CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA 7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4421 767-2370



Wed 3b

Filed:	9/26/02
49th Day:	11/14/02
180th Day:	3/25/03
Staff:	LRO-SD
Staff Report:	11/18/02
Hearing Date:	12/10-13/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-140

Applicant:William W. Boggess; Charles W. Engelhardt;Agent: John MartinGabriel & Karen Fazzini; & L.C. & Sara Siebrand

Description: Construction of four separate 3-ft. high privacy walls extending into the 3' landscaped buffer area within public right-of-way, adjacent to and east of the widened Ocean Front Walk on four separate properties containing residential and multi-family development between Queenstown Court and Yarmouth Court.

Site: 3795 Ocean Front Walk; 3755 Ocean Front Walk; 704 Redondo Court, and 704 Yarmouth Court, Mission Beach, San Diego San Diego County. APNs 423-578-15; 423-582-16; 423-581-18; and 423-315-29

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDPs #6-99-90, 6-99-145, 6-00-123, 6-00-01; 6-01-29; and 6-02-37. Waiver from Coastal Development Permit #s 6-02-1-W, 6-02-10-W, 6-02-12-W, 6-02-25-W, 6-02-33-W and 6-02-34-W; Final EIR SCH No. 97011080 – 5/11/98; Encroachment Maintenance and Removal Agreement Nos. 02-037-2 recorded on 10/4/02; 02-039 recorded 8/230/02; 02-042 recorded 8/9/02 and 02-043-2 recorded 9/16/02.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

<u>MOTION</u>: I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.



STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. <u>Boardwalk Encroachment/Storage and Staging Areas</u>. As proposed, the wall approved by Coastal Development Permit No. 6-02-125 shall be located no further west than the 3-foot wide landscaped buffer area, and shall not encroach into the planned widened public boardwalk (Ocean Front Walk). No construction staging or storage shall occur on the existing boardwalk, and construction activities shall not impede or block access on the existing boardwalk in any way.

2. <u>Future Removal of Permitted Encroachment</u>. If the existing structure along the boardwalk is substantially altered such that 50% or more of the existing walls are demolished or removed, the development authorized by this permit shall be removed in its entirety.

IV. Findings and Declarations.

The Commission finds and declares as follows:

A. Detailed Project Description/History. Proposed is the construction of a 3-ft. high, concrete and/or masonry privacy walls extending into the 3' wide landscaped buffer area of the public right-of-way inland of the Ocean Front public boardwalk and parallel to the entire length of the western property line of four separate properties as follows: 3795 Ocean Front Walk; 3755 Ocean Front Walk; 704 Redondo Court; and, 704 Yarmouth Court. The existing development on each of the projet sites is, respectively: an 18-unit condominium building, a single family residence; a two-unit condominium building and a duplex. The proposed concrete masonry walls are proposed to be constructed within the public right-of-way 3'0" west of the western property line. The proposal also includes installation of gates, stairs and/or stoops to facilitate access from the properties to the west/boardwalk. However, these improvements are designed to be located on the east side of the wall and the gates are designed to open in and to the east so as not to interfere with vehicular movement along the public boardwalk.

The Ocean Front Walk boardwalk was originally constructed in 1928, and runs along the western side of Mission Beach, from the South Mission Beach Jetty north approximately

2.36 miles to Thomas Avenue in the community of Pacific Beach. The existing concrete walkway east of the project location is approximately 11 feet wide, with a seawall/ bulkhead on the seaward side, and a 12-foot wide right-of-way easement inland of the walkway. West of the seawall is sandy beach. Historically, there have been a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the 12-foot wide public easement.

In August 1999, the Commission approved a permit for the City of San Diego to remove the private encroachments in the right-of-way at the project site from Ventura Place to Santa Barbara Place (#6-99-90). In addition, in February of 1999, the Commission approved a permit for the reconstruction of private improvements such as walls and patios east of the right-of-way on private property (#6-99-145). In January, 2000 the Commission approved the companion permit to CDP #6-99-90 for the widening of the boardwalk between Ventura Place north to Santa Barbara Place (#6-00-1). In October, 2000, the Commission approved a permit for the removal of the private encroachments between Santa Barbara Place north to Santa Rita Place (#6-00-23) and in, April, 2001, a subsequent permit for the widening of the boardwalk within this same area (#6-01-29). In September, 2002 the Commission approved a permit for the boardwalk widening along Ocean Front Walk from Santa Clara Place north to Santa Rita Place (6-02-29-A1). An emergency permit issued on May 28, 2002 (and subsequent follow up permit, 6-02-29-A1,) allowed the City to complete the expansion of the boardwalk (pouring of concrete) between Santa Rita Place south to Santa Clara Place. This work has been completed.

The boardwalk widening between Ventura Place and Santa Barbara Place as well as the installation of a landscape buffer strip has already been completed pursuant to CDP #6-00-1. In addition, all of the private encroachments between Santa Barbara Place north to Santa Rita Place have been removed and the the boardwalk widened in this location, as well. The overall improved width of the boardwalk is approximately 20 feet. The expanded boardwalk will separate wheeled traffic from pedestrian traffic and will consist of an 8-foot wide walking lane on the west side of the boardwalk, a 12-foot 3-inch wide two-way bicycle/skateboard lane east of that, and a 3-foot wide landscape buffer along the inland side of the expanded boardwalk, thus using the remaining portion of the public easement. The purpose of the 3-foot wide landscape strip is to serve as a buffer between the residential properties and businesses and the public boardwalk. The City is responsible for maintenance of the landscape buffer.

Most recently, the Commission approved CDP No.'s 6-02-9, 6-02-37, 6-02-40, 6-02-47, 6-02-56, 6-02-71, 6-02-73 and 6-02-125 for the construction of a 3' high privacy wall within the public right-of-way, similar to the proposed development. Special Condition #1 requires that the wall not encroach any further west than the 3-foot wide landscaped buffer area, and prohibits staging and storage or construction activities within the boardwalk. Similar to the restrictions placed on the project by the City's encroachment removal agreement, Special Condition #2 notifies the applicant that if the existing residence is substantially altered such that 50% or more of the existing walls are demolished or removed, the wall must be removed.

The proposed project requires a coastal development permit because it involves the construction of a significant, non-attached structure on property located between the sea and the first public road. The boardwalk is located in an area designated as an historic mean high tide line and, as such, is in an area of the Commission's permit jurisdiction. Therefore, Chapter 3 of the Coastal Act is the standard of review.

B. <u>Community Character /Visual Quality</u>. The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

C. <u>Public Access/Parking</u>. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

D. <u>Local Coastal Planning</u>. The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prejudice the ability of the City of San Diego to implement its certified LCP for the Mission Beach community.

E. <u>California Environmental Quality Act</u>. As conditioned, there are no feasible alternatives or feasible mitigation measures available which available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

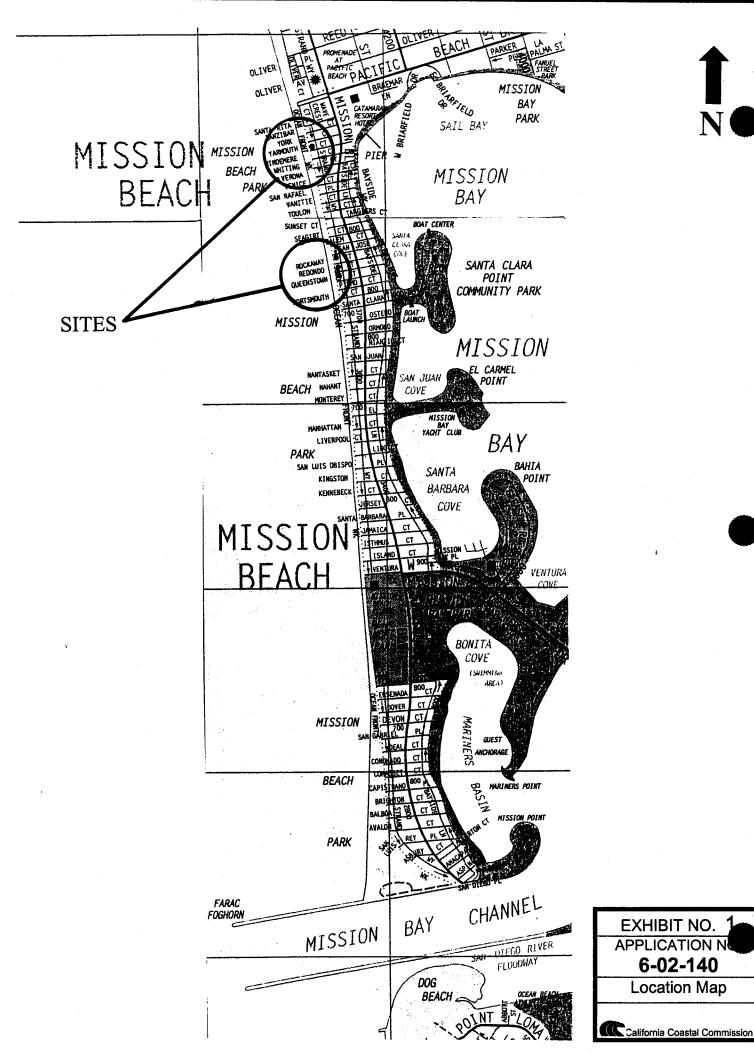
STANDARD CONDITIONS:

- 1. <u>Notice of Receipt and Acknowledgment</u>. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

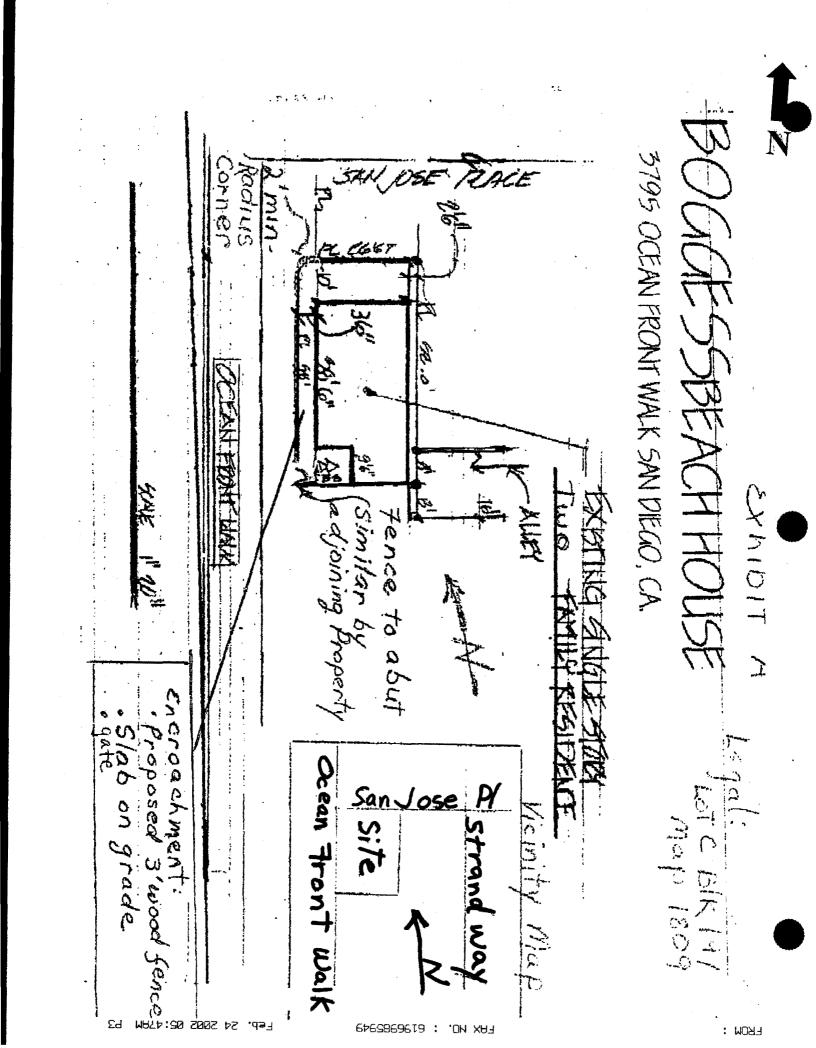
6-02-140 Page 5

- 4. <u>Assignment</u>. 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. <u>Terms and Conditions Run with the Land</u>. 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.

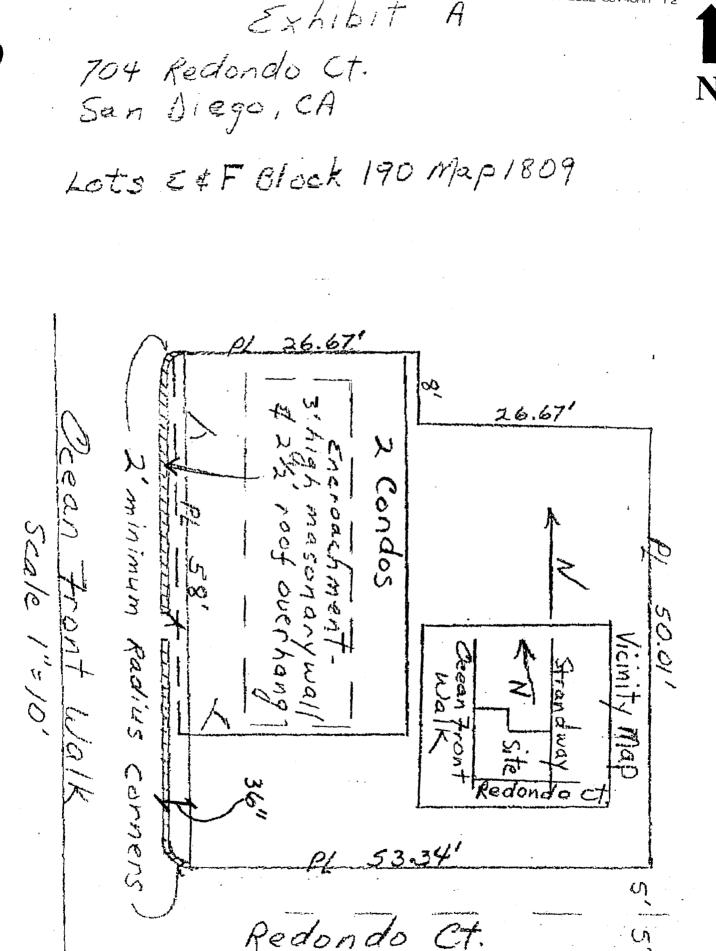
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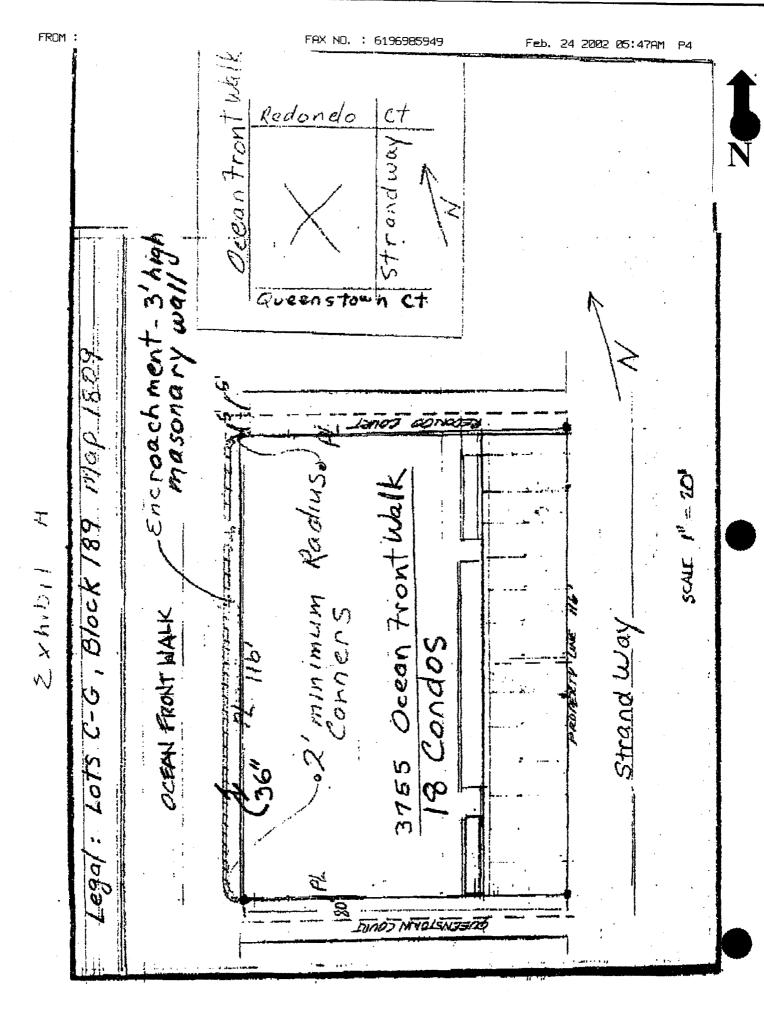


APPLICATION NC 6-02-140 Site Plans Exhibit 'A' EXHIBIT NO of 4) 704 Yarmouth Ct. こ Strap San Diego, CA Legal: Lot F, Black 243 Mop 1809 Ocean Front Walk PL 58' 11' FAX 161 Duplex 6196985945 Varmo location of sliding door 36" 51 51 43' Wall to ibut same y adjacent Encroach ments 2'radius · 3' high masonary wall 24 2002 05:48AM iroperty corner Stoop and stairs Slab on grade Ocean Front Walk Seale: 1"=10' g



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JIGINAL OF THIS DOCUMENT was recorded in DCT 04, 2002 DOCLIHENT NUMBER 2002-085%03 GREGORY J. SMITH, COUNTY RECORDER SAN DIEGO COUNTY RECORDER'S OFFICE TIME: 2:24 PM

AND WHEN RECORDED MAIL TO: THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

RECORDING REQUESTED BY:

City of San Diego

FROM

W.O. NO.

Land Development Review Division 1232 First Avenue, M.S. 502 San Diego, CA 92101-4155

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement

California Coastal Commissio

the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of $10c \times 243$ Map 1809In accordance with

Legal Description)

in the City of San Diego, County of San Diego, State of California, in conside	eration of the grant of permission by the City of San Diego to
install and maintain the improvements PRIVATE 3' HIGH 1	MASONRY WALL STOOP AND STAIRS.
AND SLAB ON GRADE	for the use and benefit to the owner's
property, over, under and across the property located at Occar	Front Walk

covenants, and agrees with the City of San Diego as follows:

(a) This agreement shall run with the land and the encroachment shall be installed and maintained or replaced in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.

(b) The property owner shall agree to at all times defend, indemnify and save the City free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance, state of use, repair or presence of the improvement installed pursuant to this agreement, including any and all injuries (including personal injury, disability, dismemberment, and death), iilness losses, loss of or damage to property, damages, claims, liabilities or expenses of any kind or nature to any person that causes or alleged to be caused in whole or in part by the negligent act or acts or ornissions by the City, its contractors, officers, agents or employees.

(c) The property owner must remove, relocate or restore the encroachment as directed by the City Engineer within 30 days after notice by the City Manager's Representative [CMR] or, in case of an emergency, the CMR may require that the work be done immediately or within less than 30 days notice. If the property owner(s) fail(s) to remove, relocate or restore the encroachment, the City Manager's Representative may cause such work to be done, and the costs thereof shall be a lien against the property.

(d) For structures encroaching over or under a public facility within a right-of-way or easement, the owner agrees to provide an alternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Manager's Representative that the City Facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching improvement(s).

(c) Whatever rights and obligations were acquired by the City with respect to the rights-of-way or ownership shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment improvement(s).

(f) The property owner shall maintain a policy of liability insurance, with the City also named, in an amount approved by the City Engineer, which will protect the City from any potential claims which may arise from the encroachments.

SEE ATTACHED EXHIBITS See Dwg. Nos: Congt. (Signature) For City Engineer w Pin APPROVED: (Prim Name & Title) (Company) By: Deputy NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODI EXHIBIT NO. 3 To request this information in formats for persons with disabilities, call (619) 446-5446 or (800) 735-29 APPLICATION NO. DS- 3237 Revised 10/10/01 6-02-140 Encroachment Removal Agreements (1 of 4)

		THE URIGINAL OF THIS DOCUMENT
		WAS RECORDED ON AUG 30, 2002 DOCUMENT NUMBER 2002-0741017
RECORDING REQUESTED BY:		GREGORY J. SMITH, COUNTY RECORDER
City of San Diego		SAN DIEGO COUNTY RECORDER'S OFFICE TIME: 9:12 AM
AND WHEN RECORDED MAIL TO:	001 15 2007	
THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT		
Land Development Review Division		
1222 First Avenue, M.S. 502 San Diego, CA 92101-4155		
-	(THIS SPACE	EFOR RECORDER'S USE ONLY
Encroachment	Maintenance and	Removal Agreement
W.O. NO. 02-039		COORD. NO.
In accordance with the provisio		Diego Municipal Code, the undersigned, the owner o $O9$
	(Legal Description)	
install and maintain the improvements		Construction of the second
Property over under and evenes the property		for the use and benefit to the owner' $Front$ $Malk$
property, over, under and across the proper	ty located at Ocean	I VIT JULIA
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covenants, and agrees with the City of San Diego as follows:

(a) This agreement shall run with the land and the encroachment shall be installed and maintained or replaced in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.

(b) The property owner shall agree to at all times defend, indemnify and save the City free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction maintenance, state of use, repair or presence of the improvement installed pursuant to this agreement, including any and all injuries (in personal injury, disability, dismemberment, and death), illness losses, loss of or damage to property, damages, claims, liabilities or expenses of any kind or nature to any person that causes or alleged to be caused in whole or in part by the negligent act or acts or omissions by the City its contractors, officers, agents or employees.

(c) The property owner must remove, relocate or restore the encroachment as directed by the City Engineer within 30 days after notice by the City Manager's Representative [CMR] or, in case of an emergency, the CMR may require that the work be done immediately or within less than 30 days notice. If the property owner(s) fail(s) to remove, relocate or restore the encroachment, the City Manager' Representative may cause such work to be done, and the costs thereof shall be a lien against the property.

(d) For structures encroaching over or under a public facility within a right-of-way or easement, the owner agrees to provide a alternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determine by the City Manager's Representative that the City Facility cannot be economically placed, replaced, or maintained due to the presence c the encroaching improvement(s).

(e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way or ownership shall remain an continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachme: improvement(s).

(f) The property owner shall maintain a policy of liability insurance, with the City also named, in an amount approved by the Ci Engineer, which will protect the City from any potential claims which may arise from the encroachments.

6/4/02	SEE ATTACHED EXHIBITS	PROFESSION
Dicham W. TSopen	See Dwg. Nos: Const. Alan	UN NO. 37 CO
(Print Name & Title)	For City Engineer APPROVED:	
(Company)	By: 1. ammal 8/20/0	2 OF CALLE
	Deputy	

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODE SEC. 1180 ET. SEQ.

To request this information in formats for persons with disabilities, call (619) 446-5445 or (800) 735-2929(TT) DS- 3237 Revised 10/10/01

		THE ORIGINAL OF THIS DOCUMENT WAS RECORDED ON AUG 09, 2002 DOCUMENT NUMBER 2002-0675177
SCORDING REQUESTED BY:	4	GREGORY J. SMITH, COUNTY RECORDER
of San Diego		SAN DIEGO COUNTY RECORDER'S OFFICE
ND WHEN RECORDED MAIL TO:		
HE CITY OF SAN DIEGO EVELOPMENT SERVICES DEPARTMENT and Development Review Division 223 First Avenue, M.S. 502 an Diego, CA 92101-4155		
	THIS SPA	ACE FOR RECORDER'S USE ONLY
V.O. NO. <u>O2-O42</u> In accordance with the provisions of		Removal Agreement COORD. NO Diego Municipal Code, the undersigned, the owner of 720 1809
	(Legal Description)	
is the City of San Diego, County of San Diego, San Stall and maintain the improvements	State of California, in considera	ation of the grant of permission by the City of San Diego to any ng/ and 2/2
roperty, over, under and across the property loc	cated at Ocean	for the use and benefit to the owner's

ovenants, and agrees with the City of San Diego as follows:

(a) This agreement shall run with the land and the encroachment shall be installed and maintained or replaced in a safe and sanitary ondition at the sole cost, risk and responsibility of the owner and successors in interest.

(b) The property owner shall agree to at all times defend, indemnify and save the City free and harmless from and pay in full, any chall claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, enance, state of use, repair or presence of the improvement installed pursuant to this agreement, including any and all injuries (including ersonal injury, disability, dismemberment, and death), illness losses, loss of or damage to property, damages, claims, liabilities or expenses f any kind or nature to any person that causes or alleged to be caused in whole or in part by the negligent act or acts or omissions by the City, s contractors, officers, agents or employees.

(c) The property owner must remove, relocate or restore the encroachment as directed by the City Engineer within 30 days after otice by the City Manager's Representative [CMR] or, in case of an emergency, the CMR may require that the work be done immediately r within less than 30 days notice. If the property owner(s) fail(s) to remove, relocate or restore the encroachment, the City Manager's representative may cause such work to be done, and the costs thereof shall be a lien against the property.

(d) For structures encroaching over or under a public facility within a right-of-way or easement, the owner agrees to provide an Iternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determined y the City Manager's Representative that the City Facility cannot be economically placed, replaced, or maintained due to the presence of he encroaching improvement(s).

(e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way or ownership shall remain and ontinue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment nervoyment(s).

(f) The property owner shall maintain a policy of liability insurance, with the City also named, in an amount approved by the City ngineer, which will protect the City from any potential claims which may arise from the encroachments.

JUNE 11, 2002
 Dave To Sub and
SARA B. SIEBRAND
 (Print Name & Title)
(Сопралу)

SEE ATTACHED EXHIBITS See Dwg. Nos: Const. Pla

For City Engineer APPROVED:

Deputy

OTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODE SEC. 1180 ET. SEQ.

THE JRIGINAL OF THIS DOCUMENT WAS RECORDED ON SEP 16, 2002 DOCUMENT NUMBER 2002-0789516 GREGORY J. SHITH, COUNTY RECORDER SAN DIEGO COUNTY RECORDER'S OFFICE THE: 8:56 AH

AND WHEN RECORDED MAIL TO: THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT Land Development Review Division 1232 First Avenue, M.S. 502 San Diego, CA 92101-4155

RECORDING REQUESTED BY:

City of San Diego

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement

W.O. NO. 02-043-2

COORD. NO._

1509

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, representative of the property owners association, herein called Tor OF THE BEACH HOME OLINERS ASSOCIATION LOTS

C-G, BLOCK 184 MAP (Legal Description)

In the City of San Diego, County of San Diego, State of California, in consideration of the grant of permission by the City of San Diego to install and maintain the improvements 3' HIGH MASONRY WALL

for the use and benefit of the association owner's property, over, under and across the property located at OCEAN FRONT WALK

covenants, and agrees with the City of San Diego as follows:

NO. 37145 EXP. 6-30-C4 CIVIL

OF CAL

(a) This agreement shall run with the land and the encroachment shall be installed and maintained or replaced in a safe and sanitary condition at the sole cost, risk and responsibility of the owners and successors in interest.

(b) The property owners shall agree to at all times defend, indemnify and save the City free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction. maintenance, state of use, repair or presence of the improvement installed pursuant to this agreement, including any and all injuries (including personal injury, disability, dismemberment, and death), illness losses, loss of or damage to property, damages, claims, liabilities or expenses of any kind or nature to any person that causes or alleged to be caused in whole or in part by the negligent act or acts or omissions by the City, its contractors, officers, agents or employees.

(c) The property owners must remove, relocate or restore the encroachment as directed by the City Engineer within 30 days after notice by the City Manager's Representative [CMR] or, in case of an emergency, the CMR may require that the work be done immediately or within less than 30 days notice. If the property owners fail to remove, relocate or restore the encroachment, the City Manager's Representative may cause such work to be done, and the costs thereof shall be a lien against the property.

(d) For structures encroaching over or under a public facility within a right-of-way or easement, the owners agree to provide an alternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Menager's Representative that the City Facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching improvement(s).

(c) Whatever rights and obligations were acquired by the City with respect to the rights of way or ownership shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment improvement(s).

(f) The property owners shall maintain a policy of liability insurance, with the City also named, in an amount approved by the City Engineer, which will protect the City from any potential claims which may arise from the encroachments.

SEE ATTACHED EXHIBITS See Dwg. Nos: CONST. For City Engineer APPROVED: Prim Nume & Title Deputy

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES MUST BE NOTARIZED, PER CIVIL CODE SEC. 1180 ET.SEQ.

To request this information in formats for persons with disabilities, call (619) 446-5446 or (800) 735-2929(TT) DS-3237B Revised 6/20/01