

CALIFORNIA COASTAL COMMISSION

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**RECORD PACKET COPY**

Filed: 4/7/99
 49th Day: 5/26/99
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 Staff: CP-LB
 Staff Report: 4/15/99
 Hearing Date: May 11-14, 1999
 Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Long Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LOB-99-135

APPLICANT: 100 E. Ocean Investments

AGENT: Kam Babaoff

PROJECT LOCATION: 100 E. Ocean Boulevard, City of Long Beach, Los Angeles Co.

PROJECT DESCRIPTION: Appeal of City of Long Beach approval of coastal development permit for construction of a 430-room Marriott Hotel (233 feet high with two restaurants, meeting and banquet rooms, and a health club).

APPELLANTS: Coastal Commissioners Sara Wan & Shirley Dettloff

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: Pursuant to Section 30603(b)(1) of the Coastal Act; the locally approved development does not conform to the City of Long Beach certified Local Coastal Program (LCP). The motion to carry out the staff recommendation is on page 6.

Staff further recommends that the Commission **continue the de novo hearing** to a future Commission meeting in order to allow it to be heard on the same day as City of Long Beach LCP Amendment Request No. 1-99. Local Coastal Program Amendment Request No. 1-99 has been submitted by the City in order to bring the proposed project and the certified LCP into conformance with one another.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No. 9710-06.
2. City of Long Beach Certified Local Coastal Program.
3. City of Long Beach Local Coastal Program Amendment No. 1-92.
4. City of Long Beach Local Coastal Program Amendment No. 2-97.
5. City of Long Beach Local Coastal Program Amendment Request No. 1-99.
6. Appeal/Coastal Development Permit No. A-5-LOB-91-845 (100 E. Ocean Blvd.).
7. Environmental Impact Report (EIR 21-98) for Marriott Hotel at 100 E. Ocean Blvd.).

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No. 9710-06, approved by the Long Beach City Council on March 16, 1999, has been appealed by two Coastal Commissioners on the grounds that the approved project does not conform to the requirements of the Certified LCP. The appellants contend that the proposed development does not conform to the requirements of the certified LCP in regards to the following issues:

Public Access:

The project (restaurant dining deck) encroaches approximately 15 feet into Victory Park (adjacent to Ocean Boulevard) and therefore does not conform with the certified LCP park dedication policy which states that *no existing parkland shall be displaced until an equal amount of parkland is provided*. The project also encroaches within the LCP required *80-foot setback measured from the curb of Ocean Boulevard*.

The project does not provide the LCP required corner cut-off for the Ocean Boulevard/Victory Park entrance to the Promenade South (public pedestrian accessway to the shore). The certified LCP states: *"Replacement of the Jergins Trust building shall provide a similar corner cut-off (measuring 120'x 120') on the northeast corner of the site in order to create a cohesive entry feature to the Promenade South from Pine Avenue."*

The project does not provide public walkways around the perimeter or a required public viewing area with public access guaranteed through easement, deed restriction or lease agreement as required by the following certified LCP policy: *"In order to provide necessary pedestrian interaction in the area, new developments shall provide public walkways, at least ten feet in width, around the perimeter of the site. In addition, whenever it is feasible the development shall provide shoreline viewing areas. The walkways and viewing areas shall be guaranteed public access through easements or deed restrictions, or lease agreement provisions."*

The project does not provide the LCP required East/west pedestrian walk at the southern edge of the development as required by the following certified LCP policy: *"The periphery of the building at the Ocean Boulevard level shall contain only pedestrian serving uses such as retail, office, and entrance lobbies; and shall provide a minimum 10 foot wide by 10 foot high open walkway or arcade adjacent to the west and south property lines which shall always remain open and accessible to the public every day between 8 a.m. and dusk."*

Parking:

The parking supply for the project is inadequate for the following reasons: a) only 77 on-site parking spaces are proposed¹, and b) The project requires the construction of an off-site parking garage in the coastal zone that has not been approved as part of this project, and the local coastal development permit does not require that the parking structure be provided prior to the opening of the proposed hotel (or at any other time).

Street Vacation:

The local coastal development permit allows a street vacation but does not carry out the following LCP policy: *"City street vacations can be allowed only if a functional area at least 1.5 times the size of the vacated street area is kept open for public use for the life of the use which requires vacation of the City street."*

In-lieu Fee:

The local coastal development permit does not carry out the following LCP requirement: *"On the site of the old Jergins building, future developers are required to pay an in-lieu fee equivalent to one-half of the cost of a bridge structure across Pine Avenue. The in-lieu fee shall be used only for the expansion of the Promenade South bridge over Seaside Way and/or for the extension of the east/west public walkway from the Promenade South to Subarea 5."*

Building Standards:

The project does not conform to the LCP standards that limit lot coverage and the height of the tower base. The first four stories approved above Ocean Boulevard covers 80% of the lot instead of the LCP limit of 55%. For five stories or higher, the approved lot coverage is 40% instead of the LCP limit of 35%. The tower base is 40 feet high instead of not more than 30 feet high. The 233-foot tall hotel does conform to the LCP's 425-foot height limit.

¹ The Long Beach certified LCP requires hotel parking to be provided at the rate of .75 space per room plus additional parking for restaurants and conference space at the rate of four spaces per 1000 sq. ft.

II. LOCAL GOVERNMENT ACTION

On February 17, 1999, the City of Long Beach Redevelopment Agency certified the Environmental Impact Report (EIR 21-98) for the proposed 430-room Marriott Hotel in Downtown Long Beach (See Exhibits). The Redevelopment Agency also adopted a Statement of Overriding Considerations for the proposed project because the EIR identifies certain environmental impacts that cannot be mitigated to a level of insignificance (i.e., traffic and circulation impacts).

On February 18, 1999, the City of Long Beach Planning Commission held a public hearing for the proposed project. At the conclusion of the public hearing, the Planning Commission found that the proposed project is consistent with the goals and policies of the City of Long Beach certified LCP and approved Local Coastal Development Permit No. 9710-06 for the construction of a 430-room Marriott Hotel in Downtown Long Beach (See Exhibits). The Planning Commission also adopted a Resolution approving a Statement of Overriding Considerations for the proposed project's environmental impacts that cannot be mitigated to a level of insignificance. An Administrative Use Permit, Standards Variance, and Site Plan Review were also approved by the Planning Commission for the proposed project. In addition, the Planning Commission recommended that the City Council approve an amendment to the City of Long Beach certified LCP in order to eliminate the inconsistencies identified by the City Planning Department between the permit under consideration and the certified LCP.

The Planning Commission's decision was appealed to the City Council by Doris Kagin. The appellant asked the City Council to deny the proposed project, but did not state any reason or include any grounds for the appeal.

On March 16, 1999, the City Council held a public hearing for the proposed project, including the appeal of the Planning Commission's actions and the LCP amendment that was recommended by the Planning Commission. At the conclusion of the public hearing, the City Council concurred with the Planning Commission that the proposed project is consistent with the goals and policies of the City of Long Beach certified LCP, although the City Council acknowledged that minor modifications to the certified LCP would be required. The appeal was denied and the approval of Local Coastal Development Permit No. 9710-06 was upheld. The City Council also adopted the Statement of Overriding Considerations and adopted a Resolution and Ordinance approving an amendment to the City of Long Beach certified LCP that would eliminate the identified inconsistencies between the proposed project and the certified LCP. A City Council imposed a condition of approval which states that the approval shall not be effective until the required LCP amendment is certified by the Coastal Commission.

On March 24, 1999, the City's Notice of Final Local Action for Local Coastal Development Permit No. 9710-06 was received in the Commission's Long Beach office. The Commission's

ten working day appeal period was then established and noticed. The appeal was received on April 7, 1999, the last day of the appeal period.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

The City of Long Beach Local Coastal Program was certified in July 22, 1980. Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by its location being within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the conformity of the project with the policies of the City of Long Beach certified Local Coastal Program, pursuant to Public Resources Code Section 30625(b)(2).

MOTION: Staff recommends a **NO** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-LOB-99-135 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Area History

The applicants propose to construct a 233-foot high hotel with 430 rooms, two restaurants, outdoor dining, and a 12,100 square foot conference center with meeting rooms, hospitality suites and a banquet room (See Exhibits). The proposed project includes the re-design and reconstruction of the portion of Victory Park that abuts the site (Exhibit #3). The easterly ten feet of the Pine Avenue right-of-way that abuts the project site is proposed to be vacated and incorporated into the proposed project.

A two-level subterranean parking garage will contain 70 parking spaces. An off-site parking structure, which has not been approved or constructed, is proposed to provide an additional 240 parking spaces for the proposed hotel (Exhibit #4). Another 240 off-site parking spaces are proposed to be leased from an existing parking structure on the adjacent property.

The project site is located on a .74 acre vacant lot at the southeast corner of Ocean Boulevard and Pine Avenue in Downtown Long Beach (Exhibit #2). Formerly, the site contained the Jergins Trust Building, a historical landmark which was demolished in 1987. The site is located on the coastal bluff which runs on the south side and parallel to Ocean Boulevard in Downtown Long Beach. Earlier this century, the ocean and beach occupied the area near the toe of this bluff, but several episodes of landfilling (most occurring prior to the Coastal Act) and the Long Beach Convention and Entertainment Center have replaced the former beach. The nearest shoreline, now at Rainbow Harbor, is located about 2000 feet south of the site (Exhibit #2).

B. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a Coastal Development Permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the local Coastal Development Permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellants contend that the City's approval of the proposed project does not conform to the requirements of the certified LCP (See Section I). Staff has recommended

that the Commission concur that the locally approved permit raises issues of conformance with the currently certified LCP and find that a substantial issue does exist with respect to the grounds on which the appeal has been filed.

The City's approval of the proposed project acknowledges that the proposed project does not conform to the currently certified LCP by its inclusion of an LCP amendment request in its actions. As part of its action approving Local Coastal Development Permit No. 9710-06, the City also approved an LCP amendment to make the LCP consistent with the proposed project. In fact, a City condition of approval states that its approval shall not be effective until the required LCP amendment is certified by the Coastal Commission.

On April 2, 1999, the City Council forwarded LCP Amendment Request No. 1-99 to the Commission's Long Beach Office. Local Coastal Program Amendment Request No. 1-99 includes several changes to the certified LCP. These changes would, if certified by the Commission, remove issues of inconsistency between the City-approved permit and the certified LCP in regards to the east-west pedestrian walk, parking, the landscaping of Victory Park, and the location of the required public viewing area. In approving the permit, the City identified several other inconsistencies with the certified LCP, but approved variances to the standards.

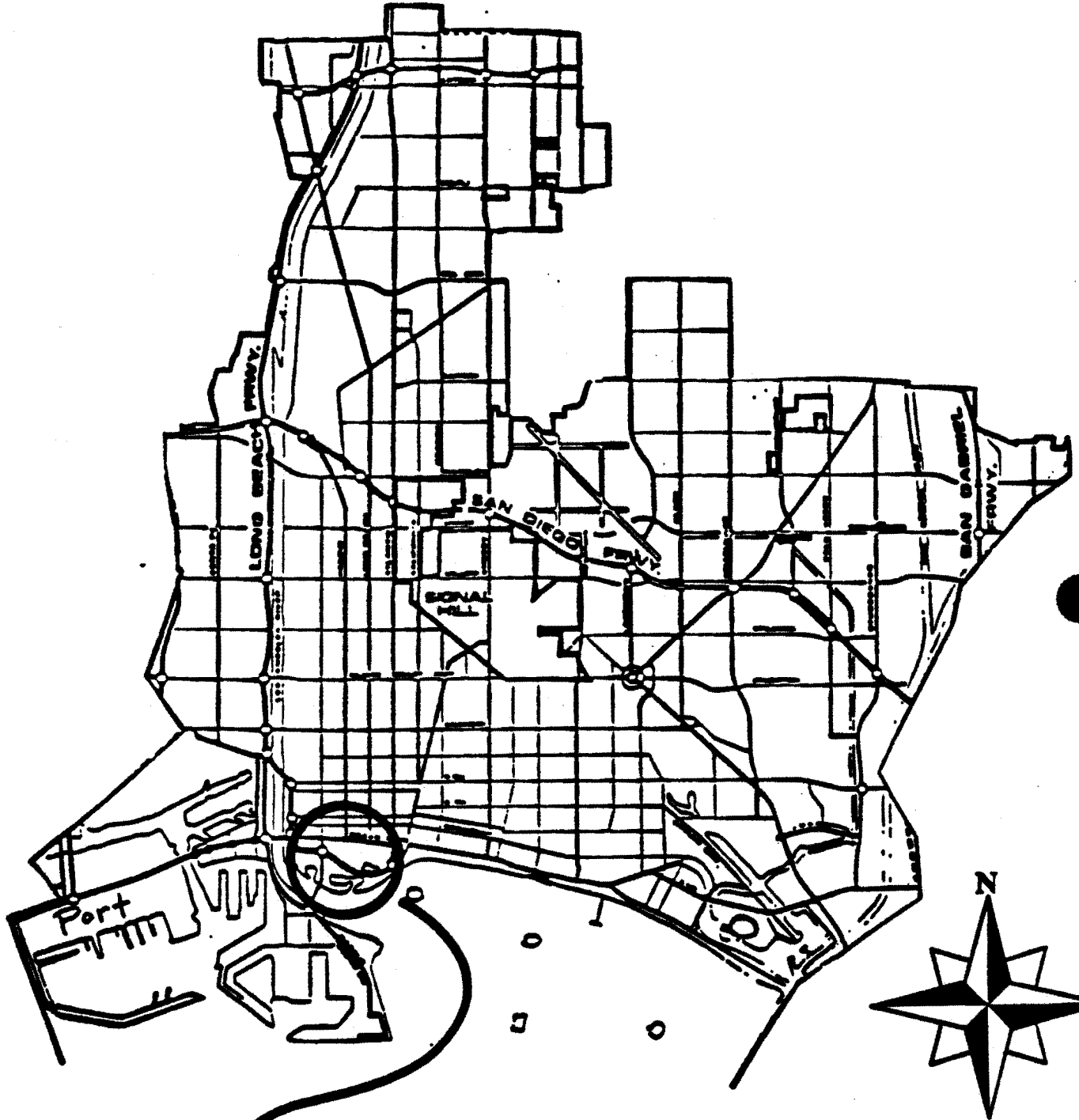
In any case, the City approved the local coastal development permit for the proposed project before the accompanying LCP amendment could be acted on by the Commission. As a result, the locally approved permit raised substantial issues of consistency with the certified LCP at the time of the local approval. Therefore, a substantial issue exists with the local government action because the proposed project cannot be found to be consistent with the policies of the certified LCP prior to the Commission's certification of an LCP amendment which brings the LCP and the proposed project into conformance with one another.

Local Coastal Program Amendment Request No. 1-99 specifically addresses the proposed development of the project site. The Commission is tentatively scheduled to act on LCP Amendment Request No. 1-99 at its June 1999 hearing in Santa Barbara. At that time, the Commission will have the opportunity to amend the certified LCP as part of the City's LCP amendment request. In order to reserve the Commission's opportunity to revise the proposed hotel project, the Commission must find that a substantial issue exists so that a de novo hearing on the proposed project can be held subsequent to the Commission's action on LCP Amendment Request No. 1-99.

In conclusion, locally approved permit raises issues of consistency with several policies contained in the currently certified LCP. The relevant LCP policies are stated in Section I of this report. Therefore, staff recommends that the Commission find that a substantial issue exists with the approval Local Coastal Permit 9710-06 on the grounds that when approved, it did not conform to several policies stated in the City of Long Beach certified Local Coastal Program. A de novo hearing will be held at a future Commission meeting in order to allow it to be heard subsequent to the Commission's action on City of Long Beach LCP Amendment Request No. 1-99.

End/cp

City of Long Beach

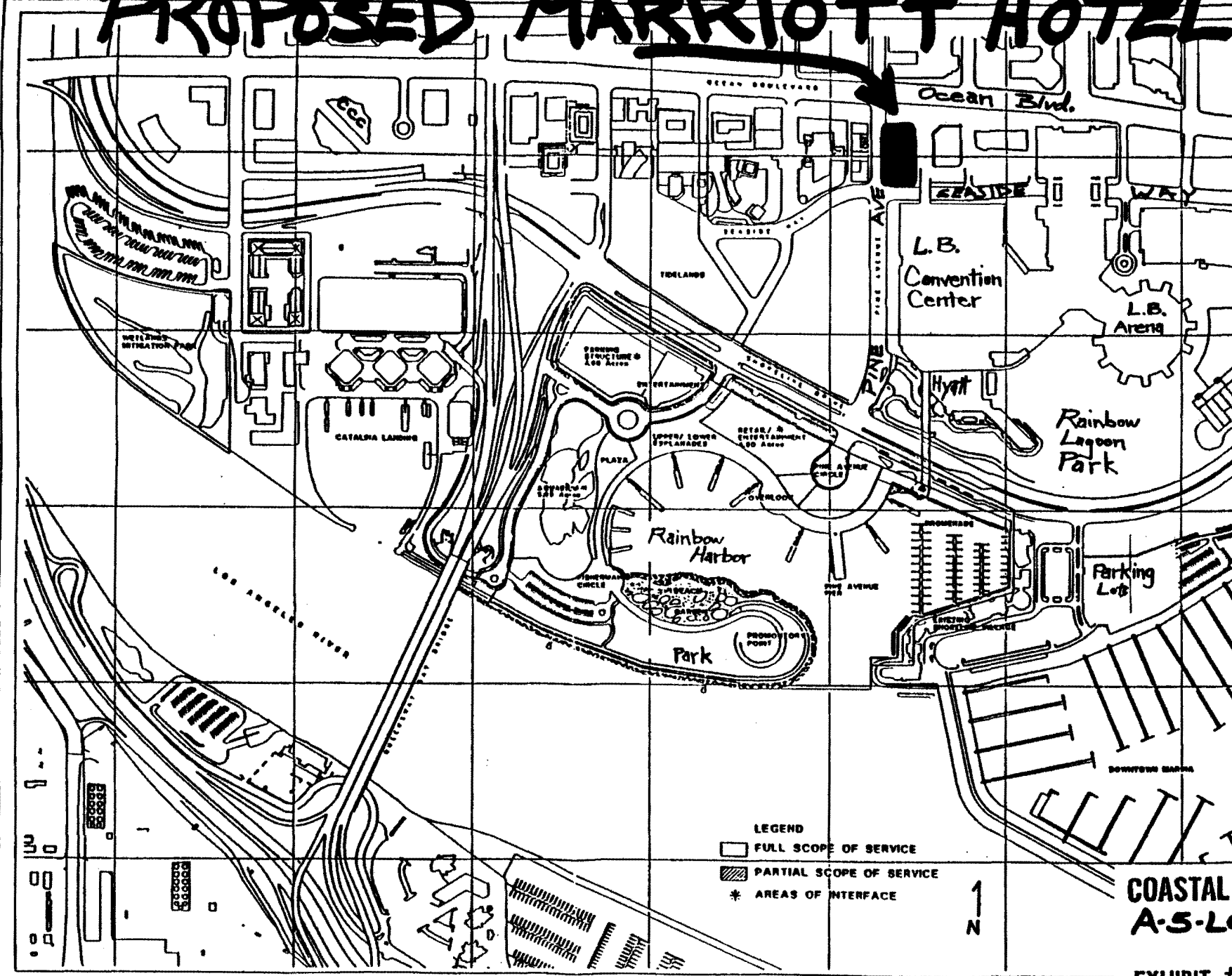


Site

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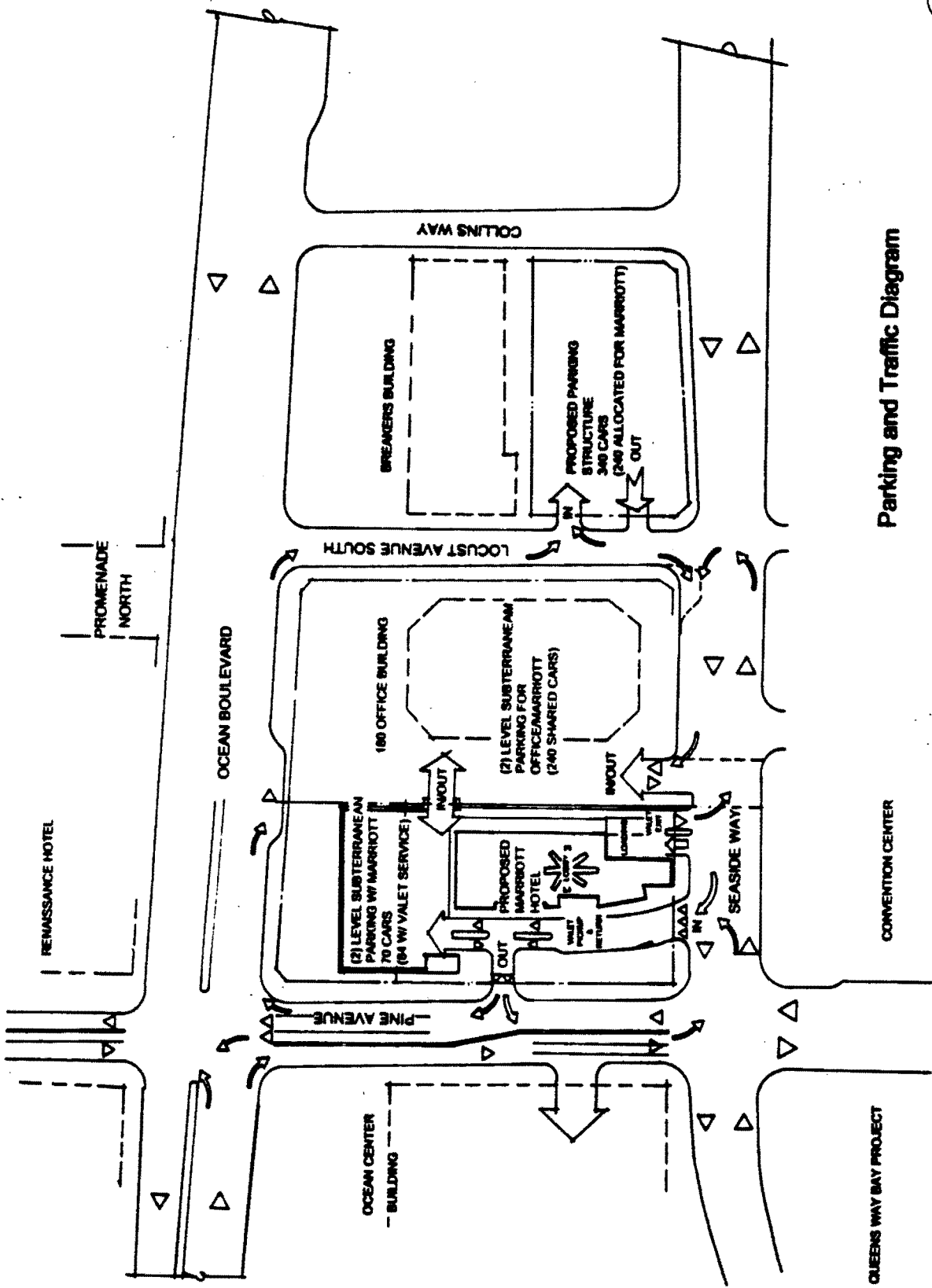
EXHIBIT # 1
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PROPOSED MARRIOTT HOTEL



 QUEENSWAY BAY	
QUEENSWAY BAY <small>Long Beach, California</small>	
CLIENT: City of Long Beach 200 West Ocean Boulevard Long Beach, CA 90802 Tel: (562) 590-1000	
ARCHITECT: Swinerton & Noland Architects Inc. 200 West Ocean Blvd., Ste. 200 Long Beach, California 90802 Tel: (562) 590-1000	
ENGINEER: HNTB & Associates 200 West Ocean Blvd., Ste. 200 Long Beach, California 90802 Tel: (562) 590-1000	
PLANNING & DESIGN: HNTB & Associates 200 West Ocean Blvd., Ste. 200 Long Beach, California 90802 Tel: (562) 590-1000	
DESIGN DEVELOPMENT: HNTB & Associates 200 West Ocean Blvd., Ste. 200 Long Beach, California 90802 Tel: (562) 590-1000	
MASTER SITE PLAN	

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Parking and Traffic Diagram

MARRIOTT HOTEL - 430 ROOM

100 East Ocean Boulevard Long Beach California

Prepared by: [unreadable], L.L.C.

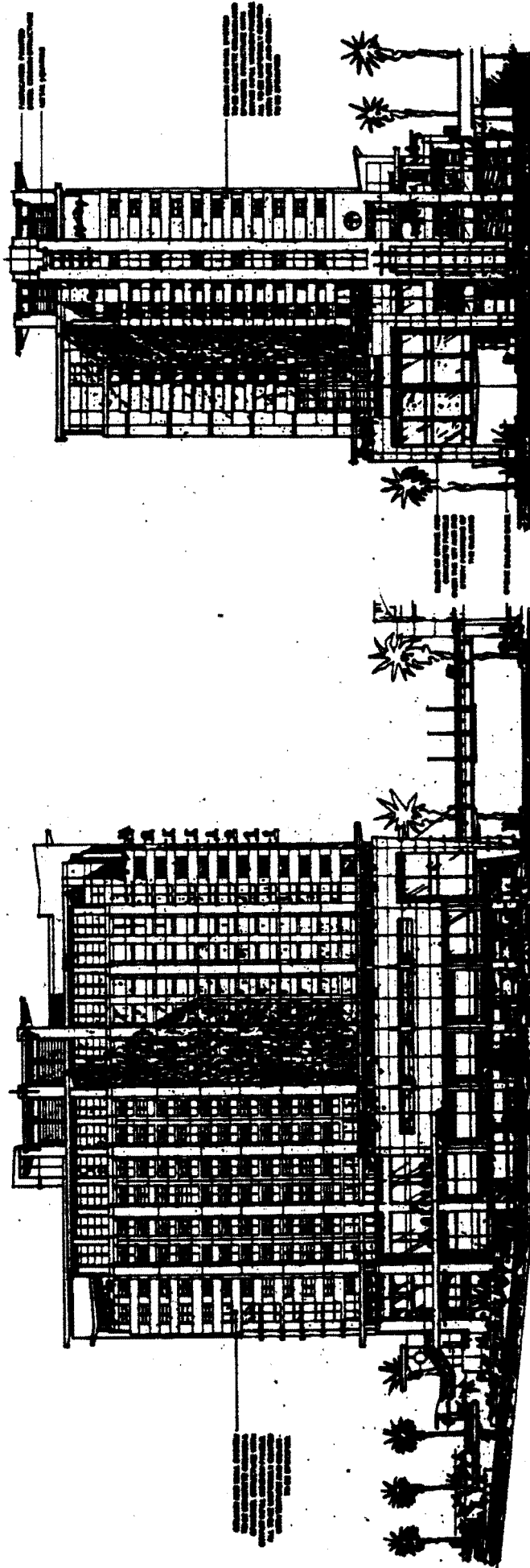
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EXHIBIT # 4

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East Pine Avenue Elevation

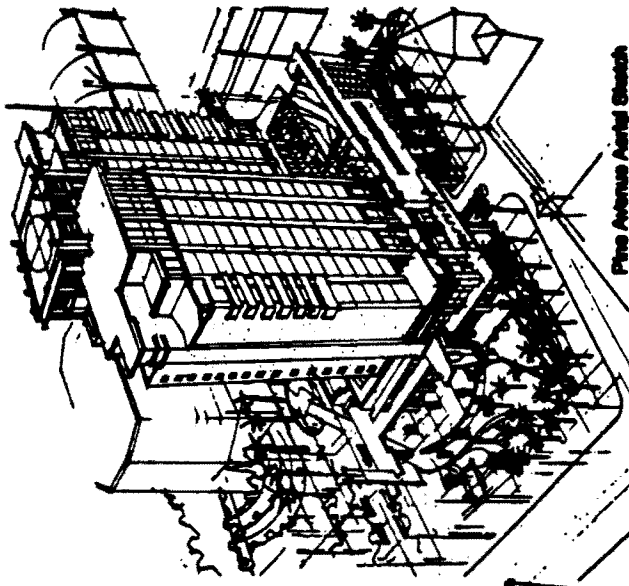
South Seaside Way Elevation

MARRIOTT HOTEL - 430 ROOM
 180 East Ocean Boulevard Long Beach California

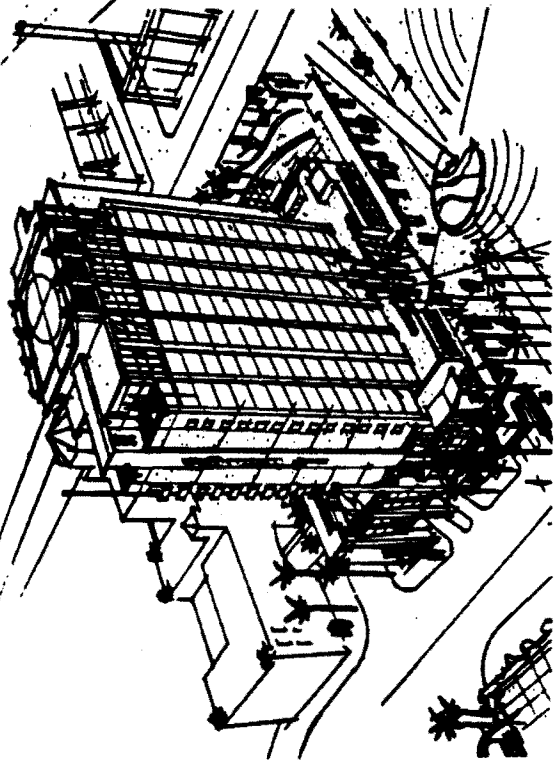
Project by: **BRUNNEN, L.L.C.** Property: **Seaside Beach Building** Job No: **11**
 Date: **20 November 1988**

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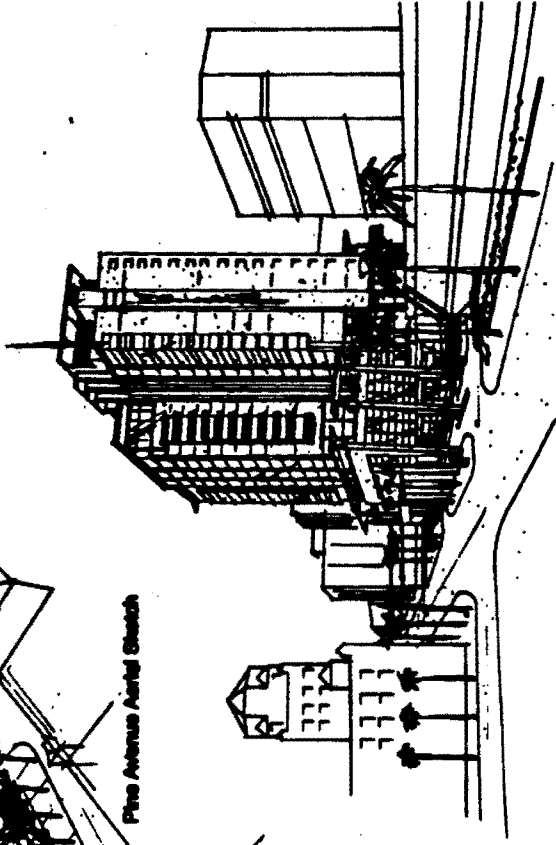
EXHIBIT # **5**
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Promenade Aerial Sketch



Promenade Aerial Sketch



Pine Avenue Eye Level Sketch

MARRIOTT HOTEL - 430 ROOM

100 East Ocean Boulevard Long Beach California

Sheet No. **15**

Prepared by: **STANBANK, L.L.C.** prepared by: **Stanbank Group Architects** Date: **20 November 1988**

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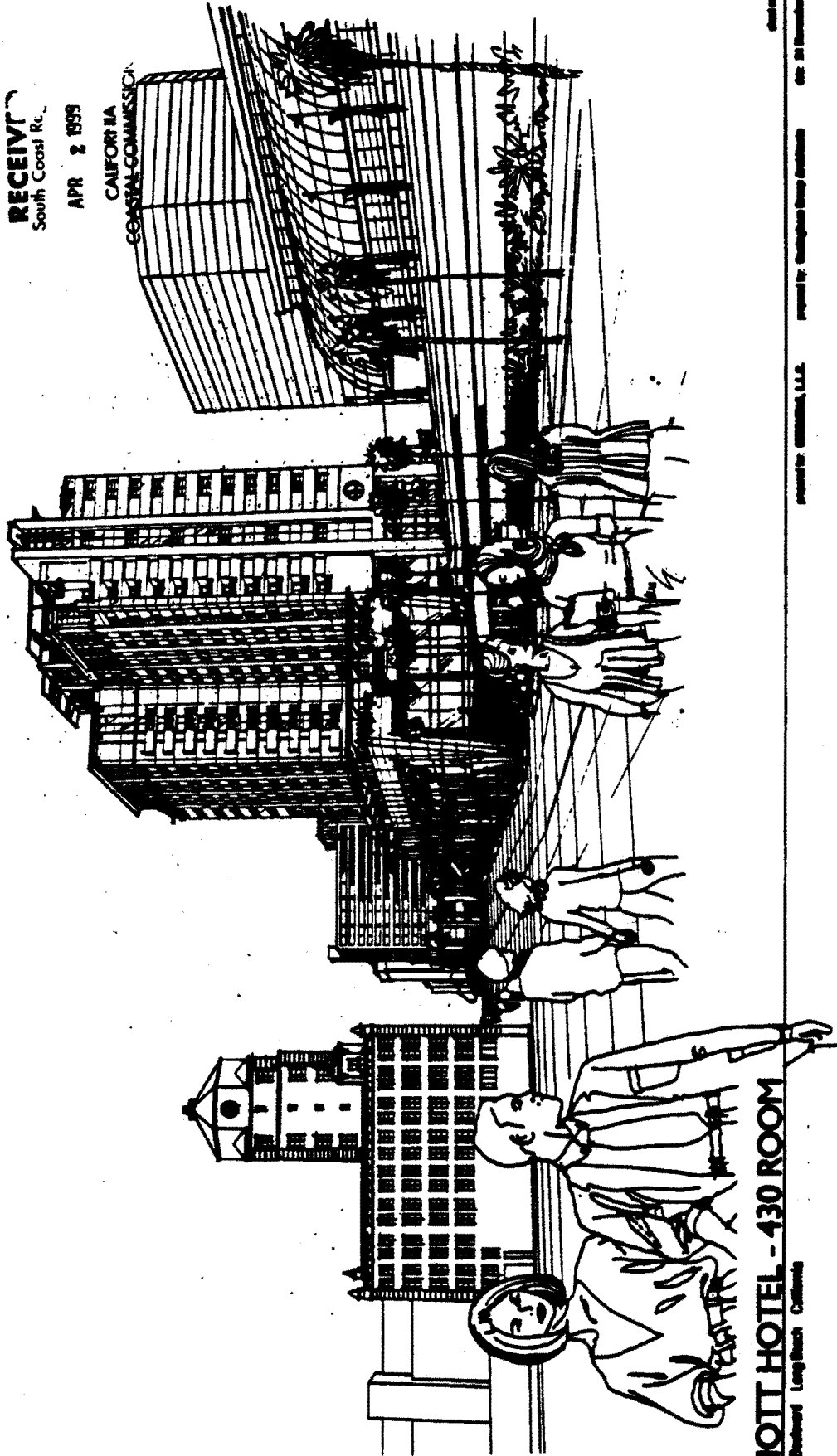
EXHIBIT # **6**

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MARRIOTT HOTEL - 430 ROOM

100 East Ocean Boulevard Long Beach California

prepared by: [unreadable], U.S.A. prepared by: [unreadable] [unreadable] on 21 November 1998

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EXHIBIT # 7

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