

**CALIFORNIA COASTAL COMMISSION**

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# W22a

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-12-017

**Applicant:** Lincoln Trust Company

**Agent:** Robert Bateman

**Location:** 2965 Ocean Front Walk, Mission Beach, San Diego, San Diego County (APN No. 423-691-05)

**Project Description:** Convert an existing 3-unit apartment building into three condominium units, revise existing landscaping, and after-the-fact authorization of removal of unpermitted development within the public right-of-way.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of this project, with conditions. The proposed project is to convert three existing rental units in an existing three-unit apartment building into condominium ownership, to revise existing landscaping, and after-the-fact authorization for removal of unpermitted development within the public right-of-way at 2965 Ocean Front Walk.

The primary issues raised by the proposed development relate to public access and protection of public views. The presence of workers and equipment in such a densely populated, popular beach area could impact public access by occupying public parking

spaces for storage or blocking public right-of-ways to and along the beach, especially during the summer months when beach use is at its peak. Visual resources could be impacted by blockage of designated view corridors to or along the ocean by the new home or landscaping.

Recommended conditions to minimize these impacts include requirements to not conduct any development during the peak summer months, to verify and receive written approval that the residence and landscaping are built according to plans that protect view corridors, and having the applicant record appropriate deed restrictions against the property putting these protections in place.

Commission staff recommends **approval of** coastal development permit application 6-12-017, as conditioned.

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**EXHIBITS**

Exhibit 1 – Location Map

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 6-12-017 pursuant to staff recommendation.*

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

### Resolution:

*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. 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

This permit is granted subject to the following 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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

The permit is subject to the following conditions:

1. **Final Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final project plans. Said plans shall first be approved by the City of San Diego and be in substantial conformance with the plans drafted by Timothy Golba and submitted on 10/30/2012.

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

2. **Final Landscape/Yard Area Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final landscaping and fencing plans approved by the City of San Diego. The plans shall be in substantial conformance with the landscape plans drafted by Frontis + Young and submitted on 3/12/2013, and shall include the following:
  - a. A view corridor, 10 feet wide, shall be preserved in the west and north yard area adjacent to Ocean Front Walk and Ensanada Court. All proposed landscaping in the west and north yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Mission Boulevard toward and along the ocean.
  - b. All landscaping shall be drought tolerant and native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.
  - c. Any fencing in the western and northern yard setback areas along Ocean Front Walk and Ensanada Court shall permit public views and have at least 75% of its surface area open to light.

- d. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether 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 successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist 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.

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

3. **Timing of Development.** No development activity may occur between Memorial Day and Labor Day of any year.
4. **Deed Restriction.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written 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 the 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 or with respect to the subject property.
5. **Condition Compliance.** WITHIN 60 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all

requirements specified in the conditions of the subject permit that the applicant is required to satisfy prior to issuance of this permit.

#### **IV. FINDINGS AND DECLARATIONS**

##### **A. PROJECT DESCRIPTION/HISTORY.**

The proposed project is to convert three existing rental units in an existing three-unit apartment building into condominium ownership, to revise the landscaping, and a request for after-the-fact authorization for unpermitted development within the public right-of-way at 2965 Ocean Front Walk in the Mission Beach community of the City of San Diego.

The 4,320 square foot project site is at the southeast corner of the intersection of Ensanada Court and Ocean Front Walk (the boardwalk), facing west. The project site contains an existing three-story, three-unit residential building with six off-street parking spaces and western and northern side yards that abut Ocean Front Walk and Ensanada Court, respectively. This segment of Ocean Front Walk extends southward from Belmont Park to the tip of the peninsula and is lined on its eastern side by approximately 65 single and multi-family properties.

On February 8, 1984, the Commission approved CDP No. 6-84-005, which authorized the demolition of a single family residence and construction of the existing three-story, three unit structure. The approved plans contained development solely within the bounds of the legal property lines, and did not propose any development within the public right-of-ways. However, the project site, along with most of the properties along the boardwalk in Mission Beach, has a long history of private encroachments extending into public right-of-ways.

Starting in 1999, the Commission approved a series of CDPs authorizing the City of San Diego to remove the unpermitted private encroachments and widen the boardwalk to its legal prescribed dimensions (CDP Nos. 6-99-090, 6-00-001, 6-00-123, 6-01-029, 6-01-029-A1). The City of San Diego in turn removed encroachments and widened the boardwalk from Belmont Park northward to just a few blocks short of the border of Mission Beach. However, due to lack of funding, the City of San Diego did not conduct any widening south of Belmont Park, and today this stretch of boardwalk, from Belmont Park all the way to the southern tip of the peninsula, represents the longest, and one of the last, remaining sections of boardwalk that has yet to be widened.

The project site is located in an area of original jurisdiction of the Coastal Commission, as such, the standard of review for the proposed development is Chapter 3 of the Coastal Act, with the City of San Diego's certified LCP used as guidance.

##### **B. PUBLIC ACCESS.**

The following Coastal Act policies are most pertinent to this issue, and state in part:

Section 30210 of the Coastal Act states:



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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30213 of the Coastal Act states, in part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

[...]

Section 30604 of the Coastal Act states, in part:

[...]

- (c) *Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any*

*body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

The project site is located at the southeast corner of the intersection of Ensanada Court and Ocean Front Walk. It is between the beach to the west and Mission Boulevard to the East. Thus, the project site is located between the sea and first public roadway, where maintaining public access to the municipal beaches is of greatest concern. On the western, front side of the project site is the north-south Mission Beach Boardwalk (Ocean Front Walk). The boardwalk is a popular thoroughfare, especially during the summer, and is frequented by pedestrians, bicyclists, skateboarders, and more. To the north, Ensanada Court, like the other east-west public right-of-ways in Mission Beach, serves as view corridors and access ways for the public to view and reach the aforementioned beach and boardwalk.

In the Mission Beach neighborhood, the public right-of-way of the various courts and places, which are generally east-west running streets, comprise the community's public view corridors. Additionally, the adjacent public boardwalk – Ocean Front Walk – which runs north-south along the beach, serves not only as a highly popular public access way, but also serves as a public view corridor along the shoreline. Because the project is located between the first public road and the sea and there is a long history of unpermitted development within the public right-of-way along both Ocean Front Walk and Ensanada Court, there is the potential for the project to impact views and access to and along the shoreline from Mission Boulevard. The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas which could impede public views to and along the ocean.

In this particular project, there is potential for landscaping in the northern and western yard area to impede views to and along the ocean. Additionally, demolition and construction activity could impede public access by occupying public parking spaces or blocking public right-of-ways with development, materials, or debris.

Prior to recent development, the project site contained encroachments into both Ensanada Court and Ocean Front Walk. The encroachment into Ensanada Court consisted of the wooden fence encroaching approximately two feet into the public right of way. The encroachment into the boardwalk consisted of a wooden fence projecting approximately ten feet into the boardwalk and enclosing a concrete patio and landscaping. Upon purchasing the project site, the applicant removed the majority of the encroaching, unpermitted development and redeveloped the encroachment area by installing, among other things, a new wooden fence, gas pipelines for fire pits, pavers, and concrete benches. Along the northern portion of the site, the applicant also removed the wooden fence. However, upon the removal of that section of fence the applicant reconstructed it along the legal property line. Upon discovery of the unpermitted, encroaching development by both the City of San Diego and the Commission, the applicant was informed that the development was unpermitted and would need to be addressed pursuant to a coastal development permit. To date the applicant has removed the unpermitted

development and the encroached-upon space is currently open, and the applicant is requesting after-the-fact authorization of that removal with this application. The space will be open to public use as it is part of the boardwalk right-of-way.

Regarding public parking, the existing, approved three-unit structure has sufficient off-street parking, and as the applicant is not proposing to modify the number of bedrooms or total interior square footage, public parking impacts are avoided.

The majority of the exterior work associated with the remodel and conversion, such as removing dry-rotted decking and roof overhangs, restuccoing the exterior, and installation of new glass railings, has been completed. Thus, parking and public access impacts from construction and siting activity are unlikely.

To mitigate possible impacts to public access, **Special Condition Nos. 1 and 2** require the applicant to adhere final site and landscaping plans that conform to those approved by the Commission. **Special Condition No. 3** places time restrictions on any development activity left to be done with regards to the condominium conversion, while **Special Condition No. 4** requires the applicant to record this permit as a deed restriction against the subject property.

In summary, the Commission finds the proposed project will not result in adverse impacts to coastal access. Off-street parking remains adequate for the three units, and any work that may remain to be done will be prohibited during the popular summer tourist season. The removal of the encroaching development will increase the stretch of boardwalk in front of the project site to its legally prescribed width, increasing the usable space available to the public. Therefore, the Commission finds that all access and resource concerns associated solely with the development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

### C. COMMUNITY CHARACTER/VISUAL QUALITY

Section 30251 of the Act addresses community character and states, in part:

*The scenic and visual qualities of the 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 land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

[...]

The project site is located at the southeast corner of the intersection of Ensanada Court and Ocean Front Walk, facing west toward the boardwalk and the beach. Save for

Belmont Park, the entire boardwalk is lined along the east by single and multi-family buildings, with a small number of commercial uses sprinkled within. These buildings range from single-story beach cottages to three-story single and multi-family units.

North of Belmont Park, the City of San Diego's past removal of unpermitted private encroachments and widening of the boardwalk created a wide public thoroughfare along the beach. However, due to lack of funding, the City of San Diego has not yet pursued encroachment removal and boardwalk widening south of Belmont Park. Thus, in that stretch of boardwalk, almost all of the properties uniformly encroach approximately ten feet into the public right-of-way with private development.

The applicant's removal of his unpermitted, encroaching development makes the property "stick out" in that it is one of the few properties along this stretch of the boardwalk to not have an encroachment into the right-of-way. However, as stated before, the property lines in this section of Mission Beach are well back from the line of development, and when the City of San Diego is able to procure the funding it will finish what it started north of Belmont Park by removing the private encroachments and widening the boardwalk to its legally prescribed width. On a related note, the applicant currently has submitted to the Commission a similar application for a condominium conversion for the neighboring property on the opposite side of Ensanada court to the north of the project site – 2975 Ocean Front Walk (ref. CDP No. 6-12-018). Thus, it is likely that this intersection will see further encroachment removal, creating greater public space and opening up viewing lines along the beach.

In summary, the Commission finds that the removal of the unpermitted encroachment will not result in development substantially out of character with the surrounding community. The property will still have a front yard setback for use by the applicant, and when the City of San Diego finishes its boardwalk widening all of the neighboring properties will be brought into line. In addition, conversion of the apartments to condominiums is consistent with the pattern of development in this area. Therefore, the Commission finds the proposed development, as conditioned, consisted with Chapter 3 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without required coastal development permits, including, but not limited to, construction of private encroachments in the public right-of-way. To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. 5** requires that the applicant satisfy all conditions of its permit that are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although development occurred prior to the submission of the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on these permit applications does not constitute a waiver of any legal action with regard to the alleged

violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit.

## **E. LOCAL COASTAL PLANNING**

Section 30604(a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent 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.

## **F. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of San Diego is the lead agency for purposes of CEQA review for this project, and the Coastal Commission is a responsible agency. Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing landscaping and construction activity, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

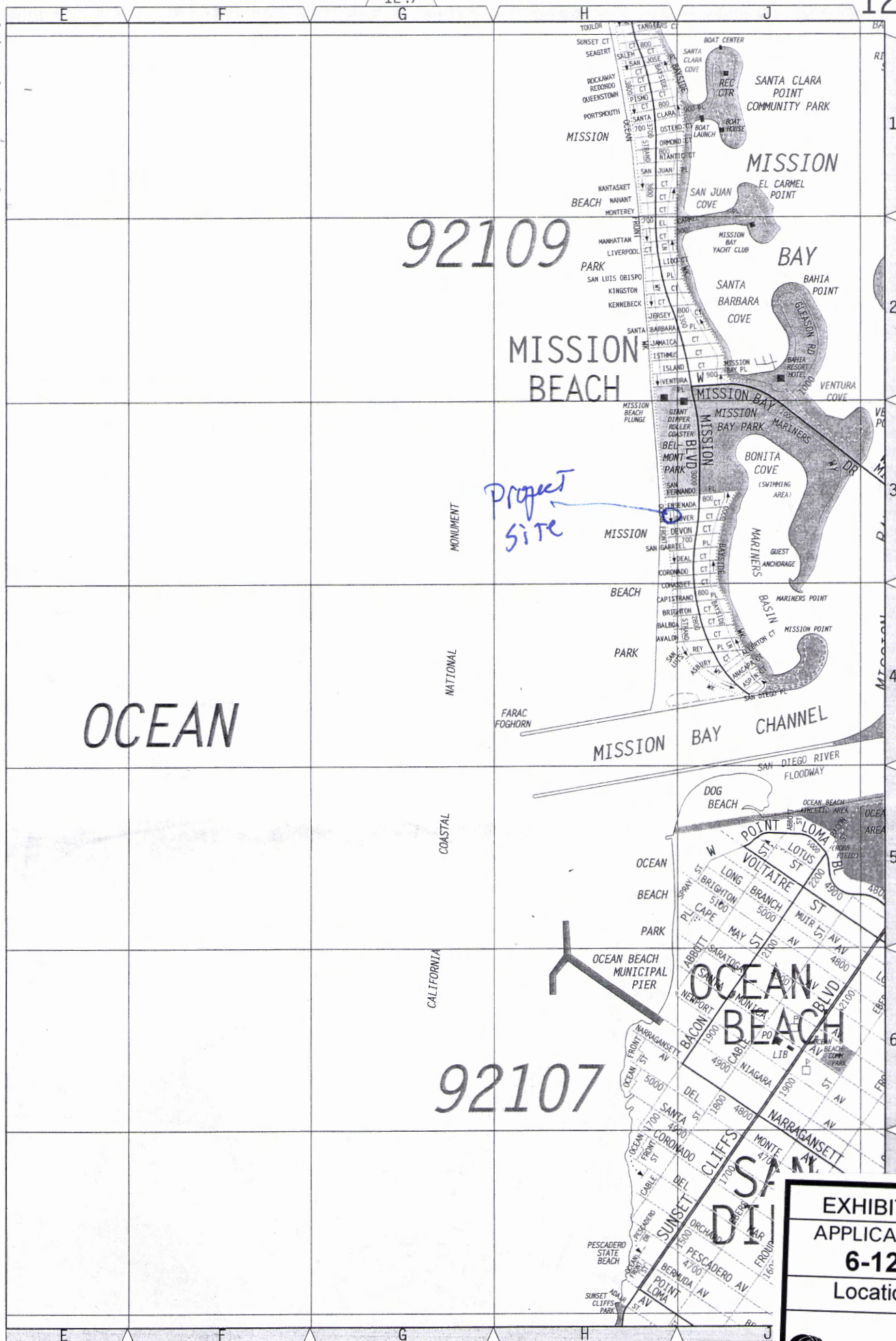


EXHIBIT NO. 1  
APPLICATION NO.  
**6-12-017**  
Location Map





Google earth




EXHIBIT NO. 2
APPLICATION NO.
<b>6-12-017</b>
Aerial View
 California Coastal Commission





EXHIBIT NO. 3  
APPLICATION NO.  
**6-12-017**  
Site Photo