STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

Wed.20.c

Hearing Date: August 13, 1997
Staff: DR-SF
Staff Report: July 29, 1997

STAFF RECOMMENDATION FOR CEASE AND DESIST ORDER

Cease and Desist Order: CCC-97-CD-004

Alleged Violators: Joan and Philip Nichols

Agent: Guy A. Bartoli

Description: The alleged violation includes unpermitted development and development that is inconsistent with the requirements of Coastal Development Permit No. P-7-23-76-8463. More specifically, the subject Coastal Act violation includes development along the Grand Canal including: (a) the placement of fill on a public Esplanade; (b) the placement of miscellaneous development within a 20-foot non-building setback area,[1] that includes, but is not limited to: brick walls, cement pillars, landscaping, and impervious decking and stairs; and (c) failure to record a 10 foot public access dedication.[2]

Location: The property is located at 3608 Grand Canal Esplanade, APN 4225-013-147, Venice (Marina Del Rey), City of Los Angeles, which is in the Coastal Zone (Exhibit Nos. 1 & 2).

Substantive File Documents: See Appendix A

Summary of Staff Recommendation:

Staff recommends that the Commission issue a cease and desist order for this violation matter. The alleged violators named in this order continue to maintain development that is both unpermitted and inconsistent with special condition requirements of Coastal Development Permit (CDP) No. P-7-23-76-8463 (Exhibit No. 3). Among other things, the subject CDP: (a) prohibits fill placement (i) upon a 10-foot-wide public right-of-way known as the Esplanade; or (ii) within a 20-foot-wide, non-building setback area, measured from the mean high high water mark; and (b) requires dedication of a 10-foot-wide public access easement within the setback area. The Coastal Commission has previously resolved 3 similar violations on adjacent properties by way of approving a coastal development permit amendment(s) to remedy inconsistencies of the existing development with the provisions of the subject permit. Despite numerous attempts to resolve this matter administratively, these particular property owners have refused to submit a CDP amendment application to the Commission and continue to

[1] As established by Special Condition No. 7 of CDP No. P-7-23-76-8463 (Lumbleau).
[2] As required by Special Condition No. 3 of CDP No. P-7-23-76-8463 (Lumbleau).

maintain and enjoy the benefits of the unpermitted development that blocks public access along the canal. A Commission issued cease and desist order will compel the property owners to comply with the terms and conditions of the subject permit or to submit a coastal development permit amendment application to remedy the inconsistency between existing development and the requirements of CDP No. P-7-23-76-8463.

I. HEARING PROCEDURES

Section 13185 of the Commission's administrative regulations contains the procedures for hearing a proposed cease and desist order. Generally, the cease and desist hearing procedure is similar in most respects to that procedure which the Commission has utilized in connection with permit and LCP matters.

Briefly, the Chair should first request that all parties or their representatives identify themselves for the record, and then state any ground rules to be imposed on the length of time for presentations. The Chair should also remind speakers that they may propose to the Commission, at any time prior to the close of the hearing, any questions which they would like a Commissioner, at his or her discretion, to ask of another speaker. The staff will then present the report and recommendation to the Commission, after which the alleged violators, or their representatives, may present their position(s), with particular attention to those areas where an actual controversy exist. The Chair may then recognize other interested persons, after which staff will respond to the testimony and to any new evidence introduced.

The Commission should receive, consider and evaluate evidence according to the same standards which it uses in its other quasi-judicial proceedings, as specified in section 13186 of the Commission's Administrative Regulations, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberation on the matter, including, if any Commissioner chooses, any question proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue a cease and desist order, either in the form recommended by staff, or as amended by the Commission. The motion per staff, if approved by a majority of the Commission, would result in issuance of the order in the form recommended by the staff.

II. STAFF RECOMMENDATION

Staff recommends that the Commission vote to issue a permanent cease and desist order in the form stated below:

Suggested Motion
I move that the Commission issue Cease and Desist Order No. CCC-97-CD-004 as set forth in Section VIII of the staff recommendation dated July 25, 1997.

The staff recommends a yes vote. To pass the motion, a majority vote of the Commissioners present is required. Approval of the motion will result in the issuance of the cease and desist order contained in Section VIII herein.

III. BACKGROUND

On November 8, 1976, the South Coast Region Coastal Zone Conservation Commission (hereinafter "Regional Commission") approved CDP No. P-7-23-76-8463 (Lumbleau) for the development of five attached single family residences on five lots that front the Grand Canal in Venice, California (Exhibit No. 3). The Regional Commission imposed Special Conditions on the subject permit to protect and enhance the public's ability to walk along the Grand Canal and to protect the biological resources in and adjacent to the Grand Canal. The subject permit was issued on September 20, 1977, and construction commenced shortly thereafter.

The Grand Canal Esplanade historically provided public access along the Grand Canal since 1905. In 1976, CDP No. P-7-23-76-8463 (Lumbleau) prohibited development along the Grand Canal Esplanade (Special Condition No. 2), in part, because its elevation was below the mean high tide elevation of 2.63 feet. In order to provide continued public access along the Grand Canal and above the high water line, the Regional Commission required the applicant to construct a new public sidewalk across the five lots, within a 10 foot-wide easement inland of the Esplanade.

However, twelve years later in 1988, the Commission approved eight single family residences on the lots immediately south of the site, on the same side of the Grand Canal (see CDP Nos. 5-87-657, 658, 659. 965, 966, 967, 968, & 969). In these permits the Commission found that, in spite of periodic flooding and the Regional Commission's reference to the Esplanade as a marsh, the Esplanade does provide adequate public access along the Grand Canal, and therefore did not require dedicated easement nor the construction of a new sidewalk inland of the Esplanade and across the properties as was required on the five lots subject to CDP No. P-7-23-76-8463. With the approval of these permits, the Commission anticipated that the public Esplanade would not be blocked at the subject properties and that lateral access across the Esplanade would be available. However, due to the placement of fill, landscaping and construction of fences and brick walls and cement pillars across the Esplanade, the Esplanade walkway terminates at the subject properties.

As a result of the unpermitted development on the subject property and the other four lots involved, and construction of the residences approved in 1988, the public sidewalk built across the five lots subject to CDP No. P-7-23-76-8463, now abuts a wall and terminates at the residence built on the south side of the subject properties instead of continuing across the adjacent lots as planned in 1976. In addition, public access along the Grand Canal on the subject 5 lots has been prevented by the placement of unpermitted fill, fences and brick walls on and across both the Esplanade and sidewalk constructed in the late 1970's. Consequently, lateral public access along the Grand Canal is simply not available across these five lots.

In 1993, the subject property owners who are also subject to CDP No. P-7-23-76-8463, applied for CDP No. 5-93-150 (Nichols) to amend the underlying permit in order to delete the 27 foot height limit contained in Special Condition No. 9, and to construct a third floor addition on lot No. 5. On September 16, 1993, the Commission approved CDP No. 5-93-150 to amend the underlying permit as it applies to lot No. 5. The building height limit was extended to 36 feet.

When the Commission staff visited the site in conjunction with CDP No. 5-93-150, they discovered permit non-compliance problems and unpermitted development placed on the five subject lots and on the Esplanade. It was then that the Commission staff first discovered that lateral public access along the

Grand Canal was blocked by unpermitted fill, fences, brick walls and other development at the subject properties. Since that time staff has received complaints from the public regarding the blocked public access and have pursued administrative resolution of the alleged violations and unpermitted development.

On May 8, 1996, in order to remedy inconsistencies between the existing development and the 1976 permit, the Coastal Commission approved permit amendments[3] to CDP No. P-7-23-76-8463, for two of the five subject property owners (Exhibit Nos. 4 & 5). Additionally, on July 9, 1997, the Commission approved a third permit amendment[4] request which proposes a similar administrative remedy. The remedy provides for resolution of the fill placement and opens up lateral public access with permit amendment condition compliance. The subject alleged violators are effectively blocking an overall administrative resolution that the Commission has so far deemed appropriate in prior regulatory action by not cooperating with the staff and the adjacent property owners who have already received Commission approval for this solution. The Commission staff has granted time-extensions to the cooperating property owners Hickok, Sevedge, and Horowitz, in an attempt to allow for a coordinated effort of all five property owners to implement the lateral public access site restoration project (Exhibit No. 7).

Prior to scheduling this Commission enforcement action, Commission staff has sought to resolve administratively the alleged violation for 4 years. However, Mr. Guy Bartoli, the property owner's agent, and Mr. and Mrs. Nichols have been unwilling to bring this matter before the Commission as a permit amendment request. Staff has suggested on numerous occasions, as demonstrated in the administrative record, that the appropriate method to resolve this case is to submit a CDP amendment application allowing the Coastal Commission to determine an appropriate regulatory solution for the inconsistencies between the existing development and the requirements of CDP No. P-7-23-76-8463.

IV. STAFF ALLEGATIONS

The staff alleges the following:

1. Joan and Philip Nichols are the owners of the property located at 3608 Grand Canal Esplanade, Venice (Marina Del Rey), City of Los Angeles, CA. 90292, APN 4225-013-147. The public Esplanade is adjacent to, and between the subject property and the Grand Canal. Both the subject property and the public Esplanade are in the Coastal Zone.

2. The Nichols have undertaken development, as defined by Coastal Act § 30106, both on their property and on the public Esplanade, including pedestrian access barriers on the public Esplanade, without receiving CDP approval and that is inconsistent with CDP No. P-7-23-76-8463, issued by the Regional Commission, on November 8, 1976. Further, the Nichols have knowingly maintained the unpermitted development which violates the terms of the subject permit.

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[3] Coastal Development Permit Amendment Nos. 5-95-019-A1 (Hickok) and 5-95-019-A2 (Sevedge).
[4] Coastal Development Permit Amendment Application No. 5-95-019-A3 (Horowitz)

V. BASIS FOR COMMISSION ISSUED ORDER

In this action, the Commission is not rehearing the special condition requirements previously imposed by the Regional Commission through its approval of CDP No. P-7-23-76-8463. Under Section 30801, "any aggrieved person" had the right to judicial review of the permit decision within 60 days of the Commission's decision. The permit imposing those conditions was never challenged.

Therefore, what is before the Commission is a hearing to determine whether the existing development violates the terms and conditions imposed by the Regional Commission, and therefore constitutes an on-going violation of the Coastal Act. Section 30810(a) of the Coastal Act allows the Commission to issue a cease and desist order in the event "that any person ... has undertaken ... any activity that (1) requires a permit from the Commission without securing a permit or (2) is inconsistent with any permit previously issued by the Commission ..."

Based upon a comprehensive review, staff has determined that the existing development is inconsistent with the terms and conditions of the 1976 permit. Since the existing development is inconsistent with, and thus negates some of the Special Conditions imposed by the Regional Commission that were intended to mitigate the impacts of the proposed development, the Commission finds that this violation case fits both criteria as outlined in Coastal Act Section 30810(a). As such, the Commission finds the existing cited development constitutes development as defined in § 30106, is unpermitted, and conflicts with conditional requirements of the 1976 permit. Thus, the Coastal Commission finds the cited development in violation of the Coastal Act.

The property owners are knowingly maintaining development that is inconsistent with CDP No. P-7-23-76-8463, and is unpermitted. The property owners refuse to voluntarily remedy the situation by filing for an after-the-fact permit action. As such, the Commission finds that a cease and desist order is necessary to compel Joan and Philip Nichols to resolve the violation status of their development. Resolution of the subject violation can be achieved through a CDP amendment application to retain and or remove the unpermitted development, and restore the site or a combination thereof.

VI. IMPACTS OF ALLEGED VIOLATION

Joan and Philip Nichols have effectively increased their "private" yard area by fencing off a portion of the public Esplanade and a required public access easement along the Grand Canal located at 3608 Grand Canal Esplanade, Venice, City of Los Angeles. The primary Coastal Act issue at issue in this cease and desist order request involves the public's ability to walk along the banks of the Venice Canals, more specifically, the Grand Canal.

Venice and its canals are a popular visitor destination point in Southern California. Public access along the canals and Ballona Lagoon is provided by a series of improved public sidewalks, public trails, historic use trails and remnants of the original sidewalks built in the early 1900's, when Venice was first developed as a vacation resort destination. These public trails and sidewalks run along both sides of each canal and separate private residences from the canals. The Venice Canals and the canal sidewalks, which are both located within the public right-of-way, provide many public recreational opportunities including, but not limited to: walking, jogging, rowing, fishing, wildlife viewing, and photography.

There is currently only one section of the Venice Canals public access system which is currently not accessible to the public: the five lots subject to CDP No. P-7-23-76-8463 (Lumbleau). Unpermitted development on portions of these five lots and across the Grand Canal Esplanade prohibits lateral access along the Canal at this site. It is the only section of interrupted lateral public access in existence along the entire Venice Canals shoreline.

One of the basic goals of the Coastal Act is to maximize public access opportunities to and along the coast and to encourage public recreational opportunities. The Coastal Act has several policies relating to providing public access. These policies are intended to protect the public's right to access coastal areas, and at the same time to allow development to proceed as long as that development allows for public access. The subject unpermitted development, which blocks public access along this section of the Grand Canal, is in direct conflict with this goal.

In fact, the Regional Commission approved CDP No. P-7-23-76-8463 (Lumbleau) for the development of five lots with five attached residences, subject to special conditions included to mitigate potential impacts the project would have upon public access and recreational opportunities. More specifically, Special Condition Nos. 3 and 4 were imposed by the Regional Commission in order to protect, enhance and continue the public's ability to walk along the banks of the Grand Canal.

Special Condition No. 3 of CDP No. P-7-23-76-8463 states:

> *[Prior to the issuance of permit, applicant shall] cause to be recorded a public easement dedicated to the City of Los Angeles or the State of California, said easement shall be a strip 10 feet wide along the mean high tide line extending from Lot 4 to Lot 8;*

Special Condition No. 4 of CDP No. P-7-23-76-8463 states:

> *[Prior to the issuance of permit, applicant shall] agree, prior to occupancy of the structure, to construct an improved fenced walkway 5 feet in width along this easement, the fencing shall be designed to allow viewing of the marsh but to prevent foot traffic and animal intrusion onto the marsh or canal. Provided that the sidewalk does not intrude into the canal, is shall be designed according to specification of the City of Los Angeles. The walkway shall be pervious, and may be fenced provided a method of maintenance has been agreed to by the Bureau of Street Maintenance.* [emphasis added]

Special Condition Nos. 3 and 4 required the dedication of a 10 foot wide easement and the construction of a fenced public sidewalk within that easement across the five lots and adjacent to the existing, public Grand Canal Esplanade already utilized, when tide conditions permitted, by the public. The Regional Commission conditionally approved CDP No. P-7-23-76-8463 to improve the quality of public access that had been historically provided by the Grand Canal Esplanade because subsidence had lowered the elevation of the Esplanade so that it is partially submerged during high tide and thus, was referred to at the time of CDP No. P-7-23-76-8463 was being approved, as a marsh.

Further, Special Condition No. 7 of CDP No. P-7-23-76-8463 required that:

> *[prior to the issuance of permit, applicant shall] enter a deed restriction preventing all construction, except the walkways, fences or pervious decks, between the line of 20 foot setback from the higher high tide line and the canal.*

A sidewalk has been constructed on each of the five lots, but it has been vertically separated and fenced off at each of the five subject property boundaries, which creates a private amenity out of public space, for the property owners. Further, the dedicated public easement that was required by Special Condition No. 3 has not been recorded; thus the public has no legal authorization to use the sidewalk constructed on private property. In addition, unpermitted fill and other development has been placed on and across the Esplanade in violation of the Coastal Act. As a result, the public cannot walk along the sidewalk or the City Esplanade.

Conclusion -- As a result of violating Special Condition Nos. 3, 4 and 7 of CDP No. P-7-23-76-8463, the property owners have: 1) enlarged their private yard area by erecting barriers perpendicular to the required sidewalk and the Esplanade; 2) blocked lateral public access along the Esplanade and sidewalk; 3) encroached into the 20-foot non-building setback area (i.e. placed fill, constructed brick walls, cement pillars and other miscellaneous development); and 4) failed to record a 10-foot wide public access easement inland of the Esplanade. This is the only area along the length of Grand Canal where public access is denied as a result of unpermitted private development activities.

VII. PROPERTY OWNER'S CONTENTIONS AND STAFF RESPONSES

It is the property owners' contention that the violations alleged by staff do not exist and that all development on the subject property is consistent with the Coastal Act and any previously issued coastal development permit (Exhibit No. 6). More specifically, the property owners contend the following:

Statement No. 1. Special Condition No. 2 of CDP No. P-7-23-76-8463 states: *[Prior to issuance of permit, applicant shall] stipulate that during construction no fill will be placed in the marsh.* The 10 foot wide City of Los Angeles owned property *[staff note - i.e. the Esplanade]* is not a marsh. This area was developed by Abbott Kinney about 75 years ago with a concrete walkway. This walkway has deteriorated and is subject to tidal flooding twice a day. The subject area that has fill over it was placed by the City of Los Angeles when the City sold the property to Mr. Lumbleau. In conclusion, Special Condition No. 2 refers to fill being placed in the "marsh." The subject area of the alleged violation is not a marsh, and therefore no violation has occurred. No fill has been placed in the marsh.

Staff Response No. 1. Through CDP No. P-7-23-76-8463, the Regional Commission prohibited development from being placed upon the City Grand Canal Esplanade by imposing Special Condition No. 2. At the time of the 1976 permit, the Esplanade's elevation was below the Canal's mean high tide elevation of 2.63 feet, and was consequently subject to periodic flooding. As such, the Commission's findings and special conditions for the subject permit refers to the Esplanade as "the marsh." Further, as evidenced in the language of Special Condition No. 4, the Commission made a distinction between the marsh and canal.

Special Condition No. 4 of CDP No. P-7-23-76-8463 states:

> *[Prior to the issuance of permit, applicant shall] agree, prior to occupancy of the structure, to construct an improved fenced walkway 5 feet in width along this easement, the fencing shall be designed to allow viewing of the marsh but to prevent foot traffic and animal intrusion onto the marsh or canal. Provided that the sidewalk does not intrude into the canal, is shall be designed according to specification of the City of Los Angeles. The walkway shall be pervious, and may be fenced provided a method of maintenance has been agreed to by the bureau of Street Maintenance.* [Emphasis added]

The property owners' contention that the City of Los Angeles placed the fill on the Esplanade prior to selling the property is unsubstantiated and is inconsistent with the Commission's findings for CDP No P-7-23-76-8463. The Commission's findings clearly state that the Esplanade's elevation was below the Canal's mean high tide elevation of 2.63 feet, was subject to periodic flooding, and therefore was referred to as "the marsh." The permittees for CDP No. P-7-23-76-8463 never challenged the Commission's findings that the City Grand Canal Esplanade was considered to be at the time a marsh.

Fill and miscellaneous unpermitted development is currently placed upon the Esplanade (or "the Marsh") as confirmed by staff's first hand observation of the site and documented by photographs. The unpermitted development includes: 1) earthen fill; 2) miscellaneous landscaping and vegetation; 3) cement pillars; and 4) brick walls and fences that are perpendicular to public access along the Esplanade and required walkway. The property owners have placed development without a permit in an area, defined by the Regional Commission in 1976, to be a marsh. Irrespective of its topographical status, CDP No. P-7-23-76-8463 prohibited development within this area.

Statement No 2. The property owners contend that the existing development is consistent with Special Condition Nos. 4 and 7 of CDP No. P-7-23-76-8463.

Special Condition No. 4 of CDP No. P-7-23-76-8463 states:

> *[Prior to the issuance of permit, applicant shall] agree, prior to occupancy of the structure, to construct an improved fenced walkway 5 feet in width along this easement, the fencing shall be designed to allow viewing of the marsh but to prevent foot traffic and animal intrusion onto the marsh or canal. Provided that the sidewalk does not intrude into the canal, is shall be designed according to specification of the City of Los Angeles. The walkway shall be pervious, and may be fenced provided a method of maintenance has been agreed to by the bureau of Street Maintenance.* [Emphasis added]

Special Condition No. 7 of CDP No. P-7-23-76-8463 states:

> *[Prior to the issuance of permit, applicant shall] enter a deed restriction preventing all construction, except the walkways, fences or pervious decks, between the line of 20 foot setback from the higher high tide line and the canal.*

The property owners state that the 20-foot non-building setback deed restriction has been recorded and a copy is in the Commission's files. The property owners also state that a copy of said deed restriction is attached to the Statement of Defense form as confirmation. The property owners further claim that the existing fences installed on the Esplanade and walkway were required by the subject permit and that the location of the fence is in the exact location where it was built on the original development. The existing fence is a replacement of an old fence that deteriorated over the years.

The property owners contend that staff's allegation of unpermitted development that impedes access "is unfounded. The existing development is consistent with the permit's requirement to dedicate an easement and construct a 5-foot-wide walkway inland of the Esplanade. The access was provided and is still in existence today. It is true that the subject access cannot be used by the public, since the most northerly property (Lot 4, Horowitz) has a fence without an opening to this access. This does not cause a violation against the other property owners and the solution to this issue is to require Horowitz to remove his fence to allow access. It is also true that the five-foot-wide public walkway dead ends at a concrete block retaining wall on the most southerly of the five properties (Hickok, Lot 8)." Again, the property owners contend that the dead-end of the access on the Hickok property does not constitute a violation on the other properties. The property owners claim that they have a solution to this issue that will be provided at a later time.

Staff Response No. 2. The existing development is <u>not</u> consistent with the requirements of CDP No. P-7-23-76-8463, as specified in Special Condition Nos. 3, 4, and 7. The area designated as the 20-foot non-building setback area contains miscellaneous unpermitted development as noted herein, which is not consistent with the terms of Special Condition No. 7. Further, the constructed sidewalk has not been dedicated to the City. Commission staff cannot determine that the sidewalk has been designed according to City of Los Angeles specifications, or that a method of maintenance has been agreed to by the Bureau of Street Maintenance.

As the property owners contend, CDP No. P-7-23-76-8463 does allow lateral fencing along the marsh perimeter within the 20-foot non-building setback area if a method of maintenance has been agreed to by the property owners and the City. There is no evidence of such an agreement. Further, through Special Condition No. 4, the Regional Commission required the construction of "an improved fenced walkway ... along this easement" and the design of the walkway fencing "to allow viewing of the <u>marsh</u> but to prevent foot traffic and animal intrusion onto the <u>marsh or canal.</u>" The appropriate location of the fence required by CDP No. P-7-23-76-8463 is further illustrated by the residential development on the adjacent properties authorized by CDP Nos. 5-87-657, 658, 659. 965, 966, 967, 968, & 969; the fencing approved under these CDPs have been constructed inland of the Esplanade.

The fence intended to comply with Special Condition No. 4 of CDP No. P-7-23-76-8463 should have been erected directly adjacent to the dedicated sidewalk and inland of the Esplanade. In reality, fill has been placed upon the Esplanade, and the perimeter fence, brick walls and cement pillars were constructed at the edge of the canal. Further, some of the fencing and brick walls that are the subject of the alleged violation are situated perpendicular to, and erected across the City Esplanade and dedicated walkway.

As the property owners contend, a five-foot lateral walkway has been constructed inland of the Esplanade as required by the subject permit. However, the property owners' contention that the <u>only</u> reasons that

the walkway is inaccessible to the public are that: 1) the property at 3602 Via Dolce[5] has a fence without an opening; and 2) that the walkway at 3618 Via Dolce[6] dead ends into a concrete retaining wall is not entirely correct. The fence and brick wall that has been erected, on the Nichols' property perpendicular to the Esplanade and walkway prevents pedestrian passage at the subject property. The existing fencing and brick walls essentially enlarge the private yard area of the alleged violators at the expense of the required public access and City Esplanade. Finally, there is no evidence that an easement for the sidewalk was ever recorded.

Conclusion -- The subject walkway has been designed as a private amenity. No evidence that has been submitted to demonstrate that the walkway was built pursuant to City design standards as required by Special Condition No. 4. The property includes development within the setback area and perimeter fencing and brick walls to privatize the area within the barriers. In addition, miscellaneous unpermitted development including a brick wall and impervious ground surface are present within the 20-foot non-building setback area in violation of Special Condition No. 7.

Statement No. 3. "Views and access along the entire canal are deteriorated. The Esplanade floods twice a day with the tide and is not conducive to be used by anyone, and as a fact has never been used except for rape and robbery. It is clear that the Commission made a mistake by requiring public access over the private properties as a condition of approval of the subject permit. Staff has informed us that the appropriate remedy of this matter would be to file a CDP amendment application, however, staff has not committed what the outcome such an application might be. We feel that staff's unwillingness to guarantee the outcome of the application leaves us subject to surprise request that will lead to further dispute and unreasonable expense."

Staff Response No. 3. The Venice Canals are a popular visitor destination in Southern California. Public access along the canals and Ballona Lagoon is provided by a series of improved public sidewalks, public trails, historic use trails and remnants of the original sidewalks built in the early 1900's. These public trails and sidewalks run along both sides of each canal and separate private residential land from the canals. The Venice canals and the public sidewalks, which are both located within the public right-of-way, provide many recreational opportunities including, but not limited to: walking, jogging, rowing, fishing, wildlife viewing, and photography.

On June 25, 1997, staff observed the public utilizing the Esplanade on both sides of the Grand Canal. Clearly the public utilizes this area and would use the subject area if access were not blocked. Finally, the property owners knew that lateral public access would be continued at the time the Regional Commission approved the 5-lot residential development. The original permittee did not challenge the permit access requirements.

There is currently one section of the Venice Canals public access system which is currently not accessible: the five lots subject to Coastal development Permit No. P-7-23-76-8463 (Lumbleau). Unpermitted development on portions of these five lots and across the Grand Canal Esplanade prohibits lateral access along the Canal at this site. It is the only section of interrupted public access along the entire Venice Canals shoreline.

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[5] Horowitz, the northerly most property ... see CDP No. 5-95-019-A3 (Horowitz).
[6] Hickok, the most southerly property ... see CDP No. 5-95-019-A1 (Hickok).

Staff has repeatedly informed the property owners that a CDP amendment application would be the appropriate method to resolve the inconsistencies between the existing development and the requirements of a previously issued coastal permit. Staff has further informed the property owners that the Coastal Commission, and not staff, makes decisions regarding CDP applications and that it would be inappropriate for staff to guarantee or speculate how the Commission may or may not vote on a particular application that may come before it, before said application is even submitted. However, staff has provided the property owners with the Adopted Commission Findings [CDP Nos. -95-019-A1 (Hickok), 5-95-019-A2 (Sevedge), and 5-95-019-A3 (Horowitz)] for the Commission's action to resolve the closely-related unpermitted development issues on adjacent properties.

Statement No. 4. The Community has been interested in a Grand Canal restoration project for several years. Unsuccessful efforts have been made in the past to pursue such a project. The lack of leadership in spearheading this development has resulted in very little progress in the past. However, a group of property owners have decided to pursue this matter with renewed interest and diligence. A committee has been formed to advance this project to fruition and the goal is to get it under way in the shortest possible time. Resolution of the public access issues on the subject property should be deferred until a coordinated effort for restoration of the entire Grand Canal can be accomplished.

Staff Response No. 4. The property owners have mentioned the possibility of a coordinated restoration effort of the entire Grand Canal. Although the property owners have not submitted documentation to guarantee that the proposed restoration project will come to fruition, staff communications with Jeffrey Prang, of Los Angeles City Council Member Ruth Galanter's Office, indicates that the proposed Venice Canals Restoration Project has a reasonable possibility of going forward. The proposed restoration project will require the formation of an tax assessment district and State and local approvals.

If approved, actual implementation of the Venice Canals Restoration Project is approximately two years away. Further, the continued existence of unpermitted development at the subject property may delay implementation of the restoration project. The subject property owners may wish the keep the private amenities they have illegally installed to the detriment of the restoration project. The restoration project would improve the overall habitat value of the canal, as well as public access along the Esplanade.

Barriers have been erected on public property and across a public walkway that block lateral public access along the Grand Canal. Removing the public access obstacles from the subject property at this time will in no way interfere with the potential for an uncertain canal restoration project. Quite simply, delaying resolution of this violation until the Grand Canal Restoration Project is implemented, does nothing to remedy the subject unpermitted development's current inconsistency with the requirements of CDP No. P-7-23-76-8463 (Lumbleau).

Conclusion -- Without guarantees, the Commission cannot indefinitely delay resolution of this Coastal Act violation. There may however be interim steps that could be taken to provide short-term solutions to blocked lateral access and the Commission could delay resolution of some of the other aspects of this case to a later date. The Commission cannot delay resolution of violation case indefinitely. This would not be fair to the many permittees who abide by the regulatory process and construct and maintain their properties in conformance with a previously issued permit and/or the Coastal Act.

VIII. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following Cease and Desist Order:

Pursuant to the authority under the California Public Resources Code Section 30810, the Coastal Commission hereby orders Joan and Philip Nichols, all their agents and any person acting in concert with the forgoing, to cease and desist from: 1) undertaking activities or in causing the undertaking of activities at 3608 Grand Canal Esplanade, APN 4225-013-147, Venice (Marina Del Rey), City of Los Angeles which constitute development under the California Coastal Act without previously obtaining a coastal development permit therefor; and 2) from maintaining development at said property that is inconsistent with the requirements of Coastal Development Permit No. P-7-23-76-8463. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B and C as follows:

A. Refrain from engaging in or maintaining any development activity on said property (and on adjacent public Esplanade) without first obtaining a coastal development permit which authorizes such activity.

B. Within sixty (60) days of the date of this order, submit to the Commission, for review and approval either:

1) a complete CDP application, which shall include the public access dedication required by Special Condition No. 3 of CDP No. P-7-23-76-8463, to remove all development herein specified for the purposes of restoring the site to a condition which conforms fully to requirements of CDP No. P-7-23-76-8463; or

2) a complete CDP amendment application, consistent with CDP amendments 5-95-019-A1, A2, and A3, to: (a) revise CDP No. P-7-23-76-8463 in order to delete Special Condition Nos. 2, 4, 7, 8 and 9 as they pertain to the subject property; (b) provide an improved lateral access on the public Esplanade; and (c) legalize or remove the unpermitted development undertaken in conflict with CDP No. P-7-23-76-8463.

C. Fully comply with the terms, conditions and deadlines of any CDP or CDP amendment for either retention of development or removal of development and necessary restoration of the site and the public Esplanade as the Commission may impose.

Persons subject to the order

Joan and Philip Nichols and their agents.

Identification of the Property

The properties that are the subject of this cease and desist order are described as:

1) 3608 Grand Canal, Marina Del Rey, City of Los Angeles, CA, 90292. APN 4225-013-147
2) Public Esplanade between the subject property and the Grand Canal.

Legal Authority

The subject property is located within the Coastal Zone. On November 8, 1976, the South Coast Region Coastal Zone Conservation Commission issued CDP No. P-7-23-76-8463 (Lumbleau) for the development of five attached residential unit on five adjacent properties. The Commission has determined that development at the subject property is inconsistent with CDP No. P-7-23-76-8463 (Lumbleau). Accordingly, the Commission is issuing this order pursuant to Public Resources Code § 30810(a).

Description of Unpermitted Development and Development Being Maintained in Violation of Previously Issued Permit

All unpermitted development and development that is inconsistent with the requirements of Coastal Development Permit No. P-7-23-76-8463. More specifically, the subject Coastal Act violation consists of development along the Grand Canal including: (a) the placement of fill upon a public Esplanade; (b) the placement of miscellaneous development within a 20-foot non-building setback area, that includes, but is not limited to, brick walls, cement pillars, landscaping, and impervious decking and stairs; and (c) failure to record a 10-foot-wide public access dedication.

Term of the order

This order shall remain in effect permanently unless and until rescinded by the Commission.

Findings

This order is issued on the basis of the findings adopted by the Commission on August 13, 1997, as set forth in the attached document entitled "Adopted Findings for Cease and Desist Order No. CCC-97-CD-04

Compliance Obligation

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS ($6,000) per day for each in which such compliance failure persist. Deadline(s) may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 day prior to expiration of the subject deadline.

Appeal

Pursuant to Public Resources Code § 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Appendix A

SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permits

1. Coastal Development Permit No. P-7-23-76-8463 (Lumbleau).
2. Coastal Development Permit Amendment Nos. 5-95-019-A1 (Hickok), 5-95-019-A2 (Sevedge) and 5-95-019-A3 (Horowitz).
3. Coastal Development Permit Nos. 5-87-657, 5-87-658 and 5-87-659 (Schaffel).
4. Coastal Development Permit No. 5-87-965 (Laughlin).
5. Coastal Development Permit No. 5-87-966 (Kirkoff).
6. Coastal Development Permit No. 5-87-967, 5-87-968, and 5-87-969 (Strand Associates).
7. Coastal Development Permit No. 5-91-584 (Venice Canals).
8. Coastal Development Permit No. 5-93-150 (Nichols).

Correspondence

- Letter to Commission staff Nancy Cave, Darryl Rance, and Chuck Posner, from Joan Nichols, June 27,1997.

- Letter to Nancy Cave and Darryl Rance, Statewide Enforcement Program, from the Law Offices of David G. Boss *[Sevedge and Hickok]*, July 25, 1997.

EXHIBITS

1. Location of property.
2. Site Map Lot No. 5.
3. Photocopy of Commission Findings and Special Conditions for CDP No. P-7-23-76-8463.
4. Photocopy of Coastal Development Permit Amendment 5-95-019-04.
5. Photocopy of local approval for adjacent property.
6. Photocopy of letter from Joan E. Nichols, dated June 27, 1997.
7. Photocopy of letter from the Law Offices of David G. Boss, July 25, 1997.

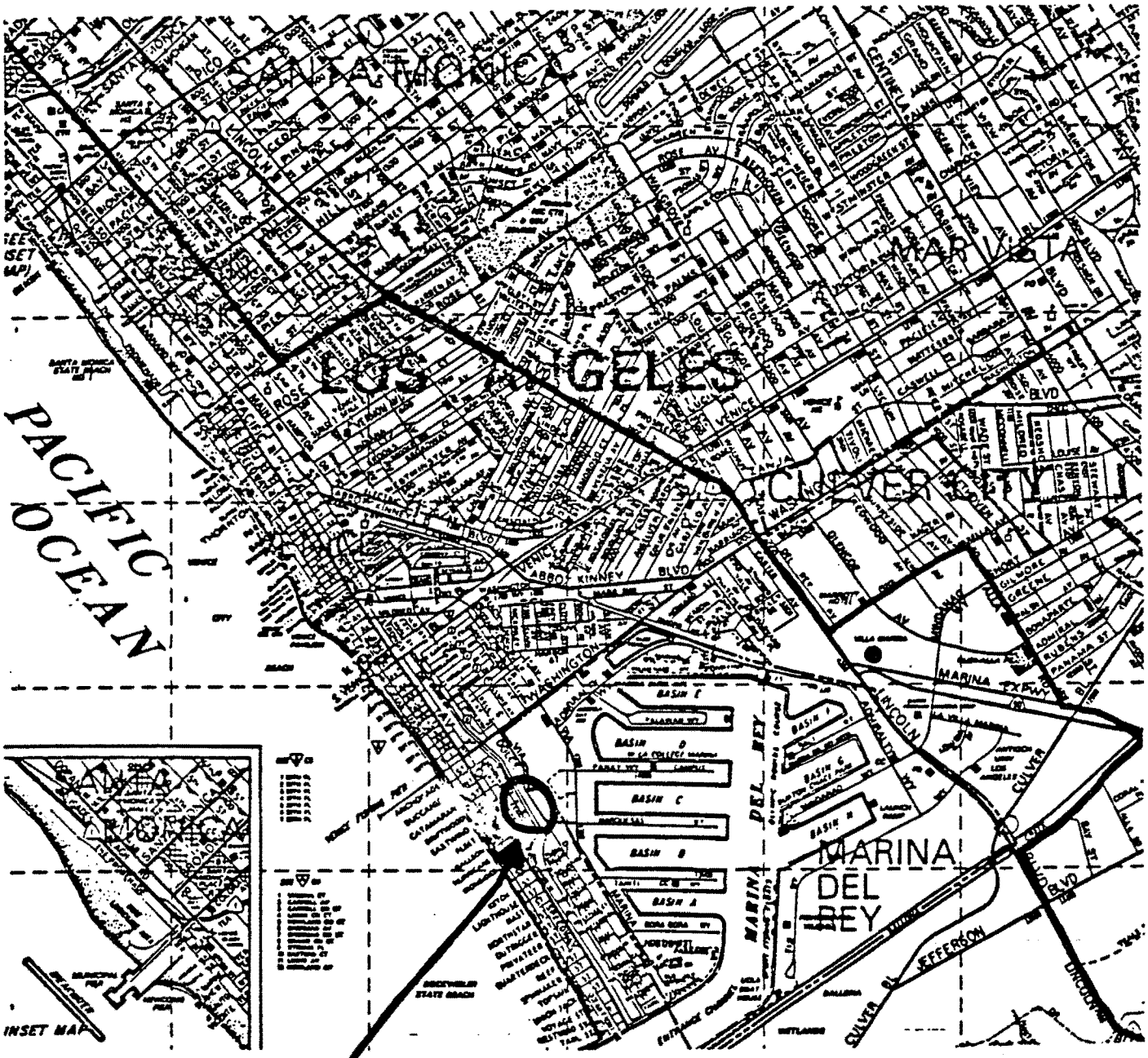


EXHIBIT NO. 1
APPLICATION NO. CCC-97-CD-04
NICHOLS 1 of 2
LOCATION MAP

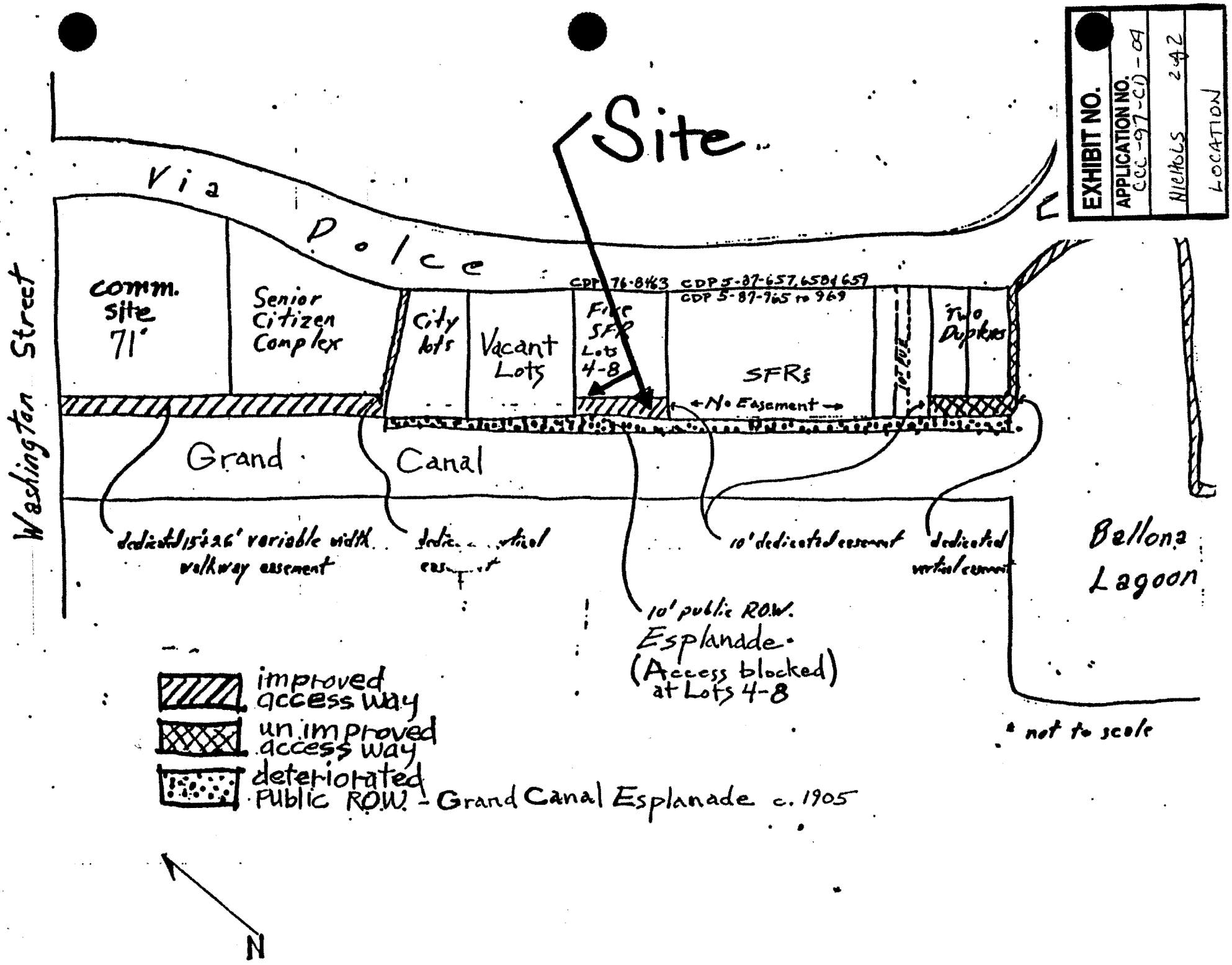


EXHIBIT NO. 2
APPLICATION NO. CCC-97-CD-04
Nichols
LOCATION
Site
Via Dolce
Washington Street
comm. site 71'
Senior Citizen Complex
City lots
Vacant Lots
Five SFR Lots 4-8
SFRs
Two Duplexes
CDP 76-8163
CDP 5-87-657, 650, 659
CDP 5-87-765 to 969
← No Easement →
Grand Canal
dedicated 15 & 26' variable width walkway easement
dedicated vertical easement
10' dedicated easement
dedicated vertical easement
10' public R.O.W. Esplanade (Access blocked at Lots 4-8)
Bellona Lagoon
improved access way
unimproved access way
deteriorated Public R.O.W. - Grand Canal Esplanade c. 1905
N
* not to scale

EXHIBIT NO. 2
APPLICATION NO. CCC-97-CD-04
NICHOLS
LOT #5

Property & Topographic Survey made for

John J. Lumbleau

Note: The elevations shown on this plat are on the Mean Sea Level Datum as maintained by the L.A.C.E. (Los Angeles City Engineer) & The U.S. Geological Survey. Mean Higher High Water line was established as +2.63 above M.S.L. 0.00. The 1976 Tide Tables published by Dept Commerce is the current reference.

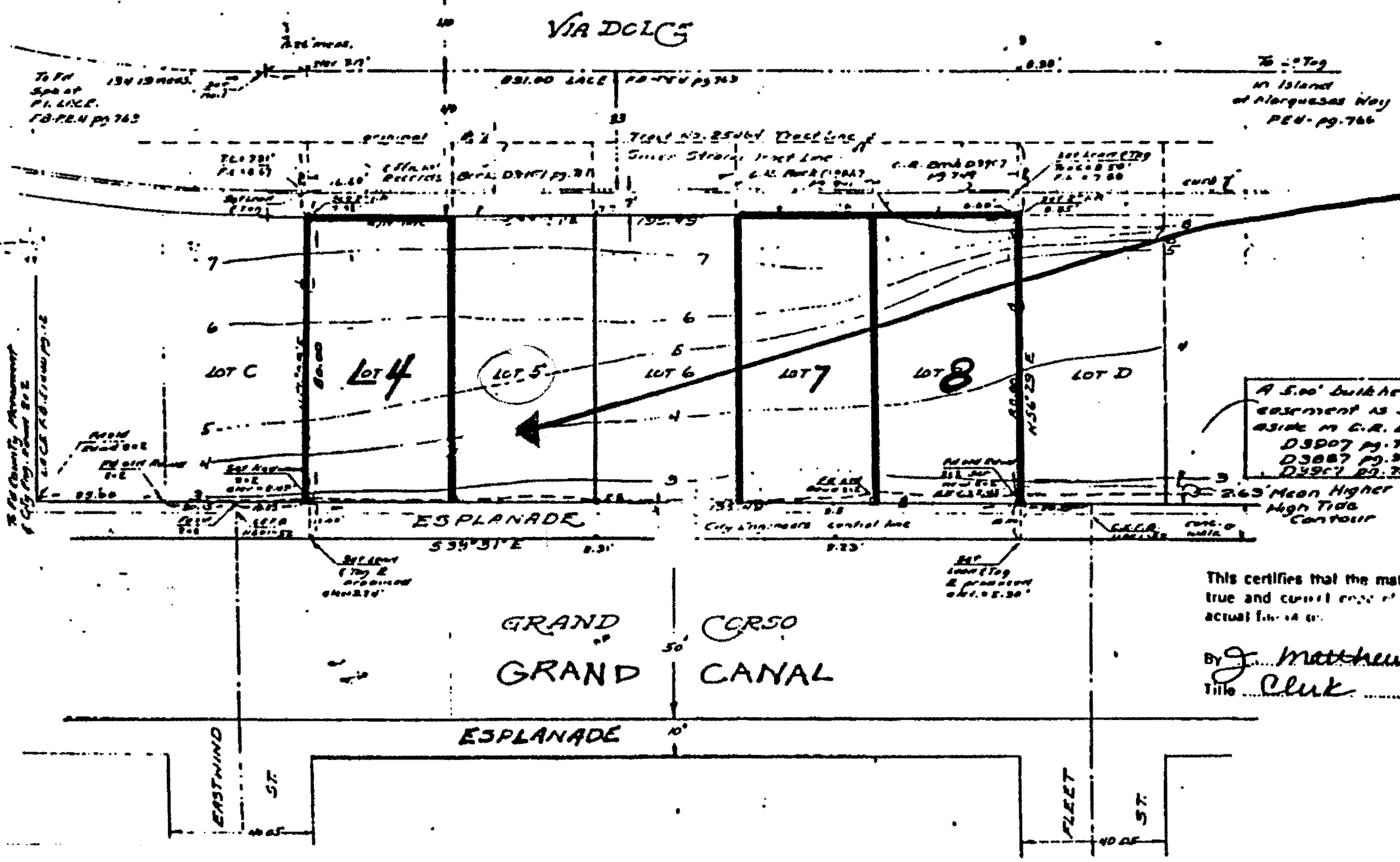
Bench Mark Reference (1960 Precise Adjust.) Spk N curb Pacific Ave. 40' S/o Eastwind St. elev. = 12.61 LACE FB 27596 pg 32

All points set contain Lic. Surveyor Tag No. 3167

Harold E. Seidenstucker
Licensed Surveyor
No 3167

Property Survey of Lots 4, 5, 6, 7, 8, Block 6, Silver Strand Tract recorded in Map Book ... pg. 86 Official Records County of Los Angeles, California. The ... are noted on the ... as recorded in official records Book D390... D388... D39C...

Surveyed Oct. 2, 1976



This certifies that the material contained herein is a true and correct copy of material contained in the actual files of ... Regional Commission.

By J. Matthews
Title Clerk Date 10-18-78

STATE OF CALIFORNIA Edmund G. Brown Jr., Governor

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648
590-5071

4 Oct
cont by appl
for PH ✓

~~September 1, 1976~~ FILE COPY

To: Commissioners October 5, 1976

From: Executive Director

Subject: Staff Summary and Recommendations

Application No.: P-7-23-76-8463

Attachments:
1. Vicinity Map
2. Elevations
3.
4.

1. Administrative Action:

The application has been reviewed and is complete. The 90 day hearing period expires on 10-23-76. Public hearing is scheduled for 11-1-76 ~~9-27-76~~. Continuations, (if any) were granted as follows:

a. 10-4-76 Appl b. ______ c. ______

2. Applicant:

John J. Lumbleau 213-387-7111
Applicant's full name Telephone number

519 S. Western Ave.
Address

Los Angeles, CA 90020

OR Sherman Stacey 213-278-6663
Representative's name Telephone number

433 N. Camden Dr. Sixth Floor
Address

Beverly Hills, CA 90020

3. Project Location:

(a) City Venice

(b) County Los Angeles

(c) Street Via Dolce

(d) Area is zoned RW2-1

EXHIBIT NO. 3
APPLICATION NO. CCC-97-CD-04
NICHOLS 1 of 13
P-7-23-76-8463
COMMISSION FINDINGS

PROJECT DESCRIPTION: Construction of five single-family dwellings on five contiguous lots on the Grand Corso Canal:

Lot #8=Three story, 3203 sq. ft., SFD with 3 bedrooms, den, two attic storage areas; and attached two car garage on a 40x80 ft., 3200 sq. ft., vacant non-conforming lot. Intensity ratio is 1.7.

Lot #7,6,& 5=Three 3-story, 3283 sq. ft. SFD's with 3 bedrooms, den, two attic storage area and attached two car garages on three contiguous 38 x 80 ft., 3074 sq. ft. vacant non-conforming lot. Intensity ratio is 1.8.

Lot #4=Three story, 3194 sq. ft., SFD with 3 bedrooms, den, two attic storage areas, and attached two car garage on a 40 x 80 ft., 3200 sq. ft., vacant non-conforming lot. Intensity ratio is 1.7.

LOCATION: Lots 4,5,6,7,8 Block 6. Silver Strand Tract on Via Dolce, ,175 ft. southwest of Washington Street in the Venice District of L.A.

DISTANCE FROM MEAN HIGH TIDE LINE: on the canal

DENSITY: GROSS: 11 du/ac NET: 14 du/ac

UNIT MIX: 3 bedrooms, den, and attic storage areas

ON-SITE PARKING: two car garage (each)

PRESENT USE OF PROPERTY: vacant

BUILDING HEIGHT: three story, 33 ft. above CFR

SITE SIZE: 40 x 80 ft, 38 x 80 ft; 3200 sq. ft, 3074 sq. ft.

PROJECT COST: $350,000 (total)

EIR: Ministerial/Categorically Exempt

AGENCY APPROVAL: Approval in Concept - L.A. Planning 6-30-76

Homeowners Assoc. - Health Dept. -

Building Dept. - RWQCB -

APCD

EXHIBIT 3
2 of 13

The proposed residences will be constructed on a string of vacant lots along the west side of Gran Corso between Bel Lago (Ballona Lagoon) and Washington Street. While it is legally in the Silver Strand Subdivision, the lots are physically separated from the rest of the subdivision by the lagoon. Immediately across the canal is a sewer pumping station and several lots with apartments on them. Marina Del Rey lies to the east.

LOCATION AND RELATIONSHIP TO LAGOON:

The lots are north of Bel Lago, along the southernmost extension of Strand Canal. The lots have settled since the original subdivision and the city sidewalk is underwater at high tide. The lots have been filled in recent years and rise several feet above the water. The city dedicated easement of 10 feet may all be either under water or taken up by the edge of the fill.

CUMULATIVE IMPACT:

Allowing these structures to be built would allow the remaining lots to be developed. Impact on the lagoon could exist to the extent that residences could be provided for up to a total of 20 families. This eventuality would result in a density of 20 du/ac (net).

PUBLIC ACCESS:

Because the sidewalk is under water at high tide, construction of the residences without redesign would block access to the lagoon and the canal.

HEIGHT AND VIEW:

Height at this location is no particular problem - there are no existing buildings of smaller scale. The view from Via Dolce will be blocked by any construction.

ALTERNATE USES:

Construction of the residences does not preclude restoration of the lagoon or the use of the land area of Silver Strand for restored nesting and feeding. The principle alternate use of this area is for viewing and access. These functions could be taken care of with easements, if the commission were to decide that development of these twenty lots is appropriate. There is some Salicornia activity on the banks of this canal, which lies between the northern canal and the Ballona lagoon.

FINDINGS:

1. This project is on a lot immediately adjacent to a canal.

2. The existing public sidewalk is periodically inundated.

3. The residences do not represent a commitment of the entire Silver Strand area.

4. The project, with conditions, will be consistent with the findings and declarations set forth in Sections 27001 and with the objectives set forth in Section 27302 of the Act.

STAFF RECOMMENDATION: Approval with Conditions
(8 votes - Section 27401 a, b, c, e)

CONDITIONS:

Prior to issuance of permit, applicant shall:

1. Submit a resurvey of the lots showing the location of the latest available mean higher high tide line;

2. Stipulate that during construction no fill will be placed in the marsh.

EXHIBIT 3
4 OF 13

3. Cause to be recorded a public easement dedicated to the City of Los Angeles or the State of California, said easement shall be a strip 10 feet wide along the mean higher high tide line extending from lot 4 through lot 8;

4. Agree, prior to occupancy of the structure, to construct an improved fenced walkway 5 ft. in width along this easement, the fencing shall be designed to allow viewing of the marsh but to prevent foot traffic and animal intrusion onto the marsh or canal. Provided the sidewalk does not intrude into the canal, it shall be designed according to specification of the City of Los Angeles. The walkway shall be pervious, and may be fenced provided a method of maintenance has been agreed to by the Bureau of Street Maintenance.

5. Submit revised plans indicating all portions of the structures set back 20 feet from the mean higher high tide line;

6. Submit revised plans that include a drainage plan which prevents any runoff into the canal and disposes of all but the heaviest storm flows on site in a French drain (gravel filled well);

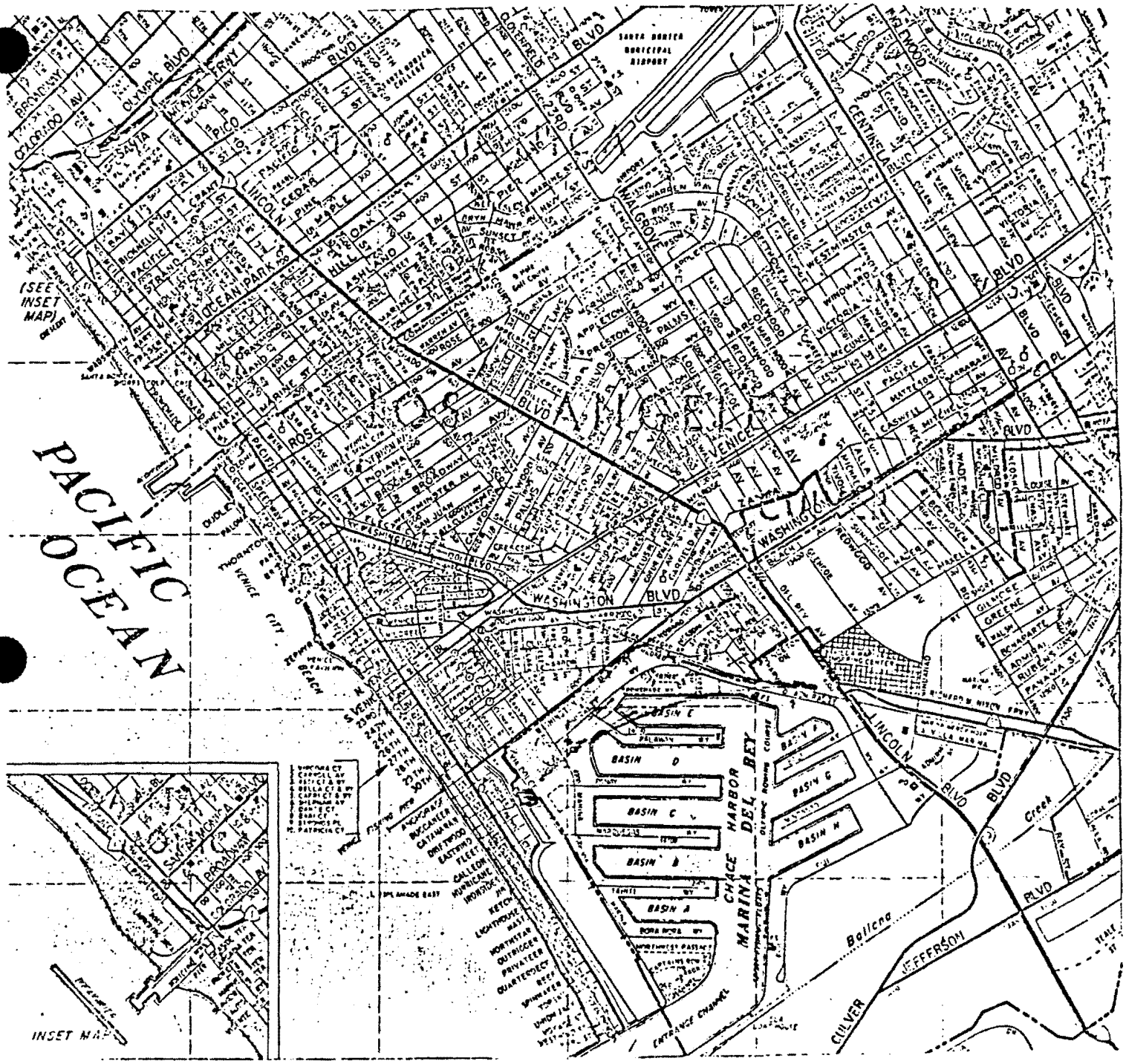
7. Enter a Deed Restriction preventing all construction, except the walkways, fences or pervious decks, between the line of 20 foot set back from the mean higher high tide line and the canal.

Staff Planner

dp

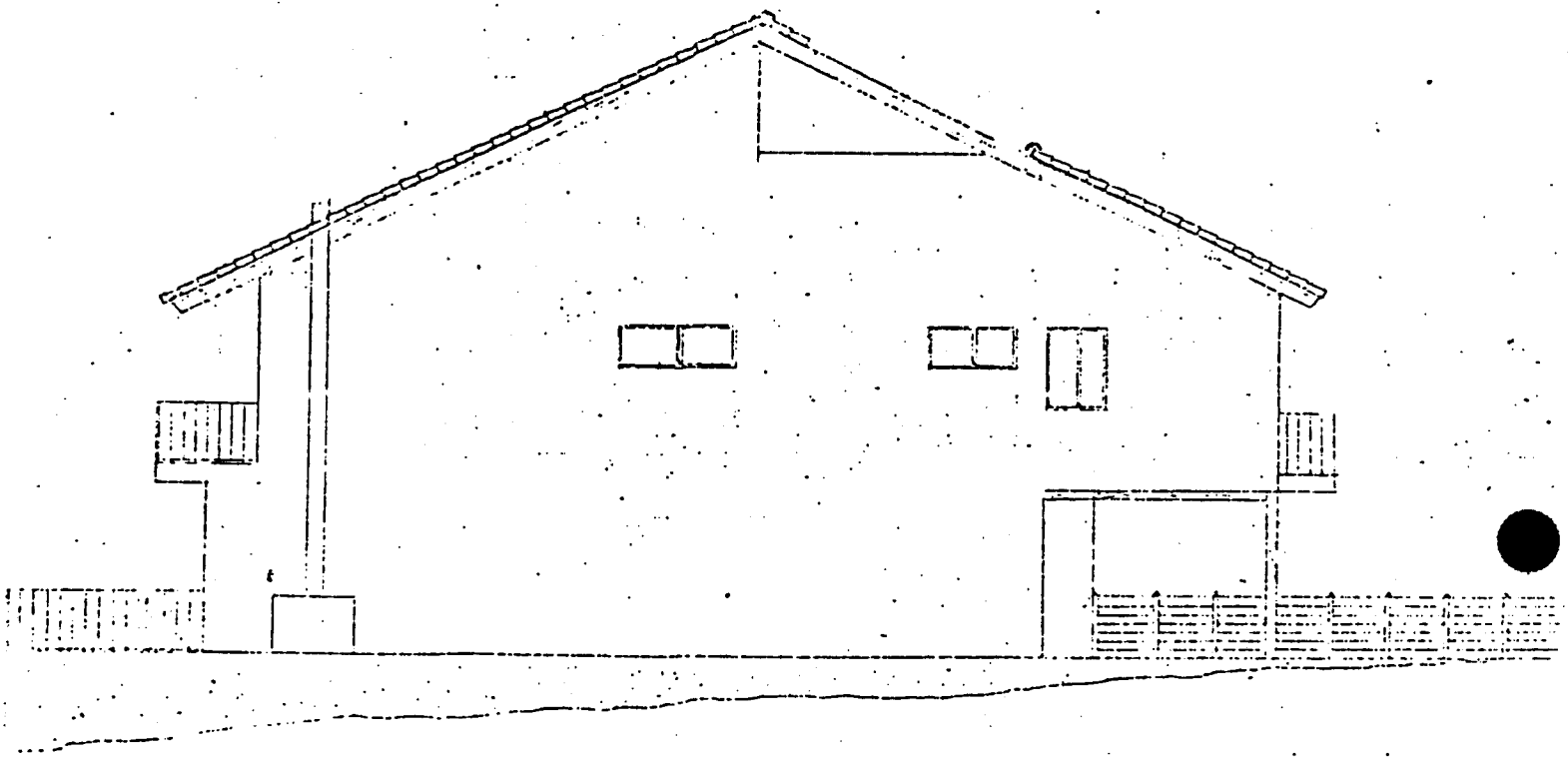
Pickens

mr



VICINITY MAP

EXHIBIT 3
6 OF 13



ELEVATION

EXHIBIT 3
7 OF 13

APPLICATION FOR PERMIT OF JOHN J. LUMBLEAU
RESPONSE TO ITEM 10.

Property Owners Within 100 Feet

Lot Nos.	Owner	Address
1, 2, 4, 5, 6, 7, 11, 14, 16	City of Los Angeles	City Hall 200 N. Spring St. Los Angeles, California 90013
3	Lee Fairbrother & Bernard Snyder	131 Fleet Street Venice, California 90291
8	Pam Manners	4 Jib, No. 11 Marina del Rey, California 90291
9	Milton & Edith Wishny, Trustees	1127 Angelo Drive Beverly Hills, California 90210
10	Ruth J. Lucas	8129 Zitola Terrace Playa del Rey, California 90291
12	Lawrence K. & Kathleen L. Reed	1978 Port Nelson Place Newport Beach, California 92660
13	R. Gordon & Renee Laughlin	2325 Wilshire Blvd., Rm. 203 Santa Monica, California 90403
15	William J. & Dawn C. Nevin	4237 Stewart Ave. Los Angeles, California 90066
17	Marina Strand Developers	16255 Ventura Blvd., Rm 1113 Encino, California 91316

EXHIBIT 3
8 OF 13

STATE OF CALIFORNIA
CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648

EDMUND G. BROWN JR., *Governor*

November 29, 1976

FILE COPY

John Lumbleau
519 South Western Ave.
Los Angeles, CA 90020

1. Your permit application No. P-7-23-76-8463 was approved by the South Coast Regional Commission on 11-8-76 with the following condition/s.

"Prior to issuance of permit, applicant shall

see attached for conditions

2. As soon as you submit evidence to show that you have complied, or will comply, with the condition/s set forth in Paragraph (1), your permit No. P-7-23-76-8463 will be issued.

3. For purposes of calculating the 360 day period from the date of permit issuance within which work authorized by the permit must commence, the date of permit issuance is the date the permit is signed by the Executive Director after all conditions have been complied with, or 120 days from the date of Commission approval, whichever occurs first.

Very truly yours,

SOUTH COAST REGIONAL COMMISSION

M. J. Carpenter
Executive Director

MJC:mc

EXHIBIT 3
9 OF 13

Conditions for P-8463

Prior to issuance of permit, applicant shall:

1. submit a resurvey of the lots showing the location of the latest available mean higher high tide line;

2. stipulate that during construction no fill will be placed in the marsh;

3. cause to be recorded a public easement dedicated to the City of Los Angeles or the State of California, said easement shall be a strip 10 feet wide along the mean higher high tide line extending from Lot 4 to Lot 8;

4. agree, prior to occupancy of the structure, to construct an improved fenced walkway 5 feet in width along this easement, the fencing shall be designed to allow viewing of the marsh but to prevent foot traffic and animal intrusion onto the marsh or canal. Provided the sidewalk does not intrude into the canal, it shall be designed according to specification of the City of Los Angeles. The walkway shall be pervious, and may be fenced provided a method of maintenance has been agreed to by the Bureau of Street Maintenance.

5. submit revised plans indicating all portions of the structures set back 20 feet from the mean higher high tide line except open second story decks which may extend to 14 feet from the mean higher high water;

6. submit revised plans that include a drainage plan which prevents any runoff into the canal and disposes of all but the heaviest storm flows on site in a French drain (gravel filled well);

7. enter a deed restriction preventing all construction, except the walkways, fences or pervious decks, between the line of 20 foot set back from the mean higher high tide line and the canal;

8. so long as the above conditions are fulfilled, the sidewalk may be straight and not follow minor fluctuations of the water line; and

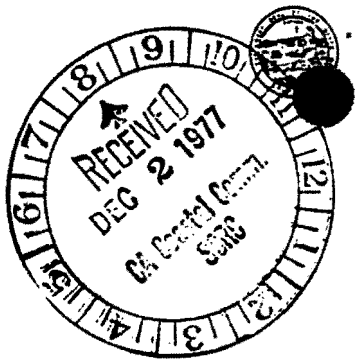
9. no portion of the structure may be higher than 27 feet above the sidewalk, which shall be constructed without unreasonable fill, according to diagram submitted by the applicant.

* * *

EXHIBIT 3
10 of 13

STATE OF CALIFORNIA — Edmund G. Brown, Jr., Governor

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P. O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) ~~436-6993~~ (714) 846-0648
590-5071



PERMIT NO. P-8463

VERIFICATION OF PERMIT

The regulations of the California Coastal Zone Conservation Commission, Section 13510, specifies that no permit shall become effective until a copy thereof has been returned to the Regional Commission, upon which all permittees have acknowledged that they have received a copy of the permit and understand its contents. You are therefore requested to verify the following statement after completely reviewing your permit and return the signed verification to the Coastal Commission within ten (10) working days following the permit issuance.

The undersigned permittee acknowledges receipt of the California Coastal Commission's approval of Permit Number P-8463 and thoroughly understands the contents of the permit, including any conditions imposed.

Nov 30 1977 — Date

Permittee's Signature

EXHIBIT 3
11 OF 13

2474

Property & Topographic S
made for

John J. Lumbleau

Note: The elevations shown on this plat are on the Mean Sea Level Datum as maintained by the L.A.C.E. (Los Angeles City Engineers) & the U.S. Geological Survey. Mean Higher High Water line was established as +2.63 above M.S.L.L. 0.00. The 1976 Tide Tables published by Dept Commerce is the current reference.

Bench Mark Reference
(1960 Precise Adjust.)
Spk W curb Pacific Ave.
40' S/o Eastwind St.
elev. = 12.61 LACE FB
27596 pg 32

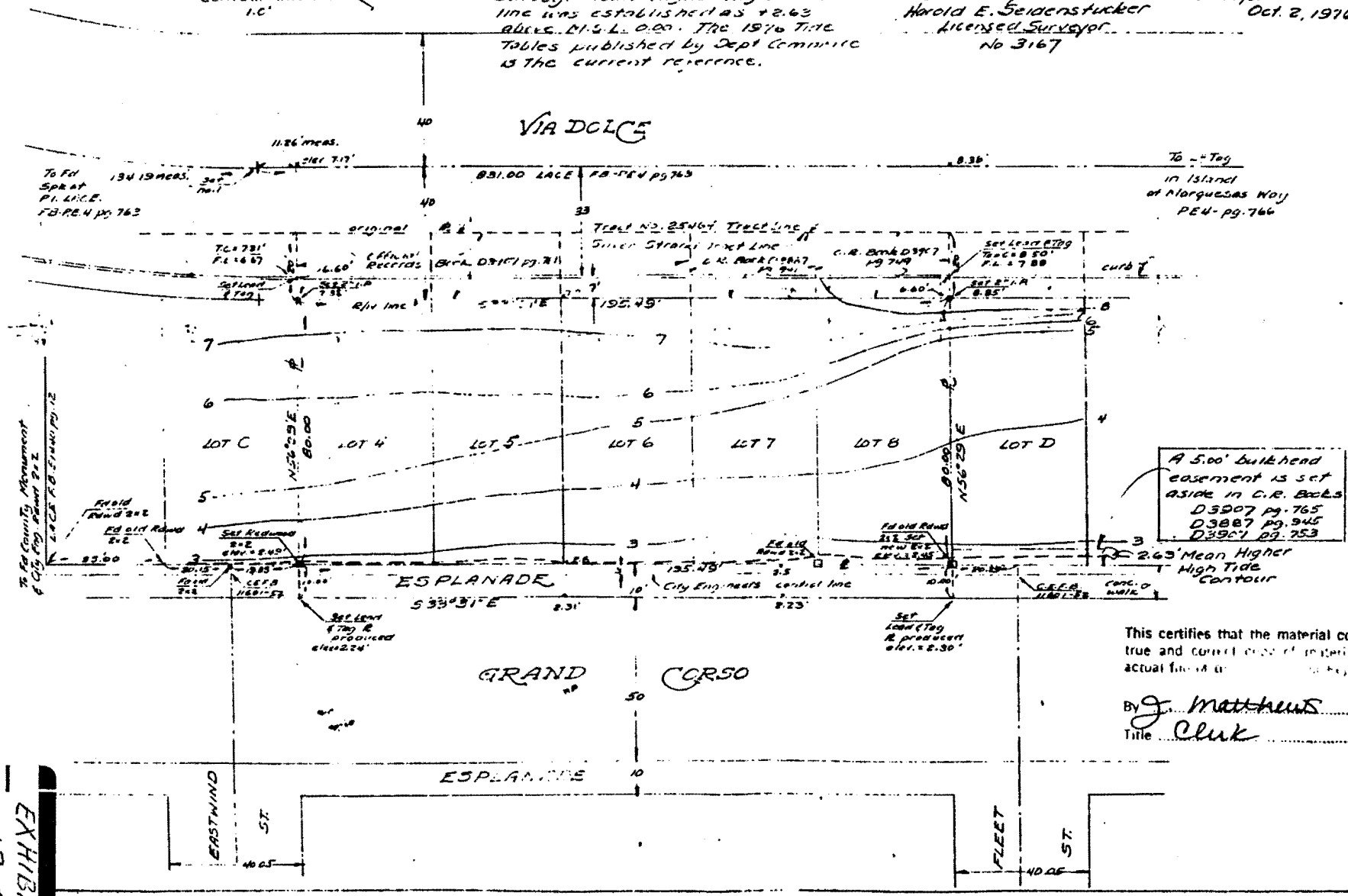
All points set contain Lic.
Surveyor Tag No. 3167

Harold E. Seidenstucker
Licensed Surveyor
No 3167

Property Surv[illegible] of
Lots 4,5,6,7,8, Block
6, Silver Strand Tract
recorded in Map Book 7
pg. 86 Official Records,
County of Los Angeles
California. The exceptions
are noted on the plat
as recorded in Official
records Book D3107-761
D3887-941
D3967-745.

Surveyed
Oct. 2, 1976

Scale
1"=20'
Contour Interval
1.0'



This certifies that the material contained herein is a true and correct copy of material contained in the actual filing of the Regional Commission.

By J. Matthews

Title Clerk Date 10-18-78

EXHIBIT 3
12 OF 13

APPLICATION FOR PERMIT OF JOHN J. LUMBLEAU
RESPONSE TO ITEM 10

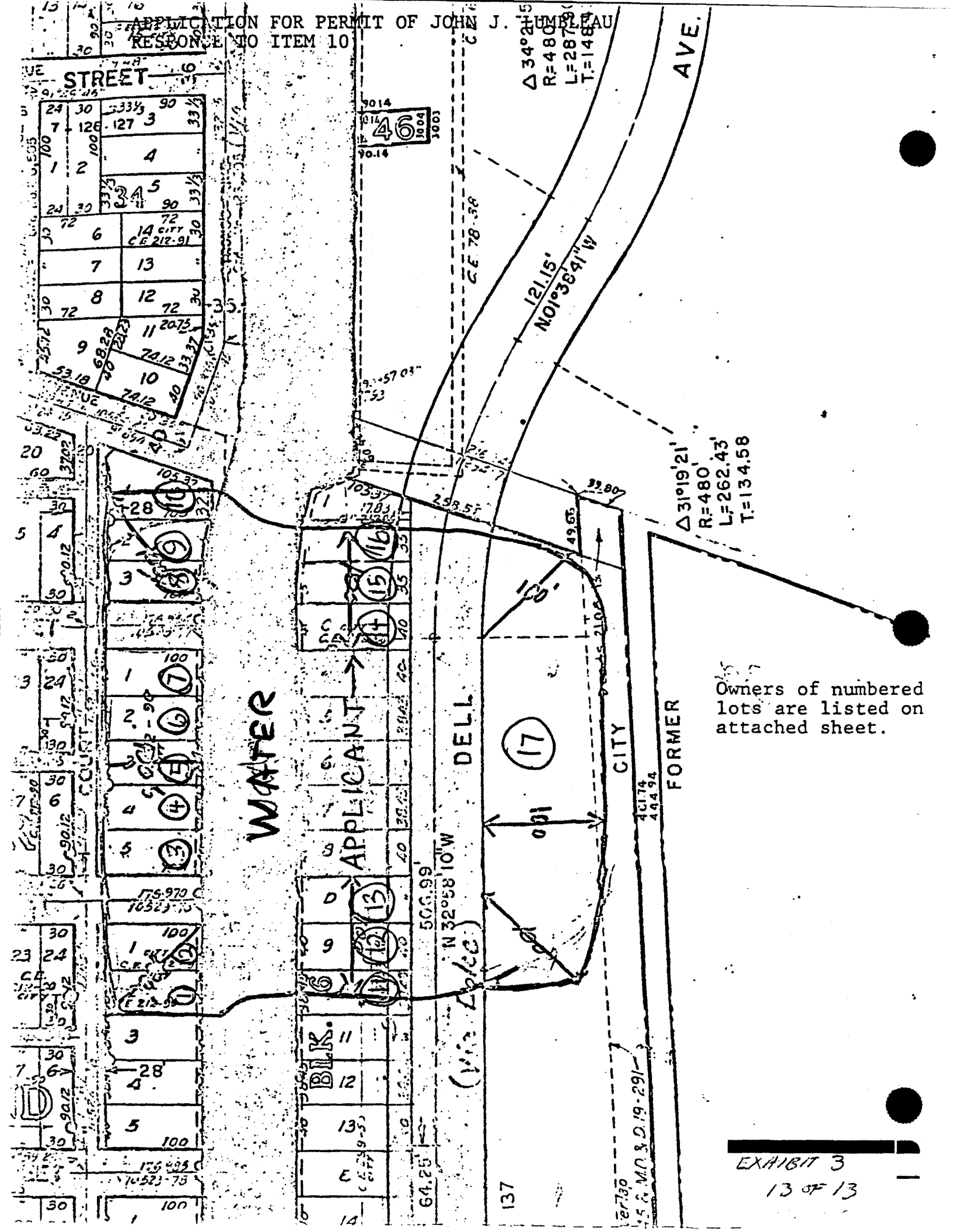


EXHIBIT 3
13 OF 13

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

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Date 17 May 1996

Permit Number P-7-23-76-8463 for: the construction of five attached three-story single family dwellings, 33 feet above centerline of frontage road.

At: 3614 Grand Canal (Lot No. 7), Venice, City of Los Angeles

has been amended by Amendment No. 5-95-019-A2 (Annette Sevedge) to include the following changes:

1) Revise special conditions of Coastal Development Permit P-7-23-76-8463 (Lumbleau) in order to delete special conditions no. 2, 4, 7, 8 and 9 as they pertain to Lot No. 7; 2) within ninety days of the granting of the amendment, remove all fences, fill and vegetation from the City Grand Canal Esplanade located between the applicant's lot and the Grand Canal; 3) resurface the City Grand Canal Esplanade with concrete for public access; 4) receive approval of existing accessory improvements in the applicant's front yard area more than ten feet and less than twenty feet inland from the Grand Canal Esplanade; and 5) erect a 2-3 foot high fence between the City Grand Canal Esplanade and the applicant's front yard area.

more specifically described in the application filed in the Commission offices.

Unless changed by the amendment, all conditions attached to the existing permit remain in effect. For your information, all the imposed conditions are attached. This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit conditions unaffected by this amendment are still in effect.

PETER M. DOUGLAS
Executive Director

By: _____

Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the conditions as amended of Permit No. 5-95-019-A2.

Date_____ Signature_____

EXHIBIT NO. 4
APPLICATION NO. CCC-97-CD-04
NICHOLS 1 of 3
CDP AMENDMENT

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 on which the Commission voted on the application. 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.

SPECIAL CONDITIONS:

1. Revision to 1976 Special Conditions

The revision to the special conditions of Coastal Development Permit P-7-23-76-8463 (Lumbleau) so that special conditions no. 2, 4, 7, 8 and 9 no longer apply to Lot No. 7 (Sevedge) shall not be effective until the applicant has restored public access along the Grand Canal Esplanade fronting her property. Public access along the Grand Canal Esplanade shall be deemed restored when the Executive Director has signed a statement concurring that the following has occurred along the Grand Canal Esplanade situated between the applicant's lot and the Grand Canal: 1) all fences, fill, vegetation and other encroachments have been removed from the Grand Canal Esplanade right-of-way, 2) the full width of the Grand Canal Esplanade right-of-way has been resurfaced with concrete consistent with the City of Los Angeles specifications and requirements for permanent right-of-way improvements, and 3) the public is able to access and walk along the improved and unobstructed Grand Canal Esplanade right-of-way.

2. Timing of Completion of Work

Public access along the Grand Canal Esplanade shall be restored, consistent with the terms and conditions of this amendment and to the satisfaction of the Executive Director, within ninety days of the Commission's action on this amendment, or within such additional time as may be granted by the Executive Director for good cause.

3. City Esplanade

The applicant acknowledges, through the acceptance of this permit amendment, that the City Grand Canal Esplanade is a public sidewalk and that the applicant shall not encroach onto or over the Grand Canal Esplanade right-of-way or otherwise interfere with the public's use of the Grand Canal Esplanade.

4. Height

The height of structures on Lot No. 7 shall not exceed 36 feet above the centerline of the frontage road, Via Dolce. All future construction on Lot No. 7 shall conform to a 36 feet above the centerline of Via Dolce height limit.

5. Setback from Esplanade

No portion of any residential structure on Lot No. 7 shall encroach within ten feet of the City Grand Canal Esplanade right-of-way.

:bll

6989F

CITY OF LOS ANGELES
CALIFORNIA

DEPARTMENT OF
PUBLIC WORKS

BUREAU OF
ENGINEERING

SAM L. FURUTA
CITY ENGINEER

650 SOUTH SPRING ST., SUITE
LOS ANGELES, CA 90014-191

March 18, 1997

Elliot Horowitz
c/o Law Office of David G. Boss
550 West B Street, suite 340
San Diego, CA 92101

PERMISSION FOR ESPLANADE (SIDEWALK) CONSTRUCTION IN THE VENICE CANALS ADJACENT TO GRAND CANAL SOUTH OF WASHINGTON BOULEVARD (3602 GRAND CANAL)

Dear Mr. Horowitz:

This letter is in response to your request to reconstruct a portion of sidewalk known as the Venice Canals Esplanade adjacent to your home on Grand Canal. In February, 1997, a plan was submitted from Mollenhaur, Higashi and Moore displaying the existing conditions in this area and the proposed improvements. After reviewing those plans, my office is prepared to issue an "A"-Permit for the construction of this improvement.

In order to obtain this over-the-counter permit either you or your contractor will have to come to the West Los Angeles Bureau of Engineering District Office at 1828 Sawtelle Boulevard, Third Floor, Public Counter. The fee for the "A"-Permit will be $106.00, a basic fees, plus 6 hours of inspection time at $57.50/hour and a 9% surcharge for a total of $491.59.

If you have any further questions or comments please contact Medhat Iskarous of my staff at (310) 575-8388.

5-95-019 A3

Sincerely,

Homer M. Morimoto, District Engineer
West Los Angeles District
Bureau of Engineering

MI:vd
A:19BPRM8.WP

RECEIVED
JUN 23 1997
CALIFORNIA
COASTAL COMMISSION

6/27/97

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 3
To Darryl Rawce	From JONI/Phil
Co. CCC	Co.
Dept.	Phone #
Fax # (415) 904-5400	Fax # (213) 749-3557

Dear Nancy, Darryl & Chuck:

Shortly after our long awaited meeting on the 25th of June 1997, our neighbors (Mr. Horowitz's tenants) told us they were going to put their dogs out, so would we please put the picket gate up, which we did. Seconds before the dogs were released as we were sitting at the patio table, just after your departure four teenagers came by on the very side walk we had all just met on (the one that is inaccessible to the public or so you said). They were walking fast, in a boisterous aggressive, surly and threatening manner - I , quite alarmed by this startling invasion, asked "could I help them ," as I even offered them some of my famous cookies as I did you. But, they had no response as they threw aside our B.B.Q and kicked the potted plants. I quickly informed them that the dogs were to be let out next door and they shouldn't go through there. By this time they were literally kicking through the picket fence with such force breaking the simple hook latch, then bursting through the gate and aggressively striding in a very charged-up emotional state of mind. They reached the 6-foot Horowitz gate kicking and pounding it again and again in the most aggressive threatening manner. During these few high charged minutes, Guy Bartoli took pictures of them now trying to literally rip down the fence by hand. I was about to call the police when Horowitz's tenants came out and unlocked the gate to let them out on to the city lots (were the wino's sleep - remember the empty bottles). While unlocking the gate, Mrs. Tenant asked them how they got in, their response (now seeing they were trapped) was "we came up from the canal!" Well, at high tide and having supposedly walked through water (as you, yourselves had just seen) they were not wet nor left any wet muddy foot prints, so we knew that was a lie.

The only way we can imagine it, is they came through the side yard at the Hickock end that was the original "public access" when Lumbleau originally built these 5 homes close to 30 years ago. The one I told Chuck about the day before in Long Beach. Explaining to him that there was a "public" walk way at both ends of the development, that was to his surprise required many years ago for public access and in fact would still connect to the old underwater Abbot Kinney fragmented sidewalk (that only chuck was on).

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We think that someone from your department set up these unruly, surly, property damaging kids, to come through storming and were told how to get in. "Gee, we wonder Who!!!?" Needless to say, but after the last 2 days of meetings, it's obviously necessary to say; we are much disheartened by the childish antics and threatening power filled attitudes of you people "The Coastal Commission Staff". You are not problem solving people that work with hardworking tax payers to provide a livable win-win solution -No your attitudes were "I've made up my mind, don't confuse me with the facts."

You refused to walk the canal banks with us, which was the reason for your long awaited site visit, resulting in a waste of our time and money and the tax payers time and money. And yet another huge display of "our minds are made-up don't confuse me with the facts to change attitude." Some of the facts you may have missed are; the eventual walkway will have to be elevated and filled-in -not dug out or down, to prevent and protect existing / future housing. Why in the world would anyone want their home sinking, aging or flooding?" Except of course you people that don't live here, don't have your life savings into these homes and so obviously don't care at all. The public access is obviously there as so well pointed out by the four "public" people you set-up to barge through. And by the way, if this is the "public" -you had better build in City money, for armed guards along our canal to keep the tax payers & home owners safe from the surly property damaging threatening gang member type of public. Mr. Phil Nichols's response in regards to this matter was "I'll bet when we see them again, as your representatives they'll be dress nice, be looking and acting like decent people! We'll see!!"

Not only does public access blatantly already exist, via a step or two at the Hickock-end, and an opening at the Horowitz's end onto the city owned wino lot. but the Venice canal home owners and tax payers were never asked, threatened or coerced into doing anything what so ever until the canal restorations took place having their plans developed and their designated funds available. Then they all participated happily -just like we've always said we would do. The Venice canal residents were never asked to build a temporary retaining wall or rip out dirt, flowers and trees, nor disrupt many species of long established wildlife. Never threatened with a "Cease and Desist order" when trying to simply explain the facts. Never asked to change the way they lived or continuously spend money on your foolish, spotty, temporary canal bank ideas that don't work being a waste of time and money. As you saw (I hope) under the sidewalk beside

EXHIBIT 6

the retirement complex, that entire area sidewalk has all eroded with the twice a day high tide.

I wonder who approved this somewhat new development without considering an embankment wall to protect the sidewalk fence and building from certain, eventual, liquification and undermining of this huge city funded retirement complex!? You obviously are uneducated in the power of water and other related water-way matters, remember 1981. So together with your ignorant bulldozer attitudes, you have thus far displayed uncaring, unfriendly, threatening and hostile ways of dealing with the issues and people. You are dangerous to the public, and considering the foolish ideas you come-up with, you could potentially destroy many people's homes and life savings. You are not even open to learning. My gosh, the Venice canals were very recently finished, You have all you need right now to do The Grand Canal Project fast and right, so why don't you get to it & do it . I, Mrs. Phil (Joni) Nichols say "People that can't lead and refuse to follow are roadblocks -creating diversion and destruction!"

You people are the roadblocks. We are appalled by your behavior and you should be ashamed of yourselves -(where are your mothers?). This canal can be done fast and right if you either get out of the way or get your act together! So stop reminding me of the nightmares of Hitler Biography I saw on the history channel recently. Your S.S. actions will also go down in our history as massive destruction of people and homes, in an uncaring, unhuman power play.

So leave us alone, stop harassing us and causing undo stress, expenses and terror; until you get your plans, approvals and funding together. You are wasting our time and money, the tax payers hard earned dollars on this unnecessary power game you insist on playing.

Joni Nichols

Mrs. Phillip (Joni) Nichols

P.S. My husband would like to know The Coastal Commission Staff member and address to fax the repair invoices to, for the damages done to our property by your hooligans?

cc: Pam Emerson

cc: Guy Bartoli

cc: Mr. & Mrs. Leonard Black

EXHIBIT 6

LAW OFFICES OF DAVID G. BOSS
550 West B Street, Suite 340
San Diego, California 92101
Telephone (619) 234-1776
Telecopier (619) 235-6749

VIA FACSIMILE AND U.S. MAIL

July 25, 1997

Nancy Cave
Darryl Rance
Statewide Enforcement Program
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RE: Chicago Title File Nos. 526-4883-9/1126-2769-2
Coastal Permit No. P-7-23-76-8463
Our File Nos. 95011150/96081286

Dear Nancy and Darryl:

My thanks to Darryl for his telephone call this morning. Darryl advised that the Coastal Commission staff would be forwarding to Ms. Sevedge and Mr. Hickok notices that the current extension period would be further extended beyond the current expiration date of August 8, 1997.

We understand that the Blacks and Nichols, the two lot owners who have not yet agreed to participate in the permit amendment process as have Ms. Sevedge, Mr. Hickok and Mr. Horowitz, are scheduled for a cease and desist hearing before the Coastal Commission on August 13, 1997.

In our conference call on July 8, 1997, you advised that you had recently been in Los Angeles and had met with representatives of the City of Los Angeles as well as the two other property owners in regards to the matter. Through these meetings, you learned that the City does intend to proceed with a canal restoration project, which would include restoration of the Esplanade in the area of the properties subject to the above referenced coastal permit.

Given these facts, you indicated that there may not be any need to proceed with the actual restoration work called for under the permit amendments. You advised that what you may be looking for instead is to have the five property owners under the above referenced permit cooperate in facilitating public access to the area of the Esplanade now, while the City proceeds with its planning.

In our conversation, I raised certain issues such as possible liability questions or other issues which exist because of the current physical condition of the Esplanade area. You advised that you would be willing to discuss these issues at greater length with the property owners but because this concept involved the cooperation of all five owners, that you were waiting to see what would happen with the remaining two owners before further discussing these issues with Mssrs. Hickok, Horowitz and Ms. Sevedge.

Darryl advised that he would be contacting me next week to discuss the matter further.

I again thank you for your assistance and cooperation in this matter and thank you for the assurances regarding the additional extension beyond the current August 8, 1997 date.

Very truly yours,

David G. Boss

DGB:db

cc: Gary Finnell, Esq./Chicago Title Insurance Company
J. Michael Cochran, Esq./Chicago Title Insurance Company
Annette Sevedge
Elliot Horowitz
Michael Hickok, Esq.

EXHIBIT NO. 7
APPLICATION NO. CCC-97-CD-04
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BOSS LTR. 7/25/97