

CALIFORNIA COASTAL COMMISSION

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Filed: January 26, 1999
 49th Day: March 16, 1999
 180th Day: July 25, 1999
 Staff: KFS-LB *8*
 Staff Report: February 18, 1999
 Hearing Date: March 9-12, 1999
 Commission Action:

RECORD PACKET COPY**STAFF REPORT: PERMIT AMENDMENT****AMENDMENT****APPLICATION NUMBER:** 5-97-023-A1**APPLICANT:** City of Newport Beach, Public Works Department**AGENT:** Dave Bartlett Associates**PROJECT LOCATION:** Within the right-of-way of Park Avenue between Jade Avenue and the east seawall, within the Jade Avenue right-of-way, and within adjacent alleys; Balboa Island, City of Newport Beach, County of Orange**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Relocation of the Section 5 Sewer Pump Station from the alleys east of Jade Avenue to Park Avenue east of Jade Avenue, including: construction of a reinforced poured-in-place concrete underground 850 gallon per minute wastewater pump station with wet well, valve and vault for housing pumps, electrical and telemetry controls and ventilation facilities; increasing the capacity of the pump station's wet well to 41,400 gallons; replacement of portions of sewer force mains, gravity sewer lines and manholes; demolition of the existing pump station and abandonment of existing facilities; repaving of street and alley surfaces; and 900 cubic yards of grading (cut).**DESCRIPTION OF AMENDMENT:** Construction of the previously approved development has been completed. The applicant is proposing to replace the existing pump station venting unit (constructed under CDP 5-97-023) with a 50 foot tall flagpole that will also function as a vent for the pump station. Construction will involve removal of some concrete road surface, trenching, subsurface placement of approximately 110 feet of 12 inch PVC pipe which will connect the pump station to the flagpole/vent, replacement of the concrete, and construction of an 8 inch high curb extension as the pad for the flag pole/venting unit. All construction will occur within the Park Avenue right-of-way.**LOCAL APPROVALS RECEIVED:** City of Newport Beach approval-in-concept dated December 11, 1998.**SUBSTANTIVE FILE DOCUMENTS:** Coastal development permit 5-97-023.**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed coastal development permit amendment with special conditions. The major issues of this staff report include public access and visual resources. Special condition one establishes that all prior conditions imposed by coastal development permit 5-97-023 remain in effect.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

STAFF NOTE:

The proposed development will occur in Spring 1999 (April and May) and take approximately 3-4 weeks to complete. The project will result in temporary impacts upon public access to the coast during construction. In addition, the proposed development will result in the placement of structures within a public viewing corridor. Therefore, since the amendment affects the project description and the development may affect public access to the coast and visual resources, the Executive Director has determined that the proposed amendment is a material change to coastal development permit 5-97-023.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** the amendment to coastal development permit 5-97-023, subject to the conditions below, for the proposed development 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 effects 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. Prior Conditions

Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-97-023 remain in effect.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Location, Background, and Amended Project Description

The proposed development is to occur within the City of Newport Beach right-of-way on Park Avenue between Jade Avenue and the east seawall on Balboa Island, in the City of Newport Beach, County of Orange (Exhibit 1 and 2).

Coastal development permit 5-97-023 approved the relocation of the Section 5 Sewer Pump Station from the alleys east of Jade Avenue to Park Avenue east of Jade Avenue. The development included construction of a reinforced, poured-in-place concrete, underground 850 gallon per minute wastewater pump station with wet well, valve and vault for housing pumps, electrical and telemetry controls, and ventilation facilities. In addition the development included increasing the capacity of the pump station's wet well to 41,400 gallons; replacement of portions of the sewer force mains, gravity sewer lines and manholes; demolition of the existing pump station, and abandonment of existing facilities; and repaving of the street and alley surfaces. Construction of the wet well required 900 cubic yards of grading (cut).

The applicant is proposing to replace the existing pump station venting unit (constructed under CDP 5-97-023) with a 50 foot tall flagpole that will also function as a vent for the pump station (Exhibit 3). Construction will involve removal of a portion of the concrete road surface, trenching, subsurface placement of approximately 110 feet of 12 inch PVC pipe which will connect the pump station to the flagpole/vent, and replacement of the concrete road surface. The flagpole will be placed at the end of Park Avenue, slightly off-center from the centerline of Park Avenue, within an 8-inch high curb extension that will flank the landward side of an existing public walkway. The existing walkway is a portion of the

continuous walkway that surrounds Balboa Island and is adjacent to the bulkhead. All construction will occur within the Park Avenue right-of-way and will not result in any permanent obstruction to the existing public walkway. Construction is expected to take approximately 3 to 4 weeks, beginning during the month of April 1999 and possibly continuing into the month of May 1999, depending on the start date.

Construction of the wastewater pump station approved by coastal development permit 5-97-023 has been completed. When operation of the facility began, residents objected to the odor exhausted from the new pump station and associated venting unit. The City investigated options and concluded that increasing the altitude at which the venting unit exhausted would mitigate the nuisance odor. Since the venting unit exhausted only a few feet above the roadway grade, the City connected a flexible hose to the vent, and ran the hose up the trunk of a nearby palm tree, thereby increasing the vent altitude from ground level to approximately 50 feet. This flexible hose was installed both as a temporary measure and to verify the City's presumption that increasing the altitude at which the venting unit exhausted would mitigate the nuisance odor. The applicant contends that the temporary measure was successful at mitigating the odor. The proposed project will use the same principle as the existing temporary measure, but will become an engineered exhaust stack that is part of the pump station but is disguised as a flagpole.

The proposed development requires an amendment to coastal development permit 5-97-023. However, the proposed amendment does not result in any change to previously imposed special conditions. Therefore, special condition one establishes that the previously imposed special conditions remain in effect.

B. Public Access/Parking

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30210 of the Coastal Act requires the protection of public access to the beach. An adequate quantity of public parking spaces maintains this access. The proposed development will occur within a public roadway that accommodates public parking. Trenching for placement of 110 feet of PVC pipe will temporarily affect approximately six public parking spaces during a 3 to 4 week construction period (Exhibit 3). Construction is anticipated to begin in the month of April and possibly continue into May 1999, depending on the start date of construction. However, parking will only be affected during daytime construction hours. In the evenings, metal plates will be placed over the trenches to allow use of the parking spaces.

In addition, the proposed development will occur adjacent to an existing public walkway and would involve temporary adverse impacts to public access by blocking vertical and lateral access to the walkway. These impacts will occur at the project site at the end of Park Avenue. However, vertical access to the walkway is available at the end of Jade Avenue, approximately 400 feet south of the proposed development and at the end of Balboa Avenue, approximately 450 feet north of the proposed development. In addition, the applicant proposes to provide detours and signage to redirect walkway users around the site when construction obstructs the walkway. Also, construction is planned to begin in spring (April) 1999, prior to the summer season when visitor use is highest. Finally, the subject site is in a

corner of the island away from the Marine Avenue commercial corridor, the island's main visitor-serving area.

The proposed development will result in temporary, construction related impacts upon public access. However, alternative access is available near the site, impacts will be construction related, temporary, and will not occur during a peak use period nor in a peak usage area. Upon completion of construction, no impediments to public access to the bay will remain. Therefore, the Commission finds the proposed development is consistent with the public access requirements of the Coastal Act.

C. Visual Resources

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 areas 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 development will result in the construction of a 50 foot tall flag pole within a public viewing corridor. The proposed flag pole will serve a dual function as a flag pole and as an exhaust for the wastewater pump station. The applicant has submitted materials that show the visual conditions of the site before and after construction of the proposed project (Exhibit 4). These renditions show that the use of the flag pole as an exhaust pipe will be disguised and will not be obvious to the casual observer. In addition, the proposed flag pole/venting unit will be constructed in an urban harbor and will be compatible with the nautical character of the surrounding areas. Therefore, the Commission finds the proposed development is consistent with section 30251 of the Coastal Act.

D. Land Use Plan

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

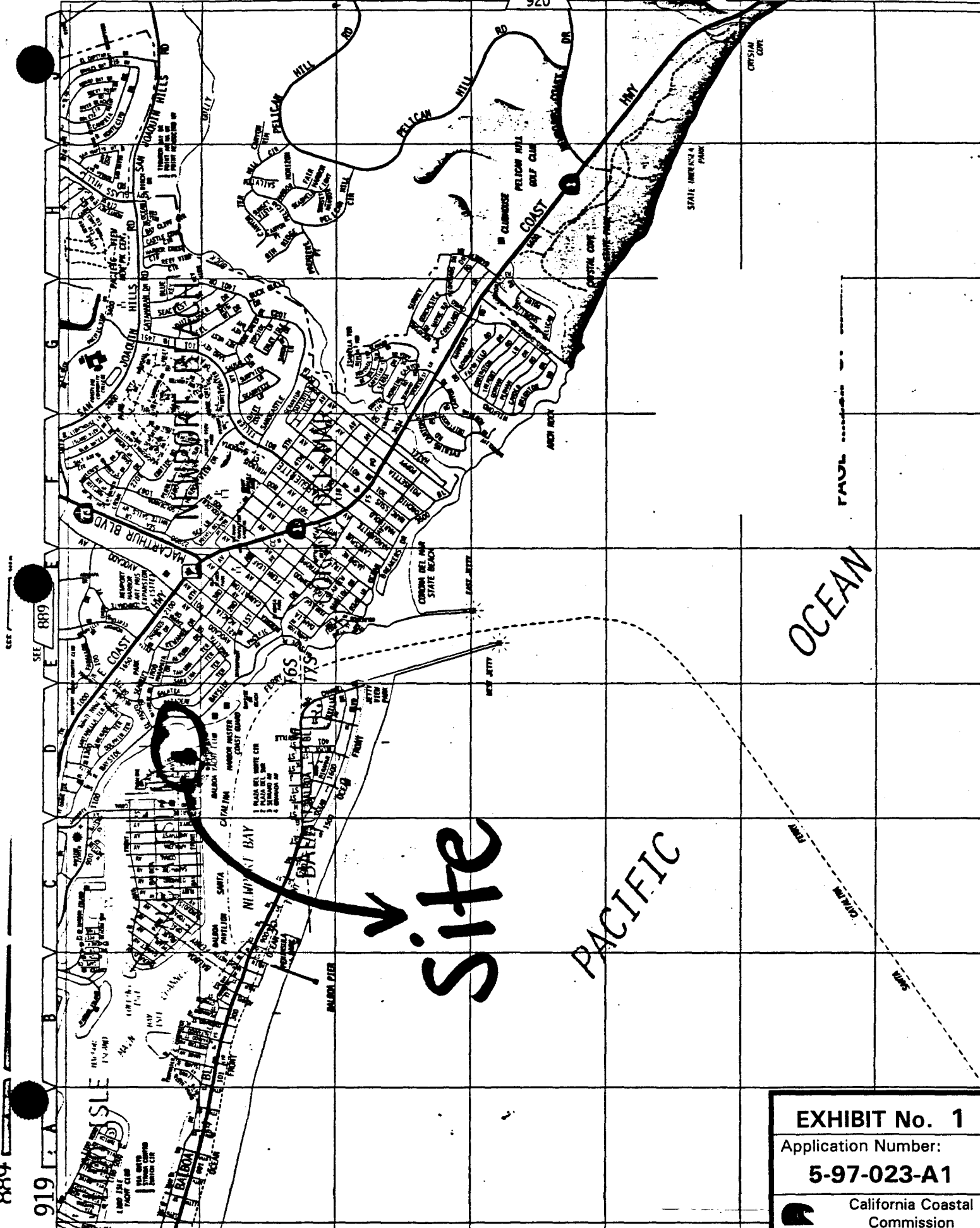
Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 is located in an urban area. All infrastructure necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the Chapter Three policies of the Coastal Act. Previously imposed special conditions will minimize any impacts to less than significant levels.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

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Site

PACIFIC

OCEAN

EXHIBIT No. 1
Application Number: 5-97-023-A1
California Coastal Commission

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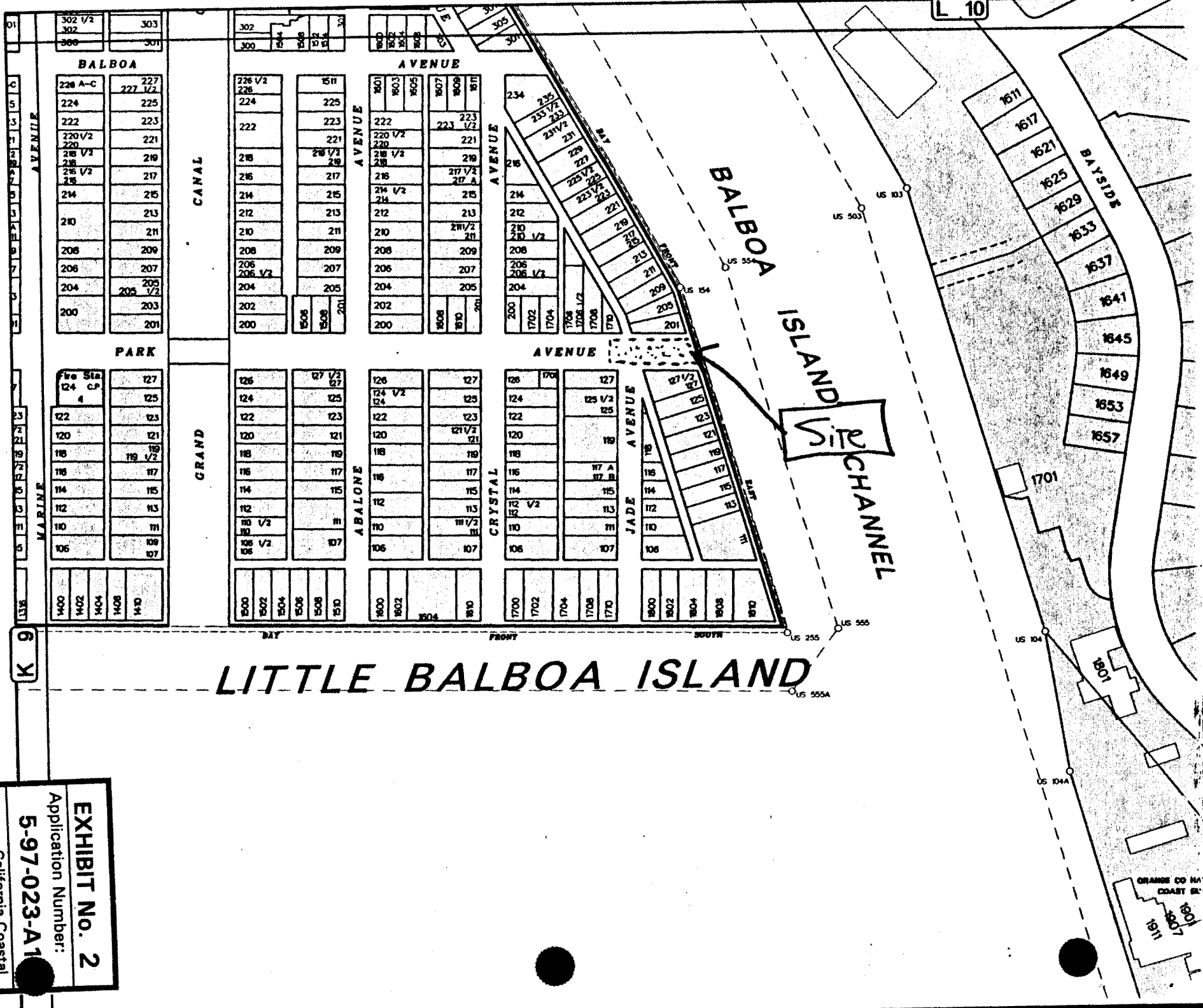
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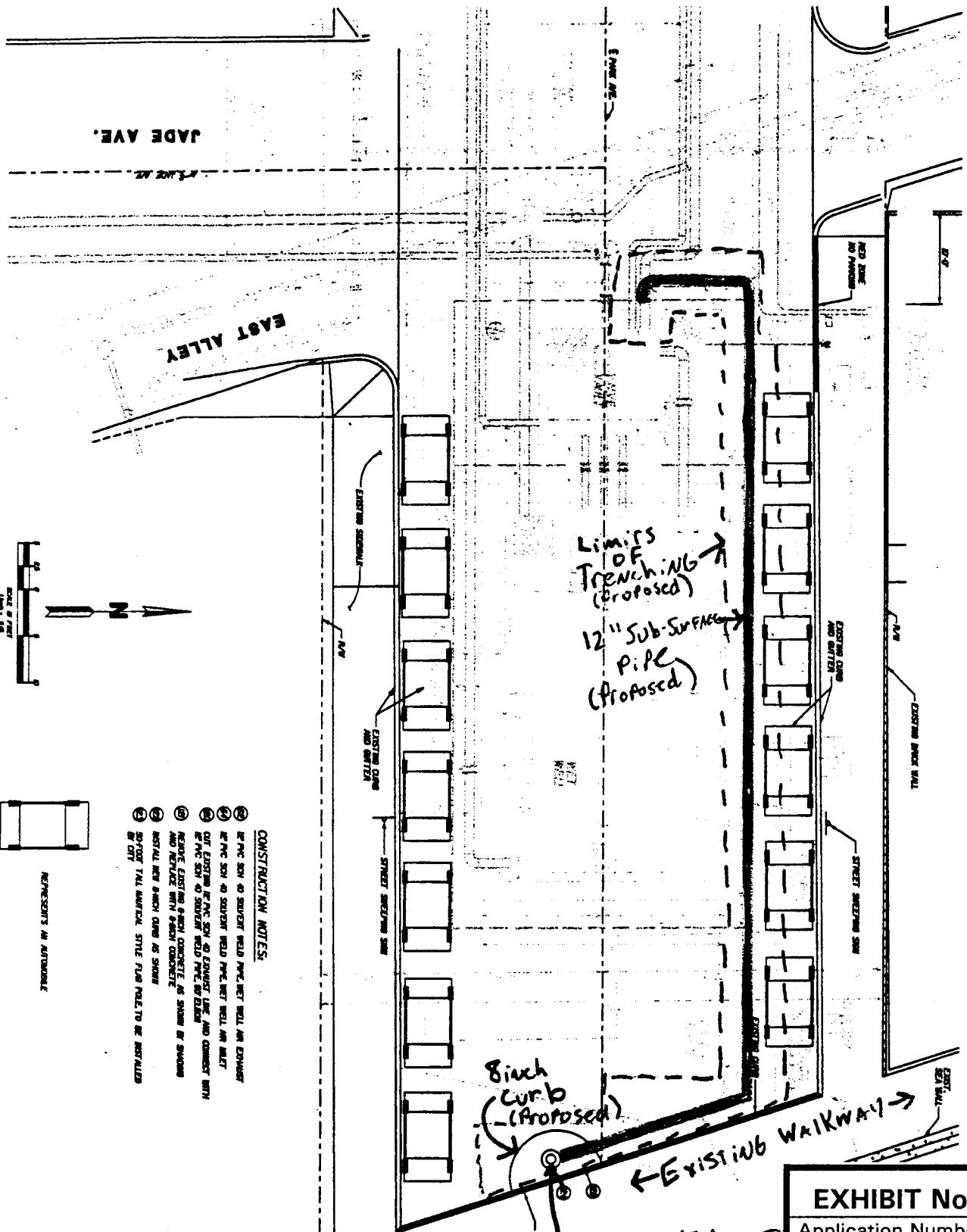
A portion of the City of Newport Beach Street Address Atlas 1988



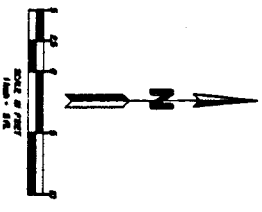
LITTLE BALBOA ISLAND

EXHIBIT NO. 2
 Application Number:
5-97-023-A1

California Coastal Commission



- CONSTRUCTION NOTES:**
- 1. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN EXHAUST
 - 2. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN ALLET
 - 3. CUT EXISTING 2" PVC SOIL AS EXHAUST LINE AND CONNECT WITH
 - 4. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN EXHAUST
 - 5. REMOVE EXISTING 2" PVC SOIL AS EXHAUST LINE AND CONNECT WITH
 - 6. AND REPLACE WITH 2" PVC CONCRETE
 - 7. INSTALL NEW 2" PVC SOIL AS EXHAUST
 - 8. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN EXHAUST
 - 9. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN ALLET
 - 10. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN EXHAUST
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 - 19. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN ALLET
 - 20. 2" PVC SOIL AS SURVEY WELD PIPE, NET WELL AN EXHAUST



REPRESENTS AN AUTOMOBILE

EXHIBIT No. 3
 Application Number:
5-97-023-A1
 California Coastal
 Commission

PARK AVENUE PARKING

**SECTION 5
 SEWAGE PUMP STATION
 CITY OF NEWPORT BEACH
 PUBLIC WORKS DEPARTMENT**



EXHIBIT No. 4
Application Number:
5-97-023-A1
Page 1 of 2
California Coastal
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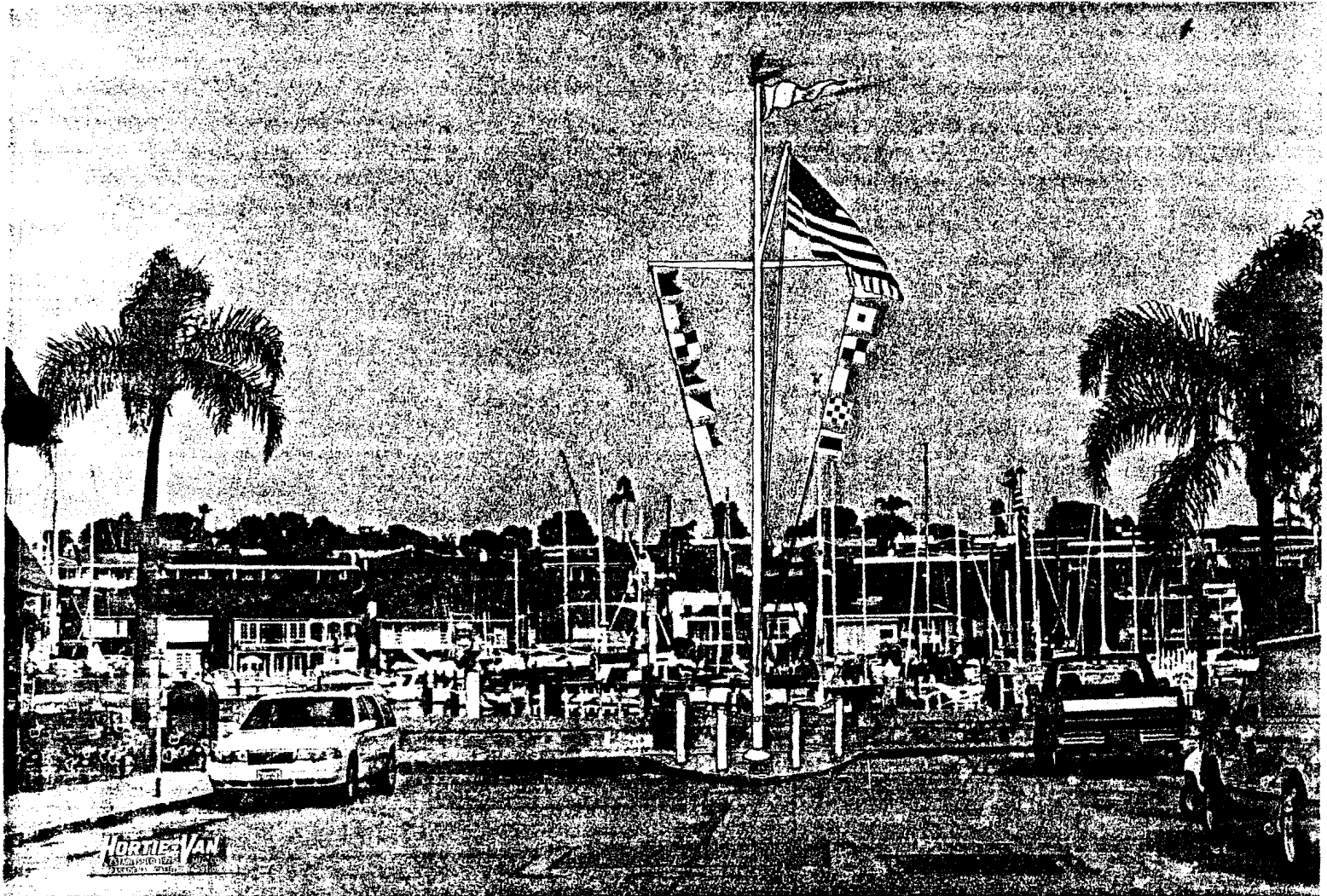


EXHIBIT No. 4

Application Number:

5-97-023-A1

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California Coastal
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CALIFORNIA COASTAL COMMISSION**Tu 18b**

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 Staff Report: 2/18/99
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 Commission Action:

RECORD PACKET COPY**STAFF REPORT: PERMIT AMENDMENT****APPLICATION NUMBER: A-5-LOB-98-336-A1****APPLICANT:** Selleck Development Group, Inc.**AGENT:** Joel Miller, Psomas and Associates**PROJECT LOCATION:** 6500 E. Pacific Coast Highway, City of Long Beach, Los Angeles County.**DESCRIPTION OF PROJECT ORIGINALLY APPROVED (A-5-LOB-98-336):**

Construction of a 67,930 square foot retail commercial development with 340 on-site parking spaces.

DESCRIPTION OF AMENDMENT REQUEST (A-5-LOB-98-336-A1):

Delete Special Condition One requiring the effective certification of City of Long Beach Local Coastal Program Amendment No. 2-98B prior to issuance of Coastal Development Permit A-5-LOB-98-336.

LOCAL APPROVAL: City of Long Beach Case No. 9702-18, 3/17/98.**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends approval of the proposed amendment that would delete Special Condition One of Coastal Development Permit A-5-LOB-98-336. Special Condition One would require the City of Long Beach to adopt into the LCP all of the Commission's suggested modifications to LCP Amendment No. 2-98B before the permit could issue. Removal of the condition would allow the applicant to begin construction while the City of Long Beach deals with long term planning questions raised in the Commission's action relating to wetlands protection. In the case of the proposed development, the project already conforms to the wetland provisions outlined for the City, and the project provides suitable mitigation for its impacts. The applicant agrees with the recommendation.

- f) **The applicant shall be responsible for the ongoing maintenance of the wetland habitat mitigation project and site. The required maintenance shall include adequate irrigation, regular cleaning, re-planting, and trash pick-up.**
- g) **The proposed thirty-foot wide landscaped area between the proposed wetland mitigation project and the proposed project's paved areas shall be landscaped and maintained with non-invasive plant species that are native to southern California. The list of proposed native, non-invasive plant species shall be submitted for the review and approval of the Executive Director.**

4. Siltation Control

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an erosion control and siltation prevention plan which controls erosion from the construction site, and prevents silt from the construction site from entering the storm drain during construction of the proposed shopping center and wetland habitat mitigation project. The plan shall conform to the standards of the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers. The approved plan shall be implemented during construction.

5. Drainage Plan

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a drainage plan for the proposed shopping center and its parking areas that incorporates best management practices (BMP's) for reducing the volume of runoff and pollutants which leave the project site and enter the storm drain system. The drainage plan shall incorporate the following: landscaped buffers, catch basins to collect litter, trash racks or bars to filter runoff, grease and oil separators or filters, and provisions for regular scheduled cleaning of paved parking lot surfaces and catch basins. The drainage plan may include other measures as well. The permittee shall implement the approved drainage plan on an ongoing and permanent basis.

6. Restaurant

Prior to construction of the restaurant proposed at the southeast corner of the project site, the applicant shall submit plans for the review and approval of the Executive Director. The restaurant plans shall conform with the site plan approved by this coastal development permit and shall not exceed 35 feet in height or contain more than 6,550 square feet in gross floor area. A drive-through restaurant is not permitted by this permit. Any modifications to the proposed restaurant shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Amendment Description

The applicant has requested an amendment to delete Special Condition One of the underlying permit, approved by the Commission on October 13, 1998. Special Condition One states:

"Approval of the coastal development permit is conditioned upon the effective certification of Long Beach LCP Amendment No. 2-98B. Accordingly, prior to issuance of the coastal development permit, the applicant shall obtain a written statement of the Executive Director of the Coastal Commission confirming that LCP Amendment No. 2-98B has been effectively certified in accordance with California Code of Regulations, Title 14, Section 13544."

In requesting this amendment, the applicant asserts that: 1) Special Condition One is an inappropriate burden on the applicant because it obligates the City of Long Beach to take an action and not the applicant; 2) there is no nexus to support Special Condition One because the Commission's other conditions of approval fully mitigate all identified impacts of the proposed project; and 3) it is a hardship for the applicant to wait for the City to adopt the Commission's suggested modifications to LCP Amendment No. 2-98B as required by Special Condition One (Exhibit #5).

B. Project History

The local coastal development permit for the proposed project and the accompanying LCP amendment were processed concurrently and heard at the same public hearings before the City Planning Commission, the City Council, and finally the Coastal Commission (Exhibit #6). The LCP amendment was project driven and adopted at the local level in order to enable the City to make a finding that the proposed project was consistent with the LCP provisions that limit the types of commercial uses, heights of architectural features, and curb cuts along this section of Pacific Coast Highway. The site is located on the west side of Pacific Coast Highway in Subarea 29 of SEADIP (Southeast Area Development and Improvement Plan) (Exhibit #2).

On April 20, 1998, the City submitted its LCP amendment request for Commission certification. On June 10, 1998, the Commission extended the time period to act on the LCP amendment for a period not to exceed one year. The Commission opened and continued the public hearing on LCP Amendment No. 2-98B on August 14, 1998. Also on August 14, 1998, two Commissioners appealed the City's approval of the local coastal development permit for the proposed project on the grounds that: 1) the local approval did not analyze or

mitigate the proposed project's impacts on wetland habitat in relation to the standards of the certified LCP, and 2) the proposed project did not conform to the currently certified LCP in regards to land use, building heights and curb cut provisions.

On October 13, 1998, the Commission reopened the public hearing on the proposed LCP amendment and opened the appeal hearing for the proposed project. On that day, the Commission approved both the de novo coastal development permit for the proposed project and LCP Amendment No. 2-98B. The approval of the LCP amendment, however, was conditional upon the City accepting two suggested modifications that would: 1) insert a new policy into the LCP to regulate development in or near wetland, and 2) allow architectural features to exceed 35 feet only in SEADIP Subarea 29 (See Exhibit #7 for suggested modifications). The proposed wetland provisions were the focal point of the Commission's discussion and the principal issue of debate in the prior action.

In addition, the Commission's action on the LCP amendment approved the City's proposed changes to the following LCP provisions that limit the types of commercial uses, heights of architectural features, and curb cut approvals that affect the project site¹:

BUILDING HEIGHT

The City proposed to modify Item 5 of "Provisions Applying To All Areas" to allow architectural features to exceed the 35 foot height limit in non-residential development.

5. *The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein.* In non-residential development in Subarea 29, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

CURB CUTS

The City proposed to revise Item 14 of "Provisions Applying To All Areas":

14. ~~(To be deleted and replaced). *No additional curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road, or Seventh Street, unless it can be shown that inadequate access exists from local streets. This restriction shall not preclude the provision of emergency access from these streets as may be required by the City.*~~
14. (Proposed). Curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street subject to the approval of the City Traffic Engineer and/or CALTRANS, where appropriate.

¹ The currently certified LCP provisions are in italic type, the City's proposed LCP modifications are underlined, and the Commission's suggested modification is in bold type.

PERMITTED USES

The City ~~proposed to add commercial retail to the list of commercial uses already permitted in Subarea 29 and to delete the limitation on restaurants:~~

SUBAREA 29

Use: *Commercial office, restaurants, commercial recreation* and commercial retail uses.

Delete: ~~*Restaurant uses shall be permitted only south of Studebaker Road.*~~

Although the Commission approved a coastal development permit for the proposed project, the proposed project could not fully conform to the certified LCP until LCP Amendment No. 2-98B was effectively certified with the above-stated changes. Local Coastal Program Amendment No. 2-98B contains the changes that specifically allow the proposed retail and restaurant uses and the architectural features that exceed the otherwise allowable 35 foot height limit. The Commission's approval of the LCP amendment, however, also included the suggested modification that would insert a new policy into the LCP to regulate development in or near wetlands.

In order to assure that needed wetland policies were incorporated into the City's LCP and to ensure technical consistency between the approved coastal development permit and the certified LCP's other development standards, the Commission found that the approval of the coastal development permit was conditional upon the effective certification of Long Beach LCP Amendment No. 2-98B. As a result, the Commission required that LCP Amendment No. 2-98B be effectively certified prior to issuance of the coastal development permit (See Special Condition One).

The City must accept the Commission's suggested modifications within six months of the Commission's October 13, 1998 action in order for LCP Amendment No. 2-98B to become effectively certified as required by Special Condition One. The City Council, however, has declined to accept the suggested modifications required for the effective certification of LCP Amendment No. 2-98B because of its concerns over the effects of the suggested modification that would insert a new policy into the LCP to regulate development in or near wetlands that are located within the certified portion of SEADIP (Exhibit #6).

The City has not accepted the Commission's suggested modification that addresses development in or near wetlands because the effects of the suggested policy are unknown at this time. The City has already approved changes to the LCP that would allow the proposed retail and restaurant uses and architectural features, but these changes remain uncertified because of the City's reluctance to accept the suggested modification addressing wetlands for LCP Amendment No. 2-98B.

Although the City has declined to accept the Commission's suggested modification regarding development in or near wetlands, the City has indicated its willingness to work with the Commission on a new LCP policy to regulate development in or near wetlands that are located within the certified portion of SEADIP (Exhibit #6). The City staff has proposed to provide the Commission with an inventory of wetland areas believed to exist within the certified portion of the SEADIP Specific Plan area and work towards the development of suitable alternative language for the protection of such wetlands. The process of identifying the wetland areas and developing a new LCP policy for wetlands will likely require environmental review and is expected to take several weeks.

C. Analysis

Both the City Council and Commission have acted on and approved the changes to the LCP necessary to allow the proposed retail and restaurant uses, architectural features, and curb cuts on the site. The primary reason that the changes to the LCP are not effectively certified is the City's concern over the application of the suggested new wetlands policy. The City wants to do a more comprehensive assessment of the potential wetland sites in the certified SEADIP area and address broader resource issues before it acts. The applicant, however, has no control over the City's decision to accept or reject the Commission's suggested modifications to the certified LCP.

In regards to the 0.03 acres of wetlands on the site, the authorized impacts and the mitigation proposed by the applicant and required by the conditions of the coastal development permit meet or exceed the mitigation measures required by either the currently certified LCP or the modifications suggested by the Commission's approval of LCP Amendment No. 2-98B.

The proposed project does conform to the Commission's action to approve the LCP with suggested modifications and appropriately addresses and mitigates any wetlands impacts at the project level because an adequate wetland assessment has been performed, appropriate mitigation has been proposed and will be provided, and the City has committed to a planning effort to address wetlands protection in its LCP. In order to allow the project to go forward as already approved by the Commission on October 13, 1998, the Commission can approve the request to delete Special Condition One of Coastal Development Permit A-5-LOB-98-336-A1.

1. Wetlands Impacts/Mitigation

The applicant proposes to construct a commercial retail center on a vacant six-acre parcel located on the seaward side of Pacific Coast Highway in southeast Long Beach (Exhibit #2). The proposed project includes a seven-foot wide dedication of land along the site's Pacific Coast Highway frontage. The dedication will widen the highway right-of-way for the addition of a 13-foot wide combined sidewalk and bicycle path that will connect to the existing

sidewalks on either side of the site. The construction of the sidewalk/bike path along Pacific Coast Highway would result in the filling of 0.02 acres (8,712 sq.ft.) of wetland habitat.

The applicant has submitted a mitigation plan that would replace at a 2:1 ratio the 0.02 acres of wetland habitat that would be filled for the public sidewalk/bike path. The mitigation plan involves the preservation of approximately .01 acre of wetland on the site, and the installation of 0.04 acres of new wetland plants to replace the 0.02 acres of filled wetlands. The 0.04 acres of created wetland plant area, when planted around the preserved 0.01 acre, adds up to a 0.05 acre wetland mitigation area. The proposed wetland native plant area would be situated on the site between the Pacific Coast Highway sidewalk/bike path and a thirty foot wide landscaped buffer (Exhibit #3).

The LCP, if amended by the modification suggested for LCP Amendment No. 2-98B, would allow filling of wetlands only if there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and for only the eight uses listed in Section 30233 of the Coastal Act:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities.

In this case, the proposed fill would result from the construction of a public sidewalk/bike path which is an incidental public service allowable under Section 30233(a)(5) of the Coastal Act. The proposed public sidewalk/bike path is incidental to an existing public service that is necessary because there is currently a gap in the public sidewalk where the project site fronts Pacific Coast Highway. The public sidewalk on the west side of Pacific Coast Highway now dead-ends at both ends of the project site. The proposed project includes the construction of a public sidewalk required by the City in order to provide an uninterrupted pedestrian accessway along the west side of Pacific Coast Highway. Therefore, the provision of the proposed thirteen-foot wide public sidewalk/bike path is a necessary public access component of the Pacific Coast Highway coastal transportation corridor.

In its action on the underlying permit, the Commission found that the construction of the proposed public sidewalk/bike path is allowable fill that can be permitted to impact the wetlands on the project site if there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Because the proposed fill is a necessary public access link in an existing access corridor, there is no feasible less environmentally damaging alternative.

As previously stated, the applicant has proposed to mitigate the loss of wetlands by replacing the 0.02 acres of fill in the wetlands by adding 0.04 acres of new wetland habitat to the 0.01 acre of wetland habitat that will be preserved on the site. The proposed mitigation plan would replace the 0.02 acres of wetland habitat that would be filled for the public sidewalk/bike path at a 2:1 ratio. The Commission found in its approval of the underlying permit that the proposed 2:1 ratio is acceptable in this case because of the wetland's small size, low biological productivity, location, and recent history.

The proposed mitigation plan would avoid filling 0.01 acre of wetland, replace 0.02 acres of filled wetlands on the site at a 2:1 ratio, and be monitored for five years to ensure that the new wetland mitigation area becomes established. A special condition of approval requires the applicant to carry out the proposed wetland mitigation project in a timely manner, and consistent with the proposed mitigation plan. The wetland mitigation area is buffered from the highway by the proposed thirteen-foot wide sidewalk, and buffered from the project parking area by a thirty-foot wide landscaped area.

In its previous action, the Commission approved special conditions that adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. As conditioned, the proposed development with the proposed amendment also conforms to the Commission's action to approve the LCP with suggested modifications and appropriately addresses and mitigates any wetlands impacts.

2. Land Use/Allowance for Retail and Restaurant Uses

The currently certified LCP does not list retail uses or restaurants as allowable uses on the project site. The certified LUP designates SEADIP Subarea 29 as a "mixed use" land use

district. The currently certified LCP list of permitted uses in Subarea 29 allows commercial uses, but only commercial office, restaurant and commercial recreation uses. Restaurant uses are currently permitted only south of Studebaker Road in Subarea 29. Both the City's LCP amendment request submittal (Long Beach LCP Amendment No. 2-98B) and the Commission's approval of the LCP amendment, however, included the changes that would add commercial retail uses and restaurants to the current list of commercial uses that may be permitted on the project site which is in Subarea 29 of SEADIP. As conditioned, the proposed development with the proposed amendment complies with the policies of the LCP as submitted by the City and approved by the Commission in its action on LCP Amendment No. 2-98B.

3. Building Heights/Architectural Features

The scenic resources of coastal areas shall be considered and protected. The proposed project will change the visual qualities of the project area by placing three structures and a parking lot on a parcel that is currently vacant. The proposed project, however, has been designed in a manner that will protect and improve the visual qualities of the area. The site is currently fenced-off with a chain-link fence and overgrown with untended vegetation comprised predominantly of ruderal species typically associated with human disturbance.

In order to protect the scenic resources of coastal areas, the certified LCP contains building height limits, open space requirements, and a specific requirement to protect views to water areas. The applicable certified LCP provisions for the site, contained in the SEADIP specific plan, state:

A.5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein.

A.9. All development shall be designed and constructed to be in harmony with the character and quality of surrounding development....

A.12. Public views to water areas and public open spaces shall be maintained and enhanced to the maximum extent possible....

A.13. Adequate landscaping and required irrigation shall be provided to create a park-like setting for the entire area. A landscaped parkway shall be provided along all developments fronting Pacific Coast Highway....

The LCP requires that the proposed project improve and protect the visual qualities of this coastal areas by providing park like landscaping, attractive building designs, and by maintaining views to the Alamitos Bay Marina through the project site.

Lush landscaping and attractive building facades are proposed around all four sides of the proposed project (Exhibit #4). The parking lot landscaping plan includes landscaped islands, trees and shrubs. Twenty-foot wide setbacks are provided along all three street frontages. The revised project plan provides over 70,000 square feet of open space. The three proposed buildings were sited to maintain public views through the site from Pacific Coast Highway to the waters of Alamitos Bay. Three view corridors are provided across the site to Alamitos Bay.

The architectural design of the proposed project includes varied rooflines and towers that convey a nautical theme that is in character with the Alamitos Bay Marina (Exhibit #4). The rooflines of the three proposed commercial structures vary from 24 to 34 feet in height, with architectural towers extending up to 43 feet above grade (Exhibit #4). Only the proposed architectural towers exceed the height limit of the currently certified LCP. The proposed towers reach 43 feet but do not block views to the water or negatively affect scenic resources.

Therefore, the proposed project protects public views through the site to the ocean and will improve the visual quality of the site itself by providing attractive buildings and park like landscaping to replace the current vacant lot look. As conditioned, the proposed development with the proposed amendment substantially complies with the policies of the LCP as submitted by the City and approved by the Commission in its action on LCP Amendment No. 2-98B.

4. Curb Cuts

The currently certified LCP allows curb cuts on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street only if it can be shown that inadequate access exists from the local streets in a development. Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street are the main traffic arteries in the SEADIP area. These roads provide vehicular access to the coast from the inland areas.

In the currently certified SEADIP specific plan's provisions that apply to all subareas, Item 14 (Curb Cuts) states:

14. No additional curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road, or Seventh Street, unless it can be shown that inadequate access exists from local streets. This restriction shall not preclude the provision of emergency access from these streets as may be required by the City.

LCP Amendment No. 2-98-B, if certified, would replace the currently certified curb cut standard (Item 14) with the following revised standard proposed by the City:

14. Curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street subject to the approval of the City Traffic Engineer and/or CALTRANS, where appropriate.

The proposed revision to the LCP curb cut provision is a minor change because both the currently certified provision and the provision approved by the Commission in its action on LCP Amendment No. 2-98B allow curb cuts on the main traffic arteries in the SEADIP area. Therefore, the proposed development with the proposed amendment conforms to both the certified LCP and the amended LCP policy approved by LCP Amendment No. 2-98B.

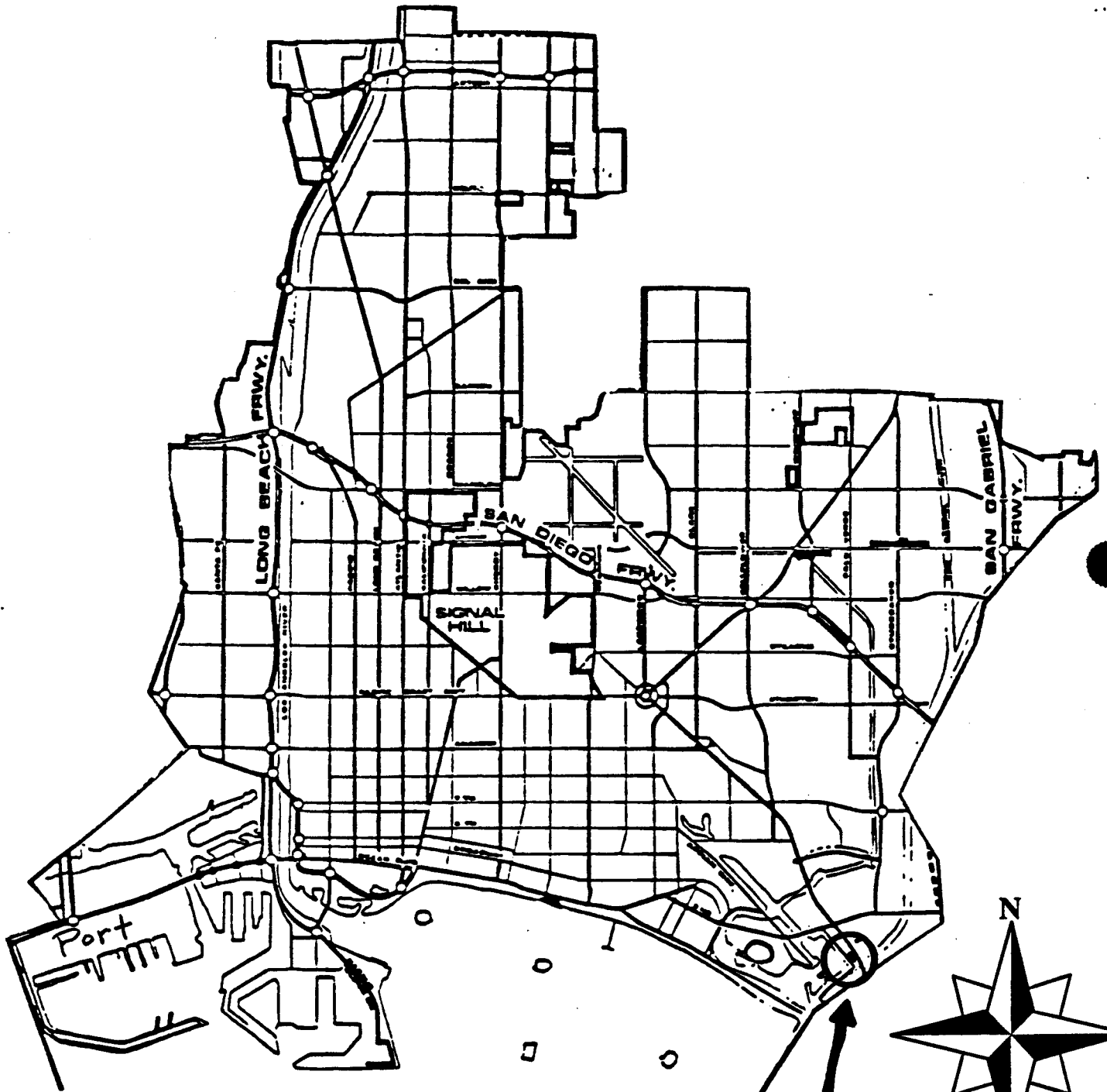
D. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit amendment to be supported by a finding showing the proposed development and amendment, 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)(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.

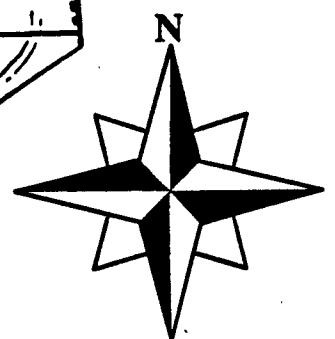
The proposed development and amendment, only as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. All significant environmental effects have been mitigated by conditions of approval. As conditioned, the proposed project and amendment will not have significant environmental effects for which feasible mitigation measures or alternatives have not been employed consistent with CEQA. Therefore, the Commission finds that the project as amended is consistent with the requirements of the Coastal Act to conform to CEQA.

End/cp

City of Long Beach



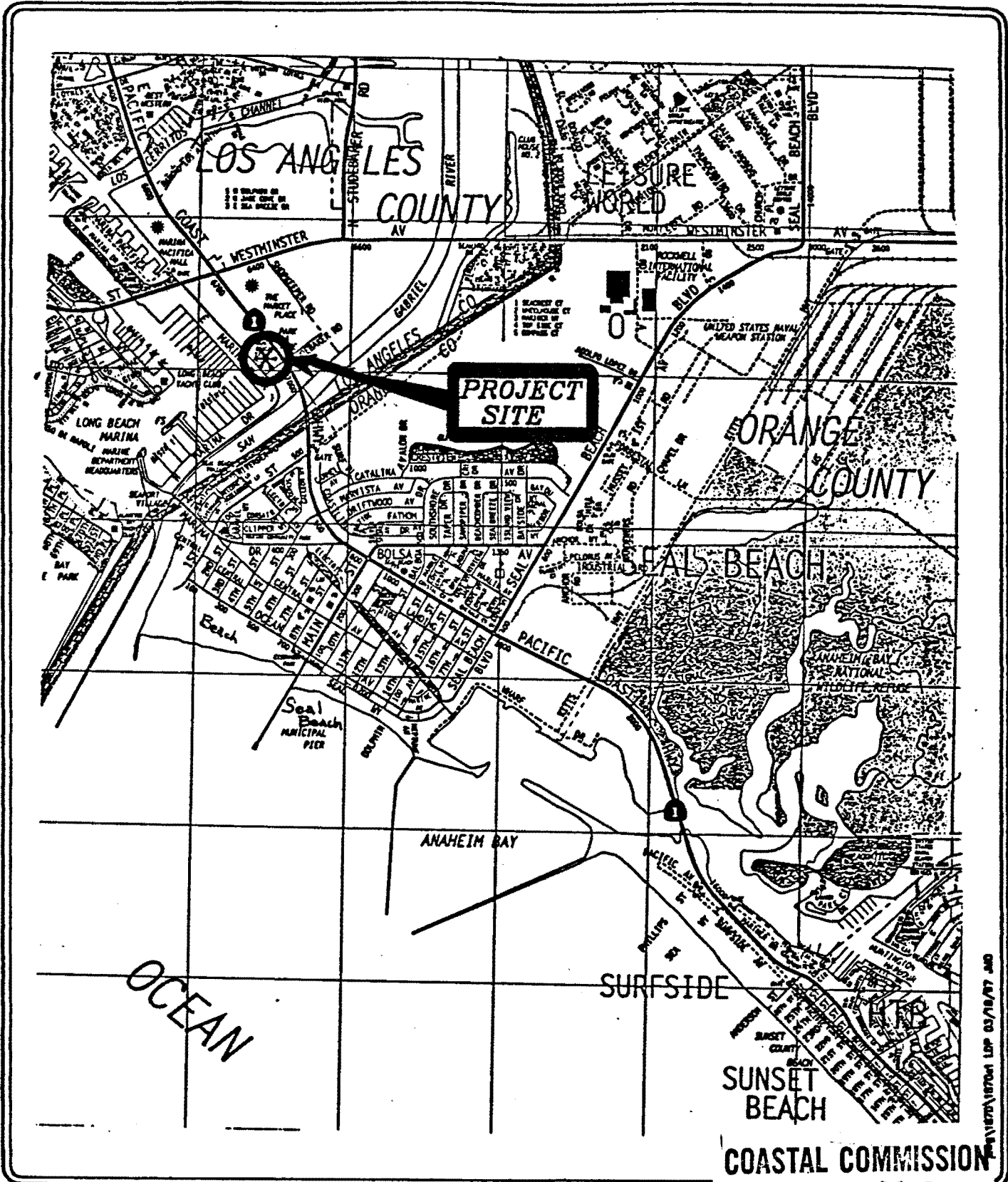
Site



COASTAL COMMISSION
A-5-208-98-336

EXHIBIT # 1

PAGE 1 OF 1



NO SCALE

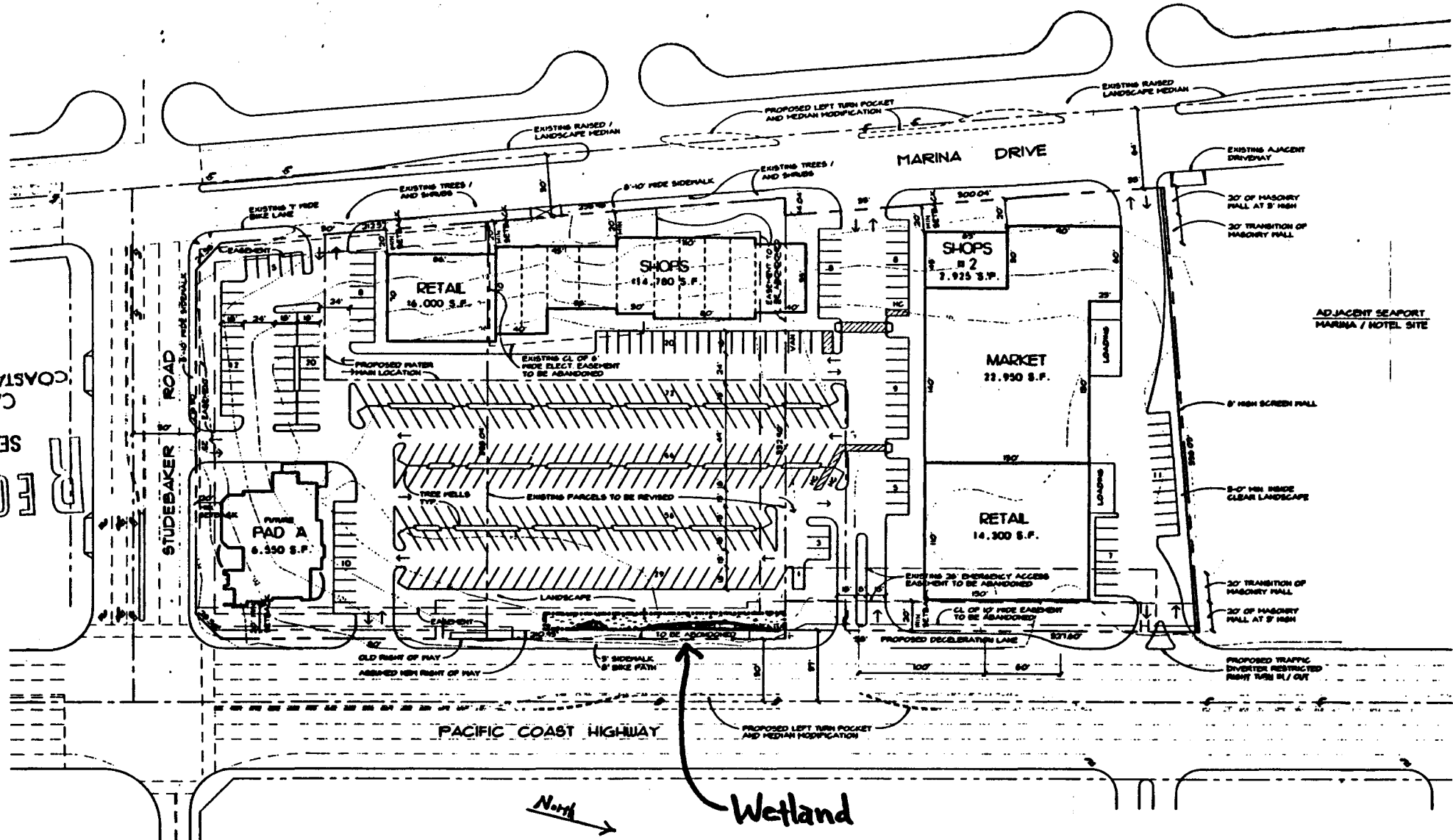
LINSCOTT
LAW &
GREENSPAN
ENGINEERS

COASTAL COMMISSION
A.S. 403-98-336

EXHIBIT # 2
PAGE 1 OF 1

VICINITY MAP
PCH @ STUDEBAKER MARKET CENTER, LONG BEACH

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COASTAL CO.



MARINA SHORES
Mitigation for "Potential" Wetland

LEGEND
 0.04 Acre Mitigation Area
 0.01 Acre of Preserved Salt Grass

OPEN SPACE
 OVERALL SITE AREA LESS T-O" WIDE DEDICATION
 AT P.C.H. = 1251,704 S.F. (NET SITE AREA)
 *10,515 S.F. (OPEN SPACE) = +26% (OPEN SPACE)
 INCREASE FROM ORIGINAL 24% OPEN SPACE PREVIOUSLY ISSUED

GLENN LUKOS ASSOCIATES
 EXHIBIT 3

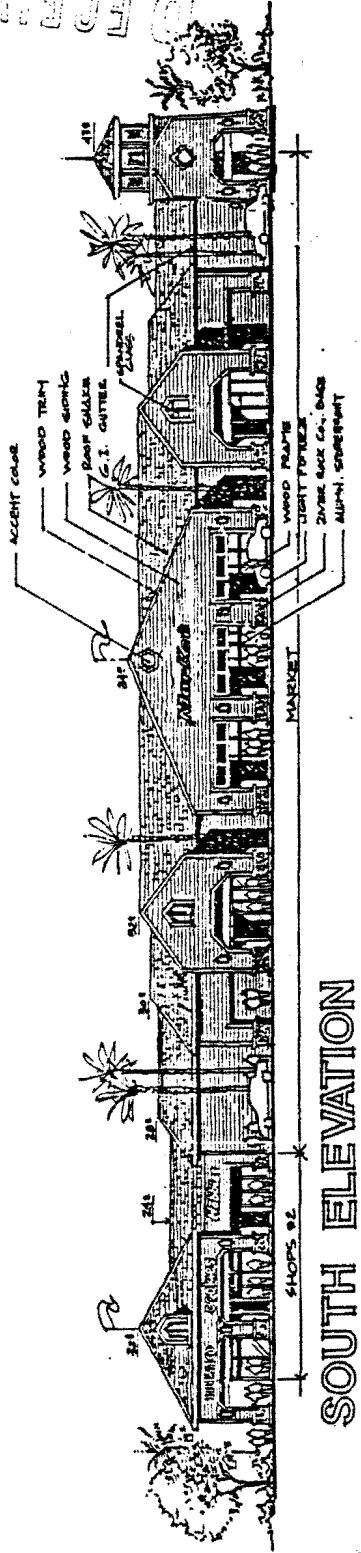
Summary
 Land: 25.88 acres ± 254,845 s.f.
 Building: 67,506 s.f.
 Land / Building Ratio: 2.77 / 1
 Parking Provided: 360 stalls
 Parking Ratio: 5.18 / 1000

COASTAL COMMISSION
A-5-LOB-98-336

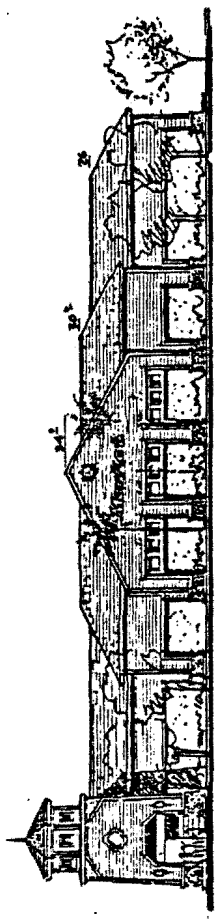
EXHIBIT # 3
 PAGE 1 OF 1

*Revised Site Plan with proposed on-site mitigation
 Approved 10/13/18 by Commission: A-5-LOB-98-336.*

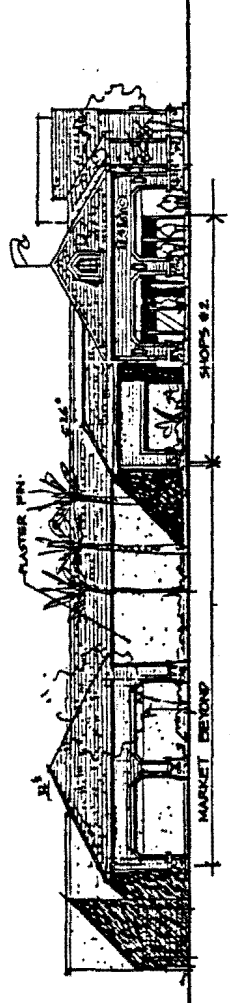
RECEIVED



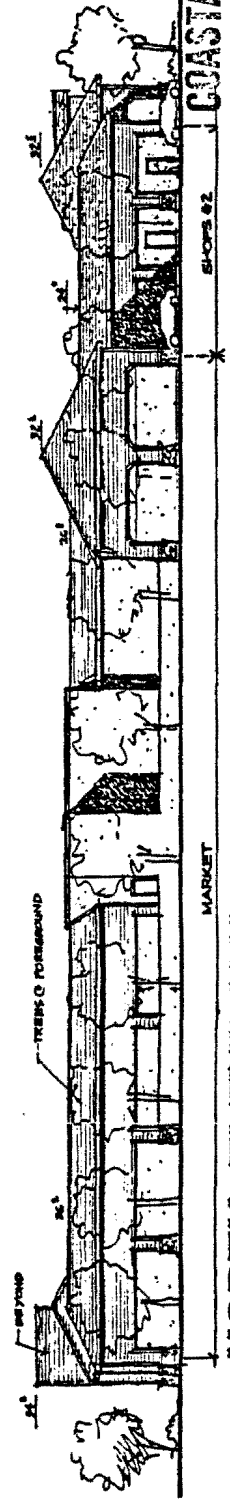
SOUTH ELEVATION



EAST ELEVATION

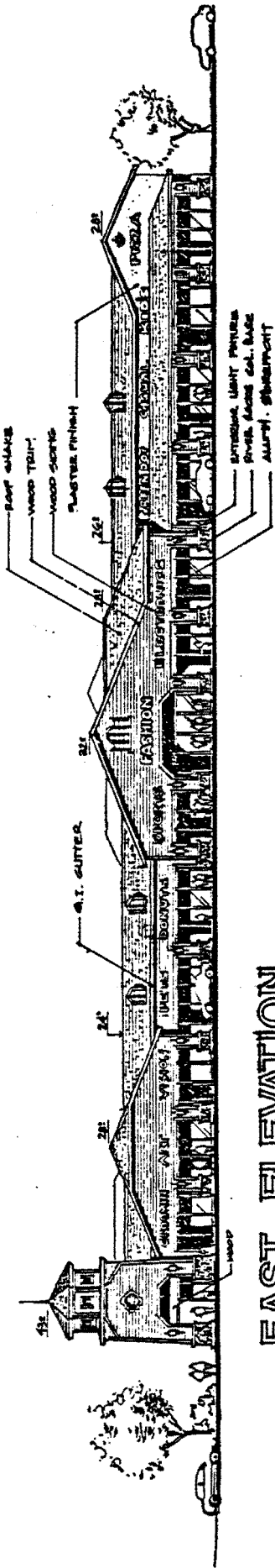


WEST ELEVATION

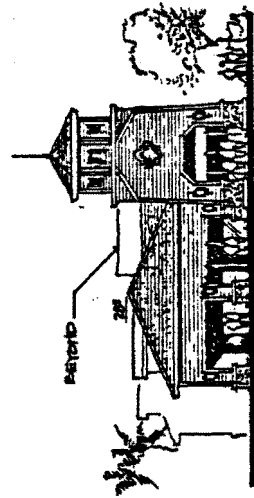


NORTH ELEVATION

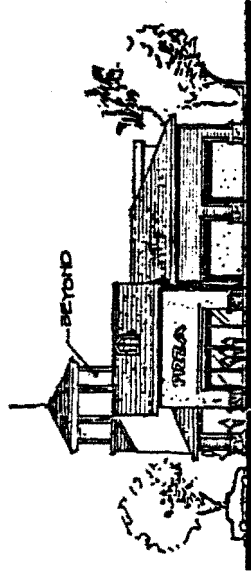
COASTAL COMMISSION
A-5-LOB-98-336



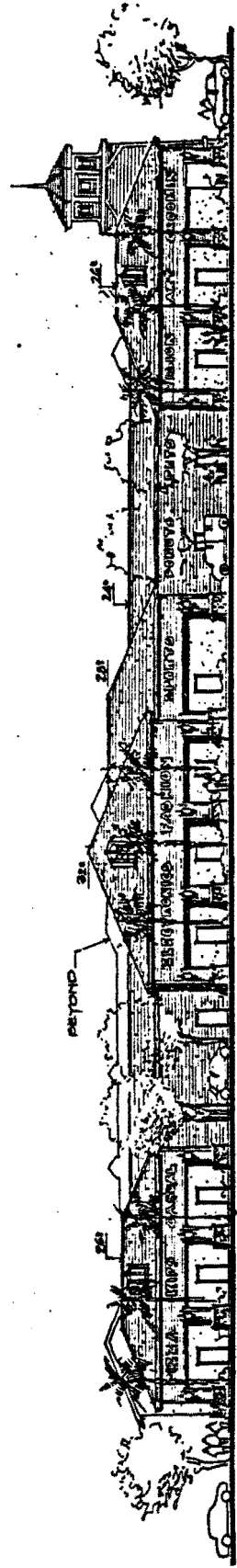
EAST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



WEST ELEVATION

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South Coast Region

FEB 3 1999

CALIFORNIA
COASTAL COMMISSION

Proposed Amendment to Coastal Development Permit No. A-5-LOB-98-336 A 1

On October 13, 1998, the California Coastal Commission approved the above-referenced Coastal Development Permit subject to several standard and special conditions. The applicant, Selleck Development Group, Inc. ("Selleck"), is requesting an amendment to the permit which seeks the deletion of Special Condition No. 1.

Special Condition No. 1 requires that before Selleck is issued a coastal development permit, the City of Long Beach must amend its LCP in accordance with California Code of Regulations, Title 14, Section 13544. Special Condition No. 1 essentially requires the City of Long Beach to adopt a wetlands policy consistent with statutory law.

Selleck believes that at the time the Coastal Commission took its action to conditionally approve the coastal development permit (October 13, 1998), it was unaware of the implications associated with Special Condition No. 1. They are as follows:

- Special Condition No. 1 is not a condition which can be fulfilled by applicant Selleck. All other standard and special conditions, which are all related to the project itself, can be satisfied by Selleck. Special Condition No. 1, however, obligates the City of Long Beach to take an action over which Selleck has no control. The burden placed on Selleck, therefore, is inappropriate.
- There is no nexus to support Special Condition No. 1. The .02-acre of wetlands determined to be located on the Selleck property has been fully mitigated by Special Condition No. 3 a-f. With the implementation of these wetland mitigation measures, there is no need for the City of Long Beach to amend its LCP as it may relate to the Selleck site because the wetland issue will have been resolved. Although there may be some merit from the Coastal Commission's point of view in having the City of Long Beach amend its LCP, such an amendment will have no relationship (no nexus) to the Selleck development because more specific mitigation measures have already been imposed by the Coastal Commission to off-set any identified wetlands impact.
- Since the Coastal Commission took its action in October, the City of Long Beach has initiated action to implement the Coastal Commission's directive. In order to complete the amendment, the City must consider its environmental clearance and conduct public hearings. This process could take several months to a year to complete. The timeframe works a hardship on Selleck which is inequitable given the wetlands mitigation which is already Selleck's responsibility.

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A-5-LOB-98-336-A1

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18



CITY OF LONG BEACH

DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802

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JAN 22 1999

CALIFORNIA (562) 570-1398
COASTAL COMMISSION (562) 570-6793

January 19, 1999

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California



SUBJECT: Report on the California Coastal Commission Action on the Marina Shores Property at 6655 Marina Drive (District 3)
COST: None

It is recommended that the City Council direct staff to request that the California Coastal Commission limit proposed Local Coastal Program text changes to Southeast Area Development and Improvement Plan (SEADIP) Subarea 29, effectively allowing the Marina Shores Project to proceed; provide the California Coastal Commission with a requested list of other SEADIP subareas, if any, believed to contain wetland areas as defined by said Commission; and work with Commission staff to formulate suitable alternative language for the protection of wetlands in the remainder of the SEADIP subareas.

BACKGROUND

The City of Long Beach SEADIP or PD-1 is a specific plan that covers the southeast portion of the City. SEADIP was originally adopted by the City in 1977, prior to the certification of the City's *Local Coastal Program* (LCP). In 1980, the California Coastal Commission (Coastal Commission) included a portion of the SEADIP document in the original certified Local Coastal Program as both the implementing ordinances and Land Use Plan (LUP) policies for the southeast portion of the City. Although the former Los Angeles County "pocket" has always been a part of the SEADIP plan, it has never been certified by the Coastal Commission, nor has the City's PD-1 Subarea 11b (See map included as Attachment A). Until such time as the former County pocket is incorporated into SEADIP, this specific planned development area will include both certified and uncertified standards and geographic areas.

In April 1997, the Selleck Development Group submitted to the City of Long Beach a development application for the construction of the "Marina Shores Project," a 67,930 square foot retail/commercial center on a 5.82 acre parcel located at the northwest corner of Pacific Coast Highway and Studebaker Road. A former oil extraction site, the property had been subjected to extensive soil remediation prior to being placed on the market. The proposed project required the amendment of Subarea 29 of SEADIP to accommodate commercial retail and restaurant uses since the LCP/SEADIP called for commercial office uses and commercial recreation uses on that particular site. The proposed amendment was heard by the City Planning Commission (Planning Commission) on June 5, 1997 and, in response to issues raised at that meeting, the case was continued to June 19, 1997. At the conclusion of the June 19th hearing, the

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A-5-LOB-98-336-A1

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HONORABLE MAYOR AND CITY COUNCIL

January 19, 1999

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Planning Commission recommended that the City Council adopt the appropriate Resolution and Ordinance to approve the Local Coastal Program (*General Plan*) and SEADIP amendments to allow the development of the Marina Shores Project and conditionally approved the Site Plan review, Standards Variance, and Local Coastal Development Permit. However, the City Council, at its hearing of August 19, 1997, as a result of a recently filed unrelated project in SEADIP, found the original environmental review (Negative Declaration 14-97) to be inadequate and directed the case back to the Planning Commission for additional environmental analysis.

This matter was again brought before the Planning Commission on January 15, 1998. At the conclusion of this hearing the Planning Commission voted to certify the Environmental Impact Report (EIR 25-97), adopt a Statement of Overriding Considerations, and approve the Local Coastal Program (*General Plan*) amendment/zoning (SEADIP) text amendment. The Planning Commission concurrently approved a Local Coastal Development Permit, Site Plan Review, and Standards Variance for a setback along Marina Drive, subject to conditions. A variance request to allow twenty-eight percent open space (instead of not less than thirty percent) was denied. The applicant appealed the variance denial to the City Council; Patricia Loeffler, Don May, Charles Moore, and Marina Pacifica appealed the Planning Commission's approvals to the City Council.

At a hearing held on March 17, 1998 the City Council adopted Resolution C-27311 and Ordinance C-7528 amending the Local Coastal Program, amended one of the LCP's implementing ordinances and certified the related Final Environmental Impact Report. City Council approved Mr. Selleck's appeal requesting twenty-eight percent open space (instead of not less than thirty percent required by SEADIP), but denied the appeal of Patricia Loeffler, Don May, Charles Moore, and Marina Pacifica, thereby sustaining the Planning Commission's approval of the project. Subsequently, the Local Coastal Program Amendment was submitted to the Coastal Commission for certification. Because the proposed project site is located outside the Coastal Commission's mapped appealable area (the mapped appealable area extends inland to Marina Drive, the first public road inland from the sea), the Local Coastal Development Permit was not noticed as being appealable to the Coastal Commission.

The Coastal Commission scheduled its hearing on this project for August 13, 1998. At that meeting, the Commission decided that while the City of Long Beach had determined that the project site was outside the appealable area and contained no wetlands, under its own unique definition, a "wetland" does occupy a portion of the property. Citing Section 30603(a)(2) of the Coastal Act and the California Code of Regulations, the Coastal Commission determined that it could appeal the project since all areas within one hundred feet of a wetland are included within the Commission's appeal jurisdiction. On August 14, 1998, two Coastal Commissioners appealed the development permit. The applicant, Dan Selleck, then requested that the hearing be rescheduled for the Coastal Commission's October 1998 meeting.

COASTAL COMMISSION

EXHIBIT #.....6.....
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HONORABLE MAYOR AND CITY COUNCIL
January 19, 1999
Page 3

At its meeting on October 13, 1998, the Coastal Commission again considered two measures: the Local Coastal Development Permit for the Marina Shores Project and the proposed changes to the City's Local Coastal Program that would allow that project to proceed. Mr. Selleck agreed to implement all of the wetland mitigation measures required by the Coastal Commission for the 0.02-acre (approximately 871 square feet) potential wetland habitat it believes to exist on the site. The Coastal Commission then broadened the discussion of wetlands beyond the subject site and questioned whether or not there were other wetlands located within the certified SEADIP area. It was determined that there was at least one such area within Subarea 25 (at the southeast corner of the current Marketplace complex). The Coastal Commission, following its staff recommendation, finally approved the coastal development permit for the Marina Shores Project, conditioned upon the City of Long Beach making significant changes to the Long Beach LCP and SEADIP.

The Coastal Commission proposed changes to the Long Beach LCP requiring the City to incorporate specific language intended to protect any wetlands located within the entire certified SEADIP area. Specifically, the Commission required Long Beach to substitute new language in its LCP regarding future development in or near any wetlands that may be present. While much of the new language was taken directly from the Coastal Act and presents few problems for the City, three of the proposed revisions represent significant changes to the City's LCP. First, the City would have to adopt a new definition of a "wetland" as specified in the Commission's Statewide Interpretive Guidelines and Section 13577(b) of the California Code of Regulations. This definition is unlike the definitions currently contained in the LCPs of other known Southern California jurisdictions, or used by agencies such as the U.S. Fish and Wildlife Service or the State Department of Fish and Game. Second, when it is determined that there is no feasible, less environmentally-damaging, alternative to the loss of wetlands due to development in the certified SEADIP area, the new language calls for "typical" mitigation ratios of 3:1 for riparian areas and 4:1 for saltmarsh habitats. These ratios are clearly greater than the 1:1 - 2:1 ratios currently used for most wetland mitigation. Finally, language would be added to the LCP requiring all future developments in the certified SEADIP area located adjacent to wetland habitat areas to provide a 100-foot buffer between the development and wetland habitats, and a 50-foot buffer between the development and riparian areas unless, in consultation with U.S. Fish and Wildlife Service and/or the State Department of Fish and Game, it is determined that a reduced buffer is sufficient. Since the City is presently uncertain as to the extent of possible wetlands (as defined by the new Coastal Commission definition) in the certified SEADIP area, these proposed text changes may or may not present problems for future development projects.

Since the Coastal Commission has approved the Marina Shores Project and the changes to the City's LCP, subject to the aforementioned conditions, the City of Long Beach must determine what action, or actions, it wishes to take within the six month period (from October 13, 1998) permitted by State law for response to

COASTAL COMMISSION

EXHIBIT # 6

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HONORABLE MAYOR AND CITY COUNCIL

January 19, 1999

Page 4

the Coastal Commission's decisions. There are at least three options available for consideration by the City Council:

1. The City can refuse to modify its Local Coastal Program within the six month response period, which will effectively deny the Marina Shores Project that is conditioned upon the City adopting the Coastal Commission's changes.
2. The City can adopt the specified Coastal Commission language into its LCP, allowing the Marina Shores Project to proceed.
3. City staff can request that the Coastal Commission amend its conditions of approval by limiting the required text changes to Subarea 29, effectively allowing the Marina Shores Project to proceed; provide the Commission with a requested list of other SEADIP subareas, if any, believed to contain wetland areas as defined by the Commission; and work with Commission staff to formulate suitable alternative language for the protection of wetlands in the remainder of the SEADIP subareas.

Staff has carefully evaluated these options and would recommend that the City Council consider Option 3 as an appropriate course of action. The reasons for this recommendation are:

- Option 1 accomplishes little since the City will likely continue to encounter this same situation in the future when taking proposed projects to the Coastal Commission for approval since their staff is clearly concerned that such wetlands as may exist in the SEADIP area are adequately protected. In addition, the Marina Shore Project would not be able to proceed because a critical condition of approval will not have been met.
- Option 2, while it would allow the Marina Shores Project to proceed, would seem to place the City at risk since there is presently no comprehensive list or map of wetlands in the SEADIP area based upon the Coastal Commission's new policy. Since the full impact of the proposed changes is currently unclear, there is a risk of litigation by the Bixby Ranch Company and Bryant Properties who believe their properties in the SEADIP area may be adversely affected by the Commission's new wetlands policies. Additionally, there is no other jurisdiction in Southern California that is presently known to have adopted the specified wetlands language into its coastal program.

Given these considerations, it is the staff recommendation that Option 3 be adopted by the City Council as the appropriate response to the Coastal Commission's October 13, 1998 decisions regarding the Marina Shores Project and the proposed changes to the City's Local Coastal Program.

COASTAL COMMISSION

EXHIBIT # 6

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HONORABLE MAYOR AND CITY COUNCIL

January 19, 1999

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IT IS RECOMMENDED THAT THE CITY COUNCIL:

Direct staff to request that the California Coastal Commission limit proposed Local Coastal Program text changes to Southeast Area Development and Improvement Plan (SEADIP) Subarea 29, effectively allowing the Marina Shores Project to proceed; provide the Coastal Commission with a requested list of other SEADIP subareas, if any, believed to contain wetland areas as defined by said Commission; and work with Coastal Commission staff to formulate suitable alternative language for the protection of wetlands in the remainder of the SEADIP subareas.

Respectfully submitted,



EUGENE J. ZELLER
DIRECTOR OF PLANNING AND BUILDING

EJZ:JWH

A:\CCOUNCIL\CCC_SELLECK.DOC

Attachment

APPROVED:



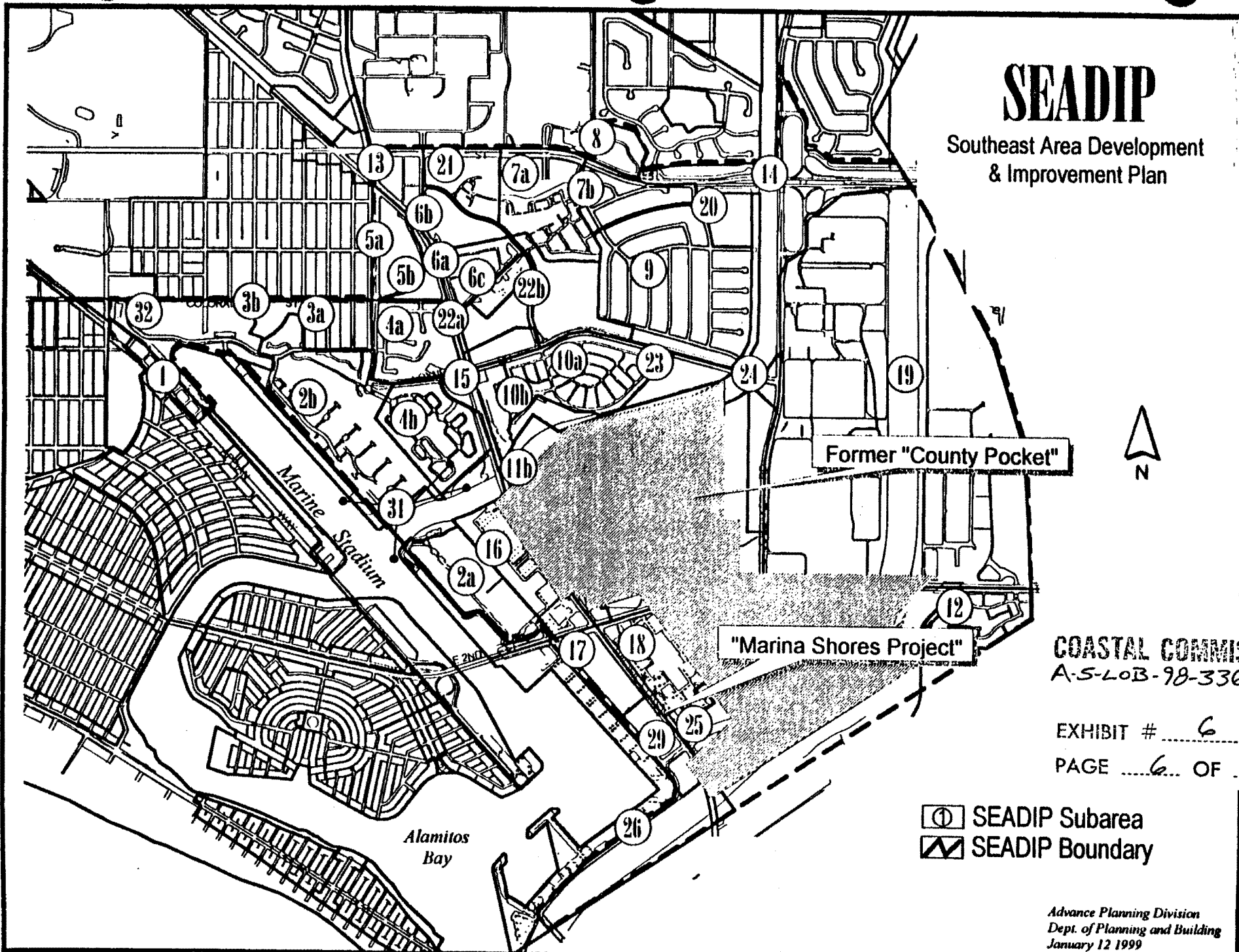
HENRY TABOADA
CITY MANAGER

COASTAL COMMISSION

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SEADIP

Southeast Area Development
& Improvement Plan



Former "County Pocket"

"Marina Shores Project"

COASTAL COMMISSION
A-5-LoB-98-336-A1

EXHIBIT # 6
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- ⓪ SEADIP Subarea
- ▨ SEADIP Boundary

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 OceanGate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071



October 29, 1998

Eugene Zeller
 Director of Planning and Building
 City of Long Beach
 333 West Ocean Boulevard
 Long Beach, CA 90802

Re: Long Beach Local Coastal Program (LCP) Major Amendment No. 2-98B (Marina Shores/SEADIP).

Dear Mr. Zeller,

You are hereby notified that City of Long Beach Local Coastal Program Amendment No. 2-98B was approved with suggested modifications by the California Coastal Commission at its October 13, 1998 meeting in Oceanside. The Commission's approval of Local Coastal Program Amendment No. 2-98B effectively certifies City Council Resolution No. C-27312 and Ordinance No. C-7528, if modified as suggested, for implementation in the geographic portion of the SEADIP area that is subject to the City's certified LCP.

City Council Resolution No. C-27312 and Ordinance No. C-7528, if modified as suggested, would modify the land use and building height standards for Subarea 29 of SEADIP, and revise the wetland protection and curb cut standards for the entire SEADIP area that is subject to the City's certified LCP. The proposed LCP amendment affects both the Land Use Plan (LUP) and implementing ordinances (LIP) portions of the certified LCP.

City of Long Beach LCP Amendment No. 2-98B will not be fully effective, however, until the Commission's suggested modifications are adopted by the City Council, and the Executive Director certifies that the City has complied with the Commission's action. The Coastal Act requires that the City's adoption of the suggested modifications be completed within six months of the Commission's October 13, 1998 approval.

Certification of City of Long Beach LCP Amendment No. 2-98B is subject to the following modifications A and B:

- A. Delete all provisions under SEADIP Section B "Responsibility for Construction and Maintenance of Wetlands and Buffers" and replace with the following:

Development in or Near Wetlands:

The City shall preserve and protect wetlands within the certified SEADIP area. "Wetlands" shall be defined as any area which may be covered periodically or permanently with shallow water, including, but not limited to, saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. In addition, "wetlands" shall also be defined as specified in the Commission's Statewide Interpretive Guidelines and Section 13577(b) of the California Code of Regulations. As part of any discretionary review or the required environmental analysis associated with a development proposal in the

certified SEADIP area, the applicant shall provide evidence from a qualified biologist whether wetlands exist on the site of the proposed development. If any wetlands are identified on the site, the applicant shall be required to obtain confirmation of the wetlands delineation from the U.S. Fish & Wildlife Service and/or the State Dept. of Fish & Game and solicit the resource agencies' recommendation on the appropriateness of the proposed development, the permissibility of the development impacts and any required mitigation.

All proposed development must conform to the following:

- Within the certified SEADIP area, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following (1-8):
 1. New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
 2. Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 3. In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 of the Coastal Act, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
 4. In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 5. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 6. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 7. Restoration purposes.
 8. Nature study, aquaculture, or similar resource dependent activities.
- Where it has been determined that there is no feasible less environmentally-damaging alternative and the proposed impacts are one of the eight allowable uses specified above, the diking, filling or dredging of open coastal waters, wetlands,

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estuaries and lakes shall be mitigated to minimize adverse environmental effects through habitat replacement, restoration and enhancement activities. There shall be no net loss of wetland acreage or habitat value as a result of land use or development activities. Mitigation ratios may vary depending on the specific site conditions; location of habitat areas; the amount of impacts; the nature, quality and uniqueness of the affected habitat; resource agency consultation; precedential coastal development permit decisions and other factors. However, typical mitigation ratios are 3:1 for riparian areas and 4:1 for saltmarsh habitats. Specifically, when wetland impacts are unavoidable, replacement of the lost wetland shall be required through the creation of new wetlands at a ratio determined by the appropriate regulatory agencies, but in any case at a ratio of greater than one acre provided for each acre impacted so as to ensure no net loss of wetland acreage. Replacement of wetlands on-site or adjacent, within the same wetland system, and in-kind mitigation shall be given preference over other mitigation options.

- Development located adjacent to wetland habitat areas shall not adversely impact the wetlands. A 100 ft. buffer shall be provided between development and wetland habitats and a 50 ft. buffer shall be provided between development and riparian areas unless, in consultation with the U.S. Fish & Wildlife Service and/or the State Dept. of Fish & Game, it is determined that a reduced buffer is sufficient. Uses and development within buffer areas shall be limited to minor passive recreational uses or other improvements deemed necessary to protect the habitat and shall be located in the portion of the buffer area furthest from the wetland. All identified wetlands and buffers shall be permanently conserved or protected through the application of an open space easement or other suitable device.
- Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.
- In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.
- Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects.

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Aspects that shall be considered before approving a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

B. Modify Item 5 of "Provisions Applying To All Areas":

5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. In Subarea 29, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

Thank you for your cooperation and we look forward to working with you and your staff in the future. Please call Charles Posner or myself at the above number if you have any questions regarding this issue.

Sincerely,

Teresa Henry
Assistant District Director

cc: J. Humphrey

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