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CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Filed: 6/19/96
 49th Day: 8/7/96
 180th Day: 12/16/96
 Staff: AJP-LB
 Staff Report: 7/23/96
 Hearing Date: 8/13-16/96
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-96-109

APPLICANT: Hope Warschaw and John Law AGENT: Jim Schmidt

PROJECT LOCATION: 514 Palisade Beach Road, Santa Monica

PROJECT DESCRIPTION: Addition of an entertainment room, maid's quarters, swimming pool, three-car garage, driveway, fencing and landscaping to a two lot parcel currently improved with a single-family residence. An existing chain link fence, sand berm and vegetation located on the beach and seaward of the property line is proposed to be removed.

Lot area:	16,810 square feet
Building coverage:	1,957 square feet
Pavement coverage:	2,302 square feet
Landscape coverage:	4,146 square feet
Parking spaces:	3
Zoning:	R2B
Plan designation:	Residential
Ht abv fin grade:	23 feet

LOCAL APPROVALS RECEIVED: Approval in Concept

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with a special condition regarding the removal of encroachments on State property.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions:1. Removal of Sandberm, Fence and Vegetation

With the acceptance of this permit the applicant agrees to remove the

sandberm, fence and vegetation that is located seaward of the applicant's southern (oceanside) property line, as established in the August 1984 Settlement Agreement (see Exhibit 2), prior to occupancy of development approved in this action or within 365 days of the date of Commission action, whichever occurs first. Additional time may be granted by the Executive Director for good cause.

IV. Findings and Declarations.

A. Project Description and Background

The applicant proposes to add approximately 3,224 square feet to an existing 6,760 square foot, two-story single-family residence with detached four car garage. The addition includes on the first floor an approximately 944 square foot livable area, attached to the existing single-family residence by a single hallway, and 849 foot three car garage, attached to the existing garage. Above the proposed garage and partially over the existing garage will be a 1,375 square foot maids quarters. The proposed project also includes covered ground level decks, swimming pool, property line fence and gate along the southwest boundary line, landscaping and an uncovered parking space. The applicant is also proposing to remove a sandberm, fence and vegetation located adjacent to the applicant's property on sandy beach.

The existing single-family residence is located on a 8,407 square foot lot. The proposed addition will be built on an abutting 8,407 square foot vacant lot. The structural additions will be connected to the existing single-family residence.

The proposed project is located in the City of Santa Monica's North Beach area on Palisades Beach Road (Pacific Coast Highway). The North Beach area contains the City's northern sandy beach area, beach clubs, the "Gold Coast" single-family residential neighborhood, and multi-family residential development. The subject lot is located within a row of residentially developed lots consisting of single-family residences.

To the north and south of the parcel there is a single-family residence; to the east is Palisades Beach Road (Pacific Coast Highway) and Palisades Park bluffs; and to the west is sandy beach.

The proposed site is located within the City's Beach Overlay District. The boundary of the Beach Overlay District is the area west of Ocean Avenue and Neilson Way (excluding the Pier area) extending from the City's northern boundary line to the southern boundary line. The Beach Overlay District was created with the passage of a voter initiative (Proposition S). The initiative prohibits hotel and motel development, and restaurants over 2,000 square feet in the Beach Overlay District (the initiative was not certified by the coastal Commission).

In 1992, Commission denied the LCP for the Beach Overlay District and denied certification because the Commission found that Proposition S discouraged visitor serving uses along the beach resulting in an adverse impact on coastal recreation and access. In an earlier action in 1987, the Commission

certified, with suggested modifications, a LUP that included the area presently known as the Beach Overlay District. In its action in 1987, the Commission found that the submitted LUP would also result in adverse impacts on coastal access and recreational opportunities and denied the LUP as submitted and approved it with suggested modifications to mitigate any adverse impacts. As modified the 1987 LUP allowed limited residential development with a small amount of commercial development in the north beach area. The 1987 LUP certification has lapsed.

B. Boundary Line Agreement

The applicant is one of approximately 28 lot-owners who have been involved in a long term dispute and legal settlement of boundary line placement between the 28 lot owners, the City of Santa Monica and the State (as represented by the State Lands Commission and Department of Parks and Recreation). The dispute centered around the exact location of the landward extent of State owned lands. The 1921 mean high tide line was formally established by survey as the legal property line between public and private property. The issue in the Santa Monica boundary line dispute was the ownership of sandy beach which has accreted seaward of the 1921 legal property line. The boundary line dispute in Santa Monica had existed prior to the passage of the 1976 Coastal Act and Proposition 20. Many of the 28 lot owners have extended structural improvements to their primary structures (mostly single family residential structures) located on fee-title owned land beyond the legal 1921 property line and onto the Santa Monica State Beach lands.

The settlement of the dispute between the State, City and the applicant, was finalized in August 1984. The recorded settlement consists of a "Boundary Line Agreement" fixing forever the location of the boundary between upland property owned by the applicant and the tide and submerged lands owned by the public, a "Lease Agreement with Options" between the three parties leasing certain parcels located landward of the agreed upon boundary line, and a "Permit for Improvements and lease Option Agreement" in which the State and City lease to the applicant certain parcels located seaward of the established boundary line. The Commission previously stated to all parties to this legal settlement and herein repeats its statement that the California Coastal Commission is not a party of the lease agreement and has not asserted any rights to be a party, since the Commission does not regulate ownership of land within the coastal zone. Therefore the property exchange carried out under the option is not in the Commission's jurisdiction. However, the applicant proposes to remodel and modify existing uses located within the coastal zone which requires a coastal development permit from the Commission. The Commission notes that its legal mandate is to regulate and plan for the use of land located within the Coastal Zone of California in accordance with the 1976 Coastal Act. The Commission is not asserting regulatory authority over the legal settlement or its terms and conditions established by the signing parties of interest. The Commission is, however, asserting regulatory and planning authority over the land proposed for development and use by the applicant, in accordance with its responsibility under the Coastal Act.

In previous actions on Palisades Beach Road, the Commission has required that no private, permanent improvements extend onto leased land seaward of the 1921 Mean High Tide line as adopted in the settlement, because these leases will terminate in the near future.

C. Recreation-Ocean Front

Section 30221 of the Coastal Act States:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

As stated, the proposed project is located between the first public road and the sea. The Coastal Act requires that public coastal recreational facilities shall have priority over other types of development on any private land suitable for such use. Sections 30221 and 30222 gives priority land use to visitor-serving commercial and public recreational facilities on public and private oceanfront and upland areas where necessary.

In acting on the 1992 LUP submittal, the Commission found that the LUP, which incorporated the provisions of Proposition S, discouraged visitor serving uses along the beach, resulting in an adverse impact on coastal access and recreation, and the LUP did not adequately mitigate these and other adverse impacts. Therefore, the Commission could not find the LUP consistent with Section 30221 and 30222 of the Coastal Act.

In the 1987 certified LUP, the Commission found that maximum public access was not being provided on the beach, especially in the north beach area, and allowing private residential development along the north beach would adversely impact public access and would preclude higher priority recreational uses. Therefore, the Commission required a modification to Policy 59 of the LUP, which, as modified, stated in part:

. . . High density residential development shall not be allowed on lots which are currently designated for but not built out to the high density level. Development on these lots shall not exceed their existing density and shall be redesignated as such. Residential development shall be allowed only on those parcels which are currently both developed with and zoned for private residential use. . . Residential development of properties currently developed with beach clubs or other recreational uses shall be prohibited. These parcels shall accommodate beach related visitor-serving recreational and commercial uses including but not limited to overnight visitor accommodations and public parking uses. . .

As modified, the 1987 LUP allowed residential use on lots currently developed with residential use, however, the lots were not allowed to exceed their existing densities in order to minimize the impacts to recreational and access opportunities. In this particular case the applicant is improving an existing vacant lot for an addition to an existing single-family residence. The development will not increase the number of residences in the area.

The subject property is located within a residential tract, north of the Santa Monica Pier, consisting of mainly older single and multiple family residences with some recycling occurring. This area, because of its proximity to a State beach parking lot and the Pier, would normally be suitable for visitor-serving commercial development. One of the basic Coastal Act goals is to maximize public recreation and access to the beaches. However, this project does not involve the development of a new single-family residence. The project is an addition to an existing single-family residence located between other residential development. As an addition to an existing single-family residence the project will not increase the number of residences along this beach tract and will not adversely impact coastal recreational opportunities for the area. The Commission, therefore, finds that as proposed the project will be consistent with Sections 30221 and 30222 of the Coastal Act.

D. Development

Section 30250 of the Coastal Act states in part that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states in part that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project is located in an area of the north beach subarea that is developed with a mix of single and multiple-family residences. Residential structures range from one to three-stories, with a maximum height of 40 feet.

The proposed project will be two-stories, 24.5 feet high, as measured from existing grade. In past permit action for the area the Commission has consistently limited the height of development to 50 feet for all structures in the north beach subarea. The City currently limits development to a maximum height of 40 feet but also requires projects to conform to a view envelope to protect views from the Palisades Park bluffs. The view envelope is measured from a height of 30 feet at the beach set back line to a point 5 feet above the bluff. As proposed, the project is consistent with past Commission permit action regarding height and with the City's view envelope height limit. The project as proposed is consistent with the character and scale of the surrounding area and with past Commission permit action for the area. The Commission finds, therefore, that the proposed project is consistent with Sections 30250 and 30251 of the Coastal Act.

E. Violation

The project site includes a sandberm, fence and vegetation on the sandy beach seaward of the 1921 Mean High Tide Line, which was established under the August 1984, Settlement Agreement between the property owners, State Lands Commission and the City of Santa Monica, as the boundary line separating private property and State property. Aerial photographs in the South Coast District office show that in 1986 the sandberm and vegetation were not existing. Then in the 1993 photographs the sandberm, fence and vegetation are present in front of this property and in front of the adjacent property to the south. Based on these photographs it is evident that the sandberm, fence and vegetation were placed in the area after the Settlement Agreement but prior to the applicant buying the property in 1995.

A permit is required for the material placed on the beach outside of the applicant's property since it constitutes development pursuant to Section 30106 of the Coastal Act. A permit search through the records of the South Coast District office indicates that no permit application has ever been filed for this development.

The Commission has required that no improvements extend seaward of the 1921 Mean High Tide line as adopted in the settlement. The applicant has agreed to remove all material that is in front of the property as part of this application. The adjoining property owner will be contacted by Commission staff regarding their encroachment and required removal. Commission staff has also notified the City of Santa Monica regarding these encroachments onto public beach.

Although unpermitted development may have taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal permit.

F. Local Coastal Program

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District), and the Santa Monica Pier. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications.

The area within the Beach Overlay District was excluded from certification due

to Proposition S discouraging visitor serving uses along the beach resulting in an adverse impact on coastal access and recreation. In deferring this area the Commission found that, although Proposition S and its limitations on development were a result of a voters initiative, the policies of the LUP were inadequate to achieve the basic Coastal Act goal of maximizing public access and recreation to the State beach and did not ensure that development would not interfere with the public's right of access to the sea.

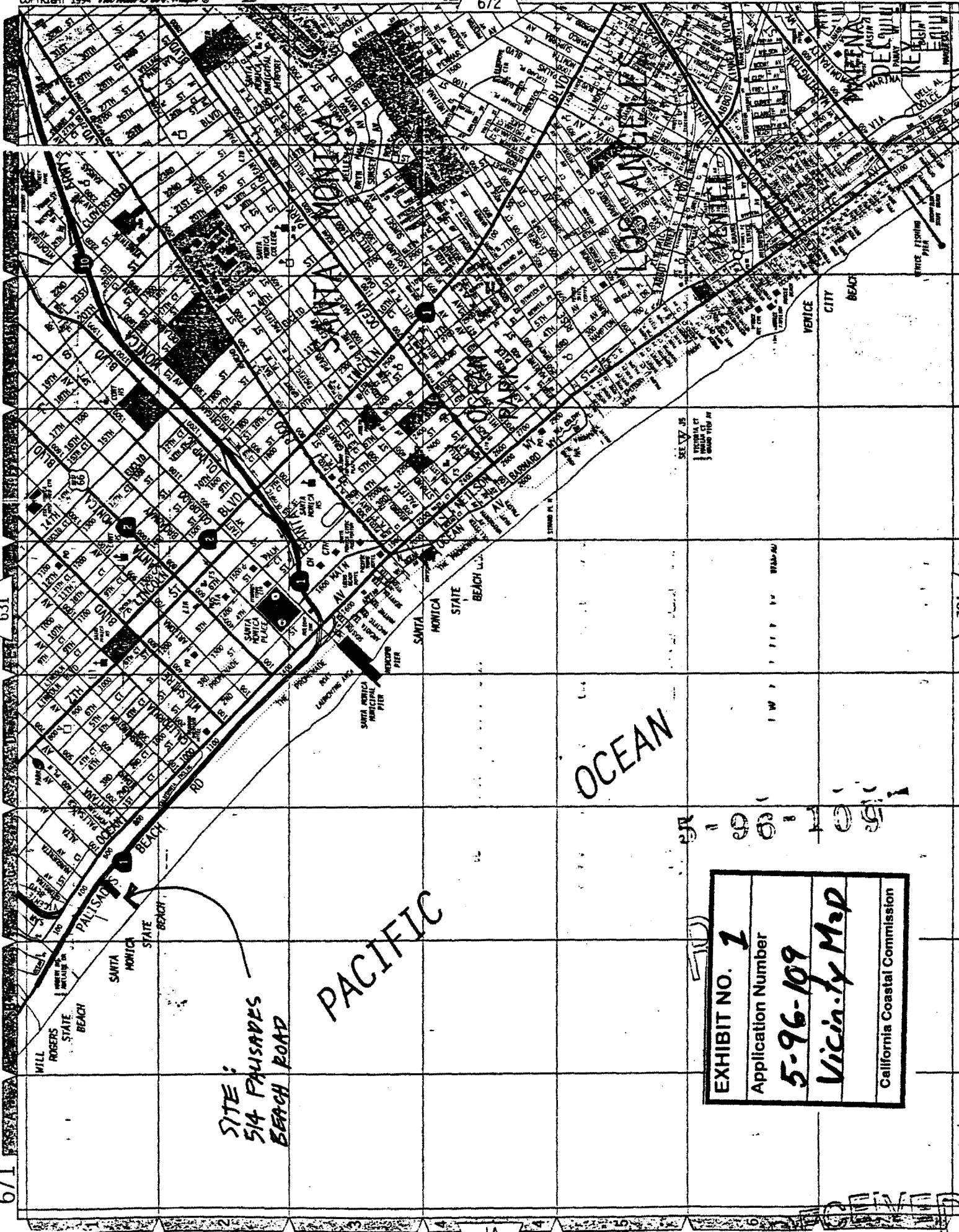
The subject site, because of its proximity to the State beach and Santa Monica Pier, is suitable for visitor-serving commercial development. However, because the applicant is adding to an existing single-family residence staff is recommending approval of the development. As proposed the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare Land Use Plan policies for the Beach Overlay District (deferred area) and a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

7390F



*SITE:
514 PAUSADES
BEACH ROAD*

OCEAN

PACIFIC

EXHIBIT NO. 1
Application Number
5-96-109
<i>Vicinity Map</i>
California Coastal Commission

SEE 631 MAP

SEE 701 MAP

671

1921 MHT Line

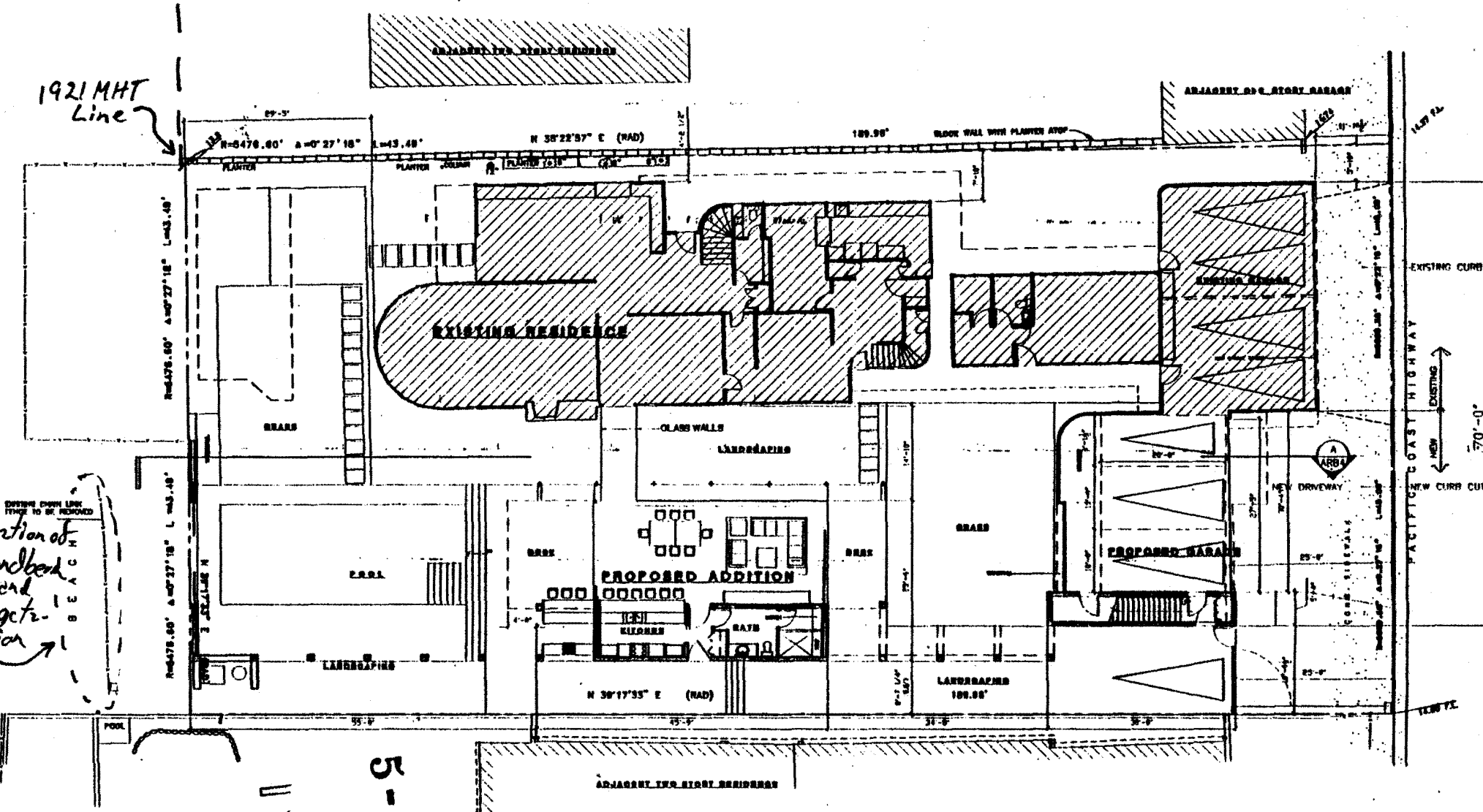


EXHIBIT NO. 2
 Application Number
5-96-109
Site Plan
 California Coastal Commission

FIRST FLOOR PLAN / PLOT PLAN

1/8" = 1'-0"



EXISTING FIRST FLOOR 2932 S.F.
 PROPOSED FIRST FLOOR 1848 S.F.

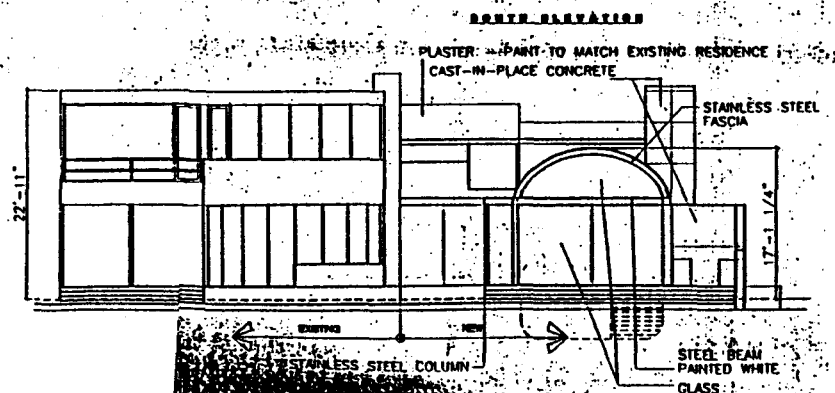
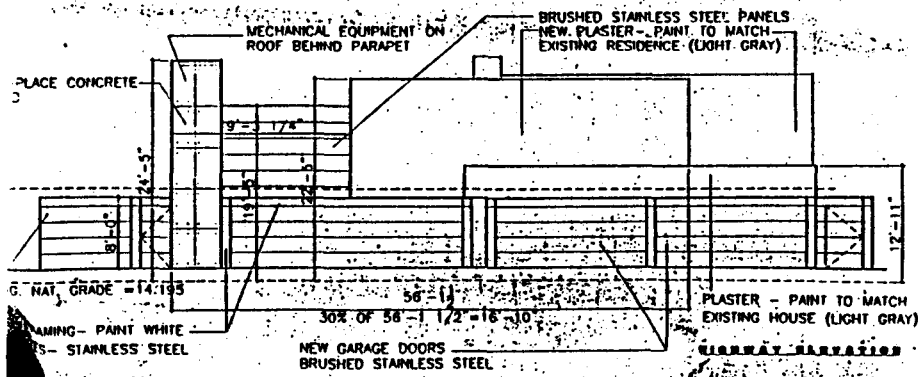
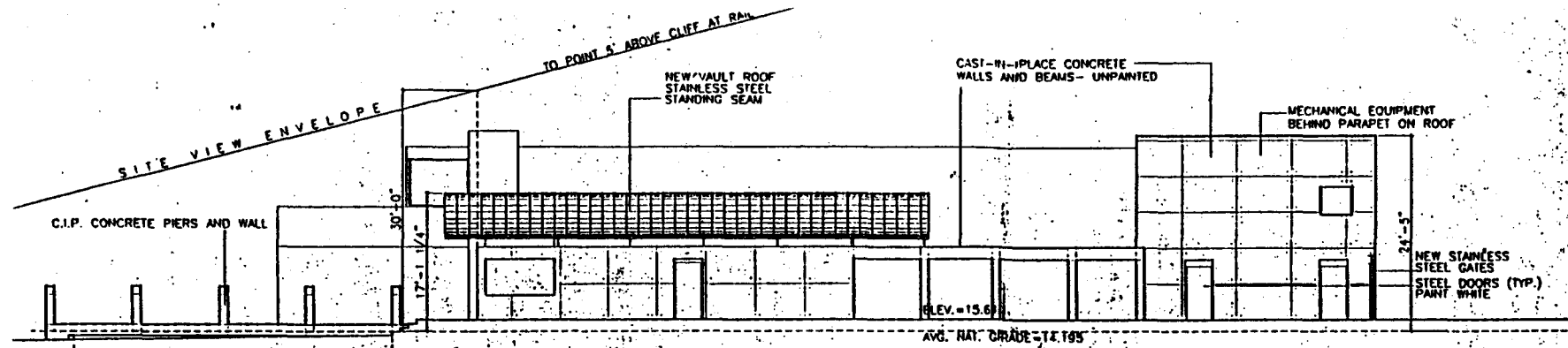


EXHIBIT NO. 3

Application Number
5-96-109

Elevation
Drawings

California Coastal Commission