

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 800 Oceangate, Suite 1000
 Newport Beach, CA 90802-4302
 (949) 590-5071

**RECORD PACKET COPY**

Filed: October 1, 1999
 49th Day: November 19, 1999
 180th Day: March 29, 2000
 Extension
 Agreement: May 18, 2000
 Staff: KFS-LB
 Staff Report: March 23, 2000
 Hearing Date: April 11-14, 2000
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-289

APPLICANT: Newport-Mesa Unified School District (NMUSD)
 Eric Jetta, Director of Maintenance and Operations

PROJECT LOCATION: 1327 W. Balboa Blvd., Newport Beach, Orange County

PROJECT DESCRIPTION: Construction of a 2 foot high (measured from adjacent sand area) perimeter wall on the west and south west sides of an existing grass recreational field. The perimeter wall will be approximately 120 linear feet on the west side and 25 feet on the south west side.

LOCAL APPROVALS RECEIVED: City of Newport Beach approval dated June 23, 1999.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with four special conditions. The major issues of this staff report are the construction of a low wall on a beach which could be subject to wave and flooding hazards and have adverse public access and visual impacts. Special Condition 1 addresses concerns regarding hazards and public access by specifying that the purpose of the wall is as an appurtenant structure designed to minimize the encroachment of sand upon a grass field. Special Condition 2 addresses visual impacts by requiring the applicant to submit a color and texture plan showing that the structure will be constructed of materials colored with earth tones to be compatible with the sandy beach. Special Condition 3 addresses visual impacts by prohibiting the placement of signs, other than public safety related signs, on the proposed wall. Special Condition 4 addresses hazards by requiring the applicant to submit a written agreement acknowledging the hazards and if the property is conveyed to record a deed restriction.

STAFF NOTE:

The subject application was placed on the January 2000 agenda. A public hearing was opened on Tuesday, January 11, 2000. However, in the absence of the applicant and known objection to Commission staff's recommendation, the item was trailed to Wednesday, January 12, 2000. Prior to taking the matter up on January 12, 2000, the applicant requested a postponement pursuant to Section 13073 of the California Code of Regulations.

Since the January 2000 hearing, the proposed project was revised by the applicant to address the concerns of Commission staff and other interested parties. These concerns included potential adverse visual impacts due to the height and length of the wall. The revised project reduces the total length of wall from 528 feet to 145 feet and reduces the height of the wall from 3 feet to 2 feet. The applicant has also specified that wall height will be measured from the grade of the sandy beach, rather than the grade of the grass field which is higher than the sandy beach. By reducing the length of the wall, potential impacts upon vistas of the beach and ocean were reduced. Potential adverse impacts upon vistas of the beach were further minimized by reducing the height of the wall to 2 feet and specifying that the height of wall will be measured from the sandy beach, rather than the higher grass field elevation.

The subject application was filed on October 1, 1999. The 180th day was March 29, 2000. However, an *Agreement for Extension of Time for Decision on Coastal Development Permit* (Exhibit 3) was executed on February 18, 2000. Therefore, the Commission must act on the subject application by May 18, 2000.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL.

Staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the permit application with special conditions.

MOTION

I move that the Commission approve CDP #5-99-289 pursuant to the staff recommendation.

Staff recommends a YES vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION OF 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, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies of the Coastal Act, 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. FUNCTION OF WALL

The proposed perimeter wall is an appurtenant structure designed to function as a sand fence only.

2. 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 sandy beach. 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 sandy beach,
2. white and black tones will not be used,

3. ^{0.1} the color will be maintained through-out the life of the structure,

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.

3. SIGNAGE

Signage is prohibited, unless specifically permitted by this permit or another Commission approval. Exceptions: i) Signs on the wall of the approved structure that are related to the presence of the wall and are necessary for public safety.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, and flooding; (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 ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant and landowner(s) shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (a) 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.

C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1327 W. Balboa Boulevard, on the Balboa Peninsula within the City of Newport Beach (Exhibits 1 pages 1 and 2). The subject site is the recreational area of the Newport Elementary School which is located seaward of the Ocean Front walkway (a paved beachfront public lateral accessway). The property is owned by the City of Newport Beach and is leased to the Newport-Mesa Unified School District. The subject site is between the first public road and the sea and is located on the beach.

Newport Elementary School was constructed in 1933. The school grounds are surrounded by residential development on three sides and the beach on the seaward side. In 1960, since there were limited locations where the school district could locate a recreational area for the school, the school district leased the beach area adjacent to the school and seaward of the Ocean Front walkway. Documents submitted by the applicant indicate the recreation area, including paved areas for basketball, other hard court games, and playground equipment were constructed in the early 1960's.

The applicant is proposing to construct a 2 foot high perimeter wall (i.e. sand fence) on two sides (west and southwest sides) of an existing grass recreational field (Exhibit 2). The height of the wall will be measured from the adjacent sandy area, rather than from the height of the grass field which is higher than the adjacent sandy areas. The wall along the west side of the field, which is perpendicular to the beachfront lateral accessway, will be 120 feet long. The wall along the southwest side of the grass field, which is parallel to the beachfront lateral accessway, will be 25 feet long.

The applicant is proposing the wall to reduce the encroachment of wind blown sand from the adjacent beach onto the grass field. Since the site is surrounded on three sides by existing residential development, the grass field could not be relocated to avoid the wind blown sand. The wall is not intended to function as a seawall or other protective device. Special Condition 1 clarifies the function of the wall.

B. PUBLIC ACCESS

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The proposed perimeter wall will be constructed on two sides of an existing grass field. The grass field is part of the recreational area for the adjacent Newport Elementary School. The field is on the seaward side of Ocean Front walkway, an improved lateral public walkway which runs the length of the Balboa Peninsula and the beach in this area of the City of Newport Beach. The walkway separates the school structures which are on the landward

side of the walkway and the recreational areas for the school which are located on the seaward side of the walkway. The grass field is bounded by the public walkway on the landward side, a black top playground on the seaward side, paved basketball courts on the east side and a sandy play area with playground equipment on the west side. An approximately 400 foot wide sandy beach occurs seaward of the black top playground. In addition, approximately 800 foot wide sandy beach areas flank the paved recreational areas.

The proposed wall will not completely enclose the existing grass field. In addition, no wall will be constructed along the perimeter flanked by the Ocean Front walkway. Therefore, a person wishing to traverse the grass field from the public walkway to the beach could do so unobstructed with the exception of a short 25 foot length segment of wall parallel to the water. In addition, due to the short height of the wall, 2 feet, most persons could step over the wall with little effort. The applicant states that the wall has been designed so that the wall will not adversely impact the public's use of the area and so that there isn't the appearance that the grass recreation area is private. In addition, while there are other structures surrounding the grass field, such as the existing black top playground, existing paved basketball courts, and miscellaneous playground equipment, these structures do not obstruct public access. In addition, there are no gates surrounding the recreational area. Therefore, when the area is not in use by the school, the public can use the recreational area. Therefore, the proposed sand fence will benefit the public's ability to use the grass field by minimizing the encroachment of sand onto the grass. It should also be noted that there is a paved vertical accessway, approximately 70 feet west of the grass field which extends from the end of 14th Street onto the wide sandy beach. This vertical accessway provides another method for the public to access the most seaward areas of the wide sandy beach in this area.

The proposed wall is designed as a sand fence only. If the fence were utilized to restrict access to the field, such a restriction would result in an adverse impact upon public access to the beach and existing recreational area. Therefore, the Commission imposes Special Condition 1 which clarifies that the function of the wall is as a sand fence only. As conditioned, the Commission finds that the proposed sand fence/wall will not obstruct access to the beach and is consistent with Section 30211 of the Coastal Act.

C. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in relevant 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...

The proposed development is a two (2) foot high solid block wall constructed in an "L" shaped configuration on two sides of an existing grass field. The "L" shaped wall will have two segments, one 120 foot segment which is perpendicular to the shoreline, and one 25 foot segment parallel to the shoreline and connected at the seaward end of the 120 foot segment. The wall will be located seaward of the existing Ocean Front walkway, a popular paved public walkway which runs parallel to the shoreline in this area of the City of Newport Beach.

Presently, there are partially obstructed views to and along the shoreline available from the Ocean Front walkway and from the sandy beach. These views include the sandy beach, ocean, Newport Pier to the north and Balboa Pier to the south, as well as distant views of the bluffs along Corona Del Mar. Obstructions include existing recreational equipment such as basketball backboards, chain link baseball backstops, and playground equipment.

Topographic grades are not flat in this area. For instance, between the Ocean Front walkway and the ocean, the grade of the grass field and sandy beach rises gradually to a crest that is approximately 3 feet above the grade of the walkway. Presently, with this change in topography, views of the ocean are unobstructed. However, the 25 foot segment of the proposed wall that is parallel to the shoreline would be constructed near the ridge of the crest formed by the grade of the sandy beach.

The proposed wall will be 2 feet above the grade of the sandy beach. Since the grade of the sand is approximately 1 foot below the grade of the grass field, the effective height of the wall when viewed from the walkway would be approximately 1 to 1.5 feet above the grade of the grass field. Due to the low height of the wall and the short length of the wall, no significant adverse impact upon views of the ocean would occur.

The applicant has stated that the proposed wall is necessary to prevent blowing sands from encroaching upon the grassy field. This grassy field provides a recreation area for Newport Elementary School, as well as for the public when the school is not utilizing the field. An aerial photograph submitted regarding the proposed project indicates that the primary source of sandy encroachment occurs along the northern side of the grass field where the sandy beach and grass field are immediately adjacent to one another. The other three sides of the grass field are surrounded by asphalt and the Ocean Front walkway, and therefore are not immediately adjacent to sandy beach. The aerial photograph indicates that sand encroachment upon the other three sides is not as prevalent as the side which is immediately adjacent to sandy beach.

The Commission finds that preventing encroachment of sand upon the grass field will enhance public access opportunities by allowing the grass field to remain usable by the Elementary School and public. However, while the proposed wall will not have any substantial direct impact upon vistas of the beach and ocean, the proposed wall could be a prominent feature on the sand if not appropriately colored. In addition, the presence of a wall presents an opportunity for signage, such as advertising and graffiti, which would cause the wall to be a prominent adverse visual feature on the beach. In order to reduce visual impacts the Commission imposes Special Conditions 2 and 3. Special Condition 2 require the applicant to submit a color and texture plan showing that the wall will be colored with earth toned materials, that black and white colors will not be used, and that the color will be maintained throughout the life of the structure. The plans are to be reviewed and approved by the Executive Director and the permittee shall construct the wall in accordance with those plans. In order to reduce adverse visual impacts from signs and graffiti, Special Condition 3 prohibits the presence of signs on the wall with the exception of signs necessary for public safety related to the presence of the wall on the beach. Under Special Conditions 2 and 3, if the wall were vandalized with graffiti, the permittee would be required to restore the wall to the plans approved by the Commission.

As conditioned, the Commission finds the proposed project is consistent with Section 30251 of the Coastal Act.

D. HAZARDS

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The proposed development is located on a sandy beach that is subject to tidal and wave action. The beach environment is dynamic and there are risks associated with development in such areas. For instance, severe wave action due to an irregular but severe storm event can cause the beach to erode more quickly than natural beach sand replenishment would occur. In such cases, structures on sandy beach areas could be subject to wave attack, flooding, and erosion.

The proposed sand wall will be located landward of existing development on the beach including an existing asphalt playground and existing recreation equipment. Therefore, the applicant is not proposing to increase erosion hazards by extending development seaward of other existing appurtenant structures. Therefore, the proposed project minimizes hazards to life and property.

In addition, the proposed sand wall is an appurtenant structure and does not represent a significant investment. Therefore, in the event the proposed wall were subject to wave attack, erosion, or flooding, the wall could be removed to avoid the hazard. Special Condition 1 clarifies the purpose of the structure is as a sand wall and that it is an appurtenant structure. Therefore, since the wall is not a significant investment, protection, such as a shoreline protective device, would not be required to protect the wall in the event that the wall were subject to wave attack, erosion, or flooding. Rather, removal of the wall could occur. The appurtenant and removable nature of the structure minimizes any hazard associated with the presence of the wall in an area where wave attack, erosion, or flooding could occur.

Given that the applicant has chosen to implement the project despite risks from wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission imposes Special Condition 4. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

E. LAND USE PLAN

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government

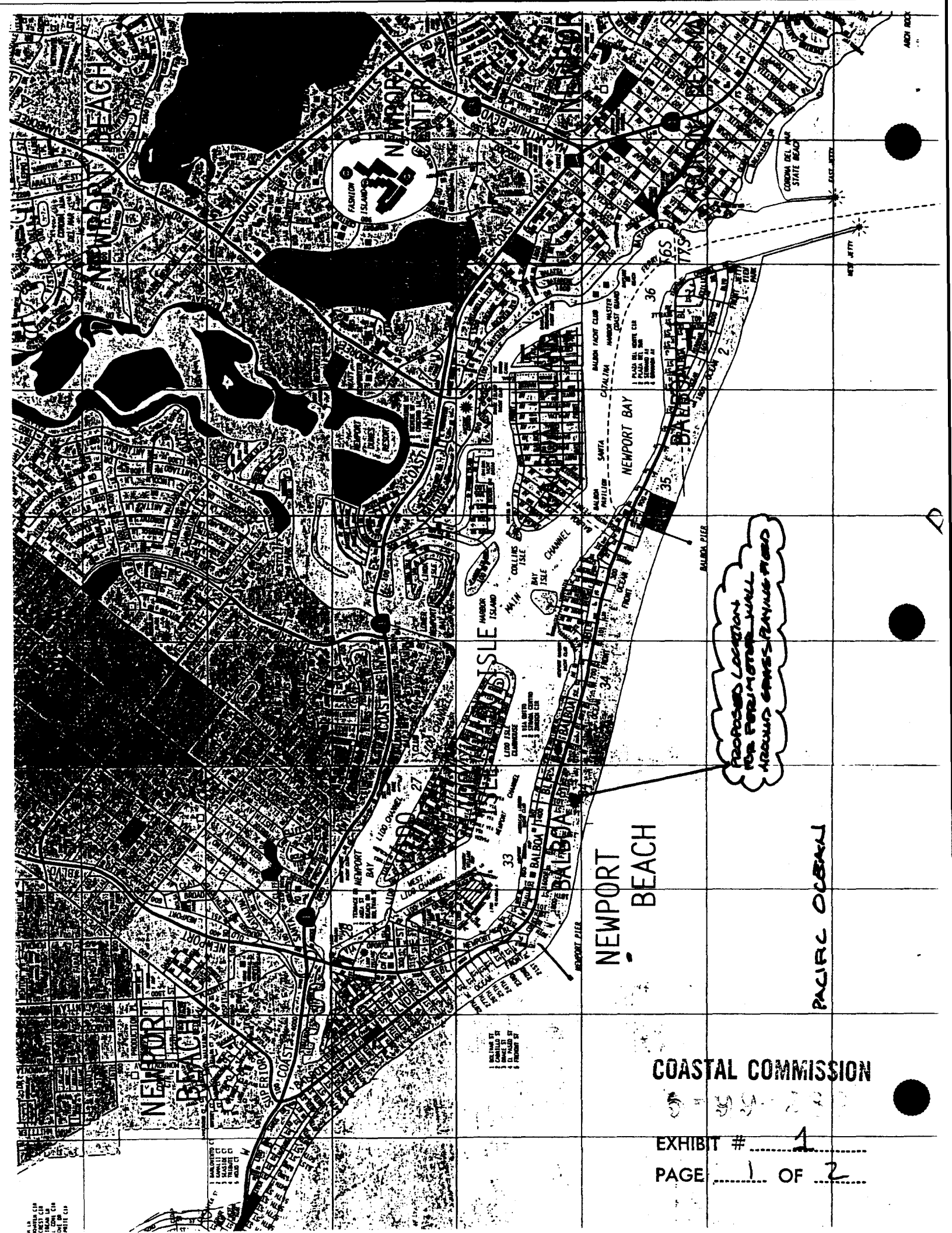
having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

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

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's 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 urbanized area. Development already exists on the subject site. The development, as proposed, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



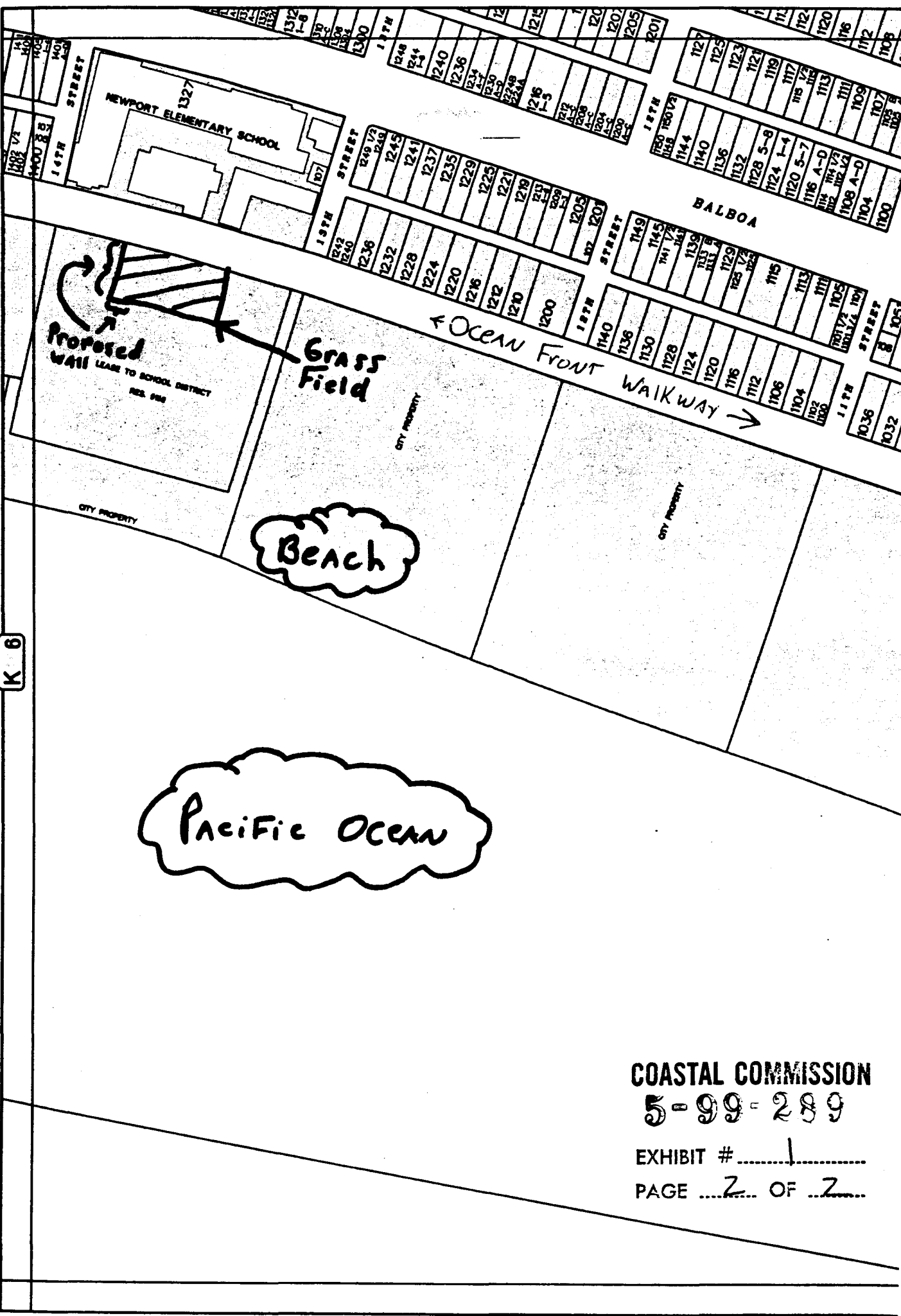
PROPOSED LOCATION FOR FORMER JETTIES WILL AROUND GAMES PLAYING FIELD

NEWPORT BEACH

PACIFIC OCEAN

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2



K 6

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5-99-289

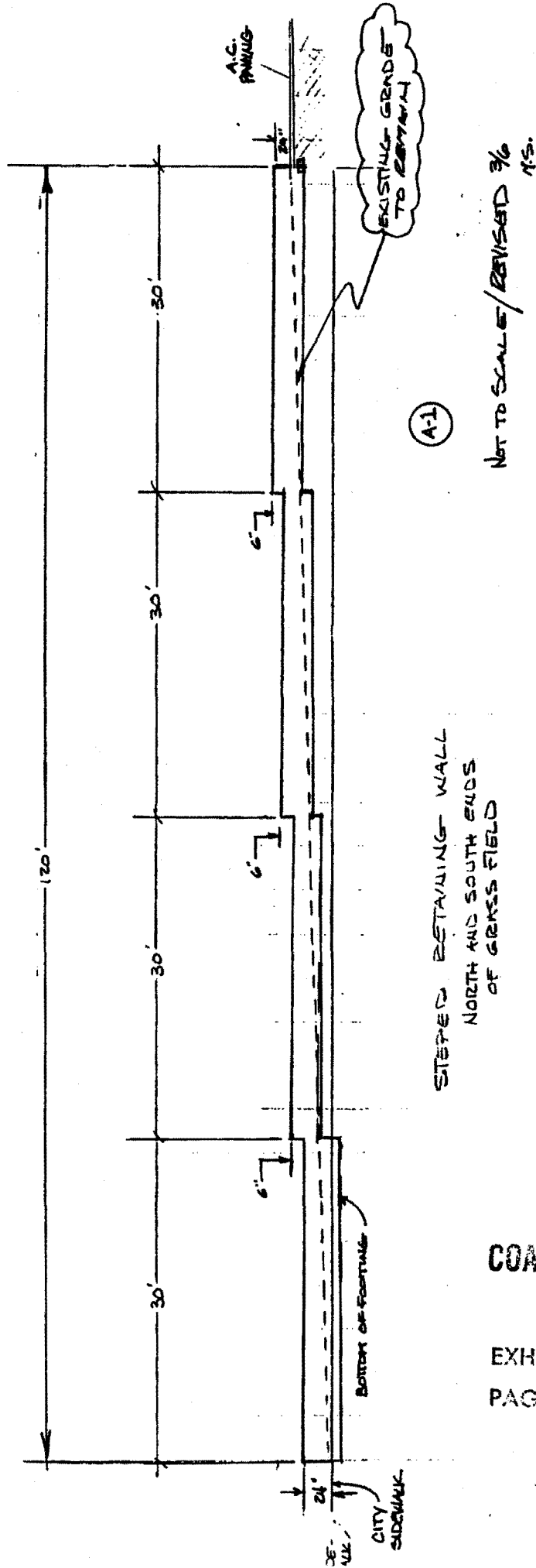
EXHIBIT # 1

PAGE 2 OF 2

DETAIL FOR RETAINING WALL - NORTH - SIDE

NEWPORT ELEMENTARY SCHOOL
327 W. BARBOA BLVD.
NEWPORT BEACH, CA.

RECEIVED
MAR 08 2000
CALIFORNIA
COASTAL COMMISSION



STEPPED RETAINING WALL
NORTH AND SOUTH ENDS
OF GRASS FIELD

COASTAL COMMISSION

5-99-289

EXHIBIT # 2

PAGE 1 OF 3

BLACK TOP PLAYGROUND

288'

RECEIVED
MAR 08 2000
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RETAINING WALLS

GRASS FIELD

SAND
PLAY AREA

STEPPED
RETAINING WALL



SKET BALL
COURTS
PAVED

120

CITY SIDEWALK

NEWPORT ELEMENTARY SCHOOL
527 W. BALBOA BLVD.
NEWPORT BEACH, CA.

NOT TO SCALE / REVISED 3/6 - M.S.

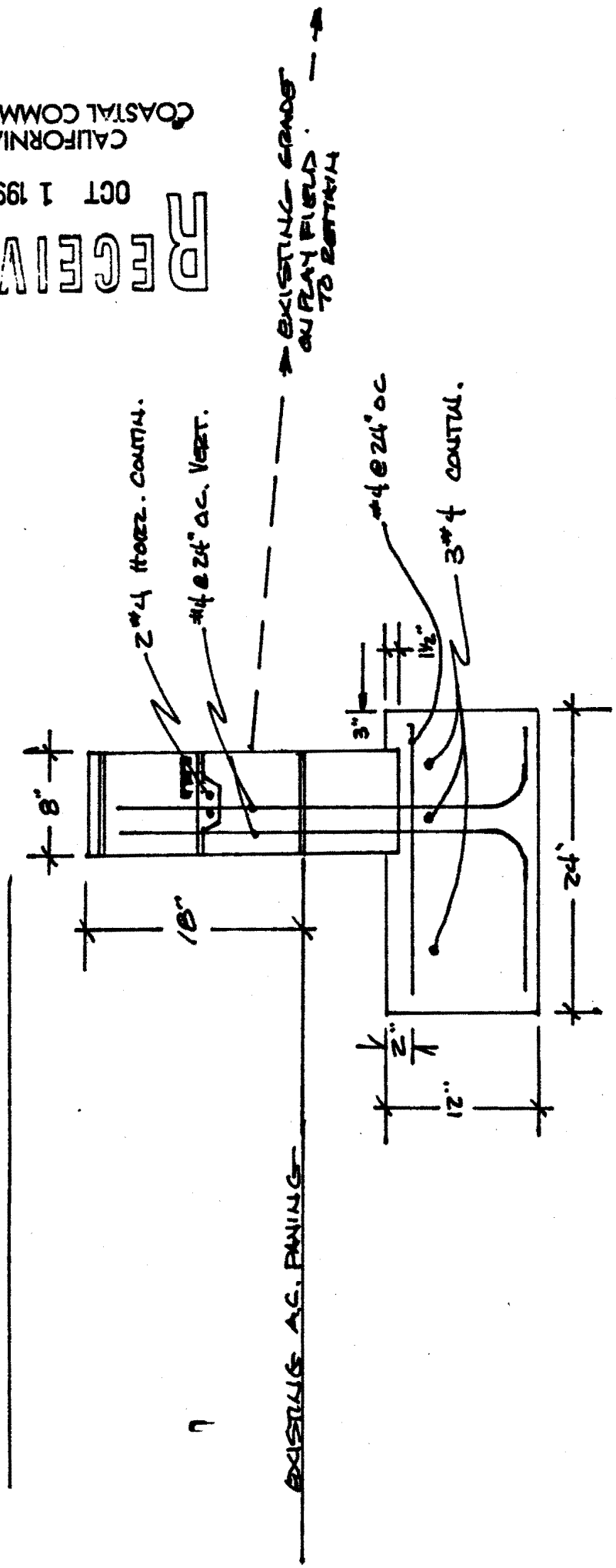
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5-99-289

EXHIBIT # 2

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 OCT 1 1999
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EXISTING AS FINISH

EXISTING GRADE
 ON PLAY FIELD
 TO REMAIN

2 #4 HORIZ. CONTIN.
 #4 #24" OC. VERT.

#4 #24" OC
 3 #4 CONTIN.

FOOTING DETAIL - CMU RETAINING WALL

1. ALL CELLS TO BE FILLED
 SOLID WITH GROUT

COASTAL COMMISSION

5-99-289

EXHIBIT # 2

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RECEIVED
GARY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Region



South Coast Area Office
2200 Ocean Gate, Suite 1000
San Diego, CA 90802-4302
Tel: 619-590-5071

FEB 18 2000

CALIFORNIA
COASTAL COMMISSION

AGREEMENT FOR EXTENSION OF TIME
FOR DECISION ON COASTAL DEVELOPMENT PERMIT

Pursuant to Government Code Section 65957, the applicant, or applicant's representative and Coastal Commission staff hereby agree that the time limits for a decision on permit application #5-99-289 established by Government Code Section 65952 shall be extended by 90 days (extension request ordinarily to be 90 days, and in no event more than 90 days, from the date of the later of the two signatures below; total period for Commission action not to exceed 270 days).

For NMUSO ~~2-18-2000~~ 76. John
Applicant Signature

-or-

SAME
Authorized Representative Signature

2/18/2000
Date

KARL SCHWING
CCC Staff Name (Print)

[Signature]
CCC Staff (Signature)

2/18/2000
Date

COASTAL COMMISSION

5-99-289

EXHIBIT # 3

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