

CALIFORNIA COASTAL COMMISSION

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**Tu 24c**

Filed: January 26, 1999
49th Day: March 16, 1999
180th Day: July 25, 1999
Staff: KFS-LB
Staff Report: June 24, 1999
Hearing Date: July 13-16, 1999
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-99-036**APPLICANT:** Gerson Bakar & Associates, Inc.**AGENTS:** Culbertson Adams & Associates, Inc.
Robert Bein, William Frost & Associates
Hetherington Engineering, Inc.**PROJECT LOCATION:** 1 Park Newport, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Bluff stabilization to protect existing development through the addition of slope drainage improvement structures at two bluff top locations facing the Upper Newport Bay Ecological Reserve. The development includes repair to the eroded bluffs including 100 cubic yards of grading, installation of two concrete interceptor ditches, connection of the interceptor ditches to an existing 15" storm drain via a 12" corrugated steel pipe, installation of one retaining wall to support the drainage ditch, and concrete encasement of a concrete-filled sand bag retaining structure to reduce water infiltration and direct runoff into the interceptor ditches.

SUMMARY OF STAFF RECOMMENDATION: The main issues of this application are construction adjacent to an ESHA, visual impacts, and geologic hazards. Staff recommends approval of the proposed project with four special conditions, as follows: 1) Requirement for pre-construction and construction period biological monitoring; 2) Requirement to avoid impacts upon sensitive habitat areas; 3) Minimization of visual impacts; and 4) Assumption-of-risk deed restriction.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept #1842-98; Letter of no comment dated January 13, 1999 from the California Regional Water Quality Control Board.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit #5-97-250 (Park Newport Apartments); Coastal Development Permit #5-98-345; *Negative Declaration*, State Clearinghouse Number 98101084; *Biological Assessment of Proposed Bank Stabilization Project* by J.E. Heppert & Associates...dated June 1998; Letter from Ronald Rempel, California Department of Fish and Game to California Coastal Commission...dated October 13, 1998; Letter from United States Department of the Interior, Fish and Wildlife Service to California Coastal Commission dated May 5, 1999; Letter report from LSA Associates, Inc. to U.S. Fish and Wildlife Service dated May 25, 1999, titled *Gnatcatcher Surveys on Bluff Below Park Newport Apartments*; Letter from Culbertson, Adams & Associates to Commission staff dated November 24, 1998; Letter from Culbertson Adams & Associates dated January 25, 1999; *Conference Summary Erosion Control Retaining Wall Adjacent to Building 35 Park Newport Apartments* by Law/Crandall...dated

November 2, 1978; *Maintenance Program Slope Facing Backbay Drive Park Newport Apartments* by Law/Crandall, Inc. dated August 29, 1994 (Project 2661.30777.0001); *Bi-Monthly Monitoring Program Slope Facing Backbay Drive Park Newport Apartments* by Law/Crandall, Inc. dated May 14, 1996 (Project 70131-4-0896.0006); *Grading Plan Review - Temporary Erosion Repair Portions of the West Facing Slope* by Hetherington Engineering, Inc. dated August 25, 1998.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development 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. PRE-CONSTRUCTION AND CONSTRUCTION PERIOD BIOLOGICAL EVALUATION

- A. *IMMEDIATELY PRIOR TO COMMENCEMENT OF CONSTRUCTION*, a qualified biologist shall determine the presence of California gnatcatchers at and in the vicinity of the project site. If breeding California gnatcatchers are present at or in the vicinity of the project site, project construction shall be halted. Commencement of the project may begin after the completion of the California gnatcatcher breeding season (February 1 through August 15). No work may commence during the California gnatcatcher breeding season without an amendment to this coastal development permit or a new coastal development permit.
- B. All site preparation, grading and construction activities for the proposed development shall be monitored on-site by a qualified biologist. The biologist shall have the express authority to halt all work at or in the vicinity of the project site should California gnatcatchers be discovered.

2. REQUIREMENTS TO AVOID CONSTRUCTION IMPACTS TO SENSITIVE HABITAT

Disturbance to sensitive habitat, including on-site coastal sage scrub shall be avoided. In order to accomplish this objective the following shall occur: 1) all construction materials and equipment shall be staged landward of the bluff, in existing developed areas only; 2) access to the construction sites shall occur from the top of the slope, through existing developed areas only. No work shall occur from the bluff face below the proposed development and no equipment access shall be allowed from the bottom of the slope; 3) temporary protective fencing shall be installed during construction to exclude any activity in sensitive habitat – the location of the fencing shall be installed consistent with the recommendations of a qualified biologist; 4) erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to sensitive habitat areas, during construction, to include the following, at minimum: placement of sand bags (2 bags high) at the edge of slope to prevent runoff/sediment transport over the top of the slope; plastic barrier fencing around the limits of construction areas; pre-construction meeting to review procedural and BMP guidelines; 5) construction equipment, materials, and debris shall be removed at the conclusion of construction; 7) Excavation spoils shall be disposed of at a legal disposal site outside the coastal zone. Any change, including choice of a disposal/reuse site within the coastal zone, may require an amendment to this permit or a new coastal development permit. Any such change shall be identified by the applicant in a written statement submitted to the Executive Director for review and approval and/or a determination as to whether changes are substantive and require a new coastal development permit or an amendment to this permit.

**3. REQUIREMENTS TO MINIMIZE VISUAL IMPACTS -
COLOR AND TEXTURE PLAN**

- A. *PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT*, the applicant shall submit, for the review and approval of the Executive Director, a plan demonstrating that the color and texture of the structure will be compatible with the adjacent bluff face and native vegetation. The plan shall demonstrate that:
1. the structure will be constructed with concrete that has been colored with earth tones that are compatible with the adjacent bluff face and vegetation,
 2. white and black tones will not be used,
 3. the color will be maintained through-out the life of the structure, and
 4. the structure will have a non-reflective texture to match the adjacent bluff face.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide/slope destabilization; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. *PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT*, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction 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 Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The proposed project is to install drainage enhancements to improve slope stability and protect existing development located on an approximately 100 foot high, unstable coastal bayside bluff. The project involves the addition of slope drainage improvement structures at two bluff top locations, Sites A and B, facing the Upper Newport Bay Ecological Reserve (Exhibit 2). The applicant states the proposed project will take approximately one month to construct and that construction will begin immediately upon issuance of all required approvals.

The subject site is located at 1 Park Newport in the City of Newport Beach, west of Back Bay Drive at the northwest corner of San Joaquin Hills Road and Jamboree Road (Exhibit 1 and 2). The proposed developments are to occur at the bluffs along the western property boundary. The applicants' property is developed with a large apartment complex on the bluff top west of Upper Newport Bay and the Upper Newport Bay Ecological Reserve (UNBER). Back Bay Drive demarcates the western boundary of the applicants' property and separates it from Upper Newport Bay and UNBER. UNBER is owned by the California Department of Fish and Game (CDFG). All proposed work will occur solely on the applicants' property.

Two concrete interceptor ditches, one each at Sites A and B, will be constructed and connected to an existing 15" storm drain via a 12" corrugated steel pipe (Exhibit 3). Approximately 100 cubic yards of material will be excavated during trenching to construct the interceptor ditches. These soils will be exported from the site and disposed or reused outside the coastal zone. The interceptor ditch at Site A will be approximately 130 feet long. The development will extend from approximately the 100 foot contour line just below the bluff rim to a bluff face terrace located along the 90 foot contour line. Construction of the interceptor ditch will involve placement of approximately 1,800 square feet of concrete. In addition, approximately 1,200 square feet of concrete will be placed between an existing retaining wall along the rim of the bluff and the new interceptor ditch. The concrete will encase an existing concrete filled sand bag slope protection structure. This concrete paving is to provide slope protection as well as to create a concrete apron to reduce water infiltration and direct runoff into the interceptor ditch. An approximately 30 foot long retaining wall will also be constructed on the down slope side of the interceptor ditch as part of the foundation for the interceptor ditch structure. The retaining wall will be approximately 6 feet tall, of which 4 feet will be subsurface (Exhibit 3, page 2).

The interceptor ditch at Site B will be approximately 115 feet long and will extend from approximately the 97 foot bluff face contour line to a bluff face terrace at the 95 foot contour line. The interceptor ditch will result in the placement of approximately 800 square feet of concrete.

The drainage structures will be fitted with grated trash rack inlets to minimize water quality impacts. Runoff entering the interceptor ditches will be directed to an existing 15 inch storm drain line which descends the bluff face and discharges into an energy dissipator device located at the toe of the bluff on the bay side of Back Bay Drive. The existing storm drain line is approximately equidistant between Sites A and B. Connection from Sites A and B to the existing storm drain line will occur via a 12 inch corrugated steel drain line.

B. PREVIOUS COMMISSION ACTION ON PROJECT SITE

Coastal Development Permit 5-98-345

On October 13, 1999, the Commission granted to Gerson Bakar & Associates, Coastal Development Permit 5-98-345 with conditions. The project involved the installation of two caisson retaining walls at two bluff top locations to increase bluff stability. The first retaining wall included twenty three caissons, placed about 3 feet landward of the top of slope, and was approximately 150 feet long. The second retaining wall included six caissons placed about 3 feet landward of the top of slope, resulting in a 40 feet long structure. No major earthwork was proposed and neither caisson retaining wall was to extend above grade.

Issues explored included impacts upon sensitive habitat and geologic hazards. Special conditions imposed included: 1) approval from the California Department of Fish and Game to proceed with work adjacent to an environmentally sensitive habitat area; 2) demonstration of compliance with geotechnical recommendations; 3) demonstration of an assumption of risk deed restriction; 4) requirements for avoidance of sensitive habitat and implementation of erosion control/sedimentation best management practices during construction; and 5) an informational special condition stating that any addition or change to the proposed project may require an amendment to the permit or a new coastal development permit.

The work proposed in the present application was originally submitted as part of the application for CDP 5-98-345. However, application materials for the sites that are the subject of this application took longer to complete than anticipated. Due to safety concerns related to the timing of project implementation and the impending winter rain, the application was amended, omitting the now proposed work. Statements were submitted from the geotechnical consultants for each of the sites demonstrating that the projects were separable as they were neither functionally nor structurally related and could be implemented safely as separate developments.

Coastal Development Permit 5-97-250

On September 9, 1997 the California Coastal Commission granted a permit (5-97-250) for development at the subject property which included the construction of a caisson retaining wall, excavation and recompaction of 52 cubic yards of soil, and repair/replacement of a damaged drainage pipe. The approved development occurred along bluffs adjacent to Big Canyon, on the northern side of the property. This work occurred to protect apartment unit 3160, an existing structure. Special conditions included obtaining permission from CDFG for the proposed work and incorporation of the geotechnical recommendations made by the geotechnical consultant.

C. HAZARD

Section 30253 of the Coastal Act states, in part:

New development shall:

(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.

Geologic conditions at the Park Newport Apartments site have been the subject of at least 47 geologic reports since 1968. These reports have examined slope stability and documented ongoing bluff erosion, sloughing, and landsliding at the larger site occupied by the Park Newport Apartments complex as well as in the area of Sites A and B. A slope monitoring program was in place sporadically between 1978 and 1994. Since 1994, monitoring has occurred more continuously on at least an annual basis.

Hetherington Engineering provided an evaluation of the proposed project in their letter *Grading Plan Review-Temporary Erosion Repair* dated August 25, 1998. This geotechnical engineer states that several reports by LeRoy Crandall and Associates and Law/Crandall outline temporary and permanent mitigation measures to enhance stability of the bluffs. The proposed project is considered a maintenance oriented structure designed to enhance stability of the slope by improving drainage and decreasing erosion. Hetherington Engineering states that the proposed project is suitable, from a geotechnical standpoint, to provide such drainage and erosion control.

While the geotechnical consultant has found that the proposed project will perform its intended function, the proposed project is designed only to provide erosion control and improved drainage which will improve bluff stability. However, the proposed development does not guarantee gross stabilization of the entire slope. In their August 25, 1998, letter, Hetherington Engineering states:

The intent of the improvements is to enhance surface drainage conditions by intercepting and directing surface water to an existing storm drain. These improvements will enhance the stability of the natural slope in these areas by reducing infiltration of water. It should be understood by Gerson, Bakar and Associates and the City of Newport Beach that these improvements are beneficial in this regard but do not render the natural slopes surficially or grossly stable and as such, the improvements are subject to future damages resulting from gross or surficial slope instability. With the above in mind, the erosion repair plan is considered suitable from a geotechnical viewpoint.

Based upon the information provided by the applicant, the proposed project is not designed, nor will it provide, surficial or gross stability to the slope. Therefore, while the development will enhance slope stability, the proposed structures may be subject to damage from surficial or gross slope instability. Accordingly, the Commission requires, as a condition of approval (special condition number four), that the applicant record an assumption of risk deed restriction acknowledging that landslide/slope destabilization hazards remain, even with implementation of this project, and that the applicant and all landowners waive any claim of liability again the Commission. The Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

D. ENVIRONMENTALLY SENSITIVE HABITAT AREA

Section 30240(b) of the Coastal Act states:

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would

significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject site has sensitive coastal sage habitat on-site and is located adjacent to the Upper Newport Bay Ecological Reserve, an environmentally sensitive habitat area. A biological impact assessment titled *Biological Assessment of Proposed Bank Stabilization Project – Park Newport Apartments...* dated June 1998 was performed by J.E. Heppert & Associates of Mission Viejo (Exhibit 4). This assessment determined that coastal sage habitat exists on-site and occurs adjacent to the proposed project element locations. This information was corroborated by a mapped coastal sage habitat delineation prepared by R. Mitchel Beauchamp of Pacific Southwest Biological Services, and field visits documented by the California Department of Fish and Game (Exhibit 5) and the U.S. Fish and Wildlife Service (Exhibit 6).

In addition to on-site habitat, significant sensitive habitat and species are supported in UNBER, adjacent to the subject property. The City's certified Land Use Plan addresses UNBER in the following manner:

The Reserve has been identified by the State Coastal Commission, State Department of Fish and Game, U.S. Fish and Wildlife Service, and the Southern California Association of Governments as a unique and valuable State resource. The upper bay is an integral part of the Pacific Flyway, and the saltwater marsh, bay waters, and upland of upper Newport Bay provide habitat for 158 species of birds, of which 81 species are wading or water-associated birds. Rare or endangered birds utilizing the Reserve include the California Black Rail, which nests in pickleweed, sedges, saltgrass, and bulrush; Belding's Savannah Sparrow, which nests in pickleweed; Light-footed Clapper Rail, which nests in pickleweed and cordgrass; California Least Tern, which lays its eggs in the sand; and California Brown Pelican, which occasionally visits the upper bay for purposes of resting and feeding. Also present in the Reserve are 18 species on the Audubon Blue List, a list of birds not considered rare or endangered, but which are showing evidence of non-cyclic population declines or range contractions. Over 60 species of fish and over 1,000 species of marine invertebrates have been reported in the bay.

The Land Use Plan goes on to state, in part:

Substantial sediment deposition has occurred in upper Newport Bay. Sources of sediment include...landslides, and construction projects. The occurrence of three extremely wet winters (1969, 1978, and 1980) resulted in the major transport of sediment to the bay. The extensive sedimentation that has occurred has adversely affected the Upper Newport Bay Ecological Reserve due to loss of tidal prism. In addition, suspended sediments can lead to reduction of photosynthetic activity and can interfere with filter feeding mechanisms of marine life-forms...the City of Newport Beach has participated in 208 planning studies to develop a solution to this problem. This solution involves utilization of Best Management Practices (BMP's) to retain...construction sediment on-site...

As outlined in more detail in the "Hazards" section of this staff report, the bluffs at the subject site have been subject to ongoing erosion and destabilization. The proposed project is necessary to increase stability of the bluff and thus provide protection to existing structures and adjacent environmentally sensitive habitat area. In the absence of remedial measures, soil saturation is expected to lead to continued sloughing and local failures, threatening the bluff top apartment building. In addition, the California Department of Fish and Game (CDFG) expressed concern in their letter to Commission staff dated October 13, 1998, that continued

bluff instability would lead to impacts upon down slope coastal sage habitat. CDFG is supportive of the proposed work as a measure to reduce the possibility of impacts upon sensitive habitat areas. Accordingly, the proposed project, which is designed to improve bluff stability, would be compatible with sensitive habitat, as it does not encroach into sensitive habitat areas and is designed to prevent impacts upon sensitive habitat areas which may occur as a result of bluff destabilization.

While CDFG is supportive of the concept of the proposed project, CDFG also stated that California gnatcatchers were observed in the project area during their field visit on October 8, 1998, which was outside the gnatcatcher breeding season. CDFG stated that if construction occurred during gnatcatcher breeding season (generally February 1 through August 15), the applicant would be required to comply with the Federal Endangered Species Act.

Since CDFG observed the presence of California gnatcatchers in the project area, and since California gnatcatchers are a federally listed endangered species, Commission staff requested review of the proposed project by the U.S. Fish and Wildlife Service (USFWS). Personnel from USFWS performed a field review of the subject site and required the applicant to do a focused gnatcatcher survey to determine whether gnatcatchers were nesting and breeding in the vicinity of the project site. Six focused surveys were performed during the gnatcatcher breeding season by LSA Associates, Inc. of Irvine, California. LSA Associates' letter report dated May 25, 1999, states that no gnatcatchers were observed in the vicinity of the project site during the protocol survey (Exhibit 7). Consequently, USFWS is not requiring the applicant to avoid construction activity during the gnatcatcher breeding season (generally February 15 through August 15 according to USFWS).

The applicant has provided a recently conducted California gnatcatcher survey, and has consulted with CDFG and USFWS on the presence of gnatcatchers at the subject site. However, there are conflicting results between CDFG's observation of California gnatcatchers on site, and the absence of such observations by the applicant's biologist. USFWS has indicated that the proposed construction activity may have adverse effects upon California gnatcatchers if they are in the project area during the breeding season. Therefore, given conflicting outcomes regarding the presence of gnatcatchers in the project area, but also given information recently gathered during the breeding season which indicates that gnatcatchers are not present at the site, special condition one requires that construction activity may only occur during the breeding season if a biological survey of the project area conducted immediately prior to construction shows that no gnatcatchers are present. If gnatcatchers are present, all work shall be halted and work shall be restricted to the period outside the gnatcatcher breeding season (February 1 through August 15) unless an amendment or a new coastal development permit is obtained. If an amendment or new coastal development permit is sought by the applicant to allow construction to occur during the breeding season, any such application must be accompanied by a plan to avoid impacts to the gnatcatcher, and evidence of review and approval of such plan by CDFG and USFWS.

The applicant has proposed mitigation measures to avoid disturbance to sensitive resource areas. These measures are a part of the applicant's *Mitigated Negative Declaration* and in letters dated November 24, 1998 and January 25, 1999, from the applicant's agent to Commission staff. According to the documentation, all proposed work will be staged and implemented from the developed areas landward of the bluff edge. In addition, the biological assessment and coastal sage delineation demonstrate that no work will occur within the on-site coastal sage habitat and no coastal sage habitat will be impacted by the proposed development. As a preventative measure the applicant has proposed installation of temporary plastic barrier fencing to exclude activity in existing coastal sage habitat. A biologist with expertise in coastal sage habitat will direct placement of the fencing. In addition, the biologist

will be on-site prior to construction activity to determine the presence of breeding California gnatcatchers. If gnatcatchers are present, work will not commence during the gnatcatcher breeding season unless an amendment or a new coastal development permit has been obtained. Finally, sedimentation/erosion control Best Management Practices (BMPs), such as a pre-construction meeting to discuss implementation and adherence to BMPs, and placement of sand bag barriers will be used to prevent sedimentation impacts to on-site coastal sage habitat and UNBER. These measures are required to ensure the proposed development is consistent with section 30240 of the Coastal Act, therefore the proposed measures are incorporated in special conditions one and two.

The proposed project is necessary to control erosion, improve drainage and decrease saturation of the bluff. If left untreated, slope saturation will lead to collapse of bluff materials. Impacts to biological resources, including impact upon UNBER, will be reduced by implementing the proposed project. Therefore, as conditioned, the Commission finds that the proposed project is consistent with section 30240 of the Coastal Act.

E. WATER QUALITY

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.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Existing packed earth drainage structures discharge water through an existing drain line to UNBER. The proposed development will continue these discharges. The drainage basin for the existing and proposed drainage system is an approximately 0.11 acre landscaped area. No parking lots or street areas discharge through the existing or proposed drainage system. The proposed project will not change the quality of water discharged from the project site. In addition, the Regional Water Quality Control Board has reviewed the proposed project and stated that no comments were required. The proposed development includes best management practices to reduce construction related sedimentation impacts to UNBER. In addition, trash grates installed on the drains of the proposed drainage ditches will catch any trash which might enter the drainage ditch and subsequently be discharged to UNBER. The proposed project will not result in impacts to water quality, therefore the Commission finds the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

F. VISUAL IMPACTS

Section 30251 of the Coastal Act states, in part:

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...shall be subordinate to the character of its setting.

The proposed development site is visible from Galaxy Park, a public coastal view area approximately one half mile west of the site. This view area is identified in the City of Newport Beach certified Land Use Plan as a significant public view area. In addition, pedestrians and cyclists using Bay Back Drive, presently a recreational thoroughfare which runs along the base of the bluff slope, may observe the project site.

Existing development in the project area includes a concrete filled sandbag wall which retains soils on that part of the face of the bluff extending from the 100 foot contour line (i.e. lip of the bluff) to the 90 foot contour line (i.e. grade of proposed interceptor ditches) at site A. This existing structure degrades existing visual quality.

The proposed project is the installation of interceptor ditches, a retaining wall, and a concrete apron to cover the existing concrete filled sandbag wall. These structures will occur in an area viewable from significant public viewing areas. The applicant has stated these structures are designed to reduce the collapse of bluff soils that scour away existing native vegetation and leave a denuded bluff face. Accordingly, the structures are designed to prevent degradation of the long term visual quality of the bluff. However, the proposed development will increase the visual mass of structures on the bluff face which would result in negative impacts to visual resources. This visual mass includes the placement of concrete at grade to construct the drainage ditches, construction of a retaining wall that will extend two feet above grade, and construction of a concrete apron that will cover an existing ten foot tall retaining structure. Without appropriate masking, these structures would not be subordinate to the character of their setting. The applicant has proposed to texture the proposed structures in order to reduce reflection and glare viewable from public areas. However, plans submitted do not demonstrate implementation of the proposed textured surface. In addition, if the color of the proposed structures is not compatible with the bluff face, then a textured surface would not be sufficient to mask the structures such that they were subordinate to their setting. Therefore, the Commission imposes special condition three which requires the applicant to submit revised plans that show that the proposed structures shall be constructed of materials designed to blend with the color and texture of the existing bluff face and native vegetation.

As conditioned, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act to protect scenic quality in the area.

G. LOCAL COASTAL PROGRAM

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).

H. 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 project is located in an existing urban development that is immediately adjacent to an ESHA. The proposed development has been conditioned, as follows, to assure the proposed project is consistent with the resource protection policies of the Coastal Act: pre-construction and construction phase monitoring by a qualified biologist to ensure no take of California gnatcatchers occurs; avoidance of sensitive habitat and implementation of erosion control/sedimentation BMP's; color and texture requirements of the proposed structures; and an assumption-of-risk deed restriction. 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.

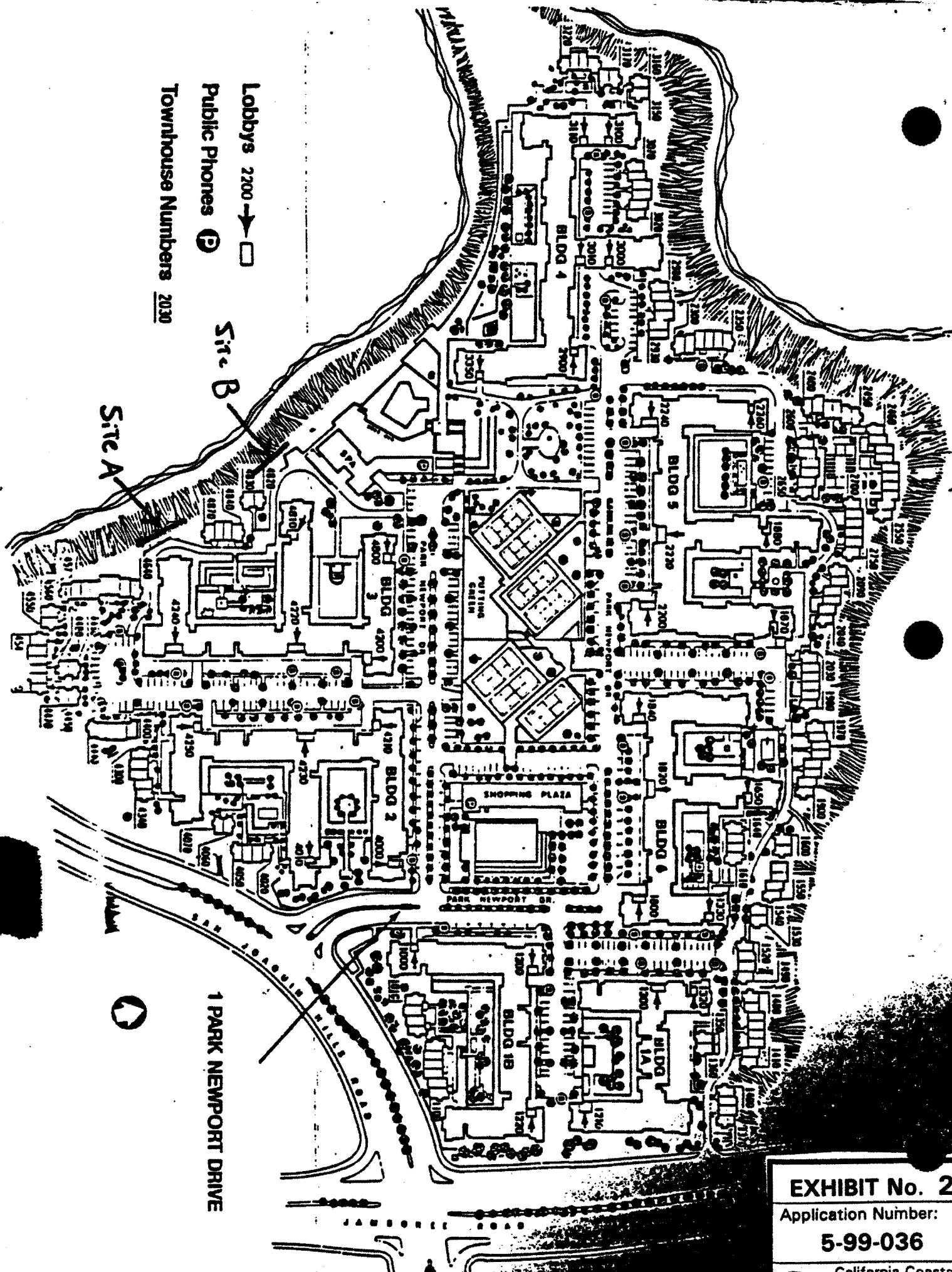


EXHIBIT No. 1

Application Number:

5-99-036

California Coastal
Commission



Lobbies 2200 → □
Public Phones (P)
Townhouse Numbers 2030

1 PARK NEWPORT DRIVE

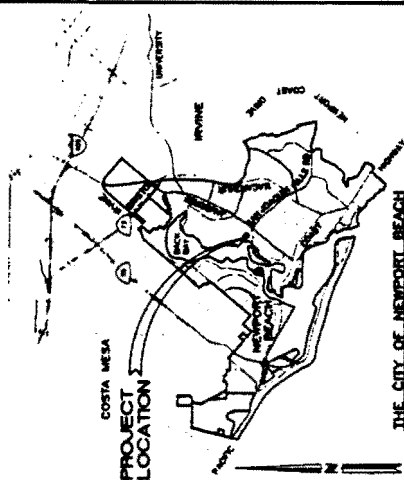
EXHIBIT No. 2

Application Number:

5-99-036

California Coasts
Commission

VICINITY MAP



GRADING NOTES

- [illegible]

- 14 WHERE SUPPORT OF BURNING OF CUT AND MINING STONES IS
15 REQUIRED TO BE NECESSARY IN THE CONSTRUCTION OF ROADS AND
16 BRIDGES, THE ENGINEERING DEPARTMENT SHALL
17 CONDUCT AND SUBMIT THE NECESSARY TREATMENT TO THE CITY ENGINEER FOR APPROVAL

GRADING NOTES

14. WHEN OUR PANELS ARE BROUGHT TO NEAR COMPLETION, THE PERFORMANCE OF THE GEOSTAT PANELS WILL BE EVALUATED. IF THE RESULTS ARE SATISFACTORILY FRAGMENTED OR TAILED AND THE GEOSTAT PANELS ARE NOT BEING COMPLETED, THE PANELS WILL BE REDESIGNED. THE REDESIGNING OF THE PANELS WILL BE PLACED THROUGH A COMMITTEE FOR THE DESIGN OF THE PANELS.

DOCUMENTATION

- [illegible]

GEOTECHNICAL FACTORS
EARTHWORK QUANTITIES

DATE	QUANTITIES	UNIT	VAL
		100 CY	
TOTAL EXPORT:		100 CY	

IMPORTS REPORTED HEREIN ARE FOR PLAIN CHECK PURPOSES ONLY AND DO NOT ACCOUNT FOR SHUTTLE/DRAWING OR REVENUE TAXES. SEE GEO-CHEMICAL REPORT FOR ADDITIONAL PRODUCT INFO.

1700 TOTAL CAPACITY: 100 BY

- DATA REPORTED HEREIN ARE FOR PLAN CHECK PURPOSES ONLY AND DO NOT ACCOUNT FOR SHORTLAGE/WRING OR MEDICAL IMAGING. SEE GEOTECHNICAL REPORT FOR ADDITIONAL PARAMETERS.

THAT CERTAIN COURSE ALONG THE WESTERN LINE OF LOT 3 IN TRACT 6907 IN THE CITY OF MEMPHIS

[illegible]

CONTROL NOTES

- [illegible]

Underground Service Alert!
Call: TOLL FREE
1-800
422-4133

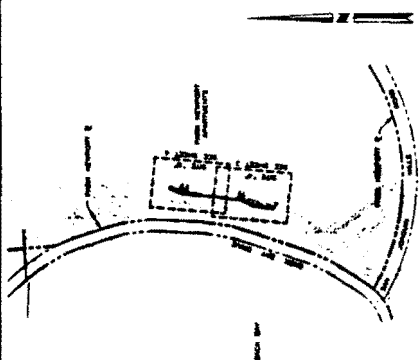
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SHEET	NO.
TITLE SHEET	1
CONSTRUCTION NOTES, QUANTITIES, AND DETAILS	2
SITE "A" GRADING PLAN	3
SITE "B" GRADING PLAN	4
STORM DRAIN PLAN	5
CROSS SECTIONS	6

GRADING PERMIT NO. G9800456

[illegible]

LOCATION MAP



PRIVATE ENGINEER'S NOTICE TO CONTRACTOR(S)

- [illegible]

CITY OF NEWPORT BEACH

This set of plans & specifications must be kept on the job at all times and it is essential that any changes or alterations on drawings be made in accordance with the City of Houston Beach Community Development Department. The planning of this project & specifications SHALL NOT be subject to change without the approval of the City of Houston Beach Community Development Department. The planning of this project & specifications SHALL NOT be subject to change without the approval of the City of Houston Beach Community Development Department.

IMPORTANT NOTICE

777 of the Environmental Code requires a 10 day appeal period
and states before a "panel is formed" and the appeal

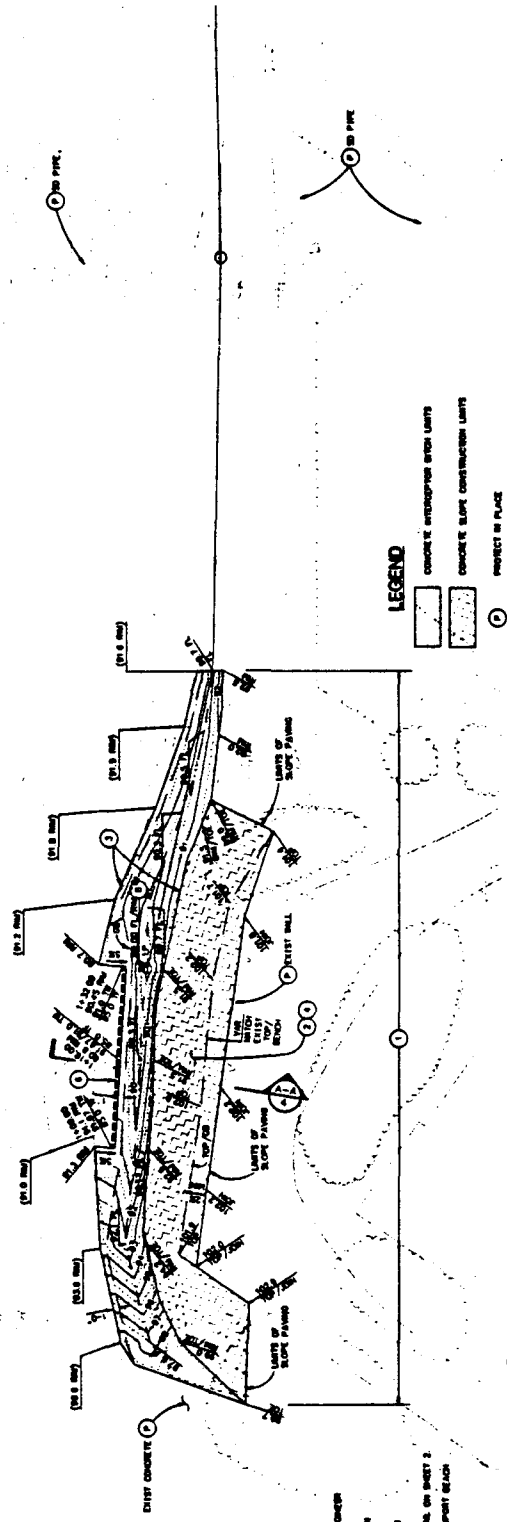
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-28-2008 BY 60322 UCBAW/SJS

PARK NEWPORT APARTMENTS
ECONOMY, DEBAS & AN

EROSION REPAIR PLAN
TITLE SHEET
CITY OF NEWPORT BEACH

BACK BAY DRIVE

- GENERAL NOTES**
1. DISTURBANCE TO EXISTING MATERIAL INCLUDING EXISTING CURB, SIDEWALK, DRIVE, AND DRIVE SHALL BE REPAIRED TO ORIGINAL CONDITION. CONTRACTOR SHALL STRICTLY FOLLOW THE CITY OF NEWPORT BEACH SPECIFICATIONS FOR REPAIRS.
 2. ALL CONSTRUCTION MATERIALS AND METHODS USED SHALL BE APPROVED BY THE CITY OF NEWPORT BEACH. CONTRACTOR SHALL SUBMIT A MATERIALS AND METHODS STATEMENT TO THE CITY OF NEWPORT BEACH FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. ANY OBSTRUCTION TO ACCESS SHALL BE REMOVED AT THE COMPLETION OF EACH PHASE OF CONSTRUCTION.
 4. ANY IMPROVED BLUFF EDGE OR SHORELINE IMPROVEMENTS, WHICH MAY BE REQUIRED BY THE CITY OF NEWPORT BEACH, SHALL BE ACCOMPLISHED BY THE CONTRACTOR AT THE COMPLETION OF THE CONSTRUCTION.
 5. EROSION CONTROL/SEDIMENTATION BEST MANAGEMENT PRACTICES (BMP'S) SHALL BE AS FOLLOWS:
 - a) THE CONTRACTOR SHALL PLACE SAND BARS (TWO SAND BARS PER 100' OF BLUFF) AND VEGETATION BARS (TWO VEGETATION BARS PER 100' OF BLUFF) AT THE TOP OF THE BLUFF TO PREVENT RUNOFF/SEDIMENTATION FROM THE BLUFF.
 - b) THE CONTRACTOR SHALL PLACE PLASTIC BARRIERS (SAND BARS) AND VEGETATION BARS (VEGETATION BARS) AT THE TOP OF THE BLUFF TO PREVENT RUNOFF/SEDIMENTATION FROM THE BLUFF.
 - c) A FINE-CONSTRUCTION SCREEN SHALL BE PLACED TO RETAIN PROCESSED, AND TOP SOILS.
 6. THE CONTRACTOR SHALL PROVIDE A SIGNATURE SHEET AT A MINIMUM OF 10' FROM THE BLUFF EDGE. THE SIGNATURE SHEET SHALL BE APPROVED BY THE CITY OF NEWPORT BEACH. THE SIGNATURE SHEET SHALL BE SUBMITTED TO THE CITY OF NEWPORT BEACH FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.

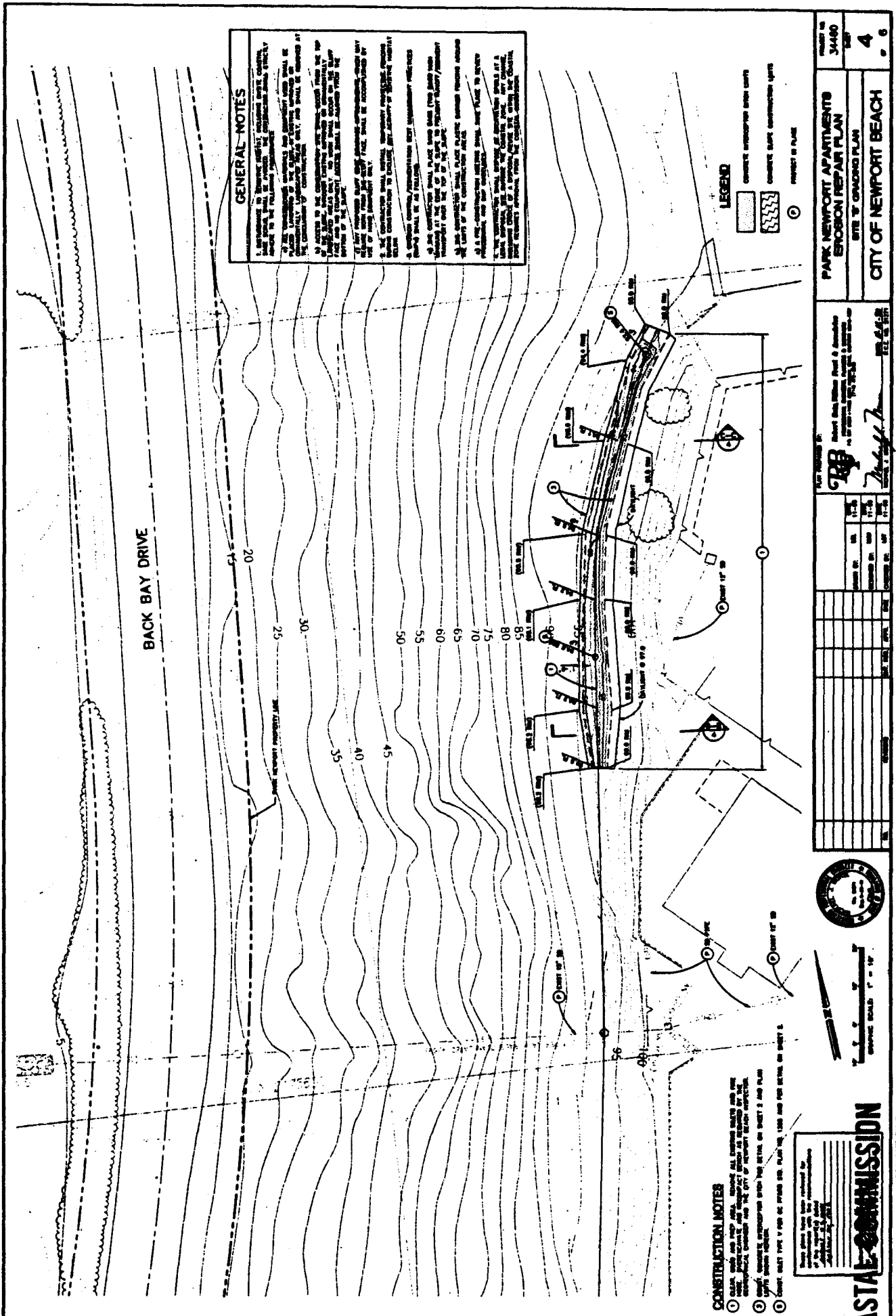


- CONSTRUCTION NOTES**
1. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. ANY OBSTRUCTION TO ACCESS SHALL BE REMOVED AT THE COMPLETION OF EACH PHASE OF CONSTRUCTION.
 2. ANY IMPROVED BLUFF EDGE OR SHORELINE IMPROVEMENTS, WHICH MAY BE REQUIRED BY THE CITY OF NEWPORT BEACH, SHALL BE ACCOMPLISHED BY THE CONTRACTOR AT THE COMPLETION OF THE CONSTRUCTION.
 3. EROSION CONTROL/SEDIMENTATION BEST MANAGEMENT PRACTICES (BMP'S) SHALL BE AS FOLLOWS:
 - a) THE CONTRACTOR SHALL PLACE SAND BARS (TWO SAND BARS PER 100' OF BLUFF) AND VEGETATION BARS (TWO VEGETATION BARS PER 100' OF BLUFF) AT THE TOP OF THE BLUFF TO PREVENT RUNOFF/SEDIMENTATION FROM THE BLUFF.
 - b) THE CONTRACTOR SHALL PLACE PLASTIC BARRIERS (SAND BARS) AND VEGETATION BARS (VEGETATION BARS) AT THE TOP OF THE BLUFF TO PREVENT RUNOFF/SEDIMENTATION FROM THE BLUFF.
 - c) A FINE-CONSTRUCTION SCREEN SHALL BE PLACED TO RETAIN PROCESSED, AND TOP SOILS.
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COASTAL COMMISSION

Project Name: Park Newport Apartments Erosion Repair Plan
 Date: 11-11-11
 City of Newport Beach

										PROJECT NO 34460		SHEET 3		DATE 11-6	
										PARK NEWPORT APARTMENTS EROSION REPAIR PLAN					
										SITE 'A' GRADING PLAN					
										CITY OF NEWPORT BEACH					
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GENERAL NOTES

1. EROSION REPAIRS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEWPORT BEACH EROSION REPAIR PLAN.
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10. THE EROSION REPAIRS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEWPORT BEACH EROSION REPAIR PLAN.

LEGEND

- CONCRETE REPAIRS (HATCHED)
- CONCRETE REPAIRS (HATCHED)
- PROJECT IN PLACE

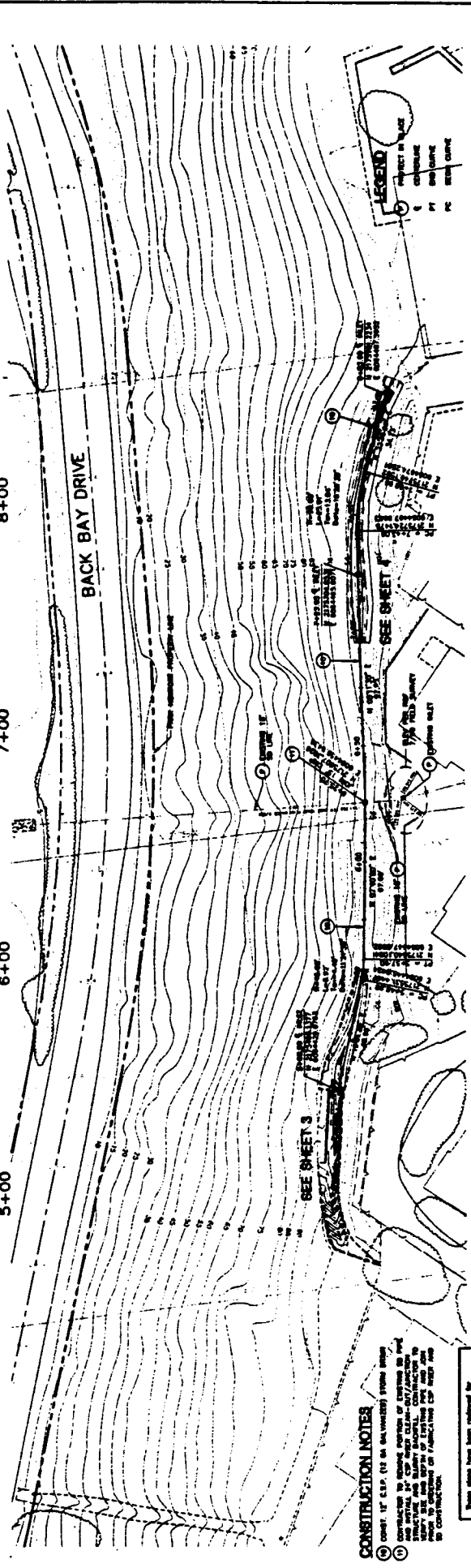
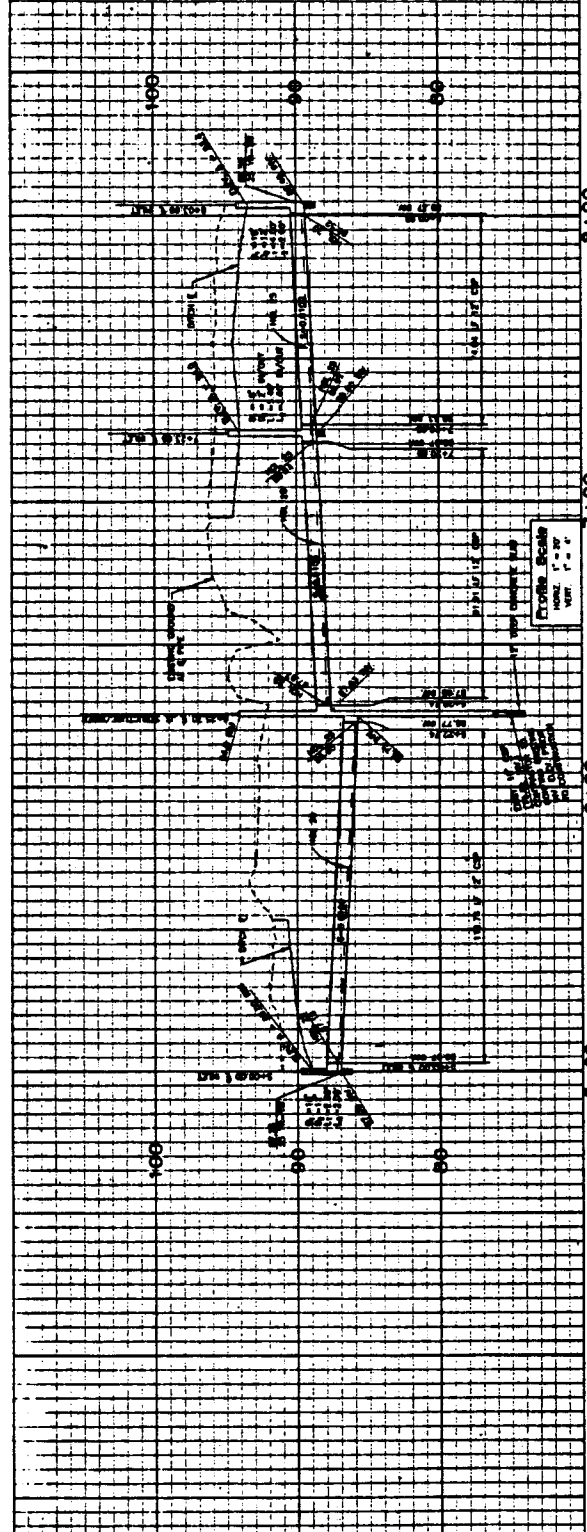
CONSTRUCTION NOTES

1. ALL EROSION REPAIRS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEWPORT BEACH EROSION REPAIR PLAN.
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PROJECT NO. 34460		SHEET NO. 4	
PARK NEWPORT APARTMENTS		CITY OF NEWPORT BEACH	
EROSION REPAIR PLAN		SITE OF EROSION REPAIR	
DATE: 10/1/88		DRAWN BY: [Signature]	
CHECKED BY: [Signature]		APPROVED BY: [Signature]	
SCALE: 1" = 10'		NORTH ARROW	
CONSTRUCTION NOTES		CONCRETE REPAIRS (HATCHED)	
CONCRETE REPAIRS (HATCHED)		PROJECT IN PLACE	

GENERAL NOTES

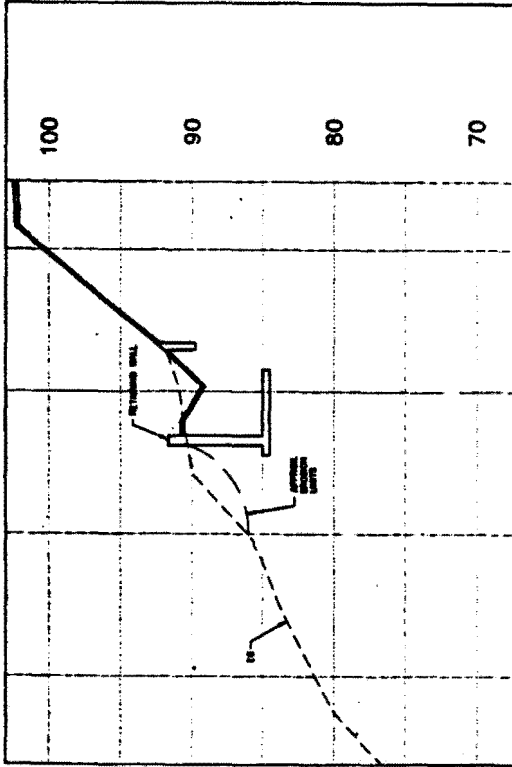
1. INCREASE IN EROSION HAZARD, INCLUDING OVER CONSTRUCTION, SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
2. ALL CONSTRUCTION MATERIALS AND EQUIPMENT USED SHALL BE PLACED LANDWARD OF THE EROSION HAZARD ZONE AND SHALL BE REMOVED AT THE CONCLUSION OF CONSTRUCTION.
3. ACCESS TO THE CONSTRUCTION SITE SHALL BE MAINTAINED FROM THE TOP OF THE SLOPE, INCLUDING EXISTING APPROACHES OR OVERHEAD LINES. ACCESS SHALL BE MAINTAINED FROM THE BOTTOM OF THE SLOPE.
4. ANY PROPOSED BLUFF OR EROSION IMPROVEMENT, WHICH MAY BE REQUIRED FROM THE BLUFF FACE, SHALL BE ACCOMPANIED BY THE CONSTRUCTION OF A STABLE EROSION CONTROL MEASURE.
5. THE CONTRACTOR SHALL MAINTAIN SUFFICIENT PROTECTIVE EROSION CONTROL MEASURES TO EXCLUDE ANY ACTIVITY IN EROSION HAZARD ZONE.
6. EROSION CONTROL/STABILIZATION BEST MANAGEMENT PRACTICES (BMP) SHALL BE AS FOLLOWS:
 - a. THE CONTRACTOR SHALL PLACE AND MAINTAIN TWO BARRIERS (ONE BARRIERS) AND THE TOP OF THE BLUFF, EROSION HAZARD ZONE, AND THE TOP OF THE CONSTRUCTION AREA.
 - b. THE CONTRACTOR SHALL PLACE PLASTIC BARRIERS AROUND THE LIMITS OF THE CONSTRUCTION AREA.
 - c. THE CONTRACTOR SHALL MAINTAIN THE BLUFF FACE TO BE IN A PROTECTIVE POSITION.
7. THE CONTRACTOR SHALL MAINTAIN THE BLUFF FACE TO BE IN A PROTECTIVE POSITION.
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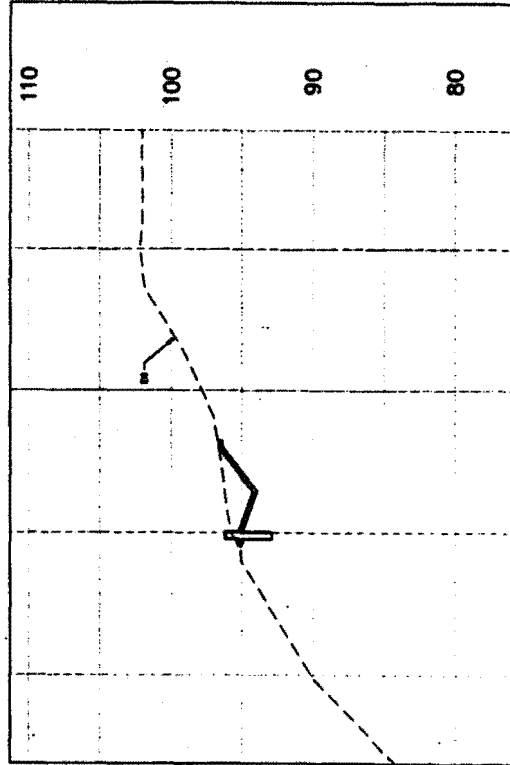
CONSTRUCTION NOTES

1. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF NEWPORT BEACH, CALIFORNIA, DEPARTMENT OF PUBLIC WORKS, DIVISION OF CONSTRUCTION, SPECIFICATIONS FOR CONSTRUCTION.
2. THE CONTRACTOR SHALL MAINTAIN THE BLUFF FACE TO BE IN A PROTECTIVE POSITION.
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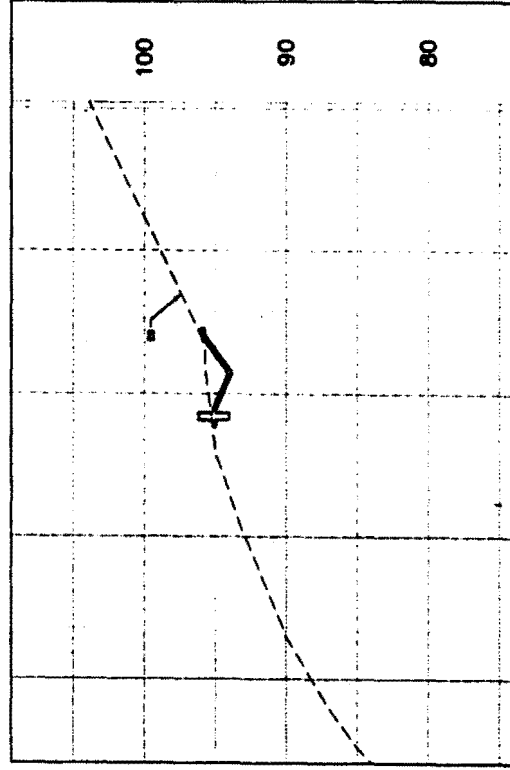
PROJECT NO. 34460		SHEET 5 OF 6	
PARK NEWPORT APARTMENTS		CITY OF NEWPORT BEACH	
EROSION REPAIR PLAN		STORM DRAIN PLAN	
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DESIGNED BY: [Signature]		APPROVED BY: [Signature]	
SCALE: 1" = 40'		SCALE: 1" = 10'	
PROJECT LOCATION: [Address]		PROJECT LOCATION: [Address]	
PROJECT DESCRIPTION: [Description]		PROJECT DESCRIPTION: [Description]	
PROJECT STATUS: [Status]		PROJECT STATUS: [Status]	
PROJECT CONTACT: [Contact]		PROJECT CONTACT: [Contact]	
PROJECT NOTES: [Notes]		PROJECT NOTES: [Notes]	



SECTION A-A



SECTION B-B



SECTION C-C

COASTAL COMMISSION
 10-10-2011

SECTION A-A AND B-B
 PROPOSED WALL
 ONLY



PROPOSED WALL
 (VERTICALS & HORIZONTALS)

FOR REVIEW BY
 CRB
 Robert Allen Williams, President
 of the Coastal Commission
 10-10-2011

PARK NEWPORT APARTMENTS
 EROSION REPAIR PLAN
 CROSS SECTIONS
 CITY OF NEWPORT BEACH

PROJECT NO.
 34-000
 SHEET
 6
 OF
 6

BIOLOGICAL ASSESSMENT
of
PROPOSED BANK STABILIZATION PROJECT

PARK NEWPORT APARTMENTS

City of Newport Beach

County of Orange,
California

Prepared for: Culbertson, Adams, & Associates
85 Argonaut, Suite 220
Aliso Viejo, CA 92656
(949) 581-2888

Prepared by: J. E. Heppert & Associates
Environmental Consulting
P.O. Box 3594
Mission Viejo, CA 92690-1594
(949) 367-0754

COASTAL COMMISSION
5-99-036

EXHIBIT # 4
PAGE 1 OF 3

June, 1998

On June 29, 1998 Jan E. Heppert conducted a site inspection of the proposed bank stabilization project at Park Newport Apartments, in the City of Newport Beach, County of Orange, California. The weather was sunny with a light breeze blowing onshore. Temperatures were in the low to mid 70's.

Park Newport Apartments proposes to stabilize three different sites along the southwest edge of their property. These three sites are in close proximity to each other, and are located at the top edge of the cliffs above Back Bay Drive and Upper Newport Bay Ecological Reserve, just north of San Joaquin Hills Road. The Park Newport Apartment site is approximately 100 feet above Back Bay Drive and Upper Newport Bay Ecological Reserve, with a nearly vertical cliff separating them.

The first site is on the southern most portion of the property, near housing units 4550 and 4540. It is the leading edge of a cliff that is a sheer 90 degree or more drop. The top of the cliff is vegetated with ornamental vegetation typical of the manufactured landscaping throughout the apartment complex. This extends down the cliff until a sheer rock face begins. Coastal sage scrub vegetation begins below this rock face, and extends down to San Joaquin Hills Road and Back Bay Drive. The bank stabilization proposed for this site includes extending a preexisting timber pole retaining wall from its present location approximately 40 feet around the corner of the cliff. If this work is done from the top of the cliff, it will not impact any native California vegetation, including coastal sage scrub found downslope.

The second site is located to the north of the first site along the cliff that rises above the ecological reserve, below units 4830, 4840, and 4870. There are two areas of exposed soil below these units that appeared to have been cleared recently. Between these two cleared areas is a small section of vegetation that has been left. This cleared area extends approximately 20 to 25 feet downslope from the apartment elevation. Below this cleared area is dense coastal sage scrub that extends downslope to Back Bay Drive. The cleared area appears to have been vegetated by ornamental vegetation based upon the vegetation found on either side of this cleared area and the small patch of vegetation left between the two cleared areas. This small area left untouched consists of pampas grass, palm trees, sugar bush and small ornamental bushes and ground cover typical of the manufactured landscaping found throughout the apartment complex. The bank stabilization proposed for this location includes the installation of approximately 5000 square feet of gunite or shotcrete. If this gunite or shotcrete is installed in the presently cleared area or the area of vegetation left between the two cleared areas, there will be no impact to any native California vegetation. If the proposed work extends downslope any further than the

cleared area, it will impact coastal sage scrub, and a permit from U.S. Fish & Wildlife Service will be necessary. In order to avoid impacting this coastal sage scrub, it is recommended that all work be done from the top of the cliffs.

The third area of proposed impact is located just north along the cliff, below the clubhouse, pool and spa. Currently there is a flat area a few feet below the complex that is vegetated with sugar bush. This flat area is 3 to 7 feet wide. A portion of this flat area has slid down the slope, along with the sugar bush. This exposed slide area is covered with plastic and secured with sand bags to prevent further erosion. Immediately below this flat area is a steep slope that is heavily vegetated with coastal sage scrub. The proposed bank stabilization includes the installation of a 157 foot long caisson wall. The construction of this wall is described as follows: 23 concrete caissons, 36 inches in diameter will be installed along the cliff. They will extend 23 feet into the soil, and be on typical 7 foot centers. If this work is done from the top of the cliff, it should not impact the coastal sage scrub. If any coastal sage scrub is disturbed or removed during the construction process, then a permit will be necessary from the U.S. Fish & Wildlife Service.

There is no riparian associated vegetation or any wetland habitat on this site or any other proposed construction site previously discussed in this report.

In order to avoid the time consuming and possibly costly permitting process through the U.S. Fish & Wildlife Service for the removal of coastal sage scrub, it is recommended that no coastal sage scrub be disturbed during this bank stabilization project. If care is taken by the contractor performing the work, and the work is done in an environmentally aware manner, it should be possible to avoid impacting the coastal sage scrub located adjacent to the work sites.

DEPARTMENT OF FISH AND GAME

Region 5, South Coast Regional Office
4949 Viewridge Avenue
San Diego, CA 92123
(619) 487-4201
FAX 487-4235

October 13, 1998

Mr. Karl Schwang
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

**Coastal Development Permit 5-98-345, Slope Stabilization Work
at the Park Newport Apartments, Newport Beach**

Dear Mr. Schwang:

The Department of Fish and Game (Department) has reviewed the above-referenced Coastal Development Permit for the stabilization of bluffs immediately adjacent to the Upper Newport Bay Ecological Reserve (Reserve), located in the City of Newport Beach, Orange County. The stabilization is necessary to eliminate the threat of slippage for residential units and the club house building within the Park Newport Apartment Complex. A site visit was made by Ms. Terri Stewart of my staff on October 8, 1998 with Mr. Kevin Culbertson to verify the project site issues, constraints and conditions. The Department concurs that the stabilization work needs to be completed prior to the upcoming winter rains to avoid impacts that may occur to the Reserve if the slopes are stabilized.

The Department has reviewed the descriptions and plans for all four proposed slope stabilization areas and has no substantial concerns with their implementation. Due to other factors, only sites #1 and #4 are being permitted by Coastal Commission at this time. The Department concurs with all of the proposed Coastal Commission special conditions being placed on the project including conducting work activities from above; installation of temporary protective fencing and avoidance of all native vegetation near the proposed work and caisson placement. Although not currently being contemplated, other conditions may be required, after monitoring, the caissons are determined to be inadequate and additional stabilization measures are necessary. The Department would expect to receive notification of additional, proposed work at these or other sites on the bluffs.

California gnatcatchers were observed by Department staff immediately below the "rockfall" area of site #1. Because of the occupied gnatcatcher habitat, if the project is modified to potentially impact coastal sage scrub or be constructed during the gnatcatcher breeding season (generally February 1 through August 15), the Federal Endangered Species Act will need to be complied with. Additional California Environmental Quality Act (CEQA) documents and mitigation may also be necessary.

The Department recommends the same conditions for slope stabilization efforts at the deferred

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Mr. Schwang
October 13, 1998
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sites (#2 and #3) as are being used for sites #1 and #4. Sites #2 and #3 should be attempted to be stabilized prior to the gnatcatcher breeding season. The Department concurs with the Coastal Commission Staff Report that the minor earthwork necessary at sites #2 and/or #3 be performed by hand, and again, from the top of the slope. Revegetation may be necessary, especially at site #2, and native vegetation and non-invasive plant species should be utilized.

Finally, the Department recommends that, at a minimum, biannual monitoring be conducted by the landowner to ensure that the slope stabilization is working and that sensitive habitat or Reserve land is not being negatively impacted.

Thank you for the opportunity to review this proposed project. Questions or comments may be directed to Ms. Terri Stewart at the letterhead address, or by telephone at (619) 467-4209.

Sincerely,

Theresa A. Stewart

for Ronald D. Rempel
Regional Manager, Region 5

cc: Department of Fish and Game
Terri Stewart, San Diego
Bill Tippetts, San Diego
Erick Burres, Long Beach

US Fish and Wildlife Service
Loren Hayes, Carlsbad

file: cc598345.1a3

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

MAY 5 1999

Karl Schwing
Coastal Program Analyst
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

Re: Coastal Development Permit Application 5-99-036, 1 Park Newport, City of Newport
Beach, Orange County, California

Dear Mr. Schwing:

This letter responds to your request that we review Coastal Development Permit Application 5-99-036 regarding the potential for the proposed project to impact the Federally-listed, threatened coastal California gnatcatcher (*Poliophtila californica californica*). Our review is based on a field visit to the site by Loren Hays of our staff, and documents submitted to us by LSA Associates, Inc., dated April 26, 1999.

The proposed project is to perform slope stability work involving the excavation and recompaction of earth, construction of interceptor ditches and storm drain inlet pipes, concreting over existing sand bags, and the construction of a retaining wall on the slope with the Park Newport Apartments complex, which is located immediately east of, and above, Back Bay Drive. The subject slope is vegetated with coastal sage scrub vegetation, and gnatcatchers are known to reside within coastal sage scrub habitat along the eastern bluffs of Upper Newport Bay. The project area is immediately adjacent to coastal sage scrub habitat present on the slope below. However, given the project description and analyses contained within documents submitted to us, there apparently will not be direct impacts to coastal sage scrub in association with the proposed project.

We are concerned for the protection of fish and wildlife resources and their habitats. In this regard, we provide comments on public notices issued for a Federal permit or license affecting the Nation's waters pursuant to the Clean Water Act. We also administer the Endangered Species Act of 1973, as amended (Act). Section 7 of the Act requires Federal agencies to consult with the Fish and Wildlife Service should it be determined that their discretionary acts may affect a listed threatened or endangered species. Section 9 of the Act prohibits the unauthorized "take" (e.g., harm harassment, pursuit, injury, kill) of Federally-listed wildlife species. "Harm" is further defined to include habitat modification or degradation where it kills or injures wildlife by

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Mr. Karl Schwing, California Coastal Commission

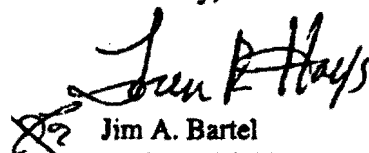
2

impairing essential behavioral patterns including breeding, feeding or sheltering. "Take" can only be permitted pursuant to the pertinent language and provisions in section 7 (Federal consultations) and section 10(a) of the Act.

Based on our own field review and site visit and the results of three separate focused surveys for gnatcatchers undertaken in the project area and environs on behalf of the project proponent, it appears unlikely the project will result in the take of the gnatcatcher. Should the remaining protocol gnatcatcher surveys detect the species within habitats adjacent to the project area, we will recommend that construction activities be avoided during the gnatcatcher breeding season (generally February 15 to August 15) or that measures be taken to avoid any potential direct or indirect effects to the gnatcatcher and thus prevent the unauthorized take of the species. It is our understanding that the applicant is willing to abide by these recommendations. Should gnatcatchers be subsequently discovered within close proximity to the proposed construction area, we recommend further contact with our office to help identify appropriate measures that would prevent the unauthorized take of the species.

Thank you for the opportunity to comment on the potential impact of the proposed project on sensitive habitats and Federally-listed species. If you should have questions pertaining to these comments, please contact Loren Hays or William Miller of my staff at (760) 431-9440.

Sincerely,



Jim A. Bartel
Assistant Field Supervisor

1-6-99-HC-224

cc: Eric Burres (CDFG)
Tim Neely (NROC)
LSA Associates, Inc. (Attn: Mr. William O'Connell)

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If you have any questions regarding the surveys or the project itself, please call me at
(949) 553-0666.

Sincerely,

LSA ASSOCIATES, INC.



M.W. "Bill" O'Connell
Associate
Biologist/Restoration Ecologist

cc: Eric Burres, California Department of Fish and Game
Richard Ellis, Gerson Bakar & Associates
Kevin Culbertson, Culbertson and Adams

Attachment

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LSA Associates, Inc.
Environmental Analysis
Transportation Engineering
Biology and Wetlands
Habitat Restoration
Resource Management
Community and Land Planning
Landscape Architecture
Archaeology and Paleontology

May 25, 1999

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South Coast Region

JUN 9 1999

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Jill Wilson O'Conner

Mr. Loren Hays
US Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Subject: Gnatcatcher Surveys on Bluff Below Park Newport Apartments

Dear Loren:

Six California gnatcatchers surveys have now been completed on the bluff above Back Bay Drive from San Joaquin Hills Road to a point approximately 0.3 mile north. These surveys were begun on April 15, 1999, and were completed on May 21, 1999. No gnatcatchers were observed or heard on any of the six occasions. Copies of the completed survey forms are attached for your review. The six surveys were made one week apart, except between the fifth and sixth survey, which were eight days apart.

Gerson Bakar & Associates wishes to proceed with their proposed project as quickly as possible so that it is completed, including the revegetation of the slide area, before the onset of the winter rains. They hope to begin the installation of the permitted drainage structure by July 15, 1999. The installation of the drainage structures at the top of the slope is imperative to the long-term survival of the coastal sage scrub plant community below. The heavy rains during the winter of 1997/98 washed from the top down over the side of the bluff and cut the away the cryptogamic crust, which covers the soil in the open areas and protects it from damage by raindrops. Consequently, the sooner the drainage is installed above the native plant community the safer the bluff will be from further scouring and slides, such as took place in 1997/98.

Loren, I want to thank you on behalf of Gerson Bakar for taking time out of your busy schedule to meet in the field and review the situation and prepare the letter to the California Coastal Commission, which has helped to expedite this process.

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5/25/99<(P:\PNP830\gnatsurvey\tr2.wpd)>

