

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY

Request Filed: 2/23/00
Staff: S. Hudson
Staff Report: 3/23/00
Hearing Date: 4/12/00
Commission Action:

**STAFF REPORT: REVOCATION REQUEST**

APPLICATION NO.: R-A-4-CPN-99-119

APPLICANT: Christopher A. Clemens and Lanette K. Loeks Revocable Trust

PROJECT LOCATION: 4921 Sandyland Road, Carpinteria; Santa Barbara County.

PROJECT DESCRIPTION: The applicant is requesting after-the-fact approval for the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and a 3 ft. high retaining wall; and the construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement and a 7 ft. high retaining wall.

PERSONS REQUESTING REVOCATION: Vince Mezzio, Gerald Velasco, and Mary Clark

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit A-4-CPN-99-119; City of Carpinteria Local Coastal Program; City of Carpinteria General Plan; Winter Protection Berm Project Summary Report by City of Carpinteria dated 1996; City of Carpinteria Administrative Record for all approved development at 4921 Sandyland Road.

PROCEDURAL NOTE: The California Code of Regulations, Title 14 Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit are as follows:

Grounds for revocation of a permit shall be:

- a) *Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*
- b) *Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.*

In this case, the persons requesting revocation of the subject permit contend that adequate grounds for revocation pursuant to Section 13105(a) exist.

CONTENTION OF PERSONS REQUESTING REVOCATION

The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous or incomplete information to the Commission in connection with Coastal Development Permit Application A-4-CPN-99-119. The request for revocation does not contend that grounds for revocation pursuant to Section 13105(b) exist regarding failure to comply with the notice provisions of Section 13054. The contentions of the submitted request for revocation include the following:

(1) The Commission did not adopt written findings for their approval of the project; (2) incorrect stringline information submitted by applicant; (3) seaward limit of approved development is not consistent with stringline previously required for neighboring development; (4) applicant's testimony regarding past flooding of the subject site was inaccurate; and (5) the project is not consistent with the building permit issued by the City of Carpinteria regarding the seaward extent of development, sideyard setbacks, and the construction of the 7 ft. high retaining wall.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under Section 13105(a).

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission grant revocation of Coastal Development Permit A-4-CPN-99-119.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY REVOCATION:

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit A-4-CPN-99-119 on the grounds that there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

II. Findings and Declarations:

The Commission hereby finds and declares as follows

A. Project Description and Background:

On February 17, 2000, the Commission approved, with conditions, Coastal Development Permit A-4-CPN-99-119 (Clemens/Loeks Revocable Trust) for after-the-fact partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and a 3 ft. high retaining wall; and the construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement and a 7 ft. high retaining wall. Final issuance of the coastal permit is dependent on completion of compliance, by the applicant, with two special conditions required by the Commission for permit approval regarding assumption of risk and a no future shoreline protective devices.

The project site is located on a 5,227 sq. ft. beachfront parcel of land in the City of Carpinteria between Sandyland Road and Carpinteria City Beach (Exhibit 1). The area surrounding the subject site is characterized as a built-out portion of Carpinteria consisting primarily of multi-family residential development. The project site is designated as a "Zone A" flood hazard area (area with highest potential for flood hazard) by the Carpinteria General Plan, the Federal Emergency Management Agency (FEMA), and the National Flood Insurance Rate Map System (FIRM). In previous years, the City of Carpinteria has constructed a sand berm (subject to a coastal development permit) along Carpinteria City Beach (approximately 20 ft. seaward of the proposed deck dripline) on an annual basis to protect the private residential development located along Sandyland Road which would otherwise be subject to wave action during storm events. The Winter Protection Berm Project Summary Report by the City dated 1996 indicates that if the berm is not constructed each winter, the private residences along Sandyland Road would be subject to significant wave action and flooding.

All proposed development has already been constructed. Although a coastal development permit is required for the proposed project, the proposed project was originally approved in error by the City pursuant to an administrative building permit on November 16, 1998. Although a coastal permit had not been issued, the City issued a Notice of Final Action for a coastal development permit for the project on April 8, 1999, after being informed by Commission Staff that a coastal permit was required. Commission Staff subsequently notified the City on April 12, 1999, that the notice was determined to be insufficient since it contained no written findings for approval. Although a coastal development permit had still not been issued for the project, the City subsequently issued an amended Notice of Final Action on May 3, 1999. Two appeals of the above-described decision were received in the Commission office on May 17 and 18, 1999, and filed on May 18, 1999. In accordance with Section 13112 of the

Administrative Regulations, staff requested on May 26, 1999, that the local government forward all relevant documents and materials regarding the subject permit. After several additional requests were made to obtain the administrative record, it was subsequently received on September 14, 1999. In a letter dated June 22, 1999, from Mr. Dave Durlinger, Community Development Director for the City of Carpinteria, to Mr. Vince Mezzio, appellant, Mr. Durlinger states that the City "informed the property owner [Clemens/Loeks] that he proceeds with completion of the house at his own risk in light of that pending appeal" of the project to the California Coastal Commission. At the Commission hearing of October 12, 1999, the Commission found that a substantial issue was raised by the appeal.

In addition, a Stop Work Order was issued by the City on February 12, 1999, for non-compliance with the City building permit. In a letter dated February 22, 1999, the City lifted the previously issued Stop Work Order and stated that portions of the development on the project site had not been constructed in compliance with the approved City building permit (design of the retaining wall/seawall on the basement level of the residence and the location of two balconies on the west and north side of the structure, a portion of the structure itself, and a stairway which extended too far into the 5 ft. wide sideyard setbacks). According to City staff, pursuant to an agreement between the City and the applicant, the final as-built location of the balconies on the west and north side of the structure were modified. However, with respect to the other previously alleged deviations, the City did not pursue these matters further or require changes to the as-built development.

Further, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit, including additions to existing structures and the seaward extension of development on a sandy beach in 1982 and 1983. Further, the subject parcel has apparently been previously converted from a single lot with two duplex apartment units (4 units) to two single family residence condominiums through the approval of a subdivision/tentative condominium tract map by the City in 1987 (which also occurred without the required coastal development permit). The second condominium residence on the subject site is located directly landward of the structure subject to this application. The approved permit application (CDP A-4-CPN-99-119) is for the recent demolition/construction of the seawardmost condominium residence on the subject site only. The above mentioned additional unpermitted development is not included as part of the approved permit and will require a future follow-up application for a coastal development permit that seeks to resolve the apparently unpermitted subdivision/tentative condominium tract map change and additions to the existing structures on the subject site.

B. Grounds for Revocation:

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit application intentionally included inaccurate, erroneous or incomplete information where accurate and complete information would have caused the Commission to act differently; and (2) that there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

On February 23, 2000, the South Central Coast District Office received a written request for revocation of the subject coastal permit from the legal counsel for Vince Mezzio, Gerald Velasco, and Mary Clark (Exhibit 10). The request for revocation is based on the grounds that the applicant submitted inaccurate, erroneous or incomplete information, which would affect the Commission's decision in regards to this project.

The revocation request does not suggest that the subject permit should be revoked on grounds that there was a failure to comply with the notice provisions of Section 13054. Therefore, the revocation request for the subject permit will only be discussed in relation to grounds of Section 13105(a). Grounds for revocation in 13105(a) contain three essential elements or tests which the Commission must consider:

- a. ***Did the application include inaccurate, erroneous or incomplete information relative to the coastal development permit?***
- b. ***If the application included inaccurate, erroneous or incomplete information, was the inclusion intentional?***
- c. ***If the answer to a and b is yes, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?***

1. Written findings for Commission's approval of the project

The request for revocation contends that the Commission did not adopt adequate findings to reflect their decision regarding approval of Coastal Permit A-4-CPN-99-119 on February 17, 2000. The letter from Jana Zimmer, legal counsel for the persons requesting revocation, dated 2/21/00 states:

While one or two Commissioners made abbreviated comments, it is impossible to discern whether the Commission as a whole was adopting those as its own...14 CCR 13096 states: "All decisions of the Commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with the Pub. Res. Code Section 30604, and Public Resources Code Section 21000 and following ,

and findings of fact and reasoning supporting the decision." The only findings before the Commission were findings for denial, but the Commission purported to take final action on the permit on February 17.

The above concern does not involve the submittal of inaccurate, erroneous or incomplete information by the applicant and; therefore, does not meet the first test (submittal by applicant of inaccurate, erroneous, or incomplete information) to determine that grounds for revocation of the subject permit exist. However, in response, the Commission notes that because the original staff report for the subject permit application contained only findings for denial, revised findings are necessary to reflect the action taken by the Commission to approve the project. In this case, revised findings that reflect the Commission's previous approval of the subject application are scheduled to be heard at the April Commission Hearing in Long Beach. The revised findings will require adoption by the Commission. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the Commission's action of February 17, 2000.

Therefore, the Commission finds that the above issue regarding inadequate findings by the Commission is not grounds for revocation of the subject permit under Section 13105(a) of the California Code of Regulations.

2. Incorrect Stringline Information Submitted by Applicant

The request for revocation contends that the testimony and/or exhibits submitted by the applicant at the February hearing, and/or during ex-parte communications with the individual Commissioners, regarding the location of the appropriate stringline for the seaward limit of development on the subject site was incorrect. The letter from Jana Zimmer, legal counsel for the persons requesting revocation, dated 2/21/00 states:

Furthermore, each and every Commissioner announced that they had participated in ex parte communications with representatives of the applicant. None of the Commissioners stated whether they were shown any documents or exhibits which were not submitted to the staff and/or made available to the public. Notwithstanding our repeated attempts to discover submittals from the applicant, there were none publicly available. The applicants nevertheless presented numerous transparencies during their oral presentation,- with lightning speed- which we assume were meant to establish that the applicants' project was consistent with the stringline imposed on my clients in 1985. This testimony was false.

In addition, the applicant's attorney made reference to a 'stringline study' which was not made part of the public record, nor made available for review. If, indeed, any Commissioner was shown any of these exhibits in private, we believe his or her disclosure on the record was inadequate under the Coastal Act. While we respect the time constraints on the Commission, to base a decision on information obtained in private and/or which is presented at the hearing with no reasonable opportunity to respond is fundamentally unfair.

The Commission notes that the exhibits, slide presentation, and assertions made by the applicants' representatives at the February hearing may have been incorrect in regards to the appropriate location of a stringline on the subject site as interpreted by the Commission. In addition, the persons requesting revocation have submitted their interpretation of the appropriate location for the stringline as part of their letter dated March 19, 2000, which asserts that the applicant's stringline analysis is incorrect (Exhibit 11). However, the Commission also notes that the testimony and exhibits given by the applicants' representatives only constituted the applicant's opinions/assertions regarding the allowable seaward limit of development on the subject site. The determination of the stringline involves analysis and is an issue on which people may have different views. Therefore, the Commission finds that the applicants' assertions regarding the appropriate location of the stringline on the subject site did not constitute the submittal of inaccurate or erroneous material. Moreover, even if the applicants' assertions regarding the stringline were incorrect, there is no evidence that the submittal of the incorrect information was intentional. Therefore, the Commission finds that the above raised issue does not provide grounds for revocation of the subject permit.

In addition, the Commission further notes that even assuming that the applicant had intentionally submitted inaccurate information regarding the stringline, the above referenced concern does not meet the third test in regards to determining whether grounds for revocation of a permit exist. The third test for the Commission to consider is whether accurate information would have resulted in the requirement of additional or different conditions or the denial of the application. In this case, however, accurate information regarding a stringline on the subject site was given in the staff report (prepared by Commission Staff) and was a matter of public record. The appropriate location for a stringline to limit the seaward extent of new development on the sandy beach, as typically interpreted by the Commission, was clearly indicated and discussed in the staff report for the subject permit application (Exhibit 3).

As such, the Commission finds that the submittal of new information regarding the stringline would not result in the requirement of additional or different conditions or denial of the subject application and that; therefore, the above issue does not constitute grounds for revocation of the subject permit under Section 13105(a) of the California Code of Regulations.

3. Inconsistent application of stringline

The request for revocation contends that the Commission failed to apply a stringline to the subject development consistent with the stringline previously required as part of the Commission's previous approval of Coastal Permit 4-85-378 (Mezzio) for development on the neighboring property. The letter from Jana Zimmer, legal counsel for the persons requesting revocation, dated 2/21/00 states:

Of most concern to my client Mr. Mezzio, is the complete failure of the Commission to address the unequal application of the law inherent in having established the stringline in 1985, and having simply disregarded the same stringline in this appeal.

The above concern does not involve the submittal of inaccurate, erroneous or incomplete information by the applicant and; therefore, does not meet the first test (submittal by applicant of inaccurate, erroneous, or incomplete information) to determine that grounds for revocation of the subject permit exist. Nor is there any assertion, or any evidence, that the applicants intentionally provided inaccurate information on this issue. However, even assuming for purpose of this analysis that there was intentional submittal of inaccurate information on this issue, the provision of accurate information would not have resulted in the requirement of additional or different conditions or in denial of the application. The Commission, in this case, found that the approved development would not result in any significant seaward encroachment and was consistent with the applicable policies of the City of Carpinteria Local Coastal Program and the Coastal Act.

Therefore, the Commission finds that the above issue regarding the appropriate seaward limit of new development on the subject site is not grounds for revocation of the subject permit under Section 13105(a) of the California Code of Regulations.

4. Applicant's testimony regarding past flooding on site was inaccurate

The request for revocation contends that the permit applicant's testimony at the February Commission hearing regarding past occurrences of flooding on the subject site was incorrect. The letter from Jana Zimmer, legal counsel for the persons requesting revocation, dated 2/21/00 states:

[T]he applicant's attorney purported to 'testify' as to the historic facts related to flooding at the property, notwithstanding that his clients only purchased the property in 1998. My clients testified, as percipient witnesses, that flooding had indeed occurred at various times prior to 1998, and that sea water had indeed reached the structures when the City failed to place the berm in front of them. Therefore, there is no substantial evidence in the record to support a conclusion that the seawall which staff recommended be removed could remain on without causing harm to my clients' properties. If the Commission made its determination on this issue based on the applicants' inaccurate testimony, there are clearly grounds for revocation under Section 13105(a).

The Commission notes that the assertions made by the underlying coastal permit applicants' representative at the February hearing may not have been correct in regards to past flooding of the subject site. In addition, the persons requesting revocation have submitted photographs of the area surrounding the project site during different wave conditions as part of their letter dated March 19, 2000, which they assert is evidence of past flooding of Carpinteria Beach and that the applicant's testimony regarding past flooding on the site is incorrect (Exhibit 11). With respect to the second part of the test, however, there is no evidence that the applicant intentionally provided this incorrect information to the Commission.

However, the Commission further notes that even assuming that the applicant had intentionally submitted inaccurate information regarding past flooding of the subject site (meeting the criteria for the first and second test) the above referenced concern does not meet the third test in regards to determining whether grounds for revocation of a permit exist. The third test for the Commission to consider is whether accurate information would have resulted in the requirement of additional or different conditions or the denial of the application. In this case, accurate information regarding the potential for flooding and wave action on the subject site was given in the staff report (prepared by Commission Staff) and was a matter of public record. The staff report states that the project site is subject to potential wave action and flood occurrences. Further, as indicated in the letter dated February 21, 2000, from the legal counsel for the persons requesting revocation of the permit, the same concerned parties testified during the public hearing that flooding had occurred at various times on the subject site prior to 1998.

As such, at the time of the Commission's decision, it had before it accurate information in the staff report indicating that there is the potential for flooding and wave action to occur on the subject site, as well as testimony during the hearing by the persons who observed such flooding. Thus, the Commission finds that the submittal of new information regarding the history or potential for future flooding and wave action on the subject site would not result in the requirement of, additional or different conditions or denial of the subject application and that, therefore, the above issue does not, constitute grounds for revocation of the subject permit under Section 13105(a) of the California Code of Regulations.

5. Project is not consistent with the City building permit

The request for revocation contends that the project approved by the Commission is not consistent with the City building permit issued by the City of Carpinteria regarding the seaward location of the proposed structure, sideyard setbacks, and the construction of the 7 ft. high retaining wall. The letter from Jana Zimmer, legal counsel for the persons requesting revocation, dated 2/21/00 states:

It is also incomprehensible to my clients that the Commission ignored the applicant's undisputed violations of the Municipal Code and the building permit actually issued by the City, which are directly material to the LCP consistency claims: the applicant misrepresented the seaward location of the structure in relation to adjacent structures, the applicant violated the sideyard setback requirements of the ordinance and the conditions of the ABR placed on his project, and the applicant went beyond the scope of the permit issued in constructing the so-called 'retaining' wall.

The above concern does not involve the submittal of inaccurate, erroneous or incomplete information by the applicant and; therefore, does not meet the first test (submittal by applicant of inaccurate, erroneous, or incomplete information) to determine that grounds for revocation of the subject permit exist. Regardless of what

information was presented by the applicant in relation to the City of Carpinteria's prior approval of the project, the seaward limit of the proposed development, development within sideyard areas, and the 7 ft. high retaining wall located under the toe of the deck were accurately depicted in the project plans submitted to the Commission as part of the coastal permit application. Therefore, the applicant did not submit inaccurate, incomplete or erroneous information to the Commission on these issues. However, assuming for the purpose of this analysis that inaccurate information on this issue was submitted, there is no evidence that its submittal was intentional.

The final part of the test is whether accurate information would have resulted in additional or different conditions or denial of the application. All development proposed as part of the subject permit application, including the retaining wall, seaward extent of the development, and development within the sideyard, was reviewed by the Commission and found to be consistent with the applicable policies of the LCP and the Coastal Act. Therefore, the Commission finds that even if inaccurate, erroneous or incomplete information was intentionally submitted on this issue, the provision of accurate information would not have resulted in the requirement of additional or different conditions or the denial of the project.

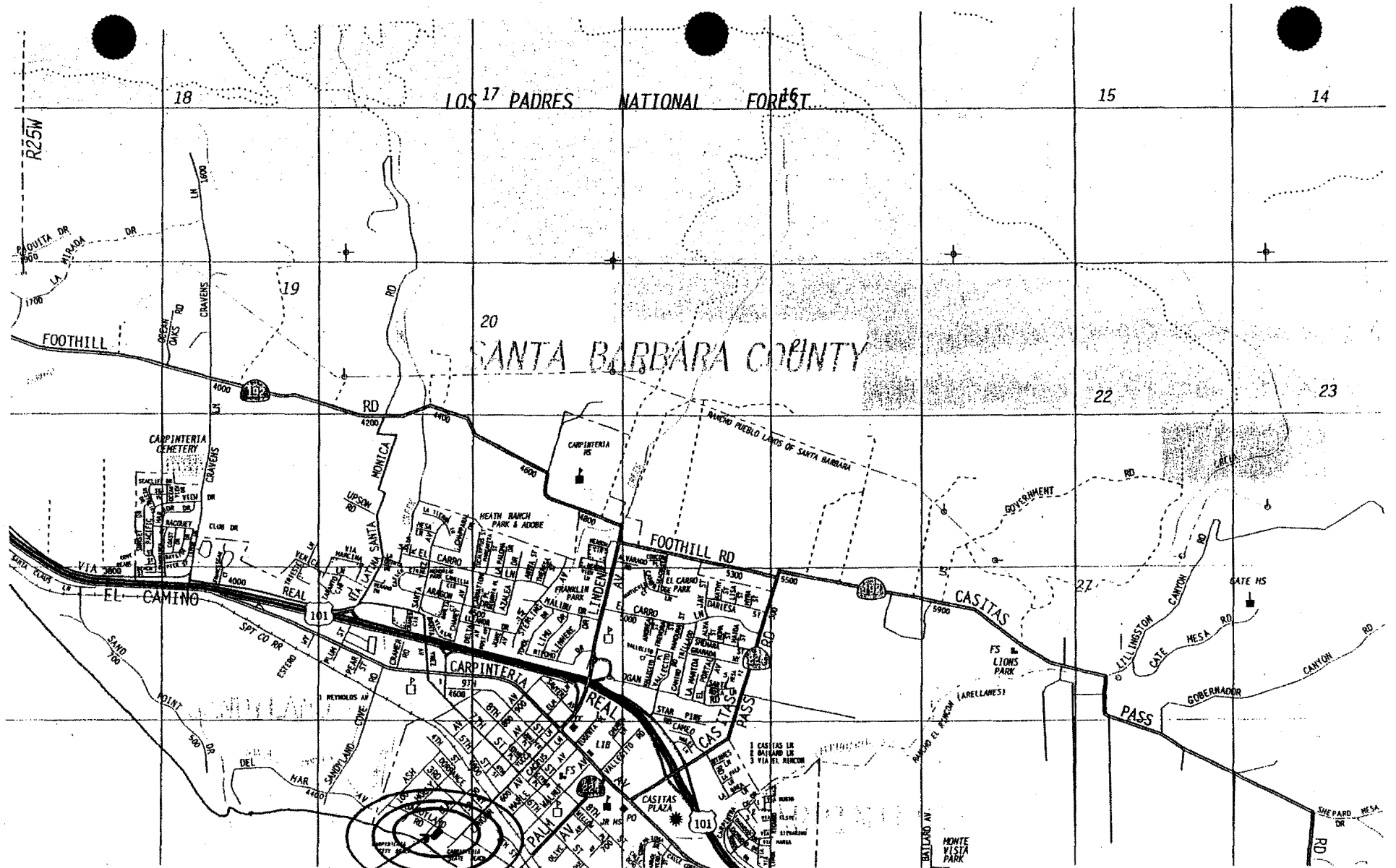
Therefore, the Commission finds that the above issue regarding inconsistencies between the as-built project and the building permit issued by the City of Carpinteria is not grounds for revocation of the coastal permit under Section 13105(a) of the California Code of Regulations.

Conclusion

For the reasons set forth above, the Commission finds that the revocation request should be denied on the basis that the grounds for revocation under Section 13105(a) have not been satisfied.

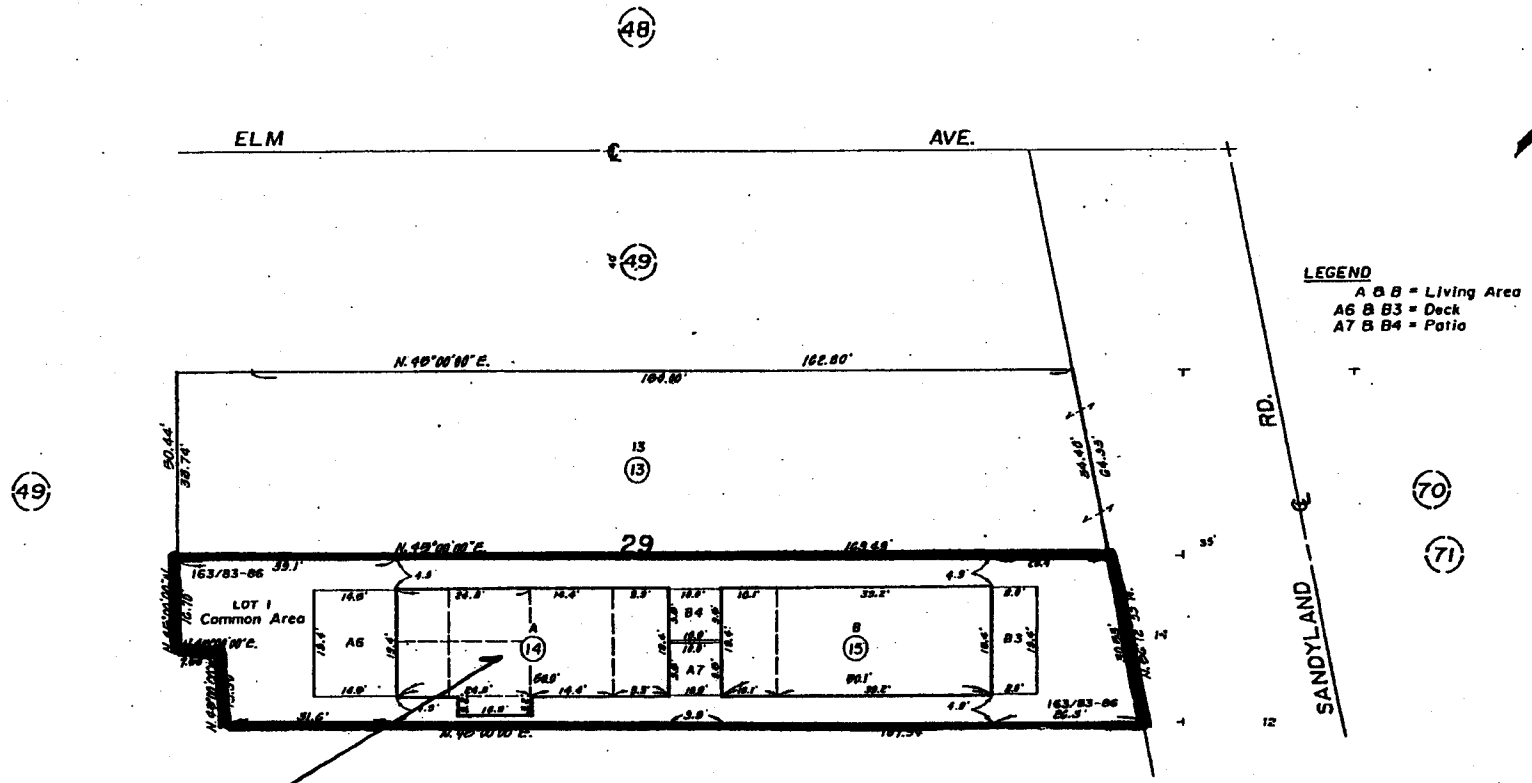
SMH-VNT

File: smh/permits/regular/r-a-4-cpn-99-119 clemens



Project Site

EXHIBIT 1
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Location Map



LEGEND
 A B B = Living Area
 A6 B B3 = Deck
 A7 B B4 = Patio

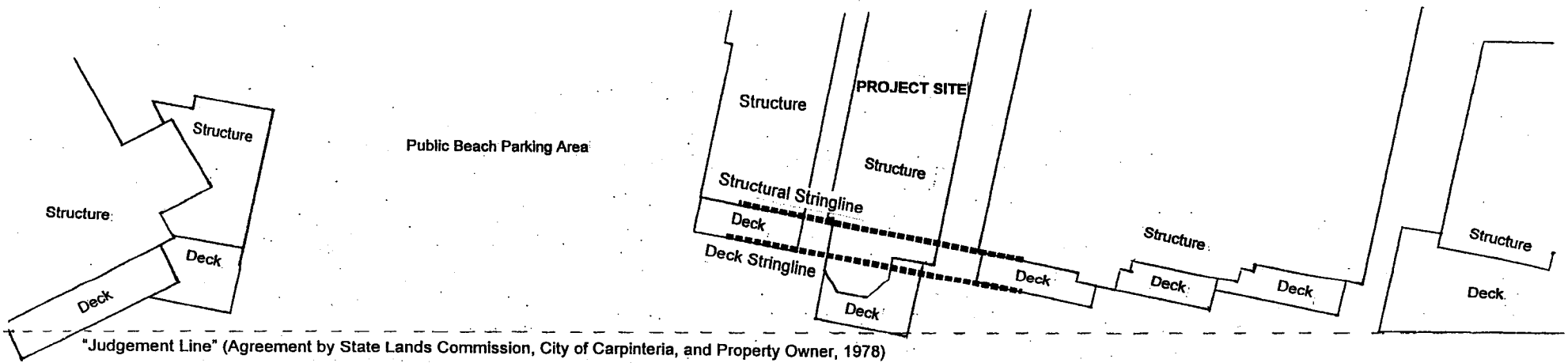
Project Site

NOTICE
 Assessor Parcels are for tax assessment purposes only and do not indicate either parcel legality or a valid building site.

- Town of Carpinteria
 09/20/89 R.M. Bk. 163, Pg. 83-86 - Condominium Plan for Lot 1 of P.M. 25,132

Assessor's Map Bk. 3 - Pg. 85
 County of Santa Barbara, Calif.

EXHIBIT 2
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Parcel Map



Carpinteria City Beach

EXHIBIT 3
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Site Plan/Seaward Limit of Development

NO.	REVISIONS
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ROBERT B. KLAMMER, ARCHITECT
 429 Wyoia Road, Santa Barbara, CA 93105
 (805)583-1896 (805)583-8901

MODEL FOR
 MENS AND LANNIE LOEKS
 IVe., Carpinteria, CA, 93013
 805)984-1557

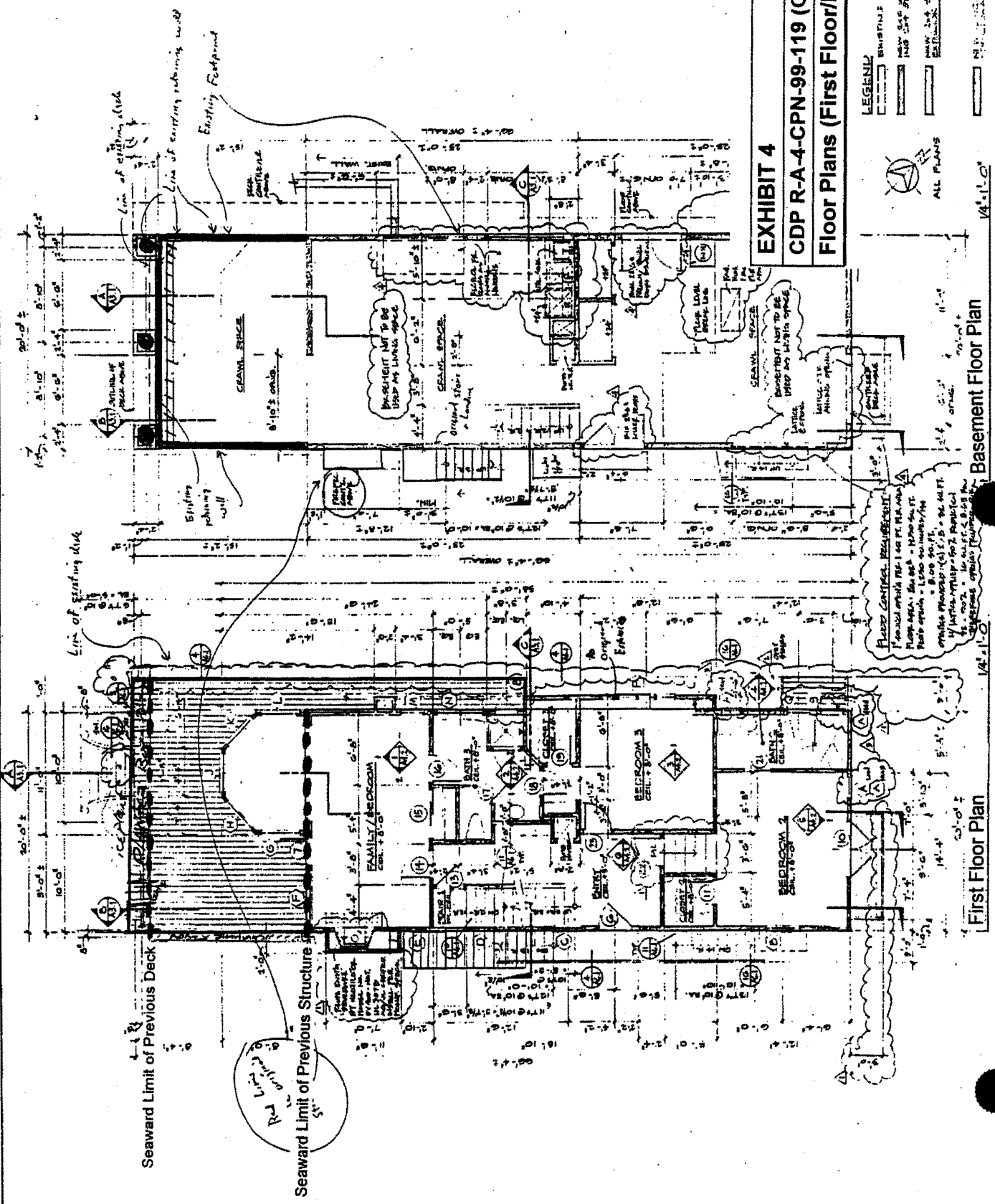
EXHIBIT 4
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Floor Plans (First Floor/Basement)

NO.	REVISIONS
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LEGEND

- [Symbol] EXISTING WALLS TO BE MAINTAINED
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- [Symbol] EXISTING WALLS TO BE DEMOLISHED
- [Symbol] NEW WALLS TO BE DEMOLISHED
- [Symbol] ALL PLANS

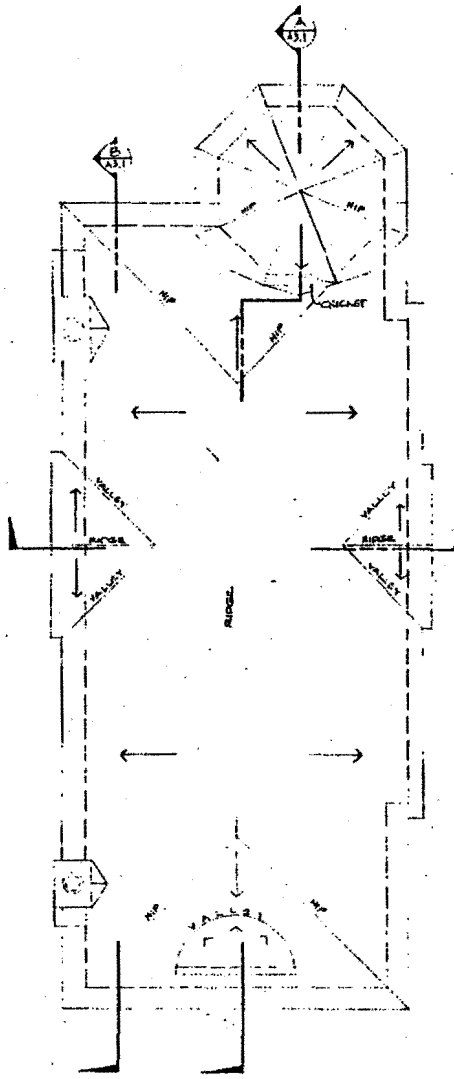
1/4" = 1'-0"



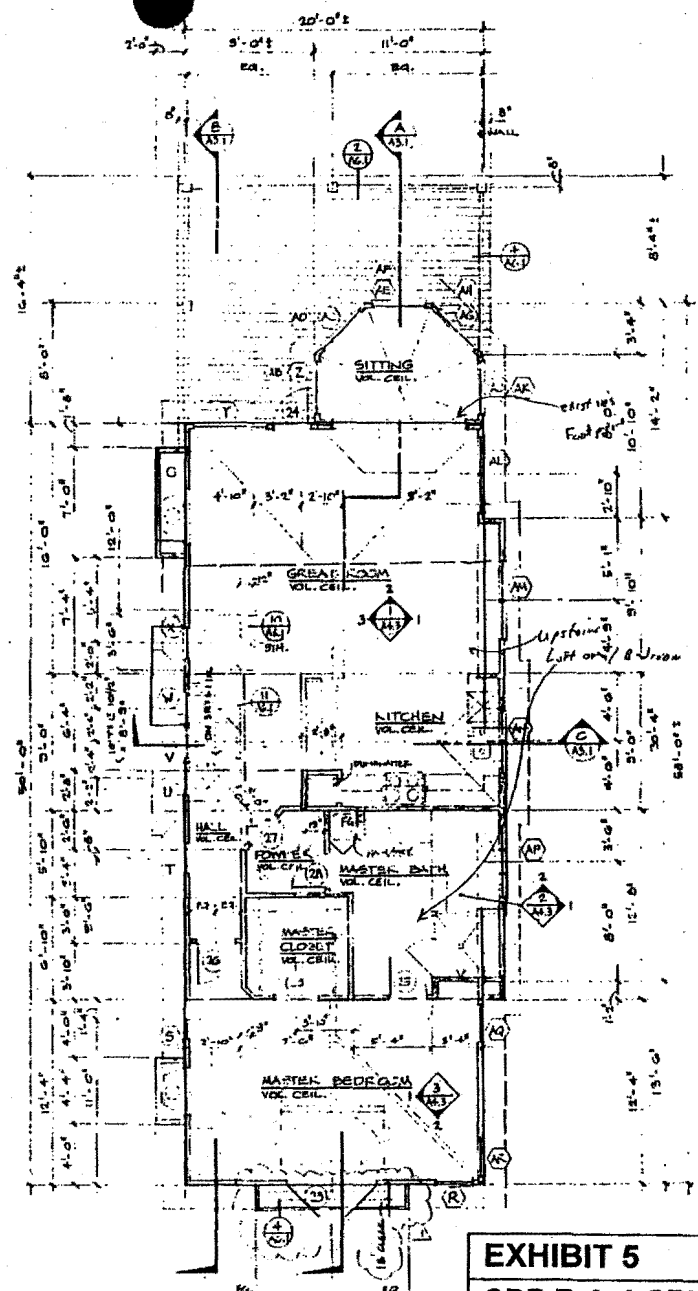
First Floor Plan

Basement Floor Plan

REVISIONS	DATE
Δ 56-11	



Roof Plan 14'-0"



Second Floor Plan

LEGEND
 NEW 2"x4 STUDS @ 16" O.C. / 1/2" EXTERIOR WALLS ONLY.

EXHIBIT 5
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Floor Plans (Second Floor)

REMODEL FOR
 CHRISTOPHER CLEMENS AND LANNIE LOEKS
 4921 Sandyland Ave., Carpinteria, CA. 93013
 (805) 684-1557

REVISIONS	
1	11/11/11
2	11/11/11
3	11/11/11
4	11/11/11
5	11/11/11

ROBERT B. KLAMMER, ARCHITECT
429 WYOLA ROAD, SANTA BARBARA, CA 93105
(805)563-1896 (805)963-8901

REMODEL FOR
CHRISTOPHER CLEMENS AND LANNIE LOEKS
4921 SANDYLAND AVE., CARPENTERS, CA. 93013
(805)884-1557

NO. 11/11/11

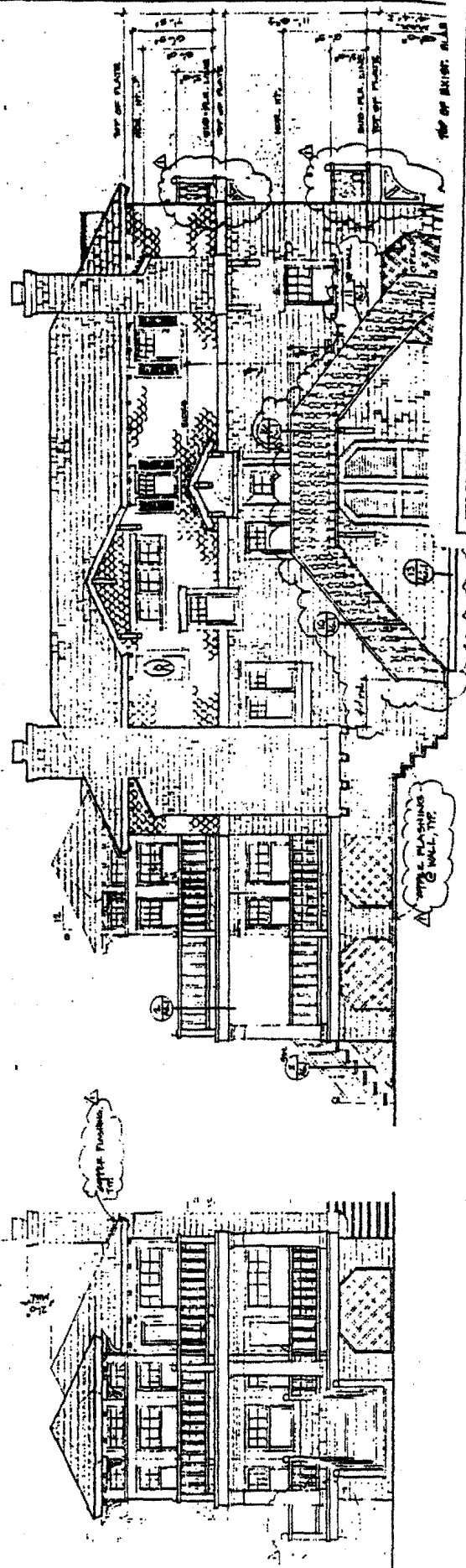
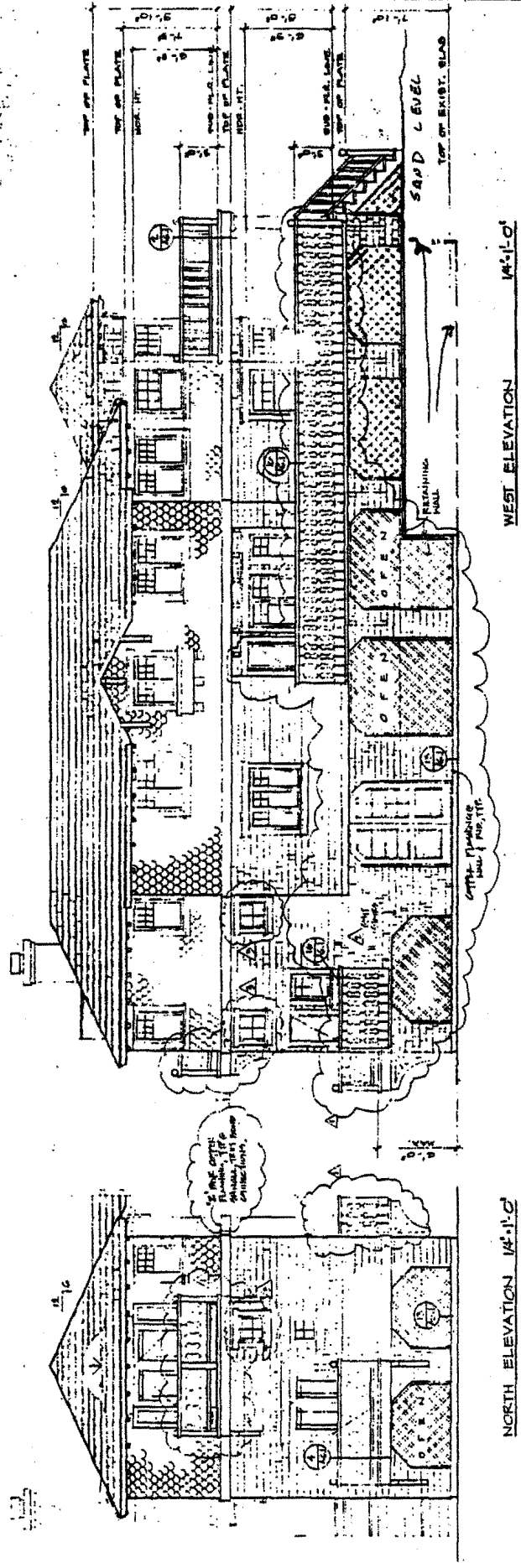
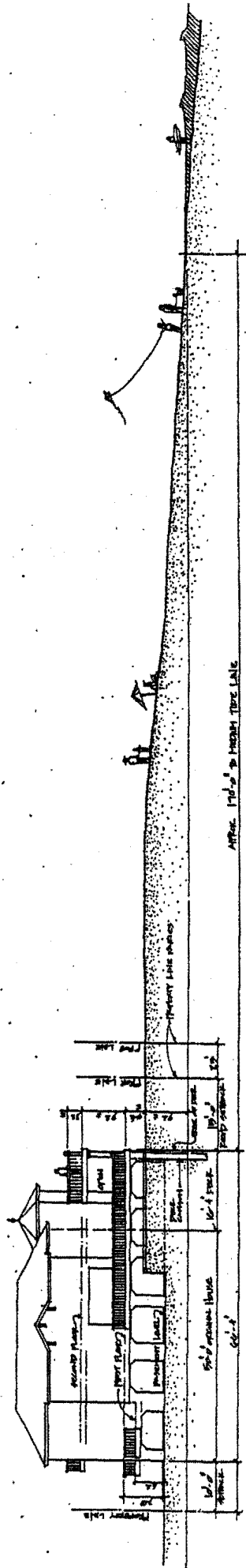


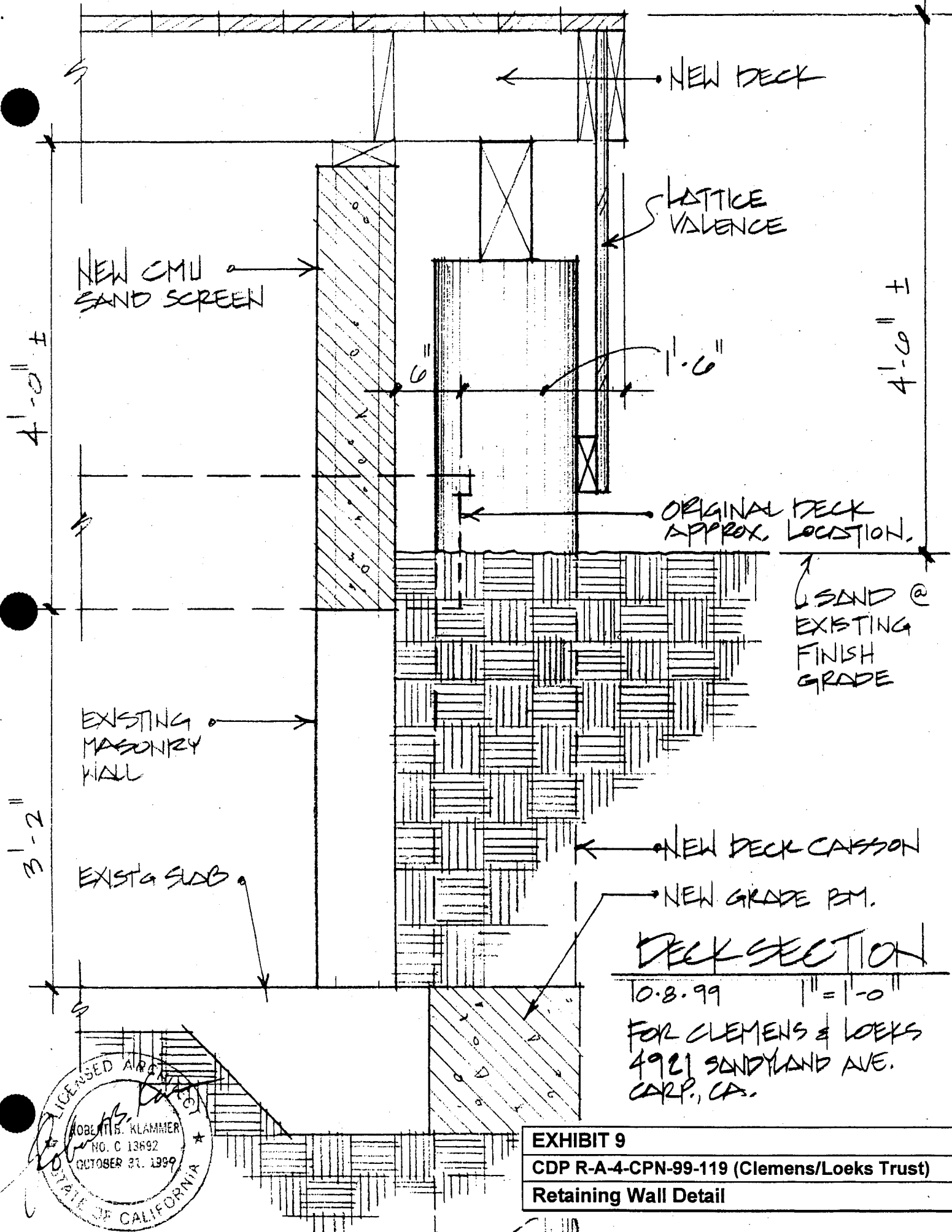
EXHIBIT 6
GDP R-A-4-CPN-99-119 (Clemens & Loecks Trust)
Structural Elevations

101'-0" MAX. 1-11



CLEMENS & LOEKS RESIDENCE / BEACH SECTION
 8-1-73 10-9-77 FROM HOUSE TO PROPERTY LINE

EXHIBIT 8
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Cross Section of Subject Site



NEW DECK

LATTICE VALANCE

NEW CMU SAND SCREEN

4'-0" ±

4'-0" ±

ORIGINAL DECK APPROX. LOCATION.

SAND @ EXISTING FINISH GRADE

EXISTING MASONRY WALL

3'-2"

EXISTING SUB.

NEW DECK CASSON

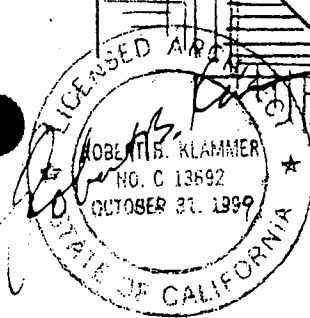
NEW GRADE PM.

DECK SECTION

10.8.99 1" = 1'-0"

FOR CLEMENS & LOEKS
4921 SANDYLAND AVE.
CARP, CA.

EXHIBIT 9
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Retaining Wall Detail



LAW OFFICES OF JANA ZIMMER
2640 Las Encinas Lane
Santa Barbara, CA. 93105

Phone: 805/563-1591

Fax: 805/687-4156

RECEIVED

FEB 23 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH COASTAL DISTRICT
email: jzimmer@rain.org

February 21, 2000

California Coastal Commission
45 Fremont Street
San Francisco, CA.

Re: Appeal No. A-4-CPN-99-119

4921 Sandyland Road Carpinteria

BY FAX and MAIL

Dear Chair Wan and Honorable Commissioners:

This is to request revocation and/ or reconsideration¹, pursuant to 14 CCR 13105 and 13106 of the "as-built" coastal permit granted on the above project on February 17, 2000. The Commission unanimously granted a permit notwithstanding having found substantial issue without dissent or discussion, and notwithstanding a strong staff recommendation for denial.

In light of the staff report and recommended findings, which the Commission rejected essentially without comment,² it is impossible to conclude the basis on which the Commission found this project to be in conformity with the Carpinteria certified LCP and the access policies of the Coastal Act, Pub. Res. Code Section 30200. Since the Commission failed to adopt any findings for approval, it is impossible for my clients to make sense of this outcome. It is uncontroverted that the City of Carpinteria failed to review this project under the policies of its LCP, and there was no substantial evidence to contradict the analysis of the staff report finding that the project was *inconsistent* with those policies.

¹Appellants request reconsideration to the extent authorized by law. Appellants contend that the statute and regulation which limits the right to request reconsideration to the *applicant* is, on its face, a violation of due process and equal protection. See, Pub. Res. Code Section 30627

²While one or two Commissioners made abbreviated comments, it is impossible to discern whether the Commission as a whole was adopting those as its own. [For example, comments were made which implied that notwithstanding the establishment of the stringline in 1985, this was now just a matter of 'private' views, or that flood control insurance requirements were somehow overly conservative and not reflective of any real concern.

1

EXHIBIT 10

CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)

Revocation Request

14 CCR 13096 states: "All decisions of the Commission relating to permit applications *shall be accompanied by written conclusions* about the consistency of the application with the Pub. Res. Code Section 30604, and Public Resources Code Section 21000 and following, and findings of fact and reasoning supporting the decision". The only findings before the Commission were findings for denial, but the Commission purported to take final action on the permit on February 17.

The statute requires that findings be adopted by a majority of the members from the prevailing side. Pub. Res. Code Section 30315.1. Of most concern to my client Mr. Mezzio, is the complete failure of the Commission to address the unequal application of the law inherent in having established the stringline in 1985, and having simply disregarded the *same* stringline in this appeal. It is also incomprehensible to my clients that the Commission ignored the applicant's undisputed violations of the Municipal Code and the building permit actually issued by the City, which are directly material to the LCP consistency claims: the applicant misrepresented the seaward location of the structure in relation to adjacent structures, the applicant violated the sideyard setback requirements of the ordinance and the conditions of the ABR placed on his project, and the applicant went beyond the scope of the permit issued in constructing the so-called 'retaining' wall.

Furthermore, each and every Commissioner announced that they had participated in *ex parte* communications with representatives of the applicant. None of the Commissioners stated whether they were shown any documents or exhibits which were not submitted to the staff and/or made available to the public. Notwithstanding our repeated attempts to discover submittals from the applicant, there were none publicly available. The applicants nevertheless presented numerous transparencies during their oral presentation, - with lightning speed- which we assume were meant to establish that the applicants' project was consistent with the stringline imposed on my clients in 1985. This testimony was false.

In addition, the applicant's attorney made reference to a 'stringline study' which was not made a part of the public record, nor made available for review. If, indeed, any Commissioner was shown any of these exhibits in private, we believe his or her disclosure on the record was inadequate under the Coastal Act. While we respect the time constraints on the Commission, to base a decision on information obtained in private and/or which is presented at the hearing with no reasonable opportunity to respond is fundamentally unfair.

Third, the applicant's attorney purported to 'testify' as to the historic facts related to flooding at the property, notwithstanding that his clients only purchased the property in 1998. My clients testified, as percipient witnesses, that flooding had indeed occurred at various times prior to 1998, and that sea water had indeed reached the structures when the City failed to place the berm in front of them. Therefore, there is no substantial evidence in the record to support a conclusion that the seawall which staff recommended be removed could remain without causing harm to my clients' properties. If the Commission made its determination on this issue based on applicants' inaccurate testimony, there are clearly grounds for revocation under Section 13105(a).

Finally, while the Commission appeared to accept that the building permit which was issued by the City was issued without legal authority, it made no effort to balance the equities, or provide any relief whatsoever to the affected property owners, on any of the three separate issues: the stringline, the sideyard setbacks, or the retaining wall. Just as the City has no power to 'waive' violations of its zoning law, the Commission does not have the legal power to simply 'waive' the policies of the Coastal Act. It would have been a simple matter to articulate a compromise which would require the applicant to make modifications to the structure to make it more consistent with the adjacent properties and the policies of the Coastal Act .

Appellants stress that they never requested outright denial of this permit. Instead, they requested and continue to request changes to the project to make it consistent with the approvals and conditions previously imposed. In this case, the Commission could achieve substantial justice by granting the permit but adding a condition that "the upper deck shall be removed". As we have demonstrated through the contractors' estimates we presented, the cost of removal of this deck would be negligible, and the resulting improvement in views along the ocean will be significant.

As a policy matter, while this submittal is of necessity couched in legal terms, we also request that the Commission understand how difficult it is to defend the regulatory structure of the Coastal Act to affected members of the public when parties leave a hearing not understanding why they have been required to make concessions, where others, who proceed without permits, are simply relieved of their obligations after the fact. As Commissioner Desser indicated after the vote, there needs to be a mechanism to address a local agency's failure to properly implement its LCP. That legal mechanism exists: it is the appeal process to the Commission. By failing to address the applicant's violations in any way, the message that the Commission sent to the City of Carpinteria, and to applicants who violate local law as well as the Coastal Act, is that they are free to conduct business as usual.

Please take this opportunity to correct your decision and achieve substantial justice among the parties.

Very Truly Yours,


Jana Zimmer

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March 19, 2000

California Coastal Commission
45 Fremont Street #2000
San Francisco, CA.

California Coastal Commission
89 South California Street, Ste 200
Ventura, CA. 93001

Re: A-CPN-99-119
Request for Revocation/Reconsideration

Dear Chair Wan and Honorable Commissioners:

Appellants, who have requested revocation of the permit granted on February 17, 2000, without findings, submit the following argument and evidence in support of their request.

1. New evidence of flood risk

The applicants' attorney purported to testify, in his presentation, that there is no history of flooding or storm wave damage relevant to this application. The applicant's attorney is not a percipient witness, and his 'argument' cannot be construed as substantial evidence. Apart from the fact that it directly contradicts the proposed factual findings of the staff report, the testimony was false. The enclosed photographs, which were taken by Appellant Mary Clark during storms which occurred in the week after the February 17 hearing clearly demonstrate that in areas where there is no berm flooding does occur. The photographs also demonstrate, in their depiction of wave erosion of the berm, that if the berm were not present, the water would reach the Clemens property. The only evidence that there is no risk from the new construction is the evidence supplied by applicant's attorney. Therefore, it was clearly material to the Commission's decision to reject its staff's report and recommendations, and the documentation submitted both by staff and the appellants. Thus, appellant's evidence meets the requirements for the Commission to consider revocation.

2. New evidence regarding the appropriate stringline

The applicant's attorney testified to a "stringline study", which does not exist, and asserted that the proposed project was consistent with the stringline previously established by the Commission as a condition of approval of Mr. Mezzio's project in 1985. This testimony was also false and misleading. Mr. Mezzio submitted a architect's rendering of the stringline and the encroachment seaward of the remodeled structure, in particular the new first and second story decks. These

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SOUTH CENTRAL COAST DISTRICT

EXHIBIT 11

CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)

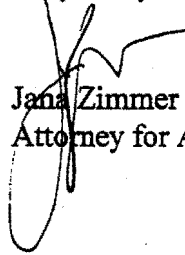
Second Letter from Persons Requesting Revocation

exhibits were not provided to the Commission as part of the staff packet, although they *were submitted to the Commission as Exhibit C to of Appellant's packet dated October 4, 1999*. These renderings are resubmitted herewith. The rendering clearly demonstrates that the new portions of the structure extend even further seaward than the pre-existing house, and the pre-existing, illegal deck on the sand.

Moreover, despite numerous requests from Appellant Velasco to be provided with any submittals from the applicant, Appellants learned after the hearing that in fact the applicant had sent materials directly to the Commissioners the day before the hearing, and that an Addendum had been distributed to the Commission including applicant's materials. This Addendum was never made available to Appellants.

The Commission should note that the Appellants never requested that the Clemens permit be denied. All they have ever sought is equal treatment under the law. That has been denied them, and they therefore request that the permit be revoked, and a new permit be approved which requires the Clemens property to adhere to the same stringline as the Appellants' properties.

Very Truly Yours,


Jana Zimmer
Attorney for Appellants

Photos taken by Appellant Mary Clark in February, 2000

#1 Erosion of Berm showing Carpinteria Shores, Villa Sortino and Clemens properties behind.

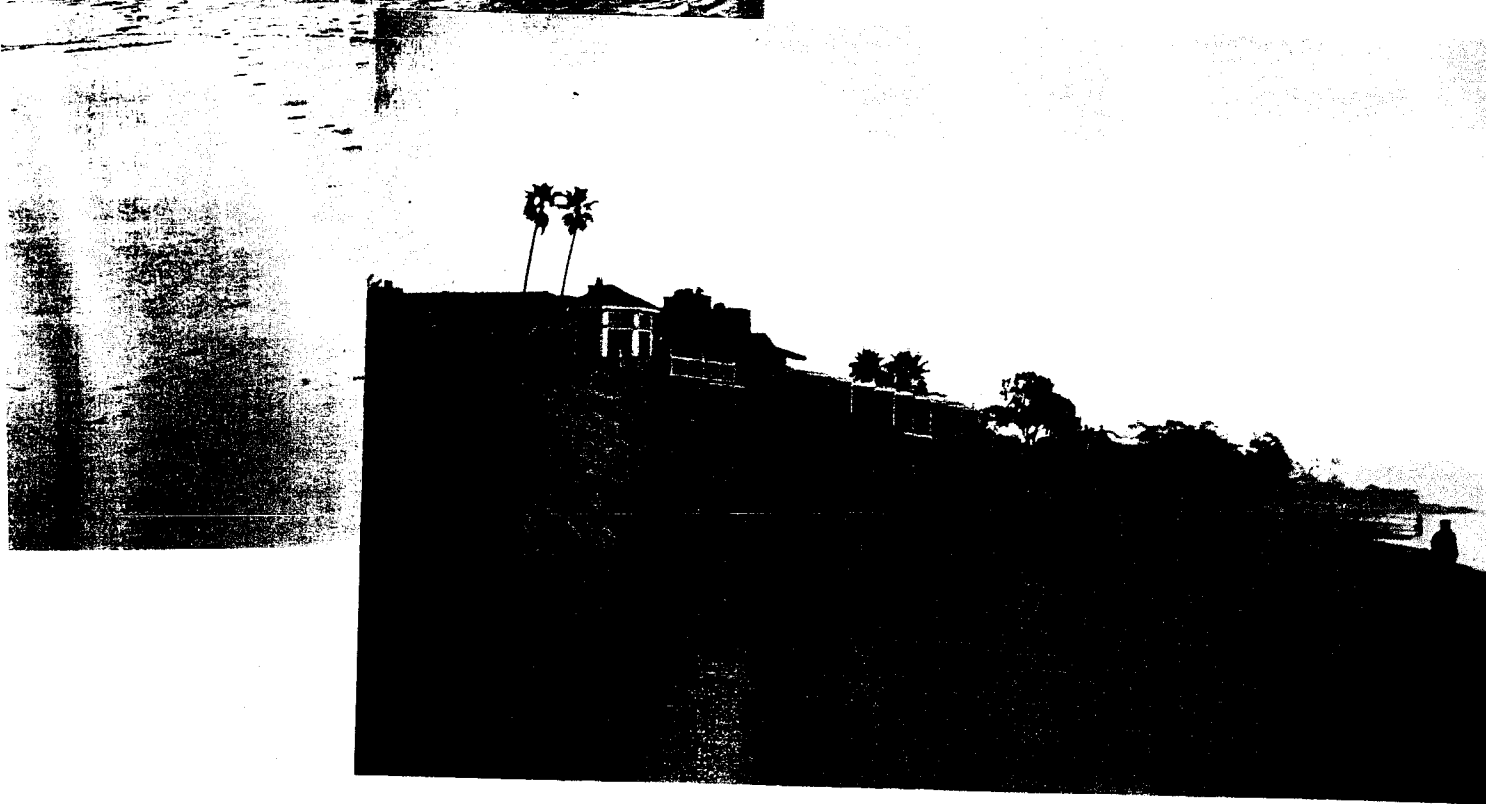
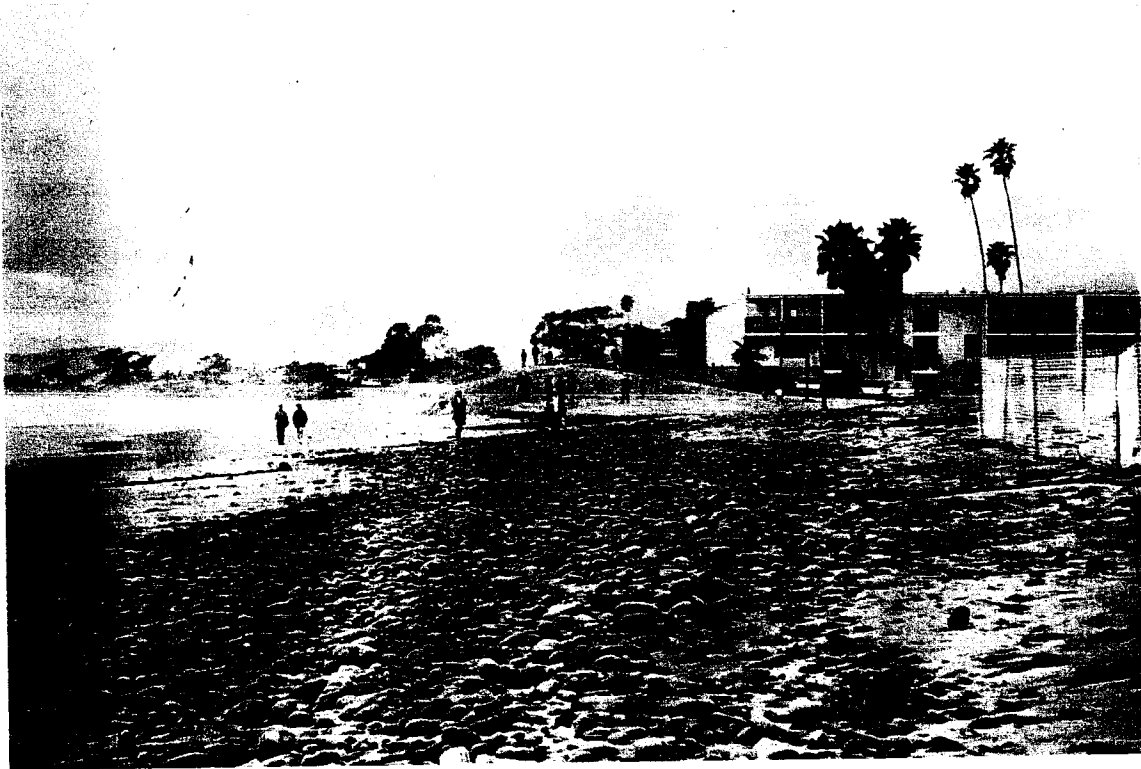


Photo #2 Erosion of berm showing properties from the west

Photo #3 Looking west from volleyball courts- without berm Carpinteria shores would have been flooded



Looking west toward Carpinteria Shores and Villa Sortino- Photo 4

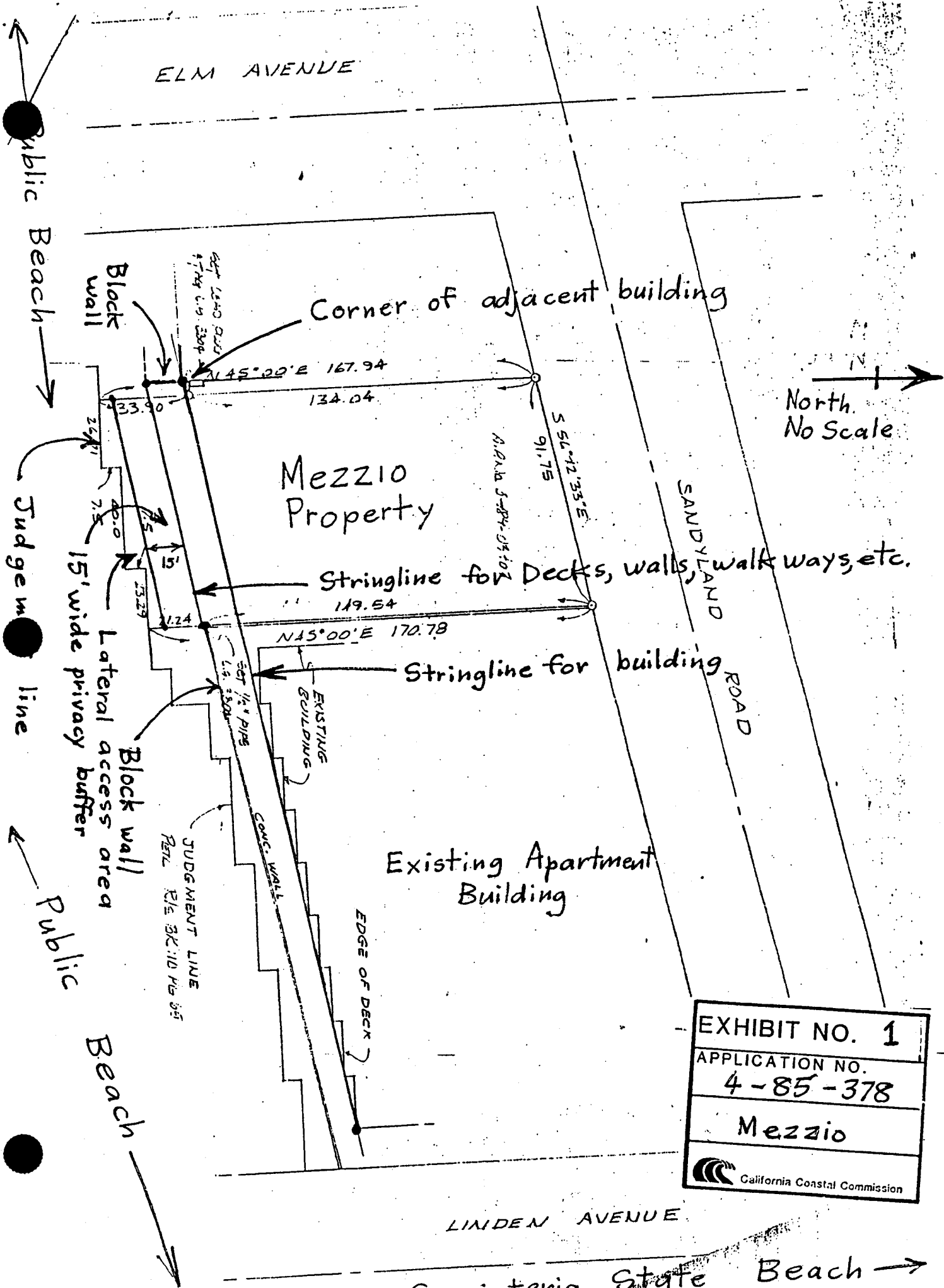
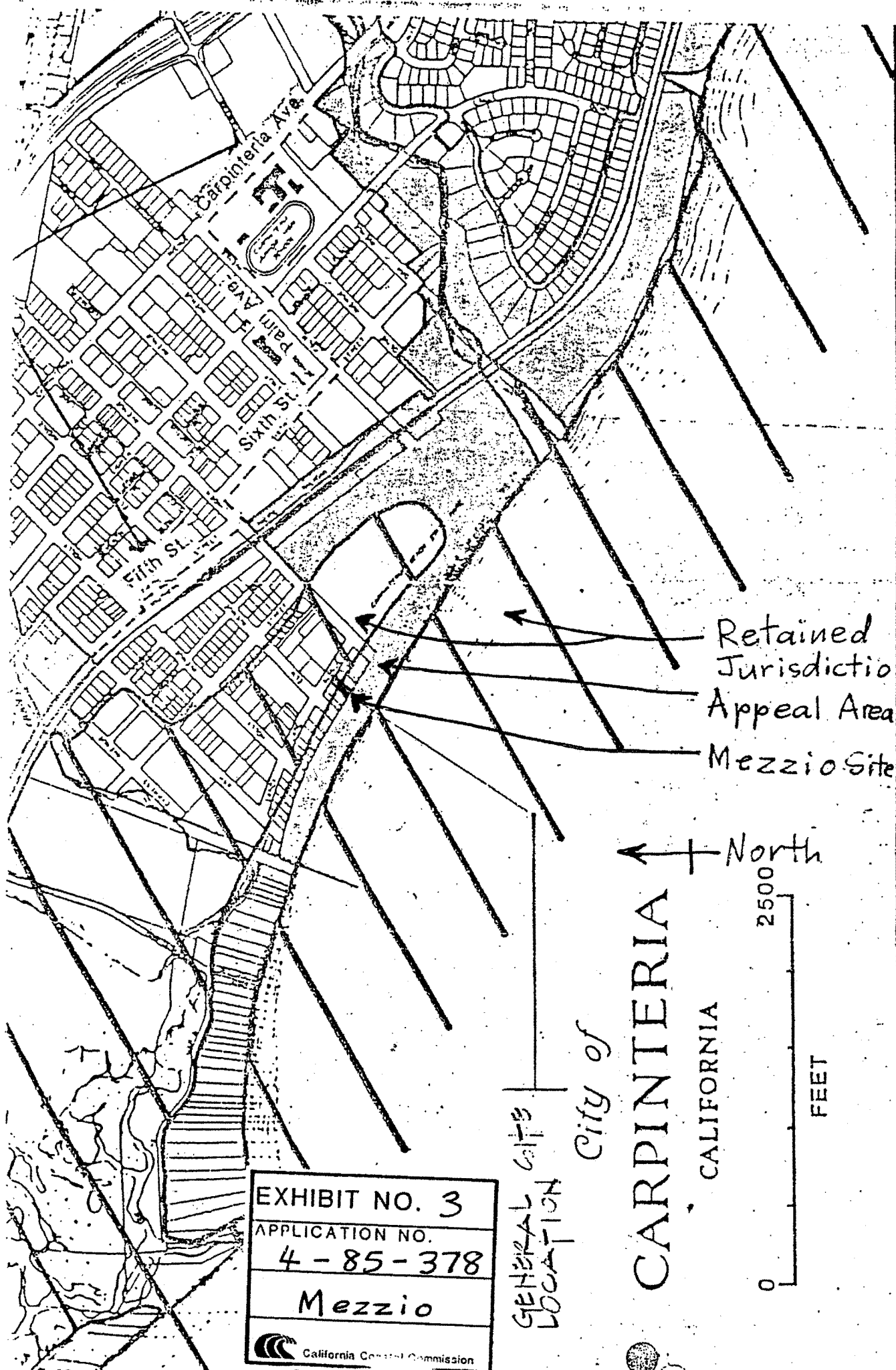
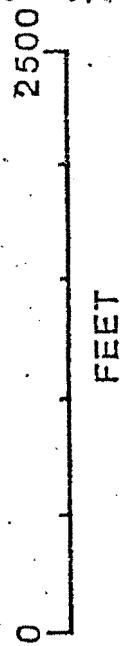


EXHIBIT NO. 1
APPLICATION NO. 4-85-378
Mezzio
California Coastal Commission




Retained
Jurisdiction
Appeal Area
Mezzio Site

North ↑



GENERAL CITY LOCATION
City of
CARPINTERIA
CALIFORNIA

EXHIBIT NO. 3
APPLICATION NO. 4 - 85 - 378
Mezzio
 California Coastal Commission

ORIGINAL
EXTERIOR WALL

ORIGINAL DECK

(E) RESIDENCE

(E) RESIDENCE

CARPINTERIA BEACH

15'-0"

(E) JUDGEMENT LINE

(E) WALKWAY AND PATIO STRINGLINE

(E) BUILDING STRINGLINE

(E) REQUIRED PRIVACY BUFFER

(E) LINE OF 2ND AND 3RD FLOOR BALCONY

(E) BUILDING LINE

4925 SANDYLAND ROAD
CARPINTERIA, CA.

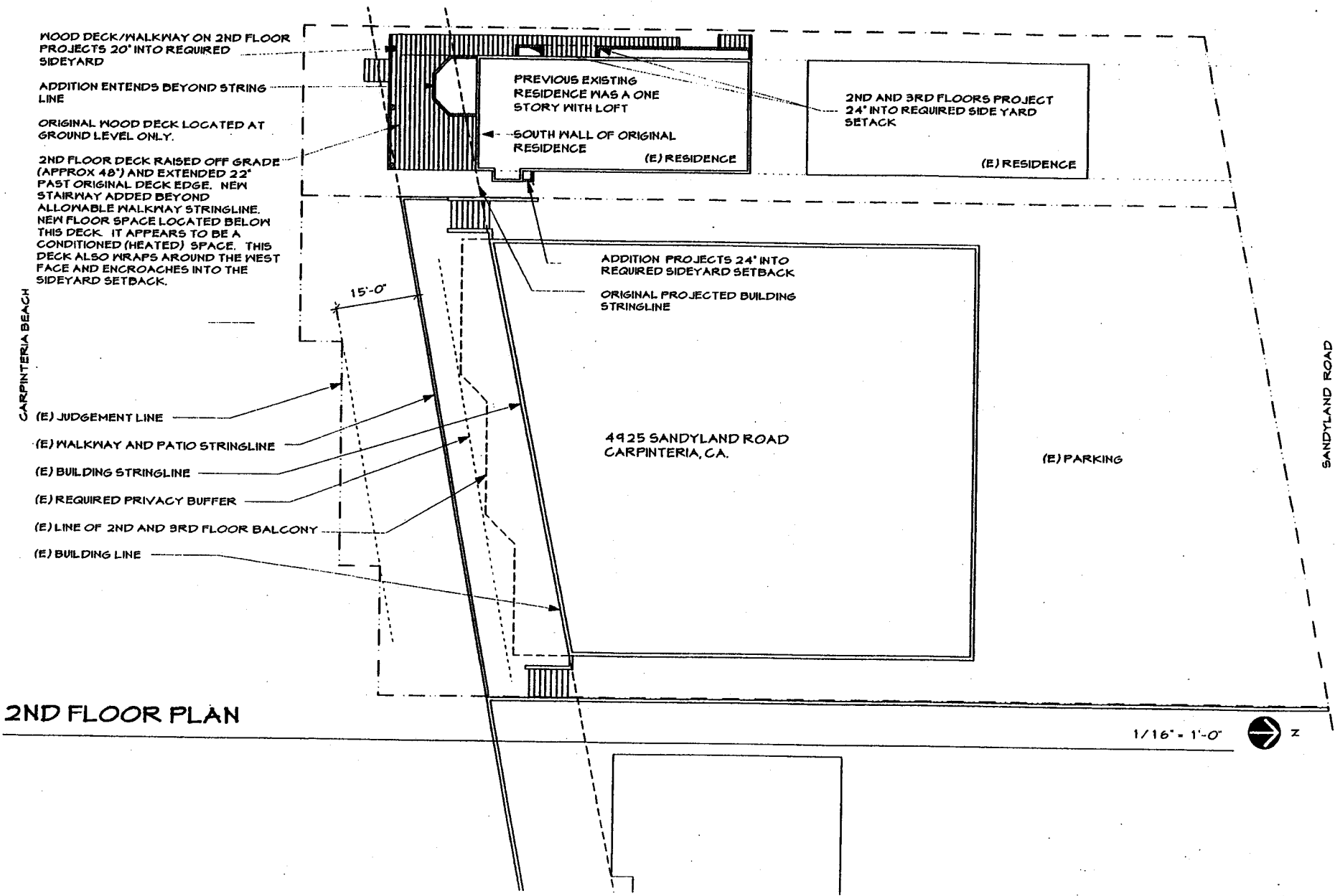
(E) PARKING

SANDYLAND ROAD

ORIGINAL FLOOR PLAN

1/16" = 1'-0"





WOOD DECK/WALKWAY ON 2ND FLOOR
 PROJECTS 20' INTO REQUIRED
 SIDEYARD

ADDITION EXTENDS BEYOND STRING
 LINE

ORIGINAL WOOD DECK LOCATED AT
 GROUND LEVEL ONLY.

2ND FLOOR DECK RAISED OFF GRADE
 (APPROX 48') AND EXTENDED 22'
 PAST ORIGINAL DECK EDGE. NEW
 STAIRWAY ADDED BEYOND
 ALLOWABLE WALKWAY STRINGLINE.
 NEW FLOOR SPACE LOCATED BELOW
 THIS DECK. IT APPEARS TO BE A
 CONDITIONED (HEATED) SPACE. THIS
 DECK ALSO WRAPS AROUND THE WEST
 FACE AND ENCROACHES INTO THE
 SIDEYARD SETBACK.

PREVIOUS EXISTING
 RESIDENCE WAS A ONE
 STORY WITH LOFT
 SOUTH WALL OF ORIGINAL
 RESIDENCE (E) RESIDENCE

2ND AND 3RD FLOORS PROJECT
 24' INTO REQUIRED SIDE YARD
 SETBACK
 (E) RESIDENCE

ADDITION PROJECTS 24' INTO
 REQUIRED SIDEYARD SETBACK
 ORIGINAL PROJECTED BUILDING
 STRINGLINE
 4925 SANDYLAND ROAD
 CARPINTERIA, CA.
 (E) PARKING

CARPINTERIA BEACH

SANDYLAND ROAD

- (E) JUDGEMENT LINE
- (E) WALKWAY AND PATIO STRINGLINE
- (E) BUILDING STRINGLINE
- (E) REQUIRED PRIVACY BUFFER
- (E) LINE OF 2ND AND 3RD FLOOR BALCONY
- (E) BUILDING LINE

2ND FLOOR PLAN

1/16" = 1'-0" N

PORTION OF DECK
PROJECTS INTO
SIDEYARD
SETBACK

ADDITION EXTENDS
BEYOND STRING
LINE

NEW 3RD FLOOR DECK
ADDED TO ALIGN WITH NEW
DECK BELOW

CARPINTERIA BEACH

15'-0"

ADDITION
PROJECTS 24"
INTO REQUIRED
SIDEYARD
SETBACK

2ND AND 3RD FLOORS
PROJECT 24" INTO REQUIRED
SIDE YARD SETACK

(E) RESIDENCE

(E) RESIDENCE

(E) JUDGEMENT LINE

(E) WALKWAY AND PATIO STRINGLINE

(E) BUILDING STRINGLINE

(E) REQUIRED PRIVACY BUFFER

(E) LINE OF 2ND AND 3RD FLOOR BALCONY

(E) BUILDING LINE

4925 SANDYLAND ROAD
CARPINTERIA, CA.

(E) PARKING

SANDYLAND ROAD

3RD FLOOR PLAN

1/16" = 1'-0"



