CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
[illegible]g Beach, CA 90802-4302
[illegible]2) 590-5071

Item M15a

Filed: October 4, 2000
Staff: KFS-LB
Staff Report: April 18, 2001
Hearing Date: May 8-11, 2001
Commission Action:

STAFF REPORT: REVISED FINDINGS

RECORD PACKET COPY

APPLICATION NUMBER: 5-00-257

APPLICANT: John Cencak

AGENT: Jay Golison

PROJECT LOCATION: A-15 Surfside Avenue, Seal Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing one-story single family residence. Construction of a new 3 story, 35 foot high, 2,648 square foot single family residence with 280 square feet of decks and an attached 415 square foot, two vehicle garage. The decks and patio will extend a maximum of 10-feet seaward, beyond the property boundary, onto land that is leased by the Surfside Colony to the applicant. In addition, re-subdivision of the lot to move the beachfront lot line 1.7 feet seaward and the street-front lot line 0.40 feet seaward.

DATE OF COMMISSION ACTION: December 11, 2000

COMMISSION ACTION: Approval with special conditions.

COMMISSIONERS ON PREVAILING SIDE: Desser, Dettloff, Allgood, Hart, Kruer, McCoy, McClain-Hill, Nava, Eitzen, Vice Chairman Potter

---

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's approval with special conditions of Coastal Development Permit application 5-00-257 on December 11, 2000. The major issue raised at the public hearing was related to the staff recommendation that, in addition to deed restrictions incorporating the requirements of Special Conditions 1, 2, and 4, lease restrictions be required because part of the project is proposed to be constructed on land that is leased by the applicant from Surfside Colony, Ltd. The applicant stated that Surfside Colony, Ltd. would not comply with the lease restriction requirement. An alternative was presented which eliminated the requirement for the lease restrictions and added a special condition that requires the owner to remove the development on Surfside Colony, Ltd. land if Surfside Colony, Ltd. were to seek shoreline protection measures to protect the development on their land that is approved by this permit. Staff incorporated this change into the staff recommendation. The Commission subsequently approved the permit per the modified staff recommendation.

LOCAL APPROVALS RECEIVED: City of Seal Beach Lot Line Adjustment letter of preliminary approval dated September 14, 2000; City of Seal Beach Approval-in-Concept dated June 20, 2000; Surfside Colony, Ltd. Architectural Committee approval of residence dated June 7, 2000; Surfside Colony, Ltd. Board of Directors approval of lot line adjustment dated July 12, 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); Consistency Determinations CD-028-97, CD-067-97, and CD-65-99; *Geotechnical Engineering Investigation* (Project No. 8790-00) by NorCal Engineering of Los Alamitos, California dated June 2, 2000; *Wave Runup Study, Lot A-15 Surfside Colony, Seal Beach, CA* prepared by Skelly Engineering of Encinitas, California dated September 2000; Letter from Surfline to John Cencak containing a wave run-up analysis study prepared by Surfline of Huntington Beach, California, dated August 12, 2000; Letter to Surfside Colony, Ltd. from Mr. John Cencak inviting Surfside Colony, Ltd. to join as co-applicant.

STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF FINDINGS

MOTION: ***I move that the Commission adopt the revised findings in support of the Commission's action on December 11, 2000 concerning Coastal Development Permit 5-00-257***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the December 11, 2000 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for Coastal Development Permit 5-00-257 on the ground that the findings support the Commission's decision made on December 11, 2000 and accurately reflect the reasons for it.

I. APPROVAL WITH CONDITIONS

RESOLUTION APPROVING THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 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.

2. **Future Development**

A) This permit is only for the development described in Coastal Development Permit No. 5-00-257. 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. 5-00-257 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 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.

3. **Conformance of Design and Construction Plans to Geotechnical Engineering Investigation - Hazards**

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 *Geotechnical Engineering Investigation* (Project No. 8790-00) by NorCal Engineering of Los Alamitos, California dated

June 2, 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 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. 5-00-257 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. 5-00-257**, 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.

5. **Compliance With Plans Submitted**

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 above. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

6. **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. PROJECT LOCATION AND DESCRIPTION

The lot is located at A-15 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 applicant is proposing a re-subdivision of the lot and the demolition of an existing single family residence and construction of a new single family residence. The proposed re-subdivision will move the beachfront lot line 1.7 feet seaward and the street-front lot line 0.40 feet seaward of their present location (Exhibit 2). The existing house to be demolished is a one-story single family residence. The proposed new residence is a 3 story, 35 foot high, 2,648 square foot single family residence with 280 square feet of decks and an attached 415 square foot, two vehicle garage (Exhibit 3). The residential structure is located on the applicant's property. However, the first floor patio and second floor deck will extend 10 feet and the third floor deck will extend 5 feet seaward, beyond the property boundary, onto land

that is leased by the Surfside Colony to the applicant (Exhibit 7). Surfside Colony is the association which owns the common areas of the private community. The applicant has invited Surfside Colony to join as co-applicant, however, as of the date of this staff report Surfside Colony has not chosen to join.

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 (Exhibit 6). 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 currently afford a degree of 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 in July 1999.

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-15 Surfside, is located. No revetment protects this lot (Exhibit 1, Page 3). 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 currently 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 Geotechnical Engineering Investigation prepared by NorCal Engineering 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 September 2000, prepared by Skelly Engineering of Encinitas, California. The analysis examined the impact of wave run-up and wave induced flooding (i.e. overtopping) upon the subject site under extreme oceanographic conditions over the next 75 years. The analysis determined that the subject site is located on a wide sandy beach and upon a portion of the beach that is presently 400 feet wide. The study states that, based upon beach width monitoring data prepared by the U.S. Army Corps of Engineers which has been obtained monthly since 1979, the beach in front of the subject site "has always been wider than 200 feet and in general is over 400 feet". The study states that the subject site has not been subject to wave attack for at least the last 40 years, including the large winter storms of 1982/83 and January 1988.

The study analyzes the potential effects of wave run-up and overtopping for eroded beach conditions, including adverse conditions such as a 12 inch sea level rise over the next 75 years, super-elevation of the sea surface caused by wave set up, wind set up, inverse barometer conditions, wave group effects, and El Nino and sea level effects. The study states that "overtopping waters will not reach the seaward side of the subject site under the extreme design conditions as long as the beach is over 200 feet wide". The study states that the beach is unlikely to become narrow enough to be of concern since "...the beach is maintained by the Federal Government it is highly unlikely that the beach will become narrow enough for runup to reach the site". Overall, the study concludes that "wave runup and overtopping should not adversely impact the property over the life of the structure" because: 1) there is a

wide sandy beach in front of the property 99.9% of the time; 2) the wide sandy beach exists due to a federally funded project and that narrowing the beach to less that 250 feet is unlikely; 3) a review of aerial photos over that last 25 years shows little overall shoreline retreat; 4) the subject site hasn't been subject to significant wave runup attack in the past; 5) a local wave expert (see Surfline study noted in substantive file documents) concludes no mitigation is necessary for wave runup and overtopping at the site; and 6) the mean high tide line is presently over 400 feet from the site and its unlikely the mean high tide line would reach the property over the life of the structure proposed. The wave run-up study recommends no mitigation for wave runup protection.

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. In addition, artificial beach nourishment projects, such as the one which provides sand that protects the subject site, can change or halt over time (see Exhibit 6). 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 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 (Exhibit 7). 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 proposed development is still subject to significant wave hazards, as described previously. The development exposed to hazards includes all development located on the property owned by the applicant (A-15) and all proposed development (i.e. patios/decks) upon the property owned by Surfside Colony which is leased to the applicant. Therefore, the Commission finds it necessary to require the recordation of an assumption-of-risk deed restriction by the applicant (Special Condition No. 1). 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 Commission is requiring recordation of 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. With this standard waiver of liability condition, the applicant is 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 is 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 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), 5-99-356-A1 (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 (e.g. 5-00-132 and 5-00-206), whether on vacant lots or in conjunction with the demolition and replacement of an existing home (see Exhibit 8).

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 (Exhibit 3, pages 4 & 5). A *Geotechnical Engineering Investigation* prepared by NorCal Engineering (Job No. 8790-00) dated June 2, 2000 was submitted by the applicant. The report indicates that the site is suitable for the proposed development. The *Geotechnical Engineering Investigation* includes certain recommendations to increase the degree of stability of the proposed development. The recommendations included in the *Geotechnical Engineering Investigation* address foundation design, earth pressure, seismic conditions, demolition, and grading.

In order to assure that risks are minimized, the recommendations of the 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 *Geotechnical Engineering Investigation* 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 all of the following conditions are met: (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. Proper coastal planning mandates that structures be sited far enough back from hazards to minimize the potential that they would be in danger and require a protective device. In addition, allowing new development that requires the construction of a shoreline protective device would be inconsistent 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 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. However, the presence of the beach cannot be guaranteed.

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 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.

In addition, the applicant is proposing to execute and record a deed restriction (Special Condition 6) 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. This condition further serves to assure the project is consistent with Sections 30251 and 30253 of the Coastal Act.

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. Finally, Special Condition 6 requires the removal of any patios or decks on Surfside Colony land if Surfside Colony were to apply for a protective device to protect the structures on their land. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30235, 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 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 5). 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 portion of the approximately 80 foot wide strip of land owned by Surfside Colony, Ltd. seaward of the "A" row of lots in the community. Surfside Colony (which serves as the homeowners' association) 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 (Exhibit 7).

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 development includes a re-subdivision of the property which will move the beachfront lot line 1.7 feet seaward and the street-front lot line 0.40 feet seaward of their present location. The re-subdivision will result in an exchange of land between the applicant and Surfside Colony, Ltd., which owns the private street on the landward side of the site and the 80 foot wide strip of private beach on the seaward side of the structure. The stated purpose of the re-subdivision is to widen the private street on the landward side of the structure for improved emergency vehicle access as well as to bring development on the subject site seaward to conform with the line of development[1]. Since the seaward property line has served as the enclosed living space "stringline" in Surfside, the lot line adjustment will allow development at the site to move 1.7 feet seaward of the presently allowable location. However, even though development will be able to move 1.7 feet seaward, according to information submitted by the applicant, such development (including enclosed living space and decks) would be consistent with the line of development established in the area (see Exhibit 4).

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, prior to issuance of this permit, record a future improvement deed restriction per Special Condition No. 2. As noted above, there is a patio and decks which 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 who 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. Accordingly, a lease restriction involving Surfside Colony, Ltd. is not necessary.

---

[1] Representatives of Surfside Colony, Ltd. have indicated to Commission staff that the Colony has been requesting (for the last several decades) that the owners of selected lots in Surfside obtain a lot line adjustment, in those areas where Surfside Avenue needs to be widened, when new development is undertaken on those lots. The subject site contains one of the original beach cottages which were constructed in the Colony in the late 1920's. Since no major new development has occurred at the subject site since the late 20's, a lot line adjustment has not occurred at this location, whereas the lots upcoast and downcoast of the site have obtained the lot line adjustments. These prior lot line adjustments established the line of development to which the subject site is now proposing to conform.

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 above existing street grade plus a chimney which extends an additional 3.5 feet above the 35 foot high roof line (Exhibit 3, page 3). 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 above existing street grade. 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. WATER QUALITY

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed development is occurring upon a developed lot, however, the proposed development will increase the amount of lot coverage and impervious surfaces. Storm water from storm events currently can percolate into the pervious sandy soil areas which will be covered by the proposed project. However, the proposed structure will include roof area where pollutants may settle. During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution results in decreases in the biological productivity of coastal waters.

To address water quality concerns the applicant is proposing to minimize the quantity of impervious surfaces by leaving the side yards largely unpaved and using stepping stones, rather than concrete pavement, where necessary to control erosion and provide a solid walking surface (Exhibit 3, page 1). In addition, water quality impacts to coastal waters can be avoided by directing storm water discharges from the roof and other impervious surfaces to percolation areas located in the sideyards of the subject site. These percolation areas cause the storm water from the roof and other impervious surfaces to drain into the sand. Discharging particulate laden storm water into the sand will prevent the particulate matter from being discharged to coastal waters via sheet flow or the storm drain system. The proposed project includes directing all roof drains to gravel percolation areas in the sideyards of the site.

Since the proposed gravel percolation areas are necessary to assure the protection of water quality, the Commission imposes Special Condition 5 which requires the applicant to conform with the plans submitted. No changes to the plans may occur without an amendment to this coastal development permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. As conditioned, the Commission finds the proposed project is consistent with Section 30231 of the Coastal Act.

F. 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.

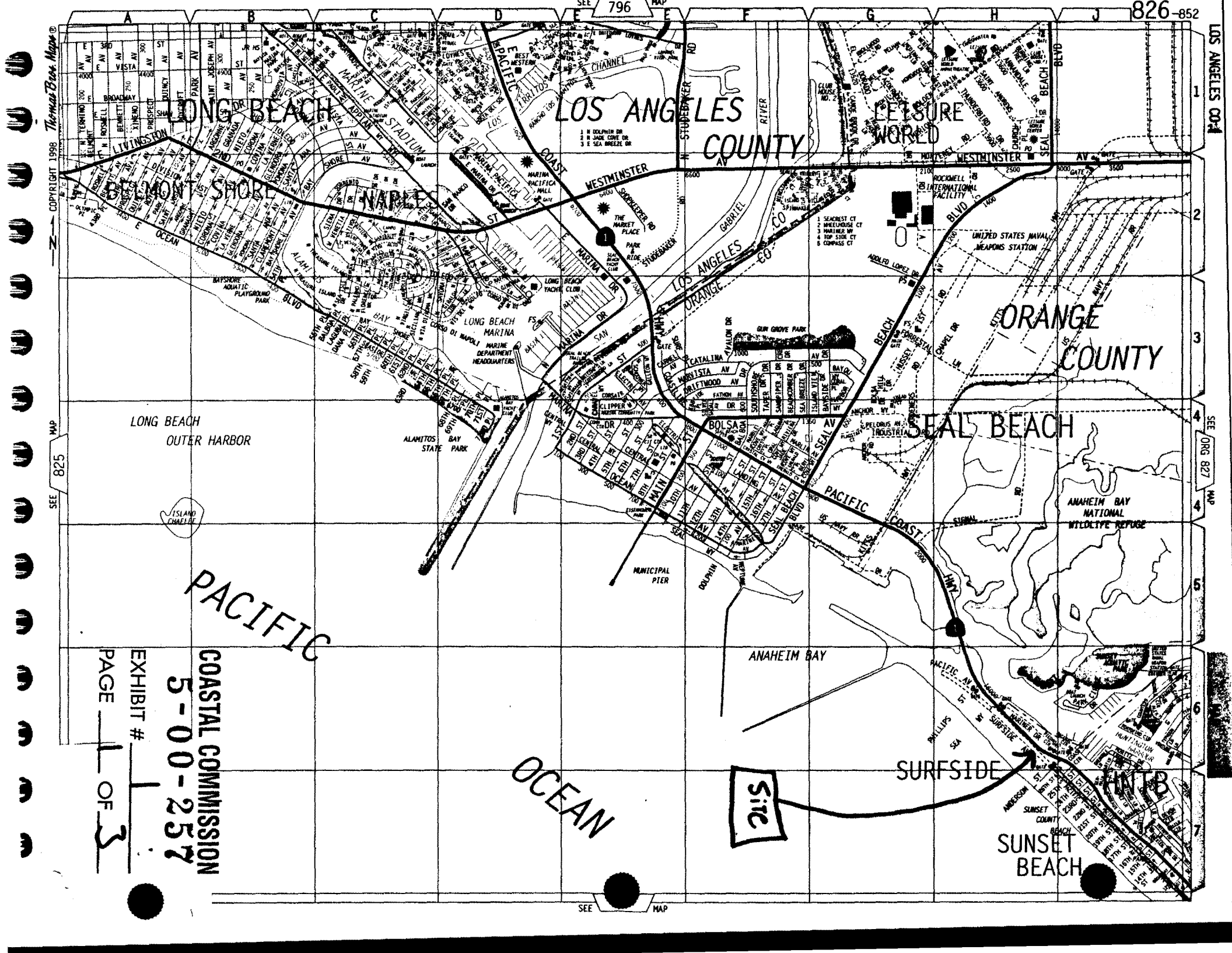
The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three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

G. 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.

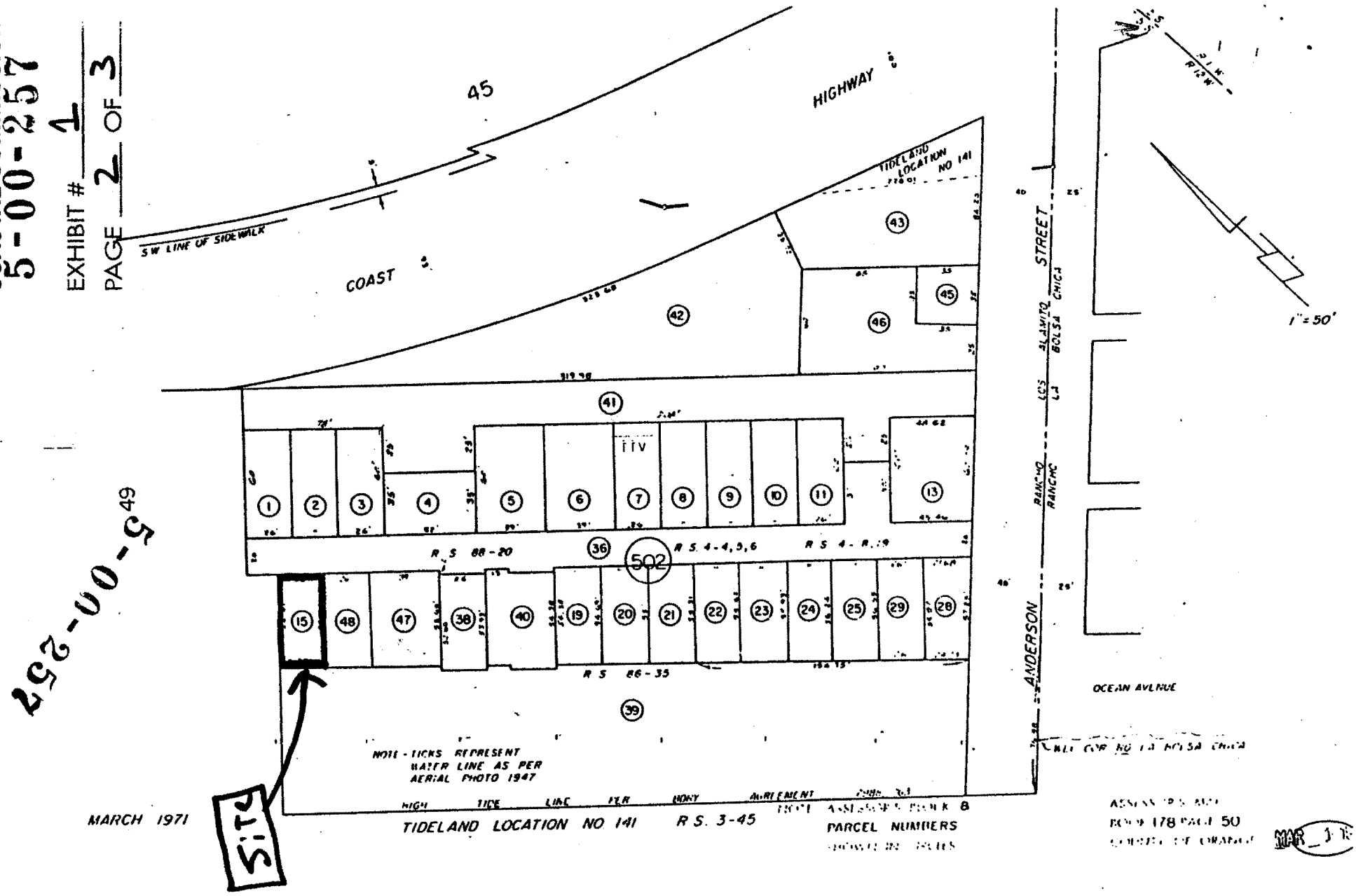
The proposed project is located in an urban area. All infrastructures necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard, public access and scenic view policies of Chapter Three of the Coastal Act. These conditions also serve to mitigate any significant adverse impacts under CEQA. Mitigation measures requiring assumption-of-risk, future improvement, and no future shoreline protective device deed 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 the requirements of CEQA.


LONG BEACH
BELMONT SHORE
NAPLES
LOS ANGELES COUNTY
LEISURE WORLD
ORANGE COUNTY
SEAL BEACH
SURFSIDE
SUNSET BEACH
PACIFIC OCEAN
LONG BEACH OUTER HARBOR
ANAHEIM BAY
LONG BEACH MARINA
ALAMITOS BAY STATE PARK
MUNICIPAL PIER
ANAHEIM BAY NATIONAL WILDLIFE REFUGE
UNITED STATES NAVAL WEAPONS STATION
ROCKWELL INTERNATIONAL FACILITY
MARINA PACIFICA MALL
THE MARKET PLACE
LONG BEACH YACHT CLUB
LONG BEACH MARINE DEPARTMENT HEADQUARTERS
BAYSHORE AQUATIC PLAYGROUND PARK
GUM GROVE PARK
ISLAND CHARLIE
Site
SEE MAP 825
SEE MAP 796
SEE MAP ORG 827
826-852
LOS ANGELES CO.
COPYRIGHT 1998 Thomas Bros. Maps®
COASTAL COMMISSION
5-00-257
EXHIBIT # 1
PAGE 1 OF 3

COASTAL COMMISSION
5-00-257
EXHIBIT # 1
PAGE 2 OF 3

5-00-257



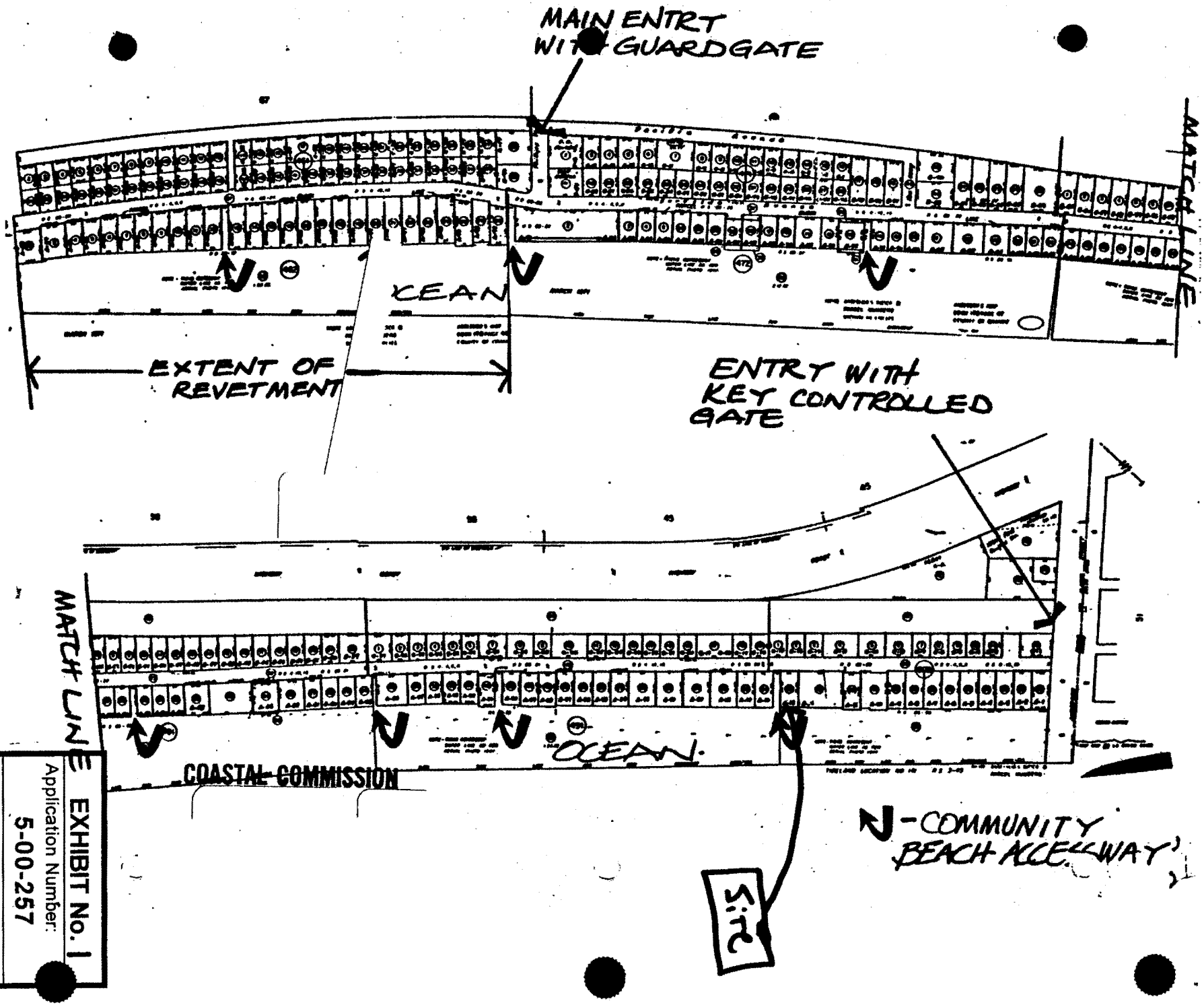


EXHIBIT No. 1
Application Number:
5-00-257
California Coastal Commission

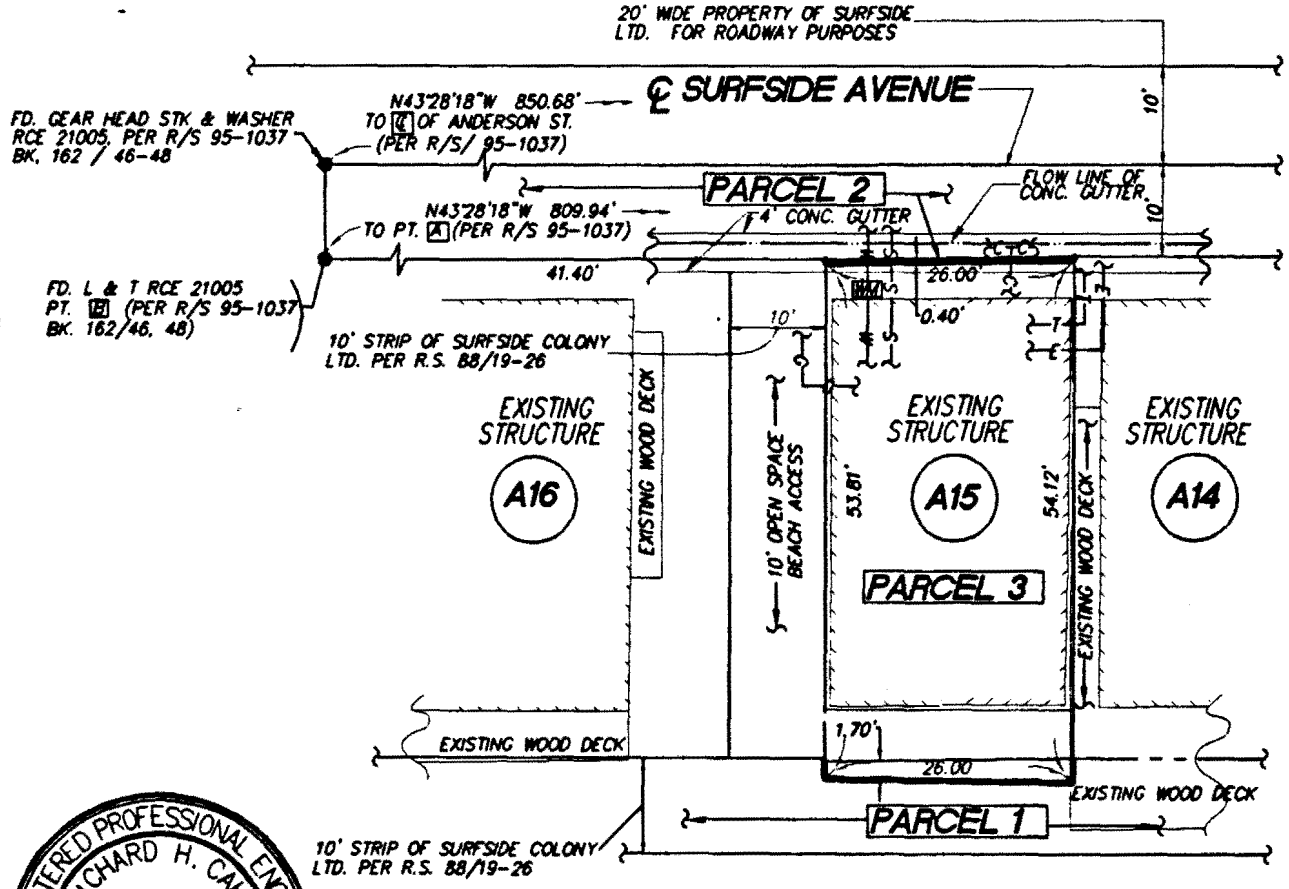
PAGE 3 of 3

SITE PLAN
LOT LINE ADJUSTMENT NO. LL 00-

OWNERS	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
SURFSIDE COLONY, LTD.	178-(502-39);(491-50);(481-51);(472-42);(462-36)	1
SURFSIDE COLONY, LTD.	178-(502-36);(491-48);(481-57);(471-48);(461-57)	2
JOHN M. CENCAK	178-502-15	3

COASTAL COMMISSION
5-00-257
EXHIBIT # 2
PAGE 1 OF 2

NORTH
SCALE : 1"=20'



REGISTERED PROFESSIONAL ENGINEER
RICHARD H. CAHL
NO. 21005
Exp. 9/30/01
CIVIL
STATE OF CALIFORNIA

WM WATER METER
—T— TELEPHONE LINE
—E— ELECTRICAL LINE
—C— CABLE TELEVISION
—W— WATER LINE
—G— GAS LINE
—S— SEWER LINE

EXISTING BUILDING FOUNDATION
PROPOSED LOT LINE PER THIS ADJUSTMENT
EXISTING LOT LINE
EXISTING LOT LINE TO BE REVISED
(XXX) INDICATES LOT ADDRESS PER SURFSIDE COLONY

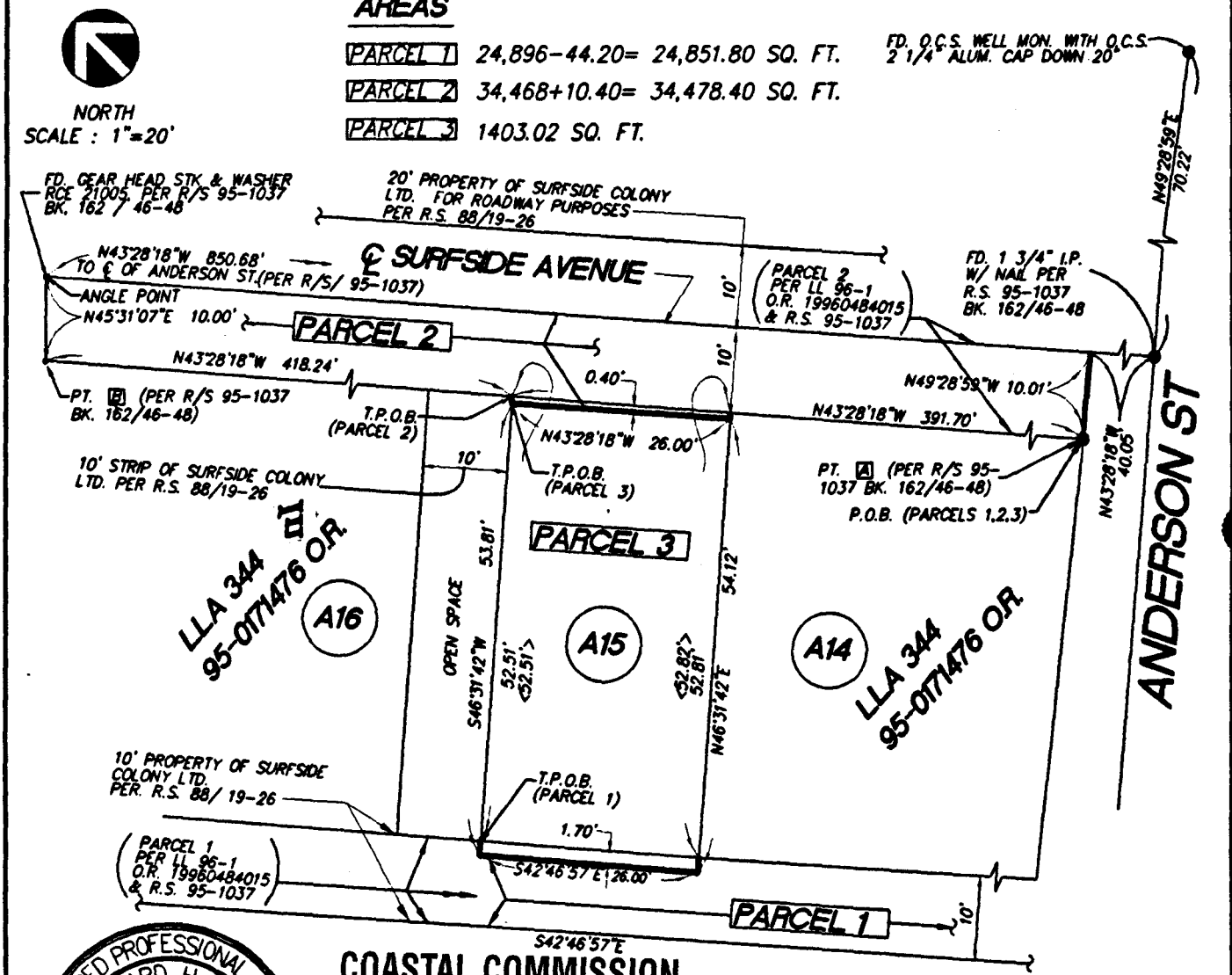
9/6/2000

R.H. CAHL R.C.E. 21005
EXP. 9-30-01

SHEET 1 OF 1

EXHIBIT B
LOT LINE ADJUSTMENT NO. LL 00-

OWNERS	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
SURFSIDE COLONY, LTD.	178-(502-39);(491-50);(481-51);(472-42);(462-36)	1
SURFSIDE COLONY, LTD.	178-(502-36);(491-48);(481-57);(471-48);(461-57)	2
JOHN M. CENCAK	178-502-15	3



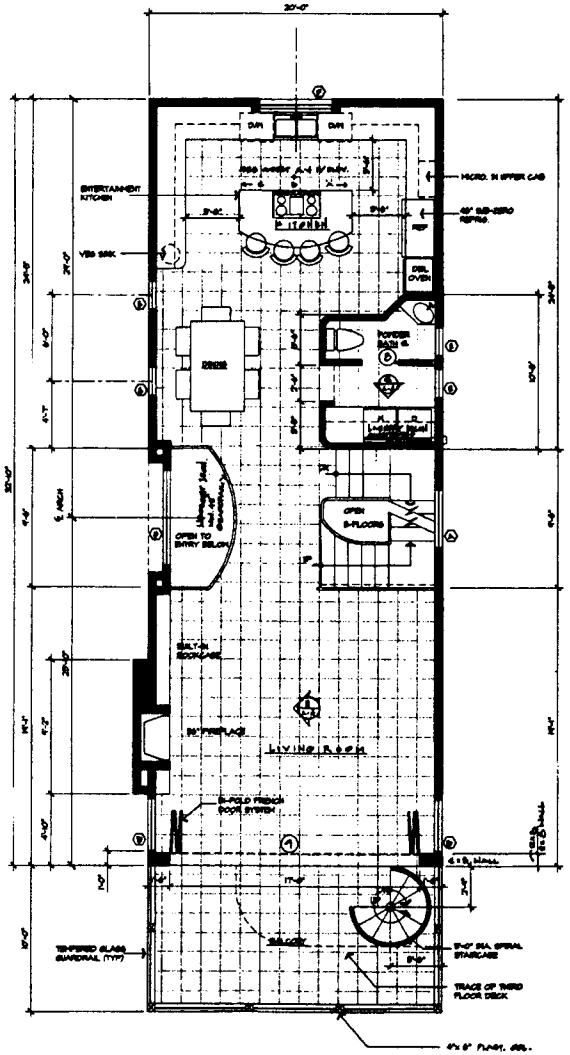
REGISTERED PROFESSIONAL ENGINEER
RICHARD H. CAHL
NO. 21005
Exp. 9/30/01
CIVIL
STATE OF CALIFORNIA

COASTAL COMMISSION
5-00-257
EXHIBIT # 2
PAGE 2 OF 2

PROPOSED LOT LINE PER THIS ADJUSTMENT
EXISTING LOT LINE
EXISTING LOT LINE TO BE REVISED
XXXXXXX INDICATED PARCEL PER THIS ADJUSTMENT
< > REC. PER R.S. 88/19-26
( ) INDICATED PARCEL PER LL 96-1 O.R. 19960484015
(XXX) INDICATES LOT ADDRESS PER SURFSIDE COLONY
P.O.B. POINT OF BEGINNING
T.P.O.B. TRUE POINT OF BEGINNING

R.H. CAHL 9/6/2001
R.C.E. 21005
EXP. 9-30-01

SHEET 1 OF 1



SECOND FLOOR PLAN

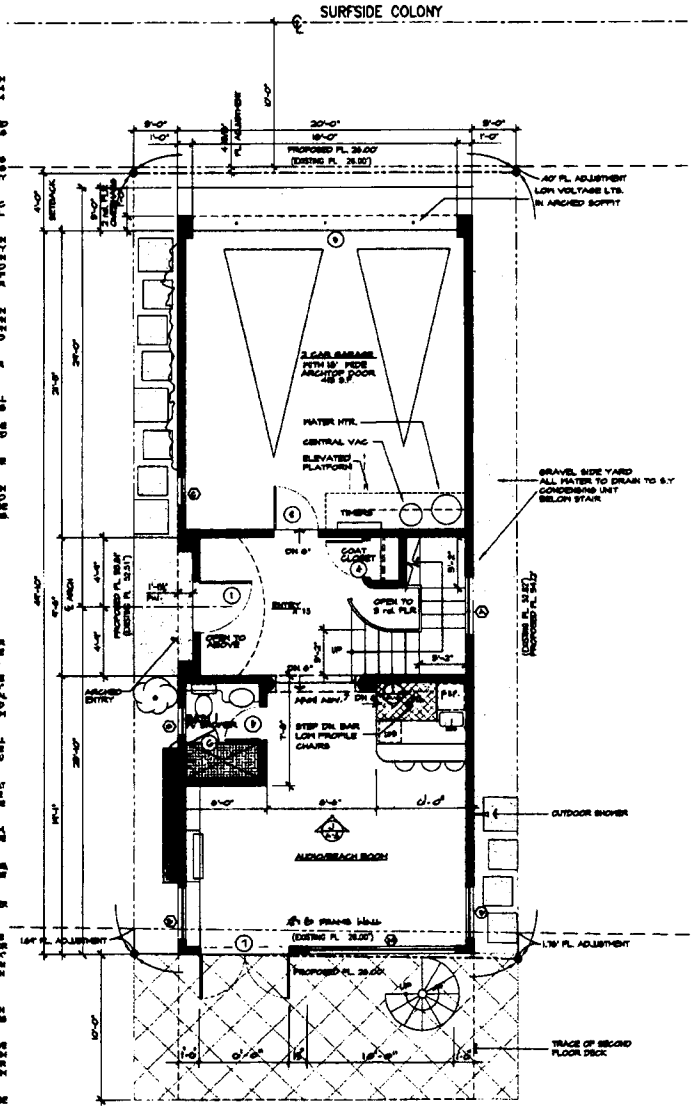
SCALE: 1/4"=1'-0"

SITE NOTES

1. THIS PROJECT SHALL COMPLY WITH THE STATE OF CALIFORNIA, TITLE 24 AND THE UBC, UMC, UPC, AND NEC, 1994 OR THE LATEST ACCEPTED EDITION
2. SEPARATE PERMITS SHALL BE OBTAINED FOR: FENCES, RETAINING WALLS, POOLS AND SPAS.
3. OBTAIN PERMIT FROM PUBLIC WORKS ENGINEERING DEPT. PRIOR TO DOING ANY SIDEWALK, CURB WORK, OR ANY WORK IN A PUBLIC RIGHT OF WAY.
4. PROVIDE NEW 200 AMP ELECTRIC SERVICE. VERIFY W/ELECTRICAL CONTRACTOR.
5. REFER TO SITE PLAN FOR LOCATION OF NEW ELECTRICAL SERVICE. VERIFY W/EDISON CO. FOR EXACT LOCATION PRIOR TO INSTALLATION PRIOR TO INSTALLATION AND PLACEMENT OF SERVICE AND GROUND ("UFER") REFER ALSO TO FOUNDATION NOTES.
6. REFER TO SITE PLAN FOR LOCATION OF NEW GAS SERVICE. VERIFY LOCATION WITH GAS CO. FOR EXACT LOCATION PRIOR TO INSTALLATION AND PLACEMENT OF SERVICE
7. OBTAIN PERMIT FROM LOCAL CITY OR COUNTY DEPT. PRIOR TO GRADING.
8. PROVIDE IRRIGATION SYSTEM FOR ALL LANDSCAPED AREAS INCLUDING TYP.
9. PROVIDE ELECTRICAL LOW-VOLTAGE LIGHTING THROUGHOUT ALL LANDSCAPED AREAS ON TYP.
10. PROVIDE UNDERGROUND DRAINAGE SYSTEM TO ALLEY
11. ROUTE ALL ROOFTOP DRAINS DOWN THROUGH EXTERIOR WALLS TO UNDERGROUND DRAINAGE SYSTEM. USE CAST IRON FOR ALL VERTICAL DRAINS.

FLOOR PLAN NOTES

1. ENCLOSED USABLE SPACE UNDER STAIR, OR STAIR SHALL BE PROTECTED ON THE ENCLOSED SIDE W/ 5/8" TYPE 'X' GYP. BD.
2. STAIR HANDRAILS SHALL NOT PROJECT MORE THAN 4 1/2" - HANDRAILS SHALL BE 34" TO 38" ABOVE STAIR TREAD. RAILING TO ORNAMENTAL IRON W/OTHER MAPLE HANDRAIL OR POLISHED BRASS, EQUIVALENT (FOR RESIDENTIAL CONFORM W/UBC 3106.
3. SMOKE DETECTORS SHALL BE SPARE FIRE HARDWALL APPROVED AND SHALL BE HARDWIRED TO HOME ELECTRICAL. EACH SLEEPING ROOM REQUIRES (1) DETECTOR.
4. PROVIDE 30" GREENBOARD OVER 5/8" SHEETROCK AT ALL LAUNDRY ROOM WALLS AND CEILING. ALSO INSURE WALLS W/R-13 INSULATION AT LAUNDRY. PROVIDE SELF-CLOSER ON DOOR.
5. PROVIDE FLOOR DRAINS IN LAUNDRY ROOM, SHOWER STALLS ETC.. ALL DRAIN LINES TO BE INSULATED WRAPPED CAST IRON.
6. PROVIDE SAFETY GLAZING IN ALL HAZARDOUS LOCATIONS, SUCH AS GLASS DOOR OR PANELS, OR GLASS ADJACENT TO DOORS OR WALKING SURFACES.
7. EXTERIOR DOORS SHALL BE SOLID 1 3/8" OR PER OTHER SPECIFICATIONS.
8. ALL ELEMENTS SUPPORTING FLOOR ABOVE GARAGE INCLUDING WALLS SUPPORTING FLOOR JOIST SHALL USE (1 LAYER OF 5/8" TYPE 'X' GYP. BD. PROVIDE FIRE RESISTIVE PROTECTION USING (1 LAYER 5/8" TYPE 'X' GYP. BD. ON ALL WALLS AND CEILINGS COMMON TO DWELLING UNIT.
9. PROVIDE 1-HOUR RATED DOOR BETWEEN GARAGE AND DWELLING, TO BE SELF-CLOSING AND AIR TIGHT.
10. PROVIDE ELEVATED PLATFORM MIN. 44" ABOVE FIN. GARAGE FLOOR TO HOUSE CENTRAL VACUUM SYSTEM, WATER SOFTENER AND WATER HEATER SYSTEM. PROVIDE RE-CIRC. HOT WATER SYSTEM ON TIMER.
11. PROVIDE EPOXY FINISH COAT ON GARAGE FLOOR (MIN.).
12. PROVIDE GAS LINE AND SHUT-OFF VALVE FOR OUTDOOR B.B.Q. AND PATIO HEATERS. PROVIDE BASE AND COUNTER FOR DROP-IN STAINLESS STEEL B.B.Q. UNIT.
13. GARAGE DOOR SHALL BE A FOOD STAIN GRID SECTION ROLL-UP TYPE WITH OPENER (RAISED PANEL).
14. PROVIDE BAY GREENBOARD FROM TOP OF GARAGE FOOTING UP FINISH 4' ABOVE GARAGE REINFORCED ON THE INTERIOR SIDE OF WALL.
15. HEIR INSTALLED CONCRETE COLUMNS ALWAYS PLACE MANUFACTURER'S STAMP SO AS NOT TO BE VISIBLE.
16. GUARDRAILS ABOVE FIRST FLOOR SHALL NOT BE LESS THAN 42" ABOVE FINISH FLOOR.



(BEACHFRONT)

SITE PLAN/FIRST FLOOR PLAN

SCALE: 1/4"=1'-0"

LEGEND:

DEMOLISH EXISTING 2x4 STUD WALL

NEW 2x4 STUD WALL

COASTAL COMMISSION
5-08-257

EXHIBIT # 3

PAGE 1 OF 5

OWNER
CENCAK RESIDENCE
A-15 SURFSIDE COLONY
SEAL BEACH, CA.

SITE PLAN/FIRST FLOOR PLAN
SECOND FLOOR PLAN

A-1

		CENCAK RESIDENCE A-15 SURFSIDE COLONY SEAL BEACH, CA.	THIRD FLOOR	A-2

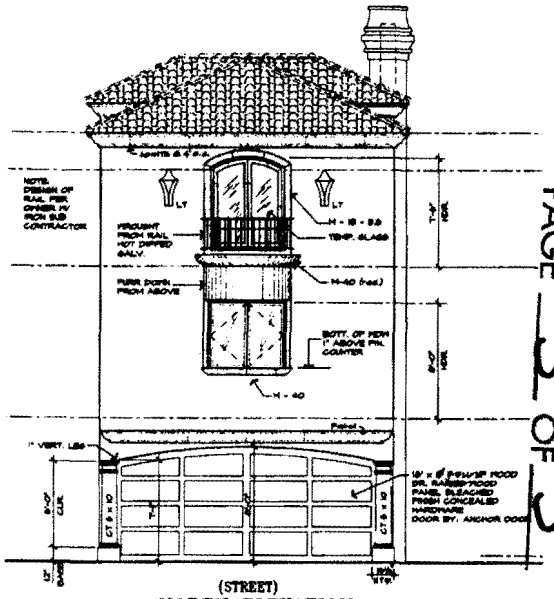
(BEACHFRONT)
THIRD FLOOR PLAN

ROOF NOTES

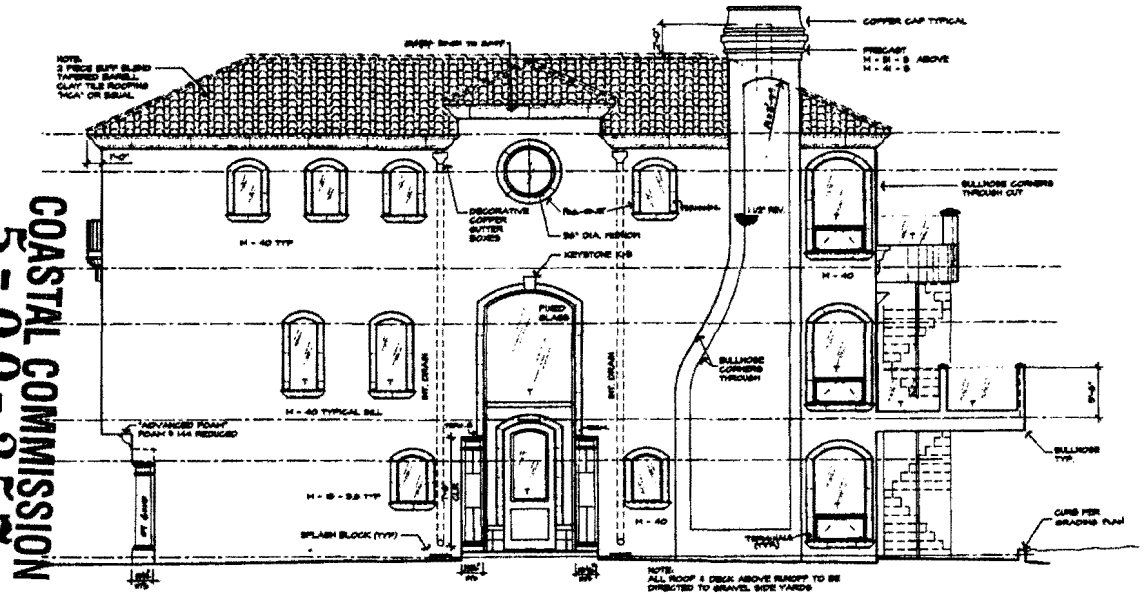
ROOF PLAN

COASTAL COMMISSION
5-00-257

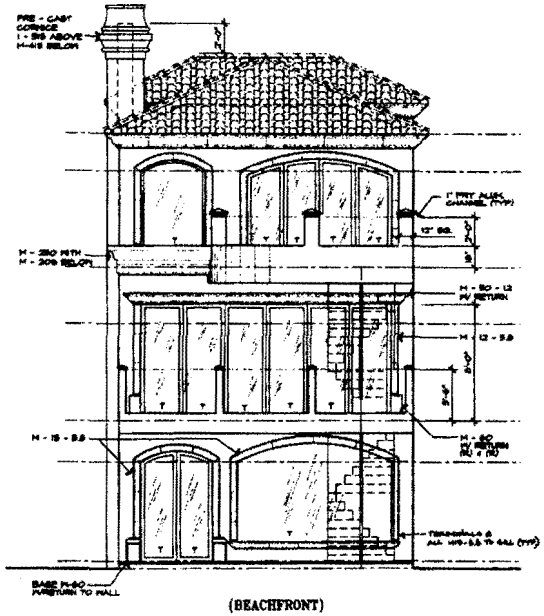
EXHIBIT # 3
PAGE 2 OF 5



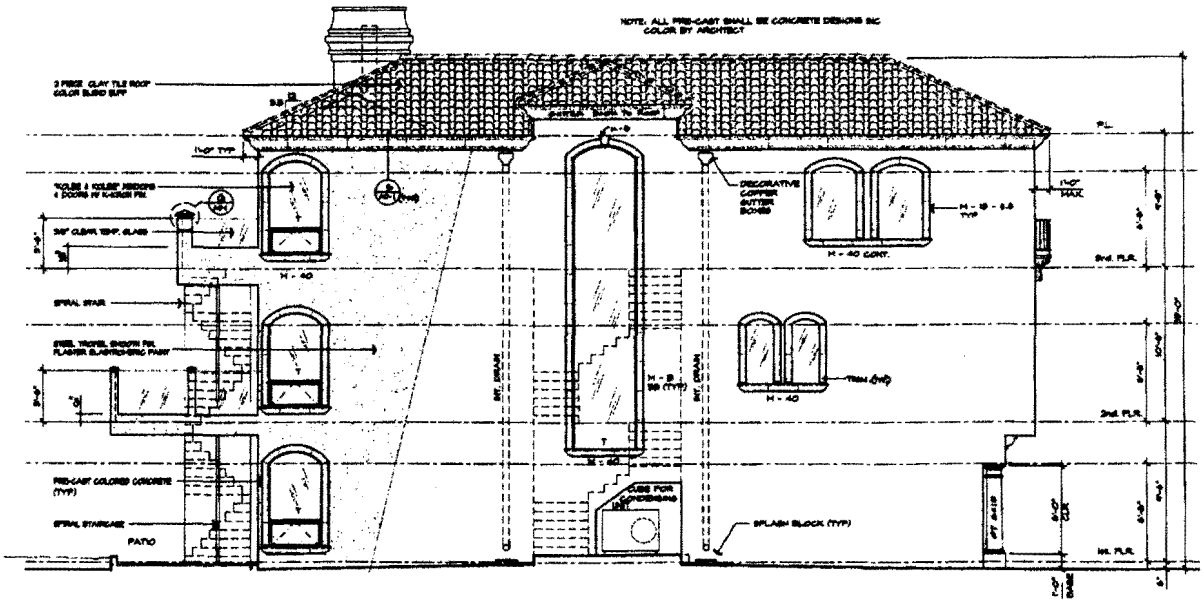
(STREET)
NORTH ELEVATION



WEST ELEVATION



(BEACHFRONT)
SOUTH ELEVATION



EAST ELEVATION

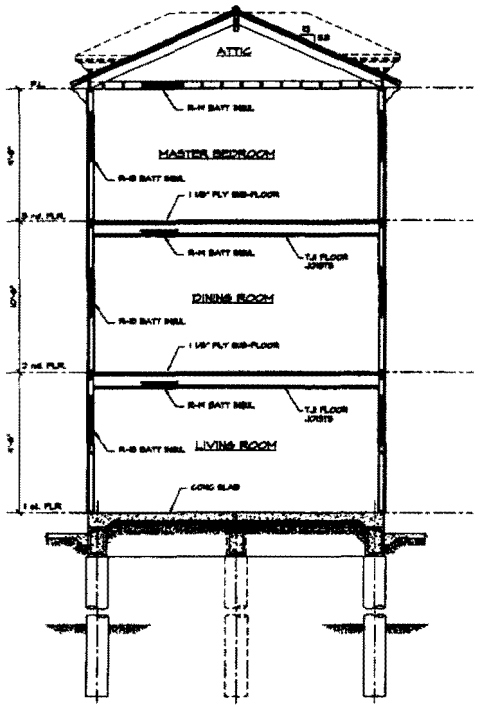
COASTAL COMMISSION
5-00-252

EXHIBIT # 3
PAGE 3 OF 5

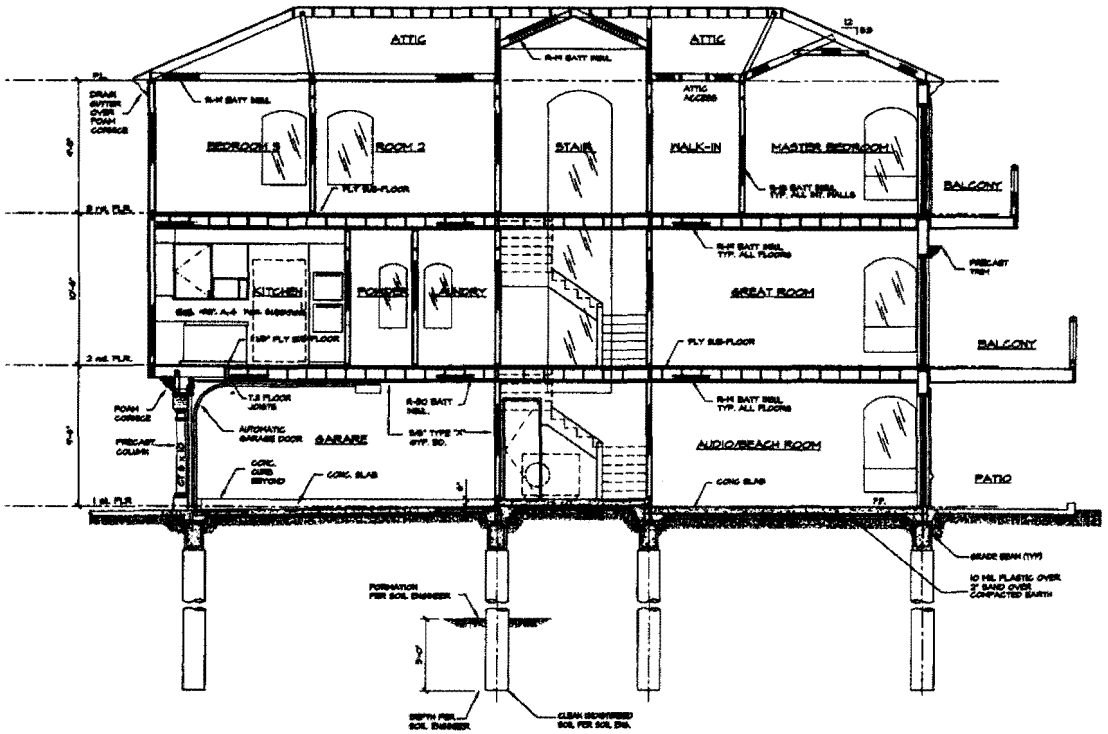
OWNER
CENCAK RESIDENCE
A-15 SURFSIDE COLONY
SEAL BEACH, CA.

EXTERIOR ELEVATIONS

A-3



SECTION "A-A"



SECTION "B-B"

COASTAL COMMISSION
5-00-252

EXHIBIT # 3
PAGE 4 OF 5

OWNER
CENCAK RESIDENCE
A-15 SURFSIDE COLONY
SEAL BEACH, CA.

BUILDING SECTIONS

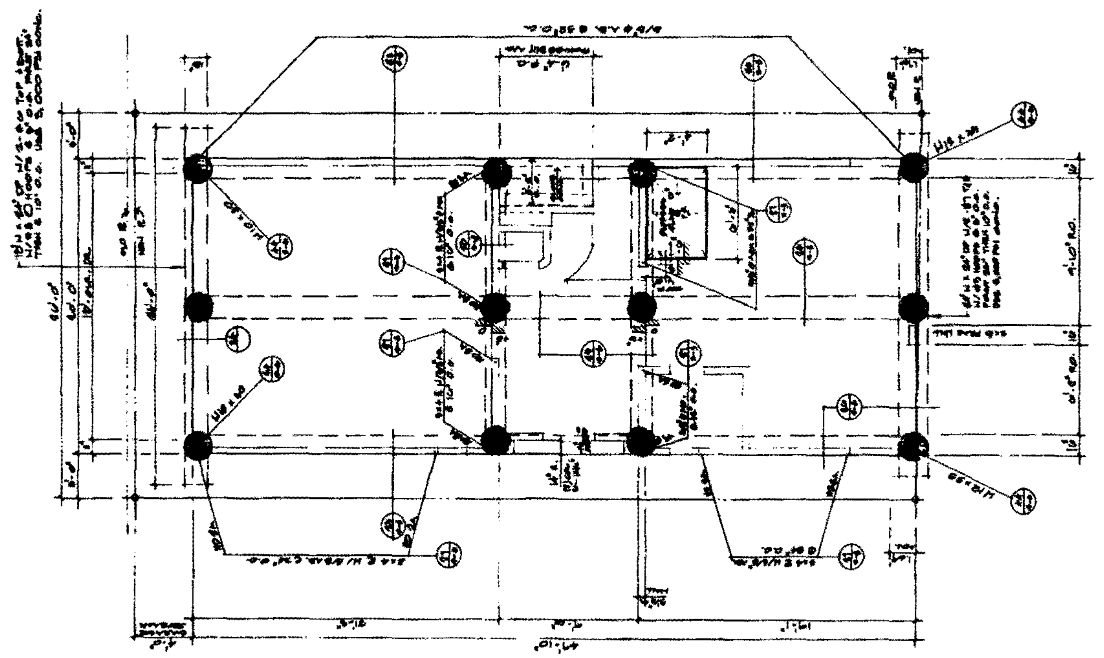
A-5

OWNER

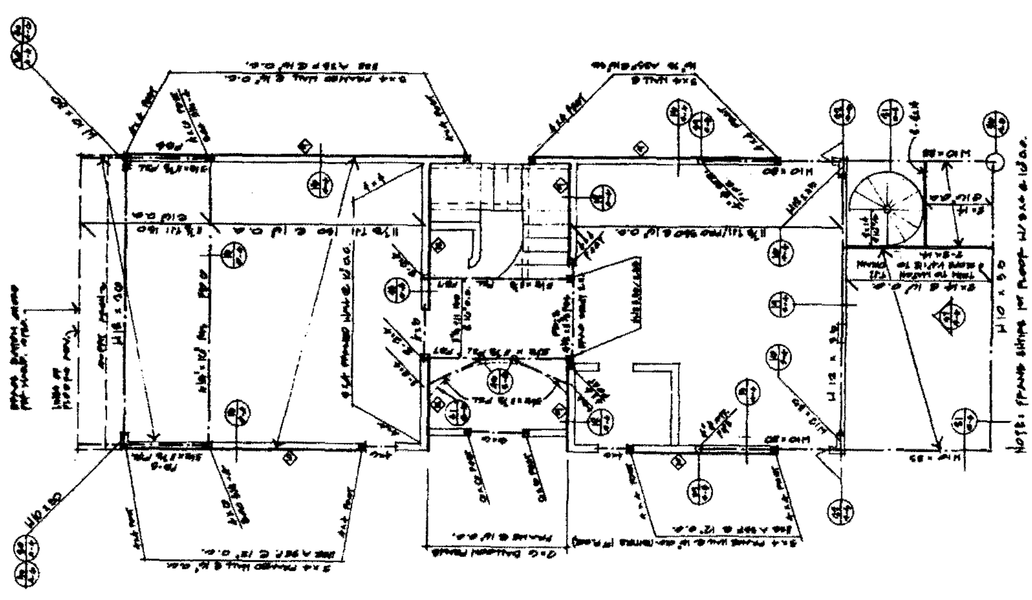
CENCAK RESIDENCE
A-15 SURFSIDE COLONY
SEAL BEACH, CA.

FOUNDATION PLAN,
FIRST FLOOR FRAMING PLAN
SECOND FLOOR FRAMING PLAN

S-2



FOUNDATION PLAN
1/4" = 1'-0"



SECOND FLOOR FRAMING PLAN
1/4" = 1'-0"

COASTAL COMMISSION
5-00-257

EXHIBIT # 3

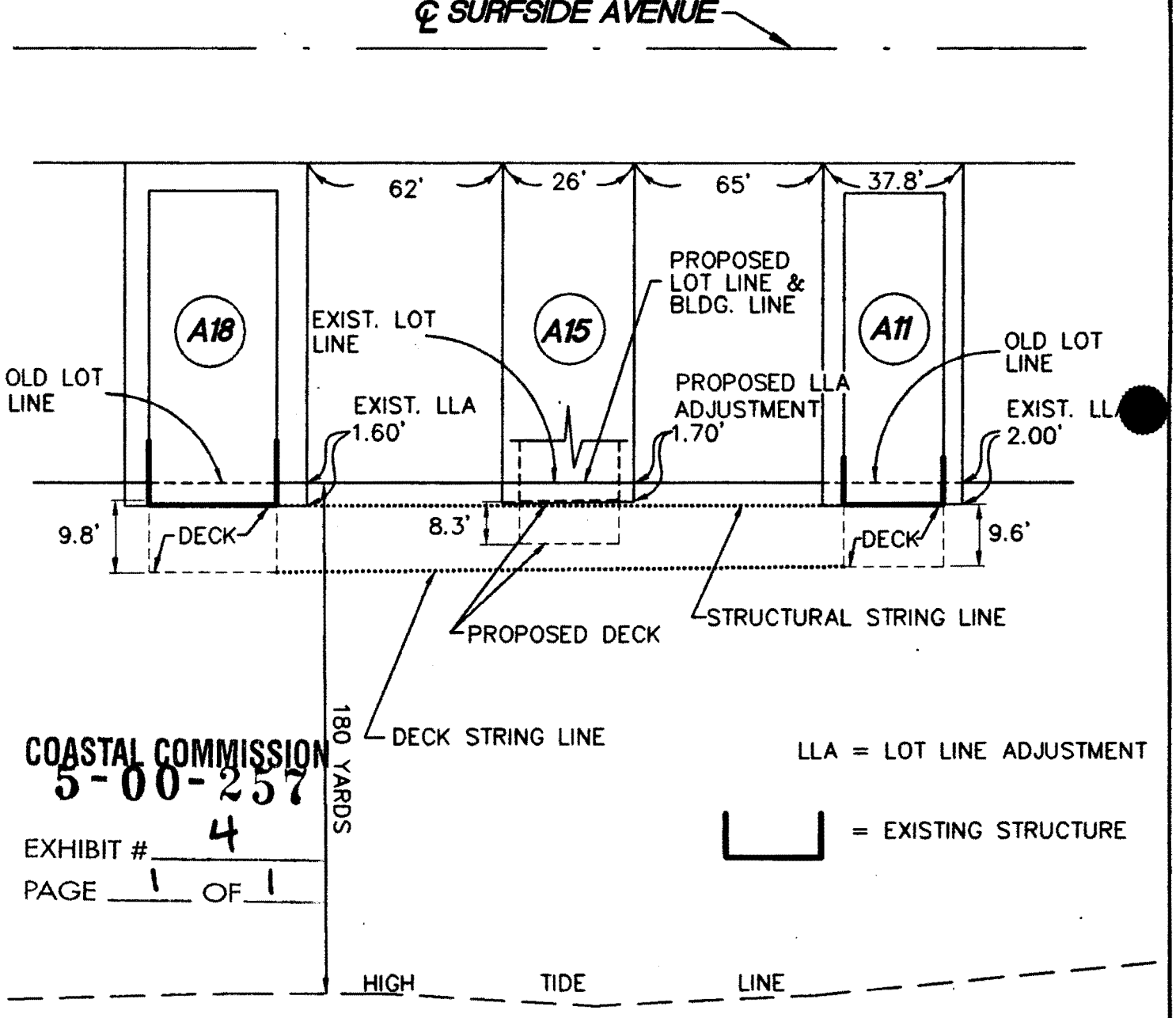
PAGE 5 OF 5

STRING LINE ANALYSIS

FOR:
LOT A15, SURFSIDE COLONY
BY:

JONES, CAHL AND ASSOCIATES
18090 BEACH BLVD. SUITE 12
HUNTINGTON BEACH, CA.
(714) 848-0566

NORTH
NOT TO SCALE



COASTAL COMMISSION
5-00-257
EXHIBIT # 4
PAGE 1 OF 1

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

EXHIBIT No. 5
Application Number:
5-00-257
California Coastal Commission

1 of 3

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 1957, 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)

EXHIBIT No. 5
Application Number:
5-00-257
California Coastal Commission

2 OF 3

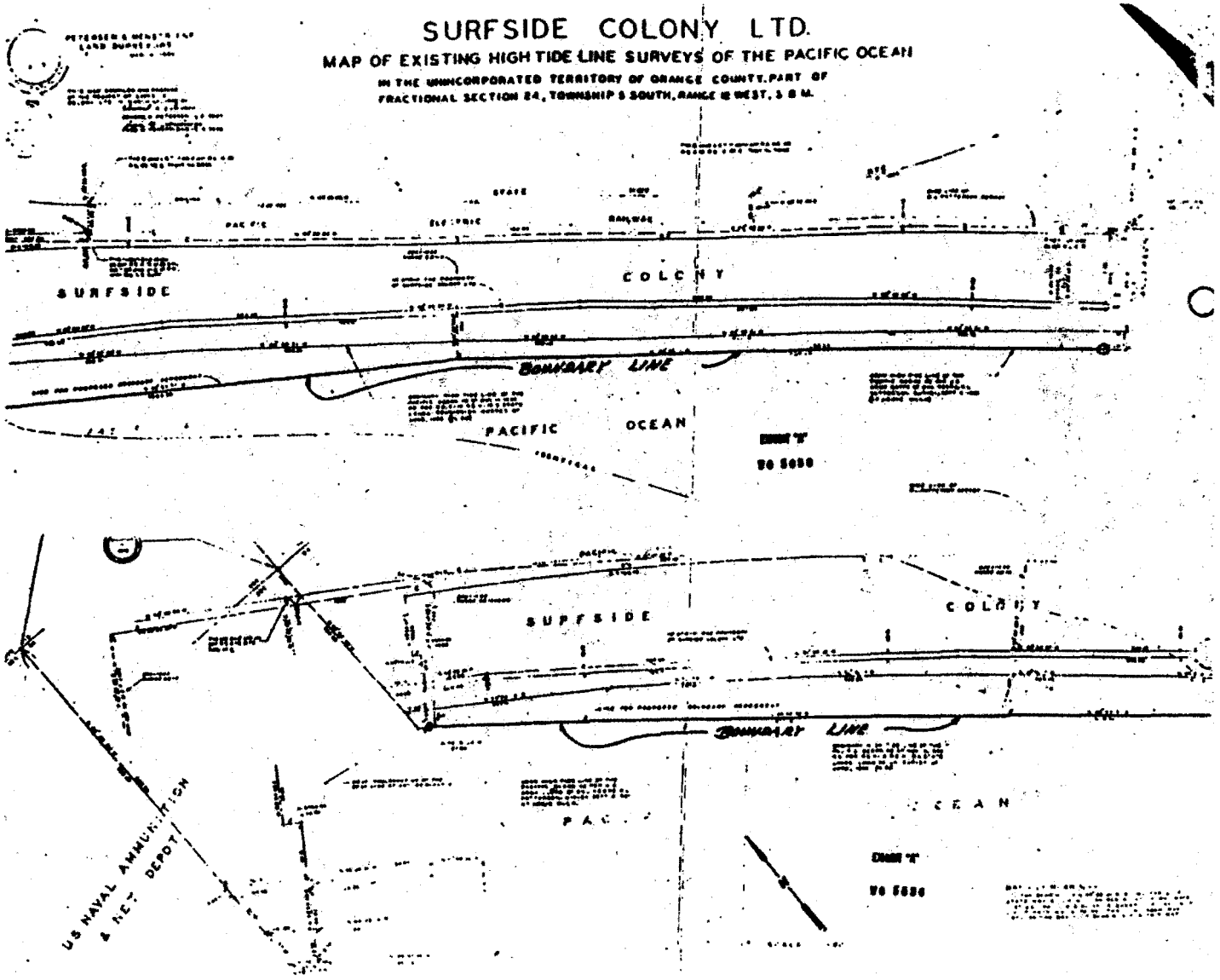


EXHIBIT No. 5
Application Number:
5-00-257
California Coastal Commission

3 of 3

ORANGE COUNTY | Friday SECTION B
WWW.LATIMES.COM/OC † JULY 14, 2000
Los Angeles Times

CHRISTINE COTTER / Los Angeles Times

Boulders help protect homes in Surfside from erosion caused by the pounding surf. Waves crash only 20 yards from the nearest house.

O.C. Awaits State Aid in Battle of the Beach

■ Funds show that Sacramento recognizes the seriousness of the erosion problem, pleased city officials say.

By DAVID REYES
TIMES STAFF WRITER

From their balconies, residents in the Seal Beach Surfside community can look out and enjoy what only seaside residents can boast of: sailboats, seabirds and even occasional migrating whales.

But right below those balconies, another important part of the view is disappearing: the beach.

Thanks to the ocean's ebb and flow, tons of sand have slipped away, leaving million-dollar homes precariously exposed, waves crashing within 20 yards of the nearest home.

"It's quite serious," said homeowner Roger Kuppinger.

Surfside is not alone.

Erosion along the state's 1,100-mile coastline is a gnawing problem; more so in urban residential communities like Surfside.

Orange County's other shrinking sands include Huntington Beach bluffs, Salt Creek Beach Park in Dana Point, Capistrano Beach and San Clemente.

But a $10-million allocation signed by Gov. Gray Davis last week as part of the state's $99.4-billion budget could help threatened beach areas.

Orange County cities hope to receive and use much of the money as vital matching funds for Army Corps of Engineers beach restoration projects. Those projects aim to prevent further erosion from storms, climate changes and man-made structures such as artificial jetties that block the natural flow of coastal sands.

Activists say money as well as sand will trickle away if the problem isn't solved.

"Erosion has to be dealt with, or we're going to lose a vital economic resource in the not too distant future," said Steve Aceti, executive director of the California Coastal Coalition.

The coalition, composed of more than 30 coastal cities, has lobbied Sacramento and the federal government, saying erosion could not only threaten homes and property, but also local economies that de-

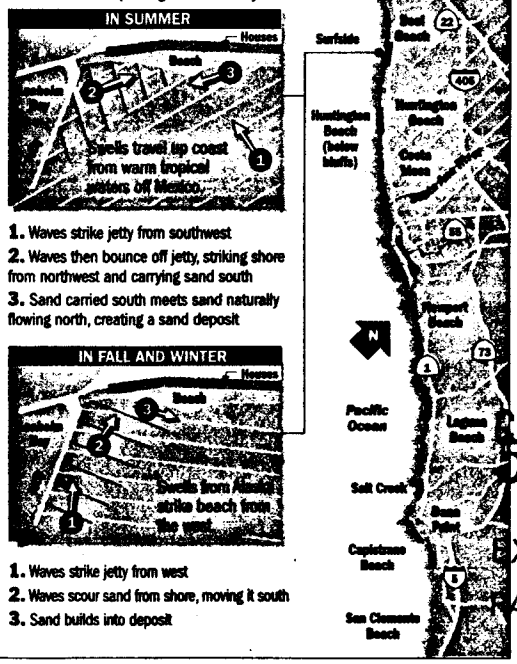
Please see EROSION, B4

Shifting Sand

Orange County may receive part of $10 million in state money budgeted for sand replenishment for beaches with serious erosion problems.

Erosion in Surfside

Surf hits O.C. beaches from two directions—west and south—depending on the time of year.



Los Angeles Times

EROSION: Waves Wash Beaches Away

Continued from B1

pend on beach tourism.

California's beaches generate an estimated $14 billion a year in direct revenue, according to a 1998 survey by the coalition.

For decades, Surfside residents have fought the problem, which was caused by the construction of a jetty by the corps in the 1940s to protect the Seal Beach Naval Weapons Station. The jetty blocks natural sand movement, meaning that lost sand isn't replaced.

To offset the loss, the corps replenishes sand at Surfside every five to six years. The most recent project was in 1996, when the corps dredged 1.6-million cubic yards of sand, the equivalent of covering 900 football fields 1 foot deep.

Surfside is an important "feeder" beach—sand replenished there drifts south to Sunset Beach, Bolsa Chica State Beach, Huntington City Beach, Huntington State Beach and the shores of Newport Beach.

But the massive process costs $6 million to $10 million, with two-thirds paid by the federal government, and the remainder with state, county and local funds.

While the state has secured restoration funds for next year, Congress has not, said Gino Salegui, director of the Surfside Storm Water Tax District. He said it will be "an exciting winter" if the funds aren't allocated.

In San Clemente, wide sandy beaches were the norm until 1983, when El Niño storms started a gradual loss of sand.

"We have less than one-half the beach width since 1983," said San Clemente Marine Safety Capt. Lynn Hughes.

The beach has gotten so thin that pilings and a metal apron underneath lifeguard headquarters that were covered by sand for decades are now exposed.

"The structure is safe," said Hughes, "but the concern is for swimmers' safety if they got swept into [the metal apron]."

Two years ago, beach restroom facilities were temporarily closed after waves gouged an 8-foot drop-off in front of one, and began crashing against the walls of another.

The eroding beach also poses a problem for lifeguards in jeeps, who have to steer a gantlet of incoming surf and boulders put in place to try to retain the disappearing sands.

The city and the corps are conducting a preliminary study to assess the damage, which could lead to a four-year investigation of problems, causes, and solutions.

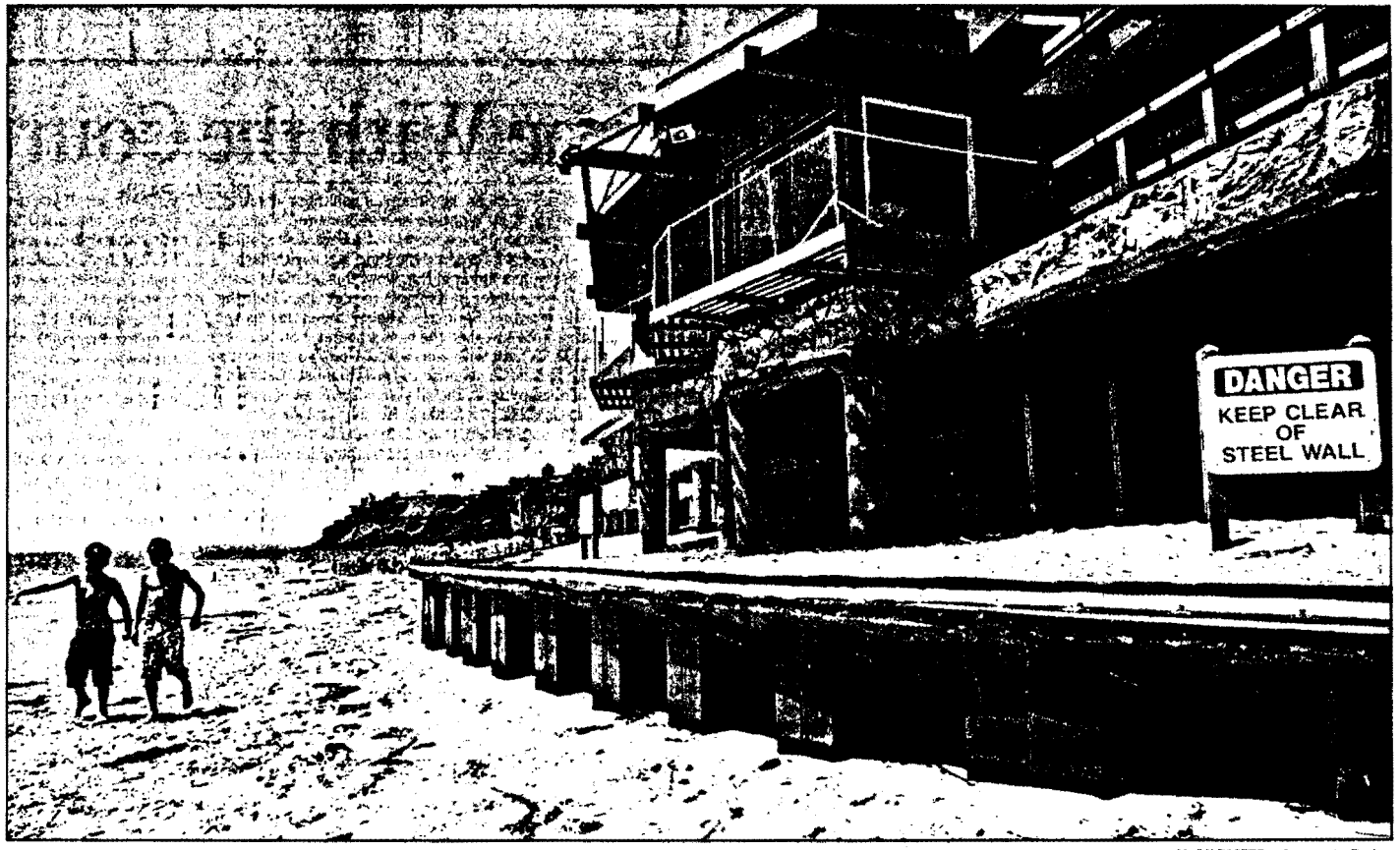
But it could be two to three years after that before the project is put out for bid, Hughes said.

"There's not a quick fix to this issue," he said.

In the meantime, the city is negotiating with a local contractor to truck in 30,000 cubic yards of sand to protect city beaches for the fall, he said.

Though the $10 million in the new budget seems small for a statewide array of projects, Orange County officials are glad that the importance of the state's coastline is being recognized by legislators.

"It signals that this is a California resource," said Steven Badum, Seal Beach city engineer. "You can't just let these beaches erode away."



MARK BOSTER / Los Angeles Times

Sand used to cover the pilings at the San Clemente lifeguard headquarters. "We have less than one-half the beach width since 1983," says Marine Safety Capt. Lynn Hughes.

A-ROW FRONTAGE LEASE

THIS LEASE, made and entered into this 16 day of May, 2000, in the County of Orange, State Of California, by and between SURFSIDE COLONY, LTD. ("Surfside"), a California corporation and John Cereak ("Lessee").

1. PREMISES. Surfside does hereby lease to Lessee and Lessee leases from Surfside that certain real property (the "Premises") adjacent to that real property known as A-15 (the "Adjacent Property"), which Adjacent Property has been improved with an existing single-family residence (the "Residence"). The Premises consists of a strip of land extending ten feet (10') westerly from the westerly lot line of the Adjacent Property between the westerly extensions of the northerly and southerly lot lines of the Adjacent Property.

2. USE. During the term of this lease, Lessee may improve the Premises solely as expressly permitted in this paragraph. Lessee may construct and/or maintain only the following structures on or over the Premises:

A. One unroofed deck extending westerly from the Residence, but in no event past the westerly boundary of the Premises. The term "unroofed deck" includes both unenclosed decks and decks enclosed by windscreens. A deck extending more than five (5) feet westerly from the Residence shall be called the "Principle Deck." Where there is more than one deck, only the deck at the Premises' grade elevation or the first elevated deck may be a Principal Deck.

B. One or two unroofed decks extending westerly from the Residence not more than five (5) feet, but in no event more than five (5) feet into the Premises, which shall be called "Secondary Deck(s)." However, if the Principal Deck is at the second-floor elevation, Surfside may, in its absolute discretion, permit the homeowner to install, on-grade, an unenclosed slab extending westerly from the Residence, but in no event past the westerly boundary of the premises. Any on-grade slab so permitted shall be considered a Secondary Deck and conform to all requirements for Secondary Decks except for its westerly dimension.

C. A "Roof Overhang" extending westerly from the Residence not more than five (5) feet, but in no event more than five (5) feet into the Premises. Occupancy on the top of Roof Overhangs is not permitted.

Principal Decks, Secondary Decks, and Roof Overhangs shall not extend northerly or southerly beyond lines which are the westerly extensions of the north and south sidewalls of the Residence. Principal Decks, Secondary Decks, and Roof Overhangs shall be constructed only with the prior approval of the Board of Directors of Surfside, or by an Architectural Committee appointed by the Board, and in accordance with such regulations as Surfside and the City of Seal Beach may issue from time to time. Below-grade decks and/or retaining walls are not permitted. A copy of the Surfside Unroofed Deck Structural Regulations ("Deck Regulation") existing at the date of this lease is attached hereto as Exhibit A and, by this reference, made a part hereof.

be completed within sixty (60) days after the termination of this Lease.

8. CONDEMNATION. In the event the Premises are condemned, Lessor shall be entitled to and shall receive the total amount of any award(s) made with respect to the Premises, including Lessee's leasehold interest therein, the right of occupancy and use of the Primary Deck and Secondary Deck(s), and any so-called "bonus" or "excess value" of this Lease by reason of the relationship between the rental payable under this Lease and the fair market rent for the Premises. Neither Lessee nor any person claiming through or under Lessee shall receive or retain any portion of such award(s) and shall promptly pay to Surfside any sums received in respect thereof. However, Lessee shall be entitled to any award, or portion of the award, allocable to Lessee's improvements on the Premises, including the Primary Deck, Secondary Deck(s) and Roof Overhang. The word "condemnation" or "condemned" as used in this paragraph or elsewhere in this Lease shall mean the exercise of, or intent to exercise, the power of eminent domain in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority" herein), and shall include a voluntary sale by Surfside to any such condemning authority, either under the threat of condemnation or while condemnation proceedings are pending, and the condemnation shall be deemed to occur upon the actual physical taking of possession pursuant to the exercise of said power of eminent domain. This lease shall be terminated as of that date.

9. CONDITION OF PREMISES. Lessee acknowledges that it has inspected the Premises and accepts the Premises "as is," with all faults, patent and latent, known and unknown, suspected and unsuspected. Lessee acknowledges that no statement or representation as to the past, present or future condition or suitability for building, occupancy or other use thereof has been made for or on behalf of Surfside. Lessee agrees to accept the Premises in the condition in which they may be upon the commencement of the term hereof.

10. INDEMNITY AND HOLD HARMLESS. Lessee agrees to defend, indemnify and hold harmless Surfside and its officers, directors, employees, agents and representatives from and against any and all claims, expenses, liabilities, actions and causes of action arising out of the use or occupancy of the Premises or the construction or maintenance of any structure upon the Premises, whether the claimant on such claim, expense, liability, action or cause of action is the Lessee, a member of Lessee's family, an invitee or licensee of Lessee, or a mere trespasser. Failure of Lessee to perform its obligations under this paragraph shall be a default under this Lease and good cause for immediate termination of the Lease.

11. HOLDING OVER. In the event the Lessee shall hold the Premises after the expiration of the term hereof with the consent of Surfside, express or implied, such holding over shall, in the absence of written notice by either party to the other, be a tenancy from month to month at a monthly rental payable in advance equal to the monthly rental payable during the term hereof and otherwise subject to all of the terms and provisions of this Lease. If Lessee fails to surrender the Premises upon the termination of this Lease despite demand to do so by Surfside, any such holding over shall not constitute a renewal hereof or give Lessee any rights with respect to the Premises, and Lessee

shall indemnify and hold Surfside harmless from loss or liability resulting from such failure to surrender, including, without limitation, any claims made by any succeeding tenant founded on or resulting from such failure to surrender.

12. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Lessee agrees to comply with all applicable laws, rules and regulations with respect to the use of the Premises and the Adjacent Property, including, without limitation, such rules and regulations as Surfside may adopt and issue from time to time.

12. WAIVER. The waiver by Surfside of any breach of the terms, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or conditions, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Surfside shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Surfside's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Surfside, unless such waiver be in writing by Surfside.

14. NOTICE. Any notices or demands which are required to be given hereunder or which either party hereto may desire to give to the other shall be given in writing by mailing the same by registered or certified United States mail, postage prepaid, addressed to the parties at the address shown below or at such other addresses as the parties may from time to time designate by notice as herein provided or may be served personally to the parties at:

"Surfside"	"Lessee"
Surfside Colony, Ltd. P. 0. Box 235 Surfside, CA 90743	_____ _____ _____

15. ENTIRE AGREEMENT. This Lease and the exhibit attached hereto and forming a part hereof set forth the covenants, promises, agreements, conditions and understandings between Surfside and Lessee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Surfside or Lessee unless reduced to writing and signed by them.

16. ARBITRATION AND ATTORNEYS' FEES. Any dispute between Lessor and Lessee arising in any way under this Lease shall be resolved solely by arbitration before the American Arbitration Association under the Commercial Rules thereof then in effect. No court shall have jurisdiction of any such dispute except to compel arbitration upon the application of either party and for purposes of entering judgment in accordance with an award rendered by the Arbitrator(s) and

or the execution and/or enforcement of the judgment entered upon the Award. The Arbitrator(s) shall award reasonable attorney's fees and costs in an amount they deem appropriate to the party who they deem to have prevailed, in their absolute discretion.

17. **ASSIGNMENT.** This Lease shall not be assigned, subleased or transferred by operation of law, or otherwise, without the prior written consent of Surfside.

18. **REMEDIES ON DEFAULT.** In the event Lessee shall default under or otherwise breach any of the terms or conditions of this Lease, Surfside shall have the right to terminate this Lease forthwith and to retake possession of the Premises. Waiver of any default or breach shall not be construed as a waiver of a subsequent or continuing default. Termination of this Lease shall not affect any liability by reason of any act, default or breach or occurrence prior to such termination.

IN WITNESS THEREOF, the parties hereto have executed this Lease the day and year first above written.

SURFSIDE COLONY, LTD.,
a California Corporation

By _____
President

By Richard W. Bandts
Secretary

LESSEE

_____

_____

COASTAL COMMISSION
5-00-257
EXHIBIT # 7
PAGE 4 OF 5

EXHIBIT A

UNROOFED DECK STRUCTURAL REGULATIONS
OF SURFSIDE COLONY, LTD.

---

1. SAFETY RAIL AND WINDSCREEN REGULATIONS.

a. As required under Code, a safety rail forty-two (42) inches in height as measured from the finished floor of the deck around the entire deck, except in those instances where a deck enclosure is to be constructed of glass panels extending from the finished floor of the deck.

The required safety rail shall meet all State, City, Safety and Building Codes.

b. No safety rail shall exceed forty-two (42) inches in height. as measured from the finished floor of the deck.

No windscreen shall exceed eight (8) feet in height as measured from the finished floor of the deck.

c. No portion of any such safety rail or windscreen shall be covered or roofed over in any manner.

d. No glass panels less than three (3) feet in width shall be used in the construction of such windscreen or safety rail.

e. Vertical beams used in the construction of such windscreen or safety rail shall not exceed four (4) by six (6) inches.

f. All portions of such windscreen above the required forty-two (42) inch safety railing height shall consist only of untinted transparent glass and be maintained in a clean condition.

g. All such glass sections shall consist of one-quarter (1/4) inch tempered plate glass or the equivalent thereof.

h. No material which in any way tends to obscure the glassed-in area shall be attached either to such windscreen or to the residence.

i. Windscreens and safety rails shall be maintained so as not to obscure the view of neighbors on either side of the residence.

j. No additional rents shall be charged for such windscreen or safety rail.

Surfside Permits with Assumption-of-Risk Deed Restrictions
As of November 16, 2000

Site	Permit #	Project Description	Exceeds Height*
A-2	5-92-450	New SFD on vacant lot	Yes
A-2	5-00-132	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-59	5-00-206	New SFD on vacant lot	Yes
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. 8
Application Number:
5-00-257
California Coastal Commission

LAW OFFICES OF DIANE ABBITT
600 West Broadway Avenue
Suite 345
Glendale, California 91204
(818) 637-2117
Facsimile (818) 637-2863

December 5, 2000

Sara Wan, Chair, and
Members of the California Coastal Commission
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Application No. 5-00-257 (Cencak)
A-15 Surfside Ave., Seal Beach

Agenda Item: Monday, December 11, 2000/Item M 8q

Dear Chairwoman Wan and Commissioners:

This firm represents John Cencak in connection with the above application.

The application seeks, in essence, to demolish an existing beachfront residence and build a new residence at Surfside Colony, in Seal Beach. Although beach front property, Mr. Cencak's land does not extend to the mean high tide line. Rather, Mr. Cencak's property ends 100 feet inland from the mean high tide, such 100 feet being a portion of the "common area" of Surfside Colony, a private community. Therefore, like virtually all of Mr. Cencak's neighbors, the new residence will include a patio and deck which extends a maximum of 10 feet beyond his property boundary on land which Mr. Cencak leases from Surfside Colony, Ltd. (the Homeowners Association for Surfside Colony), the owner of the common areas. (95 of the 102 beach front lots in Surfside Colony already have like patios and decks)

As the applicant, Mr. Cencak is perfectly willing to accept all of the conditions recommended by Staff. However, unless the Commission deletes the reference to "landowner" from three

conditions – Condition No. 1 (Assumption of Risk), No. 2 (Future Improvements) and No. 4 (No Future Shoreline Protective Device) – Mr. Cencak will be unable to satisfy the conditions of approval or to proceed with his project. This is because the landowner of the 10 feet of land which Mr. Cencak leases and upon which his patio and deck will be built– Surfside Colony, Ltd. – has stated that it will not agree to the conditions.

The purpose of this letter is to make the case that, under the unique circumstances presented, it is both fair and legally sufficient to impose the above-referenced conditions on the applicant alone. The principal reason is that the California Court of Appeal in a published opinion, Surfside Colony, Ltd. v. California Coastal Commission (1991) 226 Cal.App.3d 1260, previously rejected the assumptions relied upon by Staff in the staff recommendation. Because the Staff Report has overlooked this significant (and dispositive) appellate decision, we have attached a copy of the opinion for your convenience. As the Court of Appeal emphasized, the beach at "Surfside is unusual, if not unique." (Id. at 1268.)

The Court of Appeal Decision Regarding the Surfside Revetment

This application for permit cannot be viewed in a vacuum, as is the approach in the Staff Report. It must be considered in light of the Court of Appeal decision which has already considered the unique circumstances presented at Surfside Colony.

In Surfside Colony v. California Coastal Commission, the City of Seal Beach applied to the Commission for a regular permit to construct a substantial rock revetment on the private land owned by Surfside Colony. The revetment had been constructed previously pursuant to an emergency permit. The Commission approved the protective device, but subject to lateral and vertical access easements. The landowner, Surfside Colony, Ltd., sued to challenge the access conditions and prevailed.

The Court of Appeal began its opinion in the case with a lengthy discussion of the facts of this unique location and the unique issues the location presents. In summary, the Court of Appeal (Id. at 1263-1265) noted:

- The location of Surfside Beach as being just north of Sunset Beach and just south of Anaheim Bay.

- The fact that in the mid-40's, the Navy built two jetties on each side of Anaheim Bay which converge on each other like sides of a triangle which do not quite meet. These jetties block the natural southward flow of sand, preventing the replenishment of sand on

Surfside Beach.

- As a result of Surfside Beach's unique erosion problem, every 6 to 8 years the U.S. Army Corps of Engineers replenishes the sand on the beach at Surfside.

- If the U.S. Army Corp of Engineers does not act quickly enough to replenish the sand, the homes at Surfside face a serious erosion problem.

- Surfside Colony, Ltd. (again, the Homeowners Association) owns beach to the boundary line of the ordinary high-water mark as established by an earlier boundary agreement with the State. The distance from the seaward boundary of the homes is striking: "This boundary line extends about 100 feet toward the ocean at the southern end of the community [i.e., where Mr. Cencak's property is located]. At the northern end of the community [i.e., where the revetment is located] the boundary extends only about 65 feet toward the ocean." (Surfside Colony, 226 Cal.App.3d at 1264.)

Significantly, the Court of Appeal then went on to specifically as to Surfside Beach reject the very generalized assumptions and studies about the beach impacts of revetments which, rather incredibly, Staff again has simply resurrected in the Staff Report. These include:

- Revetments steepen shoreline profile, reducing the actual area available for public access;
- They exacerbate sand loss, reducing the area between the mean high water line and the actual water;
- They cumulatively effect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches;
- They accelerate beach scour in the winter if not sited as landward as possible; and
- They occupy beach area.

Because the Court of Appeal opinion succinctly explains why the Commission could not lawfully impose access conditions in connection with the specific revetment at Surfside Colony, we quote it at length:

"In this case, the Commission had before it two basic categories of evidence: the expert

studies and the photographs. Of the expert studies, only one dealt with Surfside Beach – the one submitted by Colony. That report, of course, does not support the Commission's decision. According to that report, the revetment tends to mitigate erosion at Surfside. Of the remaining studies, none of them show this revetment will cause erosion at this beach. They either deal with erosion at other beaches with different wave conditions, or with the effects of revetments and other such structures generally. One of those studies even goes so far as to say one cannot make a "rational" estimate of erosion without knowledge of the wave conditions at a "specific problem site."

"Nor do the photographs show any erosion being caused by the revetment in this case. At best (from the Commission's point of view), the photographs show a change for the better consistent with seasonal fluctuations. At worst, they are strong evidence the revetment reversed erosion."

"The need for `site-specific' evidence appears to be particularly important in this case. Surfside is unusual, if not unique. Most beaches do not have long jetties to their immediate north changing the normal direction of incoming waves.

"Revetments and seawalls may have different effects at different beaches . . . We cannot say, as a matter of law, all revetments will exacerbate erosion. Here, the Commission had no evidence at all establishing this revetment would cause erosion at this beach."

"We must therefore conclude no substantial evidence exists to justify a `nexus' between the revetment and the public access requirement. Under Nollan the access requirement must be deemed a `taking' of Colony's property."

(Id. at 1268-1269.)

Based Upon the Unique Circumstances at Surfside, the Commission Should Limit its Conditions of Approval to the Applicant

Nothing has changed at Surfside Colony since the Court of Appeal rendered its decision. The applicant, Mr. Cencak, has agreed to comply with all of the conditions recommended by Staff. However, given the unique circumstances presented at Surfside, we respectfully submit that the Court of Appeal decision dictates that the conditions may not extend to the landowner, Surfside Colony. We address each of the problem conditions separately below.

A. Condition No. 4 (No Future Shoreline Protective Device)

Despite the Court of Appeal opinion, Condition No. 4 would prevent not only the applicant from constructing a future revetment to protect the development approved, but it would prevent Surfside Colony from doing so. As indicated, the applicant has no problem acceding to the condition, if the Commission wishes to impose it. However, the Surfside Colony opinion squarely forecloses this type condition on Surfside Colony. Put another way, if access conditions cannot be placed on the construction of a substantial revetment in front of Surfside Colony owing to the absence of a "nexus" and because it would constitute an unlawful "taking," then surely the Commission cannot simply foreclose a future revetment in this area by conditioning this small residential project.

As a practical matter, we are not talking about a revetment which is limited to protecting the specific improvements imposed here; the applicant agrees not to construct such a protective device. The real concern seems to be the possibility of a more substantial revetment which, if constructed, would continue as a southern extension of the existing approved revetment. (It is worth emphasizing that this may never come to pass because there has been no demonstrated need for such a revetment to date.)

In that situation, the applicant (either the City or Surfside Colony, Ltd.) would have to apply for a coastal development permit. The effects of any revetment proposed, adverse or beneficial, could then be evaluated. But, currently, as the Court of Appeal held – the current state of the evidence is that there are no adverse impacts from a revetment on this particular beach.

B. Condition No. 2 (Future Improvements)

Condition No. 2 likewise should not extend beyond the applicant. There is nothing remarkable about this permit application. Mr. Cencak simply wants what virtually all of his beachfront neighbors already have, and he deserves equal treatment.

Here, the applicant is willing to agree that any future improvement to the home and deck will require a coastal development permit. But, significantly, only the applicant, not the Surfside Colony, Ltd., is entitled to use those improvements. (See Exhibit 7 to the Staff Report, the "A-Row Frontage Lease"). Thus, it only makes sense to limit the condition to the applicant.

By contrast, this is not a situation involving a commercial development or lease situation involving a lessor who can step in and take possession of the improvement if the lease terminates or the lessee defaults. In that situation, where, e.g., the lessor takes possession of the

improvement, he ought to be bound by the restriction as well. In short, since only the applicant here is entitled to use the future improvement, the rationale for extending the condition to the Surfside Colony, Ltd., is absent. The condition should be modified accordingly.

C. Condition No. 1 (Assumption of Risk)

Finally, it makes no sense to extend the Assumption of Risk condition beyond the applicant, who is willing to satisfy it. While Staff points out that this condition has been routinely imposed as to other residential projects in Surfside Colony, at no time has the language of such a permit condition been extended to Surfside Colony. This condition is generally unnecessary, but it does provide the Commission with an additional safety net. The Commission is already protected from any liability whatsoever by virtue of specific tort claims immunities in the State Tort Claims Act (Govt. Code, § 810 et seq.) Government Code section 818.4 provides:

> "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

(See also Govt. Code §§ 815.2, 820.2 [public entity immunity for the exercise of discretion vested in it].) The Section 818.4 immunity provision has been applied specifically to immunize the Coastal Commission from any monetary liability as a result its permit decisions. (Ibarra v. California Coastal Com. (1986) 182 Cal.App.3d 687, 697 [Commission immune from liability for landslide damage for granting permits to homeowners for septic tank systems]; Leimert v. California Coastal Commission (1983) 149 Cal.App.3d 222, 234 [Commission immune from liability for approval of a permit to a services district containing service limitations].)

Equally important here, beyond the statutory immunity provisions, the applicant has specifically agreed 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, etc."

Consequently, the Commission is fully protected by statute and by condition through the limitation of the condition to the applicant.

Based Upon the Number of Existing Leases, Decks and Patios, Imposition of the Conditions Upon the Landowner(Surfside Colony) Will Not Achieve the Desired Result

The beachfront at Surfside Colony is essentially built-out. Ninety five of the 102 beach front lots in Surfside Colony already have like patios and decks within the 10 foot leased area. Consequently, even assuming this permit were conditioned as recommended by Staff, the extension of conditions to Surfside Colony could not achieve any meaningful or consistent result - another factor that must be considered.

Conclusion

This application presents a unique situation which calls for a minor revision to the permit conditions. The applicant respectfully requests that the Commission approve the application with the conditions recommended, but delete the reference in Condition Nos. 1, 2 and 4 to the "landowner" with respect to the property owned and controlled by Surfside Colony.

We appreciate your consideration of our position, and look forward to discussing the issues further with you at the Commission meeting on Monday.

Very truly yours,

Diane Abbitt

Diane Abbitt
Attorney for John Cencak

DRA/dir

enclosure

cc: Mr. Peter M. Douglas
Ralph Faust, Jr., Esq.
Ms. Deborah Lee
Mr. Karl Schwing
Mr. John Cencak
Mr. David Evans, President of Surfside Colony
Mr. Dean Dennis, Esq. Counsel for Surfside Colony

[No. G007940. Fourth Dist., Div. Three. Jan. 15, 1991.]

SURFSIDE COLONY, LTD., Plaintiff and Appellant, v. CALIFORNIA COASTAL COMMISSION, Defendant and Respondent.

SUMMARY

A city applied to the California Coastal Commission for an emergency permit to build a revetment in front of beachfront homes in a private residential community in order to prevent community homes from being lost to beach erosion. In approving the application, the commission imposed four conditions. The residential community petitioned for a writ of mandate to command the commission to delete the conditions. The trial court determined that three of the four conditions amounted to an unconstitutional taking but it upheld a condition allowing the public to use the community's private beach. (Superior Court of Orange County, No. 412278, William F. Rylaarsdam, Judge.)

The Court of Appeal reversed with directions to modify the judgment in accord with the Court of Appeal's views. The court held that there must be a substantial relationship between the public burden imposed by a proposed construction along a seashore and conditions imposed by the government to permit that construction. Without any site-specific evidence indicating that the revetment would impose a public burden (in the form of erosion), the court held, it could not be said that the commission had "substantial evidence" justifying the need for an easement over the residential community's property. (Opinion by Sills, P. J., with Sonenshine and Moore, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Words, Phrases, and Maxims—Revetment.**—A revetment is a kind of built-up embankment or barricade, often made of rock.

(2) **Administrative Law § 111—Judicial Review and Relief—Administrative Mandamus—Scope and Extent of Review.**—Under Code Civ.

Proc., § 1094.5, subd. (c), there are two ways a court may review the decision of an administrative agency—either the "substantial evidence test" or the "independent judgment test." If the court uses the "substantial evidence test," the chances are greater that the agency decision will be upheld. This is because under the substantial evidence test, the court must resolve reasonable doubts in favor of the administrative decision and uphold the decision if there is "any" substantial evidence to support the findings. Under the independent judgment test, the court is free to weigh the evidence independently and resolve conflicts against the agency.

(3) **Waters § 118—Land Under Navigable and Tidewaters—Ownership.**—In California, the area seaward of the mean high tide line is public property, even though the rest of the beach may be privately owned.

(4a, 4b) **Pollution and Conservation Laws § 10—Coastal Protection—Conditions Imposed for Approval of Construction—Public Access to Beach.**—There must be a substantial relationship between the public burden posed by proposed construction along a seashore and conditions imposed by the government to permit that construction. Thus, in a proceeding for a writ of mandate by a residential community against the California Coastal Commission to command the commission to delete special conditions for approval of the community's application to build a revetment in front of the community's beachfront homes, the trial court erred in upholding the condition that the community allow public access to the community's private beach. The commission had before it two categories of evidence: expert studies and photographs. Of the expert studies only one dealt with the beach on which the revetment was to be built, and that report did not support the commission's decision. It stated that the revetment would tend to mitigate erosion on the beach. The other studies were not "site specific." Neither did the photographs, which were taken after the revetment was built, show any erosion effects. Further, it cannot be said, as a matter of law, that all revetments will exacerbate erosion. Thus, there was no substantial evidence to justify a "nexus" between the revetment and the public access requirement, and the requirement was therefore a "taking" of the community's property.

(5) **Pollution and Conservation Laws § 10—Coastal Protection—Conditions Imposed for Approval of Construction—Connection Between Public Burden and Condition.**—At the very least, the "close connection" that is required between the public burden posed by proposed

construction along a seashore and the conditions imposed by the government to permit that construction entails evidence more "substantial" than general studies that, because of unique or unusual wave conditions, may not even apply to the case at hand. Substantial evidence must be reasonable in nature, credible, and of solid value. Evidence that may not necessarily even apply to the case at hand hardly meets such a definition.

[See **Cal.Jur.3d**, Pollution and Conservation Laws, §§ 200, 211; 4 **Witkin**, Summary of Cal. Law (9th ed. 1987) Real Property, § 91.]

COUNSEL

Hill, Farrer & Burrill, Jack R. White, Arthur B. Cook and Dean E. Dennis for Plaintiff and Appellant.

Ronald A. Zumbrun and Edward J. Connor, Jr., as Amici Curiae on behalf of Plaintiff and Appellant.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, Richard M. Frank, Chief Assistant Attorney General, and Steven H. Kaufmann, Deputy Attorney General, for Defendant and Respondent.

Freilich, Stone, Leitner & Carlisle, Katherine E. Stone and Philip A. Seymour as Amici Curiae on behalf of Defendant and Respondent.

OPINION

SILLS, P. J.— (1) (See fn. 1.) Surfside Colony, Ltd. (Colony) appeals from a judgment of the superior court upholding the decision of the California Coastal Commission (the Commission) requiring Colony to grant public access to its private beach in return for permission to build a revetment.[1] Colony presents two arguments. First, it contends the superior court should have used the "independent judgment test" instead of the "substantial evidence test" in making its decision. (2) (See fn. 3.) Had the superior court done so, it would have had a better chance of convincing the court the public access requirement really was a "taking"[2] of its property

[1] A revetment is a kind of built-up embankment or barricade, often made of rock.

[2] The Constitutions of both California and the United States require the government to pay for any private property it "takes." (Cal. Const., art. I, § 19 ["Private property may be taken

without compensation.[3] Second, Colony contends the Commission should not have prevailed even under the "substantial evidence test." It asserts there was no substantial evidence to support the Commission's decision.

We agree with Colony's second argument. Under *Nollan* v. *California Coastal Comm'n* (1987) 483 U.S. 825 [97 L.Ed.2d 677, 107 S.Ct. 3141], there must be a solid connection between the public burden created by coastal construction and the necessity for a public easement. As explained below, there was no substantial evidence of any such connection in this case. We therefore do not need to decide whether the superior court erred by using the wrong test. The public access requirement cannot be upheld regardless of what test the superior court would have used.

FACTS

Surfside Beach lies just north of Sunset Beach and just south of Anaheim Bay in the City of Seal Beach (hereafter sometimes city).[4] In the mid-1940's, the Navy built two jetties on each side of Anaheim Bay. The jetties converge on each other like sides of a triangle which do not quite meet.

The jetties narrow the entrance to Anaheim Bay. They also block the natural southward flow of sand, preventing the replenishment of Surfside Beach. Additionally, they reflect waves coming in from the ocean. These reflected waves strike the beach sideways rather than head on. As a result,

or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."]; U.S. Const., 5th Amend. ["nor shall private property be taken for public use, without just compensation"].)

[3]There are two ways a court may review the decision of an administrative agency—either the "substantial evidence test" or the "independent judgment test." (See Code Civ. Proc., § 1094.5, subd. (c).) If the court uses the "substantial evidence test," the chances are greater the agency decision will be upheld. This is because under the substantial evidence test, the court must resolve reasonable doubts in favor of the administrative decision and uphold the decision if there is "any" substantial evidence to support the findings. (See *Smith* v. *County of Los Angeles* (1989) 211 Cal.App.3d 188, 198 [259 Cal.Rptr. 231]; see also *Topanga Assn. for a Scenic Community* v. *County of Los Angeles* (1974) 11 Cal.3d 506, 514-515 [113 Cal.Rptr. 836, 522 P.2d 12].) Under the independent judgment test, the court would be free to independently weigh the evidence and resolve conflicts against the agency. (See *Cerberonics, Inc.* v. *Unemployment Ins. Appeals Bd.* (1984) 152 Cal.App.3d 172, 175-176 [199 Cal.Rptr. 292].)

[4]In reality, Orange County beaches do not run either north-south or east-west. They run northwest-southeast. This makes describing local landmarks somewhat awkward, and has prompted at least one commentator to satirically suggest the local board of supervisors legislate a 90-degree compass correction. "Instead of setting the clock back or forward we'll turn the compass 90 degrees to the left to align the county with the cosmic order of things. [¶] That will put the ocean to the west and L.A. to the north where they belong. [Fn. omitted.]" (Bedsworth, *Another Modest Proposal* (1989) 31 Orange Co. Law. 6, 7.) (Actually, the compass need be corrected by only about 45 degrees to the left to achieve the desired result.) For purposes of this opinion, we describe Surfside Beach as if it ran north-south.

the reflected waves abnormally erode the beach just south of the southern jetty.

Behind Surfside Beach lies Colony—a private, gated, residential community of about 250 homes. The homes are nestled in a narrow strip about half a mile long between Surfside Beach and Pacific Coast Highway. On the other side of Pacific Coast Highway lie the waters of Anaheim Bay. Colony owns the beach to the boundary line of the ordinary high-water mark as established by an earlier boundary agreement with the State of California. This boundary line extends about 100 feet toward the ocean at the southern end of the community. At the northern end of the community the boundary extends only about 65 feet toward the ocean. (3) (See fn. 5.) The rest of the beach is public property, owned by the State of California.[5]

Because of Surfside Beach's unique erosion problem, the amount of Surfside Beach available for public use tends to diminish over time, though some sand may come back in the summer time when waves tend to be smaller. Accordingly, every six to eight years the Army Corps of Engineers replenishes the sand on the beach at Surfside. This replenishment also helps replace natural erosion occurring at beaches as far south as Newport. If the Army Corps of Engineers does not act quickly enough, or if erosion between replenishments is excessive, the amount of beach available for public use can shrink to nothing. In the mid-1950's erosion was allowed to eat away the beach to the point where Colony houses were lost.

By the early 1980's, erosion once again threatened Colony homes. Waves had formed a vertical scarp 6 to 12 feet in height along 2,000 feet of beach extending south from the Anaheim jetties toward Sunset Beach. By August 1982, only 30 feet of beach remained between the first house on the north side of Colony to the edge of the scarp.

With winter storms coming, Seal Beach officials feared an impending local disaster with certain loss of property and tax revenue. City officials demanded the federal government immediately replenish the beach with sand. The Army Corps of Engineers, however, told the city it would take no action until the first home was lost.

The city declared a state of local emergency. It applied to the Commission for an emergency permit to place sandbags on the beach. The Commission granted the emergency permit.

[5] In California, the area seaward of the mean high tide line is public property, even though the rest of the beach may be privately owned. (See *Marks* v. *Whitney* (1971) 6 Cal.3d 251, 257-261 [98 Cal.Rptr. 790, 491 P.2d 374].)

The sandbags afforded only a temporary solution to the problem. The city then applied for an emergency permit to install a rock revetment in front of Colony's beachfront homes. Colony also applied to the Commission for a standard permit to construct a rock revetment on its property. The revetment was to be about 16 feet high and 800 feet long. On November 4, 1982, the Commission issued an emergency permit to allow immediate installation of the revetment. The city built the revetment and Colony's homes were saved.[6]

The Commission proceeded to process the application for the standard permit. Its staff recommended approval, but with four conditions:

—Colony dedicate an easement for public access and passive recreational use along its private beach. (The parties refer to this as a "lateral access" requirement.)

—Colony dedicate an easement for the future construction of a boardwalk to extend the length of the revetment on Colony's side.

—Colony dedicate an easement for pedestrian and bicycle access across its property from Pacific Coast Highway to the beach. (The parties refer to this as a "vertical access" requirement.)

—Colony post conspicuous signs to inform the public of its right to cross the community's property to the beach.

The Commission's staff report relied on several scientific studies on the effects of revetments and seawalls *generally* on coastal erosion.[7] These studies show revetments and seawalls typically exacerbate erosion of the beach in front of them. The beach receives less "nourishment" from the sand behind the structure. This lack of nourishment causes more waves to break on shore. The extra energy of the additional onshore waves tends to scour the sand from the base of the structure. The beach in front becomes steeper and narrower.

On the other hand, one of the studies pointed out beach erosion is often the result of local wave conditions. According to this study, one must have

[6]Colony later agreed to reimburse the city for half the cost. The issue of the impact of the public financing of the revetment is not before this court on appeal.

[7]These included Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981); Shore Protection in California (1976), a publication of the state Department of Boating and Waterways; Christiansen, Economic Profiling of Beach fills (1977); Kuhn, Coastal Erosion Along Oceanside Littoral Cell, San Diego County (1981); and Inman, Man's Impact on the California Coastal Zone (undated), prepared for the state Department of Boating and Waterways.

knowledge of the "specific" beach before one can make a "rational" estimate of any erosion problem.[8]

The Commission held public hearings on the revetment application. In support of its application, Colony submitted an expert report asserting the revetment did not exacerbate erosion. In fact, the revetment supposedly mitigated the impact of the reflecting waves on the beach by absorbing wave turbulence. The Commission also considered its staff report and several photographs of the beach after the revetment had already been built. Three of the pictures were taken in January 1983. They showed, according to the testimony of one Commission staff member, a "perched beach"—that is, a beach in an apparently eroded condition. The Commission also saw a picture of the beach in July 1983. The picture showed sand to have come back and covered over the revetment so that it was not then visible. Despite the photographs, and apparently in reliance on the scientific studies, the Commission voted eight to four in favor of the staff report recommendations.[9]

Colony then filed a petition with the superior court for a writ of mandate. Colony asked the court to command the Commission to delete the special conditions it had imposed. The petition charged these conditions amounted to an unconstitutional taking of the Colony's property without payment of compensation.

About five years later, the case came to trial in the superior court. Using the "substantial evidence test" the court determined three of the four special conditions amounted to an unconstitutional taking. These conditions were the installation of the boardwalk, the right of the public to cross Colony from the public highway during daylight hours to get to the beach (vertical access), and the posting of signs advertising that right. The court upheld the condition allowing the public to use the private beach (lateral access).

Colony then filed this appeal, challenging the lateral access condition.

[8]Inman, Man's Impact on the California Coastal Zone (undated), prepared for the State Department of Boating and Waterways, at page 17: "No single cause can be attributed to beach erosion in California since it is often a result of localized wave conditions, the resistance of the bedrock, the presence of man made coastal structures, the lack of a sand supply, or a combination of these factors. [¶] As indicated previously, waves supply most of the energy to the coastline and some fraction of this energy is used to transport sediment in the nearshore environment. Thus, one must have a knowledge of the wave climate at a specific problem site before any rational estimate can be made of littoral sand transport."

[9]The Commission voted to make one change in the staff report. This change dropped the requirement Colony allow access across its property from the street during night hours.

DISCUSSION

In *Nollan* v. *California Coastal Comm'n, supra*, 483 U.S. 825, the United States Supreme Court examined the issue of when the requirement of an easement for public access as a condition for a coastal construction permit would amount to a "taking" of private property without compensation. Essentially, the court held there must be a substantial connection, or "nexus" between the public burden created by the construction and the necessity for the easement.[10] Without such a connection, there is an inference the government is simply trying to expropriate property without paying for it.[11]

In *Nollan*, two homeowners owned a beachfront lot. The building on the lot was a small bungalow which had fallen into disrepair. The owners sought to demolish the bungalow and replace it with a three-bedroom house in keeping with the rest of the neighborhood. The Commission, however, would only permit the owners to replace the structure if they granted an easement allowing the public to cross a portion of their property. The owners challenged the Commission's requirement, and the case eventually came before the United States Supreme Court. In a five-to-four decision written by Justice Scalia, the Supreme Court held the lack of "nexus" between the public burden created by the proposed new construction and the condition required by the Commission (allowing the public to pass over the property) meant the Commission was, in effect, taking the homeowner's property without compensation.

[10]The strength of the connection required by *Nollan* is not spelled out in so many words, but appears to be at least a substantial one. At 483 U.S. at pages 834-835 [97 L.Ed.2d at pages 687-688] the court indicates the need for a "substantial" connection between the public burden imposed by the proposed construction and the condition imposed by the government: "Our cases have not elaborated on the standards for determining what constitutes a 'legitimate state interest' or *what type of connection between the regulation and the state interest satisfies the requirement that the former 'substantially advance' the latter.* [Fn. omitted.]" (Italics added.)

The footnote in the quoted language confirms the need for a "substantial" connection. The footnote is addressed to Justice Brennan's dissent, and distinguishes between the simple rational basis test appropriate for due process or equal protection analysis and the "substantial advancement" test which is more appropriate in the "takings field." The footnote states:

"Contrary to Justice Brennan's claim [page citation omitted], our opinions do not establish that these standards are the same as those applied to due process or equal protection claims. To the contrary, our verbal formulations in the takings field have generally been quite different. We have required that the regulation 'substantially advance' the 'legitimate state interest' sought to be achieved." (483 U.S. at p. 834, fn. 3 [97 L.Ed.2d at p. 688].)

[11]See 483 U.S. at page 837 [97 L.Ed.2d at page 689]: "Similarly here, the lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. The purpose then becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation.

The Supreme Court noted the proposed new construction did not block access to the publicly owned shoreline or nearby beaches. From this fact the high court reasoned there was some other, more sinister, purpose to the requirement the owners allow the public to cross over their property. This purpose was the obtaining of an easement by the government without paying for it. The court thus concluded requiring relinquishment of the owners' right to exclude others from their private beach as a condition of the proposed construction amounted to virtual extortion. (See 483 U.S. at p. 837 [97 L.Ed.2d at p. 689].)

(4a) *Nollan* thus requires a substantial relationship between the public burden posed by proposed construction and conditions imposed by the government to permit that construction. This was also the way the dissent understood the case. Justice Brennan criticized the majority opinion for insisting on a "precise fit" between burden and condition. (483 at p. 847 [97 L.Ed.2d at pp. 695-696].) In this case, the Commission had before it two basic categories of evidence: the expert studies and the photographs. Of the expert studies, only one dealt with Surfside Beach—the one submitted by Colony. That report, of course, does not support the Commission's decision. According to that report, the revetment tends to mitigate erosion at Surfside.[12] Of the remaining studies, none of them show *this* revetment will cause erosion at *this* beach. They either deal with erosion at other beaches with different wave conditions, or with the effects of revetments and other such structures generally. One of those studies even goes so far as to say one cannot make a "rational" estimate of erosion without knowledge of the wave conditions at a "specific problem site."

Nor do the photographs show any erosion being caused by the revetment in this case. At best (from the Commission's point of view), the photographs show a change for the better consistent with seasonal fluctuations. At worst, they are strong evidence the revetment reversed erosion.

The need for "site-specific" evidence appears to be particularly important in this case. Surfside is unusual, if not unique. Most beaches do not have long jetties to their immediate north changing the normal direction of incoming waves.[13]

Revetments and seawalls may have different effects at different beaches. (See *Barrie* v. *California Coastal Com.* (1987) 196 Cal.App.3d 8, 23-24 [241

[12] Even under the substantial evidence test, the court must still examine the "whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

[13] Diagrams attached to the study done by Colony's expert show the effect of the reflected waves on Surfside. The waves appear to have the effect of redistributing sand from the extreme north end of the beach to a "bulge" somewhat farther south, but still at Surfside.

Cal.Rptr. 477] ["The Homeowners have not established that the two beaches are identical as to either their natural or manmade conditions and therefore may justify different treatment."].) We cannot say, as a matter of law, all revetments will exacerbate erosion. Here, the Commission had no evidence at all establishing this revetment would cause erosion at this beach.

We must therefore conclude no substantial evidence exists to justify a "nexus" between the revetment and the public access requirement. Under *Nollan* the access requirement must be deemed a "taking" of Colony's property.

The Commission relies on *Whaler's Village Club* v. *California Coastal Com.* (1985) 173 Cal.App.3d 240 [220 Cal.Rptr. 2]. *Whaler's Village* indeed held nonsite-specific expert studies on the general effects of revetments on beaches could be substantial evidence in support of a Commission easement requirement. (173 Cal.App.3d at pp. 260-261.)[14]

The Commission's reliance on *Whaler's Village* is misplaced. First, the facts are distinguishable. There is nothing in *Whaler's Village* to suggest the beach in that case was unusual, save possibly its susceptibility to erosion along with other beaches in Ventura County. There is no suggestion its wave patterns were different than other beaches. Moreover, in *Whaler's Village* the administrative record apparently did not contain affirmative evidence about the necessity to have knowledge of a specific beach in order to make a "rational" estimate of any erosion problem.

[14]The operative language from *Whaler's Village* is found in two passages on pages 260 and 261 of the opinion:

"There is substantial evidence in the administrative record to support the staff's conclusion that seawalls and revetments tend to cause sand loss from beach areas in front of and adjacent to them even if they protect immediate structures. Studies cited in staff reports concerning other permit applications before the Commission confirm the staff's finding that 'by artificially building up the slope of the shore area, seawalls and revetments of this type tend to cause a landward retreat of the mean high tide line, potentially affecting the boundary between public and private lands along the beaches adjacent to the project as well as on the project site itself.' " (173 Cal.App.3d at p. 260.)

"The Commission had sufficient information before it to conclude that, due to construction of this revetment and others up and down the coast, the erosive nature of the beaches in Ventura County coupled with the tendency of seawalls and revetments to increase the sand loss on beaches with a tendency to recede constitutes a cumulative adverse impact and places a burden on public access to and along state tide and submerged lands for which corresponding compensation by means of public access is reasonable. [Citations omitted.] Staff reports concerning various applications before the Commission referred to surveys of the Army Corps of Engineers and other experts concerning shoreline erosion along the California coast and, in particular, beach erosion in Ventura County. Opinion evidence of experts in environmental planning or ecological sciences is a permissible basis for decision. [Citation omitted.]" (173 Cal.App.3d at p. 261.)

Second, *Whaler's Village* employed a mere "rational basis" test in deciding nonsite-specific evidence would be sufficient to pass constitutional muster in a "taking" case. Given such a test, *Whaler's Village* assumed no need for a "direct nexus" between the burden and the condition. It was enough the project incurred "incidental" effects on the public's right to shoreline access.[15]

Nollan, however, changed the standard of constitutional review in takings cases. Whether the new standard be described as "substantial relationship,[16] or "heightened scrutiny,"[17] it is clear the rational basis test employed by *Whaler's Village* no longer controls.[18] While general studies may be sufficient to establish a mere rational relationship between revetments and erosion, *Nollan* requires a "close connection" between the burden and the condition.[19] (5) At the very least, a "close connection" entails evidence more "substantial" than general studies which, because of unique or unusual wave conditions, may not even apply to the case at hand. Substantial evidence must be reasonable in nature, credible, and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 576 [162 Cal.Rptr. 431, 606 P.2d 738, 16 A.L.R.4th 1255].) Evidence which may not necessarily even apply to the case at hand hardly meets such a definition.

[15]See generally 173 Cal.App.3d at pages 260-261, and in particular the following: "Thus, the validity of the condition is not destroyed because the development has no *direct* nexus to the condition, the benefit to the public is greater than to the developer, or future needs are taken into consideration. [Citation and fn. omitted.] It is enough that the project 'contributes, at least in an incidental manner' to the need for a particular extraction. [Citation omitted.]"

[16]See Peterson, *Land Use Regulatory "Takings" Revisited: The New Supreme Court Approaches* (1988) 39 Hastings L.J. 335, 338: "Justice Scalia, writing for the majority of five, concluded that to pass muster under the just compensation clause, an enactment must bear a substantial relationship to a valid public purpose, not merely a rational relationship, the common standard in due process and equal protection challenges." (Fn. omitted.)

[17]See *The Supreme Court, 1986 Term* (1987) 101 Harv. L.Rev. 7, 248-249: "Yet the Court expressly refused to adopt the standard of minimum rationality advocated by Justice Brennan and insisted instead that there must be a 'substantial advancing' of the government purpose. The Court thus articulated a standard of heightened scrutiny for regulations challenged under the takings clause." (Fn. omitted.)

[18]See Michelman, *Takings 1987* (1988) 88 Colum. L.Rev. 1600, 1606: "It was this lateral-passage condition that the Court found to constitute a taking. [¶] The Court so found by a course of reasoning that turned . . . on subjecting the instrumental merit of the Commission's action to a distinctly more active and intensive judicial reexamination than the kind of desultory, 'rational basis' review that the Court has for the last half-century been applying to police-power regulations affecting economic interests, most notably including land-use regulations." (Fn. omitted.)

See also 101 Harv.L.Rev., *supra*, at p. 247: "The *Nollan* decision . . . indicates that all regulations will now be subjected to a level of scrutiny far higher than the Court previously has used in assessing claims of regulatory takings."

[19]See Peterson, 39 Hastings L.J., *supra*, at p. 358: "To pass muster, a governmental act will require careful documentation of legitimate purposes and a close connection between the purpose and the act itself."

Third, *Whaler's Village* is not persuasive on the merits as to the use of nonsite-specific studies. The question raised by the homeowners in *Whaler's Village* was whether there was substantial evidence their "particular" revetment created a public burden because seawalls "in general" tend to increase erosion.[20] The opinion, however, never directly answered this question. Rather, the opinion referred to "surveys of the Army Corps of Engineers and other experts concerning shoreline erosion along the California coast and, in particular, beach erosion in Ventura County," pointed out "opinion evidence" is a "permissible basis for decision," noted the "competency" of the record had been stipulated to, and then concluded, as an afterthought while discussing another subject,[21] the easement condition was "supported by the evidence in the record." (*Whaler's Village, supra,* 173 Cal.App.3d at p. 261.)

(4b) *Whaler's Village* thus assumed it was enough to cite "opinion evidence" about beach erosion to refute the homeowners' contention. But this was not enough. It was still necessary to show the particular revetment before the court created at least some burden on public access. This the opinion did not do. Rather, the opinion *assumed* such a burden (albeit a "small" one) without ever proving it. To have proven the existence of the burden, the opinion would have had to demonstrate one of two things: either the "opinion evidence" established there would be exacerbated erosion *in every possible case* where a revetment were built or (2) the opinion evidence showed the particular revetment at issue would cause exacerbated erosion.[22] The opinion, however, did neither. It is therefore not persuasive on the subject of the substantiality of nonsite-specific evidence.

Accordingly, *Whaler's Village* does not compel a contrary result in this case.

---

[20] See *Whaler's Village, supra,* 173 Cal.App.3d at page 259: "In point, respondent argues that the Commission found a public 'burden' because seawalls *in general* tend to cause additional sand scour on any historically eroding beach but did not find that this particular revetment caused such damage."

[21] The other subject was whether there was a reasonable relationship between the goals of the coastal act and the easement condition. See *Whaler's Village, supra,* 173 Cal.App.3d at page 261: "Therefore, the condition of offering to dedicate an easement for public access was reasonably related to one of the principal objectives of the coastal act, which is to provide for maximum access to the coast by all the people in this state [citation omitted] and was supported by the evidence in the record."

[22] There is a difference between opinion evidence about the effects of revetments generally and the effect of a particular revetment. The case at bar is a good example. Both sides offered "opinion evidence." Only one side, however, offered opinion evidence bearing on the particular revetment at issue.

CONCLUSION

Without any site-specific evidence supporting the Commission's decision, we cannot say the Commission had "substantial evidence" justifying the need for an easement over Colony's property. We therefore reverse with directions to the trial court to modify the judgment in accord with the views expressed herein.[23]

Sonenshine, J., and Moore, J., concurred.

[23] In a petition for rehearing or modification of opinion, the Commission asks us to remand the matter back to the Commission for further proceedings. The Commission has apparently forgotten it stipulated before the trial court the matter *not* be returned for a second review.

STATE OF CALIFORNIA

COASTAL COMMISSION

CERTIFIED COPY

JOHN CENCAK CITY OF SEAL BEACH COUNTY OF ORANGE	Application No. 5-00-257

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday
December 11, 2000
Agenda Item No. 8.q.

Hyatt Regency Hotel
5 Embarcadero Center
San Francisco, California

596-2 WHISPERING WAY
OAKHURST, CA 93644

PRISCILLA PIKE
Court Reporting Services
mtnpris@sierratel.com

TELEPHONE
(559) 683-8230

A P P E A R A N C E S

COMMISSIONERS

Sara Wan, Chair
Dave Potter, Vice Chair
David Allgood, Alternate
Christina Desser
Shirley Dettloff
Kitch Eitchen, Alternate
Gregg Hart
Patrick Kruer
Cynthia McClain-Hill
Patricia McCoy
Pedro Nava
Mike Reilly

Michelle Poche, Trade & Commerce Agency
Michael Sweeney, Resources Agency

STAFF

Peter Douglas, Executive Director
Ralph Faust, Chief Counsel
Jamee Jordan Patterson, Deputy Attorney General
Deborah Lee, Deputy Director

-o0o-

I N D E X T O S P E A K E R S

-o0o-

California Coastal Commission
December 11, 2000
John Cencak -- Application No. 5-00-257

* * * * *

DEPUTY DIRECTOR LEE: That brings us to Item 8.q. This is Application No. 5-00-257. This is a request for a demolition of existing --

CHAIR WAN: I had a request for a five-minute break, okay.

[**Recess**]

CHAIR WAN: We are on Item "q".

DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

Item 8.q. is Application No. 5-00-257. This is a request for the demolition of an existing single family residence, and construction of a new replacement residence on the site, with decks and patio improvements proposed offsite on an adjoining parcel of land leased by Surfside Colony to the applicant.

In addition, the applicant is proposing a resub-division of the lot to move the beach front lot line 1.7-feet seaward, and the street front lot line, .40-feet seaward, to accommodate emergency access, and lot realignments that have been, historically, completed in the area.

Subject site is in the south end of Surfside Colony, located in Seal Beach, and within the segment that is

not protected by any wall. The subject site is artificially managed, and dependent to some extent on beach replenishment performed up coast.

As I mentioned earlier, the subject site lies in the stretch of Surfside Colony that is unprotected by any wall. The northern segment of the colony is protected, and is artificially nourished by dredge material from the jetty mouth. This work is performed by the Army Corps of Engineers, and these renourishment materials then migrate south, and likely sustain the wider sandy beach fronting this southern segment of the colony.

While this work has been performed for a number of years, there is no guarantee that it would continue. Given the heightened concerns about sea level rise, and the uncertainties involved in shoreline development, this Commission has adopted a more conservative standard in reviewing new construction along any beach front.

Proposed home is consistent with the string line of development, and the character of development in the adjoining colony.

Leslie Ewing, our staff engineer, has reviewed the subject home and found that the home should be safe; however, as staff has acknowledged shoreline development is always subject to certain risks.

Staff is recommending approval with conditions.

Those include execution of an assumption of risk, deed restriction, a future development deed restriction, condition that would require conformance of the design and the construction plans with the geotechnical investigation, a waiver of future shoreline protection for the home and patio improvements.

In the case of the applicant, Mr. Cencak, is in agreement and willing to execute all of those for his portion of the property; however, for the deck and patio improvements that are proposed on the adjoining strip of land, held by Surfside Colony, which is, essentially, a homeowners association, we received information from Surfside Colony's representatives that they would not concur and execute what we identified as a lease restriction for the same conditions: the waiver, the assumption of risk, and the future development deed restriction.

As you will hear from the applicant's representative, these were new conditions, which required the execution of a lease restriction by Surfside Colony that the Commission began to impose within the last couple of years, when directed by our staff counsel that there was a concern if you didn't have that execution, and there was this lease arrangement, the Commission was not getting all of the necessary protections.

We did discuss with the applicant's representa-

tive, the possibility that the patio and deck improvements could be eliminated from the subject application, as a way to try to resolve this issue; however, they have indicated that that is not something that they wish to provide at this time.

That would conclude staff's comments at this time.

CHAIR WAN: With that, I will call for ex-parte communications.

[No Response]

Seeing none, I will open the public hearing, and I have one speaker slip, I think, Diane Abbitt. How long will you need?

MS. ABBITT: Perhaps up to the full 15 minutes.

CHAIR WAN: All right, 15 minutes.

MS. ABBITT: All right, thank you, staff. Good afternoon, Madam Chairperson, Commissioners.

In fact, staff is absolutely correct. The applicant accepts all of the conditions as put forth in the staff report. The only problem that the applicant has is that he cannot force the homeowners association to accept Conditions 1, 2, and 4, and to execute the requested lease restrictions.

[Slide Presentation]

I have brought a couple of slides to show you this area, because I think it is important that you understand this project is actually one of three projects that are all

facing the same problem. The site, itself, is along the beach.

Surfside Colony is a private community developed in the 1920s. The original bungalow on this site -- and you can see it, it is in the middle -- was actually built in the 1920s and is one of the few of the original bungalows remaining.

When you look down the beach, north, you can see that almost every single property along Surfside Colony there, has in fact been improved and does have these patios and decks. All of the patios and decks are maintained on 10-foot parcels that are leased back to the owner by the homeowners association, Surfside Colony.

This is a view of the beach, looking in front of Mr. Cencak's property, out towards the ocean.

And, here you see Mr. Cencak's property in the middle, and the two decks that are on either side, in the 10-foot area. That is leased from Surfside Colony, and that in fact, his deck will meet the size of the decks, and the deck string lines per the other two properties.

Because this is a fill in, and there are 102 lots, 95 of those lots already have the decks in place, and of the 95 that have the decks in place, 23 of them were approved by this Commission since its inception. Of the 23, 21 of them did not require a lease deed restriction by the homeowners

association.

So, as we look at Mr. Cencak's and the other two landowners' unique situation, we have to ask the following questions: is what the Commission is asking fair? is it equitable? is it allowable? and is it necessary to meets the goals of this Commission?

Taking a look at the first one of them, which is the assumption of the risk condition, my understanding is that the reason to have this condition is that because there always is a possibility, regardless of the length of the beach, that we are going to see improvements destroyed by wave action.

The applicant agrees to this condition, and when you look at the wording in the condition, the applicant agrees to indemnify and hold this Commission harmless in the event that the improvements which are being improved, should be destroyed. Given that that is the case, even in fact, were Surfside Colony to determine that it wanted to take some action because of the destruction of the deck and the patios, the applicant would go ahead and indemnify the condition from that action. So, in that respect this condition is not necessary.

A second reason that the condition is not necessary, is because under the State's *Tortes Claim Act*, in fact, you are entirely and completely protected. Time and

time again, there have been cases where applicants who have had approvals have challenged this Commission's actions, stating that, in fact, part of the responsibility lies with the Commission, and time and time again, the courts have held that under the State's *Tortes Claim Act* the Commission is not liable.

For those reasons, we do not believe that the Surfside Colony Homeowners Association, signing the lease deed restriction in this regard, is necessary.

The second thing that we are talking about here is is no future development. That is your second condition. What is the purpose of this condition? Traditionally, we have seen this condition applied when, in fact, we have an improvement, commercial improvement, or a leasehold improvement which is going to revert to the landowner, and the landowner is going to be making use of that improvement.

In this particular circumstance, we know that the Surfside Colony Homeowners Association will never be using these decks, and these patios, for their own use. They are part and parcel of the improvement, the home, and only the homeowner who owns the land will make use of them. Is it necessary, therefore, to have a future development condition? I would maintain that it is not, that in fact, again, you are never going to see the purpose of this particular condition met, because there will never be a use made of the decks and

the patios by the homeowners association.

The last condition, which I really think is what this is all about, is the question of no future shoreline protection. It is absolutely essential that you understand the history of this parcel.

In the 1940s the U.S. Army Corps of Engineer actually built two jetties on the north portion of this property, and they did so to protect the Seal Beach Naval Weapons Station. These two jetties come out in a triangular mode, not quite touching, but they come up so far that they really, seriously, impact the flow of sand, and that is why the U.S. Corps of Army Engineer has continuously had a sand replenishment program, where every six or seven years they go ahead and replenish the sand, since it is not able to move down properly.

In 1981, there were incredibly bad storms, and as a result of that, Surfside Colony's Beach, which is Sunset Beach, suffered horrible erosion problems. The City of Seal Beach, and Surfside Colony, came in and jointly applied to this Commission for an emergency permit, which was granted. After, we came back, and basically went ahead and sought to get a full permit for that revetment.

At the hearing, the Commission wanted to impose a public access condition, claiming that, in fact, a revetment has very negative effects upon the beach for people. The

Commission went ahead and approved the revetment with the condition. Surfside Colony appealed that case many, many times, until finally, in the California Court of Appeals, the decision was made that as to this unique beach, there was insubstantial evidence proven that the general rules about erosion would control.

Significantly, the Court of Appeal went on to name the very same five factors in their discussion that are put forth in this particular staff report. I am going to quickly read them.

The first one, revetments deepen shoreline profile, reducing the actual area available for public access. Two, revetments exacerbate sand loss, reducing the area between the mean high water line, and the actual water. Three, revetments cumulatively effect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. Four, revetments accelerate beach scour in the winter if not sited as landward as possible. And, five, revetments occupy beach area.

After looking at all of that, the court went on to specifically say -- and I do quote it at length:

"In this case, the Commission had before it before it two basic categories of evidence, the expert studies, and the photographs. Of the expert studies, only one dealt with

Surfside Beach, the one submitted by the Colony. That report, of course, does not support the Commission's decision. According to that report, the revetment tends to mitigate erosion at Surfside Beach. Of the remaining studies, none of them show this revetment will cause erosion at this beach. They either deal with erosion at other beaches, with different wave conditions, or with the effects of revetments and other such structures generally. The need for site specific evidence appears to be particularly important in this case. Surfside is unusual, if not unique. Most beaches do not have long jetties to their immediate north, changing the normal direction of incoming waves. Revetments, and seawalls, may have different effects on different beaches. We cannot say, as a matter of law, all revetments will exacerbate erosion. Here, the Commission had no evidence at all establishing that this revetment would cause erosion at this beach."

Given those facts, Surfside absolutely will not, Surfside Colony will not sign this deed restriction. Their position is that if they were to go to court today, given

that there is no additional evidence, that they would, in fact, prevail under a theory of res judicata -- you have the same parties, the same issues, and the same arguments. There is nothing here which indicates anything has changed.

If, in fact, it were determined that Surfside wanted to extend their revetment in front of this property, they would have to come before this Commission anyway, and if there was new evidence, you would be able to make that decision based upon that evidence.

Now, what does this have to do with Mr. Cencak? Well, Mr. Cencak is kind of in a Catch-22, as are the two other applicants, whose permits you approved in this last year, who cannot get Surfside to sign off on this condition. Without it, they cannot go forward. In order to have what everybody else has, they need to have the term "and landowner" removed from their permit.

As a matter of fact, in July, when that application was before you, when you look at the staff report for project 5-00-132, the condition of landowner was not in the original staff report, but was added by staff to that landowner after the fact.

I, therefore, am asking you to be fair, and give Mr. Cencak what every other one of those 93 landowners have, be equitable, understand that Surfside Colony's position is that it would not be allowed if they were to appeal that

decision to a court of law, and that in passing this the way that it is, even if Surfside Colony agreed to those conditions, Mr. Cencak's property is 26 feet in width, 26 feet in width. How does this, how does this condition -- when it comes to having Surfside Colony sign it -- in any way advance the goals of this Commission?

Thank you.

VICE CHAIR POTTER: Thank you, Ms. Abbitt.

Return to staff, staff, comments?

CHIEF COUNSEL FAUST: Mr. Chairman, if I might talk about the particular conditions. I don't know whether Ms. Lee may have some other comments as well, but I want to deal with each of them, separately.

First, with respect to the assumption of risk condition, Condition No. 1, and in all of these instances, Ms. Patterson and I have talked about this. Our view is that because the applicant, who is willing to accept the condition, and do the necessary recordation, is in fact assuming the risk, that they are assuming the risk with respect to the property owners association, the property owners, as well.

And, so the Commission is protected by this condition without reference to the property owner, and you need not require the separate acceptance of the condition, and recordation by the property owner for the assumption of

risk condition.

With respect to the future development condition, we do not think, either, that you need to require the imposition of the condition on the property owner, for the following reasons: the purpose of this condition is to insure that certain kinds of development that are pertinent to the development you are approving today, which would otherwise not require a permit, in fact, come before the Commission for a permit, this future development.

This condition merely insures that that kind of future development receives the consideration of a permit, and this Commission can then evaluate what the development is, and what kinds of conditions to impose.

But, because all of the property is on the land of property owner's -- that on the land of the property owner, the association is a pertinent to this particular development, you are covered, as well. The property owner cannot do any independent development pursuant to the statutory exceptions, 30610, and because of that, the developers, the property -- Mr. Cencak, I'll do it that way. Mr. Cencak's agreement to this condition covers, in full, the interest that the Commission is concerned with, with respect to future development. Only Mr. Cencak can ask for that kind of future development, and since Mr. Cencak is agreeing to that condition, and agreeing to the recordation, the Commission is

covered, as well.

The last issue concerns Condition No. 4, proposed Condition No. 4, having to do with no future shoreline protection device. As with the others, Mr. Cencak is in agreement with this condition, is willing to agree to the condition, willing to record the necessary agreement.

The only question that would remain, with respect to the property owner, the association, is whether or not the association could independently seek a shoreline protective device, based upon the small elements of developments that are currently on the property owner's association property. Those are, if I understand it correctly, are a patio and, I think, two decks. All of these minor elements of development are a part of this development.

In discussing this with Ms. Patterson, we would suggest -- what we hope is going to be a suitable compromise but, we would suggest the Commission's consideration on this -- and that is that the Commission not require the property owner, the association, to agree to this condition, and to do the necessary recordation, so that the recordation problems that the Surfside Association has can be avoided.

However, just in case that there is any question about the patio, or the decks, which are attached to this property, becoming a predicate for a shoreline protective device, that would be proposed by the homeowners association,

we would suggest an amendment to this condition that would require that if the homeowners association were ever to seek a permit for a shoreline protective device, based upon this particular development, based upon the patio or the decks, that this property owner, Mr. Cencak, or any future successors or assigns, would agree to remove that development.

We are only talking now about that particular development that is on the homeowners association property: the two decks, and the patio. All other development, of course, is covered separately.

So, that would be our suggestion for the Commission's consideration, and you may want to ask Ms. Abbitt whether she is in agreement with that, and we can discuss it further, if necessary.

VICE CHAIR POTTER: Thank you, Ralph.

Ms. Abbitt, your thoughts.

MS. ABBITT: Okay, let me understand what the suggestion is, that the condition would be revised to state that if, in the event, at a future point in time, the homeowners association were to come in for a permit to build a revetment, solely for the purpose of protecting the decks and the patio, that Mr. Cencak, or a future landowner, would agree to remove the deck and patio, is that correct?

CHIEF COUNSEL FAUST: That is correct

MS. ABBITT: That's fine. We will accept that.

VICE CHAIR POTTER: Good.

Commissioner, it appears to me that we have an applicant that is now in agreement with the modified staff report.

Commissioners?

[**MOTION**]

COMMISSIONER ALLGOOD: Move per staff, with the amendment.

VICE CHAIR POTTER: Moved by Allgood, seconded by McClain-Hill.

Any objections to a unanimous roll call?

[No Response]

Very good, the item is approved.

And, thank you, counsel, for your creativity.

*

*

[Whereupon the hearing concluded.]