

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY



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Filed: 12/6/02
49th Day: 1/24/03
180th Day: 6/4/03
Staff: LRO-SD
Staff Report: 1/13/02
Hearing Date: 2/5-7/03

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-02-168

Applicant: Gerald E. Halterman

Description: Construction of a 3-ft. high privacy wall extending 3 ft. into public right-of-way, adjacent to and east of the widened Ocean Front Walk.

Site: 3801 Ocean Front Walk, Mission Beach, San Diego County.
APN 423-578-14

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Certified City of San Diego LCP Implementing Ordinances; CDPs #6-99-90, 6-99-145, 6-00-123, 6-00-01; 6-01-29; and 6-02-37. Waiver from Coastal Development Permit #s 6-02-1-W, 6-02-10-W, 6-02-12-W, 6-02-25-W, 6-02-33-W and 6-02-34-W; Final EIR SCH No. 97011080 – 5/11/98; Encroachment Maintenance and Removal Agreement Nos. 02-136 recorded on 8/23/02.

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

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

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. **Boardwalk Encroachment/Storage and Staging Areas.** As proposed, the wall approved by Coastal Development Permit No. 6-02-168 shall be located no further west than the 3-foot wide landscaped buffer area, and shall not encroach into the widened public boardwalk (Ocean Front Walk). No construction staging or storage shall occur on the existing boardwalk, and construction activities shall not impede or block access on the existing boardwalk in any way.

2. **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:

A. **Detailed Project Description/History.** Proposed is the construction of a 3-ft. high, concrete privacy wall extending 3 ft. into the landscaped buffer area of the public right-of-way inland of the Ocean Front public boardwalk and parallel to the entire length of the western property line of a property along Ocean Front Walk. The existing development on the project site is a duplex. The proposal also includes installation of a gate to facilitate access from the property to the west/boardwalk. However, these improvements are designed to be located on the east side of the wall and the gates are designed to open in and to the east so as not to interfere with vehicular movement along the public boardwalk.

The Ocean Front Walk boardwalk was originally constructed in 1928, and runs along the western side of Mission Beach, from the South Mission Beach Jetty north approximately 2.36 miles to Thomas Avenue in the community of Pacific Beach. The existing concrete walkway east of the project location is approximately 11 feet wide, with a seawall/bulkhead on the seaward side, and a 12-foot wide right-of-way easement inland of the walkway. West of the seawall is sandy beach. Historically, there have been a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the 12-foot wide public easement.

In August 1999, the Commission approved a permit for the City of San Diego to remove the private encroachments in the right-of-way at the project site from Ventura Place to Santa Barbara Place (#6-99-90). In addition, in February of 1999, the Commission

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

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

Most recently, the Commission approved CDP No.'s 6-02-9, 6-02-37, 6-02-40, 6-02-47, 6-02-56, 6-02-71, 6-02-73, 6-02-125 and 6-02-140 for the construction of a 3' high privacy wall within the public right-of-way, similar to the proposed development. Special Condition #1 requires that the wall not encroach any further west than the 3-foot wide landscaped buffer area, and prohibits staging and storage or construction activities within the boardwalk. Similar to the restrictions placed on the project by the City's encroachment removal agreement, Special Condition #2 notifies the applicant that if the existing residence is substantially altered such that 50% or more of the existing walls are demolished or removed, the wall must be removed.

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

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

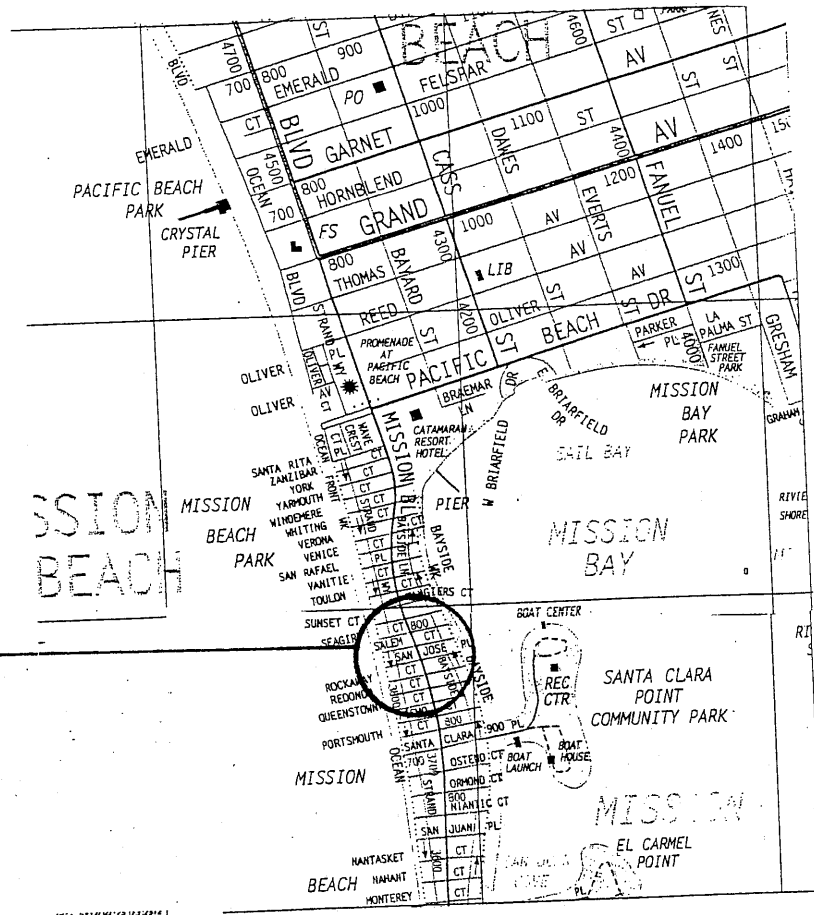
C. Public Access/Parking. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section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

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

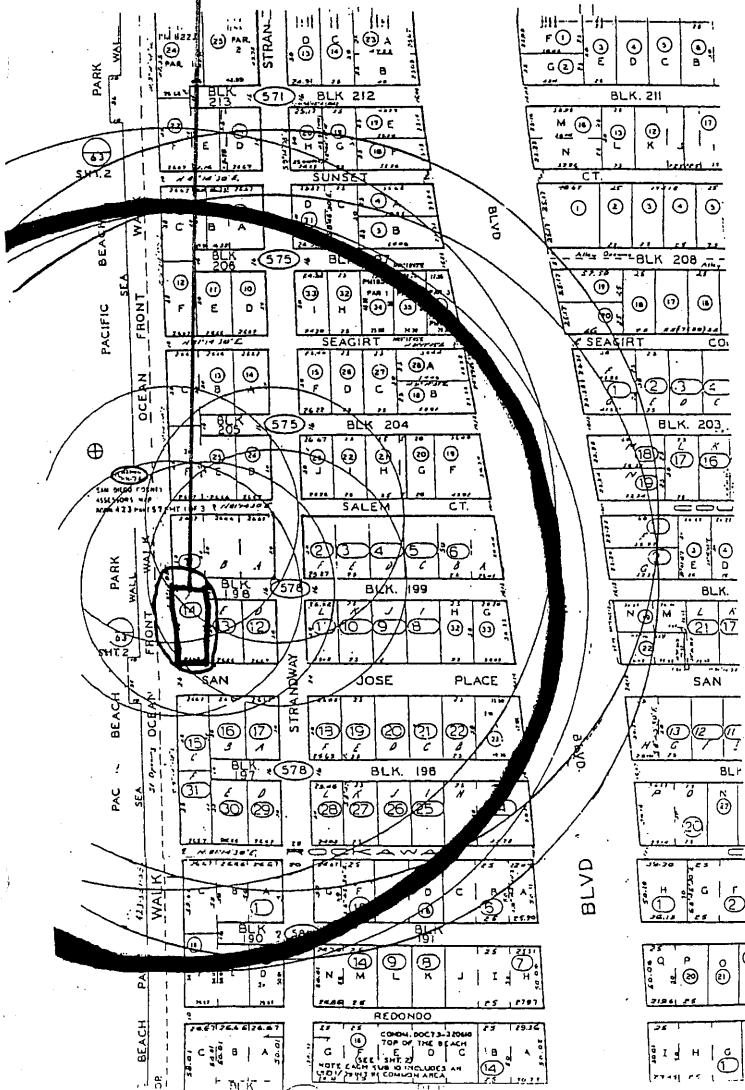
E. California Environmental Quality Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project,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

STANDARD CONDITIONS:

1. **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.




SITE



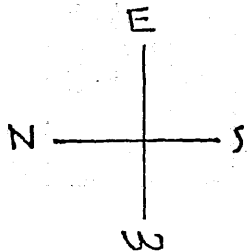
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EXHIBIT NO. 1
APPLICATION NO.
6-02-168
Location Map




California Coastal Commission

EXHIBIT 'A'



ALLEY
16'

"SYMBOL" 
PROPOSED: BLOCK WALL
8" SMOOTH-FACED
3' HIGH - 1' FOOTING

SCALE: 1" = 10'

VICINITY MAP

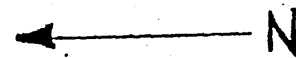
STRANDWAY

(12)

(13)

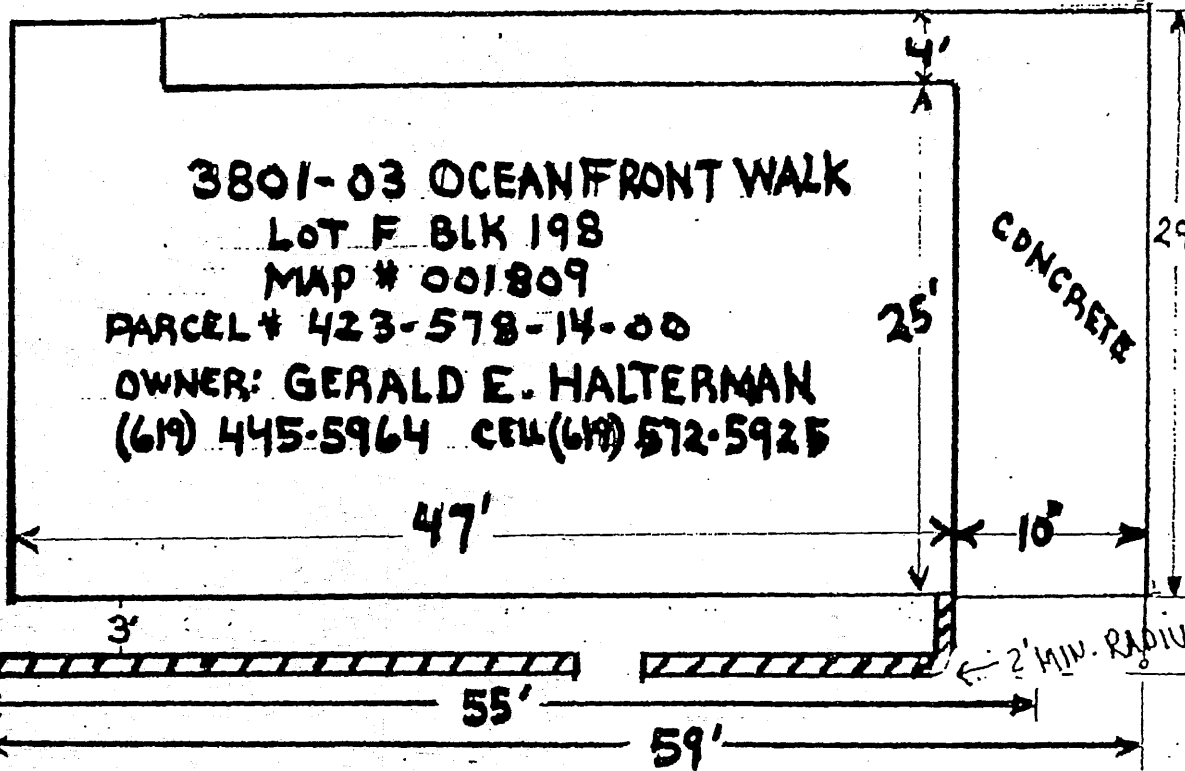
SITE

OCEAN FRONT WALK




SANT JOSE PL.
24'

705 SALEM CT.
LOT A-C
Block 198
MAP 1809
PARCEL # 423-578-01-00



OCEAN FRONT WALK

	EXHIBIT NO
	APPLICATION NO
	6-02-168
Site Plan	



The City of San Diego

RECORDING REQUESTED BY:

City of San Diego

AND WHEN RECORDED MAIL TO:

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

6-02-168
THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON AUG 23, 2002
DOCUMENT NUMBER 2002-0716122
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 2:41 PM

(THIS SPACE FOR RECORDER'S USE ONLY)

Encroachment Maintenance and Removal Agreement

W.O. NO. 02-136

COORD. NO. _____

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

LOT F BLOCK 198 MAP 1809

(Legal Description)

in the City of San Diego, County of San Diego, State of California, in consideration of the grant of permission by the City of San Diego to install and maintain the improvements of A 3' HIGH FENCE (PRIVATE)

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

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

(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.

7/15/02

(Date)

SEE ATTACHED EXHIBITS

"A"

See Dwg. Nos: CONST. PLAN

For City Engineer

APPROVED:

By: [Signature] 8/2

Deputy

EXHIBIT NO. 3
APPLICATION NO.
6-02-168

Encroachment
Maintenance and
Removal Agreement

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

To request this information in formats for persons with disabilities, call (619) 446-5446 or (800) 735-2 DS- 3237 Revised 10/10/01

CITY MANAGER RESOLUTION NO. D-4052
ENCROACHMENT REMOVAL AGREEMENT NO. 6151
HALTERMAN RESIDENCE ERA - PROJECT NO. 3792

WHEREAS, GERALD HALTERMAN, Individual, Owner/Permittee, filed an application with the City of San Diego for an Encroachment Removal Agreement to construct and maintain a 3'-0" high wall, encroaching up to three feet into the public right-of-way of Ocean Front Walk (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Project No. 3792); and

WHEREAS, the project site is located adjacent to 3801-3803 Ocean Front Walk in the NC-N zone of the Mission Beach Planned District, the Coastal Overlay and Coastal Height Limitation Overlay zones of the Mission Beach Precise Plan area; and

WHEREAS, the project site is legally described as Lot F, Block 198 of Mission Beach, Map No. 1809; and

WHEREAS, on July 31, 2002, the City Manager of the City of San Diego considered Encroachment Removal Agreement No. 6151 pursuant to Section 62.0301 of the Municipal/Land Development Code of the City of San Diego; and

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

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

That the City Manager adopts the following written findings, dated July 31, 2002.

Encroachment Removal Agreement Findings:

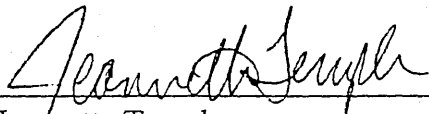
- 1. The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed project is a 3'-0" high concrete masonry wall which will encroach up to 3'-0" into the Ocean Front Walk public right-of-way adjacent to 3801-3803 Ocean Front Walk. The encroachment is proposed in response to the widening of the Mission Beach Boardwalk and is in compliance with the criteria for encroachments in this area as permitted by the City Engineer and will be removed if the property is ever redeveloped. The proposed wall has been designed to be pedestrian oriented as required by the City Engineer. The wall will encroach no greater than 3'-0" into the Ocean Front Walk right-of-way, will be smooth surfaced and round capped and will have rounded corners, at least two-foot radius, to prevent injuries to the public that uses the boardwalk for recreation type purposes. Due to the location, the proposed wall would not be detrimental to the public health, safety, and welfare.

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

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

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City Manager, Encroachment Removal Agreement No. 6151, Project No. 3792, is hereby GRANTED by the City Manager to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Encroachment Removal Agreement No. 6151, a copy of which is attached hereto and made a part hereof.



Jeannette Temple
Development Project Manager
Development Services

Adopted on: July 31, 2002

