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CALIFORNIA COASTAL COMMISSION

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49th Day: 01-30-98
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Staff: RMR/LB **RMR**
Staff Report: 02-11-98
Hearing Date: March 10-13, 1998
Commission Action:

**RECORD PACKET COPY**STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-97-348

APPLICANT: Bruce & Mickie Hezlep

AGENT: Brion Jeannette, Arch.

PROJECT LOCATION: 2832 Bayshore Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of a single-family residence and construction of a 3 story (including basement level), 9,408 square foot single-family residence with a 1,981 square foot garage. The residence includes a basement and 1,158 cubic yards of cut. Six parking spaces are provided.

Lot area:	9,278 sq. ft.
Building coverage:	4,165 sq. ft.
Pavement coverage:	1,000 sq. ft.
Landscape coverage:	4,112 sq. ft.
Parking spaces:	6
Zoning:	R-1
Plan designation:	Residential Single-Family Detached
Ht abv fin grade:	24 feet

LOCAL APPROVALS RECEIVED: Approval in concept from the Planning Department of the City of Newport Beach

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, Preliminary Geotechnical Investigation by Geofirm dated November 25, 1997

SUMMARY OF UNRESOLVED ISSUES

Staff contacted the agent for the applicant and informed him of the special conditions of the staff report. The agent had no objections to the special conditions. Therefore, there are no unresolved issues.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with special conditions regarding conformance with geotechnical recommendations, assumption of risk, location of disposal site for cut dirt, evidence of Regional Water Quality Control Board Approval, and future improvements to the bulkhead.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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. Assumption of Risk

Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from liquefaction, waves and flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Conformance with Geotechnical Recommendations

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, grading, foundation and basement plans. The approved foundation plans shall include plans for the foundation, retaining walls, subdrains and footings. These plans shall include the signed statement of the geotechnical consultant certifying that these plans incorporate the recommendations contained in the geotechnical investigation prepared by Geofirm dated November 25, 1997.

The approved development shall be constructed in accordance with the plans approved by the Commission. Any deviations from said plans shall be submitted to the Executive Director for a determination as to whether the changes are substantial. Any substantial deviations shall require an amendment to this permit or a new coastal development permit.

3. Evidence of Regional Water Quality Control Board Approval

Prior to issuance of the coastal development permit, the applicant shall submit, subject to the review and approval of the Executive Director, a discharge permit or other written evidence of approval from the California Regional Water Quality Control Board, Santa Ana Region, for discharge of water into Newport Bay for the purpose of constructing a subterranean basement.

4. Disposal of Cut Dirt

Prior to the issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a letter stating where the applicant intends to dispose the excess cut dirt. If the disposal site is in the coastal zone, a coastal development permit may be required.

5. Improvements to Bulkhead

If, in the course of demolition and construction, the applicant uncovers structural problems with the existing bulkhead infrastructure which requires remediation, the applicant shall immediately notify the Executive Director in writing for a determination as to whether any proposed construction on or near the bulkhead requires a coastal development permit or an amendment to this permit. No improvement to the bulkhead shall occur prior to such Executive Director determination.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to demolish an existing two-story, single-family residence with garage and swimming pool and construct a 24 foot high, three-story (including basement level), 9,408 square foot single-family residence with a 1,981 square foot garage. Grading consists of 1,153 cubic yards for a basement. Six parking spaces are provided on-site.

The proposed project is located in a private gated community seaward of Pacific Coast Highway and Dover Dr. adjacent to the Balboa Bay Club. To the west is Lido Channel and to the south and east is Lower Newport Bay. To the north is Pacific Coast Highway. Across the Lido Channel is Lido Isle.

Exhibit 1 is the vicinity map, which shows the location of the site. Exhibit 2 is the assessors parcel map. Exhibit 3 is the site plan. Exhibit 4 is a geotechnical cross section showing the existing site and the proposed excavation for the basement level.

Shoring and dewatering will be required for subterranean excavation and construction. No improvements are proposed to the existing bulkhead, however the City of Newport Beach requires that when a bayfront structure is demolished and reconstruction is proposed, that the bulkhead infrastructure be exposed and examined. For this reason, staff included a special condition requiring the applicant to inform the Executive Director if work on or near the bulkhead is required so that the Executive Director can make a determination as to whether a coastal development permit or coastal development permit amendment is required.

B. Geologic Hazards

Section 30253 of the Coastal Act concerns geologic stability and safety. It states in 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 applicant submitted a geotechnical report prepared by Geofirm on November 25, 1997. The geotechnical investigation involved subsurface exploration, including excavation and logging of two exploratory borings and placement of groundwater monitoring wells to monitor groundwater levels at periods of high and low tides. Also involved were laboratory testing of samples and geotechnical analysis of subsurface conditions relating to foundation design.

The applicant is proposing a two story residence with a subterranean garage and basement beneath the northerly two-thirds of the property (see Exhibit 4). Shoring and dewatering will be required for construction of the basement level. Groundwater was found at 8 feet below existing grade. At high tide the water level at boring 1 adjacent to the bay rose to elevation 92 and at low tide to elevation 89. The groundwater level at boring 2 remained at a constant elevation 92. The existing finished floor elevation varies from elevation 101 to 102. The elevations used do not reflect elevation above mean sea level. The topography of the site averages five feet above the bulkhead.

The geotechnical report notes that the basement excavation will be below groundwater levels and that the subgrade will have to be waterproofed and the basement slab designed to accommodate hydraulic uplift forces. Groundwater rises to three feet above the basement floor.

The lot contains a bulkhead and the lot is situated five feet above the top of the bulkhead. The lot is situated on the bay and not the open ocean and therefore the threat of flooding from high tides is not as great, although it still exists.

In the conclusion section of the geotechnical report the consultant notes that there is a risk of liquefaction at the site during large seismic events. Because of this potential threat the geotechnical report includes recommendations concerning installation of a stiffened foundation to offset danger from liquefaction, waterproofing of the basement slab and walls, use of shoring during excavation of the basement level, and recommendations for dewatering of the site during construction of the basement level.

The conclusions of the geotechnical report include a statement that the development of the property is geotechnically feasible and safe if the recommendations of the report are followed in design, construction and long-term maintenance of the property. The geotechnical report also concludes that construction of the proposed development will not adversely affect the adjoining properties.

To assure geologic stability and structural integrity and to minimize risks to life and property, the geotechnical report's recommendations must be incorporated in the proposed project's design and construction. Therefore, this staff report includes a special condition requiring that the applicant submit foundation and basement plans signed and stamped by the geotechnical consultant.

In addition, development on Newport Bay does involve some risk of flooding and liquefaction during a seismic event, as noted in the geotechnical report. The construction of a below grade basement on a harbor-fronting lot poses additional risks of damage from flooding and liquefaction hazards than does

construction of homes without subterranean basements. Therefore, the Commission finds that because of the project's location fronting the bay and because a basement below the water table is involved, the permit must also be conditioned for the recordation of an "assumption of risk" deed restriction.

Finally, the applicant will be removing some 1,153 cubic yards of dirt resulting from the basement excavation. The applicant has not indicated where this dirt will be disposed of. In order to assure that the future placement of this dirt does not adversely impact any coastal resources, a special condition of this permit requires that the applicant submit a letter stating where the dirt will be disposed. If the cut dirt will be disposed of at a site within the Coastal Zone, a coastal development permit may be required.

Only as conditioned for submittal of an assumption of risk deed restriction, identification of the disposal site for cut dirt, and conformance with geotechnical recommendations does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

C. Marine Resources

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.
(emphasis added)

The applicant is proposing to dewater the site in order to construct a subterranean basement. The excess water is proposed to be pumped over the existing bulkhead directly into lower Newport Bay. This could result in adverse impacts to the quality of waters in lower Newport Bay. For this reason, the permit must be conditioned to obtain approval from the Regional Water Quality Control Board for the discharge of water into lower Newport Bay. Section 30412 of the Coastal Act provides that the Regional Water Quality Control Boards have the "primary responsibility for the coordination and control of water quality."

Therefore, as conditioned to obtain approval from the Regional Water Quality Control Board, the Commission finds that the proposed development conforms with Section 30231 of the Coastal Act regarding water quality.

D. Public Access/Recreation

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.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

The subject site is a bayfront lot in a private gated community. The development consists of the demolition of an existing single-family residence and the construction of a single-family residence. The site contains an existing bulkhead and no improvements are proposed to this bulkhead.

The proposed development does not constitute an intensification of use and would not result in significant adverse impacts to coastal access and recreation. Therefore, the Commission finds that the proposed development conforms with Section 30212 of the Coastal Act.

E. Local Coastal Program

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.

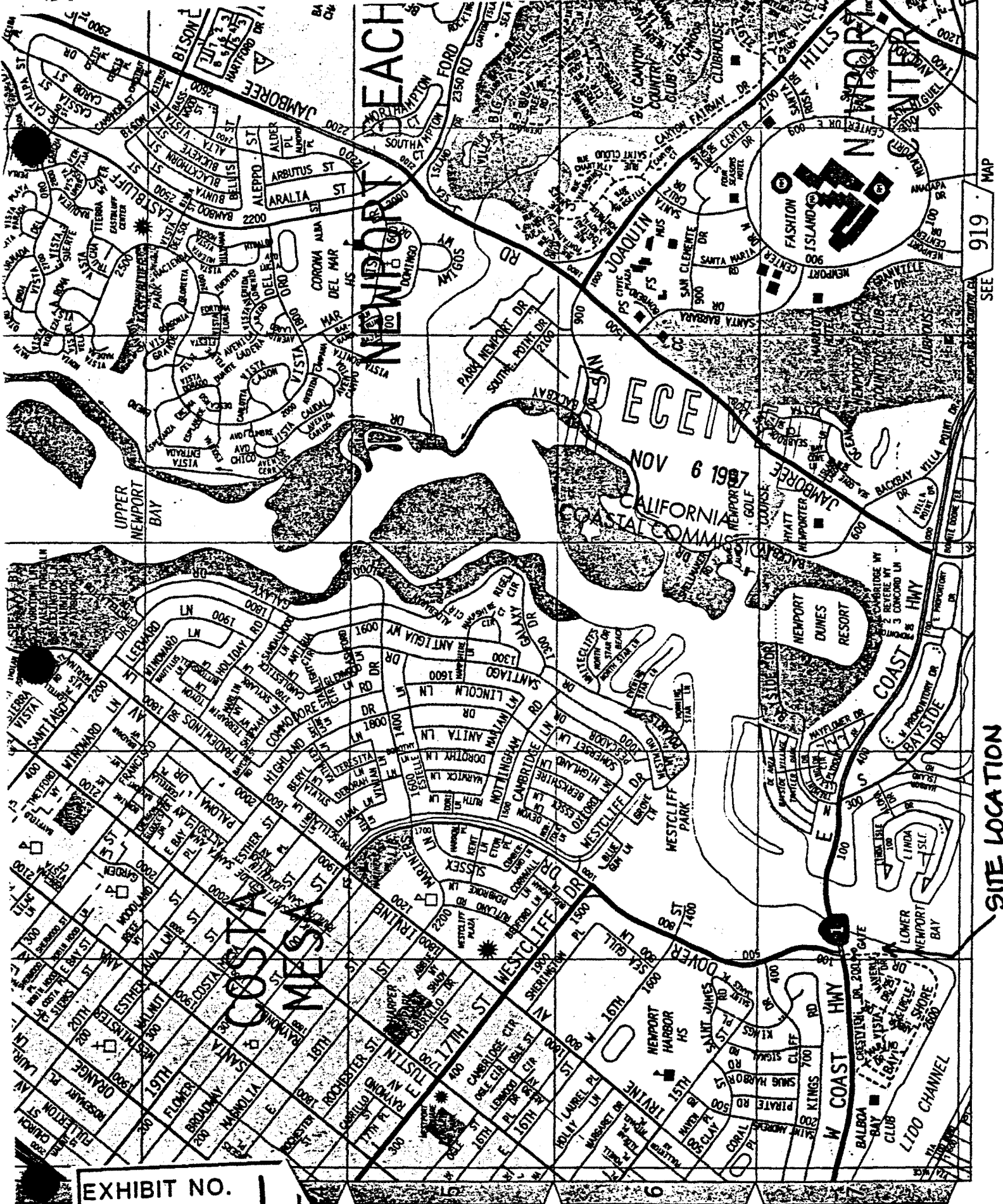
The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the ability of the City of Newport Beach to prepare a Local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

F. Consistency with the California Environmental Quality Act (CEQA).

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 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 conditioned in order to be found consistent with the geologic hazard and marine resource policies of the Coastal Act. Mitigation measures; special conditions requiring conformance with geologic recommendations, submittal of an assumption of risk deed restriction, identification of the disposal site for excess cut dirt, approval from the regional water quality control board and provision for a future permit for bulkhead work if necessary, will minimize all adverse impacts. As conditioned, 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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SITE LOCATION

EXHIBIT NO. 1

APPLICATION NO. 5-97-348

VICINITY

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ASSESS:
BOOK 4:
COUNTY

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EXHIBIT NO. 2

APPLICATION NO.
5-97-348

ASSESSORS

EXHIBIT NO. 3

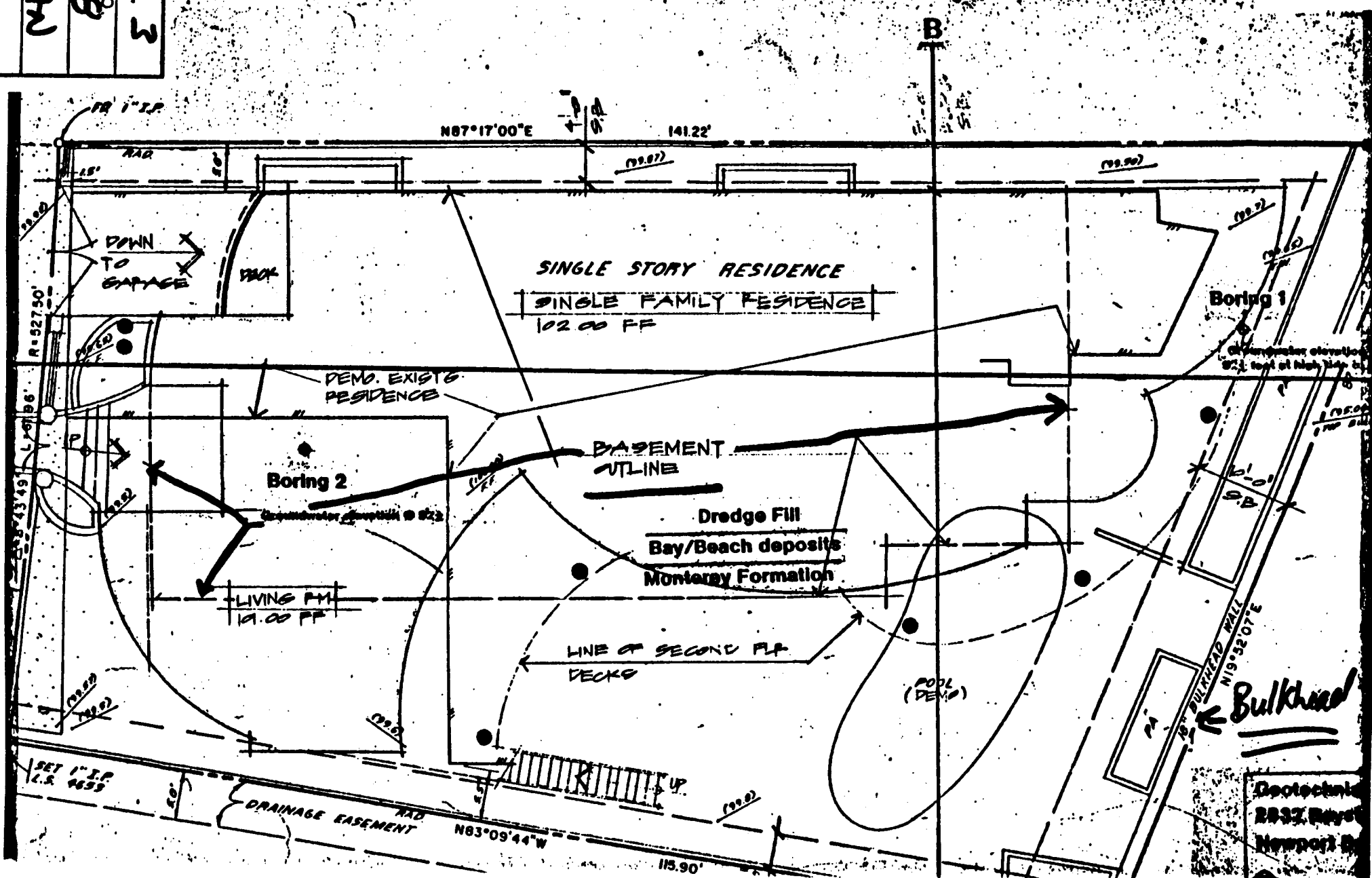
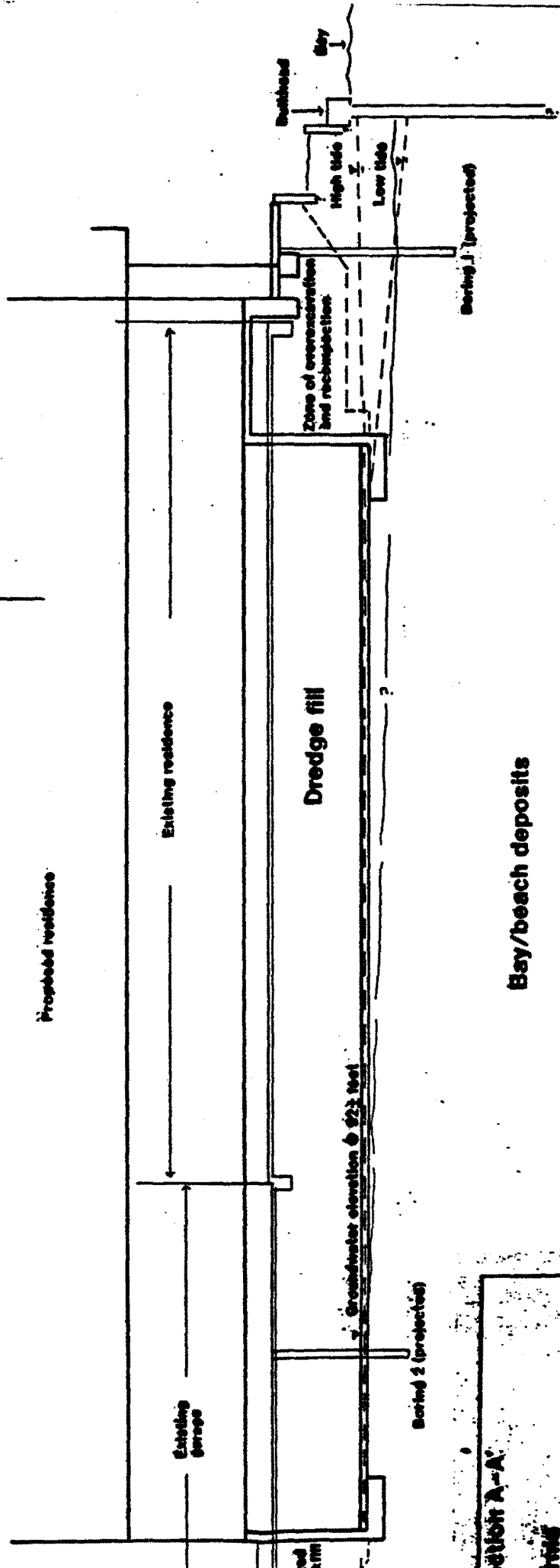


EXHIBIT NO. 4
APPLICATION NO. 5-97-348
SECTION

Intersection B-B



Bay/beach deposits

Section A-A
Number 1007
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Monterey Formation (depth undetermined)