

## CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
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Hearing Date: 4/7-10/98  
Commission Action:



TU Kb

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-97-399

APPLICANT: George Beck

PROJECT LOCATION: Immediately west and adjacent to 2331 Warmouth Street, San Pedro (2275 West 25th Street).

PROJECT DESCRIPTION: Erection of a 15-foot long, 6-foot high, chain link fence and gate, with razor wire on top, across a small undeveloped portion of a private bluff top lot that is used as an accessway to the edge of the coastal bluff and to the rocky beach below. The remaining portion of the lot is improved with a mobile home park and private golf course. The gate will be opened daily from 6:00 A.M. to 9:00 P.M. with a sign placed on the gate indicating the hours.

Lot area:	66 acres
Ht abv fin grade:	6 feet

LOCAL APPROVALS RECEIVED: Not Applicable

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with special conditions regarding no waiver of any public rights that may exist on the property and that any change in the hours the gate will remain open will require an amendment to this permit.

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. Public Rights

The Commissions' approval of this permit shall not constitute a waiver of any public rights which may exist on the property. The permittee or property owner shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

#### 2. Future Development

With the acceptance of this permit the applicant acknowledges that any change to the hours the gate will remain open, as approved by this permit, will require an amendment to this permit.

### IV. Findings and Declarations.

#### A. Project Description and Background

The applicant proposes to construct a 15 foot long, 6-foot high, chain link fence and gate, with razor wire on top, across a small undeveloped portion of a private bluff top lot which is used as an accessway to the edge of the coastal bluff and to the rocky beach below. The remaining portion of the lot is improved with a mobile home park and private golf course. The gate will be opened daily from 6:00 A.M. to 9:00 P.M. to allow non-vehicular public access (see Exhibits No. 4 & 5). A sign is proposed on the gate listing the proposed hours.

The applicant has indicated that he will be the primary person responsible for opening the gate. In addition, other neighboring residents have keys and will open the gate in the event the applicant is unable to.

The applicant states that the reason for the proposed fence/gate and limit to the hours of access along the accessway is due to a nuisance problems which occur during the late evening hours.

The project site is a 18 foot wide by 190 foot long dirt unimproved pedestrian accessway located between a private approximately 66 acre trailer park/ golf course and a single-family residence. The project site is located adjacent to the western terminus of Walmouth Street in the San Pedro area of the City of Los Angeles (see Exhibits No. 1-3). The accessway extends south from the western terminus of Walmouth Street to the edge of the south facing San Pedro coastal bluffs. Based on documentation submitted by the applicant and research of City records the project site is privately owned by Royal Palms Investment Co., the owners of the adjacent trailer park/golf course (2275 West 25th Street).

The applicant has received written permission from Royal Palms Investment Co. to construct the fence/gate and to apply for a coastal development permit.

The proposed project was constructed in 1997 without the benefit of a Coastal Development Permit. Commission staff was notified of the development by a user of the accessway. After the property owner was notified a Coastal Development Permit was subsequently submitted by the applicant.

## B. Public Access

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The major access issue in this permit is whether a gate across an unimproved pathway on an oceanfront lot that is open from 6 a.m. to 9 p.m. so that it cannot be used by the public at night for access to the ocean or for oceanfront recreation is consistent with the Coastal Act. Section 30210 states that maximum access and recreational opportunities shall be provided to protect public rights:

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

Section 30211 requires that development shall not interfere with access:

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

Section 30214 of the Coastal Act states in part that:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission, regional commissions, and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

As mentioned, the proposed development consists of the construction of a chainlink fence with gate across an 18 foot wide by 190 foot long unimproved portion of an approximately 66 acre lot, that is currently improved with a bluff top private trailer park/golf course, and limiting access to 6 a.m. and 9 p.m. The 66 acre property extends from 25th street down to and beyond the existing bluff edge.

The existing accessway provides public access from a public Street (Warmouth Street) to the edge of the coastal bluff and to a path that runs west along the top of the south facing bluffs. The bluff edge path provides a connection to the rocky beach below via a narrow path that descends down along the bluff face.

The accessway has been open since, and possibly prior to, the development of the trailer park/ golf course back in approximately 1972. The accessway is used by residents of the area, local surfers, and the general public.

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

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication". The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period" before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitation, after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a. The public has used the land for a period of five years or more as if it were public land;
- b. Without asking for or receiving permission from the owner;
- c. With the actual or presumed knowledge of the owner;
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- e. The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any such rights.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil code section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore, the required five year period of use need not have occurred prior to March 1972 in order to establish public rights.

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

Aerial photographs located in the South Coast District office taken in 1978, 1986 and 1993 show a worn footpath along the pathway indicating public use. The applicant, residents and daily users of the accessway have indicated that the site has always been open and available for public use. Such use has continued for a period of over 20 years. Staff has also frequented the site over the past ten years and has observed the public using the accessway to get to the bluff edge or the beach below.

The private trailer park/golf course has a perimeter fence along all property lines, except for this 18 foot wide portion. Based on discussions with a few of the residents in the area the proposed site has never been fenced and has continuously been open to the public without any attempt by the property owner to exclude the public. Furthermore, there is no evidence of any recorded documents at the Los Angeles County Recorders office that would imply that use of the property for any purpose is permissive.

As shown above, through staff site visits, conversations with nearby residents, users of the accessway, and aerial photographs, for a period extending over 20 years, information has been compiled indicating that the subject property is used by the public. Therefore, the potential for implied dedication exists.

Even though the potential for implied dedication may exist on the property there has not been a demonstration that such use amounts to a prescriptive right of access. Further, in order to deny or significantly modify development the Commission must find that development of the parcel would interfere with such beach access and coastal recreation and would be inconsistent with the Chapter 3 policies of the Coastal Act.

Where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, the Commission may deny a permit application under Public Resources Code Section 30211. As an alternative to denial, the Commission may condition its approval on the development being modified or relocated in order to preclude the interference of adverse effect. This is because the Commission has no power to extinguish existing public rights, even though it may authorize development which affects the exercise of those rights.

A full assessment of the degree to which the criteria for implied dedication has been met in this case could only be made after a more intensive investigation of the issue has been performed. A survey of potential users of the site would provide very helpful information to augment the information staff has compiled.

In this case, although public prescriptive rights over the property has not been proven, the applicant's proposal to keep the gate open daily between 6 a.m. and 9 p.m. could serve to protect any existing public access rights which could be impacted by the proposed development. Section 30214 of the Coastal Act directs the Commission to implement the public access policies of the Act in a manner which balance various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Therefore, the Commission must evaluate the extent to which the proposed public access is equivalent in time, place, and manner to the public use that has been made of the site in the past. If the Commission finds that the proposed access is in fact, equivalent in time, place, and manner to the access use made of the site in the past, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the project consistent with Section 30211. If an investigation indicated substantial evidence of an implied dedication exists, the proposed project would not interfere with such public rights because it proposed access that is equivalent in time, place, and manner to the access previously provided in the areas subject to the implied dedication. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could find that with or without the proposed public access proposed by the applicant, the project would not interfere with the public's right of access where acquired through use and would be consistent with Section 30211.

As stated, the site is a portion of a property that is a bluff top lot. The site provides bluff top access for viewing and other passive recreational activities. The accessway is used by surfers, hikers and area residents that come to enjoy the views offered along the bluff edge and to access the beach below. Such uses occur during the day and early evening hours which are normal beach use hours. Because the area is not lighted and the bluffs are hazardous at night the area is not used for beach and recreational access during the late evening hours.

Although the applicant is proposing a fence and gate, the applicant is also proposing to keep the gate open daily between 6:00 a.m. to 9:00 P.M. to continue to allow public access during the day and early evening hours. The proposed hours will continue to allow public access during the hours which are normally associated with beach access and coastal recreation and will significantly reduce any nuisance problem that occurs during the non-beach use hours (late evening hours).

Thus, the Commission finds that the public access proposed by the applicant is equivalent in time, place, and manner, to the access use that appears to have been made of the project area in the past. Therefore, although there is an unresolved controversy as to the existence of public prescriptive rights, the applicant's proposed project protects the rights of the public, and the Commission finds that the proposed project is consistent with Section 30211 of the Coastal Act. However, the Commission finds that the potential for prescriptive rights over the property or portions of the property may exist and the applicant should be placed on notice that such rights may exist and that granting of this permit does not constitute a waiver of any public rights which may exist on the property. Furthermore, any change to the hours that the gate will be open will require an amendment to this permit. Therefore, the Commission finds that only as conditioned will the proposed project be consistent with Sections 30210, 30211 and 30214 of the Coastal Act.

#### C. Visual Resources

Section 30251 of the Coastal Act states in part that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project is located approximately 190 feet from the bluff edge and adjoins a privately developed single-family residence in the San Pedro area of the City of Los Angeles. Because of the distance from the bluff edge and existing development the area of the location of the fence/gate does not provide any public views to or along the ocean. As located, the proposed development will not adversely impact views to the ocean from the surrounding area. The Commission, therefore, finds that the project as conditioned will be consistent with Sections and 30251 of the Coastal Act.

#### D. Local Coastal Program

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

On September 12, 1990, the Commission certified, with suggested modifications, the land use plan portion of the San Pedro segment of the City of Los Angeles' Local Coastal Program. The certified LUP contains policies to guide the types, locations and intensity of future development in the San Pedro coastal zone. among these policies are those specified in the preceding section regarding public access and visual resources. The proposed development is consistent with the policies of the certified LUP. As proposed the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies



of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. Unpermitted Development

Recent site improvements include the construction of the fence and gate and placement of a sign indicating the hours (6:00 A.M to 9:00 P.M.) the gate will be open. Although unpermitted development has taken place elsewhere on the property prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Action on of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal permit.

F. 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 impact which the activity may have on the environment.

As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

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LOS ANGELES CO.

DETAIL

SEE MAP 77



EXHIBIT NO.

1

Application Number

5-97-399

Vicinity Map

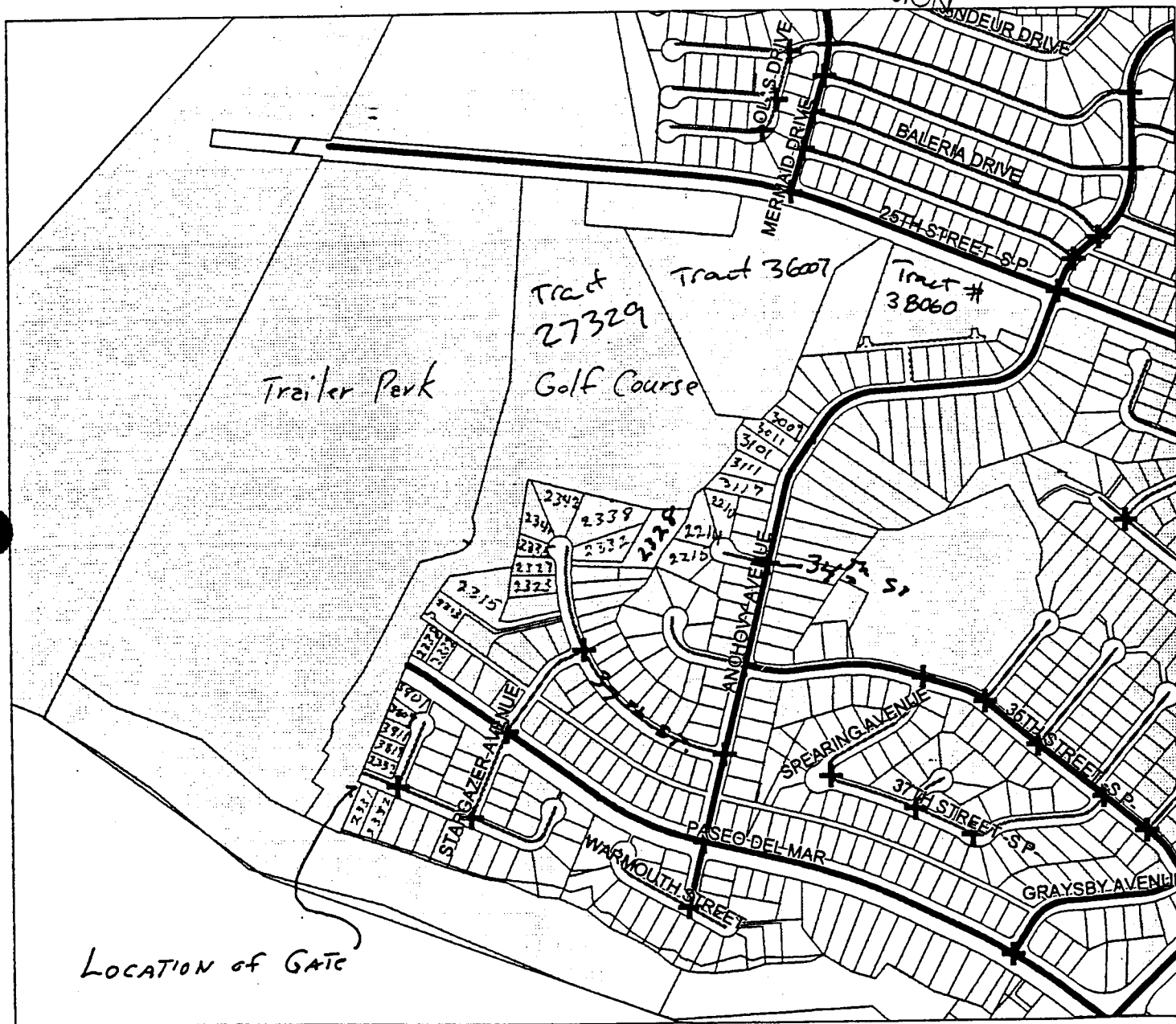
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5-97-299

CALIFORNIA  
COAST GUARD COMMISSION



**Application Number**

Application Number: **97-399**

Perce / Map

**California Coastal Commission**

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Monday, November 10, 1997 11:32 AM

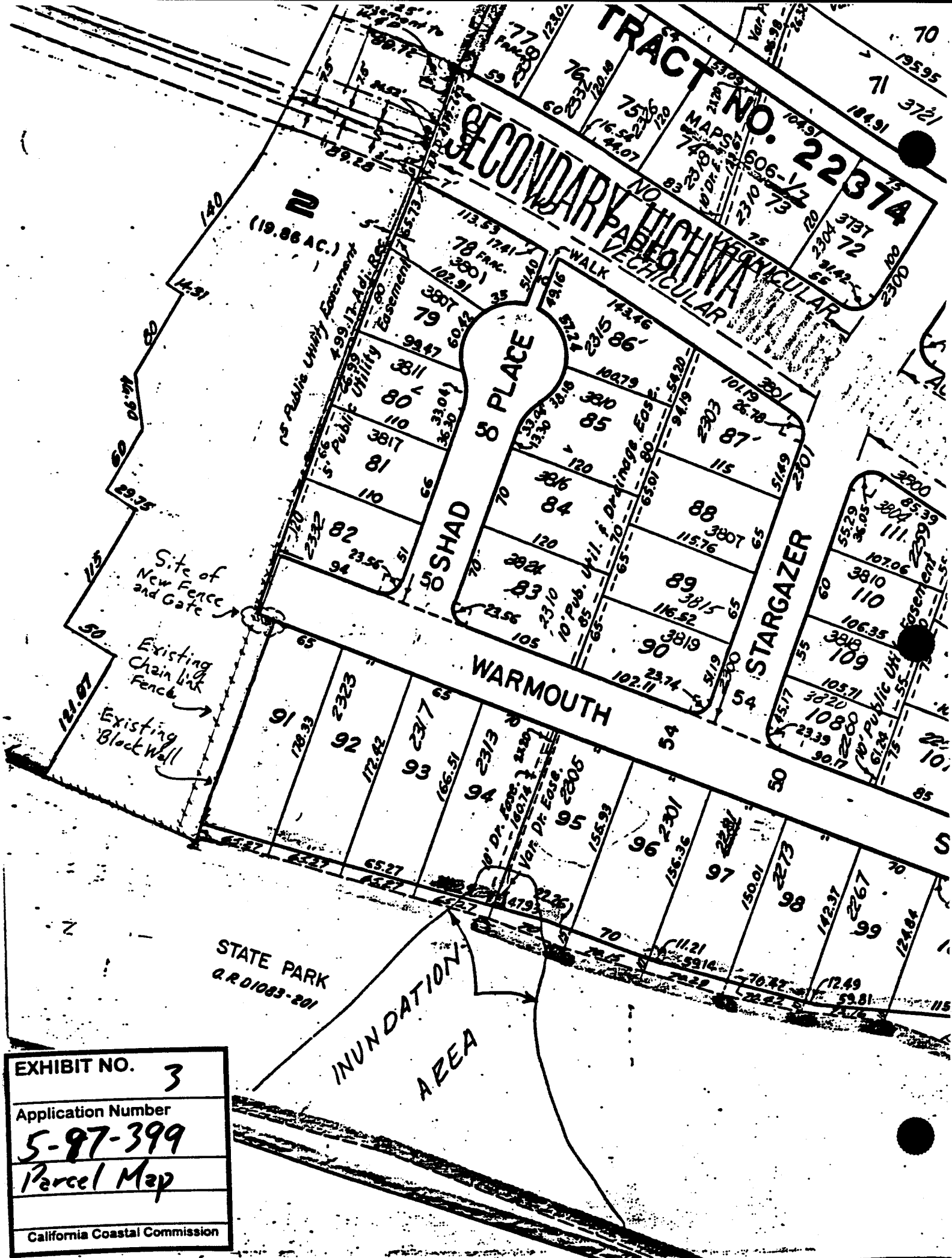
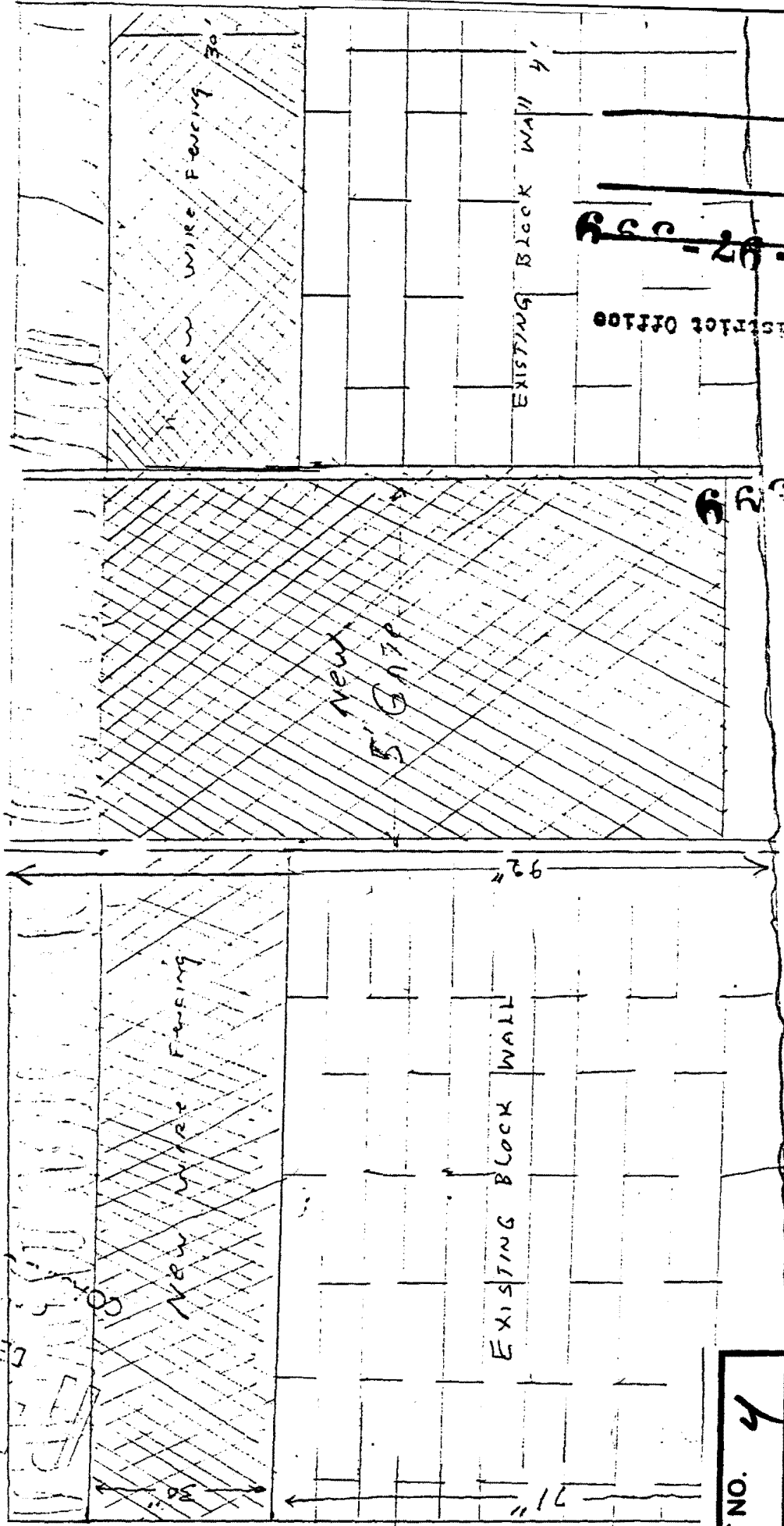


EXHIBIT NO.	3
Application Number	5-97-399
Parcel Map	
California Coastal Commission	

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West of 2831 WANDERLICK ST.



5-97-399

COAST DISTRICT OFFICE

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EXHIBIT NO.	4
Application Number	5-97-399
Drawing of	Gate/Fence
California Coastal Commission	

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SHAD PL.

Residence 2332 Warnowith

2300 Block Warnowith ST. San Pedro

DRIVEWAY

Residence 2331 Warnowith

EXISTING BLOCK WALL

EXISTING CHAIN LINK FENCE

END OF STREET

663-28-9

APPROVED  
 FORM NO. 5-97-344  
 BY:

EXHIBIT NO. 5
Application Number 5-97-344
S. J. Pen

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