

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

Filed: July 8, 1997
49th Day: August 26, 1997
180th Day: January 4, 1998
Staff: John T. Auyong
Staff Report: July 24, 1997
Hearing Date: August 12-15, 1997
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-97-171

APPLICANT: Thomas Barnes

AGENT: John T. Morgan, Jr.

PROJECT LOCATION: 4501 West Seashore Drive, City of Newport Beach,
County of OrangePROJECT DESCRIPTION: Demolish an existing duplex and construct a new 27
foot high, 3,015 square foot single-family residence
with attached 404 square foot two-car garage, and a
beachside patio which encroaches onto the Oceanfront
public right-of-way.

Lot area:	2,550 square feet
Building coverage:	1,755 square feet
Pavement coverage:	660 square feet
Landscape coverage:	135 square feet
Parking spaces:	Two
Zoning:	R-2
Land Use Plan designation:	Two Family Residential
Height above grade:	27 feet

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept No.
606-97; City of Newport Beach Modification Permit No. 4561SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan;
Coastal development permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City
of Newport Beach (street-ends)), 5-94-054 (Riegelsberger), 5-94-178 (RJH
Properties), 5-94-280 (Hood), 5-96-218 (Collins), and 5-96-225 (Fine).SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with special conditions regarding; (1) a permit amendment is required for future development on the Ocean Front public right-of-way, (2) submission of the City's encroachment permit, and (3) the City's right to revoke its encroachment permit; to mitigate the adverse impacts on public access and public recreation resulting from the proposed beachside patio encroachments onto the public right-of-way.

RECORD PACKET COPY

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, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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. Deviation from Approved Encroachments

The only encroachment onto the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a 10'x30', trapezoidal shaped (in plan view), patio surrounded by a 36" high wall. Any additional development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit from the Coastal Commission.

2. Submission of Encroachment Permit

Prior to commencement of construction of the encroachments described herein, the applicant shall submit, for review and approval by the Executive Director, a copy of a valid, approved Annual Ocean Front Encroachment Permit from the City of Newport Beach authorizing the development approved by this coastal development permit which would encroach into the public right-of-way.

3. City's Right to Revoke Encroachment Permit

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

IV. Findings and Declarations.

A. Project Description

The applicant is proposing to demolish an existing duplex and construct a new 27 foot high, 3,015 square foot single-family residence with an attached 404 square foot two-car garage (see Exhibit D). The subject site is located in West Newport. The City approved Modification Permit No. 4561 for an eight foot wide bay window on the landward side of the second floor which would encroach one foot into the southeastern side yard setback.

Also proposed is a ground level patio on the ocean side of the proposed home. The proposed patio would span the entire thirty foot width of the subject site. The proposed patio would be surrounded by a 36" high wall with a gate to the beach. The seaward most portion of the proposed patio would encroach onto the City of Newport Beach Oceanfront public right-of-way (see Exhibits B and C). The public right-of-way is City owned land for street purposes.

The portion of the proposed patio which would encroach onto the public right-of-way would be ten feet deep (i.e., extending seaward from the beachside property line) and thirty feet wide (i.e. from side yard property line to side yard property line). The subject site is located in an encroachment zone which allows encroachments up to ten feet beyond the seaward property line. In plan view, the proposed patio encroachment would be trapezoidal in shape.

B. Public Access

1. Encroachments

Section 30210 of the Coastal Act states:

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 of the Coastal Act states:

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.

The proposed development includes construction of patio encroachments onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home. The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront street. The portion of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway.

In the vicinity of the subject site, however, the City has never constructed any part of Oceanfront street but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. The public right-of-way in this area is currently unimproved and consists of sandy beach area. Thus, the proposed encroachments onto the right-of-way will reduce the amount of public sandy beach area available for public access and recreation.

In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes. For instance, the public right-of-way could be used to extend the City's concrete bikeway/walkway along the beach. The bike path currently runs inland in the vicinity of the subject site.

Other homes in the area have patio encroachments onto the public right-of-way. In 1991, the Commission certified an amendment to the City of Newport Beach Certified Land Use Plan ("LUP"). The LUP acknowledges the adverse public access impacts that will result from development on the sandy beach area which is owned by the City for street purposes.

The proposed encroachments would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. This cumulative impact is addressed by a mitigation

plan. The mitigation plan requires that all encroachments onto the City's Oceanfront public right-of-way, including the proposed encroachment, must be approved by an Annual Ocean Front encroachment permit issued by the City. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of two metered public parking spaces per street-end.

The fees vary depending on the depth (i.e. seaward from the beachside property line) of permitted encroachment onto the Oceanfront public right-of-way. The ten foot (10') depth of the proposed encroachments are in compliance with the 10' maximum depth of encroachment allowed in this area by the LUP encroachment policies. The applicant has applied for the City encroachment permit (see Exhibit F).

LUP Encroachment Policy 5.A. contains the mitigation plan which requires the City to improve thirty-three (33) unimproved street-ends between 36th Street and Summit. Policy 5.A. requires the City to use its best efforts to improve three or more street-ends per year. Pursuant to Policy 5.A, the improvements consist of the construction of two metered parking spaces per street-end.

To date, the Commission has approved coastal development permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach) for the improvement of nineteen (19) of the 33 street-ends. The City anticipates submitting a coastal development permit application for improvements to four more street-ends sometime in 1997. In addition, the hard surface walkway perpendicular to Seashore Drive at Orange Avenue required by Policy 5.A. has been completed.

In certifying the LUP amendment, the Commission found that, if developed consistent with this mitigation plan for street-improvements which enhance vertical public access, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3. The Commission's findings of denial as submitted and approval as modified of City of Newport Beach LUP Amendment 90-1, as described in the staff reports dated December 4, 1990 and May 28, 1991 respectively, are hereby incorporated by reference.

The Commission finds that the proposed encroachments are consistent with the LUP policies, i.e.; (1) they are located in an approved encroachment zone, (2) the applicant has applied for a City oceanfront encroachment permit, and (3) the City is continuing to carry out the public access improvements that are necessary to mitigate the adverse impacts of the encroachments.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit because any improvements to homes on a beach, such as the proposed development, are not exempt. However, the proposed project is being conditioned so as to put the applicant on notice that future development on the public right-of-way requires an amendment to this permit. This would allow the Commission to evaluate future development in the public right-of-way for adverse public access and recreation impacts.

The project is further being conditioned for submission of the approved City encroachment prior to commencement of construction. The approved encroachment permit would be evidence that the applicant is participating in the LUP mitigation plan; thus mitigating the public access impacts of the proposed encroachments.

As a condition of the City's issuance of an encroachment permit, the permittee waives their right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. The proposed project is thus being conditioned, consistent with the City's certified LUP (policy 6B), to provide that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

Further, the Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins) and 5-96-225 (Fine) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar encroachments onto the public right-of-way in the area. Therefore, the Commission finds that the proposed encroachments onto the public right-of-way, only as conditioned, would be consistent with the public access and recreation policies of the Coastal Act.

2. Provision of Access

Section 30212 of the Coastal Act states, in relevant part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (2) adequate access exists nearby

The subject site is located between the nearest public roadway and the shoreline. The proposed development would result in a deintensification of use of the site because the use would go from a duplex to a single-family residence. The proposed development would provide two parking spaces, consistent with the Commission's regularly used standard of two spaces per residential dwelling unit. The proposed development would not result in direct adverse impacts, neither individually nor cumulatively, on physical lateral or public public access. Vertical access is provided by the adjacent 45th Street and nearby 46th Street street-ends. Therefore, the Commission finds that no access is necessary with the proposed development. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability

of the local government having jurisdiction to prepare a local coastal program ("LCP") which conforms with the Chapter Three policies of the Coastal Act.

The City of Newport Beach Land Use Plan ("LUP") was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues coastal development permits within the City based on development's consistency with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

A public right-of-way on land owned by the City, which is the Oceanfront "paper" Street, runs between private property and the beach along West Newport. There had been a history of mostly minor private development, primarily improvements such as patios, decks, and landscaping, which had been built onto the public right-of-way in a hodge-podge manner.

The City submitted LUP Amendment 90-1 as a way to address these private encroachments onto the public right-of-way. On January 9, 1991, the Commission denied as submitted City of Newport Beach LUP Amendment 90-1 to establish policies regarding encroachments of private development onto public rights-of-way along the beaches of West Newport and the Balboa Peninsula. On June 11, 1991, the Commission approved the LUP amendment with suggested modifications. The City accepted the suggested modifications which are now a part of the LUP.

As modified, the LUP encroachment policies include encroachment zones of varying depth out onto the public right-of-way and a three foot vertical height limit on structures allowed in these zones. The encroachments as proposed conform to the standards for height and depth-of-encroachment contained in the LUP policies.

The LUP amendment as certified by the Commission established a program to mitigate the adverse impacts of the encroachments by using encroachment permit fees to fund street-end improvements. LUP Encroachment Policy 6B provides that, as a condition of approval of the encroachment permit, property owners waive and give up any right to contest the validity of the unimproved public right-of-way on which the encroachments are located. Policy 6B further provides that City encroachment permits are revokable, without cause, if the City proposes to construct public improvements on the public right-of-way.

The Commission found the LUP Encroachment policies as modified to be consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act. The proposed development, as conditioned, conforms to the LUP Encroachment policies and the public access and recreation policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that the proposed development, as conditioned, would not prejudice the ability of the City of Newport Beach to prepare an LCP in conformity with the Chapter 3 policies of the Coastal Act.

D. California Environmental Quality Act

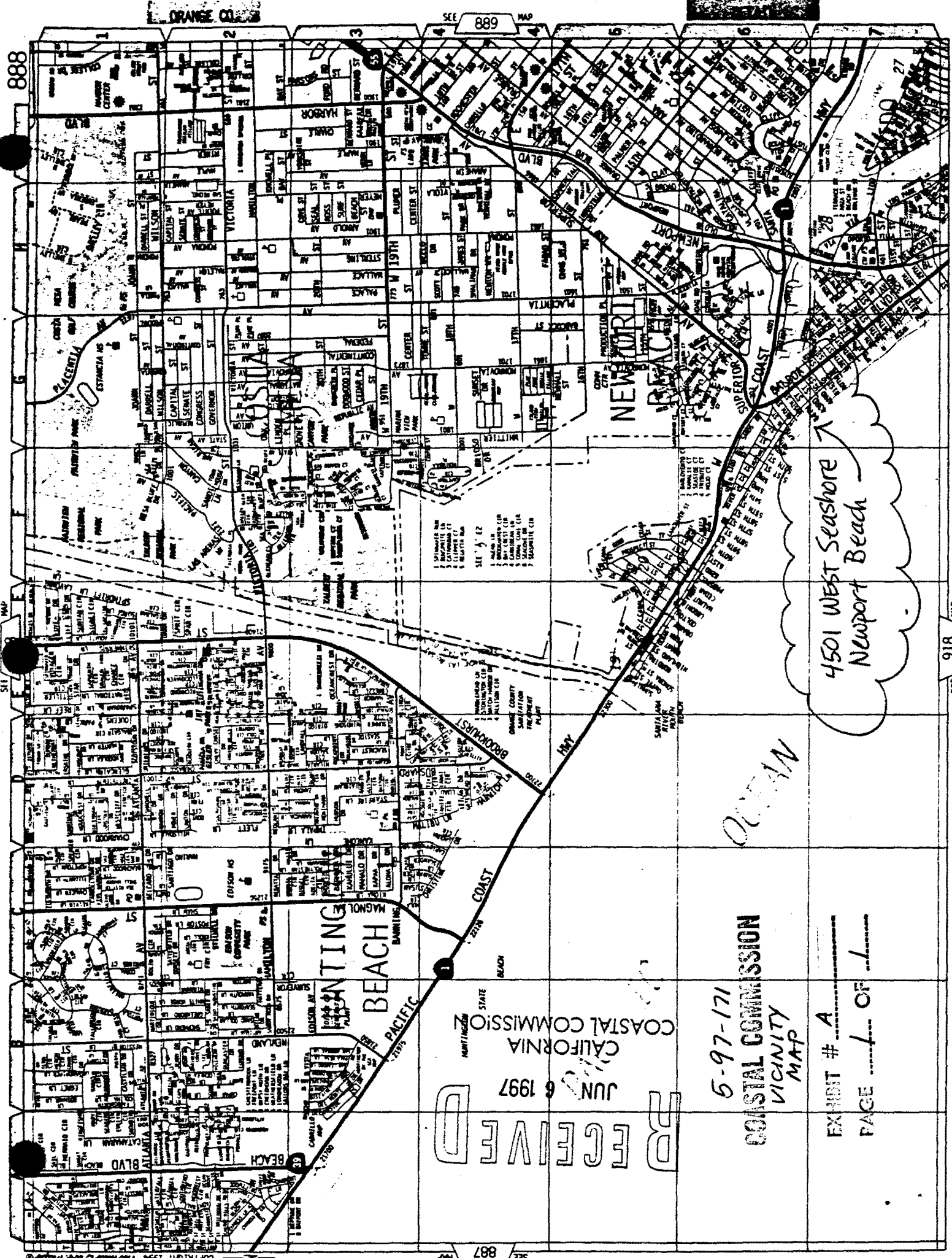
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a

finding showing the permit, as conditioned, 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.

The proposed development is located in an urban area. Development already exists on the subject site. All infrastructure necessary to serve the proposed development exists in the area. The proposed project has been conditioned in order to be found consistent with the public access and recreation policies of Chapter Three of the Coastal Act. Mitigation measures requiring; (1) that deviations from the approved encroachments require an amendment to this coastal development permit, (2) the submission of the City's approved encroachment permit for the proposed encroachment, and (3) preserving the City's right to revoke the encroachment permit; will minimize all significant adverse impacts.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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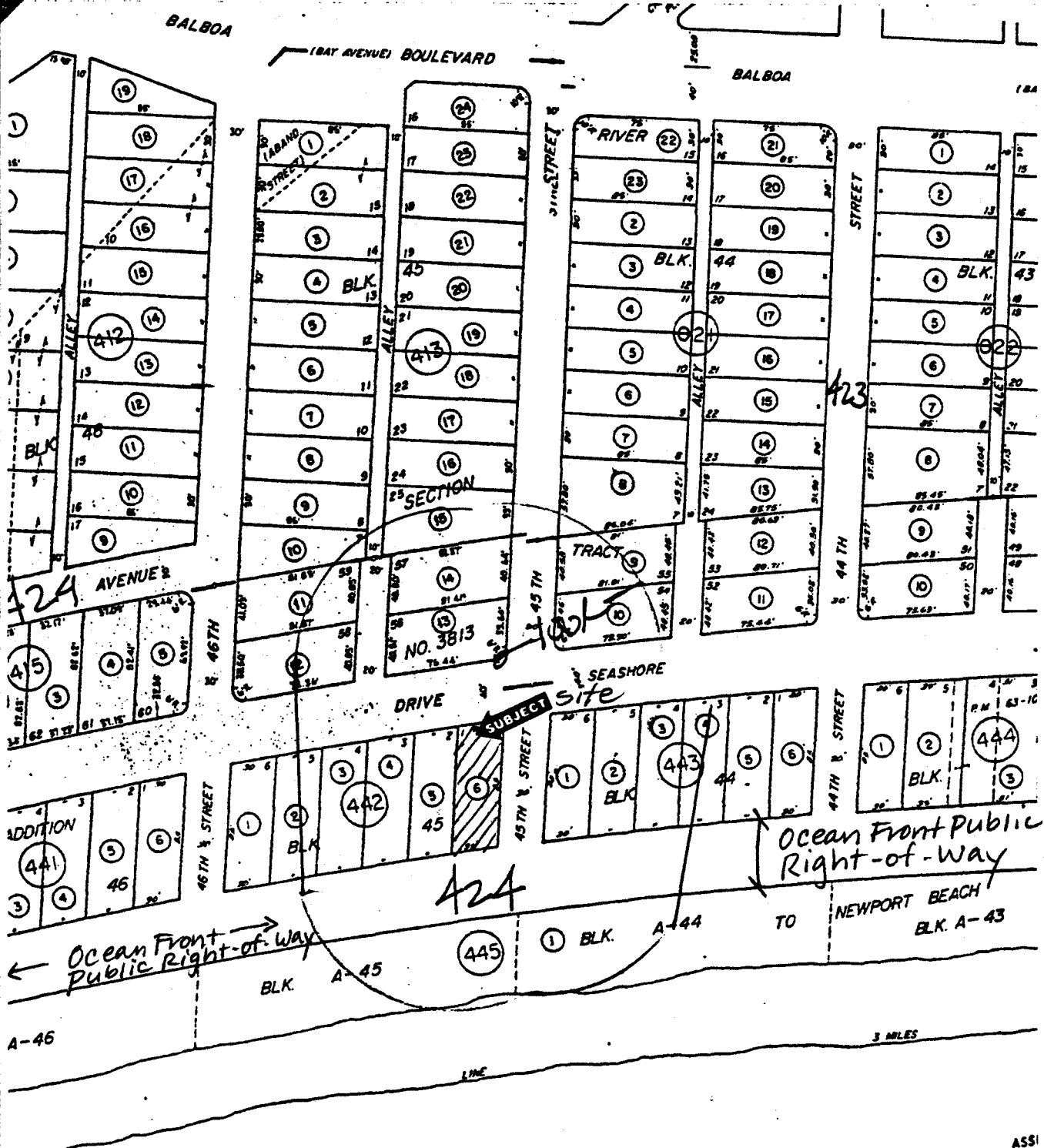
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5-97-171
COASTAL COMMISSION
VICINITY
MAP

EXHIBIT # A
PAGE 1 OF 1

4501 WEST Seashore
Newport Beach

OCEAN



1984

THIRD ADDITION TO
NEWPORT BEACH

NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

5-97-171

COASTAL COMMISSION

Public Right-of-way

EXHIBIT # B

PAGE 1 OF 1

ASSI
BOX
CO

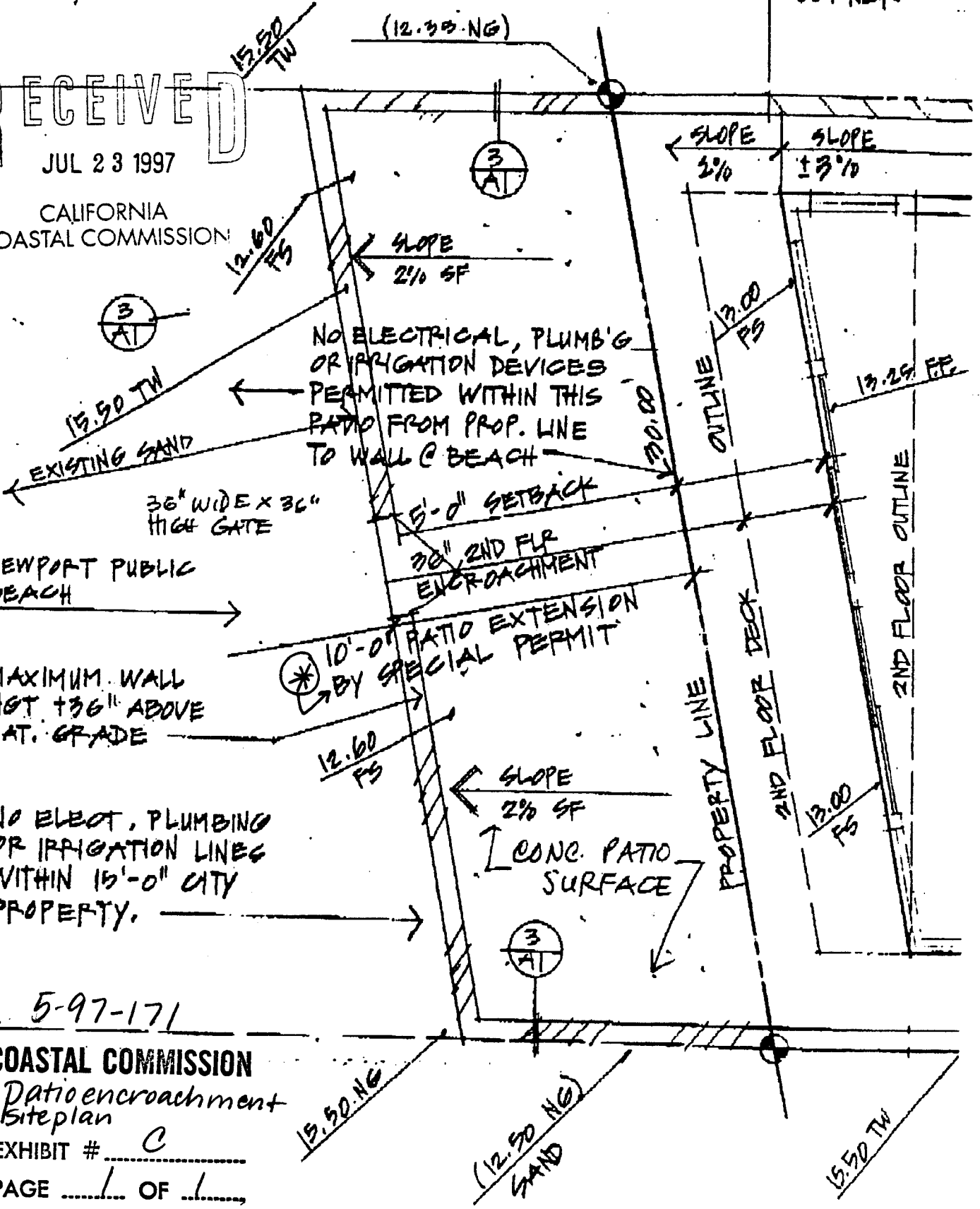
Ocean Front public right-of-way

NEW 36" MAX. HIGH WALL
ABV. NG ABOVE SAND

NEW 6'-0" HIGH
WALL TO PRO
CORNER

RECEIVED
JUL 23 1997

CALIFORNIA
COASTAL COMMISSION



NO ELECTRICAL, PLUMB'G
OR IRRIGATION DEVICES
PERMITTED WITHIN THIS
RADIO FROM PROP. LINE
TO WALL @ BEACH

36" WIDE X 36"
HIGH GATE

NEWPORT PUBLIC
BEACH

MAXIMUM WALL
HGT +36" ABOVE
NAT. GRADE

NO ELEC, PLUMBING
OR IRRIGATION LINES
WITHIN 15'-0" CITY
PROPERTY.

* 10'-0" PATIO EXTENSION
BY SPECIAL PERMIT

SLOPE
2% SF
CONC. PATIO
SURFACE

5-97-171

COASTAL COMMISSION

* Patio encroachment
Site plan

EXHIBIT # C

PAGE 1 OF 1

JOHN T. MORGAN JR. • ARCHITECT

10131 CENTRAL AVE. • GARDEN GROVE, CA 92643

• Tel. (714) 838-4017
• Fax (714) 838-4517

July 22, 1997

California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, CA 90802

Re: Coastal Number S-97-171
4501 West Seashore
Newport Beach, CA

RECEIVED
JUL 23 1997

CALIFORNIA
COASTAL COMMISSION

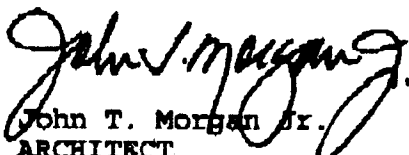
Dear John A.,

As the architect and authorized agent for this project, it has been brought to my attention by the city of Newport Beach, that we have submitted an application to your office which needs to be adjusted. Our current application indicates that a 15 foot patio encroachment onto the beachfront was requested to be approved by your office. When we applied for the encroachment permit at the city, we were informed that a 10 foot encroachment is the maximum were allowed to extend onto the beachfront.

Therefore, I am requesting that the application be adjusted to indicate that a 10 foot patio encroachment onto the beachfront is being requested. I have included with this letter, copies of receipt the city gave us and a small drawing indicating the patio adjustment. I will have a full scale site plan and a reduced site plan for your use delivered to you tomorrow. (Thursday).

If you have any questions regarding this matter, please don't hesitate to contact me.

Thank You,


John T. Morgan Jr.
ARCHITECT
4501.008

COASTAL COMMISSION

5-97-171

EXHIBIT # E

PAGE 1 OF 1

RECEIVED
JUL 23 1997

CALIFORNIA
COASTAL COMMISSION

Coastal # 5-97-171

CITY OF NEWPORT BEACH
ANNUAL OCEAN FRONT
ENCROACHMENT PERMIT

(Please print or type. Press hard - making 2 copies.)

APPLICATION FOR: ☐ EXISTING IMPROVEMENT ☐ NEW IMPROVEMENT
(CHECK ONE) ☐ EXISTING IMPROVEMENT ☐ RENEWAL
MODIFIED

Permit # OF- _____

Depth of Encroachment _____

Amount Fee Paid \$ 334.63 446.31

Receipt # _____

ADDRESS OF ENCROACHMENT _____

APPLICANT'S NAME John
TOM BARNES MORGAN

ADDRESS
10131 Central GGC CA

Phone
926-63 638-4017

OWNER'S NAME
TOM BARNES

ADDRESS 4501 W.
SEASHORE

Phone 638-4017

CONTRACTOR'S NAME
Jim Collins

ADDRESS 1500 W
N. Balboa Blvd NB

Office Phone 723-4701
Job Site Phone _____

CONTRACTOR'S CITY BUSINESS LICENSE NO. _____ STATE LICENSE NO. _____

The applicant hereby makes application to construct a new 10'-0" deep x 30'
wide patio onto the oceanfront property.

(See attached plans)

WORKERS' COMPENSATION INSURANCE (Required by Section 3800 of Labor Code) *

☐ Applicant has furnished to the city a certificate of workers' compensation insurance issued by an admitted insurer and conforming to Section 3800 of the Labor Code; or an exact copy thereof certified by the insurer. The insurance certificate shows the expiration date of the policy. If the policy lapses or is cancelled, this permit shall be deemed to be revoked.

Insurer _____ Policy No. _____ Expiration Date _____

The terms and conditions of this permit are as stated in the Oceanfront Permit Agreement. Owner hereby acknowledges that he has read and understands said terms and conditions, and that he agrees to abide by them.

William H. Barnes 9-2-97
(Owner's Signature) (Date)

SPACE BELOW THIS LINE FOR OFFICE USE

SPECIAL CONDITIONS OF APPROVAL REQUIRED BY CITY: _____

PAID

JUL 14 1997

CITY OF NEWPORT BEACH

PERMIT ISSUED BY: _____

DATE ISSUED: _____

EXPIRATION DATE OF PERMIT: June 90.

PERMIT DENIED ☐ _____

* Only required for modifications and new improvements. 5-97-171 Exhibit Fp. 1 of 2



CITY OF NEWPORT BEACH
NEWPORT BEACH, CA 92663

Coastal 5-97-171

CASH RECEIPT

RECEIPT NUMBER: 01000258262

RECEIVED BY: PERRY1
TODAY'S DATE: 07/14/97

PAYOR: BARNES
REGISTER DATE: 07/14/97 TIME: 11:03:41

ZBL RECEIVABLE MANA EN1270

\$446.31

TOTAL DUE: \$446.31

CASH PAID
\$450.00

CHECK PAID / CHECK NO
\$.00

TENDERED
\$450.00

CHANGE
\$3.69

RECEIVED
JUL 23 1997

CALIFORNIA
COASTAL COMMISSION

5-97-171

COASTAL COMMISSION
Exhibit F

EXHIBIT # _____

PAGE 2 OF 2

