

CALIFORNIA COASTAL COMMISSION

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



Filed: 4/29/10
 49th Day: 6/17/10
 180th Day: 10/26/10
 Staff: Al Padilla-LB
 Staff Report: 6/14/10
 Hearing Date: 8/11-13/10
 Commission Action:

TH10b**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER: 5-10-102****APPLICANT:** Kirk Lazarus**AGENT:** Paul Williger**PROJECT LOCATION:** 966 Palisades Beach Road, Santa Monica (Los Angeles County)

PROJECT DESCRIPTION: Remodel of an existing 3,634 square foot two story single-family residence, addition of a third story and 1,667 square feet, construction of a swimming pool. The remodel will include enclosing the existing first floor's elevated balcony on the seaward side of the residence and constructing a second story terrace above, and removing wooden fence and landscaping on State property and building new fence on private property.

Lot Area: 5,599 sq. ft.
 Building Coverage 564 sq. ft.
 Landscape Coverage: 203 sq. ft.
 Building Height 40 feet
 Zoning: R2B—Low Density Residential

LOCAL APPROVALS RECEIVED: City of Santa Monica Approval in Concept**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the proposed development with special conditions regarding: 1) Removal of private fence from State property; 2) Fence design plans; 3) assumption of risk, 4) future improvements; 5) compliance with City water quality requirements; and 6) recordation of a deed restriction against the property, referencing all of the Standard and Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: CDPs 5-99-401(Check Investments); (5-97-199(Risa, Inc); 5-97-112(Ephraim); 5-96-109(Warschaw); 5-03-369(Rosenthal); 5-06-194(Prager); 5-07-386(Novack); 5-08-297(Jabour).

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-10-102 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned 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 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. **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.

III. SPECIAL CONDITIONS

1. Removal of all Development Seaward of 1921 Mean High Tide Line.

By acceptance of this permit, the applicant agrees to remove, prior to issuance of the Certificate of Compliance, all development, including, but not limited to fencing, hardscape and landscaping that encroaches beyond the 1921 mean high tide line, which was formally established by survey as the legal property line between public and private property in this location as part of a settlement (lease agreements) between State Lands, City of Santa Monica, and the various property owners (see Exhibit No. 4).

2. Fence Design

A. The proposed fence shall consist of materials designed to minimize bird-strikes. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, plexiglas or other visually permeable barriers that are designed to prevent the creation of a bird strike hazard. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of all walls, fences, and gates for the review and approval of the Executive Director.

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

3. **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 waves, storm waves or flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. **Future Improvements Restriction**

This permit is only for the development described in coastal development permit No. **5-10-102**. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. **5-10-102** from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

5. **Water Quality Standards**

With the acceptance of this permit the applicant agrees to comply with all applicable City of Santa Monica water quality requirements as required under the City's Municipal Code that are in effect at the time of approval of this permit.

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 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. Project Description and Location

The proposed project involves the remodel of an existing 3,634 square foot two story single-family residence, addition of a third story and 1,667 square feet, and construction of a swimming pool and spa. The remodel will include enclosing the existing first floor's elevated balcony on the seaward side of the residence and constructing a second story terrace above. The final building height will measure 40 feet high from existing grade. The applicant will also remove all encroachments, including existing fencing and landscaping, from State property and reconstruct a new fence entirely on private property.

The proposed project site is located along Palisades Beach Road (Pacific Coast Highway), north of the Santa Monica Pier, in the North Beach area of the City of Santa Monica. The lot, measures approximately 30 feet wide by 182 feet deep, and is a beach fronting lot. The lot is zoned R2B (Low Density Multiple Family Residential/Parking Overlay).

The North Beach area contains the City's northern sandy beach area, beach clubs, single-family and multi-family residential development. The subject lot is located within a row of residentially developed lots and public beach parking lots. The beach area in front of the property is a broad beach, over 500 feet in width. Due to the width of the beach and the location of the Santa Monica breakwater, properties along the north beach area are generally protected from storm wave impacts.

The existing residential structure is setback 90 feet from the western property line (1921 mean high tide line) with a raised 12 foot deep deck extending seaward of the house. The 1921 mean high tide line (MHTL) was formally established by survey as the legal property line between public and private property in this location as part of a 1982 settlement (lease agreements) between State Lands, City of Santa Monica and the various private property owners. The lease agreements allowed existing development to remain and to be maintained seaward of the 1921 MHTL, but property owners were not allowed to "reconstruct or otherwise improve the same in any manner whatsoever without written permission of the State Lands Commission". Although the Coastal Commission was not a party to the lease agreements, the Commission has required that no new private, permanent improvements extend beyond the 1921 mean high tide line. In this particular case all proposed development is located landward of the 1921 MHTL. However, an existing fence and landscaping encroach 17 feet seaward of the 1921 MHTL. This development was allowed by State Lands and the City to remain under the 1982 lease agreement. As part of this application the applicant has agreed to remove all encroaching improvements and relocate the rear property fence landward of the 1921 MHTL and entirely onto private property.

B. Access

Sections 30210, 30211 of the Coastal Act require that new development provide maximum public access and recreation opportunities and avoid interference with the public's right of acquired 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 30211 of the Coastal Act states:

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

The proposed project is located on the beach, adjacent to and west of Palisades Beach Road (Pacific Coast Highway), in the City of Santa Monica's North Beach area. The North Beach area contains the City's northern sandy beach area, beach clubs, single-family and multi-family residential development. The subject lot is located within a row of residentially developed lots and public beach parking lots. The beach area in front of the property is a broad beach, over 500 feet in width.

The existing single-family residence and proposed addition are located landward of the 1921 MHTL, which was formally established by survey as the legal property line between public and private property in this location, as part of a 1982 settlement (lease agreements) between State Lands, City of Santa Monica and the various property owners. Although the Commission was not a party to the lease agreements, the Commission has required that no private, permanent improvements extend beyond the 1921 MHTL. Furthermore, all leases were valid for ten years with an additional fifteen year extension; however, all leases have expired and no further action has been taken.

Over the years the Commission has reviewed and permitted a number of projects in the North beach area. The Commission has allowed property owners to keep existing minor improvements, such as fences, hardscape and landscaping, that encroached beyond the 1921 MHTL, unless the development was being demolished and replaced. All new development, including replacing existing improvements, has been required to be located landward of the 1921 MHTL. The project site has an existing approximately 6 foot high wooden fence and landscaping that extend 17 feet beyond the 1921 MHTL property line. A previous property owner did have a lease agreement for the encroachments, but the lease has expired without being renewed. The applicant has agreed to remove all 1921 MHTL encroachments and reconstruct a new fence landward of the 1921 MHTL. To ensure that the fence is located landward of the 1921 MHTL Special Condition No. 1 requires, prior to the issuance of the

Certificate of Occupancy, the submittal of a revised site plan showing the removal and relocation of all development from the seaward side of the 1921 MHTL (see Exhibit No. 4).

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. Development

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30250 of the Coastal Act states in part that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states in part that:

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

The proposed project is located in an area of the north beach subarea that is developed with a mix of single and multiple-family residences. Residential structures range from one to three-stories, with a maximum height of 40 feet.

The proposed addition will be a maximum of three stories, 40-feet high, as measured from existing grade. In past permit actions for the area the Commission has consistently limited the height of development to 50 feet for all structures in the north beach subarea. The City currently limits development to a maximum height of 40 feet but also requires projects to conform to a view envelope to protect public views from the Palisades Park bluffs. The view envelope is measured from a height of 30 feet at the beach set back line to a point 5

feet above the bluff. The proposed project is lower than the Commission's maximum height limit and is consistent with the City's view envelope restriction.

Furthermore, the proposed development will be set back 64 feet from the rear (waterside) property line (1921 Mean High Tide Line). The City has a setback requirement of 50 feet from the rear property line; however, the Commission has consistently required that development comply with a structural stringline, or the pattern of development in the surrounding area, to minimize the seaward encroachment as properties redevelop along the beachfront. In this case, the applicant will encroach approximately 14 feet beyond the stringline. However, residences vary in their setbacks, so using a stringline may not be appropriate in some areas. In this area, the residence immediately to the north is setback 74 feet from the rear property line (1921 MHTL) and the residence immediately to the south is setback 100 feet. Other properties in the area vary from 68 feet to 90 feet. Although the proposed project's setback is not consistent with a stringline, the setback is consistent with the pattern of development in the surrounding area. Furthermore, the 68 foot setback sets the residential structure deep enough so that the structure does not visually create a psychological impact to the public caused by having a large private structure adjacent to public beach property that could push the public further seaward away from the structures effectively eliminating the sandy beach area adjacent to the property from public use. Moreover, in addition to the deep setback, the applicant is proposing to remove the existing encroachments from property previously leased from the State. By removing these encroachments, and as other properties redevelop and also remove their encroachments, additional sandy beach area will become available which will further widen the beach and free up additional beach area for public use.

As stated, the applicant will demolish the existing fence and pull it back approximately 17 feet so that the fence is located entirely on private property (seaward of the 1921 MHTL); however, fence design along the beachfront could have an adverse impact upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). At this time the applicant has not submitted a design for the fence, which could include glass or plexiglas. Although glass or plexiglass could adversely impact birds, there are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. Where clear glass is used, appliqués (e.g.) stickers can be affixed to the glass that have a pattern that is visible to birds. Some appliqués incorporate features that allow humans to see through the glass, but which are visible to birds. Usually appliqués must be replaced with some frequency in order to retain their effectiveness. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to appliqués because of the lower maintenance and less frequent replacement that is required.

As a special condition of this permit (Special Condition No. 6) the applicant is required to submit fence design plans and if the fence is to incorporate glass or Plexiglas, the plans shall indicate the use of frosted or etched glass or plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard.

Conclusion

To ensure that the encroachments are removed, Special Condition number 1 requires that prior to the issuance of the Certificate of Occupancy, the applicant will remove all encroachments and relocate a reconstructed fence landward of the 1921 MHTL. Furthermore, the reconstructed fence shall be designed to minimize bird strike and shall consist of solid materials or etched or semi-opaque glass or plexiglas.

As conditioned, the project is consistent with past Commission permit action regarding height and parking requirements. The project as proposed is consistent with the character and scale of the surrounding area and with past Commission permit action for the area. The Commission, therefore, finds that the proposed project is consistent with Sections 30230, 30250 and 30251 of the Coastal Act.

D. Control of Polluted Runoff

Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project poses a potential source of pollution due to contaminated runoff from hardscape. The City, to mitigate potential impacts, has adopted an Urban Runoff Ordinance. The ordinance requires projects to incorporate best management practices with extensive recommendations and measures to reduce or prevent contaminants from running off the site. The City requires all new development to achieve twenty- percent reduction of the projected runoff for the site. Furthermore, the City has a new state-of-the-art stormwater treatment

facility that treats all dry weather storm runoff. Runoff from all new development is directed to existing stormdrains, which direct stormwater to the treatment facility.

Coastal Commission water quality staff has previously reviewed the City of Santa Monica's water quality standards for similar projects and have determined that the City's standards are consistent with standards imposed by the Commission.

As proposed project will comply with the City water quality requirements. The Commission, therefore, finds that, as proposed, the development will be consistent with Section 30230 and 30231 of the Coastal Act.

E. Local Coastal Program

Coastal Act section 30604(a) 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.

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District), and the Santa Monica Pier. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications.

The area within the Beach Overlay District was excluded from certification due to Proposition S discouraging visitor serving uses along the beach resulting in an adverse impact on coastal access and recreation. In deferring this area the Commission found that, although Proposition S and its limitations on development were a result of a voters initiative, the policies of the LUP were inadequate to achieve the basic Coastal Act goal of maximizing public access and recreation to the State beach and did not ensure that development would not interfere with the public's right of access to the sea.

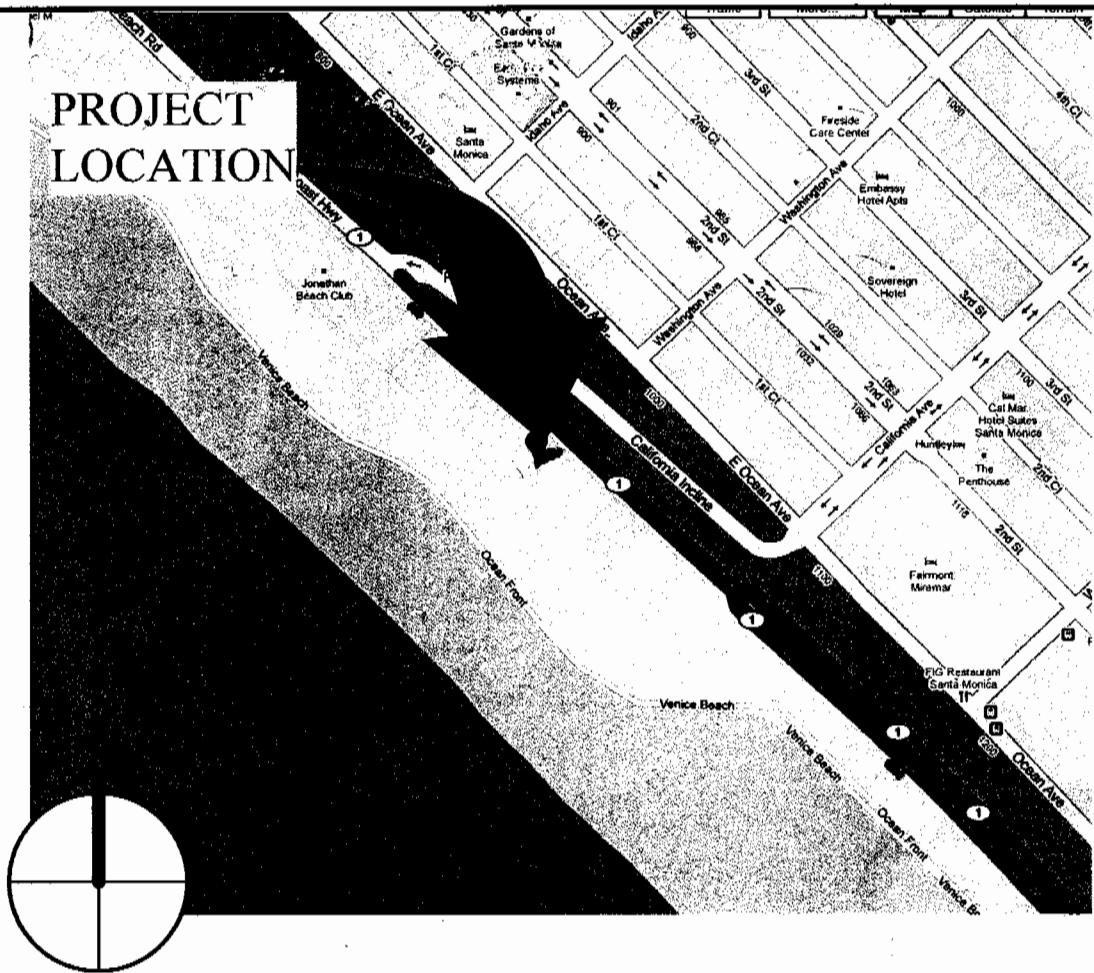
Because the applicant is adding to an existing single-family residence and the project site is located within an area consisting of residential development, the Commission finds it can approve the development. As proposed, the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare Land Use Plan policies for the Beach Overlay District (deferred area) and a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act.

The City, as lead agency for California Environmental Quality Act (CEQA) review, determined that the proposed project is exempt from CEQA requirements pursuant to Class 3, Section 15303 (b) and (c) of the State CEQA Guidelines.

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. The City, as the lead agency for CEQA review, determined that the proposed project is categorically exempt from CEQA. Therefore, the Commission finds that the proposed project, as submitted, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**PROJECT
LOCATION**

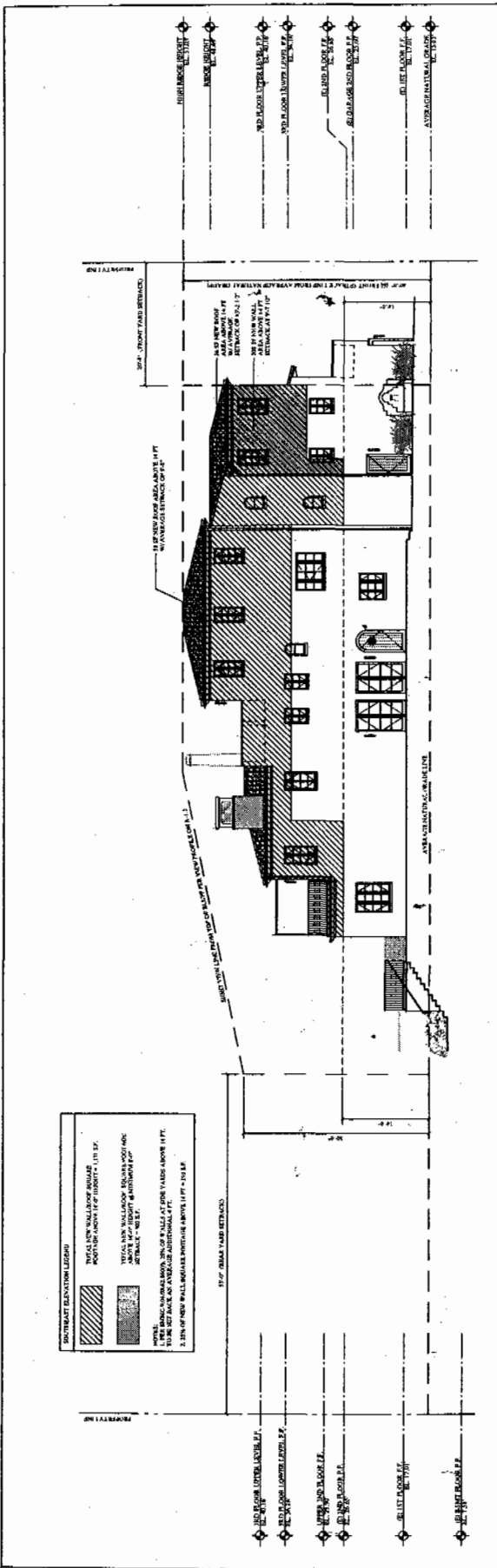


VICINITY MAP(not to scale)

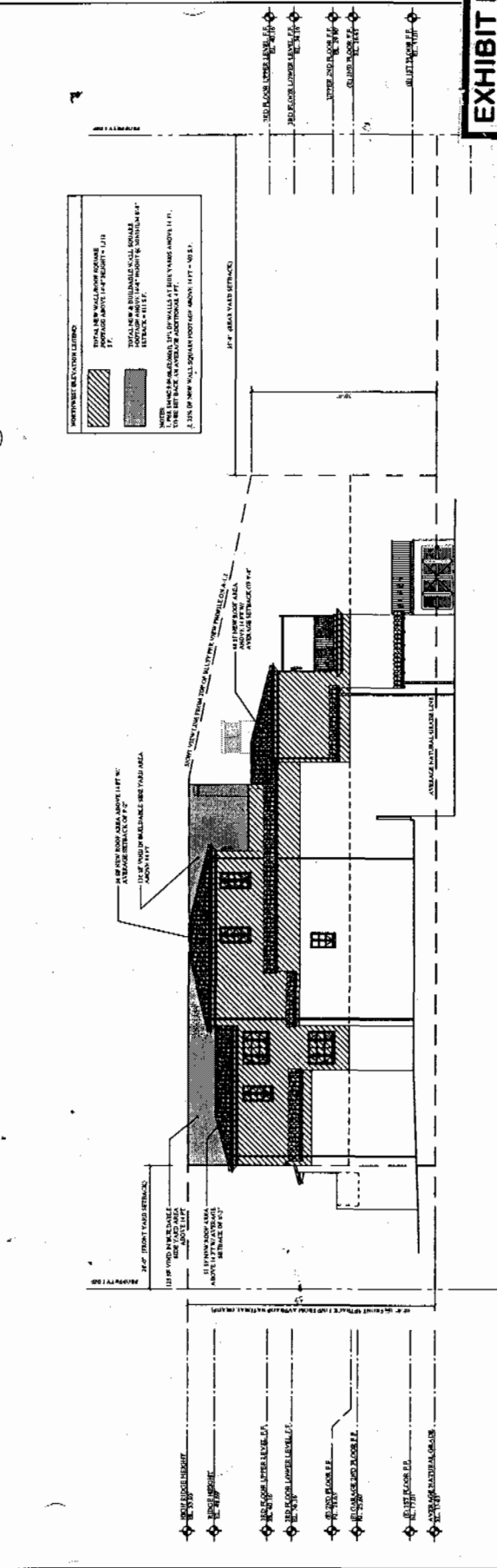
EXHIBIT NO. <i>1</i>
Application Number <i>5-10-102</i>
<i>Vicinity Map</i>
California Coastal Commission

966 Palisades Beach Rd.
 Santa Monica, CA, 90403
 Architects
 1516 17th Street
 Santa Monica, CA 90404
 FAX 310 324-0631

EXHIBIT NO.
 Application Number
5-10-102
 California Coastal Commission



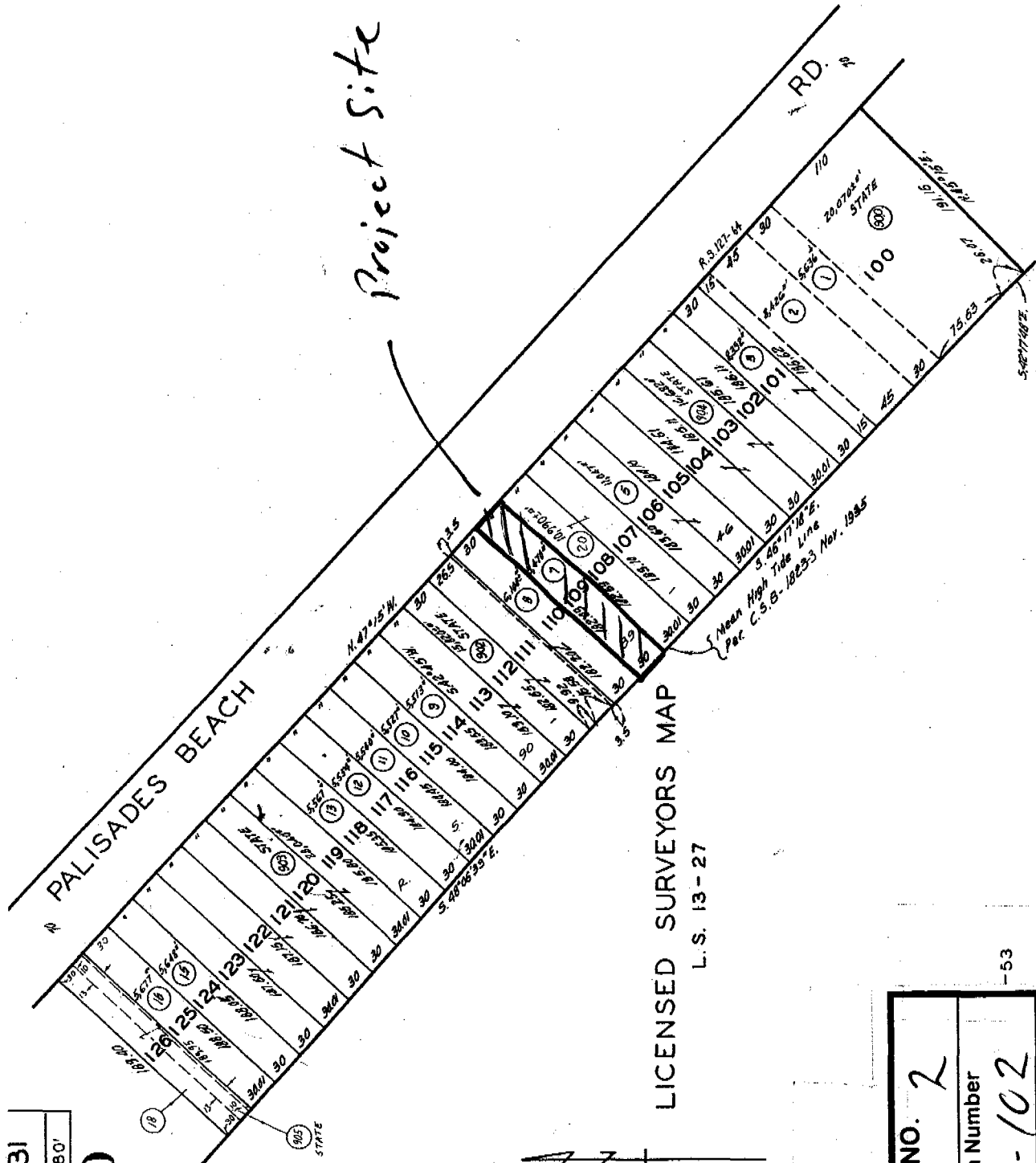
SOUTHEAST ELEVATION
 SCALE 1/8" = 1'-0"



NORTHWEST ELEVATION
 SCALE 1/8" = 1'-0"

96031204009002-07
 7/12/11
 98012704000001-07
 2000080705001001-07

ASSESSOR'S MAP
 COUNTY OF LOS ANGELES, CALIF.

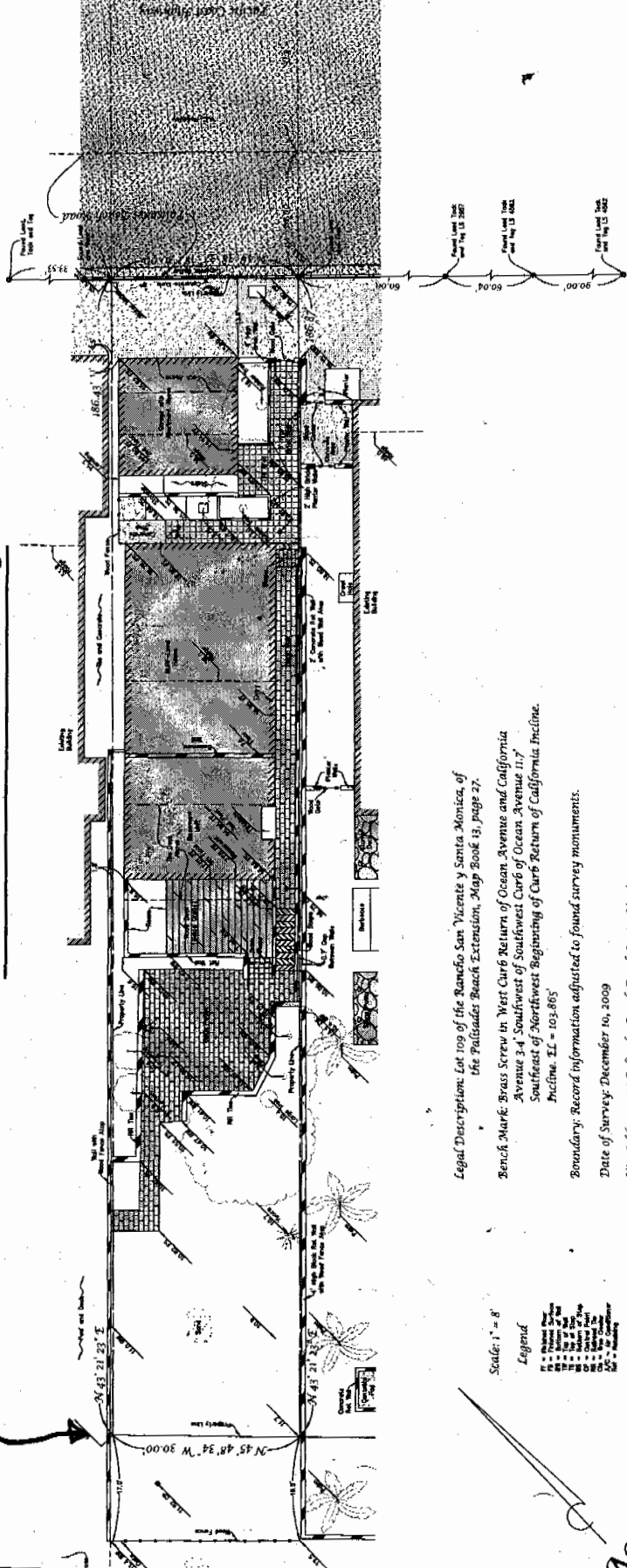


4292 31
 SCALE 1" = 80'
 2000

LICENSED SURVEYORS MAP
 L.S. 13-27

EXHIBIT NO. 2
Application Number 5-10-102
Parcel Map
California Coastal Commission

Property Line 1921 Mean High Tide Line Architectural Survey



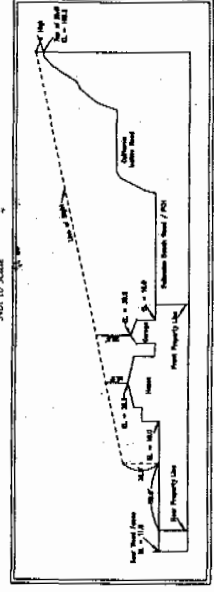
Legal Description: Lot 109 of the Rancho San Vicente y Santa Monica, of the Palisades Beach Extension, Map Book 13, page 27.
Bench Mark: Brass Screw in West Curb Return of Ocean Avenue and California Avenue 3.4' Southwest of Southwest Curb of Ocean Avenue 11.7' Southeast of Northwest Beginning of Curb Return of California Incline. I.I. = 103.865

Boundary: Record information adjusted to found survey monuments.
Date of Survey: December 10, 2009
Site Address: 966 Palisades Beach Road, Santa Monica
Area: 5,599 square feet, 0.13 acres

Note: Property Line Bearings and Distances are per Record of Survey 127-64.

Scale: 1" = 8'
 Legend:
 1. Survey Line
 2. Property Line
 3. Mean High Tide Line
 4. Building Footprint
 5. Setback Line
 6. Easement Line
 7. Utility Line
 8. Other

View Profile
 NOT TO SCALE



Plan Prepared For: Kirk Lazarus
 966 Palisades Beach Road
 Santa Monica, CA 90403

Plan Prepared By: M & M & Co.
 16445 Roscoe Boulevard
 North Hills, CA 91343
 (818) 891-9100
 Michael J. Amador, P.E.
 Field Survey By
 Plan Drafted By

THIS INSTRUMENT IS VOID AND OF NO EFFECT UNLESS IT IS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES.

Appleton & Associates, Inc.
 ARCHITECTS
 1146 17th Street
 Santa Monica, CA 90404
 FAX 310.228.0631

Site Survey
 966 Palisades Beach Rd.
 Santa Monica, CA, 90403

EXHIBIT NO. 3

Application Number
 5-10-102

Existing Site
 Plan

California Coastal Commission

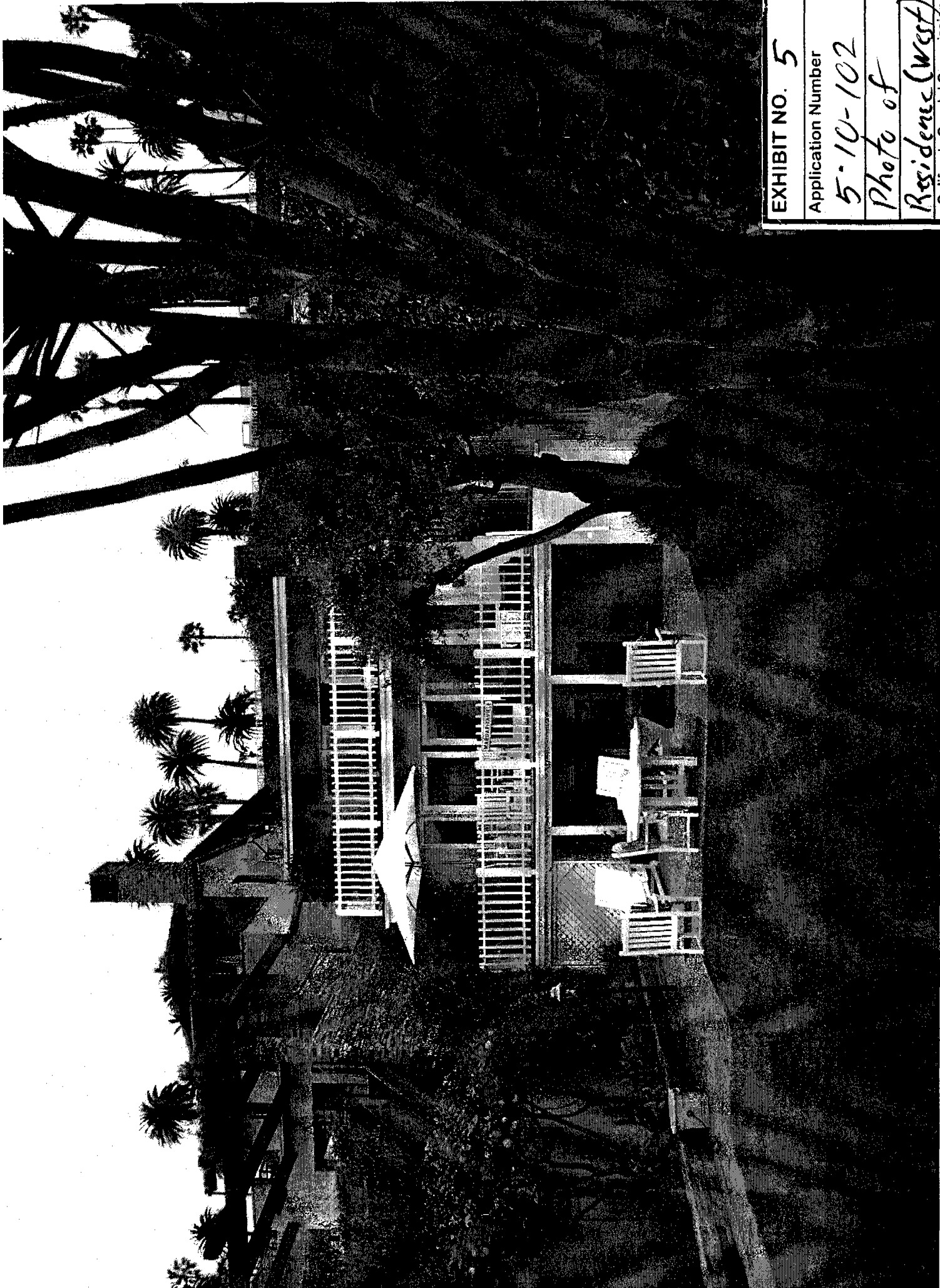
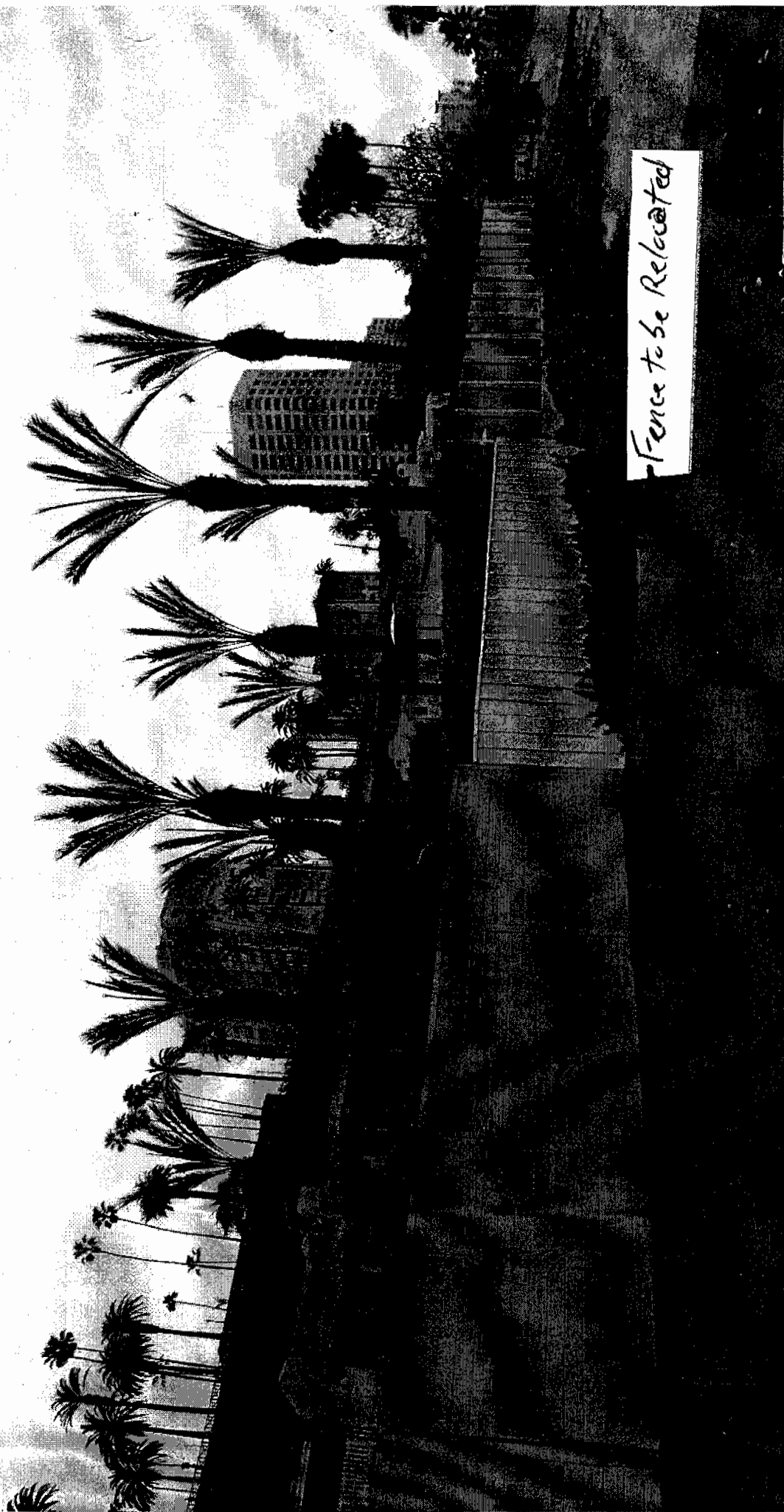


EXHIBIT NO. 5
Application Number 5-10-102
Photo of Residence (West)
California Coastal Commission



Fence to be Relocated

EXHIBIT NO. 6
Application Number 546-102
Photo of Reer Fence
California Coastal Commission