

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W12a

Filed: 8/26/10
49th Day: 10/14/10
180th Day: 2/22/11
270th: 5/23/11
Staff: Al Padilla-LB
Staff Report: 9/15/10
Hearing Date: 10/13-15/10
Commission Action:

STAFF REPORT: MATERIAL AMENDMENT

AMENDMENT

APPLICATION No.: 5-07-237-A1

APPLICANTS: Ocean Way Real Estate Trust

AGENTS: Equinox Architecture, Inc.

PROJECT LOCATION: 101 & 111 Ocean Way, Pacific Palisades, City of Los Angeles

DESCRIPTION OF CURRENT AMENDMENT No. 1: Replace the approved 400 square foot accessory structure (pool house) with a 9 foot high shade trellis built on top of a variable height retaining wall, with a maximum height of 12 feet, and approximately 55 cubic yards of fill.

DESCRIPTION OF ORIGINAL COASTAL DEVELOPMENT PERMIT: Demolition of a single-family residence and accessory structure and construction of a swimming pool, spa, shade pavilion, accessory structure, hardscape, landscaping and minor grading to direct runoff toward street.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **Approval** of the proposed coastal development permit amendment with three special conditions: 1) comply with special conditions of original permit that remain in effect; 2) comply with recommendations of the geologic consultant; 3) require that the applicant assume the risk of development; and 4) recordation of a deed restriction against the property referencing all of the Standard and Special Conditions contained in this staff report. The special conditions will ensure that the proposed project is consistent with the Chapter 3 policies of the Coastal Act.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The project is a substantial change from that previously approved. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-07-237 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

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

II. STANDARD CONDITIONS

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

III. SPECIAL CONDITIONS

1. Conditions Imposed Under Original Permit 5-07-237

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-07-237 and/or amendments thereto shall remain in effect (see Attachment No. 1). If the specifications of any plans approved to comply with permit 5-07-237 are inconsistent with either the project description submitted with this amendment or the conditions imposed by this amendment, the applicant shall submit new plans to the Commission, for the review and approval of the Executive Director, that are consistent with the terms and conditions of this permit as modified by this amendment 5-07-237-A1.

2. Conformance of Design and Construction Plans to Geotechnical Report

A) All final design and construction plans and grading and drainage plans, shall be consistent with all recommendations contained in Geologic & Soils Engineering Report, by Parmelee/Geology, Inc., dated August 10, 2006 and with the conditions imposed by the City of Los Angeles Department of Building and Safety, Geologic/Soils Report Approval List No. 55319, dated September 25, 2007.

B) 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 required.

3. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide activity, erosion and/or earth movement, (ii) to assume the risks to 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.

4. Deed Restriction

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

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Amendment Project Description

The applicant proposes to amend the previously issued Coastal Development Permit No. 5-07-237. The applicant proposes to replace from the approved plans a 400 square foot

accessory structure (pool house) and construct a 9 foot high shade trellis built on top of a variable height retaining wall with a maximum height of 12 feet with approximately 55 cubic yards of back fill to provide a flat surface for the trellis. The proposed site for the trellis is located in the same location as a previously existing accessory structure that was demolished under the original permit and was the site for the previously proposed and approved pool house.

The property is located at 101 and 111 Ocean Avenue, in the Pacific Palisades area of the City of Los Angeles. The subject site is located in the northwest corner of the 13,881 square foot lot, along the upper portion of a 16 foot high descending slope. At the bottom of the slope is an alley that serves commercial development along Entrada Drive. The project site is surrounded by commercial development to the west, residential development to the north and east, and Pacific Coast Highway to the south.

B. Visual Impacts/Landform Alteration

Section 30251 of the Coastal Act states:

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 the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas.

The project will be located inland and above PCH, on Ocean Way. The project is located approximately 130 feet inland of Will Rogers State Beach and is the first row of residential lots above PCH. The property is approximately 20 feet above PCH.

The proposed trellis will be located in the northern portion of the lot and approximately 150 feet from PCH. The trellis will have a maximum height of 9 feet from finished. Because of the location of the project in the northern portion of the property and existing development surrounding the property, the proposed structure will not have a significant adverse visual impact from along PCH and the public beach (Will Rogers State Beach).

Section 30251 requires all permitted development to minimize alteration of natural landforms. The north portion of the site is a 16 foot high slope. The applicant has proposed a retaining wall with a maximum variable height of 12 feet and approximately 55 cubic yards of backfill. The retaining wall and fill will not significantly alter the natural landform and will blend in with the surrounding development. Furthermore, as conditioned in the original permit, the area will be landscaped which will further minimize the visual impact from surrounding public areas. The Commission finds that the applicant has minimized the visual impact and landform alteration in an effort to safely construct the retaining wall and trellis. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

C. Geologic Hazard

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Under Section 30253 of the Coastal Act new development may occur in areas of high geologic, flood, and fire hazard so long as risks to life and property are minimized and the other policies of Chapter 3 are met. The proposed project is located along a coastal bluff lot in the Pacific Palisades area of the City of Los Angeles. The geotechnical analysis states that as designed with the recommendations made in the geotechnical reports it is possible to develop the lot safely. However, the applicant commissioned the report, and ultimately the conclusion of the report and the decision to construct the project is the responsibility of the applicant. The proposed project may still be subject to natural hazards such as slope failure. As noted elsewhere, the surrounding areas have been subject to many landslides. The historic slide or nearby slides may unexpectedly move and cause damage to the property, leaving pilings and other foundation work exposed or damaged. The geotechnical evaluations do not guarantee that future erosion, landslide activity, or land movement will not affect the stability of the proposed project or that movement of offsite slides might not affect this property or adjacent roads. Because of the inherent risks to development in high geologic risk areas, the Commission cannot absolutely acknowledge that the design of the project will protect the subject property during future storms, erosion, and/or landslides. Therefore, the Commission finds that the proposed project is subject to risk from landslides and that the applicant should assume the liability of such risk.

The applicant may decide that the economic benefits of development outweigh the risk of harm, which may occur from the identified hazards. However, neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the applicant is required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. The assumption of risk, when recorded against the property as a deed restriction, will show that the applicant is aware of and appreciates the nature of the hazards which may exist on the site and which may adversely affect the stability or safety of the proposed development.

In case an unexpected event occurs on the subject property, the Commission imposes Special Condition No. 3, which requires the landowner to assume the risk of extraordinary erosion and/or geologic hazards of the property. The deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential

buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

Therefore, prior to issuance of the Coastal Development Permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit. As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

D. Local Coastal Program

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

The City of Los Angeles has not prepared a draft Land Use Plan for this planning subarea. However, the City's work program to develop a Local Coastal Program considers natural hazards as an issue for this area of the City. Approval of the proposed development, as conditioned to comply with geologic recommendations and to assume the risks from natural hazards, will not prejudice the City's ability to prepare a certifiable Local Coastal Program. The Commission, therefore, finds that the proposed project is consistent with the provisions of Section 30604 (a) of the Coastal Act.

E. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications 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.

As explained above and incorporated herein, all adverse impacts have been minimized and the project, as conditioned will avoid potentially significant adverse impacts on the environment. The Commission finds that the proposed project, as conditioned is consistent with the requirements of the Coastal Act and CEQA.

Attachment No. 1
Special Conditions Approved under Original Permit 5-07-237

III. SPECIAL CONDITIONS

1. Conformance of Design and Construction Plans to Geotechnical Report

A) All final design and construction plans and grading and drainage plans, shall be consistent with all recommendations contained in Geologic & Soils Engineering Report, by Parmelee/Geology, Inc., dated August 10, 2006 and with the conditions imposed by the City of Los Angeles Department of Building and Safety, Geologic/Soils Report Approval List No. 55319, dated September 25, 2007.

B) 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 required.

2. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide activity, erosion and/or earth movement, (ii) to assume the risks to 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.

3. Erosion and Drainage Control

A) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a plan for erosion and drainage control.

1) Erosion and Drainage Control Plan

(a) The erosion and drainage control plan shall demonstrate that:

- *During construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and public streets.*
-

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Special Conditions Approved under Original Permit 5-07-237

- The following temporary erosion control measures shall be used during construction: temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.
 - Following construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and public streets.
 - Permanent erosion and drainage control measures shall be installed to ensure the stability of the site, adjacent properties, and public streets.
 - All drainage from the lot shall be directed toward the street and away from the slope.
- (b) The plan shall include, at a minimum, the following components:
- A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed for permanent erosion control.
 - A site plan showing the location of all temporary erosion control measures.
 - A schedule for installation and removal of the temporary erosion control measures.
 - A site plan showing the location of all permanent erosion and drainage control measures.
 - A schedule for installation and maintenance of the permanent erosion and drainage control measures.
 - A written review and approval of all erosion and drainage control measures by the applicant's engineer and/or geologist
 - A written agreement indicating where all excavated material will be disposed and acknowledgement that any construction debris disposed within the coastal zone requires a separate coastal development permit.
- (c) These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from the runoff waters during construction. All sediment shall be retained on-site unless removed to an appropriately approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

B) 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

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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 required.

4. Swimming Pool Leak Detection

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a written plan to mitigate for the potential of leakage from the proposed swimming pool and spas. The plan shall, at a minimum: 1) provide a separate water meter for the pool to allow monitoring of the water usage for the pool and the home; 2) identify the materials, such as plastic linings or specially treated cement, to be used to waterproof the underside of the pool to prevent leakage, and information regarding past success rates of these materials; 3) provide double wall construction to swimming pool and spa with a drainage system and leak detection system installed between the walls, and; 4) identify methods used to control pool drainage and to prevent infiltration from drainage and maintenance activities into the soils of the applicant's and neighboring properties. The applicant shall comply with the mitigation plan approved by the Executive Director.

5. Landscape Plan

A) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a final landscaping plan. The plan shall be prepared by a licensed landscape architect and incorporate the following criteria: (a) a majority of the vegetation planted shall consist of native/drought and fire resistant plants of the coastal sage community as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996; no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council (formerly known as the California Exotic Pest Plant Council), or as may be identified from time to time by the State of California shall be utilized on the property; (b) no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property; (c) no permanent irrigation system shall be allowed within the property. Temporary, above ground irrigation to allow the establishment of the plantings is allowed; (d) the plantings established shall provide 90% coverage in 90 days; (e) all required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

1) The plan shall include, at a minimum, the following components:

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Special Conditions Approved under Original Permit 5-07-237

(a) A map showing the type, size, and location of all plant materials that will be on the developed site, topography of the developed site, and all other landscape features, and;

(b) A schedule for installation of plants.

B) Five years from the date of the implementation of the landscaping plan the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

C) The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Deed Restriction

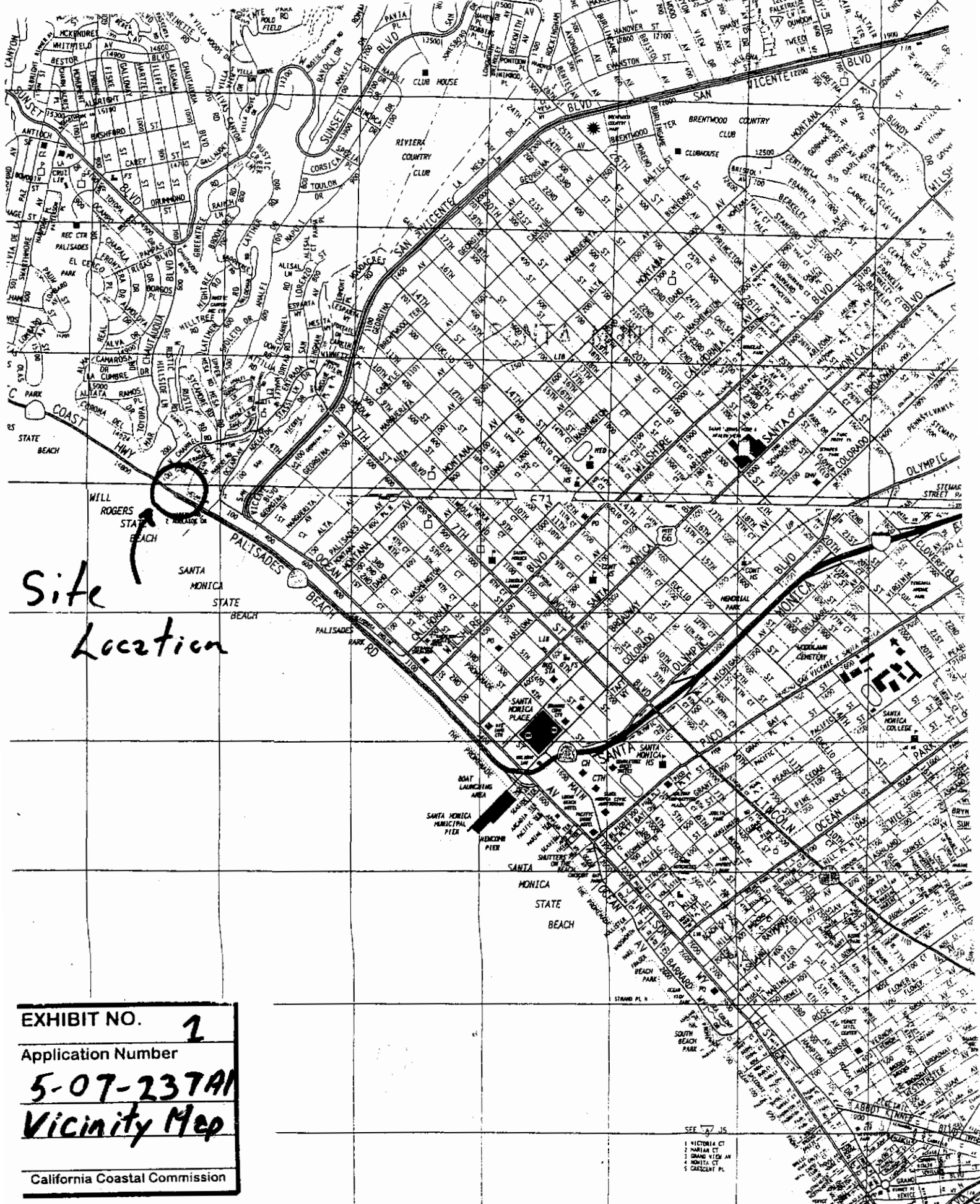
PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; 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 or parcels governed by this 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 permit shall continue to restrict the use and enjoyment of the subject property so long as either

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Special Conditions Approved under Original Permit 5-07-237

this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.



Site
Location

EXHIBIT NO. **1**
 Application Number
5-07-237A1
Vicinity Map
 California Coastal Commission

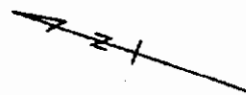
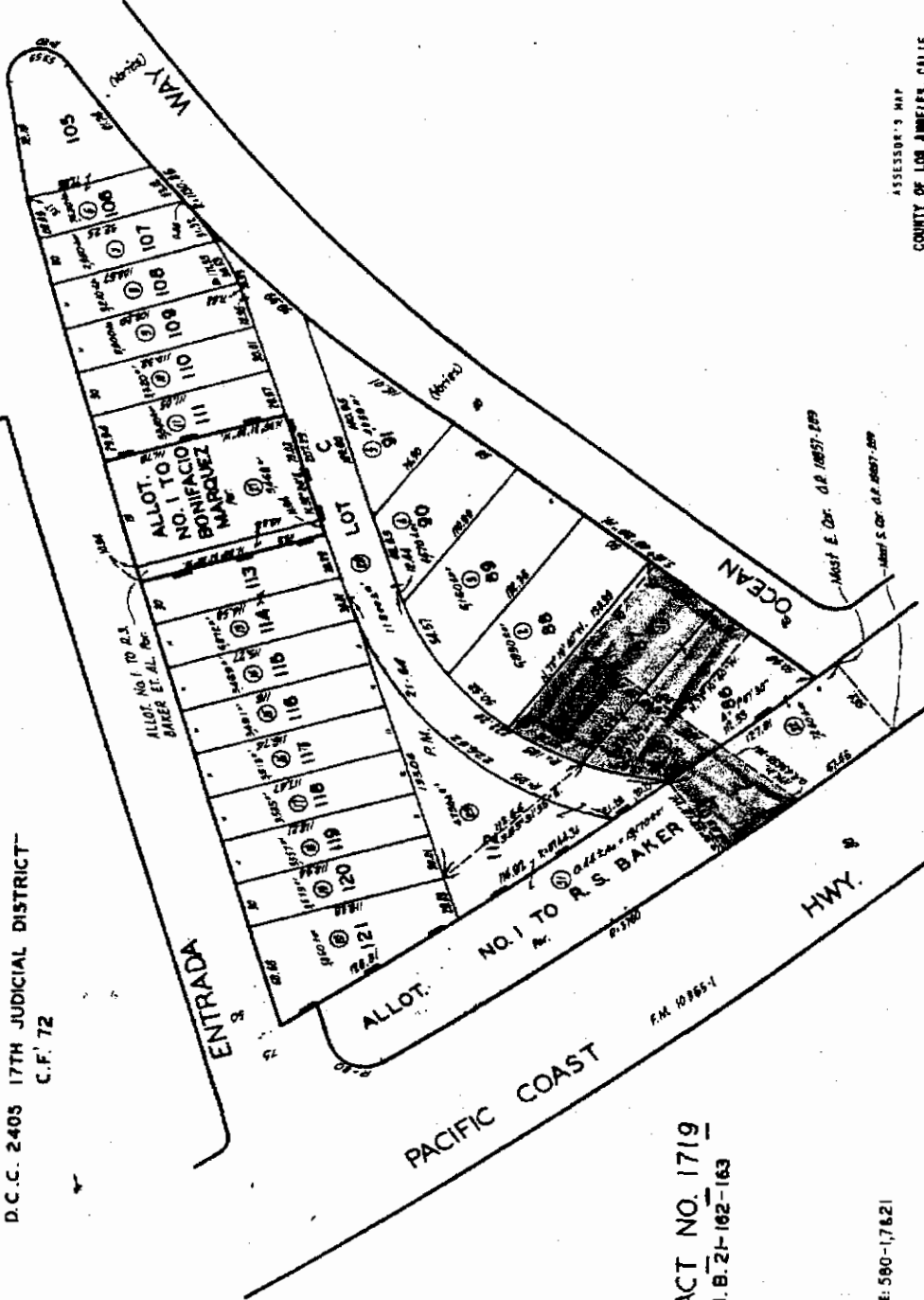
SEE MAP 15
 1 VICTORIA CT
 2 MARLIN CT
 3 BRANG VICH AN
 4 MONITA CT
 5 CRESCENT PL

4410 7
SCALE 1" = 60'

5-6-66 REVISED
S. J. BOY
69024
C. F. 72

RANCHO BOCA DE SANTA MONICA
D.C.C. 2405 17TH JUDICIAL DISTRICT
C.F. 72

DR. 8
SPORT



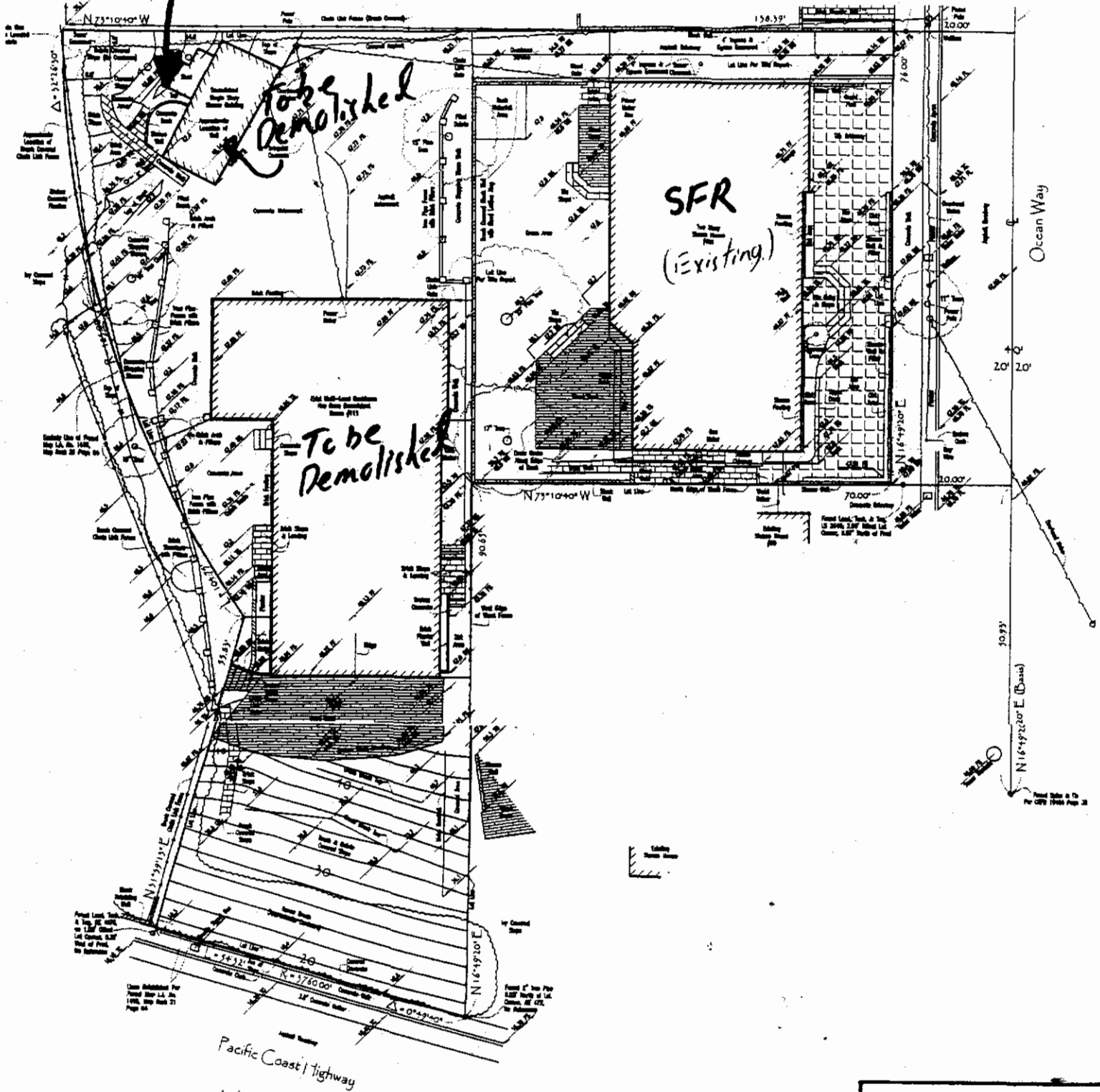
TRACT NO. 1719
M. B. 21-162-163


CODE 67

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

| | |
|-------------------------------|-------------|
| EXHIBIT NO. | 2 |
| Application Number | 5-07-237-A1 |
| Parcel Map | Parcel Map |
| California Coastal Commission | |

Location of proposed retaining wall
and trellis



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| EXHIBIT NO. 3 |
| APPLICATION NO. 5-07-237A1 |
| Site Plan - Existing |
|  California Coastal Commission |

Project Site

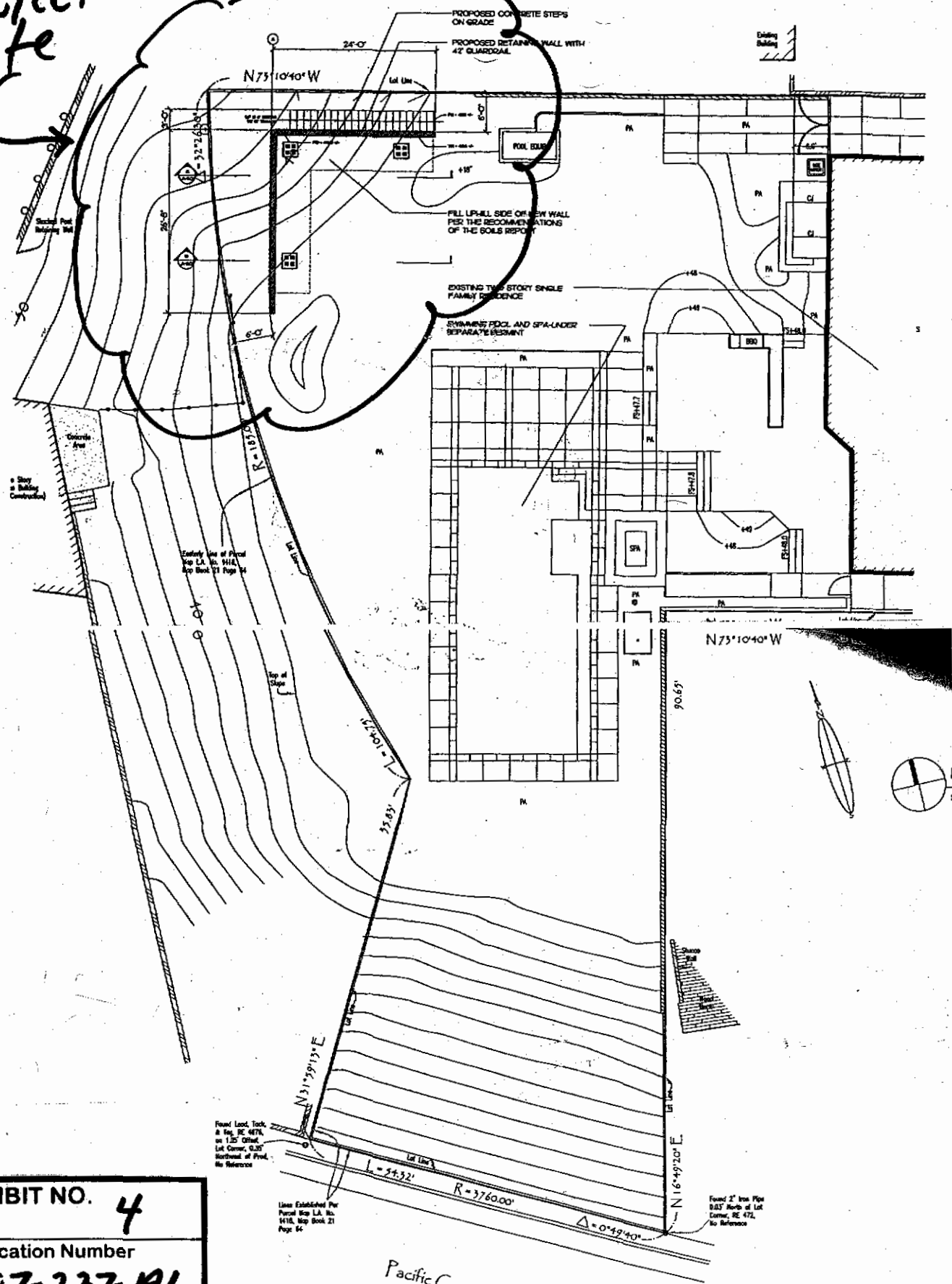
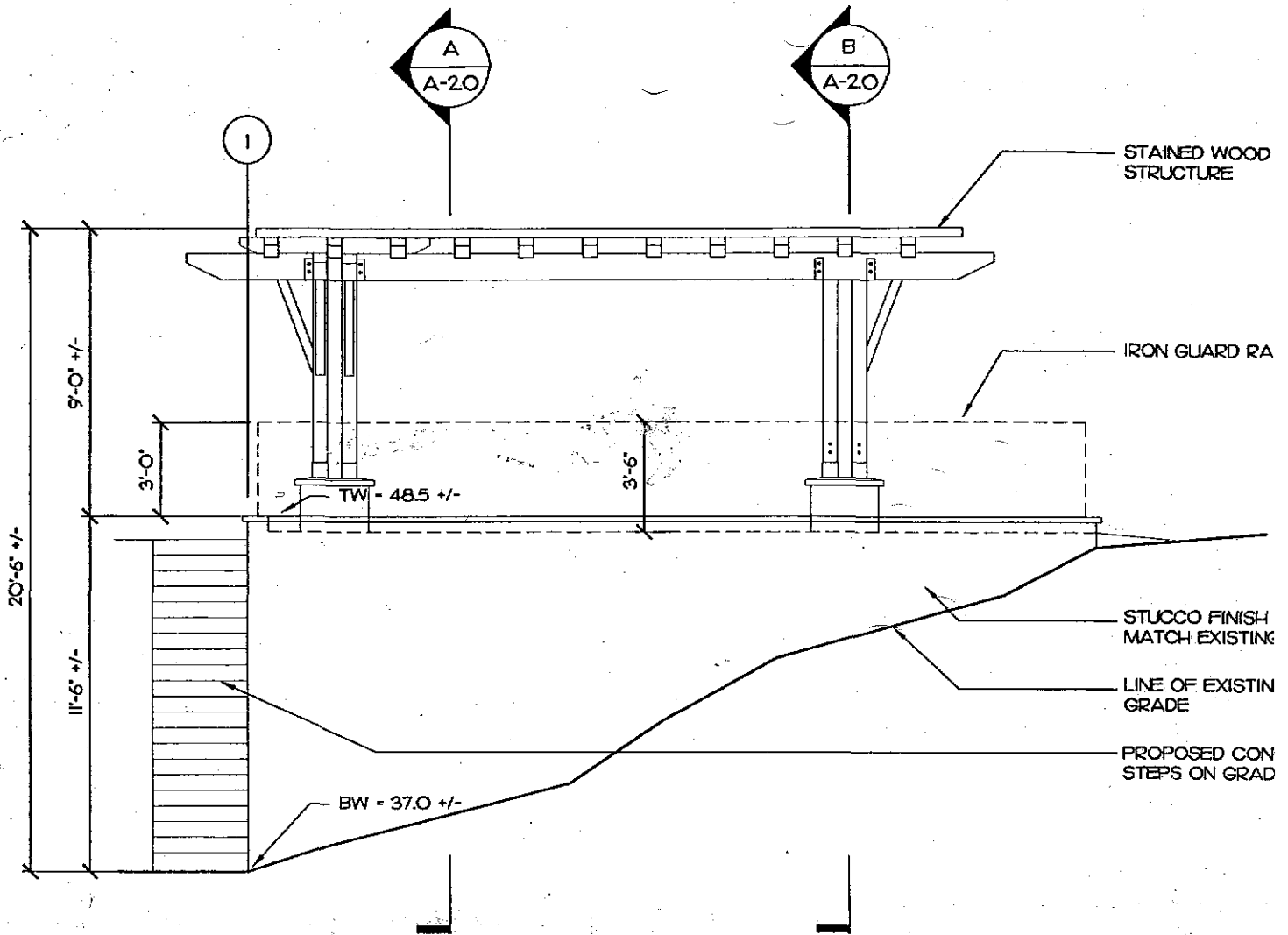


EXHIBIT NO. 4
 Application Number
5-07-237-A1
Site Plan
 California Coastal Commission

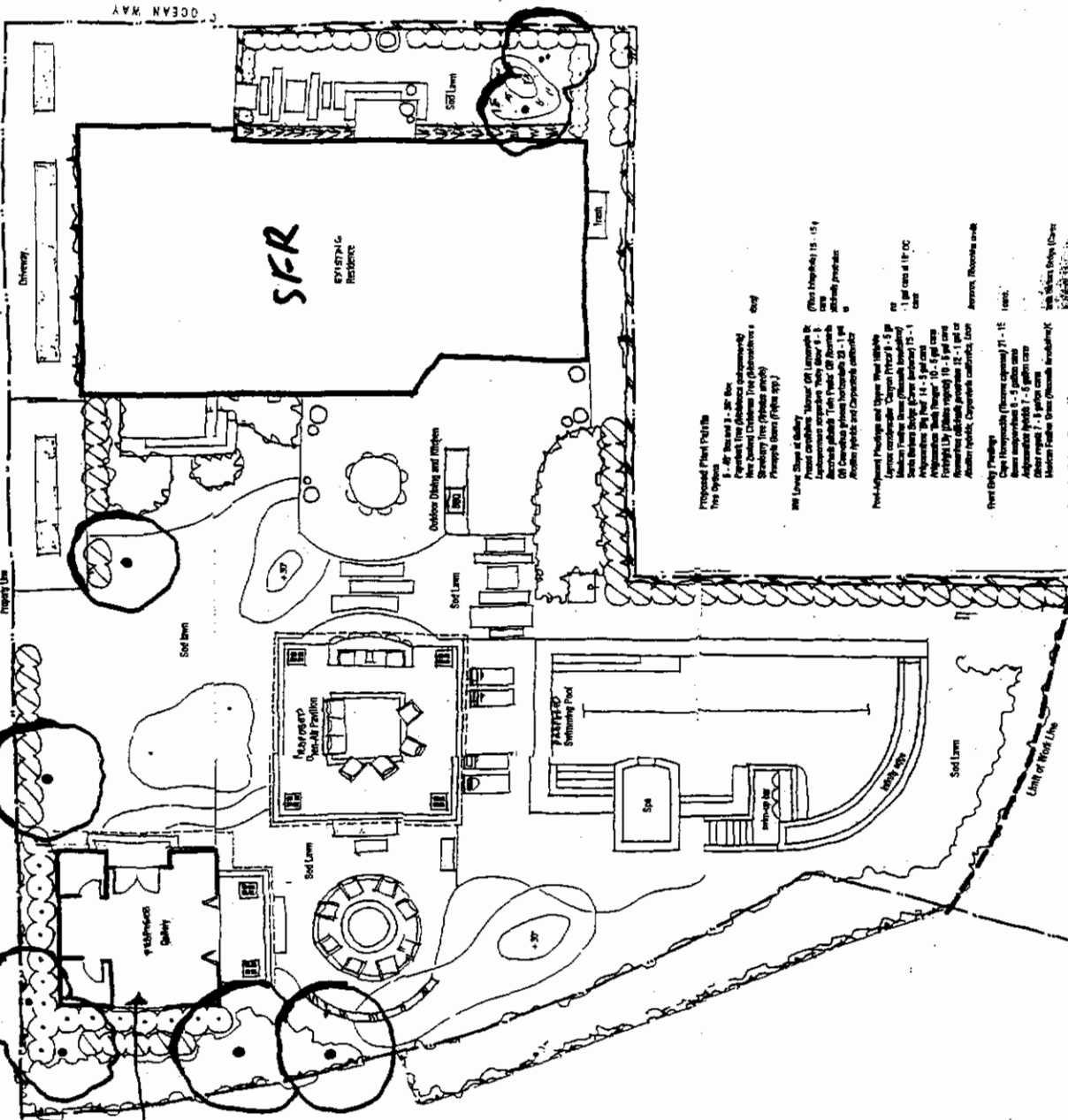
PROJECT DESCRIPTION





| | |
|-------------------------------|--------------------------|
| EXHIBIT NO. | 5 |
| Application Number | 5-07-237-A1 |
| | <i>Trellis Elevation</i> |
| California Coastal Commission | |

*Location of
Approved
Pool House*



OCEAN WAY

- Proposed Plant Palette**
 This palette is based on the following:
 - Plant palette for the existing residence
 - New Central Christmas Tree (approximately 8' high)
 - Prunella (approx. 10' high)
 - Prunella (approx. 10' high)
 - Prunella (approx. 10' high)
- Pool House Details**
 - Pool House: 10' x 10' (approx. 100 sq ft)
 - Pool House: 10' x 10' (approx. 100 sq ft)
 - Pool House: 10' x 10' (approx. 100 sq ft)
- Plant Palette**
 - Plant palette for the existing residence
 - New Central Christmas Tree (approximately 8' high)
 - Prunella (approx. 10' high)
 - Prunella (approx. 10' high)
 - Prunella (approx. 10' high)

| | |
|--|--------------------|
| EXHIBIT NO. | 6 |
| Application Number | 5-07-237-A1 |
| Site Plan | |
| Crignelly Approved California Coastal Commission | |

