

CALIFORNIA COASTAL COMMISSION

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 180th Day: July 23, 2000
 Staff: DL-SD
 Staff Report: January 25, 2000
 Hearing Date: February 15-18, 2000

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-145

Applicant: Bruce Demaree, et.al.

Description: Construction of decorative walls, fences, planters, and patio areas not to exceed 3 feet in height on the seaward side of beachfront residences from Ventura Place to Santa Barbara Place.

Site: 3205, 3209, 3211, 3213, 3215, 3217, 3219, 3221, 3225, 3233, 3237, 3239, 3243, 3261, 3249, 3263, 3275, 3281, 3285, 3285#6 Ocean Front Lane, Mission Beach, San Diego County. APN 423-664-22, 23; 423-664-01 though 07; 423-646-03 through 05.

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDP #6-99-90.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed improvements. The proposed walls and fences will be located entirely on public property inland of both the existing boardwalk and the public right-of-way easement east of the boardwalk. Special Conditions on the project prohibit construction staging on the existing boardwalk, and prohibit construction activities from impeding or blocking access on the existing boardwalk in any way. No opposition to the proposed wall and fence construction has been identified.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-99-145 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. Final Plans/Storage and Staging Areas. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site plans that, for each of the subject properties, clearly indicate that the walls, fences, and patios improvements approved herein are located east of the public right-of-way easement on Ocean Front Lane, and which indicate the distance between the improvements and the public right-of-way easement. In addition, said plans shall include written notes stating the following:

- a. No construction staging or storage shall occur on the existing boardwalk, and construction activities shall not impede or block access on the existing boardwalk in any way.

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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The proposed project is the construction of decorative walls, fences, and patio areas on the western side yards of the existing private residences located east of Ocean Front Walk (a boardwalk) along an approximately 710-foot long stretch from Ventura Place north to Santa Barbara Place, in the Mission Beach community of the City of San Diego. The proposed improvements would be located entirely on private property, inland of the right-of-way easement which is located between the existing boardwalk and the private residences. The walls would be a maximum of 36-inches in height as measured from Ocean Front Walk. The proposed walls would be constructed of wood, stone, brick, or other material types varying from property to property among the approximately 20 residences involved.

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 east of 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 inland of the walkway. West of the seawall is sandy beach. Historically, there have been a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the 12-foot wide public easement.

In August 1999, the Commission approved a permit for the City of San Diego to remove the private encroachments in the right-of-way at the project site from Ventura Place to Santa Barbara Place (#6-99-90). In January of this year, removal of the encroachments began. The City has indicated its intent to submit a coastal development permit application for expansion of the boardwalk into the right-of-way in the future. Draft plans for the expansion indicate the expansion would consist of an 8-foot wide walking lane on the seaward side of the boardwalk, a 12-foot 3-inch wide bicycle/skateboard lane east of that, and a 3-foot wide landscape buffer along the inland side of the expanded boardwalk, covering the remaining portion of the public easement. The proposed private improvements would be located inland of the public right-of-way, from 1 inch to several feet east of the future landscape buffer.

The proposed project requires a coastal development permit because it involves the construction 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 proposed walls and hardscape improvements would take place on the east side of the existing Ocean Front Walk boardwalk, east of the public right-of-way easement. The boardwalk is a heavily-used recreational facility frequented 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).

When the Commission approved removal of the encroachments on the subject site, it was anticipated that the private property owners would apply for a permit to rebuild the walls and fences east of the right-of-way. The proposed project does not involve any development within the right-of-way, and thus, does not require any encroachment removal agreements. However, only preliminary project plans have been submitted, indicating that the walls would be located anywhere from 1-inch to several feet east of the private property line. Because any encroachment into the public right-of-way would adversely impact the potential expansion of the boardwalk in the future, the proposed improvements are consistent with the Coastal Act only if they do not extend into the right of way for the boardwalk. Therefore, Special Condition #1 requires the submittal of final construction plans that clearly indicate the location of the proposed improvements vis-à-vis the right-of-way easement. Such plans must demonstrate that all improvements will be constructed landward of the right of way easement; no improvement or portion of any improvement shall be located in the right of way easement.

As conditioned, the new walls and patios will be consistent with a future expansion of the boardwalk and are not expected to have any adverse impacts on public recreation or access. However, because the site is used so heavily, particularly in the summer months, construction activity that impeded use of the boardwalk could have a significant adverse impact on public access and recreation.

Given the nature of the proposed improvements (walls, fences, patio, etc.) it is not anticipated that a substantial area would be required for construction activities or staging and storage. Special Condition #1 prohibits any staging and storage for the development occurring on the existing boardwalk occur on private property, and prohibits any closure of the boardwalk or public area for construction activities. 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, as conditioned, neither access to the boardwalk nor any other public area would be impacted by construction of the improvements, there is no need to restrict the timing of the work.

In summary, the proposed project involves the construction of walls and patios on private property east of the existing boardwalk and the public right-of-way. Although expansion

of the boardwalk is not proposed at this time, the proposed development is consistent with a future expansion of the existing boardwalk, a public recreational amenity. 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. Visual Quality. Section 30251 of the Coastal Act states in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The existing residences along the boardwalk vary widely in architectural style and appearance, and the proposed walls would be constructed of wood, stone, brick, or other material types varying from property to property. The project site is not adjacent to a lagoon or natural park area of the type where the Commission typically requires development to be of colors or designs compatible with or subordinate to the character of the surrounding natural environmental. Development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied, and the 3-foot high walls and patio improvements, whether wood, brick, cement, or other material chosen by the individual property owners, is not expected to have an adverse impact on the visual quality of the neighborhood. Therefore, the Commission finds the proposed development consistent with the visual protection policies of the Coastal Act.

4. 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 involve constructing walls, fences and patios entirely on private property east of the right-of-way, consistent with 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.

5. 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.

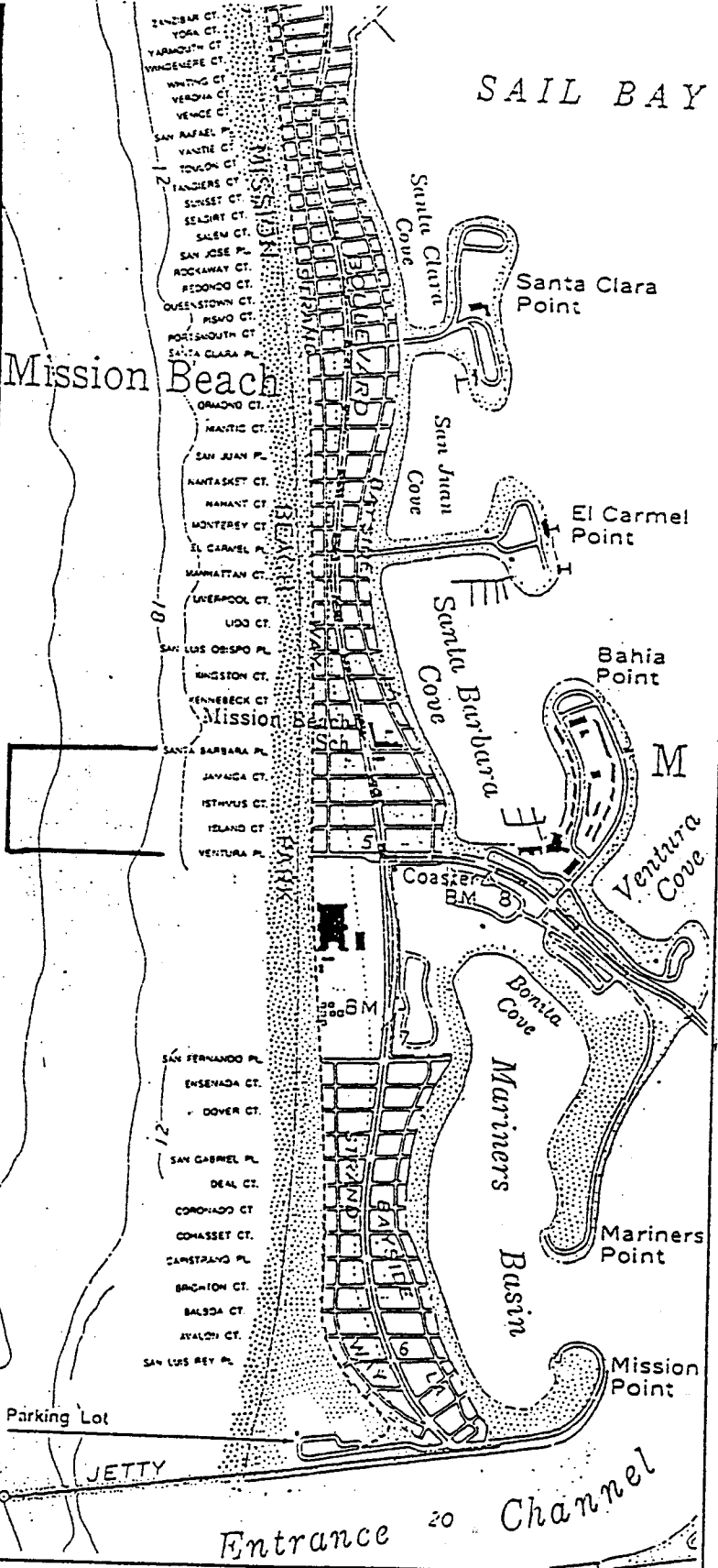
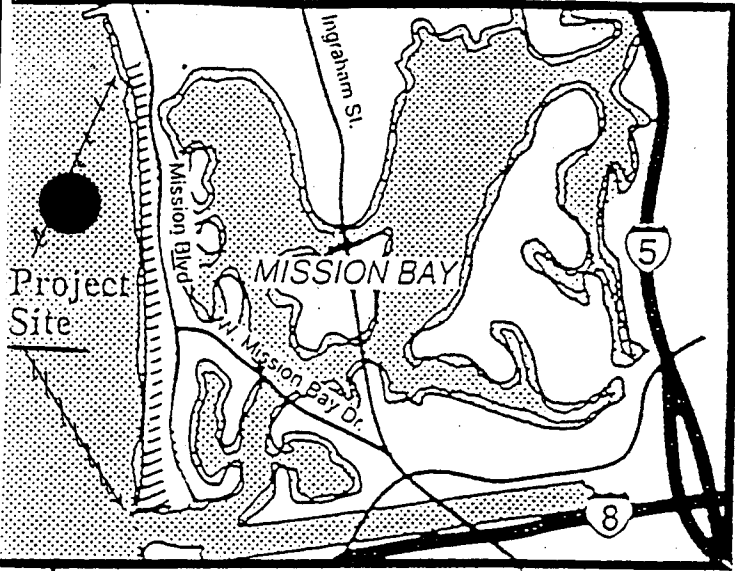
The proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring the construction activities take place on private property and not impede public access, will minimize all adverse environmental 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. Compliance. All development must occur in strict compliance with the proposal as 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 development during construction, 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.

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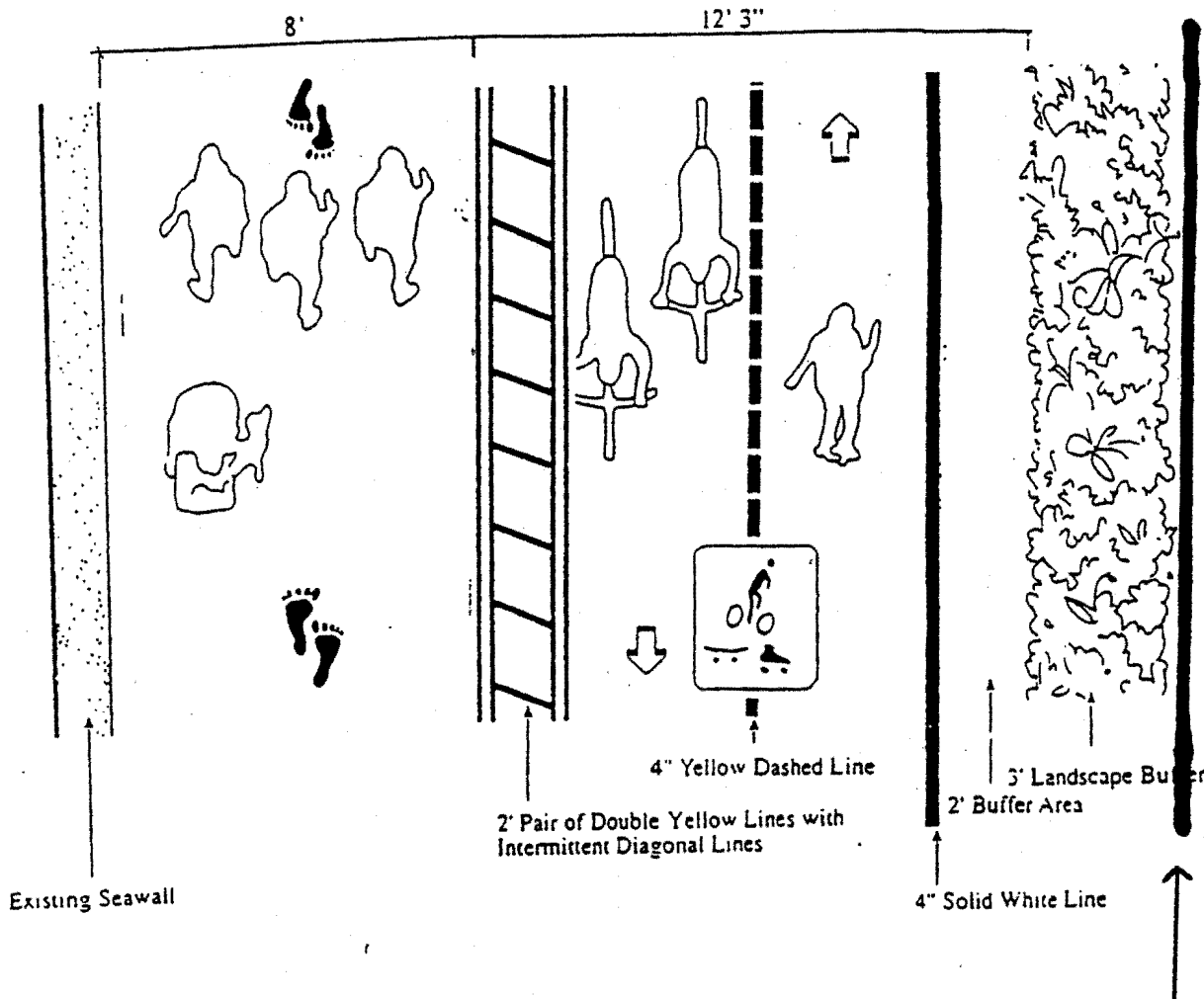


N
 Not to Scale

EXHIBIT NO. 1
APPLICATION NO.
6-99-145
Location Map




Plan View



Each Wall/fence would be located East of the Landscaped buffer on private property.

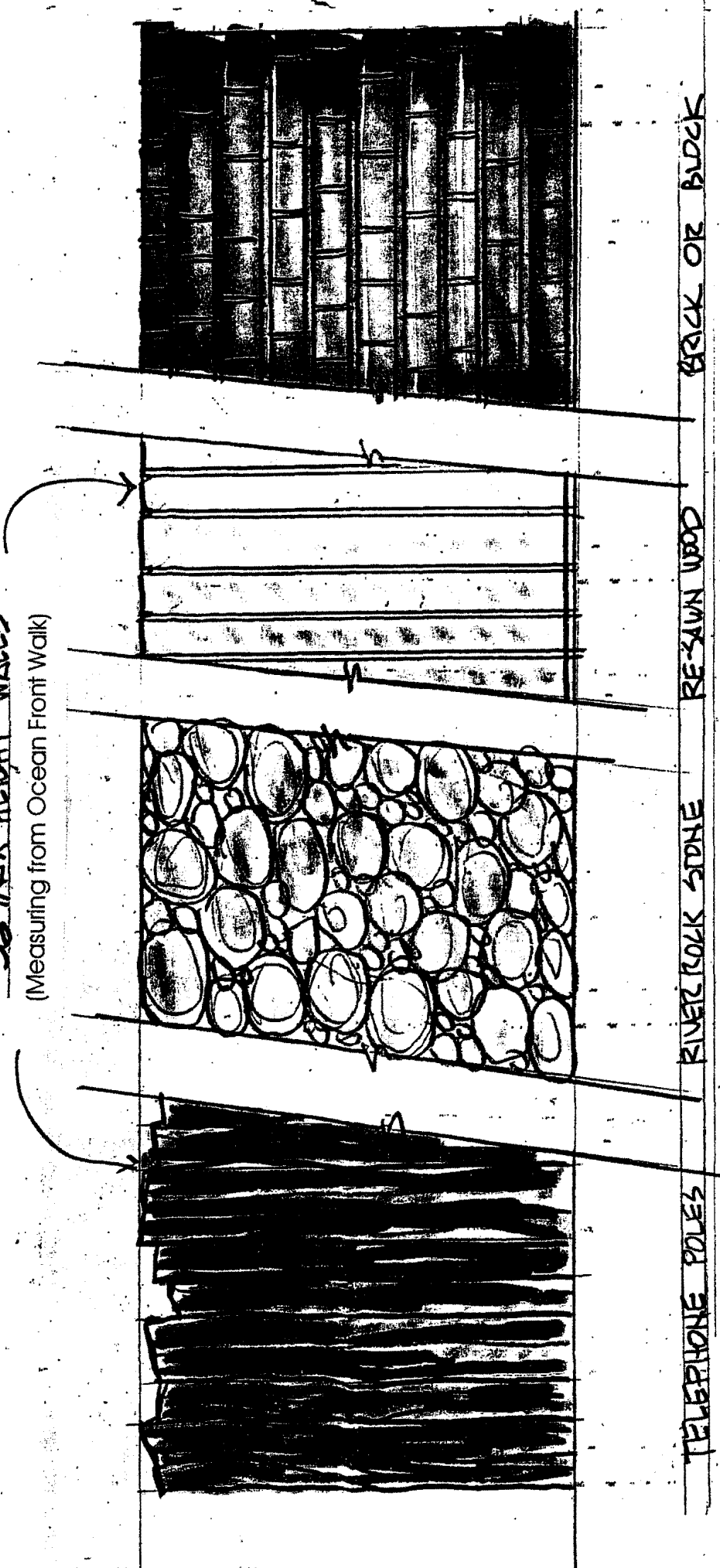
Materials: Types of material for the fences and walls may vary from parcel to parcel. (wood, block wall, railroad ties, etc.)

Location: On Private property East of the 12 foot right away. (Inch to a few feet Eastward)


EXHIBIT NO. 2
APPLICATION NO.
6-99-145
Site Plan
 California Coastal Commission

36" MAX HEIGHT WALLS

(Measuring from Ocean Front Walk)



TYPICAL WALL MATERIALS - FRONT + SIDE ELEVATIONS

EXHIBIT NO. 3
APPLICATION NO.
6-99-145
Typical Wall
Construction
 California Coastal Commission

