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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
(805) 641-0142

Hearing Opened: 10/12/99
Original Action: 2/17/00
Staff: S. Hudson
Staff Report: 5/25/00
Hearing Date: 6/13/00
Commission Action:



RECORD PACKET COPY

STAFF REPORT: APPEAL
De Novo Hearing
Revised Findings

LOCAL GOVERNMENT: City of Carpinteria

LOCAL DECISION: Approved with No Conditions

APPEAL NO.: A-4-CPN-99-119

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

APPELLANTS: Mary Clark, Vince Mezzio, and Gerald Velasco

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.

DATE OF COMMISSION ACTION: February 17, 2000 in San Diego

COMMISSIONERS ON PREVAILING SIDE: Commissioners Daniels, Desser, Dettloff, Allgood, Kruer, McClain-Hill, Nava, Potter, Reilly, Wooley, and Wan.

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program; City of Carpinteria General Plan; City of Carpinteria Administrative Record for all approved development at 4921 Sandyland Road; Winter Protection Berm Project Summary Report by City of Carpinteria dated 1996; Letter to Clemens/Loeks from Perkins Engineering dated 2/6/00.

PROCEDURAL NOTE

Staff recommends that the Commission **adopt** the following revised findings in support of the Commission's decision on February 17, 2000, to **approve** the proposed project subject to two (2) special conditions regarding no future shoreline protective devices and assumption of risk. The Commission found that the proposed project is consistent with the policies of the City of Carpinteria's Local Coastal Program and with the applicable policies of the Coastal Act.

Because staff originally recommended denial of this proposed project, revised findings are necessary to reflect the action taken by the Commission. Staff recommends, therefore, that the Commission adopt the following resolution and revised findings in support of its action to approve this permit with conditions. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the action of the Commission.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on February 17, 2000, concerning approval of Coastal Development Permit Application A-4-CPN-99-119.*

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 February 17, 2000, 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 approval of Coastal Development Permit A-4-CPN-99-119 on the ground that the findings support the Commission's decision made on February 17, 2000, and accurately reflect the reasons for it.

II. 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 term or 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.

III. Special Conditions

1. No Future Bluff or Shoreline Protective Device

- A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit A-4-CPN-99-119 including, but not limited to, the construction of the residence, retaining wall, basement, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to the residence, basement, and retaining wall, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. Prior to issuance Coastal Development Permit A-4-CPN-99-119, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which reflects the above restrictions and obligations. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Assumption of Risk/Shoreline Protection

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall

include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

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.

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 a letter dated June 22, 1999, from Mr. Dave Durflinger, Community Development Director for the City of Carpinteria, to Mr. Vince Mezzio, appellant, Mr. Durflinger 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. 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. The City authorized occupancy of the completed development in August 1999. After several additional requests were made to obtain the administrative record, it was subsequently received on September 14, 1999. At the Commission hearing of October 12, 1999, the Commission found that a substantial issue was raised by the appeal.

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. 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. This application 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 this application and will require a future follow-up application for a coastal development permit.

B. Consistency With Local Coastal Program Policies

Policy 1-1 of the LCP states:

The City shall adopt the policies of the Coastal Act (Public Resources Code Sections 30210 through 30263) as the guiding policies of the land use plan.

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development which occurs between the first public road and the sea, such as the proposed project site). In this case, the proposed development has been previously appealed to the Commission which found, during a public hearing on October 12, 1999, that a substantial issue was raised.

As a "de novo" application, the standard of review for the proposed development is, in part, the policies and provisions of the City of Carpinteria Local Coastal Program (LCP) which was certified by the Commission on January 6, 1982. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea, including those areas where a certified LCP has been prepared, such as the project site, must also be reviewed for consistency with the Chapter 3 policies of the Coastal Act regarding public access and public recreation. Further, the Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Carpinteria LCP as guiding policies pursuant to Policy 1-1 of the LCP.

C. Hazards and Geologic Stability

Policy 3-8 of the LCP states:

Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impacts of geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.

Policy 3-11 of the LCP states in part:

If the proposed development falls within the floodway fringe, development may be permitted provided...finish floor elevations are above the projected 100-year flood elevation, as specified in the City's Flood Plain Management Plan.

Policy 3-12 of the LCP states:

Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

Policy 3-8 of the LCP requires that all proposed development located in or adjacent to areas subject to geologic hazards or beach erosion shall be reviewed to determine any potential impacts of such development. Policies 3-11 and 3-12 of the LCP require that new development be designed in a manner that minimizes hazards from flooding and does not require the expenditure of public funds for flood control works. In addition, Section 30253 of the Coastal Act, which has been included in the certified LCP as a guiding policy, requires that new development minimize risks to life and property in areas of high geologic or flood hazards and assure structural stability and integrity.

The proposed project includes 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 construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement. The applicant has submitted a letter from Perkins Engineering which indicates that the

proposed residence has been constructed in compliance with current structural building code requirements. The letter from Perkins Engineering dated 2/6/00 states:

The 1994 Uniform Building Code was used for seismic design and the structural wall elements met code requirements for seismic design. The front, ocean facing masonry, wall was not designed as an ocean resisting element, e.g., seawall.

Although no information regarding the geologic stability of the subject site or location of the proposed development in relation to wave action has been submitted by the applicant, the Commission notes (based on available information including the sections of the City's General Plan regarding hazards and the engineering reports previously submitted by the City for the construction of an annual sand berm to prevent damage to the subject site from wave action) that the proposed development is located in an area that has been historically subject to an unusually high amount of natural hazards including flooding and severe beach erosion from storm waves. The Winter Protection Berm Project Summary Report by the City of Carpinteria dated 1996 indicates that the construction of a sand berm along the public beach fronting the subject site (approximately 20 ft. seaward of the dripline of the proposed deck) is necessary on an annual basis in order to protect private residential development located along Sandyland Road which would otherwise be damaged by wave action. In addition, the entire project site is designated as a "Zone A" flood hazard area (area with highest potential for flood hazard) by the City of Carpinteria General Plan, the Federal Emergency Management Agency (FEMA), and the National Flood Insurance Rate Map System (FIRM). However, in this case, the applicant has indicated that the portions of the proposed residence that are intended for habitable use will be located above the elevation of the flood zone and will not be subject to flood hazard. In addition, the City of Carpinteria's Engineer has determined that the proposed project is consistent with FEMA flood control requirements. In addition, the City's approval required that the remodel be supported by caissons which have been constructed at the seaward end of the deck. A copy of the architect's caisson plan and photographs of the caissons as constructed are included in the record. Given the existence of these caissons, and certification by the City that the project is consistent with FEMA flood control requirements, the project is consistent with Coastal Act requirements and LCP Policy 3-8.

As discussed above, the Carpinteria coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the 1995 severe winter storm season. Thus, ample evidence exists that beachfront development located on the seaward side of Sandyland Road in Carpinteria, including the project site, is subject to potential risks due to storm waves and surges, high surf conditions, erosion, and flooding.

When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property. Therefore, in the case of this project, the Commission finds that due to the possibility of liquefaction,

storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by Special Condition Two (2), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development is consistent with Policies 3-8, 3-11, and 3-12 of the LCP and with Section 30253 of the Coastal Act as included in the LCP as a guiding policies.

D. Shoreline Protective Devices and Seaward Encroachment

Policy 3-1 of the LCP states:

Seawalls shall not be permitted unless the City has determined that there are no other less environmentally damaging alternatives for protection of existing development. Where permitted, seawall design and construction shall respect to the degree possible natural land forms. Adequate provision for lateral beach access shall be made and the project shall be designed to minimize visual impacts by use of appropriate colors and materials.

Policy 3-3 of the LCP states:

To avoid the need for future protective devices that could impact sand movement and supply, no permanent above-ground structures shall be permitted on the dry sandy beach except facilities necessary for public health and safety, such as lifeguard towers.

Policy 3-8 of the LCP states:

Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impacts of geologic hazards arising from seismic events, tsunami runoff, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.

Policy 3-11 of the LCP states in part:

If the proposed development falls within the floodway fringe, development may be permitted provided...finish floor elevations are above the projected 100-year flood elevation, as specified in the City's Flood Plain Management Plan.

Policy 3-12 of the LCP states:

Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

Policy 3-1 of the LCP, consistent with Section 30235 of the Coastal Act which has been included in the certified LCP as a guiding policy, provides that the construction of shoreline protection devices for existing development may be allowed only when no feasible less environmentally damaging alternative exists. Policy 3-3 of the LCP prohibits the construction of new development on the dry sandy beach in order to avoid the need for the construction of seawalls for new development. In addition, Policy 3-8 of the LCP requires that all proposed development located in or adjacent to areas subject to geologic hazards or beach erosion shall be reviewed to determine any potential impacts of such development. Further, Policies 3-11 and 3-12 of the LCP require that new development be designed in a manner that minimizes hazards from flooding and does not require the expenditure of public funds for flood control works. In addition, Section 30253 of the Coastal Act, which has been included in the certified LCP as a guiding policy, requires that new development minimize risks to life and property in areas of high geologic or flood hazards and assure stability and structural integrity.

The proposed project includes 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 construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement. The proposed project also includes a 7 ft. high concrete block retaining wall approximately 1.5 ft. landward of the toe of the deck. The subject site is located between Sandyland Road and Carpinteria City Beach in a built-out area of Carpinteria consisting primarily of multi-family residential development. As previously discussed the Commission notes that Carpinteria City Beach is subject to periodic episodes of beach erosion and flooding from severe storm events and that the proposed development will be subject to potential wave action.

Past Commission review of residential projects along the shoreline has shown that such development has potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas. In order to determine what adverse effects to coastal processes and public access will result from the proposed project, it is necessary to analyze whether the proposed development will result in the seaward encroachment of development on the sandy beach.

1. Seaward Encroachment by New Development

One means of controlling seaward encroachment of residential structures to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, that the Commission, in past permit actions, has developed is the "stringline" policy. As applied to beachfront development, the stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks.

The applicant is not in agreement with the use of a stringline measurement to define the appropriate seaward limit for development on the subject site. Specifically, the applicant's consultants have asserted that new development on the subject site should be allowed to extend seaward to a "judgement line" determined as part of a previous stipulation agreement between the State Lands Commission, the City of Carpinteria, and the previous property owner in 1978 which occurred as a result of a Superior Court action (Glenn Roberts, et al. v. City of Carpinteria, et al.). The agreement defines the boundary line referred to as a "judgement line" between private property and public beach (Carpinteria City Beach). In addition, the agreement between the above three parties also delineated a second "judgement line" (drawn approximately 20 ft. landward of the property boundary judgement line) seaward of which, no development would be allowed to occur. The approximate location of this most landward "judgement line" is shown on Exhibit 3. Staff notes that use of the above described "judgement line" would allow development on the subject site to extend further seaward than the use of a stringline method.

However, the Commission notes that the above agreement between the State Lands Commission, the City, and the previous property owner is not included in the certified LCP as a policy or development standard and that the City has not submitted any amendment application to the certified LCP to do so. Further, the Commission also notes that the above agreement does not require the approval of new development landward of the judgement line and that the agreement in no way limits the ability of the Commission, or the City, to regulate the appropriate location, or the seaward extent, of new development on the subject site.

In past permit actions regarding new beachfront development along Sandyland Road in Carpinteria, the Commission has, in some cases, required that new development be consistent with a stringline in order to minimize seaward encroachment. Coastal Development Permit 4-85-378 (Mezzio) was approved by the Commission for the construction of a condominium complex on the neighboring parcel located immediately east and adjacent to the subject site in 1985 with a special condition requiring the submittal of revised plans to relocate all development landward of the appropriate structural and deck stringlines. However, the Commission notes that a stringline was not applied in all cases for new development along Sandyland Road in Carpinteria. Coastal Development Permit (CDP) 4-90-041 (Designworks Development) was

approved in 1990 for the construction of a condominium complex two lots to the west of the subject site. The staff report for CDP 4-90-041 stated that a stringline was not required for the subject development because of the unique irregular design of the structure (seaward encroachment by portions of the structure would be compensated by other portions of the structure that would be setback further from the beach) and because the LCP does not contain a specific policy regarding the use of a stringline. However, the Commission notes that the development approved by CDP 4-90-041 was constructed in substantial conformance with a stringline drawn from the nearest corners of the adjacent structures and deck (the deck was located entirely landward of the stringline and only a small portion of the structure extended seaward of the structural stringline).

The Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and that the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. Therefore, the applicant is only seeking to extend the outer "envelope" of the development 1.5 ft. further seaward. The applicant states that this 1.5 ft. area of new deck was formerly occupied by a permanent planter box.

The Commission finds that the LCP does not require the Commission to apply a stringline. The Commission further finds that, in the specific case of this project, the proposed extension of the house and deck will not result in the significant seaward encroachment by new development on the Carpinteria City Beach. Based on these determinations, the Commission finds that the proposed development is consistent with the LCP.

2. Shoreline Protective Devices

In past permit actions, the Commission has found that the construction of a shoreline protection device, such as a seawall, may result in significant adverse effects to shoreline sand supply and public access. The certified LCP, in recognition of the adverse effects to beach areas that results from the use of shoreline protection devices to protect development, includes several policies which limit the use of such devices. Policy 3-1 of the LCP, consistent with Section 30235 of the Coastal Act which has been included in the certified LCP as a guiding policy, provides that the construction of shoreline protection devices for existing development may be allowed only when no feasible less environmentally damaging alternative exists. Further, Policy 3-3 of the LCP prohibits the construction of new development on the dry sandy beach in order to avoid the need for the construction of seawalls for new development.

In the case of the proposed project, although no seawall is proposed, the project includes the a 7 ft. high concrete block retaining wall approximately 1.5 ft. landward of the toe of the proposed deck. The proposed retaining wall is part of the foundation for the proposed deck and residence and the applicant's engineering consultant has

indicated that the proposed retaining wall is not intended to function as a seawall. The Commission notes, pursuant to the above referenced policies of the LCP, that the construction of a shoreline protection device for development, may only be allowed when no feasible alternatives to the construction of the proposed seawall exist.

Even though the precise impact of a structure on the beach is a persistent subject of debate within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whether it is a vertical bulkhead or a rock revetment. The main difference between a vertical bulkhead and rock revetment seawall is their physical encroachment onto the beach. However, it has been well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or vertical bulkhead will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach and the interruption of alongshore processes

In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering that, "Seawalls usually cause accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them."¹ Ninety-four experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement of the adverse effects of shoreline protective devices:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.²

The impact of seawalls as they are related to sand removal on the sandy beaches is further documented by the State Department of Boating and Waterways:

1 Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.

2 Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.³

Finally this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.⁴

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself. He concludes that:

Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.⁵

Dr. Everts further concludes that armoring in the form of a shoreline protection device interrupts the natural process of beach retreat during a storm event and that, "a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat." Therefore, the Commission finds that a shoreline protective device, over time, will result in potential adverse effects to the beach sand supply resulting in increased seasonal erosion of the beach and longer recovery periods.

The impacts of potential beach scour is also important relative to beach use. Scour is the removal of beach material from the base of a cliff, seawall or revetment due to wave action. When waves impact on a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the

3 State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976), page 30.

4 Coastal Sediments '87.

5 Letter Report dated March 14, 1994 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Craig Everts, Moffatt and Nichol Engineers.

incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges that seawalls do affect the supply of beach sand. The subject property is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue. If the beach scours at the base of the bulkhead, even minimal scouring in front of the proposed retaining wall/bulkhead will translate into a loss of beach sand available (i. e. erosion) at an accelerated rate than would otherwise occur under a normal winter season if the beach were unaltered. A second impact of beach scour relates to the potential turbulent ocean condition. Scour at the face of a seawall would result in greater interaction with the wall and thus, make the ocean along Carpinteria City Beach more turbulent than it would along an unarmored beach area

In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that staff proposed for several other projects that were being heard by the Commission on the same day as this project.

3. Conclusion

The proposed project includes the demolition of more than 50% of an existing residence and the construction of a significantly larger new residence with a 7 ft. high concrete block retaining wall. The subject site is located between Sandyland Road and Carpinteria City Beach in a built-out area of Carpinteria consisting primarily of multi-family residential development. As previously discussed in detail, the Commission notes that Carpinteria City Beach is subject to periodic episodes of beach erosion and flooding from severe storm events and that the proposed development may be subject to potential wave action. In past years, the City of Carpinteria has constructed a large sand berm along Carpinteria City Beach (approximately 20 ft. seaward of the proposed deck dripline) on an annual basis (subject to a coastal development permit) to protect the private residential development located along Sandyland Road, including the subject site, which could otherwise be subject to potential wave action during storm events.

The Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. However, as discussed above, the Commission finds that the project will not result in significant seaward encroachment by new development on a sandy beach.

It is not possible to completely predict what conditions the proposed residence may be subject to in the future. The construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act as included in the certified LCP as a guiding policy. In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that staff proposed for several other projects that were being heard by the Commission on the same day as this project.

Therefore, for the reasons discussed above, the Commission finds that the proposed project is consistent with Policies 3-1, 3-3, 3-8, 3-11, and 3-12 of the certified LCP or with Sections 30235, 30251, or 30253 of the Coastal Act which have been included in the certified LCP as guiding policies.

E. Public Access

The City of Carpinteria Local Coastal Program, consistent with the Chapter 3 policies of the Coastal Act, mandates the provision of maximum public access and recreational opportunities along the coast. The LCP contains several policies which address the issues of public access and recreation along the coast.

Policy 7-1 of the LCP states:

For new developments between Sandyland Road and City Beach, the City shall determine the extent to which the land proposed for development has historically been used by the public for informal parking and beach access and shall require adequate provision for continuation of such use.

Policy 7-2 of the LCP states:

No above-ground structure or other development, except for public health and safety purposes, and recreational facilities of a temporary nature (e.g., volleyball nets) shall be sited on any dry sandy beach within the City's jurisdiction.

Policy 7-13 of the LCP states, in part:

For all developments between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory...At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide.

In addition to the above referenced policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act.

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

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

Section 30220 of the Coastal Act states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

As previously noted, in addition to any applicable policies of the LCP, all projects located between the first public road and the sea requiring a coastal development

permit, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Based on the access and recreation sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential adverse effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The subject site is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue.

The Commission must consider a project's direct and indirect effect on public areas of the beach. To protect public beach areas when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public beach (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on public beach land, whether the development will indirectly affect public areas of the beach by causing physical impacts to tidelands and shoreline processes.

The project does not have any impact on the nearby public accessway or the existing beach parking. While the Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck, the Commission finds that the proposed residence will not result in significant seaward encroachment by new development on the sandy beach. As such, the Commission notes that the location of the proposed development will not result in significant adverse effects to public access along the sandy beach.

Although the applicant has not submitted any information regarding the location of the mean high tide line, the Commission notes, based on the width of the subject beach, that the proposed development is likely located landward of the mean high tide line. However, the Commission also notes that even structures located above the mean high tide line, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. Specifically, the Commission notes that if a shoreline protection device results in increased beach erosion, the effect would be a reduction in the amount of beach available for public use. That is why the

Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands.

In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

The beaches of Carpinteria are extensively used by visitors of both local and regional origin and the Commission notes that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. The construction of a new seawall to protect the proposed new development would not be consistent with Policy 3-1 of the LCP and with Section 30235 of the Coastal Act which has been included in the LCP as a guiding policy. In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that the staff proposed for several other projects that were being heard by the Commission on the same day as this project.

Therefore, the Commission finds that the proposed project is consistent with the public access and recreation policies of the Coastal Act and with the certified Carpinteria Local Coastal Program.

F. Visual Resources

Policy 4-1 of the LCP states, in part, that:

Broad unobstructed views from the nearest public street to the ocean...shall be preserved to the extent feasible. In addition, new development located on or adjacent to bluffs, beaches, or streams, or adjacent to Carpinteria Marsh shall be designed and sited prevent adverse impacts on the visual quality of these resources.

Policy 4-1 of the LCP requires that new development be designed and sited in order to prevent any adverse impacts to public views to and along the Carpinteria shoreline. In addition, Coastal Act Section 30251, which is included in the certified LCP as a guiding policy, requires that visual qualities of coastal areas shall be considered and protected and, where feasible, degraded areas shall be enhanced and restored.

The subject site is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue. The LCP requires that public views to the ocean from Linden Avenue must be preserved to the extent feasible. See Carpinteria LCP at page 30. The development does not obstruct the view of the ocean from Linden Avenue.

As previously discussed in detail, the proposed development will not be located substantially further seaward than the previously existing development on the subject site. Specifically, the Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and that the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. In the case of the proposed project, the Commission notes that the proposed project will not result in the significant seaward encroachment by new development on the sandy beach and will therefore not result in adverse effects to public views to or along the sandy beach.

Therefore, the Commission finds that the proposed project is consistent with Policy 4-1 of the LCP or with Section 30251 of the Coastal Act which has been included in the certified LCP as a guiding policy.

G. Violations

Development has occurred on the subject site without the required coastal development permit consisting of 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. Although a coastal development permit is required for the proposed project, the proposed project was approved, in error, by the City pursuant to an administrative building permit on November 16, 1998. All proposed development has already been constructed.

Although construction has taken place prior to the issuance of a coastal development permit, consideration of the application by the Commission has been based solely upon the policies of the certified Carpinteria Local Coastal Program and the Chapter 3 public access and recreation policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to potential violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

In addition, 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. This additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit.

H. CEQA

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

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

SMH-VNT

File smh/permits/regular/a-4-cpn-99-119 clemens revised findings

APPENDIX

STUDIES AND PUBLICATIONS

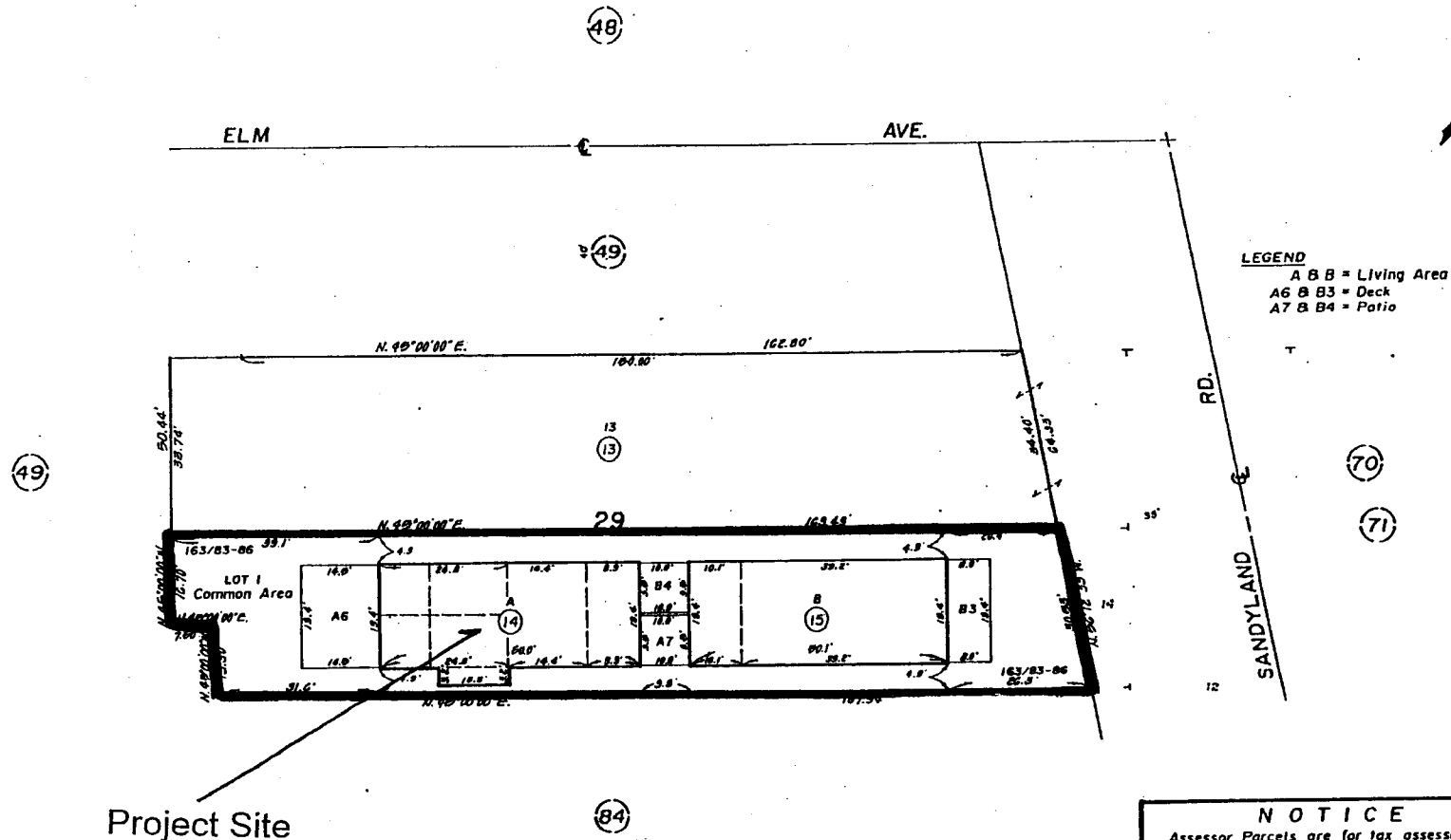
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- Kuhn, Gerald G. Coastal Erosion along Oceanside Littoral Cell, San Diego, California. 1981.
- Maloney & Ausness. "The Use and Legal Significance of the Mean High Water Line Coastal Boundary Mapping". 53 No. Carolina L. Rev. 185 (1974).
- McDougal, W.G., M.A. Sturtevant, and P.D. Komar. "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties". Coastal Sediments '87. 1987.
- National Academy of Sciences. Responding to Changes in Sea Level, Engineering Implications. National Academy Press, Washington D.C. 1987.
- Shalowitz, Shore and Sea Boundaries, Vols. I and II (1962, 1964).
- Shepard, Beach Cycles in Southern California, Beach Erosion Board Technical Memorandum No. 20 (U.S. Army Corps of Engineers, 1950).
- State of California. State Department of Boating and Waterways (formerly Navigation and Ocean Development). Shore Protection in California. 1976.
- Tait, J.F and G.B. Griggs. "Beach Response to the Presence of a Seawall: A Comparison of Field Observations". Shore and Beach. Vol. 58, No. 2, pp 11-28. 1990.
- Thompson, "Seasonal Orientation of California Beaches". Shore and Beach (Vol. 55, Nos. 3-4). July 1987.

LETTERS and MEMOS

- Letter to Lesley Ewing from Douglas Inman, Ph.D., February 25, 1991
- Letter to Lesley Ewing from Dr. Craig Everts of Moffatt and Nichols Engineers, March 14, 1994

POR. PUEBLO LANDS

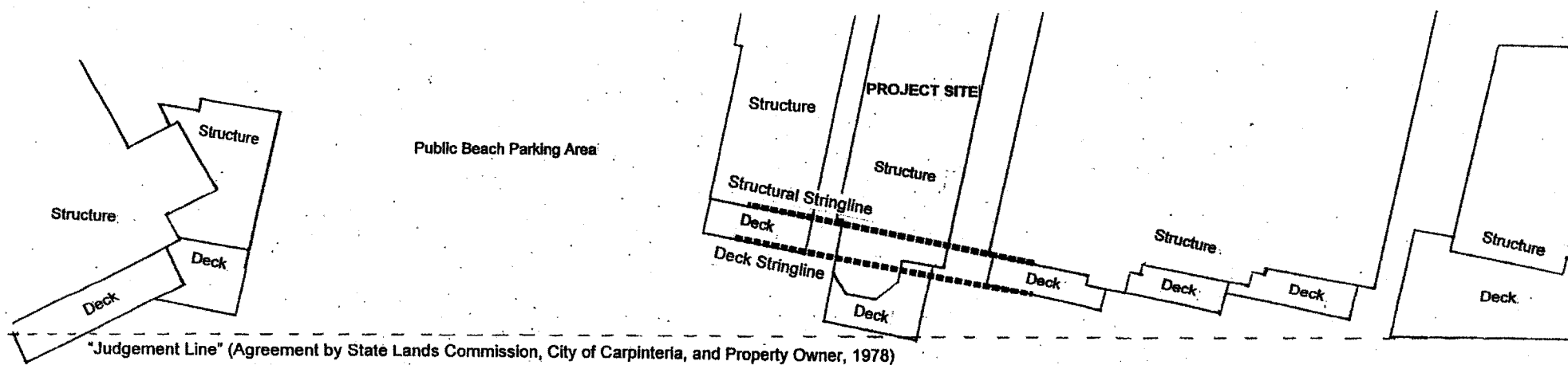
3-85



- 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 A-4-CPN-99-119 (Clemens/Loeks Trust)
Parcel Map



Carpinteria City Beach

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

EXHIBIT 4

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

Floor Plans (First Floor/Basement)

ON THE

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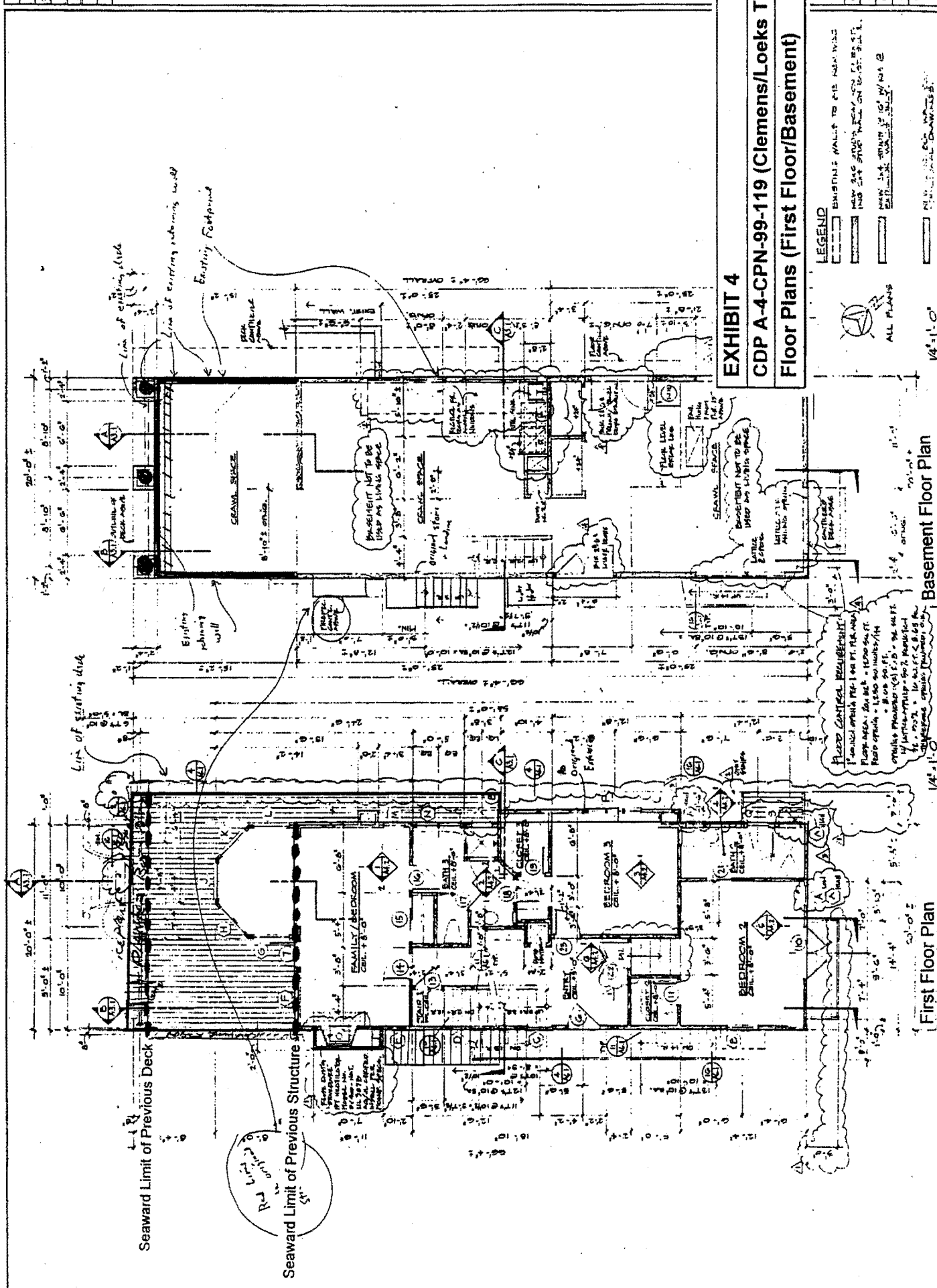
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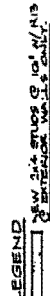
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Basement Floor Plan

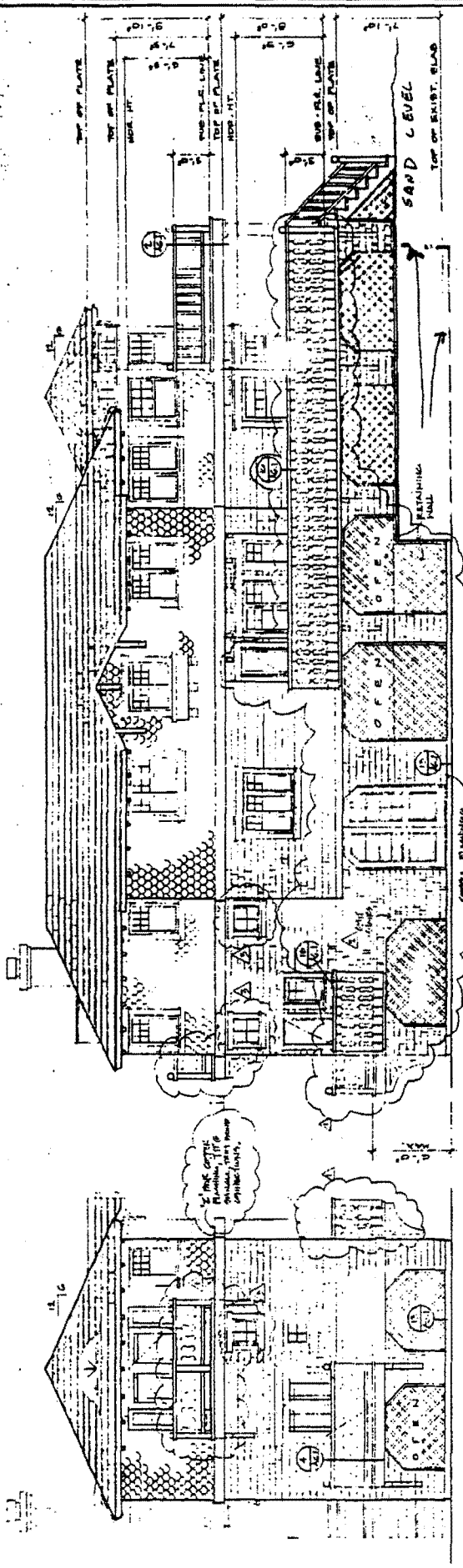
First Floor Plan



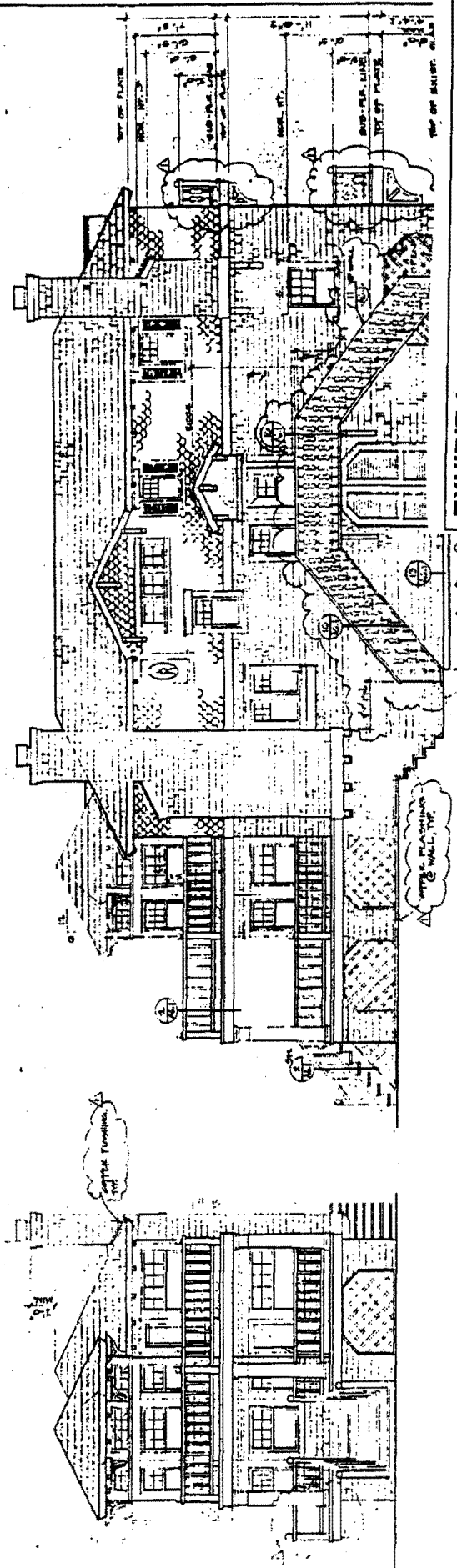


Floor Plans (Second Floor)

Roof Plan



NORTH ELEVATION 14'-11\"/>



SOUTH ELEVATION 14'-11\"/>

WEST ELEVATION 14'-11\"/>

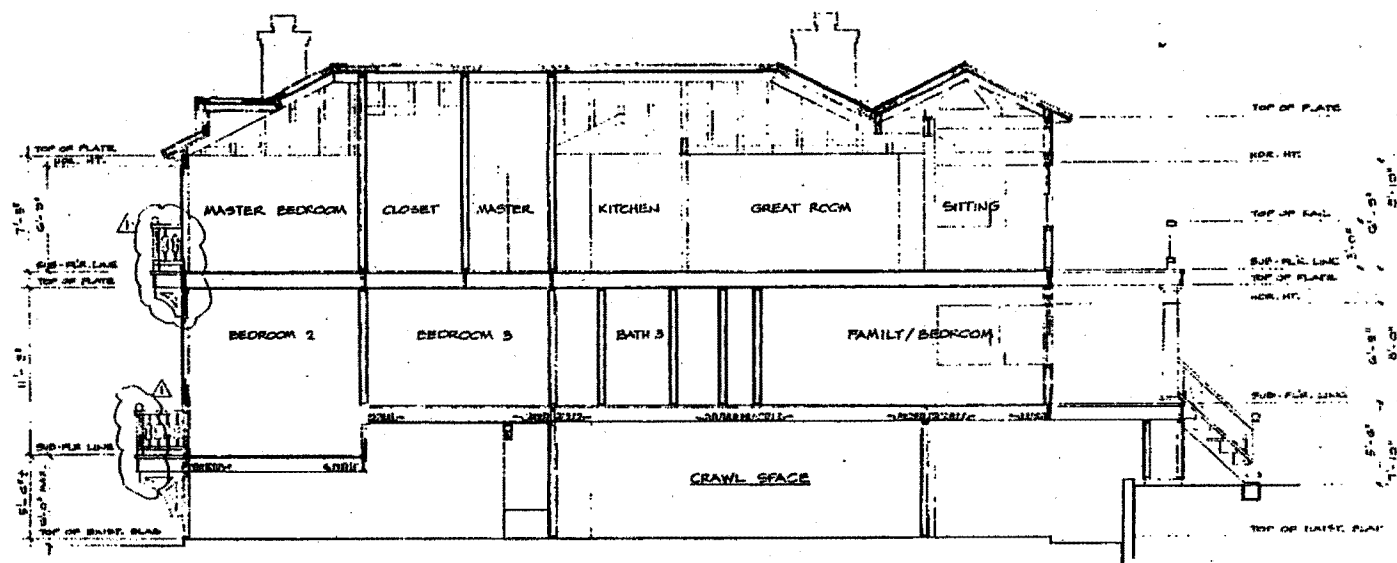
EXHIBIT 6

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

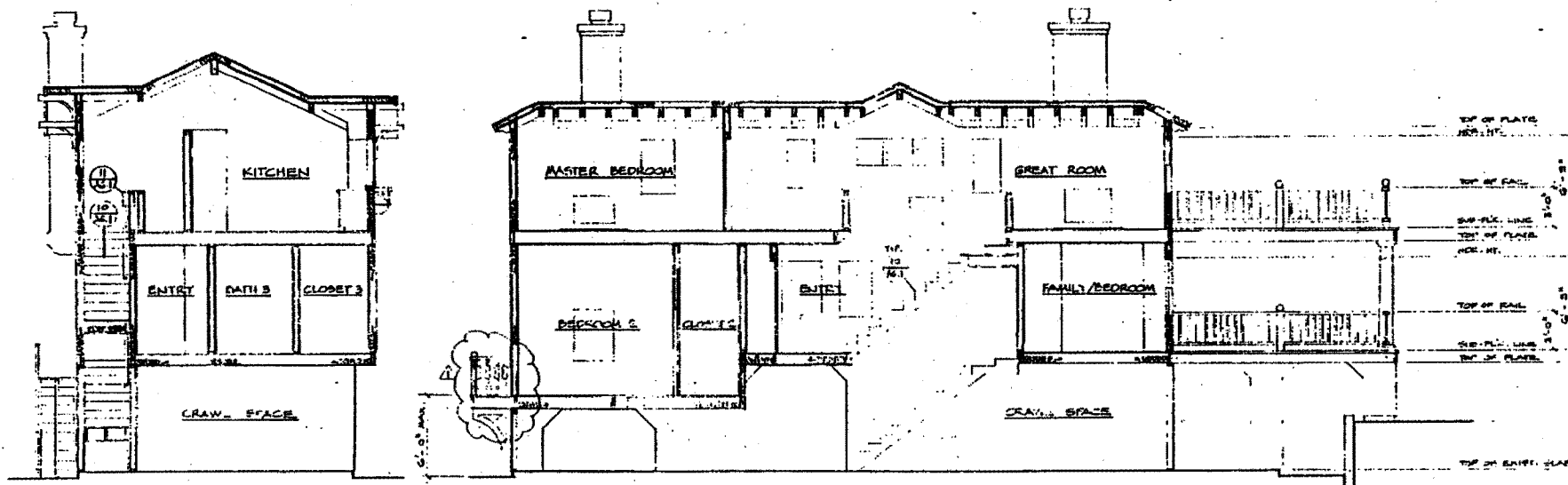
REMODEL FOR
CHRISTOPHER CLEMENS AND LANNIE LOEKS
4921 Sandylane Ave., Carpinteria, CA. 93013

ROBERT B. KLAMMER, ARCHITECT
429 Wyola Road, Santa Barbara, CA 93105
(805) 563-1896 (805) 563-8901

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SECTION 1/4"=1'-0" (A)

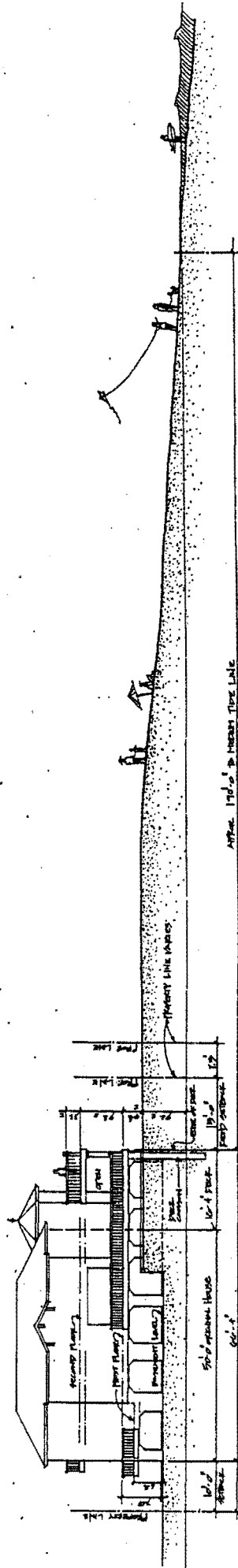


SECTION 1/4"=1'-0" (C)

SECTION 1/4"=1'-0" (B)

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

EXHIBIT 7
CDP A-4-CPN-99-119 (Clemens/Loeks Trust)
Structural Cross Sections



CLEMENS & LOEKS RESIDENCE / BEACH SECTION
 8-7-73 10-9-73 ROGER KUMMER, ARCHITECT

EXHIBIT 8

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

Cross Section of Subject Site



INC



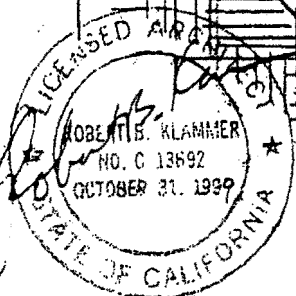
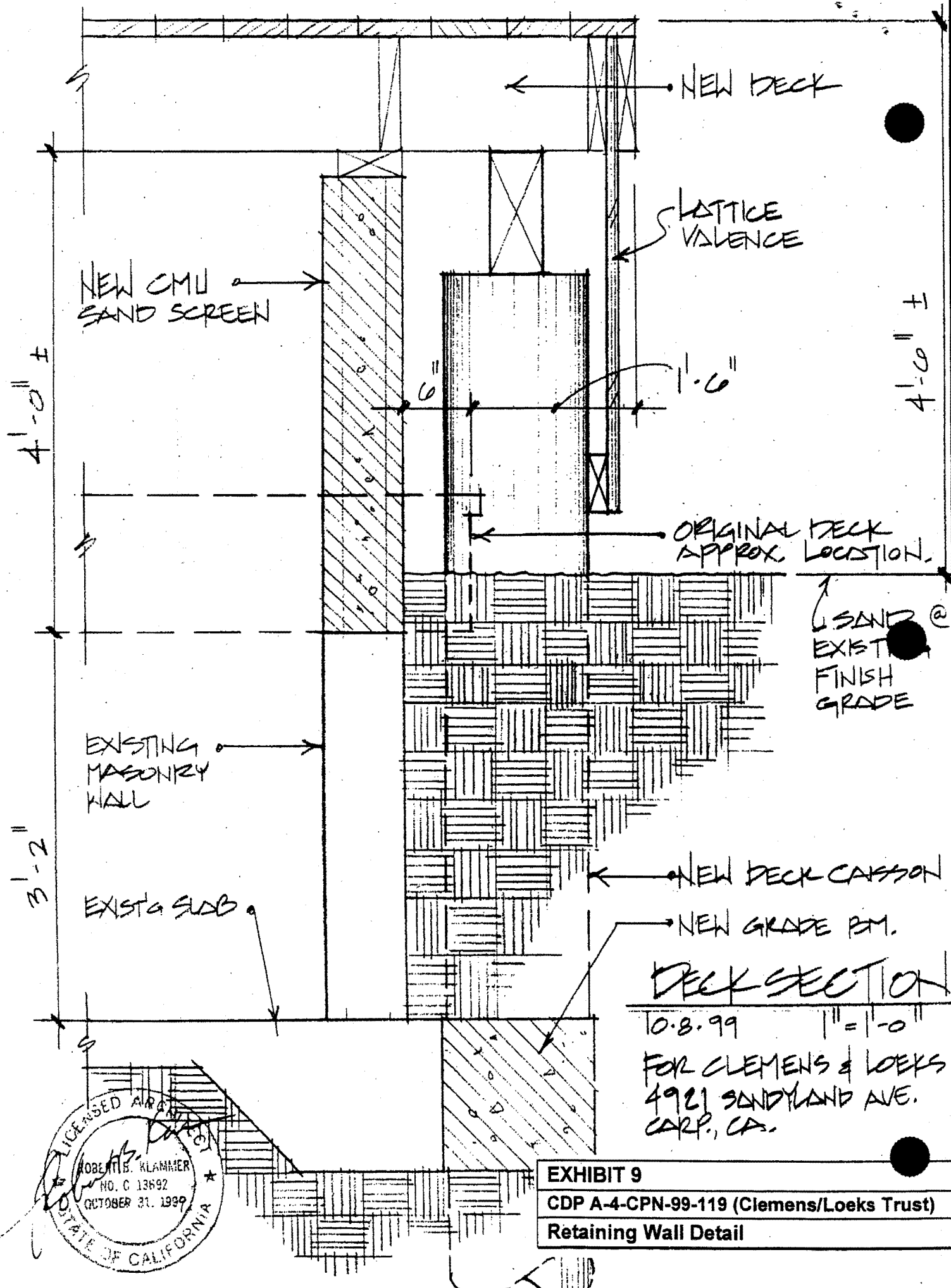


EXHIBIT 9

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

Retaining Wall Detail

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY



Memorandum

DATE: May 31, 2000
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 25a, Tuesday, June 13, 2000, Coastal Development Permit A-4-CPN-99-119 (Clemens/Loeks Revocable Trust)

The following correspondence is attached regarding the revised findings for the above permit item:

- (1) Correspondence from the appellants requesting that the Commission reject the proposed revised findings and only approve a "revised permit" to eliminate a portion of the previously approved "second and third level decks" (*Exhibit 1*).
- (2) Letter from the applicant indicating that they are in disagreement with Special Condition One, "No Future Bluff or Shoreline Protective Devices," of their permit (*Exhibit 2*).
- (3) Response letter from Commission staff indicating that Special Condition One (as contained in the revised findings staff report) is identical to the "No Future Bluff or Shoreline Protective Devices" condition that was required by the Commission for several other similar projects that were heard by the Commission on the same day that CDP A-4-CPN-99-119 was approved (*Exhibit 3*).

cc: AR
SG

Ralph

LAW OFFICES OF JANA ZIMMER

2640 Las Encinas Lane
Santa Barbara, CA 93105
805.563.1591
Fax: 805.687.4166RECEIVED
MAY 24 2000
CALIFORNIA
COASTAL COMMISSION

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 1 415 904 5400

To: Peter Douglas
Of: California Coastal Commission
From: Law Offices of Jana Zimmer
Client/Matter: Mezzio Appeal/ Mezzio v. CCC
Date: 5/24/00

DOCUMENTS	NUMBER OF PAGES
Letter and attachments	5

COMMENTS:

Please assure that the attached is distributed to the Commissioners. I also respectfully request that the Commission entertain my offer to settle the pending litigation pursuant to my letter of April 3, 2000, also attached in a closed session prior to taking action on the revised findings.

Ralph and Peter will be pleased to hear that if the Commission does a small measure of justice in this matter now, I will waive fees.

Thank you.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE
IMMEDIATELY AT 805.563.1591.

EXHIBIT 1

CDP A-4-CPN-99-119 (MEMORANDUM)

Correspondence from Appellants

LAW OFFICES OF JANA ZIMMER
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Santa Barbara, CA. 93105

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email: jzimmer@rain.org

May 24, 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

Re: Proposed Revised Findings

Dear Chair Wan and Honorable Commissioners:

Appellants respectfully request that the Commission reject the proposed revised findings granting an "as-built" permit in this case. As evidenced in the attached architectural drawings, which were submitted by Appellants but not distributed to the Commission prior to the hearing on the merits, and photographs of the pre-existing condition of the property which were distributed at prior hearings, the seaward encroachments are much more extensive than depicted.

The proposed findings state in pertinent part,

"The Commission notes that the proposed deck for the new residence extends approximately 1.5 feet further seaward than the previously existing deck and that the proposed residence extends approximately 10 feet or more further seaward than the previously existing structure. Therefore, the applicant is only seeking to extend the outer 'envelope' of the development 1.5 feet further seaward. the Commission finds that the LCP does not require the Commission to apply a stringline. The Commission finds that, in the specific case of this project, the proposed extension of the house and deck will not result in the significant seaward encroachment by new development on the Carpinteria City Beach. Based on these determinations the Commission finds that the proposed development is consistent with the LCP" [Proposed Revised Findings, p. 12]"

The conclusion that the seaward encroachment from this addition is minimal is based on the erroneous assumption that the ground level deck was lawfully constructed. It was not. There is no permit on record for the ground level deck on the sand. Therefore, the illegal ground level

deck cannot and should not be used as a 'base line' to measure the extent of the seaward encroachment of the remodeled structure. To do so would encourage illegal development and expansions based on illegal development.

Furthermore, as depicted on the second floor plan and the third floor plan, the encroachment not only consists of a seaward extension on the ground floor of more than ten (10) feet, but also *new encroachments* on the second and third floor plan, which both have decks which extend the entire volume of the building more than ten feet where it never encroached before.

The drawings submitted by the Appellants, and re-submitted herewith, show that contrary to the applicants' representations, the remodeled structure does not conform with the stringline which was established by this Commission and imposed on Mr. Mezzio's adjacent property. All the Appellants ask is fair and equal treatment. The Commission can achieve this result by rejecting the findings and approving a revised permit which directs the applicant to eliminate the portions of the structure which extend beyond the stringline which was imposed on Mr. Mezzio and his co-owners.

The Commission should put an end to this dispute by adopting a finding as follows:

"The Commission finds that the volume of the new seaward encroachment created by the structure as built results in a three story structure which projects seaward at least 11.5 [eleven and one half feet] further than the pre existing above ground structure, and that in the circumstances the seaward projection violates the stringline previously established by the Commission along this particular stretch of Carpinteria beach, and therefore results in development which is inconsistent with the LCP.

In order to maximize the preservation of views to and along the Coast to the extent feasible in the circumstances, the Commission finds that a revised permit may be issued at minimal cost to appellant which requires the second and third level decks to be cut back to the location of the building encroachment."

We note that the Commission recently engaged in an effort to find an appropriate compromise to a stringline issue in Malibu. We request a similar effort to reassure the public that the laws are enforced equally as to similarly situated citizens.

As I will be out of the country in June, the Appellants will be represented on the revised findings and request for revocation by my partner, Andrea Marcus, and by Appellant Velasco, who can respond to any new factual assertions. Thank you.

Very Truly Yours,


Jana Zimmer

1/16" = 1'-0"



(E) PARKING

(E) RESIDENCE

(E) RESIDENCE

4925 SANDYLAND ROAD
CARPINTERIA, CA

CARPINTERIA BEACH

ORIGINAL
EXTERIOR WALL
ORIGINAL DECK

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

ORIGINAL FLOOR PLAN

WOOD DECK/WALKWAY ON 2ND FLOOR
PROJECTS 30' INTO REQUIRED
SIDEYARD

ADDITION EXTENDS BEYOND STRING
LINE

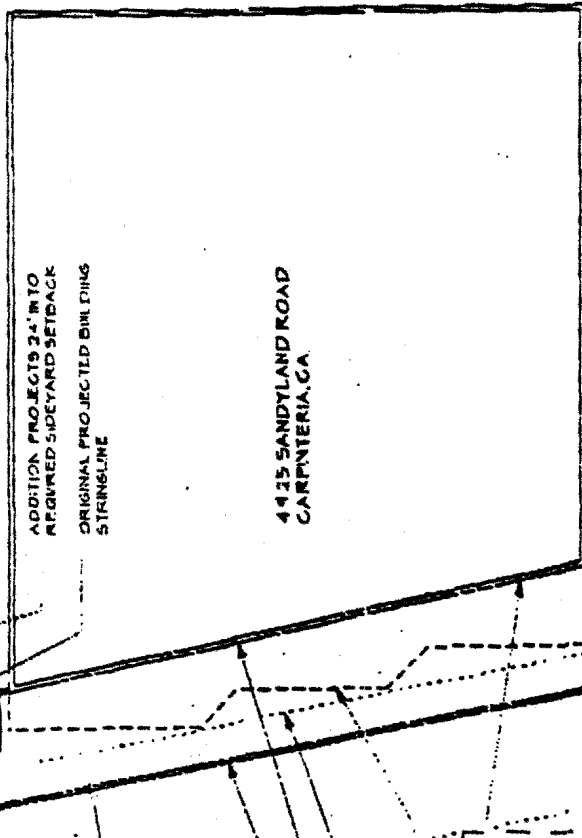
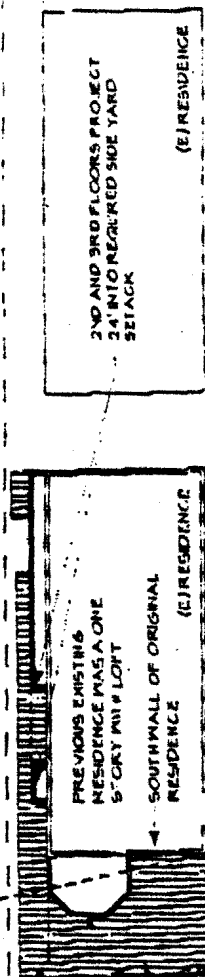
ORIGINAL WOOD DECK LOCATED AT
GROUND LEVEL ONLY.

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 ENCLOSED INTO THE
SIDEYARD SETBACK.

CARPENTERIA DECK

- (E) ADJACEMENT 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

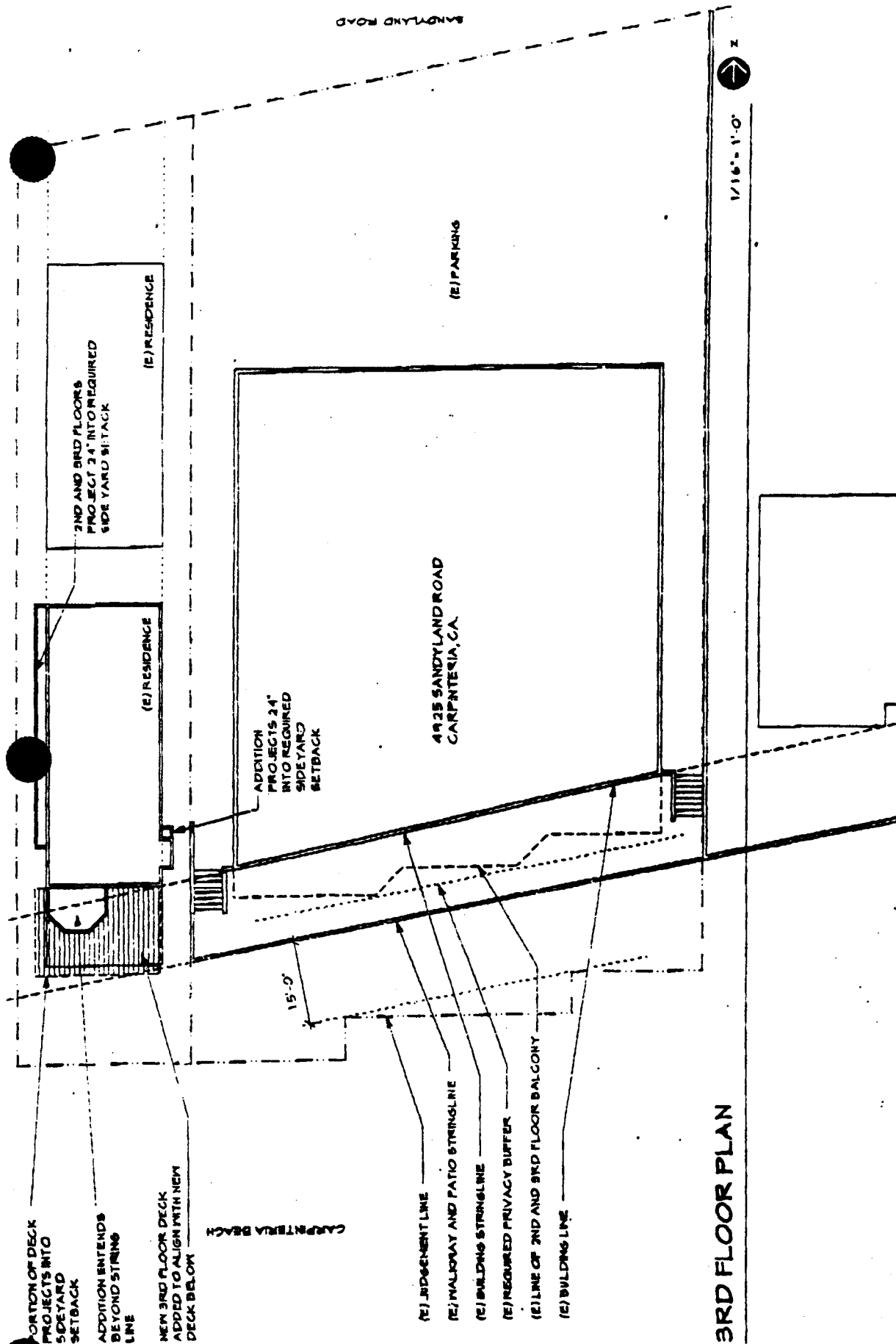


(E) PARKING

1/16" = 1'-0"



SANDYLAND ROAD



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April 3, 2000

California Coastal Commission
45 Fremont Street #2000
San Francisco, CA. 90405

Attn: Peter Douglas, Executive Director
Ralph Faust, Chief Counsel

Re: Appeal No. A-4-CPN-99-119
4921 Sandyland Road Carpinteria

Hearing: April 12, 2000

By FAX and Mail

Dear Chair Wan and Commission members:

This letter addresses three matters pertaining to the above appeal.

1. Pending Litigation

Please find enclosed a courtesy copy of the lawsuit my client has been compelled to file in this matter challenging the Commission's action of February 17, 2000 granting an 'as built' permit to the applicants. Please consider the implications of this litigation in closed session prior to acting on our request for revocation and/or the proposed revised findings in this case.

By copy of this letter to the applicant's attorney, we are suggesting that this matter can still be resolved fairly by agreement as to the following:

First Cause of Action The Commission stipulates to a minor change in policy which will make its practice consistent with its governing regulations, to wit: when the Commission acts contrary to a staff recommendation and draft findings, that it take a conceptual vote, and continue the matter to a date certain for consideration of revised findings. When, as here, the Commission takes final action and defers consideration of revised findings, an aggrieved party has no reasonable opportunity to determine the grounds or basis for legal challenge prior to the expiration of the 60 day statute of limitations. The current practice

directly violates 14 CCR 13096.

- Second and Third Causes of Action Petitioner Mezzio never sought denial of this project. All he ever requested was to have the same standard applied to surrounding properties as the Commission required of him in 1985. As we have previously stated, Mezzio would be satisfied with minor alterations to the second story deck and third story deck and bay window to fully conform the applicant's project to the stringline established by the Commission in 1985. By copy of this letter to Real Parties we are requesting their agreement to such a solution.
- Fourth Cause of Action: Given the impossible time constraints on oral presentation, it is critical that the Commission assure that all documents and evidence submitted to the Commissioners be made available to the opposing side prior to the hearing. At a minimum, staff should assure that an Addendum is distributed to the public prior to the hearing, and that known interested parties are made aware of any submittals on request. The Commission should also establish a deadline for submittals. In this case, the applicant's submittals did not reach the district office until 48 hours before the hearing, and were never made available to our client, despite repeated requests. It is impossible to achieve a fair hearing without such procedures.

Please review this offer and direct your attorneys to communicate with my office after the hearing. If the Commission declines to provide my clients with any relief, *you should consider adding a condition, as in past cases, requiring the applicant to defend and indemnify the Commission for all fees and costs incurred as a result of the litigation.*

2. Recommendation on Request for Revocation

Although the report admits, on at least two issues, that the *information submitted by the applicant was incorrect*, the recommendation is for denial because, in part, it is alleged that my clients have failed to prove that the incorrect statements by applicant were intentional. In the context of this appeal, the standard to prove intent is unreasonable on its face. Please recall that appellants requested, from the beginning that the Commission issue administrative subpoenas to the architect and the applicant. Without any possibility of cross examination, without testimony under oath, and without access to documents in the applicant's control it is literally impossible to prove intent.

As indicated in correspondence from the applicant's representative,¹ the applicant maintained that the applicant's structure was 'consistent' with the stringline imposed on Mr. Mezzio's project. This is and was a false statement, which the applicant knew or should have known was false. The 'original' wood deck on the sand was unpermitted and therefore illegal. The new

¹This correspondence, we stress, was never made available to appellants until it was sent with the revised findings and recommendation for denial of the revocation request.

structure includes decks on the second and third levels. The bay window clearly intrudes into the building stringline. The applicant's representatives presumptively reviewed the City's files. Therefore the claim that the new project conforms to the Mezzio stringline is patently false.

Secondly, we object to the recommended findings to the extent they purport to justify a decision made based on false information because there was also accurate information in the record. It is clear that the only basis on which the Commission could grant this permit was in reliance on the false information. To assert that the Commission is free to rely on falsehoods because it could have chosen to rely on correct information makes no sense whatsoever.

Third, it is important to recognize that the certificate of occupancy, as well as a large part of the construction occurred, in the first instance, after Appellant made his concerns known to the City, and after the Notice of Appeal which operated as a Stay as a matter of law, and after the City notified Mr. Clemens that he was proceeding at his own risk.

3. Recommended Findings

Appellant objects to the recommended findings as legally inadequate and unsupported by substantial evidence in the record.

The Commission has rejected the staff's recommended findings of inconsistency with the LCP and the applicable provisions of the Coastal Act. The consistency findings as to the flood hazard are not based on a determination that there is no hazard. They are based on the applicant's unsupported representation that the concrete wall is not 'intended' to function as a protective device, and the applicant's acceptance of conditions which would preclude the construction of additional protective devices, and a waiver of liability. It is a terrible precedent for the Commission to allow liability waivers to substitute for factual findings of consistency with the policies of the Coastal Act. Such individual liability waivers do nothing to protect the public's right to access to the beach, and to the protection of beach resources.

Moreover, the findings as to seaward encroachment propose a factual determination that the seaward encroachment of the reconstructed project is 'only 1.5 feet' seaward of the original. This finding is inadequate and not supported by the evidence because it is based on the pre-existing location of a wooden deck on the sand which was not permitted and illegal. Thus, the fact is that the encroachment from this project is actually approximately 11.5 feet onto the public beach. This is not an insignificant encroachment.

Thank you for your consideration of these considerations.

Very Truly Yours,


Jana Zimmer

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May 22, 2000

ORIGINAL VIA FEDERAL EXPRESS

VIA FACSIMILE (415) 904-5400

Sandy Goldberg
California Coastal Commission
State of California
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Chris Clemens and Lannie Locks
4921 Sandyland Road, Carpinteria
Revised Findings (A-4-CPN-99-119)

Dear Ms. Goldberg:

As you know, this law office represents Chris Clemens and Lannie Locks, and the Christopher A. Clemens and Lannette A. Locks Revocable Trust, owners of the above-addressed property. As a follow-up to our recent telephone conversation, the purpose of this correspondence is to provide suggested revisions to the findings in the above-referenced matter which are currently scheduled for consideration by the California Coastal Commission at its June 2000 meeting. At your suggestion, I have enclosed herewith a copy of the previously proposed Revised Findings which include our clients' proposed corrections and deletions. Also enclosed with this letter are a number of suggested additions to be inserted into the Revised Findings.

We would be happy to prepare the entire set of Revised Findings and provide the same to you on computer disc or by e-mail if you so desire. In addition, while you should have a complete set of all of the referenced exhibits in the case file, we would be happy to provide any additional copies of those exhibits if needed.

Separate and apart from the Revised Findings, the current staff report in this matter incorrectly states the agreed language for Special Condition No. 1. At the time of the hearing of this matter in February 2000 our clients agreed to include in the approval of this permit the then standard special

(1/25/1200-001)

EXHIBIT 2

CDP A-4-CPN-99-119 (MEMORANDUM)

Letter from Applicant

Sandy Goldberg
California Coastal Commission
May 22, 2000
Page 2

condition language regarding limitations on future seawall installation. Our clients did not agree to the language as stated in the previous staff report. The language of Special Condition No. 1 should read as follows:

"Prior to the issuance of Coastal Development Permit 4-99-119, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which states that no future construction, repair or maintenance, enhancement, reinforcement, or any other activity affecting any shoreline protective device at this property shall be undertaken if such activity extends the seaward footprint of the development at the subject property and by acceptance of this permit the applicant hereby waives any rights to extend the seaward footprint of the development at the subject property that may exist under Public Resources Code Section 30235. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this Coastal Development to this coastal development permit."

Thank you for your cooperation with regard to this matter. Once you have had the opportunity to review this correspondence and the enclosures, please contact me at your earliest convenience to discuss this matter further. As always, please do not hesitate to contact me at anytime with any question or comments you may have.

Sincerely,

GAINES & STACEY

By


FRED GAINES

FG:bw

Enclosures:

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Gov

CALIFORNIA COASTAL COMMISSION435 FIDMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 804-6300

May 24, 2000

Fred Gaines
Gaines & Stacey
Warner Center Plaza
21650 Oxnard Street, Suite 500
Woodland Hills, CA 91367-4901

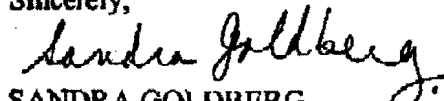
Re: Clemens/Loeks Project (A-4-CPN-99-119)

Dear Mr. Gaines:

I received your letter dated May 22, 2000 regarding this matter and your proposed revisions to the Revised Findings. I will be reviewing your proposals, however, I am writing to respond to the issue that you raised regarding the special condition language. In your letter, you object to the language of Special Condition No. 1 in the Revised Findings Staff Report dated March 23, 2000. You propose alternative language that you believe should be used instead. I have listened to the tape from the February 17, 2000 hearing where the Commission voted to approve the project with Special Condition No. 1. The statements made during the hearing indicate that the Commission intended to impose a condition prohibiting future construction of any shoreline protective device on the property and that it intended to use the same condition that was imposed on other projects considered by the Commission on that day. The language that you propose in your letter of May 22, 2000 is not consistent with the expressed intent of the Commission because it does not prohibit future construction of a shoreline protective device on the property. The language that you propose only restricts construction of a shoreline protective device that "extends the seaward footprint of the development at the subject property ..." In addition, unlike your proposal, Special Condition No. 1 in the Revised Findings dated March 23, 2000 is identical to the condition that was imposed on several other projects that were heard by the Commission on the same day as your clients' project.

Your May 22, 2000 letter suggests that your clients may have misunderstood the scope of the condition imposed by the Commission. While this is unfortunate, in light of the clearly expressed intent of the Commission to prohibit any shoreline protective device and the Commission's formal vote to impose such a condition, the Commission staff cannot agree that the language of the condition should be changed in the manner that you request.

Sincerely,


SANDRA GOLDBERG
Staff Counsel

cc: Chuck Damm

EXHIBIT 3

CDP A-4-CPN-99-119 (MEMORANDUM)

Commission Staff Response to Applicant

