

## CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
 700 Ocean Gate, 10th Floor  
 Newport Beach, CA 90802-4302  
 (562) 590-5071



W9d

Filed: 05-06-98  
 49th Day: 06-24-98  
 180th Day: 11-02-98  
 Staff: RMR/LB RMR  
 Staff Report: 05-15-98  
 Hearing Date: June 9-12, 1998  
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-21

APPLICANT: Gary Smith, Craig Combs and Brian Ray AGENT: Shellmaker, Inc.

PROJECT LOCATION: 2227, 2231 and 2233 Bayside Drive, Newport Beach,  
 Orange County

PROJECT DESCRIPTION: Sawcut the existing 12 inch wide seaward wall footing, reinforce the existing landward wall footing, and install a four foot high (one foot three inches above bay grade), 7 inch wide and 120 foot long sheet pile directly seaward of the existing wall. No fill of open coastal waters is proposed. The voids created by erosion and undercutting in the rear yards landward of the retaining wall/seawall will be filled.

Lot area:	NA
Building coverage:	NA
Pavement coverage:	NA
Landscape coverage:	NA
Parking spaces:	NA
Zoning:	NA
Plan designation:	NA
Project density:	NA
Ht abv fin grade:	NA

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of Newport Beach Fire and Marine Department, approval from the Regional Water Quality Control Board

## SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Land Use Plan, Coastal Development Permits 5-97-223 (Shea/Albert), 5-96-045 (2231 Bayside Dr., De Minimis Waiver), and 5-93-283 (2227 Bayside Dr., Consent Calendar)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with special conditions concerning placement of construction materials and assumption of risk. Staff contacted the agent for the applicants and informed them of the special conditions. There are no known objections at this point.

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 applicants 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 high tides 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. Construction Responsibilities and Debris Removal

The applicants agree not to store any construction materials or waste where it is subject to wave erosion and dispersion. The permittee shall remove from the beach and retaining wall/seawall area any and all debris resulting from construction. In addition, no mechanized equipment is allowed seaward of the retaining wall/seawall at any time.

### IV. Findings and Declarations

The Commission hereby finds and declares:

#### A. Project Description

The applicants are proposing to repair an existing retaining wall/seawall (hereinafter referred to as "wall") by sawcutting the existing 12 inch wide wall footing, reinforcing the existing landward wall footing, and installing a four foot high (one foot three inches above bay grade), 7 inch wide and 120 foot long sheet pile directly seaward of the existing wall (see Exhibit 2). No filling of the bay is proposed. The applicants will fill voids created by bay erosion and undercutting in the rear yards landward of the existing wall.

The development site is located on Bayside Drive on the southernmost portion of Newport Bay (see Exhibit 1). The proposed development occurs across three lots, developed with docks, piers and single-family residences. There is an existing retaining wall which functions as a seawall. The existing wall is 120 feet long, approximately 4 feet deep and extends out approximately 17 inches, including the one foot wide footing.

During the recent winter storms bay water infiltrated under the wall footing and removed soil, creating voids in the patio and back yard areas of the three lots, particularly lots 2227 and 2231 Bayside Drive.

Permits have previously been issued by the Commission for development at the three parcels. Coastal Development Permit 5-93-283 (Lindborg, 2227 Bayside Drive) was a Regular Calendar permit approved by the Commission for the demolition of an existing residence and the construction of a new 3,014 square foot single-family residence and 430 square foot garage. There were no special conditions. Coastal Development Permit 5-96-045 (Combs, 2231 Bayside Drive) was approved as a Regular Waiver for the addition of 905 square feet to the landward side of the second floor of an existing single-family residence.

## B. Marine Resources

### 1. Shoreline Protective Devices

Section 30235 of the Coastal Act states:

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

Section 30253 of the Coastal Act 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.

### 1. Existing Situation

Each of the three lots has a single family residence and a dock and pier extending out into Newport Harbor. The proposed development consists of repairs to an old retaining wall which functions as a seawall as well. The existing wall extends across three lots developed with single-family residences and is 120 feet long, approximately 4 feet deep and extends out approximately 17 inches, including the one foot wide footing. Area residences either have walls or sandy beach on the bay front. Winter storm high tides eroded soils from out under the wall resulting in damage to rear yards and patios at 2227 and 2231 Bayside Drive. The rear yard at 2227 Bayside Dr. shows several areas of erosion where high tides have completely removed soil to a depth of four to five feet and inland to upwards of 10 feet. The residence at 2231 Bayside Dr. has a concrete patio adjacent to the wall. Dirt was eroded from underneath the slabs, leaving the patio completely unsupported in places. On the seaward side of the wall the footing is completely exposed and bay water can easily infiltrate under the wall. Rear yard patios and the wall itself are at risk from high tides and erosion.

## 2. Proposed Development

The applicant is proposing to sawcut the one foot wide footing at the base of the wall. Next the applicant will place a fiberglass sheet pile next to the wall extending approximately three feet into the bay bottom. The sheet pile will extend out a total of seven inches from the existing wall. The applicant will then enlarge the footing of the wall on the landward side and fill the voids created by high tide erosion.

The plans were designed and approved by a registered civil engineer. The applicant originally proposed to place the sheet pile adjacent to the wall footing and then backfill behind it, triggering the requirement for a Coastal Act Section 30233 analysis regarding fill of open coastal waters. The applicant then considered a range of options including removing and replacing the wall in its existing location and the option of sawcutting the footing and placing the sheetpile directly against the wall. The applicant changed the project description in favor of sawcutting the footing and placing the sheet pile against the existing wall.

## 3. Coastal Act Analysis

Section 30235 of the Coastal Act stipulates that shore protection structures which alter shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion. The existing wall does not serve coastal-dependent uses but is necessary to protect existing structures, i.e. patios, rear-yard decks and ultimately the residences. The existing wall is in place and was constructed prior to passage of the Coastal Act. The proposed development does not increase the length, size, height or location of the existing wall. The original project included a design which resulted in the fill of open coastal waters because the sheet pile would have been situated seaward of the footing (see Exhibit 2, top right corner or Exhibit 4). The area between the sheet pile and the wall footing would have been filled with concrete. The project has been redesigned so that the seaward portion of the existing footing will be removed and the sheet pile will be placed directly against the existing wall instead of seaward of the footing (see Exhibit 3). The proposed development is designed to protect the footing of the wall from seaward erosion during high tides and prevent high tides from eroding soils behind the wall, destabilizing the wall itself, and endangering existing structures.

The existing footing of the wall extends out approximately one foot. Once the footing is cut away, the new sheet pile will extend out seven inches from the wall (see Exhibit 3). Therefore, no fill of open coastal waters is required. The Commission has approved many similar seawall situations (i.e., reinforcing the footings) in Newport Beach and Huntington Beach. Many of the homes constructed in the 1940's and 1950's have seawalls which are substandard by today's construction standards. The recent El Nino storms have exposed the weaknesses inherent in many of the older seawalls.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, assure structural stability and neither create nor contribute significantly to erosion. The proposed development consists of improvements to an existing retaining wall or seawall designed to prevent bay water from infiltrating under the wall footing and eroding soils from the rear yards of existing

residences (landscaped or patios). The proposed development will protect existing property and will not create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding area. Any adverse effects on adjacent properties would have been created by the installation of the original wall. No additional adverse effects would be created by reinforcing the footing of the existing wall. The proposed development does not increase the length, size, height or location of the existing wall.

The site is located in the southernmost portion of Newport Bay. The bay entrance is protected by the East and West jetties. However, the necessity for reinforcing the wall and the evidence of existing damage confirms that the existing development is subject to coastal tidal erosion resulting in damage to the properties. Staff conducted a site visit and saw the nature and extent of the erosion, which was considerable.

The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his/her property. The Commission finds that due to the unforeseen possibility of flooding and erosion, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicants' assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. Only as conditioned can the Commission find the proposed development consistent with Section 30253 of the Coastal Act. Therefore, the Commission finds that the proposed development will protect the existing wall and rear yard structures from further erosion and damage and is consistent with Sections 30253 and 30235 of the Coastal Act.

## 2. Marine Habitat

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The subject site is located on the southernmost portion of Newport Bay. Except at high tide, the site is not underwater. Some of the lots along this stretch of bay do not even have bulkheads or seawalls. The wall across the three lots was not designed as a seawall but does operate as one during high tides. Eelgrass, a sensitive marine plant which provides valuable, high quality habitat for a variety of sensitive species, is not found at the site.

There are no special species of biological or economic significance at the site.

The applicant has provided approval from the Regional Water Quality Control Board and review by the Army Corps of Engineers. However, implementation of the proposed development does involve construction at or near the tidal zone. In order to prevent adverse impacts to marine waters from construction special condition two requires that the applicant store any construction materials landward of the wall, remove any and all construction debris seaward of the wall and not place any machinery in the tidal zone. As conditioned, the Commission finds that the proposed development conforms with Section 30230 of the Coastal Zone.

C. Public Access/Recreation

The proposed development is located on Newport Bay between the sea and the first public road. All development located between the sea and the first public road must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act.

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 proposed development is located across three single-family residential lots in the southernmost portion of Newport Bay. There is no public access to the bay across the site. There are several opportunities for public access to the coast located near the proposed development. Bayside Drive County Beach is accessible via the Orange County Sheriff/Harbor Patrol Bureau located about a half mile to the northwest of the proposed development. This area also allows the launching of small boats by the public. In addition, a street end located less than 400 feet to the southeast of the proposed development offers

an overlook to the harbor.

The closest public beach and access is located at the Harbor Master and Coast Guard site.

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.

D. 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).

E. 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)(A) 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 effect which the activity may have on the environment.

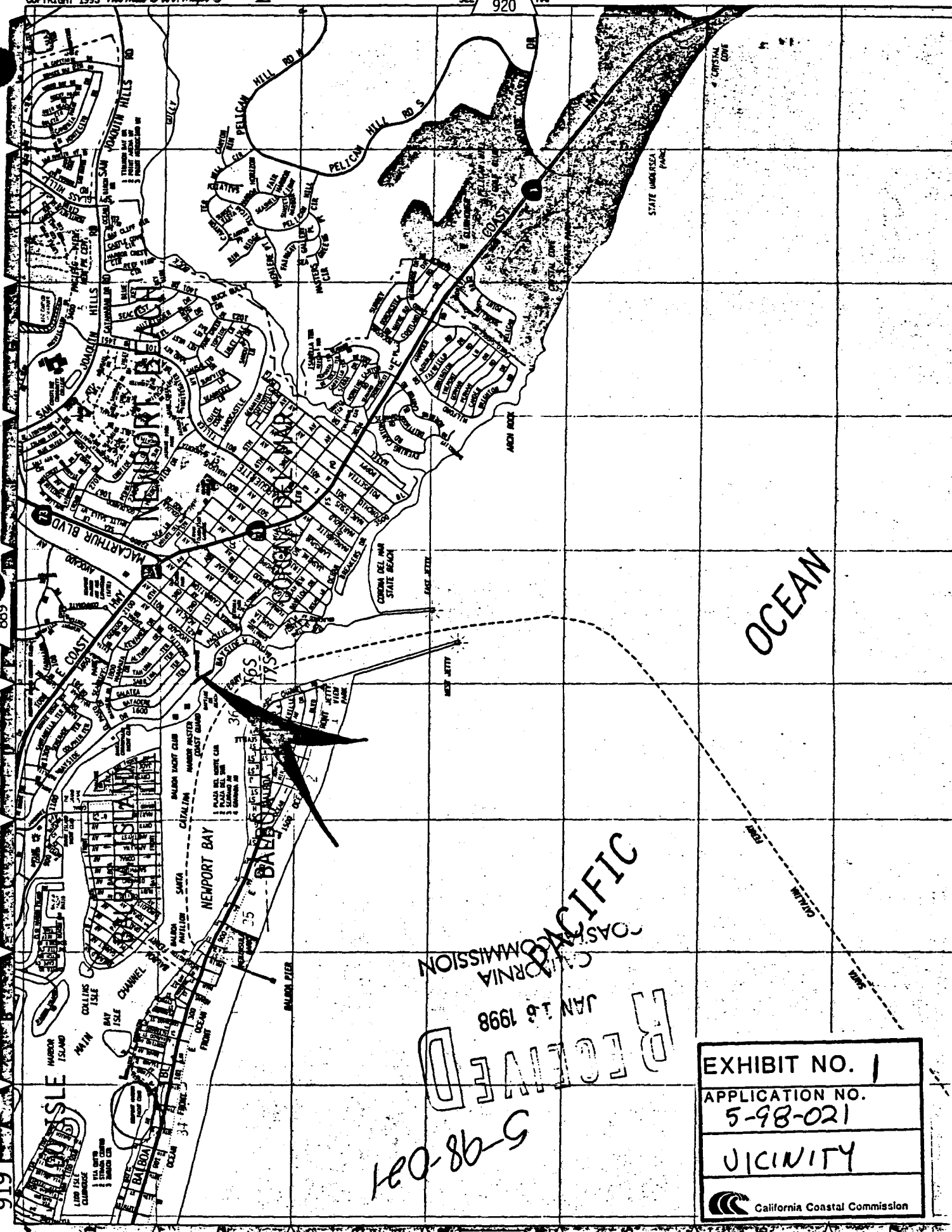
The proposed project has been conditioned in order to be found consistent with the geologic hazards policies and marine resource protection policies of the Coastal Act. Mitigation measures; submittal of an assumption of risk deed restriction and a condition regarding removal of construction debris, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, 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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SEE 889

919

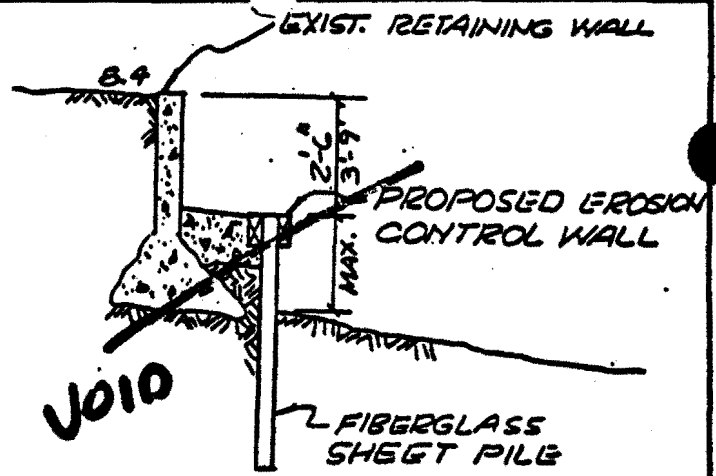
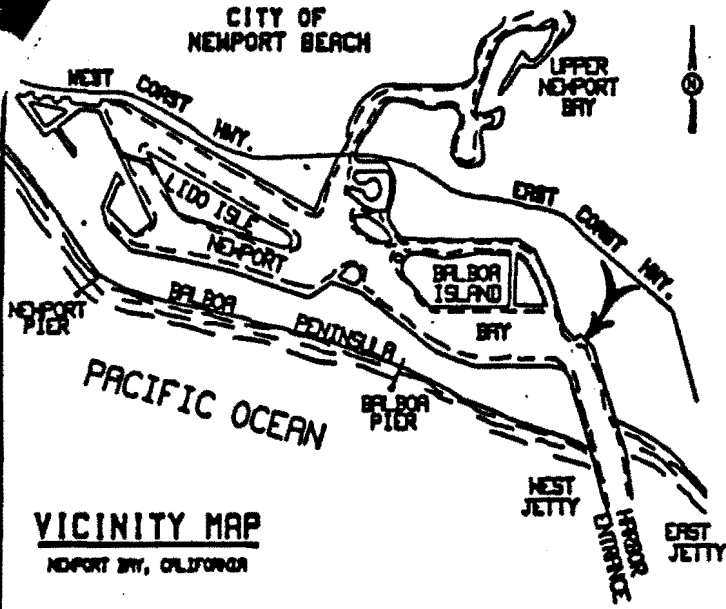


RECEIVED  
 JAN 16 1998  
 CALIFORNIA COASTAL COMMISSION

5-98-021

EXHIBIT NO. 1
APPLICATION NO. 5-98-021
VICINITY
California Coastal Commission

**CITY OF NEWPORT BEACH**



**PROFILE 1" = 4'**

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

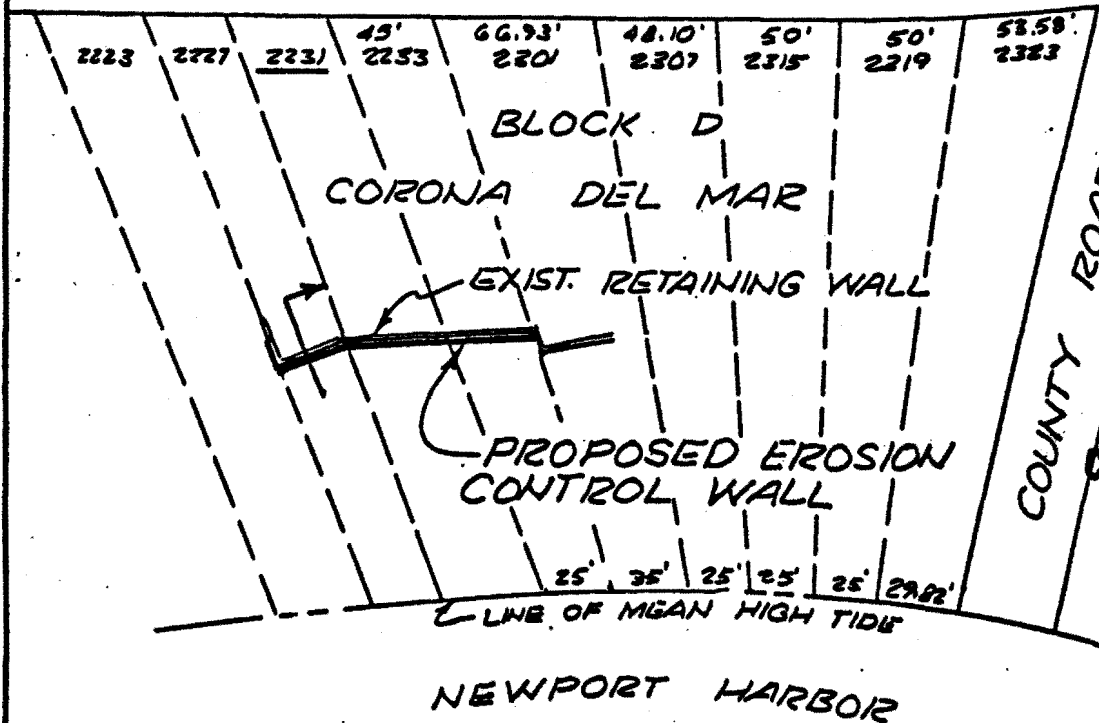
South Coast District Office

APPROVED Permit No. **5-98-021**

By: \_\_\_\_\_

EFFECTIVE Date: \_\_\_\_\_

**BAYSIDE DRIVE**



**FIRE & MARINE DEPT.**  
**CITY OF NEWPORT BEACH**

*Tony Nelson*  
12/15/97

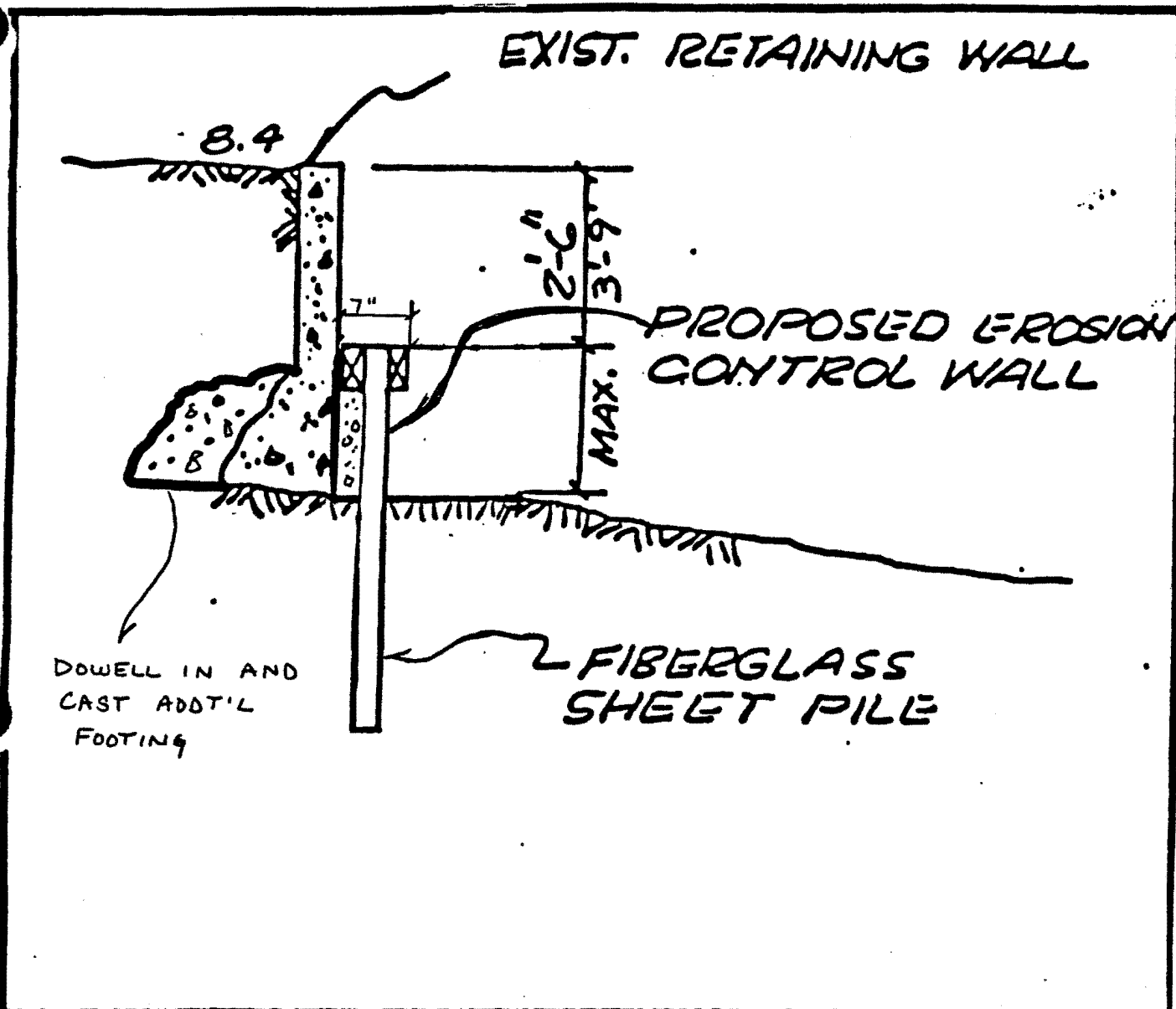
**EXHIBIT NO. 2**

APPLICATION NO.  
**5-98-021**

**SITE PLAN**

APPLICANT'S NAME **CRAIG COMBS**


JOB ADDRESS **2231 BAYSIDE DR.**

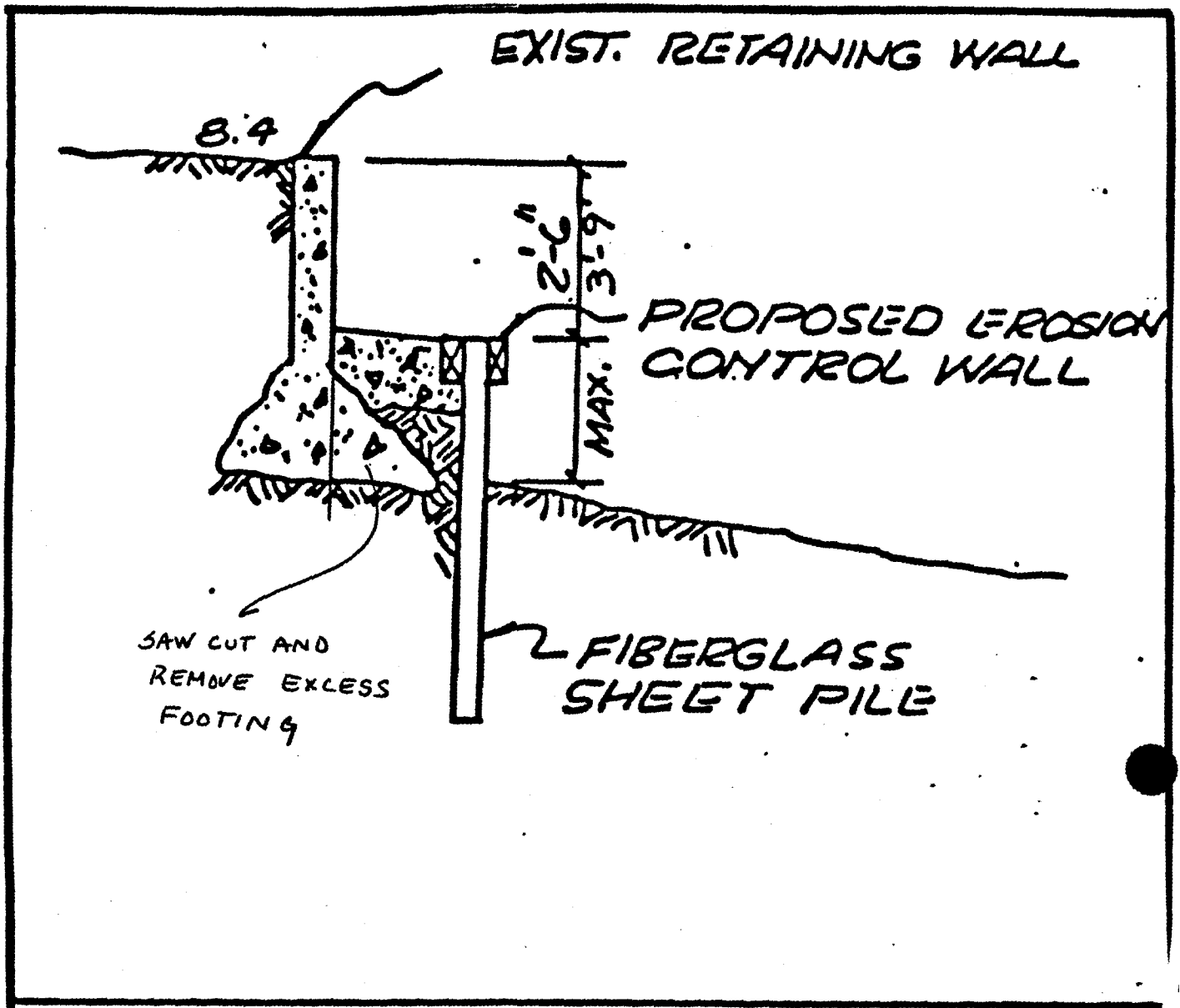


SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

Coastal Development Permit #5-98-021

Modified Proposal

EXHIBIT NO. 3
APPLICATION NO. 5-98-021
CROSS-SECTION
 California Coastal Commission



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

Coastal Development Permit #5-98-021

Original Proposal (with reference to sawcutting for Modified Proposal shown)

EXHIBIT
APPLICATION
5-98-
OR
Californ

EXHIBIT 4

# shellmaker inc.

April 24, 1998

California Coastal Commission  
South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302

RECEIVED  
APR 27 1998  
CALIFORNIA  
COASTAL COMMISSION

Re: Coastal Development Permit #5-98-021

Attn: Robin Maloney-Ramos

Dear Mr. Maloney-Ramos,

I am writing in response to your letter pertaining to the site visit on March 31, 1998. My clients are trying to come up with a reasonable repair that will protect the existing patios and flat work from further damage. The original concept that we submitted to you would accomplish this aim with very little risk to the existing structures. However, we have reviewed your letter and realize that there are restraints that your department must work within.

My clients are anxious to come up with a solution that will satisfy the Coastal Commission's requirements as well as minimize the damage that they have incurred. We have reviewed the project with the project engineer and we now propose the following:

- Sawcut the existing footing on the seaward side to make it flush with the existing wall.
- Move the erosion control wall back so that the inshore water is flush with the existing wall.
- Dowel in and cast a larger footing on the inshore side of the existing wall.


In changing the parameters of the project, the erosion control wall will protrude about 7" from the seaward face of the garden wall. This is actually 5" less than the existing footing which at its base actually extends seaward out about 12" from the seaward face of the existing wall.

It does increase the risk of losing the existing structures during construction, but we feel that if we exercise extreme caution and use additional shoring that we will be able to accomplish this compromise. I have enclosed conceptual drawing which illustrate what we are proposing. If you have any questions, please feel free to contact me.

Sincerely,

*Lisa E. Miller*

Lisa E. Miller  
President

EXHIBIT NO. 5
APPLICATION NO. 5-98-021
LETTER REVISING PROJECT
 California Coastal Commission

# shellmaker inc.

May 6, 1998

California Coastal Commission  
South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302

RECEIVED  
MAY 8 1998

CALIFORNIA  
COASTAL COMMISSION

Re: Coastal Development Permit #5-98-021

Attn: Robin Maloney-Ramos

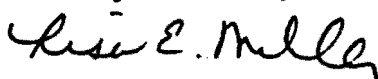
Dear Mr. Maloney-Ramos,

Following up on our telephone conversation this morning I would like to confirm that the changes to the above referenced project in my letter to you dated April 24, 1998 are acceptable to your office. As I stated before, this method adds a substantial amount of risk to the project but we feel that we exercise extreme caution in construction to mitigate the risk. This option will accomplish the aim of deepening the footing to prevent erosion in the future as well as protect the existing structures. The only other option is complete replacement which, as you and I have discussed, we have sought to avoid.

The proposed project as modified will also preclude the need for any mitigation. I am sending a copy of this letter as well as our past correspondence to Priya Finnermore at the Army Corps of Engineers so that she can modify her permit. I spoke to Priya this morning and she really need to hear from your office so that she can process the paperwork on her end. I would appreciate it if you could give her a call at (213) 452-3402.


Thank you for your help on this project. You mentioned to me this morning that you are trying to get this on the June calendar. Please send me the permit notices and I will have them posted at the jobsite.

Sincerely



Lisa E. Miller  
President

cc: Priya Finnermore  
Craig Combs (for distribution)

EXHIBIT NO. 6
APPLICATION NO. 5-98-021
LETTER REGARDING PROJECT
 California Coastal Commission