

CALIFORNIA COASTAL COMMISSION

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Filed: 10/20/04
49th Day: 12/8/04
180th Day: 4/18/05
Staff: MV-LB
Staff Report: 1/27/05
Hearing Date: 2/16-18/05
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-04-283
APPLICANT: ARNOLD FEUERSTEIN
AGENT: JIM CALDWELL, HARBOR BAY HOMES
PROJECT LOCATION: 16681 Carousel Lane
Huntington Beach, Orange County

PROJECT DESCRIPTION: Construction of a new 40 foot long, concrete deck cantilevered 5 feet beyond the bulkhead.

LOCAL APPROVALS RECEIVED: City of Huntington Beach Approval in Concept dated 7/7/04.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with five special conditions which require 1) submittal of written evidence from the project engineer confirming that the existing bulkhead is able to support the deck and will not create or contribute to destruction of the site or surrounding area; 2) submittal of evidence that the applicant has obtained all permits, leases or other authorizations necessary from the California State Lands Commission; 3) submittal of evidence of the applicant's legal ability to perform the work; 4) that approval of this permit does not waive any public rights that may exist on the at the site; and, 5) that proper construction methods be employed during construction of the cantilevered deck.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 5-99-032 (Yacoel, et al); City of Huntington Beach certified Local Coastal Program (used as guidance in this area of original permit jurisdiction).

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application as conditioned.

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-04-283 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 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. Engineer's Certification

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a report from the project engineer, substantiating that the bulkhead at the subject site is structurally adequate to support the proposed cantilevered deck. The report shall be prepared and certified by an appropriate professional (i.e. civil or other appropriate engineer).

2. California State Lands Commission Approval

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by California State Lands Commission, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Legal Interest

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to carry out the proposed project and all conditions of approval of this permit.

4. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

5. Construction Responsibilities and Debris Removal

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (b) Any and all construction material shall be removed from the site within 10 days of completion of construction.

- (c) Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The applicant proposes to construct a new 40 foot long, concrete deck cantilevered 5 feet beyond the face of the existing bulkhead. The subject site is located at 16681 Carousel Lane, on Harbour Channel in Huntington Harbor in the City of Huntington Beach. The nearest public access in the area is at Sunset County Beach, located approximately one quarter mile south of the subject site. There is no existing cantilevered deck on the subject site, thus, this is not a replacement deck, but a new deck.

Drainage from the deck will flow back onto the residential lot where it will be directed to a trench drain. In addition, the agent has indicated that, once the deck is completed, the applicant will be supplied with information on how to protect the water quality of the harbour and to properly maintain the on-site filters.

The proposed deck is in an area of the Commission's original permit jurisdiction. However, the City's certified Local Coastal Program may be used as guidance. The proposed development is consistent with the City's certified LCP Implementation Plan, specifically Chapter 210, which provides standards for cantilevered decks in Huntington Harbor.

Most of the existing residences that front along the waters of Huntington Harbor have cantilevered decks. The proposed deck is similar in function to the other cantilevered decks associated with residential development within Huntington Harbor. The proposed development is consistent with past Commission actions in the area.

B. State Lands Commission Approval

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the

*proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, **prior to the issuance of a coastal development permit**, the applicant shall demonstrate the authority to comply with all conditions of approval. (Emphasis added).*

The proposed deck would cantilever over the waters of Huntington Harbor. In this area of Huntington Harbor, the water area is owned by the State of California, administered by the California State Lands Commission (CSLC).

The applicant has submitted an application to the CSLC for a lease covering the area over which the proposed deck would cantilever. In telephone conversations between staff of the CSLC and Commission staff, CSLC staff has indicated that an approval of the requested lease is likely to occur at the next CSLC hearing, which is expected to occur in late March 2005. In telephone conversations, CSLC staff has indicated that they do not object to issuance of the coastal development permit for the proposed project provided that a special condition is imposed that requires the applicant to obtain approval of a lease from the CSLC. The CSLC staff has indicated that such a special condition need not be prior to issuance of the coastal development permit, as it is anticipated that the lease will be approved. However, Section 30601.5 requires that the applicant demonstrate the authority to comply with all special conditions "prior to the issuance of a coastal development permit." Thus in order to be consistent with the requirements of the Coastal Act, evidence of an approved lease for the proposed development must be provided before the coastal development permit can be issued. Therefore a special condition is imposed which requires the applicant to submit evidence of an approved lease from the CSLC prior to issuance of the coastal development permit. Only as conditioned to require the applicant to obtain all necessary permits and legal interest (lease) that the State Lands Commission may require before issuance of this coastal development permit, can the proposed development be found consistent with Section 30601.5 of the Coastal Act. Furthermore, a special condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

C. Hazard

Section 30253 of the Coastal Act states (in part):

New development shall:

(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.

The subject deck is proposed to cantilever over an existing bulkhead at the subject site.

The bulkhead (along with other bulkheads in the project vicinity) is the subject of coastal development permit 5-99-032. Coastal development permit 5-99-032 was approved by the Coastal Commission, but has not yet been issued because the permittees have not satisfied all of the "prior to permit issuance" requirements of approval. The permit has not yet expired. The permit allowed repairs to the existing bulkhead. Information submitted at the time of the bulkhead repair application indicates that the bulkhead is being undermined and is in need of repair. The approved bulkhead repair includes placement of vinyl sheet pile immediately channelward of the existing bulkhead, pumping concrete in the area landward of the vinyl sheet pile, and the placement of rip rap at the toe of the vinyl sheet pile.

The ability of the existing bulkhead to adequately support the proposed cantilevered deck is important because Section 30253 of the Coastal Act requires that stability and structural integrity in new development be assured, and that new development not create nor contribute to the destruction of the site or surrounding area. The bulkhead at the subject site is structurally tied to the bulkhead on the adjoining properties, and indeed, to the bulkhead system the surrounds the island in Huntington Harbour upon which the subject site is located. If the burden of the proposed deck upon the existing, undermined bulkhead were such that it caused it to collapse, that would put both the subject site and the adjacent properties in jeopardy. The proposed deck could not be approved if it was possible that the deck could jeopardize the stability of the subject site and adjacent sites. In addition, collapse of the bulkhead at the subject site could result in inadvertent fill of coastal waters, inconsistent with Section 30233 of the Coastal Act. Furthermore, collapse of the bulkhead could also disturb marine resources at the subject site, inconsistent with Section 30230 of the Coastal Act.

However, the applicant's project engineer and the bulkhead repair project engineer have indicated verbally that the bulkhead at the subject site, in its current condition, is adequate to support the proposed cantilevered deck. In addition, both engineers have indicated that construction of the proposed cantilevered deck will not interfere with construction of the approved bulkhead repairs. However, at this point none of these assertions are in writing. In order to be clear that the Commission is only approving the project based on these assertions, it is necessary that they be providing in writing. Thus, the Commission finds that only as conditioned to submit written evidence from the project engineer confirming that the bulkhead will be able to support the deck and will not create or contribute to destruction of the site or surrounding area, can the proposed development be found consistent with Section 30253 of the Coastal Act.

D. PUBLIC ACCESS

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

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. An LCP for the City of Huntington Beach was effectively certified in March 1985. However, the proposed development is occurring within an area of the Commission's original permit jurisdiction, due to the project location seaward of the mean high tide line. Consequently, the standard of review is the Coastal Act and the City's LCP is used only as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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.

ANAHEIM BAY
NATIONAL
WILDLIFE REFUGE

BOLSA CHICA CHANNEL

EDINGER AVE



HUNTINGTON

LOCATION

HARBOR

SUNSET BEACH

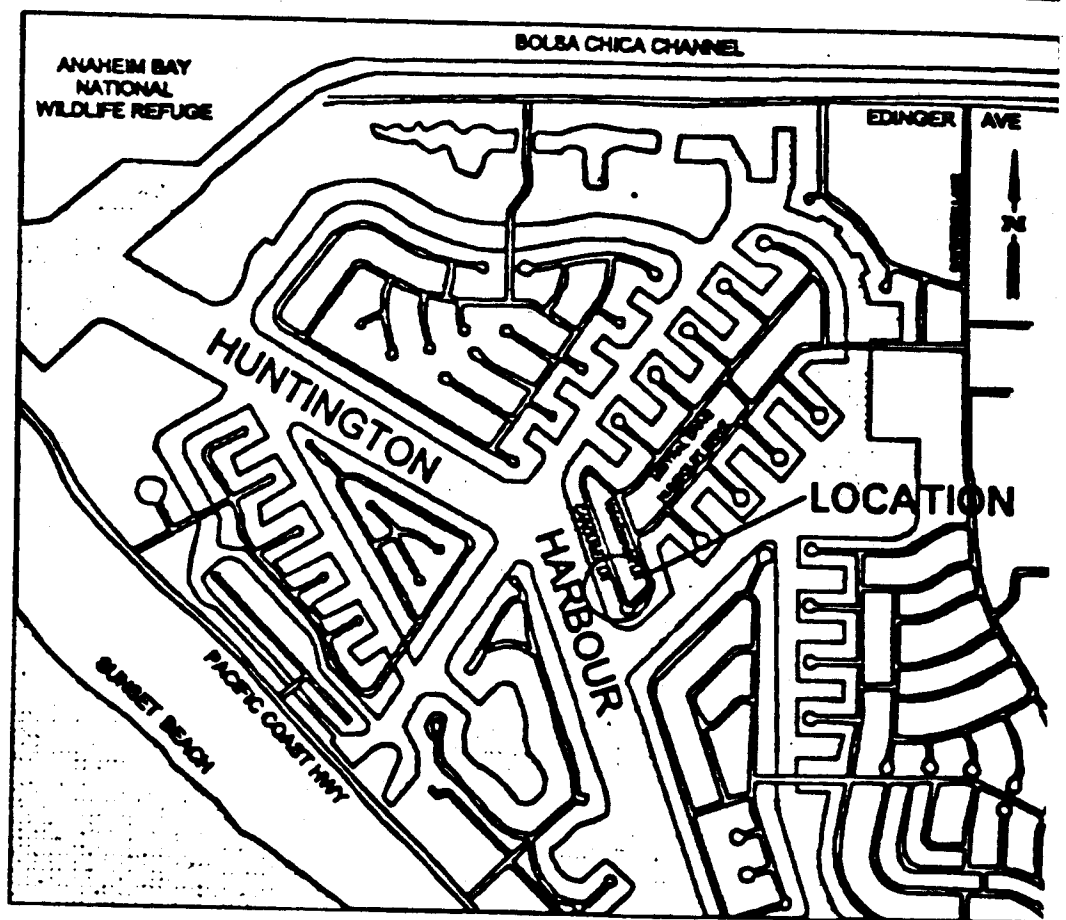
PACIFIC COAST HWY

COASTAL COMMISSION

5-04-283

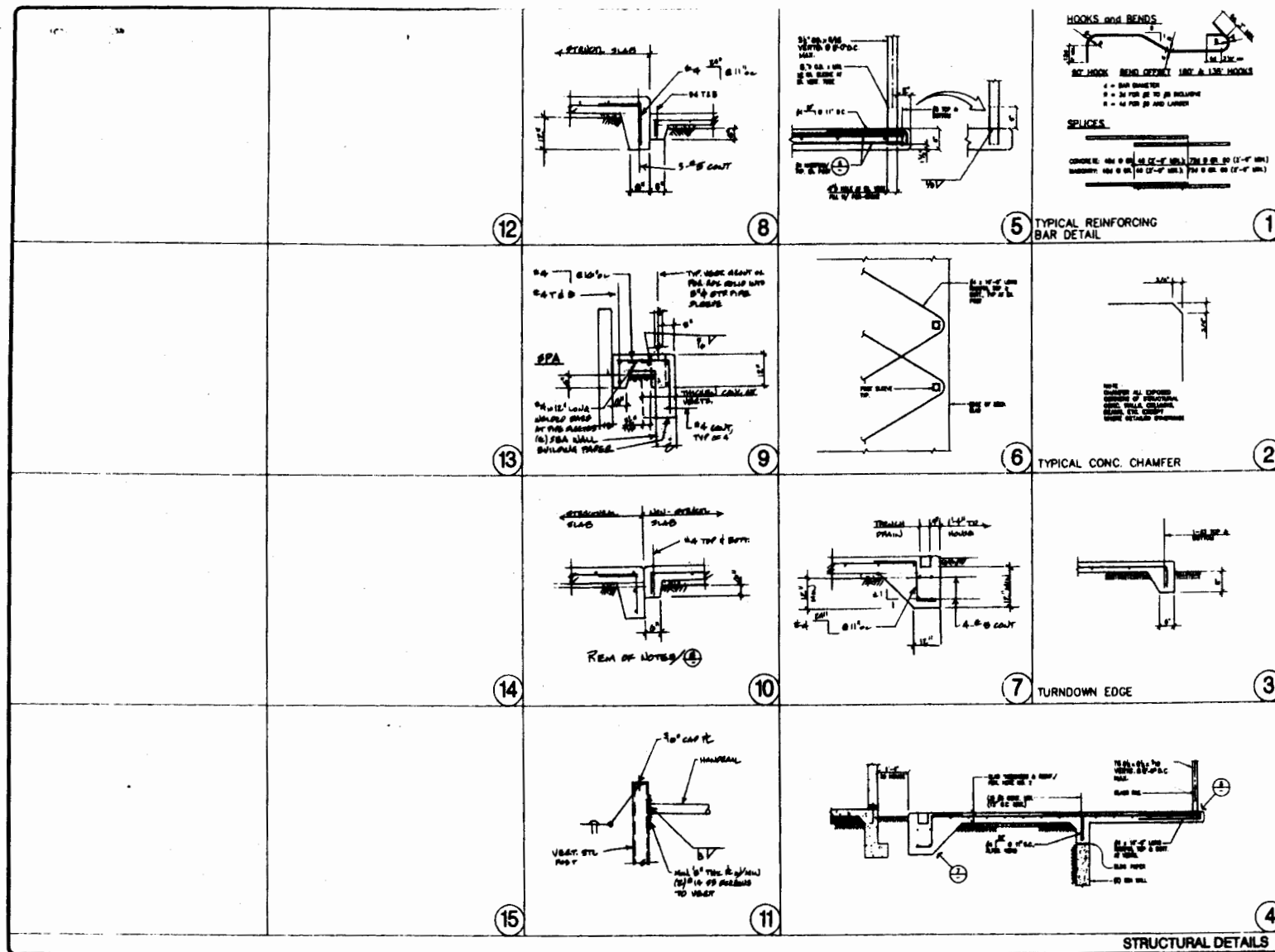
EXHIBIT # A

PAGE 1 OF 1



VICINITY MAP

Site Plan
COASTAL COMMISSION
5-04-283
EXHIBIT # B
PAGE 1 OF 1



REVISIONS	BY



STRUCTURAL

S-

COASTAL COMMISSION

Cross Section

5-64-283

EXHIBIT #

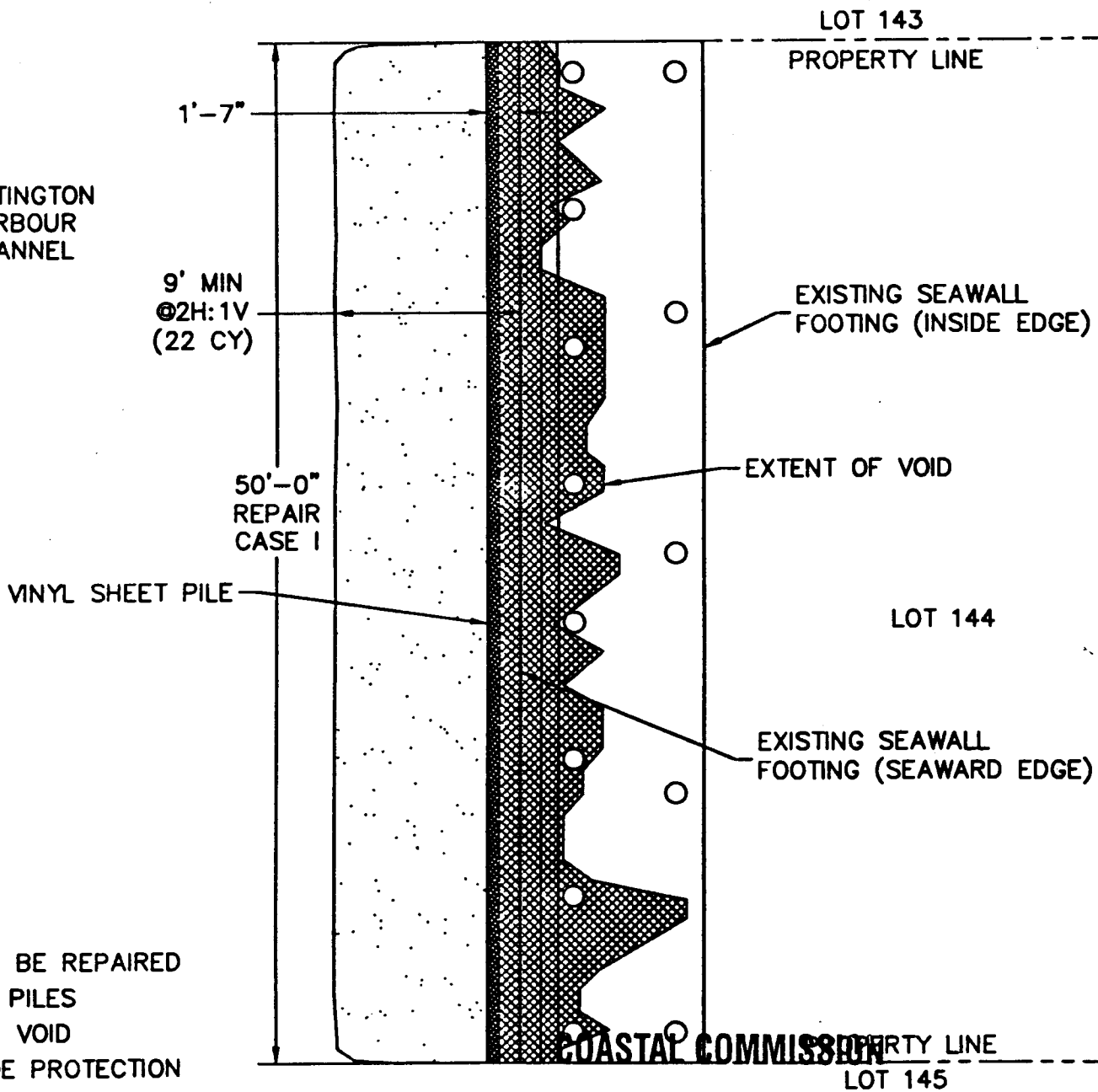
PAGE 1 OF 1

Bulkhead Repair Plan per 5-99-032

COASTAL COMMISSION
5-04-283
EXHIBIT # D
LOT 143



HUNTINGTON
HARBOUR
CHANNEL



LEGEND:

- PILES TO BE REPAIRED
- EXISTING PILES
- GROUTED VOID
- ROCK TOE PROTECTION



TETRA TECH

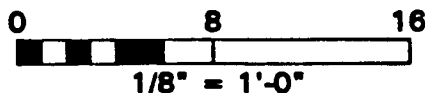
800 The City Parkway West, Suite 300
Orange, CA 92668
(714)456-0166, Fax (714)456-0161

EXHIBIT # 3
PAGE 34 OF 48

PURPOSE: Repair Existing Seawall

Datum: MLLW = 0
Adj. Property Owners:
1. See Attached List
2.
3.

PLAN VIEW



John D. Brady Jr.
16681 Carousel Lane
Huntington Beach, CA 92649

Proposed Repair of Existing Seawall

IN: Huntington Harbour
AT: Huntington Beach
County of O.C. State: CA
Application By: John D. Brady Jr.
Sheet 2 of 8 Date: 2/25/99

