

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Tu 4d

Filed: August 19, 1998
49th Day: October 7, 1998
180th Day: February 15, 1999
Staff: John Auyong-LB
Staff Report: September 24, 1998
Hearing Date: October 13-16, 1998
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-98-266

APPLICANT: WMC Development

AGENT: Pacific Coast Architects

PROJECT LOCATION: 6906 West Oceanfront, City of Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construct a 2,494 square foot two-story single-family residence with attached 449 square foot two-car garage and oceanfront patio encroachments.

Lot Area	2,250 square feet
Building Coverage	1,485 square feet
Pavement Coverage	615 square feet
Landscape Coverage	150 square feet
Parking Spaces	Two
Height above final grade	27'-6"

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept 1182-98, City of Newport Beach Oceanfront Encroachment Permit and Agreement.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Coastal development permit 5-97-243 (701 Lido Partners)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with special conditions regarding: 1) a permit amendment is required for future development on the Ocean Front public right-of-way, 2) submission of the City's approved encroachment permit and signed agreement, and 3) the City's right to revoke its encroachment permit; to mitigate the adverse

impacts on public access and public recreation resulting from the proposed beachside patio encroachments onto the Ocean Front public right-of-way.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

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

II. Standard Conditions:

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

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Deviation from Approved Encroachments. The only encroachment onto the City of Newport Beach Ocean Front public right-of-way allowed by this coastal development permit is a 15'x30' concrete patio surrounded by a 3'0" high concrete block wall with an opening to the beach. Any development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit from the Coastal Commission.
2. Encroachment Permit and Agreement. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE ENCROACHMENTS DESCRIBED HEREIN, the applicant shall submit, for review and approval by the Executive Director, a copy of a valid, approved Annual Ocean Front Encroachment Permit and recorded Agreement from the City of Newport Beach, signed by both the applicant and the City, that authorizes the development approved by this coastal development permit which would encroach into the public right-of-way. The applicant shall comply with the provisions of the approved Ocean Front Encroachment Permit and Agreement.
3. City's Right to Revoke Encroachment Permit. Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

IV. Findings and Declarations:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant is proposing demolition of an existing single-family residence and construction of a 2,494 square foot two-story single-family residence with attached 449 square foot two-car garage and new oceanfront patio encroachments. The proposed patio encroachments would not be located on private property and instead would be located on the Ocean Front public right-of-way that is owned by the City of Newport Beach for street purposes. The proposed patio encroachments would consist of a 15 foot wide (depth of encroachment) and 30 foot long concrete patio. The proposed patio would be surrounded on the seaward and side property lines by a 3 foot high concrete wall with an opening to the beach on the seaward side. (see Exhibit B, Pages 1 and 2)

B. Public Access

1. Encroachments

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

The proposed development includes construction of patio encroachments on the City of Newport Beach Ocean Front public right-of-way, which runs along the seaward edge of the subject site. The City holds the public right-of-way for public street purposes. The public right-of-way is designated on assessor's parcel maps as Ocean Front street.

The portion of Ocean Front in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway. In the vicinity of the subject site, however, the public right-of-way in this area is currently unimproved and consists of sandy beach area. Thus, the proposed encroachments onto the public right-of-way will reduce the amount of public sandy beach area available for public access and recreation.

In addition, the encroachments would make it difficult in the future for the City to improve the public right-of-way for public lateral access purposes. For instance, the City has never constructed any part of Ocean Front street but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area on the public right-of-way. The existing bike path currently runs inland in the vicinity of the subject site.

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

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

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

The fees vary depending on the depth (i.e., seaward from the beachside property line) of permitted encroachment onto the Ocean Front public right-of-way. The fifteen foot (15') depth of the proposed encroachments are in compliance with the 15' maximum depth of encroachment allowed in this area (52nd Street west to the city boundary at the Santa Ana River mouth) by the LUP encroachment policies. The applicant has received the City encroachment permit. (see Exhibit C)

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

To date, the Commission has approved coastal development permits 5-93-114, 5-94-091, 5-95-010, 5-96-106, and 5-97-258 (City of Newport Beach) for the improvement of 23 of the areas 33 street-ends. In addition, the hard surface walkway perpendicular to Seashore Drive at Orange Avenue, which allows for access for persons with disabilities and is required by the mitigation plan, has been completed.

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

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

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments is not exempt from obtaining a coastal development permit because any improvements to homes on a beach, such as the proposed development, are not exempt. However, the proposed project is being conditioned so as to put the applicant on notice that future development on the public Ocean Front right-of-way requires an amendment to this

permit. This would allow the Commission to evaluate future development in the public right-of-way for adverse public access and recreation impacts.

The project is further being conditioned for submission of the approved City encroachment permit and encroachment agreement to demonstrate evidence that the applicant is participating in the LUP mitigation plan; thus mitigating the public access impacts of the proposed patio encroachments. In this instance, the applicant has submitted the encroachment permit as well as the notarized agreement. The agreement has not yet been recorded.

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

Further, the Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partnership) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar encroachments onto the Ocean Front public right-of-way in the area. Therefore, the Commission finds that the proposed encroachments onto the public right-of-way, only as conditioned, would be consistent with the public access and recreation policies of the Coastal Act.

2. Seawalls

LUP Encroachment Policy 6.C. states:

The encroachment permit shall also specify that the construction of any seawall, revetment or other erosion control devices, if necessary, shall occur within, or as close as feasible to, private property. Seawalls shall not be located in a more seaward alignment to protect private development in the encroachment zone.

Condition #6 of the City's "Oceanfront Encroachment Permit Agreement" states:

The Authorized Improvements shall not serve as justification for the construction of erosion control devices oceanward of private property. Seaward revetments or other control devices, if necessary, shall be installed in accordance with the Coastal Act and placed as close to the property line as feasible.

Construction of seawalls can have adverse public access impacts. First, if a seawall is constructed on public property, the footprint of the seawall eliminates sandy beach area, which

would be used for public access and public recreation. Second, depending on the location of the seawall, vertical public access to the beach may be blocked. Third, depending on the design of the seawall, erosion of the public beach may result. Erosion of the beach would reduce the area, which would be used for public lateral access and public recreation.

By signing the City required encroachment agreement, the applicant agrees to limit, if not completely eliminate, future encroachment of any necessary seawall onto the public Ocean Front right-of-way. The coastal development permit is being conditioned for the submittal of the encroachment permit and agreement, as well as compliance with the provisions of the encroachment permit and agreement. This would reduce adverse public access impacts, which may result from future construction of a seawall.

Further, the coastal development permit is being conditioned so that any future development in the public right-of-way would require an amendment to this permit. This would allow the Commission to review any seawall, which may be proposed to be constructed in the public right-of-way, for adverse public access impacts. Therefore, as conditioned, the Commission finds the proposed development to be consistent with Sections 30210 and 30211 of the Coastal Act.

3. Provision of Public Access

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

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

(2) adequate access exists nearby . . .

The subject site is located between the nearest public roadway and the shoreline. The proposed development would provide ---- parking spaces, consistent with the Commission's regularly used standard of two spaces per residential dwelling unit. Lateral public access is provided by the adjacent public beach. Vertical public access is provided by the nearby Fern Street and Grant Street street-ends. The proposed development would not result in direct adverse impacts, neither individually nor cumulatively, on physical lateral or vertical public access. Therefore, the Commission finds that no public access is necessary with the proposed development. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a local coastal program ("LCP") which conforms with the Chapter Three policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was originally certified on May 19, 1982. As conditioned, the proposed development is consistent with the public access and recreation policies of Chapter Three of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, would not prejudice the City's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act.

D. CEQA

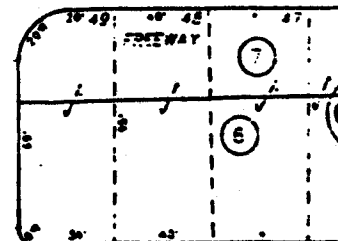
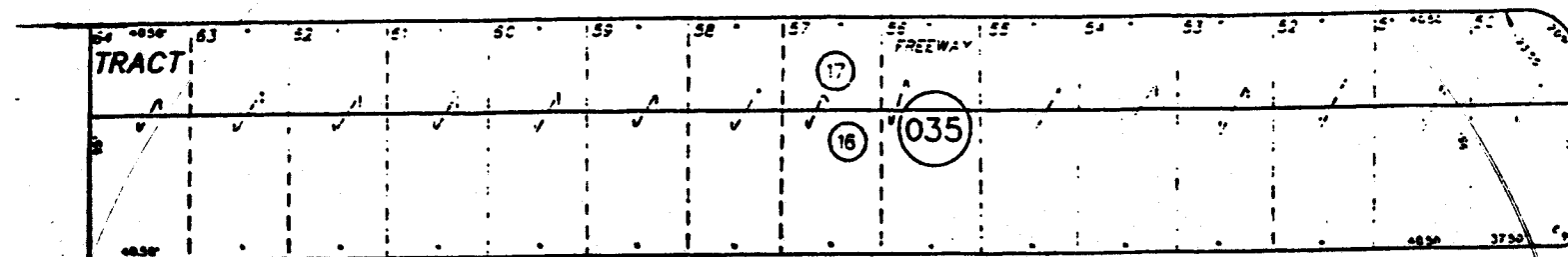
Section 13096 (a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effects, which the activity may have on the environment.

The proposed development is located in an urban area. Development already exists on the subject site. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the public access policies of Chapter Three of the Coastal Act. Mitigation measures requiring: 1) a permit amendment is required for future development on the Ocean Front public right-of-way, 2) submission of the City's approved encroachment permit and signed agreement, and 3) the City's right to revoke its encroachment permit; will minimize all significant adverse impacts. There are no negative impacts caused by the proposed development, which have not been adequately mitigated.

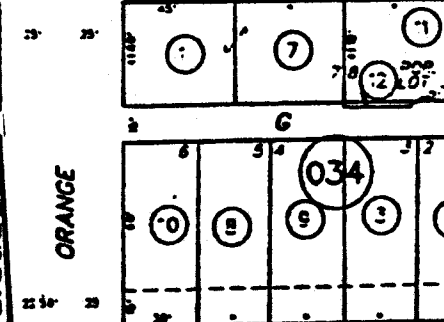
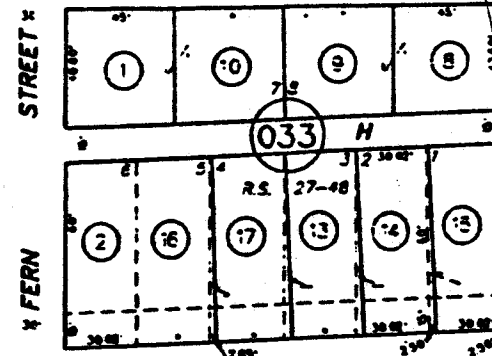
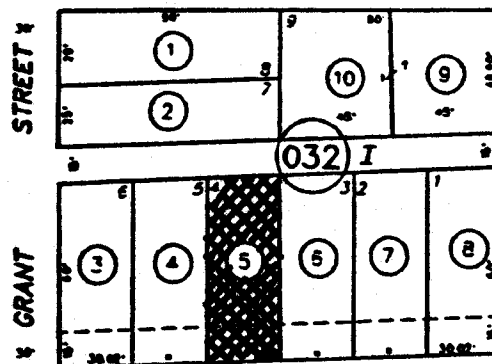
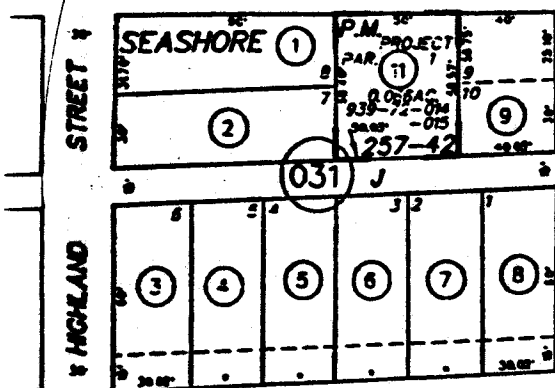
As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent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

← State Route 1 →

BOULEVARD



SEASHORE



← public R-O-W →

COLONY

subject site:
I-1 6906 W. Oceanfront

037

← Beach →

5-98-266
COASTAL COMMISSION
VICINITY MAP

EXHIBIT # A
PAGE 2 OF 2

G-1

TRAC

MARCH 1949

SEASHORE COLONY TR. ADD. M.M. 7
TRACT NO. 4400 M.M. 162-20 TO 26 INC.
PARCEL MAP PM 257-12

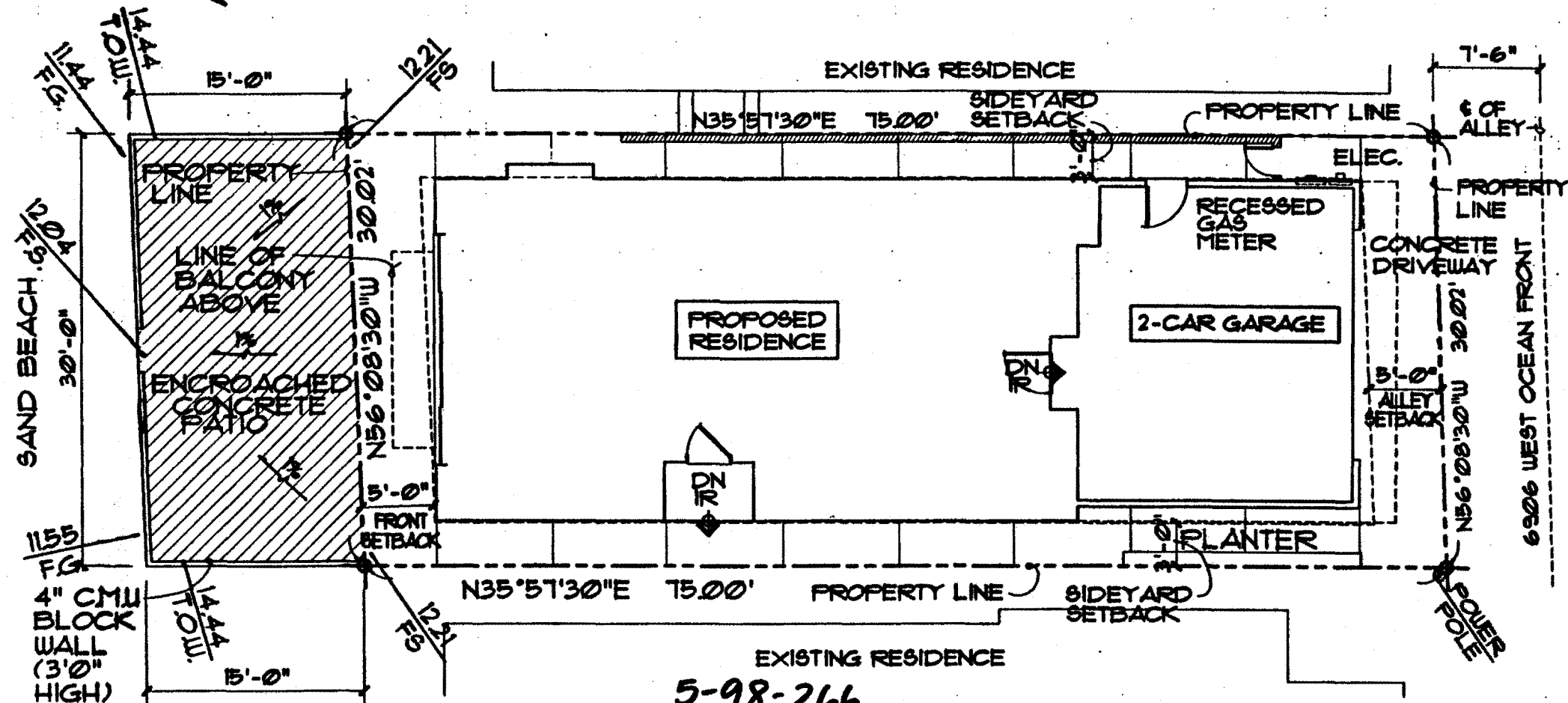
NOTE - ASSESSOR'S BLOCK 1
PARCEL NUMBERS
SHOWN IN CIRCLES
BLOCK NUMBERS

ASSESSOR'S MAP
BOOK 15 PAGE 03
COUNTY OF ORANGE
BOOK 424 PAGE 43

THIS
ASS
SOR
NOT
CCO

Please make a sketch of the encroachments showing all property lines, setbacks existing structures, existing patio improvements, dimensions and elevations above or below existing grade.

← Beach

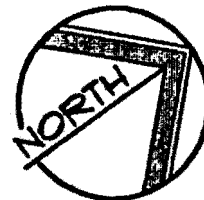


encroachment area on Ocean Front public right-of-way

5-98-266
COASTAL COMMISSION
Plans

EXHIBIT # B
PAGE 2 OF 6

17 AUG. '98

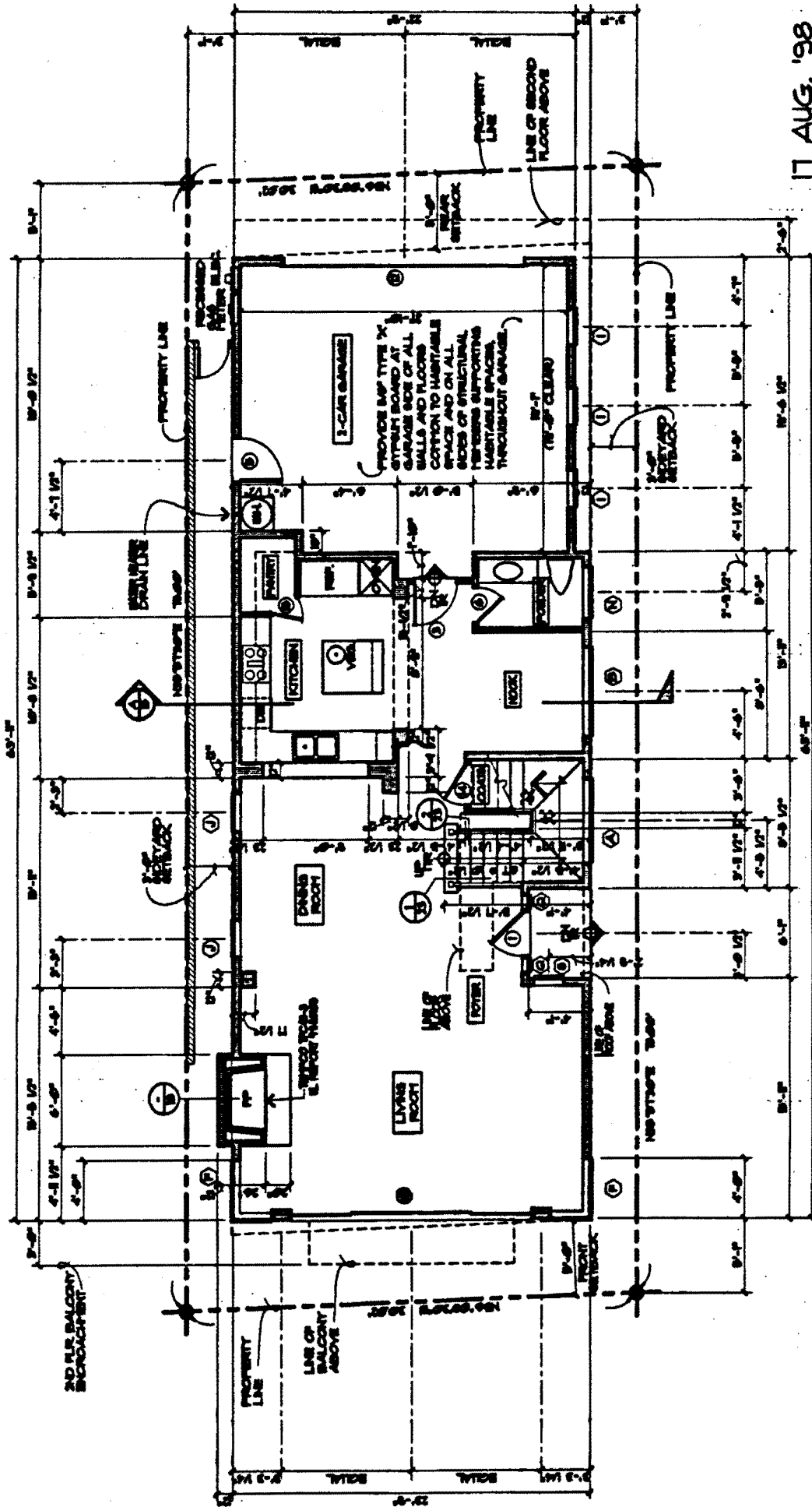


SITE PLAN

LEG DESCRIPTION: A PORTION OF LOT 4, BLOCK SEASHORE COLONY TRACT AND 15 FEET OF OCEAN FRONT STREET (VACATED).

SCALE: 1" = 10'-0"

beach ←



COASTAL COMMISSION

5-98-266

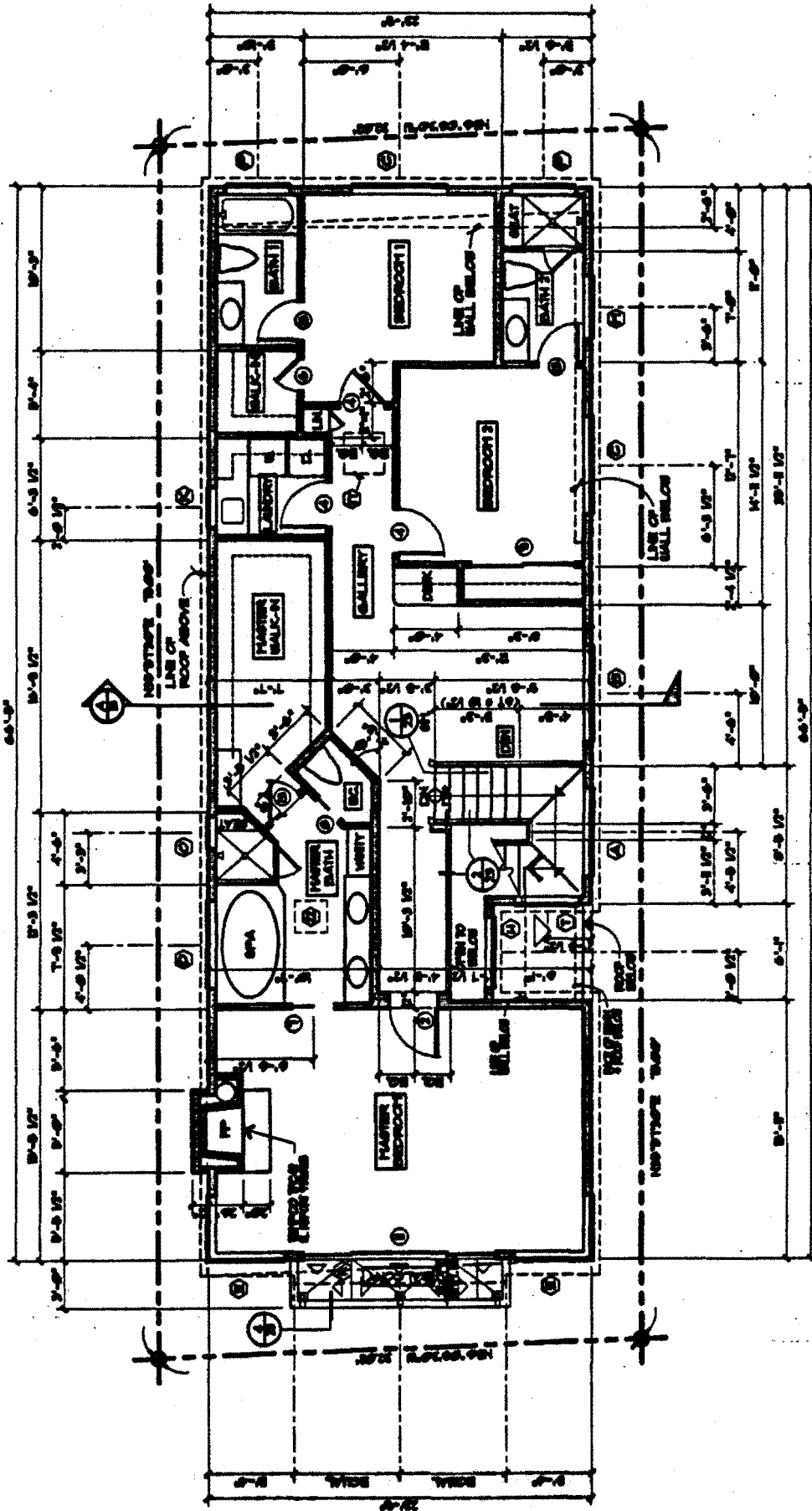
EXHIBIT # B

PAGE 3 OF 6

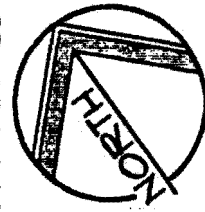
FIRST FLOOR PLAN

SCALE: 1"=10'-0"

← Beach



17 AUG. '98



COASTAL COMMISSION

5-98-266

EXHIBIT # 3

PAGE 4 OF 6

SECOND FLOOR PLAN

SCALE: 1" = 10'-0"

CITY OF NEWPORT BEACH

ANNUAL OCEAN FRONT ENCROACHMENT PERMIT

(Please print or type. Press hard - making 3 copies.)

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

ADDRESS OF ENCROACHMENT 6906 W. Oceanfront

APPLICANT'S NAME

David Place

ADDRESS

430 32nd St. NIP 92663

Phone

723. 9100

OWNER'S NAME

WMC Development

ADDRESS

Same

Phone

Same

CONTRACTOR'S NAME

Finton & Assoc

ADDRESS 124 Santa Clara

Arcadia CA 91006

Office Phone 626/445. 1040

Job Site Phone

CONTRACTOR'S CITY BUSINESS LICENSE NO. 775 311 * STATE LICENSE NO. 603186 *

The applicant hereby makes application to Extend the current 7'
encroachment an additional 8' to a total
of 15' encroachment - CONCRETE RATIO WITH
1' HIGH BLOCK WALL

(See attached plans)

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

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

Insurer State Fund Policy No. 1130722-96 Expiration Date 2/1/99

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

(Owner's Signature)

(Date)

SPACE BELOW THIS LINE FOR OFFICE USE

SPECIAL CONDITIONS OF APPROVAL REQUIRED BY CITY: PER CITY COUNCIL POLICY

L-14 5-98-266 COASTAL COMMISSION

Encroachment Permit &

Agreement

PERMIT ISSUED BY: [Signature]

DATE ISSUED: 9-13-98 EXPIRATION DATE OF PERMIT: June 30, 1999

PERMIT DENIED ☐:

* Only required for modifications and new improvements.

Application # 5-98-266

Date Approved:

8-12-98

OCEANFRONT ENCROACHMENT PERMIT
AGREEMENT

FOR

6906 W. Oceanfront

(Property Address)

1. Definitions.

- (a) "Authorized Improvements" shall mean those improvements within the Permit Zone that are shown on Exhibit "B" provided the improvement is consistent with the Policy and the LCP.
- (b) "LCP" shall mean Amendment No. 23 to the Land Use Plan of the Local Coastal Program, as approved by the City Council on October 22, 1990, together with any amendments approved subsequent to that date.
- (c) "Permit Zone" shall mean the area oceanward of the property line that runs generally parallel to the shore line and within the oceanward prolongation of those property lines that are roughly perpendicular to the oceanfront shore line on the Balboa Peninsula and West Newport Beach as follows:
1. "A" Street to 250 feet southeast of "E" Street
- Property line approximately 7½ feet to back of sidewalk
 2. 52nd Street to 36th Street - Up to 10 feet
 3. Santa Ana River to 52nd Street - Up to 15 feet
- (d) "Permittee" shall mean WMC DEVELOPMENT
(DAVID CLOSE), the owners of
the property at 6906 W. OCEANFRONT
- (e) "Policy" shall mean City Council Policy L-14 as approved by the City Council on October 22, 1990, together with modifications approved subsequent to that date.
- (f) "Public Works Director" shall mean the Public Works Director for the City of Newport Beach or a designee.

COASTAL COMMISSION
5-98-266

2. Permit Principles.

Permittee acknowledges that the issuance, administration and interpretation of the Permit is based on, and shall be consistent with, the following:

- (a) This Permit is the product of more than 2½ years of study, meetings, hearings and analysis that culminated in City Council and Coastal Commission approval of the Policy and the LCP.
- (b) The Policy and LCP represent a compromise in terms of the extent of the Permit Zone, permitted improvements, and the nature of public access impacts improvements to be constructed along oceanfront with funds derived from the permit fees.
- (c) By issuing this Permit, the City is giving up any right to contend it is the fee owner of the Permit Zone. The City concedes it possesses only an easement for street and public access purposes. Implementation of the Policy requires Permittee to concede the existence of the easement and give up any right to challenge its validity.
- (d) Permittee, as the owner of the property adjacent to, and the underlying fee in, the Permit Zone, has the legal right to construct and maintain Authorized Improvements within the Permit Zone subject to compliance with the Policy, LCP and conditions to this Permit.
- (e) The fees charged Permittee are to be used solely to defray the cost of administering the Policy and, in accordance with the LCP, mitigate the impact on beach access stemming from the construction and maintenance of Authorized Improvements. The annual fee shall be as specified in City Policy L-14.

3. Standard Conditions.

Permittee shall strictly comply with the following standard conditions to the approval of all oceanfront encroachment permits and any special conditions specified in Exhibit "B":

- (a) Permittee must execute and file Oceanfront Encroachment Permit.

5-98-266
COASTAL COMMISSION
Encroachment permit & agreement

EXHIBIT # C
PAGE 3 OF 7

- (b) Permittee must file a completed Oceanfront Encroachment form (Exhibit "A"), a sketch of the improvements within the encroachment zone on Oceanfront Encroachment form (Exhibit "B") and pay annual fee per City Council Policy L-14.
- (c) Upon sale of property, new owner must execute and file Oceanfront Encroachment Permit before close of escrow.
- (d) Permittee shall construct and maintain only the Authorized Improvements;
- (e) Permittee shall maintain all Authorized Improvements in good condition and repair;
- (f) Permittee shall defend, indemnify and hold the City and its officers and employees harmless with respect to any claim, damage or injury related to Authorized improvements provided the Permittee shall have no such obligation if the claim, damage or injury was caused by any officer, employee or representative of the City;
- (g) Permittee shall remove any unauthorized improvements within ten (10) days after notice to do so, consent to City abatement of unauthorized improvements if not removed within the time specified in the notice and shall pay all costs incurred by the City in removing any unauthorized improvement.
- (h) Permittee shall allow the Public Works Director, or designee, to inspect improvements within the Permit Zone during normal business hours without notice to Permittee.
- (i) Construction within Permit Zone:
 - 1. All construction within the Permit Zone must be performed by licensed contractors, unless waived by the City.
 - 2. All work must be inspected by the City. Forms and subgrades must be inspected and approved before concrete is ordered. Inspectors are normally available during working hours upon 24 hours advance notice. Call (714) 644-3311 to arrange for an inspection.
 - 3. Barricades and or flagging must be provided and maintained around all trenches, excavations and obstructions.

5-98-266
COASTAL COMMISSION
Encroachment permit ¹/₂ agreement

EXHIBIT # C
PAGE 4 OF 7

4. Refuse or unused materials shall be removed within 24 hours after completion of the work. If materials are not so removed, the City may remove the materials and bill the applicant.
5. Work which has been done prior to issuance of a permit is subject to rejection and/or fine.

4. Encroachment Permit Term/Renewal.

(a) Term

This permit shall be effective on the date of issuance and shall expire on the 30th of June following issuance.

(b) Renewal

1. In order to maintain Authorized Improvements within the Permit Zone, Permittee must pay annual encroachment fee and file a completed Oceanfront Encroachment Permit form (Exhibit "A") by May 31 of each year.
2. In order to construct new improvement or modify existing improvements within the Permit Zone, Permittee must pay Encroachment Fees Schedule if applicable and file a completed Oceanfront Encroachment Permit form (Exhibit "A"), a sketch of the improvements on the Oceanfront Encroachment form (Exhibit "B") for approval prior to beginning work.

5. Stipulation to Easement.

Permittee stipulates that City has an easement for street and public access purposes across the Permit Zone. The construction or maintenance of authorized encroachments pursuant to any Oceanfront Encroachment Permit constitutes a waiver on the part of the Permittee and all successors to dispute the validity of this easement. City stipulates that Permittee owns fee title underlying the Permit Zone subject only to the easement for street and public access easements.

6. Location of Erosion Control Devices

The Authorized Improvements shall not serve as justification for the construction of erosion control devices oceanward of private property. Seaward revetments or other control devices, if necessary, shall be installed in accordance with the Coastal Act

COASTAL COMMISSION
5-98-266

EXHIBIT # C
PAGE 5 OF 7

and placed as close to the property line as feasible.

7. Termination.

City shall have the right to terminate this Permit, or require Permittee to modify Authorized Improvements, if the City Council determines that all or a portion of the right of way is needed for construction of a public improvement.

8. Revocation.

The Public Works Director may revoke this Permit after notice and hearing upon a determination that Permittee is in violation of the terms or principles or conditions of this Permit.

9. Notice.

Notice shall be deemed given when personally delivered to Permittee or when deposited in the United States mail, first class postage prepaid, and addressed to Permittee at the address specified on the Application for Permit.

IN WITNESS WHEREOF, the parties have caused this Permit to be executed on the day and year first written below.

CITY OF NEWPORT BEACH
A Municipal Corporation

By: *Arthur Wong*

"PERMITTEE":

By: *David B. B.*

5-98-266
COASTAL COMMISSION
Encroachment permit & agreement

EXHIBIT # C
PAGE 6 OF 7

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Orange)

On 8/7/98 before me, Brian Foxcroft
personally appeared David S. Close
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]



This area for official notarial seal.

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER(S) _____ TITLE(S) _____
- ☐ PARTNER(S) - ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER _____

COASTAL COMMISSION
5-98-266

EXHIBIT # C
PAGE 7 OF 7

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION

Though the date requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

