


CALIFORNIA COASTAL COMMISSION

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 Staff: KFS-LB 
 Staff Report: May 25, 2000
 Hearing Date: June 13-16, 2000
 Commission Action:

STAFF REPORT: REVISED FINDINGS
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.

DATE OF COMMISSION ACTION: April 11, 2000

COMMISSION ACTION: Approval with special conditions.

COMMISSIONERS ON PREVAILING SIDE: Daniels, Desser, Dettloff, Estolano, Hart, Kruer, Orr, Potter, Rose, Woolley, and Chairman Wan

SUBSTANTIVE FILE DOCUMENTS: Administrative Coastal Development Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and 5-97-380 (Haskett); Coastal Development Permits 5-99-487 (Watson); 5-99-423 (Evans); 5-99-372 (Smith), 5-99-386 (Straight); 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's approval with special conditions of Coastal Development Permit application 5-99-289 on April 11, 2000.

STAFF NOTE:

In staff's written recommendation dated March 23, 2000, staff recommended approval of the proposed project subject to four special conditions regarding 1) specification that proposed structure was appurtenant; 2) a requirement for submission of a color and texture plan; 3) prohibition of placement of signs for anything other than public safety; and 4) an assumption-of-risk deed restriction. During the April 2000 hearing, the Commission added a special condition prohibiting the use of any protective devices to protect the structure from

wave uprush and flood hazards. The following findings incorporate the changes to the special conditions made at the hearing.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF ADOPTION OF REVISED FINDINGS.

The staff recommends that the Commission make the following motion and adopt the following resolution:

MOTION:

I move that the Commission adopt the revised findings in support of the Commission's action on April 11, 2000 concerning Coastal Development Permit 5-99-289.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 11, 2000 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for Coastal Development Permit 5-99-289 on the ground that the findings support the Commission's decision made on April 11, 2000 and accurately reflect the reasons for it.

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. 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.

5. **NO FUTURE SHORELINE PROTECTIVE DEVICE**

- A(1). By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-99-289 including, but not limited to, the proposed 2 foot high perimeter wall on the west and south west sides of the existing grass recreational field and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30253.
- A(2). By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the permittee and/or landowner shall remove the development authorized by this Permit, including the proposed 2 foot high perimeter wall on the west and south west sides of the existing grass

recreational field, if any government agency has ordered that the structure be removed due to any of the hazards identified above. In the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

A(3). In the event the beach recedes to within 10 feet of the structure approved by this permit but no government agency has ordered that the structure be removed, either i) the permittee and/or landowner shall remove the entire structure approved by this permit in accordance with a coastal development permit; or ii) an investigation shall be prepared by an appropriately licensed professional retained by the applicant and/or landowner, that addresses whether any portions of the structure approved by this permit is threatened by wave, erosion, or storm conditions, or other natural hazards. The investigation shall identify all those immediate or potential future measures that could stabilize the structure approved by this permit without shore or bluff protection, including but not limited to removal or relocation of portions of the structure. If the investigation concludes that the structure or any portion of the structure is unsafe, the permittee shall, in accordance with a coastal development permit remove the threatened portion of the structure.

B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 5-99-289**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). 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 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 200 foot wide sandy beach occurs seaward of the black top playground. In addition, approximately 600 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 relevant part:

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding

area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

1. Wave Uprush and Flooding Hazards

The subject site is located on a beach parcel, on the Balboa Peninsula between the Newport Pier and the Balboa Pier. Presently, there is a wide sandy beach between the subject development and the ocean. The mean high tide line is approximately 400 feet from the seaward edge of the existing grass recreational field and proposed 2 foot high sand wall. This wide sandy beach presently provides homes and other structures in the area some protection against wave uprush and flooding hazards. However, similar to other nearby beach fronting communities such as those at A1 through A91 Surfside in Seal Beach (north of the subject site) the wide sandy beach is the only protection from wave uprush hazards.

Even though wide sandy beaches afford protection of development from wave and flooding hazards, development in such areas is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside. Additionally, heavy storm events such as those in 1994 and 1998, caused flooding of the Surfside community. As a result, the Commission has required assumption-of-risk deed restrictions for new development on beachfront lots in Surfside and other similar communities.

Section 30253 (1) states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. Based on historic information and current conditions at the subject site, the proposed development is not considered to be sited in a hazardous area. The beach is currently 400 feet wide in front of the proposed development. In addition, the existing blacktop pavement, which pre-dates the Coastal Act, extends 200 feet seaward of the proposed development. This existing development was not adversely effected by the severe storm activity which occurred in 1983, 1994, and 1998. Since the proposed development is landward of existing development which has escaped storm damage during severe storm events, the proposed development is not anticipated to be subject to wave hazard related damage. Also, the applicant is not proposing to increase erosion hazards by extending development seaward of other existing appurtenant structures. Therefore, the proposed project minimizes risks to life and property.

However, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may effect beach processes, including sand regimes. The

mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

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 for an assumption-of-risk agreement. 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.

Also, 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.

The assumption-of-risk condition is consistent with prior Commission actions for development along the beach. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and more recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed restrictions on construction of new development. Examples include coastal development permits 5-99-372 (Smith), 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

2. Future Shoreline Protective Devices

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. In addition, the construction of a shoreline protective device to protect new development would conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including beaches which would be subject to increased erosion from such a device.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. However, as previously discussed, nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively effect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, this portion of Newport Beach is currently characterized as having a wide sandy beach. However, the width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not

only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion. In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from shoreline protective devices. The applicant is not currently proposing a seawall and does not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is a wide sandy beach in front of the proposed development that provides substantial protection from wave activity.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 5 which requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Section 30251 and 30253.

By imposing the "No Future Shoreline Protective Device" special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. The Commission also requires that the applicant remove the structure if any government agency has ordered that the structure be removed due to wave uprush and flooding hazards. In addition, in the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Finally, by accepting the permit the applicant also agrees on behalf of itself and all successors and assigns to remove the development authorized by this permit if the beach erodes to within 10 feet of the structure. Optionally, instead of simply removing the structure if the beach erodes to within 10 feet of it, the condition gives the permittee the ability to conduct an investigation as to whether the approved structure is threatened. If only a portion of the structure is threatened, only the threatened portion must be removed.

3. Conclusion

Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions 4 and 5 require the applicant to record Assumption-of-Risk, and No Future Shoreline Protective Devices deed restrictions. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

E. LAND USE PLAN

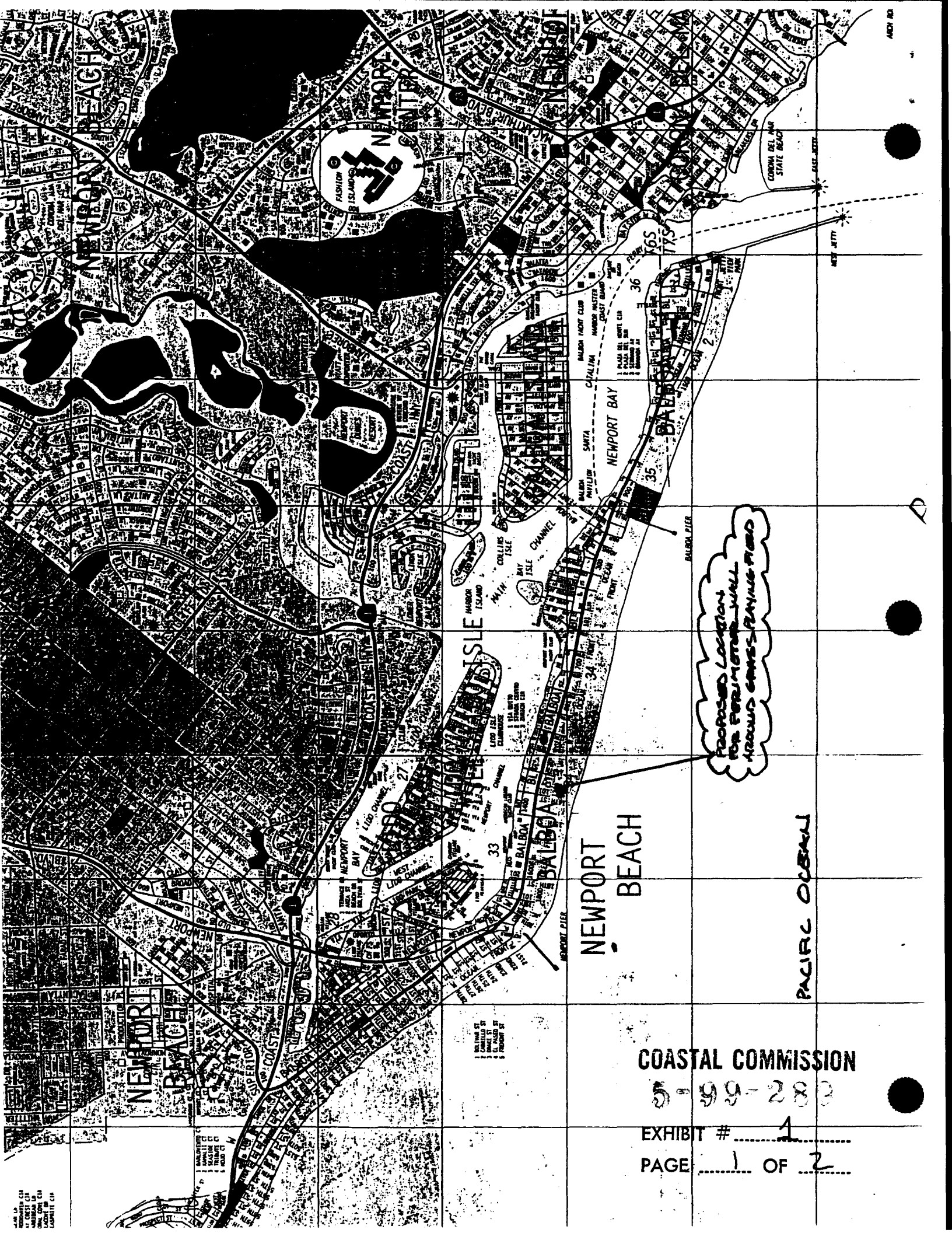
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

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 conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Conditions imposed are: 1) clarification of the ancillary nature of the proposed structure; 2) requirements for a color and texture plan; 3) prohibition against certain types of signage; 4) an assumption-of-risk agreement; and 5) a prohibition of future shoreline protective devices. 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 FORUM CENTER WILL
ALLOW GAMES PLAYING FIELD

NEWPORT
BEACH

PACIFIC OCEAN

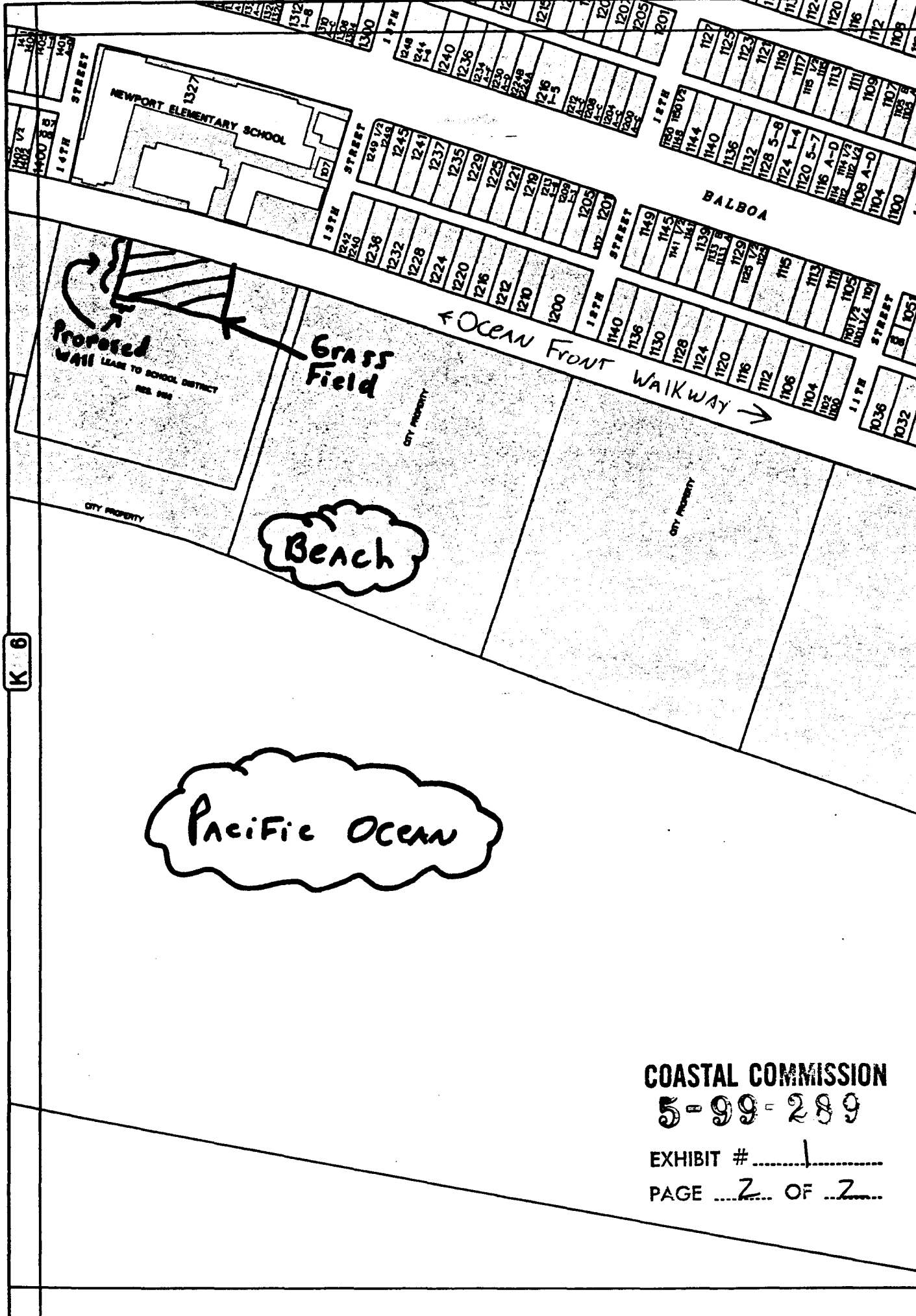
COASTAL COMMISSION

5-99-283

EXHIBIT # 1

PAGE 1 OF 2

NEWPORT BEACH
CITY
COUNCIL
JANUARY 1971
CITY CLERK
LORRAINE C. H.



K 6

Proposed
Wall LEASE TO SCHOOL DISTRICT
SEE 506

Grass
Field

Beach

Pacific Ocean

Ocean Front
Walkway

COASTAL COMMISSION

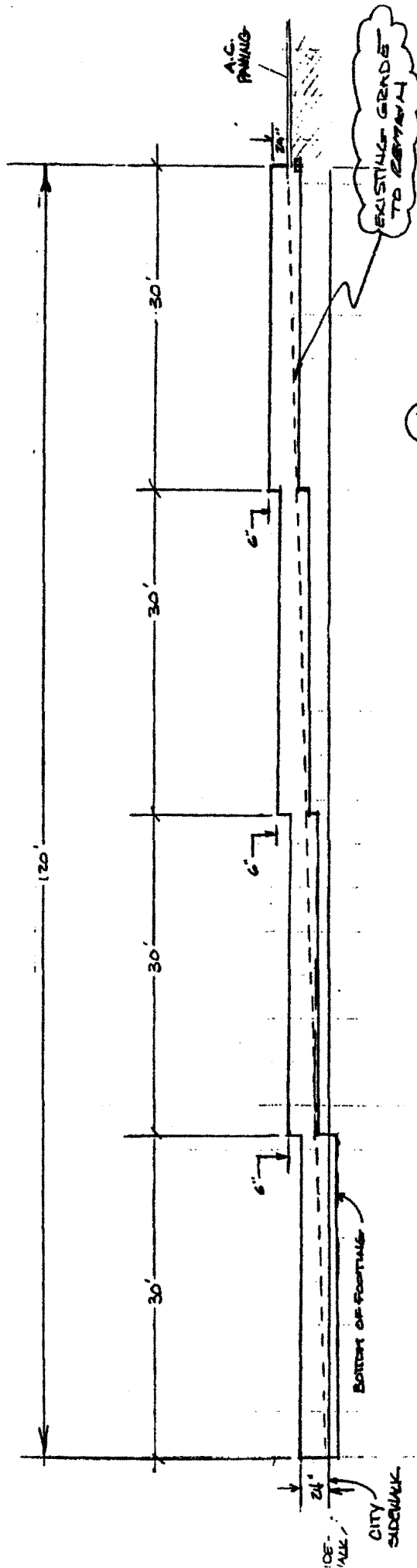
5-99-289

EXHIBIT # 1

PAGE 2 OF 2

DETAIL FOR RETAINING WALL - NORTH - SIDE
 NEWPORT ELEMENTARY SCHOOL
 527 W. BAYVIEW BLVD.
 NEWPORT BEACH, CA.

RECEIVED
 MAR 08 2000
 CALIFORNIA
 COASTAL COMMISSION



(A-1)

STEPPED RETAINING WALL
 NORTH AND SOUTH ENDS
 OF GRASS FIELD

NOT TO SCALE / REVISED 3/6
 N.S.

COASTAL COMMISSION
 5-99-289
 EXHIBIT # 2
 PAGE 1 OF 3

BLACK TOP PLAYGROUND

288'

COASTAL COMMISSION
CALIFORNIA

MAR 08 2000

RECEIVED

RETAINING WALL 2

GRASS FIELD

SAND
PLAZA

STEPPED
RETAINING WALL



CITY SIDEWALK

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

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

COASTAL COMMISSION

5-99-289

EXHIBIT # 2

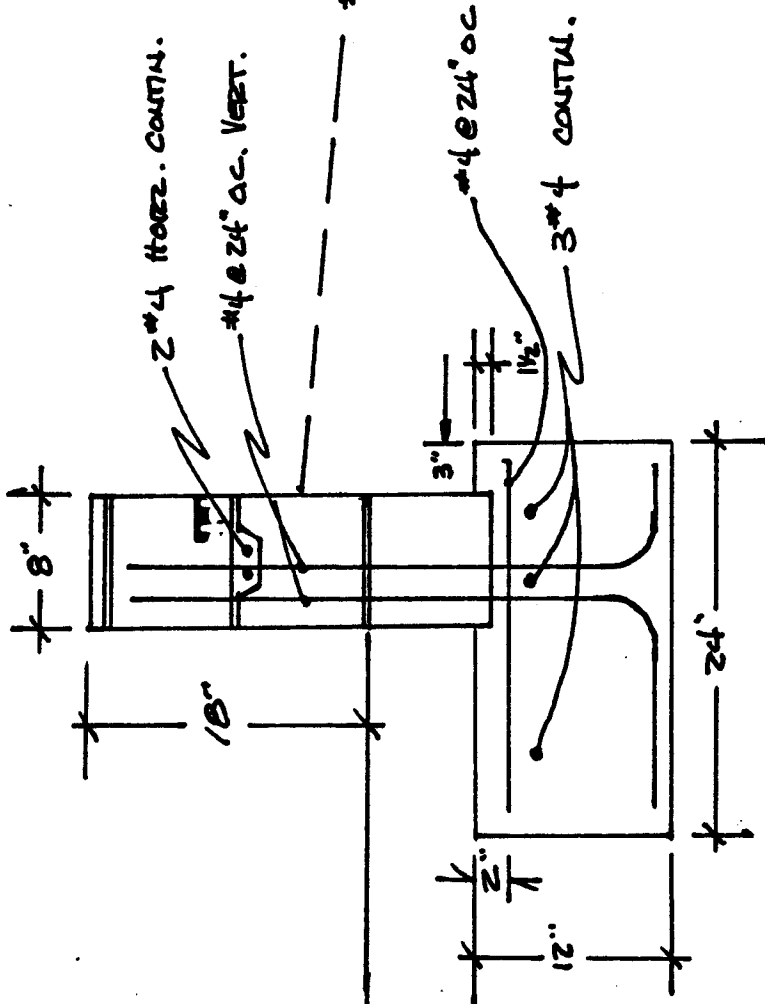
PAGE 2 OF 3

ASSET BALL
COURT'S
PAVED

120

OCT 1 1999

RECEIVED



EXISTING AS SHOWN

EXISTING GRADE
ON PLAY FIELD
TO REMAIN

RETAINING DETAIL - CHU RETAINING WALL

1. ALL CELLS TO BE FILLED
SOLID WITH GROUT

COASTAL COMMISSION
5-99-289

EXHIBIT # 2
PAGE 3 OF 3

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
1000 Ocean Gate, Suite 1000
Long Beach, CA 90802-4302
Tel: 562-590-5071



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 NMUSD [Signature]
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

PAGE 1 OF 1

