

CALIFORNIA COASTAL COMMISSION

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Commission Action:

M3a

STAFF REPORT: CONSENT CALENDAR**APPLICATION NUMBER:** 5-01-197**APPLICANT:** Janice Jacobs & Mark Dolansky**AGENT:** Todd Schooler**PROJECT LOCATION:** 5301 Seashore Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Addition of a 312 square foot new third story and interior remodel of an existing two story duplex and addition of a second story deck. The resultant structure will be a 2,226 square foot (Unit A is 840 square foot at first story; Unit B is 1,386 square feet at second and third stories), 29 foot high, 3 story duplex with an attached 394 square foot, 2 car garage and a 154 square foot roof deck on a beachfront lot. No change is proposed to an existing 15 by 30 foot at grade patio within the Oceanfront encroachment area. A 36 inch high brick wall surrounding the patio in the encroachment area is currently proposed. The proposed brick wall was constructed without benefit of a coastal development permit sometime after 1991.

Lot Area:	1805 square feet
Building Coverage:	1288 square feet
Pavement Coverage:	382 square feet
Landscape Coverage:	135 square feet
Parking Spaces:	2
Zoning :	R-1
Ht above final grade:	29 feet

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 0785-2001; City of Newport Beach Modification Permit No. MD 2001-040.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project subject to six (6) special conditions requiring 1) recordation of an Assumption-of-Risk deed restriction; 2) recordation of a No Future Protective Device deed restriction; 3) requirement to obtain Commission approval for any deviation related to Oceanfront patio encroachments; 4) a notification that this coastal permit does not prevent the City of Newport Beach from requiring the removal of oceanfront patio encroachments; 5) an informational special condition which clarifies that the coastal development permit is for the remodel and additions specified in this permit only and that any future development requires an amendment to this permit or a new coastal development permit; and 6) compliance with all conditions within 90 days of the date of Commission action on the permit. The applicant is in agreement with the staff recommendation.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Modification Permit No. 2001-040 Findings; City of Newport Beach certified Land Use Plan; *Wave Uprush Study* for 5301 Seashore Drive, Newport Beach, CA prepared by Skelly Engineering dated August 2001

Coastal Development Permits related to hazards: 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-086 (Wells); 5-00-059 (Danner); 5-00-114 (Heuer); 5-00-271 (Darcy); 5-99-477 (Watson); 5-99-289 (NMUSD); 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold); City of Newport Beach certified Land Use Plan;

Coastal Development Permits related to street end improvements: 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298 (City of Newport Beach);

Coastal Development Permits related to Oceanfront encroachments: 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partnership) and 5-98-266 (WMC Development); *Orange County Beach Erosion Control Project, San Gabriel River to Newport Bay, Orange County, California* prepared by the U.S. Army Corps of Engineers Los Angeles District dated April 1995.

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve CDP #5-01-197 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

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 this permit is reported to the Commission. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
5. 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. Assumption of Risk, Waiver of Liability and Indemnity
 - A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (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.

2. No Future Shoreline Protective Device

A(1). By acceptance of this permit, the applicant agrees, on behalf of him/herself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-01-197 including future improvements, in the event that the property is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of him/herself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

A(2). By acceptance of this permit, the applicant further agrees, on behalf of him/herself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the duplex and patio wall, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that any portion of the development is destroyed, the permittee 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.

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, which reflects the above restriction on development. 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.

3. Deviation from Approved Encroachments.

A. The only encroachment onto the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a 36 inch high, brick patio wall. A 15 by 30 foot at-grade patio existed at the site prior to the Commission's certification of the Land Use Plan amendment (Newport Beach Land Use Plan Amendment 90-01) addressing Oceanfront encroachments and so is grandfathered in. Any development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is required.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit evidence, for the review and approval of the Executive

Director, that the encroachment fee required to retain the existing and proposed encroachments has been paid.

4. City's Right to Revoke Encroachment Permit.

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

5. Future Development

This coastal development permit 5-01-197 approves only the development, as expressly described and conditioned herein, remodel and addition to an existing duplex located at 5301 Seashore Drive in the City of Newport Beach. Any future development to the duplex or garage, such as a change in the intensity of use (including a change in the physical number of residential units or a change in the number of parking spaces) shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

6. Condition Compliance

WITHIN NINETY (90) DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans, no matter how minor, must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The subject site is located at 5301 Seashore Drive on the Balboa Peninsula within the City of Newport Beach, Orange County (Exhibit A). The site is a beachfront lot located between the first public road and the sea. Unlike the beachfront areas of Newport Beach south of 36th Street, there is no paved public walkway between the site and the public beach. The project is located within an

existing urban residential area, located at the northern end of Newport Beach near the mouth of the Santa Ana River. There is a wide sandy beach (approximately 200 feet wide) between the subject property and the mean high tide line. Vertical public access to this beach is available immediately adjacent to the subject site at the end of 53rd Street and approximately 150 feet upcoast of the subject site at the end of 54th Street.

The applicant is proposing to add a 312 square foot new third story and roof deck and to remodel the second floor of the existing two story duplex. The existing second story is proposed to be remodeled by converting an existing bedroom into deck area at the landward side of the site, expanding an existing deck by converting living room space to deck area at the seaward side of the site, and adding a new stairway to the proposed third floor. No change is proposed to the existing first story and with the exception of the conversion of interior living space to deck area at the second story, there will be no change to the existing exterior walls. The resultant structure will be a 2,226 square foot (Unit A is 840 square foot at first story; Unit B is 1,386 square feet at second and third stories), 29 foot high, 3 story duplex with an attached 394 square foot, 2 car garage and a 154 square foot roof deck. No grading is proposed.

The subject site includes an existing encroachment seaward of the beachside property line, into the Oceanfront right-of-way consisting of a 15 by 30 foot, ground-level patio. Currently proposed is a 36 inch high, brick patio wall which would surround the patio except for an 8 foot wide opening on the west side (Exhibit C). The public right-of-way is City owned land for street purposes. The proposed 36 inch high, brick wall was constructed without benefit of a coastal development permit sometime after 1991.

The City approved Modification Permit No. 2001-040 to allow the existing non-conforming duplex with substandard parking in an R-1 zone to remain. In approving the Modification Permit the City made a number of findings (see Exhibit F), including the fact that the proposed project will not increase or intensify existing use at the site.

B. PREVIOUS COMMISSION ACTION ON BEACHFRONT LOTS

The Commission has recently approved new development and residential renovation projects on beachfront lots in Orange County and southern Los Angeles with special conditions requiring the recordation of an assumption of risk deed restriction and no future protective device deed restriction. The Commission is imposing these special conditions as new development which will necessitate a future shoreline protective device in the future cannot be permitted. Though this project is in Orange County, projects in both Orange County and Los Angeles County are used for comparative purposes in the current situation because of their similar site characteristics, including the existence of a wide sandy beach between the subject site and the mean high tide line. Projects similar to the currently proposed development in Orange County include Coastal Development Permits 5-99-477 (Watson); 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold). Recent examples in Hermosa Beach include Coastal Development Permits 5-00-086 (Wells); 5-00-059 (Danner); 5-00-114 (Heuer) and 5-00-271 (Darcy). The Commission approved CDP 5-99-289 (NMUSD) in April 2000 for the construction of a sand wall around an elementary school playfield site south of the subject site. Finally, the Commission most recently approved Coastal Development Permits 5-00-192 (Blumenthal), 5-01-261 (Pearson); 5-00-262 (Puntoriero), and 5-00-285 (Collins) with conditions related to no future seawalls and assumption of hazard risks at the sites.

C. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30251 of the Coastal Act states that:

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

1. Wave Uprush and Flooding Hazards

The subject site is located on a beach parcel on the Balboa Peninsula at the northern end of Newport Beach near the mouth of the Santa Ana River. Presently, there is a wide sandy beach between the subject development and the ocean. According to the Wave Runup Study prepared by Skelly Engineering dated August 2001, the mean high tide line is approximately 200 feet from the seaward edge of the subject property. This wide sandy beach presently provides homes and other structures in the area some protection against wave uprush and flooding hazards. However, similar to other nearby beach fronting sites such as those at A1 through A91 Surfside in Seal Beach (north of the subject site), the wide sandy beach is the only protection from wave uprush hazards. Similar situations exist in downtown Seal Beach and Hermosa Beach (Los Angeles County).

Even though wide sandy beaches afford protection of development from wave and flooding hazards, development in such areas is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside. Additionally, heavy storm events such as those in 1994 and 1998, caused flooding of the Surfside community. As a result, the Commission has required assumption-of-risk deed restrictions for new development on beachfront lots throughout Orange County and southern Los Angeles County.

Section 30253 (1) of the Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. Based on historic information and current conditions at the subject site, the proposed development is not considered to be sited in a hazardous area. According to the applicant, the proposed project is not located in any special flood hazard area as defined on the applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) for the area. There is currently a wide sandy beach in front of the proposed development. In addition, the existing development was not adversely affected by the severe storm activity which occurred in 1983, 1994, and 1998. Since the proposed development will not change the existing footprint and so is no further seaward of existing development, which has escaped storm damage during severe storm events, the proposed development is not anticipated to be subject to wave hazard related damage. Nonetheless, any development on a beachfront site may be subject to future flooding and wave attack as coastal conditions (such as sand supply and sea level) change.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer), that anticipates wave and sea level conditions (and associated wave run-up, flooding, and erosion hazards) through the life of the development. For a 75 to 100 year structural life, the hazard analysis would need to take the 1982/83 storm conditions (or 1988 conditions) and add in 2 to 3 feet of sea level rise in order to determine whether the project site would be subject to wave run-up, flooding, and erosion hazards under those conditions. The purpose of this analysis is to analyze the potential for future storm damage and any possible mitigation measures which can be incorporated into the project design.

When initially asked to provide a wave uprush analysis, the applicant's agent provided verification from the City of Newport Beach Building Department stating that the subject site is not located in an area subject to flooding from wave activity based on FIRMs published by FEMA. However, Commission technical staff determined the method of analysis used for preparation of the FIRM documents to be insufficient for Commission purposes in analyzing the present and future need for shoreline protective devices and made a subsequent request for a wave uprush study prepared by an appropriately licensed professional.

The applicant then provided the Wave Uprush Study prepared by Skelly Engineering dated August 2001 which addresses the potential of hazard from flooding and wave attack at the subject site. The report concludes the following:

"...[W]ave runup and overtopping will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup protection. The proposed project minimizes risks from flooding."

Based on the information provided by the applicant, Commission staff concurs with the conclusion that the site is not subject to hazards from flooding and wave uprush at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to "assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices..."

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. For instance, there is a jetty at the mouth of the Santa Ana River which is approximately one mile north of the project site. This jetty, as well as other groins in this area of Newport Beach result in littoral transport patterns that are complex. A study prepared by the U.S. Army Corps of Engineers in April 1995 titled Orange County Beach Erosion Control Project, San Gabriel River to Newport Bay, Orange County, California, suggests that the effect of changes to the littoral pattern in the project area is difficult to predict. This report states:

The shoreline in the Newport Beach groin field region has experienced mild yet continual erosion. The groin field was constructed during Stage 4b and Stage 5 of this project during the 1970's. The project involved an initial fill after construction of the groins. Under this project authority, the groin field has never received any fill material as part of periodic nourishment and/or maintenance since initial construction completed in 1973. The littoral transport patterns in the groin field region are complex due to the influences of the Newport Submarine Canyon. The great depths of the canyon dramatically influence the wave climate and subsequently the littoral transport patterns. The littoral material exhibits bi-directional longshore movement. It is generally believed that the submarine canyon acts as a sink for a portion of the longshore littoral transport.

In the project area, the report goes on to suggest that erosion patterns are difficult to predict because areas near the project site where beach erosion is expected to be either static or slightly eroding, are actually experiencing accretion. Regarding erosion in the Newport Beach groin field, the report states:

...The shoreline at STA 664+21, which is just upcoast of the groin field but downcoast of the Santa Ana River, has been stable or accretionary which further indicates the complexity of sediment transport behavior in the groin field region.

The beach width monitoring station STA 664+21 is located at 62nd Street, approximately 9 blocks upcoast of the subject site. The Army Corps study indicates that the beach in the vicinity of the project site is growing. However, the information in the Army Corps study also suggests that the wide beach exists in part due to the presence of groins and jetties in the vicinity of the project site. This suggestion is confirmed by the applicants site specific Wave Uprush Study. Regarding the littoral cell and the function of structures in beach stability at the subject site, the applicant's site specific wave uprush study states:

...Almost all of the shoreline in this littoral cell has been stabilized by man. The subject site is within a groin field that provides stability to this section of shoreline. The local beaches near the site were primarily made by man through nourishment as a result of major shoreline civil works projects (Newport Bay, Huntington Harbor, channelization of Santa Ana River, etc.). In addition, this site is subject to periodic beach nourishment as part of the US Army Corps of Engineers Orange County Beach Erosion Control Project. The up-coast and down-coast movement of sand along the shoreline is mostly controlled by the

groin field. There is little if any long term beach erosion at the site. The movement of sand along the shoreline depends upon the orientation of the shoreline and the incoming wave direction. The movement of sand along this section of Newport Beach is generally to the southeast but under wave conditions from the south the direction reverses. The source of sediment for this compartment is beach nourishment and sands from nearby rivers. The sink for sands is the Newport Submarine Canyon. This submarine canyon focuses and defocuses the incoming wave energy. Both the man made structures and the canyon play a major role in the local coastal processes.

Therefore, it is clear that the existing groins and jetties in the project area function in a manner which allows the existing wide sandy beach to persist. However, damage to these groins and jetties could dramatically and unpredictably change littoral transport mechanisms at the site. Such changes may cause the wide sandy beach to erode. Therefore, the presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development. In order to address this situation with respect to Coastal Act policy, two special conditions are necessary.

2. Assumption of Risk

Given that the applicant has chosen to implement the project despite potential risks from wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission imposes Special Condition 1 for an assumption-of-risk agreement. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

The assumption-of-risk condition is consistent with prior Commission actions for development along the beach. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and more recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed and no future protective device restrictions on new development. Examples include Coastal Development Permits 5-00-261 (Pearson); 5-00-262 (Puntoriero); 5-99-289 (NMUSD); 5-99-477 (Watson), 5-99-372 (Smith), 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

3. Future Shoreline Protective Devices

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the

required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. The proposed project involves additions to and remodel of an existing duplex and the construction of a 36 inch high brick wall along the seaward side of the existing patio. Except for the conversion of a portion of the existing second story living area to outdoor deck area, the existing exterior walls will remain. No work is proposed at the first story. Nevertheless, due the amount of work that is being undertaken and it's significant extension of the expected life of the resulting development at the subject site, the Commission considers the proposed project to be new development. The construction of a shoreline protective device to protect this type of new development would conflict with Section 30251 of the Coastal Act, which states that permitted development shall minimize the alteration of natural landforms, including beaches which would be subject to increased erosion from such a device.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. While the Commission recognizes that existing development at the subject site includes a brick wall parallel to and 15 feet seaward of the seaward property line, the wall is not designed to function as a shoreline protective device and cannot be relied upon to provide protection from wave uprush. The Wave Runup Study concludes that there are several facts that indicate that wave runup and overtopping should not adversely impact the property over the life of the structure including: *"[a]erial photographs over the last two decades show little overall shoreline retreat in general and a wide sand beach in front of the property even at times when the beach is seasonally at its narrowest and that "[t]he presence of the groin field provides significant structural stability to the beach at the subject site."* However, as previously discussed, nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Furthermore, as noted above, the existing wide beach persists due to the presence of groins and jetties in the area. Damage to the groins and jetties could cause shoreline processes to change resulting in erosion of the beach. Therefore, it is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow high wave energy on the shoreline materials that may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in the earlier discussion, this portion of Newport Beach currently characterized as having a wide sandy beach. However, the width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protection device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events, but also potentially throughout the winter season.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion.

In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from shoreline protective devices. The applicant is not currently proposing a seawall and does not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is a wide sandy beach in front of the proposed development that provides substantial protection from wave activity.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 2 which 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 necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Section 30251 and 30253.

By imposing the "No Future Shoreline Protective Device" special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future.

4. Conclusion

The Commission finds that hazards potentially exist from wave uprush and flooding at the subject site. Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions 1 and 2 require the applicant to record Assumption-of-Risk and No Future Shoreline Protective Devices deed restrictions. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

D. PUBLIC ACCESS

1. Encroachments

Section 30210 of the Coastal Act states:

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.

Section 30211 of the Coastal Act 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.

The proposed development includes construction of new and retention of existing patio encroachments onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home (see Exhibit C). The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront Street (Exhibit B). The portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers are developed with a public walkway/bikeway. In the vicinity of the subject site, however, the City has never constructed any part of the Oceanfront street, but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. The development now pending proposes to construct a 36 inch high, brick patio wall and to retain the existing patio encroachment. Thus, the proposed and existing encroachments will continue to reduce the amount of public sandy beach area available for public access and recreation and could interfere with the City's future use of the right-of-way for public access.

The proposed encroachments would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes. For instance, the public right-of-way could be used to extend the City's concrete bikeway/walkway along the beach. The bike path currently runs inland in the vicinity of the subject site.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the

development on the sandy beach area which is owned by the City of street purposes. This cumulative impact is addressed by a mitigation plan. The mitigation plan requires that all encroachments onto the City's Oceanfront public right-of-way, including the proposed encroachment, must be approved by an Annual Oceanfront Encroachment Permit issued by the City. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of a minimum of two metered public parking spaces per street end.

The fees vary depending on the depth (i.e. seaward from the beachside property line) of permitted encroachment onto the Oceanfront public right-of-way. The proposed 15 foot encroachment is within the 15 foot maximum depth of encroachment allowed in this area by the LUP encroachment policies.

The LUP encroachment policies prohibit encroachments: (1) between 36th and "A" Streets, (2) on Peninsula Point, (3) which would interfere with vertical public access, (4) that require the issuance of a City Building Permit, or exceed three feet in height, and (5) that existed prior to October 22, 1991, and which did not have an approved encroachment permit prior to that date. The proposed development does not fall into any of these categories of prohibited encroachments.

LUP Encroachment Policy 5.A. contains the mitigation plan which requires the City to reconstruct thirty-three unimproved street ends between 36th Street and Summit, and the City will use its best efforts to improve three or more street ends per year. To date, the Commission has approved coastal development permits 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298 for improvements to the ends of 37th, 38th, 40th, 42nd through 60th Streets, and Cedar Street, Walnut Street, and Lugonia Street. Of these approvals, the street ends at 37th, 38th, 40th, and 42nd through 59th Streets have been completed. The improvements approved at 60th through Lugonia Street are anticipated to be completed soon. In addition, the hard surface walkway perpendicular to Seashore Drive at Orange Avenue required by Policy 5.A. has been completed.

When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with this mitigation plan for street improvements which enhance vertical public access, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The Commission's findings of denial as submitted and approval as modified of City of Newport Beach LUP Amendment 90-01, as described in the staff reports dated December 4, 1990 and May 28, 1991, respectively, are hereby incorporated by reference.

The Commission finds that the proposed encroachment is consistent with the LUP policies in that they are located in an approved encroachment zone, the applicant has submitted the original Oceanfront Encroachment Permit, and the City is continuing to carry out the public access improvements that are necessary to mitigate the adverse impacts of the encroachments. However, the applicant has submitted only a current bill for the encroachment permit, but no evidence that the fee was paid. In order to assure that the encroachments are consistent with the Land Use Plan policies addressing Oceanfront encroachments as certified by the Commission, and so are consistent with the public access policies of the Coastal Act, evidence that the required fee has been paid must be submitted. Therefore, as a condition of approval the applicant shall submit, for the review and approval of the Executive Director, evidence that the current encroachment permit fee has been paid.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur unless the coastal development permit is amended or a new coastal development permit obtained, the Commission imposes Special Condition 3 which requires that an amendment to this permit or a new coastal development permit be obtained for any deviations to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. The proposed project is thus being conditioned (Special Condition 4), consistent with the City's certified LUP (Encroachment Policy 6B), to provide that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

Further, the Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partnership), 5-98-266 (WMC Development) and 5-01-261 (Pearson) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar encroachments onto the Oceanfront public right-of-way in the area. Therefore, the Commission finds that the proposed encroachments onto the public right-of-way, only as conditioned, would be consistent with the public access and recreation policies of the Coastal Act.

2. Parking

Section 30210 of the Coastal Act requires that public access be maximized. Further, Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by: (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (emphasis added)

Section 30250 of the Coastal Act requires, in part, that new residential development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, Section 30252 of the Coastal Act requires, among other things, that the amount and location of new development maintain and enhance public access to the coast by providing adequate parking facilities.

When private development does not provide adequate on-site parking, users of that development may be forced to occupy public parking that could be used by visitors to the coast. A lack of public parking discourages visitors from coming to the beach and other visitor serving activities in the coastal zone. A proposed development's lack of parking could therefore have an adverse impact

on public access. Further, the City's certified Land Use Plan (LUP) states that parking is a major issue in the Newport Beach Coastal Zone.

The project site is located adjacent to the wide sandy beach that extends from the Santa River mouth to the tip of the Balboa Peninsula at the harbor entrance. This beach area is an extremely popular destination for residents and visitors alike. Consequently the provision of adequate parking in the area is essential to assure that public access is maximized.

The proposed project includes modifications to an existing duplex consisting of two residential units. The existing duplex provides only two parking spaces. No additional spaces are proposed. Although impacts that arise from a deficiency of two parking spaces might appear to be minimal, Section 30250 requires that the cumulative effects of such impacts be considered. Therefore the Commission must consider whether approval of the proposed project could create adverse impacts on coastal resources, specifically to public access due to lack of parking.

The Commission has consistently found that two parking spaces are necessary to satisfy the parking demand generated by individual dwelling units. The project site contains two residential units. Under the Commission's standard of two parking spaces per dwelling unit the project should provide four on-site parking spaces. However, only two spaces exist on-site and no additional parking spaces are proposed. Therefore, the proposed development is deficient by two parking spaces.

It should also be noted that the subject site's ability to provide additional parking spaces is constrained by the lot size (1805 square feet, 30 feet by 60 feet) and existing development on the subject site. The proposed project consists of an interior remodel and addition of a new, 312 square foot third floor. The footprint of the existing structure is not proposed to be changed. The existing building footprint extends to the rear property line, and is setback three feet from each side property line and five feet from the front (seaward) property line. No changes are proposed to the existing first floor of the structure. Therefore additional parking spaces could not be accommodated on site without requiring removal of existing portions of the structure where no work is currently proposed.

However, no increase in the number of dwelling units is proposed, so the proposed project would not result in an intensification of use of the site. Thus no increase in parking demand will occur as a result of the proposed project. Because the proposed project will not intensify the existing use of the site, the project's parking deficiency is not required to be corrected at this time.

Nevertheless, future improvements to the structure at the site could result in an increase in the number of dwelling units beyond the two units that currently exist, resulting in an intensification of use. This would result in an increase in parking demand and an increase in the parking deficiency, potentially leading to adverse impacts on public access. Therefore, the Commission finds that it is necessary to place a condition on the permit informing the permittee that a new coastal development permit, or an amendment to this permit, would be required for any future improvements to the project as proposed and conditioned herein. This would allow for the review of future improvements for any potential adverse impacts to public access.

This type of special condition has been previously imposed by the Commission and the Executive Director for similar residential projects involving addition which did not result in an intensification of

use but did have inadequate parking based on the Commission's regularly used standard. Therefore, as conditioned for a future improvements condition, the Commission finds that the proposed development is consistent with Section 30210 and 30252 of the Coastal Act.

3. New Development

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

The subject site is a beachfront lot located between the nearest public roadway and the shoreline on the Balboa Peninsula in the City of Newport Beach. There is a wide public sandy beach seaward of the subject site which provides lateral public access. Vertical public access to this beach is available immediately adjacent to the subject site at the end of 53rd Street and approximately 150 feet upcoast of the subject site at the end of 54th Street. Therefore, the Commission finds adequate access is available nearby and the proposed development is consistent with Section 30212 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) component of its LCP was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the complete LCP has not been prepared or certified. Therefore, the Commission issues CDPs within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

The City of Newport Beach owns a public right-of-way, the Oceanfront "paper" Street, which runs between private property and the beach along West Newport and the Balboa Peninsula. Portions of the right-of-way are developed with a public bikeway/walkway. The public bikeway/walkway provides public access and recreation opportunities. However, in West Newport (including the vicinity of the subject site) and the eastern end of the Balboa Peninsula, the public right-of-way is unimproved. Since the public right-of-way in these areas is not physically improved, there are no public improvements to serve as a barrier preventing private encroachment onto the public beach.

There has been a history of mostly minor private development, such as patios, decks, and landscaping, which had been built onto the public right-of-way in an inconsistent manner. Since these improvements were on a beach, pursuant to Sections 13250 and 13253 of the Commission's regulations, they are not exempt from coastal development permit requirements pursuant to Coastal Act Section 30610(a) which exempts certain improvements to single family homes from coastal development permit requirements. Some of these encroachments were not approved by coastal development permits and therefore were in violation of the Coastal Act.

In order to address the situation in a comprehensive manner, the City of Newport Beach applied for an LUP amendment (90-01) which provided policies to establish conditions and restrictions on the nature and extent of private encroachments onto Oceanfront from private residential development. The amendment also established a mitigation plan for the encroachments. On June 11, 1991, the Commission approved LUP amendment 90-01 with suggested modifications. The Commission found that the amendment, as modified, is consistent with the Chapter 3 policies of the Coastal Act. The City accepted the suggested modifications which are now a part of the LUP.

As modified by the Commission and accepted by the City, the LUP encroachment policies include encroachment zones of varying depth ranging from 0 to 15 feet. In the project area, the maximum allowable encroachment into the Oceanfront "paper street" is 15 feet from the seaward property line. In addition, no encroachments are allowed which would interfere with public access to the beach or ocean and no encroachments may exceed 3 feet in height. The existing encroachments at the subject site conform to the standards for height and depth of encroachment contained in the LUP policies.

The LUP amendment established a program to mitigate the adverse impacts of the encroachments upon public access by using encroachment permit fees to fund street-end improvements. The street end improvements include the removal of private encroachments from the street ends and the construction of at least 2 metered public parking spaces on each street

end. The City of Newport Beach has been implementing the improvements on a consistent basis (Coastal Development Permits 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298).

Also, the LUP encroachment policies provide that the encroachment permits are revocable, without cause, in the event the City pursues the construction of public improvements along Oceanfront. The Commission imposes Special Condition 4 which places the applicant on notice that approval of the coastal development permit does not restrict nor interfere with the City's right to revoke the encroachment permit and require the removal of the encroachments.

Finally, among other provisions, the LUP encroachment policy provides that no seawalls may be constructed which would be designed to protect private development within the encroachment zone. Special Condition 2 reinforces this LUP policy.

The Commission found the LUP Encroachment policies, as modified, to be consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act. The proposed development, as conditioned, conforms with the public access and recreation policies of Chapter Three of the Coastal Act as well as the certified LUP encroachment policies. Therefore, the Commission finds that approval of the proposed development, as conditioned, would not prejudice the City's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act as required by Section 30604(a).

F. Unpermitted Development

Prior to applying for the required coastal development permit for the proposed project, the applicant constructed the 36 inch high brick wall within the encroachment area. Although unpermitted development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Action on the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

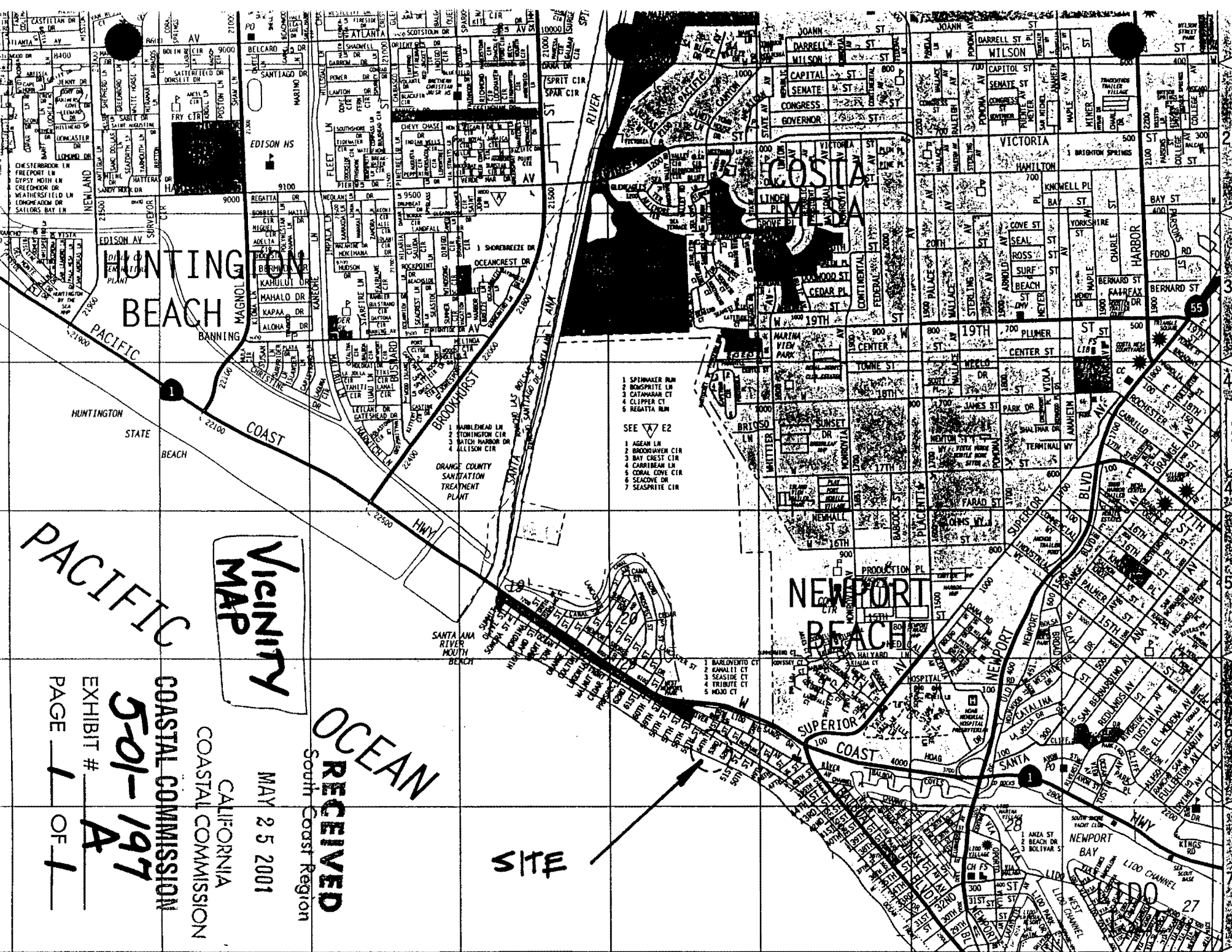
G. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of coastal development permit applications 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 project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. Conditions imposed are: 1) an assumption-of-risk agreement; 2) a prohibition of future shoreline protective devices; 3) a notification that changes to the proposed patio encroachments may require a Commission approval; 4) a notification that this coastal development permit approval does not restrict the ability of the City to revoke their encroachment permit to pursue construction of access

and recreation improvements in the public right-of-way; 5) notification clarifying that the coastal development permit is for the remodel and additions specified in this permit only and that any future development requires an amendment to this permit or a new coastal development permit; and 6) a requirement that all conditions be complied with within 90 days of the date of Commission action. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.



- 1 SPINNAKER RUN
 - 2 BONSPRITE LN
 - 3 CATAMARAN CT
 - 4 CLIPPER CT
 - 5 REGATTA RUN
- SEE ∇ E2
- 1 AEGEAN LN
 - 2 BROADWAYEN CIR
 - 3 BAY CREST CIR
 - 4 CARRIBEAN LN
 - 5 CORAL COVE CIR
 - 6 SEASIDE DR
 - 7 SEASPRITE CIR

SITE

PACIFIC COAST

VICINITY MAP

OCEAN RECEIVED
South Coast Region

MAY 25 2001

CALIFORNIA COASTAL COMMISSION

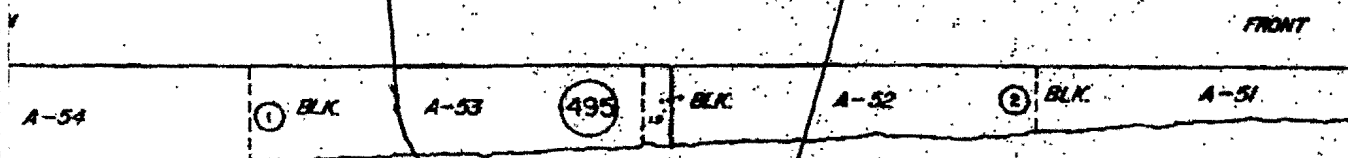
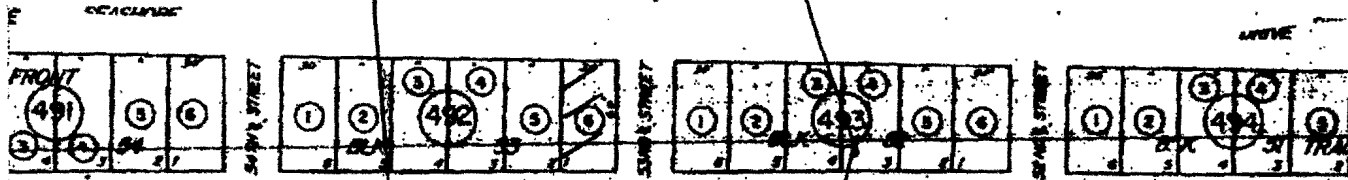
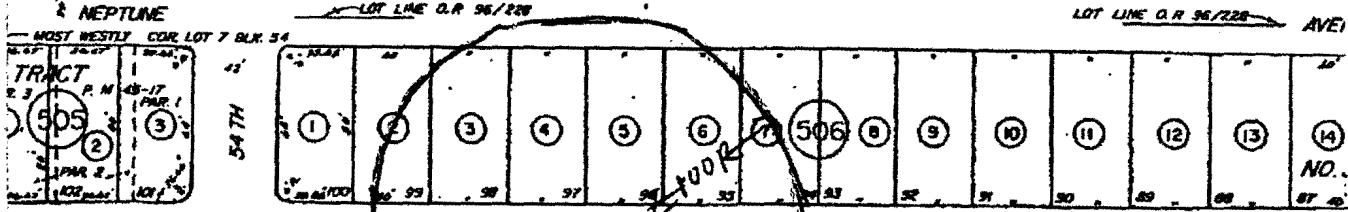
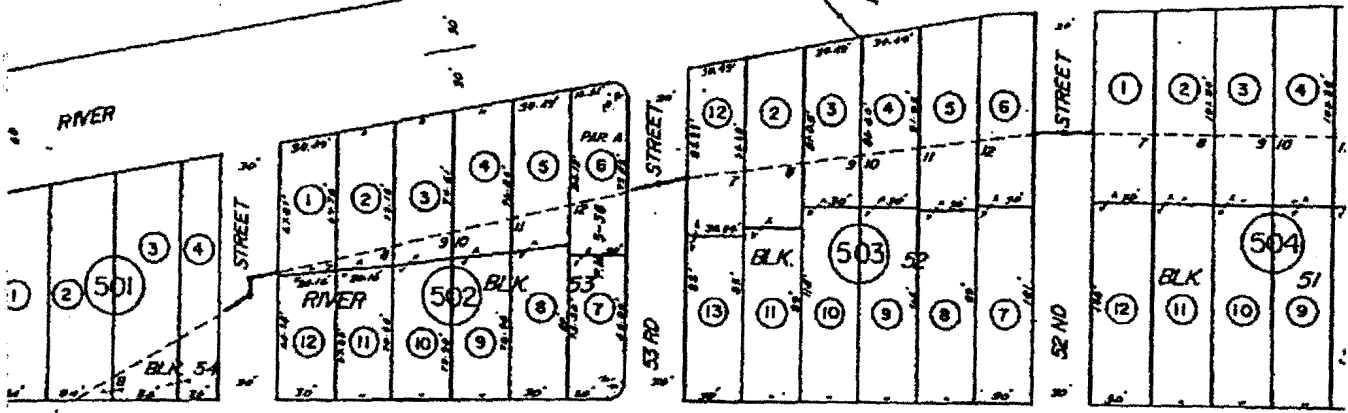
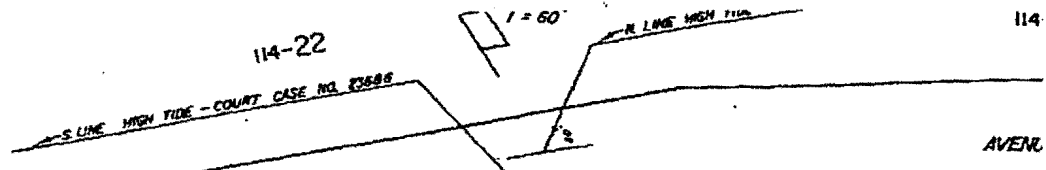
COASTAL COMMISSION

EXHIBIT # 5-01-197

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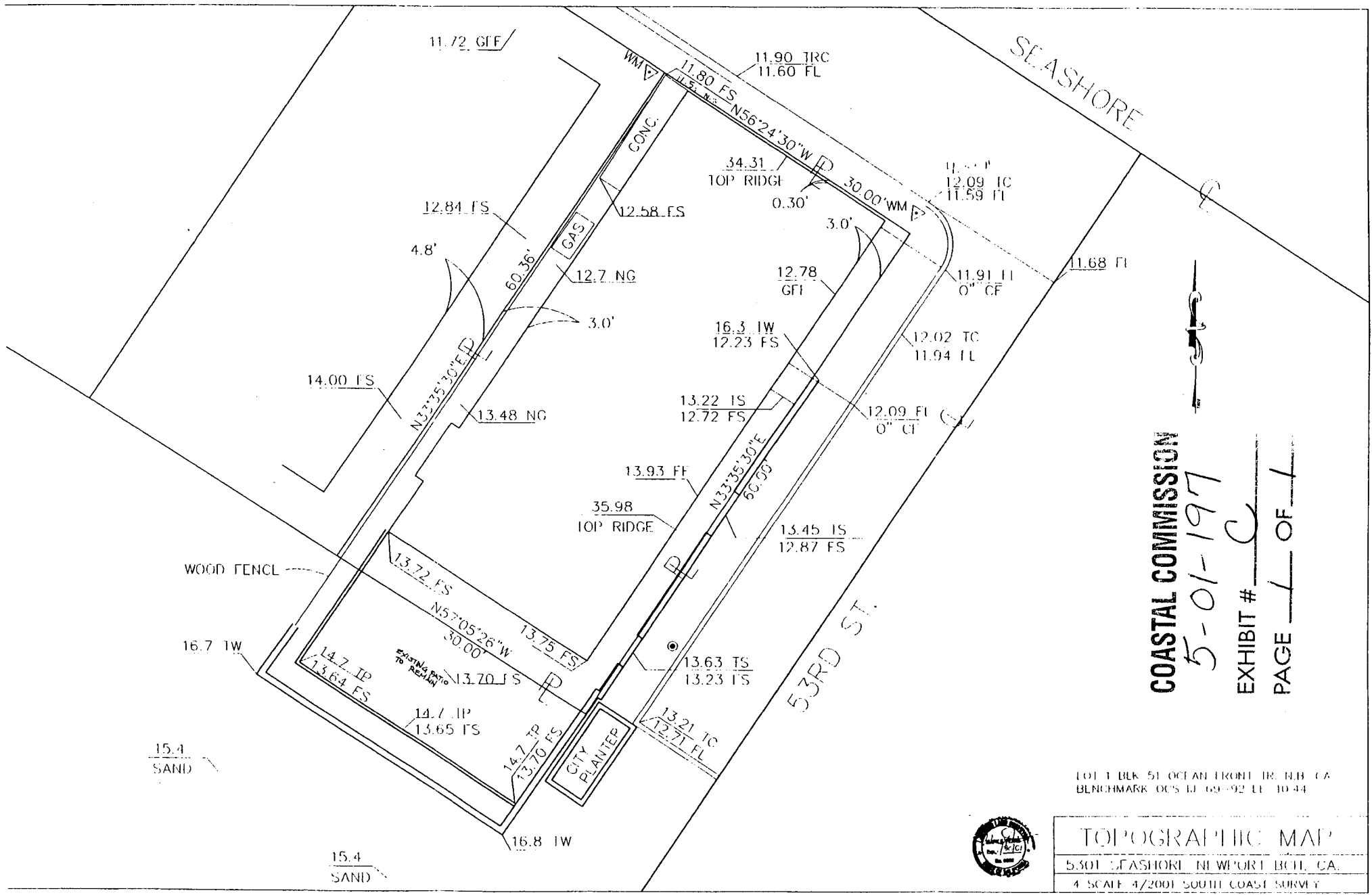
114



OCEAN FRONT TRACT N.M. 4-12 NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES ASSESSOR'S MAP BOOK 424 PAGE 49 COUNTY OF ORANGE

COASTAL COMMISSION
 5-01-197
 EXHIBIT # B

Ownership Map



COASTAL COMMISSION

5-01-197

EXHIBIT # C

PAGE 1 OF 1

LOT 1 BLK 51 OCEAN FRONT TR. B.H. CA
 BENCHMARK OCS 11 69-92 LL 10 44



TOPOGRAPHIC MAP
 5301 SEASHORE NEWPORT BECH, CA.
 4 SCALE 4/2001 SOUTH COAST SURVEY

THIRD FLOOR PLAN

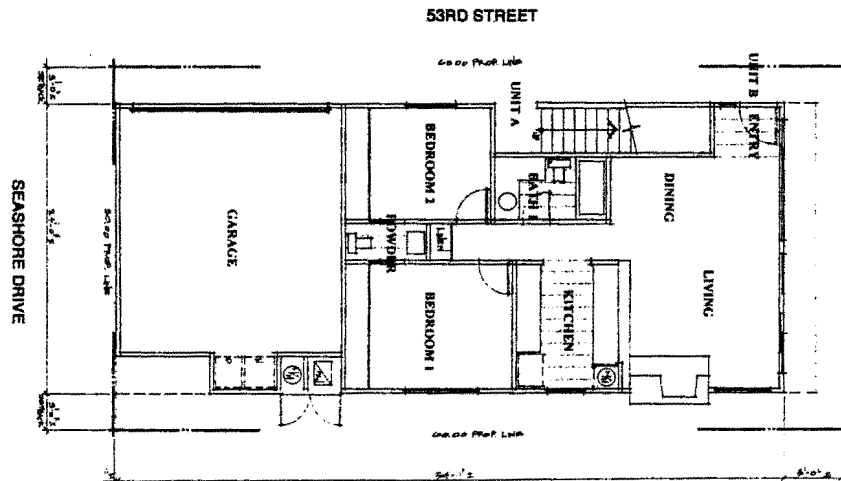
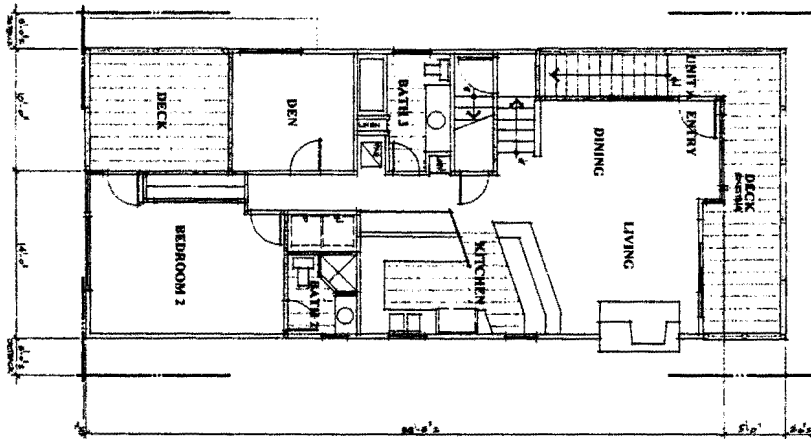
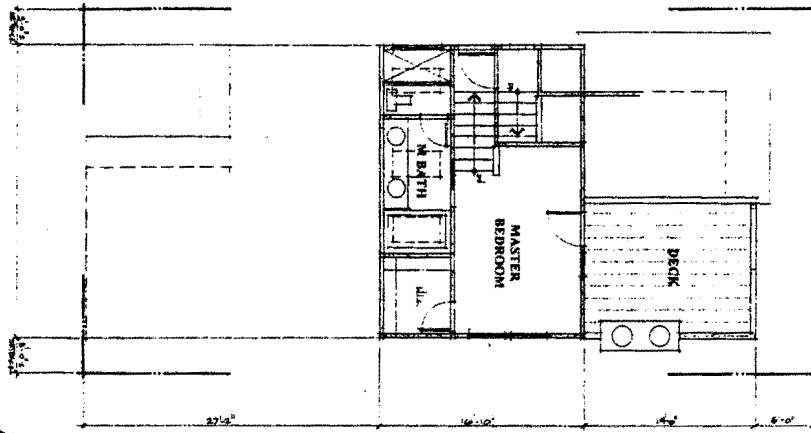
SCALE: 1/8" = 1'-0"

SECOND FLOOR PLAN

SCALE: 1/8" = 1'-0"

FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"



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 South Coast Region
 MAY 25 2001
 CALIFORNIA
 COASTAL COMMISSION

5-01-197



5-01-197

EXHIBIT D

Copyright Todd Schooner & Associates Architects & Planners
2

Todd Schooner

Project Location :

5301 SEASHORE DRIVE
 NEWPORT BEACH, CA

A REMODEL AND ADDITION FOR:
 JANICE JACOBS, MARK DOLANSKY
 AND FRAN MURPHY
 5301 SEASHORE DRIVE
 NEWPORT BEACH, CA 92663

CITY OF NEWPORT BEACH ANNUAL OCEAN FRONT ENCROACHMENT PERMIT

RECEIVED

JUN 28 2004 OF 5301 Seashore Dr.

(Please print or type. Press hard - making 3 copies.)

APPLICATION FOR: EXISTING IMPROVEMENT NEW IMPROVEMENT
 (CHECK ONE) EXISTING IMPROVEMENT MODIFIED RENEWAL

Depth of Encroachment 15'
 COMMISSION:
 Amount Fee Paid \$ (600.00)
 Receipt # 2574

ADDRESS OF ENCROACHMENT 5301 Seashore Dr.

APPLICANT'S NAME <u>JANICE JACOBS</u>	ADDRESS <u>5301 SEASHORE DR. NEWPORT BCH, CA 92663</u>	Phone <u>714-521-5215</u>
OWNER'S NAME <u>JANICE JACOBS</u> <u>MARK DOLANSKY</u> <u>FRANCES MURPHY</u>	ADDRESS <u>5301 SEASHORE DR. NEWPORT BCH, CA 92663</u>	Phone <u>714-521-5215</u>
CONTRACTOR'S NAME *	ADDRESS *	Office Phone *
		Job Site Phone

CONTRACTOR'S CITY BUSINESS LICENSE NO. _____ * STATE LICENSE NO. _____ *

The applicant hereby makes application to BUILD A BARRIER WALL 36"
HIGH EXTENDING THE ALLOWABLE 15' ENCROACHMENT

(See attached plans)

WORKERS' COMPENSATION INSURANCE (Required by Section 3900 of Labor Code) *

Applicant has furnished to the city a certificate of workers' compensation insurance issued by an admitted insurer and conforming to Section 3900 of the Labor Code; or an exact copy thereof certified by the insurer. The insurance certificate shows the expiration date of the policy. If the policy lapses or is cancelled, this permit shall be deemed to be revoked.

Insurer _____ Policy No. _____ Expiration Date _____

The terms and conditions of this permit are as stated in the Oceanfront Permit Agreement. Owner hereby acknowledges that he has read and understands said terms and conditions, and that he agrees to abide by them.

Janice Jacobs (Owner's Signature) _____ 1/27/92 (Date) _____

SPACE BELOW THIS LINE FOR OFFICE USE

SPECIAL CONDITIONS OF APPROVAL REQUIRED BY CITY: _____

PERMIT ISSUED BY: Don Walker
 DATE ISSUED: 7/1/92 EXPIRATION DATE OF PERMIT: June 30, 1993
 PERMIT DENIED :

* Only required for modifications and new improvements.

5-01-197

White - Permit
 Pink - Temporary Office Copy
 Yellow - Applicant
 EXHIBIT "A"

Exhibit E₁



CITY OF NEWPORT BEACH

REVENUE DIVISION

3300 NEWPORT BLVD

P. O. BOX 1768, NEWPORT BEACH, CA 92658-8915

E-Mail Address: RevenueHelp@City.Newport-Beach.ca.us

JACOBS, JANICE E
5301 SEASHORE DR
NEWPORT BEACH, CA 92663

#129

BUSINESS NO: EN1108
NOTICE DATE: 05/21/2001
DUE DATE: 06/30/2001

Service	Qty	Unit Price	Extension
OCEANFRONT ENCROACHMENT	1	\$741.00	\$741.00
Total Invoice:			\$741.00
Adjustments:			.00
Penalties:			.00
Payments:			.00
Past Due:			.00
Total Amount Due:			\$741.00

Our records indicate that you are the property owner at 5301 SEASHORE DR and that you were issued an Ocean Front Encroachment permit for construction and maintenance of approximately 15.00 feet of improvements in the public right-of-way along the ocean front. The current permit will expire on June 30, 2001 and must be renewed prior to that date.

In accordance with Resolution 91-80, the permit renewal fee has been adjusted to reflect the change in the Consumer Price Index. In order to avoid a 10% penalty applied to the first month, plus 5% for each month thereafter, payment must be received by June 30, 2001.

For inquiries regarding your permit, contact the Public Works Department at (949)644-3311. For billing or payment questions, please call (949)644-3141.

5-01-197

Exhibit E₂



CITY OF NEWPORT BEACH

MODIFICATION PERMIT NO. MD2001-040
(PA2001-071)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3250

Staff Person: Javier S. Garcia, 644-3206
Appeal Period: 14 days after approval date

May 2, 2001

Todd Schooler
359 San Miguel Drive, Suite 304
Newport Beach, CA 92660

Application No: Modification Permit No. MD2001-040
(PA2001-071)

Applicant: Todd Schooler

Address of Property Involved: 5301 Seashore Drive

Legal Description: Lot No. 1, Block No. 53, Ocean Front Tract

Approved as Requested:

Additions and alterations to an existing nonconforming duplex located in the R-1 District and that provides only one parking space for each dwelling unit. The addition includes a master bedroom suite at the third floor. There will be no net increase in the number of habitable rooms.

The Modifications Committee, on May 2, 2001, voted 3 ayes and 0 noes to approve the application request as modified based on the following findings and subject to the following conditions.

FINDINGS:

The Modifications Committee determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood and that the modification as approved would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code, and made the following findings:

1. The Land Use Element of the General Plan and the Local Coastal Program Land Use Plan designates the site for "Single Family Detached" residential use. The existing residential duplex has been determined to be a legal non-conforming structure.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).

COASTAL COMMISSION

5-01-197

EXHIBIT # F

PAGE 1 OF 4

May 2, 2001

Page - 2

3. The modification to the Zoning Code as proposed would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is a logical use of the property that would be precluded by strict application of the zoning requirements for this District for the following reason(s):
 - Section 20.62.0601.a(3) (Non-Conforming Parking) of the Newport Beach Zoning Code permits the "addition of a new room provided that there is no net increase in the number of habitable rooms, with approval of a modification permit". The existing duplex has a total of nine habitable rooms, including five bedrooms, the remodel and addition proposes a total of nine habitable rooms, including 5 bedrooms.
4. The modification to the Zoning Code as proposed will not be detrimental to persons, property or improvements in the neighborhood or increase any detrimental effect of the existing use for the following reasons:
 - The proposed additions and alterations will not increase or intensify the existing use.
 - The proposed project will comply with all requirements of the Zoning Code.
5. The proposed modification will not affect the flow of air or light to adjoining residential properties.
6. The proposed modification will not obstruct views from adjoining residential properties.

CONDITIONS:

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
3. In accordance with the provisions of Chapter 13 of the Newport Beach Municipal Code or other applicable section or chapter, additional street trees shall be provided and existing street trees shall be protected in place during construction of the subject project, unless otherwise approved by the General Services Department and the Public Works Department through an encroachment permit or agreement if required.
4. A building permit shall be obtained prior to commencement of the construction.

5-01-197

F₂

5. All work performed within the public right of way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement if required.
6. A total of two spaces shall be maintained clear and available for the parking of vehicles at all times. A minimum of one parking space shall remain available for each dwelling unit.
7. This approval shall expire unless exercised within 24 months from the date of approval as specified in Section 20.93.055 of the Newport Beach Municipal Code.

The decision of the Committee may be appealed to the Planning Commission within 14 days of the date of the decision. Any appeal filed shall be accompanied by a filing fee of \$714.00. No building permits may be issued until the appeal period has expired. A copy of the approval letter shall be incorporated into the Building Department set of plans prior to issuance of the building permits or issuance of revised plans.

MODIFICATIONS COMMITTEE

By Javier S. Garcia *et*
Javier S. Garcia, AICP, Senior Planner
Chairperson

JSG:gr

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Attachments: Vicinity Map

Applicant:
Todd Schooler
359 San Miguel Drive Suite 304
Newport Beach, CA 92660

Appeared
in Opposition: None

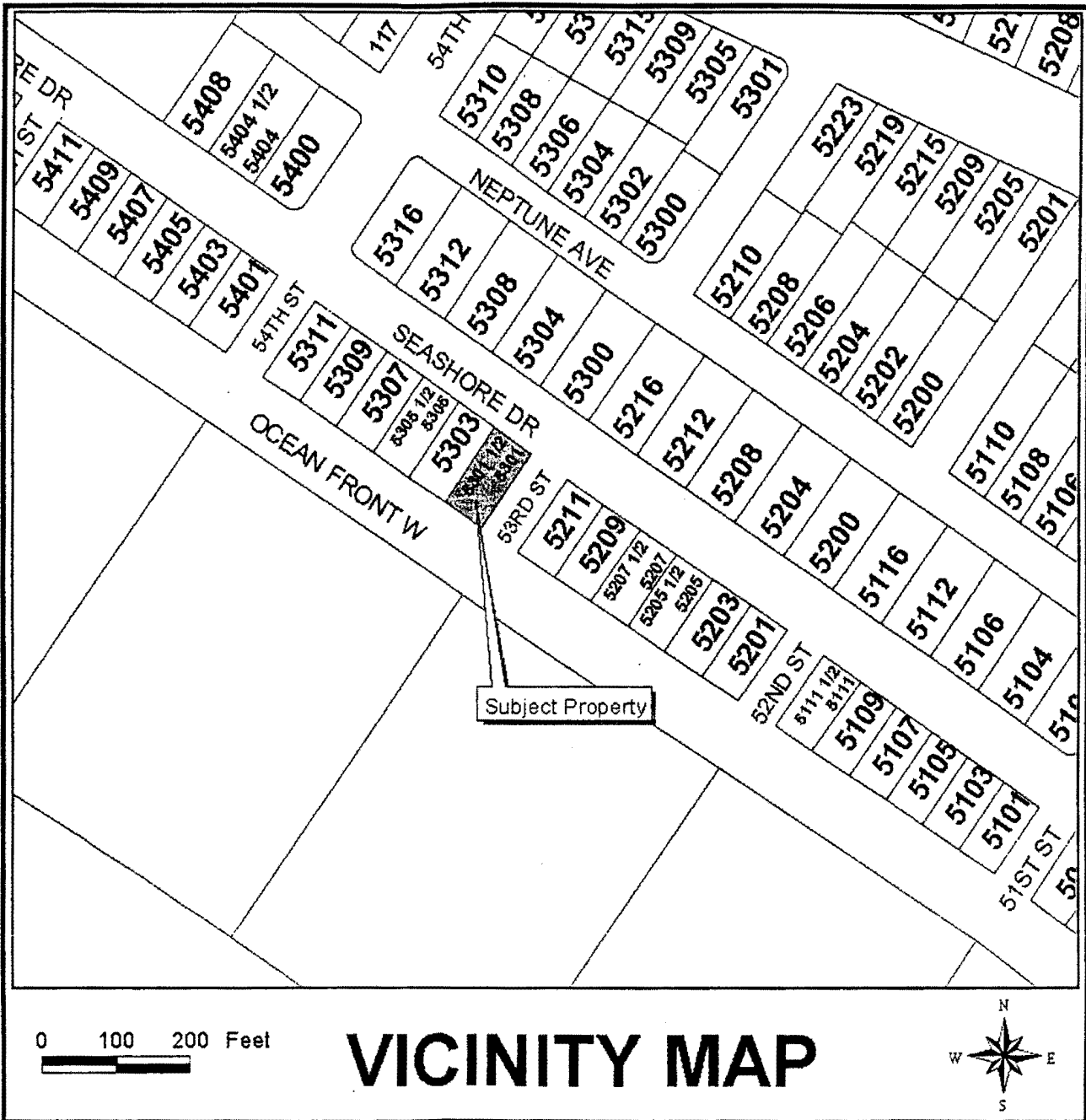
Property owners:
Janice Jacobs, Mark Dolansky and Fran
Murphy
5301 Seashore Drive
Newport Beach, CA 92663

Appeared
in Support: None

5-01-197

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VICINITY MAP



PA2001-071 for

Modification Permit No. MD2001-040

5301 Seashore Drive

5-01-197

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