

**CALIFORNIA COASTAL COMMISSION**

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Hearing Date: July 15, 2004  
Commission Action:



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**STAFF REPORT: APPEAL**

**LOCAL GOVERNMENT:** City of Long Beach

**LOCAL DECISION:** Approval with Conditions – Case No. 0312-22

**APPEAL NUMBER:** A-5-LOB-04-226

**APPLICANT:** Maxim Management, LP (Attn: Minoo Fitter)

**AGENT:** Bozena Jaworski, Architect

**APPELLANTS:** Coastal Commissioners Sara Wan & Toni Iseman

**PROJECT LOCATION:** 1720 Bluff Place, City of Long Beach, Los Angeles County.

**PROJECT DESCRIPTION:** Construction of a three-level, two-unit condominium (Vesting Tentative Parcel Map No. 060880) with a four-car garage on a vacant 2,130 square foot bluff face lot.

Lot Area	2,130 square feet
Building Coverage	1,830 square feet
Pavement Coverage	140 square feet
Landscape Coverage	160 square feet
Parking Spaces	4
Zoning	Ocean Blvd. Planned Dev. District PD-5
Plan Designation	Planned Development - Residential
Ht above final grade	33.5 feet above beach

**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission determine that the appeal raises **a substantial issue** in regards to the locally approved development's conformity with the City of Long Beach Certified Local Coastal Program (LCP) as the City-approved project would interfere with the view from an LCP-protected public viewing area (12<sup>th</sup> Place overlook). If the Commission adopts the staff recommendation, the de novo hearing will immediately follow. **The motion to find Substantial Issue is on Page Four.** The staff also recommends that the Commission, after a de novo public hearing, **approve with conditions** a de novo coastal development permit for the proposed development. The recommended special conditions would protect public access and public views of the beach and seascape by limiting the maximum height of the structure to the 46.9' elevation of the 12<sup>th</sup> Place overlook. Additional special conditions are recommended to address geologic safety, parking, encroachments onto public land, the construction staging area, protection of water quality, future shoreline protective devices and other future improvements, assumption of risk, local government approval, and deed restriction. **See Page Eight for the motion and resolution necessary to approve the de novo permit.** The applicant agrees with the staff recommendation.

**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Long Beach Certified Local Coastal Program (LCP), 7/22/80.
2. City of Long Beach Planned Development Ordinance PD-5.
3. City of Long Beach Local Coastal Development Permit No. 0312-22 (Lot C: 1720 Bluff Pl.).
4. Appeal & Coastal Development Permit No. A5-LOB-04-059 (Lot D: 1724 Bluff Place).
5. City of Long Beach Local Coastal Development Permit No. 486-86 (Lot B: 1710-18 Bluff Pl.).
6. City of Long Beach Local Coastal Development Permit No. 0308-06 (Lot A: 1700 Bluff Pl.).
7. Topographic survey for 1730 Bluff Place and surrounding lands, prepared by M. Petyo & Assoc., Inc., November 20, 2003 (Exhibit #3).

**I. APPELLANTS' CONTENTIONS**

Coastal Commissioners Sara Wan and Toni Iseman have appealed the City's approval of Local Coastal Development Permit No. 0312-22. Local Coastal Development Permit No. 0312-22, approved by the Long Beach City Council on May 4, 2004, would permit the applicant to build a four-story, 4,400 square foot, two-unit condominium on a vacant beach-fronting lot near downtown Long Beach (See Exhibits).

The appellants contend that the City-approved development would adversely affect visual resources by partially obstructing a primary public view that exists at the 12<sup>th</sup> Place street end, on top of the coastal bluff. The 12<sup>th</sup> Place overlook is a 55-foot wide public street that provides the public with parking and visual access to the beach, the sea, RMS Queen Mary and the port (Exhibit #2, p.1). The City-approved structure would block part of the shoreline view from the 12<sup>th</sup> Place overlook, as the building would extend about eleven feet above the elevation of the viewing area.

The appellant also contends that the applicant has not provided, nor has the City required, an adequate analysis of the subterranean stability of the site or a wave run-up study to determine whether the proposed project would be safe. The certified Long Beach LCP (Page III-A-12) states: "Construction of units on the face of the bluff will require that studies be made by each developer of soil stability conditions." The City record does not refer to any review or approval of the LCP-required study. Therefore, the appellants contend that the applicant has not provided an adequate analysis of the subterranean stability of the site or a wave run-up study to determine whether the proposed project would be safe. Page III-A-6 of the certified LCP identifies the bluffs in LCP Area A, where the project site is located, as a hazard area because "the area is subject to tsunamis" and "there exists a very great potential for liquefaction."

**II. LOCAL GOVERNMENT ACTION**

On May 4, 2004, the Long Beach City Council held a public hearing for an appeal and approved with conditions the following:

1. City of Long Beach Local Coastal Development Permit No. 0312-22.
2. Vesting Tentative Parcel Map No. 060880.
3. Standards Variance (garage setback of 9 feet instead of 20 feet).
4. Standards Variance (front yard setback of 2'9" instead of 8 feet).
5. Standards Variance (curb cut of 32'4" instead of not more than 20 feet).

On June 3, 2004, the City's Notice of Final Local Action for Local Coastal Development Permit No. 0312-22 was received via first class mail in the Commission's South Coast District office in Long Beach. The Commission's ten working-day appeal period was established on June 4, 2004. The appeal was filed on June 17, 2004, the last day of the appeal period.

### **III. APPEAL PROCEDURES**

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)].

The City of Long Beach Local Coastal Program (LCP) was certified on July 22, 1980. Section 30603(a)(1) of the Coastal Act identifies the proposed project site as being in an appealable area by virtue of its location. The proposed project is located between the sea and the first public road paralleling the sea, and within three hundred feet of the beach.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
  - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
  - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project.

Sections 30621 and 30625(b)(2) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of substantial issue. If there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will hold a de novo public hearing on the merits of the application. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue. The Commission's finding of substantial issue voids the entire local coastal development permit action that is the subject of the appeal.

#### **IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds for the appeal regarding conformity of the project with the City of Long Beach Local Coastal Program or the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

Staff recommends a **NO** vote on the following motion:

**MOTION:** *"I move that the Commission determine that Appeal No. A-5-LOB-04-226 raises No Substantial Issue with respect to the grounds on which the appeal has been filed."*

Failure of this motion will result in a de novo hearing on the application and adoption of the following resolution and findings. A majority of the Commissioners present is required to pass the motion.

#### **Resolution to Find Substantial Issue for Appeal A-5-LOB-04-226**

The Commission hereby finds that Appeal No. A-5-LOB-04-226 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

## **V. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

### **A. Project Description**

Local Coastal Development Permit No. 0312-22 and Vesting Tentative Parcel Map No. 060880, approved by the Long Beach City Council on May 4, 2004, would permit the applicant to build a four-story, 4,400 square foot, two-unit condominium with four parking spaces on a vacant beach-fronting lot near downtown Long Beach. The project site is a sloping 2,130 square foot lot situated on the lower half of the bluff face below Bluff Place, the improved public street that currently provides vehicular access to the site and the beach from the top of the bluff (Exhibit #3). The project site has 55 feet of beach frontage.

The project site, situated between the public beach and Ocean Boulevard, is in the heart of the densely developed residential neighborhood that exists east of downtown along the Ocean Boulevard scenic corridor. Multi-unit residential buildings occupy most of the properties located on top of the bluff immediately inland of the site. The City-approved residence, which extends about eleven feet above the elevation of the 12<sup>th</sup> Place overlook, would obstruct part of the public's view from that overlook.<sup>1</sup>

### **B. Factors to be Considered in Substantial Issue Analysis**

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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<sup>1</sup> The applicant (new property owner Minoo Fitter) has since modified the proposed project so that the structure would not extend above the 46.9 elevation of the 12<sup>th</sup> Place overlook (See Exhibit #4).

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **a substantial issue** exists for the reasons set forth below.

### **C. Substantial Issue Analysis**

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

The primary issue raised by the appeal is the project's effect on the public view from the 12<sup>th</sup> Place bluff top overlook. The 12<sup>th</sup> Place overlook is a 55-foot wide public street that provides the public with parking and visual access to the beach, the sea, RMS Queen Mary and the port (Exhibit #2, p.1). The City-approved development would block part of the shoreline view from the 12<sup>th</sup> Place overlook as the structure would extend about eleven feet above the elevation of the bluff top viewing area.

Commission staff recommends a finding of substantial issue because the locally approved development is not in conformity with the City of Long Beach LCP, as asserted in the appeal. The certified LCP identifies the street ends in the project area, and specifically the 12<sup>th</sup> Place overlook, as coastal accessways and public viewing areas. The implementing ordinances (LIP) portion of the certified LCP contains specific building design standards that were developed by the City and certified by the Commission to protect and enhance the public views from the street ends. The local action did not implement the LCP's view protection provisions applicable to this property. Therefore, the City approval raises an issue with respect to the approval's compliance with the certified LCP.

### **LCP Policy**

The certified LCP identifies the 12<sup>th</sup> Place overlook as a coastal accessway and a public viewing area. The project site and the 12<sup>th</sup> Place overlook are situated in LCP Area A. The Policy Plan Summary for LCP Area A, on LCP Page III-A-8, states:

*"A principle objective of this plan is to improve public access to the beach in Area A. This will be accomplished in part by improvements to the street ends south of Ocean Boulevard. These will be developed as mini-parks for viewing and/or beach access purposes".*

Page III-A-10 of the certified LCP states:

*"The park-like street end development (described above) will serve both recreation and visitor serving needs by providing access to the beach, as well as quiet sitting and viewing areas."*



The public beach stairway at 12<sup>th</sup> Place was demolished about ten years ago, but the City is currently planning to improve the 12<sup>th</sup> Place street end for public access as called for by the LCP. Bluff Place and the public beach stairway located at the terminus of 11<sup>th</sup> Place currently provide public pedestrian access to the beach below the 12<sup>th</sup> Place overlook (Exhibit #2, p.1).

### **LCP Policy Implementation**

Page III-A-12 of the certified LCP describes the implementation of the Policy Plan for LCP Area A, as follows:

#### ***"VISUAL RESOURCES AND SPECIAL COMMUNITIES***

*Measures for implementation of this policy plan adequately protect and enhance the visual resources of Area A, particularly those dealing with setbacks, view protection, shadow control, and development of street ends."*

The certified LCP then refers to the LCP implementing ordinances (LIP), which include the Ocean Boulevard Planned Development District (PD-5, formerly PD-1). The Ocean Boulevard Planned Development District contains the specific use and building design standards that protect and enhance the public views from the street ends situated south of Ocean Boulevard. These LIP standards include setback requirements, height limits, density limits, open space requirements, terracing requirements, and lot coverage and floor area ratio limits. The Ocean Boulevard Planned Development District also includes a special incentive provision to encourage lot assembly to allow for higher buildings and densities in exchange for greater visibility of the ocean and more open space. The project site and the abutting vacant lot (1720 and 1724 Bluff Place) would be prime candidates for such a consolidation.

### **Substantial Issue**

The City-approved structure, which would extend eleven feet above the elevation of the 12<sup>th</sup> Place overlook, does not protect the public view from this overlook. On June 10, 2004, the Commission found that the public view from the 12<sup>th</sup> Place overlook is a significant visual resource [See Appeal No. A5-LOB-04-059 (Linden: 1724 Bluff Place)]. The Commission's action on Appeal No. A5-LOB-04-059 resulted in a building height limit being applied to the site that abuts the current project site. The height limit imposed by the Commission on 1724 Bluff Place was the 46.9-foot elevation of the 12<sup>th</sup> Place overlook. This height limit ensures that the approved development at 1724 Bluff Place would not extend above the elevation of the 12<sup>th</sup> Place overlook. If the same height limit were imposed on this project, the adverse effect on the public view would be eliminated.

The City, however, did not impose any limit on the development that would have protected the public view from the 12<sup>th</sup> Place overlook, and thus violated the intent and overall goal of the certified LCP to protect the public's view from the street end. Therefore, a substantial issue exists with respect to the locally approved development's conformity with the City of Long Beach Certified LCP.

The appellant also contends that the applicant has not provided, nor has the City required, an adequate analysis of the subterranean stability of the site to determine whether the proposed

project would be safe. The certified LCP, on Page III-A-12, does require that construction on the face of the bluff will require that studies be made by each developer of soil stability conditions. The City record does not include such a study. Therefore, a substantial issue exists with respect to the locally approved development's conformity with the City of Long Beach Certified LCP.

In conclusion, the proposed development and the local coastal development permit for the proposed development do not conform to the requirements of the City of Long Beach certified LCP. The project, as approved and conditioned by City of Long Beach Local Coastal Development Permit No. 0312-22, would have an adverse effect on visual resources. Therefore, the Commission finds that the appeal raises **a substantial issue**.

#### **VI. STAFF RECOMMENDATION FOR DE NOVO PERMIT**

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

**MOTION:** *"I move that the Commission approve Coastal Development Permit A-5-LOB-04-226 pursuant to the staff recommendation."*

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.

#### **VII. RESOLUTION: APPROVAL WITH CONDITIONS**

The Commission hereby approves, subject to the conditions below, a coastal development permit on the grounds that the development as conditioned will be in conformity with the certified Long Beach Local Coastal Program and the public access and recreation policies of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

#### **VIII. STANDARD CONDITIONS FOR DE NOVO PERMIT**

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 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 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.

#### **IX. SPECIAL CONDITIONS FOR DE NOVO PERMIT**

##### **1. Revised Plans**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised project plans for the review and approval of the Executive Director. The revised plans shall comply with the following requirements:

- (a) Building Setback – Beach. No portion of the structure, including balconies, awnings and decks, shall extend seaward of the applicant's southern (beach-fronting) property line.
- (b) Building Height. No portion of the structure (including roof deck railings and rooftop equipment) shall exceed the elevation of the 12<sup>th</sup> Place overlook right-of-way (46.9 feet above datum as indicated on the topographic survey dated November 20, 2003).

The permittee shall undertake and maintain the development in conformance with the final plans approved by the Executive Director. Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

##### **2. Geologic Safety**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a geotechnical report for the approved development which addresses the construction on the bluff face. The report shall be prepared and certified by an appropriate licensed professional (i.e., civil or other appropriate engineer or architect). All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geotechnical report.

**B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the geotechnical report approved by the California Coastal Commission for the project site.

C. 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 a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Parking

At least two on-site parking spaces for each residential unit shall be provided and maintained in the garage of the approved structure. Vehicular access to the on-site parking shall be taken only from Bluff Place.

4. Encroachments

The development approved by this coastal development permit is limited to the applicant's private property. Private use or development of the beach or any public right-of-way is not permitted. There shall be no encroachment of private development onto or over any portion of the public beach or the rights-of-way abutting the applicant's property. Prohibited encroachments include, but are not limited to: landscaping, tables, chairs and signs.

5. Construction Staging Plan

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Construction Staging Plan that identifies the project staging area(s) to be used during construction of the approved development. The construction staging plan shall include a site plan that depicts the limits of the construction site and staging area(s), construction corridors, and the location of fencing and temporary job trailers. No portion of the beach shall be used for construction staging activities, and the Bluff Place coastal accessway shall remain open and passable at all times. The permittee shall undertake the development in conformance with the approved Construction Staging Plan. Any proposed changes to the approved Construction Staging Plan shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Protection of Water Quality – During Construction

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Construction Best Management Practices Plan for the project site, prepared by a licensed professional, and shall incorporate erosion, sediment, and chemical control Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the adverse

impacts associated with construction to receiving waters. The plan shall include the following requirements:

- (i) No construction materials, debris, or waste shall be placed or stored in a manner where it may be subject to wave, wind, rain, or tidal erosion and dispersion. All trash generated on the construction site shall be properly disposed of at the end of each construction day.
- (ii) Any and all debris and excess soil or sand resulting from excavation and construction activities shall be removed from the project site within 72 hours of completion of excavation or construction. Excavation and construction debris and sediment shall be removed or contained and secured from work areas each day that excavation and construction occurs to prevent the accumulation of sediment and other debris that could be discharged into coastal waters. All excavation and construction debris and other waste materials removed from the project site shall be disposed of or recycled in compliance with all local, state and federal regulations. No debris shall be placed in coastal waters. If a 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.
- (iii) Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction and demolition activities. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and the Pacific Ocean.
- (iv) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and kept as far away from storm drain inlets and receiving waters as possible.
- (v) During excavation and construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into any street or drain that discharges into the beach or ocean, unless such discharge specifically authorized by the California Regional Water Quality Control Board.
- (vi) In the event that lead-contaminated soils or other toxins or contaminated material are discovered on the site, such matter shall be stockpiled and transported off-site only in accordance with Department of Toxic Substances Control (DTSC) rules and/or Regional Water Quality Control Board (RWQCB) regulations.

B. The required Construction Best Management Practices Plan for the project site shall also include the following BMPs designed to prevent spillage and/or runoff of construction and demolition-related materials, sediment, or contaminants associated with construction activity. The applicant shall:

- (i) Develop and implement spill prevention and control measures and shall ensure the proper handling, storage, and application of petroleum products and other

construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible.

- (ii) Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a controlled location not subject to runoff into coastal waters, and more than fifty feet away from a storm drain, open ditch or surface waters.
- (iii) Provide and maintain adequate disposal facilities for solid waste, including excess concrete, produced during construction.
- (iv) Provide and maintain temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, wind barriers such as solid board fence, snow fences, or hay bales and silt fencing.
- (v) Stabilize any stockpiled fill with geofabric covers or other appropriate cover, and close and stabilize open trenches as soon as possible.
- (vi) Implement the approved Construction Best Management Practices Plan on the project sites prior to and concurrent with the excavation and construction operations. The BMPs shall be maintained throughout the development process.

C. The Construction Best Management Practices Plan approved by the Executive Director pursuant to this condition shall be attached to all final construction plans. The permittee shall undertake the approved development in accordance with the approved Construction Best Management Practices Plan. Any proposed changes to the approved Construction Best Management Practices Plan shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## 7. Future Improvements

This permit is only for the development described in Coastal Development Permit A5-LOB-04-226. Any future improvements to the development authorized by this permit, including but not limited to repair and maintenance, shall require an amendment to Coastal Development Permit A5-LOB-04-226 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. No Future Bluff or Shoreline Protection Device

A. By acceptance of this coastal development permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit A5-LOB-04-226 in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this coastal development permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this coastal development permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this coastal development permit if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to 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.

9. Assumption of Risk, Waiver of Liability and Indemnity Agreement

By acceptance of this coastal development permit, the applicant, on behalf of himself and all successors and assigns, and any other holder of the possessory interest in the development authorized by this permit, 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; and (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 any injury or damage due to such hazards.

10. Local Government Approval

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of Coastal Permit A5-LOB-04-226 shall prevail.

11. Permit Compliance

All development must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions. Any deviation from the approved plans

must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations.

12. Deed Restriction

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this coastal development 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; and (2) imposing the 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 entire parcel governed by this coastal development permit. 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 coastal development permit shall continue to restrict the use and enjoyment of the subject property so long as either this coastal development permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**X. FINDINGS AND DECLARATIONS FOR DE NOVO PERMIT**

The Commission hereby finds and declares:

**A. Project Description**

As a result of the appeal and the Commission's June 10, 2004 action on Appeal No. A5-LOB-04-059 (1724 Bluff Place), the applicant has agreed to modify the proposed project so that the structure would not extend above the 46.9' elevation of the 12<sup>th</sup> Place overlook (See Exhibit #4). The modified project description is:

Construction of a three-level, two-unit condominium (Vesting Tentative Parcel Map No. 060880) with a four-car garage on a vacant 2,130 square foot bluff face lot.

The vacant project site is a sloping 2,130 square foot lot situated on the lower half of the bluff face below Bluff Place, the improved public street that currently provides vehicular access to the site (Exhibit #2). Bluff Place also provides direct pedestrian access to the beach below the bluff. The project site has 55 feet of beach frontage. The proposed four-car garage takes access from Bluff Place. As modified, the proposed structure would reach 33.5 feet as measured from the beach to the top of the roof. As approved by the City, the structure would have reached eleven feet (one story) higher than the 12<sup>th</sup> Place overlook and the currently proposed project. As modified, the proposed project would not obstruct the public view from the 12<sup>th</sup> Place overlook.

The project site is on the seaward edge of the residential neighborhood occupying the one-block wide area situated between the public beach and Ocean Boulevard, a scenic corridor (Exhibit #2). This densely developed residential neighborhood is one-half mile east of downtown along the Ocean Boulevard. Multi-unit residential buildings occupy most of the properties located on top of the bluff immediately inland of the site.

## **B. Public Views – Visual Impacts**

The primary issue raised by the appeal is the project's effect on the public view from the 12<sup>th</sup> Place bluff top overlook. The 12<sup>th</sup> Place overlook is a 55-foot wide public street that provides the public with parking and visual access to the beach, the sea, RMS Queen Mary and the port (Exhibit #2, p.1). The proposed project, as modified to not extend above the elevation of the 12<sup>th</sup> Place overlook, would not obstruct the public view from the 12<sup>th</sup> Place overlook. Special Condition One requires the applicant to submit revised plans for the modified project with a height not to exceed the elevation of the 12<sup>th</sup> Place overlook right-of-way (46.9 feet above datum as indicated on the topographic survey dated November 20, 2003). The applicant has agreed to the height limit (Exhibit #4).

Therefore, the proposed project as conditioned, is consistent with the certified Long Beach LCP which identifies the street ends in the project area, and specifically the 12<sup>th</sup> Place overlook, as coastal accessways and public viewing areas. The implementing ordinances (LIP) portion of the certified LCP contains specific building design standards that were developed by the City and certified by the Commission to protect and enhance the public views from the street ends.

### **LCP Provisions**

As stated on pages six and seven of this report, the certified LCP identifies the 12<sup>th</sup> Place overlook as a coastal accessway and a public viewing area. The project site and the 12<sup>th</sup> Place overlook are situated in LCP Area A. The public beach stairway at 12<sup>th</sup> Place was demolished about ten years ago, but the City is currently planning to improve the 12<sup>th</sup> Place street end for public access as called for by the LCP. Bluff Place and the public beach stairway located at the terminus of 11<sup>th</sup> Place currently provide public pedestrian access to the beach below the 12<sup>th</sup> Place overlook (Exhibit #2).

Page III-A-12 of the certified LCP describes the implementation of the Policy Plan for LCP Area A, as follows:

#### ***"VISUAL RESOURCES AND SPECIAL COMMUNITIES***

*Measures for implementation of this policy plan adequately protect and enhance the visual resources of Area A, particularly those dealing with setbacks, view protection, shadow control, and development of street ends."*

The certified LCP then refers to the LCP implementing ordinances (LIP), which include the Ocean Boulevard Planned Development District (PD-5, formerly PD-1). The Ocean Boulevard Planned Development District contains the specific use and building design standards that protect and enhance the public views from the street ends situated south of Ocean Boulevard.



These LIP standards include setback requirements, height limits, density limits, open space requirements, terracing requirements, and lot coverage and floor area ratio limits. The Ocean Boulevard Planned Development District also includes a special incentive provision to encourage lot assembly to allow for higher buildings and densities in exchange for greater visibility of the ocean and more open space. The project site and the abutting vacant lot (1720 and 1724 Bluff Place) would be prime candidates for such a consolidation.

The certified LCP sets forth the building standards for the project site within PD-5, as follows:

**(c) Building Design Standards [For all of PD-5]**

1. **Design character.** *All buildings shall be designed as to provide an interesting façade to all sides and to provide an open and inviting orientation to Ocean Boulevard. The following additional features shall also be provided:*
  - A. *The exterior of building design, style and façade shall be appropriate for the area and harmonious with surrounding buildings.*
  - B. *Any portion of any building south of the shoulder of the bluff shall be terraced to reflect the sloping nature of the bluff.*
2. **Yard Areas.**
  - A. **Setbacks.**
    - (1) *Ocean Boulevard frontage –twenty feet from property line.*
    - (2) *Side streets – eight feet from side street property line.*
    - (3) *Interior property lines – ten percent of the lot width.*
    - (4) *Beach property lines – no building shall extend toward the beach further than the toe of the bluff, or where existing development has removed the toe of the bluff, no building shall extend toward the beach further than existing development on the site.*

**Specific Building Design Standards [For Subarea Two of PD-5]**

**Building Design.**

1. **Floor Area Ratio.** *The gross floor area of the building shall not exceed 2.5 times the area of the site.*
2. **Height.** *The height of the building shall not exceed 45 feet or four stories above Ocean Boulevard grade.*
3. **Lot Coverage.** *Lot coverage shall not exceed 65 percent from Ocean Boulevard grade to the sky.*
4. **Usable Open Space.** *Each unit shall have a minimum of 64 square feet of usable open space abutting the unit, accessible only from the dwelling unit.*

The Commission finds that the LCP's 45-foot height limit for the project site is the absolute maximum, but it is not the only building standard that can limit the height of buildings in PD-5. Special and more restrictive design standards apply to any property, or portion of property,

situated south (seaward) of the top of the bluff. These LCP standards include building setback requirements, lot coverage and floor area ratio limits, open space requirements, and terracing requirements. The certified LCP's building standards for PD-5 require that, "Any portion of any building south of the shoulder of the bluff shall be terraced to reflect the sloping nature of the bluff." In this case, the entire building is located south (seaward) of the shoulder (i.e. top) of the bluff. If the building height were permitted to exceed the height of the bluff top (i.e. the 12<sup>th</sup> Place overlook), it would not be able to reflect the sloping nature of the bluff as it would extend up and beyond the elevation of the top of the bluff and into the protected view from the 12<sup>th</sup> Place overlook.

The certified LCP identifies the 12<sup>th</sup> Place overlook as a public viewing area, and it sets forth the building standards deemed necessary to protect the public view of the shoreline. The LCP contains specific building design standards, particularly building setback and terracing requirements, that were certified by the Commission to protect and enhance the public views from the street ends. The staff is recommending that the building's height be limited to protect the public view from the 12<sup>th</sup> Place overlook. The applicant has agreed to this limit (Exhibit #4).

Therefore, in order to reduce the amount of obstruction to the public's view from the 12<sup>th</sup> Place overlook, the height of the proposed structure shall be limited so as not to exceed the elevation of the overlook. The recommended height limit would still permit the applicant to construct a 33-foot high (above the beach), three-level building without exceeding the 46.9-foot elevation of the 12<sup>th</sup> Place overlook (as shown on the site survey: Exhibit #3). Only as conditioned would the development conform to the view protection provisions of the certified LCP.

### **Building Footprint - Setbacks**

The applicant is also requesting approval of variances from the PD-5 building standards. The following variances can be approved without any adverse effect on public views since the public view would be protected by the reduced building height:

- Standards Variance (garage setback of 9 feet instead of 20 feet).
- Standards Variance (curb cut of 32'4" instead of not more than 20 feet).

The certified LCP provides for variances from those building standards, although such variances are only allowable where they would have no adverse effect on, among other things, visual characteristics. The requested variances from the garage setback and curb cut, in association with the limited building height, would carry out the LCP and will not interfere with physical, visual and psychological aspects of access to or along the coast. No public parking would be eliminated by the larger curb cut along Bluff Place, and the variance is necessary to enable the applicant to provide the proposed four on-site parking spaces.

In regards to the setback from the public beach, the certified LCP states:

*Beach property lines – no building shall extend toward the beach further than the toe of the bluff, or where existing development has removed the toe of the bluff, no building shall extend toward the beach further than existing development on the site.*

The applicant's site survey identifies the toe of the bluff on the seaward edge of the sloping project site (Exhibit #3). There is no existing development on the site. Therefore, the proposed development may extend up to the seaward edge of the property as shown on the proposed plans. The existing structure abutting the north side of the project site (Lot B) extends up to the seaward edge of the property line, and the project approved to the south (Lot D: 1724 Bluff Place) is permitted to extend up to the seaward property line, so all development on lots B, C and D would form a straight stringline extending up to, but not over, the seaward lot lines (Exhibit #2, p.1). The recommended special conditions prohibit any portion of the structure, including balconies, awnings and decks, from extending seaward of the applicant's southern (beach-fronting) property line. Only as conditioned does the proposed development conform with the provisions of the certified LCP.

**C. Public Access and Recreation**

The proposed project, which is located between the first public road and the sea, must also conform with the following public access and recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30221 of the Coastal Act requires that oceanfront land suitable for recreational use shall be protected for recreational use. The proposed development, as conditioned, will not adversely affect public access and recreation.

### **Encroachments - Staging Plan**

Any private encroachment onto the public beach or into a public accessway would conflict with the requirement of Section 30211 of the Coastal Act, which states: "Development shall not interfere with the public's right of access to the sea..." Therefore, Special Condition Four prohibits any such encroachments. In addition, the applicant is required to provide a construction staging plan (Special Condition Five) that avoids encroachments onto the public beach or blockage of the Bluff Place public accessway. Only as conditioned does the proposed development conform certified LCP and the public access and recreation policies of the Coastal Act.

### **On-site Parking**

The proposed project must provide adequate on-site parking in order to protect the public on-street parking that supports public access to the beach. The certified LCP requires the provision of two on-site parking spaces for each residential unit. The proposed plans provide for four parking spaces within a garage. The permit is conditioned to require the provision of at least two on-site parking spaces for each residential unit. As conditioned, the Commission finds that the proposed development conforms certified LCP and the public access and recreation policies of the Coastal Act.

### **D. Marine Resources**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and 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, 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 certified LCP and the public access and recreation policies of the Coastal Act.

### **E. Future Improvements**

The development is located within an existing developed area and, as conditioned, would be 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 could adversely affect public views, and public access and recreation. To assure that future development is consistent with the certified LCP and the public access and recreation policies of the Coastal Act, the Commission finds that a future improvements special condition must be imposed. As conditioned the development conforms with the certified LCP and the public access and recreation policies of the Coastal Act.

**F. Geologic Safety, Future Shoreline/Bluff Protection and Assumption of Risk**

The certified LCP (Page III-A-12) states: "Construction of units on the face of the bluff will require that studies be made by each developer of soil stability conditions." Also, Page III-A-6 of the certified LCP identifies the bluffs in LCP Area A, where the project site is located, as a hazard area because "the area is subject to tsunamis" and "there exists a very great potential for liquefaction."

Therefore, Special Condition Two requires that the applicant, prior to issuance of the coastal development permit, shall submit for the review and approval of the Executive Director, a geotechnical report for the approved development which addresses the construction on the bluff face. The report shall be prepared and certified by an appropriate licensed professional (i.e., civil or other appropriate engineer or architect). All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geotechnical report. Only as conditioned does the development conform with the provisions of the certified LCP.

As the certified LCP makes clear, development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require adherence to the geotechnical recommendations, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development.

In order 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 special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

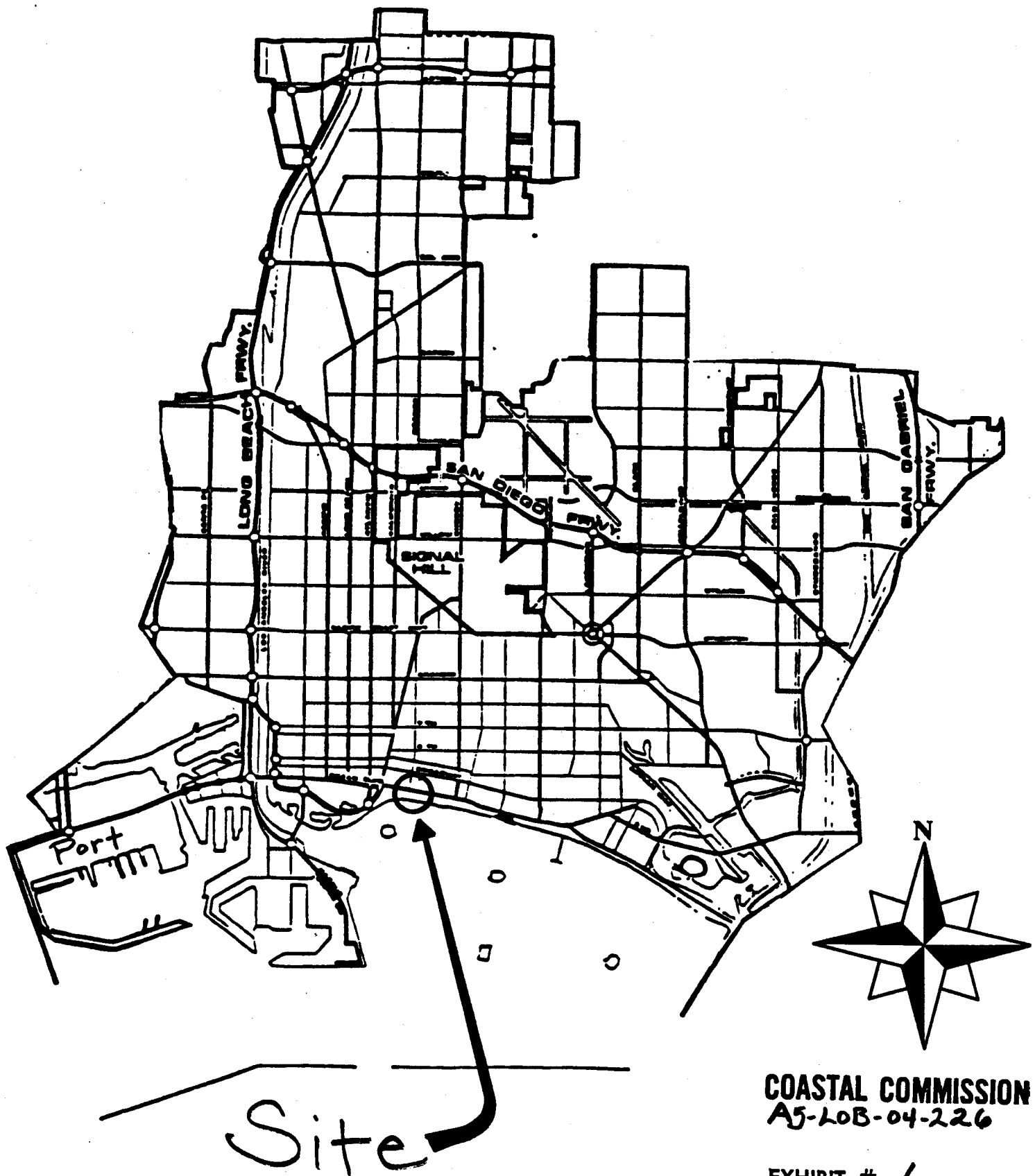
**G. California Environmental Quality Act**

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, 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, as conditioned, has been found consistent with the City of Long Beach certified LCP and the public access and recreation policies of the Coastal Act. All adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

End/cp

# City of Long Beach



COASTAL COMMISSION  
A5-LoB-04-226

EXHIBIT # 1

PAGE 1 OF 2





Site: 1720 Bluff Place - Lot C

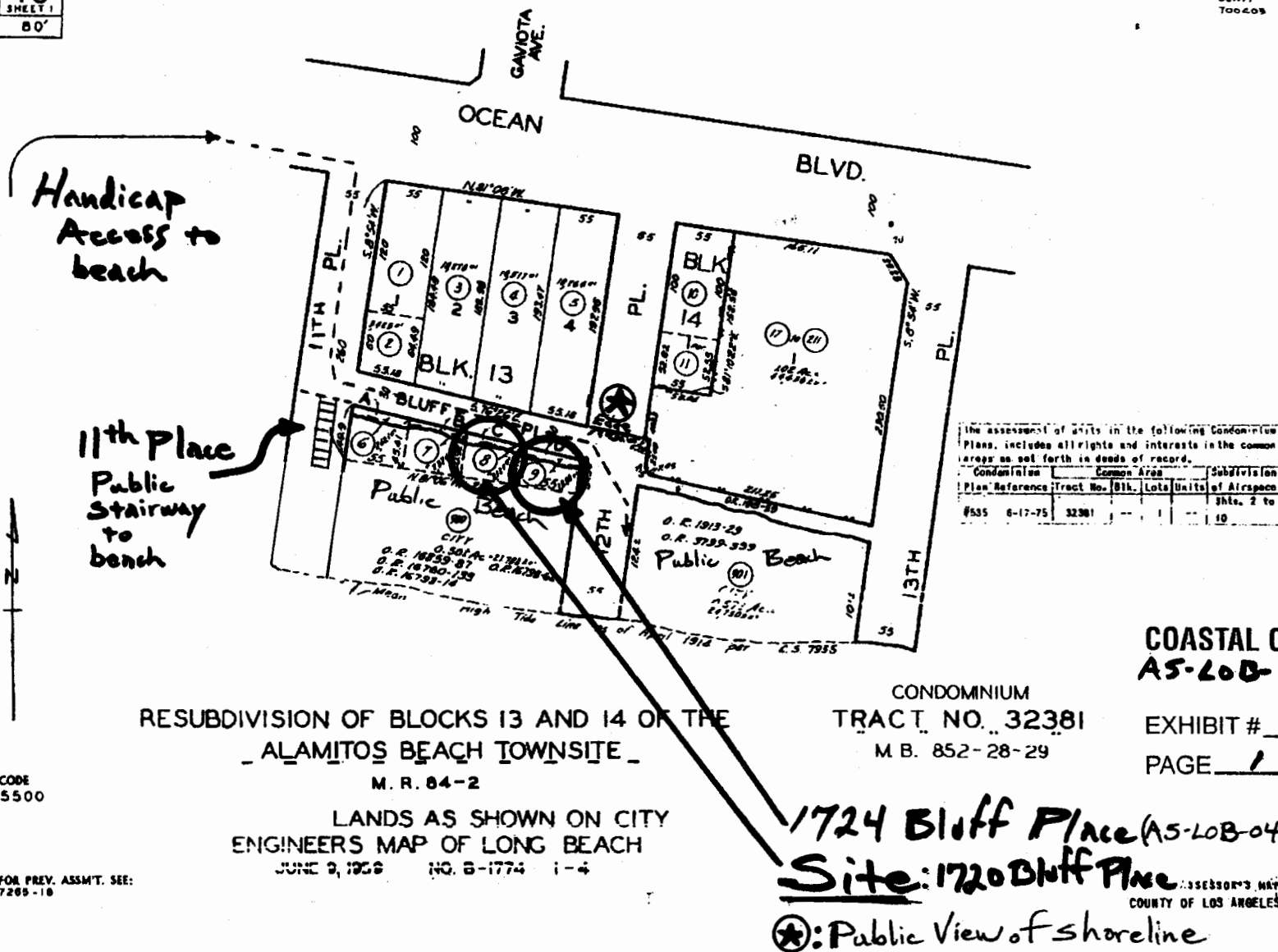
COASTAL COMMISSION  
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View Enlarged Map

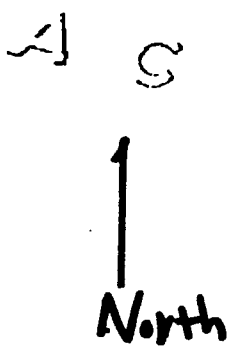
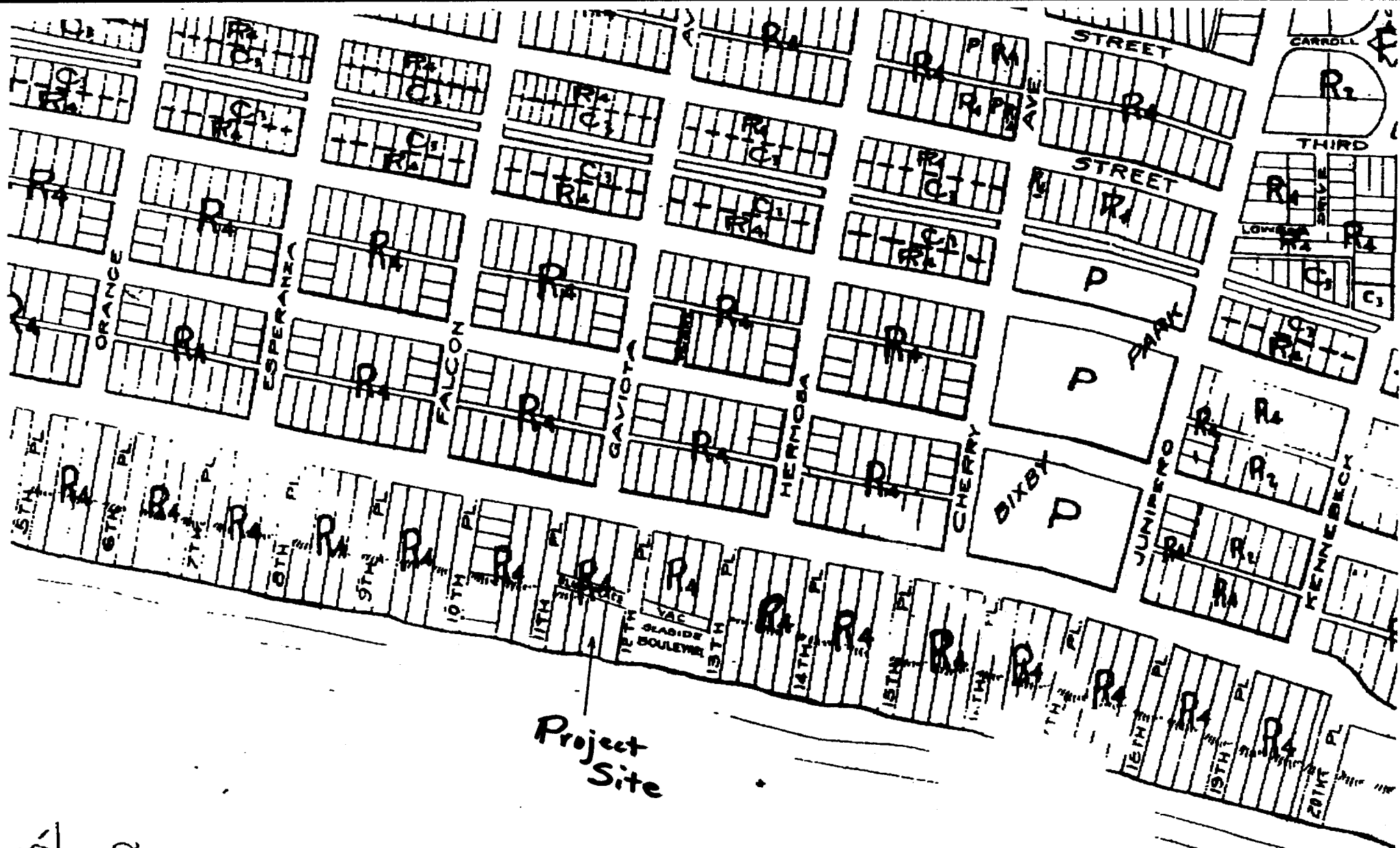
View Printing  
Instructions

County of Los Angeles: Rick Auerbach, Assessor

7265 16  
SHEET 1  
SCALE 1" = 80'4-5-89  
64117  
700408  
7500  
750000ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.

Map provided by City of Long Beach Planning Dept.

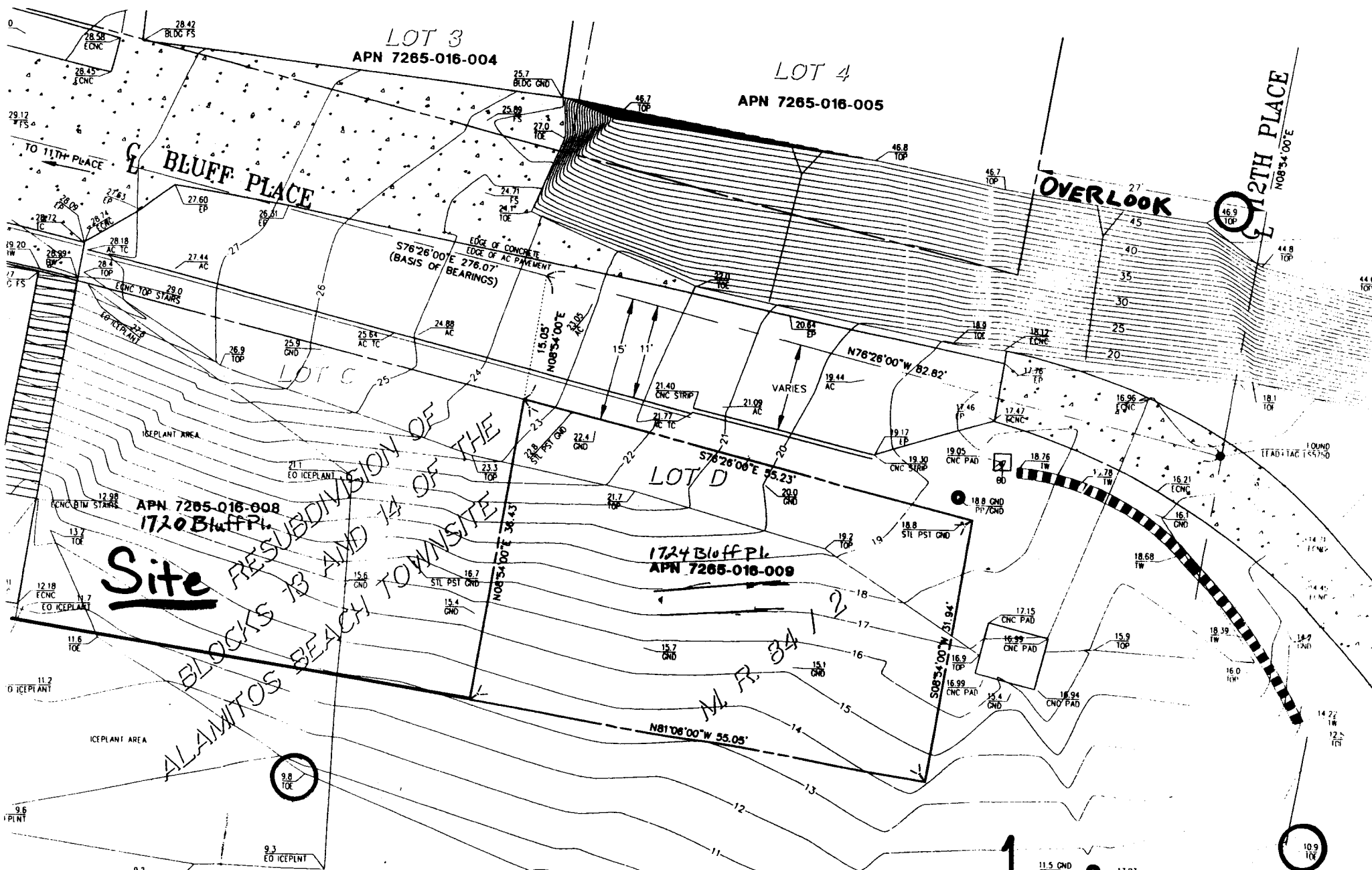




1925 Zoning  
Map

Map provided by City of Long Beach Planning Dept.

COASTAL COMMISSION  
A5-LOB-04-226  
EXHIBIT # 2  
PAGE 3 OF 3



**Site**

RESUBDIVISION OF THE  
BLOCKS 13 AND 14 OF THE  
ALAMITOS BEACH TOWNSITE

**Site Survey**

North

**MINOO FITTER**  
3204 Cherry Ave  
Long Beach, CA 90807  
Ph: 714-2965518 Fax: 562-5954656

June 22, 2004

California Coastal Commission  
200 Oceangate #1002  
Long Beach, CA 90802  
Attn: Mr. Charles Posner

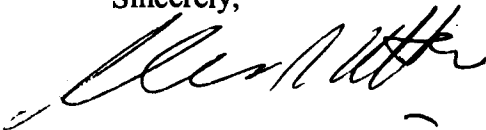
Re: Appeal from coastal permit  
1720 Bluff Place  
Appeal No. A-5-LOB-04-226

Dear Mr. Posner:

I am in receipt of the appeal of The Coastal Commission dated June 17, 2004, for the property located at 1720 Bluff Place, in the city of Long Beach. As a new owner of the said property, I have decided not to contest the decision and hereby agree to limit the height of the building not to exceed 46 feet 9 inches that is 12<sup>th</sup> place overlook.

I am enclosing the necessary documents to justify my ownership of the said property. Should you have any more questions or need more information, please feel free to call me.

Sincerely,



Minoo Fitter

**COASTAL COMMISSION**  
**A5-LOB-04-226**

EXHIBIT # 4  
PAGE 1 OF 1