

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
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 Staff: EL-SD
 Staff Report: April 22, 1998
 Hearing Date: May 12-15, 1998

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

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Application No.: 6-98-43

Applicant: Sea World of California Agent: Patrick Owen

Description: Construction of a temporary, forty-foot-tall set/stage (unenclosed scaffolding structure) in association with a proposed summertime show at Ski Stadium, within the existing theme park. The structure would be erected in mid-May, 1998 and removed by September 30, 1998.

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| Lot Area | 165.8 acres |
| Parking Spaces | 8,350 |
| Zoning | R1-5000 |
| Plan Designation | Regional Park/Commercial Lease |
| Ht abv fin grade | 40 feet (proposed temporary structure) |

Site: 500 Sea World Drive, Mission Bay Park, San Diego, San Diego County. APN 760-037-01

Substantive File Documents: Certified Mission Bay Park Master Plan

STAFF NOTESSUMMARY OF STAFF'S PRELIMINARY RECOMMENDATION:

Staff recommends approval of the proposed temporary facility with special conditions addressing potential impacts to biological resources and formalizing the date for removal of the structure. Issues raised by the proposal include possible adverse impacts on eelgrass and a nearby least tern nesting site, along with concerns over visual resources and public access. The issues are resolved through project design, the temporary nature of the development and the conditions of approval which staff believes are acceptable to the applicant.

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Mitigation for Impacts to Eelgrass. The applicant shall implement the following measures to avoid impacts to eelgrass to the maximum extent feasible:

a) All support structures for the temporary stage set shall be cantilevered from the island, with no anchors or pilings in the water;

b) Using a biologist acceptable to the Executive Director, the applicant shall conduct a pre-event eelgrass mapping program to document the current distribution of eelgrass and to plan placement of the temporary structure to avoid damage to eelgrass. The pre-event mapping will serve as a baseline to assess any potential shading impacts to eelgrass resulting from placement of the structure for a 4-1/2 month period. The biologist shall then conduct a post-removal eelgrass survey within 10 days of the end of the 1998 Intensity Games Show. This survey will be compared to the pre-event survey to determine if any impacts associated with the approved development have occurred. Both surveys shall be submitted to the Executive Director for review and written approval.

If the Executive Director concludes that impacts are identified, a recommendation for mitigation will be made by the biologist on means to mitigate impacts. The mitigation recommendation may range from follow-up monitoring in approximately one month to determine if natural recovery of the damaged beds has occurred, to revegetation of impacted habitat in accordance with the Southern California Eelgrass Mitigation Policy at a ratio of 1.2 to 1 (replacement to impact). The Executive Director shall determine the necessary mitigation, taking into consideration the biologist's recommendation and input by the California Department of Fish and Game, the US Fish & Wildlife Service and the National Marine Fisheries Service.

- c) The applicant shall undertake and complete any mitigation measures as recommended and approved in accordance with Section b.2. above for damage which occurs.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a written commitment by the applicant to be responsible for the mitigation shall be provided to the Executive Director for review and written approval.

2. Least Tern Mitigation. The applicant shall comply with the following provisions to protect the Stony Point Least Tern Nesting Site on Fiesta Island:

- a. The portion of the approved structure facing Fiesta Island shall be covered with shade cloth (screening);
- b. Bird deterrents shall be installed on the upper portions of the structure; and
- c. No portion of the structure shall exceed forty feet in height.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the proposed temporary stage set demonstrating consistency with the above-stated requirements.

3. Removal Date. All temporary improvements must be removed from the site no later than September 30, 1998.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant, Sea World of California, is proposing to stage a new show in its existing Ski Stadium between Memorial Day and Labor Day, called the 1998 Intensity Games Show. They are proposing construction of a temporary, forty-foot-high, multi-level scaffolding-type structure, which includes both a half-pipe and a sno-flyer ramp, on which to stage the summertime show. The structure will be erected on an existing, artificially-constructed island in the waterski lagoon, which is located in the northwestern portion of the theme park. Although the ramp will extend beyond the perimeter of the island, the structural supports will be cantilevered from the island; no supports or anchors will be located in the water. The applicant proposes to begin construction of the temporary structure in mid-May, opening the new show on Memorial Day weekend. The show itself will end around Labor Day and all temporary improvements will be removed by September 30, 1998.

2. Biological Resources (Least Terns/Eelgrass). Section 30230 requires that marine resources be maintained, enhanced and restored and that use of the marine environment sustain biological productivity. Eelgrass resources are present in most areas of Mission Bay, except in the deepest channels. There are surveyed eelgrass beds within the water ski lagoon area; the beds

represent a mitigation bank created by Sea World several years ago in conjunction with Coastal Development Permit #6-90-140. The permit authorized removal of a coffer dam and other in-water alterations associated with changing the use of the subject venue from a dolphin show arena to a water ski show arena.

However, the surveys required with that permit did not include the specific area where the proposed scaffolding structure will overhang portions of the Bay. The structure will extend outward over the water on the northeastern portion of the island, whereas the known eelgrass resources are on the northwestern side. The applicant maintains that the proposed temporary structure will not shade any eelgrass, but has not yet submitted a survey demonstrating that no eelgrass resources are present in the immediate project area. If eelgrass is present, shading the resource for four and a half months (mid-May till the end of September) could cause a significant impact on the resource. Thus, Special Condition #1 requires the applicant to conduct a pre-event survey. If no eelgrass is present, that survey will suffice. If the resource does occur in the area, a post-event survey will be required to determine if impacts have occurred, in which case mitigation will be necessary.

In addition, Section 30240 provides that development adjacent to environmentally sensitive habitats be sited and designed to prevent impacts which would degrade those areas. There is an existing least tern nesting site north of Sea World, across South Pacific Passage. Although there has not been documented nesting activity at this site for several years, possibly due to a nearby heron rookery, it is still a designated site and the potential exists for the endangered birds to nest this season. The concern is that the proposed forty-foot-high structure could provide predator perches, since it will offer a direct line of sight into the preserve.

There are mature trees on the Sea World property which meet or exceed the height of the proposed structure and which may already provide predator perches. Also, a nearby restaurant within Sea World, just east of the water ski venue, is forty feet tall. The applicant has proposed to install bird-proofing devices and shade cloth on the proposed temporary structure to discourage its use as a predator perch, and has installed such devices on other existing structures in the park already. Special Condition #2 formalizes the procedures the applicant is to follow in this regard. Final plans must be submitted which clearly identify the types of bird deterrents to be used and show how and where they will be applied.

In summary, although the proposed structure is temporary in nature, it raises the potential for adverse impacts on biological resources. Both through project design and the attached special conditions, all impacts should be either avoided altogether or appropriately mitigated. The City's Natural Resource Manager and a representative of the California Department of Fish and Game have confirmed that significant resource impacts are unlikely and the proposed mitigation measures are appropriate. Therefore, the Commission finds the proposed development, as conditioned, consistent with the cited policies of the Coastal Act.

2. Public Access. The following Coastal Act policies are most pertinent to the proposed development, and state, in part:

Section 30211

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.

(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...

Section 30604(c)

(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 such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...

Sea World is a private commercial leasehold within Mission Bay Park, a public park owned by the City of San Diego. The site is located between the first coastal roadway and the bay. Although public lateral access is available along most of the Mission Bay shoreline, there is no access through the Sea World Facilities, which extend to or beyond the waterline in places, including at the subject venue. Pedestrian and bicycle traffic can cross through the parking areas and rejoin the bayside pathway on either side of the leasehold. Vertical access is available at those same two locations and informally elsewhere along the shore dependent upon parking or transit availability.

The Mission Bay Park Master Plan envisions a complete pedestrian access pathway around the bay as a future goal; access through Sea World may itself be an issue when the lease is renewed but for now, the Commission finds that

adequate lateral and vertical access is available to serve the demonstrated needs of the public in this area of Mission Bay Park, as specifically required in Section 30604(c) of the Coastal Act. The existing lease between the City and applicant is not up for renewal until 2033; however, current negotiations between these two parties addressing a potential lease expansion could generate a lease amendment, which could then result in the designation of a new renewal date. Since the Commission is not party to these negotiations, it is not known how the subject of improved public access to the shoreline in this area of the park is being addressed. However, the Commission may appropriately consider public access needs in any proposed expansion of the Park when future development requests might go forward.

Another issue of concern to the Commission is traffic circulation, since many of the same access routes that serve Sea World also serve other areas of Mission Bay Park and the oceanfront communities of Mission Beach, Ocean Beach and Pacific Beach. Sea World Drive and Ingraham Street serve as major coastal access routes for these areas and are the only public roadways serving Sea World. Traffic circulation along these streets has been a problem in the past and may worsen in the future with additional regional growth. The lease between Sea World and the City of San Diego calls for phased traffic improvements based on expected increases in attendance at the park over time. In the 1986 Sea World Master Plan update, improvements to Sea World Drive and Sea World Way intersections were required to occur when attendance levels reached 3.6 million, but were actually implemented several years before attendance had reached that point. The next improvements are not required until attendance reaches 4 million, which is projected by the applicant to occur within the next few years.

In 1992, the Commission approved the relocation of the Sea World entryway from Sea World Drive to Perez Cove Way, and the reconfiguration of all on-site parking lots. These improvements were completed just prior to Memorial Day weekend, 1993, and have improved the prior congested traffic situation on Sea World Drive by providing on-site queue space for 485 vehicles. Although these improvements may ultimately eliminate or modify the need for some or all of the mitigations outlined in the 1986 Sea World Master Plan update, the lease still uses total yearly attendance to determine the need for such improvements. However, use of annual attendance figures may not be the most efficient way to plan for future traffic improvements, particularly in light of the relocated entryway.

Sea World typically applies for coastal development permits on at least an annual basis to accommodate any number of minor improvements and renovations within the park, along with the occasional major new facility or attraction, such as a recent proposal for a new water ride/restaurant feature. With any major improvements, the question of traffic circulation arises. The subject development, however, which consists of a temporary structure to accommodate a new summertime show within an existing show venue, is not considered to be a major improvement of the type that would significantly increase park attendance. Thus, no additional requirements with respect to traffic circulation are recommended at this time.

With respect to the adequacy of on-site parking, Sea World currently provides a total of 8,350 parking spaces for visitors, staff and employees; parking spaces have not been specifically allocated for individual uses, but most employee parking occurs in the lots nearest the administrative facilities. In addition to serving Sea World itself, the existing parking facilities have also served the needs of Hubbs Research Institute personnel as well. The Hubbs facilities, which include laboratories, aquaculture tanks, and associated research and administrative functions, are currently housed in the old Atlantis Restaurant building, as approved in Coastal Development Permit #6-93-86.

Under that permit, 77 spaces in the "Atlantis" lot were designated for use by Hubbs; the remainder of that lot, and all other on-site parking facilities, are used by Sea World patrons and employees. Although it is difficult, if not impossible, to accurately analyze exactly how much parking a theme park such as Sea World normally requires, there is no indication that on-site parking facilities have ever been inadequate. Even when queuing problems on adjacent public streets occurred in the past (before the new entryway system), there was always adequate vehicle storage capability within the existing parking lots; in addition, the recent parking lot reconfiguration resulted in a significant increase in the actual number of parking spaces, increasing from around 6,000 spaces to over 8,000 spaces total. Moreover, the Sea World parking lots have been identified in past coastal permits for some Mission Bay Park events (summer concerts and America's Cup for example) as a reservoir for overflow/remote parking. Since the subject temporary improvements are not expected to significantly increase park attendance, existing parking facilities on-site should continue to be adequate.

In summary, the Commission finds that adequate vertical and lateral access exists around the Sea World leasehold for the currently demonstrated needs of visitors to this portion of Mission Bay Park. The proposed temporary improvements are entirely within Sea World's existing leasehold, which includes both land and water areas. In addition, the on-site parking reservoir has recently (1993) been augmented through parking lot reconfiguration, and continues to be adequate for the facility's needs to date. When yearly attendance exceeds 4,000,000, this issue may be reconsidered, both by the City and the Commission; however, the proposed development is not expected to significantly alter yearly attendance. As conditioned to address other concerns, the Commission finds the proposal consistent with all of the public access policies of the Coastal Act.

4. Water Quality. The following Coastal Act policies addressing water quality are most applicable to the subject proposal, and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored...Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters....

Section 30231

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....

Over the years, concerns have been raised regarding Sea World's land and water operations with respect to maintaining optimum water quality. In particular, the manner in which surface runoff from the parking lots is discharged has been raised as a significant issue. The proposed project is not a major new attraction, but only construction of a temporary structure within an existing show stadium. This development is not anticipated to generate noticeably increased attendance at the theme park, and thus will not increase use of the parking lots to any significant degree. Moreover, the proposed development does not involve modifications to any of Sea World's existing water treatment, collection or discharge facilities. Therefore, as conditioned to address other concerns, the Commission finds the proposed development consistent with the cited policies of the Coastal Act.

5. Visual Impacts. Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and for the compatibility of new and existing development. All of Mission Bay Park is a highly scenic public recreational resource, such that protection and enhancement of visual amenities is a critical concern in any proposed development in the park. The new facilities are located within, but along the perimeter of, the existing Sea World leasehold, in the northwestern area of the theme park. The temporary scaffolding structure will be visible from Fiesta Island, the Ingraham Street Bridge and the waters of South Pacific Passage.

The proposed structure exceeds the normally-applied thirty-foot height limit for projects west of I-5 in the City of San Diego. This height limit has been applied to all new, permanent construction at Sea World since the voters passed Proposition D in 1974, establishing the limit. However, some older structures in Sea World exceed thirty feet in height, including a restaurant adjacent to the Ski Stadium, which is forty feet tall. In addition, Sea World's aerial tramway passes just to the north of the subject site, and is 100 feet tall; also many existing trees in the area exceed the height of the proposed structure. Thus, although the proposed structure will be taller than many nearby facilities, there are other existing trees and structures as tall or taller, such that the proposed facility will not be visually prominent from the identified vantage points.

Although no new permanent structures would be approved inconsistent with the City's ordinance, the City makes exceptions for temporary structures such as that proposed, and those approved recently for the X-Games, also in Mission Bay Park. The Commission has found it appropriate to make similar exceptions in past approval of temporary facilities in Mission Bay Park. Cranes associated with America's Cup venues exceeded the height limit, as do two of

the structures used in the X-Games last year and upcoming this June. The proposed scaffolding structure will be constructed in mid-May and removed by the end of September, being in place for a total of four and a half months, longer than the X-Games improvements but shorter than those associated with the America's Cup, which were on-site for more than a year. As a temporary facility, the Commission finds the proposed development generally compatible with the surrounding existing development, with no permanent adverse effect on the existing scenic coastal area, consistent with Section 30251 of the Act.

6. Local Coastal Planning. Section 30604 (a) also 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. Such a finding can be made for the subject proposal, as conditioned.

Mission Bay Park is primarily unzoned, but this particular part of the park carries an underlying base zone of R1-5000, a single-family residential designation. However, Mission Bay Park as a whole is a dedicated public park, and Sea World is designated as a Lease Area in the presently-certified Mission Bay Park Master Plan (land use plan). Since this is a land use document only, permit jurisdiction remains with the Coastal Commission, pending certification of an implementation program for Mission Bay. However, it appears that much of Mission Bay Park, which is primarily constructed on filled tidelands, will remain in the Coastal Commission's area of original permit jurisdiction, where Chapter 3 of the Coastal Act is the standard of review.

The proposed development is consistent with the designation in the Mission Bay Park Master Plan and, as conditioned, has been found consistent with all applicable Chapter 3 policies of the Coastal Act. No modifications to Sea World's lease with the City of San Diego, or other local discretionary actions, are required as a result of the improvements proposed herein. Therefore, the Commission finds that approval of the project, as conditioned, should not prejudice the ability of the City of San Diego to prepare a fully-certifiable LCP for its Mission Bay segment.

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

As discussed herein, with the attached conditions, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned and as a temporary use, has been found consistent with the public access and recreation, biological resource and visual resource policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse

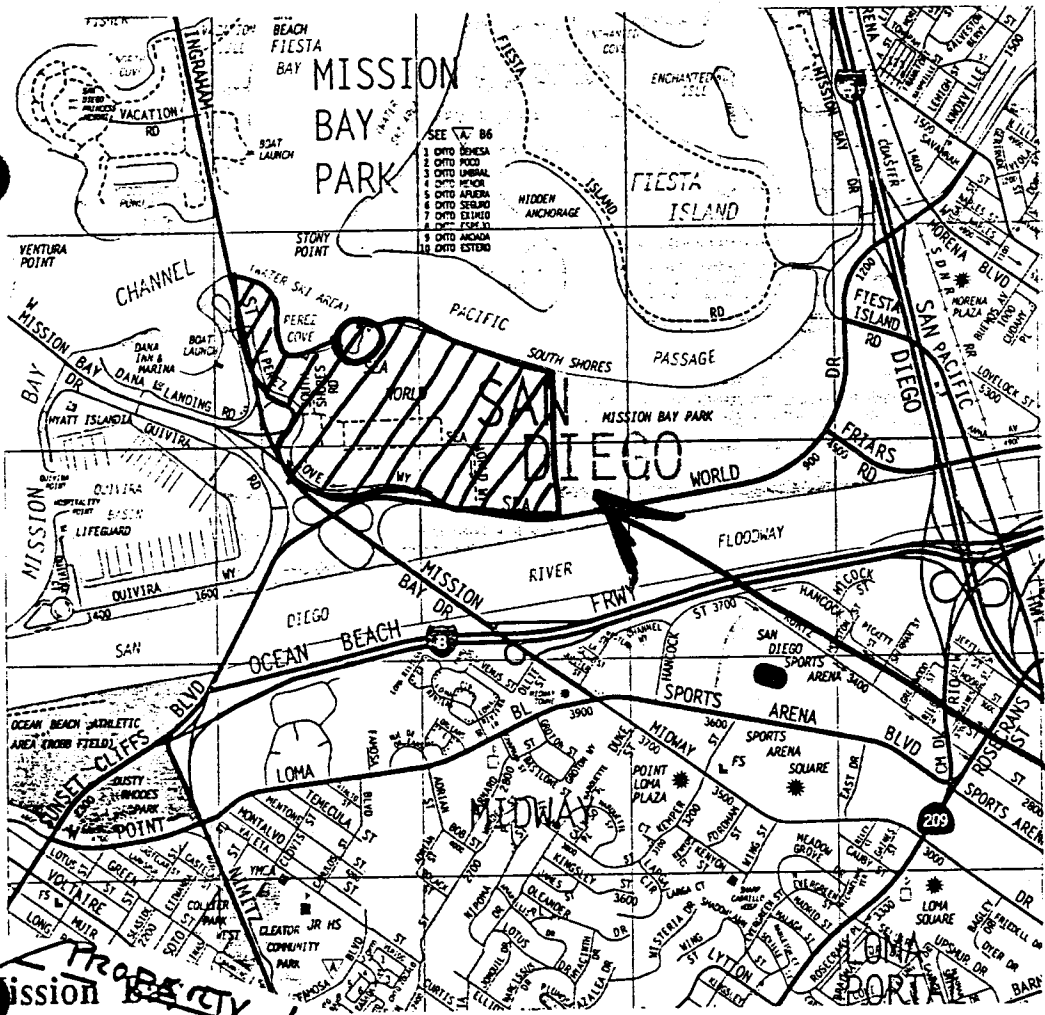
impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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 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. Compliance. All development must occur in strict compliance with the proposal as 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 development during construction, 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.

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Site

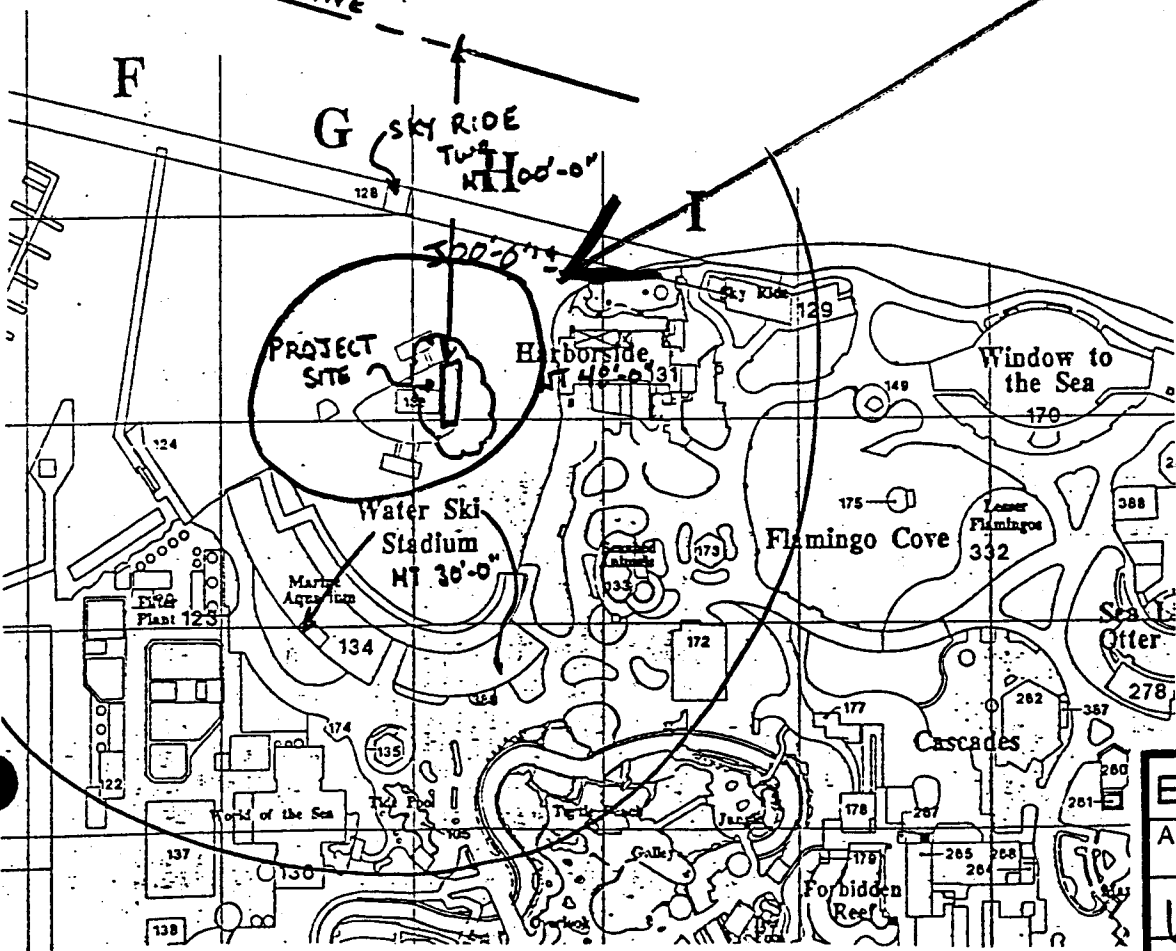
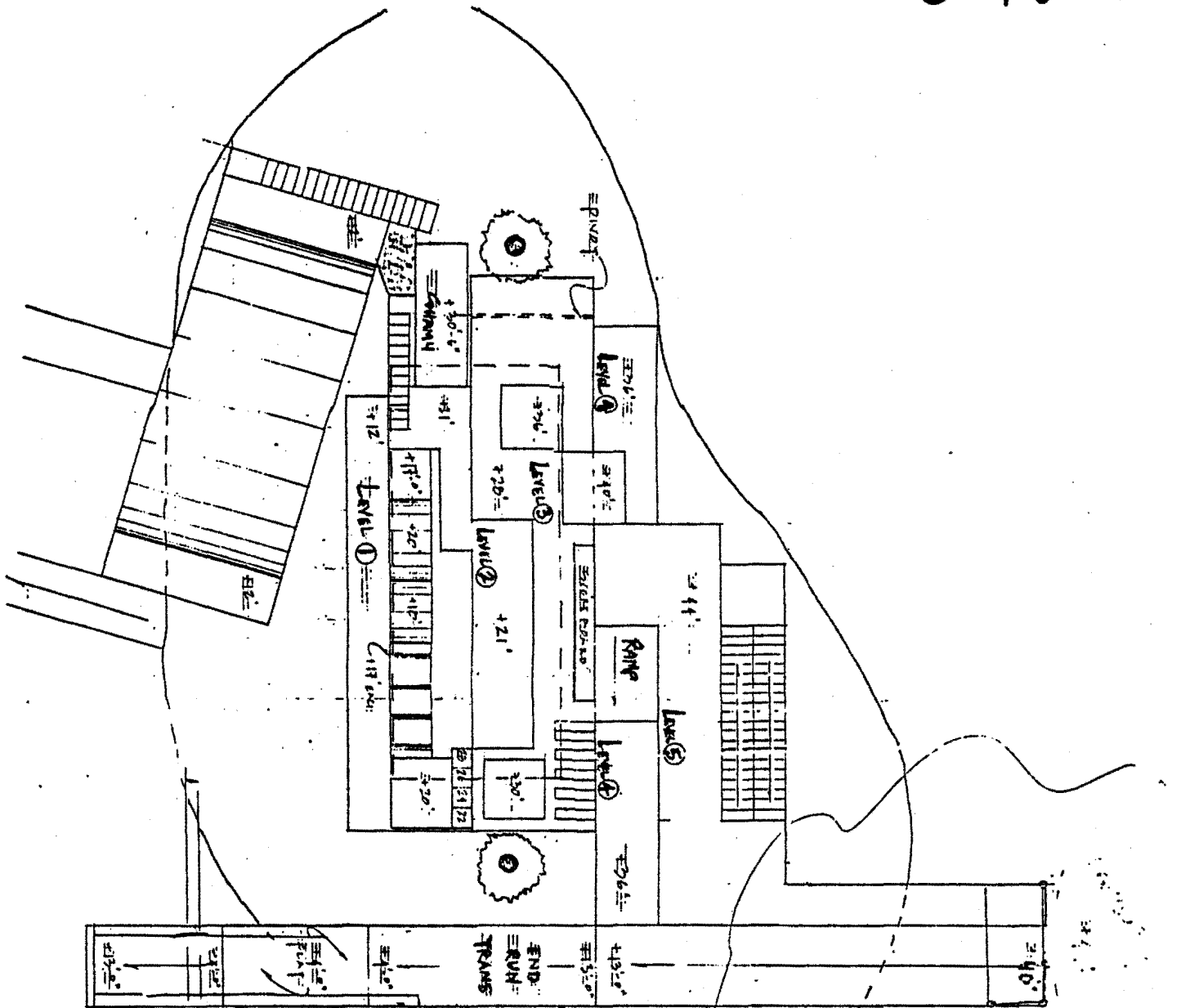


EXHIBIT NO. 1
 APPLICATION NO.
 6-98-43
 Vicinity Maps

6-98-43



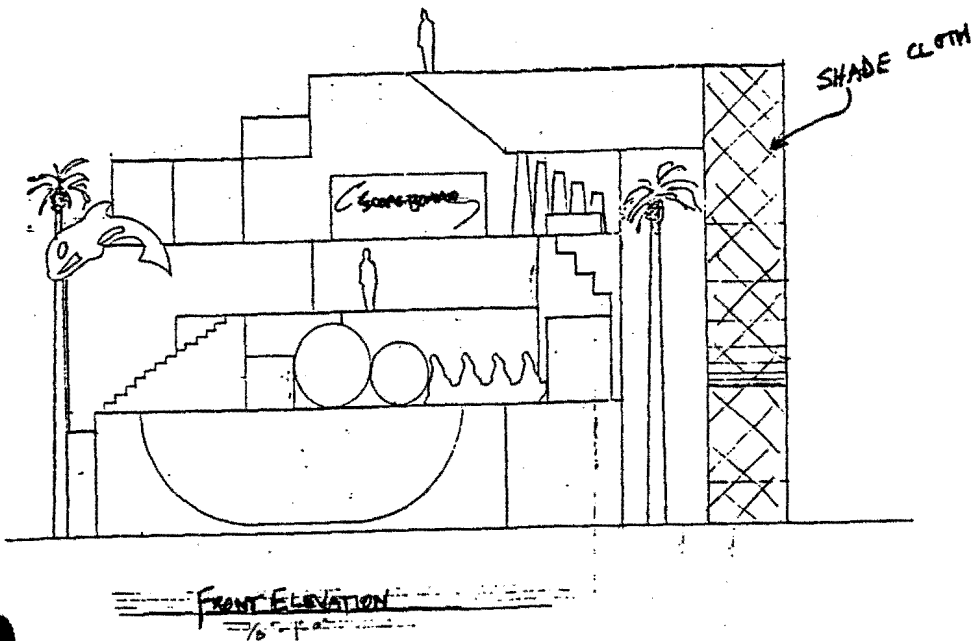
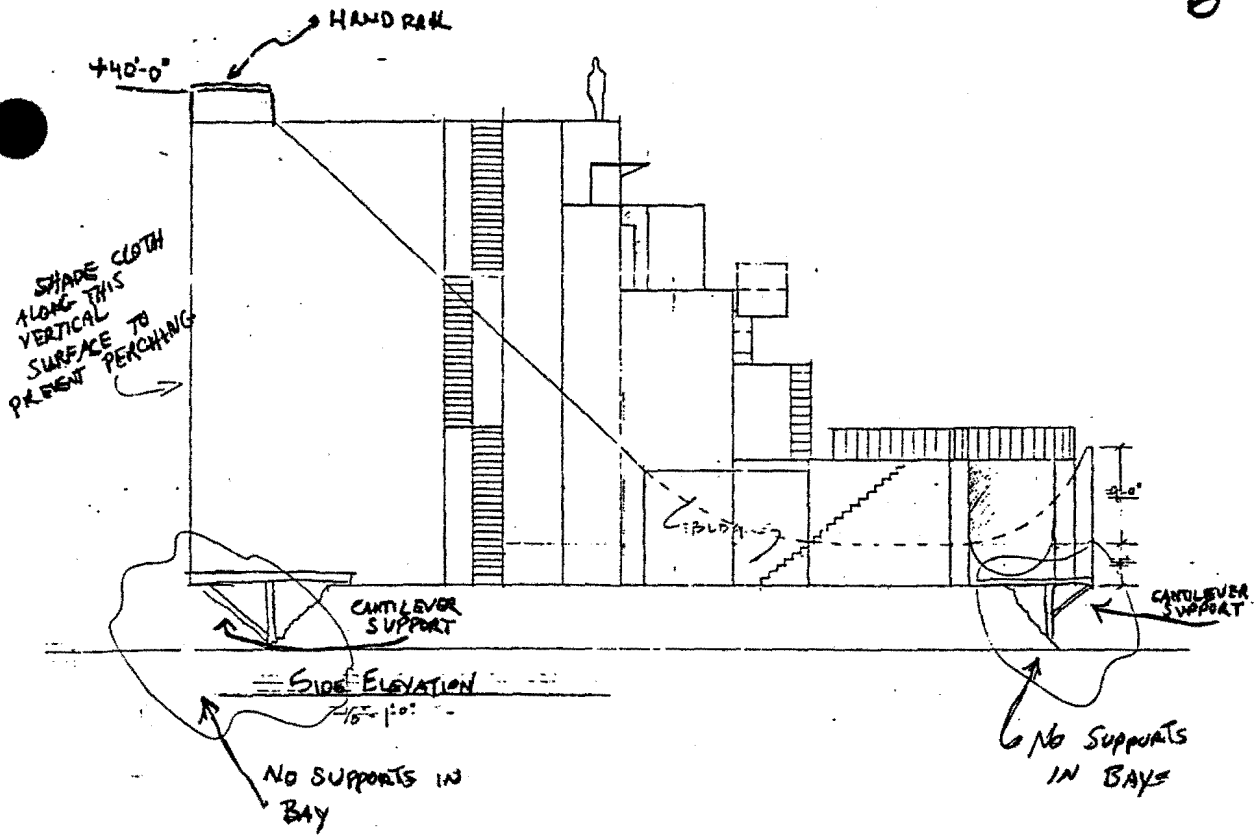
SCAFFOLDING STRUCTURE
 (ALL OPEN AREAS TO BE
 COVERED W/ SAND CURT
 TO PREVENT BIRD
 PERCHINGS)

APPROX. TOP OF RIP-RAP



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| EXHIBIT NO. | 2 |
| APPLICATION NO. | 6-98-43 |
| Site Plan | |

6-98-43



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| EXHIBIT NO. 3 |
| APPLICATION NO. 6-98-43 |
| Elevations |
| California Coastal Commission |