

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

Staff: BP-SD  
Staff Report: July 24, 1997  
Hearing Date: August 8-11, 1997



AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Wed 116

Application No.: 6-97-82-A

Applicant: Bill Mann

Agent: Morton O'Grady

Original Description: Coastal Development Permit #F-1045: Construction of six single family dwellings on seven contiguous 25' lots with one lot retained as permanent open space to be landscaped and maintained by the applicant or his assignee. Each dwelling unit is to be two stories, wood frame, with two bedrooms and a den, and three off-street parking spaces per unit.

Coastal Development Permit #F-2875: Construction of improvements to a single family residence consisting of beach access steps down the bluff face, a 63 sq. ft. viewing platform on the bluff face, a 4 ft. high wire fence along the western half of the north property line, a 6 ft. high fence along the western half of the south property line, a 6 ft. high wooden fence on the east side of the property, paving and landscaping.

Amendment Description: Retain and remove part of existing unpermitted masonry wall along front (east side) of view lot, install plexiglass with aluminum supports in place of removed portion of masonry wall; remove some larger trees and shrubs and trim others to open up the view corridor; add landscaping, and replace fence parallel with the existing vertical accessway on site.

Substantive File Documents: Certified Mello II Local Coastal Program; Coastal Development Permit #'s F-2875 and F-1045

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of portions of the proposed development. The original permits required the applicant to improve and maintain a public vertical accessway on the site and that on-site vegetation be managed to protect public views across the approved view lot to the ocean. Staff is recommending that the Commission require the applicant to submit revised plans which indicate that the existing unpermitted masonry wall which blocks public views to the ocean is not approved and has been removed within 90 days of the Commission's action on this permit amendment. Although the applicant is proposing that a portion of the existing masonry wall be made transparent to recapture the view across the site, wind screens and other transparent materials are easily scratched or marred so they cease to be transparent and are not a good long term solution to maintaining public views across the site. Therefore, staff is recommending its removal.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development as conditioned, will be in conformity with the adopted Local Coastal Program, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The amendment is subject to the following conditions:

1. Revised Demolition Plan. Prior to the issuance of the coastal development permit amendment, and within 30 days of the Commission's action on this permit amendment, the applicant shall submit to the Executive Director for review and written approval, a revised demolition plan of the view lot which indicates removal of the existing unpermitted masonry wall, and includes only accessory structures and landscaping which have been permitted by the Commission. Only the permitted landscaping as shown on the Proposed Landscape plan, dated 6/17/97, shall be allowed to remain at the heights identified in the Proposed Landscape Plan.

2. Timing of Removal. Prior to the issuance of the coastal development permit amendment, and within 90 days of the Commission's action on this permit amendment, the permittee shall remove the entire masonry wall and all shrubs and trees identified for removal in the demolition plan, dated 6/17/97. Upon removal of the wall and landscaping, the applicant shall contact the Executive Director to arrange for a site inspection to verify compliance with this permit.

2. IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Original Project Description/History. In January 1974, the San Diego Regional Coastal Commission issued a development permit (CDP #F-1045) to the Carlsbad Beach Club for six single family dwellings on seven contiguous lots, with the condition that the southernmost lot be maintained as an open space view lot and that a vertical public access easement to the beach be dedicated and maintained adjacent to the south of the lot.

There have been four landowners of 2701 Ocean Street, the subject view lot. The lot is a 25 ft. wide lot of which five feet is a vertical accessway and 20 ft. is a view corridor. In late 1974 Richard McMahan purchased both the adjacent lot with a home and the lot designated as the open space and view

lot. However, he violated the terms of the permit by adding residential improvements within the view lot, not managing the vegetation thereby blocking public views across the view lot, and by not constructing and maintaining the public accessway.

Subsequently in October 1975 Mr. McMahan received a coastal development permit (#F-2875) to resolve the above violations. The permit was approved with the condition that the public accessway be improved (expending no more than \$500.00 in materials) and maintained and that the vegetation be managed to ensure the visual quality of the designated view corridor. The Commission approved some after-the-fact improvements including existing patios and decks located on the view lot devoted to the vista corridor and to the south of the residence. The Commission approved the existing landscaping and fencing through a finding that they were consistent with the Coastal Act. The Commission found that the "...original condition of F-1045 requiring the maintenance of a vista corridor through the project site did not prohibit developments or landscaping that would not significantly interfere with the maintenance of the open character of the view corridor. The generally open fencing that has been used by the applicant, the depressed location of the patios and paved areas, and the management practices of the required landscaping should result in the developments being consistent with the intent of the view corridor...."

In addition to the above, the Commission approved construction of improvements to a single family residence consisting of beach access steps down the bluff face, a 4 ft. high wire fence along the western half of the north property line, a 6 ft. high fence along the western half of the south property line, a 6 ft. high wooden fence on the east side of the property, paving and landscaping. A proposed 63 sq.ft. viewing platform of the bluff face was denied.

Later, the McMahans closed the accessway, dumped dirt over the existing stairs that led from the street to the beach, and recorded a revocation (August 1978) of the original offer of dedication by the Beach Club. These violations resulted in a lawsuit by the Attorney General's Office, on behalf of the Coastal Commission, against the McMahans.

In January, 1982, Richard C. Strauss purchased the property and settled the lawsuit immediately. The settlement consisted of (1) the execution of recordation of a new offer of dedication for public access, and (2) the placement of \$500.00 into an improvements fund, to be given to the agency accepting the offer of dedication for accessway improvements. The accessway has been constructed and the easement is accepted by the City of Carlsbad and is open and operating.

The present owner, William Mann, has applied to resolve the apparent violation of the previous permits which occur on the sites. A 6 ft. high masonry wall has been constructed along the Ocean Street frontage without benefit of a coastal development permit. The owner wants to resolve the apparent violation before he applies to the City of Carlsbad for several improvements to the lot approved for residential development. Improvements to the single family lot

are subject to the City of Carlsbad's permit jurisdiction because the City has a certified Mello II LCP. However, revisions to a previously issued coastal development permit approved by the Commission require a permit amendment approved by the Commission. Additionally, the Coastal Commission has appeal authority on the project as the project site lies within the Commission's appealable area.

2. Amendment Request. Amend permits for construction of six residences, beach access way and open space/view lot to retain and remove part of unauthorized masonry wall along front (east side) of view lot, install plexiglass with aluminum supports in place of removed portion of masonry wall; remove some larger trees and shrubs and trim others to open up the view corridor; add landscaping, and replace the fence parallel with the existing vertical accessway on site.

Specifically, the top portion of the masonry wall would be removed and replaced with transparent plexiglass. The applicant indicates the intent is to have no net reduction in the public view from that which was approved in #F-2875, where a 6 foot wooden fence was approved running the width of the open space lot from the garage to the vertical accessway, setback about 45 feet from Ocean Street. Additionally, the amendment proposes that with the exception of several existing trees, all on-site trees would be removed and the existing trees would be trimmed to open up views across the site. New landscaping is proposed that would be lower-growing and spreading plantings that would not encroach into the view corridor even when mature.

3. No Waiver of Violation. Although development has taken place inconsistent with the terms of the previous permit approval, 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 any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Visual Impacts. Section 30251 of the Act requires that the scenic and visual qualities of coastal areas be protected, that permitted development be sited and designed to protect views along the ocean and scenic coastal area, and that development be visually compatible with the character of surrounding areas. The site is located within the certified Mello II LCP's Scenic Preservation Overlay Zone designed to assure the maintenance of existing views and panoramas. The overlay regulates development in areas of high scenic value to assure the exclusion of incompatible uses and structures, and to preserve and enhance the scenic resources present in adjacent areas. The site of the proposed development is located on an ocean-fronting lot that was previously required by the Commission to be a view lot with the vegetation managed to ensure preservation of public views across the lot from the street to the ocean.

The subject area is characterized by small-lot ocean fronting residences, with few vacant and/or open space sites. The existing residence is compatible in

size and scale with surrounding residences. An existing six foot high masonry wall runs the width of the open space lot adjacent to Ocean Street which blocks all views of the ocean from Ocean Street, inconsistent with the Commission's previous approval. This wall was constructed by the applicant without benefit of a coastal development permit. The applicant states that he was not notified at the local level that a coastal development permit was required.

As noted, in F-2875, the Commission approved existing improvements that were built without benefit of a coastal development permit. These included landscaping, low-lying deck and patio areas within the view easement and several fences generally along the perimeter of the site. Additionally, the Commission approved an approximately 6 foot high wood fence that runs parallel to Ocean Street (across the site from the garage to the vertical accessway), by finding that because of the fence's siting downslope of the street, it would extend only 19" above the Ocean street frontage. The Commission found it would not significantly block public views across the site to the ocean at that height. Although the Commission previously found it would only extend 19" above Ocean Street, the fence is closer to 3 feet above the centerline of Ocean Street. It is located about 45 feet seaward of the centerline of Ocean Street. Bluewater views over the fence to the ocean are available.

The existing masonry block wall and the canopies of several trees on the view lot block the view to the ocean from Ocean Street. The applicant is proposing to remove the existing trees that would obscure the ocean view and replace them with vegetation that would not block views. The applicant is also proposing to convert a portion of the masonry block wall to a transparent wind screen so that, according to the applicant, there would be no net reduction in the ocean view afforded across the site when compared with the Commission's previous approval. That is, the transparent part of the masonry wall would be at the same elevation as the top of the wood wall; therefore, in the applicant's opinion, no net loss in the public view approved by the Commission would occur. The applicant wants to retain the masonry wall because it provides safety from vandalism and provides more privacy from users of the vertical accessway than would occur without it.

While recognizing the applicant's intent, the Commission cannot approve the existing after-the-fact masonry wall or the proposed wind screen. The Commission has had experience with wind screens and other transparent materials. They quickly become opaque from graffiti and/or are easily scratched or marred so they cease to be transparent. Consequently, they are not a good long term solution to maintaining public views across the site. While the Commission understands the applicant's need for safety and privacy, the existing and approved 6' wood fence provides a barrier that protects the habitable area of the view lot from intrusion, serving the same purpose as the unapproved masonry block wall. Thus, the Commission finds the masonry wall must be removed and no transparent wind screen can be installed. Special Condition #1 calls for a revised site plan that indicates the wall has been removed.

The Commission can support the applicant's revised landscaping plan. As noted, the revised plan proposes to remove all the vegetation that presently

blocks views across the view corridor and replace it with lower-growing and spreading plantings that would not encroach into the view corridor even when mature. According to the applicant's proposed landscaping plan, no proposed trees or shrubs would grow higher than 5 feet at maturity, and existing trees would be maintained in a manner to preserve views.

The Commission finds the amended project as conditioned in conformance with Section 30251 of the Act and the certified Mello II LCP. The removal of the unpermitted masonry wall and the replacement of screening vegetation with non-screening plants will have a positive impact on the visual quality of the area. The existing 5-foot wide vertical accessway on the site will remain open and available to the public to access the shoreline from Ocean Street.

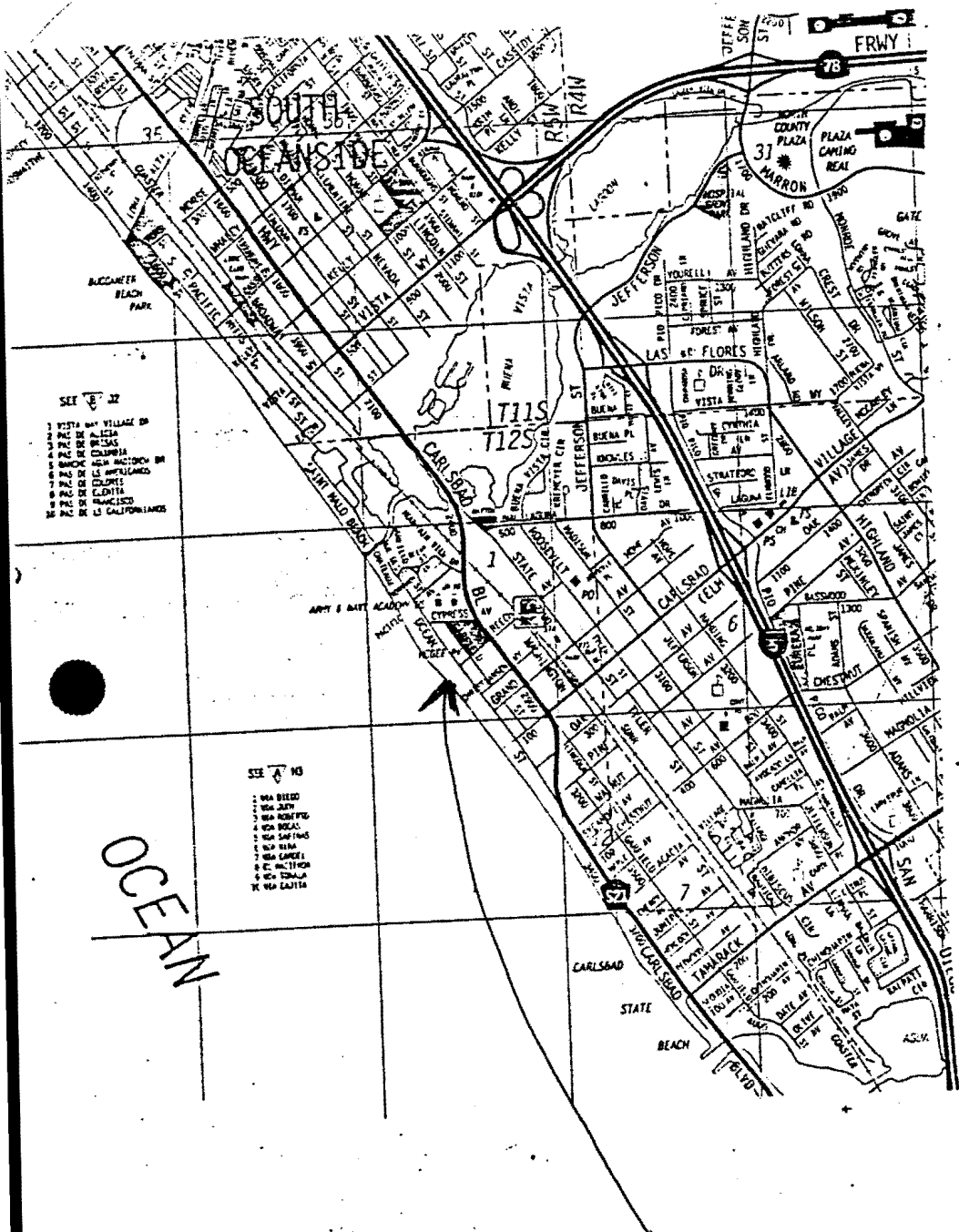
5. Local Coastal Planning. Section 30604 (a) requires that a coastal development permit amendment shall be issued only if the Commission finds that the permitted development as amended will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The project site is zoned and planned in the certified Mello II LCP for Residential uses and is subject to the Scenic Preservation Overlay Zone. As conditioned, the proposed project is consistent with provisions of the overlay zone and past Commission actions on the site. Therefore, approval of the amendment as conditioned is consistent with Chapter 3 policies of the Coastal Act and the visual resource policies of the certified Mello II LCP.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, 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 project has been conditioned to be found consistent with the visual resource policies of the Coastal Act. Mitigation measures will minimize all adverse environmental 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 amendment, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

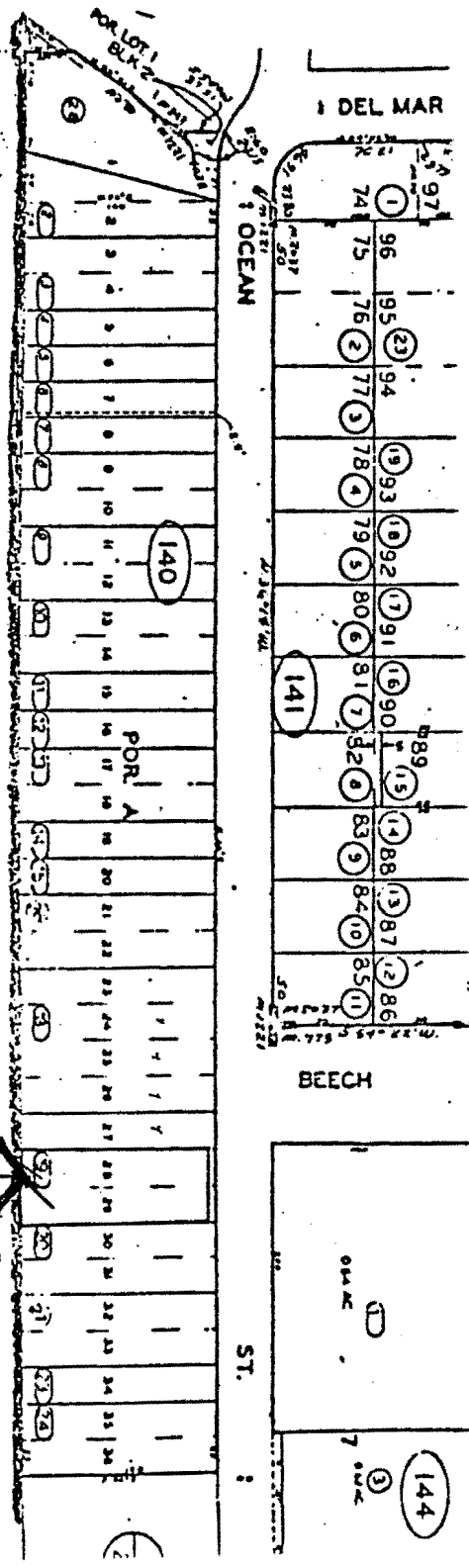
EXHIBIT NO. 1
APPLICATION NO. 6-97-02-A
Location
California Coastal Commission



1"=100'  
PACIFIC  
OCEAN

Site

PROJECT SITE



ST.

144

# PROPOSED SECTION

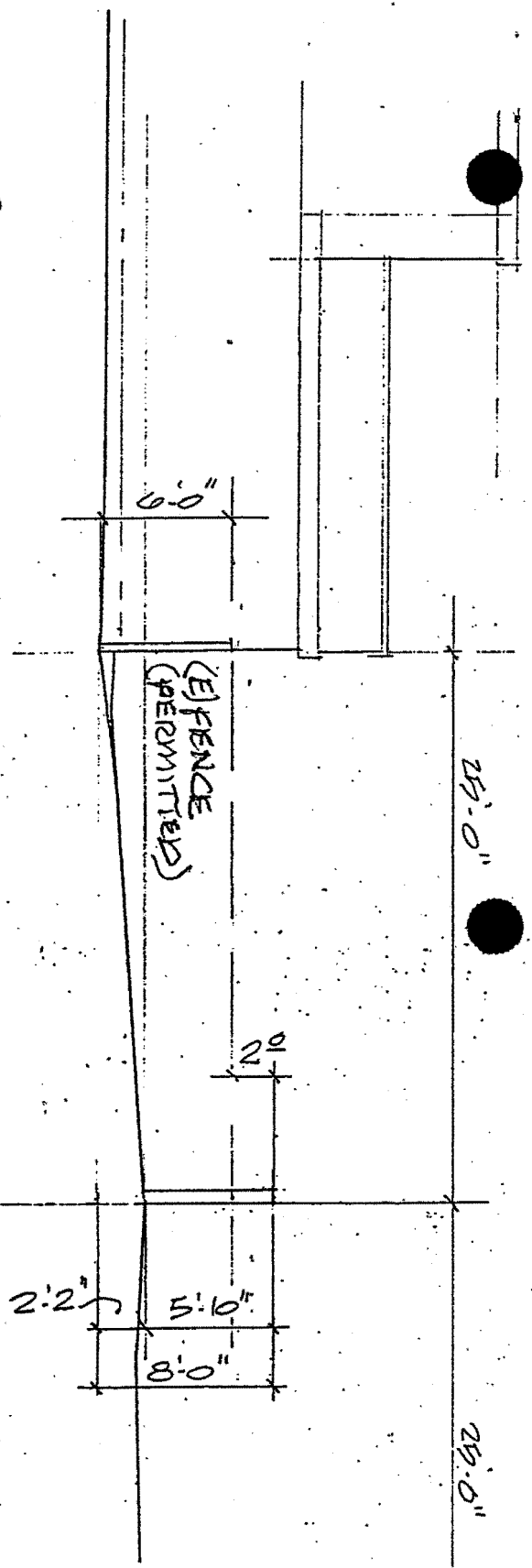
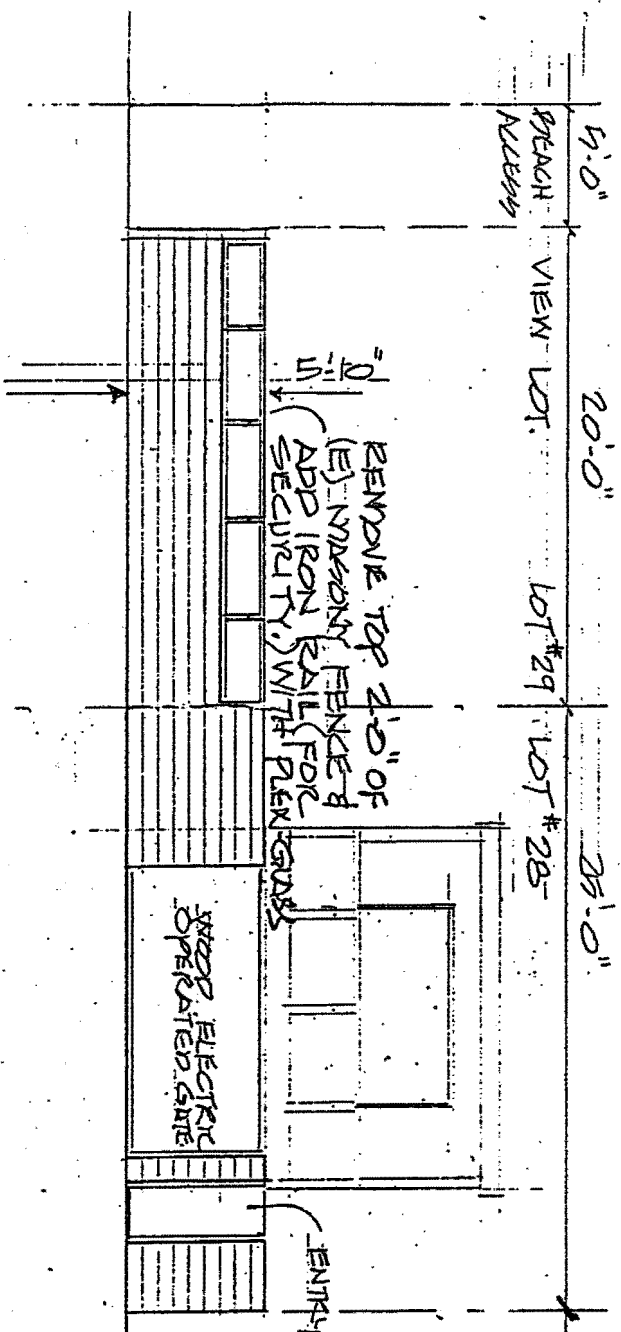


EXHIBIT NO. 2
APPLICATION NO. 6-97-82-A
Proposed Elevation
California Coastal Commission

# PROPOSED ELEVATION



2701 OCEAN ST  
CARLSBAD, CA.

REMOVE TOP 2'-0" OF  
(E) MASONRY FENCED  
(ADD IRON RAIL FOR  
SECURITY) WITH PLEXIGLASS

WIND ELECTRIC  
OPERATED SITE

ENTRY GATE

TREES TO BE  
TRIMMED &  
MAINTAINED.

MAIN

3-10-97

1/8" = 1'-0"



# EXISTING SECTION

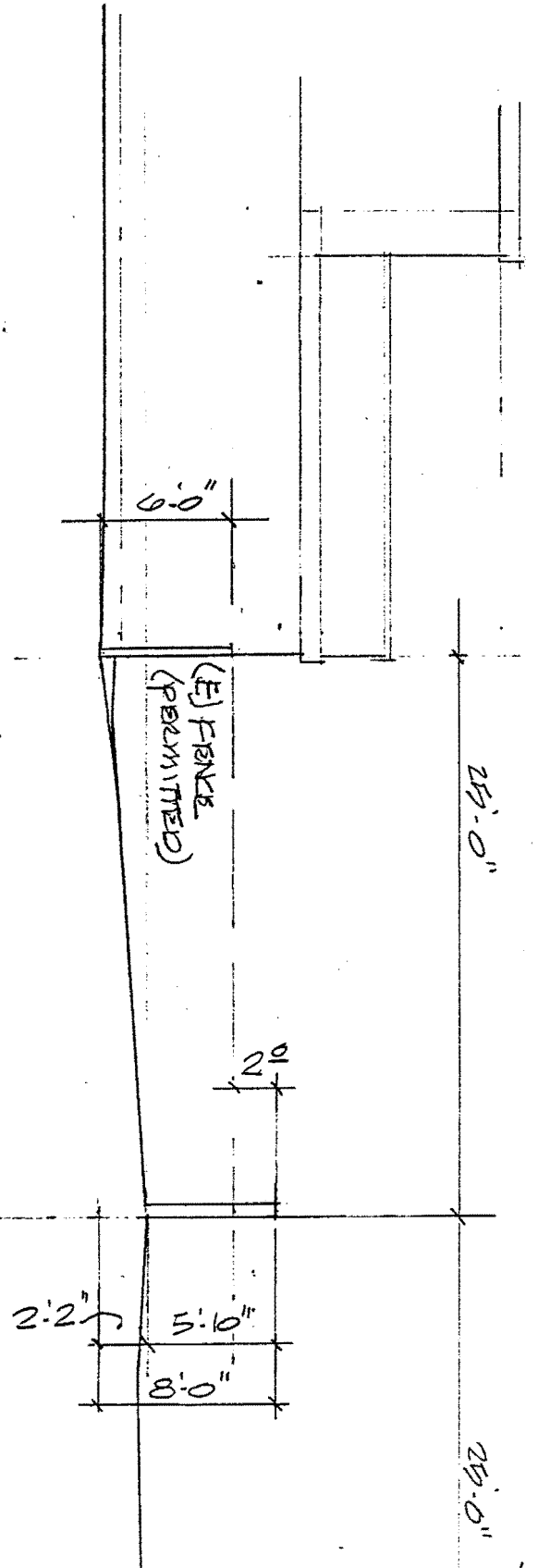
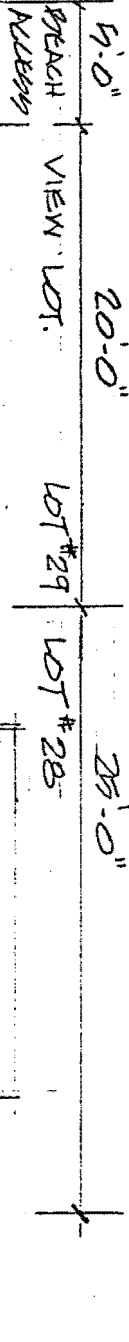


EXHIBIT NO. 3
APPLICATION NO. 60-97-82-A
Existing Elevations
California Coastal Commission



2701 OCEAN ST  
CARLSBAD, CA

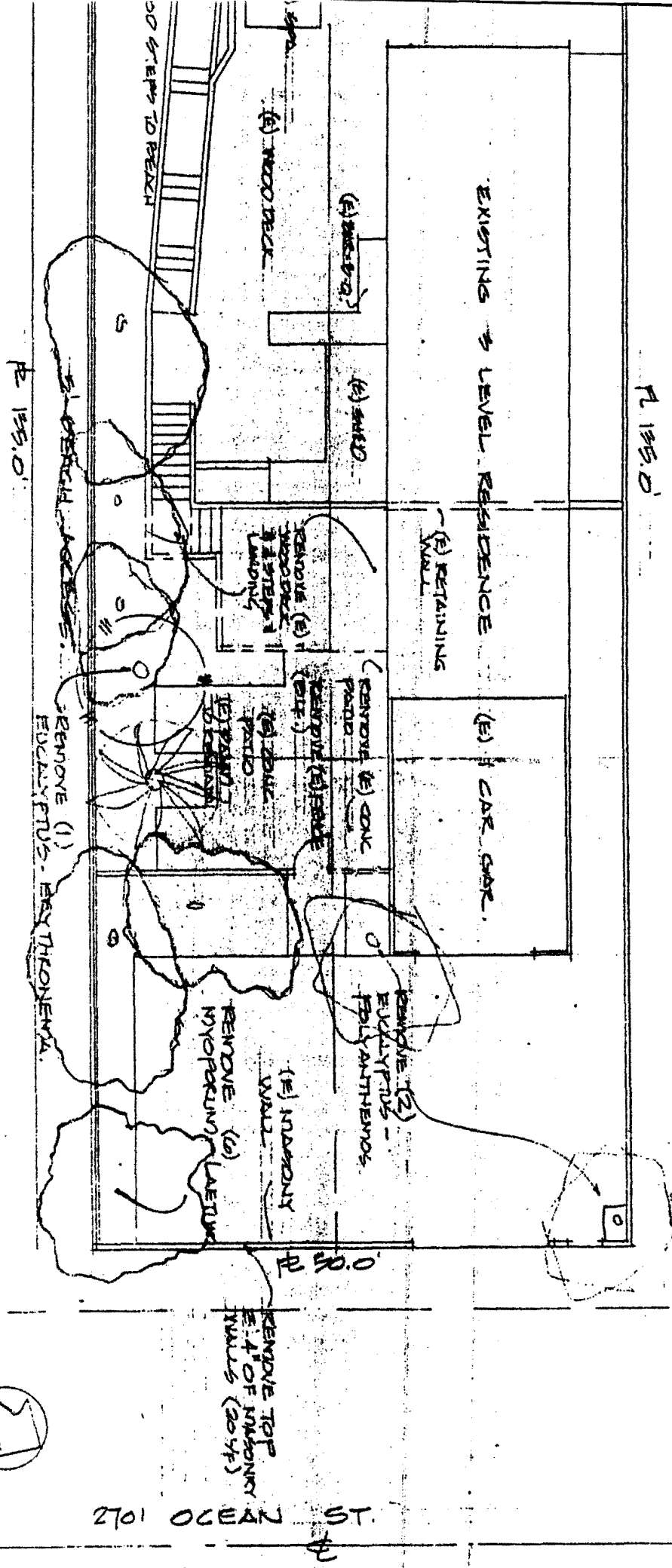
# EXISTING ELEVATION

18" = 1'-0" F-1045, F-2875

MANNN  
3-10-97

SITE PLAN (DEMOLITION) LANDSCAPE, DECKING, CONC. & MASONRY VIEW.

SCALE 1/8" = 1'-0"



2701 OCEAN ST.

EXHIBIT NO. 4
APPLICATION NO. 10-97-82-A
Demolition Plan
California Coastal Commission

EXHIBIT NO. 5  
APPLICATION NO. 0-97-82-A  
Landscape Plan

