

CALIFORNIA COASTAL COMMISSION

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Hearing Date: Sept. 14-17, 1999
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-99-255

APPLICANT: Jerry Kramer

AGENT: Jeff Lee, The Lee Group, Inc.

PROJECT LOCATION: 5405 Via Donte, (Lot 2, Block 16, Del Rey Beach Tract), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Construction of a three-story, 34 foot high, 4,332 square foot single family residence with an attached three-car garage on a vacant lagoon-fronting lot.

Lot Area	4,409 square feet
Building Coverage	2,215 square feet
Pavement Coverage	300 square feet
Landscape Coverage	1,894 square feet
Parking Spaces	3
Zoning	RD1.5-1
Plan Designation	Single Family Residence
Ht above final grade	34 feet

LOCAL APPROVAL: City of Los Angeles Approval in Concept #99-067, 7/12/99.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission grant a coastal development permit for the proposed development with special conditions relating to the maintenance of public areas, lagoon buffer protection, drainage, building height, parking and future improvements. The project site is subject to several previous Commission actions. The applicant agrees with the staff recommendation and has accepted the conditions of the previous Commission approvals which affect the site.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permit A-266-77 (ILA) & amendment.
2. Coastal Development Permit 5-87-112 (Del Rey Assoc.) & amendment.
3. Coastal Development Permit 5-86-641 (Lee) & amendments.
4. Coastal Development Permit 5-98-293 (Caso).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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 impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Maintenance of Public Areas

Prior to issuance of the permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, binding the applicant and its successors in interest to: (1) participate with the other lot owners subject to Coastal Development Permits A-266-77, 5-86-641 and 5-87-112 on a fair and equitable basis in the responsibility for the maintenance of the public areas, lagoon buffers, and drainage devices prescribed by Coastal Development Permits A-266-77, 5-86-641 and 5-87-112; (2) allow the State Coastal Conservancy, and its successors in lagoon buffer maintenance, the right to enter, restore and maintain the lagoon buffer; and (3) maintain all yard areas and height limits within sixty feet of the lagoon bank as specified in the special conditions this permit, 5-99-255. The public areas shall be identified in the deed restriction.

This deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Easement for Public Access and Habitat Protection

Development, except that specifically approved under Coastal Development Permit 5-86-641 and amendments, is prohibited in the buffer area identified in recorded easement No. 88-1912729 which covers that portion of the applicant's lot which

occupies the lagoon buffer area. Prohibited development includes planting of non-native vegetation. The applicant shall not interfere with the use of the lagoon buffer public access path across the easement, restoration of the lagoon buffer as strand habitat, and such fencing that is necessary to preserve the habitat.

3. Setback from Lagoon Buffer

All portions of the dwelling (including stairways, decks, and bay windows), except for ground level decks, shall be set back from the easterly edge of the buffer strip at least ten feet, or fifteen percent of the buildable area of the lot, whichever is greater. In this instance, the required setback is 13 feet, 8 inches. A solid wall to protect the ground level deck shall not exceed 6.5 feet in height measured from the grade of the public access pathway located in the lagoon buffer. Deck railings or a glass wall may extend up to 42 inches above the height of the solid wall. No fence, wall or other accessory structure shall encroach into the lagoon buffer area.

4. Lagoon Buffer Protection

An existing retaining wall separates the buffer area and the building site. This permit does not authorize any development or construction activity in the lagoon buffer area located between the existing wall and Ballona Lagoon. No stock piling, grading, or trash disposal shall occur in the lagoon buffer area at any time.

5. Drainage

Prior to issuance of the permit, the applicant shall submit drainage plans, subject to the review and approval of the Executive Director, which provide that all drainage on the site is directed away from Ballona Lagoon and into the existing City storm drain system. The applicant and all successors in interest shall maintain the approved development consistent with the drainage plans approved by the Executive Director.

6. Building Height

The height of the proposed structure within sixty horizontal feet of the inland edge of the Esplanade of Ballona Lagoon at the adjacent shoreline shall not exceed 29 feet above the existing average grade (elevation 14.65'). For every two feet further away from the lagoon, the structure may be one foot higher in height to a maximum height of 45 feet above the 14.65' elevation.

7. Parking

Prior to issuance of the permit, the applicant shall record a deed restriction, in a form and content approved by the Executive Director, assuring the provision of three off-street parking spaces on the project site. These parking spaces shall take access from Via Donte, not from the paved street ends designated for public parking. The deed restriction shall also note that the courts and street ends of the tract are designated for public parking and shall not be used for preferential parking. This deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that 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.

8. Future Improvements

Prior to issuance of the permit, the applicant shall record a deed restriction, in a form and content approved by the Executive Director, which shall provide that Coastal Development Permit 5-99-255 is only for the proposed development and that any future additions or improvements to the property will require a coastal development permit or amendment from the Coastal Commission, its successor agency, or a local government pursuant to a certified Local Coastal Program. This deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that 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.

9. Retaining Wall

Through the acceptance of this coastal development permit, the applicant acknowledges that the retaining wall located on the site adjacent to the lagoon buffer area is the permanent retaining wall for the lot and the border between the lagoon buffer and the developable area of the site. This permit does not authorize any development or construction activity in the lagoon buffer area located between the existing wall and Ballona Lagoon. In order to prevent disruption of the protective lagoon buffer, and to ensure the structural integrity of the retaining wall, the proposed development shall not interfere with the permanence of the retaining wall. The height of the existing retaining wall may be increased up to a maximum height of 6.5 feet measured from the public pathway located at the inland edge of the lagoon buffer easement adjacent to the wall.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a three-story, 34-foot high, 4,332 square foot single family residence with an attached three-car garage on a vacant lot (Exhibit #3). The three-car garage is accessed from Via Donte. The site is located on the east bank of Ballona Lagoon in the Silver Strand area of Venice (Exhibits #1&2). An improved public pedestrian pathway passes between the proposed building site and Ballona Lagoon (Exhibit #3). The existing public pathway is within the Ballona Lagoon buffer that was dedicated for public access and habitat as a condition of a prior permit: Coastal Development Permit 5-86-641 (Lee).

The site is part of the Del Rey Beach Tract, which is physically contiguous to the Silver Strand subdivision. The Del Rey Beach Tract and the Silver Strand subdivision were subdivided at the same time and share the same natural conditions. The entire area is referred to as the "Silver Strand area".

B. Project Background and Area History

The Silver Strand subdivision and the Del Rey Beach Tract share a long history before the Coastal Commission. Both subdivisions, referred to together as the Silver Strand area, are located along the east bank of Ballona Lagoon and have only recently been developed with single family residences. Although the subdivisions were created in the early 1900's, the development of the area did not occur until the late 1970's. Therefore, the Commission has reviewed and permitted the development of the subdivisions with single family residences. The previous Commission actions in the area provide the basis for staff's recommendation on this application.

The first Commission approval in the Silver Strand area occurred in 1977 when the Commission approved the Silver Strand permit, A-266-77 (ILA), which was brought before the Commission on appeal. In 1986, the Commission approved Coastal Development Permit 5-86-641 (Lee) for the grading and infrastructure improvements on ten lagoon fronting lots which were not subject to A-266-77 (ILA). The proposed project is situated on one of the ten lots subject to Coastal Development Permit 5-86-641 (Exhibit #2).

In 1987, the Commission approved Coastal Development Permit 5-87-112 (Del Rey Assoc.) for the development of 36 lots with single family residences on a portion of the Del Rey Beach Tract which also was not subject to Coastal Development Permit A-266-77 (ILA) (Exhibit #2).

1. Silver Strand Permit A-266-77 (ILA)

As previously stated, the first Commission approval in the Silver Strand area occurred in 1977 when the Commission approved the "Silver Strand Permit": Coastal Development Permit A-266-77 (ILA). Coastal Development Permit A-266-77 (ILA) was brought before the Statewide Coastal Commission as an appeal of a Regional Coastal Commission decision. Prior to the Commission's action on Coastal Development Permit A-266-77 (ILA) in 1977, the Statewide Coastal Commission and the Regional Coastal Commission had denied several applications to improve the streets and supply utilities within portions of the Silver Strand subdivision and the Del Rey Beach Tract to make residential development possible. The previous projects were denied because of adverse impacts on traffic, recreation and wetland habitat.

The projects were proposed by a consortium of comprised of most of the owners of the approximately three hundred undeveloped lots located on Blocks 7 through 18 of the Silver Strand subdivision and Blocks 13 through 15 of the Del Rey Beach Tract (Exhibit #2). Most of the lot owners were represented by the consortium, although the gas company which owned several lots and a few other individual lot owners refused to join. The consortium was judged to have the legal ability to apply for a permit to grade the lots, improve the streets, and supply utilities within the Silver Strand area so that individual lot owners would eventually be able to build homes under separate permits.

The Commission's 1977 approval of Coastal Development Permit A-266-77 (ILA) permitted the consortium of applicants, the Isthmus Landowners Association (ILA), to develop the infrastructure necessary for the development of single family homes on approximately three hundred lots located on Blocks 7 through 18 of the Silver Strand subdivision and Blocks 13 through 15 of the Del Rey Beach Tract (Exhibit #2).

Coastal Development Permit A-266-77 (ILA) was subject to conditions addressing lagoon protection, maintenance of public areas, public access, and public parking. In its approval of Coastal Development Permit A-266-77 (ILA), the Commission found that Ballona Lagoon, located adjacent to the Silver Strand and Del Rey Beach subdivisions and about twenty feet west of the subject site, was critical habitat area and an important coastal resource. The Commission further found that residential development of the Silver Strand area would have major adverse cumulative impacts on the lagoon and that several measures were necessary to mitigate the adverse impacts of development.

One of the mitigation measures was the requirement for the dedication of an easement for habitat protection and public access as part of a lagoon buffer to reduce the impacts of the residential development on the lagoon. The protective lagoon buffer area was to be restored according to the Ballona Lagoon Preserve Plan in order to improve the degraded habitat area.

Another mitigation measure was a condition of Coastal Development Permit A-266-77 (ILA) which required the owners of the lots subject to Coastal Development Permit A-266-

77 (ILA) to establish a private homeowners association sufficient to maintain all public areas and landscaping approved and required by the permit. Because all of the owners of the lots subject to Coastal Development Permit A-266-77 (ILA) would benefit from the permitted tract improvements, the Commission required each lot owner to contribute to the maintenance of the improvements.

Coastal Development Permit A-266-77 (ILA) was amended in 1979 in response to litigation. The amended permit still allowed the ILA to develop the infrastructure necessary for the development of approximately three hundred lots with single family homes. As amended, Coastal Development Permit A-266-77 (ILA) required the permittee (ILA) to perform all grading in a single contract, to improve a public access path on the east bank of the lagoon, restore the lagoon buffer, to improve the streets and malls for public access and parking, and to establish a private homeowners association sufficient to maintain all public areas and landscaping including the lagoon buffer.

In approving the amendment to Coastal Development Permit A-266-77 (ILA), the Commission found that individual lot owners who apply to develop lagoon fronting lots in the area would be required to dedicate a portion of their property for a habitat protection and public access easement as a condition of approval. Therefore, pursuant to Coastal Development Permit A-266-77 (ILA) as amended, each lagoon fronting lot owner on the east bank, as a condition of developing their property, is required to offer to dedicate a 24 to 30 foot easement as part of the forty foot wide lagoon buffer along the east bank of the lagoon. No private development is permitted within the easement areas.

The protective lagoon buffer is comprised of the undeveloped City Esplanade (partly submerged), the lagoon fronting lot owners' easements, and the front yard setbacks on all lagoon-fronting lots. The protective lagoon buffer on each privately owned lot extends from the inland side of the undeveloped City Esplanade into the front yard structural setback areas of the residences which are used as yard areas. The required front yard setback area is a minimum depth of ten feet or fifteen percent of the buildable depth of the lot, whichever is greater. The Commission has allowed the construction of garden walls between the easement areas and the front yards of the residences. Besides the garden walls, the front yard setback areas may contain ground level decks and landscaping, but no other structures. No development may occur in the easement areas except for the public access path and revegetation with native coastal strand plants.

Since 1980, the grading approved by the amendment to Coastal Development Permit A-266-77 (ILA) has been completed, the public access path along Ballona Lagoon has been improved, and the permittee (ILA) has established itself as the private homeowners association of the Isthmus Landowners Association (ILA) to maintain the lagoon buffer and other public areas.

The amendment of Coastal Development Permit A-266-77 (ILA) also required that the lot owners located in the area subject to the permit to contribute equally for the restoration and maintenance of the lagoon buffer. Because all of the owners of the lots subject to

Coastal Development Permit A-266-77 (ILA) would benefit from the permitted tract improvements, including the lagoon buffer restoration, the Commission required each lot owner to contribute to the maintenance of the improvements. The Commission found that the development of the area with homes would have an impact on the lagoon and public access. The improvements would mitigate these impacts. Without the improvements, no lot could be developed.

The conditions of approval for Coastal Development Permit A-266-77 (ILA) provided the basis for the mitigating special conditions which have been routinely applied to all subsequent coastal development permits in the area. This set of special conditions ensure that the Chapter 3 policies of the Coastal Act and the intent of Coastal Development Permit A-266-77 (ILA) is carried out as individual lots are developed. This application is required to conform to the conditions of approval necessary to ensure consistency with the Chapter 3 policies of the Coastal Act and Coastal Development Permit A-266-77.

2. Coastal Development Permit 5-86-641 (Lee)

The Commission had originally required, as part of Coastal Development Permit A-266-77 (ILA), that the southern six acres of the Del Rey Beach Tract be dedicated for public recreation and coastal access parking. The 1979 amendment of Coastal Development Permit A-266-77 (ILA), however, deleted the required dedication of the six-acre site to a public agency for public recreation. The six-acre site, in which the currently proposed project is situated, was still excluded from residential development in order not to preclude the use of the property for commercial recreation and public parking. No development was permitted in this area until 1986.

In 1986, the owner of the ten lagoon fronting lots in the southern six acres of the Del Rey Beach Tract, Harlan Lee, applied for a permit to develop his ten lots subject to the same special conditions which were agreed to in Coastal Development Permit A-266-77 (ILA). The Commission agreed to the proposal, and in 1986 it approved Coastal Development Permit 5-86-641 (Lee) for grading, street improvements, drainage facilities, and utilities for the ten lagoon-fronting residential lots located in the six-acre area which was previously to be set aside for commercial recreation use and which includes the subject site (Exhibit #2).

The proposed project is situated on one of the ten lagoon-fronting lots which were the subject of Coastal Development Permit 5-86-641 (Exhibit #2). The proposed project's building pad and utility hook-ups were constructed under that permit.

The special conditions of Coastal Development Permit 5-86-641 (Lee) were based on the conditions and findings of Coastal Development Permit A-266-77 (ILA). Coastal Development Permit 5-86-641 (Lee) was conditioned as proposed by the applicant to require the applicants to do the following: 1) join the homeowners association in order to maintain all public areas, 2) direct all drainage away from the lagoon, 3) to grade and construct the lagoon public access path, 4) to accomplish all grading in a single contract, 5) to dedicate an easement (buffer) for public access and habitat protection along the

lagoon for a width of 24 feet across all lots, 6) set all future structures back from this buffer at least ten feet or fifteen percent of the depth of the lot, whichever is greater, 7) to show that all required public parking has been provided, 8) to provide three on-site parking spaces per future residence, 9) to limit future residences to the height limit, and 10) to fence the lagoon buffer during construction and ensure that no grading, stockpiling or trash disposal occurred in this buffer area. The special conditions were applied to ensure that the development of the ten lagoon-fronting lots was consistent with the Chapter 3 policies of the Coastal Act and the Commission's previous actions. The proposed project is still subject to the above stated conditions of Coastal Development Permit 5-86-641 (Lee) and subsequent amendments.

Coastal Development Permit 5-86-641 (Lee) has been amended four times. The four amendments have involved the following issues: changes in the grading and elevations of the ten lagoon-fronting lots, violations of the permit conditions regarding protection of the lagoon buffer, construction of the lagoon public access trail, and restoration of the lagoon buffer. Amendment numbers two through four of Coastal Development Permit 5-86-641 (Lee) involved the restoration of a portion of Ballona Lagoon and buffer and the improvement of the lagoon public access trail in order to resolve alleged violations of the permit which resulted in damage to the lagoon and buffer area.

Since the approval of amendment 5-86-641-A4 in 1992, the lagoon and buffer area adjoining the ten lots subject to Coastal Development Permit 5-86-641 (Lee) and amendments has been successfully improved with a continuation of the east bank public access path and restored with native coastal strand vegetation.

3. Coastal Development Permit 5-87-112 (Del Rey Assoc.)

In 1987, the Commission approved Coastal Development Permit 5-87-112 (Del Rey Assoc.) for the development of streets, utilities, and 36 lots with single family residences on a portion of the Del Rey Beach Tract located near the lagoon, but not adjoining it (Exhibit #2). Although the subject site was not subject to Coastal Development Permit 5-87-112 (Del Rey Assoc.), that permit continued the Commission's implementation of the conditions imposed on the Silver Strand and Del Rey Beach Tract areas since the approval of Coastal Development Permit A-266-77 (ILA).

In the Commission's approval of Coastal Development Permit 5-87-112 (Del Rey Assoc.) found that residential development of this portion of the Del Rey Beach Tract would have cumulative adverse impacts on the lagoon and mitigation measures were necessary to mitigate those cumulative adverse impacts of development. One of the mitigation measures was a condition which required the permittee (Del Rey Assoc.) and all members of the Del Rey Association to join with the private homeowners association established under Coastal Development Permit A-266-77 (ILA) to participate equally in the maintenance of the public areas and landscaping (including malls, parking nodes, lagoon buffer and path) approved and required by the Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee), and 5-87-112 (Del Rey Assoc.) (Exhibit #2).

4. Coastal Development Permit 5-95-152

The most recent Commission action affecting the site was the conditional approval of Coastal Development Permit 5-95-152 in 1996. Coastal Development Permit 5-95-152 and amendments approved the Ballona Lagoon Enhancement Plan. The co-applicants of the permit include the Ballona Lagoon Marine Preserve (BLMP), California State Coastal Conservancy, and the City of Los Angeles. The Ballona Lagoon Enhancement Plan involves restoration work in Ballona Lagoon and the lagoon buffer including: excavation of a deep pool at the south end of the lagoon, improvements in the operation of the automatic tide gates, removal of non-native vegetation from the lagoon's east bank, revegetation of the east bank between the water and path (about half the buffer width) with native vegetation, and various public access improvements. The Ballona Lagoon Enhancement Plan is well underway.

The site of the currently proposed project is affected by the enhancement plan, as are all of the lots located on the east bank of Ballona Lagoon, because it contains an easement for public access and habitat restoration on the east bank of Ballona Lagoon. Recorded easement No. 88-1912729 covers that portion of the applicant's lot which occupies the lagoon buffer area. The Coastal Conservancy accepted this easement and many others in order to implement the Ballona Lagoon Enhancement Plan.

As part of the Ballona Lagoon Enhancement Plan, the Coastal Conservancy has transferred the east bank easements to the City of Los Angeles. These easements which cross the subject site and other lagoon fronting lots currently contain the Ballona Lagoon east bank public access trail and are included within the area of the Ballona Lagoon Enhancement Plan. The currently proposed project will not interfere with the successful implementation of the Ballona Lagoon Enhancement Plan.

C. Lagoon Buffer

As previously stated, the existing building pad on the subject site was graded under Coastal Development Permit 5-86-641 (Lee). In its approval of Coastal Development Permit 5-86-641 (Lee), the Commission found that the development of the site would have cumulative and individual impacts on the habitat of Ballona Lagoon. The Commission also found that the shores and water area of the lagoon had a history of public use. The lagoon and buffer area had been historically used for camping, clamming, fishing, walking, and bird watching.

The approval as conditioned of Coastal Development Permit 5-86-641 (Lee) and amendments was found to be consistent with the Chapter 3 policies of the Coastal Act which address Environmentally Sensitive Habitat Areas, coastal access, and recreation. The proposed project must also be found consistent with the following Chapter 3 policies of the Coastal Act, taking into consideration the previous Commission actions in the area

[Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee) & 5-87-112 (Del Rey Assoc.)].

Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Coastal Access

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 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Recreation

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.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In approving Coastal Development Permit 5-86-641 (Lee), the Commission found that the area could be developed residentially and still provide for protection of habitat and for passive recreational use if the applicants dedicated a buffer for habitat and a public access trail (path) along the east bank of the lagoon. The applicant's proposed plan included a 24-foot wide lagoon buffer and the extension of the existing lagoon buffer path from the north through to Via Marina. The plan also included the appropriate structural setbacks to protect the environmentally sensitive lagoon habitat.

As a result of the Commission's approval of Coastal Development Permit 5-86-641 (Lee), the applicant (Lee) recorded and dedicated easement No. 88-1912729 for a 24-foot wide lagoon buffer with a public access path across the ten lagoon fronting lots (Lots 1-5 of Blocks 16 & 17), including the subject site (Lot 2, Block 16), which were the subject of Coastal Development Permit 5-86-641 (Exhibit #2).

In approving Coastal Development Permit 5-86-641 (Lee) and subsequent permits for residences in the area, the Commission adopted a set of conditions in order to protect and preserve Ballona Lagoon and its buffer area. This set of special conditions is also applied to the currently proposed project. The special conditions prohibit development in the recorded easement which covers that portion of the applicant's lot which occupies the buffer area (Exhibit #3). Prohibited development includes planting of non-native vegetation. The applicant shall allow a public access trail across the easement, restoration of the buffer as strand habitat, and such fencing that is necessary to preserve the habitat. The applicant is also prohibited from disturbing the fence and vegetation in the buffer area, and from interfering with public use of the trail. In addition, all drainage must be directed away from Ballona Lagoon.

Long term maintenance of the lagoon buffer, drainage devices, and public access path on the east bank of Ballona Lagoon is, and always has been a concern of the Commission. To address this issue, the Commission has consistently placed the burden of responsibility for the necessary maintenance of public areas which have not been accepted by a public agency on the lot owners in the area who have benefited from the improvement of the area. The approval of the proposed project requires the applicant to participate in the maintenance of the public areas.

In its approval of Coastal Development Permit A-266-77 (ILA), the Commission found that Ballona Lagoon was a critical habitat area and an important coastal resource. The Commission further found that residential development of the Silver Strand and Del Rey Beach area would cause major adverse cumulative impacts on the lagoon, and that several measures were necessary to mitigate the adverse impacts of development. One of the mitigation measures was a condition which required the lot owners who benefited from Coastal Development Permit A-266-77 (ILA) to establish a private homeowners association sufficient to maintain all public areas and landscaping approved and required by the permit which have not been accepted by a public agency. The Isthmus Landowners Association (ILA) was established to maintain all public areas and landscaping approved and required by Coastal Development Permit A-266-77 (ILA).

The Commission also required the lot owners benefiting from Coastal Development Permit A-266-77 (ILA) to participate on a fair and equitable basis with the other lot owners in the maintenance of the public areas, public access path, lagoon buffer, and drainage devices in the Silver Strand and Del Rey Beach Tracts. The Commission placed similar requirements on the lot owners subject to Coastal Development Permits 5-86-641 (Lee) and 5-87-112 (Del Rey Assoc.) (Exhibit #2). This requirement is based on the concept that all property owners subject to the permit cumulatively created the negative impacts on the lagoon and have benefited most from the improvement of the public areas, and therefore should assume the responsibility to maintain the habitat mitigation and public areas.

This responsibility for the long-term and ongoing maintenance of the public areas, public access path, lagoon buffer, and drainage devices in the Silver Strand and Del Rey Beach Tracts remains with the homeowners pursuant to Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee), and 5-87-112 (Del Rey Assoc.) until each of these public areas is accepted by a public agency.

Therefore, as a condition of approval, the applicant is required to record a deed restriction binding the applicant and its successors in interest to: (1) participate with the other lot owners subject to Coastal Permits A-266-77, 5-86-641 and 5-87-112 on a fair and equitable basis in the responsibility for the maintenance of the public areas, lagoon buffers, and drainage devices prescribed by Coastal Development Permits A-266-77, 5-86-641 and 5-87-112; (2) allow the State Coastal Conservancy, and its successors in lagoon buffer maintenance, the right to enter, restore and maintain the lagoon buffer; and (3) maintain all yard areas and height limits within sixty feet of the lagoon bank as specified in the special conditions this permit, 5-99-255. The public areas shall be identified in the deed restriction. The deed restriction shall run with the land, binding on all heirs and assigns of the applicants.

In addition, the existing retaining wall which separates the lagoon buffer area from the building site shall be used as a barrier to protect the lagoon buffer from the impacts of the construction of the proposed residence. A condition of approval states that this permit does not authorize any development or construction activity in the lagoon buffer area

located between the existing wall and Ballona Lagoon. No stock piling, grading, or trash disposal shall occur in the lagoon buffer area at any time.

Finally, the proposed project provides the dedicated easement and lagoon buffer that is required in order to protect the lagoon habitat and the public access path. Therefore, the proposed project, as conditioned, is consistent with the habitat, access, and recreation policies of the Coastal Act, and with the Commission's prior actions.

D. Front Yard Setback

Based on the previous Commission actions the area, the proposed structure is required to be set back from the buffer, the Esplanade, and Ballona Lagoon in order to provide public access and to protect the resources of the lagoon environment habitat. A special condition of Coastal Development Permit 5-86-641 (Lee) requires the front yard setback to be a minimum of ten feet, or fifteen percent of the buildable portion of the lot, whichever is greater. The required front yard setback is measured from the inland edge of the dedicated 24-foot wide buffer adjacent to Ballona Lagoon (Exhibit #3).

In determining the required setback distance, fifteen percent of the length of the lot is calculated from the "net length" of the lot or the length of the "buildable" lot. In this case, the total lot length is 115 feet, but 24 feet is dedicated as the lagoon buffer. Therefore, the buildable lot is 91 feet long. Fifteen percent of 91 feet is thirteen feet and eight inches (13'8"). The proposed project provides both the 24-foot wide buffer area and the required 13'8" front yard setback (See Exhibit #3), consistent with the original conditions of the prior coastal development permits.

All portions of the dwelling, including stairways, decks, and bay windows, shall be set back from the easterly edge of the buffer strip at least 13'8". No development or construction, except for fences and ground levels decks, are permitted within the front yard setback. A solid wall to protect the ground level deck shall not exceed 6.5 feet in height measured from the grade of the public access pathway located in the lagoon buffer. Deck railings or a glass wall may extend up to 42 inches above the height of the solid wall. No fence, wall or other accessory structure shall encroach into the lagoon buffer area.

In addition, in order to prevent further encroachments into the setback that may impact public access and the sensitive habitat areas, the applicants are required to record a future improvements deed restriction on the property. As conditioned to provide the required setback from the lagoon buffer and to record a future improvements deed restriction, the proposed project is consistent with the habitat, access, and recreation policies of the Coastal Act, and with the Commission's prior actions.

E. Building Height

A height limit for structures adjacent to Ballona Lagoon has been established in previous Commission actions to protect against a "canyon effect" which could negatively impact bird flight patterns. Ballona Lagoon is utilized by many bird species, including the federally and state listed endangered California least tern.

A building pad elevation and height limit were established for the project site when the Commission approved Coastal Development Permit 5-86-641 (Lee) for the grading of ten building pads, including the building pad for the proposed residence. When the grading of the ten building pads occurred on the project site in 1988, the permittee (Lee) raised the elevation of some of the pads above the permitted elevation in order to improve drainage from the site. In November 1989, the Commission approved an after-the-fact amendment [5-86-641-A2 (Lee)] that revised the approved building pad elevations on the ten lots, including the project site. A condition of the amendment established new height limits for the ten lots subject to the amendment so that the roof heights of future development would conform to the height of the adjacent development. The new height limit established for the ten lots by amendment 5-86-641-A2 compensated for the additional elevation that was gained when the building pads were graded.

In order to regulate the height of structures adjacent to Ballona Lagoon so as to limit the impacts on birds, the following special condition was applied to the second amendment to Coastal Development Permit 5-86-641 [5-86-641-A2 (Lee)]:

- 1.A. For any future proposed structures on Lots 1-4 of Block 16 and Lots 2-5 of Block 17, the height of the proposed structure within sixty horizontal feet of the inland edge of the Esplanade of Ballona Lagoon at the adjacent shoreline shall not exceed 29 feet above the existing grade as approved herein. For every two feet further away from the Lagoon, the structure may be one foot higher in height to a maximum height of 45 feet.

The same height limit has been applied to all of the Commission approvals for single family residences on the affected sites. The height limit has also been applied to this permit.

The plans submitted with this application show the existing average grade of the building pad on the lot is elevation 14.65' (Exhibit #4). The height of the proposed structure within sixty horizontal feet of the inland extent of the Esplanade of Ballona Lagoon, as indicated on the submitted elevations, is less than 29 feet (as measured from elevation 14.65'). Only the top of the proposed chimney exceeds the 29-foot height limit within 60 feet of the Esplanade. The height of the proposed structure does not exceed 34 feet in the area where the Commission's height limit allows up to 45 feet (Exhibit #4). Therefore, the proposed project conforms to the Commission's height limit for the site.

In order to prevent further increases in structural height that may impact bird flight patterns the applicant is required to record a future improvements deed restriction on the property. Only as conditioned to limit the height of the structure and to record a future improvements deed restriction is the proposed project is consistent with the habitat protection policies of the Coastal Act and the Commission's prior actions.

F. Parking

In order to protect coastal access, all new development on lots adjacent to Ballona Lagoon in the Silver Strand area is required to provide adequate on-site parking. In previous actions, the Commission has determined that three on-site parking spaces are adequate to serve single family residences in the area. The proposed project provides three on-site parking spaces in the attached garage (Exhibit #3).

For previous projects in the area, applicants have been required to record a deed restriction that assures the provision of at least three on-site parking spaces. The same requirement applies to this permit. The deed restriction requirement for parking includes a statement acknowledging that the courts and street ends in the tract are designated for public parking and shall not be used for preferential parking (i.e., permitted or restricted parking).

Therefore, approval of the permit is conditioned to record the deed restriction for parking currently required by the Commission for projects in the Silver Strand and Del Rey Beach Tracts. The required deed restriction states that at least three on-site parking spaces will be provided, and that they shall take access from Via Donte, not from the paved street ends designated for public parking. The deed restriction shall also note that the courts and street ends of the tract are designated for public parking and shall not be used for preferential parking. Only as conditioned to provide at least three on-site parking spaces and to record the deed restriction addressing parking, is the proposed project is consistent with the coastal access policies of the Coastal Act and the Commission's prior actions.

G. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (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 Coastal Program that is in

conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The Venice area of the City of Los Angeles does not have a certified Local Coastal Program. The proposed project, as conditioned, is consistent with the habitat, coastal access, and recreation policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

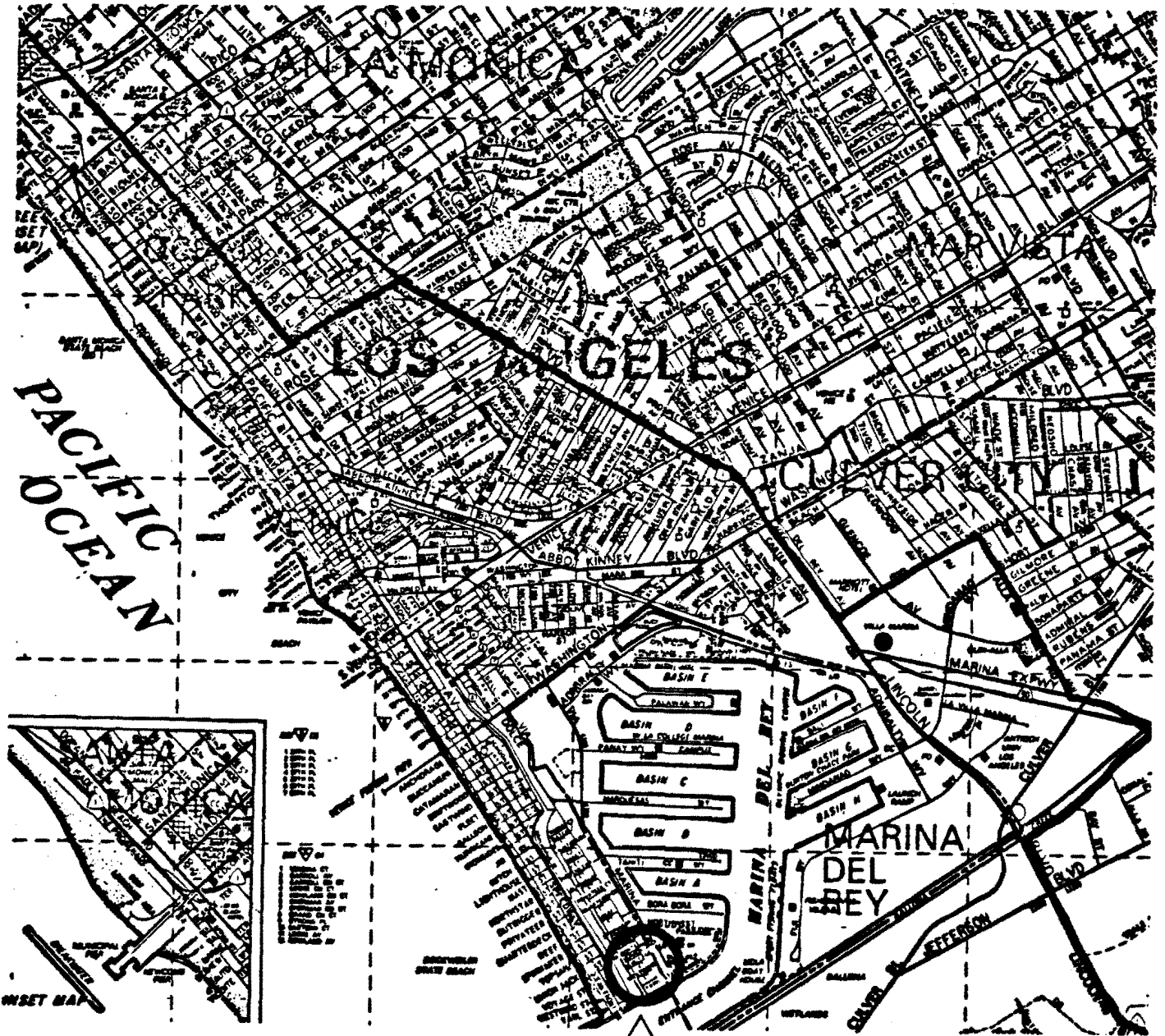
H. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a 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's conditions of approval adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. All adverse impacts have been minimized and there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the requirements of the Coastal Act to conform to CEQA.

End/cp

Silver Strand / Del Rey Beach Tracts



Site

COASTAL COMMISSION
5-99-255

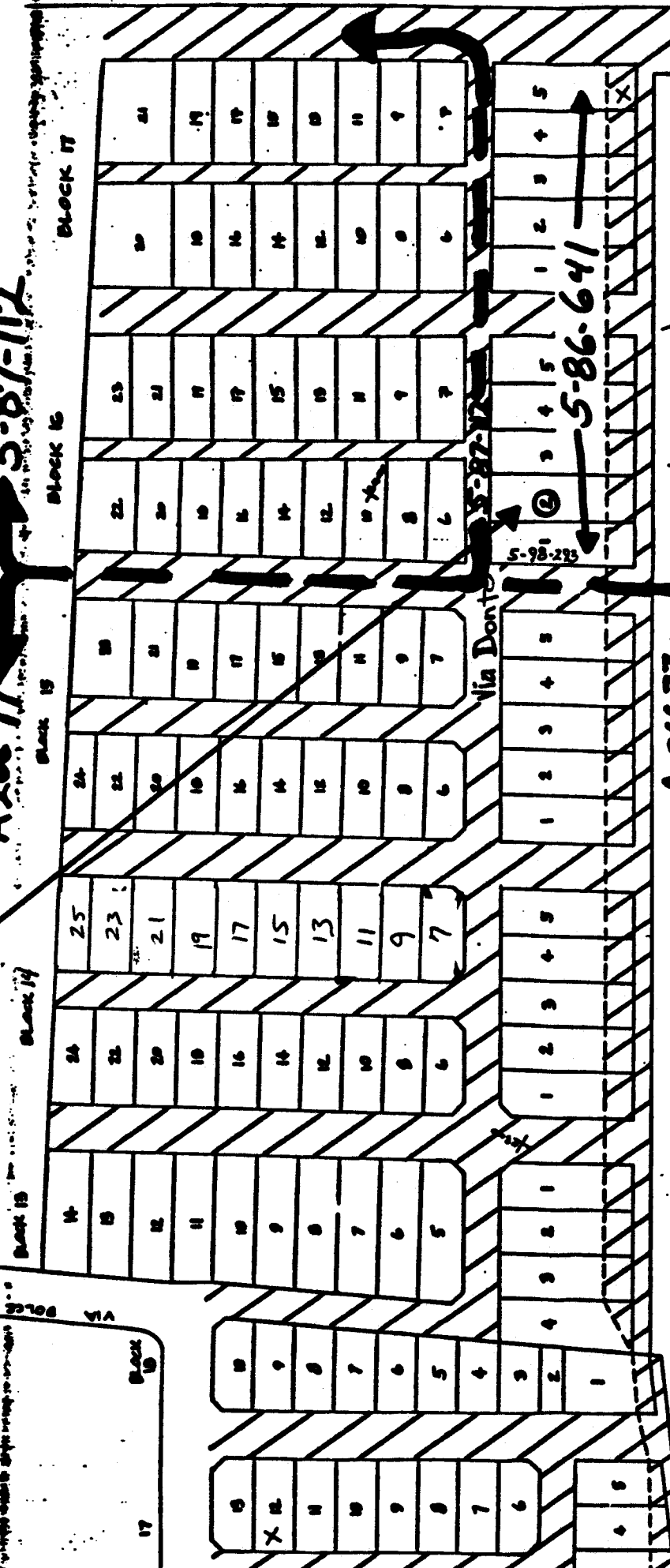
EXHIBIT # _____

PAGE _____ OF _____

Site

Lot 2 BIK 16

CDP A-26-77 ← S-87-112



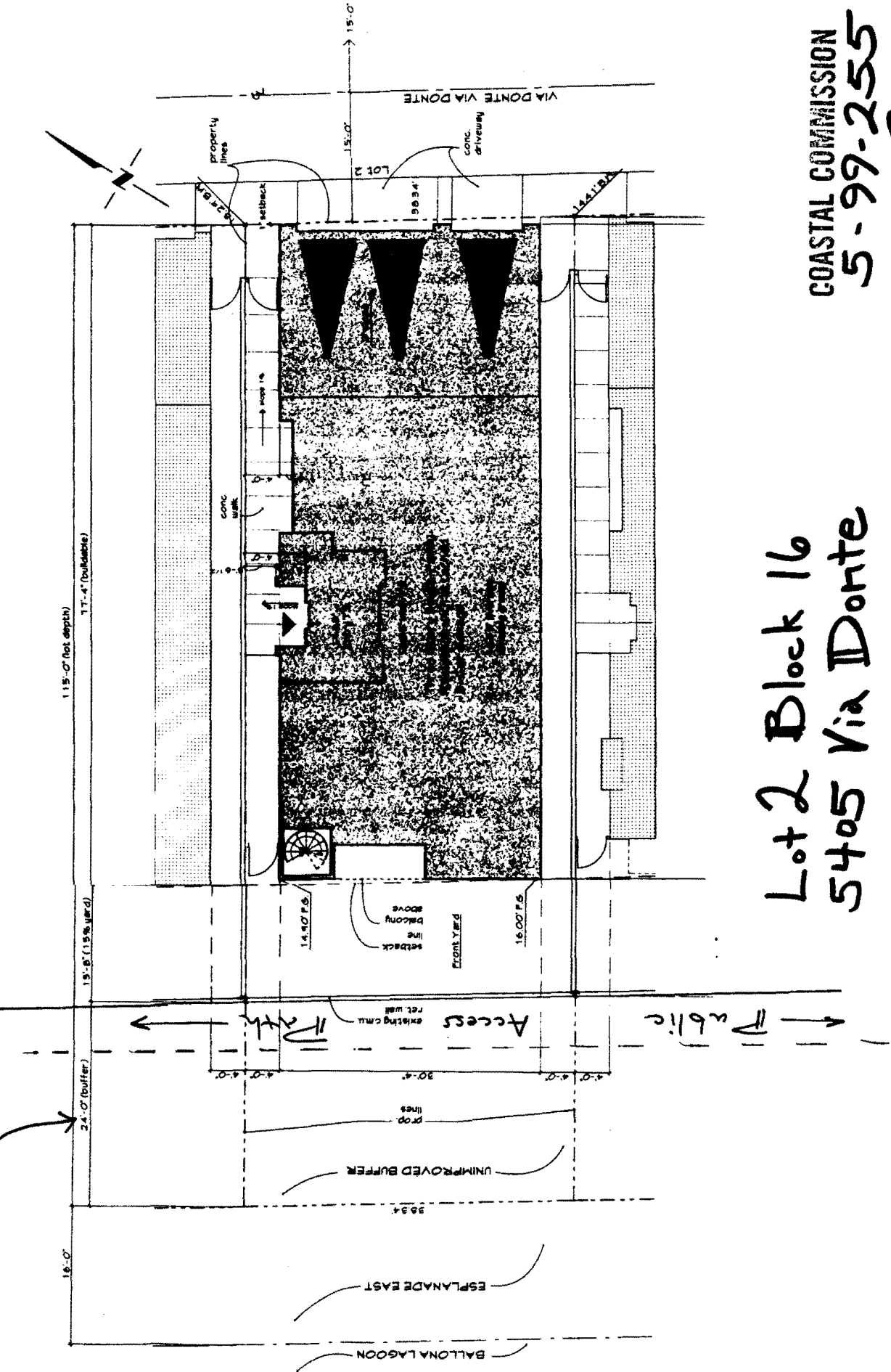
VIA PACIFIC AVENUE
 CALIFORNIA COMMUNITY COMMISSION
 11/13/68, 11/19/68
 APPROVED ON 11/13/68
 AS CONCERNING TO MINORS' RIGHTS, RESPECTIVELY
 MICHAEL L. FISCHER
 EXECUTIVE DIRECTOR
 by James M. Black
 The Board of Directors

EXHIBIT NO. 2
 APPLICATION NO.
 5-99-255
 Location Map

North

Beach 7

Dedicated Easement
Inst. No. 88-1912-729



Lot 2 Block 16
5405 Via Donte

COASTAL COMMISSION
5-99-255

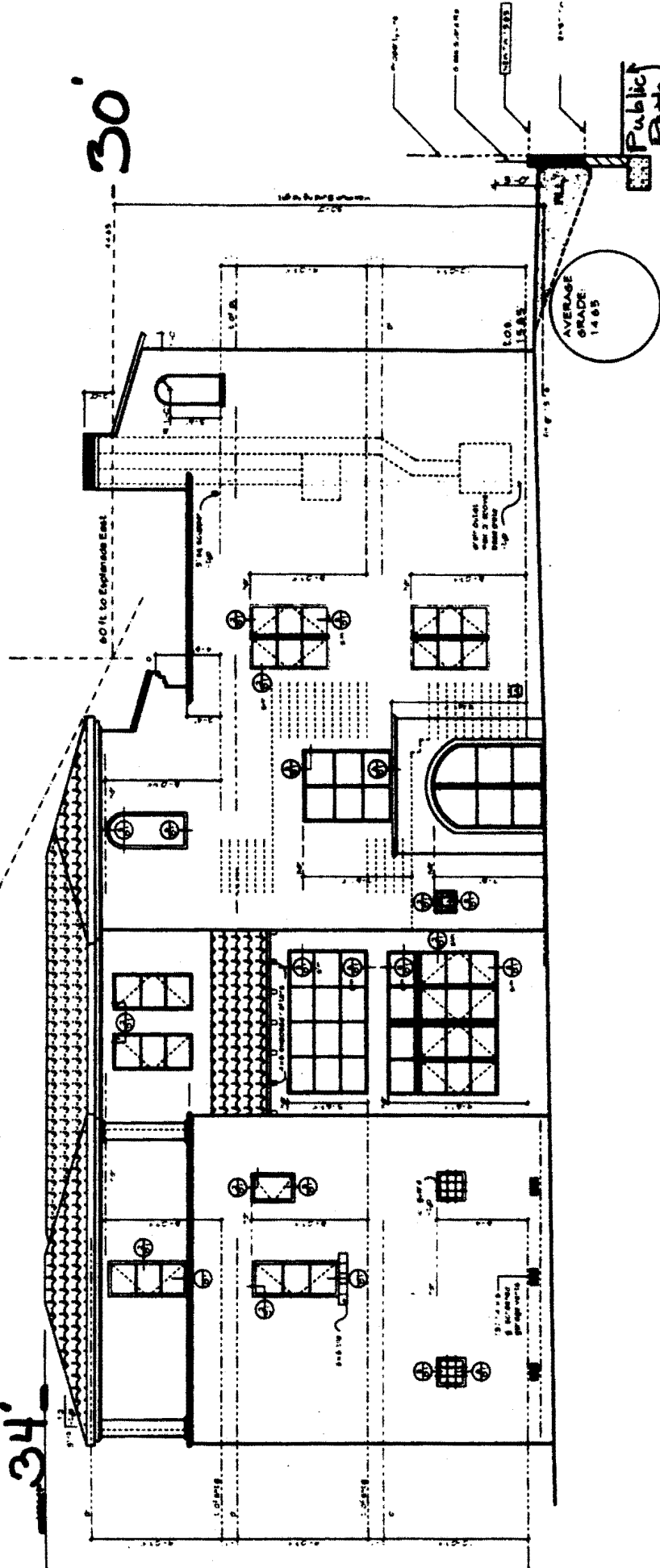
EXHIBIT # 3

PAGE 1 OF 1

45' 450' Engineer Approved Building Height

34'

30'



Public Path

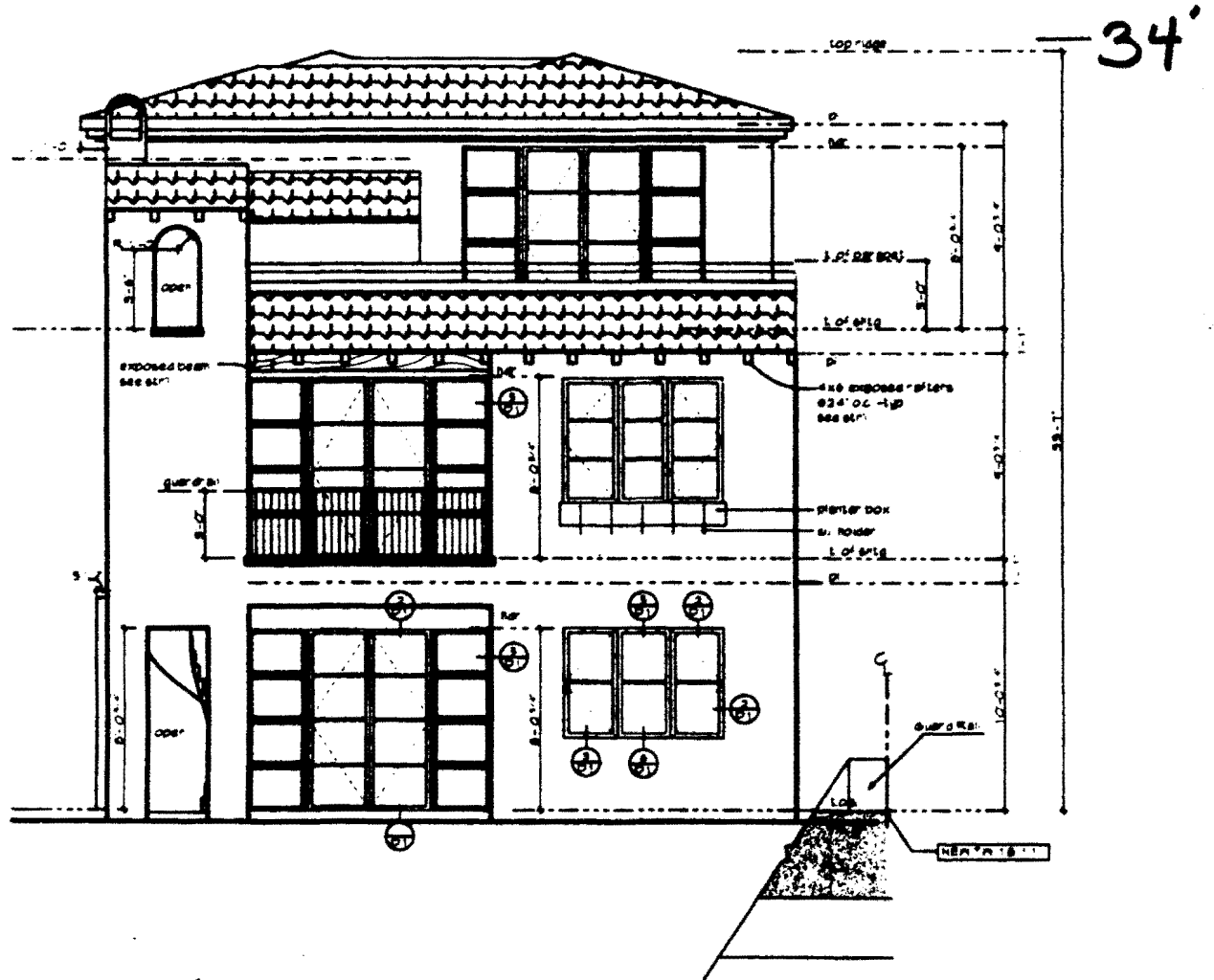
Dallona Lagoon

NORTH ELEVATION

COASTAL COMMISSION
5-99-255

EXHIBIT # 4

PAGE 1 OF 1



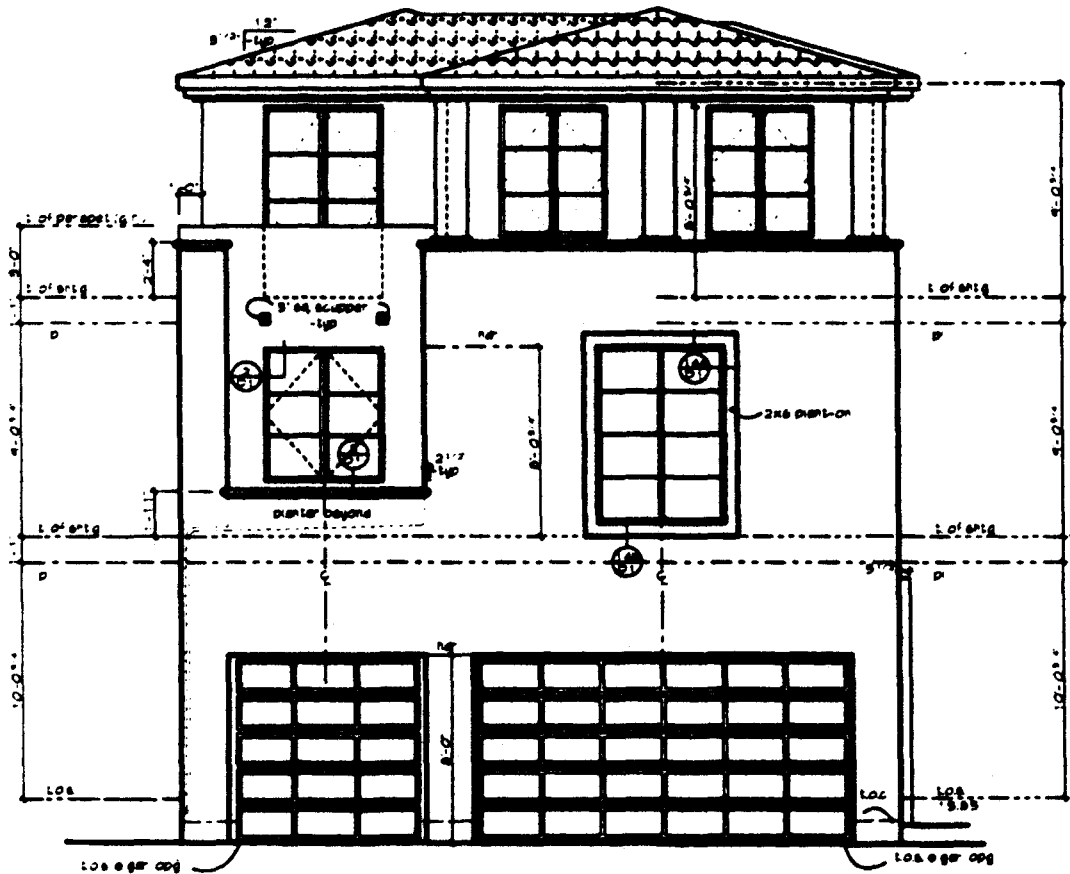
WEST ELEVATION

View from Ballona Lagoon

COASTAL COMMISSION
5-99-255

EXHIBIT # 5

PAGE 1 OF 1



EAST ELEVATION
 (Via Donte)

COASTAL COMMISSION
 5-99-255

EXHIBIT # 6
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