

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Th 5a

Filed: 9/2/08
49th Day: 10/21/08
180th Day: 3/1/09
Staff: Laurinda-SD
Staff Report: 9/18/08
Hearing Date: 10/15-17/08

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-08-11

Applicant: Andrea & Gerard Yablonicky

Agent: Michael Rollins

Description: Replacement of existing wall/fence at south property line with new 3-6 ft. high, 8-inch block concrete masonry wall on a 2,400 sq.ft. oceanfront lot containing an existing two-story single-family residence, which will remain.

Site: 2633 Ocean Front Walk, Mission Beach, San Diego, San Diego County. APN 423-761-07.

Substantive File Documents: Certified Mission Beach Precise Plan; Certified Mission Beach Planned District Ordinance; Encroachment Removal Agreement

I. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

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

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Future Removal of Permitted Encroachment. If the existing structure along the boardwalk is substantially altered such that 50% or more of the existing walls are demolished or removed, the development authorized by this permit shall be removed in its entirety.

III. Findings and Declarations.

The Commission finds and declares as follows:

A. Detailed Project Description/History. Proposed is the replacement of an existing wall/fence at south property line with a new 3-6 ft. high, approximately 80-foot long, 8-inch wide block concrete masonry (CMU) wall on a 2,400 sq.ft. oceanfront lot containing an existing two-story single-family residence, which will remain. No other development is proposed. A total of four parking spaces will remain on site which is adequate for the existing structure, consistent with Section 30252 of the Coastal Act.

The project site is located on Ocean Front Walk about eight lots south of Asbury Court which is fairly close to its southern terminus in South Mission Beach. Ocean Front Walk is an improved concrete boardwalk that typically runs in a north/south direction along the western limits of oceanfront development in Mission Beach. However, north of the project site near the vicinity of Asbury Court, the existing improved public boardwalk veers to the west where it ends near the existing South Mission Beach lifeguard station and comfort station. While those properties located south of Asbury Court are situated adjacent to the Ocean Front Walk public right-of-way, it is not improved and there are numerous private encroachments in the public right-of-way (ref. Exhibit No. 1). These improvements typically consist of paved patios and landscaping. In this particular case, there are a number of private encroachments that extend approx. ten feet into public right-of-way of Ocean Front Walk. For the subject property, the improvements in this area consist of a brick stairs, wooden fence, brick pavers and brick planter area which are located ten feet beyond the western property line within the public right-of-way. The City notified the applicant that there was no record of an Encroachment Removal Agreement for these private accessory improvements in the public right-of-way. As such, the applicant subsequently applied for, and received approval for, these improvements via an Encroachment Removal Agreement (ref. Exhibit No. 3). As noted previously, the subject development consists of replacing the wall on the south property line which does not currently match up with the property pin markers. The new wall will follow the exact alignment of the south property line and new new improvements are proposed within the Ocean Front Walk Right-of-Way. Special Condition #2 notifies the applicant that if in the future, the existing residence is substantially altered such that 50% or more of the existing walls are demolished or removed, the wall must be removed.

Given that the proposal is located on Ocean Front Walk, a major public accessway, and that the site is between the first coastal road and sea, adequate yard area setbacks should be provided pursuant to the City's certified LCP. Side yard areas should remain open to allow views to the ocean and/or to avoid the "walled off" view from public streets. In this particular case, the subject site is located in that portion of Ocean Front Walk that extends south and veers off from the public boardwalk and pedestrian/bicycle walkway. The right-of-way contains sandy beach area and there is no improved public walkway immediately west of the subject site. This sandy area is owned by the City of San Diego and is part of south Mission Beach park. A line of thick shrubs borders the south end of this sandy beach next to the roadway that leads to public parking lot on the north side of the Mission Beach jetty. To the south is the Mission Bay Channel jetty and to the west is a very wide public sandy beach.

Given that the proposed work only involves the replacement of a wall in the side yard, there is no need to deed restrict the side yards for protection of public views, similar to other oceanfront development in this area as the proposed wall will not encroach into the side yard setback area. The existing site is already developed and no changes to the existing structure are proposed. However, in the future, if the site is ever redeveloped, the requirement for deed restricting the side yards to include only low level vegetation and open fencing to open up views toward the ocean as well as to minimize a "walled off" effect, will be required.

B. Community Character /Visual Quality. The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

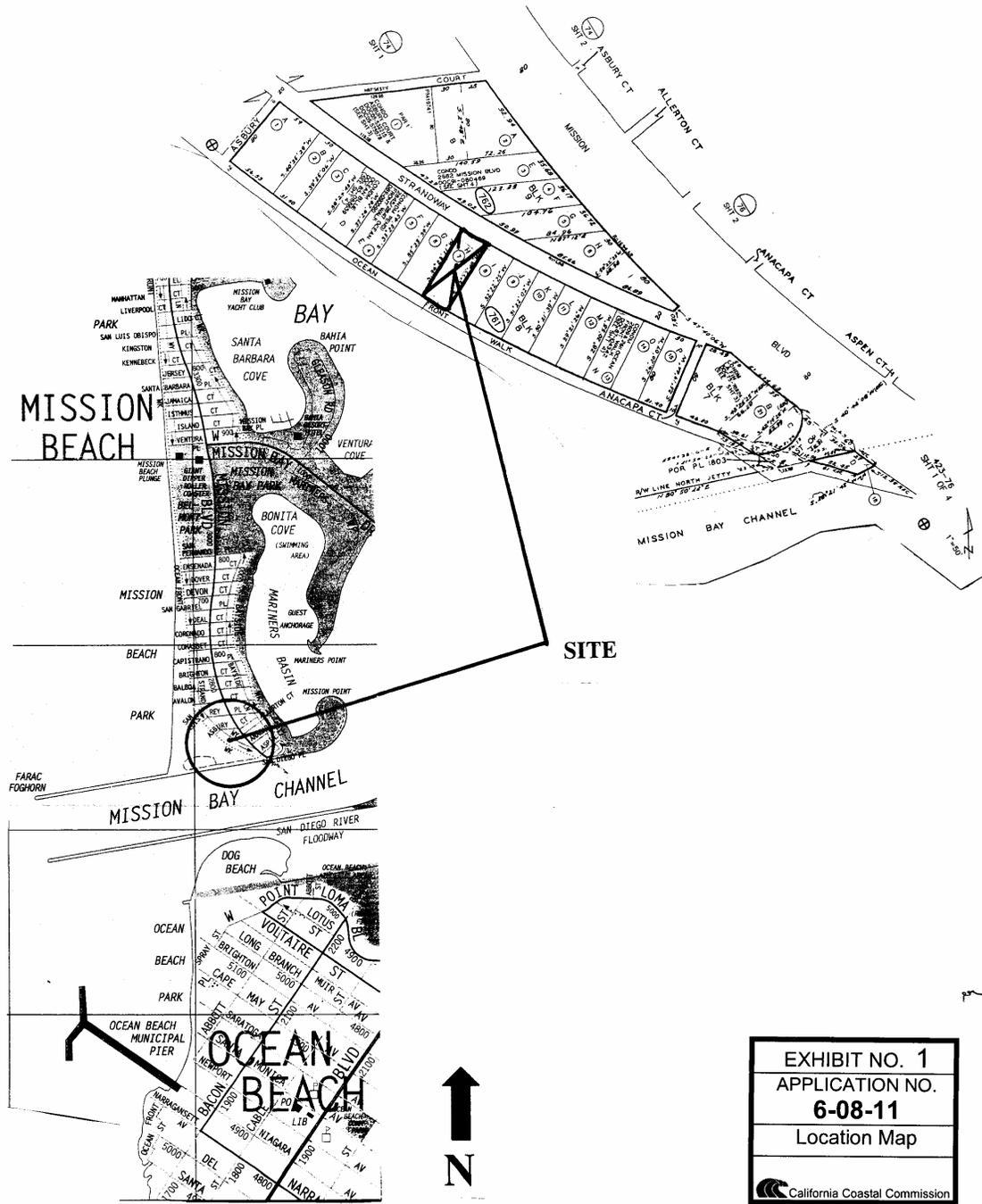
C. Public Access/Parking. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section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

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

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

STANDARD CONDITIONS:

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



PLANNING DATA

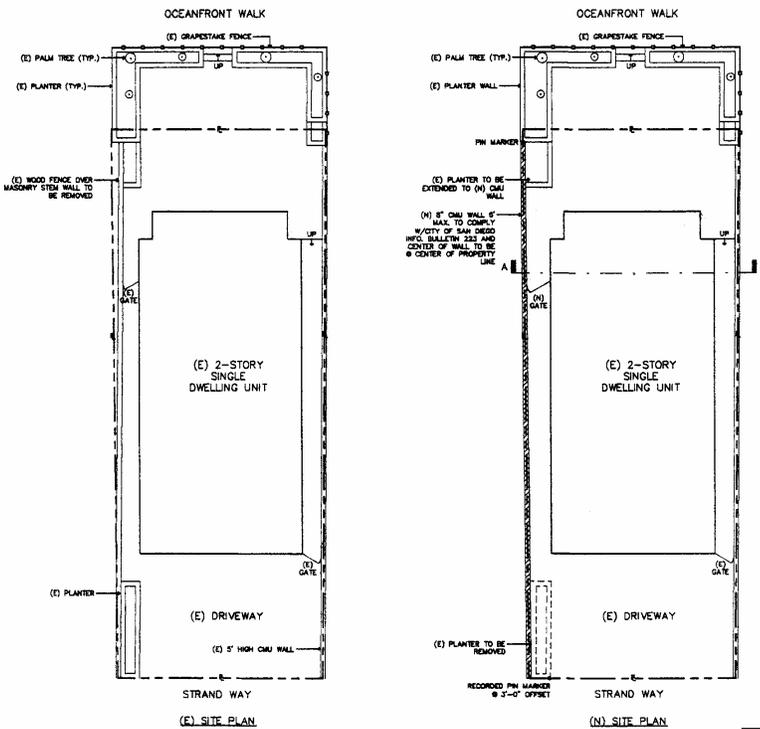
APN 423-761-07-00
 WORK AREA 78'-1" LINEAR FEET OF (N) WALL
 OWNER ANDREA & GERARD YABLONICKY
 2633 STRAND WAY, SAN DIEGO, CA 92109
 619-298-7232

GENERAL CONTRACTOR CHRISTOPHER R. MORGAN, CLASS B 323186
 3510 CURLEW STREET, SAN DIEGO, CA 92103
 619-417-8897

SCOPE OF WORK 1. REMOVE (E) FENCE AND STEM WALL; 2. SAW CUT 4" SOUTH OF CENTER LINE; 3. EXCAVATE AND UNDER PIN FOOTING, 12" TO EACH SIDE OF CENTER LINE; 4. REMOVE SIDEWALK AS NECESSARY AT NORTH OF CENTER LINE; 5. POUR FOOTINGS PER I.B. 223; 6. CONSTRUCT WALL PER I.B. 223 WITH TOOLED JOINTS.

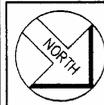
D.A. DRAFTING, INC.
 San Antonio, Texas, United States
 1716 S. Loop West, Suite 100
 San Antonio, TX 78201
 Phone: (214) 541-1111
 Fax: (214) 541-1112

CONTRACTOR/DESIGNER:
 CHRYSALIS HOME IMPROVEMENT
 CHRIS MORGAN
 3510 CURLEW ST.
 SAN DIEGO, CA 92103
 619-417-8897



YABLONICKY RESIDENCE
 EXTERIOR WALL REPAIR & RE-LOCATION
 2633 STRAND WAY
 SAN DIEGO, CA 92109

YABLONICKY RESIDENCE
 EXTERIOR WALL REPAIR & RE-LOCATION
 2633 STRAND WAY
 SAN DIEGO, CA 92109



TITLE (N) & (E) SITE PLAN, ELEVATIONS, BUILDING SECTION & PLANNING DATA
 CHECKED -
 DATE 06-28-08
 SCALE AS SHOWN

1
A1 NEW & EXISTING SITE PLANS
 1/8" = 1'-0"

EXHIBIT NO. 2
APPLICATION NO.
6-08-11
 Existing and New
 Site Plans

DOC # 2008-0437406



AUG 15, 2008 10:30 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 23.00

PAGES: 5




THE CITY OF SAN DIEGO

RECORDING REQUESTED BY:
THE CITY OF SAN DIEGO
AND WHEN RECORDED MAIL TO:

City of San Diego
Development Services Department
1222 First Ave., MS-501
San Diego, CA 92101

Handwritten initials: *JS*

(THIS SPACE FOR RECORDER'S USE ONLY)

ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT

P.T.S. APPROVAL NUMBER 5 69655

P.T.S. PROJECT NUMBER: 159700

In accordance with the provisions of Section 129.0715 of the San Diego Municipal Code, this agreement is made by and between the City of San Diego, a Municipal Corporation [City] and the owner or owner's duly authorized representative of real property [Property Owner], located at _____
2633 Ocean Front Walk

and more particularly described as Lot H, Block 8 Of Mission Beach Altered Map Number 1809

in the City of San Diego, County of San Diego, State of California [Property].

In consideration of the grant of permission by the City of San Diego to encroach into the public right-of-way [ROW] by installing and maintaining private improvements, to wit: Existing Brick Stairs, Wood Fence, Brick Pavers & Brick Planter Area Within Ocean Front Walk Public Right Of Way.

[Encroachment] over, under, and across the ROW for the use and benefit of the Property, Property Owner covenants and agrees with the City Of San Diego as follows:

- (a) This agreement shall run with the land.
- (b) The Encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Property Owner(s) and the successors in interest.
- (c) With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the Encroachment, the Property Owner agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.

(Continued on Page 2)

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.
DS-3237 (01-07)

EXHIBIT NO. 3
APPLICATION NO.
6-08-11
Encroachment
Removal Agreement

 California Coastal Commission

Also covered by this Section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of the Property Owner, its employees, agents or officers, or any third party. The Property Owner's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

Property Owner further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

- (d) The Property Owner(s) shall remove, relocate or restore the Encroachment as directed by the City Engineer within thirty (30) calendar days of written notice from the City, or in the case of an emergency, as determined by the City, the City may request that the work be done immediately or within less than thirty (30) calendar days. If the Property Owner(s) fails to remove, relocate or restore or otherwise comply with the direction of the City Engineer regarding the Encroachment, the City may cause the work to be done, and the costs thereof shall be a lien against the property. The City's request to remove, relocate, or restore the encroachment shall not be arbitrary or without reason.
- (e) For structures encroaching over or under a public facility within a right-of-way or easement, the owners agree to provide an alternate right-of-way and to relocate said public facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City that the Facility cannot be economically placed, replaced, or maintained due to the presence of the Encroachment.
- (f) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the Encroachment.
- (g) The property Owner shall maintain a policy of liability insurance with the City of San Diego and its respective elected officials, officers, employees, agents, and representatives named as additional insureds, in an amount approved by the city, which will protect the City from any potential claims that may arise from the Encroachment.

Andrea Yablonicky
(Signature)

See Attached Exhibit(s): A & B

See Drawing Number(s): N/A

Andrea Yablonicky / Property Owner
(Print Name & Title)

N/A
(Company Organization Name)

7/29/08
(Date)

APPROVED:

Paul J. Buehler
City Control Engineer

Date: 8/14/08



NOTE: ALL SIGNATURES MUST INCLUDE NOTARY ACKNOWLEDGMENTS PER CIVIL CODE SEC. 1180 ET. SEQ.

EXHIBIT A

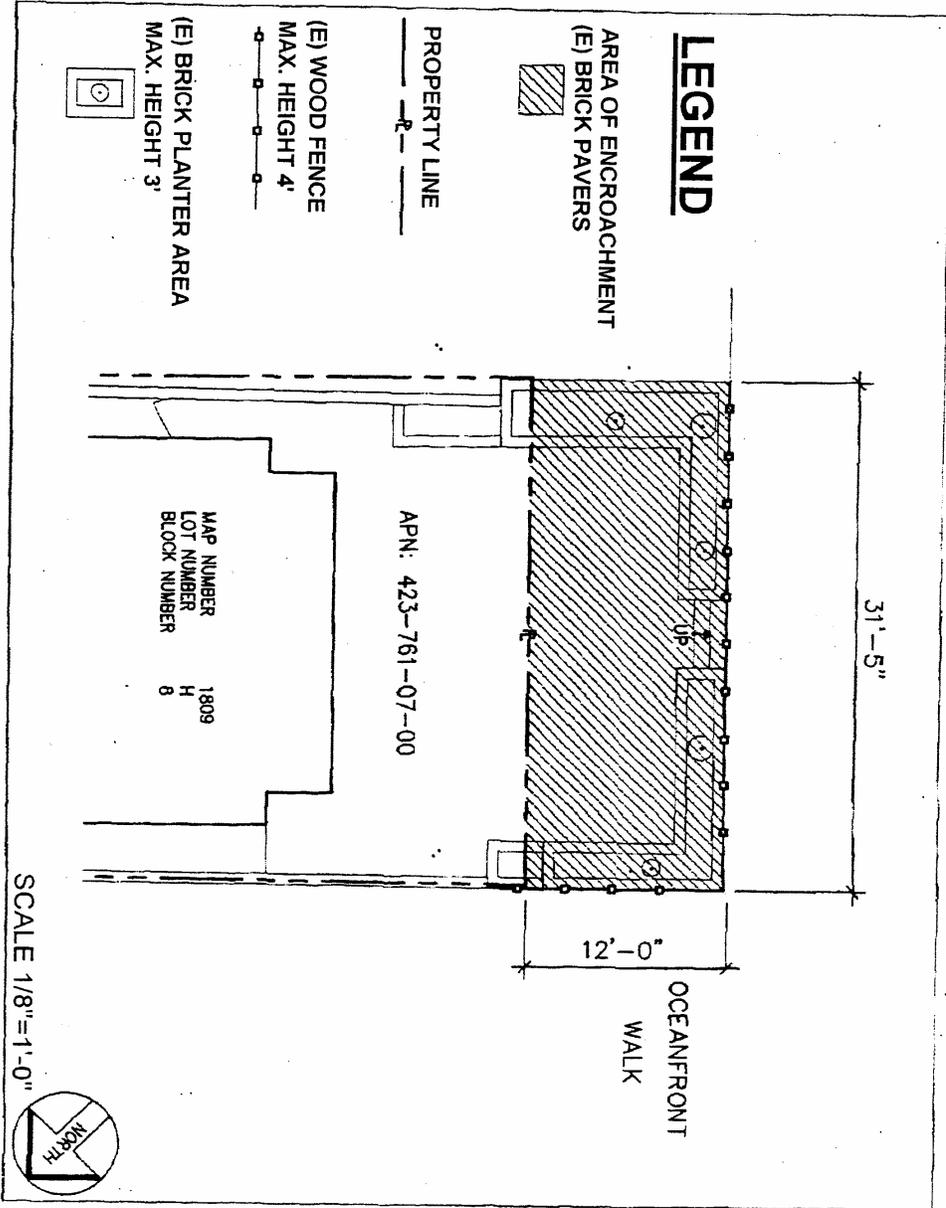
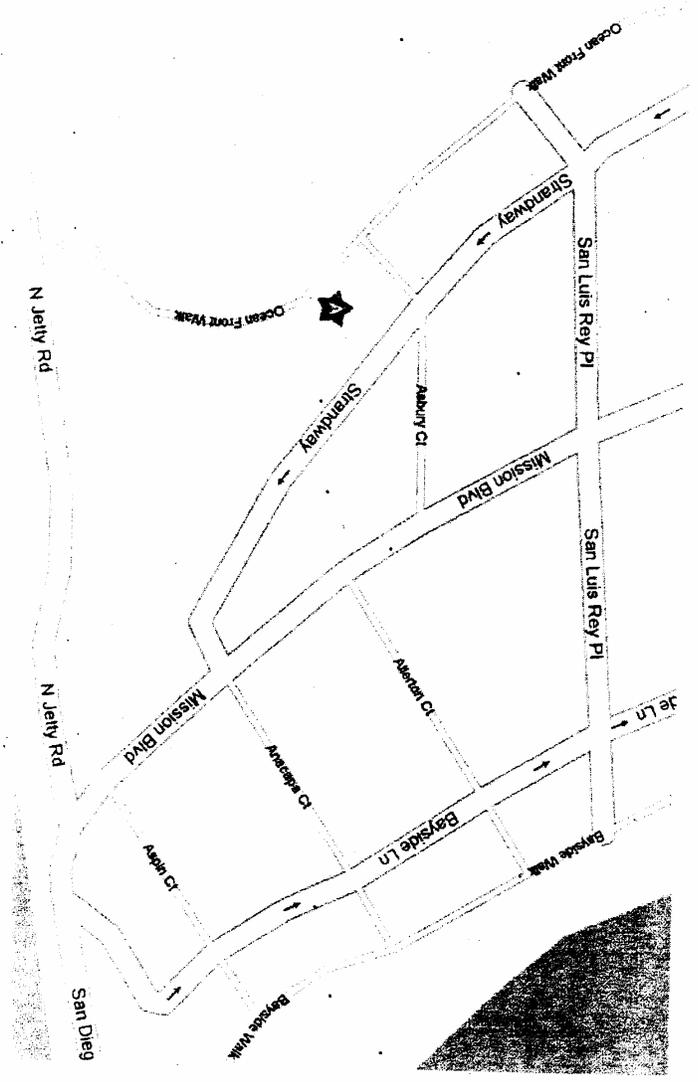


EXHIBIT B



VICINITY MAP
2633 Ocean Front Walk
San Diego, CA 92109 8242

THIS CERTIFICATE IS THE NOTARIZATION OF TO THE FOLLOWING DOCUMENT:

Type of Document: ENCROACHMENT MAINT. & REMOVAL AGREEMENT
Document Date: 7/29/2008 No. of Pages: 2
Document Signer: ANDREA VACHONICKY
Identification Used: CA. DRIVERS LIC

California Acknowledgement

State of California
County of SAN DIEGO

On JULY 29, 2008 before me, JO-RE ANN LAWSON, Notary Public, personally appeared:

ANDREA VACHONICKY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Notary in and for said state & County

California Jurat

State of California
County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by:

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary in and for said state & County

