

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
 3111 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 521-8036

## RECORD PACKET COPY



Staff: EL-SD  
 Staff Report: January 11, 2000  
 Hearing Date: February 15-18, 2000

# Fri 9a

## REVISED CONDITIONS AND FINDINGS

Application No.: 6-99-54

Applicant: Randolph Rhett

Agent: Dominy & Associates

Description: Demolition of five existing cottages totaling 2,818 sq.ft. and construction of five new, one-story plus loft, 558.5 sq.ft. cottages (totaling 2,792.5 sq.ft.) on an 8,011 sq.ft. parcel.

Lot Area	8,011.0 sq. ft.
Building Coverage	2,792.5 sq. ft. (35%)
Pavement Coverage	2,738.0 sq. ft. (34%)
Landscape Coverage	2,480.5 sq. ft. (31%)
Parking Spaces	5
Zoning	R-2 12.5 dua
Plan Designation	High Density Residential 12.5 dua
Project Density	27.1 dua
Ht abv fin grade	15 feet

Site: 931-939 Ocean Avenue, Del Mar, San Diego County. APN 300-171-01

Substantive File Documents: Certified City of Del Mar LCP Land Use Plan and draft Implementing Ordinances; Planning Commission Resolution No. PC-98-18; Design Review Board Resolution No. DRB-98-84

### Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on June 10, 1999, approving the development with a special condition addressing landscaping.

Date of Commission Action: June 10, 1999

Commissioners on Prevailing Side: Desser, Dettloff, Estolano, Flemming, Kehoe, Reilly and Chairman Wan

**STAFF RECOMMENDATION:**

I. The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission adopt the revised findings in support of the Commission's action on June 10, 1999 concerning approval with conditions of Coastal Development Permit #6-99-54.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the *June 10, 1999* hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for *its approval with conditions of Coastal Development Permit #6-99-54* on the grounds that the findings support the Commission's decision made on *June 10, 1999* and accurately reflect the reasons for it.

**II. Standard Conditions.**

See attached page.

**III. Special Conditions.**

The permit is subject to the following condition:

1. **Final Landscaping Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a detailed final landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible. The plan shall require the preservation of all mature trees on the site.

The permittee shall undertake development in accordance with the approved final landscaping plan and submit a written commitment that all planted materials shall be maintained in good growing condition. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans

shall occur without an 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. Commission Action/Detailed Project Description. On June 10, 1999, the Commission approved the following described development with a special condition above. The applicant is proposing to demolish five existing cottages on one legal lot, which were constructed as rental units in 1929. The applicant then proposes to construct five new cottages, maintaining the general style and scale of the existing ones. The existing cottages range in size from 396 sq.ft. to 611 sq.ft., having a combined total of 2,818 sq.ft. The five proposed replacement cottages would be identical, each 558.5 sq.ft. in size including a loft, for a total of 2,792.5 sq.ft. The existing cottages are all approximately 16 feet in height, and the proposed new cottages would measure just under 15 feet to the top of the roof. There are five unimproved parking spaces currently available, which occupy area both on the subject site and within public right-of-way; the parking area would be reconfigured and paved, but five parking spaces would remain.

The site is located on the south side of 10<sup>th</sup> Street, at its western terminus just east of the railroad right-of-way. The site address is Ocean Avenue, which is not an improved public street but rather a partially-vegetated linear strip of land west of the private properties. Within that strip, there is a public trail which provides ocean and shoreline views of the Del Mar coast. The portion of trail west of the subject site is paved, although the trail is unpaved along most of its length. The paved trail will remain.

The cottages, as they exist today, are nonconforming with several provisions of the Del Mar Municipal Code and the Uniform Building Code. Under the current Municipal Code, the existing development is nonconforming with respect to density, floor area ratio, rear yard, interior and street side yard setbacks and parking; also, portions of the development encroach beyond the property line onto adjacent private and public property. As proposed by the applicant, the replacement cottages would eliminate the floor area ratio nonconformity, all setback nonconformities, the parking nonconformity and the encroachment onto adjacent private lands. However, the proposed redevelopment project would still be nonconforming with respect to density, since the current land use plan designation and zoning would allow only two units. The proposal is also still nonconforming with respect to parking, in that portions of two of the proposed parking spaces would encroach onto public right-of-way and all the parking spaces are open rather than enclosed.

The City of Del Mar has a certified land use plan, and the Coastal Commission has recently certified the implementation plan with suggested modifications. The modifications have not yet been accepted by the City Council; thus, permit jurisdiction has not yet been transferred to the city. Therefore, the Commission retains permit

jurisdiction over the entire city. Chapter 3 of the Coastal Act is the standard of review for coastal development permits, with the certified local coastal program providing guidance.

2. Public Access /Intensity of Development. The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies, which address the protection of public access and recreational opportunities, are most applicable to the proposed development, and state in part:

Section 30210

In carrying out the requirements 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 30252

The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking ...

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The subject site is located between an alley and 10<sup>th</sup> Street on Ocean Avenue, which is not an improved public street, but consists of landscaping and a narrow paved sidewalk. The designated first public road is Stratford Court, which is one block east of the site. West of the site is the public trail which extends continuously north along the blufftop to 12<sup>th</sup> Street and south beyond 4<sup>th</sup> Street, with additional, non-contiguous segments further north and south as well. West of the public trail are the railroad right-of-way and the ocean bluffs. There are also historic, informal walking/jogging paths paralleling the railroad track on both the east and west side of the track, within its right-of-way. In recent years, the railroad, out of concern for public safety, has posted "no trespassing" signs along the right-of-way and has cited members of the public for using the posted area. However, the informal paths still receive a fair amount of use. In addition, there is evidence that people cross the tracks and make their way down the face of the bluffs to the beach below.

The closest formal beach access exists to the north of the subject site at 15<sup>th</sup> Street, a walk of approximately six city blocks, or roughly a third of a mile, from the subject site. This

formal access can be reached from 10<sup>th</sup> Street by walking along the streets or by walking on the public trail to the west of the site. To the south, the nearest formal beach access is approximately a mile away. There are also views of the ocean available to the public from the existing paved public trail immediately west of the subject site and views of the ocean from the street end of 10<sup>th</sup> Street. Thus, 10<sup>th</sup> Street provides parking for people to access the beach, to access the blufftop trail, and to enjoy ocean views.

As stated, Section 30252 of the Coastal Act requires, among other things, that new development maintain and enhance public access by providing adequate parking on-site. In its review of the subject proposal to demolish and replace five existing rental cottages, the City determined that seven parking spaces would be required for the existing development, but only five spaces are required for the proposed new cottages, based on its parking standards for multi-family housing. The applicant is proposing five spaces, to replace the five spaces currently serving the site. Although the proposed units are quite small (one bedroom plus a small loft), each unit can accommodate more than one tenant and it is likely that more than one tenant will live in one or more of the units. Therefore, it is possible that one or more units will have tenants with more than one vehicle. Since only five vehicles can be accommodated in the proposed site configuration, any additional vehicles would have to park on the public street, usurping space that would otherwise be available for public parking. The permissible density under the certified land use plan would allow only two units on this site. However, since these units could be significantly larger than the proposed cottages, accommodating perhaps several adults/drivers per unit, it is uncertain whether the actual parking needs for two large units would be less than those for five small cottages.

The City of Del Mar ordinances provide that, when existing nonconforming development is demolished, all nonconforming rights are extinguished. New development must be fully consistent with all Municipal Code (zoning) requirements; in this particular case, only two units would be allowed on the subject site. However, the City of Del Mar has also adopted a redevelopment ordinance specifically designed to encourage property owners to reduce existing nonconformities without relinquishing rights. Under this ordinance, a property owner can completely demolish and rebuild as long as the City can make findings that existing nonconformities are not expanded and that there is a public benefit outweighing any potential public harm. The City used this ordinance to approve the proposed development, finding that existing Municipal Code nonconformities were not increased, but were, in fact, significantly reduced. In addition, the City found a public benefit in eliminating the Uniform Building Code nonconformities, which the City considers a threat to public safety. The City also found that the new development would carry on the historic value and community charm of the existing cottages, although the City has no provisions at this time for designating residential structures as historic sites. For these reasons, the City approved a project under its redevelopment ordinance that could not be approved under the regular Municipal Code provisions for new multi-family development, due to insufficient parking and inconsistency with allowed density.

The Commission concurs with the City's action, and finds that the proposed development would not result in adverse impacts on public access. The public can park on 10<sup>th</sup> Street

and walk to the beach via Stratford Court and 15<sup>th</sup> Street, a distance of approximately a third of a mile. The public can also park along 10<sup>th</sup> Street and walk along the public trail west of the site, which provides panoramic views of the ocean and portions of the Del Mar coastline as well as access to the 15<sup>th</sup> Street beach access. Public parking availability on 10<sup>th</sup> Street would be increased by the applicant's reconfiguration of on-site parking. Currently, the tenants' cars pull directly into the site, at a ninety-degree angle to the street, across the entire site frontage. Under the proposed reconfiguration, cars will enter the site via a driveway, allowing curb to be installed along most of the project site and two on-street public parking spaces created along the new curb.

The existing development is deficient in parking by two spaces under the City's zoning requirements, because two of the previously-one-bedroom units were expanded into two-bedroom units. Although the parking standards in the land use plan certified by the Coastal Commission as consistent with Chapter 3 of the Coastal Act do not specifically address lofts, they require one parking space for studios or one-bedroom units and two parking spaces for two-bedroom units. Thus, the five proposed one-bedroom units would require five parking spaces, which should all be in enclosed in garages under the City's code. Since a loft provides additional living and sleeping area, without actually being a second bedroom, the Commission finds there may be instances when strict application of the code requirements is inappropriate and additional parking should be required to maximize public beach and recreational access. In the subject case, however, due to the small size of the proposed units and the minimal amount of loft area the City counts as living space (32 sq.ft.), the Commission finds that five parking spaces is consistent with the intent of Section 30252 of the Coastal Act, which requires new development to provide adequate parking. Whether parking spaces are open or enclosed is not a matter of statewide concern, and the encroachment of portions of two parking spaces into public right-of-way represents a reduction over the encroachments that currently exist. Therefore, the Commission finds the proposed development is consistent with the cited Chapter 3 policies of the Coastal Act.

3. Visual Resources. The following policy of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

Section 30251

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 subject site represents the first row of development inland of the railroad right-of-way, and is adjacent to an improved public sidewalk used for recreational purposes. The proposed project would demolish and rebuild five existing rental cottages. The redevelopment plan would result in five identical one-story plus loft cottages, with decks

and landscaped yards facing the public sidewalk. The proposal includes the retention of as much existing landscaping as possible, including the retention of the mature trees, and replacement of any landscaping that would be removed. A special condition is included to require a final landscaping plan assuring compliance with this proposal, including the retention of all mature trees on the site. Thus, after redevelopment, the site will not appear significantly different than today and the Commission finds the proposed development, as conditioned, consistent with Section 30251 of the 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 for the proposal, as conditioned.

The City of Del Mar has a certified land use plan which designates the subject site for High Density Residential development at a density of 12.5 dwelling units per acre (dua). The existing R-2 Zone carries the same density requirement. These designations would allow two units on the site. Based on the development patterns of the neighborhood, this is usually accomplished with two large detached single-family residences on a parcel, with two parking spaces typically required for each unit. In the subject proposal, the applicant would retain an existing density nonconformity of five units, which equals 27.1 dua, more than double the density allowed under the existing zone and the land use designation certified by the Coastal Commission. However, although the proposed development maintains a nonconforming density, the Commission finds that, due to the very small size of the proposed cottages, the development is unlikely to result in a greater number of residents on the site than could reasonably be expected to occur with two significantly larger units.

As currently certified, the City of Del Mar LCP Land Use Plan does not include any policies addressing existing nonconforming structures or uses. Although not formally submitted for certification at the time the Commission acted on this permit, the City has recently obtained certification of its implementation plan (November, 1999). However, this document also does not include any policies addressing nonconformities. Furthermore, neither the certified land use plan nor implementation plan include the City's redevelopment provisions that were used in the local discretionary reviews to allow the City to approve the proposed development. However, the Commission does not find that this would seriously prejudice the LCP process in this particular case, since the proposed development will eliminate many existing nonconformities and bring the project site into much closer conformity with the certified planning documents. At the same time, it will maintain the existing community character and historical ambience represented by the existing small cottages. In addition, since the City of Del Mar does not have an effectively-certified LCP at this time, Chapter 3 of the Coastal Act is the standard of review for this permit action. In previous findings, the Commission has found the proposed development, as conditioned, consistent with all applicable policies of Chapter 3.

Although the Commission finds the proposed development, as conditioned, consistent with Chapter 3 of the Coastal Act, it would like to raise the issue of potential cumulative impacts with respect to the City's redevelopment ordinance in general. It is not known how many other sites in Del Mar may be eligible to use the City's redevelopment ordinance, but the City's representative has indicated the ordinance has only been used once before in the ten years it has been in existence. It is also not known how many potential redevelopment sites may be located in critical nearshore areas. The age of much existing development throughout the City, including in the area west of Camino del Mar, would suggest that there may be a significant number of sites with existing Municipal Code and Uniform Building Code nonconformities. If the redevelopment ordinance were to be applied to even a few sites in sensitive locations from an access perspective, the cumulative impact on available public beach parking could be significant. Moreover, the City, when it obtains coastal development permit authority in the near future, will not be able to use the redevelopment ordinance in its permit review, since the ordinance is not part of the certified LCP. The appropriate means for the Commission and the City to address this issue is through the LCP amendment process. If the City wants to include these provisions as land use plan and implementation plan amendments, any future LCP submittals addressing redevelopment should include an analysis of the likely extent of applicability and potential cumulative effects.

5. 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 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.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the visual resources, access and community character policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might 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:

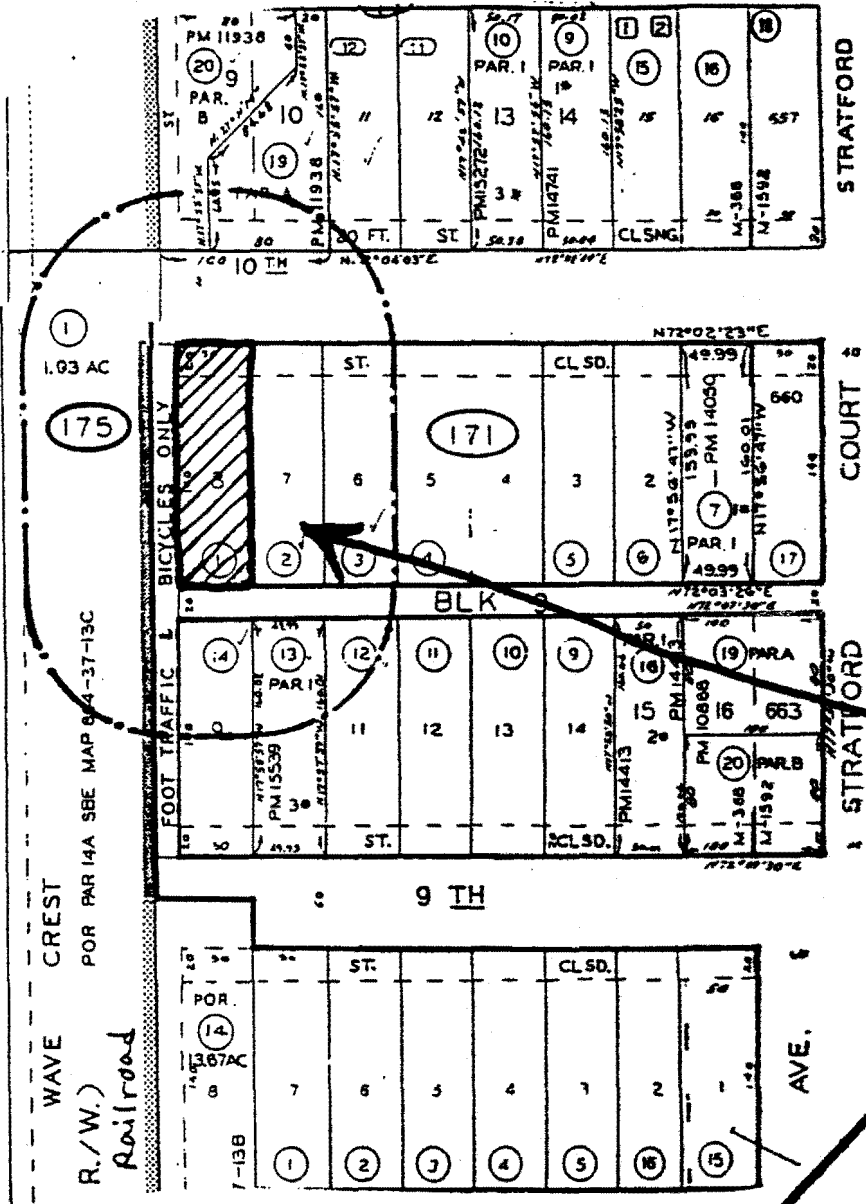
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.



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.

6-99-54

Pacific Ocean



Site

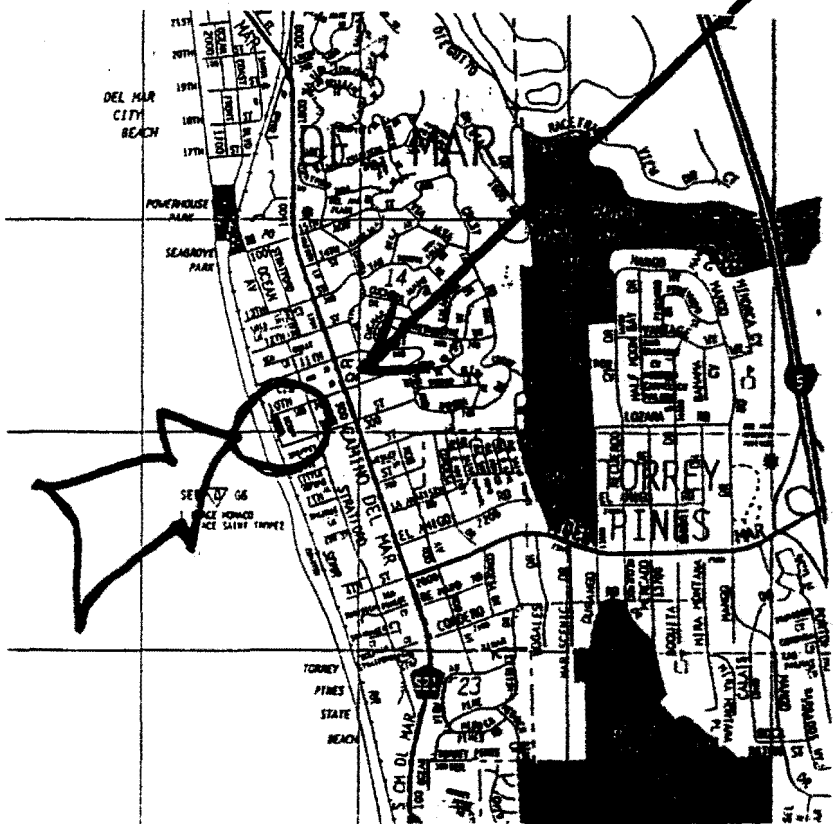


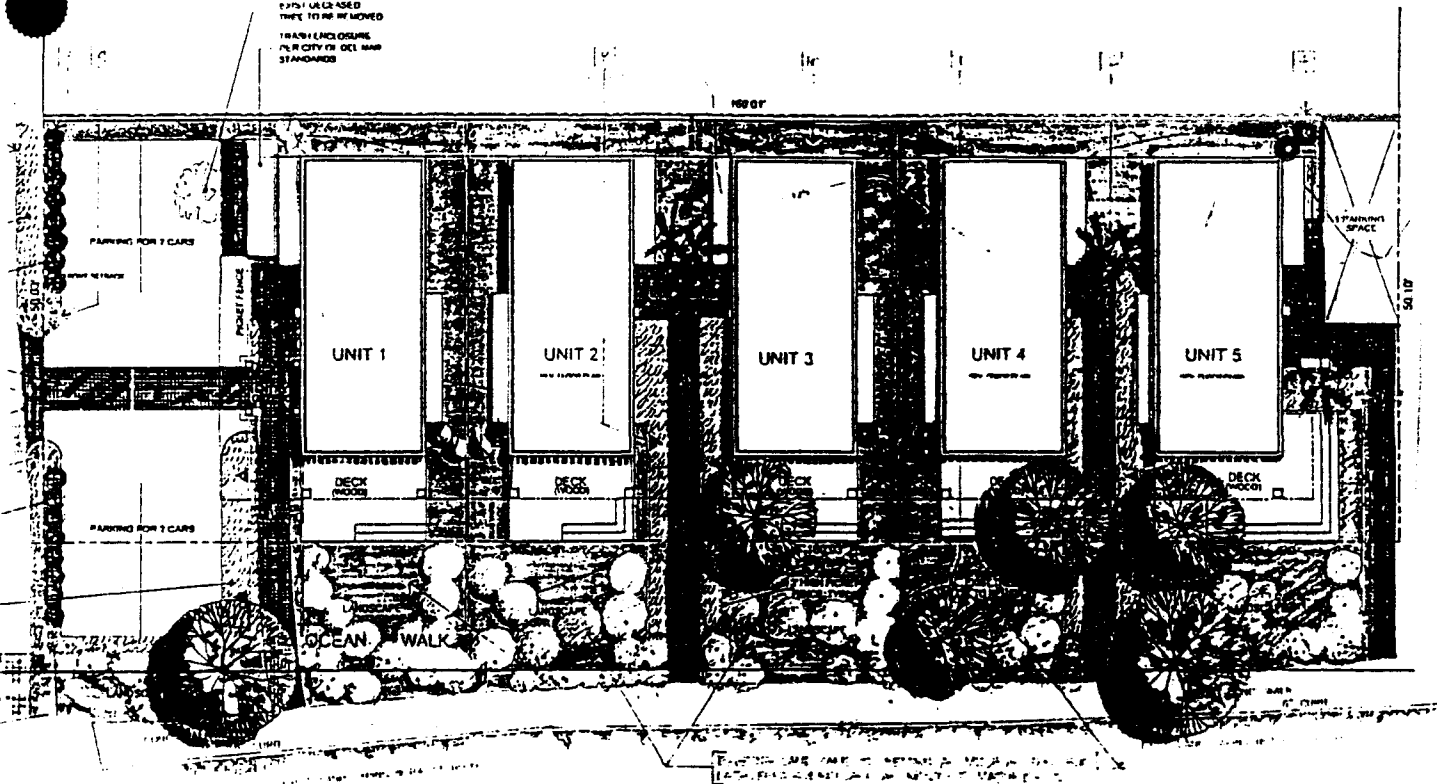
EXHIBIT NO. 1
APPLICATION NO.
<b>6-99-54</b>
Location Maps
California Coastal Commission

6-99-54

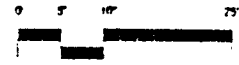
NOT TO BE USED  
UNLESS SPECIFIED  
OR CITY OF OCEAN  
STANDARDS

10TH STREET

ALLEY



**PROPOSED SITE PLAN**



**SITE ELEVATION - WEST**

EXHIBIT NO. 2
APPLICATION NO.
6-99-54
<i>Site Plan and</i>
California Coastal Commission
<i>elevations</i>

