

CALIFORNIA COASTAL COMMISSION

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

Filed: 9/10/96
49th Day: 10/29/96
180th Day: 3/9/97
Staff: AJP
Staff Report: 10/1/96
Hearing Date: 1/7-10/97
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-96-191

APPLICANT: John Mavar

AGENT: Raymond Medak

PROJECT LOCATION: 2021 & 2045 W. Paseo del Mar, San Pedro, County of
Los AngelesPROJECT DESCRIPTION: Erection of a six foot high perimeter chainlink fence
along three sides of a vacant blufftop parcel.

Lot area:	42,055 square feet
Zoning:	R1-1XL (Residential)
Plan designation:	Residential
Ht abv fin grade:	6 feet

LOCAL APPROVALS RECEIVED: City of Los Angeles Approval In Concept.

SUBSTANTIVE FILE DOCUMENTS: San Pedro certified Land Use Plan; Coastal
Development Permit No. P-9-18-74-3811; Appeal No. 179-76.STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with a special condition to put the applicant on notice that public rights may exist on the property.

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 1975, 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. Public Rights

By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property.

IV. Findings and Declarations.

A. Project Description and Background

The applicant proposes to construct a six foot high chainlink fence along the property boundaries of a irregularly shaped 42,055 square foot vacant blufftop parcel. The fence will be located along the entire length of the northeast boundary line, the southeastern most boundary line and partially along the northwestern boundary line.

The project site is a 42,055 square foot coastal bluff top parcel of land located adjacent to the intersection of Western Avenue and Paseo del Mar in the San Pedro of the City of Los Angeles (see Exhibit 1). The project site consists of two terrace levels with low gentle slopes separating the levels. The terrace area extends from Paseo del Mar to approximately 90 to 120 feet seaward to the bluff top edge. The property extends down the 120 foot bluff face to approximately the toe of the bluff.

The parcel is located adjacent to a developed residential neighborhood. The subject site is the eastern most privately owned bluff top parcel within this residential neighborhood. Surrounding land uses include multi-family residential structures directly north of the project site across Paseo del Mar, a vacant City of Los Angeles owned property immediately to the east, Royal Palm Beach County Park south at the foot of the bluff, and a single family residence to the west (see Exhibit 3).

B. Public Access

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The major access issue in this permit is whether the fencing of a vacant oceanfront lot so that it cannot be used by the public for access to the ocean or for oceanfront recreation is consistent with the Coastal Act. Section 30210 states that maximum access and recreational opportunities shall be provided to protect public rights:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 requires that development shall not interfere with access:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

As mentioned, the proposed development consists of the construction of a chainlink fence on a currently vacant bluff top property. The property is located adjacent to and south of Paseo del Mar and overlooks a south facing beach.

The parcel is the eastern most parcel within the residential tract and one of the last undeveloped parcels in the neighborhood. The parcel offers unobstructed views to and along the ocean. The parcel is used to some extent by the residents in the area as a pedestrian shortcut, as evidenced by the worn paths and observations by staff during site visits in the area. Residents from the residential neighborhood located to the west of the property pass through the property as a small shortcut along Paseo del Mar because the improved portion of the roadway veers inland away from the bluff in the vicinity of the property creating a slightly longer route if one was to follow the improved roadway (see Exhibit 5).

The project raises issue with Section 30210 and 30211 of the Coastal Act because there is some evidence that over the years the property has been used by the public and therefore the potential for implied dedication exists over the property.

If the Commission finds that the public has acquired a right of access to the sea across the property and development of the fence will interfere with that access, the proposed project would be inconsistent with Section 30210 and 30211 of the Coastal Act. Development inconsistent with Section 30210 and 30211 should not be permitted.

In 1974 a previous property owner submitted an application for the construction of a restaurant and associated parking on this lot (P-9-18-74-3811 and Appeal No. 179-76). At that time the lot was zoned for commercial use and the proposed use was consistent with the zoning. The project was denied by the Regional Commission and a subsequent appeal was found to raise no substantial issue by the State Commission (Appeal No. 285-74). Subsequent to this action the applicant sought judicial review of the Regional Commission's action. A peremptory writ of mandamus was entered against the Regional Commission and the Regional Commission was ordered "... (2) to consider said decision in light of the written, documentary and oral evidence properly before you as of the termination of the November 18, 1974 hearing and in light of any additional evidence you may properly receive at or in such further proceedings as you may in your discretion hold in order to comply with this writ, (3) to make written findings of fact in support of the determination you shall make upon such reconsideration..." The Regional Commission subsequently adopted the denial findings in the original staff report.

The staff report stated that the project site was:

currently utilized by the general public for numerous recreational activities, including whale-watching, kite flying and more passive

pursuits as the site provides a fine vista of the coastline and surf below.

Furthermore, during the Regional Commission's public hearing a number of residents from the area testified that the vacant lot was heavily used by the public. Such uses included, strolling, sightseeing, kite flying, picnicking, etc.

Aerial photographs located in the South Coast District office taken in 1978, 1986 and 1993 show worn footpaths crisscrossing the property indicating public use. Such uses as testified in 1974 before the Regional Commission continue to occur today, a period of over 20 years. Staff has also frequented the site over the last nine years and has observed three to eight foot wide footpaths crisscrossing the property. One of the footpaths extends from the City owned property located adjacent to and east of the property extending across the property to the northwest corner of the lot where the existing public sidewalk fronts the property. Other paths lead from the sidewalk to the bluff edge. Staff has also observed people walking along these paths and seeing people sitting along the bluffs edge enjoying the ocean views.

This parcel has always been vacant and open to the public without any attempt, except in 1994, by the property owner(s) to prohibit public use of the property. The one exception in 1994 was by the previous property owner. The previous property owner erected a chainlink fence, similar in location as the proposed fence, without the benefit of a Coastal Commission permit. However, just prior to the previous property owner being notified in writing by Commission staff that a permit was required, and a few days after erecting the fence, it was torn down by unknown individuals. The applicant removed the remaining remnants of the fence with no further attempt to fence the property.

As shown above, through staff site visits and public testimony before the Commission in 1974, for a period extending over 20 years, information has been compiled indicating that the subject property may have been used by the public. Therefore, the potential for implied dedication exists.

Even though the potential for implied dedication may exist on the property there has not been a demonstration that such use amounts to a prescriptive right of access. Further, in order to deny or significantly modify development the Commission must find that development of the parcel would interfere with beach access and coastal recreation and would be inconsistent with the Chapter 3 policies of the Coastal Act. As stated the property is a bluff top lot providing bluff top access for viewing and other passive activities. However, the worn footpaths and staff investigation indicates that public use of the property is primarily for a shortcut to the street, and not for coastal recreation. Further, the property, because of the steepness of the bluff, does not provide access down to the beach. Public beach access is available approximately 1,050 feet to the east at the Royal Palms Beach park entrance. This entrance leads to the County's public parking lot and park which are located at the foot of the bluffs.

Furthermore, the property immediately to the east of the proposed site is a City owned vacant parcel. This parcel provides the same passive recreational opportunities as the proposed site and is designated in the Land Use Plan as a Scenic View Site. In addition, just east of the Royal Palms Beach park

entrance the County of Los Angeles is currently constructing a bluff top park [#5-96-008 (County of Los Angeles)]. The park area was previously fenced and the public was prohibited from the area. This park will provide the public an additional area for passive recreational and viewing opportunities. Further south along the bluff is a City owned and operated baseball field and south of this playing field is approximately 1,500 linear feet of City owned open bluff top providing off-street parking and coastal viewing area.

Because, (1) a public bluff top lot providing bluff viewing and recreational area is located immediately to the east of the property and beach access is within close proximity to the proposed site, (2) a right of access by implied dedication has not been demonstrated by substantial evidence, (3) and the lot does not provide access directly to the beach, permitting the proposed fence that would preclude bluff top access along the property will not interfere with beach access nor significantly diminish coastal recreational opportunities in the area. However, the Commission finds that the potential for prescriptive rights over the property or portions of the property may exist and the applicant should be placed on notice that such rights may exist and that granting of this permit does not constitute a waiver of any public rights which may exist on the property. Therefore, the Commission finds that only as conditioned will the proposed project be consistent with Sections 30210 and 30211 of the Coastal Act.

C. Visual 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 landforms, 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 south of Paseo del Mar and west of Western Avenue in the San Pedro area of the City of Los Angeles. Paseo del Mar offers turn-out and viewsite areas between Point Fermin Park and Western Avenue. These areas offer panoramic views of the ocean, Catalina Island, and the San Pedro bluffs. Along this 2 mile stretch the certified Land Use Plan designates three areas as Scenic View Sites (see Exhibit 4). The certified LUP states that development:

Turn-out and viewsite areas from Paseo del Mar, as shown on the Special Features Map (Appendix C), shall provide unobstructed views of the ocean.

One of the Scenic View Sites is located on the City owned vacant parcel adjacent to and east (down coast) of the proposed site. From this view site the ocean, Catalina Island and the bluffs to the west and east are visible.

The proposed site is located west (up coast) of the designated Scenic View Site. As located, development of the site will not adversely impact views to the ocean from the adjacent view site since the property is outside of the view site's visual corridor. Views from along Paseo del Mar and Western will

not be significantly impacted because the fence is chainlink and will continue to allow views through the fence. The Commission, therefore, finds that the project as conditioned will be consistent with the view protection policies of the Coastal Act and the certified LUP will not adversely impact the visual resources of the surrounding area and therefore, is consistent with Sections and 30251 of the Coastal Act.

D. 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.

On September 12, 1990, the Commission certified, with suggested modifications, the land use plan portion of the San Pedro segment of the City of Los Angeles' Local Coastal Program. The certified LUP contains policies to guide the types, locations and intensity of future development in the San Pedro coastal zone. among these policies are those specified in the preceding section regarding public access and visual resources. The proposed development is consistent with the policies of the certified LUP. 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 a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. 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.

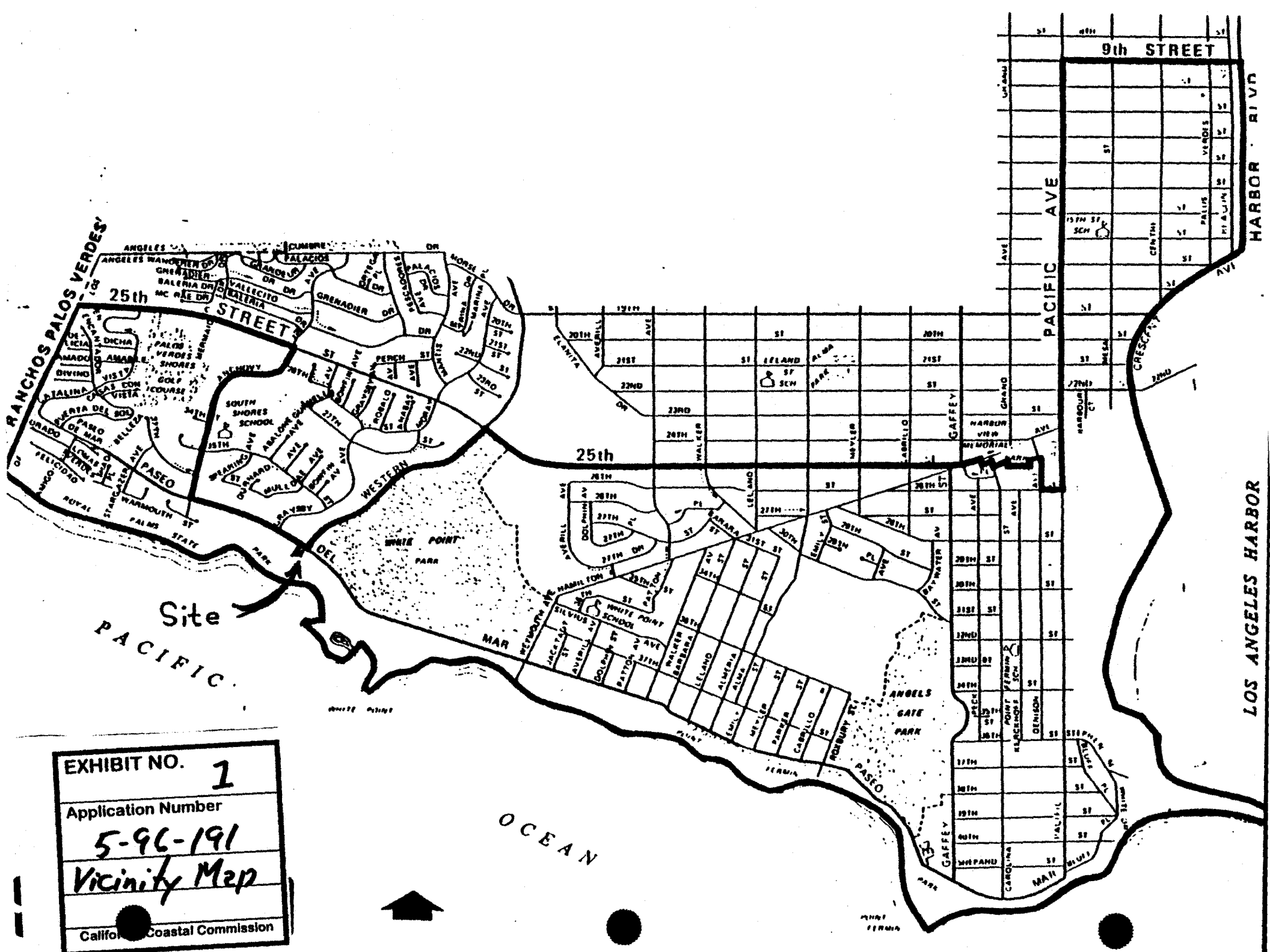


EXHIBIT NO.	1
Application Number	5-96-191
Vicinity Map	
California Coastal Commission	

APPROVED

Permit No.

5-96-191

By:

EFFECTIVE

Date:

RECEIVED

SEP 10 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

SURVEY & TOPOGRAPHY BY:

DENN ENGINEERS

3914 DEL AMO BLVD., STE. 921
TORRANCE, CA 90503
(310) 542-9433

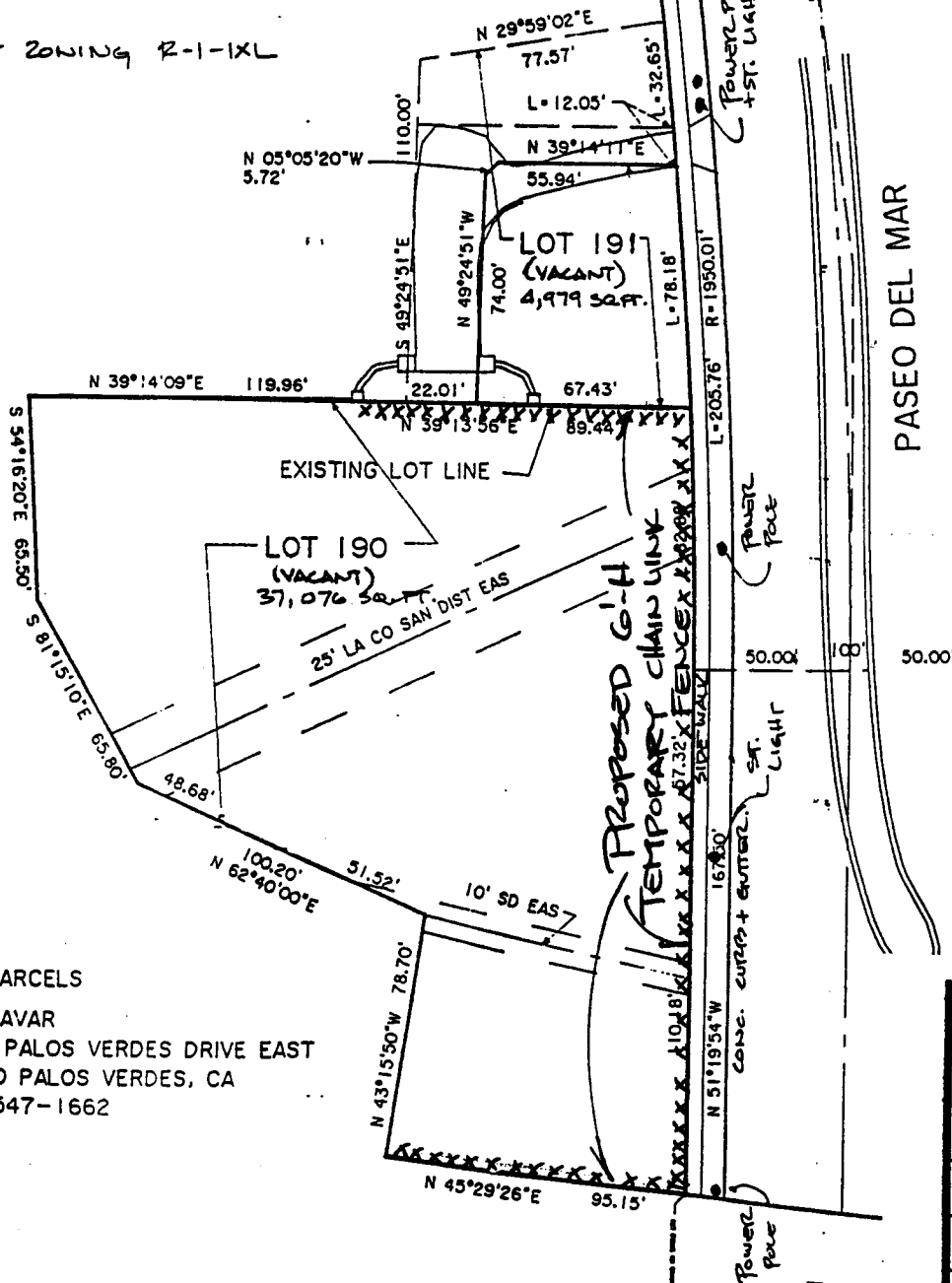
EDWARD G. SHWEIRI
R-C.E. 11284

DATE



GRAYSBY AVE.

PRESENT ZONING R-1-1XL



OWNER PARCELS

JOHN MAVAR
30411 PALOS VERDES DRIVE EAST
PANCHO PALOS VERDES, CA
(310) 547-1662

EXHIBIT NO. 2

Application Number

5-96-191

Site Plan

California Coastal Commission



**CODE
470**

L.S. 1-47

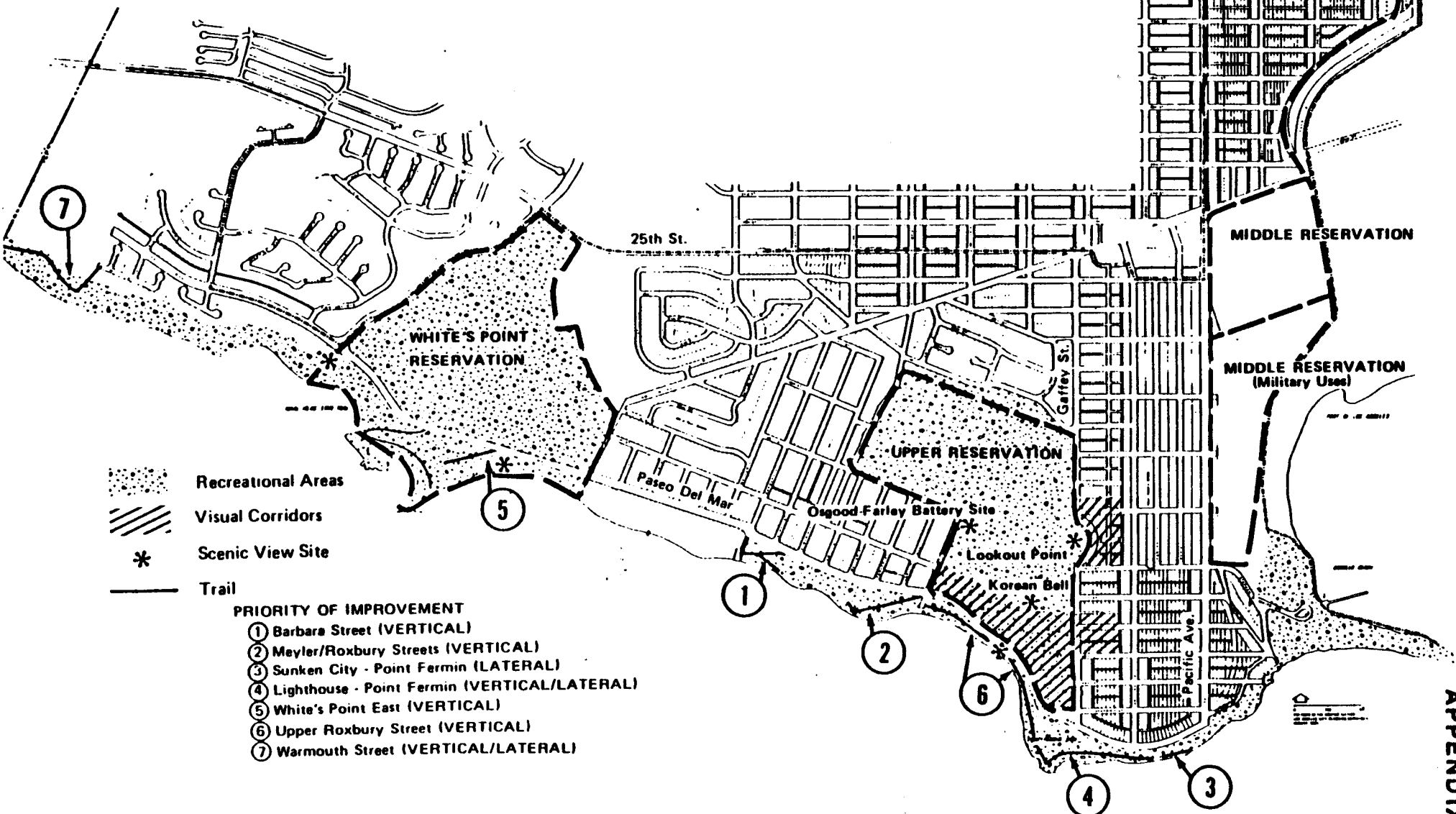
EXHIBIT NO.	3
Application Number	5-96-191
	Surrounding Land
Uses	
California State Commission	

EXHIBIT **4**

Application Number
5-96-191

San Pedro LUP,

Scenic Resource Map
 California Coastal Commission



SAN PEDRO SPECIFIC PLAN
SPECIAL FEATURES

APPENDIX C

EXHIBIT NO. 5
Application Number 5-96-191
Path Location
California Coastal Commission

