

CALIFORNIA COASTAL COMMISSION

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 Staff: LRO-SD
 Staff Report: 9/20/00
 Hearing Date: 10/10-13/00

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-123

Applicant: City of San Diego Transportation & Drainage Division

Description: Removal of existing private walls, patios, decks, landscaping, etc. that encroach into the Ocean Front (boardwalk) public right-of-way easement.

Site: Ocean Front Walk (boardwalk) from Santa Barbara Place to Pacific Beach Drive, Mission Beach, San Diego, San Diego County.

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDPs #6-99-90 and 6-99-145; Final EIR SCH No. 97011080 - 5/11/98.

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed encroachment removals with conditions that address access and staging areas, and future development. Over the years, the adjacent private residences have developed decks, patios and other accessory improvements in the public right-of-way of Ocean Front Walk. The proposed permit to remove these private encroachments from the public right-of-way will allow for a future expansion of the existing public boardwalk. No short or long-term impacts to coastal resources will result from the removal of the accessory improvements in the boardwalk right-of-way.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-00-123 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. **Storage and Staging Areas/Timing of Construction.** As proposed, the applicant shall comply with the following:
 - a. The existing boardwalk shall remain open to two-way traffic throughout the encroachment removal activities.
 - b. No overnight storage of equipment or materials shall occur on public parking spaces with the exception of a 2,500 sq.ft. area (10 parking spaces maximum) located in the southeast corner of the Belmont Park south parking lot, which may be used only by the City of San Diego. The staging site shall be removed and/or restored immediately following completion of the development.
 - c. The City shall not perform any of the encroachment removal work between Memorial Day weekend and Labor Day of any year; however, private homeowners may undertake work on individual encroachments during the summer season.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director.

No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Future Development. This permit is for removal of encroachments in the public right-of-way adjacent to the existing boardwalk on Ocean Front Walk. All other development proposals for the site such as reconstruction of fences and patios, shall require Coastal Commission approval through a coastal development permit or an amendment to this permit, unless such development is exempt from permit requirements under section 30610(a) of the Coastal Act and section 13250 of the California Code of Regulations.

3. Export of Graded Material. All material removed from the project site must be disposed of at a legal disposal site, dumpster, or trash collection facility.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The City of San Diego is proposing to remove all of the existing private improvements/accessory structures, including walls, patios, decks, landscaping, etc. which currently encroach into the 12-foot wide Ocean Front Walk right-of-way easement on the inland side of the existing boardwalk, along a approximately 1 2/3 mile stretch from Santa Barbara Place south to Ventura Place, in the Mission Beach community of the City of San Diego. The encroachments are being removed to allow for a future eastward expansion of the boardwalk. The City is obtaining the permit, but requiring that the individual property owners remove the encroachments; however, if the homeowners do not comply with the City's order, the City will remove the encroachments at the homeowners' expense.

The Ocean Front Walk boardwalk was originally constructed in 1928, and runs along the western side of Mission Beach from the South Mission Beach Jetty north approximately 2.36 miles to Thomas Avenue in the community of Pacific Beach. The existing concrete walkway at the project location is approximately 11 feet wide, with a seawall/bulkhead on the seaward side, and a 12-foot wide right-of-way easement east of the walkway. West of the seawall is sandy beach. There are currently a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the 12-foot wide public easement.

The subject permit application represents the second application by the City of San Diego for removal of private accessory improvements that encroach into the public boardwalk. The first coastal development permit (CDP #6-99-90) was approved by the Commission on 8/12/99 for removal of the encroachments from Ventura Place (just north of Belmont Park) to Santa Barbara Place to the north (approximately 710 linear feet). The subject permit application encompasses a much larger area which extends approximately 39 blocks from Santa Barbara Place north to Pacific Beach Drive which is the boundary

between the Mission Beach and Pacific Beach communities. A related permit, CDP #6-99-145, was also approved by the Commission on 2/18/00 for construction of walls, fences, planters and patio areas on the seaward side, and within the private property lines, of the beachfront residences just inland of where the private encroachments had been required to be removed pursuant to CDP #6-99-90.

The proposed project requires a coastal development permit because it involves the removal of significant, non-attached structures on property located between the sea and the first public road. The boardwalk is located in an area of the Commission's original jurisdiction, therefore, Chapter 3 of the Coastal Act is the standard of review.

2. Public Access/Recreation. 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 30212 of the 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 except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway....

Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 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.

The existing Ocean Front Walk boardwalk is a recreational facility heavily used by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. The City has for many years contemplated expansion of the boardwalk, and thus, has required property owners adjacent to the boardwalk to obtain encroachment removal agreements for the improvements in the easement which state that the property owner must remove or relocate the encroachments within 30 days of notice by the City.

In reviewing new development adjacent to the boardwalk, the Commission has been similarly concerned with the potential for the elimination of right-of-way area available for any future expansion of the boardwalk. Therefore, the Commission has approved numerous permits for new development along Ocean Front Walk in the past only with the finding that the development would not impact public access because either: 1) no improvements in the easement were proposed, or 2) an encroachment removal agreement was obtained from the City (#6-98-26; #6-97-76; #6-94-138; #6-94-115; #6-91-214; #6-91-89; #6-89-343).

The proposed project would prepare the subject site for a landward expansion of the boardwalk. Thus, the project would permit the future expansion of a significant recreational and access facility, consistent with the public access and recreation policies of the Coastal Act. However, because the site is used so heavily, particularly in the summer months, construction activity that impeded use of the boardwalk would have a significant adverse impact on public access and recreation.

The City of San Diego has proposed maintaining two-way access on the boardwalk at all times during the encroachment removals. In addition, the City has indicated that although some traffic control might be necessary at the street ends adjacent to the boardwalk, no street closures would be permitted for the removal activity. With regard to staging and storage of equipment, the City has indicated that if a private property owner removes the encroachments, the City requires that a privately owned area be used for staging and storage. Given the nature of the encroachments (planters, landscaping, patios, decks, etc.) it is not anticipated that a substantial area would be required for staging. Typically, the Commission restricts work on public recreational areas to outside the summer season, to avoiding impacts to the public during the time of highest demand for recreation and public beach access. However, in the case of the proposed project, since the neither access to the boardwalk nor any other public area would be impacted by removal of encroachments by private property owners, there is no need to restrict the timing of the work under this scenario.

In contrast, for any encroachments removed by the City, the City has proposed using up to approximately 2,500 sq.ft. in the southeast corner of the Belmont Park south parking lot. This larger area is necessary because the City would be removing encroachments on

multiple properties. Although this staging area would impact 10 public parking areas in a beach area with a severe parking shortage, the City has proposed limiting all work that it performs, to outside the peak summer season (Memorial Day to Labor Day). Because many of the residential units in Mission Bay are occupied by summer renters, the demand for parking in Mission Bay drops considerably in the non-summer season. Thus, temporarily usurping 10 parking spaces is not expected to significantly impede the public's ability to access the beach. In order to avoid impacts on coastal access, the applicant proposes not to involve the use of more than 10 parking spaces for construction staging, to keep the boardwalk open during the removal activities, and not to perform any work during the summer season. Special Condition #1 requires the applicant to implement the proposed storage and staging/timing of construction measures. Thus, the removal activities will not adversely impact public access or recreation.

As a result of the removal of the encroachments, some individual homeowners may want to rebuild smaller patios or decks, relocate fences or undertake other reconstruction activities in their yards. Section 13250 of the Commission's Administrative Regulations state that on property located between the sea and first public road, improvements to any significant non-attached structures such as garages or fences, require a coastal development permit. Any such permits would be processed separately and individually. Special Condition #2 advises that improvements to significant detached structures in the subject location may require a coastal development permit, and the Commission office should be contacted to ensure that no development takes place without a required permit. Special Condition #3 advises that all material removed from the sites must be properly disposed of.

In summary, the proposed project would remove private encroachments in an existing public right-of-way. Although not proposed at this time, the project would allow for the future expansion of the existing boardwalk, a public recreational amenity. The project is consistent with the numerous past Commission actions on development along the boardwalk that required that the applicants obtain encroachment removal agreements for any development in the right-of-way. As conditioned, no short or long-term impacts to coastal resources are anticipated. Therefore, the proposed project can be found consistent with the public access and recreation policies of the Coastal Act.

3. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority. Section 103.0538 of the certified Planned District Ordinance (PDO) for Mission Beach requires that development or redevelopment of any lot abutting the Ocean Front Walk public right-of-way obtain an encroachment permit for any existing or proposed encroachments into the public right-of-way. The subject permit would remove the existing private improvements in the right-of-way as authorized by the

encroachment permits required by the certified PDO. The project is consistent with the certified Mission Beach Precise Plan and all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of San Diego to implement its certified LCP for the Mission Beach community.

4. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

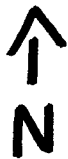
The proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring that the boardwalk remain open to traffic and the timing of construction, will minimize all adverse environmental impacts. As conditioned, there are no 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 is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

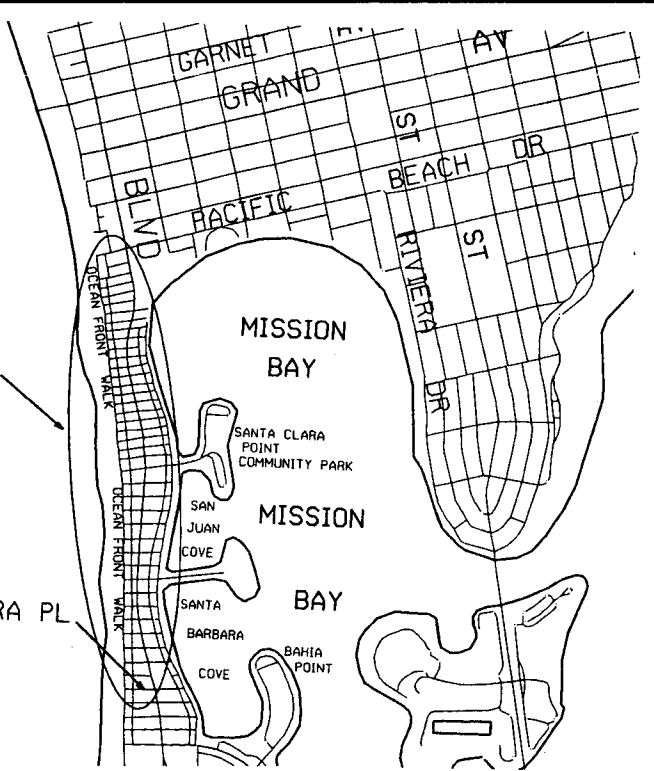
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.

5. 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.

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SITE LOCATION
SANTA BARBARA PL



Project Site

EXHIBIT NO. 1
APPLICATION NO.
6-00-123
Location Map
California Coastal Commission

LEGEND

▨ - AREA IN WHICH ALL ENCRANCHING WALLS, FENCES, PATIO DECKS AND SLABS, TREES, SHRUBBERY, GROUND COVER, PLANTERS, IRRIGATION SYSTEMS, AND MISCELLANEOUS HARDSCAPE ARE TO BE REMOVED.

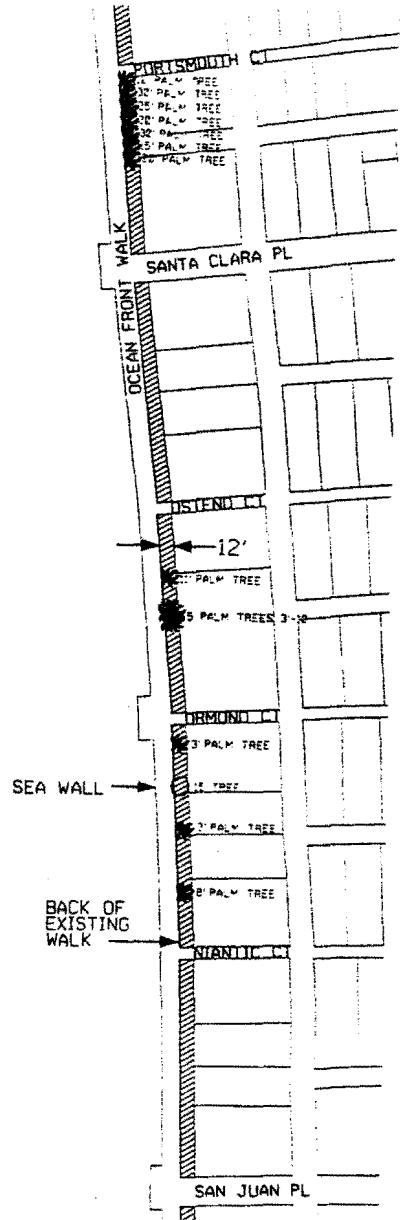
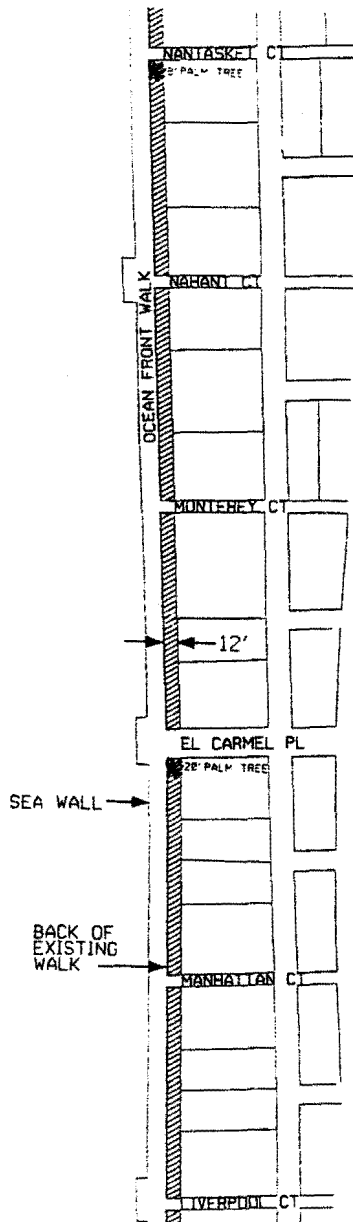
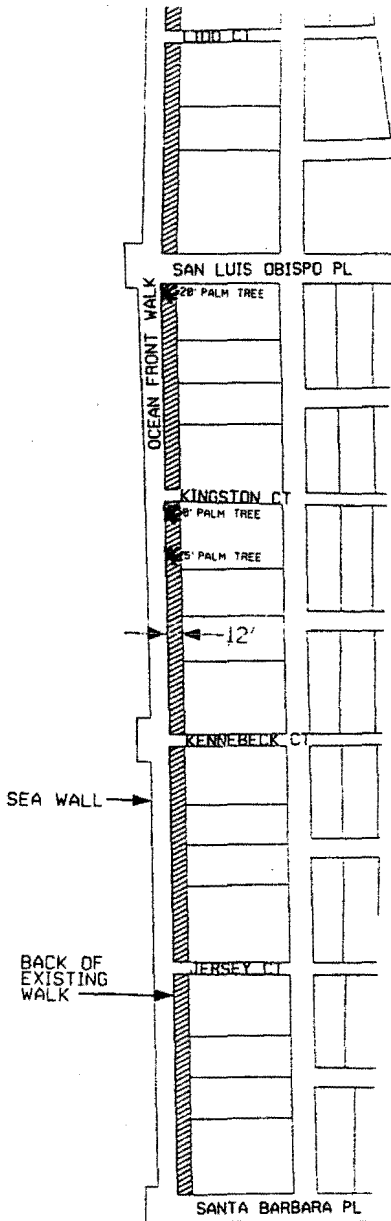



EXHIBIT NO. 2
 APPLICATION NO.
 6-00-123
 Encroachment
 Removal Plan for
 Santa Barbara Pl, to
 Portsmouth Ct.

California Coastal Commission

LEGEND

 - AREA IN WHICH ALL ENCRDACHING WALLS, FENCES, PATIO DECKS AND SLABS, TREES, SHRUBBERY, GROUND COVER, PLANTERS, IRRIGATION SYSTEMS, AND MISCELLANEOUS HARDSCAPE ARE TO BE REMOVED.

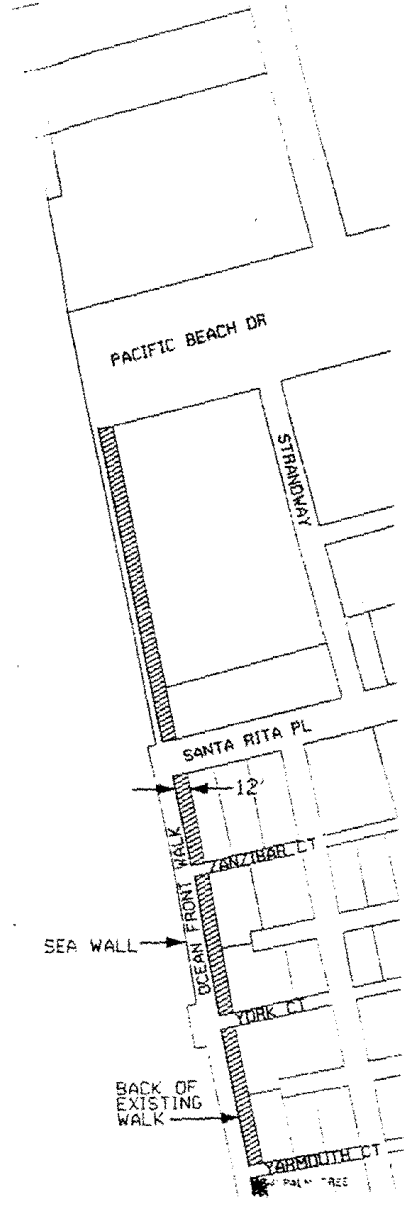
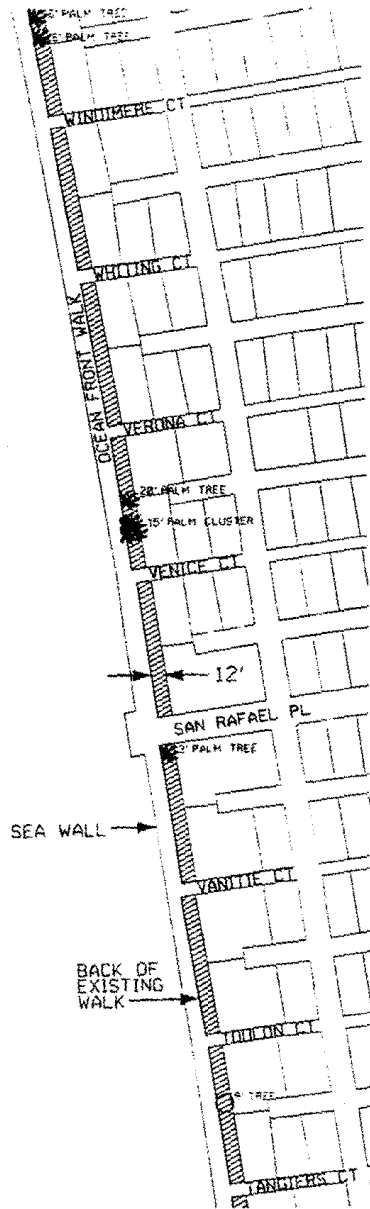
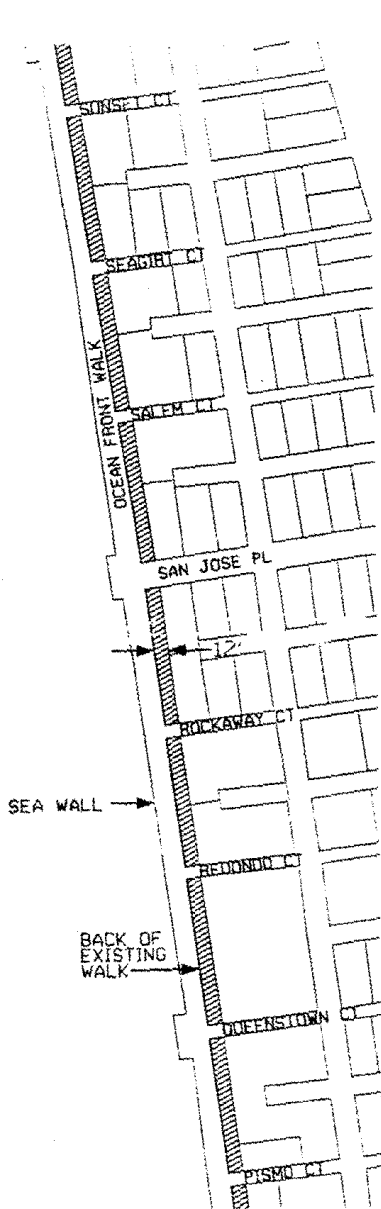



EXHIBIT NO. 3
 APPLICATION NO.
6-00-123
 Encroachment
 Removal Plan for
 Pismo Ct. to
 Pacific Beach Dr.

 California Coastal Commission

