

CALIFORNIA COASTAL COMMISSION

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

Request Filed: 2/23/00
Staff: S. Hudson
Staff Report: 5/25/00
Hearing Date: 6/13/00
Commission Action:

**RECORD PACKET COPY****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 Section 13096(b) of the regulations allows the Commission to vote to take an action contrary to the staff recommendation and specifies that the prevailing Commissioners must state the basis for their action in enough detail to allow the staff to prepare a revised staff report that reflects the Commission action. The Commission action on this project complied with Section 13096(b). Because the original staff report for the subject permit application recommended 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 June 2000 Commission Hearing in Santa Barbara. The revised findings will require adoption by the Commission. Thus, when the revised findings are adopted, there will be findings to accompany the Commission's decision as required by Section 13096(a). The Commission's action was also consistent with Sections 13090(d) and 13092(b) of the regulations.

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 a stringline analysis on the subject site. 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' stringline analysis for 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 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.

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

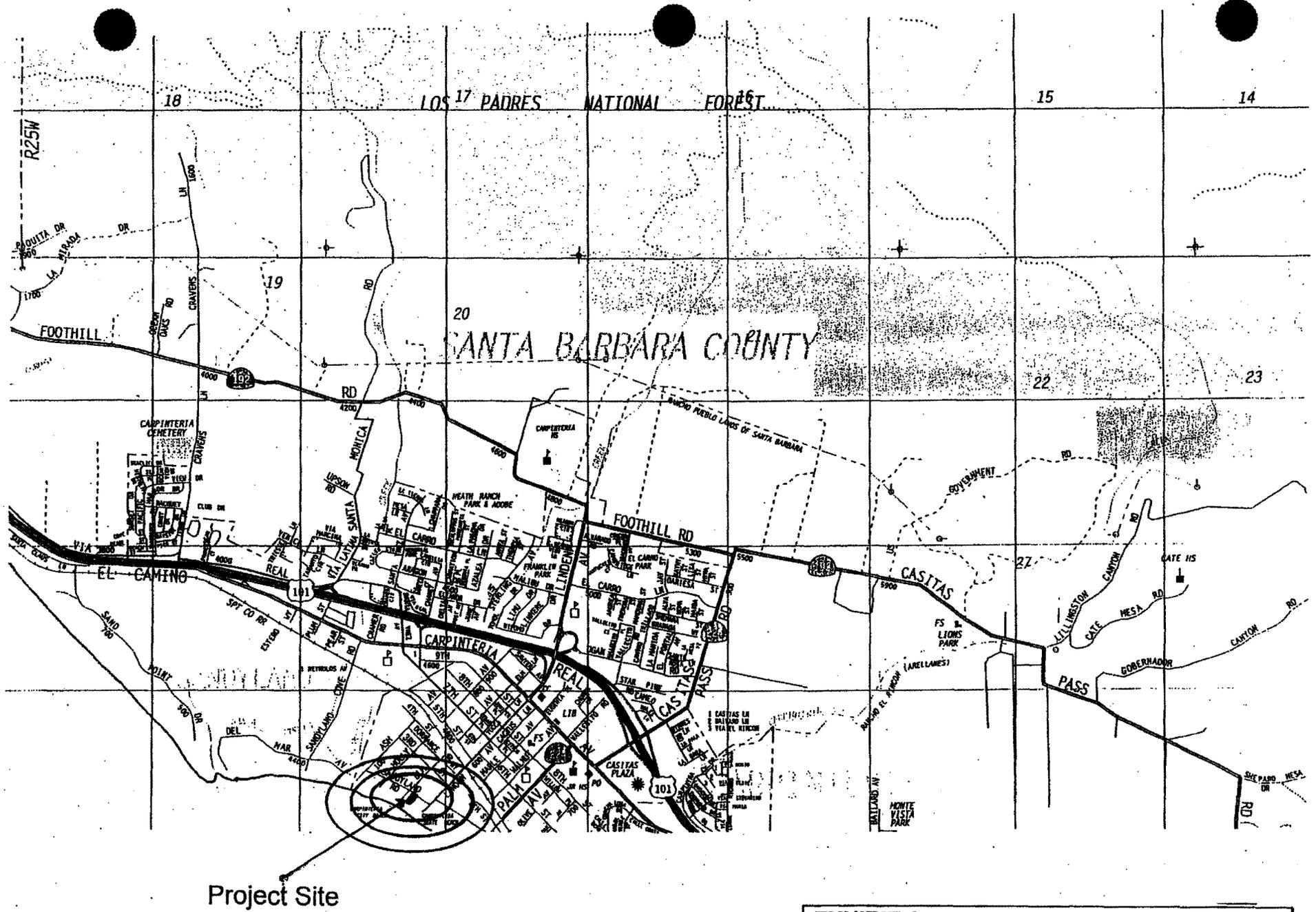
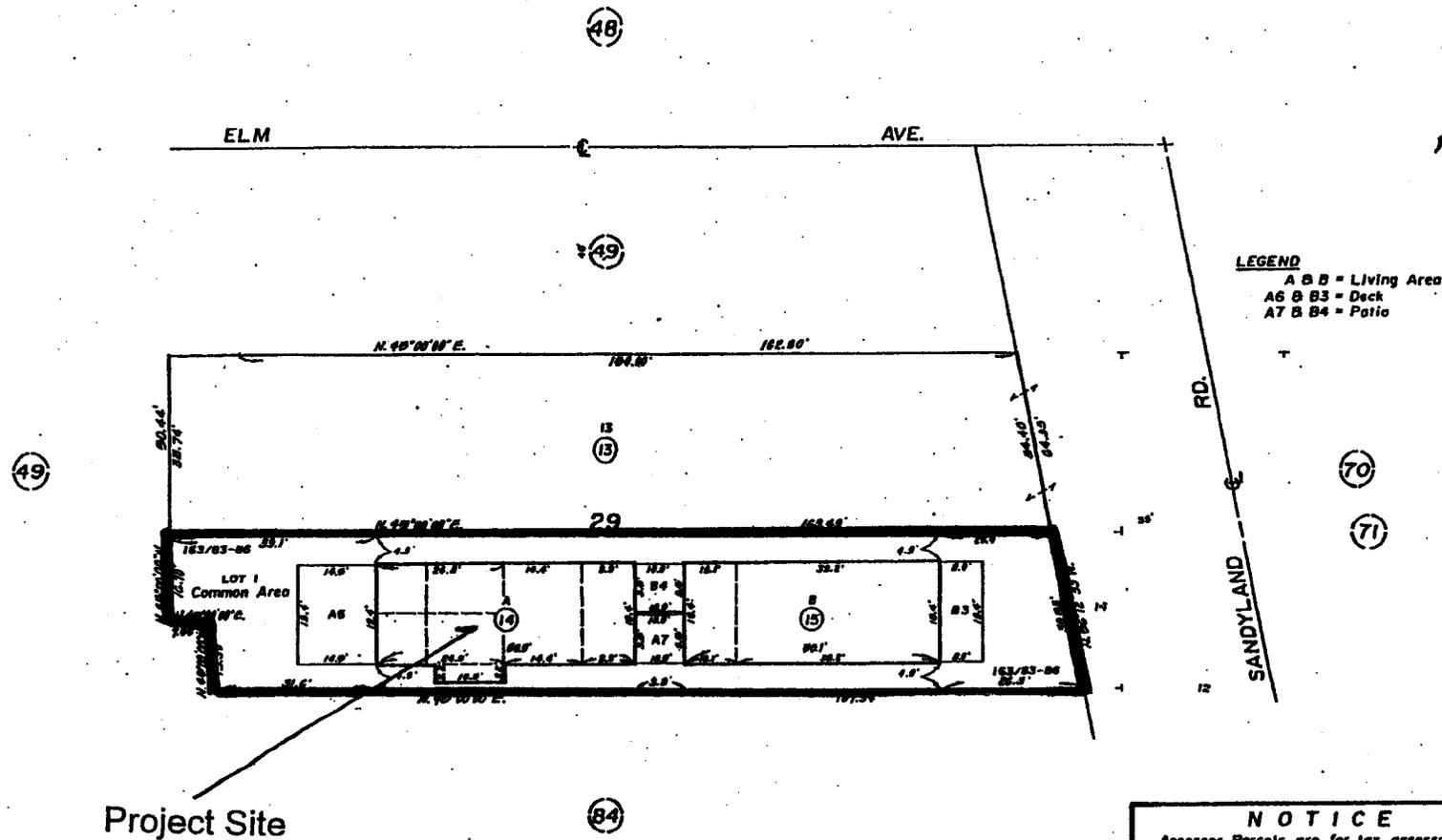


EXHIBIT 1
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Location Map



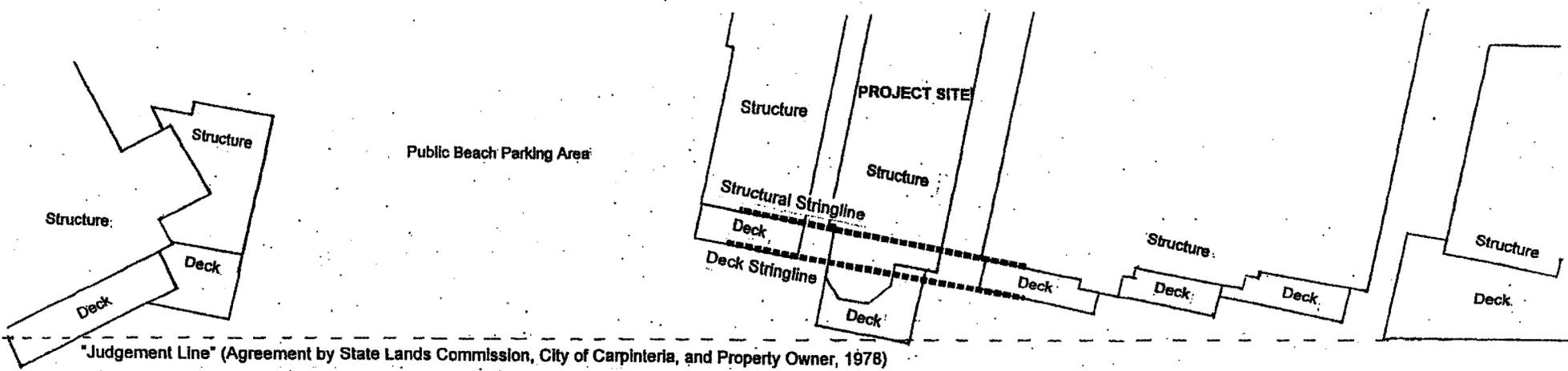
Project Site

- 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



Judgement Line (Agreement by State Lands Commission, City of Carpinteria, and Property Owner, 1978)

Carpinteria City Beach

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

NO.	DATE	REVISION
1	11-11-84	11-11-84
2	11-11-84	11-11-84
3	11-11-84	11-11-84
4	11-11-84	11-11-84
5	11-11-84	11-11-84
6	11-11-84	11-11-84
7	11-11-84	11-11-84
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17	11-11-84	11-11-84
18	11-11-84	11-11-84
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20	11-11-84	11-11-84

MODEL FOR
EMENS AND LANNIE LOEKS
146, Carpinteria, CA 93013
705/84-1557

ROBERT B. KLAMMER, ARCHITECT
429 Wyola Road, Santa Barbara, CA 93105
(805)563-1886 (805)863-8901

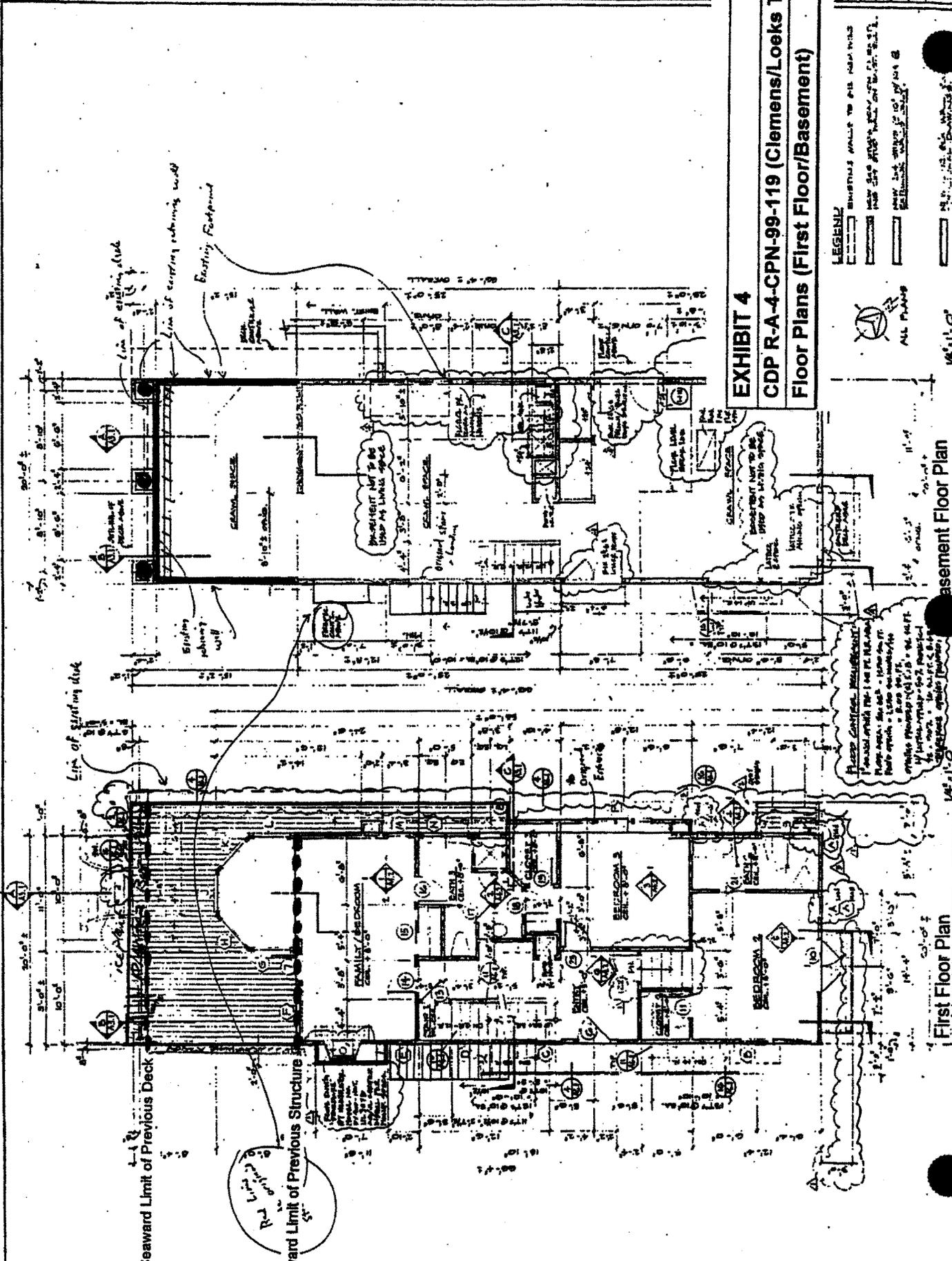


EXHIBIT 4
CDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
Floor Plans (First Floor/Basement)

LEGEND

- EXISTING WALLS TO REMAIN
- NEW WALLS TO BE CONSTRUCTED
- EXISTING FLOOR FINISH
- NEW FLOOR FINISH
- EXISTING CEILING FINISH
- NEW CEILING FINISH
- EXISTING ROOF FINISH
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- NEW SITEWORK

ALL PLANS

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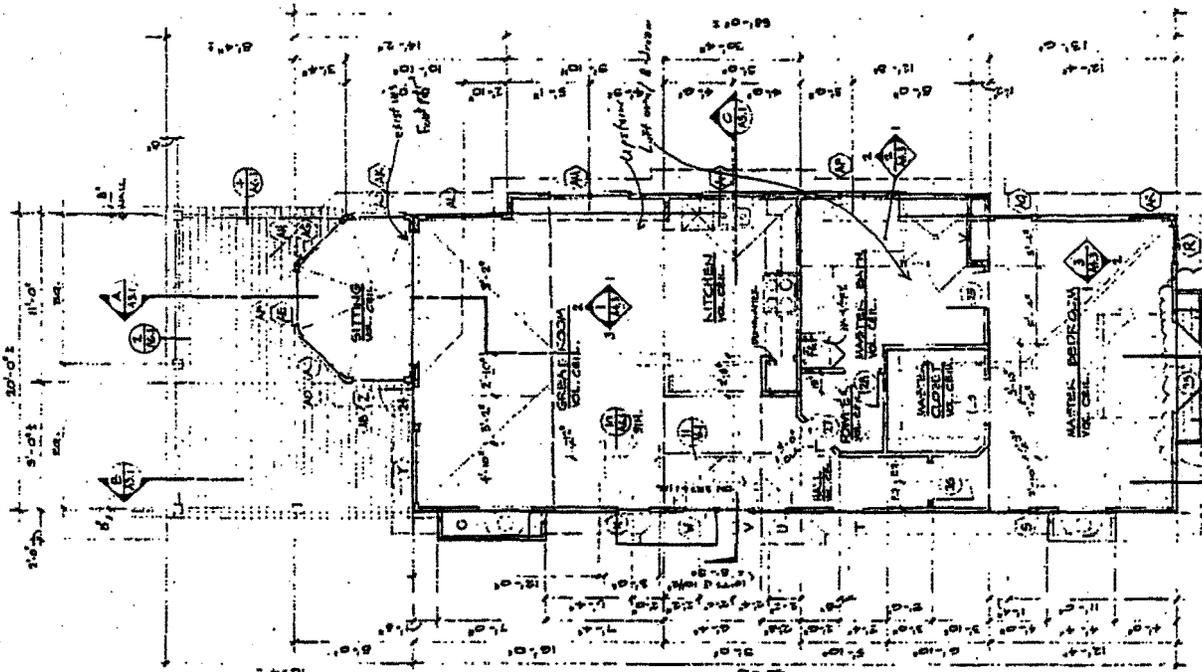
100 3/4" = 1'-0"

First Floor Plan

Basement Floor Plan

REVISIONS BY	DATE	DESCRIPTION

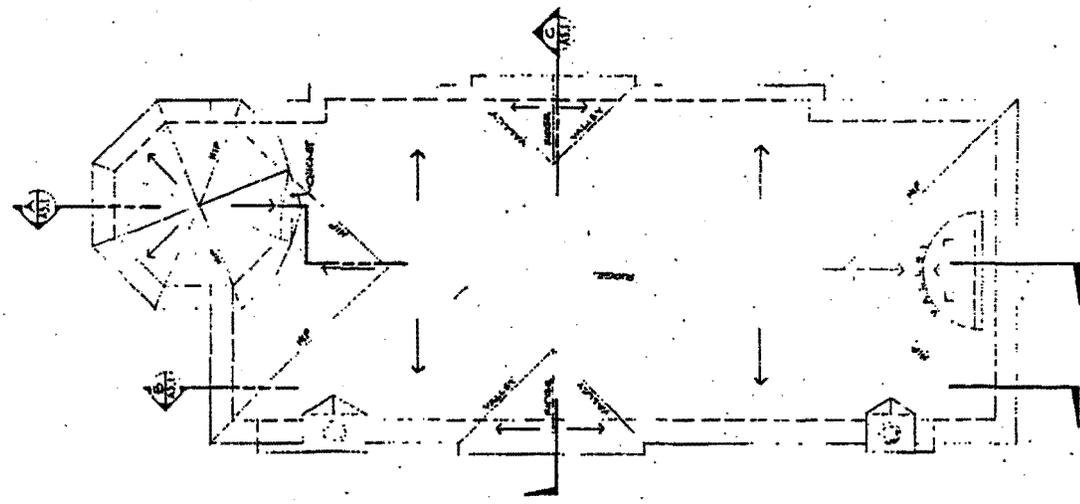
REMODEL FOR
 CHRISTOPHER CLEMENS AND LAMNIE LOEKS
 4921 Sandyland Ave., Carpinteria, CA. 93013
 (805)644-1557



LEGEND
 1/4" = 1'-0" SCALE OF ARCHITECTURE

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

Second Floor Plan

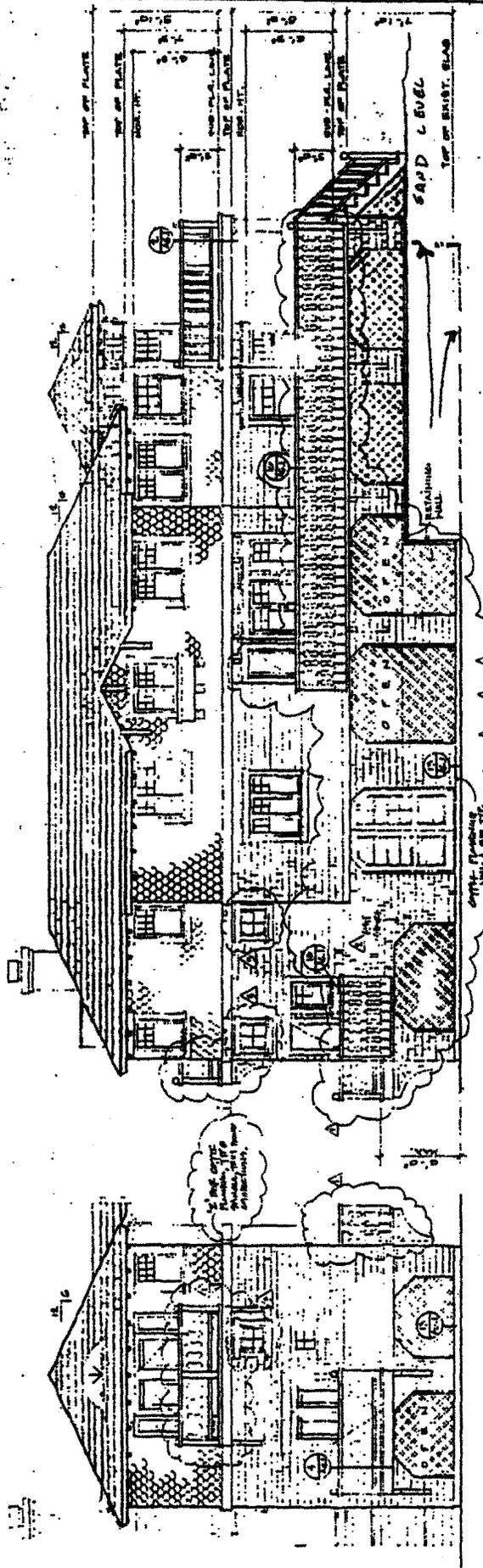


Roof Plan

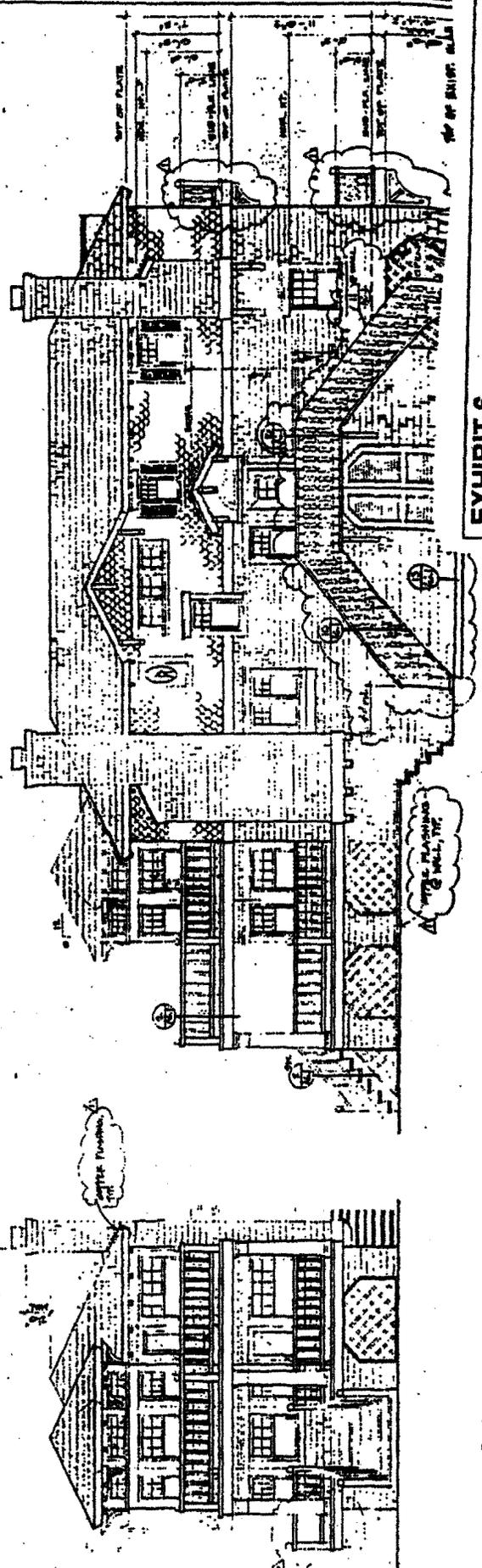
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ROBERT B. KLAMMER, ARCHITECT
 429 WYOLA ROAD, SANTA BARBARA, CA 93105
 (805)563-1896 (805)963-2901

REMODEL FOR
 CHRISTOPHER CLEMENS AND LANNIE LOEKS
 4921 SANDYLAND AVE., CAPITOLA, CA 93013
 (805)864-1537



WEST ELEVATION 1/4"=1'-0"

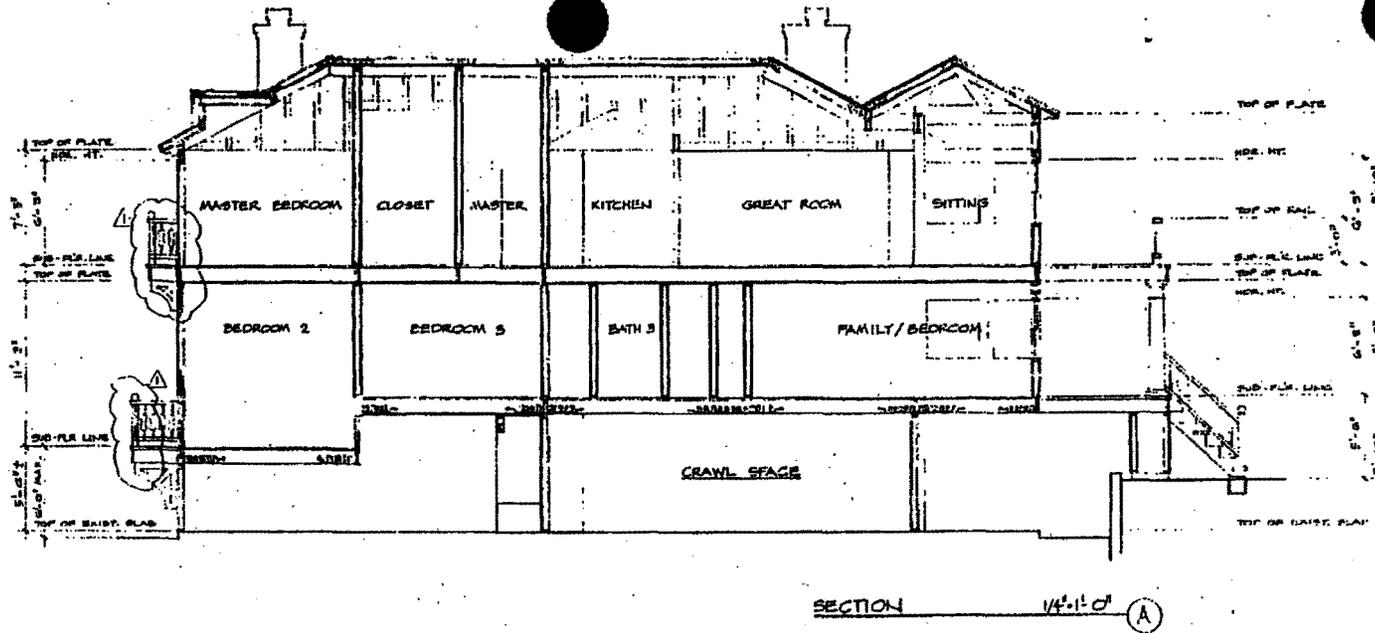


NORTH ELEVATION 1/4"=1'-0"

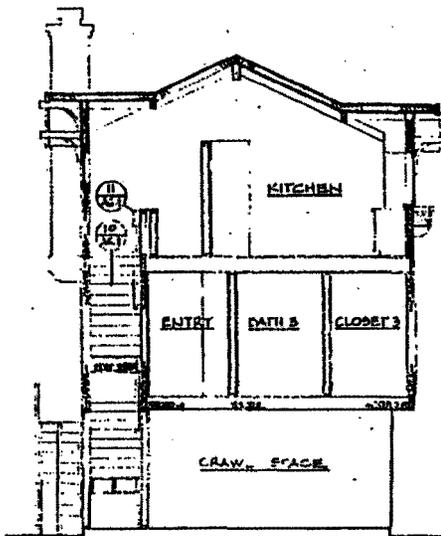
SOUTH ELEVATION 1/4"=1'-0"

EXHIBIT 6

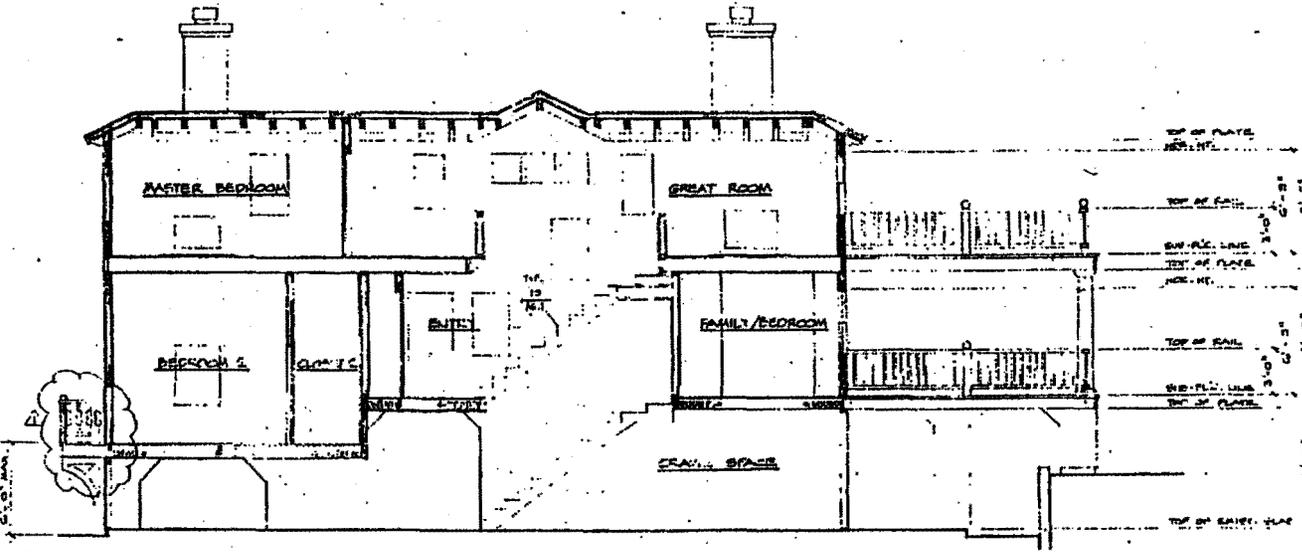
GDP R-A-4-CPN-99-119 (Clemens/Loeks Trust)
 Structural Elevations



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



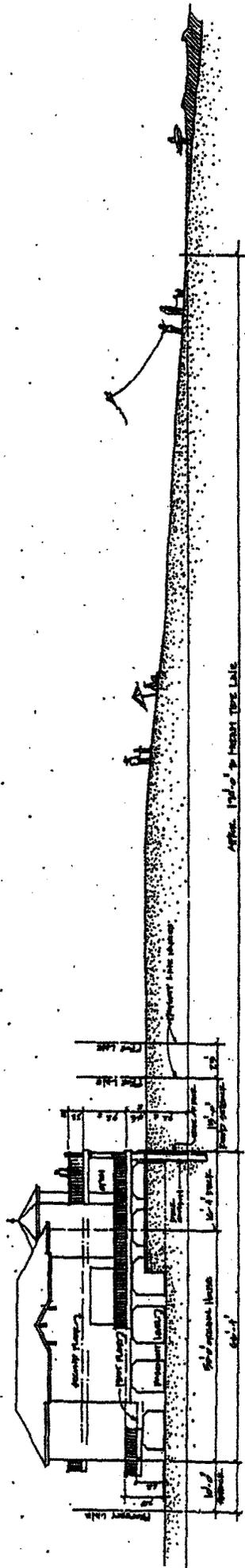
SECTION 1/4" = 1'-0" (C)



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

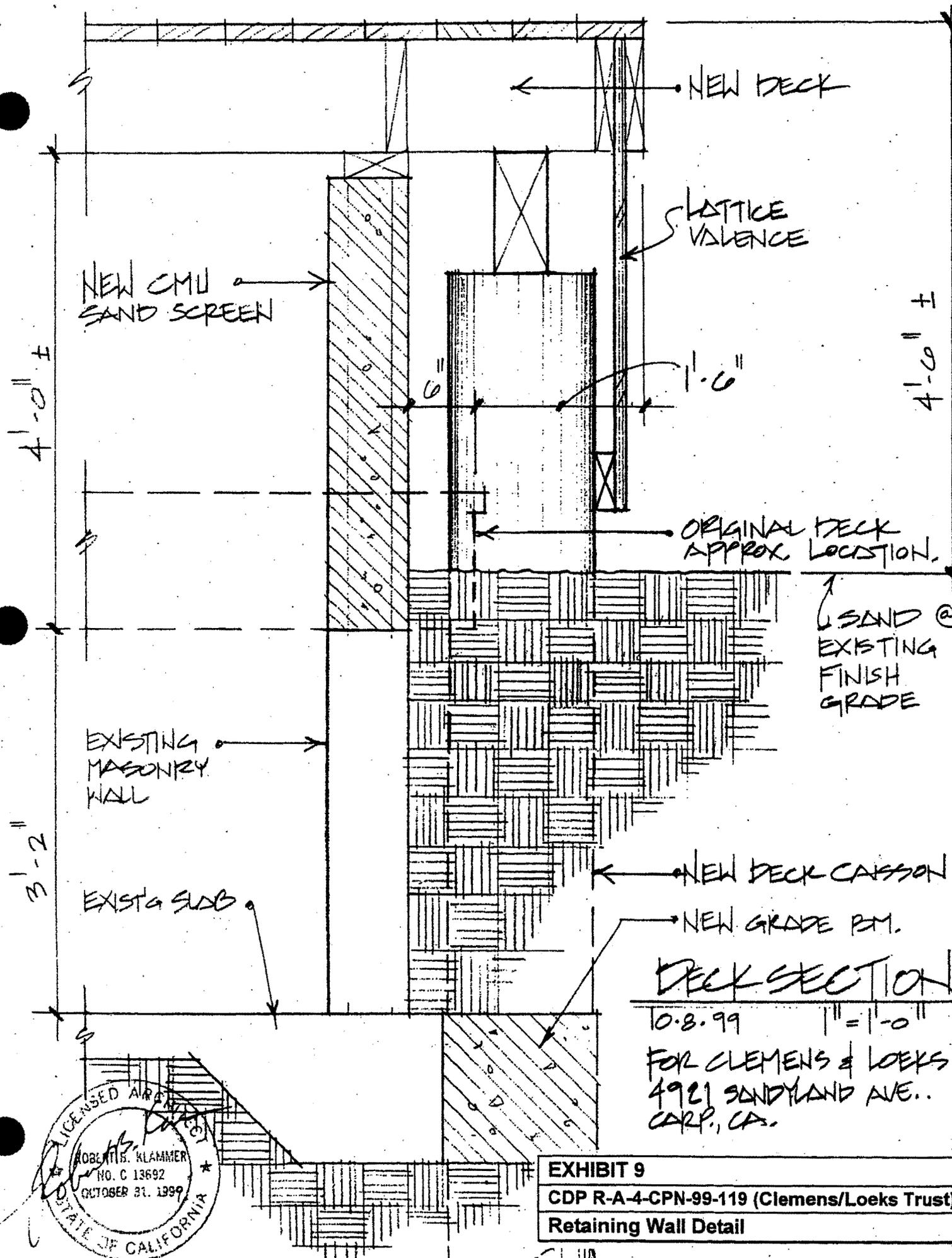
REMODEL FOR
 CHRISTOPHER CLEMENS AND LANNIE LOEKS
 4921 Salsburg Ave., Carpinteria, CA 93013
 (805)684-1557

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



CLEMENS & LOOKS RESIDENCE / BEACH SECTION
 8-1-73 10-8-73 POWER PLANT, WALKWAY

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



NEW CMU SAND SCREEN

NEW DECK

SLATTICE VALENCE

ORIGINAL DECK APPROX. LOCATION.

SAND @ EXISTING FINISH GRADE

EXISTING MASONRY WALL

EXISTING SUB

NEW DECK CAISSON

NEW GRADE P.M.

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 COAST 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.

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).

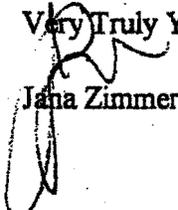
Finally, while the Commission appeared to accept that the building permit which was issued by the City was issued without legal authority, it made no effort to balance the equities, or provide any relief whatsoever to the affected property owners, on any of the three separate issues: the stringline, 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

LAW OFFICES OF JANA ZIMMER

2640 Las Encinas Lane
Santa Barbara, CA 93105-2923
805.563.1591

fax: 805.687.4156

email: zimmer@rain.org

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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MAR 21 2000
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT 11

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

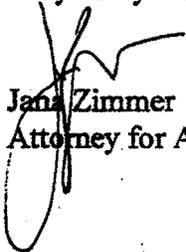
Second Letter from Persons Requesting Revocation

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.

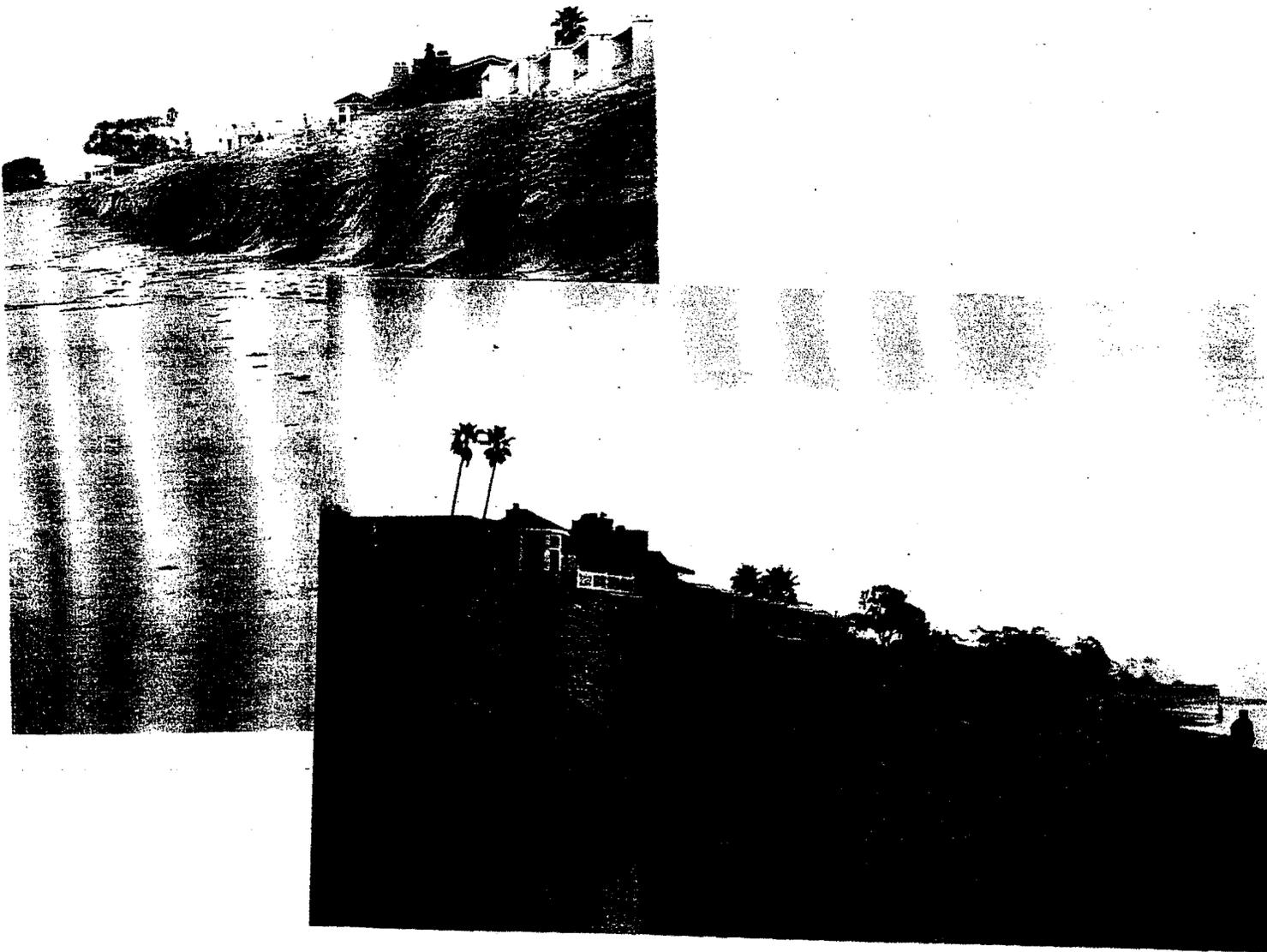
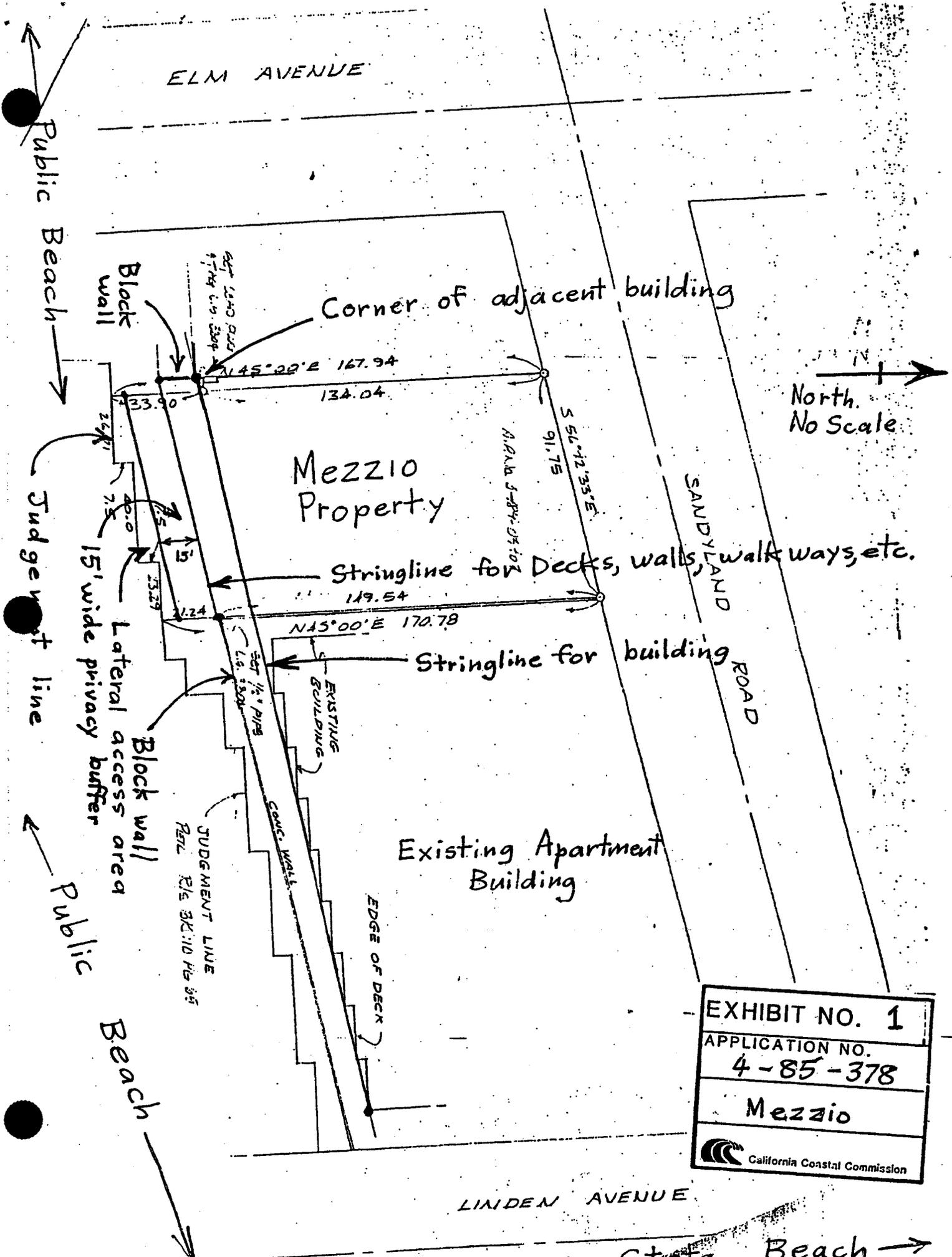


Photo #2 Erosion of berm showing properties from the west

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



ELM AVENUE

Public Beach

Block wall

Corner of adjacent building

Mezzio Property

North
No Scale

Judgment line

Stringline for Decks, walls, walkways, etc.

SANDYLAND ROAD

15' wide privacy buffer

Stringline for building

Block wall

Existing Apartment Building

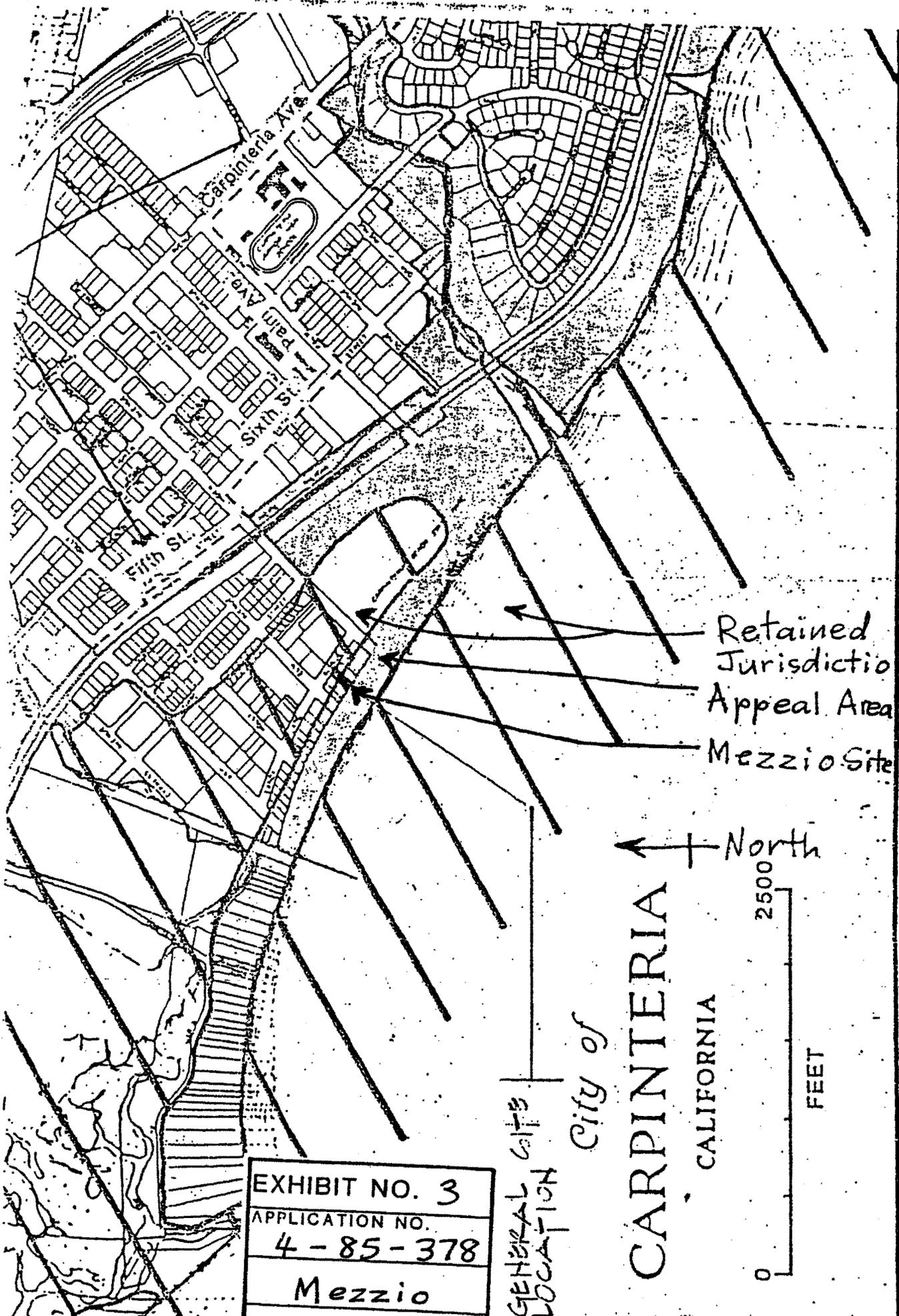
Public Beach

Public Beach

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

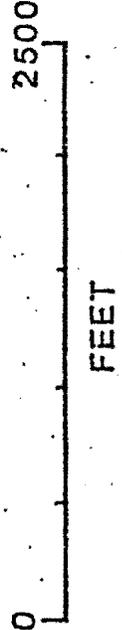
LINDEN AVENUE

State Beach



Retained
Jurisdiction
Appeal Area
Mezzio Site

North ↑



GENERAL CITY'S
LOCATION

City of
CARPINTERIA
CALIFORNIA

EXHIBIT NO. 3
APPLICATION NO. 4 - 85 - 378
Mezzio



ORIGINAL
EXTERIOR WALL
ORIGINAL DECK

CARPINTERIA BEACH

(E) RESIDENCE

(E) RESIDENCE

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

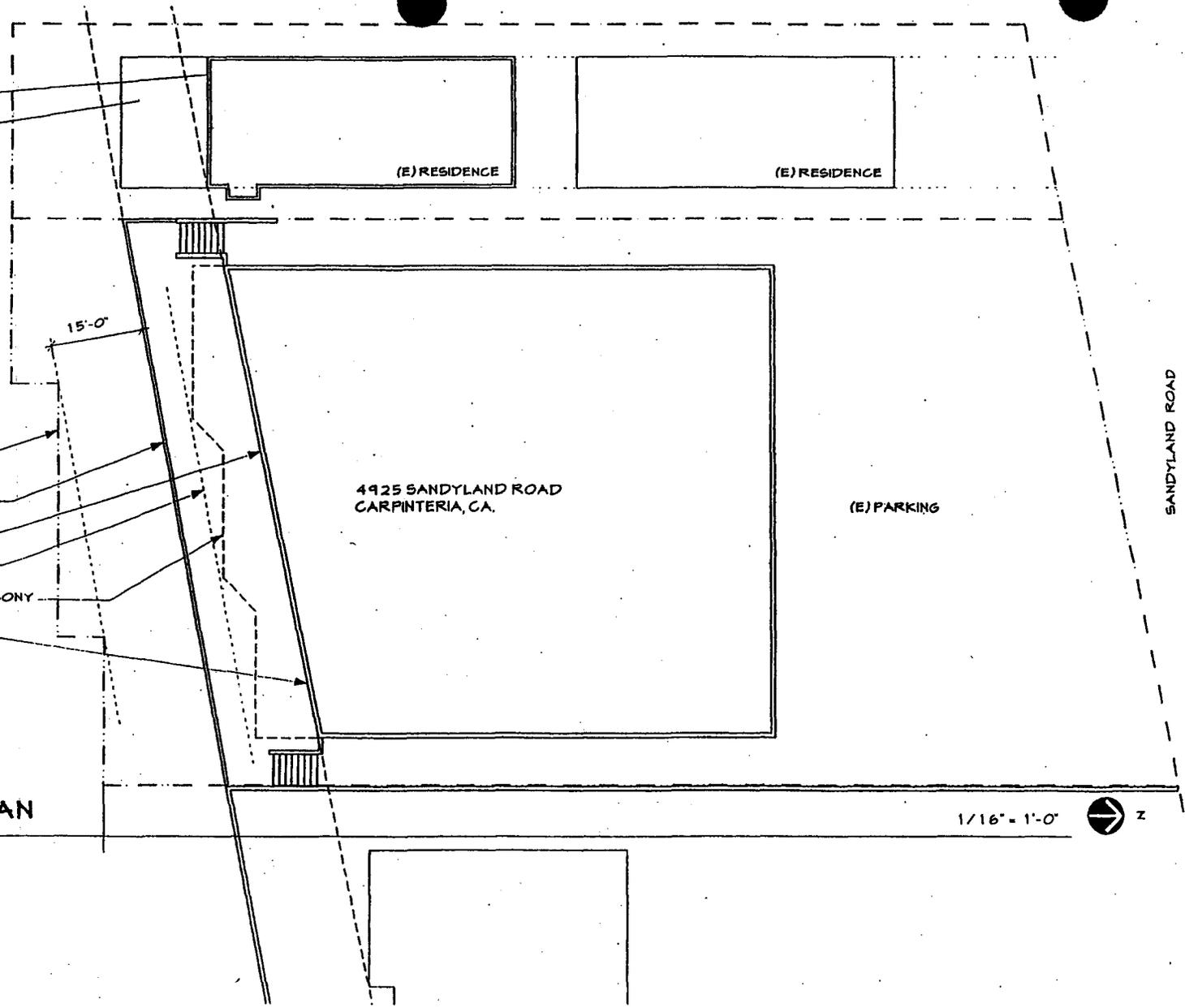
4925 SANDYLAND ROAD
CARPINTERIA, CA.

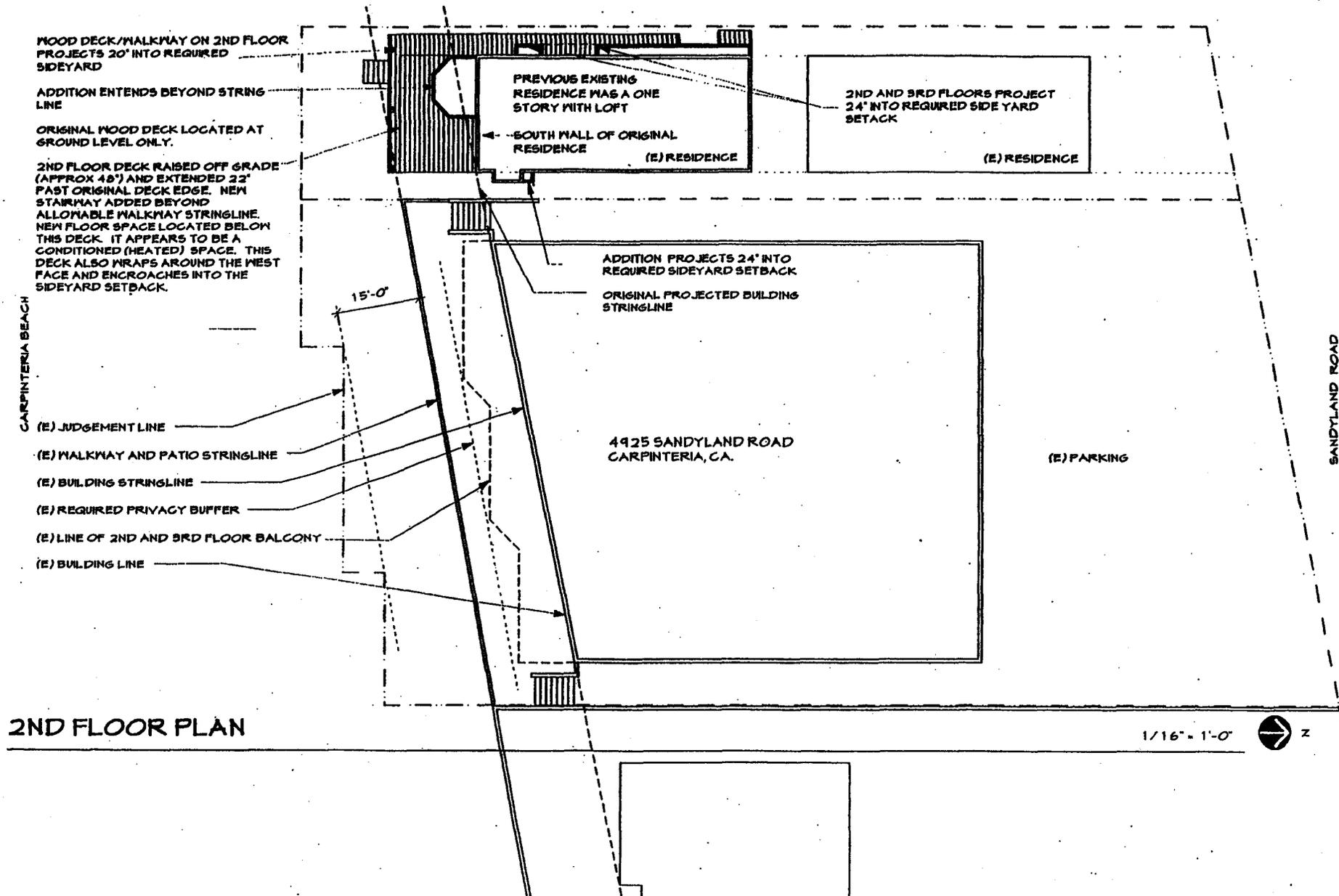
(E) PARKING

SANDYLAND ROAD

ORIGINAL FLOOR PLAN

1/16" = 1'-0"





2ND FLOOR PLAN

1/16" = 1'-0"



PORTRION 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

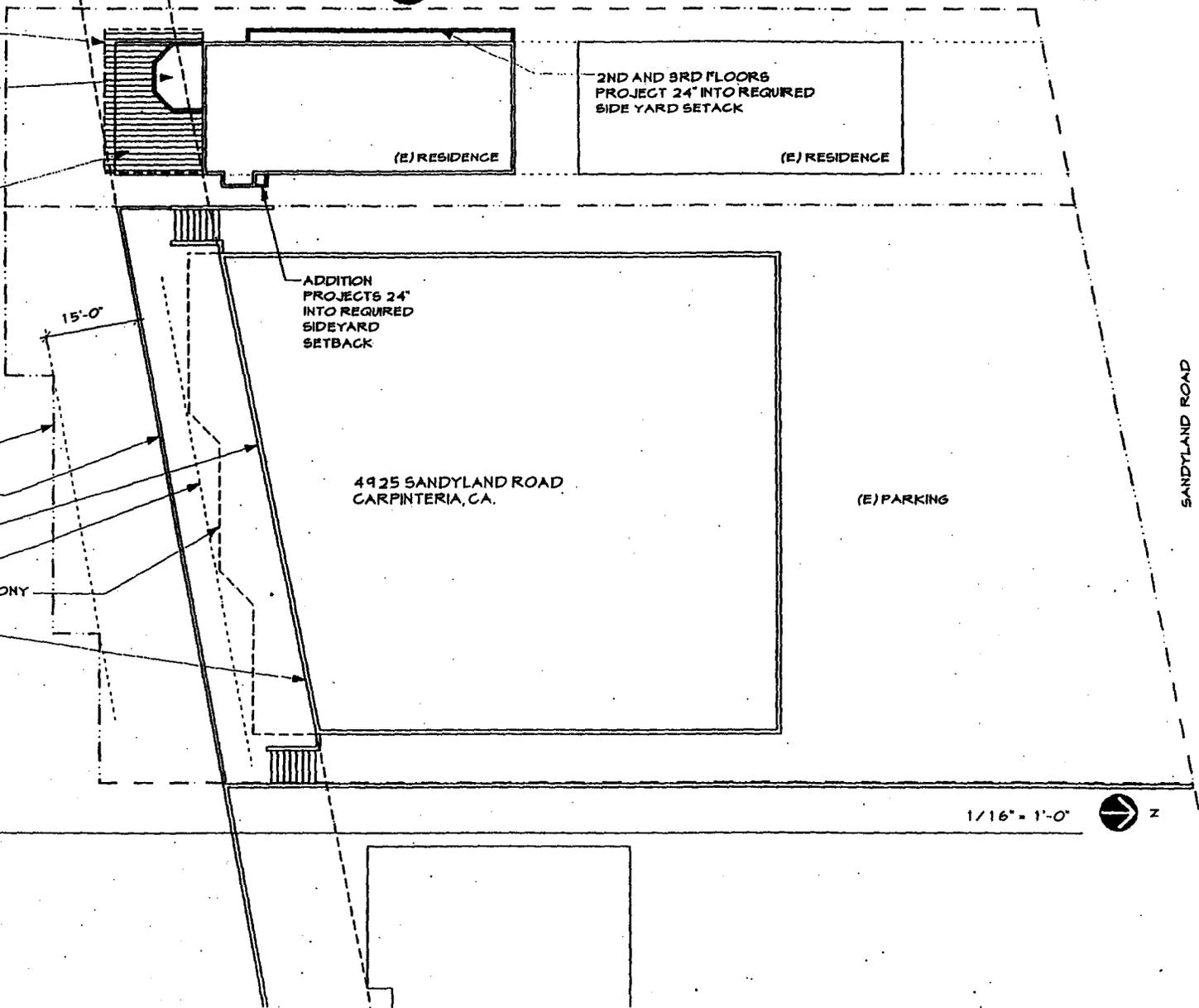
4925 SANDYLAND ROAD
CARPINTERIA, CA.

(E) PARKING

SANDYLAND ROAD

3RD FLOOR PLAN

1/16" = 1'-0"



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

Phone: 805/563-1591

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RECEIVED
APR 11 2000

CA COASTAL COMMISSION
LEGAL DIVISION

email: jzimmer@rain.org

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

EXHIBIT 12

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

Third Letter from Persons Requesting Revocation
--

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 Commission 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,



Jara Zimmer

RECEIVED
APR 11 2000

1 Jana Zimmer (State Bar No. 89978)
2 2640 Las Encinas Lane
3 Santa Barbara, CA. 93105
4 Tel: (805) 563-1591

CA COASTAL COMMISSION
LEGAL DIVISION

Attorney for Plaintiff/Petitioner

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 COUNTY OF SANTA BARBARA
7

8
9 VINCENT MEZZIO

Case No.

10 Petitioner/Plaintiff

PETITION FOR WRIT OF MANDATE [CCP
1094.5; 1085, Pub Res. Code Sec. 30801]

11 vs.

12
13 CALIFORNIA COASTAL COMMISSION;
14 DOES 1-10;)

15 Respondent/Defendant

16 and

17 CHRISTOPHER A. CLEMENS AND
18 LANETTE K. LOEKS REVOCABLE
19 TRUST (DOES 11-20)

Real Parties in Interest/Defendants

20 PETITIONER alleges as follows:

21 1. PETITIONER VINCENT MEZZIO ["PETITIONER"] is and at all times relevant hereto has
22 been an owner of real property at 4925 Sandyland Road in the City of Carpinteria and the County of
23 Santa Barbara. The actions of RESPONDENT and REAL PARTIES have herein caused and continue
24 to cause harm to the PETITIONER in the use and enjoyment of his property.

25 2. RESPONDENT CALIFORNIA COASTAL COMMISSION ["RESPONDENT"] is and at
26 all times relevant herein was a state agency created by Public Resources Code Section 30300. The
27 Commission has the authority and responsibility to implement and enforce the provisions of the California
28

1 Coastal Act (Public Resources Code Section 30000 et seq.), including the authority to review and act
2 upon appeals of permits for development issued by local agencies, such as the City of Carpinteria under
3 its Local Coastal Program certified by the COMMISSION under the Coastal Act.

4 3. REAL PARTY IN INTEREST CHRISTOPHER A. CLEMENS AND LANETTE K. LOEKS
5 REVOCABLE TRUST is, and at all times relevant hereto has been the owner of certain real property
6 in the City of Carpinteria known as 4921 Sandyland Road., and located adjacent to the PETITIONER'S
7 property.

8 4. DOES 1 through 10, inclusive, are employees, officers, or agents of the RESPONDENT
9 responsible in some manner for the actions described herein. PETITIONER will amend the Petition to
10 specifically identify each such respondent as required and as the capacity and identity of each such
11 respondent becomes known.

12 5. DOES 11 through 20, inclusive are employees, officers or agents of the REAL PARTY
13 responsible in some manner for the actions described herein, and/or owning an interest in the real
14 property which is the subject of this Petition. PETITIONER will amend the Petition to specifically
15 identify each such respondent as required and as the capacity and identity of each such respondent
16 becomes known.

17 6. On or about November 16, 1998, without notice to Petitioner, the City of Carpinteria
18 erroneously approved an administrative building permit authorizing the reconstruction and expansion of
19 Real Parties' property at 4921 Sandyland Road, Carpinteria, ["The Project"]

20 7. On or about April 12, 1999, the City of Carpinteria issued a Notice of Final Action for coastal
21 development permit for the project.

22 8. PETITIONER and others timely appealed the issuance of said coastal development permit to
23 the RESPONDENT COMMISSION. Notwithstanding that an appeal to the Coastal Commission
24 operates as a stay of any local agency permit, and further notwithstanding notification from the City that
25 they were proceeding at their own risk, REAL PARTIES continued with construction under the building
26 permit.

27 9. The California Coastal Act requires, at Public Resources Code Section 30604 (b) and (c), that
28

1 every proposed development between the first public road and the sea must be reviewed for consistency
2 with the access and public recreation policies of Chapter 3 of the Coastal Act, as well as the policies and
3 provisions of the City of Carpinteria's Local Coastal Program [LCP]. On October 12, 1999,
4 RESPONDENT Commission unanimously found that the appeal presented a substantial issue as to the
5 consistency of the project with the City's certified Local Coastal Program [LCP] and the policies of the
6 Coastal Act.

7 10. On February 17, 2000, the RESPONDENT held a hearing on a 'de novo' application for a
8 coastal development permit to validate the construction of the project, which had been essentially
9 completed by that time.

10 11. The Staff Report and Recommended Findings presented to the RESPONDENT at said
11 hearing were for denial of the project on the ground that it did not conform to with the policies of the
12 certified Local Coastal Program for the City of Carpinteria or the public access and public recreation
13 policies of Chapter 3 of the Coastal Act. Said staff report and recommended findings are attached hereto
14 as Exhibit A and incorporated by reference as though fully set forth herein.

15 12. After the public hearing on February 17, 2000, the RESPONDENT COMMISSION voted
16 11-0 to approve the project as built, notwithstanding the staff report and recommended findings for
17 denial, and without adopting any findings to support the approval. Each and every Commissioner
18 disclosed that they had had an 'ex parte' communication with REAL PARTIES or their representatives.

19 FIRST CAUSE OF ACTION

20 [Writ of Mandate CCP Section 1085, 1094.5, Pub. Res. Code Section 30801, 30804]

21 [Violation of 14 CCR 13096-Failure to Adopt Findings]

22 13. PETITIONER realleges and incorporates Paragraph 1-12 of this Petition as though fully set
23 forth herein.

24 14. 14 California Code of Regulations [CCR] Section 13096 is a duly adopted regulation
25 implementing the Coastal Act which states: "All decisions of the [Coastal] Commission relating to permit
26 applications shall be accompanied by written conclusions about the consistency of the application with
27 the Pub. Res. Code Section 30604, and Public Resources Code Section 21000 and following, and
28

1 findings of fact and reasoning supporting the decision”

2 15. RESPONDENT COMMISSION took final action to approve a coastal development permit
3 for REAL PARTIES' project on February 17, 2000. Said decision was not accompanied by findings as
4 required by law.

5 16. RESPONDENT'S failure to adopt findings at the time of its final decision, as required by
6 Section 13096, and Code of Civil Procedure Section 1094.5(b) constituted an abuse of discretion.
7 PETITIONER was prejudiced because he is unable to ascertain the basis on which the RESPONDENT
8 rejected the staff recommendation for denial of the project.

9 17. PETITIONER believes and thereon alleges that the RESPONDENT Commission has a
10 pattern and practice in cases where it rejects the staff's proposed findings, of violating its duty to adopt
11 findings concurrently with its decisions in violation of 14 CCR 13096.

12
13 **SECOND CAUSE OF ACTION**

14 [Writ of Mandate CCP 1094.5, Pub. Res. Code 30801]

15 18. PETITIONER realleges and incorporates the allegations of Paragraph 1-17 of this Petition
16 as though fully set forth herein.

17 19. RESPONDENT'S approval of the project as built violated the public access and recreation
18 policies of the Coastal Act and is inconsistent with the policies of the certified Local Coastal Program
19 [LCP] of the City of Carpinteria and therefore constituted an abuse of discretion under CCP Section
20 1094.5(b) and Public Resources Code Section 30801. Said policies include, but are not limited to LCP
21 Policy 1-1,3-1, 3-3, 3-8, 3-11, 3-12, Pub. Res. Code Section 30253, LCP Policy 7-1,7-2,, 7-13 and Pub.
22 Res. Code Section 30210,30211 and 30212(a), LCP Policy 4-1 and Pub. Res. Code Section 30251, all
23 as more fully set forth in the Coastal Commission staff report and recommendation attached hereto as
24 Exhibit A and incorporated as though fully set forth herein.

25 20. There is no substantial evidence in the record to support a finding of consistency with any of
26 the policies or statutes alleged in Paragraph 19, above.

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THIRD CAUSE OF ACTION

[for Writ of Mandate and Damages for Abuse of Discretion for Denial of Equal Protection

CCP 1094.5, 1095]

21. PETITIONER realleges and incorporates by reference the allegations of Paragraph 1-20 as though fully set forth herein.

22. RESPONDENT COMMISSION has adopted a 'stringline' policy which 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.

23. RESPONDENT has applied the use of the stringline to numerous permits, including an application by PETITIONER MEZZIO, [CDP 4-85-378]. As a result of the application of the stringline policy to his permit issued in 1985, PETITIONER MEZZIO was compelled to reduce the size of the project he constructed at 4921 Sandyland Road from seven condominium units to six units, with attendant economic losses.

24. As a result of the COMMISSION's failure to apply the same stringline policy to REAL PARTIES' property as it applied to PETITIONER'S adjacent property, PETITIONER and other owners of condominium units in the structure at 4925 Sandyland Road, as well as members of the public have been deprived of views to and along the beach in violation of Carpinteria LCP Policy 4-I.

25. COMMISSION has failed to articulate any rational basis on which to discriminate between PETITIONER and REAL PARTIES, who are similarly situated owners of adjacent real property. Said discrimination and unequal treatment is unlawful under the Equal Protection Clauses of the California and U.S. Constitutions.

FOURTH CAUSE ACTION

[For Abuse of Discretion for Denial of Fair Hearing]

[Violation of Pub. Res. Code Section 30319 through 30324]

26. PETITIONER realleges and incorporates by reference the allegations of Paragraphs 1-25 of the Petition as though fully set forth herein.

1 27. PETITIONER diligently requested, on numerous occasions prior to the hearing of February
2 17, 2000 to be provided with copies of any and all documents submitted by the REAL PARTIES in
3 support of their application. Petitioner was repeatedly informed that no such documents existed.

4 28. PETITIONER is informed and believes, and thereon alleges, that REAL PARTIES mailed
5 evidence and documents in support of the application directly to each of the RESPONDENT
6 Commissioners, and that said Commissioners reviewed and relied on said documents in their decision.

7 29. None of the documents submitted to the Commissioners *ex parte* was made available to
8 PETITIONER either at or prior to the hearing, such that PETITIONER was deprived of any reasonable
9 opportunity to respond to REAL PARTIES submission, thereby constituting a violation of Pub.
10 Resources Code 30319 through 30324, which require that all documents submitted to the Commission
11 be made available to the public.

12 30. PETITIONER was prejudiced by the RESPONDENT'S failure to make the REAL PARTIES
13 submission available to the public because PETITIONER was unable to respond to incorrect, incomplete
14 and misleading information contained in the REAL PARTIES' submission.

15 31. PETITIONER has exhausted any and all administrative remedies herein;

16 32. PETITIONER has no adequate remedy at law.

17
18 WHEREFORE PETITIONER prays:

19 1. On the First Cause of Action, for a Writ of Mandate directing RESPONDENT Commission
20 to set aside its approval of a Coastal Development Permit for Real Parties' property and reconsider its
21 decision, and directing Commission, under CCP Section 1085, to comply with the mandatory provisions
22 of 14 CCR 13096.

23 2. On the Second Cause of Action, for a Writ of Mandate directing RESPONDENT Commission
24 to set aside its approval of a Coastal Development Permit for Real Parties' property, and directing Real
25 Party to remove all structural elements found to violate the Coastal Act and policies of the LCP as set
26 forth in the staff report and recommendations;

27 3. On the Third Cause of Action, for a writ of mandate directing RESPONDENT Commission
28

1 to set aside its approval of a Coastal Development Permit for Real Parties' property, and/or for damages
2 according to proof;

3 4. For costs of suit;

4 5. For Attorneys' fees under CCP Section 1021.5 and /or any other authorizing statute

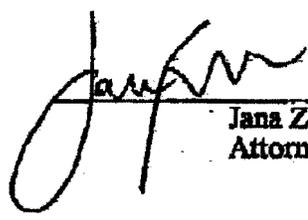
5 6. For such other relief as the court finds proper.

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9 Dated: April 3, 2000



Jana Zimmer
Attorney for Petitioners/Plaintiff

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