

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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(562) 590-5071

**RECORD PACKET COPY**

Filed: December 11, 1998
49th Day: January 29, 1999
180th Day: June 9, 1999
Staff: KFS-LB *[initials]*
Staff Report: December 17, 1998
Hearing Date: January 12-15, 1999
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-98-434

APPLICANT: Martin Cisek

PROJECT LOCATION: 2723 Ocean Boulevard, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Additions to a single family residence including addition of approximately 69 square feet of living space to the lower floor, addition of 356 square feet (including new entry, bathrooms and bedroom) to the upper level of the house, conversion of an existing 165 square foot one vehicle garage to an exercise room, addition of a new 200 square foot one vehicle garage, and addition of an extension to an existing exterior deck to accommodate a second vehicle. No grading is proposed.

Lot Area: 6,741.50 square feet
Building Coverage: 2,290 square feet
Pavement Coverage: 1,236 square feet
Landscape Coverage: 3,215.5 square feet
Parking Spaces: 2 (1 covered, 1 uncovered)
Zoning: R-1 (single family detached residential)

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept 2055-98; City of Newport Beach Modification Permit 4768.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit 5-86-078 (List); coastal development permit 5-88-455 (Welton); *Geotechnical Engineering Report at 2723 Ocean Boulevard, Corona Del Mar...* dated October 5, 1998 by Geotechnical Solutions, Inc. of Irvine (Project Number G-1402-06)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with special conditions regarding submission of final construction plans along with evidence that such plans have been reviewed by the geotechnical consultant and found to be in conformance with their recommendations and an assumption-of-risk deed restriction for geologic hazards at the site. The major issue of this staff report concerns development on a coastal bluff/hillside.

The applicant has submitted a letter (see Exhibit 3) which states they do not object to the assumption-of-risk deed restriction special condition.

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 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. Provision of Final Revised Design and Construction Plans and Conformance of Such Plans to Geotechnical Report

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, final design and construction plans as well as 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 *Geotechnical Engineering Report at 2723 Ocean Boulevard, Corona Del Mar*...dated October 5, 1998 by Geotechnical Solutions, Inc. of Irvine (Project Number G-1402-06) 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 landslides or slope failure 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

The applicant proposes to add 426 square feet of interior space, conversion of 165 square feet from garage to interior living space, and addition of a 200 square foot garage to an existing 2,175 square foot single family residence at 2723 Ocean Boulevard in Newport Beach (Corona del Mar), Orange County (Exhibit 1 and 2). Remodel includes addition of approximately 69 square feet to the lower floor, addition of 356 square feet (including new entry, bathrooms and bedroom) to the upper level of the house. There will also be an extension to an exterior driveway deck to accommodate a second vehicle. The remodeled house will be no higher than the existing structure, which does not exceed the curb height of Ocean Boulevard (the frontage road). In addition, the additions are on the landward side of the property and will not result in seaward encroachment of the structure. No grading is proposed.

The subject site is not located between the sea and the first public road paralleling the sea. However, the property is located on a developed coastal bluff.

B. Previous Commission Action on the Site

5-86-078 (List)

On March 13, 1986, the Commission concurred with the Executive Director's issuance of administrative coastal development permit 5-86-078 for the addition of 2,800 square feet to the existing single family residence including a swimming pool and 2-car garage. The Executive Director determined that geotechnical conditions at the site (a possible wedge failure) warranted the inclusion of an assumption or risk deed restriction for extraordinary hazards from a landslide.

The permit file does not contain any signed *Acknowledgement of Permit Receipt and Acceptance of Contents*. Therefore, it appears the permit was never activated.

5-88-455 (Welton)

On August 10, 1988, the Commission concurred with the Executive Director's issuance of administrative coastal development permit 5-88-455 for the demolition of a multi-level single family residence and construction of a 7,244 square foot, six-level, 47-foot high single family residence with five on-site parking spaces in two garages. The Executive Director determined that there was a risk of adverse geologic conditions at the site. Therefore, two special conditions were imposed. The first required the applicant to submit evidence that a registered civil engineer reviewed the plans and determined that those plans met the recommendations specified in the geologic evaluation of the site. The second special condition required the execution and recordation of an assumption-of-risk deed restriction that stated the site may be subject to extraordinary hazards from landslides and that the Commission was released from any liability related to damage from such hazards.

The applicant returned a signed *Acknowledgement of Permit Receipt/Acceptance of Contents* on August 2, 1988. However, a comparison of the plans submitted under this application with present site plans show that the proposed project was never constructed.

C. 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.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is the remodel of an existing structure. In order to assure that geologic conditions at the site would support the proposed development the following geotechnical investigation was performed at the subject site: *Geotechnical Engineering Report at 2723 Ocean Boulevard, Corona Del Mar...* dated October 5, 1998 by Geotechnical Solutions, Inc. of Irvine (Project Number G-1402-06). This report was an update to a previous geotechnical investigation performed by Soils International of Anaheim, California, in 1986 (JN S-093-FG). The geotechnical investigation stated the following:

Since the property was originally developed 39-years ago, the sea cliff and structures have performed exceptionally well without major signs of distress.

However, the subject site could be prone to mass failure due to undercutting or overloading of the slope. In addition, though considered unlikely, a westerly bedding dip of 22 to 33 degrees creates the potential for a wedge type failure if groundwater lubricates potentially continuous clayey bedding planes. Despite these conditions, the report concludes the following:

Based on a review of the Geotechnical Investigation Report dated February 24, 1988 by the Soils International and the recent field geologic observation of the site, it is concluded the existing slope are considered grossly stable and proposed remodeling will increase stability if recommendations of our report are implemented and drainage is improved and well maintained.

Recommendations included load values to be used for the foundation design, embedment of the continuous footing into bedrock, use of moderately deep cast in place concrete piers for the deck and bedroom, drainage improvements, and soils compaction recommendations.

The applicant has submitted plans which have been reviewed by Geotechnical Solutions, Inc. The Principal Engineer concluded that the remodeling plans are in compliance with their October 28, 1998 recommendations. However, the letter also states that these plans are 'preliminary' and that foundation plans should be made available to their office for review when they are ready. Therefore, per Special Condition 1, the Commission finds that the applicant shall submit final revised construction plans along with evidence that such plans have been reviewed by the geotechnical consultant and found to be in substantial conformance with the recommendations submitted in their geotechnical engineering report.

Although adherence to the geological consultant's recommendation will minimize the risk of damage, the risk is not eliminated entirely. Therefore, the standard waiver of liability condition has also been attached as Special Condition 2. By this means, the applicant is notified that the home is being built in an area that is potentially subject to landslide and slope failure 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.

Therefore, as conditioned, the Commission finds that the proposed project is consistent with section 30253 of the Coastal Act.

D. Visual Resources

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.

Ocean Boulevard in the Corona Del Mar area of Newport Beach is identified in the City's certified land use plan as an area where coastal views are to be protected. The land use plan states:

Where coastal views from existing roadways exist, any development on private property within the sight lines from the roadway shall be sited and designed to maximize protection of the coastal view. This policy is not intended to prohibit development on any site.

The land use plan then identifies the coastal view areas (i.e. Ocean Boulevard, among others) to which this policy applies. The subject site does occur within the identified protected area. In order to protect public coastal views the City requires that the height of homes along this stretch of Ocean Boulevard do not exceed curb height. The proposed development conforms with this requirement.

The proposed development is consistent with the City's height limitation and the height of existing development and will not affect existing public views. Therefore the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act.

E. Land Use Plan

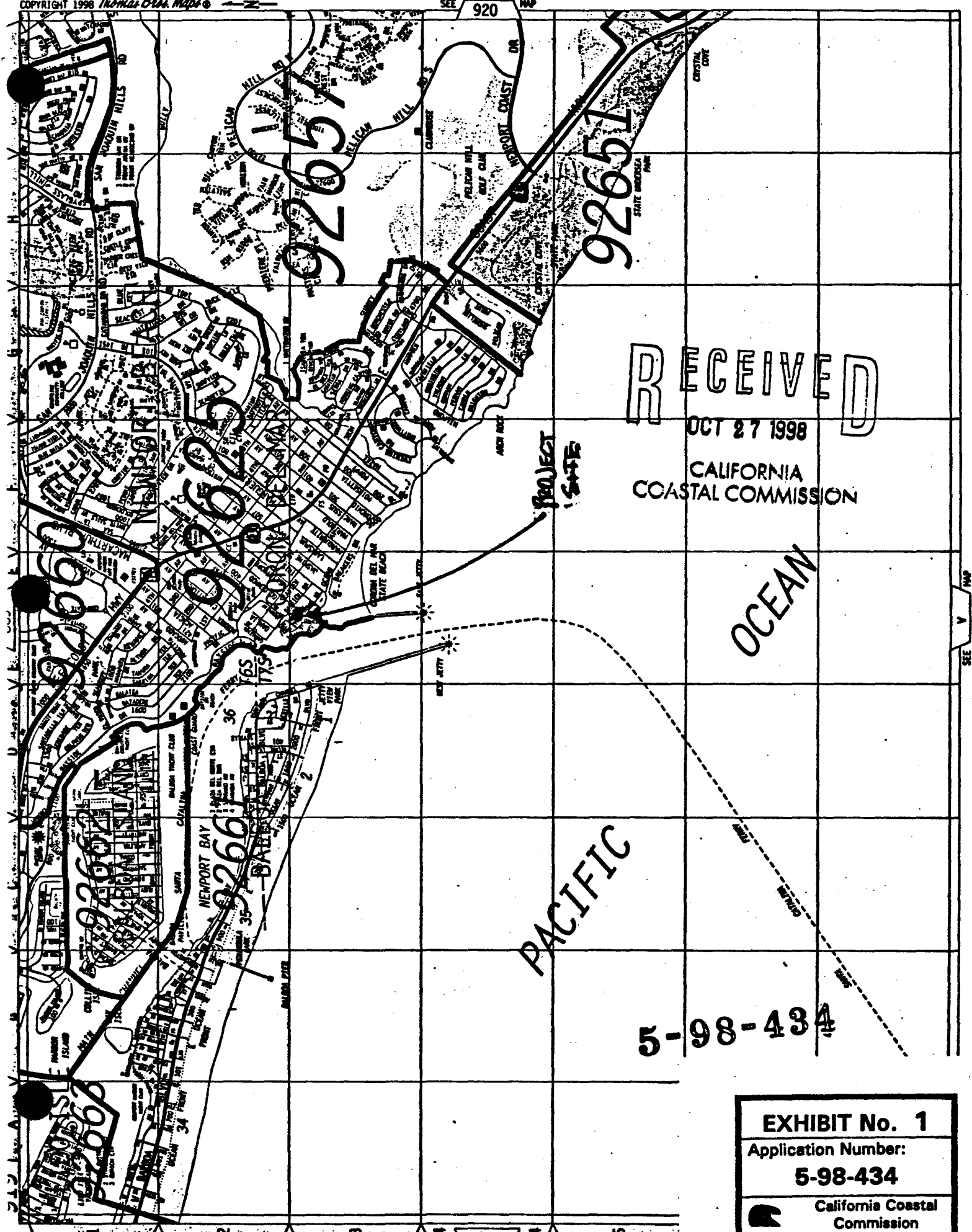
Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development 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.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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 project is located on a developed coastal bluff near an existing harbor in an urbanized area. Development already exists on the subject site. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with the hazard abatement policies of the Coastal Act: conformance with geotechnical recommendations and an assumption-of-risk deed restriction. 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 consistent with CEQA and the Chapter Three policies of the Coastal Act.



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5-98-434

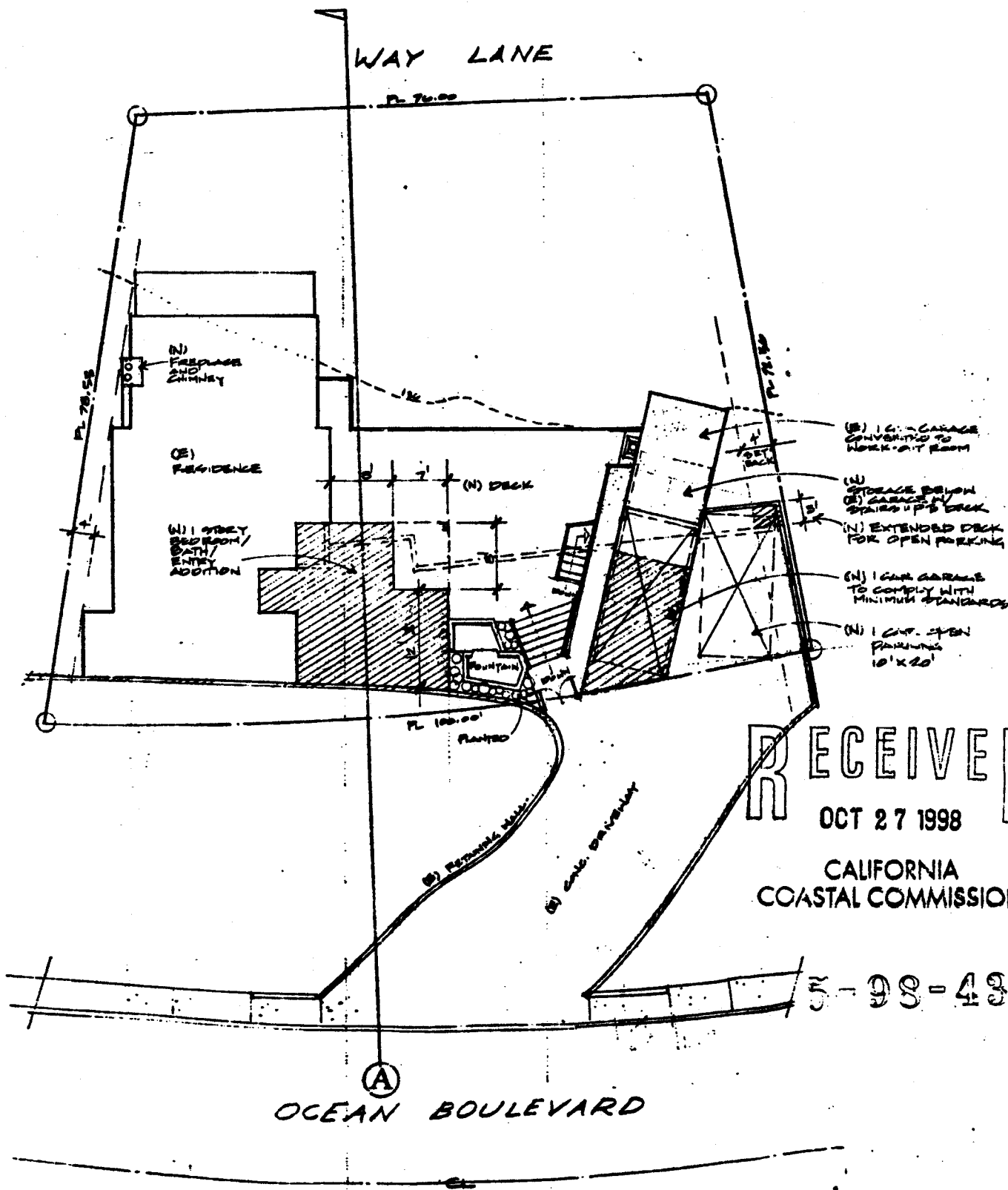
EXHIBIT No. 1

Application Number:

5-98-434



California Coastal
Commission



SITE PLAN

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CALIFORNIA
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5-98-434

LOCATION OF RESIDENCE OF:
MARTIN CISEK
2723 OCEAN BLVD.
CORONA DEL MAR, CA.
602-961-3

SITE PLAN

EXHIBIT No. 2

Application Number:

5-98-434



California Coastal
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Dec-09-98 11:30A

Martin Cisek
4152 Detroit Street
Chandler, Az. 85226
(602) 961-3969

California Coastal Commission
South Coast District
PO Box 1450
Long Beach, Ca 90801-1450

December 7, 1998

To whom it may concern:

This is to inform you that I, as owner of the property at 2723 Ocean Blvd, Newport Beach, Ca, agree to assume all risk of any geological hazard at said property and intend to record a deed restriction stating such if required by the California Coastal Commission as a condition of approval for application # 5-98-434.

Sincerely,


Martin Cisek

EXHIBIT No. 3

Application Number:

5-98-434



California Coastal
Commission

FOR PLAN CHECK # 5-98-434