

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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F4b

Filed: November 18, 2002
49th Day: January 6, 2003
180th Day: May 17, 2003
Staff: ALB-LB
Staff Report: December 19, 2002
Hearing Date: January 7-10, 2003
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-02-315

APPLICANT: Cathy Noonan

RECORD PACKET COPY

AGENT: Marshall Innins, Architect

PROJECT LOCATION: A-5 Surfside Avenue, Seal Beach, Orange County

PROJECT DESCRIPTION: Addition of 727 square feet and remodel of an existing 1010 square foot single-family residence with an attached 380 square foot two-car garage and construction of a new 200 square foot beach level deck and a new 200 square foot second story deck on a beachfront lot. The decks and patio will extend a maximum of 10-feet seaward, beyond the property boundary, onto land that is leased by the Surfside Colony to the applicant. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the proposed development subject to seven (7) special conditions. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events. Special Condition No. 1 requires the applicant to assume the risk of development. Special Condition No. 2 requires future improvements be submitted to the Commission for permit amendment. Special Condition No. 3 requires that no future shoreline protective device be constructed to protect the development approved by this permit. As described more fully below, Special Condition No. 4 requires the applicant to agree to remove the patio and decks if Surfside Colony ever proposes a protective device to protect the patio and decks. Special Condition No. 5 requires the applicant to conform to certain construction phase best management practices. Special Condition No. 6 requires the applicant to conform to the drainage plan submitted, which shows rooftop and surface runoff being directed into trench drains with subterranean gravel bio-filtration devices to allow infiltration. Special Condition No. 7 requires recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

The proposed development includes elements that are on the applicant's property (the residence) and elements that are on property owned by Surfside Colony, Ltd. (the ground level patio) or cantilevered over property owned by Surfside Colony, Ltd. (the second and third floor decks). In prior approvals the Commission had required Surfside Colony, Ltd. to execute lease restrictions acknowledging the restrictions outlined in Special Conditions 1, 2 and 3 above. However, Surfside Colony, Ltd. has refused to execute such lease restrictions and the applicants were unable to obtain release of their coastal development permits. As an alternative, the Commission accepted

a prior applicant's proposal [5-00-257 (Cencak)] to eliminate the requirement for the lease restrictions and add a special condition that requires the owner of the residential property to remove the development on Surfside Colony, Ltd. land if Surfside Colony, Ltd. were to seek shoreline protection measures to protect the development on their land that is approved by this permit. This approach has been continued by the Commission on subsequent Surfside approvals. Special Condition No. 4 would implement this same requirement at the subject property in lieu of the lease restrictions, which the Commission would normally require the applicant to obtain from Surfside Colony, Ltd.

LOCAL APPROVALS RECEIVED: City of Seal Beach Approval-in-Concept dated September 12, 2002; Surfside Colony, Ltd. Architectural Committee approval of residence dated September 12, 2002.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development and Administrative Permits P-73-1861, P-75-6364, 5-86-676, 5-87-813, 5-95-276, 5-97-380, 5-98-098, 5-98-412 (DiLuigi), 5-99-356-A1 (Mattingly), 5-99-386 (Straight), and 5-99-423 (Evans); 5-00-132 (U.S. Property); 5-00-206 (McCoy); 5-00-257 (Cencak); 5-01-239 (Goodwin); Consistency Determinations CD-028-97, CD-067-97, and CD-65-99; *Wave Runup & Coastal Hazard Study, Lot A-5 Surfside Colony, Seal Beach, CA* prepared by Skelly Engineering dated November 2002; A-Row Frontage Lease between Surfside Colony, Ltd. and Cathy Noonan.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-02-315 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit amendment will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit amendment must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

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

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property, that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards, (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from injury or damage due to such hazards.

2. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-02-315. Pursuant to Title 14, California Code of Regulations, section 13250(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) shall not apply. Accordingly, any future improvements to the single family house or decks described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-02-315 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

3. No Future Shoreline Protective Device

- A(1) By acceptance of this permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-02-315 including, but not limited to, the residence, foundation, decks and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2) By acceptance of this permit, the applicant further agrees, on behalf of themselves and all other successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, foundation and decks, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

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

By acceptance of this permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that in the event that Surfside Colony, Ltd. would seek shoreline protection measures for the herein approved patio and/or decks and not for the principal structure on the applicant's property, the applicant and any successors in interest shall agree to remove the permitted patio and/or decks.

5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity;
- (b) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- (c) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (d) Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be

- discharged into coastal waters. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day;
- (e) The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - (f) A pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines;
 - (g) All BMPs shall be maintained in a functional condition throughout the duration of the project.
 - (h) Debris shall be disposed at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required.

6. Drainage and Runoff Control

By acceptance of this permit, the applicant agrees, on behalf of himself and all successors or assigns, to carry out the project in conformance with the Drainage Detail (Sheet A-1) prepared by Marshall Innis, Design Group Architects submitted November 14, 2002, which shows roof and surface runoff being directed into trench drains with subterranean gravel bio-filtration devices to allow infiltration. Any proposed changes to the drainage plan shall be reported to the Executive Director. No changes shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Special Conditions"); and (2) imposing all Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The lot is located at A-5 Surfside Avenue in the private community of Surfside Colony, in the City of Seal Beach, Orange County (Exhibits 1 and 2). The subject site is a beachfront lot located between the first public road and the sea. The proposed development is in an existing private, gated residential community, located south of the Anaheim Bay east jetty. The proposed project is consistent with development in the vicinity and prior Commission actions in the area. There is a wide, sandy beach between the subject property and the mean high tide line. A pre-Coastal (1966) boundary agreement between Surfside Colony and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside. As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80 feet in width, adjacent to the homes fronting the ocean. The beach seaward of this area is available for lateral public access. Vertical access is available at the end of Anderson Street to the south of the Surfside community. In addition, the Commission conditioned permit P-75-6364 to allow public access through the gates at the southeastern end of Surfside during daylight hours.

The applicant is proposing a 727 square foot addition (112 sq. ft. first floor and 615 sq. ft. second floor) to an existing 1010 square foot single-family residence with an attached 380 square foot two-car garage and construction of a new 200 square foot beach level deck and a new 200 square foot second story deck (Exhibit 3). The resultant structure will be a two-story, 29' high, 1737 square foot single-family residence with an attached 380 square foot two-car garage. The residential structure will be located within the applicant's property boundary. However, the first and second floor decks will extend 10 feet beyond the property boundary, onto land that is leased by Surfside Colony, Ltd. to the applicant. Surfside Colony is the community association that owns the common areas of the private community. The applicant has invited Surfside Colony to join as co-applicant; however, Surfside Colony has not chosen to join.

The project also includes the installation of a new concrete driveway and side yard walkways. The applicant has incorporated post-construction water quality measures into the proposed project, including the installation of two infiltration trenches along the inland corners of the site to allow infiltration of roof and surface runoff. No grading is proposed. Demolition debris will be disposed of at an appropriate location outside the Coastal Zone.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future can not be allowed due to the adverse impacts such devices have upon public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate setback from the water, require conformance with a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite, prohibit construction of protective devices (such as a seawall) in the future, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future

development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

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

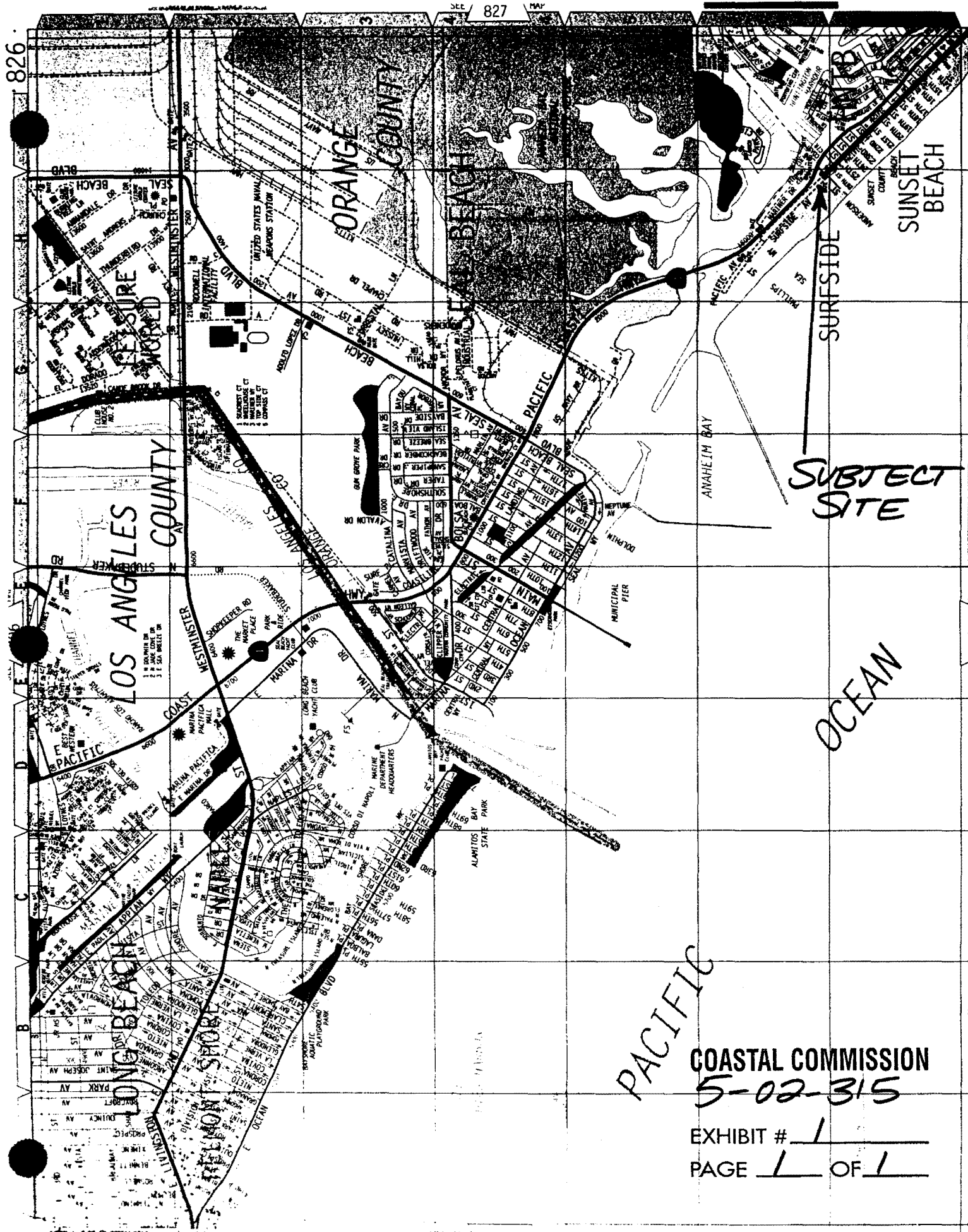
On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California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

use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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



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COASTAL COMMISSION

5-02-315

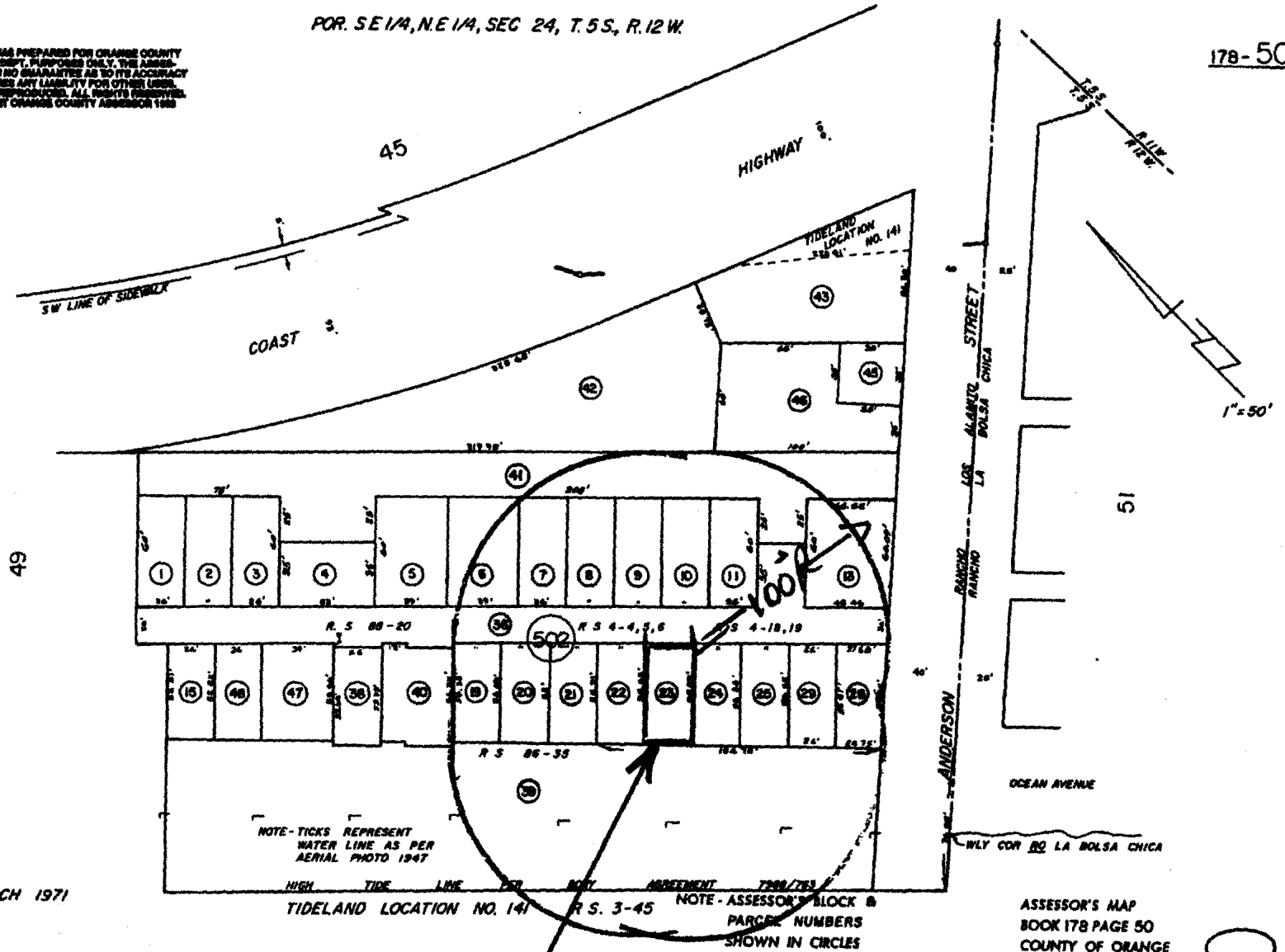
EXHIBIT # 1

PAGE 1 OF 1

POR. SE 1/4, NE 1/4, SEC 24, T. 5 S., R. 12 W.

THIS MAP WAS PREPARED FOR ORANGE COUNTY
ASSESSOR DEPT. PURPOSE ONLY. THE ASSES-
SOR MAKES NO GUARANTEE AS TO ITS ACCURACY
FOR ANY OTHER PURPOSE OR FOR OTHER USES.
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MARCH 1971

ASSESSOR'S MAP
BOOK 178 PAGE 50
COUNTY OF ORANGE

COASTAL COMMISSION

5-02-315

EXHIBIT # 2

PAGE 1 OF 1

90,000 Feet

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South Coast Region
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5-02-315
EXHIBIT # 3
PAGE 1 OF 3

THE NOONAN RESIDENCE

SAN CLEMENTE, CALIFORNIA

SYMBOLS ABBREVIATIONS GENERAL NOTES PROJECT DATA SHEET INDEX

- 1 REFERENCE NOTE
- 2 DOOR SYMBOL
- 3 DOOR SYMBOL
- 4 CABINET TYPE
- 5 CABINET TYPE
- 6 REVISION SYMBOL
- 7 MATCH LINE
- 8 PROPERTY LINE
- 9 CONTROL POINT
- 10 SECTION IDENTIFICATION
- 11 SHEET REFERENCE NUMBER
- 12 DETAIL IDENTIFICATION
- 13 INTERIOR ELEVATION IDENTIFICATION
- 14 SHEET REFERENCE NUMBER
- 15 NEW OR FINISHED CONTOUR
- 16 EXISTING CONTOUR

SYMBOL	ABBREVIATIONS
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GENERAL NOTES

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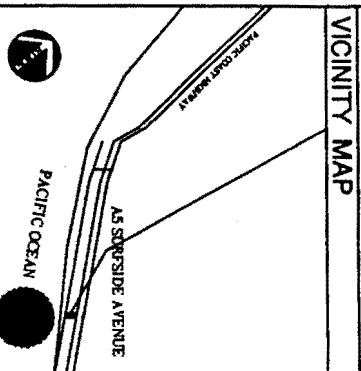
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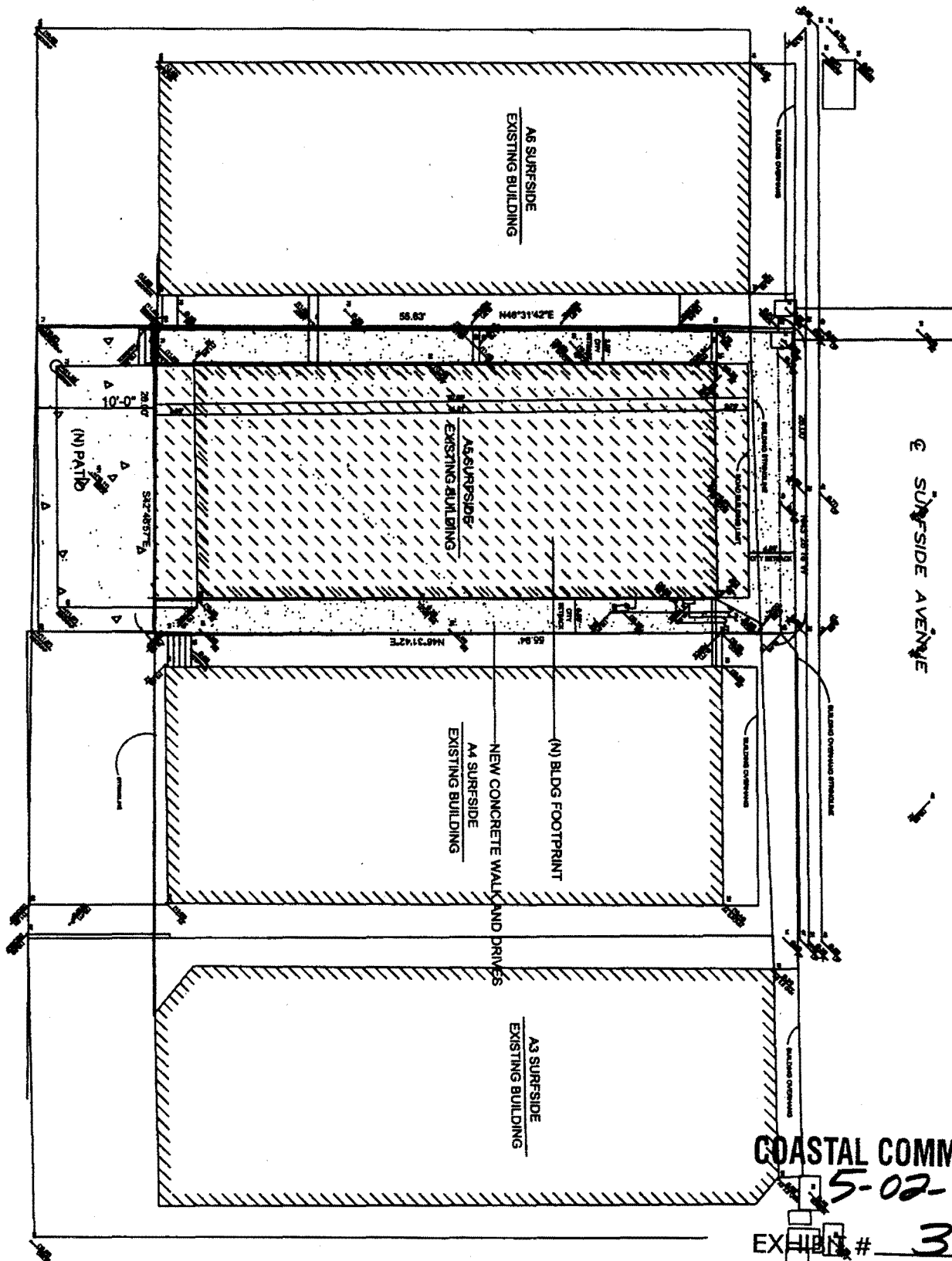
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PROJECT DATA
PROJECT NAME
PROJECT ADDRESS
PROJECT CITY
PROJECT STATE
PROJECT ZIP
PROJECT PHONE
PROJECT FAX
PROJECT EMAIL
PROJECT WEBSITE
PROJECT ARCHITECT
PROJECT ENGINEER
PROJECT LANDSCAPE
PROJECT INTERIOR
PROJECT EXTERIOR
PROJECT FURNITURE
PROJECT LIGHTING
PROJECT SOUND
PROJECT VIDEO
PROJECT AUDIO
PROJECT THERMAL
PROJECT MECHANICAL
PROJECT ELECTRICAL
PROJECT PLUMBING
PROJECT HVAC
PROJECT FIRE
PROJECT SAFETY
PROJECT SECURITY
PROJECT ACCESS
PROJECT PARKING
PROJECT TRAVEL
PROJECT WALKING
PROJECT BIKING
PROJECT HORSEBACK
PROJECT BOATING
PROJECT FISHING
PROJECT GOLFING
PROJECT TENNIS
PROJECT BASEBALL
PROJECT SOFTBALL
PROJECT BASKETBALL
PROJECT VOLLEYBALL
PROJECT RUGBY
PROJECT CRICKET
PROJECT HOCKEY
PROJECT ICE SKATING
PROJECT SKIING
PROJECT SNOWBOARDING
PROJECT WATER SKIING
PROJECT WIND SURFING
PROJECT KAYAKING
PROJECT CANOEING
PROJECT ROWING
PROJECT SAILING
PROJECT FLYING
PROJECT CLIMBING
PROJECT JUMPING
PROJECT ROLLER SKATING
PROJECT BOWLING
PROJECT GOLFING
PROJECT TENNIS
PROJECT BASEBALL
PROJECT SOFTBALL
PROJECT BASKETBALL
PROJECT VOLLEYBALL
PROJECT RUGBY
PROJECT CRICKET
PROJECT HOCKEY
PROJECT ICE SKATING
PROJECT SKIING
PROJECT SNOWBOARDING
PROJECT WATER SKIING
PROJECT WIND SURFING
PROJECT KAYAKING
PROJECT CANOEING
PROJECT ROWING
PROJECT SAILING
PROJECT FLYING
PROJECT CLIMBING
PROJECT JUMPING
PROJECT ROLLER SKATING
PROJECT BOWLING





COASTAL COMMISSION
5-02-315

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As of
Checked by
Date
Approved by

11/11/02

Comments

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