

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 641 - 0142

Filed: 12/23/99
 49th Day: 2/10/00
 180th Day: 6/20/00
 Staff: MB-V *OK*
 Staff Report: 1/26/00
 Hearing Date: 2/15-18/00

**RECORD PACKET COPY**

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Ventura

DECISION: Approval with Conditions

APPEAL NO.: A-4-VNT-99-280

APPLICANT: Mr. & Mrs. Lee Weisel

PROJECT LOCATION: 3086 Solimar Beach Drive, Solimar Beach (Ventura County)

PROJECT DESCRIPTION: Construction of a two story, approximate 3,700 sq. ft. single family residence extending 7 to 17 ft. further seaward to replace an existing one story, approximate 1,200 sq. ft. single family residence. Also, merge two lots and allow a 6 inch front yard setback off a private road.

APPELLANT: Carl Ward

SUBSTANTIVE FILE DOCUMENTS: County of Ventura: Local Coastal Program and administrative record for Appeals 429 and 439 and Parcel Map Waiver 908 (PMW 908) and Variance 5038 (V-5038).

Summary of Staff Recommendation: Substantial Issue Exists

As approved by the County of Ventura, the proposed residence would extend 7 to 17 feet further seaward than the existing residence it will replace. The appellant alleges that the new, larger residence will adversely affect public and private views.

The Staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed for the following reason: the proposed residence is inconsistent with the applicable policies and related zoning standards of the County's certified Local Coastal Program.

I. Appealability to the Commission

The proposed project is located seaward of the Old Coast Highway, and a private road seaward of the Highway (Solimar Beach Drive). The Highway is the first road paralleling the ocean in this area and is, therefore, within the appeals jurisdiction of the Commission. (Coastal Act Section 30603[a][1])

A. Project Description

The local government decision was to authorize the merger of two lots and a 6 in. front yard setback off a private road and construction of a two story, approximate 3,700 sq. ft. single family residence to replace an existing one story, approximate 1,200 sq. ft. single family residence and extending the new residence 7 to 17 ft. further seaward than the existing residence.

B. Appeal Procedures

The Coastal Act provides for appeals to the Coastal Commission after certification of Local Coastal Programs (LCPs) of a local government's actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses. (Coastal Act Section 30603[a]) Any development approved by a County that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]) Finally, developments, which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5])

The proposed project is located seaward of the first public road paralleling the sea (i.e. the Old Coast Highway) and is, therefore, appealable to the Commission. (Coastal Act Section 30603[a][1])

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4]). Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal.

Procedurally, where the staff is recommending that the appeal raises a substantial issue, unless three or more Commissioners wish to hear arguments regarding the question of substantial issue, then substantial issue is deemed found. If the Commission decides to hear arguments and vote on the substantial issue question,

proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal. If a substantial issue is found to exist, the Commission will proceed to a full public *de novo* hearing on the merits of the project at a subsequent hearing. If the Commission conducts a *de novo* hearing on the merits of the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. If a *de novo* hearing is held, testimony may be taken from all interested persons at the *de novo* hearing.

C. Local Government Action and Filing of Appeal

The Coastal Commission certified the LCP Land Use Plan on June 18, 1982 and the implementing ordinances on April 28, 1983. The County of Ventura approved a Coastal Development Permit on December 7, 1999 through approval of PMW (Parcel Map Waiver) 908 and Variance 5038. (Note: The County does not employ a separate numbering system for their permits when the project is located in the certified LCP area.) The County approval in effect allowed Planned Development Permit No. 1732 to be effective for construction of a two story, approximate 3,700 sq. ft. single family residence to replace an existing one story, approximate 1,200 sq. ft. single family residence and extension of the new residence 7 to 17 ft. further seaward than the existing residence.

The Commission received the Notice of Final Action on the project on December 9, 1999, and received this appeal of the County's action on December 23, 1999. The appeal was filed on December 23, 1999 by the Coastal Commission, and was therefore filed within the 10 working day appeal period of the Commission's receipt of the Notice of Final Action as provided by the Commission's administrative regulations.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued Coastal Development Permit is filed. The appeal was received after the second mailing for the January, 2000 Commission hearing. Consequently, the date of receipt did not allow sufficient time for the Commission to open and continue the hearing at the January, 2000 meeting pursuant to Section 13112 of the California Code of Regulations.

In accordance with the California Code of Regulations, on December 27, 1999 staff requested all relevant documents and materials regarding the subject permit from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The administrative record for the project was

received from the County on January 5, 2000. Because all of the remaining file materials have now been transmitted to the Commission and reviewed by staff, the matter is now scheduled for Coastal Commission review.

II. Staff Recommendation on Substantial Issue

MOTION I move that the Commission determine that appeal A-4-VNT-99-280 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed pursuant to Section 30603 of the Coastal Act.

STAFF RECOMMENDATION

Staff recommends a **NO** vote on the motion. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE

The Commission hereby finds that Appeal No. A-4-VNT-99-280 presents a substantial issue with respect to the grounds on which the appeal has been filed under Sec. 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

III. Findings and Declarations for Substantial Issue

1. Project description

The proposed project consists of the construction of a two story, approximate 3,700 sq. ft. single family residence to replace an existing one story, approximate 1,200 sq. ft. single family residence and extension of the new residence seven to seventeen ft. further seaward than the existing residence. The range of distance seaward is accounted for by the irregular shape of the existing residence. The proposed residence will present a uniform face toward the sea. The project location is landward of the sandy beach, which is separated from the subject property by a community-wide rip rap seawall (revetment). No accurate plan of the seawall is provide as part of this application, but staff review of the site plan for this project and a site visit indicates that the seawall is estimated to be 90 % on land belonging to the Solimar Beach Colony Homeowners Association.

Reconstruction and replacement of the seawall was approved by the South Central Coast Regional Commission on March 13, 1981. This seawall was approved with conditions as regional coastal development permit 216-21 and subsequently appealed to and amended by the Coastal Commission on July 23, 1981 (Coastal development permit A-219-79). Conditions of approval included a deed restriction for lateral access from the toe of the seawall to the mean high tide line, vertical access and construction of accessways at each end of the community, access signs, State Lands Commission review, agreement to not prejudice public rights, and liability waiver from risks of storm waves and erosion. The deed restriction has been recorded.

The sandy beach varies seasonally and is ambulatory, as recognized by the lateral access condition of Coastal development permit A-219-79. The lateral access condition specified that the deed restriction for lateral access be to the toe of the revetment as determined by the fluctuating sand level on the beach.

The Parcel Map Waiver approved by Ventura County allowed a small remnant parcel seaward of the existing residence to be joined to the parcel on which the existing residence is located. The remnant parcel resulted in 1974 from the Solimar Beach Colony Homeowners Association deeding the area in front of 63 residential lots to individual residential lots. This is considered by Ventura County to have been an illegal land transfer. There is no record of a coastal development permit for the action. The action created approximately 63 illegal lots, which potentially cloud the title of both the deeded lots and the lots attached thereto. Many homeowners have corrected this error over the years by requesting a merger of the two lots, according to Ventura County. A review of the Community Maps in the LUP and the Zoning Maps in the Zoning Ordinance in the certified LCP shows that the remnant lots were not designated as separate lots at the time of LCP certification in 1983, but were attached to the lots landward, consistent with the present proposal.

The Parcel Map Waiver approved by Ventura County allowed a rear yard setback for the proposed new house to extend further than the seven to seventeen feet proposed i.e. up to a distance of thirty feet or 14 ft. measured landward from the seaward, or rear property line after the merger. As noted, this assumes that the remnant parcel was joined to the main parcel by way of a parcel map waiver. The fourteen foot setback is specified in the County Schedule of Specific Development Standards by Zone (Sec.8175-2). The new rear property line resulting from the Parcel Map Waiver and Variance is at the approximate landward extent of the community-wide seawall constructed on land belonging to the Solimar Beach Homeowners Association.

The Variance allowed a setback of six inches from the front property line, rather than the ten feet required by the Residential Beach Zone. Also a zero setback was allowed for the eaves on the front property line.

In April 7, 1992 the Commission found no substantial issue on an appeal by Mr. Weisel (the present applicant of this permit) by the County of Ventura. The County issued a coastal development permit to Mr. Ward (the present appellant) to construct a

replacement single family residence on the adjacent downcoast parcel at 3084 Solimar Beach Road. The Commission's decision was based upon issues raised by the appellant relative to hazards and cumulative impacts, and the public access policies of Chapter 3 of the Coastal Act. Local approval included a Parcel Map Waiver, as does the present application. The proposed replacement residence was permitted to intrude up to seventeen feet seaward. This placed the building within as close as twenty two feet of the revised rear (seaward) property line which was moved thirty feet further seaward by the Parcel Map Waiver

2. Issues Raised by the Appellant

The Appellant alleges that the project is inconsistent with the Ventura County Local Coastal Program because the development will significantly impede views of the public. The appeal states that: "The decision will allow replacement of a 400 [sq. ft., plus or minus] structure with a 4,000 [sq. ft., plus or minus] structure which will significantly impede view rights of the public as well as private parties, including appellant."

3. Local Government Action and Filing of Appeal

The approval of a coastal development permit at the local level, as noted, resulted in County approval of a two story, approximate 3,700 sq. ft. single family residence to replace an existing one story, approximate 1,200 sq. ft. single family residence and extending the new residence 16 ft. further seaward than the existing residence.

The County of Ventura approved a Coastal Development Permit on December 7, 1999 through denial of an appeal from the Planning Commission approval of Parcel Map Waiver 908 and Variance 5038. The Commission received the Notice of Final Action on the project on December 9, 1999, and received this appeal of the County's action on December 23, 1999. As noted previously, the denial of the appeal at the local level resulted in County approval of a Planned Development Permit No. 1732 allowing construction of a two story, approximate 3,700 sq. ft. single family residence to replace an existing one story, approximate 1,200 sq. ft. single family residence and extending the new residence 16 ft. further seaward than the existing residence.

The Planned Development Permit No. 1739 and Variance 5038 were subject to a number of standard conditions relating to designation of the approved use, permit expiration, permit modifications, other agency permits, zoning clearance, building permits, acceptance of conditions, liability of County employees, monitoring cost, billing third party actions, as well as requirements of other agencies, such as the Fire Department, Solid Waste Management Division, and Air Pollution Control District. Parcel Map Waiver PMW-908 was subject to standard conditions relative to negation of the permit, recordation, other agencies' permits, expiration, recordation, liability for enforcement costs, and processing fees.

4. Substantial Issue Analysis

Section 30603(b)(1) of the Coastal Act stipulates that:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Staff recommends that the Commission, after a public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed for the following reason: the proposed residence is inconsistent with the applicable policies and related zoning standards of the County's certified Local Coastal Program.

The Appellant's contentions raise valid grounds for an appeal for the reasons set forth below.

a. Public Views

The appellant alleges that the County approved the project in a manner inconsistent with the public view protection standards of the County's certified Local Coastal Program. The project is located in the North Coast Community i.e. the area north of the City of San Buenaventura. No specific view protection policies are designated in the LUP for this area of the coast. The only policies in the LUP providing for protection of public views are found in the section applicable to the South Coast, which is the Malibu and Santa Monica Mountains portion of the LUP i.e. southeast of Pt. Mugu Naval Air Station/Pacific Missile Test Range.

However, the LUP contains Coastal Act policies including Section 30251 (p. 22 of the Coastal Area Plan) which states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

As previously discussed, the proposed development will be located sixteen feet further seaward than the previously existing development on the subject site. As such, the Commission notes that the proposed project will result in the seaward encroachment by new development toward the sandy beach. Seaward encroachment by a single residence may result in significant adverse effects to public views along the beach.

However, the Commission also examines whether such development, when viewed on a regional basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

Within the Solimar Community, the private homeowners association has recently decided to enforce private view protection through a "stringline" or informal view line protecting the side views from existing residences. The County has used a more liberal requirement, designated on the project plans as the "1991 Board Decision Reference Line" which says that no structure can be constructed within fourteen feet of the rear property line. The fourteen feet rear yard setback is allowed under the County Schedule of Specific Development Standards by Zone (Sec.8175-2 of the certified LCP Zoning Ordinance) and, as previously noted, the setback was extended seaward by the addition of a remnant parcel. As mapped on the project plans, there is a "1991 Board Decision Reference Line" which serves as a "stringline". This "stringline" varies from approximately 19 to 26 ft. from the rear property line as defined by the Parcel Map Waiver, with the variation accounted for by the oblique angle of the property line as opposed to the "stringline" parallel to the frontage road.

Although the project is some distance from this setback line, the project will result in creation of a large two-story residence approximately three times the size of the present residence and intruding sixteen feet further seaward of the present residence. Approximately one half of the residences in the Solimar Beach area are similar older single family residences. On a cumulative basis, replacement residences intruding further seaward will result in a more massive bulk for this seacoast community, affecting views to and along the coast.

Public views of the project site are from the Old Coast Highway and the 101 Freeway looking southeast toward the site. Public Views of the site are available at a range of from approximately 1000 ft. to the northwest (from the closest point in the vicinity of the previously noted lateral accessway, on the Old Coast Highway) to approximately one half mile to two miles (from the 101 Freeway, traveling southeast toward Ventura). Most of the view from the 101 Freeway is blocked by the changes in natural terrain, differences in Freeway topography, and blocking by the railing along the freeway, thick ruderal and natural vegetation, and a large palm farm or wholesale nursery seaward of the highway.

At these distances, while the individual residence proposed is a minor change, the cumulative effect of replacement of single family residences extending further seaward will be distinguishable for the Solimar Beach Community from the Old Coast Highway. The mixture of single family and two story buildings tend to blend into one continuous mass at such distances. The impact of such change is already evident in the north end of the community, where the view from the Old Coast Highway across the northern portion of the Solimar Beach Community is impacted by several larger single family residences.

The Commission further examines the project impacts on public views from the beach. The proposed two story residence at 25 ft. is conforming to the height limit in the certified Zoning Ordinance at 25 ft. (Sec. 8175-2) The project site is visible from the sea and the sandy beach on the ambulatory area seaward of the community rip rap revetment, where lateral access is provided by deed restriction under the 1981 coastal development permit discussed above. The lower approximate third of the view looking inland, toward the residences and the backdrop of coastal hills, is blocked by the Community's rip rap seawall or revetment. Development of the two story residence intruding seaward will block the remaining view of most of the hills from the beach.

The above analysis shows that the proposed development blocks views from the beach and impacts upon views from the Old Coast Highway or 101 Freeway. For these reasons, the Commission finds that the approval of the project is not in conformance with the public view standards of the County's certified Local Coastal Program, and that the Appellant's contention raises a substantial issue with respect to the protection of public view standards of the County's certified Local Coastal Program.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED
DEC 23 1999
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Carl Ward
3086 Solimar Beach Dr.
Ventura 93001 (805) 648-1931
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Ventura County

2. Brief description of development being appealed: House project including merger of illegal parcel without condition and approval by set back variance

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3086 Solimar Beach Dr.
Ventura 93001

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: _____
- c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

Appeal 4-VNT-99-280
Ward
Exhibit I
Appeal

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- c. Planning Commission
- b. City Council/Board of Supervisors
- d. Other _____

6. Date of local government's decision: 12.7.99

7. Local government's file number (if any): Appeals 429 & 439

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:
Les and Jo Ann Weigel
3086 S. Limas Beach Dr.
Ventura CA 93001

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____

- (2) _____

- (3) _____

- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)


State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Decision will allow replacement of a 1100^{sq} structure with a 4000^{sq} 25 story structure which will significantly impede view rights of the public as well as private parties, including appellant

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.


Signature of Appellant(s) or Authorized Agent

Date 12-23-99

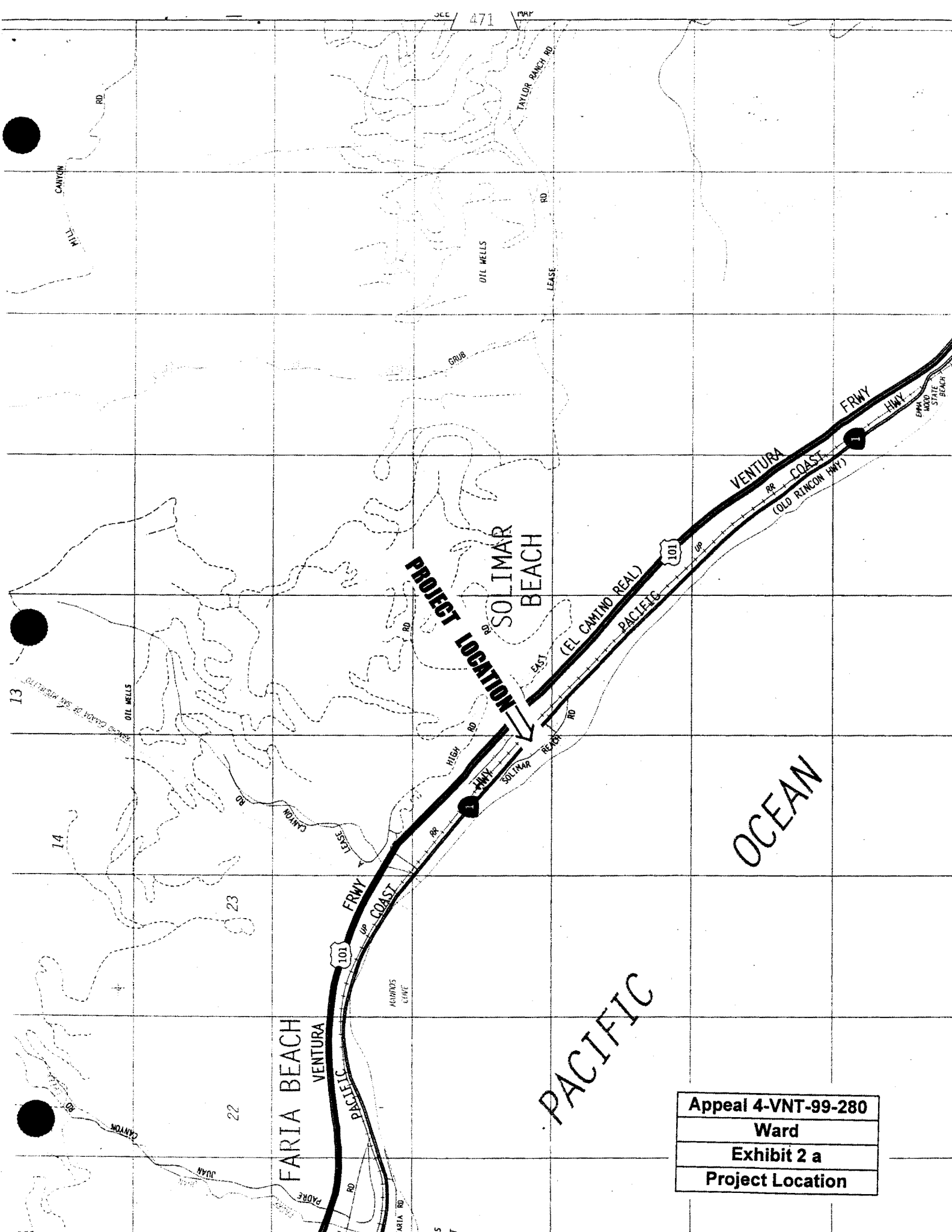
NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

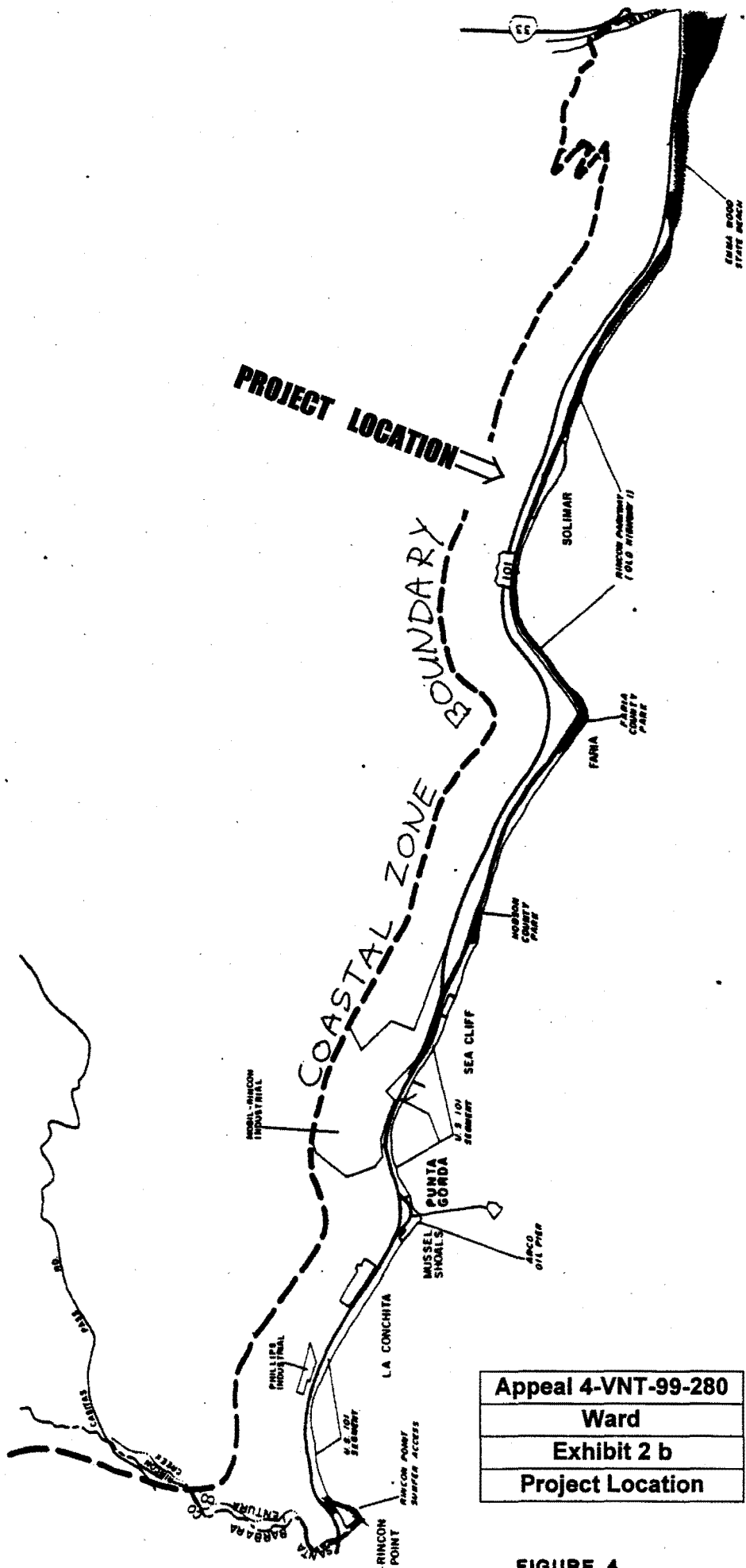
I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____



Appeal 4-VNT-99-280
Ward
Exhibit 2 a
Project Location



Appeal 4-VNT-99-280
Ward
Exhibit 2 b
Project Location

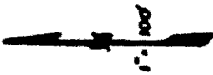
RECREATIONAL AREAS ON THE NORTH COAST

COASTAL PLAN

FIGURE 4

60-35

SPR 0 1993



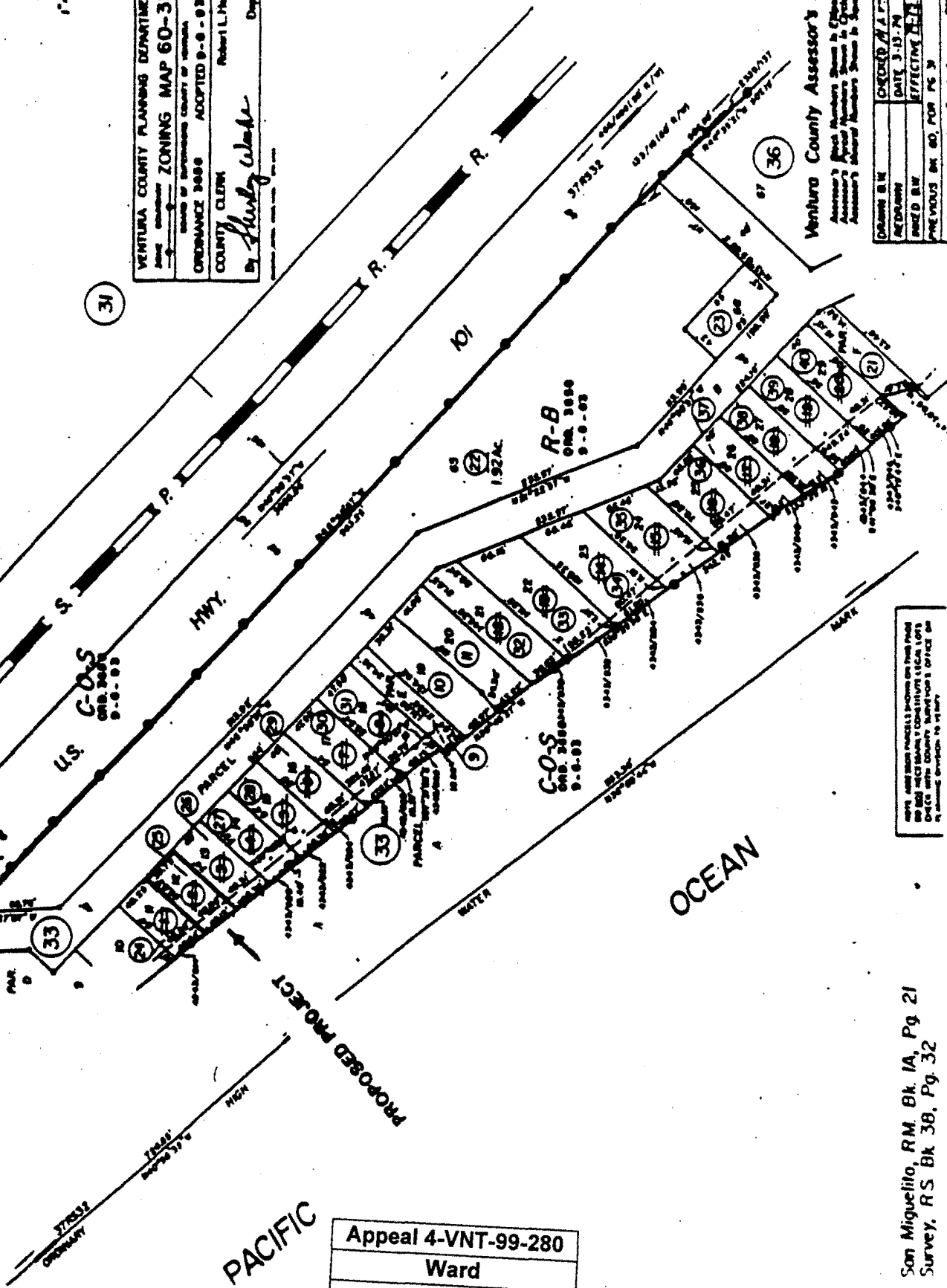
VENTURA COUNTY PLANNING DEPARTMENT
 ZONING MAP 60-35
 ORDINANCE 3488 ADOPTED 9-8-93
 COUNTY CLERK Robert L. Hanson
 By *Harley Colwell* Deputy

Tax Rate Area 91006

RANCHO SAN MIGUELITO

31

34



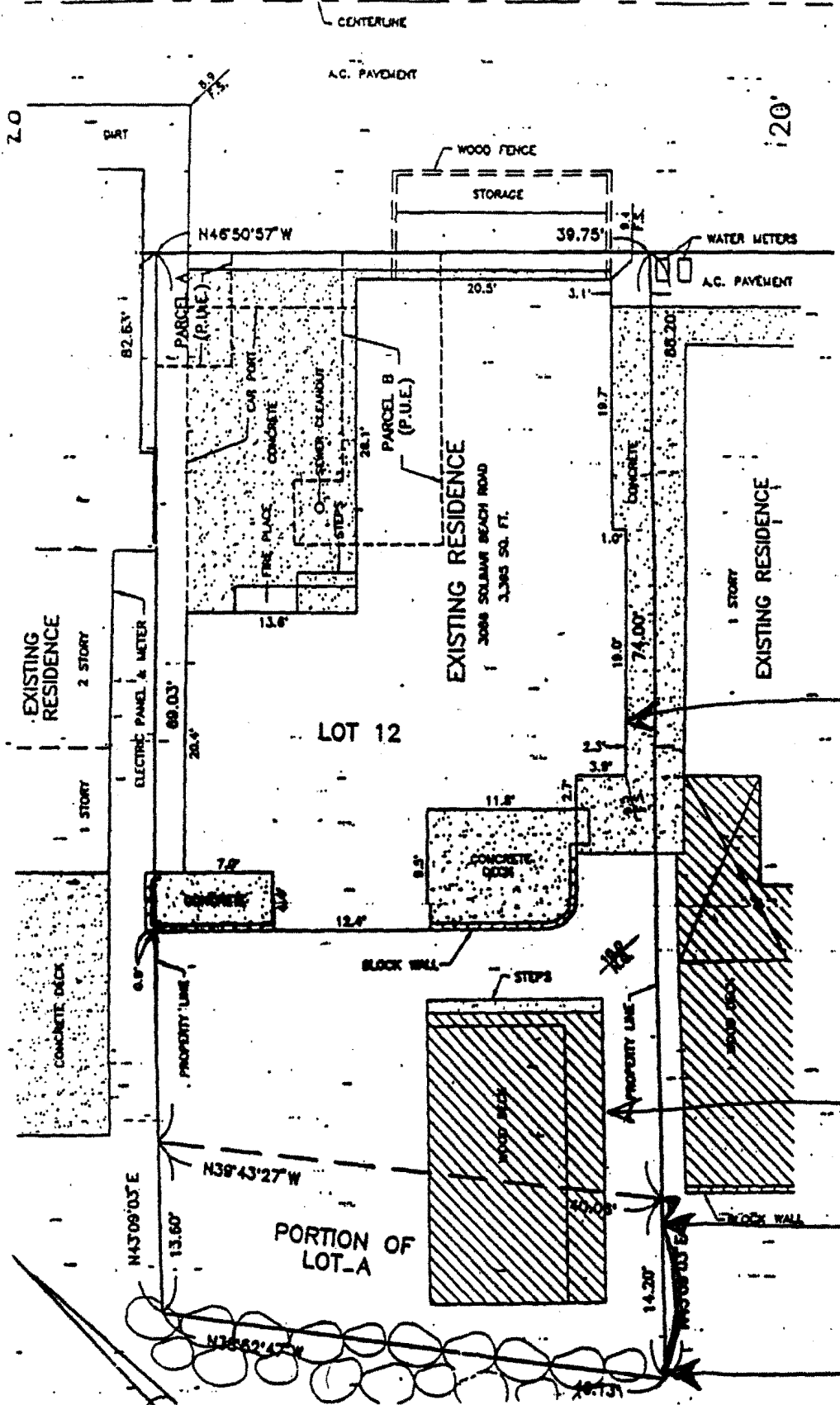
Ventura County Assessor's Map

Assessor's Map Number Shows to City
Assessor's Map Number Shows to County
Assessor's Map Number Shows to State

DATE	02/01/97
DATE	3-13-97
EFFECTIVE DATE	07-01-97
PREVIOUS BK. NO.	FOR PG. 3

NOTE: ALL PARCELS SHOWN ON THIS MAP
 ARE SUBJECT TO THE COUNTY'S LAND USE
 PLAN AND THE COUNTY'S SUBDIVISION MAPS
 AS APPLICABLE TO THE AREA.

Appeal 4-VNT-99-280
 Ward
 Exhibit 3
 Parcel Map



Existing house

Existing Wood deck

Fragment lot combined

new rear property line



PARCEL MAP WAIVER NO
VOLUNTARY MERGER.
PREPARED BY
LOUIS ZEHFUSS SURVEYOR
11301 BEEBEARD AVE
GRANADA HILLS, CA 91344

Appeal 4-VNT-99-280
Ward
Exhibit 4
Existing Residential Parcel Map

EXHIBIT 2

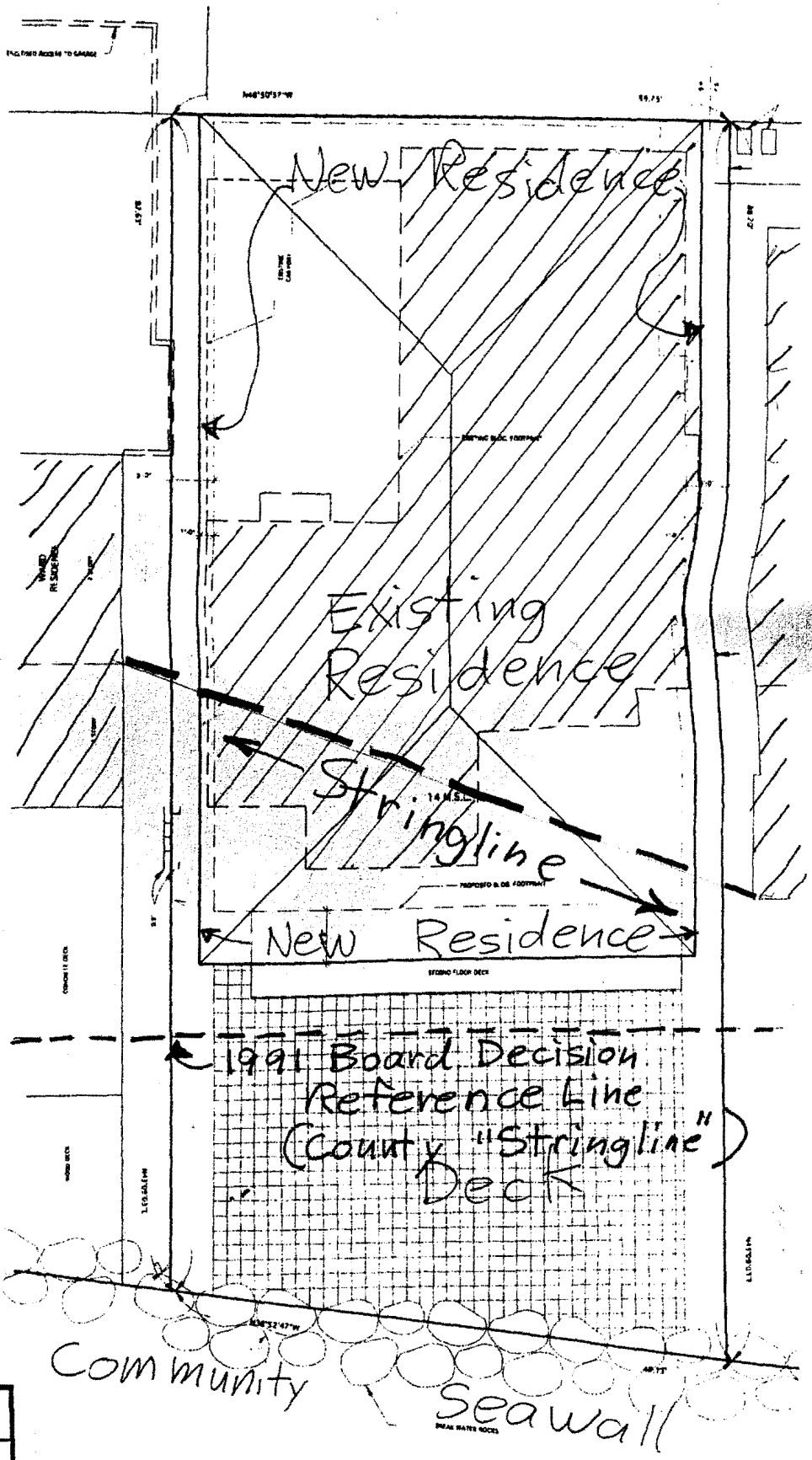


EXHIBIT NO.	5
APPLICATION NO.	
	44-VNT-99-280
	(Weisel)
	Site Plan/Stringline

SITE PLAN

1/8"=1'-0"

