CALIFORNIA COASTAL COMMISSION

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Staff: KFS-LB
Staff Report: January 25, 2001
Hearing Date: February 13-16, 2001
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NUMBER: 5-00-132-A1

APPLICANT: U.S. Property

RECORD PACKET COPY

AGENT: Tony Ursino

PROJECT LOCATION: A-2 Surfside Avenue, Seal Beach, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a new 2,607 square foot, 35' high, 3-story single-family residence with an attached 390 square foot 2-car garage, and 366 square feet of seaside deck/patio areas. The decks and patio will extend 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicant. The approved project was subject to five special conditions requiring: 1) the recordation of assumption-of-risk deed and lease restrictions; 2) the recordation of future improvements deed and lease restrictions; 3) conformance of the design and construction plans to all recommendations contained in the preliminary foundation soils exploration; 4) the recordation of a no future protective devices deed and lease restriction; and 5) submission of a revised drainage plan.

DESCRIPTION OF PROPOSED AMENDMENT: The applicant is proposing to modify Special Conditions 1, 2, and 4, to eliminate the requirement that lease restrictions related to the proposed seaside patio and decks be signed by the property owner, Surfside Colony Ltd., and recorded. In place of these lease restrictions, the applicant is proposing to execute and record a deed restriction which stipulates that the applicant and any future land owner agree to remove the seaside patio and decks if Surfside Colony seeks any shoreline protective measures for the approved patio and/or decks.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the proposed amendment with the applicants proposed changes to Special Conditions 1, 2, and 4 and the addition of the proposed special condition related to any future protection of the seaside patio and decks.

LOCAL APPROVALS RECEIVED: City of Seal Beach Approval-in-Concept dated April 5, 2000; Surfside Colony, Ltd. Architectural Committee approval dated May 5, 2000.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development and Administrative Permits P-73-1861, P-75-6364, 5-86-676, 5-87-813, 5-95-276, 5-97-380, 5-98-098,

5-98-412 (DiLuigi), 5-99-356-A1 (Mattingly), 5-99-386 (Straight), and 5-99-423 (Evans); 5-00-132 (U.S. Property); 5-00-206 (McCoy); and 5-00-257 (Cencak); Consistency Determinations CD-028-97, CD-067-97, and CD-65-99; and Preliminary Foundation Soils Exploration prepared by Geo-Etka, Inc. (Job No. F-9117-00) dated February 21, 2000; Letter from Surfline to Tony Ursino containing a wave run-up analysis study prepared by Surfline of Huntington Beach, California, dated May 24, 2000.

PROCEDURAL NOTE

A. Coastal Development Permit Amendments

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1) The Executive Director determines that the proposed amendment is a material change,

2) Objection is made to the Executive Director's determination of immateriality, or

3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

Staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the amendment application with special conditions.

MOTION

I move that the Commission approve CDP Amendment #5-00-132-A1 pursuant to the staff recommendation.

Staff recommends a YES vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION OF APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** the amendment to Coastal Development Permit 5-00-132, subject to the conditions below, for the proposed development on the grounds that the development would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would 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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit amendment 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 amendment 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. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

6. **Prior Conditions**

   Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-00-132 remain in effect.

Please note: Special Condition 1 has been deleted and replaced by the following Special Condition 7; Special Condition 2 has been deleted and replaced by the following Special Condition 8; and Special Condition 4 has been deleted and replaced by the following Special Condition 9.

7. **Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction**

A) By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (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, (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 injury or damage due to such hazards.

B) **PRIOR TO THE 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 subsection A of this condition. The deed restriction shall include a legal description of the applicant's parcels. 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. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

8. **Future Development**

A) This permit amendment is only for the development described in Coastal Development Permit No. 5-00-132. Pursuant to Title 14, California Code of Regulations, section 13250(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) shall not apply. Accordingly, any future improvements to the single family house described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-00-132 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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, reflecting the above restrictions on development. The deed restriction shall include legal descriptions of the applicant's parcels. 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. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

9. **No Future Shoreline Protective Device**

A(1) By acceptance of this permit, the applicant agrees, on behalf of themselves 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. 5-00-132 including, but not limited to, the residence, foundation, decks and any other future improvements in the event that the development 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 themselves 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 themselves and all other successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, foundation and decks, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 5-00-132**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcels. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

10. **Future Removal of Structures on Land Owned by Surfside Colony, Ltd.**

A. By acceptance of this permit, the applicant agrees that in the event that Surfside Colony, Ltd. would seek shoreline protection measures solely for the herein approved patio and/or decks, the applicant and any successors in interest shall agree to remove the permitted patio and/or decks.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcels. 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. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PREVIOUSLY APPROVED PROJECT AND PROPOSED AMENDMENT

On July 12, 2000, the Commission approved Coastal Development Permit 5-00-132 for the construction of a new 2,607 square foot, 35' high, 3-story single-family residence with an attached 390 square foot 2-car garage, and 366 square feet of seaside deck/patio areas at A-2 Surfside Avenue, Seal Beach, Orange County. The decks and patio are proposed to extend 10-feet seaward, beyond the property boundary, onto land that is leased by the Surfside Colony to the applicant. The approved project was subject to five special conditions requiring: 1) the recordation of assumption-of-risk deed and lease restrictions; 2) the recordation of future improvements deed and lease restrictions; 3) conformance of the design and construction plans to all recommendations contained in the preliminary foundation soils exploration; 4) the recordation of a no future protective devices deed and lease restriction; and 5) a requirement for the submittal of a revised drainage plan.

The proposed project includes development (patios and decks) on land which is owned by Surfside Colony, Ltd. (the homeowners association). This land is leased by Surfside Colony, Ltd. to the applicant for the purpose of constructing the decks and patio. This development is subject to the same flooding and wave uprush hazards as the primary structure. Since a deed restriction recorded by the applicant would not cover the off-site development on Surfside Colony, Ltd.-owned land, the Commission required in Special Conditions 1, 2, and 4, that lease restrictions be signed and recorded by the applicant and Surfside Colony. The lease restrictions would contain the same restrictions as the deed restriction recorded on the applicants property. Since the Commission's approval of the permit, the applicant has attempted to execute the necessary lease restrictions. However, Surfside Colony, Ltd. has declined to comply with the applicants request to execute and record the lease restrictions (Exhibit 3). In absence of Surfside Colony, Ltd.'s agreement to the lease restrictions, the applicant is not able to comply with the conditions of approval of the permit.

The applicant is now proposing that Special Conditions 1, 2, and 4 be modified to remove the requirement for lease restrictions. However, in order to address the concern that hazards may threaten the patio and/or decks, thus generating a request for shoreline protective measures, the applicant is proposing a deed restriction which would stipulate that the applicant and any future landowner agree to remove the patio and/or decks if Surfside Colony, Ltd., seeks any shoreline protective measures to protect the patio and/or decks. The proposed changes to Special Conditions 1, 2, and 4 and the applicants proposed new condition are as follows:

1. **Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction**

   A) By acceptance of this permit, the applicant ~~and any landowner~~ acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (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, (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 injury or damage due to such hazards~~; (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv)~~.

B) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant~~ and landowner~~ shall execute and record a deed restriction ~~and/or lease restriction as applicable~~, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The deed restriction~~ and lease restriction~~ shall include a legal description of the applicant's ~~and landowner's~~ parcels. The deed restriction~~ and lease 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. The deed restriction~~ and lease restriction~~ shall not be removed or changed without a Commission amendment to this coastal development permit.

2. **Future Development**

A) This permit amendment is only for the development described in Coastal Development Permit No. 5-00-132. Pursuant to Title 14, California Code of Regulations, section 13250(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) shall not apply. Accordingly, any future improvements to the single family house described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-00-132 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

B) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant ~~and landowner~~ shall execute and record a deed restriction~~ and/or lease restriction as applicable~~, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction ~~and lease restriction~~ shall include legal descriptions of the applicant's ~~and landowner's~~ parcels. The deed restriction~~ and lease 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. The deed restriction~~ and lease restriction~~ shall not be removed or changed without a Commission amendment to this coastal development permit.

4. **No Future Shoreline Protective Device**

A(1) By acceptance of this permit, the applicant ~~and landowner~~ agrees, on behalf of themselves 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. 5-00-132 including, but not limited to, the residence, foundation, decks and any other future improvements in the event that the development 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 themselves 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 ~~and landowner~~ further agrees, on behalf of themselves and all other successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, foundation and decks, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 5-00-132**, the applicant ~~and landowner~~ shall execute and record a deed restriction ~~and/or lease restriction~~ in ~~the~~ a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's ~~and landowner's~~ entire parcels. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

The applicants' proposed new condition is as follows:

A. By acceptance of this permit, the applicant agrees that in the event that Surfside Colony, Ltd. would seek shoreline protection measures solely for the herein approved patio and/or decks, the applicant and any successors in interest shall agree to remove the permitted patio and/or decks.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcels. 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. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

B. HAZARDS

Section 30253 of the Coastal Act states, in 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

As noted in the Commission's findings of approval of Coastal Development Permit 5-00-132, which are incorporated here by reference (Exhibit 2), the project site is presently protected by a wide sandy beach. This wide sandy beach is present due to a beach nourishment project periodically undertaken by the U.S. Army Corps of Engineers to mitigate the effects of erosion caused by wave reflection of the Anaheim Bay east jetty. While the beach provides some protection to the Surfside Colony, the persistence of the beach is largely dependent upon artificial beach nourishment. In absence of this beach nourishment, the beach erodes and development at Surfside Colony is exposed to flooding and wave uprush hazards.

As noted in the Commission's previous findings, the applicant submitted a wave run-up analysis which examined the impact of wave run-up and flooding upon the subject site. The analysis determined that the subject site would be safe from wave uprush and flooding hazards provided that the non-expendable portions of the proposed structures are 3 to 4 feet high over the beach.

However, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may effect 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. 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 assure that present and future property owners are aware of the potential risks from flooding and wave uprush hazards, the Commission previously imposed Special Condition 1 which required the applicant to execute and record a deed restriction acknowledging the hazards. In addition, the Commission required that a lease restriction be recorded containing the same warning regarding flooding and wave uprush hazards in order to cover the patio and decks which are proposed to be constructed on the seaward side of the residence on land that is owned by Surfside Colony, Ltd. Due to problems obtaining the lease restriction from Surfside Colony, Ltd., the applicant is proposing to eliminate the requirement for the lease restriction.

The patio and decks being constructed on Surfside Colony, Ltd. owned land are appurtenances to the primary residential structure being constructed on land owned by the applicant. The decks are attached to the second and third floors of the residential structure. As designed, the decks could not be built if the primary residential structure was not also built. Meanwhile, the patio on the ground floor is also attached to the residential structure, however, the patio is not reliant on the residential structure for foundation support. Rather, the patio has it's own foundation system. However, in absence of the residential structure, the patio and decks have no real utility. The purpose of the patio and decks are to provide an outdoor amenity for the associated residential structure. Therefore, the owners and occupants of the residential structure would also be the users of the patio and decks. The applicant is proposing to retain the requirement for a deed restriction which would be attached to the property upon which the residential structure is being built. Therefore, any owners and occupants of the residential structure would be advised of the hazards to which the site is subject. Logically, the owner and occupants would be aware that these hazards are present on the patio and decks which are part of the residential structure. Therefore, the Commission finds that the proposed change to Special Condition 1 is consistent with Section 30253 of the Coastal Act. Therefore, the Commission deletes Special Condition 1 in it's entirety, and replaces it with Special Condition 7 which reflects the changes to Special Condition 1 proposed by the applicant. These changes are consistent with the Commission's most recent action on a coastal development permit [5-00-257 (Cencak)] within Surfside Colony.

2. 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. In addition, allowing the construction of a shoreline protective device to protect new development would conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, 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. However, as noted in the Commissions findings approving Coastal Development Permit 5-00-132, which are incorporated here by reference, the subject beachfront area has experienced flooding and erosion during severe storm events, such as El Nino storms. 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 which could lead to a request for a protective device.

The Commission previously found that the construction of a shoreline protective device at the site would adversely affect the public's ability to use the sandy beach and cause erosion of the public beach. However, information submitted by the applicant suggests that no shoreline protective device would be necessary over the life of the structure. In order to assure that the project is consistent with Section 30253 of the Coastal Act which requires that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area and to assure that the project is consistent 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 Commission imposed Special Condition 4. Special Condition 4 requires the applicant to record a deed restriction and Surfside Colony Ltd. and the applicant to execute and record a lease 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 Coastal Development Permit 5-00-132.

However, as noted above, the applicant has not been able to obtain the lease restriction from Surfside Colony, Ltd. Therefore, the applicant is proposing to modify Special Condition 4 to eliminate the requirement for a lease restriction. However, in place of the lease restriction, the applicant is proposing to execute and record a deed restriction which stipulates that the applicant agrees to remove the patio and/or decks which are on Surfside Colony, Ltd. owned land if Surfside Colony, Ltd. ever seeks to protect the patio and/or decks with shoreline protective measures. The proposed deed restriction addresses any concern that protective measures would be sought by Surfside Colony, Ltd. to protect the patio and/or decks being constructed on their property since the patio and/or decks would be removed if such protection was sought. Therefore, the Commission finds that the change to Special Condition 4 eliminating the requirement for a lease restriction and adding the applicants proposed deed restriction is consistent with Sections 30251 and 30253 of the Coastal Act. Therefore, the Commission deletes Special Condition 4 in it's entirety, and replaces it with Special Condition 9 which reflects the changes to Special Condition 4 proposed by the applicant. In addition, the Commission imposes Special Condition 10 which implements the applicants proposed deed restriction related to removal of the patio and/or decks. These changes are consistent with the Commission's most recent action on a coastal development permit [5-00-257 (Cencak)] within Surfside Colony.

C. PUBLIC ACCESS

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 in the private community of Surfside (Exhibit 1). A pre-Coastal (1966) boundary agreement between Surfside Colony and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside (Exhibit 2, page 22). As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80-feet in width, adjacent to the homes fronting the ocean. The beach seaward of this area is available for lateral public access.

The proposed project has decks and a patio area which encroach ten feet seaward beyond the subject site's seaward property line onto a ten foot wide strip of land owned by Surfside Colony, Ltd. (which serves as the homeowners' association). Surfside Colony leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowner's seaward property line onto Surfside Colony land. The applicant has obtained a lease from Surfside Colony, Ltd. for the proposed encroachment.

As noted in the Commissions findings of approval for Coastal Development Permit 5-00-132, which are incorporated here by reference, the Commission found that the development would conform to the line of development already established in the community. In addition, the proposed project would not result in direct adverse impacts, either individually or cumulatively, on vertical or lateral public access.

However, to guarantee that any future development of the property can be evaluated for consistency with Section 30212 of the Coastal Act, the Commission imposed Special Condition 2 which requires the applicant to record deed restrictions and the applicant and landowner, Surfside Colony, Ltd. to record lease restrictions stipulating that future improvements to the approved development require a coastal development permit. As noted above, the applicant has been unable to obtain the lease restrictions from Surfside Colony, Ltd. However, as also noted above, the patio and decks are appurtenances to the primary residential structure. Changes to these structures would be undertaken by the owner of the residential structure and not Surfside Colony, Ltd. Special Condition 2 includes a deed restriction which is attached to the property upon which the residential structure is being built. Therefore, the owner of the residential structure whom would be undertaking any changes to the patio and/or decks would be notified of the permit requirement via the deed restriction which affects the residential structure. Therefore, the Commission finds the applicants' proposed change to Special Condition 2 is consistent with Section 30212 of the Coastal Act. Therefore, the Commission deletes Special Condition 2 in it's entirety, and replaces it with Special Condition 8 which reflects the changes to Special Condition 2 proposed by the applicant. These changes are consistent with the Commission's most recent action on a coastal development permit [5-00-257 (Cencak)] within Surfside Colony.

D. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

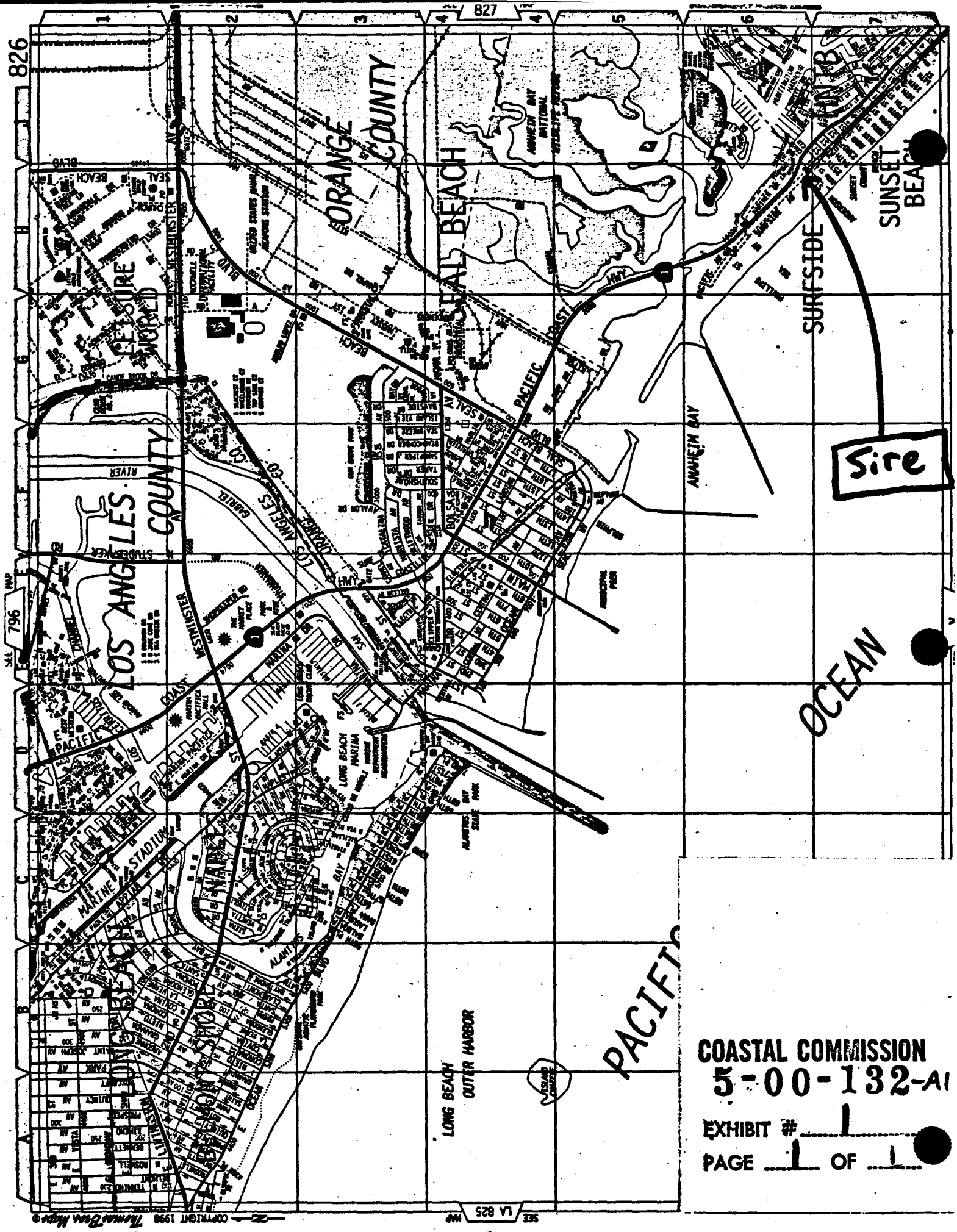
The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three policies of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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 proposed project is located in an urban area. All infrastructures necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard, public access and scenic view policies of Chapter Three of the Coastal Act. Mitigation measures requiring assumption-of-risk, future improvement, and no future shoreline protective device deed restrictions will minimize any significant adverse effects that the activity may have on the environment.

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 consistent with CEQA and the policies of the Coastal Act.



COASTAL COMMISSION
5-00-132-A1
EXHIBIT # 1
PAGE 1 OF 1

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Phone: (562) 590-5071
Fax: (562) 590-5084

COMMISSION ACTION ON 7.12.00

- ☐ Approved as Recommended
- ☐ Denied as Recommended
- ☒ Approved with Changes /added Conds
- ☐ Denied
- ☐ Other

Filed: May 30, 2000
49th Day: July 18, 2000
180th Day: November 26, 2000
Staff: KFS-LB
Staff Report: June 22, 2000
Hearing Date: July 11-14, 2000
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-00-132

APPLICANT: U.S. Property

AGENT: Tony Ursino

PROJECT LOCATION: A-2 Surfside Avenue, Seal Beach, Orange County

PROJECT DESCRIPTION: Construction of a new 2,607 square foot, 35' high, 3-story single-family residence with an attached 390 square foot 2-car garage, and 366 square feet of seaside deck/patio areas. The decks and patio will extend 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicant.

LOCAL APPROVALS RECEIVED: City of Seal Beach Approval-in-Concept dated April 5, 2000; Surfside Colony, Ltd. Architectural Committee approval dated May 5, 2000.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development and Administrative Permits P-73-1861, P-75-6364, 5-86-676, 5-87-813, 5-95-276, 5-97-380, 5-98-098, 5-98-412 (DiLuigi), 5-99-356-A1 (Mattingly), 5-99-386 (Straight), and 5-99-423 (Evans); Consistency Determinations CD-028-97, CD-067-97, and CD-65-99; and Preliminary Foundation Soils Exploration prepared by Geo-Etka, Inc. (Job No. F-9117-00) dated February 21, 2000; Letter from Surfline to Tony Ursino containing a wave run-up analysis study prepared by Surfline of Huntington Beach, California, dated May 24, 2000.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the proposed development subject to three special conditions. The major issue of this staff report concerns development on a beach that could be affected by geologic hazards and flooding. Special Condition No. 1 requires the recordation of assumption-of-risk deed/lease restrictions. Special Condition No. 2 requires the recordation of future improvements deed/lease restrictions. Special Condition No. 3 requires conformance of the design and construction plans to all recommendations contained in the preliminary foundation soils exploration. Special Condition No. 4 requires the recordation of a no future protective devices deed restriction.

STAFF RECOMMENDATION:

The staff recommends that the Commission **APPROVE** the permit with special conditions.

MOTION:

I move that the Commission approve CDP No. 5-00-132 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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 amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit amendment 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 amendment 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. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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 Deed Restriction**

A) By acceptance of this permit, the applicant and any landowner acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (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, (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 injury or damage due to such hazards; (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (I) through (iv).

B) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant and landowner shall execute and record a deed restriction and/or lease restriction as applicable, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The deed restriction and lease restriction shall include a legal description of the applicant's and landowner's parcels. The deed restriction and lease 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. The deed restriction and lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. **Future Development**

A) This permit amendment is only for the development described in Coastal Development Permit No. 5-00-132. Pursuant to Title 14, California Code of Regulations, section 13250(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) shall not apply. Accordingly, any future improvements to the single family house described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-00-132 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

B) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant and landowner shall execute and record a deed restriction and/or lease

restriction as applicable, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction and lease restriction shall include legal descriptions of the applicant's and landowner's parcels. The deed restriction and lease 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. The deed restriction and lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. **Conformance of Design and Construction Plans to Foundation Soils Exploration and Wave Run-Up Analysis**

A. All final design and construction plans, including grading, foundations, site plans, floor plans, elevation plans, and drainage plans, shall be consistent with all recommendations contained in the Preliminary Foundation Soils Exploration prepared by Geo-Etka, Inc. dated February 21, 2000 and the letter from Surfline to Tony Ursino containing a wave run-up analysis study prepared by Surfline of Huntington Beach, California, dated May 24, 2000. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **No Future Shoreline Protective Device**

A(1) By acceptance of this permit, the applicant and landowner agree, on behalf of themselves 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. 5-00-132 including, but not limited to, the residence, foundation, decks and any other future improvements in the event that the development 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 themselves 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 and landowner further agree, on behalf of themselves and all other successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, foundation and decks, if any government agency has ordered that the structure are not to be occupied due to any of the hazards identified above. In the event

that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 5-00-132**, the applicant and landowner shall execute and record a deed restriction and/or lease restriction in the a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's and landowner's entire parcels. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The lot is located at A-2 Surfside Avenue in the private community of Surfside Colony, in the City of Seal Beach, Orange County, California (Exhibit 1). The subject site is a beachfront lot located between the first public road and the sea. The proposed development is in an existing private, gated residential community, located south of the Anaheim Bay east jetty. The proposed project is consistent with development in the vicinity and prior Commission actions in the area. There is a wide, sandy beach between the subject property and the mean high tide line.

The proposed project includes the construction of a new 2,607 square foot, 35' high, 3-story single-family residence with an attached 390 square foot 2-car garage, and 366 square feet of seaside deck/patio areas. The decks and patio will extend 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicant.

B. HAZARDS

Section 30253 of the Coastal Act states, in 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 at the southern end of Surfside Colony, a private beachfront community in the City of Seal Beach (Exhibit 1). Unlike the southern end, the northern end of Surfside is subject to uniquely localized beach erosion due to the reflection of waves off the adjacent Anaheim Bay east jetty. These reflected waves combine with normal waves to create increased wave energy that erodes the beach in front of Surfside Colony more quickly than is typical at an unaltered natural beach. Since the erosion is the result of the federally owned jetty, the U.S. Army Corps of Engineers has periodically replenished the beach. The beach nourishment provides Surfside a measure of protection from wave hazards. However, when the beach erodes, development at Surfside Colony may be exposed to wave uprush and subsequent wave damage.

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.

The especially heavy wave action generated during the 1982-83 El Nino winter storms caused Surfside Colony to apply for a coastal development permit for a revetment to protect the homes at Surfside's northern end. The Commission approved Coastal Development Permit No. 5-82-579 for this revetment, and Coastal Development Permit No. 5-95-276 for the repair of the revetment. The Commission also approved Consistency Determinations CD-028-97 and CD-67-97 for beach nourishment at Surfside performed by the U.S. Army Corps of Engineers completed in July 1997. The Commission also approved the most recent beach nourishment project at Surfside in Consistency Determination CD-65-99.

The revetment and widened beach protect the northern end of Surfside Colony from wave uprush. However, a wide sandy beach provides the only protection for the central and southern areas of Surfside Colony where the subject site, A-2 Surfside, is located. No revetment protects this lot (Exhibit 1, Page 2). At present, the beach material placed at the northern end of Surfside is naturally transported to the central and southern beach areas, thereby serving as the primary source of material for the wide sandy beach in front of the subject property.

Even though the site is protected by a wide sandy beach, this does not preclude wave uprush damage and flooding from occurring at Surfside during extraordinary circumstances. Strong

storm events like those that occurred in 1994 and 1997 can cause large waves to flood any portion of Surfside. Though the subject site could be exposed to wave run-up, the Foundation Soils Report prepared by Geo-Etka, Inc. did not identify wave run-up or flooding as a potential development concern at the subject site.

The applicant has submitted a wave run-up analysis study dated May 24, 2000, prepared by Surfline of Huntington Beach, California. The analysis examined the impact of wave run-up and flooding upon the subject site. The analysis determined that the subject site is located on a wide sandy beach and upon a portion of the beach that is generally higher than other lots within Surfside. The study looked at the effect of large wave and flooding events such as those which occurred in January 1983 and January 1988. In addition, the study looks at the effect of a 2 to 3 foot sea level rise during a 75 to 100 year life of the structure. The study determined that given storm conditions such as those in 1983 and 1988, the subject site would experience a 1 to 2 foot surge of water. Adding in a 2 to 3 foot sea level rise, the study expects a maximum 3 to 4 foot surge of water at the subject site if the storm conditions present in 1983 and 1988 were experienced again. The study determines that provided that the non-expendable portions of the structure are 3 to 4 feet high over the beach, no other mitigation measures would be required.

In addition, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may effect 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. 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.

The proposed project has decks and a patio area which encroach ten feet seaward beyond the subject site's seaward property line onto a ten foot wide strip of land owned by Surfside Colony, Ltd. (which serves as the homeowners' association). Surfside Colony leases its property to the applicant and adjacent homeowners for construction of patios. The proposed development is consistent with existing development in Surfside Colony. However, while the proposed project will not be located any further seaward than other residences in the area, the subject site is still subject to significant wave hazards, as described previously. Therefore, the Commission finds it necessary to require the recordation of an assumption-of-risk deed restriction and lease restriction by the applicant and Surfside Colony, Ltd. (Special Condition No. 1). With this standard waiver of liability condition, the applicant and Surfside Colony, Ltd. are notified that the lot and improvements are located in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant and Surfside Colony, Ltd. are also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition insures that future owners and lessors of the property will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for homes in Surfside since the 1982-83 El Nino storms. For example, the Executive Director issued Administrative Permits 5-97-380, 5-98-098, and more recently Coastal Development Permits

5-98-412 (Cox) and 5-99-356A1 (Mattingly) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed restrictions on construction of new homes throughout Surfside, whether on vacant lots or in conjunction with the demolition and replacement of an existing home (Exhibit 4).

Foundation Design

The proposed project requires construction of a foundation system. The proposed structure will be supported by new concrete caissons or piles tied together with grade beams. The approximate pile depth is expected to be 20 feet. A Preliminary Foundation Soils Exploration prepared by Geo-Etka, Inc. (Job No. F-9117-00) dated February 21, 2000 was submitted by the applicant. The report indicates that the site is suitable for the proposed development. The Preliminary Foundation Soils Exploration includes certain recommendations to increase the degree of stability of the proposed development. The recommendations included in the Soils Exploration address foundation design, earth pressure, seismic conditions, demolition and tree removal, and grading.

In addition, the applicant submitted a wave run-up analysis prepared by Surfline of Huntington Beach, California dated May 24, 2000. The wave run-up analysis determines that the site will be safe from wave run-up and flooding hazards over the 75 to 100 year life of the structure provided that the non-expendable development in elevated a minimum of 3 to 4 feet above beach level.

In order to assure that risks are minimized, the recommendations of the wave run-up analysis and geotechnical consultant must be incorporated into the design of the project. As a condition of approval (Special Condition No. 3), the applicant shall submit final grading plans, foundation plans, site plans, floor plans, elevation plans, and drainage plans signed by the appropriately licensed professional indicating that the recommendations contained in the Preliminary Foundation Soils Exploration and wave run-up analysis have been incorporated into the final design of the proposed project.

As conditioned by both Special Conditions No. 1 and No. 3, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act which requires that geologic and flood hazards be minimized, and that stability and structural integrity be assured.

2. 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. In addition, allowing the construction of a shoreline protective device to protect new development would conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, 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. However, as previously discussed, the subject beachfront area has experienced flooding and erosion during severe storm events, such as El Nino storms. 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 which could lead to a request for a protective device.

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 such high wave energy on the shoreline that materials 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 effect 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 earlier discussion, this portion of Seal Beach is 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 protective 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 constructing the proposed residence using a caisson and grade beam foundation. The applicant's wave run-up analysis has indicated that elevation of the non-expendable portions of the structure 3 to 4 feet above the beach elevation will assure the development is not subject to wave run-up and flooding. Based on the information provided by the applicant, no other mitigation measures, such as a seawall, are anticipated to be needed 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 currently a wide sandy beach in front of the proposed development that currently 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. 4 which requires the applicant and Surfside Colony Ltd. 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 Sections 30251 and 30253 of the Coastal Act.

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. The Commission also requires that the applicant remove the structure if any government agency has ordered that the structure be removed due to wave uprush and flooding hazards. In addition, in the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Conclusion

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 4 require the applicant to record Assumption-of-Risk, and No Future Shoreline Protective Devices deed restrictions. In addition, Special Condition 3 requires the applicant to submit final grading, foundation, site, floor, elevation plans, and drainage plans along with evidence that such plans conform with the recommendations of the geotechnical consultant and wave run-up analysis. As conditioned,

the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

C. PUBLIC ACCESS

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 in the private community of Surfside (Exhibit 2). A pre-Coastal (1966) boundary agreement between Surfside Colony and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside (Exhibit 3). As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80-feet in width, adjacent to the homes fronting the ocean. The beach seaward of this area is available for lateral public access.

The proposed project has decks and a patio area which encroach ten feet seaward beyond the subject site's seaward property line onto a ten foot wide strip of land owned by Surfside Colony, Ltd. (which serves as the homeowners' association). Surfside Colony leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowner's seaward property line onto Surfside Colony land. The applicant has obtained a lease from Surfside Colony, Ltd. for the proposed encroachment.

In past permits, the Commission has consistently allowed the seaward property line of individually owned beachfront lots in Surfside to serve as the enclosed living area stringline. The Commission has also consistently allowed the seaward edge of the ten-foot wide strip of land owned by Surfside Colony, Ltd. to serve as the deck stringline. These stringlines serve to limit encroachment of development onto the beach. The proposed development would conform to these stringlines.

The proposed project would not result in direct adverse impacts, either individually or cumulatively, on vertical or lateral public access. In addition to the beach seaward of the fixed boundary between State and private lands, public access, public recreation opportunities and public parking exist nearby in Sunset Beach, an unincorporated area of Orange County at the southeastern end of Surfside. In addition, the proposed project provides parking consistent with the standard of two parking spaces per residential dwelling unit, which the Commission has regularly used for development in Surfside.

To guarantee that the future development of the property can be evaluated for consistency with Section 30212 of the Coastal Act, the Commission finds it necessary that the applicant and landowner, prior to issuance of this permit, record a future improvement deed and lease restriction per Special Condition No. 2.

Therefore, as conditioned, the Commission finds that the proposed development would not result in significant adverse impacts on public access nor public recreation. Thus, the Commission finds that the proposed development, as conditioned, would be consistent with Section 30212 of the Coastal Act.

D. HEIGHT AND VIEWS

Section 30251 of the Coastal Act states, in relevant part:

> *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...*

The proposed development will be 35 feet high plus a chimney which extends an additional 3 feet above the 35 foot high roof line (Exhibit 2). The City of Seal Beach approved the proposed development in concept. The Commission typically has limited residential development in Surfside, except for chimneys and roof access staircase enclosures, to a 35-foot height limit. This is to minimize the visual effect of a large wall of buildings along the beach that results when homes are constructed to maximize use of the City established building envelope. The approved project would be consistent with the 35-foot height limit and with heights of other homes in Surfside.

A fence surrounding Surfside Colony, as well as several rows of existing homes, currently block public views from Pacific Coast Highway (State Route 1), the first public road paralleling the beach. The subject site is not visible from the highway. Thus, the approved development on the subject site would not further degrade views from Pacific Coast Highway. In addition, since the approved development will not encroach seaward past existing homes in Surfside Colony, no existing public views along the shoreline would be blocked by the approved development. Therefore, the approved development is consistent with Section 30251 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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 proposed project is located in an urban area. All infrastructures necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard, public access and scenic view policies of Chapter Three of the Coastal Act. Mitigation measures requiring assumption-of-risk, future improvement, and no future shoreline protective device deed/lease restrictions and conformance with geotechnical recommendations will minimize any significant adverse effects that the activity may have on the environment.

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 consistent with CEQA and the policies of the Coastal Act.

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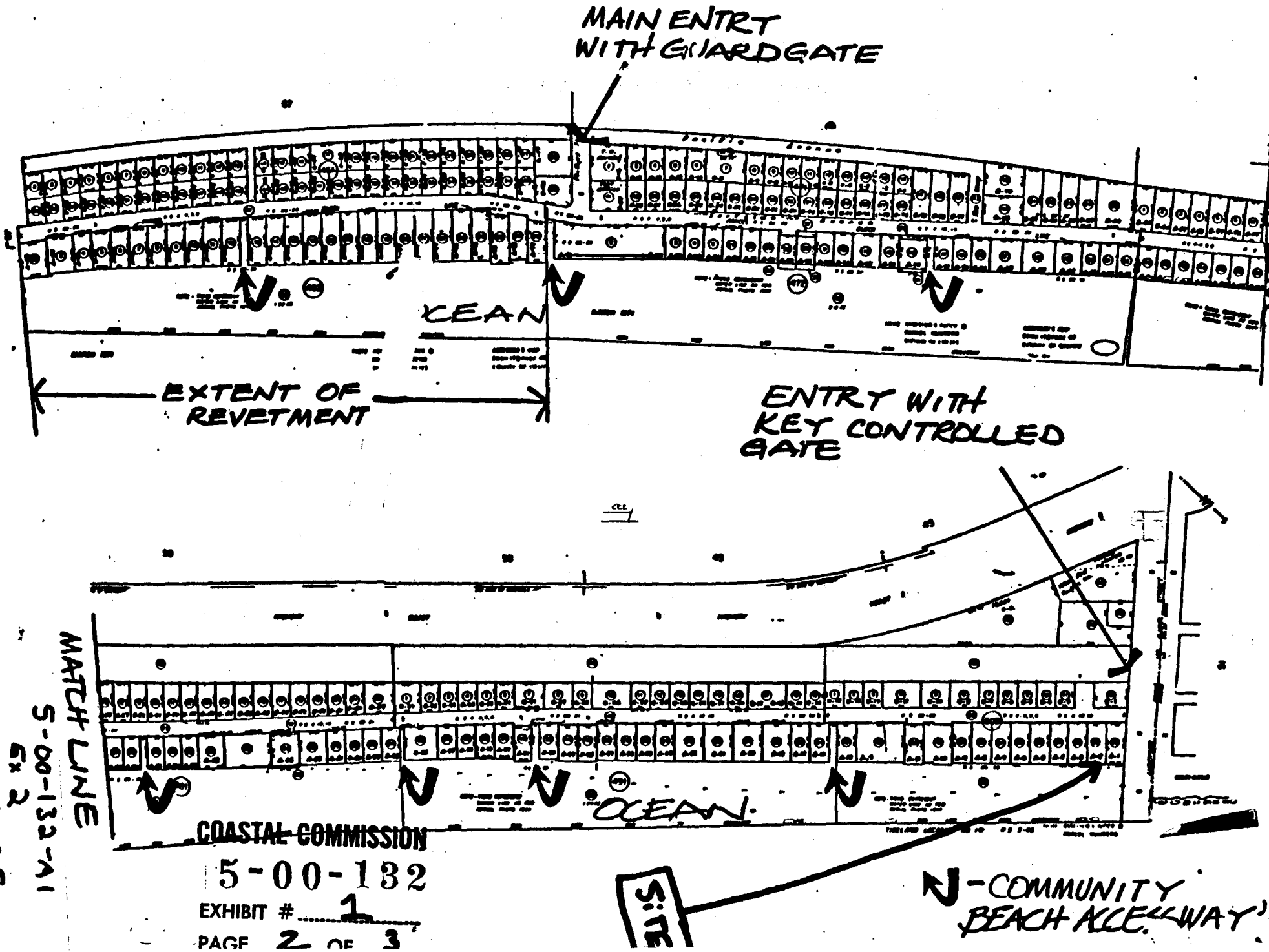

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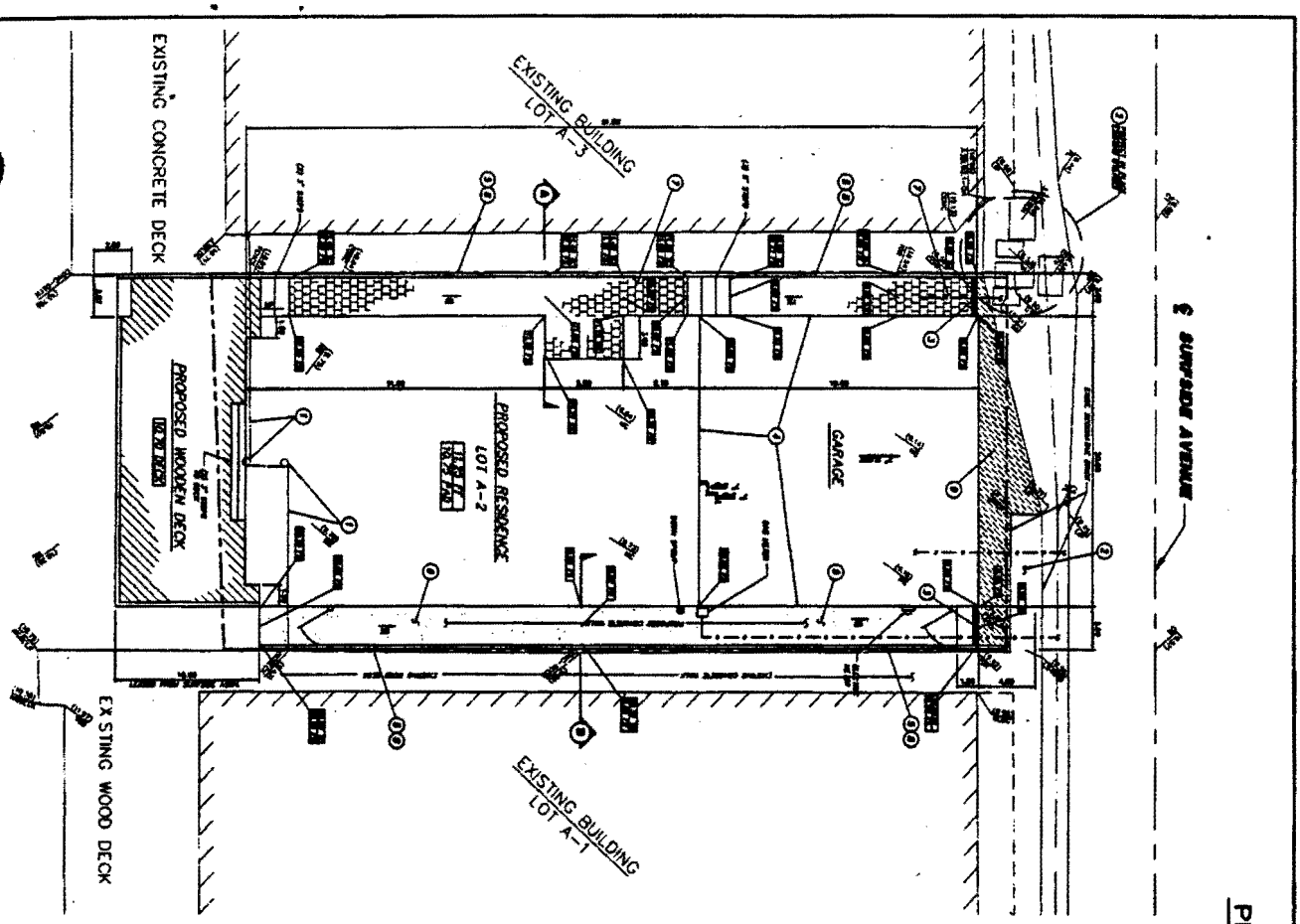

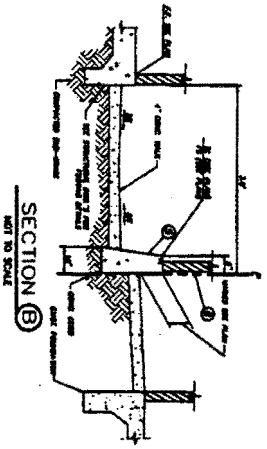

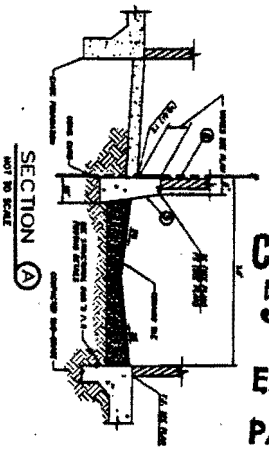

PROJECT SECTIONS

COASTAL COMMISSION
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CONSTRUCTION NOTES		
	QTY	UNIT
① DEMO EXISTING STRUCTURE	1	L.S.
② PROTECT IN PLACE EXISTING UTILITIES AND BRICK WORK	1	L.S.
③ CONSTRUCT STRIP DRAIN PER SEAL BEACH STANDARDS	1	EACH
④ CONSTRUCT EXTERIOR FOUNDATION W/ STEM WALL PER STRUCTURAL DRAWINGS	1	EACH
⑤ CONSTRUCT CURB ONLY PER SEAL BEACH STANDARDS	83	LF
⑥ CONSTRUCT 4" PCC CONCRETE SIDEWALK	94	LF
⑦ CONSTRUCT CERAMIC TILE WALK PER ARCHITECTURAL PLANS	50	SF
⑧ CONSTRUCT WOODEN FENCE PER ARCHITECTURAL PLAN	24	LF
⑨ CONSTRUCT PCC GUTTER TO MATCH EXIST. GUTTER PER SEAL BEACH STANDARDS		

LEGEND

- CERAMIC TILE
- PCC CONCRETE
- CONCRETE SIDEWALK
- WOOD DECK
- PROPOSED GRADE (XXX.XX)
- EXISTING GRADE
- EDGE OF PAVEMENT
- GAS LINE
- SEWER LINE
- WATER LINE
- PROPERTY LINE
- DIRECTION OF FLOW
- FINISHED FLOOR ELEVATION
- NATURAL GRADE
- FLOW LINE
- TOP OF CURB
- RIGHT OF WAY
- TOP OF SLOPE
- TOP OF RETAINING WALL
- TOP OF CONCRETE SLAB
- LINEAR FEET
- SQUARE FEET

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2
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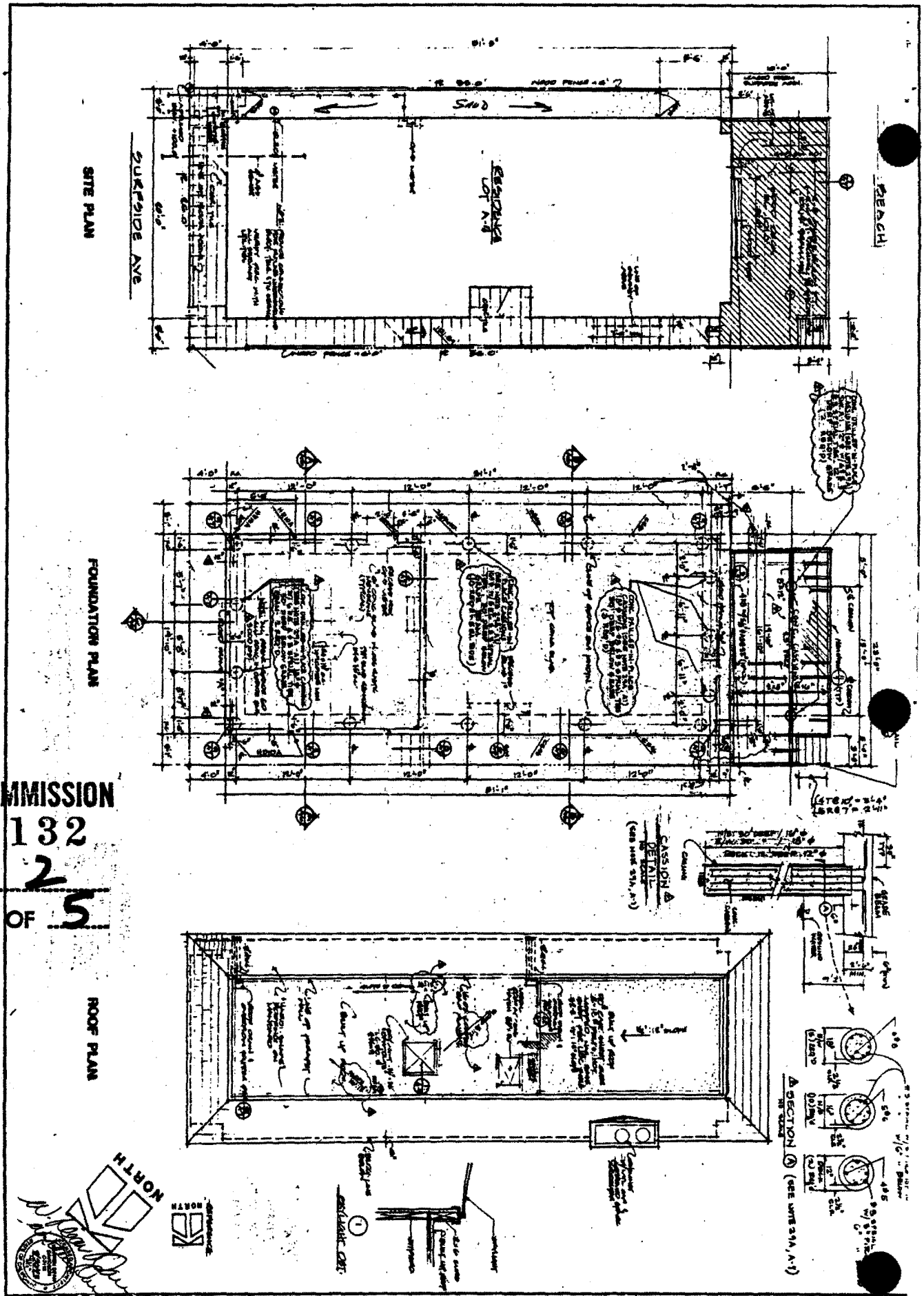
GRADING PERMIT NO.

GRADING PLAN & SECTIONS	GRADING PLAN A-2 SURFSIDE AVENUE SEAL BEACH, CA	JONES, CARR & ASSOCIATES	REVISIONS
MIKE McCOY			
5-2-08			
C.2			



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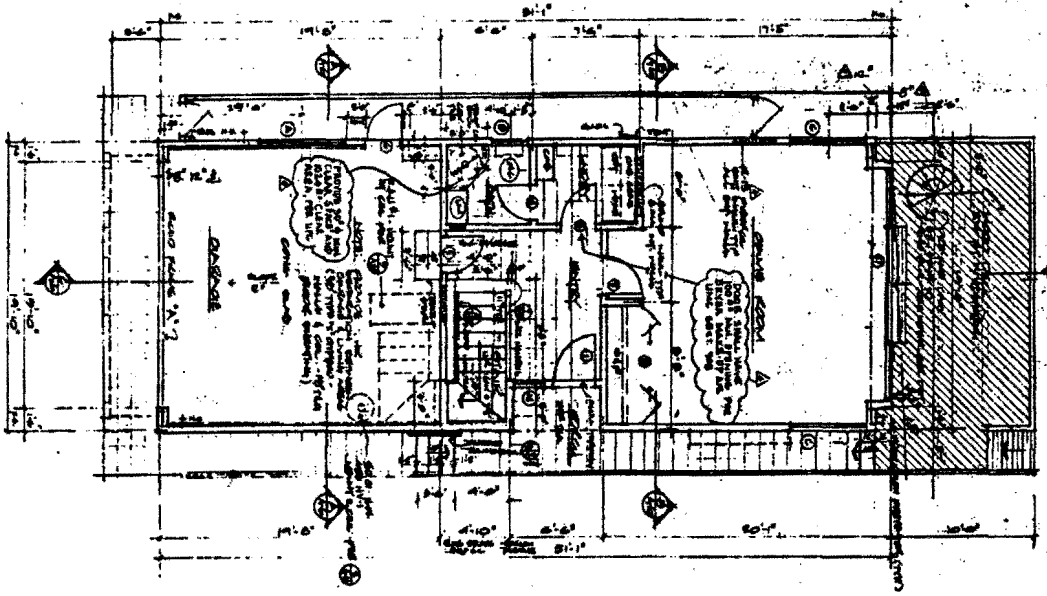
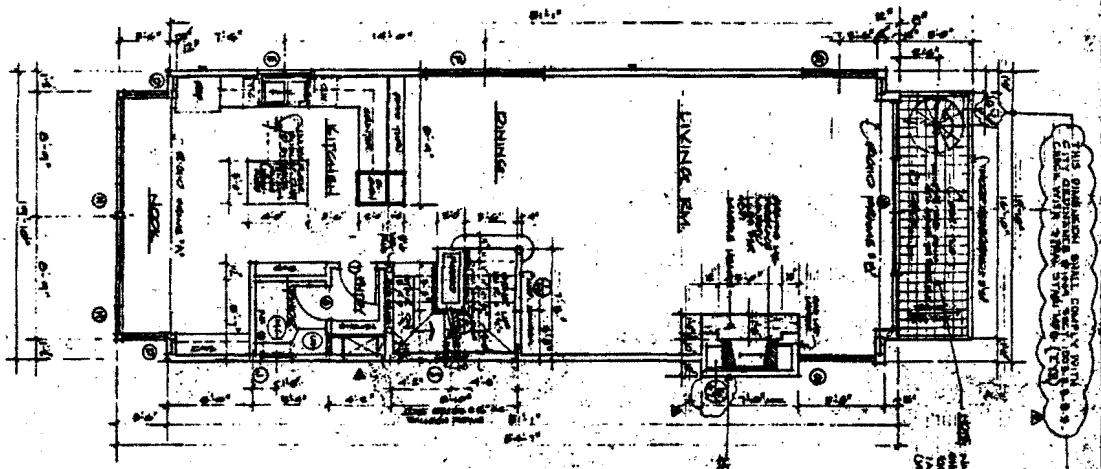
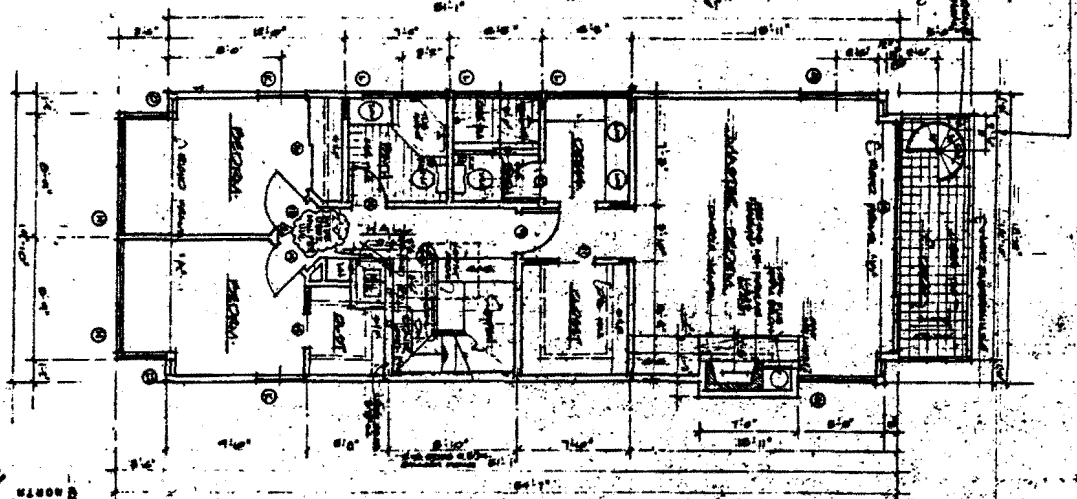


FIRST FLOOR PLAN



SECOND FLOOR PLAN



THIRD FLOOR PLAN

NORTH

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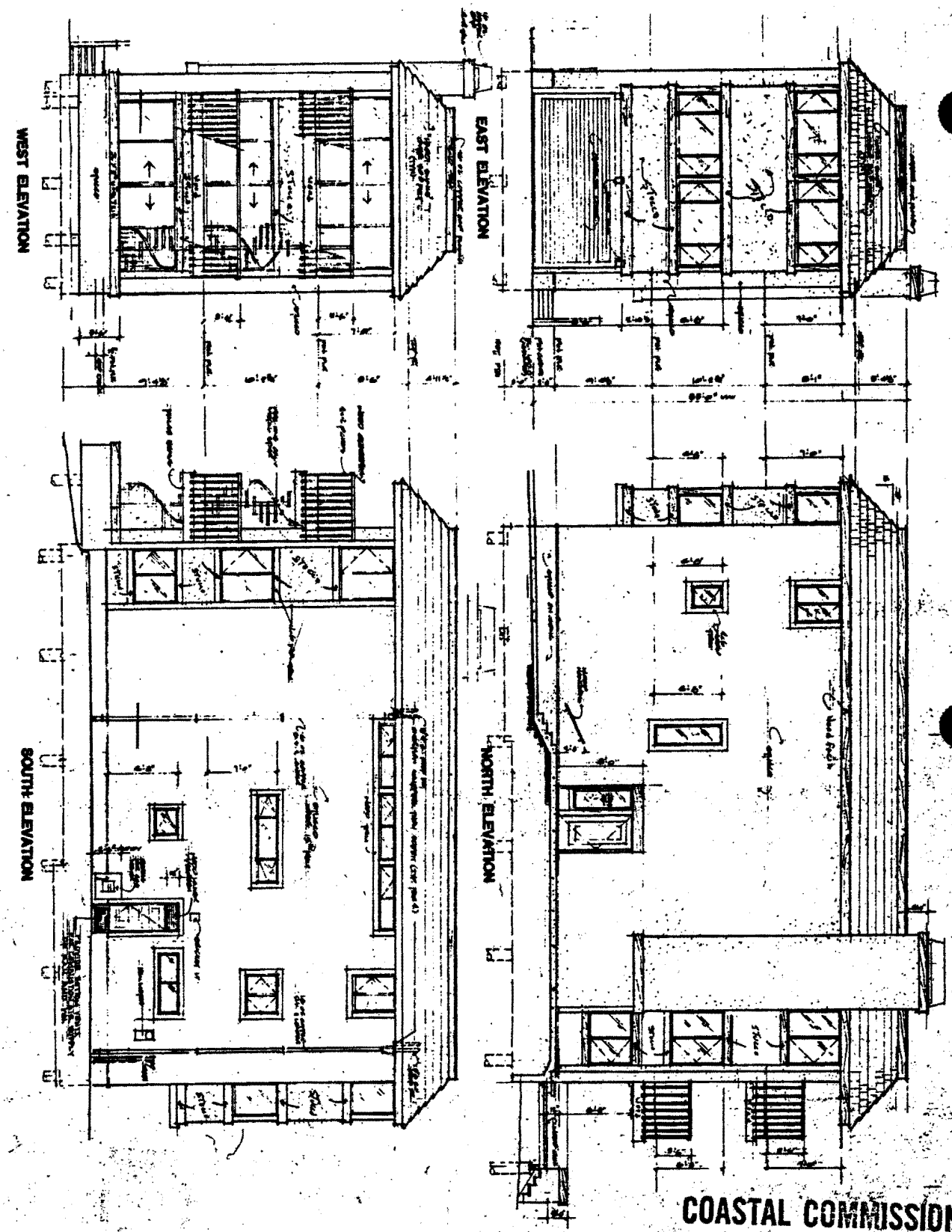
FLOOR PLANS

RESIDENCE
MR. Mike McCoy
A-2
SURFSIDE COLONY, CALIFORNIA

W. DEAN DAVIDSON & ASSOC.
ARCHITECTURE PLANNING



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A5	ELEVATIONS	RESIDENCE MR. Mrs. Mc Coy A-2 ELDERSIDE COLONY, CALIFORNIA	W. DEAN DAVIDSON & ASSOC. ARCHITECTURE PLANNING

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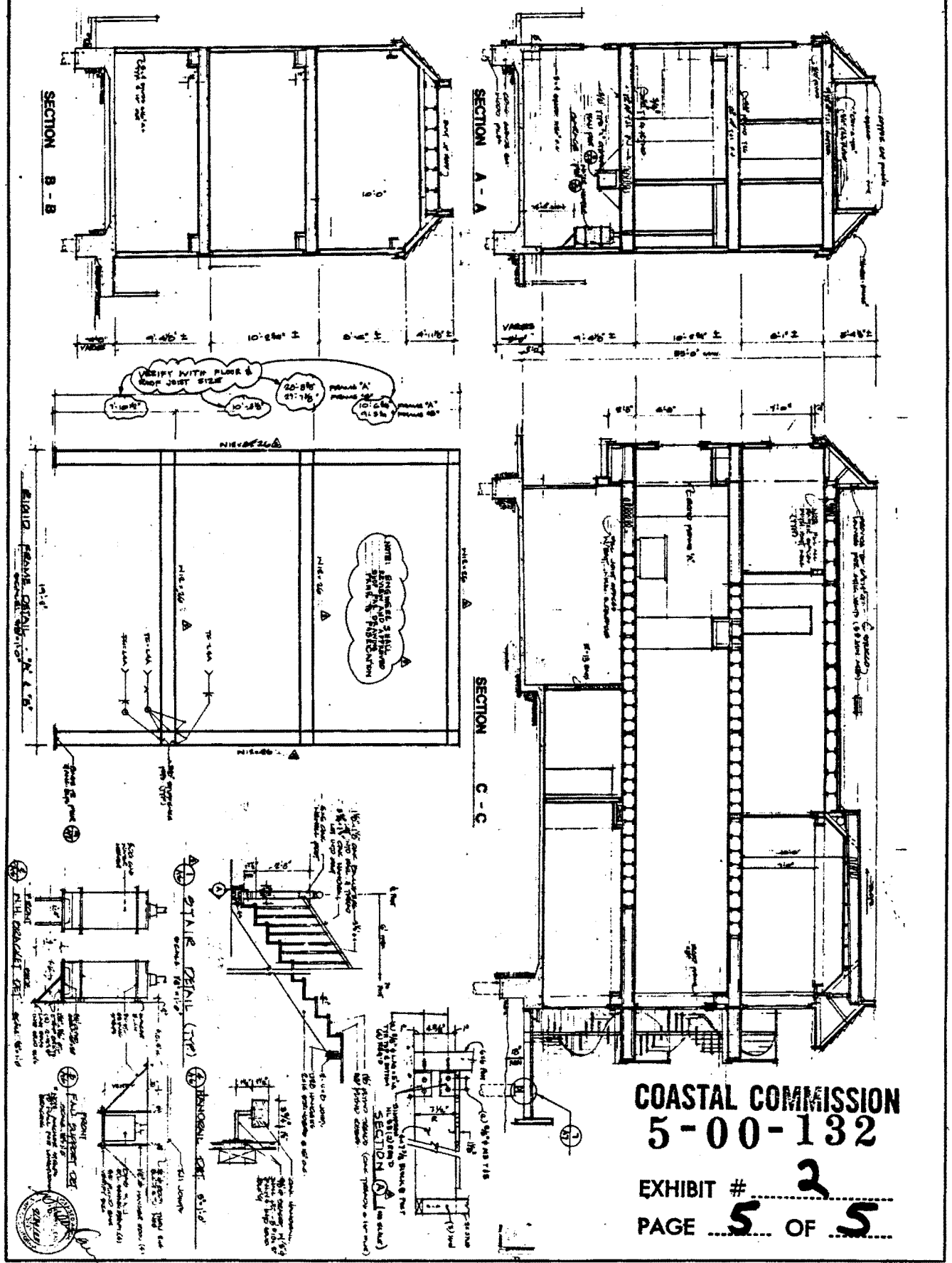

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SECTIONS
RIGID FRAME DETAILS

RESIDENCE
MR. Mike Coy
A-2
DUNE RIDGE COLONY, CALIFORNIA

W. DEAN DAVIDSON & ASSOC.
ARCHITECTURE PLANNING

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STATE OF CALIFORNIA—STATE LANDS COMMISSION

EDMUND G. BROWN JR., Governor

STATE LANDS DIVISION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-3271

Mike D
Dave

RECEIVED
NOV 6 1975
South Coast Regional Commission

November 3, 1975

File Ref.: YC-75

South Coast Regional
Conservation Commission
P. O. Box 1450
Long Beach, CA 90801

Attention: Mr. David Gould

Dear Mr. Gould

In reply to your phone request for State boundary line data along the Pacific Ocean at Surfside, Orange County, I refer you to a Record of Survey filed August 23, 1966, in Book 86 R.S., pages 35, 36 and 37, Orange County Recorder's Office.

A copy of the State Lands Commission Minute Item #33, meeting of April 28, 1966, is enclosed for your information.

Sincerely,

Donald J. Brittnacher

DONALD J. BRITTNACHER
Senior Boundary
Determination Officer

DJB:ls

Enclosure

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EXHIBIT No. 3
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California Coastal Commission

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MINUTE ITEM 4/28/66

33. APPROVAL OF BOUNDARY AGREEMENT BETWEEN STATE OF CALIFORNIA AND SURFSIDE COLONY, LTD., A CALIFORNIA CORPORATION, ALONG THE ORDINARY HIGH WATER MARK OF THE PACIFIC OCEAN, VICINITY OF SURFSIDE, ORANGE COUNTY - W.O. 5850, B.L.A. 74.

After consideration of Calendar Item 11 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO EXECUTE AN AGREEMENT WITH THE SURFSIDE COLONY, LTD., FIXING THE ORDINARY HIGH WATER MARK AS THE PERMANENT BOUNDARY ALONG THE PACIFIC OCEAN BETWEEN STATE TIDE AND SUBMERGED LANDS AND PRIVATE UPLANDS, SAID BOUNDARY LINE BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 1 IN BLOCK A, AS SHOWN ON "RECORD OF SURVEY SURFSIDE COLONY", FILED IN BOOK 4, PAGE 19 OF RECORD OF SURVEYS, COUNTY OF ORANGE, SAID BLOCK A BEING IN FRACTIONAL SECTION 24, TOWNSHIP 5 SOUTH, RANGE 12 WEST, S.B.M.; THENCE S. 49° 26' 59" W. 77.55 FEET TO A POINT ON THE MEAN HIGH TIDE LINE OF 1937, WHICH POINT IS THE TRUE POINT OF BEGINNING OF THIS BOUNDARY LINE AND WHICH IS ALSO SHOWN ON "MAP OF EXISTING HIGH TIDE LINE SURVEYS OF THE PACIFIC OCEAN" PREPARED FOR SURFSIDE COLONY, LTD., BY PETERSEN & HENSTRIDGE, LAND SURVEYORS, IN MARCH 1966; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE FOLLOWING COURSES: N. 43° 45' 11" W. 1069.03 FEET, N. 48° 53' 37" W. 1004.50 FEET, N. 49° 52' 36" W. 957.14 FEET AND N. 56° 15' 04" W. 6.74 FEET TO THE END OF THIS BOUNDARY LINE, WHICH ENDING POINT BEARS S. 00° 02' 00" E. 358.85 FEET AND S. 56° 15' 04" E. 20.32 FEET FROM THE QUARTER CORNER BETWEEN SECTIONS 13 AND 24, T. 5 S., R. 12 W., S.B.M.

Attachment
Calendar Item 11 (1 page)

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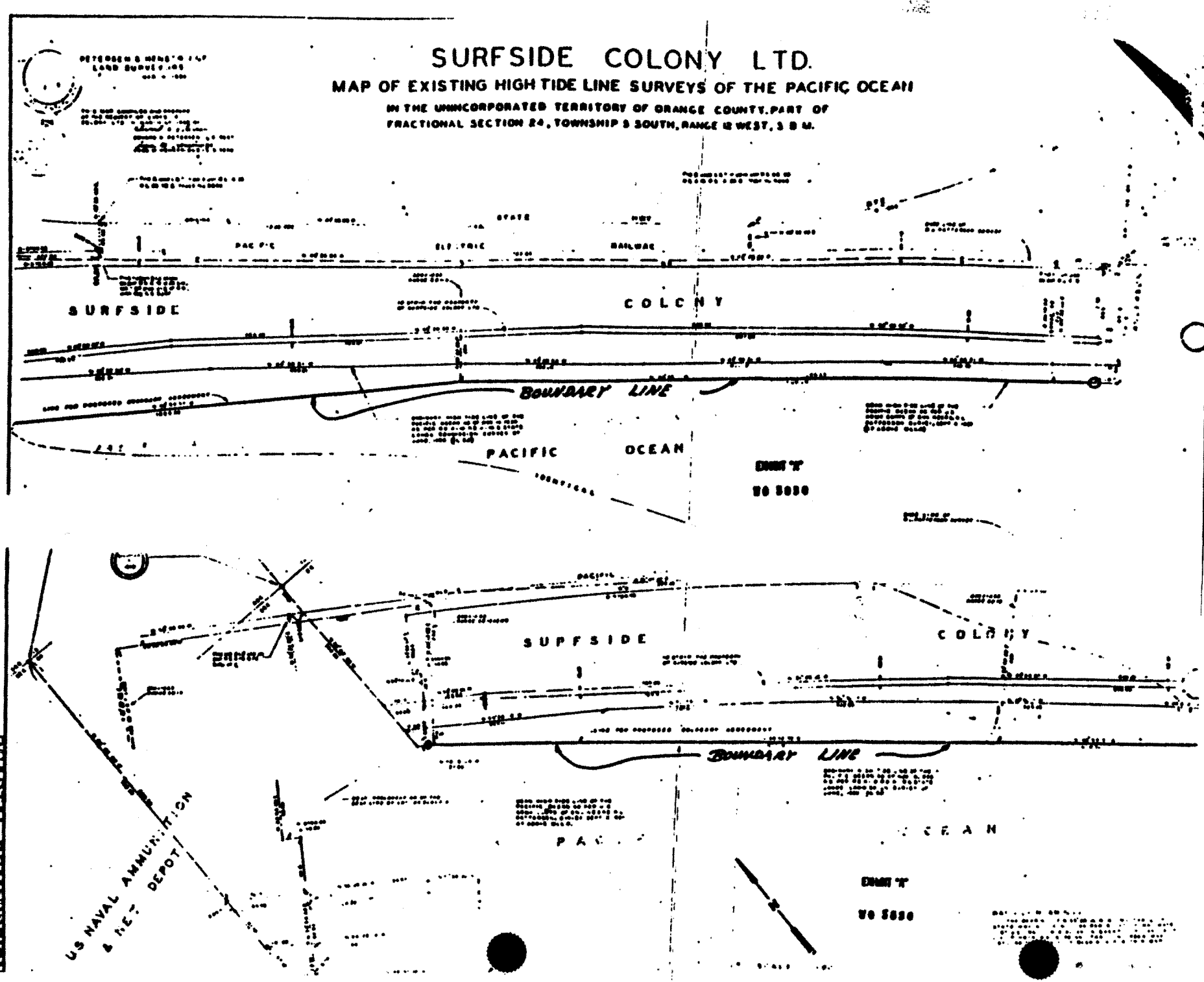
A 60-71

12,593

SURFSIDE COLONY LTD.

MAP OF EXISTING HIGH TIDE LINE SURVEYS OF THE PACIFIC OCEAN

IN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY, PART OF FRACTIONAL SECTION 24, TOWNSHIP 5 SOUTH, RANGE 12 WEST, S B M.



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Surfside Permits with Assumption-of-Risk Deed Restrictions
As of June 22, 2000

Site	Permit #	Project Description	Exceeds Height*
A-2	5-92-450	New SFD on vacant lot	Yes
A-6	5-86-676	Addition to existing SFD	Yes
A-8	5-99-423	Partial Demo/Addition to SFD	Yes
A-20	5-90-860	Demo. SFD, Construct new SFD	Yes
A-21	5-87-813	Addition to existing SFD	
A-24	5-87-045	Demo. SFD, Construct new SFD	Yes
A-26	5-87-115	Construct new SFD	Yes
A-36	5-92-165	Demo. SFD, Construct new SFD	
A-44	5-88-152	Demo. SFD, Construct new SFD	
A-45	5-99-356-A1	Addition to existing SFD	Yes
A-47	5-98-412	New SFD on vacant lot	No
A-62	5-87-436	New SFD on vacant lot	Yes
A-62	5-84-068	New SFD on vacant lot	Yes
A-64	5-85-441	Demo. SFD, Construct new SFD	No
A-71	5-82-714	Demo. SFD, Construct new SFD	
A-86	5-85-474	New SFD on vacant lot	Yes
A-87	5-85-474	New SFD on vacant lot	Yes
A-88	5-85-474	New SFD on vacant lot	Yes
A-98	5-98-098	New SFD on vacant lot	Yes
A-99	5-99-386	Demo. SFD, Construct new SFD	Yes
A-100	5-84-790	Demo. SFD, Construct new SFD	Yes

* Where it is known that the plans on file indicate that a chimney or covered roof access structure exceeds the 35 foot height limit.

SFD = Single-Family Dwelling

EXHIBIT No. 4
Application Number:
[redacted] 5-00-132
California Coastal Commission

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Surfside Colony, Ltd.

P.O. BOX 235 • SURFSIDE, CALIFORNIA 90743
OFFICE (562) 592-2352 • FAX (562) 592-2687

November 2, 2000

Mr. Tony Ursino
18600 Main Street
Suite #200
Huntington Beach, CA 52648

Dear Mr. Ursino:

After review of the documents submitted, the Board of Directors of Surfside Colony does not consider it in the best interests of the Colony as a whole to sign these documents, given the waivers of rights contained therein.

Very truly yours,

SURFSIDE COLONY BOARD OF DIRECTORS

Signed for the Board of Directors by:

Judith Norton
Administrative Manager