

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

15 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

RECORD PACKET COPY



Tue 4a

Filed: 5/2/02
 49th Day: 6/20/02
 180th Day: 10/29/02
 Staff: DS-SD
 Staff Report: 6/12/02
 Hearing Date: 7/8-12/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-71

Applicant: H. M. Elliott

Description: Construction of a new 36" high, approximately 6" wide, 60' long privacy wall extending 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: 702 Whiting Ct., Mission Beach, San Diego, San Diego County
 APN: 423-551-22

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDP No.s 6-99-90, 6-99-145, 6-00-123, 6-00-01; 6-01-29; and 6-02-37; 6-02-40; 6-02-47; 6-02-56. 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. 02-104-2 recorded 3/29/02

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:

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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 5/2/02 by the applicant. The plans shall clearly indicate that the wall approved by Coastal Development Permit No. 6-02-71 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. Proposed is the construction of a 3-ft. high, approximately 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 an approximately 1,500 sq. ft. beachfront site containing an existing single-family residence.

The proposed concrete masonry wall is proposed to be constructed within the public right-of-way 3 ft. 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 No.'s 6-02-9, 6-02-37, 6-02-40, 6-02-47, and 6-02-56 for the construction of a 3' high privacy wall within the public right-of-way, similar to the proposed development.

The 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 (CDP #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 CDP #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 3' 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 (Exhibit 3). 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 as 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.

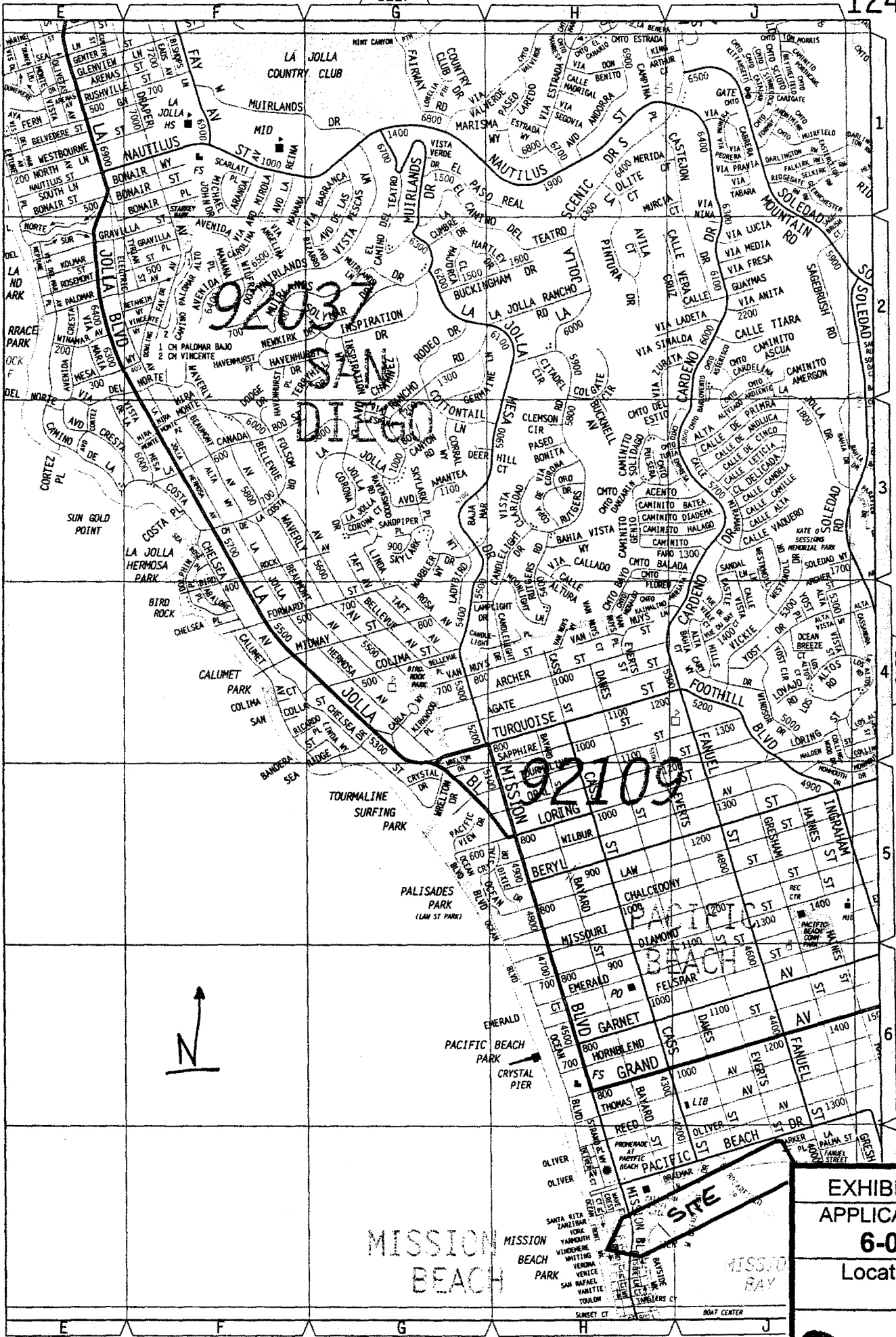
The proposed project has been conditioned so that it is consistent with the public access policies of the Coastal Act. Mitigation measures, including conditions requiring that construction activities take place on private property, and that any future redevelopment of the site requires the permitted 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.

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SAN DIEGO CO.

SEE 1248 MAP

EXHIBIT NO. 1
APPLICATION N
6-02-71
Location Map

California Coastal Commission

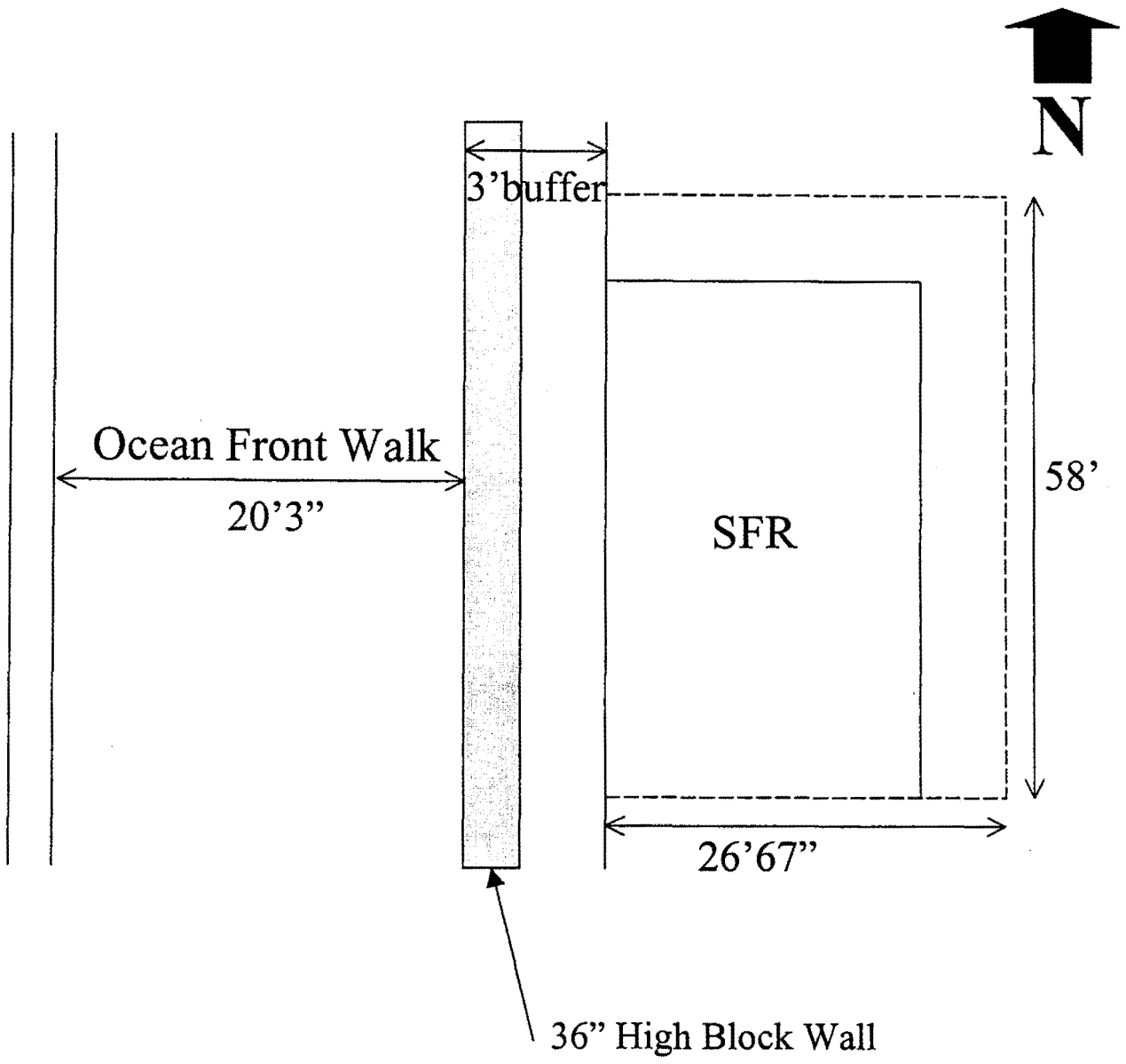

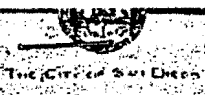


EXHIBIT NO. 2
APPLICATION NO.
6-02-71
Site Plan
 California Coastal Commission



THE ORIGINAL OF THIS DOCUMENT
 WAS RECORDED ON MAR 29, 2002
 DOCUMENT NUMBER 2002-0267409
 GREGORY J. SMITH, COUNTY RECORDER
 SAN DIEGO COUNTY RECORDER'S OFFICE
 TIME: 2:04 PM

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

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement

W.O. NO. 02-104-2

COORD. NO. _____

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of Lot F Blk 237 Mission Beach 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 3' high block wall (private)

for the use and benefit to the owner's property, over, under and across the property located at 702 Whiting Ct

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), 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'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).
- (e) 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.

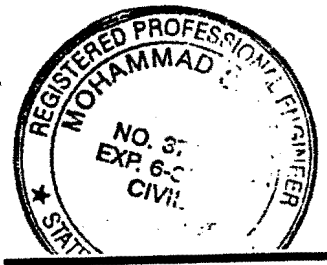
SEE ATTACHED EXHIBITS

"A"

See Dwg. Nos: CONST. PLAN

For City Engineer
 APPROVED:

By: M. Jammal 3/11/02
 Deputy



Jan 31, 2002
 (Date)
Hugh M. Elliott
 (Signature)
Hugh M. Elliott - Owner
 (Print Name & Title)

 (Company)

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) 735-2 DS- 3237 Revised 10/10/01

EXHIBIT NO.	
APPLICATION NO.	
	6-02-71
Encroachment Removal Agreement	

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 DIEGO, CA 92108-4402
 767-2370

RECORD PACKET COPY



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Applicant: Robert and Darlene Hodge

Description: Construction of a new 36" high, approximately 6" wide, 60' long privacy wall extending 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.

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- 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.

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The Commission finds and declares as follows:

1. Detailed Project Description/Permit History. Proposed is the construction of a 3-ft. high, approximately 60 linear-foot long, 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 an approximately 3,300 sq. ft. beachfront site containing an existing single-family residence. The wall is proposed to be constructed within the public right-of-way 3 ft. 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 No.'s 6-02-9, 6-02-37, 6-02-40; 6-02-47 and 6-02-56 for the construction of a 3' high privacy wall within the public right-of-way, similar to the proposed development.

The 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 (CDP #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 CDP #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 3' 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 (Exhibit 3). 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 as 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.

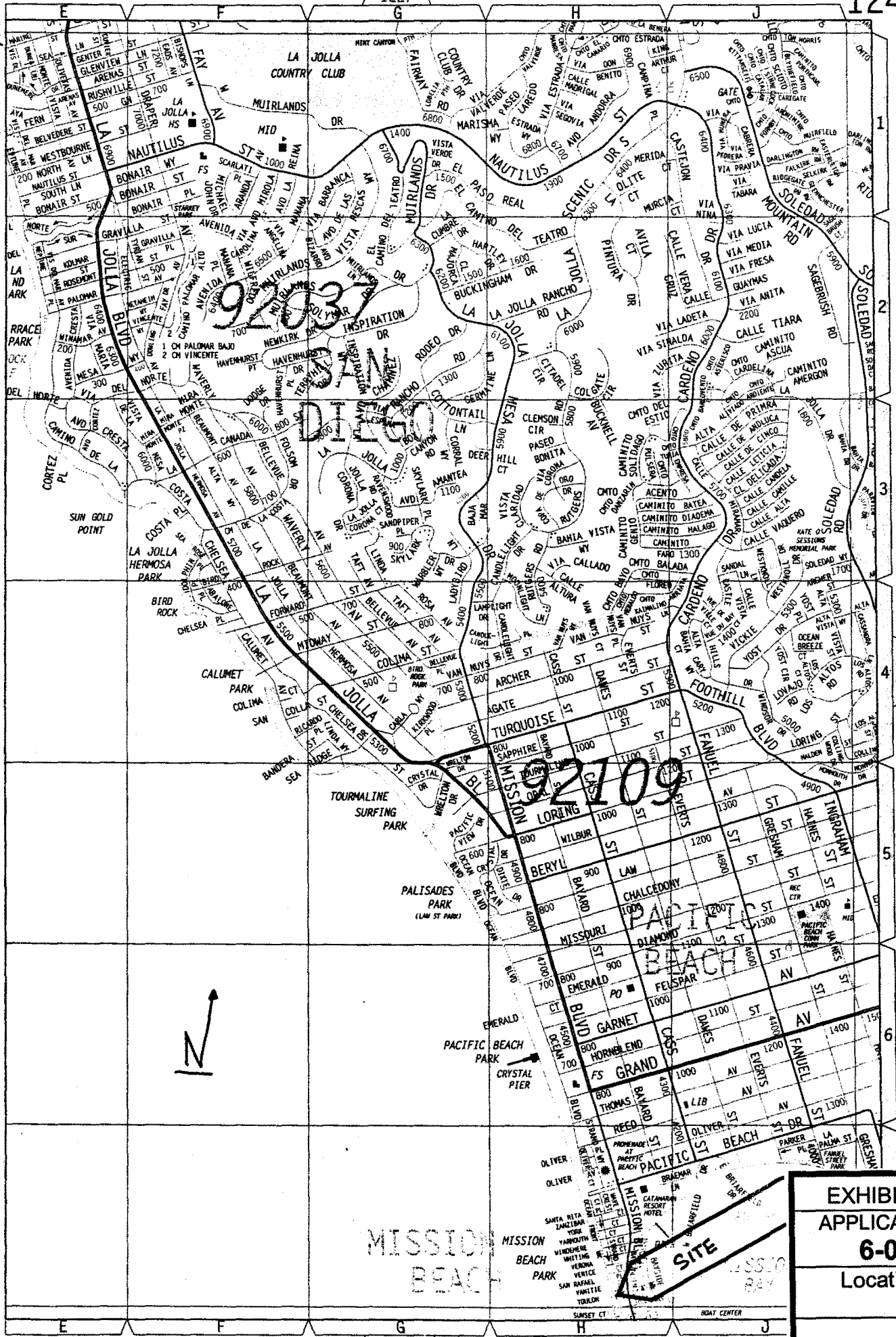
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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.

(G:\San Diego\Reports\2002\6-02-73 Hodge.doc)

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SAN DIEGO CO.



SEE 1248 MAP

EXHIBIT NO. _____
 APPLICATION NO. _____
6-02-73
 Location Map

6-02-73

Mission Beach

Exhibit 'A'

Adjacent Property

3' Buffer Zone

Vanitie Court

3' Square For Signage

Rounded Corner 2' Radius Min.

Property Line

Existing Wood Fence

Cement Patio

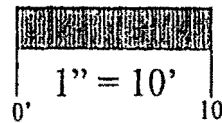
17' Wide Cement Board Walk

3879 Ocean Front Walk
Lots B&C, Block 221, Map 1809

2' Round Support Post for Upper Floor

Drive Way

2 Step Cement Entry Way & Walk Way



Existing Sea Wall

Rounded Corner 2' Radius Min.

City Landscaped

Adjacent Property 702 Toulon Ct.

Existing Wood Fence

EXHIBIT NO. 2

APPLICATION NO.

6-02-73

Site Plan

California Coastal Commission

6-02-073

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 22, 2002
DOCUMENT NUMBER 2002-0243503
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:08 PM

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement

W.O. NO. 02-007(-2)

COORD. NO. _____

In accordance with the provisions of Section 62.0302 of the San Diego Municipal Code, the undersigned, the owner of Lots B+C, Block 221 of map 1809, Mission Beach
(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 personal secondary masonry seawall and 24" cement walkway for the use and benefit to the owner's property, over, under and across the property located at 3879 Ocean Front Walk, San Diego, CA.

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), 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'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 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).
- (e) 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

A, B

See Dwg. Nos: Construction V16

For City Engineer
APPROVED:

By: M. Sammak 2/15/02

01/22/02

(Date)

Robert L. Hodge Darlene Hodge

(Signature)

(Print Name & Title)

(Company)



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) 735-7353
DS- 3237 Revised 10/10/01

EXHIBIT NO.
APPLICATION NO.
6-02-73

Encroachment
Removal Agreement

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
767-2370

RECORD PACKET COPY



Tue 4c

Filed: 5/8/02
49th Day: 6/26/02
180th Day: 11/4/02
Staff: DS-SD
Staff Report: 6/17/02
Hearing Date: 7/8-12/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-75

Applicant: City of Solana Beach

Agent: Marvin Zigman

Description: Construction of an approximately 5 ft. high, 55 ft. long, concrete block retaining wall and re-paving and re-stripping an existing parking lot, on a site containing an existing restaurant.

Site: 137 Lomas Santa Fe Drive, Solana Beach, San Diego County
APN: 298-73-03

Substantive File Documents: Certified County of San Diego Local Coastal Program (LCP); City of Solana Beach General Plan and Zoning Ordinance; Exemption Letter dated 4/26/02 to Chandra Collure, City of Solana Beach from Gary Cannon, Commission staff.

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. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final construction plans for the permitted development. Said plans shall be in substantial conformance with the plans submitted by the City of Solana Beach, dated 5/8/02, and shall also include staging areas and access routes for construction equipment and project supplies that shall not impact existing traffic patterns or access along Lomas Santa Fe Drive.

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the construction of an approximately 55 ft. long, approximately 5 ft. high concrete block retaining wall along the eastern property line of a site containing an existing restaurant, as well as the re-paving and re-striping of an existing private parking area. The project proposal is needed in order to accommodate public street improvements within the public right-of-way along Lomas Santa Fe Drive that include a widened bike lane, construction of curbs and gutters, and an improved sidewalk as part of the City's roadside maintenance program. These improvements are exempt from Coastal Development Permit requirements. However, in order to facilitate these roadway improvements, an existing berm, topped with a concrete retaining wall, along the eastern property line of an existing restaurant along Lomas Santa Fe Drive must be demolished. Also, in order to accommodate the street improvements, the existing parking lot for the restaurant must also be modified. Although the public street improvements are exempt from Coastal Development Permit requirements, the development proposed on private property (the project proposal) requires a permit because the project involves the construction of a significant non-attached structure and the removal of one parking space from the existing lot.

The project site is located at 137 Lomas Santa Fe Drive, approximately 7/10 of a mile west of Interstate 5, approximately ¼ mile east of the Pacific Ocean, in the City of Solana Beach.

The project site is located within an area that was previously covered by the County of San Diego's Local Coastal Program (LCP). However, the County LCP was never effectively certified and is thus used as guidance, with Chapter 3 Policies of the Coastal Act used as the standard of review.

2. Public Access. Sections 30210, 30212, and 30220 of the Coastal Act provide for the protection, provision and enhancement of public access and recreational opportunities in coastal areas. These policies address the public's right of access to the sea and public recreational sites, and require that access considerations be given high priority in reviewing development proposals.

Although the proposal will close the restaurant parking lot for several days and result in the elimination of 1 parking space, the replacement of the an existing retaining wall and the re-paving of an existing parking lot will not cause any impacts to public access in the area because the site does not provide any beach parking. The City of Solana Beach requires that the 1,760 sq. ft. restaurant provide a minimum of 11 parking spaces for its use, and the parking lot currently provides 14 spaces. With the elimination of one space as a result of the project proposal, the parking area remains consistent with the City's parking requirements and adequate parking to serve the existing restaurant is maintained. In order to ensure that the project does not cause impacts to Lomas Santa Fe Drive, however, Special Condition #1 is attached and requires that the applicant submit final construction plans to the Executive Director that include staging and storage sites for project materials and that indicate traffic access along Lomas Santa Fe Drive will remain unaffected. The project, as conditioned, will not affect traffic along a major coastal access way, and will not affect existing beach parking. Although the proposal involves the removal of a parking space from the parking lot (leaving 13 spaces), the parking area is a private lot that is used only for the restaurant, and the project will not impact beach parking in the area. The project is located well inland of the ocean in an established commercial area, and public access to the ocean will not be affected by the project proposal because beachgoers in this area generally do not park east of the Pacific Coast Highway, which runs approximately 1/8 mile west of the project site. Therefore, the Commission finds the project is consistent with the above-cited sections of the Coastal Act, as well as with all other public access and recreation policies of the Act.

3. Water Quality. The following Coastal Act policies addressing water quality are most applicable to the subject proposal, and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored...Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters....

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum population of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment

The proposed development, when completed, will not have any adverse impacts on water quality. The site contains an existing parking area, and the amount of impervious surface on the site will remain unchanged by the project proposal. The existing drainage outlets, which empty into

Lomas Santa Fe Drive storm drains, are adequate for the parking area and the retaining wall, and the project will not result in any impacts to water quality. The proposed parking lot improvements, therefore, will not result in any additional water quality concerns because the project does not propose any changes to the existing, and adequate, onsite drainage improvements. The Commission finds that approval of the development, as proposed, is consistent with the cited Coastal Act policies regarding the protection of water quality.

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.

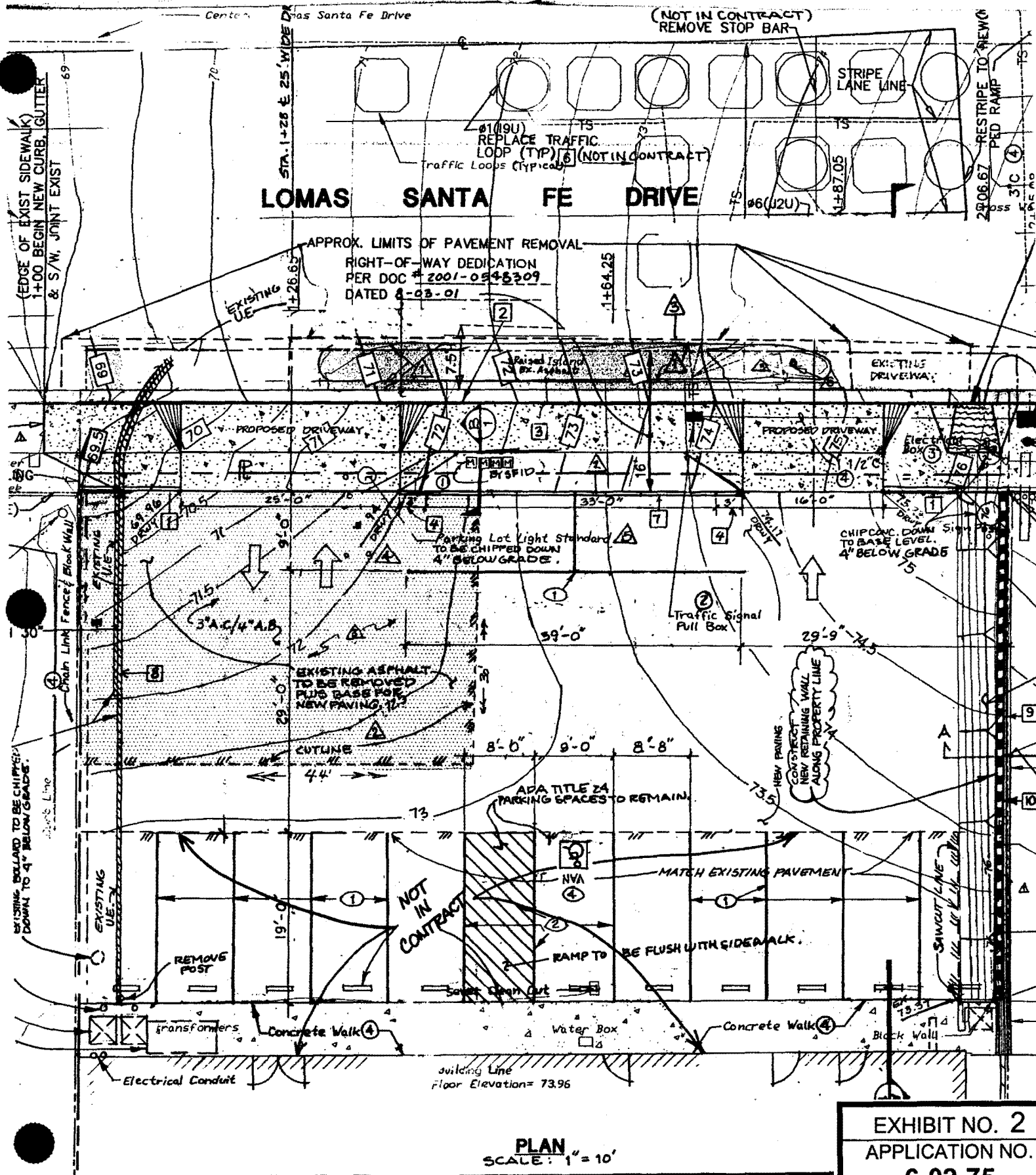
The area proposed for improvements is adjacent to the City's right-of-way, within an existing private parking area off of Lomas Santa Fe Drive. The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. While the Commission certified the County LCP, the County never accepted the Commission's modifications and therefore, the LCP was never effectively certified and Chapter 3 policies of the Coastal Act remain the standard of review. However, the Commission will continue to utilize the San Diego County LCP documents for guidance in its review of development proposals in the City of Solana Beach until such time as the Commission certifies an LCP for the City. The proposed development is within the City's Scenic Area and Specific Plan – Highway 101 special overlay zones, and is consistent with the requirements of these zones. The project is in conformance with all applicable Chapter 3 policies, and therefore the Commission finds the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable Local Coastal Program.

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.

As conditioned, the proposed project is consistent with the policies of the Coastal Act. 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, and attached special conditions will minimize impacts to public access and water quality. 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.



APPROX. LIMITS OF PAVEMENT REMOVAL
 RIGHT-OF-WAY DEDICATION
 PER DOC # 2001-0945209
 DATED 8-03-01

PLAN
 SCALE: 1" = 10'

EXHIBIT NO. 2
APPLICATION NO.
6-02-75
Site Plan

K	CITY APPROVED CHANGES		RECOMMENDED FOR APPROVAL	
	APP'D	DATE	By:	Date
	OC	9-7-01	<i>Therese Lyons</i> Associate Civil Engineer	
	OC	11-2-01		
	OC	3-15-02		
	OC	3-29-02		



CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4402
 619-767-2370

RECORD PACKET COPY



Tue 4d

Filed: 5/9/02
 49th Day: 6/27/02
 180th Day: 11/5/02
 Staff: DS-SD
 Staff Report: 6/17/02
 Hearing Date: 7/8-12/02

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-77

Applicant: Andres Davies

Description: After the fact approval of a lot line adjustment involving two existing lots. Also proposed is the addition of 119 sq. ft. to an existing 595 sq. ft. accessory building and its conversion to a guesthouse, grading and driveway improvements, as well as on- and off-site drainage improvements on a 25,969 sq. ft. site containing an existing 1,225 sq. ft. single-family home and a 1,360 sq. ft. detached garage.

Area	25,969 sq. ft.
Building Coverage	1,225 sq. ft. (5%)
Pavement Coverage	2,300 sq. ft. (8%)
Unimproved Area	22,444 sq. ft. (87%)
Parking Spaces	4

Zoning	Medium-High Residential (8-12 du/acre)
Plan Designation	Medium-High Residential (8-12 du/acre)
Project Density	2 du/ac

Site: 671 Ida Ave, Solana Beach, San Diego County.
 APN: 298-140-13 & 298-140-15

Substantive File Documents: Previously Certified County of San Diego Local Coastal Program (LCP); City of Solana Beach General Plan and Zoning Ordinance; Certificate of Compliance for Andres Davies, recorded 12/3/01 San Diego County Recorder's office.

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.

NONE

IV. Findings and Declarations.

The Commission finds and declares as following:

1. Detailed Project Description. The proposed project is for an after-the-fact lot line adjustment involving two existing lots. Proposed lot A will be 20,437 sq. ft. and proposed lot B will be 5,532 sq. ft. Also proposed is approximately 300 cu. yards of balanced grading, driveway improvements, the addition of 119 sq. ft and conversion of an existing 595 sq. ft. accessory building into a 714 sq. ft. guesthouse, and on- and off-site drainage improvements on a 25,969 sq. ft. site containing an existing 1,225 sq. ft. one-level single-family residence, and a 1,320 sq. ft. detached, 2-story garage and office.

On November 16, 2001 the Commission approved CDP #6-01-147 for the demolition of a single-family residence and construction of a new single-level 1,245 sq. ft. single-family residence and a 595 sq. ft. accessory building on the subject site, with a condition requiring the applicant to submit to the Executive Director final drainage plans.

On February 8, 2002 the Commission approved CDP #6-01-182 for the construction of a detached three car garage with a 660 sq. ft. 2nd story office, including a wet bar and bathroom, with a special condition regarding permitted density.

The project site is located at 671 Ida Ave, one block west of Interstate 5, in the City of Solana Beach. The surrounding area consists of medium and large sized single-family residences as well as several apartment and condominium complexes.

The City of Solana Beach does not yet have a certified Local Coastal Program (LCP) and therefore, the Chapter 3 policies of the Coastal Act are the standard of review. The previously certified County of San Diego LCP is used for guidance in Solana Beach.

2. Runoff/Water Quality. Section 30231 of the Coastal Act states:

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

In order to reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, the applicant is proposing to direct runoff from the roof, driveway, and other impervious surfaces into the landscaped areas on the site for infiltration and or/percolation, prior to being conveyed off-site into a proposed vegetated swale located on adjacent private property. The applicant has submitted a letter of consent from the adjacent property owner authorizing the applicant to construct said swale. Directing runoff through landscaping and vegetated swales is a well-established BMP for treating runoff from small developments such as the subject proposal.

The project proposal also includes approximately 300 cu. yards of balanced grading, and consistent with County of San Diego grading requirements, the applicant has proposed a number of erosion control measures (such as incremental grading in the rainy season) to assure that erosion and off-site sedimentation is reduced. In addition, the subject site is located well inland, and is not adjacent to or in close proximity to any water body or lagoon; thus, the modest amount of proposed balanced grading will not impact water quality. As submitted, the proposed development will serve to reduce any impacts to water quality from the project to insignificant levels, consistent with the above cited Coastal Act policies.

3. Parking/Public Access. Section 30250(a) and 30251 of the Coastal Act requires that new residential development be located where adequate public services are available and where it will not have significant adverse impacts on coastal resources. Section 30252 requires that adequate parking for new development is provided. The site is planned and zoned for Medium-High Residential use in the City of Solana Beach, which allows eight to twelve dwelling units per acre. The site is also designated for 8-12 units

per acre residential development in the previously certified County of San Diego Local Coastal Program, which is used for guidance in the City of Solana Beach.

The proposed development is consistent with the City's regulations. There are currently four parking spaces on the southern site and the proposal does not include any changes to existing parking. The proposal, therefore, provides adequate parking onsite for the residence. With the existing home, the development represents a density of 2 dwelling units per acre, which is consistent with the applicable zoning and land use designations. The southern project site (containing an existing single-family home) is located in an area where all typical urban services such as water and sewer are available. Additionally, the northern proposed lot, currently undeveloped, has street access and is located in an area where all typical urban services are available; the site is capable of containing a single-family residence with adequate parking and services, should the applicant wish to sell or develop the site in the future. The minor lot line adjustment will not result in isolating either lot from access to a maintained public roadway, or to urban amenities such as sewer or water service and the proposed lots are comparable in size with other lots in the area.

The site is located on the west side of Interstate 5 in an area that does not have the potential to impact beach or public recreation parking and adequate parking is provided on-site. Thus, the proposed development does not raise any coastal access issues, and the project is consistent with Sections 30250(a) and 30252 of the Coastal Act.

4. No Waiver of Violation. Although development, in the form of a minor lot line adjustment, has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

A minor lot line adjustment between this lot and the lot immediately north of it occurred in December of 2001, and was recorded without benefit of a coastal development permit. Thus, the applicant is also including a request for after-the-fact approval of the lot line adjustment in this application. The larger, southern lot is already developed with a single-family home, while the northern lot is vacant.

5. Visual Impacts. Section 30251 of the Coastal Act provides for the protection of scenic coastal resources and for the compatibility of new and existing development. The site is located within an established residential neighborhood consisting of large and medium scale single-family residences. Several of the surrounding homes have detached garages and outbuildings, and the proposed conversion of an existing accessory building into a guesthouse will not affect the character of existing community. The subject site is not located within any of the special overlay areas identified in the County LCP, and the site is not visible from Interstate 5 or any other designated coastal access

routes or scenic corridors. Therefore, the project will not have an adverse visual impact on the community and the project is consistent with Section 30251 and all other applicable Chapter 3 policies of the Coastal Act.

6. 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 was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. While the Commission certified the County LCP, the County never accepted the Commission's modifications and therefore, the LCP was never effectively certified, and Chapter 3 policies of the Coastal Act remain the standard of review. However, the Commission will continue to utilize the San Diego County LCP documents for guidance in its review of development proposals in the City of Solana Beach until such time as the Commission certifies an LCP for the City.

The subject site was designated as High-Medium Residential in the previously certified County of San Diego LCP. The City of Solana Beach has zoned and designated this area for residential uses in their draft Land Use Plan and Zoning Ordinance, and the proposed project improvements are consistent with these designations. As discussed above, the proposed project is consistent with the relevant Chapter 3 policies regarding the protection of public access and visual resources, and no adverse impacts to coastal resources will result. The site was not subject to any of the special area overlays established in the County LCP. Therefore, the Commission finds the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable Local Coastal Program.

7. 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 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 that the activity may have on the environment.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. There are no feasible alternatives or mitigation measures available that would substantially lessen any significant adverse impact that the activity might 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.

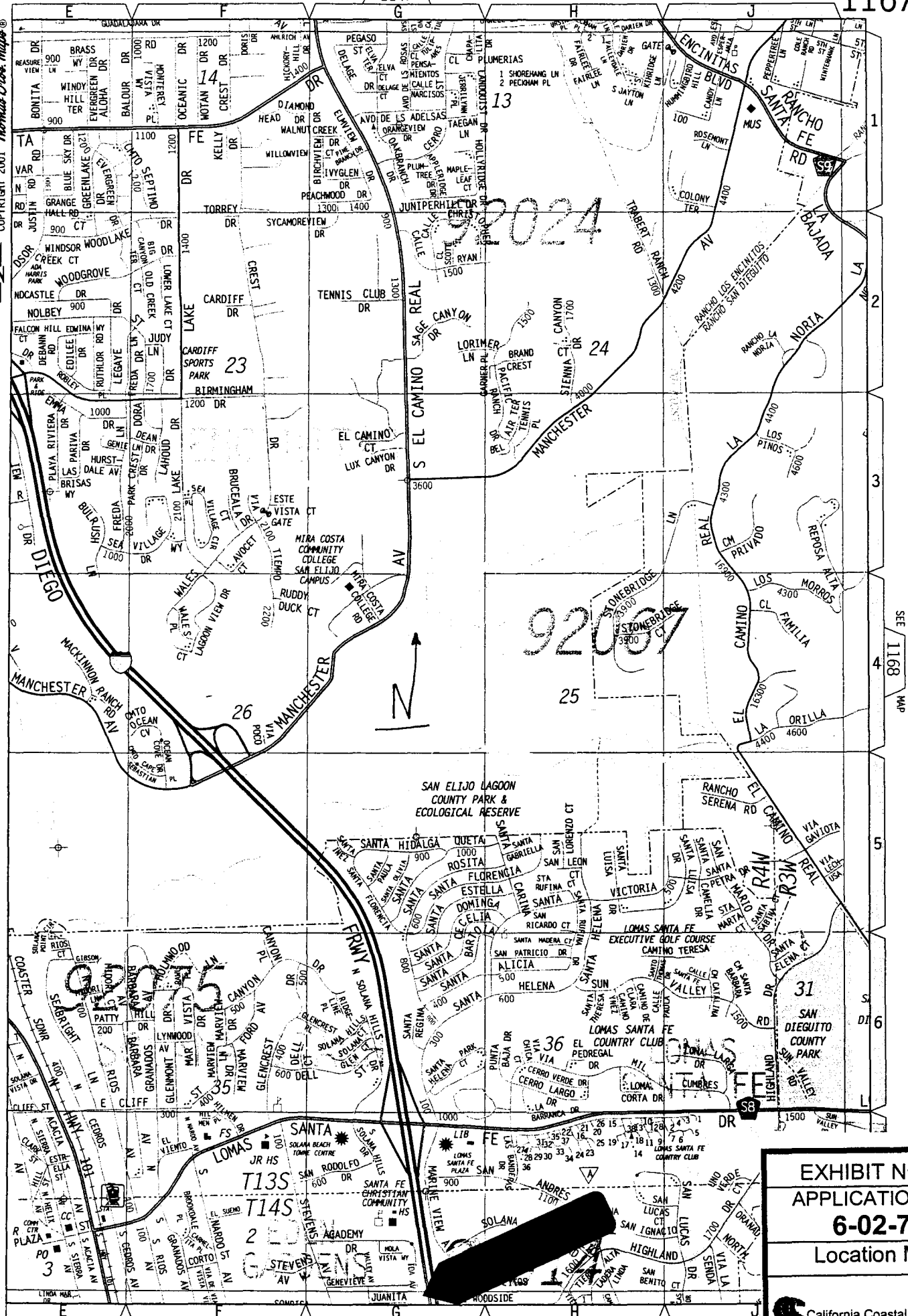
STANDARD CONDITIONS:

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.

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SEE 1168 MAP

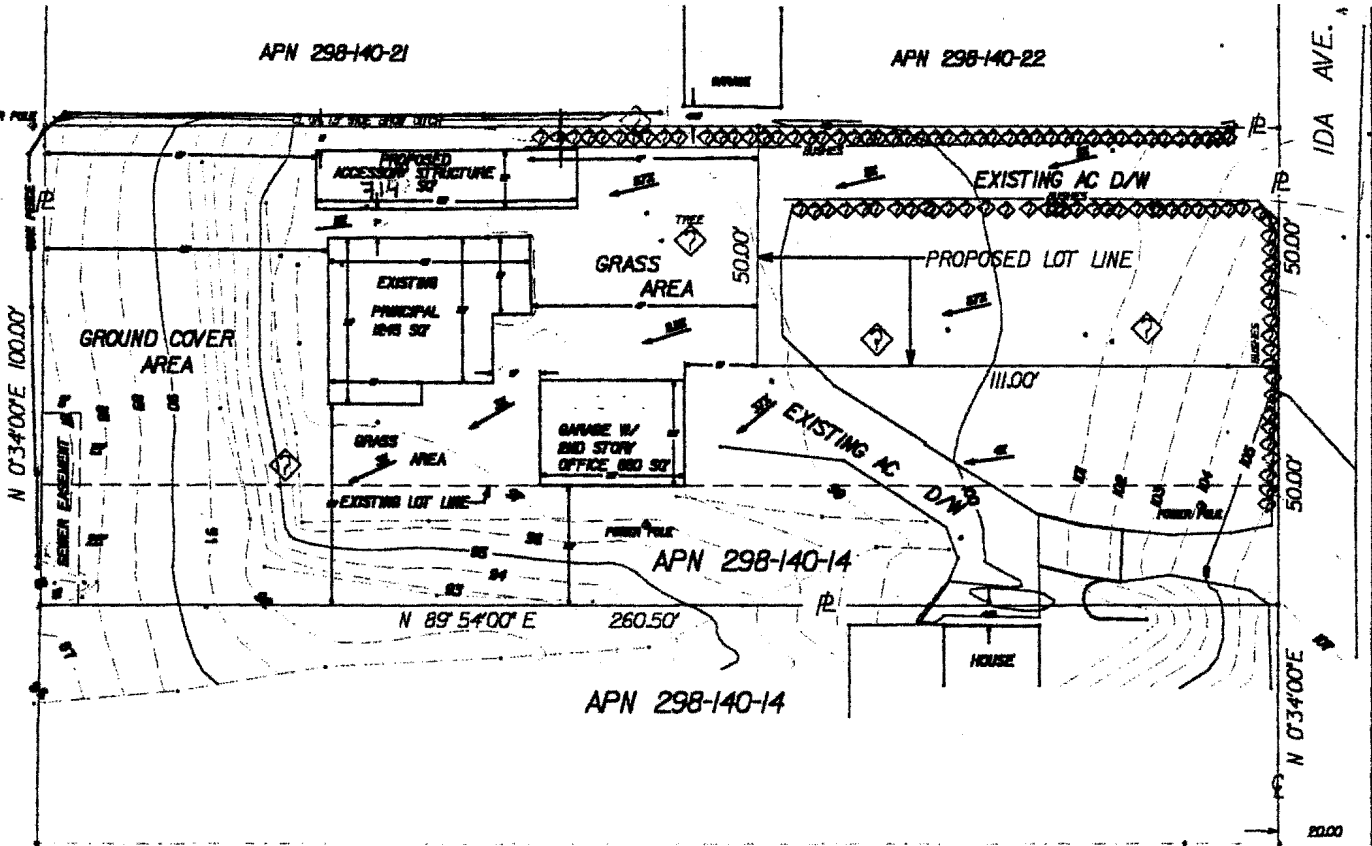
EXHIBIT NO. 1
APPLICATION NO.
6-02-77
Location Map

California Coastal Commission

SEE 1187 MAP

0 .125 .25 .375 .5 miles 1 in. = 1900 ft.

6-01



RICK D. BROOKS P.L.S.
 6172 W. MANOR DR.
 LA MESA CA 91942
 L.S. NO. 5086

SITE PLAN
 671 IDA AVE.
 ANDRES DAVILA
 619-980-6269

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