

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

1000 SOUTH CALIFORNIA ST., SUITE 200
SANTA ANA, CA 92701

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Staff: S. Hudson *SH*
Staff Report: 6/24/99
Hearing Date: July 13, 1999
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 4-99-123**APPLICANTS:** Romancing the Sun, L.L.P**PROJECT LOCATION:** Zuma Beach County Park, Malibu; Los Angeles County

PROJECT DESCRIPTION: Placement and rental of 31 separate 32 sq. ft., 4.75 ft. high, collapsible canvas shade canopies with 62 chaise lounges on the sandy beach for a period from July through December 1999. The proposed project will also include the operation of a temporary concession stand for the rental of the proposed shade canopies/chaise lounges, rental of self-carry portable shade umbrellas and chaise lounges, and the sale of beach recreation related merchandise.

LOCAL APPROVALS RECEIVED: N/A

SUBSTANTIVE FILE DOCUMENTS: City of Manhattan Beach Local Coastal Program Amendment 1-97; CDP 4-97-143-W (Ocean View Cabana Co), 4-97-101 (LACDBH), 5-97-135 (LACDBH), and 4-95-112 (LACDBH).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends denial of the proposed project. The applicant is proposing to place 31 shade canopies with 62 chaise lounges on the sandy beach from July through December 1999. The proposed project will also include the operation of a temporary concession stand for the rental of the proposed shade canopies/chaise lounges, rental of self-carry portable shade umbrellas and chaise lounges, and the sale of beach recreation related merchandise. The proposed project site is located on the public beach at Zuma Beach County Park.

The area of sandy beach which would be occupied by the proposed shade canopies is currently available for public use. Use of the proposed shade canopies would be available to members of the public for a fee on a time-limited basis. Although the proposed project would serve to provide some recreational opportunities, the proposed project would also result in the conversion of public beach area currently available for public access and recreation to a private exclusive use area for commercial development.

Commission staff has been informed by the applicant that, although the development proposed by this application is only for a one-time period from July - December 1999, the intent of the applicant is to continue to place and rent the proposed shade canopies on Zuma Beach on a continuing yearly basis each summer season.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Denial

The Commission hereby **denies** a permit for the proposed development, which is located between the sea and the first public road nearest the shoreline, on the grounds that the development would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would result in continuing significant adverse effects on the environment within the meaning of the California Environmental Quality Act, is not in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and would 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.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to place 31 separate 32 sq. ft., 4.75 ft. high, temporary collapsible blue-canvas shade canopies with 62 chaise lounges on the sandy beach. The proposed project will also include the operation of a temporary concession stand for the rental of the proposed shade canopies/chaise lounges, rental of self-carry portable shade umbrellas and chaise lounges, and the sale of beach recreation related merchandise. Commission staff has been informed by the applicant that, although the development proposed by this application is only for a one-time period from July – December 1999, the intent of the applicant is to continue to place and rent the proposed shade canopies on Zuma Beach on a continuing yearly basis each summer season.

The proposed project site is located on the sandy beach at Zuma Beach County Park (Exhibit 1). Zuma Beach County Park is characterized as a wide public beach approximately 1.5 miles in length backed by a public promenade walkway and multiple public parking lots. Visible structures in the park include public restrooms, lifeguard towers, food concessions, children's playground equipment, and volleyball courts. Zuma Beach is a popular destination point for tourists and residents of southern California and the Los Angeles metropolitan region. Zuma Beach County Park contains public parking facilities for approximately 2,077 vehicles and is the most heavily used beach in the Malibu area. Zuma Beach is most heavily used for public recreational use during the summer season during which time the applicant is proposing to place the proposed development on the beach.

The proposed shade canopies would be anchored through the use of a metal base which would be buried in the sand to prevent the canopies from being removed or blown away. The applicant has indicated that the proposed shade canopies and chaise lounges would remain on the public beach from July through December 1999, and would be rented to members of the public on a time-limited basis. The shade canopies would remain in their anchored positions on the sandy beach 24 hours/day throughout the summer season until their removal in December. The concession stand would also be located on the sandy beach adjacent to the concrete public promenade walkway. The shade canopies would be arranged in a single 435 linear ft. long line on the sandy beach approximately 36 ft. to 231 ft. seaward from the existing public promenade walkway which delineates the seaward boundary of the public parking lots (Exhibit 3). The applicant has indicated that the proposed shade canopies will be located approximately 210 ft. landward from the water's edge.

The project site has been the subject of past Commission action. Coastal Development Permit Waiver 4-97-143-W was issued on August 26, 1997, for the temporary use of 700 sq. ft. of sandy beach at Zuma County Beach for the rental of 30 beach chairs with shade canopies. In addition, the Commission notes that development on a public beach operated by Los Angeles County requires approval from the Los Angeles County Department of Beaches and Harbors before development may commence. In the case of the proposed project, the County of Los Angeles Department of Beaches and Harbors has submitted a letter dated June 22, 1999 which indicates that the applicant has permission to carry out the proposed project (Exhibit 6). It is Commission staff's understanding that the County of Los Angeles will derive some revenue from the sublease agreement that will be entered into by the applicant for the proposed concession.

B. Public Access and Recreation

One of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas and to reserve lands suitable for coastal recreation for that purpose. The Coastal Act has several policies which address the issues of public access and recreation within coastal areas.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states (in part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act sections 30210, and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Section 30220 of the Coastal Act requires coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected.

The applicant is proposing to place 31 separate 32 sq. ft., 4.75 ft. high, temporary collapsible canvas shade canopies with 62 chaise lounges on the sandy beach. The proposed project will also include the operation of a temporary concession stand for the rental of the proposed shade canopies/chaise lounges, rental of self-carry portable shade umbrellas and chaise lounges, and the sale of beach recreation related merchandise. The proposed shade canopies will be located in a single line along approximately 435 linear ft. of beach (6 groups of 5-6 structures with 5 ft. of open space between each shade canopy and 20 ft. of open space between each group). The shade canopy structures themselves will physically occupy approximately 1,000 sq. ft. of public sandy beach. The shade canopies would remain in their anchored positions on the sandy beach 24 hours/day throughout the summer season until their removal in December.

The Commission notes that the area of sandy beach which would be occupied by the proposed shade canopies is currently available for public use and that the proposed project will result in the occupation of public beach by private commercial development.

Public access to and along the beach represents important lower cost recreational opportunities in the Malibu area. The Commission notes that the proposed project would serve to provide a coastal recreational use (for a fee). However, the Commission also notes that the proposed project would also result in the exclusion of members of the public who are not willing to pay the required fee to use the portion of public beach where the proposed shade canopies would be located. Paid admission or use fees have the effect of limiting use of an area or service to those persons willing to buy tickets or pay usage fees. This constitutes a limitation on public access if the area which the public will be excluded from using without paying the required admission or use fee is located on a public beach. The Commission notes that certain types of recreation oriented concessions may be allowable within public parks when such development or services do not result in adverse effects to public access or loss of the public's ability to use public beach area. Such concessions might include rental of self-carry umbrellas or shade canopies, self-carry beach chairs, water recreational equipment, etc.) and where such concessions do not result in the formal exclusion or occupation of any area of the public beach for public use. In the case of the proposed project, the Commission notes that although the proposed project would serve to provide some recreational opportunities, the proposed project would also result in the conversion of public beach area currently available for public access and recreation to an exclusive use area for commercial development.

In addition, the Commission further notes that the placement of the proposed shade canopies will effectively exclude the public from using an even greater portion of the beach than would be physically occupied by only the shade canopies themselves. The proposed shade canopies will constitute not only a physical obstruction to the public's ability to use the beach but a psychological obstruction as well due to the inherent exclusive nature of the proposed development. The Commission notes that views of the water are of primary importance for most beachgoers and that members of the public are unlikely to use those portions of the beach located landward of the proposed 435 linear ft. line of shade canopies for passive recreational activities such as sitting, sunbathing, or strolling since the proposed structures would represent a significant disruption to views of the water from those areas. In addition, members of the public are unlikely to use those portions of the beach located immediately seaward of the shade canopies for passive recreation such as sitting or sunbathing due to the apparent exclusive nature of the proposed structures. The Commission notes that the provision of 5 ft. wide open areas between the proposed canopies and 20 ft. wide open areas between groupings of the canopies is not adequate to ameliorate the adverse effects to the public's ability to use the beach. Photographs submitted by the applicant showing the subject beach when the shade canopies were present in 1997 (pursuant to Coastal Development Permit Waiver 4-97-143-W) show that members of the public generally avoided congregating or using beach area immediately in front (seaward) or behind (landward) of the shade canopies effectively creating a type of informal privacy buffer around the development (Exhibits 5b and 5c). Thus, the Commission finds that the actual area of public beach that will be adversely impacted by the proposed development will not be limited to only the approximately 1,000 sq. ft. of beach directly

occupied by the shade canopies, but will actually consist of a significantly larger unmeasurable area. Therefore, the Commission finds that due not only to the direct occupation of public beach area by the proposed development, but also due to creation of an apparent larger exclusive private use area around the proposed shade canopies, the Commission notes that the proposed project will result in adverse effects to public access to and along the beach, as well as the public's ability to fully use the public beach.

The Commission notes that the Coastal Development Permit Waiver 4-97-143 was previously issued to the Oceanview Cabana Company to allow for the temporary placement and rental of 30 beach chairs with shade canopies on Zuma Beach for the period from May through September 1997. The waiver was issued on a temporary basis for one summer season based on the finding that the proposed development would not adversely impact public recreational use or impede public access to and from the beach. The Commission notes that based upon information obtained by staff after the proposed shade canopies had been in operation for one season, the placement of the shade canopies on the public beach did result in adverse effects to the public's ability to use the beach for the reasons discussed in detail above.

The exclusive use of public beaches for commercial development has been an issue of prime importance to the Commission in terms of adverse effects to public access. In past actions, the Commission has found that commercial development or events located on a public beach are not consistent with the Coastal Act if a usage or admission fee is required. The Commission specifically prohibited the charging of a usage or admission fee for "temporary events" (an event operating on a continual basis for a period of no more than two weeks in length) located on public beaches in their decision on the City of Manhattan Beach Local Coastal Program Amendment 1-97 in 1997. In the case of this project, the proposed commercial development would continually occupy public beach area for a significantly longer period of time than the temporary commercial events which the Commission previously prohibited from charging usage or admission fees. The Commission further notes that the use of public beaches for commercial development, such as the proposed shade canopies, would result in cumulative adverse effects to public coastal recreational opportunities and public coastal access through the displacement of beach available for public use on a regional level. Although the displacement or loss of beach area available for public use at a single beach by commercial development may be inconsequential, the precedent of approval and cumulative effect of this type of development on a regional level would dramatically alter the public's ability to use public beaches.

Therefore, for the reasons stated above, the Commission finds that the proposed project is not consistent with the sections of the Coastal Act regarding public access and recreation.

D. Visual Impacts

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that where feasible, degraded areas shall be enhanced and restored. The project site is located on the sandy beach at a Los Angeles County public park. The applicant is proposing to place 31 separate 32 sq. ft., 4.75 ft. high, temporary collapsible canvas shade canopies with 62 chaise lounges on the sandy beach to be rented on a time-limited basis. The proposed project will also include the operation of a temporary concession stand for the rental of the proposed shade canopies/chaise lounges, rental of self-carry portable shade umbrellas and chaise lounges, and the sale of beach recreation related merchandise. The 31 proposed shade canopies will be constructed with blue canvas and will be located in a single line along approximately 435 linear ft. of beach (6 groups of 5-6 structures with 5 ft. of open space between each shade canopy and 20 ft. of open space between each group).

In past Commission actions, the Commission has found that the placement or construction of new structures on or adjacent to the sandy beach would result in adverse effects to public views. Coastal Development Permits 4-97-101 and 4-95-112 (Los Angeles County Department of Beaches and Harbors) for the construction of sunshelters and kiosks at Zuma beach were previously denied by the Commission partially on the basis that the proposed development would result in adverse effects to public views. Coastal Development Permit 5-97-135 (Los Angeles County Department of Beaches and Harbors) for the construction of sunshelters and kiosks at other public beaches in the Los Angeles area was also denied by the Commission partially on the basis that the proposed development would result in adverse effects to public views.

In the case of this project, the Commission notes that the placement of the proposed shade canopies on the sandy beach would result in adverse effects to public views to and along the coast. Public views from the sandy beach on the subject site consist of relatively unbroken views of the sandy beach and coastal horizon. Visible structures on the sandy beach primarily consist of lifeguard towers, public restrooms, and non-intrusive recreational development including volleyball nets and a children's play area which serve to provide important public services or recreational use for members of the public. The shade canopies would be arranged in a single line on the sandy beach approximately 36 ft. to 231 ft. seaward from the existing public promenade walkway

which delineates the seaward boundary of the public parking lots. The applicant has indicated that shade canopies would be located approximately 210 ft. landward of the water's edge. Public views of the beach and sea from those portions of the beach located landward of the proposed location of the shade canopies (all areas of the beach less than 36 ft. to 231 ft. seaward from the existing public promenade walkway) would be obstructed by the proposed shade canopies. The Commission notes that views of the water are of primary importance for most beachgoers and that members of the public are unlikely to use those portions of the beach located landward of the proposed 435 linear ft. line of shade canopies for passive recreational activities such as sitting, sunbathing, or strolling since the proposed structures would represent a significant disruption to views of the water from those areas.

Therefore, for the reasons discussed above, the Commission finds that the proposed project is not consistent with Section 30251 of the Coastal Act.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal 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 Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development would result in adverse effects and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the City of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application 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 Commission finds that the proposed project would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.

SMH-VNT

File: smh/permits/regular/4-99-123 suns

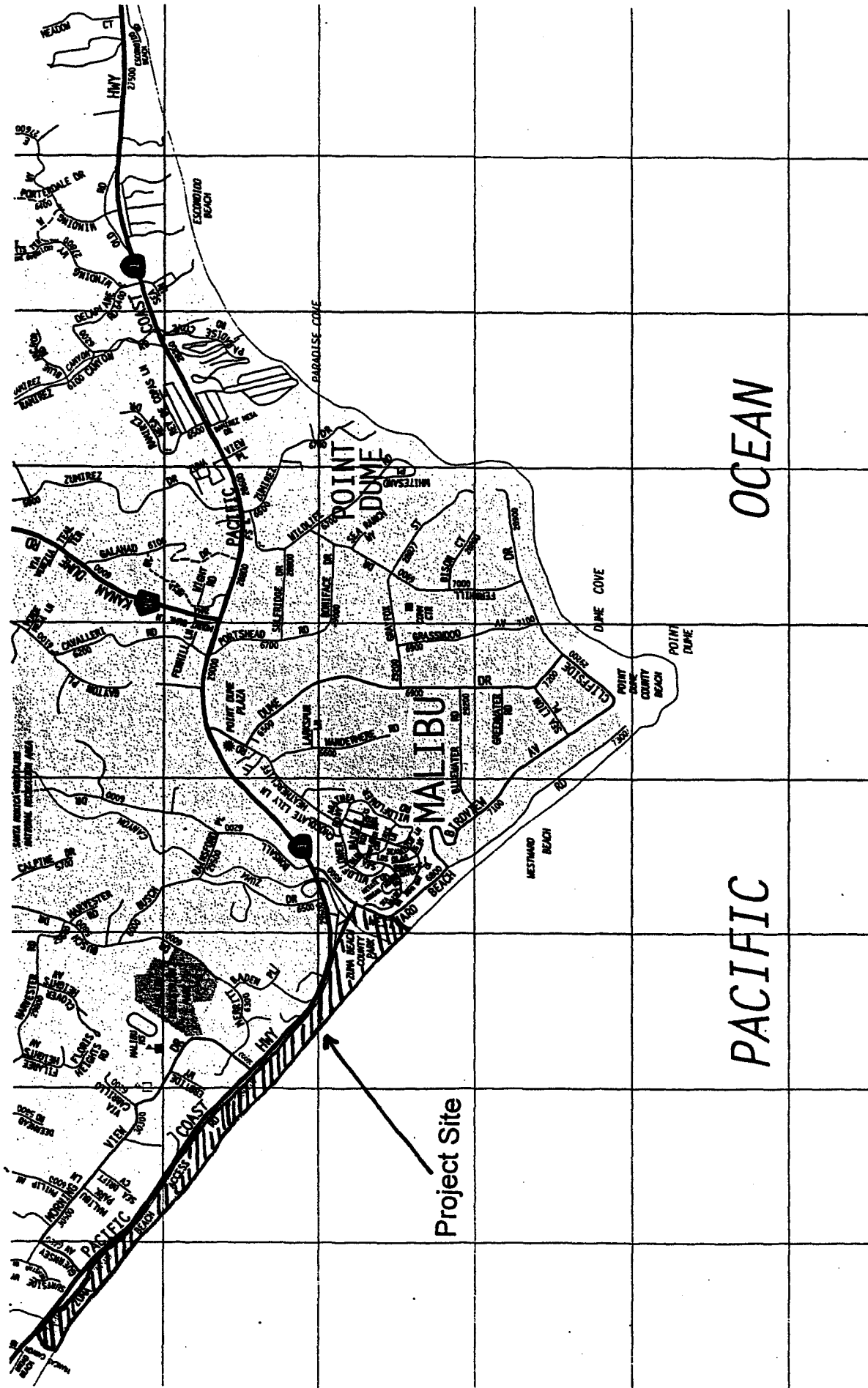
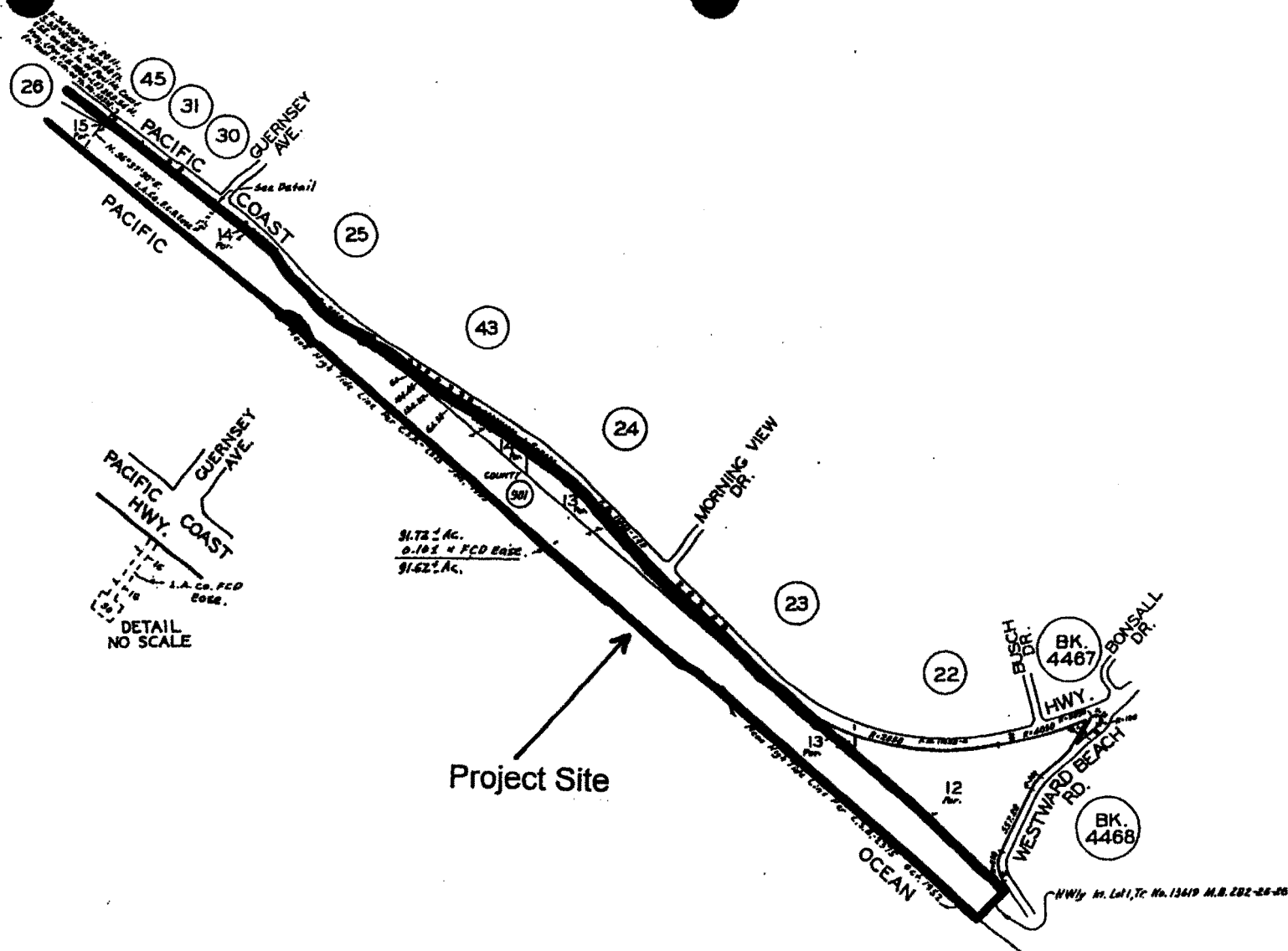


EXHIBIT 1

CDP 4-99-123 (Romancing the Sun)

Location Map



LAND OF MATTHEW KELLER IN THE RANCHO
TOPANGA MALIBU SEQUIT R.F. 534

EXHIBIT 2

CDP 4-99-123 (Romancing the Sun)

Parcel Map

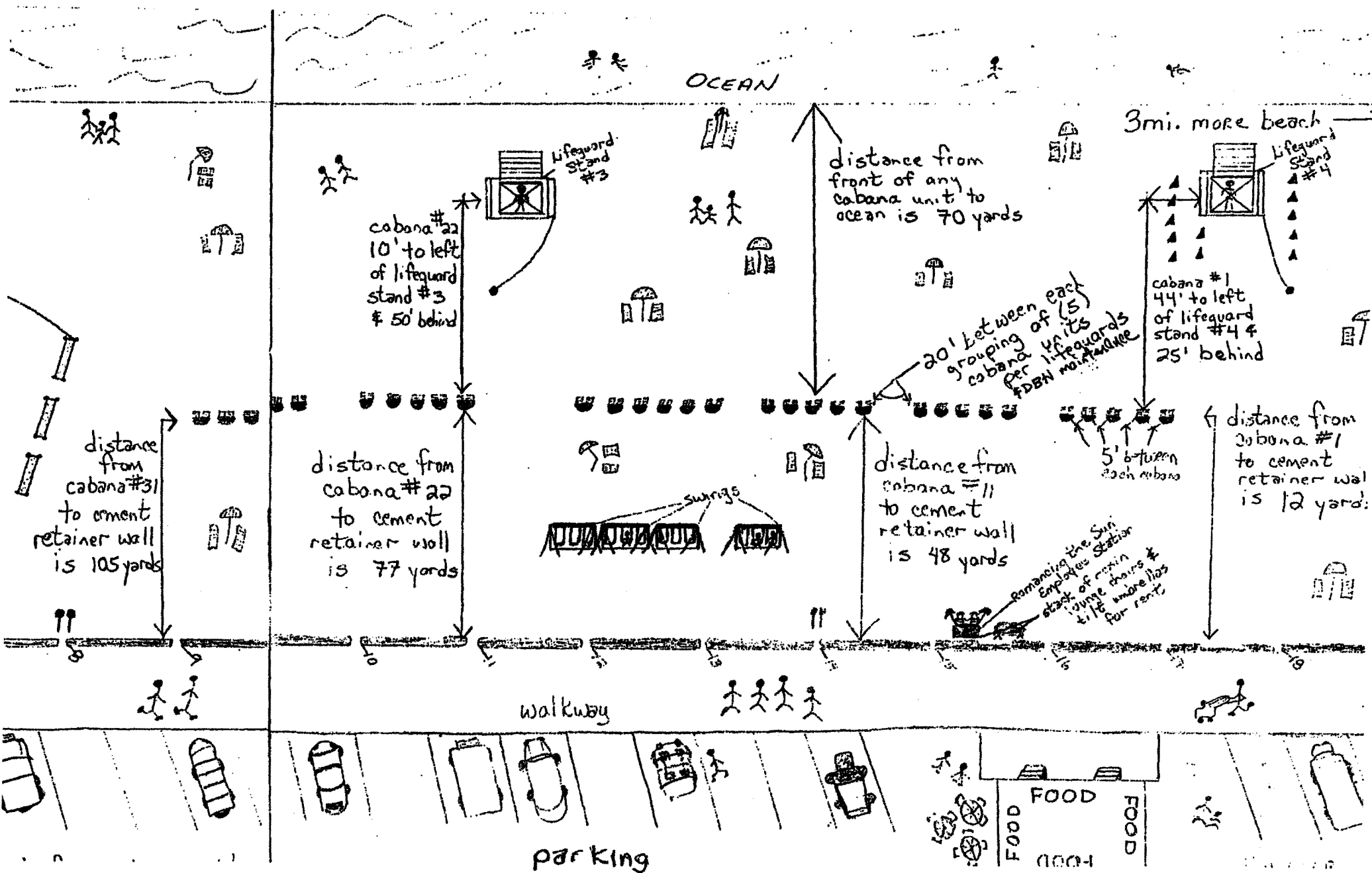
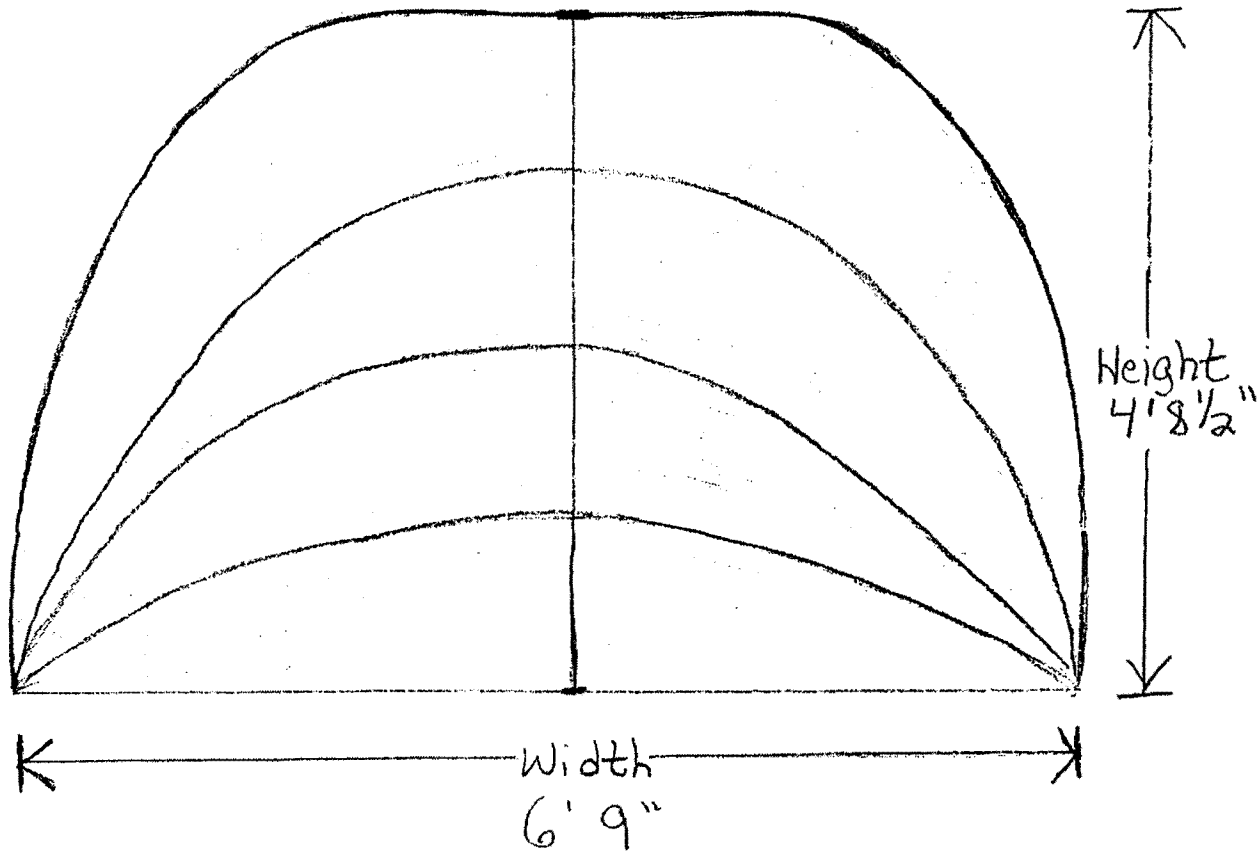


EXHIBIT 3

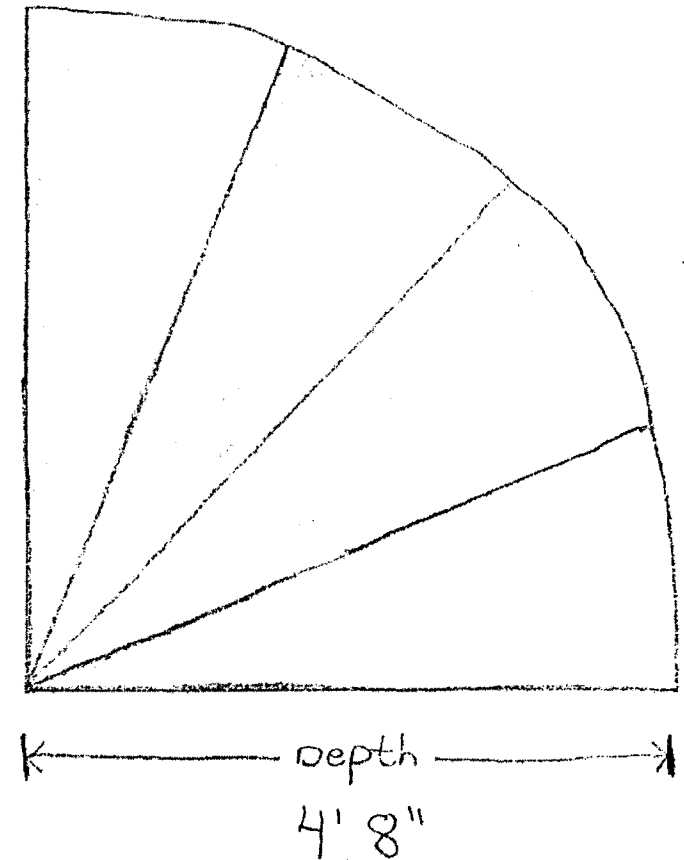
CDP 4-99-123 (Romancing the Sun)

Site Plan

BACK VIEW



SIDE VIEW



* lounge chair dimensions:
length 6' 7"
width 2' 3"
height 1' 1 1/2"

Cabana
Unit
Rendering

EXHIBIT 4

CDP 4-99-123 (Romancing the Sun)

Shade Canopy Rendering

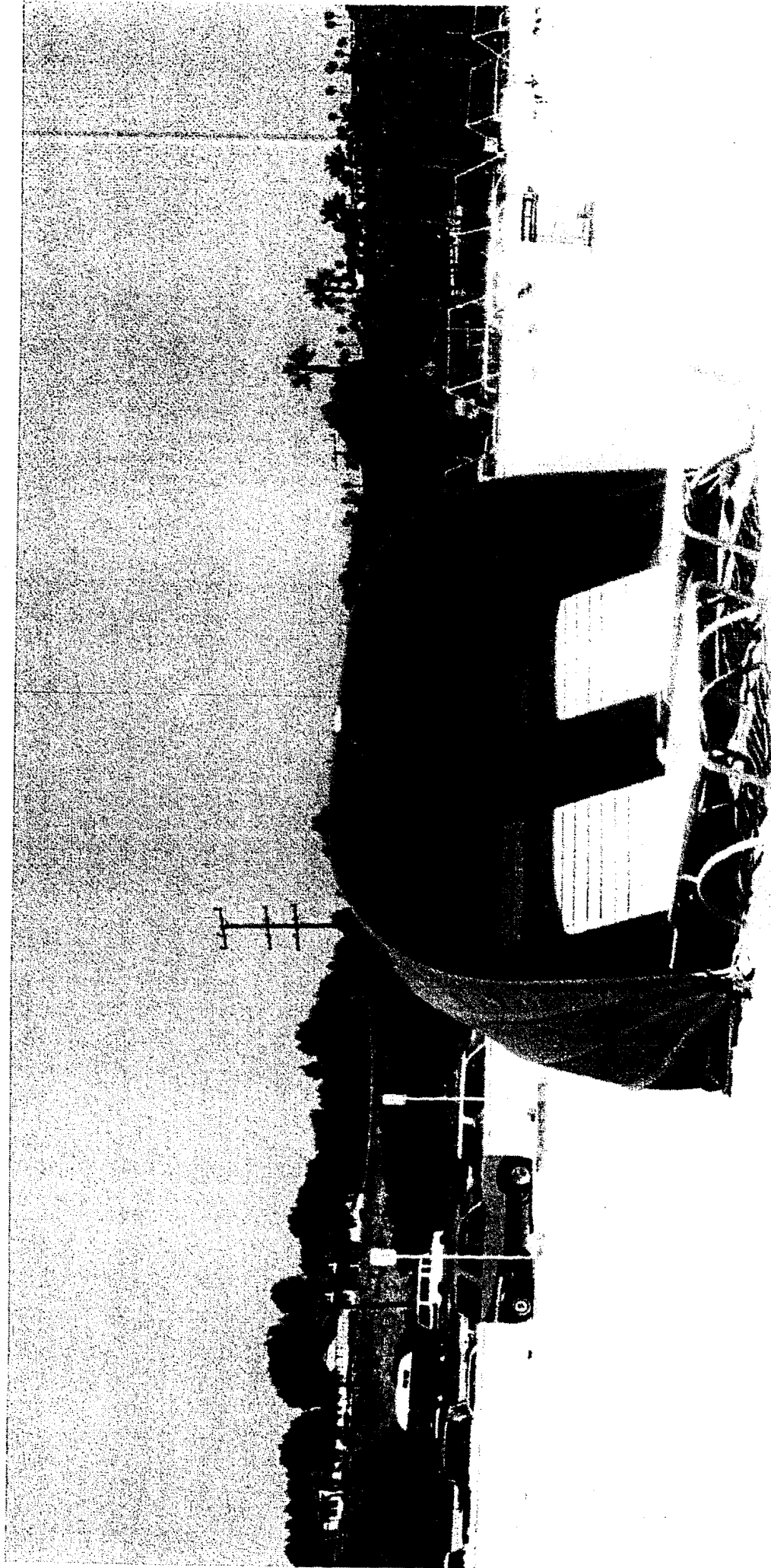


EXHIBIT 5a

CDP 4-99-123 (Romancing the Sun)

Shade Canopy Photographs



EXHIBIT 5b
CDP 4-99-123 (Romancing the Sun)
Shade Canopy Photographs

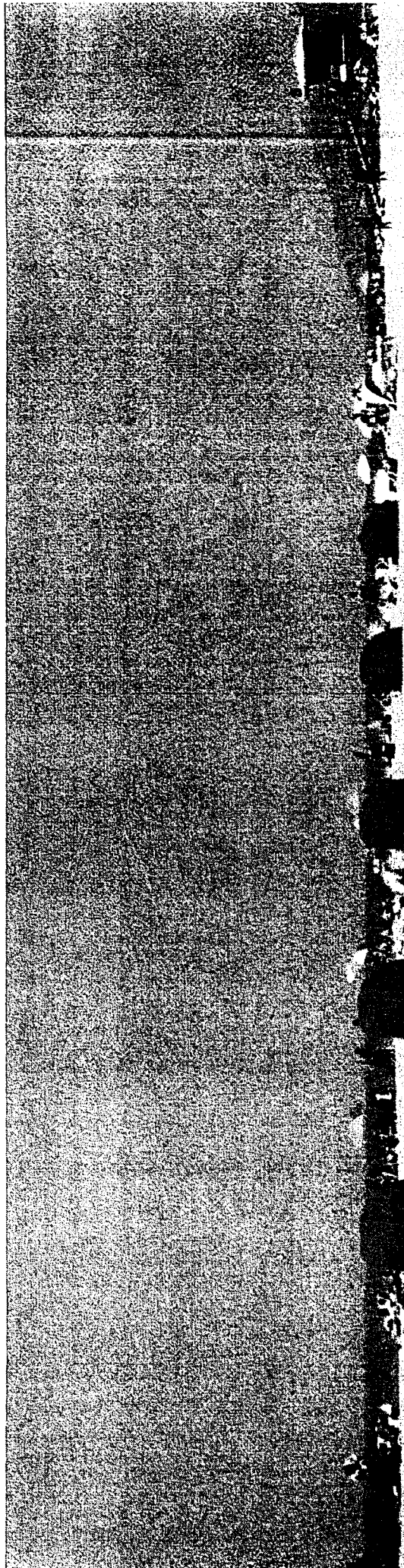


EXHIBIT 5c
CDP 4-99-123 (Romancing the Sun)
Shade Canopy Photographs



COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS



STAN WISNIEWSKI
DIRECTOR

KERRY GOTTlieb
CHIEF DEPUTY

June 22, 1999

Mr. Steve Hudson, Coastal Program Analyst
California Coastal Commission
89 South California Street #200
Ventura, California 93001

Dear Mr. Hudson:

Subject to the California Coastal Commission's approval, we will grant our permission for:

1. F and S Food Company to negotiate a sublease agreement with Romancing the Sun for cabana and beach chair rentals at Zuma I.
2. The installation of thirty-one (31) cabanas with sixty-two (62) beach chairs over a designated area at Zuma I Beach.

Should you have any questions pertaining to this proposed operation, please call Ms. Yvonne Clark at (310) 305-9532.

Very truly yours,

Stan Wisniewski, Director

SW:YC:y
LET/AMB/YCLARK

EXHIBIT 6

CDP 4-99-123 (Romancing the Sun)

Letter from L.A. County

