

CALIFORNIA COASTAL COMMISSION

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180th Day: 7/23/2006
Staff: Ryan Todaro-LB
Staff Report: 4/20/2006
Hearing Date: 5/10-12/2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-05-503

APPLICANT: Martin Burke

PROJECT LOCATION: 507-631 Paseo De La Playa, Torrance,
Los Angeles County

PROJECT DESCRIPTION: After-the-fact approval of and replacement of an approximately 8 foot-high, 930 foot-long section of chain-link fence along the toe of a bluff and on the sandy beach.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is requesting after-the-fact approval of and replacement of an approximately 8 foot-high, 930 foot-long section of chain-link fence along the toe of a bluff and on the sandy beach. Staff recommends that the Commission **deny** the project because it is inconsistent with Sections 30210, 30240 (b) and 30251 of the Coastal Act. **(The motion is on page 3 of this report.)**

Section 30210 protects public access by requiring that maximum access shall be provided and 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. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of existing blufftop development that would impact public access to or use of coastal resources.

Section 30240 (b) protects parks and recreation areas by requiring that development be sited and designed to prevent impacts that would significantly degrade those areas or be incompatible with their continuance. The proposed project, as submitted, would be a significant new development encroaching seaward that would degrade and/or be incompatible with the use of the immediately adjacent beach area as a recreational area.

Section 30251 protects the scenic and visual qualities of coastal areas and requires the Commission to minimize the alteration of natural landforms. The proposed fence would

substantially alter the appearance of the area at the toe of the bluff. Establishing a seaward limit of development and setting development farther back from the toe of the coastal bluff decreases a development's visibility from public vantage points, thus protecting views and the scenic quality of the area as well as preventing alteration of the natural landform. The project will change the quality of the view from and along the public beach at the toe of the Torrance bluff. The toe of the bluff, where the fence is proposed to be located is immediately inland of Torrance Beach, which is a public beach and is heavily used by visitors from Redondo Beach, Torrance, and other south Los Angeles County communities and by occasional visitors from farther inland, farther north, and elsewhere looking for a quiet beach. The bluff rises steeply (as much as a 1:1.5 slope) from the inland side off the beach and is covered with a mixture of native and introduced vegetation, dominated by coastal bluff scrub. Constructing a chain link fence at the toe of the bluff at the inland edge of the sandy beach changes the quality and experience of the area from an undeveloped, almost rural space with the backdrop of an undeveloped bluff, to a developed urban neighborhood.

While there are exceptions, the overall appearance of the bluff along Paseo de la Playa is natural and undeveloped. The Commission has approved only minor development near the toe of the bluff; no structures other than paths and low, decorative walls. However, in 1973, the Regional Commission approved a 560-foot long chain-link fence at the toe of the bluff (Permit No. A-12-20-73-2419) along 5 lots (429, 433, 437, 441 and 445 Paseo de la Playa). The applicant cites security and liability (due to the steep and unstable nature of the bluffs) as reasons for the proposed fence. The applicant also cites the provisions of a 1988 "Boundary Agreement", which he claims authorizes the construction and maintenance of the existing fence.

The primary issues addressed in this staff report are the conformance of the proposed development with the visual resources and public access policies of the Coastal Act. Staff recommends that the Commission **DENY** the request.

There are feasible alternatives or mitigation measures that exist, such as locating the fence on top of the bluff and adjacent to the single-family residences or constructing a low split-rail fence for demarcation purposes at the toe of the bluff as part of a project to restore the natural vegetation on the bluff. Such alternatives would preserve the integrity of the coastal bluff and would avoid the seaward encroachment of development with its associated risks and adverse visual impacts.

Section 30600(c) 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 City of Torrance only has a certified Land Use Plan (LUP) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

LOCAL APPROVALS RECEIVED: City of Torrance, Approval in Concept, 1/18/06

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. A-12-20-73-2419 (Muller, Marlow, Hood), Coastal Development Permit No. 5-90-104-A5 (Campbell), Coastal Development Permit No. 5-01-409 (Conger), Coastal Development Permit No. 5-04-324 (Bredesen), 5-92-1079 (Wright), State Lands Commission Boundary Line Agreement No. 257, recorded 9/12/1988.

EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map/Site Plan
3. State Lands Commission Boundary Line Agreement (pages 1-15)
4. Project Site Photos

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-05-503 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. PROJECT DESCRIPTION

Project Location

The project site is located within an existing residential area, on the beach and at the toe of a coastal bluff, at 507, 515, 517, 521, 525, 529, 533, 537, 601, 605, 609, 613, 617, 627 and 631 Paseo de la Playa), City of Torrance, Los Angeles County (Exhibit #1). The site is along the rear property lines of 15 residential lots, between the first public road, Paseo de la Playa, and the sea. The bluff varies in height from approximately 60 feet at the Los Angeles County Torrance Beach Park to the north of the residential lots to 120 feet near the boundary of Palos Verdes Estates. There are 28 residential lots along this area of Torrance Beach. The bluff tops of all 28 residential lots have been developed with single-family residences. Torrance Beach, the beach seaward of the toe of the bluff, is public. Vertical public access to this beach is available to pedestrians via public parking lots and footpaths located at the Torrance Beach Park, which is approximately 750 feet to the north of the project site (Exhibit #1). There are also a vertical beach public access way and public parking in Palos Verdes Estates located approximately $\frac{3}{4}$ of a mile to the south of project site.

Project Description

The applicant requests after-the-fact approval of and replacement of an approximately 8 foot-high, 930 foot-long section of chain-link fence along the toe of a bluff and on the sandy beach. This fence would be located along the rear property lines of 15 residential lots, spanning from 507 Paseo de la Playa south to 631 Paseo de la Playa, except for 623 Paseo de la Playa (Exhibit #2).

Prior Development at Subject Site and Surrounding Area and Related Legal Actions

In a search through Commission files, staff did not locate any records for issuance of a coastal development permit for the fence that currently exists on the subject site. The applicant indicated to staff that after receiving permission from the State Lands Commission to construct a fence along the newly demarcated boundary (at the end of the boundary line negotiations that resulted in the 1988 "Boundary Agreement" mentioned above), the applicants assumed that they had received all necessary permits for the fence from the State. However, there is no evidence that the Commission or its staff formally or informally approved construction of the fence. Therefore, development has occurred on site without benefit of the required coastal development permit. The applicant believes that the fence that currently exists on the site was constructed before the boundary line

agreement (Exhibit #3) was finalized, shortly after there was a conceptual understanding in the negotiations, in the early 1980's.

Boundary Line Agreement

In the California Supreme Court's 1970 decision in Gion v. City of Santa Cruz, 2 Cal. 3d 29, the Court established the standard for implied dedication of private land for public use. Shortly thereafter, the City of Torrance was experiencing significant development and there was a drive by private developers to build condos on beachfront property and seek to exclude the public from beach areas traditionally used by the public. A series of additional suits ensued in Torrance, with the City seeking to confirm the existence of public rights. In response, property owners and residents of blufftop lots sought to resolve these and related issues regarding their lots, which extended down to the Mean High Tide Line (MHTL), such as where that MHTL was located. In 1988, the City of Torrance, the State Lands Commission, the Attorney General (on behalf of the People of the State regarding the implied dedication issues), and private property owners on the bluff in Torrance finalized a "Boundary Agreement" to settle these issues. With respect to the prescriptive rights issue, the property owners agreed that the sandy beach area (the area landward of the newly-established line between public trust land and private land at the water's edge and seaward of the toe of the bluff) was subject to a public easement for beach and recreational purposes in exchange for a provision in the agreement that stated that the owners would have "the continuing right to construct, repair and maintain an eight (8) foot chain link fence on the landward boundary line of the Sandy Beach Portion." See Exhibit 3, Recital ¶ 13, and ¶¶ 4 and 7.

The City was anxious to resolve this issue to protect public rights on the beach, which had traditionally been used by the public. Thus, this boundary line agreement was created. According to the applicant, who has been a resident of one of the blufftop lots since 1972 and who represented the property owners in the settlement, the ability to construct, repair and maintain this fence was a key part of the boundary line agreement for the private property owners. This was confirmed to Commission staff by representatives of the State Lands Commission and the Attorney General's office in connection with the current application. Mr. Burke has indicated that the landowners would not have settled the dispute as they did had they not understood that they were gaining an unimpeded right to construct and maintain the fence.

There were several lawsuits concerning public rights on the Torrance Beach in the 1970's and early 1980's. The Commission was not a party to these suits, and the Commission was not a party to the boundary agreement discussed above.

Although the Boundary Agreement states that the property owners get "the continuing right to construct, repair and maintain an eight (8) foot chain link fence on the landward boundary line of the Sandy Beach Portion," the Commission is not bound to this, since the Commission was not a party to this agreement. Neither the State Lands Commission nor the Attorney General, representing the interest of the People of the State of California in

access to land that was allegedly impliedly dedicated, can waive the permit requirement imposed by the Coastal Act or otherwise act on the Coastal Commission's behalf, nor can they bind or estop the Commission from carrying out its charge. Indeed, there is no evidence of any intent to do so, other than the very fact that the agreement articulates a right to build a fence.

Permit History for Bluff Development in Project Vicinity

Figure 1 and 2 on the following two pages summarizes the permit history of bluff development for the 28 residential lots located along Paseo de la Playa in Torrance.

FIGURE 1 TORRANCE BLUFFS INVENTORY OF BLUFF FACE/TOE DEVELOPMENT PERMITTED AND PRE-COASTAL DEVELOPMENT			
Pre-coastal	Development	Location	Permit

			Number
1	Fences		
		417	NA
3	Stairways/paths		
		413/417	NA
		601	NA
		627	NA
2	Patios/decks ¹		
		413/417	NA
		627	NA
0	Shade structures		
			NA
0	Retaining walls		
			NA
Approved			
1	Fences		
	(5 lots)	429, 433, 437, 441, 445	A-12-20-73-2419
3	Stairways/paths		
		429	5-85-755
		433	5-90-1041A3
		515	5-90-1079
0	Shade structures		
3	Retaining walls		
		429	5-85-755
		433	5-90-1041A3 ²
		449 ³	5-90-355

FIGURE 2 TORRANCE BLUFFS INVENTORY OF BLUFF FACE/TOE DEVELOPMENT UNPERMITTED DEVELOPMENT			
Unpermitted		Location	ATF Permit Number

¹ Patios/decks listed above are located below concrete drainage swale marking the "historic top of bluff".

² Wall at toe of bluff.

³ Low wall constructed as part of upper bluff repair, not highly visible.

1	Fences		
	(15 lots)	507, 515, 517, 521, 525, 529, 533, 537, 601, 605, 609, 613, 617, 627, 631	5-05-503 (pending)
4	Stairways/paths ⁴		
		425*	
		437*	
		445	
		[601 ⁵]	
		605	
3	Patios/decks		
		429	
		433	
		437	
4	Shade structures		
		413	
		429	
		433	
		437	

The Commission has approved only minor development near the toe of the bluff, mostly in the 1970s and 1980s, and it has not approved **any** such development in the last 10 years. In 1973, the Regional Commission approved a fence at the toe of the bluffs along five lots separating the inhabited portion of the private property and the bluff face from the sandy beach (A-12-20-73-2419). When the Commission's predecessor agency came into being in 1973, there were three improved bluff face accessways on this bluff. There were two platforms perched on the bluff face -- one at each end of the row of lots. Since 1973, the Commission and the predecessor Commission has approved one six-foot chain link fence extending along the toe of the bluff on the five northernmost lots, as well as three stairways/paths down the bluff face to the toe of the bluff on the 28 lots along Paseo de la Playa and has denied two applications for a bluff face path and 5-04-324 (Bredesen and 5-03-328, Carey) and has conditioned a second to remove all development below the bluff to swale (an amendment to 5-01-409 (Conger)).

With some exceptions, since 1995, The Commission has only approved development at the **top** of the bluff face, and other than bluff restoration and some drains, only above the

⁴ A web of unpermitted paths existed across several lots in 1972. An asterisk indicates that these were further modified without a CDP after 1973.

⁵ This stairway has been rebuilt in a new location. Since there was a stairway on this lot in 1972, even though a permit was needed for its relocation, the relocated stairway is not included in this staff report total as "unpermitted".

historic top of bluff. The Commission approved a walkway to an upper bluff terrace at 437 Paseo de la Playa, conditioned not to extend seaward of a swale marking the historic top of the bluff 5-01-409 (Conger). The Commission approved remedial sand colored concrete terrace drains and bluff restoration (5-90-868) at 441 Paseo de la Playa, but no stairway and no development below mid-bluff. The Commission denied two applications for construction of stairs down the bluff face and a covered observation deck located towards the toe of the bluff but approved the part of an application that included bluff restoration for the endangered El Segundo Blue butterfly on a down coast site at 613 Paseo de la Playa (5-03-328, Carey)⁶.

The Commission has approved five new houses on the bluff top lots and a number of additions to existing single-family houses and appurtenant structures, such as pools, jacuzzis and patios on the top of the bluff. Most of the approved additions were at the top of the bluff, or inland of a three foot wide concrete lined drainage structure parallel to the bluff edge, which represents the historic top of bluff north of 449 Paseo de la Playa. In approving this development, the Commission routinely imposed conditions limiting development to a 25-foot bluff edge set back. In making these approvals, the Commission agreed with the applicants that a concrete swale located about ten feet below the house pads and parallel to the bluff edge represented the historic edge between the top of the bluff and the bluff face (5-01-409A, Conger and P-5-77-716, Warren).

In December 1995, the Commission approved construction of a four foot-high retaining wall along the perimeter of the property near the toe of the bluff, perimeter chain-link fencing along the eastern property line (5-90-1041-A3, Campbell). It was found that the wall would assist in the revegetation of the bluff. In November, 2005, the Commission denied an application at the same property (5-90-1041-A5, Campbell) which proposed among other things, adding four feet in height to the existing four-foot high retaining wall and construction of a shade structure on a concrete patio at the toe of the bluff. Additionally, in June, 2005, the Commission denied an application (5-04-324, Bredesen) at 437 Paseo de la Playa which proposed among other things, a 1,218 square-foot, two-level concrete patio, concrete retaining wall and 540 square-foot trellis at the toe of the bluff.

B. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

⁶ The Commission's Enforcement Division is currently investigating unpermitted development along the bluffs at Paseo de la Playa in Torrance, including stairways and toe of slope improvements.

The Coastal Act protects the visual quality of coastal areas, and particularly of the ocean, the areas along the ocean, and general scenic areas. While the City of Torrance's certified Land Use Plan includes a discussion of views that centers on views from private homes, the Land Use Plan also discusses views to and along Torrance beach, and it includes drawings of the view along Torrance beach, with the cliffs rising up as the backdrop of the beach.

While some bluff faces in southern California have been subdivided and developed, development generally does not extend down the Torrance bluffs. The bluffs extend from about 60 feet high at the north end to almost one hundred twenty feet high as the coast curves toward Palos Verdes. The bluff also becomes steeper, changing from a 2:1 slope covered with dune sand to a rocky cliff. From the beach, the roofs of some of the houses on the top of the bluff, parts of the rear walls of those houses and the edges of some patios are visible. With few exceptions, there is little development along the face of the Torrance bluffs.

The bluff face still resembles the bluff face shown in the sketch in the proposed 1981 LUP, irregular cliffs overlain by blown sand, vegetated with a mixture of ice plant and native plants. The roofs and rear windows of some of the houses and the edges of decks are visible from the beach, but generally the bluff front appears undisturbed. Development along the bluffs must be sited and designed to protect views to and along the beach and to minimize the alteration of excising natural landforms. New development must also be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding area.

The proposed project is located at the toe of the bluff and immediately adjacent to the public beach. The bluff face at this site is highly visible from the sandy beach. The applicant requests after-the-fact approval of and authorization for replacement of a chain-link fence. Pursuant to Section 30251 of the Coastal Act, new development must be visually compatible with the surrounding area. Comparing the proposed fence to the site without any fence, as we must, since the existing fence is not authorized under the Coastal Act, the proposed project would obviously and visibly change the view of the bluff from the beach.

The Commission finds that the project, as currently proposed, is not sited and designed to protect scenic and visual qualities of the site as an area of public importance. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character where approved (or pre-coastal) development occurs solely at the top of the coastal bluff (on 22 out of 28 lots). The placement of a chain link fence at the toe of the bluff would result in an adverse visual effect when viewed from public vantage points along the beach.

Allowing the proposed project would also lead to seaward encroachment of new development in an area where additional unpermitted development has occurred and threatens to affect the community character. The Commission finds that the proposed

project would not be visually compatible with the character of the surrounding area. An 8-foot high chain-link fence has a greater visual impact because of its industrial-like appearance and height compared to a less confrontational alternative such as a low split rail fence, and even a low, split-rail fence detracts from a totally open, natural-looking environment. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and therefore must be denied. Denial of the project is consistent with the Commission's recent action on applications 5-01-018 (Conger), where the Commission approved ancillary structures that were located above the historic top of the bluff, but rejected all development seaward of that line; and 5-04-328 (Carey), both instances where the Commission denied bluff face stairs. Denial of the project is also consistent with the Commission's recent action on applications 5-90-1041-A5 (Campbell), where the Commission denied raising the height of an existing retaining wall and constructing a shade structure on a concrete patio at the toe of the bluff; and 5-04-324 (Bredesen), where the Commission denied a 1,218 square-foot, two-level concrete patio, concrete retaining wall and 540 square-foot trellis at the toe of the bluff.

C. PUBLIC ACCESS

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 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project is adjacent to a public beach, which is a recreation area. In fact, pursuant to the Boundary Agreement, there is an easement over the area expressly for "beach and recreational purposes." The fence has an impact that significantly degrades the beach as a recreational area and is incompatible with the recreational character of the area because no one wants to lie on the sand at the base of a private, 8-foot tall, chain link fence, and it transforms the experience of the area from one of open space to one of being in the shadow of someone's fenced in yard. The project may also have indirect impacts on public recreation by increasing the number of lots where there is permitted private development directly adjacent to other public beaches farther to the south. This change in effect, moves the edge of private development structures closer to the public areas. The project site is located at the toe of a bluff and on the sandy beach, on the seaward side of

Paseo de la Playa, which is the first public road immediately inland of Torrance Beach. The project site is highly visible from the sandy public beach.

Public access is available directly seaward of the toe of the bluff at Torrance Beach. Development at this site, if approved, must be sited and designed to be compatible with Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas or be incompatible with their continuance. The proposed project, as submitted, would be a significant new development located seaward of the permitted development that exists on these fifteen lots, which are single family houses at the top of the bluffs. By moving the fence to the toe of the bluff, the applicants have moved the line of development seaward of its previously approved location.

As described previously, the applicant is requesting after-the-fact approval of and replacement of an approximately 8 foot-high, 930 foot-long section of chain-link fence along the toe of a bluff and on the sandy beach. While the requested structure does not physically impede public access to the adjacent beach area, new private structures adjacent to the beach often facilitate private use of the public beach adjacent to the new private structures. Some property owners along Paseo de la Playa may seek to intensify use of their properties along the face and toe of the bluff if the proposed project is approved. Increased intensification of private development located along the coastal bluffs adjacent to Torrance Beach will result in a less inviting beach appearance to the general public discouraging public use of the beach.

The Commission finds that the area directly seaward of the development is a publicly owned recreation area and that the proposed project would decrease the distance from the public beach to private residential uses, thereby significantly degrading the area for public recreation. Therefore, the Commission finds that the proposed project is inconsistent with the public access and recreation policies, Sections 30210 and 30240 (b) of the Coastal Act, and must be denied.

D. UNPERMITTED DEVELOPMENT

The development that occurred on site without benefit of the required coastal development permit includes the construction of an approximately 8 foot-high, 930 foot-long section of chain-link fence along the toe of a bluff and on the sandy beach. This development is located adjacent to the public beach and is visible from the public beach. In this case, because the proposed project, including the request for after-the-fact approval of the unpermitted development, would be inconsistent with the Chapter 3 policies of the Coastal Act, staff is recommending denial of this application. The Commission's enforcement division will evaluate further actions to address this matter.

Although construction has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the

consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

E. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act.

On June 18, 1981, the Commission approved with suggested modifications the City of Torrance Land Use Plan (LUP). Torrance identified the beach area as an important resource in its Land Use Plan and included photographs of the bluffs in its document. However, the City did not accept the modifications, and the certified LUP has lapsed. The area that was not resolved included development standards for the beach and the bluffs; where the boundary line issues were unresolved. Because the City of Torrance does not have a certified LUP, the standard for this review is the Coastal Act.

The construction of the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act discussed previously, specifically Sections 30240(b) and 30251. Development at the toe of the bluff and on the sandy beach would cause adverse impacts to coastal scenic resources and public access. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts, which would significantly degrade those areas. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and visual impacts. By approving development that is inconsistent with Chapter 3 policies of the Coastal Act, the proposed development would prejudice the City's ability to prepare a Local Coastal Program for the City of Torrance that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, approval of the project is found inconsistent with Section 30604(a), and the project must be denied.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as locating the fence on the blufftop and adjacent to the single-family residences or constructing a low split-rail fence for demarcation purposes at the toe of the bluff as part of a project to restore the natural vegetation on the bluff, which could be designed so as to be consistent with Chapter 3 of the Coastal Act, depending on the details. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

PROJECT
SITE

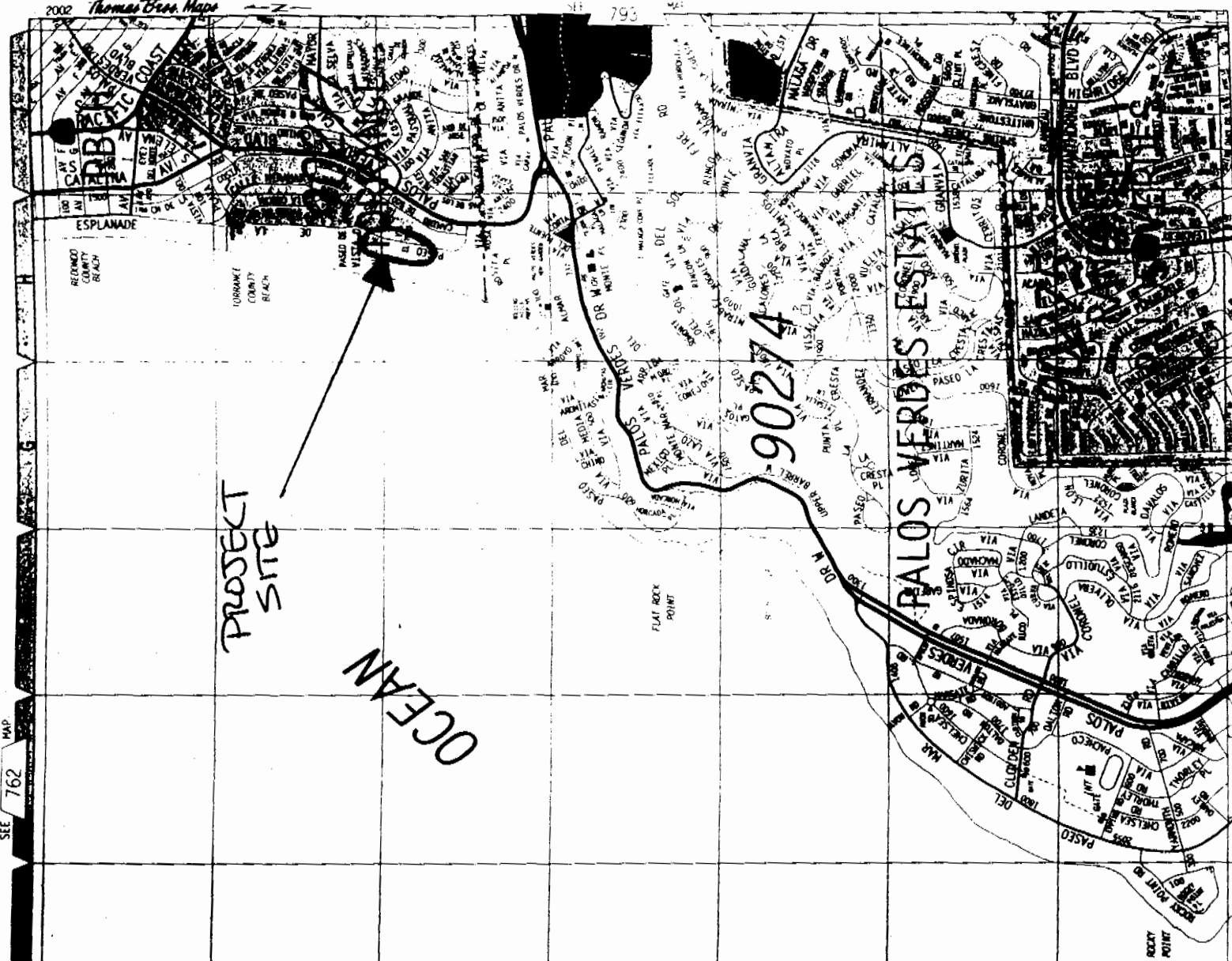
OCEAN

PACIFIC

90274

COASTAL COMMISSION
S-OS-503

EXHIBIT # 1
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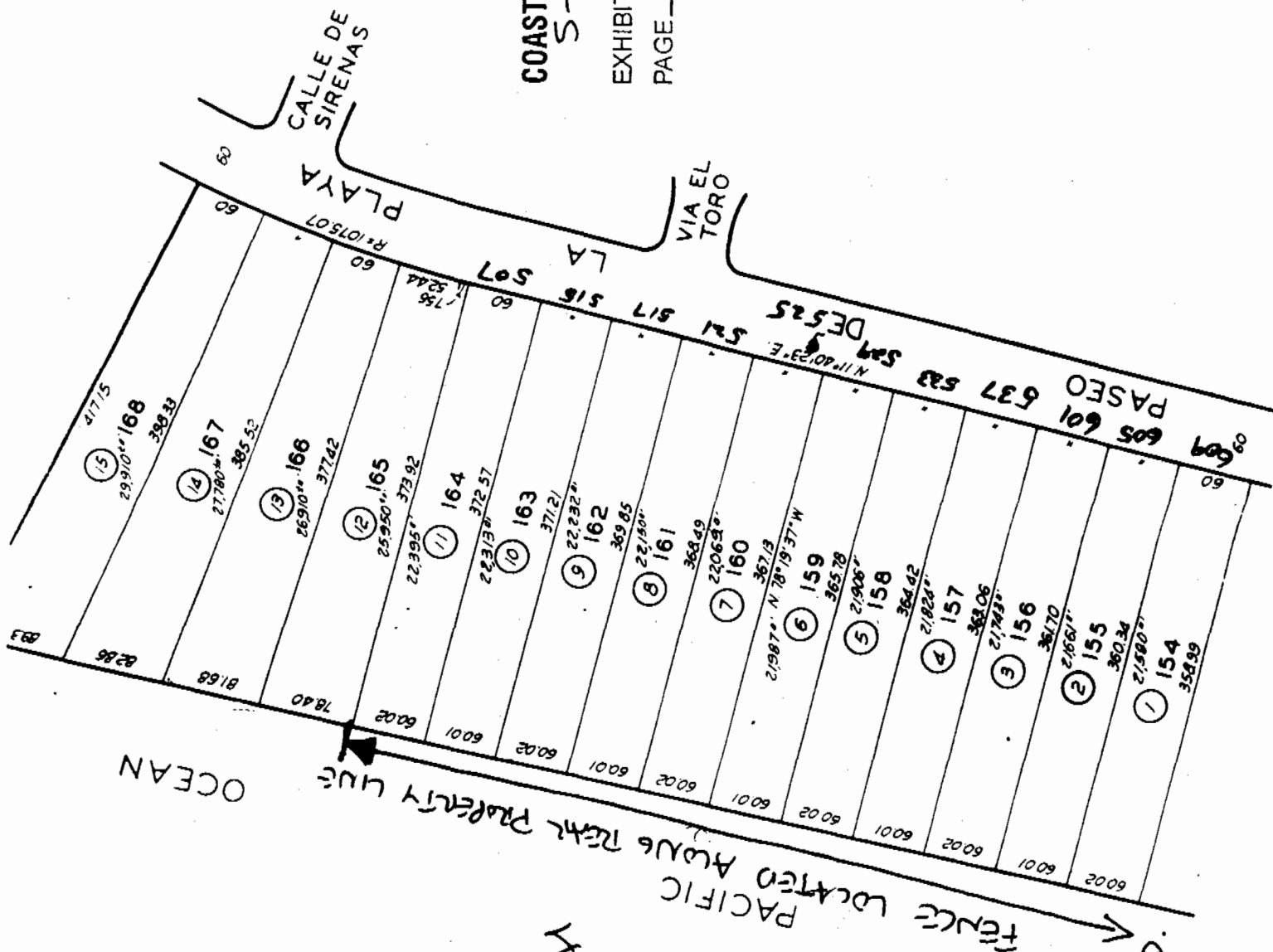
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EXHIBIT #

2

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SANDY BEACH

TRACT NO. 18379

M.B. 563-9-14

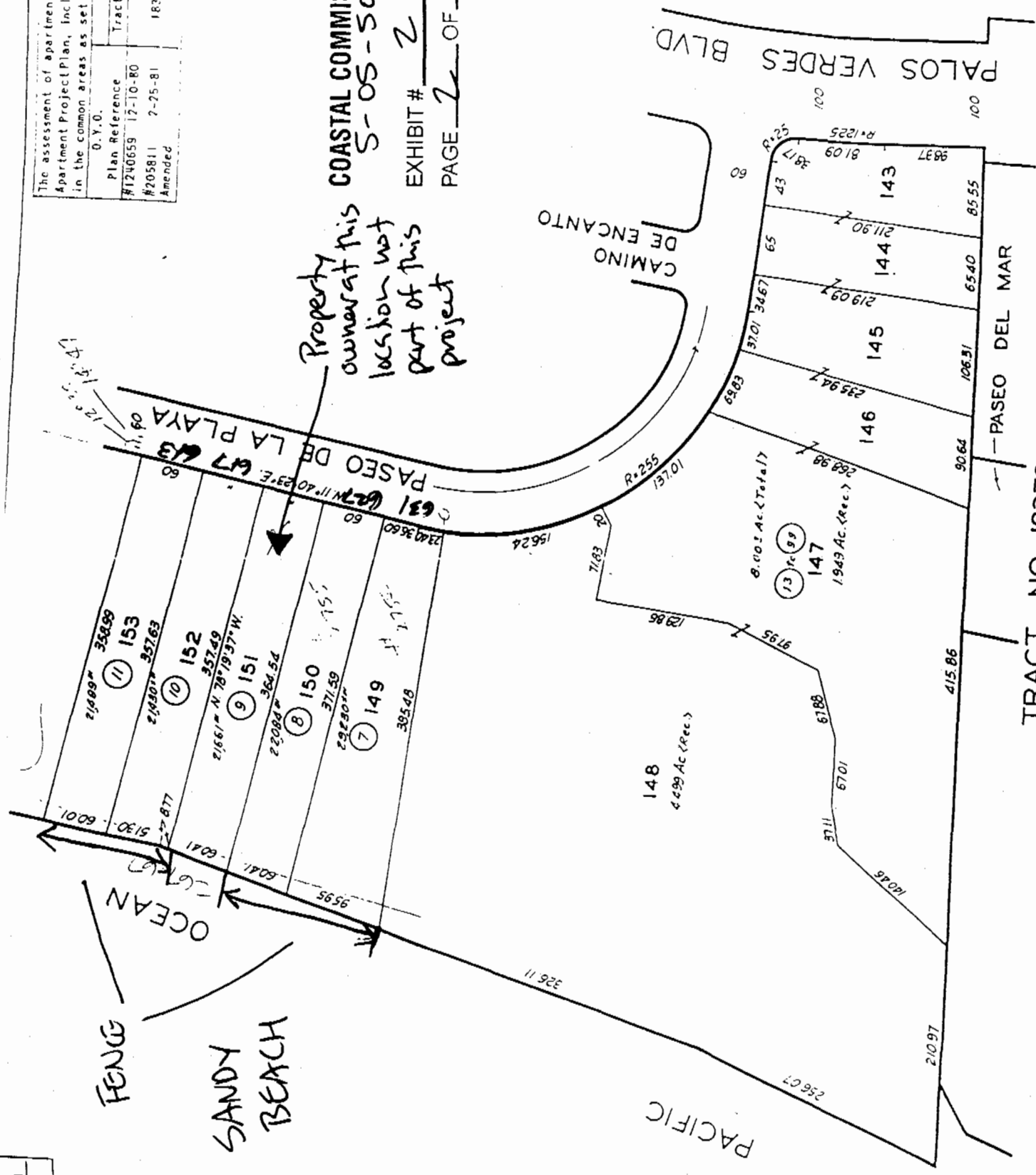
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PAGE

The assessment of apartments in the following Community Apartment Project Plan, includes all rights and interests in the common areas as set forth in deeds of record.

O.Y.O.	Plan Reference	Tract No.	Common Area	Subdivision
#1240659	12-10-80	18379	Lots	of Airspace
#205811	2-25-81		143 to 148	Shts. 2 to 5

Property owner at this location not part of this project

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EXHIBIT # 2
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TRACT NO. 18379

M.B. 563-8-14

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68 1458133 5-05-803

Recorded at the request of:
State of California
State Lands Commission

WEEK RECORDED mail to:
State Lands Division
1807 - 13th Street
Sacramento, California 95814

STATE OF CALIFORNIA
OFFICIAL BUSINESS - DOCUMENT
entitled to free recordation
pursuant to Government Code
Section 6103

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
1 MIN 2 PM SEP 12 1988
PAST

S.L.C. - B.L.A. No. 257

NO TAX DUE

Above Space for Recorder's Use

FREE G

BOUNDARY AGREEMENT

This agreement is entered into at Torrance, California,
by and between the City of Torrance, a municipal corporation
(hereinafter referred to as the "City"), the State of California
(hereinafter referred to as the "State"), acting by and through
the State Lands Commission (hereinafter referred to as the
"Commission"), the State, acting by and through the Attorney
General on behalf of the People of the State (hereinafter
referred to as the "Attorney General"), and the owners of certain
interests in certain real property who execute counterparts to
this agreement (hereinafter individually referred to as the
"Respective Owner" and collectively referred to as the "Owner").

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WITNESSETH:

1. WHEREAS, the State received title to the tidelands and submerged lands within the State upon being admitted to the United States by virtue of its sovereignty; and
2. WHEREAS, the Commission, pursuant to Division 6 of the Public Resources Code, has jurisdiction over all tidelands and submerged lands owned by the State; and
3. WHEREAS, the Owner is the owner of fee, or holder of an option to purchase, leasehold, or other interests in and to certain lots of real property located in Tract 18379, City of Torrance, County of Los Angeles, State of California, as per map recorded in Book 563, pages 9 through 14 of Maps, Records of said County; and
4. WHEREAS, said real property abuts and is situated adjacent to the sovereign tidelands owned by the State; and
5. WHEREAS, the ordinary high water mark constitutes the common boundary between the lands owned by the State by virtue of its sovereignty, that is the submerged and tidelands, and the lands owned by the Owner, that is the uplands; and
6. WHEREAS, there is substantial doubt and uncertainty as to the true location of said common boundary; and
7. WHEREAS, the Commission, pursuant to Section 6357 of the Public Resources Code,
"may establish the ordinary high-water mark of . . . tide, or submerged lands of this State, by agreement, arbitration, or

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action to quiet title, whenever it is deemed expedient or necessary; and

8. WHEREAS, each of the parties hereto considers it expedient and necessary and in the best interests of each of them and the public in general to describe and fix permanently the common boundary between the lands owned by the State by virtue of its sovereignty and the Owner's lands and forever set at rest any and all questions relating to the location of said boundary line; and

9. WHEREAS, the California Supreme Court in the case of Gion v. City of Santa Cruz (1970) 2 Cal.3d 29, clarified the common law doctrine of implied dedication arising from public use of land for a prescriptive period of five (5) years without asking or receiving permission from the landowner, with actual or presumed knowledge of said public use in any significant way during said time; and

10. WHEREAS, certain lands, abutting and landward of the ordinary high-water mark herein agreed to be said common boundary, have been used by members of the public for beach access and recreational purposes, for more than five (5) years continuously, openly, notoriously and adversely to claims of private ownership, which public use has resulted in the dedication of said certain lands to the public; and

11. WHEREAS, the City, on behalf of itself and as Trustee for the People of the State, has filed a quiet title action to preserve and protect the rights of the public in and to said

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property, City of Torrance v. Don Ja Ran Construction Co., Inc.
et al., S. W. C. 20629; and

12. WHEREAS, the exact location of said public rights acquired through implied dedication is uncertain and subject to dispute; and

13. WHEREAS, it is a further intent of this agreement to settle said quiet title action and to set at rest all questions regarding the location and extent of said public rights over said uplands, specifically described in this Agreement, as between the parties hereto; and

14. WHEREAS, the Attorney General is a party to this Agreement by virtue of his representation of the People of the State in implied dedication matters; and

15. WHEREAS, the provisions of this Agreement regarding said public rights will define and permanently recognize the rights of the various parties therein, and, as to the affected lands in the ownership of the private parties to this Agreement which are specifically found not to be subject to said public rights, this Agreement will clear the title thereof of any cloud created by the uncertainty as to the location and extent of said public rights;

16. WHEREAS, as a part of this Agreement, the State will lease to the City the area within one thousand (1,000) feet waterward of the Agreed Boundary Line (together with an abutting parcel of property) for public recreational purposes.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. In order to locate, describe and permanently establish

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the true and correct boundary line between the lands owned by the State by virtue of its sovereignty, and the lands owned by the other parties to this Agreement, abutting and upland of said sovereign lands, it is agreed that said boundary line is and shall be as shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Agreed Boundary Line"), and described in Exhibit "B" attached hereto and incorporated by reference.

2. It is the intent of the parties hereto that the Agreed Boundary Line shall be permanent and fixed and not subject to change by reason of erosion or accretion caused by natural or artificial processes.

3. The Owner and City hereby quitclaim, release, and remise all of their rights, title and interest in and to all that real property located oceanward of the Agreed Boundary Line set forth in Paragraph 1 above to the State, acting by and through the Commission. The State, by virtue of its sovereignty, acting by and through the Commission, and the City, hereby quitclaim, release, and remise all of their right, title and interests within Tract 18379 hereinabove described, landward of said Agreed Boundary Line, excepting and reserving the public rights hereinafter described in Paragraphs 4 and 9 and those easements, rights of way and dedications to the City which are of record, to the Respective Owners who execute this Agreement or counterpart of the Agreement, provided that should any portion of the lands upland of said Agreed Boundary Line ever become covered by the navigable waters of Santa Monica Bay, said portion shall

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be subject to an easement for purposes of commerce, navigation and fisheries so long as said condition exists, but subject to the right of the Respective Owners of said lands to restore said portion of such lands to its prior dry condition within a reasonable time. Nothing in this paragraph shall affect the public rights referred to in Paragraphs, 4, 5 and 6 below.

4. It is agreed by and between each of the parties hereto that that real property described in Exhibit "C" attached hereto and incorporated herein by reference (hereinafter referred to as the "Sandy Beach Portion"), and shown on Exhibit "A" is subject to a public easement for beach and recreational purposes, by virtue of the public's use of said property for beach and recreational purposes for more than five (5) years continuously, openly and notoriously by the public without requesting or receiving permission for such use and without objection or interference from anyone being made to such use, and as such has been adverse to claims of private ownership and has resulted in a dedication of said property to the public. Said public uses have included, but have not been limited to strolling, bathing, sunbathing, picnicking, playing, viewing, fishing, as well as public protection, policing and erosion control. It is also agreed that said rights shall be held by the City in trust for, and on behalf of, the People of the State, provided, however, that the City may not terminate or relocate such rights without the concurrence of the Owner, the Commission, and Attorney General.

5. It is agreed by and between the parties that said public rights shall extend solely for beach, recreational, and public

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uses including but not limited to: ingress, egress, viewing, strolling, photography, painting, fishing, swimming, bathing, surfing, picnicking, sunbathing, beach games, and all other uses associated with beach and shoreline recreational areas, together with the right of City to provide lighting for public protection, life guarding, life guarding facilities, cleaning and sanitation and associated services, trash pickup and occasional erosion control. Said lighting shall be equipped with guards or other devices to restrict glare onto Owners' premises.

6. The public easement hereby shall include the right to locate sanitation and protection facilities and lighting in accordance with the provisions of Title 17, Section 7982(a), of the California Administrative Code regulating "sanitation of public beaches," which provides:

"Toilets shall be provided on the basis of not less than one per each sex per 1,000 people or one per 500 people if sex is not designated, at the time of maximum use, but not less than one or two units depending on whether or not sex is designated. Urinals may be substituted for toilets up to two-thirds of the requirement, and portable toilets may be used to meet this requirement. Toilets shall be located in accordance with actual use patterns on the beach."

7. Notwithstanding the public easement the Owner has the continuing right to construct, repair and maintain an eight (8) foot chain link fence on the landward boundary line of the Sandy Beach Portion and to have access to the Sandy Beach Portion to facilitate said construction, repair and maintenance.

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8. The City and the State further agree that in the event any construction is contemplated upon the Sandy Beach Portion, the City and/or the State shall give the Owner ninety (90) days' notice of said contemplated construction. Said Notice shall consist of reasonably posted notice along the landward boundary line of the Sandy Beach Portion. If the Owner believes that the contemplated construction exceeds the extent of the easement described above, then the Owner shall, within said ninety (90)-day period bring a declaratory relief action in the Superior Court of the State of California, to determine whether said proposed construction exceeds the extent of the easement. The failure of the Owner to object in one or more particular cases shall not constitute a waiver of a subsequent right to bring such declaratory relief action.

9. Each Respective Owner hereby grants to the City, as Trustee for the People of the State of California, the public easement over and across the Sandy Beach Portion, as described Paragraphs 4, 5 and 6 above.

10. The City agrees to dismiss, as to each Respective Owner signing this Agreement, or counterpart to this Agreement, any pending quiet title action it has filed against the Respective Owner's property hereinbefore described. Each such Respective Owner consents to said dismissal and waives any and all claims whatsoever arising therefrom, including but not limited to any and all claims for costs and attorneys' fees, except as specifically provided in paragraph 11.

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11. The parties agree that that portion of each Respective Owner's real property within Tract 18379 located landward of the Sandy Beach Portion is not subject to a public easement or dedication of the type hereinbefore described provided that said Respective Owner executes this Agreement, or counterpart to this Agreement. Said portion of the Owner's real property within Tract 18379 located landward of the Sandy Beach Portion is hereinafter referred to as the "Residential Portion." The State, the Commission, the Attorney General, and the City, and each of them, hereby remise, release and quitclaim any claims of such implied dedication rights over that part of the Residential Portion owned by each Respective Owner who executes this Agreement, or counterpart to this Agreement.

12. This agreement will supersede and control over certain quitclaim deeds to the City executed by lessehold owners in the following documents:

Quitclaim deed from Wen Y. Chao and Ching Ju Chao to the City of Torrance, recorded January 5, 1972, in book D 5310, page 919 in the Records of Los Angeles County (lot 157); quitclaim deed from John P. Maginnis and Anne M. Maginnis to the City of Torrance, recorded January 5, 1977, in book D 5310, page 921 in the records of Los Angeles County (lot 149); quitclaim deed from Lloyd C. Ownbey and Ida Pearl Ownbey to the City of Torrance, recorded January 5, 1972, in book D 5310, page 923 in the records of Los Angeles County (lot 150); quitclaim deed from Bruce B. Anson and Penelope J. Anson to the

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City of Torrance, recorded January 5, 1977, in book D 5310, page 925 in the records of Los Angeles County (lot 158); quitclaim deed from Shirley K. Newton to the City of Torrance, recorded March 26, 1975, in book D 6598, page 755 in the records of Los Angeles County (lot 160); quitclaim deed from W. Thomas Allen and Beverly A. Allen to the City of Torrance, recorded March 26, 1975, in book 6598, page 757 in the records of Los Angeles County (lot 168).

The respective rights of the parties shall be as set forth in this agreement, as the reason for the establishment of this boundary line is to bring the landward boundary of the "Sandy Beach Portion" into a uniform description based upon physical landmarks. It is also in recognition of the fact that the owners of fee title to the property described in said quitclaim deeds did not join in the conveyance.

13. It is recognized that consideration exists in the exchange of mutual releases, releases and quitclaims, in that the establishment of a fixed boundary line is of value to all the parties.

14. The Commission shall issue a 49-year permit to the City for the use of those lands lying within one thousand feet waterward of the Agreed Boundary Line set forth in Paragraph 1 above for beach park purposes and such other uses as set forth herein. The specific details, legal description of the lands included within said permit and form of said permit which shall be issued shall be substantially as set forth in Exhibit "D."

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attached hereto and incorporated herein by reference. The Commission shall approve and authorize the issuance of said permit as a part of authorizing the execution of this Agreement. Any act required by a provision of this paragraph to be performed after the effective date of this Agreement shall be severable, separate and distinct from other provisions of this Agreement. Should the Commission or the City fail to perform any act required by this paragraph after said effective date, said failure shall in no way affect the consideration supporting this Agreement or the validity or binding nature thereof. Nothing herein, however, shall affect or diminish the rights of the Commission or the City at law or in equity, to enforce the provisions of this paragraph or this Agreement.

15. The City shall be responsible for recording this Agreement. The premiums and costs of any title insurance policies shall be borne by the party requesting such insurance.

16. This Agreement shall become effective upon the occurrence of all of the following acts:

(a) Execution of this Agreement, or counterpart of this Agreement, by the City, the Commission, the Attorney General, and by the Respective Owners of at least one-half of the lots specified in the "Owner's List" attached hereto as Exhibit "E," and incorporated by reference, provided that in the event any Respective Owner listed in Exhibit E voluntarily or involuntarily disposes of any interest affected by this Agreement prior to the recordation of this Agreement, the execution of this Agreement or counterpart to this Agreement

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shall be by the successor-in-interest of each Respective Owner to the extent said interest was disposed of by each such Respective Owner; and

(b) Execution of this Agreement, or counterpart to this Agreement by authorized representatives of DON JA RAN CORPORATION and PEERLESS BUILDING CORPORATION, or their respective successors or assigns; and

(c) Recordation of this Agreement in the Office of the County Recorder for the County of Los Angeles. In the event said recordation does not occur prior to September 15, 1988, this Agreement shall be void and without force and effect. The effective date of this Agreement shall be the date of recordation thereof.

17. Upon becoming effective, this Agreement shall be binding upon and inure to the benefit of the parties who execute this Agreement and their heirs, successors and assigns.

18. Any Respective Owner who has not executed this Agreement or counterpart to this Agreement prior to the effective date described in paragraph 15, may, within ten years of the effective date, execute this Agreement or counterpart to this Agreement as to the Respective Owner's property.

19. This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original and as if all of the parties to this Agreement and the aggregate counterparts had executed the same instrument. Any signature page of this Agreement or counterpart to this Agreement may be detached from this Agreement

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or any counterpart to this Agreement without impairing any signature thereon and may be attached to this Agreement or counterpart to this Agreement identical in form thereto but for having attached to it one or more additional signature pages. In the execution of this Agreement or counterpart to this agreement each party hereto shall furnish such acknowledgements and certifications as may be necessary to permit the recordation of this Agreement in the Office of the County Recorder of the County of Los Angeles.

20. So long as authorized by applicable laws to do so, each of the parties hereto will do such further acts and execute, acknowledge and deliver all further conveyances and other instruments as may be necessary to more fully assure to each party hereto all of the respective properties, rights, titles, interests, estates, remedies, powers and privileges to be conveyed or provided for herein.

21. The parties agree that all provisions of this Agreement which remain to be performed after the effective date hereof shall survive such execution and shall continue in full force and effect. Upon said effective date, all such provisions of this Agreement shall be severable, separate and distinct from the other provisions of this Agreement. Should any party fail to comply with any or all of such provisions thereafter, such failure shall in no way affect the consideration supporting this Agreement, or counterpart to this Agreement, or the validity or binding nature thereof. Nothing herein, however, shall affect or diminish the rights of any party hereto at law or in equity, or

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both, to enforce the provisions of this Agreement, or counterpart to this Agreement against any other party hereto.

22. The provisions set forth in this Agreement have been determined for purposes of compromise and settlement. In the event this Agreement is not executed by the Owner, nothing herein shall be an admission of any party hereto in any proceeding, whether judicial or otherwise, to evidence the location, character, condition or legal status of said property or interest therein that is the subject of this Agreement, or the belief, statement, knowledge, or intent of any party hereto with respect thereto.

23. Nothing herein shall constitute an admission or expression by any party to this Agreement as to the location of the ordinary high water mark or as to the existence, extent or nonexistence of public implied dedication rights over or upon any real property other than said property of Owner.

24. This Agreement constitutes the entire agreement between the parties and none of the parties rely upon any warranty or representation not contained herein.

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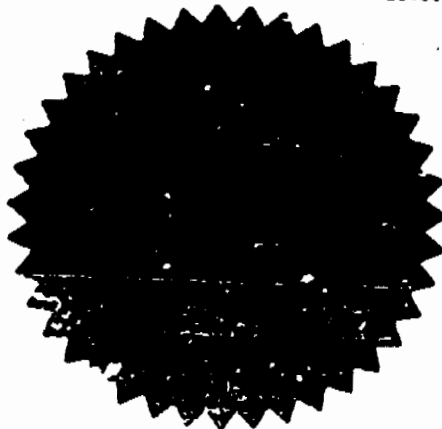
OF

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IN APPROVAL WHEREOF, I GEORGE DEURMEJIAN, Governor of the State of California have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to Section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento, this 1st day of September in the year of our Lord one thousand nine hundred eighty eight.


GEORGE DEURMEJIAN
Governor of the State of California



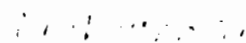
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Attest:



MARSHALL P. FORD
Secretary of State

BY: _____

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