

CALIFORNIA COASTAL COMMISSION

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

Filed: 7/30/97
49th Day: 9/17/97
180th Day: 1/26/98
Staff: MV-LBNW
Staff Report: 8/21/97
Hearing Date: 9/9-12/97
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 5-97-236

APPLICANT: Walter R. Wagner AGENT: Shellmaker Inc.

PROJECT LOCATION: 4015 Marcus Drive, Newport Beach, Orange County

PROJECT DESCRIPTION:

Replace deteriorating bulkhead with new bulkhead, including six one inch diameter anchor rods tied to a concrete anchor. The proposed bulkhead will be located in same location as the existing bulkhead.

Lot area:	n/a
Building coverage:	n/a
Pavement coverage:	n/a
Landscape coverage:	n/a
Parking spaces:	n/a
Zoning:	n/a
Plan designation:	Two Family & Water
Project density:	n/a
Ht abv fin grade:	+9 feet Mean Low Low Water

LOCAL APPROVALS RECEIVED:

Approval in Concept, City of Newport Beach Marine Department; Harbor Permit No. 340-4015.

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach certified Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the project with two special conditions: 1) construction impacts on the shoreline shall be minimized and all construction materials shall be stored landward of the bulkhead and removed at the end of construction; and 2) the location of the debris disposal site shall be identified and subject to the approval of the Executive Director.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. Construction Materials

Disturbance to sand and intertidal areas shall be minimized. Local sand, cobbles, or shoreline rocks shall not be used for back fill or construction material. All construction materials shall be stored landward of the bulkhead and shall be removed at the conclusion of construction.

2. Location of Debris Disposal Site

Prior to issuance of the coastal development permit, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the debris resulting from removal of the existing bulkhead and any construction spoils. Construction debris shall be disposed of at the approved disposal site.

IV. Findings and Declarations.

A. Project Description

The applicant is proposing the replacement of an existing deteriorated bulkhead with a new bulkhead, including six one inch diameter anchor rods tied to a concrete anchor. The proposed bulkhead will be 30 feet in length. The top of the bulkhead will be +9 feet Mean Low Low Water. No change is proposed to the bulkhead location. All development will occur at the line of the existing bulkhead and landward.

The subject site is a harbor fronting lot. The land use designation is Two Family Residential. Seaward of the bulkhead line, the area is land use designated Water.

B. Protective Structures

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible. (emphasis added)

A single family residence exists on the subject site. In addition, residences exist on either side of the subject site. Failure to replace the deteriorated bulkhead would lead to eventual damage to the existing structures. Therefore, the applicant has proposed the bulkhead improvements to assure stability of the subject and adjacent sites.

There are bulkheads adjoining the project site. Because the proposed project consists of placing the new bulkhead in the same location as the existing bulkhead, the proposed project will not result in adverse impacts on shoreline processes or marine vegetation.

The proposed development is necessary to protect existing structures. The proposed bulkhead will not have any adverse impacts on shoreline processes or marine vegetation. The proposed development consists of bulkhead replacement in the same location which is designed to protect existing structures from ongoing erosion and damage. Therefore, the Commission finds that the proposed development conforms with Section 30235 of the Coastal Act.

C. Coastal Access and Recreation

Section 30212 of the Coastal Act states requires that public access be provided with new development. Section 30212(b)(4) states that "new development" does not include:

- (4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.

Public access (both lateral and vertical) to the bayfront is not available on the subject site nor on the adjacent residential lots. Because Section 30212(b)(4) of the Coastal Act does not require the provision of public access for reconstruction or repair of a seawall in the same location, the provision of public access is not required with the proposed project. In addition, public access in the subject area is available at each of the street ends in the vicinity as well as at a small public park located at Marcus Avenue and 39th Street, adjacent to the bay. The certified Land Use Plan cites 36 street end access points to lower Newport Bay on the Balboa Peninsula. Public access to the ocean side of the Balboa Peninsula extends for the length of the peninsula.

Section 30604(c) of the Coastal Act requires that the findings for projects between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. Public access and recreation opportunities exist nearby. Additionally, the proposed project does not adversely impact existing public access. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act as the proposed development does not constitute "new development" and also would not create adverse impacts on public access and public access exists nearby.

D. Water Quality

Section 30231 of the Coastal Act 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 development involves construction adjacent to the marine environment. In order to protect the marine environment from degradation, all construction materials and machinery shall be stored away from the water. In addition, no construction materials not essential for the project improvements shall be placed in the bay. Local sand, cobbles, or shoreline rocks shall not be used for backfill or construction material as per special condition 1. Only as conditioned does the Commission find that the proposed development conforms with the resource protection policies of Section 30231 of the Coastal Act.

The removal of the deteriorated seawall will create unwanted debris. The debris must not be allowed to enter the marine environment in order to prevent adverse impacts on marine resources. In order to assure that the debris is disposed of properly, the location of the disposal site must be identified and approved as acceptable. As a condition of approval, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the debris resulting from removal of the existing bulkhead and any construction spoils. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30231 of the Coastal Act regarding protection of marine resources.

E. Land Use Plan

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

The Newport Beach Land Use Plan was certified on May 19, 1982. The proposed development consisting of replacement of an existing bulkhead is consistent with the policies contained in the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program [Implementation Plan] for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

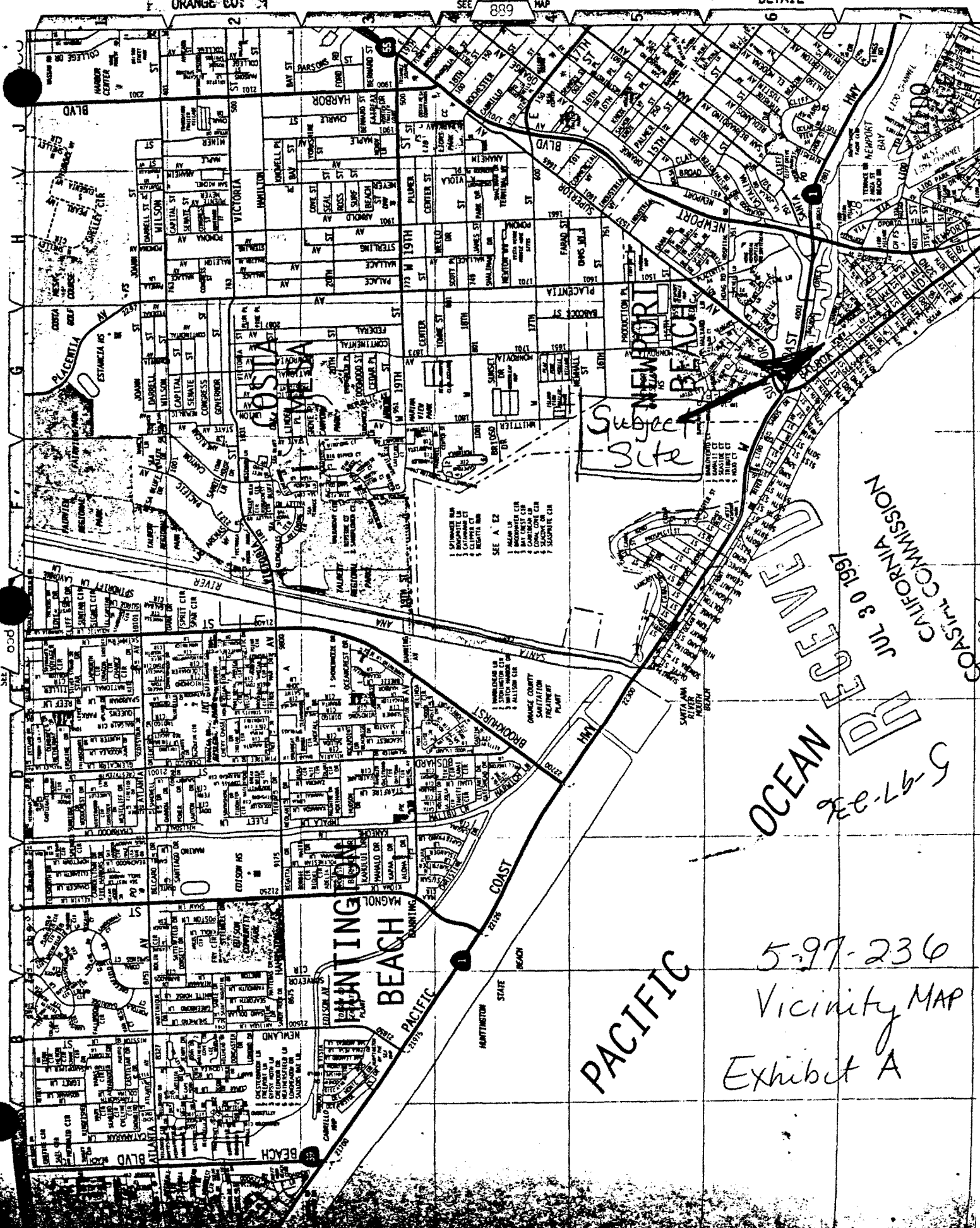
F. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application 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)(i) 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 impact which the activity may have on the environment.

The proposed project has been found consistent with the protective structures, marine water quality and coastal access and recreation policies of Chapter 3 of the Coastal Act. There are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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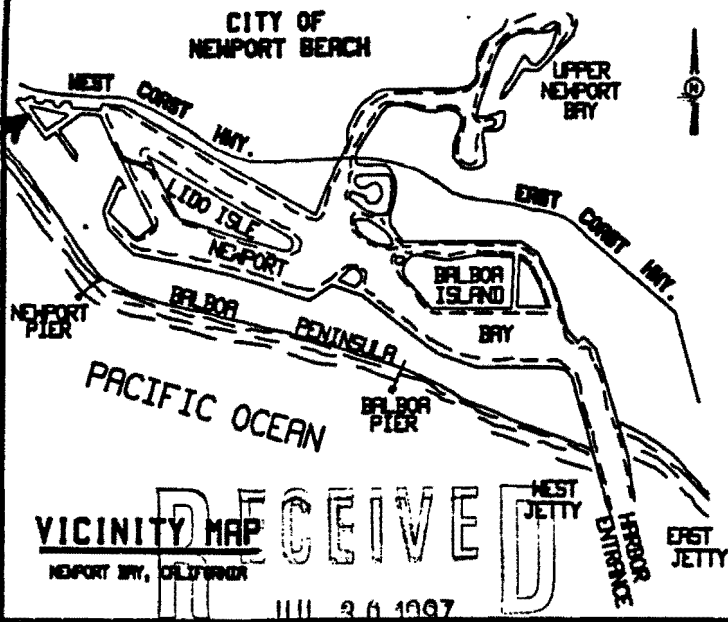


PACIFIC

5-97-236
Vicinity MAP
Exhibit A

OCEAN
5-97-236
JUL 30 1997
CALIFORNIA COASTAL COMMISSION

CITY OF NEWPORT BEACH



PROPOSED NEW BLKD.

ANCHOR BEAM

ANCHOR RODS

South Coast District Office

APPROVED

Permit No. 5-97-236

By:

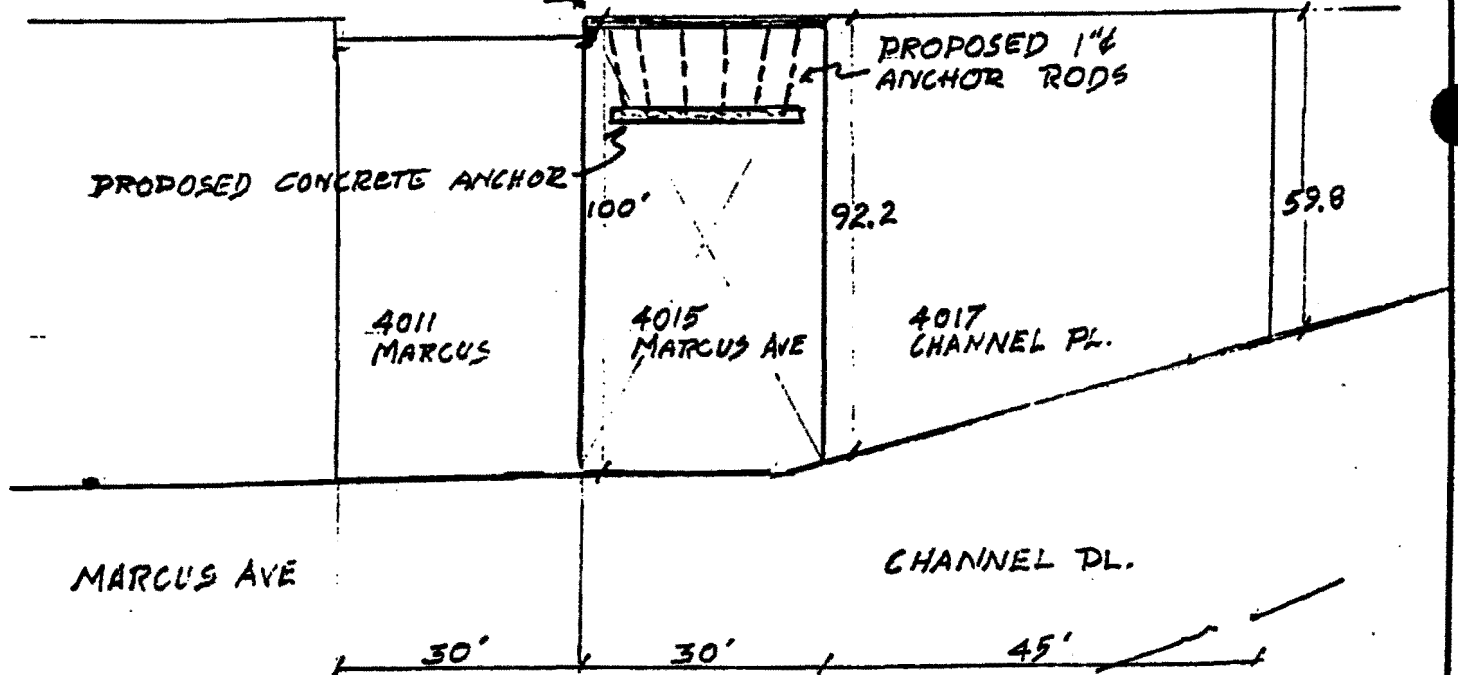
PROFILE 1" = 40'

BOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

CALIFORNIA
COASTAL COMMISSION

THE RIVD ALTO

EXIST. BLKD. TO BE REMOVED, PROPOSED NEW BULKHEAD LOCATED
ALONG SAME ALIGNMENT



FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

7/22/97
Tommy Melton

PLAN VIEW 1" = 40'

APPLICANT'S NAME WALTER R WAGNER

JOB ADDRESS 4015 MARCUS AVE

DATE

5-97-236

Exhibit B