

CALIFORNIA COASTAL COMMISSION

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

Filed: March 24, 1998
49th Day: May 12, 1998
180th Day: September 20, 1998
Staff: John T. Auyong *John*
Staff Report: April 23, 1998
Hearing Date: Thu., May 14, 1998
Commission Action:



RECORD PACKET COPY

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-98-098

APPLICANT: Don Cox

PROJECT LOCATION: A-98 Surfside, City of Seal Beach, County of Orange

PROJECT DESCRIPTION: Construction of a 2,871 square foot, 35 foot high, three-story, single-family residence, with an attached 654 three-car garage (including two tandem spaces) on a vacant lot.

Lot area:	1,710.25 square feet
Building coverage:	1,299.8 square feet
Pavement coverage:	410.45 square feet
Parking spaces:	Three
Zoning:	Residential Low Density
Height above grade:	35 feet

LOCAL APPROVALS RECEIVED: City of Seal Beach Approval-in-Concept

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit 5-97-380 (Haskett)

SUMMARY OF STAFF RECOMMENDATION: Staff is recommending approval of the proposed project with special conditions regarding an assumption-of-risk deed restriction and the submission of final ownership.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. Standard Conditions.

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

III. Special Conditions.

1. Assumption of Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from wave uprush hazards and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to the natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Legal Ability. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that the applicant is the legal owner of the project site.

IV. Findings and Declarations.

A. Project Description.

The applicant is proposing to construct a 2,871 square foot, 35 foot high, three-story, single-family residence, with an attached 654 three-car garage (including two tandem spaces) on a vacant beachfront lot at A-98 Surfside in the City of Seal Beach.

B. Chapter 3 Policy Analysis.

1. Hazards.

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard

The subject site is located at the northern end of Surfside Colony, a private beachfront community in the City of Seal Beach. The northernmost end of Surfside is subject to uniquely localized beach erosion due to the reflection of waves off the adjacent Anaheim Bay east jetty. These reflected waves combine with normal waves to create increased wave energy that erodes the beach in front of the subject site more quickly. Because this erosion is created by a federally owned jetty, the U.S. Army Corps of Engineers periodically replenishes the beach. The beach provides Surfside a measure of protection from wave hazards. Once the beach is gone, however, development on the subject site is then exposed to wave uprush and is at risk due to damage from the waves.

The especially heavy wave action generated during the 1982-83 El Nino winter storms caused Surfside Colony to apply for a coastal development permit for a revetment to protect the homes (including the subject site) at Surfside's northern end. The Commission approved coastal development permit 5-82-579 for this revetment, and coastal development permit 5-95-276 for the repair of the revetment. The Commission also approved consistency determinations CD-028-97 and CD-67-97 for the most recent beach nourishment at Surfside performed by the U.S. Army Corps of Engineers which was completed in July 1997.

The revetment and widened beach protect the subject site from wave uprush. However, erosion of the beach will inevitably occur. If the revetment is exposed due to beach erosion, it may become damaged as it was in 1994 prior to its repair. If the revetment is damaged, the subject site could also be damaged. Also, while the revetment will protect homes from the brunt of the wave energy, the waves can occasionally overtop the revetment as they did in

1994 and cause minor flooding in Surfside. Therefore, the Commission finds that it is necessary to require the recordation of an assumption-of-risk deed restriction to put the applicant and future homeowners on notice of the wave hazards and risk of flooding that exists at Surfside.

The assumption-of-risk condition is consistent with prior Commission actions for homes in Surfside since the 1982-83 El Nino storms. For instance, the Executive Director issued administrative permits 5-86-676 and 5-87-813 with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Executive Director has consistently imposed assumption-of-risk deed restrictions on construction of new homes throughout Surfside, whether on vacant lots (as is the case of the proposed development) or in conjunction with the demolition of an existing home. Further, the Commission recently approved coastal development permit 5-97-380 (Haskett) for improvements to an existing home at A-69 Surfside with an assumption-of-risk deed restriction.

Therefore, the Commission finds that, as conditioned for an Assumption-of-Risk deed restriction, the proposed development would be consistent with Section 30253 of the Coastal Act.

2. 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 project except where:

(2) adequate access exists nearby . . .

The subject site is a beachfront lot located between the nearest public roadway and the shoreline in the private community of Surfside. A pre-Coastal (1966) boundary agreement between Surfside Colony and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside (see Exhibit C).

The proposed project would have patios which encroach ten feet seaward past the subject site's seaward property line onto a ten foot wide strip of land owned by Surfside Colony, Ltd (which serves as a homeowners' association). Surfside Colony leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowners' seaward property lines onto Surfside Colony land.

In past permits, the Executive Director has consistently allowed the seaward property line of individually-owned beachfront lots in Surfside to serve as an enclosed living area stringline. The Executive Director has also consistently allowed the seaward edge of the ten foot wide strip of land owned by Surfside Colony to serve as the deck stringline. These de facto stringlines serve to limit encroachment of development onto the beach. The proposed development would adhere to these stringlines.

The proposed project would not result in direct adverse impacts, neither individually nor cumulatively, on physical vertical or lateral public access. Public access, public recreation opportunities and public parking exist nearby in Sunset Beach, an unincorporated area of Orange County at the southeastern end of Surfside. Further, the Commission approved permit P-75-6364 requiring public access through the approved gates at Surfside's southeastern end during daylight hours. In addition, the proposed project provides parking consistent with the standard of two parking spaces per residential dwelling unit, which the Commission has regularly used for development in Surfside.

Therefore, the Commission finds that the proposed development would not result in significant adverse impacts on public access nor public recreation. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

3. Height / Views.

Section 30251 of the Coastal Act states, in relevant part:

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 land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed home would be 35 feet high. The Commission typically has limited residential development in Surfside (except for chimneys and staircase enclosures) to a 35 foot height limit. This is to minimize the visual effect of a large wall of buildings along the beach which results because most homes are built out to the maximum allowed by the City. The proposed home would be consistent with the heights of other homes in Surfside.

A fence surrounding Surfside, as well as the homes themselves, currently block public views from Pacific Coast Highway (State Route 1), the first public road, to the beach. The subject site would not encroach seaward past existing homes in Surfside. Thus, the proposed home would not block existing public views to and along the shoreline.

Therefore, the Commission finds that the proposed development would be consistent with Section 30251 of the Coastal Act.

C. Legal Ability / Ownership.

Section 30601.5 of the Coastal Act requires, in part, that a permit applicant shall demonstrate the authority to comply with all conditions of approval, prior to issuance of the coastal development permit. One of the conditions of approval is the recordation of an assumption-of-risk deed restriction. The applicant has not completed his purchase of the property but has submitted escrow instructions reflecting an intent to purchase the property. The Commission finds that the applicant must submit written evidence that the sale

has been completed so that the applicant is able to execute the required assumption-of-risk deed restriction, in compliance with Section 30601.5 of the Coastal Act.

D. 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 which conforms with the Chapter Three policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

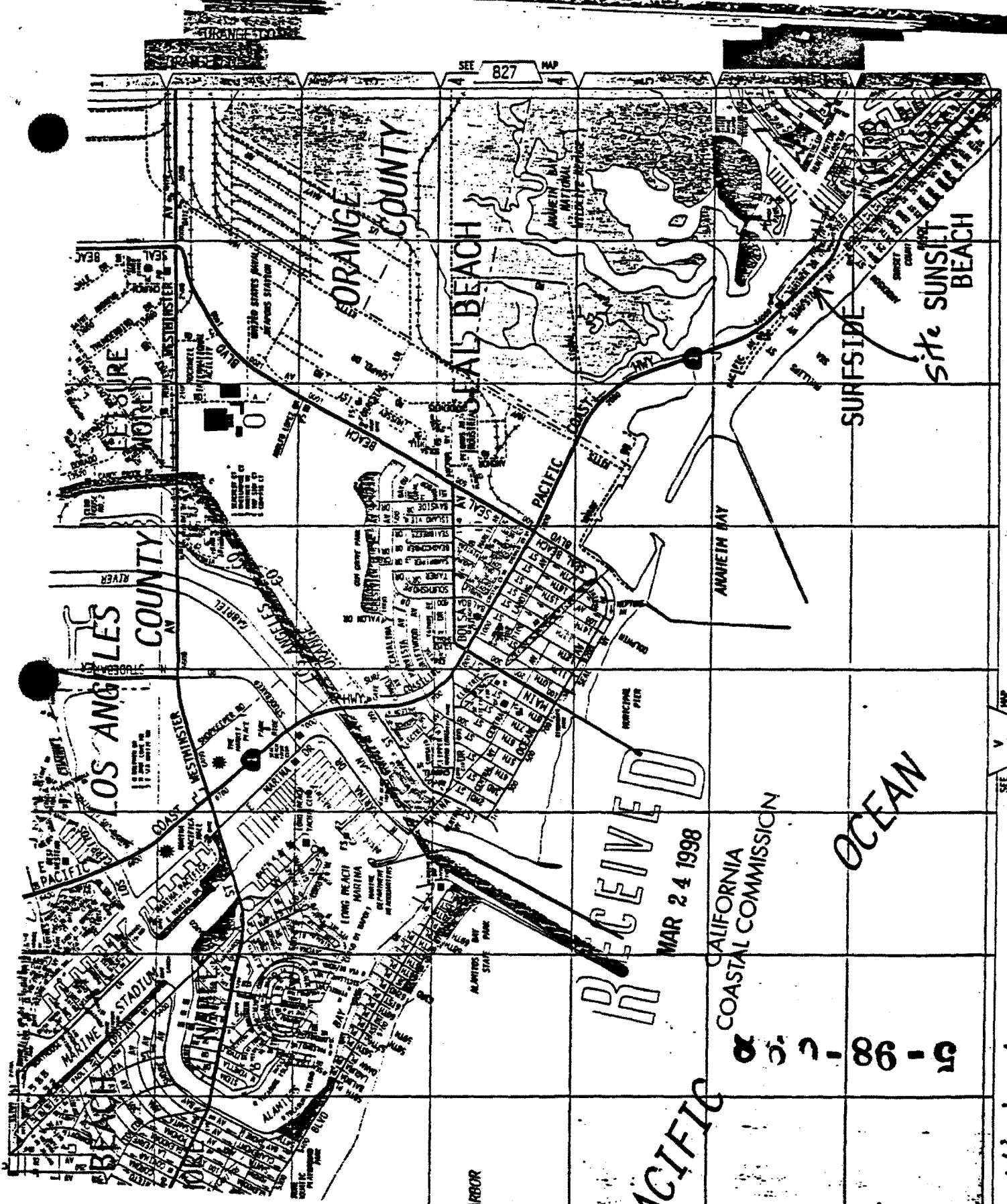
The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified local coastal program consistent with the Chapter Three policies of the Coastal Act.

E. California Environmental Quality Act.

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(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 effect which the activity may have on the environment.

The proposed development is located in an urban area. 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 flood hazards policies of Chapter Three of the Coastal Act. Mitigation measures requiring an assumption-of-risk deed restriction will minimize all significant adverse effects which the activity may have on the environment.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect 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.



COASTAL COMMISSION 5-98-098
VICINITY MAP

EXHIBIT # A
PAGE 1 OF 2

RECEIVED
MAR 24 1998
CALIFORNIA COASTAL COMMISSION
5-98-098
VICINITY MAP

5.98.098

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14+50	14.4
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15+50	17.8
16+00	19.5
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17+00	22.9
17+50	24.6

COASTAL COMMISSION

J-98-098 Location

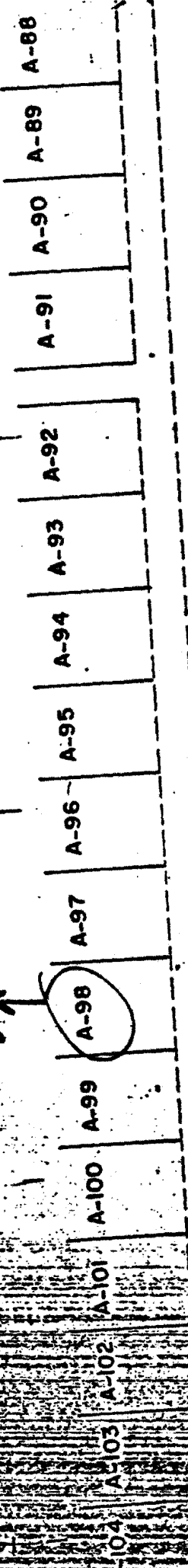
EXHIBIT # A

PAGE 2 OF 2

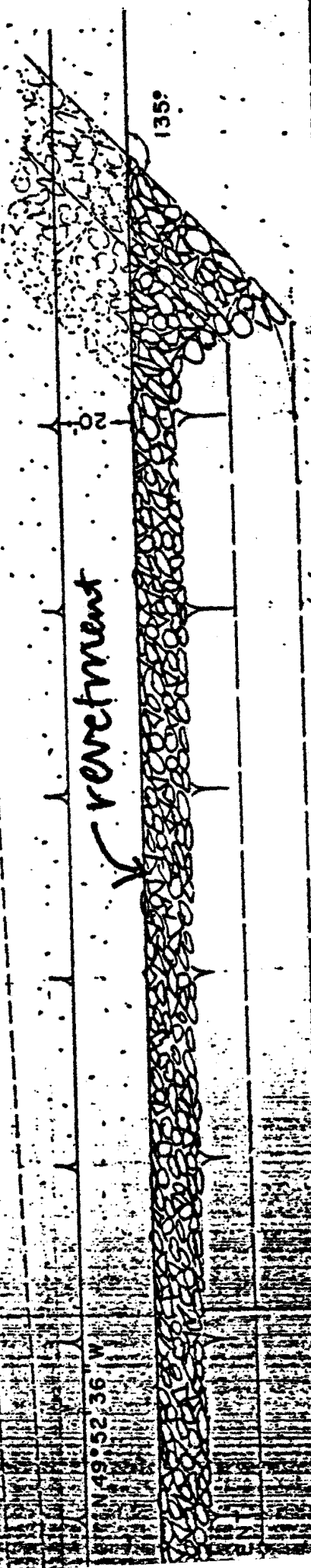
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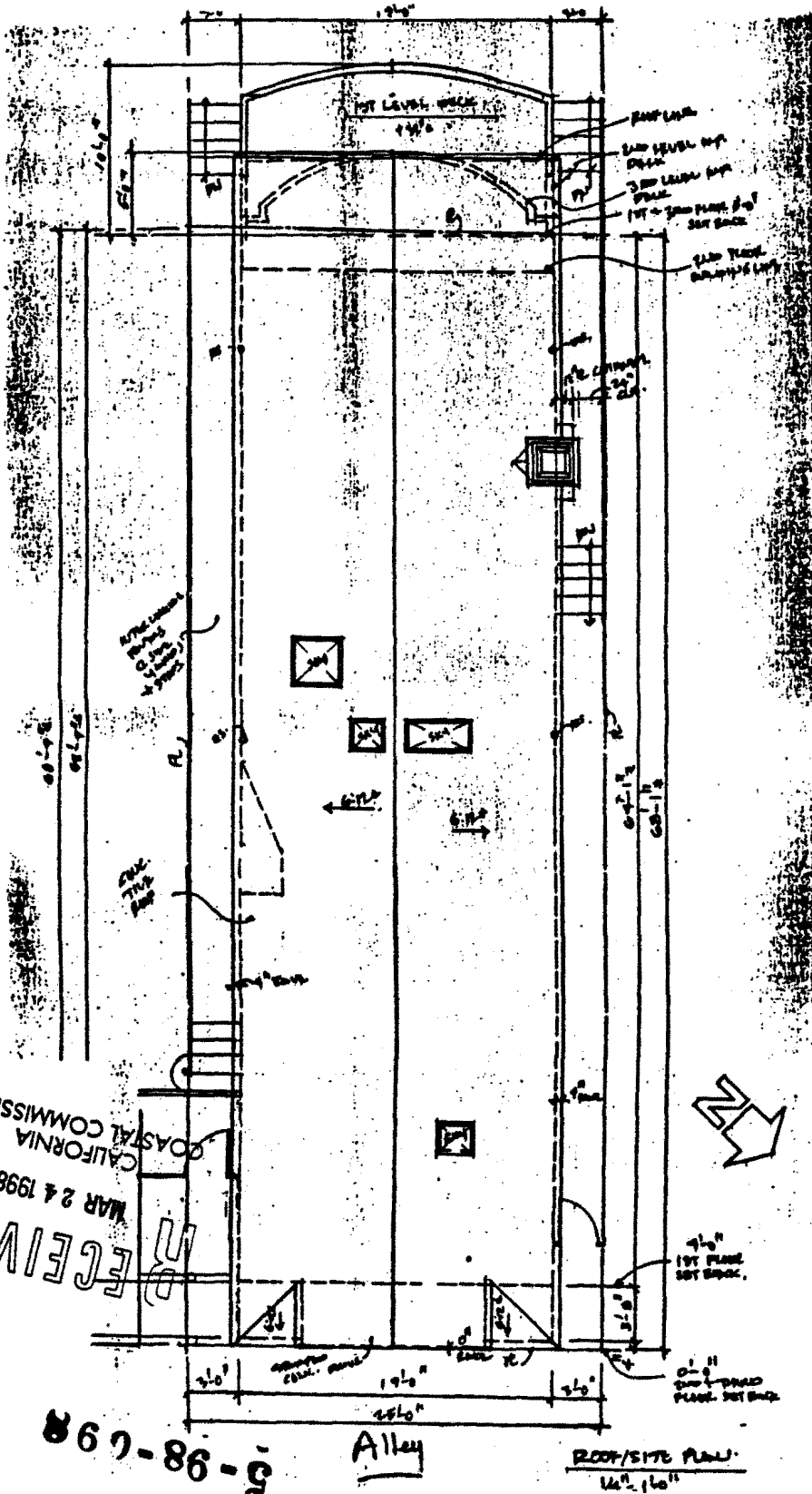


957.14

beach & ocean

BOUNDARY LINE OF THE ORDINARY HIGH WATER MARK AS ESTABLISHED BY BOOK 7988 PAGE 763, RECORDS OF THE COASTAL COMMISSION

Reduced site Plan



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 CALIFORNIA COASTAL COMMISSION

5-98-098
 COASTAL COMMISSION
 Plans
 EXHIBIT # B
 PAGE 1 OF 1

867-86-5 Alley ROOF/SITE PLAN 14'-10"

STATE LANDS DIVISION

1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-3271



*Mike D
Dave*

RECEIVED

NOV 6 1975

November 3, 1975

South Coast Regional Commission

File Ref.: YC-75

South Coast Regional
Conservation Commission
P. O. Box 1450
Long Beach, CA 90801

Attention: Mr. David Gould

Dear Mr. Gould

In reply to your phone request for State boundary line data along the Pacific Ocean at Surfside, Orange County, I refer you to a Record of Survey filed August 23, 1966, in Book 86 R.S., pages 35, 36 and 37, Orange County Recorder's Office.

A copy of the State Lands Commission Minute Item #33, meeting of April 28, 1966, is enclosed for your information.

Sincerely,

Donald J. Brittnacher

DONALD J. BRITTNACHER
Senior Boundary
Determination Officer

DJB:ls

Enclosure

75-6364

5-98-098
COASTAL COMMISSION
Boundary Line

EXHIBIT # C
PAGE 1 OF 3

33. APPROVAL OF BOUNDARY AGREEMENT BETWEEN STATE OF CALIFORNIA AND SURFSIDE COLONY, LTD., A CALIFORNIA CORPORATION, ALONG THE ORDINARY HIGH WATER MARK OF THE PACIFIC OCEAN, VICINITY OF SURFSIDE, ORANGE COUNTY - W.O. 5850, B.L.A. 74.

After consideration of Calendar Item 11 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO EXECUTE AN AGREEMENT WITH THE SURFSIDE COLONY, LTD., FIXING THE ORDINARY HIGH WATER MARK AS THE PERMANENT BOUNDARY ALONG THE PACIFIC OCEAN BETWEEN STATE TIDE AND SUBMERGED LANDS AND PRIVATE UPLANDS, SAID BOUNDARY LINE BEING DESCRIBED AS FOLLOWS:

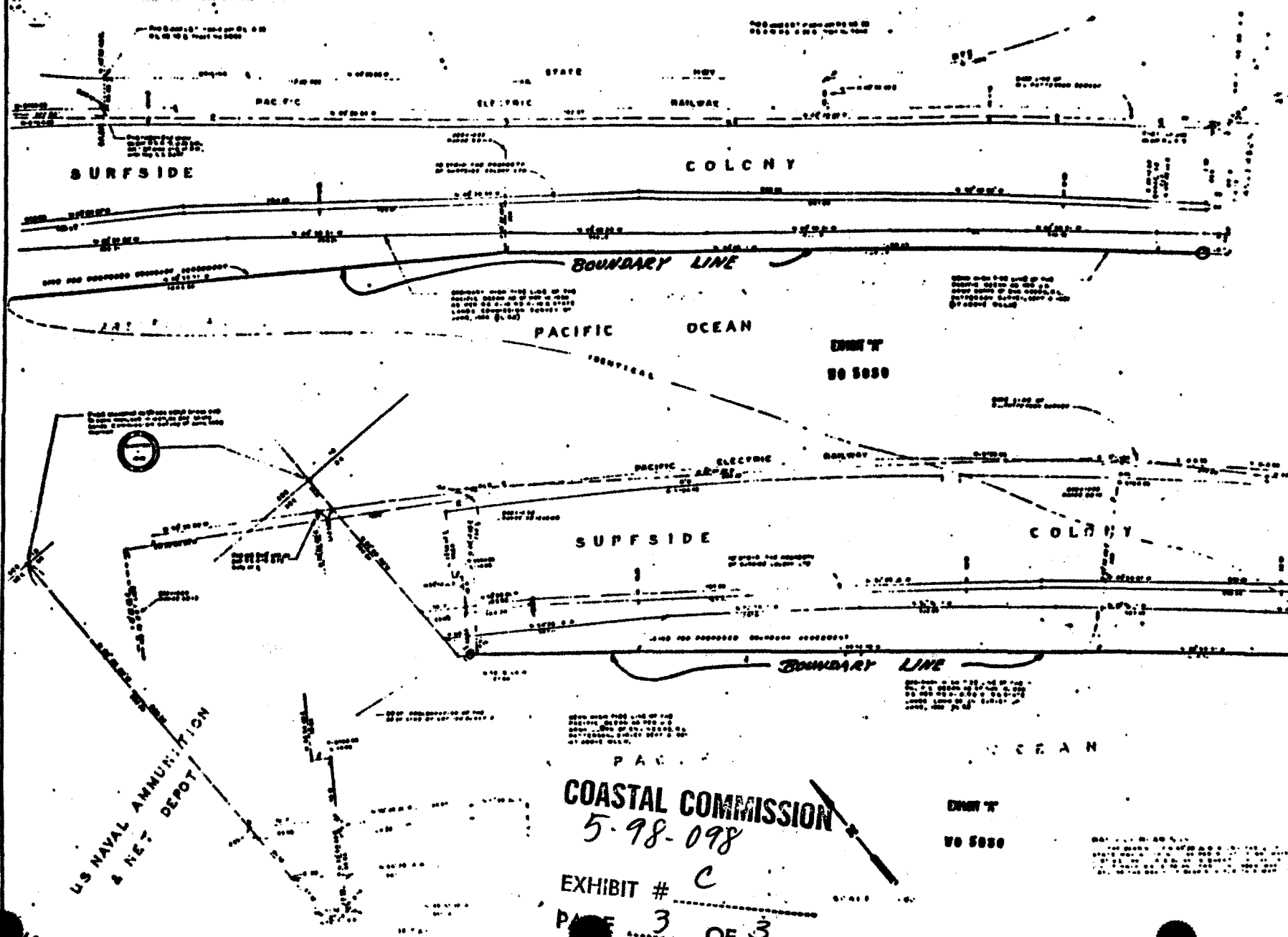
BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 1 IN BLOCK A, AS SHOWN ON "RECORD OF SURVEY SURFSIDE COLONY", FILED IN BOOK 4, PAGE 19 OF RECORD OF SURVEYS, COUNTY OF ORANGE, SAID BLOCK A BEING IN FRACTIONAL SECTION 24, TOWNSHIP 5 SOUTH, RANGE 12 WEST, S.B.M.; THENCE S. $49^{\circ} 26' 59''$ W. 77.55 FEET TO A POINT ON THE MEAN HIGH TIDE LINE OF 1937, WHICH POINT IS THE TRUE POINT OF BEGINNING OF THIS BOUNDARY LINE AND WHICH IS ALSO SHOWN ON "MAP OF EXISTING HIGH TIDE LINE SURVEYS OF THE PACIFIC OCEAN" PREPARED FOR SURFSIDE COLONY, LTD., BY PETERSEN & HENSTRIDGE, LAND SURVEYORS, IN MARCH 1966; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE FOLLOWING COURSES: N. $43^{\circ} 45' 11''$ W. 1069.03 FEET, N. $48^{\circ} 53' 37''$ W. 1004.50 FEET, N. $49^{\circ} 52' 36''$ W. 957.14 FEET AND N. $56^{\circ} 15' 04''$ W. 6.74 FEET TO THE END OF THIS BOUNDARY LINE, WHICH ENDING POINT BEARS S. $00^{\circ} 02' 00''$ E. 358.85 FEET AND S. $56^{\circ} 15' 04''$ E. 20.32 FEET FROM THE QUARTER CORNER BETWEEN SECTIONS 13 AND 24, T. 5 S., R. 12 W., S.B.M.

Attachment

Calendar Item 11 (1 page)

5-98-098
 COASTAL COMMISSION
 Boundary Line
 EXHIBIT # c
 PAGE 2 OF 3

SURFSIDE COLONY LTD.
MAP OF EXISTING HIGH TIDE LINE SURVEYS OF THE PACIFIC OCEAN
 IN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY, PART OF
 FRACTIONAL SECTION 24, TOWNSHIP 5 SOUTH, RANGE 12 WEST, 3 S.M.



PETERSEN & HENNINGSEN
 LAND SURVEYORS
 1911

SURFSIDE

COLONY

BOUNDARY LINE

PACIFIC OCEAN

SURFSIDE

COLONY

BOUNDARY LINE

PACIFIC OCEAN

**U.S. NAVAL AMMUNITION
 & NET DEPOT**

COASTAL COMMISSION
 5-98-098

EXHIBIT # **C**
 PAGE **3** OF **3**

ENR 7
 VO 5080

75-0304

Colony's Plans
 Exhibit A