

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 W. BROADWAY, STE. 380  
P.O. BOX 1450  
LONG BEACH, CA 90802-4416  
(562) 506-2001

Filed: November 3, 1995  
49th Day: December 22, 1995  
180th Day: May 1, 1996  
Staff: John T. Auyong  
Staff Report: December 1, 1995  
Hearing Date: December 12-15, 1995  
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-95-227

APPLICANT: Al Schoellerman AGENT: Stine Architecture

PROJECT LOCATION: 1001 Mariners Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Addition of a 24'x12' wood deck supported by 4 footings and extending from the existing brick patio out over the bluff edge, and bluff repair consisting of a geo web retaining wall system with vegetated front face, pea gravel filled trench and PVC pipe subdrain.

Lot area: 15,875 square feet  
Plan designation: Single Family Detached Residential

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept 1579-95

## SUBSTANTIVE FILE DOCUMENTS:

1. Geotechnical "Report of Findings" for 1001 Mariners Drive, Newport Beach, dated August 8, 1995, prepared by Medall Geotechnical Associates, Inc. for Mr. Al Schoellerman
2. Coastal Development Permit P-5-24-76-7930 (Brauchla Construction Co.; 1001 Mariners Drive, Newport Beach)
3. Geotechnical Report of Slope Investigation of the Schoellerman Residence at 1001 Mariners Drive, Newport Beach, prepared by G.A. Nicoll and Associates Inc. dated May 21, 1981 (Project 2371)
4. Coastal Development Permit 5-93-308 (Pope Trust)
5. Coastal Development Permit 5-93-367 (Rushton)
6. City of Newport Beach Certified Land Use Plan

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed development with special conditions regarding (1) conformance with geologic recommendations, (2) a deed restriction for assumption-of-risk and future improvements, (3) revised plans for drainage, landscaping, and deletion of projecting deck, and (4) permission from the Department of Fish and Game to enter onto their land if necessary, in order to minimize geologic hazards and protect the adjacent Upper Newport Bay ESHA.

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 but not limited to 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, is located between the sea and the first public road nearest the sea and is in conformance with the public access and public recreation policies 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

#### i. Geotechnical Recommendations

Prior to issuance of the coastal development permit, the applicant shall submit, subject to the review and approval of the Executive Director, plans signed by the geotechnical consultant indicating that the recommendations in the geotechnical "Report of Findings" for 1001 Mariners Drive, Newport Beach, dated August 8, 1995, prepared by Medall Geotechnical Associates, Inc. for Mr. Al Schoellerman have been incorporated into the plans for the project. The plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the plans approved by the Commission which may be required by the consultant shall require an amendment to this permit or a new coastal development permit.

#### 2. Assumption-of-Risk Deed Restriction

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that (1) the landowner understands that the site may be subject to extraordinary hazards from wave action and geologic instability and assumes the liability from such hazards, and (2) the applicant unconditionally waives any future claims of liability against the Commission or its successor agency for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free and clear of prior liens.

#### 3. Landscaping

Prior to issuance of the coastal development permit, the applicant shall submit, subject to the review and approval of the Executive Director, revised landscape plans approved and signed by the Department of Fish and Game for the revegetation of the slope to be repaired, as described and conditioned herein. The plans shall incorporate the following criteria:

- (a) Slope areas to be stabilized shall be planted and maintained for purposes erosion control, protection of environmentally sensitive habitat areas, and visual enhancement. To minimize the need for irrigation, minimize impacts on native habitat in the adjacent Upper Newport Bay Ecological Reserve, and to screen or soften the visual impact of development, all landscaping shall consist of native, drought resistant plants. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Planting shall be of native plant species indigenous to the area using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days of initial planting and shall be repeated, if necessary, to provide such coverage.

4. Drainage

a. Controlled Drainage

Groundwater collected from the proposed subdrain shall be directed to Upper Newport Bay in a controlled manner which would not lead to bluff erosion.

b. Revised Plans (Drainage)

- Prior to issuance of the coastal development permit, the applicant shall submit, subject to the review and approval of the Executive Director, revised drainage plans which indicate that the proposed PVC pipe extends to the toe of the slope, and an energy dissipator is to be located at the outlet of said pipe.

5. Department of Fish and Game Permission

Prior to issuance of the coastal development permit, the applicant shall obtain written permission from the Department of Fish and Game to enter land owned by the Department of Fish and Game should such entrance be necessary. This permit does not authorize development on lands owned by the Department of Fish and Game.

6. Projecting Deck

a. Projections Past Bluff Edge

No development other than necessary bluff repair/stabilization, native landscaping, and necessary approved drainage devices are allowed to project beyond the bluff edge or to be located on the bluff face.

b. Revised Plans (Projections)

Prior to issuance of the coastal development permit, the applicant shall submit revised plans, subject to the review and approval of the Executive Director, which shows that none of the proposed deck extends past the bluff edge.

7. Future Improvements

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that any development as defined in Section 30106 of the Coastal Act (except development specifically exempted pursuant to Section 30610 of the Coastal Act) on the subject site, including but not limited to future bluff stabilization, shall require an amendment to this permit or a new coastal development permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free and clear of prior liens.

#### IV. FINDINGS AND DECLARATIONS

the Commission finds and declares:

##### A. PROJECT DESCRIPTION/SITE HISTORY

The applicant is proposing to repair an on-site bluff failure by constructing a geo web retaining wall system, behind which would be granular fill compacted to minimum 90% density. The front face of the proposed wall would be vegetated with drought tolerant plant material. At the bottom of the proposed wall, midway down the bluff face, the applicant proposes a gravel filled trench filled with six inch (6") square pea gravel, with a three inch (3") perforated face up PVC pipe subdrain. A proposed three inch (3") solid PVC pipe would drain out midway on the bluff face.

The applicant is also proposing to add a 24'x12' wood deck which would extend out over the bluff edge, past the existing brick patio. The proposed deck would be supported by 4 footings extending about five feet below the surface of the bluff face. A 36" high wrought iron railing is proposed at the edge of the proposed deck. The top of the proposed railing would be about ten feet above the bluff face.

On June 21, 1976, the California Coastal Zone Conservation Commission approved permit P-5-24-76-7930 (Brauchla Construction Co.) for the existing on-site house. The permit contained conditions for a ten (10) foot bluff setback for enclosed living area, direction of drainage to the street in a non-erosive manner, a berm at the top of the bluff to prevent runoff over the slope, planting the slope with deep rooted, drought resistant vegetation, and minimizing irrigation on fill slopes.

##### B. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject bluff has failed twice, once in 1980 during the rainy season and most recently after the 1993 rainy season. The proposed bluff stabilization is to repair the most recent bluff failure.

A preliminary geotechnical "Report of Findings" for 1001 Mariners Drive, Newport Beach, dated August 8, 1995, was prepared by Medall Geotechnical Associates, Inc. for Mr. Al Schoellerman regarding the subject site. The report found that the native material on which the subject site has been developed is a Quaternary marine terrace deposit of silty and sandy clays and clayey sands. The report also found that the bluff failures occurred because of periods of intensive rainfall and natural seepage exacerbated by animal burrows.

The report indicates that the 1980 bluff repair involved pipe driven into the slope for vertical support, holding 2"x6" planks, which formed the toe of the repair behind which benching and keying into firm material was executed. The report concludes that the proposed development should be sufficient to repair the slope. The report also concludes that the proposed deck would be stable provided the deck is found on piers which extend a minimum of five feet into the bluff face.

However, the subject bluff has failed twice and the site is in an area prone to bluff failure. Further, the Commission has approved coastal development permits 5-93-308 (Pope Trust) and 5-93-367 (Rushton) for the stabilization of nearby bluffs, also on the west side of Upper Newport Bay. Since the bluffs on the west side of Upper Newport Bay, and the on-site bluff in particular, have exhibited instability, it is necessary to condition this permit to minimize geologic instability.

### 1. Geotechnical Recommendations

To assure geologic stability and structural integrity and minimize risks from geologic hazards, a special condition must be imposed which requires the submission of plans approved by the geotechnical consultant which incorporate the recommendations contained in the geotechnical "Report of Findings" for 1001 Mariners Drive, Newport Beach, dated August 8, 1995, prepared by Medall Geotechnical Associates, Inc. for Mr. Al Schoellerman.

### 2. Assumption-of-Risk

While the "Report of Findings" for 1001 Mariners Drive, Newport Beach, dated August 8, 1995 prepared by Medall Geotechnical Associates, Inc., for Mr. Al Schoellerman, concludes that the site is suitable for the proposed development, this proposed project due to its being on a bluff which has twice experienced bluff failure, coupled with the instability of nearby bluffs, involves greater risks. Therefore, the Commission finds that an assumption-of-risk deed restriction must be imposed.

### 3. Drainage (Hazards)

A condition is necessary which ensures that drainage from the proposed PVC pipe leading from the proposed subdrain does not empty onto the bluff face and lead to erosive, uncontrolled runoff down the bluff face. This could be accomplished by ensuring that the proposed pipe outlet is at the base of the bluff, rather than midway down the bluff as proposed, and that an energy dissipator to slow the velocity of runoff coming out of the proposed pipe is located at the pipe outlet. Also, a condition is necessary for the submission of revised plans which show how the drainage would not be erosive and uncontrolled (See Exhibit D).

#### 4. Projecting Deck (Hazards)

While the geotechnical "Report of Findings" concludes that the proposed deck would minimize direct rainfall from reaching the bluff underneath, adequate vegetation cover would accomplish the same goal. Further, the proposed deck would not cover the area of the existing failure. In addition, the upper layers of soil could erode from around the supporting footings of the proposed deck, thus jeopardizing the structural integrity of the proposed deck. Thus, a condition is necessary which prohibits decks or other development which extends past the bluff edge. A condition is also necessary for the submission of revised plans which show that the proposed deck does not extend past the bluff edge.

#### 5. Future Improvements (Hazards)

Because the subject on-site bluff has failed twice, it is important that the Commission be able to review any future development for consistency with the hazards policies of Chapter Three of the Coastal Act. Therefore, a condition is necessary for the recordation of a deed restriction which informs the current and future landowners that future improvements on-site would require an amendment to this permit or a new coastal development permit.

#### 6. Conclusion (Hazards)

Therefore, the Commission finds that, as conditioned, the proposed project would be consistent with Section 30253 of the Coastal Act regarding geologic hazards.

#### C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS ("ESHA")

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The subject site is located adjacent to the Upper Newport Bay Ecological Reserve ("Reserve") which is owned by the California Department of Fish and Game. The Reserve is identified pursuant to Section 30233 of the Coastal Act as one of 19 coastal wetlands to be afforded special protection. Further, the Reserve is identified in the City of Newport Beach Certified Land Use Plan ("LUP") as an ". . . integral part of the Pacific Flyway . . ." and ". . . a unique and valuable State resource." Therefore, development adjacent to the Reserve must be carefully designed to minimize impacts on the Reserve and protect and maintain the sensitive resources of the Reserve.

The subject site is located immediately adjacent to the Reserve. Therefore, the proposed development must be conditioned to minimize impacts on the Reserve.

#### 1. Landscape Plans

A condition is necessary which requires that the proposed vegetation of the bluff consist primarily of native plants which would be compatible with and would not impact the sensitive plant life and habitat within the Reserve. The landscape plans submitted indicate the proposed use of drought tolerant but non-native plants such as myoporum pacifica, bougenvillea, and plumbago. In fact, a program for the removal of myoporum plants from another part of the Reserve will be undertaken to minimize impacts from that plant on the reserve. A condition is also necessary requiring that revised landscape plans approved by the Department of Fish and Game ("Department") be submitted which indicate that primarily native plants would be used. Examples of native erosion control plants approved by the Department in conjunction with landscaping plans for coastal development permit 5-93-308 include California sagebrush, coastal goldenbush, and California buckwheat.

#### 2. Drainage (ESHA)

Erosion of the bluff face would increase sediment entering the Reserve which would result in adverse impacts on the resource values of the Reserve. Thus, a condition is necessary which ensures that drainage from the proposed PVC pipe leading from the proposed subdrain does not empty onto the bluff face and lead to erosive, uncontrolled runoff down the bluff face. This could be accomplished by ensuring that the proposed pipe outlet is at the base of the bluff, rather than midway on the bluff face as proposed, and that an energy dissipator to slow the velocity of runoff coming out of the proposed pipe is located at the pipe outlet. Also, a condition is necessary for the submission of revised plans which show how the drainage would not be erosive and uncontrolled (See Exhibit D).

#### 3. Future Improvements (ESHA)

Because the subject site is adjacent to an ESHA, it is important that the Commission be able to review any future development, particularly another bluff repair project, for consistency with the ESHA policies of Chapter Three of the Coastal Act. Therefore, a condition is necessary for the recordation of a deed restriction which informs the current and future landowners that future improvements on-site would require an amendment to this permit or a new coastal development permit.

#### 4. Permission from the Department of Fish and Game

Although the plans submitted indicate that the most recent bluff failure is located entirely on the subject site, it is possible that, to undertake the development as described and conditioned herein, it would be necessary to enter the adjacent land which is part of the Reserve and owned by the Department. Such entry would impact the habitat values of the Reserve. Therefore, a condition is necessary which requires that written permission from the Department be secured to enter Department lands.



## 5. Conclusion (ESHA)

Therefore, the Commission finds that, as conditioned, the proposed project would be consistent with Section 30240 of the Coastal Act regarding ESHAs.

### D. VISUAL IMPACTS

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic area such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed deck which would project past the bluff edge would have an adverse visual impact. While the existing on-site concrete patio and nearby patios along the bluffs along the west side of the Reserve come close to or are at the edge of the bluff, allowing structures to project past the bluff edge would create adverse visual impacts, particularly on a cumulative basis. The proposed footings of the proposed projecting deck in particular would not be visually compatible with the scenic value of the bluffs. Therefore, a condition is necessary which requires that only necessary development related to bluff repair, vegetation and drainage be allowed past the bluff edge to minimize visual impacts. In addition, a condition is also necessary for the submission of revised plans which show that the proposed deck does not extend past the bluff edge.

### E. PUBLIC ACCESS RECREATION

Section 30212 of the Coastal Act states, in relevant 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:
- (2) adequate access exists nearby, . . .

The subject site is adjacent to a cul-de-sac with an open area that allows visual access to Upper Newport Bay. Existing improved and unimproved trails around Upper Newport Bay at the foot of the bluffs and adjacent to the subject site provides access and recreation opportunities. Additional recreation and access opportunities are available nearby at Northstar Beach to the southwest of the subject site. Therefore, the Commission finds that the proposed development would not have significant adverse impacts on public access or public recreation opportunities, that adequate access exists nearby, and the proposed development thus is consistent with Section 30212 of the Coastal Act regarding public access.

#### F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that a coastal development permit shall be issued only if the proposed development would not prejudice the ability of the local government having jurisdiction to prepare a local coastal program (LCP) which conforms with, and is adequate to carry out, the Chapter Three policies of the Coastal Act.

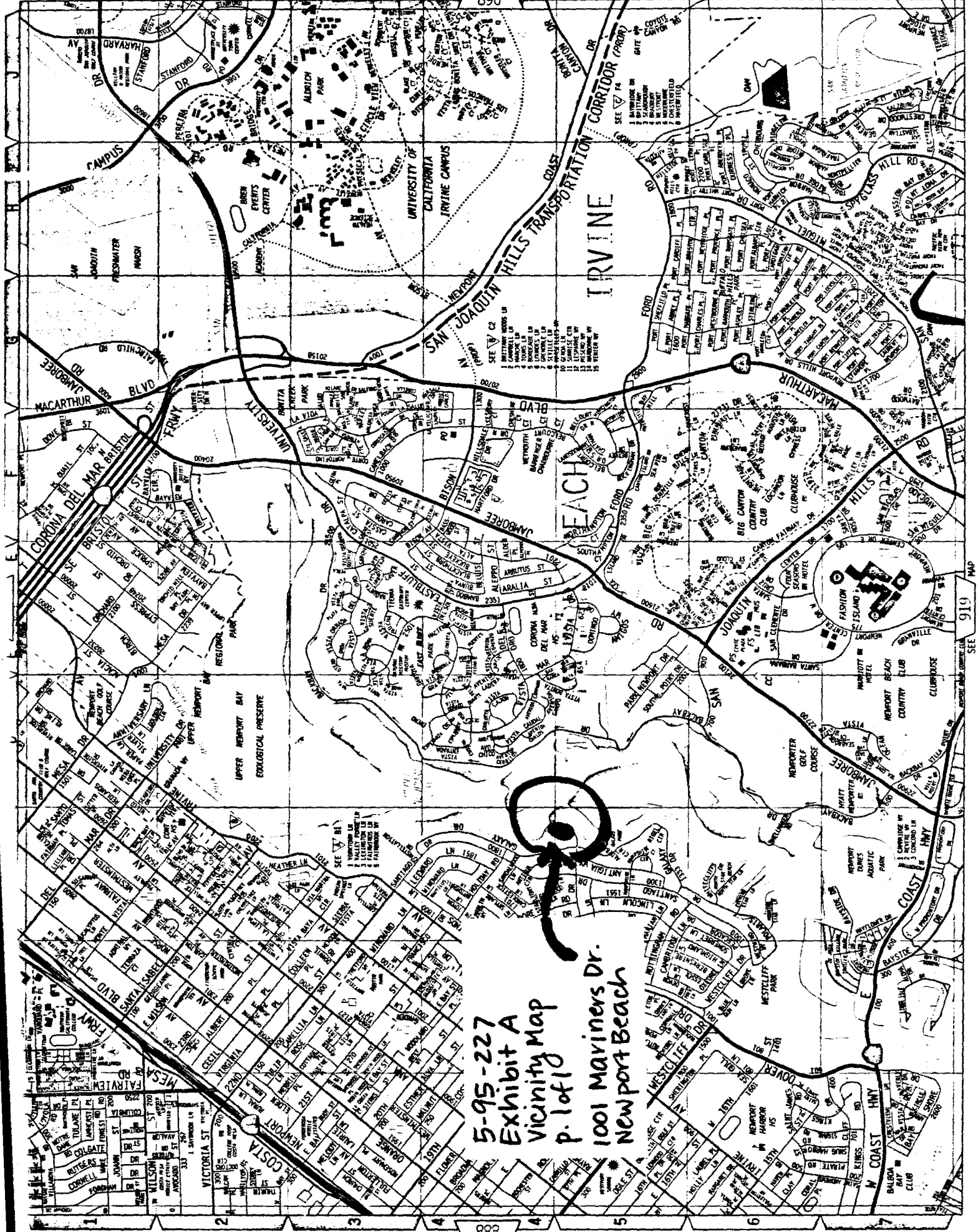
The Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The proposed project would be conditioned to be consistent with the hazards, ESHA, and visual quality policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed project as conditioned would not prejudice the ability of the City of Newport Beach to prepare an LCP consistent with the Chapter 3 policies of the Coastal Act.

#### G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

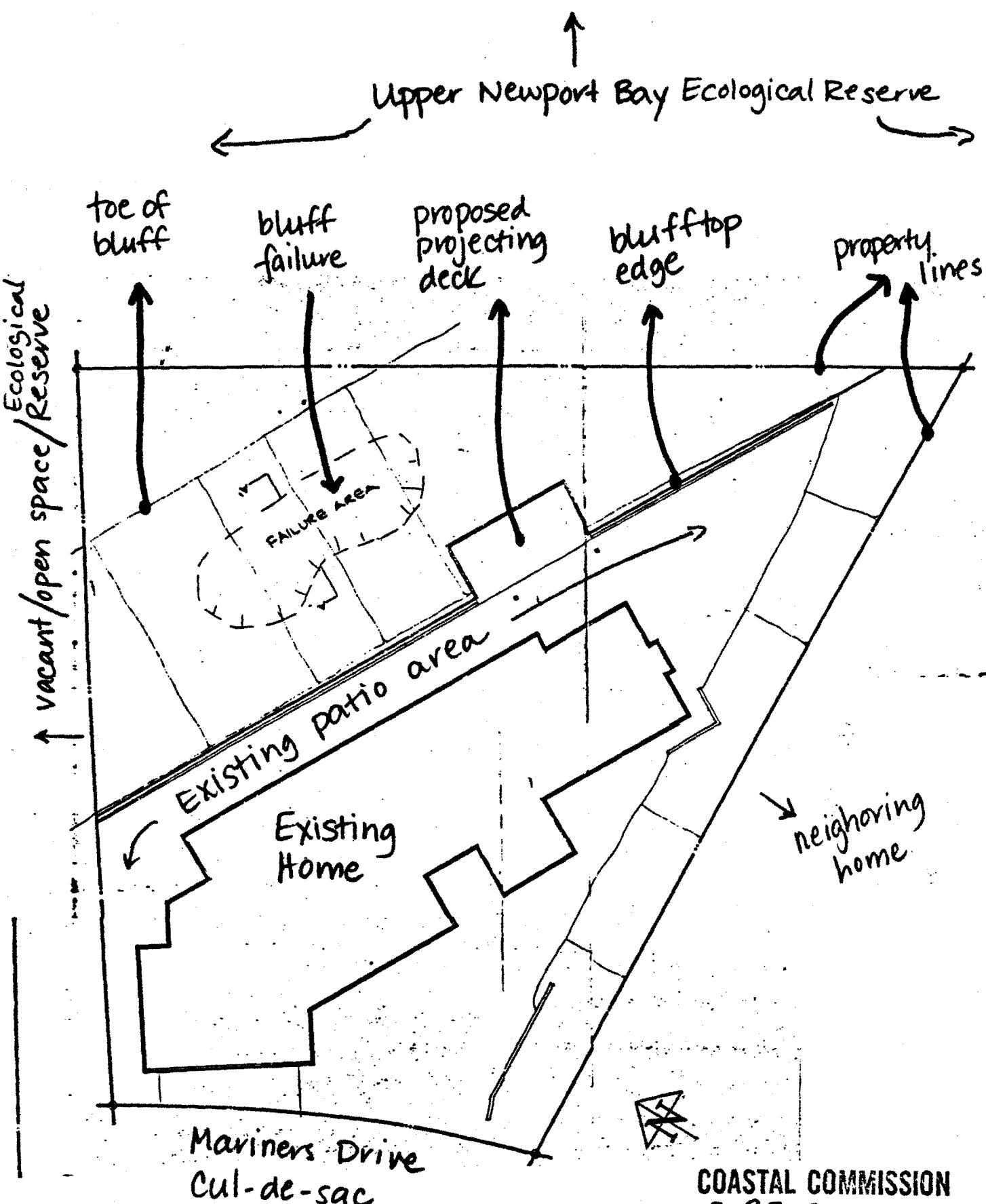
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 subject site is located in an urban zone. Infrastructure necessary to serve the site exists in the area. The proposed project has been conditioned in order to be found consistent with the hazards, ESHA, and visual resources policies of Chapter 3 of the Coastal Act. Mitigation measures including (1) conformance with geologic recommendations, (2) a deed restriction for assumption-of-risk and future improvements, (3) revised plans for drainage, landscaping, and deletion of projecting decks, and (4) permission from the Department of Fish and Game to enter onto their land if necessary, will minimize all adverse 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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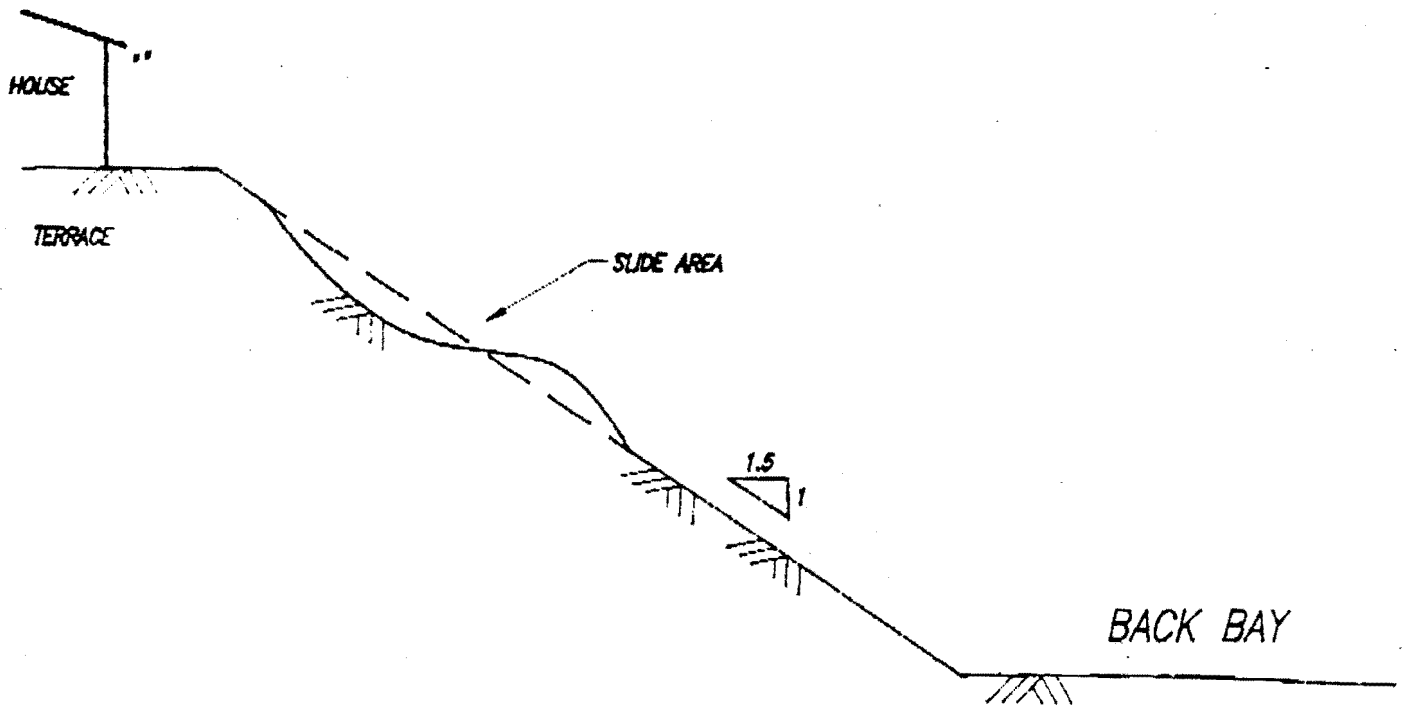
5-95-227  
 Exhibit A  
 vicinity Map  
 p. 1 of 1  
 1001 Mariners Dr.  
 Newport Beach



COASTAL COMMISSION  
5-95-227 - Site Plan

EXHIBIT # B

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**COASTAL COMMISSION**  
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 profile of bluff failure  
 EXHIBIT # C  
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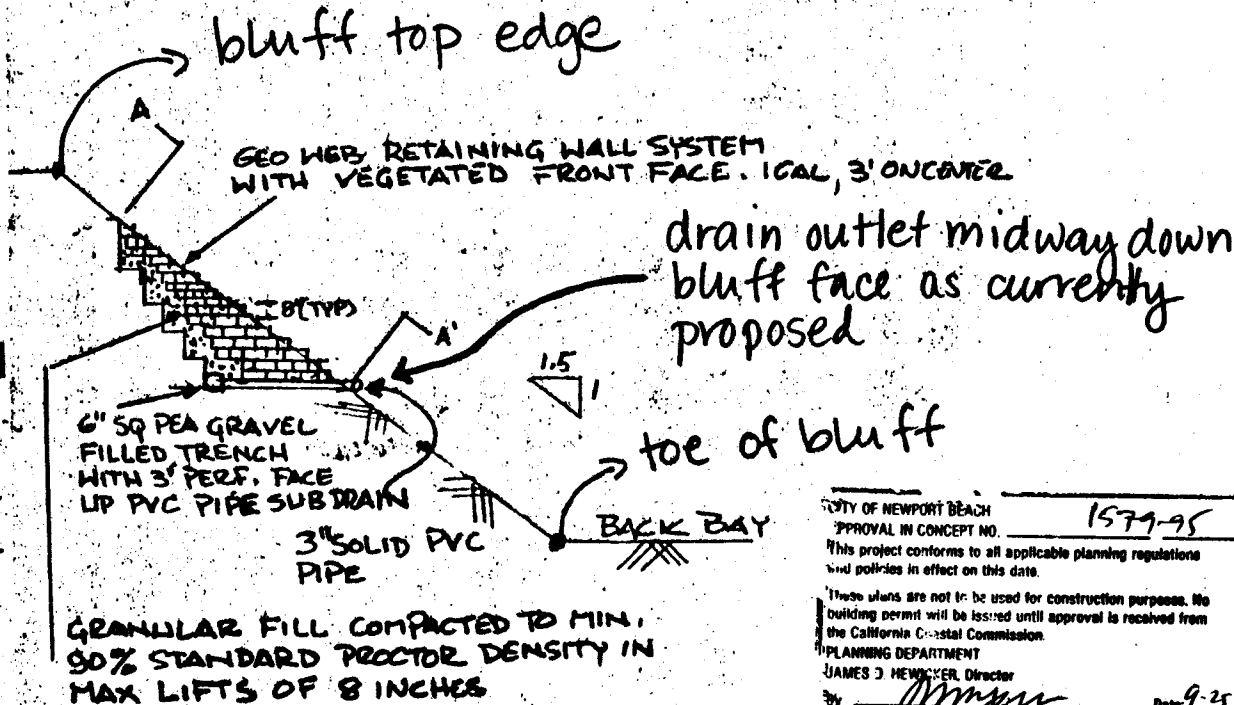
**PLATE 6**

**MEDALL GEOTECHNICAL  
 ASSOCIATES, INC.**  
 30 Hughes, Suite 206  
 Irvine, California 92718  
 (714) 452-9132

**SCHOLLERMAN SLOPE REPAIR  
 CROSS SECTION  
 1001 MARINERS DRIVE  
 NEWPORT BEACH, CA**

- NON FAILURE SLOPE FACE TO BE CLEANED AND DRESSED.
- SLOPE FACE TO BE PLANTED WITH DROUGHT TOLLERANT PLANT MATERIAL ONE GAL. SIZE, ON 12 FT CENTERS.  
EG:  
MYOPORUM PACIFICA.  
ACACIA ONGERUP  
BOUGAINVILLEA  
PLUMBAGO
- PLANTS TO BE IRRIGATED BY DRIP TYPE IRRIGATION SYSTEM WITH ONE EMITTER PER PLANT

- FAILURE REPAIR



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 proposed bluff  
 repair  
 EXHIBIT # D  
 PAGE 1 OF 1

GRANULAR FILL COMPACTED TO MIN.  
 90% STANDARD PROCTOR DENSITY IN  
 MAX LIFTS OF 8 INCHES

NOT TO SCALE

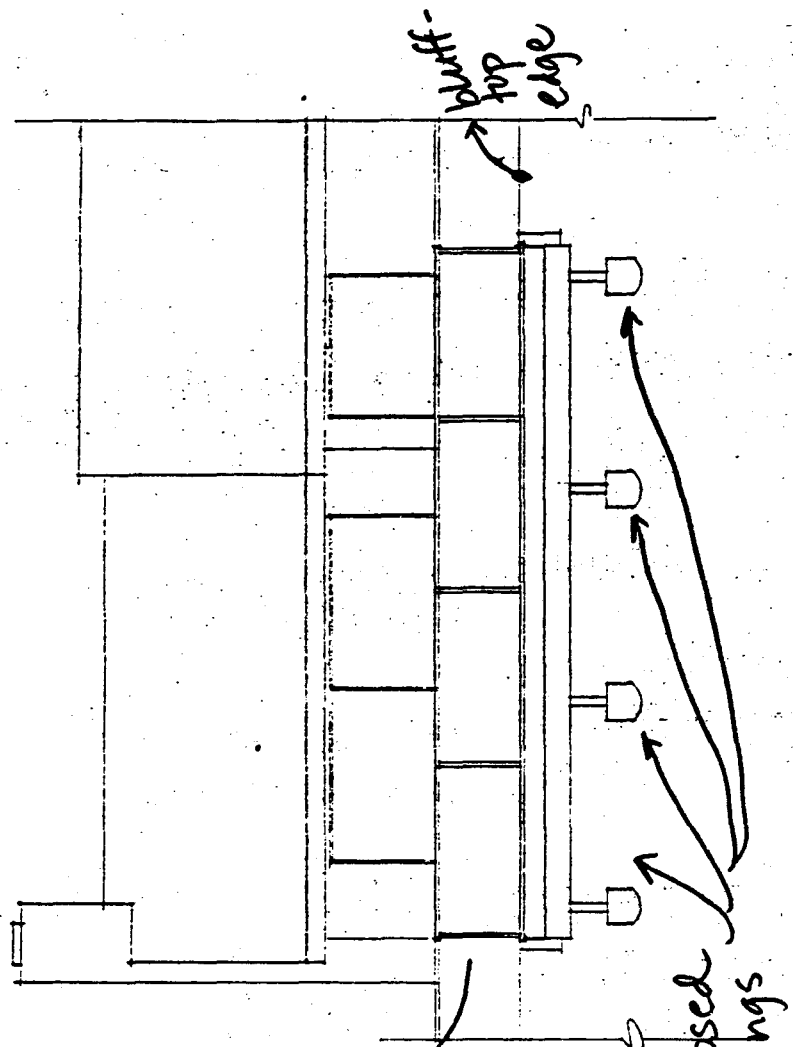
CITY OF NEWPORT BEACH  
 APPROVAL IN CONCEPT NO. 1579-95  
 This project conforms to all applicable planning regulations and policies in effect on this date.  
 These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.  
 PLANNING DEPARTMENT  
 JAMES J. HEWICKER, Director  
 Date: 9-25-95  
 South Coast District Officer

SCHOELLERMAN RESIDENCE

Deck Addition  
 1001 Mariners Drive  
 Newport Beach, CA

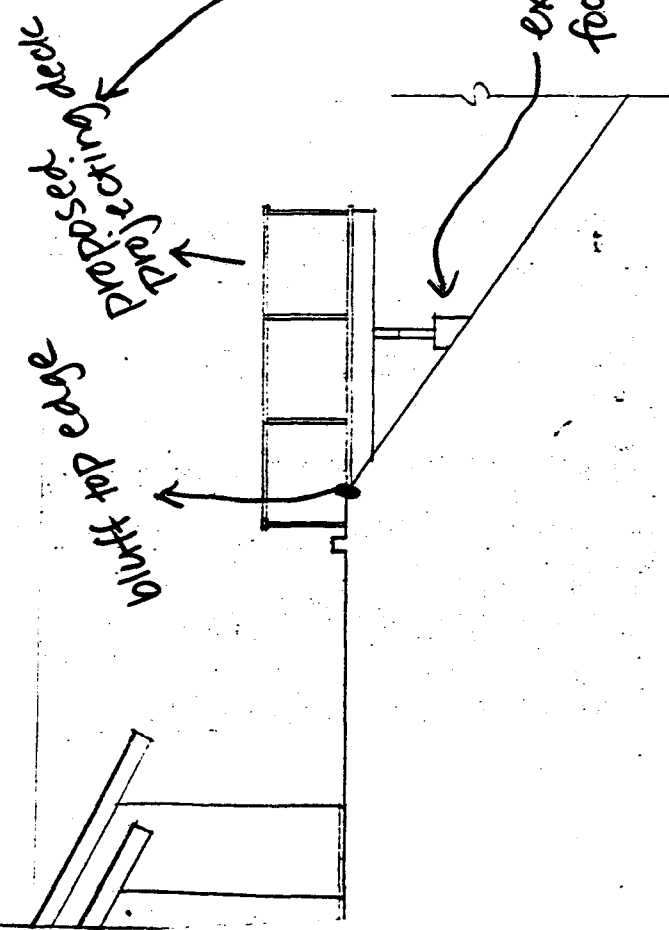
DRAWN T.O.
CHECKED T.O.
DATE 9-15-95
SCALE 1/8" = 1'-0"
JOB NO. 9513
SHEET 3

Elevations of  
 proposed projecting  
 deck  
 COASTAL COMMISSION  
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 EXHIBIT # E  
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FRONT ELEVATION

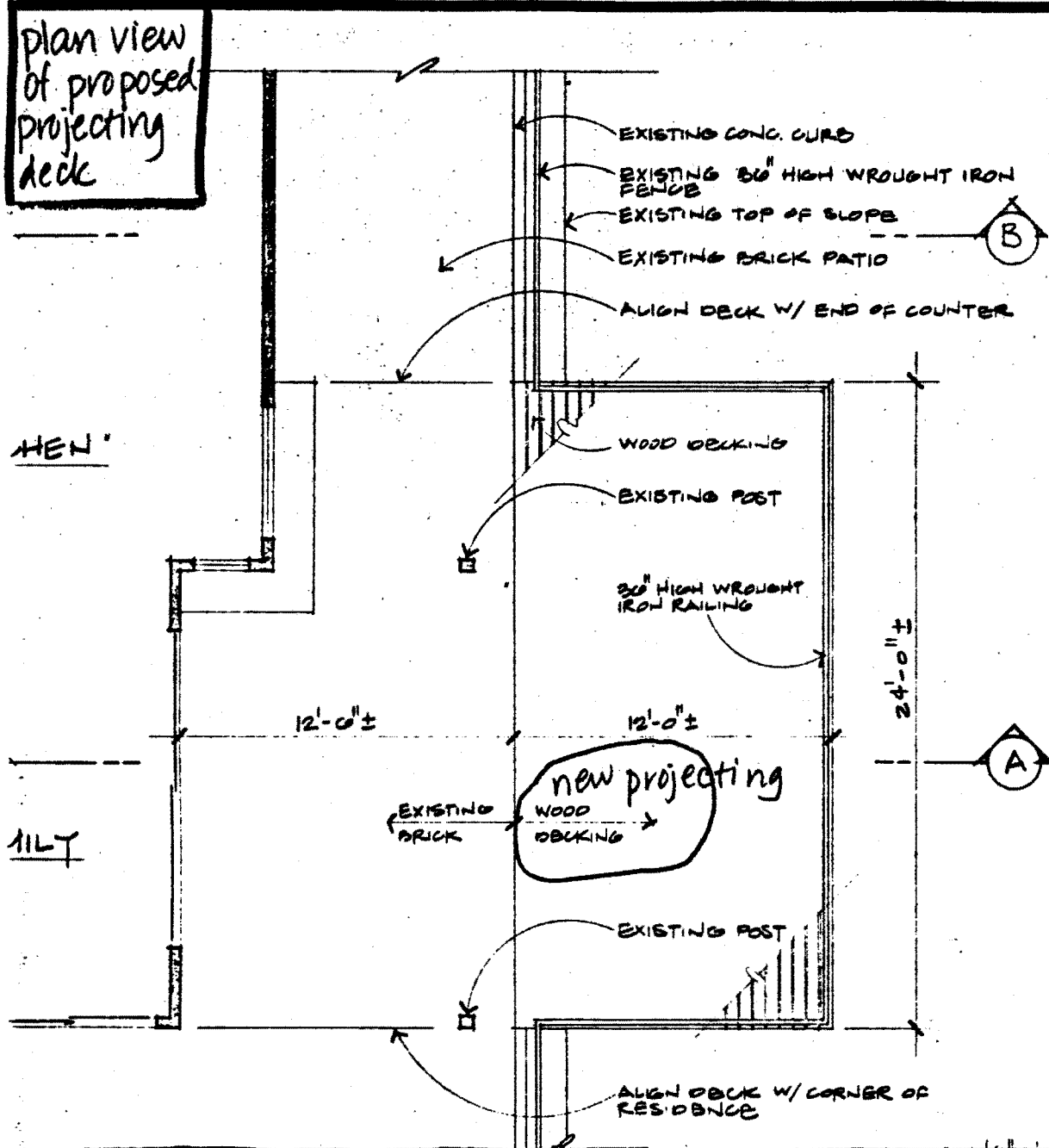
1/4" = 1'-0"



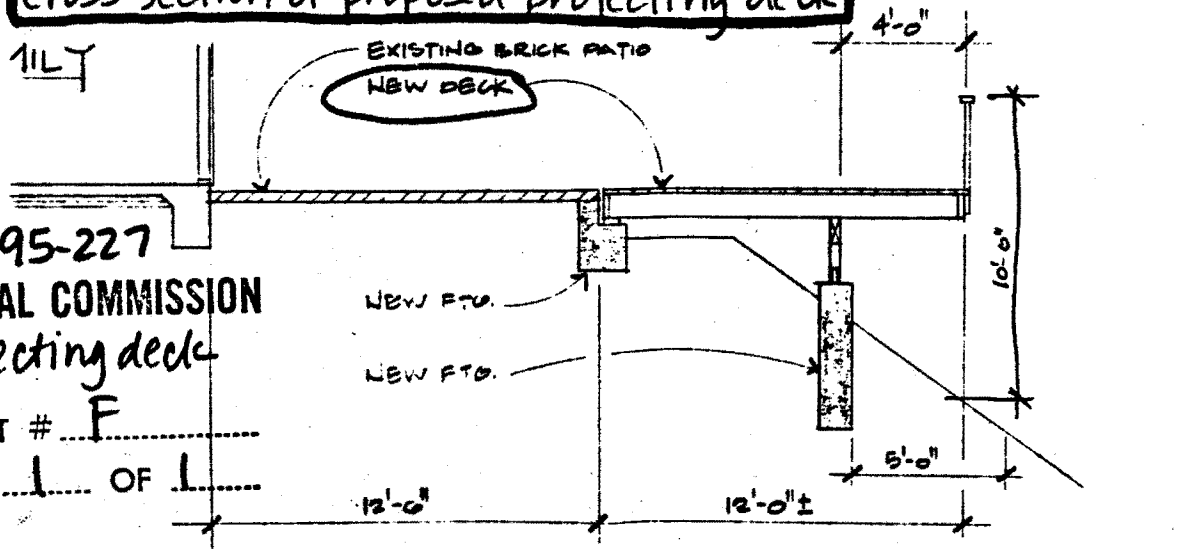
LEFT SIDE ELEVATION

1/4" = 1'-0"

plan view of proposed projecting deck



cross-section of proposed projecting deck



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 COASTAL COMMISSION  
 projecting deck  
 EXHIBIT # F  
 PAGE 1 OF 1

IN A

STINE

FRMAN RESIDENCE