

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Seal Beach, CA 90802-4302
(714) 590-5071

**RECORD PACKET COPY**

Filed: November 20, 1998
49th Day: January 8, 1999
180th Day: May 19, 1999
Staff: KFS-LB *[initials]*
Staff Report: December 17, 1998
Hearing Date: January 14, 1999
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-98-412

APPLICANT: Eugene J. and Sue Ann DiLuigi

AGENT: John Chipman, Chipman Architects

PROJECT LOCATION: A47 Surfside Avenue, City of Seal Beach, County of Orange

PROJECT DESCRIPTION: Construction of a 2,046 square foot, 3-story single family residence, with 789 square feet of balconies and patio area, a 417 square foot roof deck and an attached 380 square foot, 2-space garage. There are presently no structures on the subject property.

Lot Area	1,154 square feet
Building Coverage	781.5 square feet
Pavement Coverage	230 square feet
Landscape Coverage	None
Parking Spaces	Two
Zoning	Residential Low Density
Ht above final grade	35 feet

LOCAL APPROVALS RECEIVED: City of Seal Beach approval in concept; Approval in principle by Architectural Committee, Surfside Colony, Ltd. dated November 12, 1998.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permits P-75-6364, 5-82-579, 5-86-676, 5-87-813, 5-95-276, 5-97-380, 5-98-098; consistency determinations CD-028-97 and CD-67-97; *E/Risk Mandatory Disclosure Report Vacant Lot in Surfside Community, Seal Beach* (ERN 041498-121) dated April 16, 1998 by E/Risk, Inc. of Santa Clara, California; *Preliminary Foundation Soils Exploration at A-47 Surfside* (JN:F-8544-98), California by Geo-Etka, Inc. of Orange, California.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with special conditions regarding demonstration of compliance with geotechnical recommendations and an assumption-of-risk deed restriction. The major issue of this staff report concerns development on a beach that could be affected by flooding.

As of the date of this report, Staff understands the applicant may object to the assumption-of-risk deed restriction.

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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects 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. Conformance of Design and Construction Plans to Geotechnical Report

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundations, grading and drainage plans and certified that each of those final plans incorporates all of the recommendations contained in the engineering geologic report *Preliminary Foundation Soils Exploration at A-47 Surfside, California* (JN:F-8544-98) by Geo-Etka, Inc. of Orange, California, approved by the California Coastal Commission for the project site.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Assumption-of-Risk Deed Restriction.

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 flooding and 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

Construction of a 35 foot high, 2,046 square foot, 3-story single family residence, with 789 square feet of balconies and patio area, a 417 square foot roof deck and an attached 380 square foot, 2-space garage (Exhibit 2). There are presently no structures on the subject property. The subject site is located on a beachfront lot at A47 Surfside Avenue in the City of Seal Beach, Orange County within a gated, private beachfront community known as Surfside Colony (Exhibit 1).

B. 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 applicant has submitted a real estate disclosure report that identifies whether the subject property is located within special hazard zones including the Alquist-Priolo Special Studies Zone, Geologic and Seismic Hazard Zones (established by the California Department of Mines and Geology), Special Flood Hazard Areas (Federal Emergency Management Agency), City and County Flood Hazard Areas, among others. This report states the subject site is not within any Federal or State identified hazard areas. However, the report does state the subject site is located in an Expanded Seismic Hazard Area and in a City/County Flood Hazard Area.

A *Preliminary Foundation Soils Exploration* was performed by Geo-Etka, Inc. of Orange, California, for the subject site. This report explored soils conditions at the site in order to make recommendations for the foundation design for the proposed residence. Recommendations were provided for load values to be used for the foundation design. In addition, construction guidelines regarding sequence, materials, and soil compaction were identified. The report recommended a driven pile foundation which would mitigate any liquefaction potential at the site. This report concluded the site was suitable for the construction of a residential structure and that the proposed structure would not affect the stability of surrounding structures.

A potential for liquefaction exists at the subject site and foundation recommendations have been provided to mitigate any impacts. In order to assure the mitigation is implemented, the Commission attaches Special Condition 1.

The subject site is located halfway between the southern and northern end of Surfside Colony, a private beachfront community in the City of Seal Beach. The northern 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 Surfside Colony more quickly than is typical at an unaltered natural beach. Since this erosion is created by a federally owned jetty, the U.S. Army Corps of Engineers has periodically replenished the beach. The beach provides Surfside a measure of protection from waves hazards. However, when the beach erodes, development at Surfside Colony may be exposed to wave uprush and subsequent wave damage.

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 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 completed in July 1997.

The revetment and widened beach protect the northern end of Surfside Colony from wave uprush. However, the middle and southern end of Surfside Colony, where the subject property is located, is only protected by a wide sandy beach. No revetment protects this property. Erosion of the beach will inevitably occur, especially if ongoing sand replenishment

projects are interrupted (which form the wide sandy beach protecting the subject property). In addition, the presence of the wide sandy beach does not preclude wave uprush damage and flooding from occurring at Surfside. Strong storm events, like those which occurred in 1994, can cause large waves to flood Surfside. Therefore, the Commission finds that it is necessary to require the recordation of an assumption-of-risk deed restriction. With this standard waiver of liability condition, the applicant is notified that the home is being built in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition insures that future owners of the property will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for homes in Surfside since the 1982-83 El Nino storms (see Exhibit 4). For instance, the Executive Director issued administrative permit's 5-86-676, 5-87-813, and more recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission 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 and replacement of an existing home. An example includes the recently approved coastal development permit at A-98 Surfside 5-98-098 (Cox).

To affirm that the proposed development will assure stability and structural integrity, and neither create nor contribute significantly to geologic instability, or destruction of the site or surrounding area and to assure that risks to life and property are minimized, per Special Condition 1, the Commission finds that the applicant shall, as a condition of approval, incorporate the geologist's recommendations into the final design and construction plans of the proposed project. In addition, the Commission finds that extraordinary hazards remain from wave uprush and flooding at the subject site and requires, per Special Condition 2, an assumption-of-risk deed restriction. Therefore, as conditioned, the Commission finds that the proposed project is consistent with section 30253 of the Coastal Act.

C. 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 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 3). As a result of this boundary agreement, the beach adjacent to the homes fronting the ocean is owned by Surfside Colony Ltd. up to a distance of eighty feet. The beach seaward of this area is available for lateral public access.

The proposed project has decks and patio area which encroach ten feet seaward beyond 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 homeowner's seaward property line onto Surfside Colony land. The applicant has obtained a lease from Surfside Colony, Ltd. for the proposed encroachment.

In past permits, the Executive Director has consistently allowed the seaward property line of individually-owned beachfront lots in Surfside to serve as the 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, Ltd. to serve as the deck stringline. These stringlines serve to limit encroachment of development onto the beach. The proposed development would conform with these stringlines.

The proposed project would not result in direct adverse impacts, neither individually nor cumulatively, on 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.

D. Height and 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 (not including a roof access staircase enclosure). The Commission typically has limited residential development in Surfside (except for chimneys and roof access staircase enclosures) to a 35 foot height limit (see Exhibit 4). This is to minimize the visual effect of a large wall of buildings along the beach which results because most homes are constructed to maximize use of the City established building envelope. The proposed home would be consistent with the heights of other homes in Surfside.

A fence surrounding Surfside, as well as several rows of existing homes, currently block public views from Pacific Coast Highway (State Route 1), the first public road paralleling the beach. The subject site is not visible from the highway. Therefore, the proposed development on the subject site would not further degrade views from Pacific Coast Highway. In addition, since the proposed development will not encroach seaward past existing homes in Surfside, no existing public views along the shoreline would be blocked.

E. Local Coastal Program

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 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 coastal program consistent with the Chapter Three policies of the Coastal Act.

F. California Environmental Quality Act

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 effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard policies of Chapter Three of the Coastal Act. Mitigation measures requiring conformance with geotechnical recommendations and an assumption-of-risk deed restriction will minimize all significant adverse effects which the activity may have on the environment.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

SEE ORG B27 MAP

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CALIFORNIA

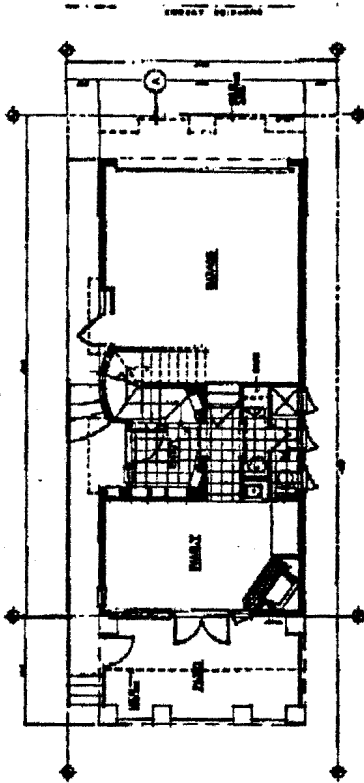
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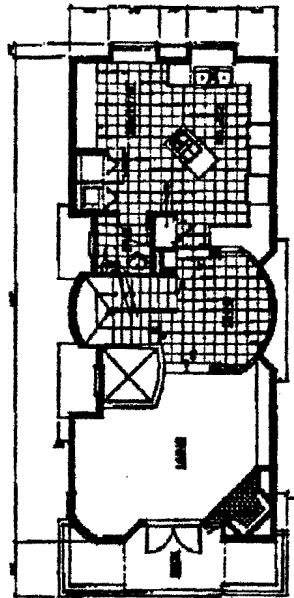
LONG BEACH CUTS

2. IV 4-86-3

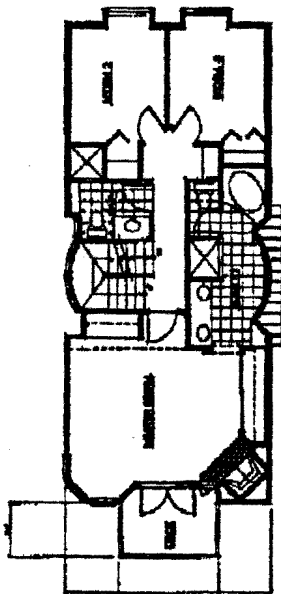
**California Coastal
Commission**



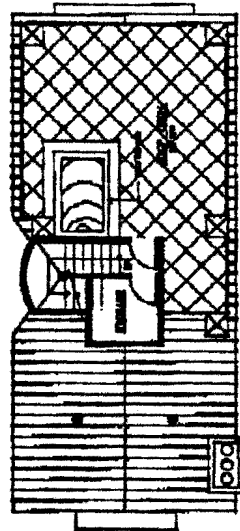
FIRST FLOOR / SITE PLAN



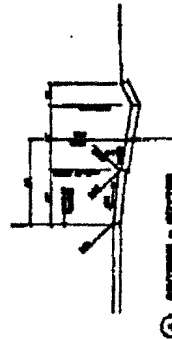
SECOND FLOOR PLAN



THIRD FLOOR PLAN



FOURTH FLOOR PLAN



SITE PLAN

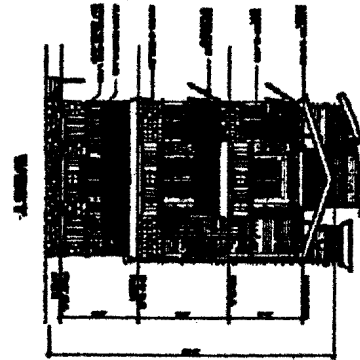
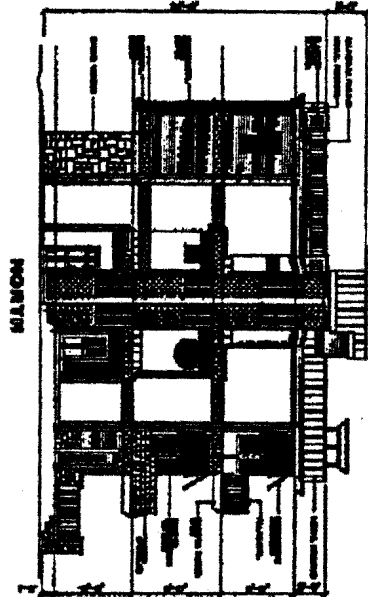
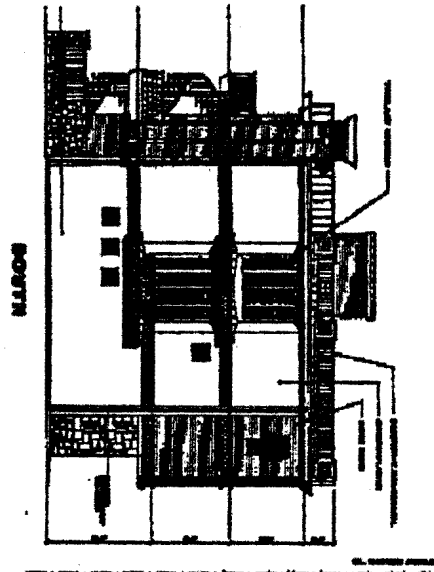
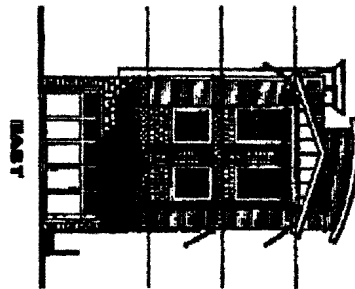


DILUIGI RESIDENCE
1-17 JAMES & JANE

DILUIGI RESIDENCE

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 2



DILUIGI RESIDENCE

Architect

ROSS MAXWELL

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2

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

EXHIBIT No. 3

Application Number:

5-98-412



California Coastal
Commission

MINUTE ITEM

4/28/66

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° 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° 45' 11" W. 1069.03 FEET, N. 48° 53' 37" W. 1004.50 FEET, N. 49° 52' 36" W. 957.14 FEET AND N. 56° 15' 04" W. 6.74 FEET TO THE END OF THIS BOUNDARY LINE, WHICH ENDING POINT BEARS S. 00° 02' 00" E. 358.85 FEET AND S. 56° 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)

COASTAL COMMISSION

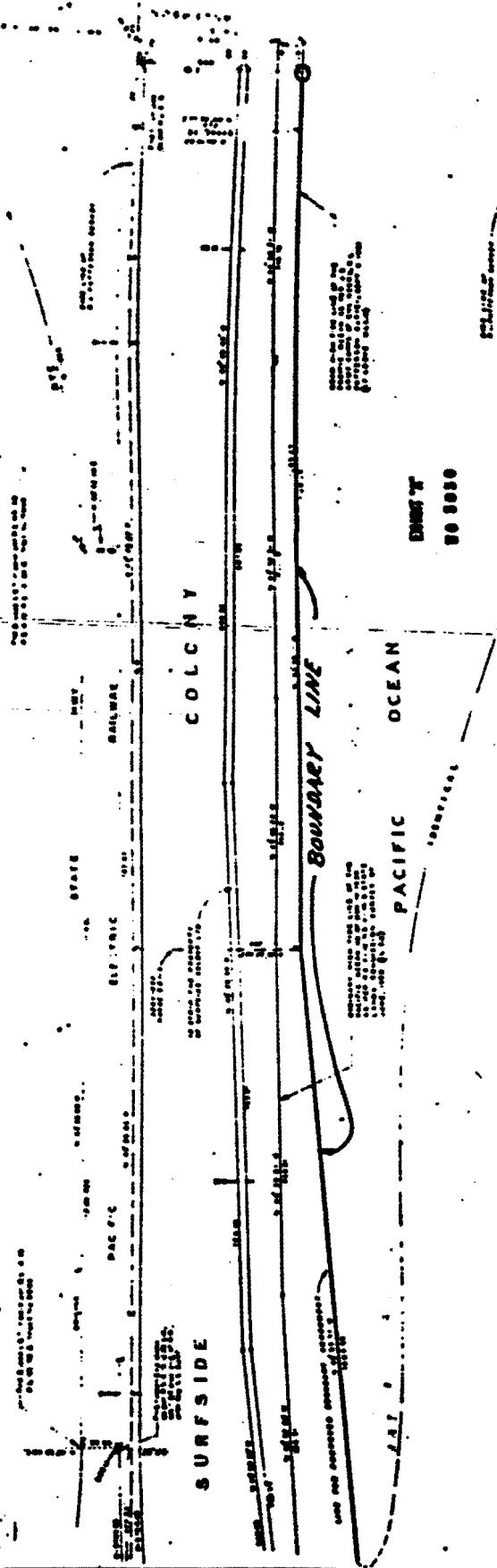
EXHIBIT # 3
PAGE 2 OF 3

SURFSIDE COLONY LTD.

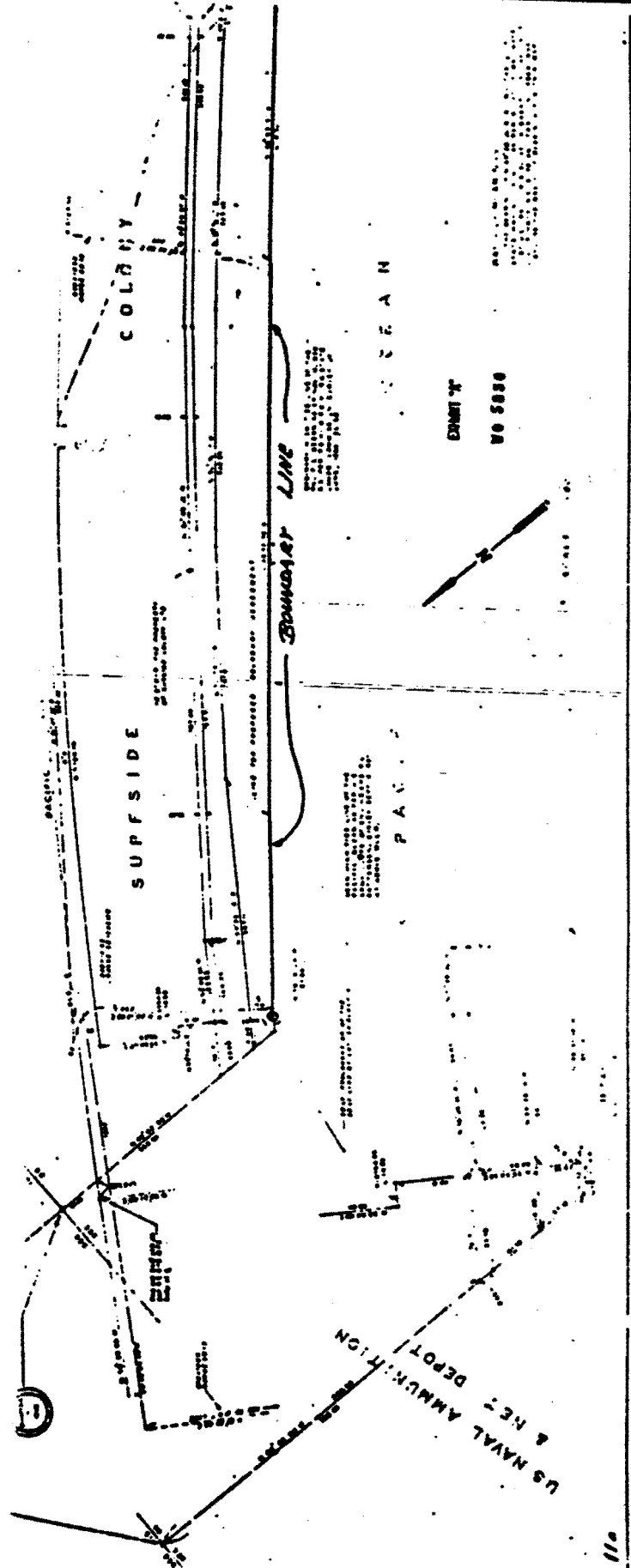
MAP OF EXISTING HIGH TIDE LINE SURVEYS OF THE PACIFIC OCEAN
IN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY, PART OF
FRACTIONAL SECTION 24, TOWNSHIP 3 SOUTH, RANGE 12 WEST, 3 N.M.

DETERMINED BY MEANS OF THE
LAND SURVEY ACT
1908

AS TO SURVEY OF THE
PACIFIC OCEAN



DEPT. OF THE INTERIOR
NO. 5830



DEPT. OF THE INTERIOR
NO. 5830

COASTAL COMMISSION

Surfside Permits with Assumption-of-Risk Deed Restrictions

Site	Permit #	Project Description	Exceeds Height*
A-2	5-92-450	New SFD on vacant lot	Yes
A-6	5-86-676	Addition to existing SFD	Yes
A-20	5-90-860	Demo. SFD, Construct new SFD	Yes
A-21	5-87-813	Addition to existing SFD	
A-24	5-87-045	Demo. SFD, Construct new SFD	Yes
A-26	5-87-115	Construct new SFD	Yes
A-36	5-92-165	Demo. SFD, Construct new SFD	
A-44	5-88-152	Demo. SFD, Construct new SFD	
A-62	5-87-436	New SFD on vacant lot	Yes
A-62	5-84-068	New SFD on vacant lot	Yes
A-64	5-85-441	Demo. SFD, Construct new SFD	No
A-71	5-82-714	Demo. SFD, Construct new SFD	
A-86	5-85-474	New SFD on vacant lot	Yes
A-87	5-85-474	New SFD on vacant lot	Yes
A-88	5-85-474	New SFD on vacant lot	Yes
A-98	5-98-098	New SFD on vacant lot	Yes
A-100	5-84-790	Demo. SFD, Construct new SFD	Yes

* Where it is known that the plans on file indicate that a chimney or covered roof access structure exceeds the 35 foot height limit.

SFD = Single-Family Dwelling

EXHIBIT No. 4

Application Number:

5-98-412

 California Coastal
Commission