

Tue 3a-c

San Diego Coast District

CONSENT CALENDAR

Tuesday, May 7, 2002

6-02-009

6-02-040

6-02-047

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

175 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

**Tue 3a**

Filed: 4/2/02
49th Day: 5/21/02
180th Day: 9/29/02
Staff: LRO-SD
Staff Report: 4/17/02
Hearing Date: 5/7-10/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-009

RECORD PACKET COPY

Applicant: Dennis DeConcini

Description: Construction of a 3-ft. high concrete block wall extending into the 3'0" landscaped buffer area within public right-of-way adjacent to, and east of, the planned widened Ocean Front public boardwalk on an approximately 4,265 sq.ft. beachfront site containing an existing two-story, 20-ft. high, approximately 4,232 sq.ft., 9-unit apartment building with four off-street parking spaces.

Site: 705 Salem Court, Mission Beach, San Diego, San Diego County.
APN 423-578-01

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDPs #6-02-37, 6-99-90, 6-99-145, 6-00-123, 6-00-01, and 6-01-29; 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 No. 5016 recorded 2/27/02.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *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. Final Plans/Storage and Staging Areas. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final site plans to the Executive Director for review and written approval. The plans shall substantially conform with draft site plan submitted on 2/27/02 by the applicant. The plans shall clearly indicate that the wall approved by Coastal Development Permit No. 6-02-9 is located no further west than the 3-foot wide landscaped buffer area and does not encroach into the planned widened public boardwalk (Ocean Front Walk). The plans shall indicate the distance between the development authorized by this permit and the public right-of-way easement. In addition, said plans shall include written notes stating the following:

- a. 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.

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

2. Future Removal of Permitted Encroachment. 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:

1. Detailed Project Description/Permit History. Proposed is the construction of a 3-ft. high concrete block privacy wall extending 3'0" into the 3'0" 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 on an approximately 4,265 sq.ft. beachfront site containing an existing two-story, 20-ft. high, approximately 4,232 sq.ft., 9-unit apartment building with four off-street parking spaces. The existing structure is adjacent to the boardwalk and abuts the western property line. The proposed concrete masonry wall is proposed to be constructed within the public right-of-way 3'0" west of the western property line.

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 (#6-00-123) and in, April, 2001, a subsequent permit for the widening of the boardwalk within this same area (#6-01-29).

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 recently been removed and the City will soon pour the concrete resulting in the widened boardwalk at this location. Specifically, the existing approximately 11-foot wide boardwalk was permitted to be expanded by approximately 9 feet with an additional 3-foot wide landscape buffer area on the inland side of the improved boardwalk. Thus, the overall improved width of the boardwalk upon completion of the remainder of the widening will be 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 #6-02-037 in April, 2002 for the construction of a 3' high privacy wall within the public right-of-way along the western property line of a duplex development, located approximately two blocks north of the proposal site, at 708 Sunset Court.

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.

2. Public Access/Recreation. Sections 30210, 30212, 30214(b) 30221, and 30222 of the Coastal Act address public access and recreation by protecting public rights and access to the shoreline and gives favor to public needs over private uses, and can be found applicable to the project proposal.

The proposed privacy wall will be located on the east side of the proposed expansion of the Ocean Front Walk boardwalk. The boardwalk is a heavily-used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. The City has for many years contemplated expansion of the boardwalk, and thus, has required property owners adjacent to the boardwalk to obtain encroachment removal agreements for the improvements in the easement which state that the property owner must remove or relocate the encroachments within 30 days of notice by the City.

In reviewing new development adjacent to the boardwalk, the Commission has been similarly concerned with the potential for the elimination of right-of-way area available for any future expansion of the boardwalk. Therefore, the Commission has approved numerous permits for new development along Ocean Front Walk in the past only with the finding that the development would not impact public access because either: 1) no improvements in the easement were proposed, or 2) an encroachment removal agreement was obtained from the City (#6-98-26; #6-97-76; #6-94-138; #6-94-115; #6-91-214; #6-91-89; #6-89-343).

Individual property owners are presently submitting applications to construct privacy walls and fences on private property to replace those removed from the public right-of-way pursuant to CDPs #6-99-90 and 6-00-123. As part of the boardwalk widening pursuant to these latter permits, the City has designed a 3-foot wide landscape buffer strip just inland of the expanded boardwalk. Because encroachments into the public right-of-way would impede expansion of the boardwalk in the future, rebuilt walls and fences must normally be located inland of the planned landscaped buffer strip.

However, there are 26 homes and businesses which presently either do not have a setback from their western property line or are within one foot of the western property line. Approximately 20 of the existing residences and businesses fronting on the boardwalk, presently have no setback from the public right-of-way easement, such as the existing development on the subject site. Specifically, these property owners legally built the structures or businesses on the "zero lot line" such that the western walls of their structures are directly on the "zero lot line" and abut the landscaped buffer portion of the public right-of-way. In these situations, it would not be possible to construct a private wall/fence in front of these structures for privacy without encroaching into the landscape buffer area. In the case of the subject permit application, the existing duplex is located on the zero lot line and was legally built at a time when no setback was required. As such, the proposed privacy wall is proposed to be located 3'0" west of the structure in the 3-ft. wide landscape buffer strip.

It should be noted that when the City began the program to widen the boardwalk, it was anticipated that there would be a need to provide for special provisions for these 26 (legal/non-conforming) homes to allow for a privacy buffer between the planned expanded boardwalk and the existing homes located at or near the western property boundary. In addition, when approving the coastal development permits for the Boardwalk expansion, the Commission was also aware of these 26 homes and the need to provide special provisions to address privacy walls. The City has decided that for the 20 houses/businesses that are built on the zero lot line or within one foot of the zero lot line, if the structure was built at a time when it was legal not to have a setback, they will be permitted to use up to the full three ft. width of the area designated for a landscape buffer for purposes of building a private wall/fence. In these cases, the privacy wall would abut the improved portion of the boardwalk and there would not be a buffer area between the boardwalk and the privacy wall. In addition for the approximately six houses/businesses that have less than a three-foot setback from the zero lot line, the City will permit some of the landscape buffer area to be used for the construction of a privacy wall. The purpose of permitting these 26 residences/businesses to encroach into the landscaped buffer area is because these structures were legally built at a time when there was no required setback from the property line. As such, the 3-foot landscaped strip will serve as a physical barrier between the public boardwalk and the privacy walls. As noted previously, the public boardwalk is a heavily used recreational amenity which becomes very crowded during the peak summer season. A physical barrier is both desired by the adjacent homeowners and necessary. However, prior to authorization for such privacy walls, the City is requiring that these proposed developments must first obtain an encroachment removal agreement.

In the case of the subject project, the applicant has obtained an Encroachment Removal Agreement for the proposed construction of the privacy wall within the City's right-of-way easement (i.e., landscape buffer strip). The encroachment removal agreement consists of a one-page form letter and attached resolution with findings for approval of the agreement. These documents have already been recorded against the subject property and provide several stipulations. The resolution associated with the encroachment

removal agreement clearly indicates that the applicant may construct and maintain a 3'0" wall encroaching "up to three feet" into the public right-of-way of Ocean Front Walk. The resolution also provides that the wall shall be smooth surfaced and round capped with rounded corners to prevent injuries to the public that uses the boardwalk for recreation type purposes. The encroachment maintenance and removal agreement contains several specific provisions, one of which requires that 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 the 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 shall consist of a lien against the subject property.

As noted previously, the structures located on the zero lot line are legal non-conforming structures such that they were built at a time when a setback from the property line was not required. However, the Commission has a potential concern with regard to bringing these structures into conformity in the future should these properties ever be redeveloped or substantially improved. For this particular property, along with the other 25 residences/businesses which are located on the zero-lot line, should the property ever be redeveloped, the new structure would need to be brought into conformity with current zoning and observe the current required building setbacks (7'0" from the western property line for the first story and for additional stories above the first story; 3'0" feet for 50% of the lot fronting on the walk and 5'0" feet for the remaining 50% for the R-N zone where the subject site is located). In the event this were to occur, the privacy walls that are allowed to encroach into the public right-of-way, such as in the subject permit, should also have to be removed. However, the Encroachment Maintenance and Removal Agreement does not specifically state that such permitted encroachment shall be removed in connection with redevelopment of the site or modifications to the structure such that a greater setback would be provided thus no longer requiring the permitted encroachment into the 3'0" landscaped buffer area. Specifically, if the existing structure along the boardwalk is substantially altered to the degree that it would essentially consist of "new development", the wall permitted herein would need to be removed. As such, Special Condition #2 requires the applicant to remove the permitted encroachment (i.e., privacy wall) if the structure is substantially altered such that 50% or more of the existing walls are demolished or removed.

In addition, Special Condition #1 requires the submittal of final construction plans that clearly indicate the location of the proposed improvements in relationship to the right-of-way easement. Such plans must demonstrate that all improvements will be constructed no further west than the 3-foot wide landscaped buffer area; no improvement or portion of any improvement shall be located in the planned widened public boardwalk. In order to prevent construction activity from adversely affecting the public's use of the boardwalk, Special Condition #1 also prohibits any staging and storage for the development from occurring on the existing boardwalk and prohibits any closure of the boardwalk or public area for construction activities.

As conditioned by the City, the new wall will not obstruct future expansion of the boardwalk and is not expected to have any adverse impacts on public recreation or access. Pursuant to Section 30214(b), encroachment of the wall into the landscaped buffer, subject to the requirements for removal in the event the boardwalk is widened or the subject property is redeveloped, is an appropriate accommodation of the applicant's privacy. However, because the site is used so heavily, particularly in the summer months, construction activity that impeded use of the boardwalk could have a significant adverse impact on public access and recreation. Given the nature of the proposed improvements (concrete masonry wall) it is not anticipated that a substantial area would be required for construction activities or staging and storage. Typically, the Commission restricts work on public recreational areas to outside the summer season, to avoid impacts to the public during the time of highest demand for recreation and public beach access. However, in the case of the proposed project, since, as conditioned, neither access to the boardwalk nor any other public area would be impacted by construction of the improvements, there is no need to restrict the timing of the work.

In summary, the proposed project involves the construction of a wall and patio on private property east of the existing boardwalk and the public right-of-way. The proposed development is consistent with a future expansion of the existing boardwalk, a public recreational amenity. As conditioned, no short or long-term impacts to coastal resources are anticipated. Therefore, the proposed project is consistent with the public access and recreation policies of the Coastal Act.

3. Visual Quality. Section 30251 of the Coastal Act requires, in part, that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas.

The existing residences along the boardwalk vary widely in architectural style and appearance, and the proposed wall will consist of a concrete masonry wall. The project site is not adjacent to a lagoon or natural park area of the type where the Commission typically requires development to be of colors or designs compatible with or subordinate to the character of the surrounding natural environment. Development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied, and the proposed 3-foot high wall, is not expected to have an adverse impact on the visual quality of the neighborhood. In addition, the proposed privacy wall meets the City's standards and will not block any views toward the ocean. Therefore, the Commission finds the proposed development consistent with the visual protection policies of the Coastal Act.

4. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority. The site is zoned R-N in the Mission Beach Planned District Ordinance (PDO). Section 103.0538 of the certified Planned District Ordinance (PDO) for Mission Beach requires that development or redevelopment of any lot abutting the Ocean Front Walk public right-of-way obtain an encroachment permit for any existing or proposed encroachments into the public right-of-way. The subject permit would involve constructing a wall 3'0" west of the western property line into the City's right-of-way and proposed 3-foot wide landscape buffer strip inland of the proposed expanded public boardwalk. Inasmuch as the applicant has obtained an Encroachment Maintenance and Removal Agreement, the proposed project is consistent with the certified Mission Beach PDO. The project is consistent with the certified Mission Beach Precise Plan and all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of San Diego to implement its certified LCP for the Mission Beach community.

5. Consistency with the California Environmental Quality Act (CEQA).

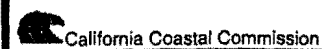
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring the construction activities take place on private property and not impede public access and that through any future redevelopment of the site that the permitted encroachment herein, is removed, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

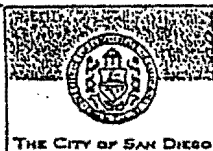
STANDARD CONDITIONS:

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

2. Expiration. If development has not commenced, the permit will expire two years from the date 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. 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.



3. BEFORE EXCAVATING, CALL UNDERGROUND SERVICE ALERT



THE CITY OF SAN DIEGO

SPECIFICATIONS FOR Wood and Masonry Fences

CITY OF SAN DIEGO DEVELOPMENT SERVICES
1222 FIRST AVENUE, MS 301, SAN DIEGO, CA 92101
Call (619) 446-5300 for appointments and (619) 446-5000 for information.

INFORMATION
BULLETIN

223

March 2001

Figure 1/ Masonry fence

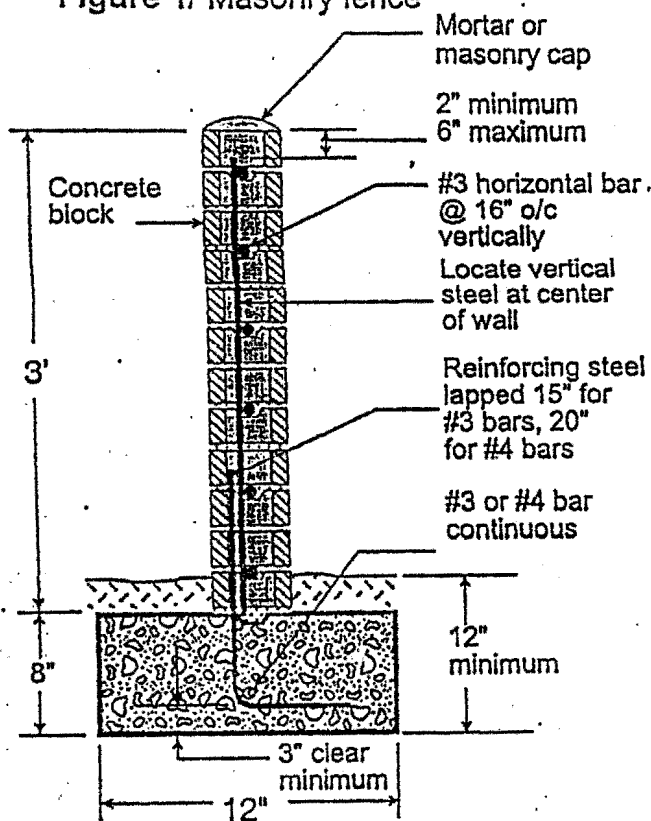


Table A/Requirements for masonry walls

Wall height, H (feet)	Material	Footing width, W (inches)	Reinforcing steel
4	6" concrete block 8" concrete block 8" brick	12 12 12	#3 @24" o.c. #3 @24" o.c. #3 @24" o.c.
5	6" concrete block 8" concrete block 8" brick	18 18 18	#3 @24" o.c. #4 @24" o.c. #4 @24" o.c.
6	8" concrete block 8" brick	24 24	#4 @24" o.c. #4 @24" o.c.

Table B/Fence specifications

Height, H (feet)	Post size (inches)	Section width, W (feet)
4	4 x 4	6
5	4 x 4	6
6	4 x 4	6
4	4 x 6	8
5	4 x 6	8
6	4 x 6	8

EXHIBIT NO. 3

APPLICATION NO.

6-02-009

Cross Section of
Proposed Wall

The following information to be provided by the Water Utilities Section Plan Checker:
VISION of INFORMATION and APPLICATION SERVICES: ENTER THIS INFO. INTO I.O.S.



THE CITY OF SAN DIEGO

RECORDING REQUESTED BY:

City of San Diego

AND WHEN RECORDED MAIL TO:

THE CITY OF SAN DIEGO
Development Services Department
Land Development Review Division
1222 First Avenue, M.S. 502
San Diego, CA 92101-4155

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON MAR 29, 2002
DOCUMENT NUMBER 2002-0267422
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 2:06 PM

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement for Ocean Front Walk

W.O. NO. 99-771-2

COORD. NO. 226-1691

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of

Lots A-C, Block 198, map 1809

(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 of a 3ft. high fence (private)

owner's property, over, under and across the property located at 705 Salem Ct, San Diego, CA 92109

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

(a) This agreement shall run with the land and the encroachment(s) 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 encroachment(s) 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 caused or alleged to be caused in whole or in part by the negligent act(s) or omissions by the City, its contractors, officers, agents or employees.

(c) The property owner must remove, relocate or restore the encroachment(s) from the public right-of-way as established by the City, within 30 days after notice by the City Manager's Representative [CMR]. In case of an emergency, the CMR may require that the work be done immediately or with less than 30 days notice. If the property owner fail(s) to remove, relocate or restore the encroachment(s) by the specified deadline, the CMR may cause such work to be done without further notice, and the costs thereof shall be a lien against the property.

(d) 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(s).

(e) The property owner shall maintain a policy of liability insurance in the amount of at least \$1,000,000 Combined Single Limit, with the City as a named insured, as a potential source of reimbursement to the City for any claims which may arise from the encroachment(s).

(f) If development, as defined in San Diego Municipal Code section 113.0103, of the property results in a permit requirement by any agency to conform with the setback requirement on Ocean Front Walk, then this agreement will terminate and the property owner shall: (1) remove the encroachment(s); and (2) pay for and install concrete and/or landscaping improvements to the City specifications in the public right-of-way where the encroachment(s) were located.

2-8-02

(Date)

Dennis De Concini

(Signature)

DENNIS DE CONCINI, owner

(Print Name & Title)

SEE ATTACHED EXHIBITS

'A'

See Dwg. Nos: CONST. PLAN

For City Engineer

APPROVED: M. Sammati

By: 2/15/02

Deputy

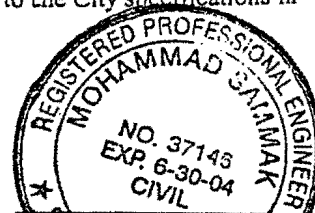


EXHIBIT NO. 4
APPLICATION NO.
6-02-009

Encroachment
Maintenance and
Removal Agreement

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODE

To request this information in formats for persons with disabilities, call (619) 446-5446 or (800) 735-2929 (TDD)
DS- 3237 Revised 2/5/01

CITY MANAGER
RESOLUTION NO. D-3006
PROJECT NO. 2842
ENCROACHMENT REMOVAL AGREEMENT NO. 4745
DECONCINI RESIDENCE ERA

WHEREAS, DENNIS DECONCINI, INDIVIDUAL, Owner/Permittee, filed an application with the City of San Diego for an Encroachment Removal Agreement to construct and maintain a 3'-0" high wall, encroaching up to three feet into the public right-of-way of Ocean Front Walk (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Project No. 2842), and;

WHEREAS, the project site is located adjacent to 705 Salem Court in the R-N zone of the Mission Beach Planned District, the Coastal Overlay and Coastal Height Limitation Overlay zones of the Mission Beach Precise Planning area, and;

WHEREAS, the project site is legally described as Lots "A-C," Block 198 of Mission Beach, Map No. 1809, and;

WHEREAS, on March 11, 2002, the City Manager of the City of San Diego considered Encroachment Removal Agreement No. 4745 pursuant to Section 62.0301 of the Municipal/Land Development Code of the City of San Diego, and;

WHEREAS, if the property is ever redeveloped, the encroachment shall be removed, and;

NOW, THEREFORE, BE IT RESOLVED by the City Manager of the City of San Diego as follows:

That the City Manager adopts the following written findings, dated March 11, 2002.

Encroachment Removal Agreement Findings:

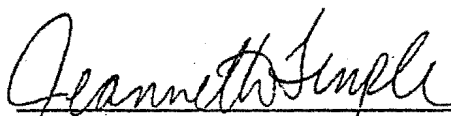
1. **The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed project is a 3'-0" high concrete masonry wall which will encroach up to 3'-0" into the Ocean Front Walk public right-of-way adjacent to 705 Salem Court. The encroachment is proposed in response to the widening of the Mission Beach Boardwalk and is in compliance with the criteria for encroachments in this area as permitted by the City Engineer. The proposed wall has been designed to be pedestrian oriented as required by the City Engineer. The wall will encroach no greater than 3'-0" into the Ocean Front Walk right-of-way, will be smooth surfaced and round capped and will have rounded corners, at least two-foot radius, to prevent injuries to the public that uses the boardwalk for recreation type purposes. Due to the location, the proposed wall would not be detrimental to the public health, safety, and welfare.

2. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed wall would be located adjacent to a residential structure that was legally built on the property line. As proposed, the wall would comply with the applicable regulations of the Land Development Code for walls and fences in the public right-of way. Further the proposed wall would comply with the Mission Beach Precise Plan and Local Coastal Program Land Use Plan and the City of San Diego's General Plan and Progress Guide.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City Manager, Encroachment Removal Agreement No. 4745, Project No. 2842 is hereby GRANTED by the City Manager to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Encroachment Removal Agreement No. 4745, a copy of which is attached hereto and made a part hereof.



Jeannette Temple
Development Project Manager
Development Services

Adopted on: March 11, 2002

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

DIEGO, CA 92108-4402

(619) 767-2370

**Tue 3b**

Filed: 3/1/02
49th Day: 4/19/02
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Staff: DS-SD
Staff Report: 4/12/02
Hearing Date: 5/7-10/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-040

RECORD PACKET COPY

Applicant: Jeff Rahill

Description: Construction of a new 36" high, 8" wide, 60' long privacy wall built 2' 8" in the 3' landscaped buffer area within public right-of-way adjacent to and east of the planned widened Ocean Front Walk on a site containing an existing duplex.

Site: 3735-3737 Ocean Front Walk, Mission Beach, San Diego, San Diego County. APN: 423-591-01.

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 No. 3957 recorded 2/7/02.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *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. Final Plans/Storage and Staging Areas. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final site plans to the Executive Director for review and written approval. The plans shall substantially conform to the draft site plan submitted on 3/1/02 by the applicant. The plans shall clearly indicate that the wall approved by Coastal Development Permit No. 6-02-040 is located no further west than the 3-foot wide landscaped buffer area, and does not encroach into the planned widened public boardwalk (Ocean Front Walk). The plans shall indicate the distance between the development authorized by this permit and the public right-of-way easement. In addition, said plans shall include written notes stating the following:

- a. 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.

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

2. Future Removal of Permitted Encroachment. 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:

1. Detailed Project Description/Permit History. Proposed is the construction of a 3-ft. high, 60 linear-foot long, concrete block privacy wall 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 on a 1,712 sq.ft.

beachfront site containing an existing duplex. The proposed concrete masonry wall is proposed to be constructed within the public right-of-way 2'10" west of the western property line.

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 (#6-00-123) and in, April, 2001, a subsequent permit for the widening of the boardwalk within this same area (#6-01-29).

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 recently been removed and the City will soon pour the concrete resulting in the widened boardwalk at this location. Specifically, the existing approximately 11-foot wide boardwalk was permitted to be expanded by approximately 9 feet with an additional 3-foot wide landscape buffer area on the inland side of the improved boardwalk. Thus, the overall improved width of the boardwalk upon completion of the remainder of the widening will be 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 6-02-037 in April, 2002 for the construction of a 3' high privacy wall within the public right-of-way along the western property line of a duplex development, located approximately eight blocks north of the proposal site, at 708 Sunset Court.

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.

2. Public Access/Recreation. Sections 30210, 30212, 30214(b) 30221, and 30222 of the Coastal Act address public access and recreation by protecting public rights and access to the shoreline and gives favor to public needs over private uses, and can be found applicable to the project proposal.

The proposed privacy wall will be located on the east side of the proposed expansion of the Ocean Front Walk boardwalk. The boardwalk is a heavily used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. The City has for many years contemplated expansion of the boardwalk, and thus, has required property owners adjacent to the boardwalk to obtain encroachment removal agreements for the improvements in the easement which state that the property owner must remove or relocate the encroachments within 30 days of notice by the City.

In reviewing new development adjacent to the boardwalk, the Commission has been similarly concerned with the potential for the elimination of right-of-way area available for any future expansion of the boardwalk. Therefore, the Commission has approved numerous permits for new development along Ocean Front Walk in the past only with the finding that the development would not impact public access because either: 1) no improvements in the easement were proposed, or 2) an encroachment removal agreement was obtained from the City (#6-98-26; #6-97-76; #6-94-138; #6-94-115; #6-91-214; #6-91-89; #6-89-343).

Individual property owners are presently submitting applications to construct privacy walls and fences on private property to replace those removed from the public right-of-way pursuant to CDPs #6-99-90 and 6-00-123. As part of the boardwalk widening pursuant to these latter permits, the City has designed a 3-foot wide landscape buffer strip just inland of the expanded boardwalk. Additionally, because encroachments into the public right-of-way would impede expansion of the boardwalk in the future, rebuilt walls and fences must normally be located inland of the planned landscaped buffer strip.

However, there are 26 homes and businesses that presently either do not have a setback from their western property line or are within one foot of the western property line. Approximately 20 of the existing residences and businesses fronting on the boardwalk presently have no setback from the public right-of-way easement, such as the existing development on the subject site. Specifically, these property owners legally built the

structures or businesses on the "zero lot line" such that the western walls of their structures are directly on the "zero lot line" and abut the landscaped buffer portion of the public right-of-way. In these situations, it would not be possible to construct a private wall/fence in front of these structures for privacy without encroaching into the landscape buffer area. In the case of the subject permit application, the existing residence is located on the zero lot line and was legally built at a time when no setback was required. As such, the proposed privacy wall is proposed to be located 2'8" west of the structure in the 3-ft. wide landscape buffer strip.

It should be noted that when the City began the program to widen the boardwalk, it was anticipated that there would be a need to provide for special provisions for these 26 (legal/non-conforming) homes to allow for a privacy buffer between the planned expanded boardwalk and the existing homes located at or near the western property boundary. In addition, when approving the coastal development permits for the Boardwalk expansion, the Commission was also aware of these 26 homes and the need to provide special provisions to address privacy walls. The City has decided that for the 20 houses/businesses that are built on the zero lot line or within one foot of the zero lot line, if the structure was built at a time when it was legal not to have a setback, they will be permitted to use up to the full three ft. width of the area designated for a landscape buffer for purposes of building a private wall or fence. In these cases, the privacy wall would abut the improved portion of the boardwalk and there would not be a buffer area between the boardwalk and the privacy wall. In addition, for the approximately six houses/businesses that have less than a three-foot setback from the zero lot line, the City will permit some of the landscape buffer area to be used for the construction of a privacy wall. These 26 residences/businesses are permitted to encroach into the landscaped buffer area to allow structures that were legally built at a time when there was no required setback from the property line to have privacy walls or fences. As such, the 3-foot landscaped strip will serve as a physical barrier between the public boardwalk and the privacy walls. As noted previously, the public boardwalk is a heavily used recreational amenity which becomes very crowded during the peak summer season. A physical barrier is both desired by the adjacent homeowners and necessary. However, prior to authorization for such privacy walls, the City is requiring that these proposed developments must first obtain an encroachment removal agreement.

In the case of the subject project, the applicant has obtained an Encroachment Removal Agreement for the proposed construction of the privacy wall within the City's right-of-way easement (i.e., landscape buffer strip). The encroachment removal agreement consists of a one-page form letter and attached resolution with findings for approval of the agreement. These documents have already been recorded against the subject property and provide several stipulations. The resolution associated with the encroachment removal agreement clearly indicates that the applicant may construct and maintain a 3'0" wall encroaching "up to three feet" into the public right-of-way of Ocean Front Walk. The resolution also provides that the wall shall be smooth surfaced and round capped with rounded corners to prevent injuries to the public that uses the boardwalk for recreation type purposes. The encroachment maintenance and removal agreement

contains several specific provisions, one of which requires that 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 the case of an emergency, the CMR may require that the work be done immediately or within less than 30 days notice. If the properties owners fail to remove relocate or restore the encroachment, the City manager's representative may cause such work to be done, and the costs shall consist of a lien against the subject property.

As noted previously, the structures located on the zero lot line are legal non-conforming structures such that they were built at a time when a setback from the property line was not required. However, the Commission has a potential concern with regard to bringing these structures into conformity in the future should these properties ever be redeveloped or substantially improved. For this particular property, along with the other 25 residences/businesses which are located on the zero-lot line, should the property ever be redeveloped, the new structure would need to brought into conformity with current zoning and observe the current required building setbacks (10'0" from the western property line). In the event this were to occur, the privacy walls that are allowed to encroach into the public right-of-way, such as in the subject permit, should also have to be removed. However, the Encroachment Maintenance and Removal Agreement does not specifically state that such permitted encroachment shall be removed in connection with redevelopment of the site or modifications to the structure such that a greater setback would be provided thus no longer requiring the permitted encroachment into the 3'0" landscaped buffer area. Specifically, if the existing structure along the boardwalk were substantially altered to the degree that it would essentially consist of "new development", the wall permitted herein would need to be removed. As such, Special Condition #2 requires the applicant to remove the permitted encroachment (i.e., privacy wall) if the structure is substantially altered such at 50% or more of the existing walls are demolished or removed.

In addition, Special Condition #1 requires the submittal of final construction plans that clearly indicate the location of the proposed improvements in relationship to the right-of-way easement. Such plans must demonstrate that all improvements will be constructed no further west than the 3-foot wide landscaped buffer area; no improvement or portion of any improvement shall be located in the planned widened public boardwalk. In order to prevent construction activity from adversely affecting the public's use of the boardwalk, Special Condition #1 also prohibits any staging and storage for the development from occurring on the existing boardwalk and prohibits any closure of the boardwalk or public area for construction activities.

As conditioned by the City, the new wall will not obstruct future expansion of the boardwalk and is not expected to have any adverse impacts on public recreation or access. Pursuant to Section 30214(b), encroachment of the wall into the landscaped buffer, subject to the requirements for removal in the event the boardwalk is widened or the subject property is redeveloped, is an appropriate accommodation of the applicant's privacy. However, because the site is used so heavily, particularly in the summer

months, construction activity that impeded use of the boardwalk could have a significant adverse impact on public access and recreation. Given the nature of the proposed improvements (concrete masonry wall) it is not anticipated that a substantial area would be required for construction activities or staging and storage. Typically, the Commission restricts work on public recreational areas to outside the summer season, to avoid impacts to the public during the time of highest demand for recreation and public beach access. However, in the case of the proposed project, since, as conditioned, neither access to the boardwalk nor any other public area would be impacted by construction of the improvements, there is no need to restrict the timing of the work.

In summary, the proposed project involves the construction of a wall within the public right-of-way east of the existing boardwalk. The proposed development is consistent with a future expansion of the existing boardwalk, a public recreational amenity. As conditioned, no short or long-term impacts to coastal resources are anticipated. Therefore, the proposed project is consistent with the public access and recreation policies of the Coastal Act.

3. Visual Quality. Section 30251 of the Coastal Act requires, in part, that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas.

The existing residences along the boardwalk vary widely in architectural style and appearance; the proposed development will consist of a concrete masonry wall. The project site is not adjacent to a lagoon or natural park area of the type where the Commission typically requires development to be of colors or designs compatible with or subordinate to the character of the surrounding natural environment. Moreover, development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied, and the proposed 3-foot high wall is not expected to have an adverse impact on the visual quality of the neighborhood. In addition, the proposed privacy wall meets the City's standards and will not block any views toward the ocean. Therefore, the Commission finds the proposed development consistent with the visual protection policies of the Coastal Act.

4. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority. Section 103.0538 of the certified Planned District Ordinance (PDO) for Mission Beach requires that development or redevelopment of any lot abutting the Ocean Front Walk public right-of-way obtain an encroachment permit for any existing or proposed encroachments into the public right-of-way. The subject permit

would involve constructing a wall 2'8" west of the western property line into the City's right-of-way and proposed 3-foot wide landscape buffer strip inland of the proposed expanded public boardwalk. Inasmuch as the applicant has obtained an Encroachment Maintenance and Removal Agreement, the proposed project is consistent with the certified Mission Beach PDO. The project is consistent with the certified Mission Beach Precise Plan and all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of San Diego to implement its certified LCP for the Mission Beach community.

5. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 has been conditioned so that it is consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring that construction activities take place on private property, and that any future redevelopment of the site requires the permitted encroachment herein be removed, ensures that all adverse environmental impacts are minimized. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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. 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

92109

MISSION
BEACH

OCEAN

92107

EXHIBIT NO. 1
APPLICATION NO.
6-02-40
Location Map

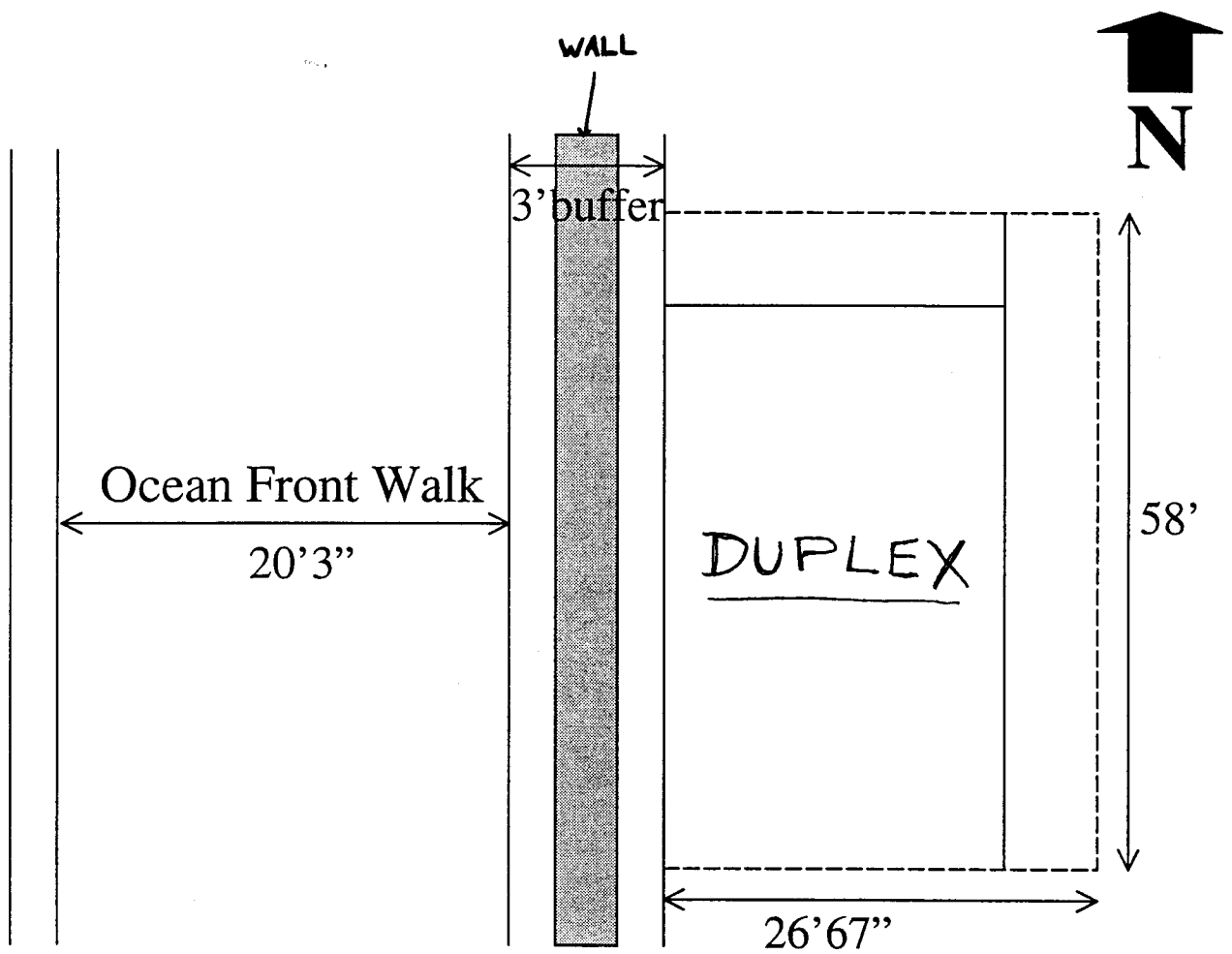


EXHIBIT NO. 2
APPLICATION NO.
6-02-40
Site Plan

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

DIEGO, CA 92108-4402

767-2370

**Tue 3c**

Filed: 3/19/02
49th Day: 5/7/02
180th Day: 9/15/02
Staff: DS-SD
Staff Report: 4/12/02
Hearing Date: 5/7-10/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-047

RECORD PACKET COPY

Applicant: Margie Moore

Description: Construction of a new 36" high, approximately 6" wide, 60' long privacy wall extending approximately 2' 10" into the 3' landscaped buffer area within public right-of-way adjacent to and east of the planned widened Ocean Front Walk on a site containing an existing single-family home.

Site: 701 Whiting Court, Mission Beach, San Diego, San Diego County.
APN: 423-551-23.

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 No. 5243 recorded 3/15/02.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *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. Final Plans/Storage and Staging Areas. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final site plans to the Executive Director for review and written approval. The plans shall substantially conform to the draft site plan submitted on 3/19/02 by the applicant. The plans shall clearly indicate that the wall approved by Coastal Development Permit No. 6-02-047 is located no further west than the 3-foot wide landscaped buffer area, and does not encroach into the planned widened public boardwalk (Ocean Front Walk). The plans shall indicate the distance between the development authorized by this permit and the public right-of-way easement. In addition, said plans shall include written notes stating the following:

- a. 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.

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

2. Future Removal of Permitted Encroachment. 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:

1. Detailed Project Description/Permit History. Proposed is the construction of a 3-ft. high, 60 linear-foot long, concrete block privacy wall 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 on a 1,524 sq. ft. beachfront site containing an existing one-story single-family residence. The proposed concrete masonry wall is proposed to be constructed within the public right-of-way 2' 10" west of the western property line.

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 (#6-00-123) and in, April, 2001, a subsequent permit for the widening of the boardwalk within this same area (#6-01-29).

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 recently been removed and the City will soon pour the concrete resulting in the widened boardwalk at this location. Specifically, the existing approximately 11-foot wide boardwalk was permitted to be expanded by approximately 9 feet with an additional 3-foot wide landscape buffer area on the inland side of the improved boardwalk. Thus, the overall improved width of the boardwalk upon completion of the remainder of the widening will be 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 6-02-37 in April, 2002 for the construction of a 3' high privacy wall within the public right-of-way along the western property line of a duplex development, located approximately five blocks south of the subject site, at 708 Sunset Court.

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.

2. Public Access/Recreation. Sections 30210, 30212, 30214(b) 30221, and 30222 of the Coastal Act address public access and recreation by protecting public rights and access to the shoreline and gives favor to public needs over private uses, and can be found applicable to the project proposal.

The proposed privacy wall will be located on the east side of the proposed expansion of the Ocean Front Walk boardwalk. The boardwalk is a heavily used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. The City has for many years contemplated expansion of the boardwalk, and thus, has required property owners adjacent to the boardwalk to obtain encroachment removal agreements for the improvements in the easement which state that the property owner must remove or relocate the encroachments within 30 days of notice by the City.

In reviewing new development adjacent to the boardwalk, the Commission has been similarly concerned with the potential for the elimination of right-of-way area available for any future expansion of the boardwalk. Therefore, the Commission has approved numerous permits for new development along Ocean Front Walk in the past only with the finding that the development would not impact public access because either: 1) no improvements in the easement were proposed, or 2) an encroachment removal agreement was obtained from the City (#6-98-26; #6-97-76; #6-94-138; #6-94-115; #6-91-214; #6-91-89; #6-89-343).

Individual property owners are presently submitting applications to construct privacy walls and fences on private property to replace those removed from the public right-of-way pursuant to CDPs #6-99-90 and 6-00-123. As part of the boardwalk widening pursuant to these latter permits, the City has designed a 3-foot wide landscape buffer strip just inland of the expanded boardwalk. Additionally, because encroachments into the public right-of-way would impede expansion of the boardwalk in the future, rebuilt walls and fences must normally be located inland of the planned landscaped buffer strip.

However, there are 26 homes and businesses that presently either do not have a setback from their western property line or are within one foot of the western property line. Approximately 20 of the existing residences and businesses fronting on the boardwalk presently have no setback from the public right-of-way easement, such as the existing development on the subject site. The City has anticipated the need for these homes and businesses to create a buffer between the boardwalk and private property, and has made it clear that permits will be issued to these landowners for the encroachment into the landscaped buffer area. Specifically, these property owners legally built the structures or businesses on the "zero lot line" such that the western walls of their structures are directly

on the property line and abut the landscaped buffer portion of the public right-of-way. In these situations, it would not be possible to construct a private wall/fence in front of these structures without encroaching into the landscape buffer area. In the case of the subject permit application, the existing residence is located on the western property line and was legally built at a time when no setback was required. As such, the proposed privacy wall is proposed to be located approximately 2' 10" west of the existing structure in the 3-ft. wide landscape buffer strip.

It should be noted that when the City began the program to widen the boardwalk, it was anticipated that there would be a need to provide for special provisions for these 26 (legal/non-conforming) homes to allow for a privacy buffer between the planned expanded boardwalk and the existing homes located at or near the western property boundary. In addition, when approving the coastal development permits for the Boardwalk expansion, the Commission was also aware of these 26 homes and the need to provide special provisions to address privacy walls. The City has decided that for the 20 houses/businesses that are built on the zero lot line or within one foot of the zero lot line, if the structure was built at a time when it was legal not to have a setback, they will be permitted to use up to the full three ft. width of the area designated for a landscape buffer for purposes of building a private wall or fence. In these cases, the privacy wall would abut the improved portion of the boardwalk and there would not be a buffer area between the boardwalk and the privacy wall. In addition, for the approximately six houses/businesses that have less than a three-foot setback from the zero lot line, the City will permit some of the landscape buffer area to be used for the construction of a privacy wall. These 26 residences/businesses are permitted to encroach into the landscaped buffer area to allow structures that were legally built at a time when there was no required setback from the property line to have privacy walls or fences. As such, the 3-foot landscaped strip will serve as a physical barrier between the public boardwalk and the privacy walls. As noted previously, the public boardwalk is a heavily used recreational amenity which becomes very crowded during the peak summer season. A physical barrier is both desired by the adjacent homeowners and necessary. However, prior to authorization for such privacy walls, the City is requiring that these proposed developments must first obtain an encroachment removal agreement.

In the case of the subject project, the applicant has obtained an Encroachment Removal Agreement for the proposed construction of the privacy wall within the City's right-of-way easement (i.e., landscape buffer strip). The encroachment removal agreement consists of a one-page form letter and attached resolution with findings for approval of the agreement. These documents have already been recorded against the subject property and provide several stipulations. The resolution associated with the encroachment removal agreement clearly indicates that the applicant may construct and maintain a 3'0" wall encroaching "up to three feet" into the public right-of-way of Ocean Front Walk. The resolution also provides that the wall shall be smooth surfaced and round capped with rounded corners to prevent injuries to the public that uses the boardwalk for recreation type purposes. The encroachment maintenance and removal agreement contains several specific provisions, one of which requires that 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 the case of an emergency, the CMR may require that the work be done immediately or within less than 30 days notice. If the properties owners fail to remove relocate or restore the encroachment, the City manager's representative may cause such work to be done, and the costs shall consist of a lien against the subject property.

As noted previously, the structures located on the zero lot line are legal non-conforming structures such that they were built at a time when a setback from the property line was not required. However, the Commission has a potential concern with regard to bringing these structures into conformity in the future should these properties ever be redeveloped or substantially improved. For this particular property, along with the other 25 residences/businesses which are located on the zero-lot line, should the property ever be redeveloped, the new structure would need to be brought into conformity with current zoning and observe the current required building setbacks (10'0" from the western property line). In the event this were to occur, the privacy walls that are allowed to encroach into the public right-of-way, such as in the subject permit, should also have to be removed. However, the Encroachment Maintenance and Removal Agreement does not specifically state that such permitted encroachment shall be removed in connection with redevelopment of the site or modifications to the structure such that a greater setback would be provided thus no longer requiring the permitted encroachment into the 3'0" landscaped buffer area. Specifically, if the existing structure along the boardwalk were substantially altered to the degree that it would essentially consist of "new development", the wall permitted herein would need to be removed. As such, Special Condition #2 requires the applicant to remove the permitted encroachment (i.e., privacy wall) if the structure is substantially altered such that 50% or more of the existing walls are demolished or removed.

In addition, Special Condition #1 requires the submittal of final construction plans that clearly indicate the location of the proposed improvements in relationship to the right-of-way easement. Such plans must demonstrate that all improvements will be constructed no further west than the 3-foot wide landscaped buffer area; no improvement or portion of any improvement shall be located in the planned widened public boardwalk. In order to prevent construction activity from adversely affecting the public's use of the boardwalk, Special Condition #1 also prohibits any staging and storage for the development from occurring on the existing boardwalk and prohibits any closure of the boardwalk or public area for construction activities.

As conditioned, the new wall will not obstruct planned expansion of the boardwalk and is not expected to have any adverse impacts on public recreation or access. Pursuant to Section 30214(b), encroachment of the wall into the landscaped buffer, subject to the requirements for removal in the event the boardwalk is widened or the subject property is redeveloped, is an appropriate accommodation of the applicant's privacy. However, because the site is used so heavily, particularly in the summer months, construction activity that impeded use of the boardwalk could have a significant adverse impact on

public access and recreation. Given the nature of the proposed improvements (concrete masonry wall) it is not anticipated that a substantial area would be required for construction activities or staging and storage. Typically, the Commission restricts work on public recreational areas to outside the summer season, to avoid impacts to the public during the time of highest demand for recreation and public beach access. However, in the case of the proposed project, since, as conditioned, neither access to the boardwalk nor any other public area would be impacted by construction of the improvements, there is no need to restrict the timing of the work.

In summary, the proposed project involves the construction of a wall within the public right-of-way east of the existing boardwalk. The proposed development is consistent with the planned expansion of the existing boardwalk, a public recreational amenity. As conditioned, no short or long-term impacts to coastal resources are anticipated. Therefore, the proposed project is consistent with the public access and recreation policies of the Coastal Act.

3. Visual Quality. Section 30251 of the Coastal Act requires, in part, that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas.

The existing residences along the boardwalk vary widely in architectural style and appearance; the proposed development will consist of a concrete masonry wall. The project site is not adjacent to a lagoon or natural park area of the type where the Commission typically requires development to be of colors or designs compatible with or subordinate to the character of the surrounding natural environment. Moreover, development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied, and the proposed 3-foot high wall is not expected to have an adverse impact on the visual quality of the neighborhood. In addition, the proposed privacy wall meets the City's standards and will not block any views toward the ocean. Therefore, the Commission finds the proposed development consistent with the visual protection policies of the Coastal Act.

4. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority. Section 103.0538 of the certified Planned District Ordinance (PDO) for Mission Beach requires that development or redevelopment of any lot abutting the Ocean Front Walk public right-of-way obtain an encroachment permit for any existing or proposed encroachments into the public right-of-way. The subject permit would involve constructing a wall 3' west of the western property line into the City's

right-of-way and proposed 3-foot wide landscape buffer strip inland of the planned expanded public boardwalk. Inasmuch as the applicant has obtained an Encroachment Maintenance and Removal Agreement, the proposed project is consistent with the certified Mission Beach PDO. The project is consistent with the certified Mission Beach Precise Plan and all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of San Diego to implement its certified LCP for the Mission Beach community.

5. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 has been conditioned so that it is consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring that construction activities take place on private property, and that any future redevelopment of the site requires the permitted encroachment herein be removed, ensures that all adverse environmental impacts are minimized. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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. 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.

