

CALIFORNIA COASTAL COMMISSION

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



Filed: May 16, 2000
 49th Day: July 4, 2000
 180th Day: November 12, 2000
 Staff: KFS-LB ~~18~~
 Staff Report: July 20, 2000
 Hearing Date: August 8-11, 2000
 Commission Action:

RECORD PACKET COPY**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-00-179

APPLICANT: Michael A. Eubanks

AGENT: None

PROJECT LOCATION: 409 E. Balboa Blvd., Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single family residence and construction of a new 2,355 square foot, two-story, single family residence with an attached 470 square foot two car garage.

Lot Area:	2850 square feet
Building Coverage (proposed):	1677 square feet
Pavement Coverage (proposed):	750 square feet
Landscape Coverage (proposed):	410 square feet
Parking Spaces (proposed):	2
Land Use (certified LUP):	Retail & Service Commercial (certified LUP)
Land Use (City GP):	Specific Plan
Zoning (Commission certified):	None certified
Zoning (City Code)	SP-8 RP (Specific Plan #8, Residential Professional District)

Ht above existing (natural) grade: 29 feet

LOCAL APPROVALS RECEIVED: City of Newport Beach approval-in-concept 0982-2000

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit Waiver 5-99-374 (Henry); Coastal Development Permits 77-676 (Henry); P-8139; P-448; P-1038; 5-89-138; P-9055.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with no special conditions. The major issue of this staff report is the construction of a single family residence in an area designated as Retail and Service Commercial in the Commission-certified land use plan for the City of Newport Beach.

STAFF RECOMMENDATION:

The staff recommends that the Commission **APPROVE** the permit with no special conditions.

MOTION:

I move that the Commission approve CDP No. 5-00-179 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 majority of the Commissioners present.

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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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

None.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is to demolish an existing single family residence and construct a new single family residence. The new residence will have 2,355 square feet of living space, 520 square feet of decks (including a roof deck) and an attached 470 square foot two-vehicle garage (Exhibit 2). The residence will be two stories (plus the roof deck) and 29 feet above existing natural grade. There is no proposed change in the number of dwelling units. Accordingly, there is no proposed change in the intensity of use of the site.

The subject site is located at 409 E. Balboa Boulevard, on the Balboa Peninsula within the City of Newport Beach (Exhibit 1). The site is located in an area of the City commonly identified as Central Balboa. The subject site is located within 300 feet of the inland extent of the beach.

B. NEW DEVELOPMENT

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by: (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Section 30250 (a) of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

When a private development does not provide adequate on-site parking, users of that development are forced to occupy public parking used by visitors to the coastal zone. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

The Commission has consistently found that two parking spaces is adequate to satisfy the parking demand generated by one individual residential unit. The proposed project provides two parking spaces on site.

Also, the proposed project is a new single family home which is new development. The site is presently occupied by a single family dwelling which will be demolished. In addition, the area where the proposed new development is occurring is predominantly residential. Therefore, the proposed development is contiguous with existing development able to accommodate it.

Therefore, the Commission finds that the proposed development is consistent with Sections 30250 and 30252 of the Coastal Act.

C. LAND USE PLAN

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

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The subject site is located in an area with the *Retail & Service Commercial* (RSC) designation (Exhibit 4). The certified Land Use Plan identifies the following uses within the RSC area:

Areas with this designation are to be predominantly retail in character, also accommodating some service office uses. It is the intent of this designation to provide contiguity of shopping and mutually supportive businesses. Uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior citizen housing facilities. Office uses which do not provide services directly to the public shall be prohibited on the ground level, but may be permitted on the second level or above where the ground level is occupied by a primary use. Separate "corporate" type offices are not allowed in these areas.

The certified Land Use Plan breaks the City down into ten detailed land use planning areas. Each of these ten areas is further broken down into planning sub-areas. Application of the land use designation is tailored to the planning sub-areas and have a range of uses that is more expansive or more restrictive than the uses identified in the general description above.

The subject site is located within the Balboa Peninsula planning area and the Central Balboa sub-area. The description of the planning intent and uses within the Central Balboa sub-area is described as follows in the certified Land Use Plan:

Central Balboa is the area bounded by Newport Bay, A Street, the ocean beach and Adams Street, plus the lots fronting on Balboa Boulevard between Adams Street and Coronado Street. This area is a unique mixture of visitor-oriented and neighborhood-oriented retail and service uses, including coastal-dependent visitor uses such as sport fishing establishments, day-boat rentals, ferry service, fishing docks, and

the historic Balboa Pavilion. The area is designated for Retail and Service Commercial land use, with some areas shown for Single Family Attached, Two Family Residential and Government, Educational and Institutional Facilities.

The Rendezvous Condominiums are shown for Single Family Attached and are allocated 24 dwelling units, which reflects the existing use. Two-Family Residential areas require 2,375 sq.ft. of buildable lot area for duplex development. No subdivision which will result in additional dwelling units is allowed.

Areas which are designated for Retail and Service Commercial or Governmental, Educational and Institutional land use are allowed a maximum floor area ratio of 0.5/1.0. Separate residential uses are prohibited [emphasis added]. Residential development is permitted on the second floor in conjunction with ground floor commercial up to a total floor area ratio of 1.25. One dwelling unit is allowed for each 2,375 sq.ft. of buildable lot area with a minimum of one unit allowed per lot. The area is allocated 223 dwelling units. Office uses may be permitted on the second floor or above when the ground level is occupied by a primary use providing goods or services directly to the public.

The applicant is proposing to construct a separate single family dwelling in the area designated by the certified Land Use Plan for Retail and Service Commercial (RSC) use. The certified Land Use Plan states that separate residential uses in the RSC area is prohibited. Accordingly, the proposed development is not consistent with the certified Land Use Plan.

However, the standard of review for development in Newport Beach is Chapter 3 of the Coastal Act and not the certified Land Use Plan. In areas, such as Newport Beach, where there is a certified Land Use Plan but which has no certified implementation program (which is required for a city to have a certified Local Coastal Program) the certified Land Use Plan is used for guidance, but is not the standard of review.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Accordingly, visitor serving commercial uses have priority over residential uses in the coastal zone. However, as outlined below, the subject area is not in demand as a visitor-serving commercial area. In addition, the proposed project does not change the land use designation for the area. Therefore, should the area become in demand for commercial use, this type of future use is not precluded.

Even though the area where the proposed development is occurring is designated RSC, this designation is not consistent with the predominant character of existing development on this block (between Cypress Street and Adams Street). There are ten approximately 30 foot wide by 95 foot deep lots between Cypress Street and Adams Street on the south side of E. Balboa Boulevard. Of these ten lots, all of them are developed with residential uses including single family and multi-family dwellings. One of the lots, which has a residential structure on it, is

partly occupied by an architectural firm. However, this use appears to be part of a home office and not separate from the residential use. In addition, the block across the street is predominantly residential (multi-family) with only one site being used in a commercial capacity (a real estate mortgage office). Exhibit 3 shows existing uses in the vicinity of the subject site.

Also, the proposed residential dwelling will replace an existing single family dwelling. Therefore, the applicant is not proposing to change the use or intensity of use of the subject site. This proposed development would be consistent with the character of surrounding development.

There are commercial areas nearby (Exhibit 3). Travelling east on E. Balboa Boulevard toward the Balboa Ferry landing and the Balboa Fun Zone (approximately one to two blocks away), the area transitions to a visitor-oriented commercial area. Uses in this area include cafes, small markets, recreation equipment rentals, commercial offices, among other uses. However, the subject lot is in an area that is on the fringe of these areas and is predominantly residential in character.

Presently, due to changes made by the City of Newport Beach in 1994 (Ordinance 94-44: Central Balboa Specific Area Plan), the City's local planning documents (e.g. General Plan Land Use Plan) for the area is no longer consistent with the Commission-certified Land Use Plan. The City has not submitted an amendment request at this time. The Commission-certified RSC designation for the subject site only allows a residential use in combination with some other commercial use (i.e. mixed use). However, the City's local land use map designates the subject site Residential Professional (RP) (Exhibit 5) rather than RSC as identified in the Commission-certified Land Use Plan (Exhibit 4). This RP designation allows for separate single family residences as well as mixed residential/commercial uses.

As noted above, the City has not yet submitted a request for a land use plan amendment to change the Commission-certified LUP to conform with the City's Central Balboa Specific Area Plan. City staff have been in contact with the Commission regarding the necessity to update the certified LUP to reflect the changes made by the Central Balboa Specific Area Plan. The Commission's records show that Commission staff commented on the plan in a letter dated June 10, 1994. Commission staff's letter to the City raises concerns with the conversion of land designated for commercial use to residential use and whether in the long term areas currently in use as residential areas will be needed for visitor-oriented commercial use. Commission staff's comments also raise issues related to the adequacy of parking in the area. In addition, the Commission's records show that local government planning for the area is continuing. For instance, the City has prepared two studies in 1997 titled *Project 2000: A Planning Vision for the Balboa Peninsula* and *Balboa Peninsula Planning Study*. These plans show an emphasis on enhancing and expanding the existing commercial areas east of Adams Street (i.e. Fun Zone and Pier area), rather than expanding commercial development into the block between Cypress and Adams (where the subject site is located). The City has not submitted any formal request to the Commission to amend the certified Land Use Plan based on these recent planning studies. However, the City has been -and continues to be- encouraged to apply for the necessary LUP amendment in order that the City's certified LUP is maintained as a meaningful coastal zone management planning document.

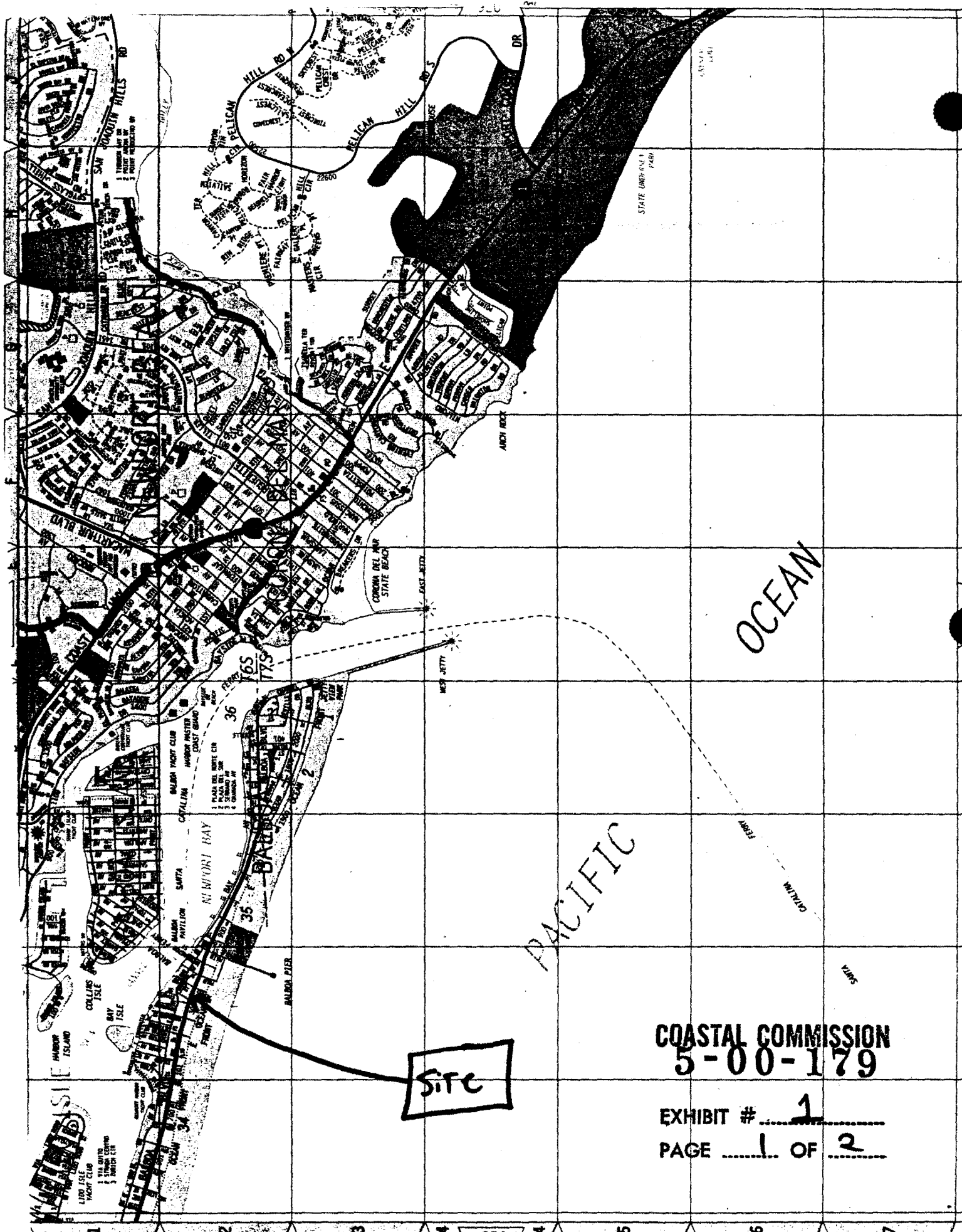
In addition, Commission actions in the area show a history of residential use of the block where the subject site occurs (i.e. between Cypress Street and Adams Street). Coastal Development Permits 77-676 and P-8139 as well as Coastal Development Permit Waiver 5-99-374 were for single family homes and duplexes at 411, 413, and 415 E. Balboa Boulevard which are east of and adjacent to the subject site. In addition, Coastal Development Permits P-9055, 448, and 5-89-138 were for residential uses at 406, 410, and 412-414 E. Balboa Boulevard which are across the street and within the same block as the subject site. There are no records of coastal development permits for commercial buildings within the block where the proposed development is occurring.

The proposed project will replace an existing single family residence with a new single family residence. There is no proposed change to the use or intensity of use of the site. The proposed use is not consistent with the certified Land Use Plan which designates the site RSC. However, the site and character of surrounding development is residential rather than commercial. In addition, the City's current short and long term plans for the Central Balboa area do not identify the block where the subject site is located as an area that is necessary to support visitor serving commercial uses. Rather, such commercial uses would be concentrated beginning on the next block east of the subject site. In addition, in the event the area was needed for visitor serving commercial use, the proposed development does not change the land use designation, therefore, the project does not preclude use of the site for commercial re-development in the future. Also, the history of coastal development permit approvals in the near vicinity of the proposed project shows use of the area for residential purposes. 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) of the Coastal Act.

D. 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 urbanized area. Development already exists on the subject site. In addition, the proposed development is consistent with the public access policies of the Coastal Act, as submitted. As submitted, no feasible alternatives or feasible mitigation measures are known which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the Chapter 3 policies of the Coastal Act.



SITE

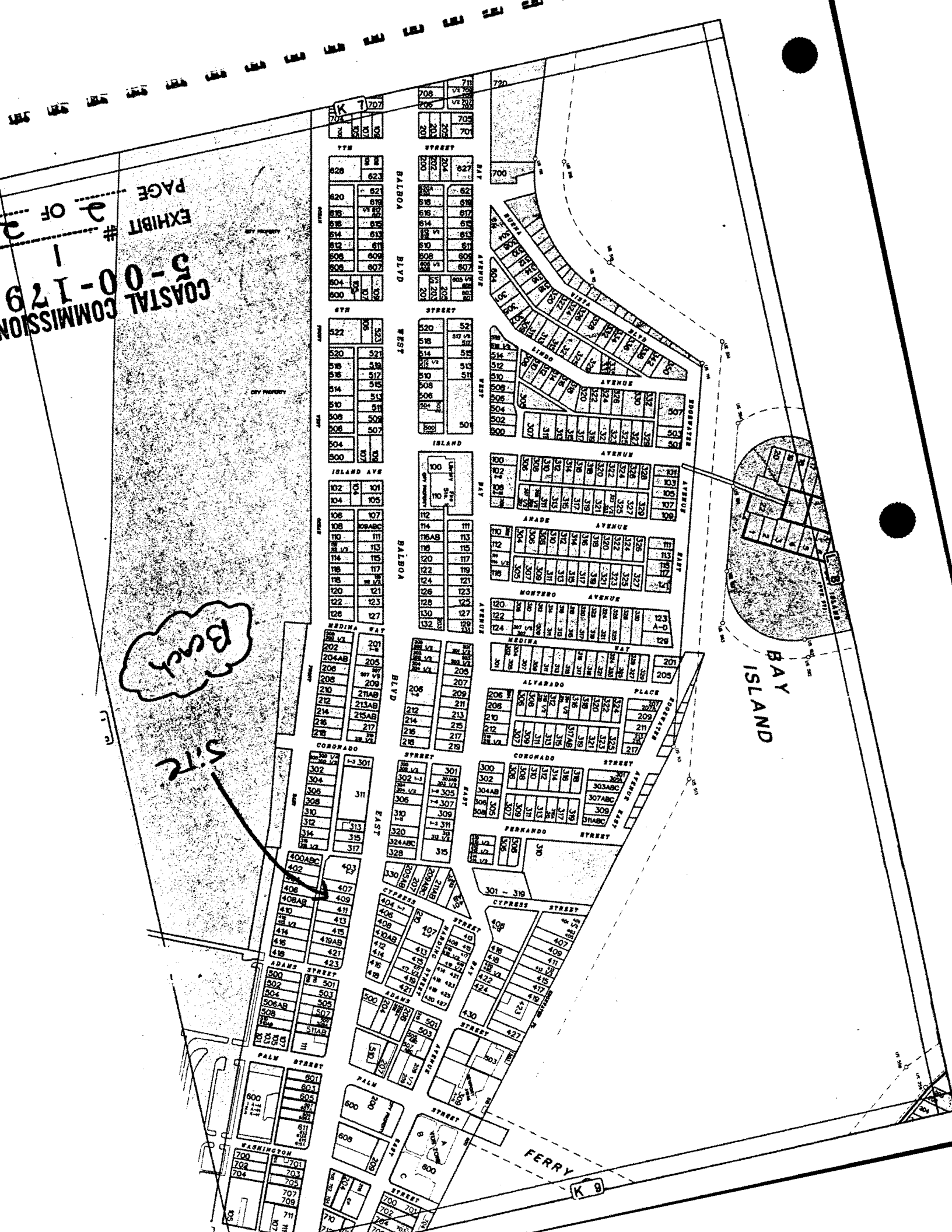
COASTAL COMMISSION
5-00-179

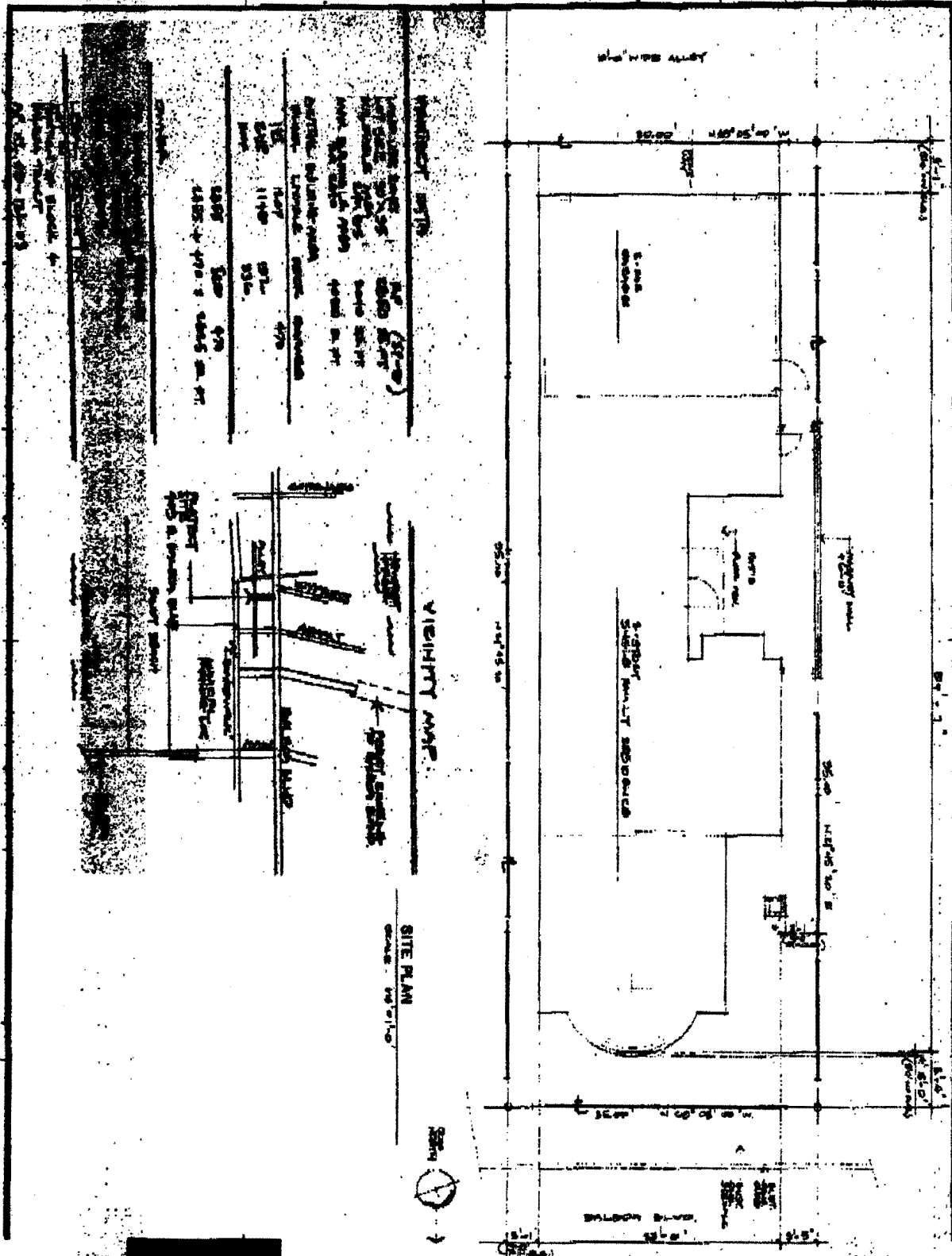
EXHIBIT # 1
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SITE





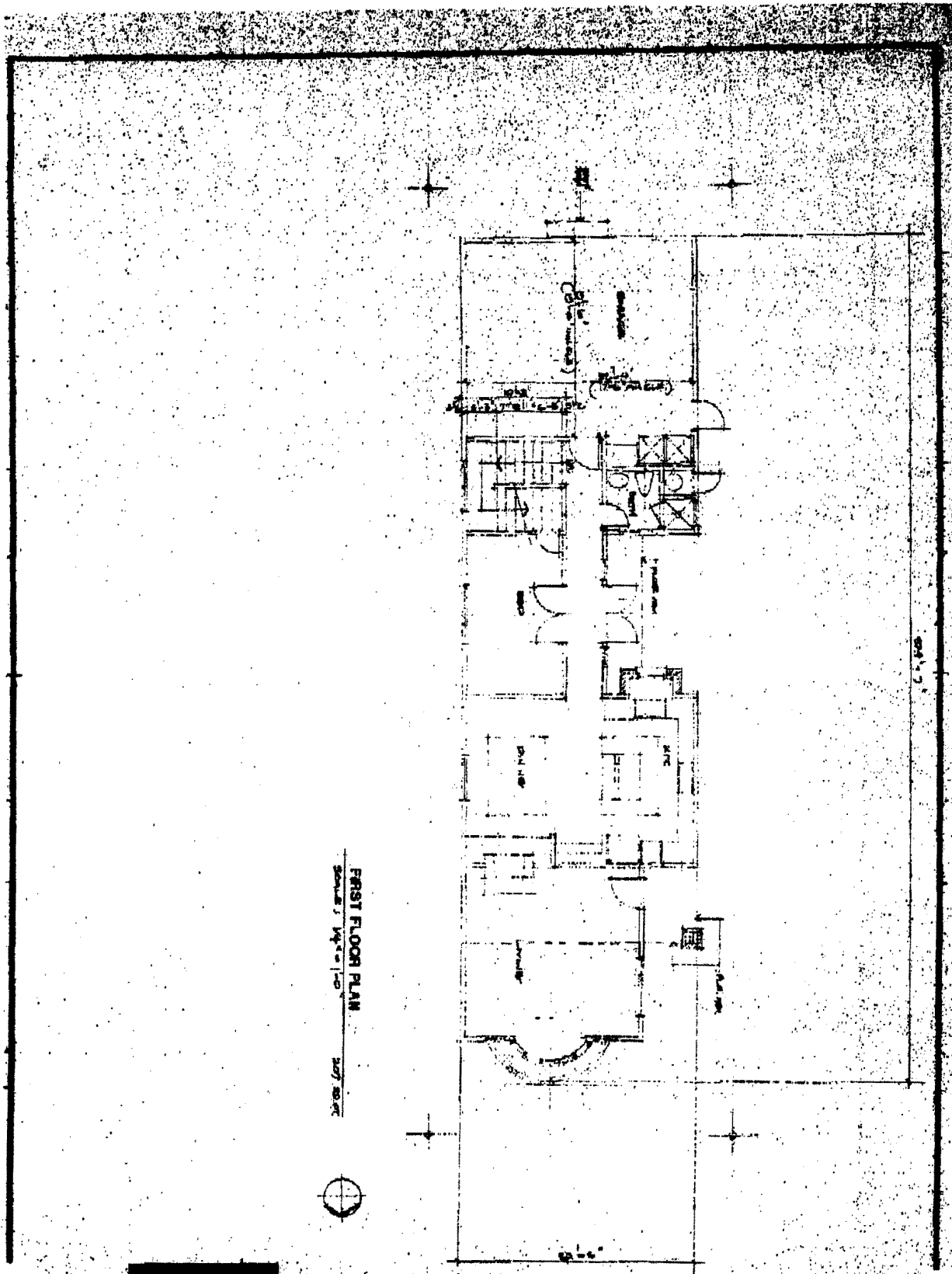
SITE PLAN
 ELIZABETH'S RESIDENCE
 304 E BALBOA BLVD
 IMPERIAL BEACH, CALIFORNIA

COASTAL COMMISSION

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EXHIBIT # 2

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FIRST FLOOR PLAN
 Scale: 1/4" = 1'-0"
 2007 08/01



FIRST FLOOR PLAN

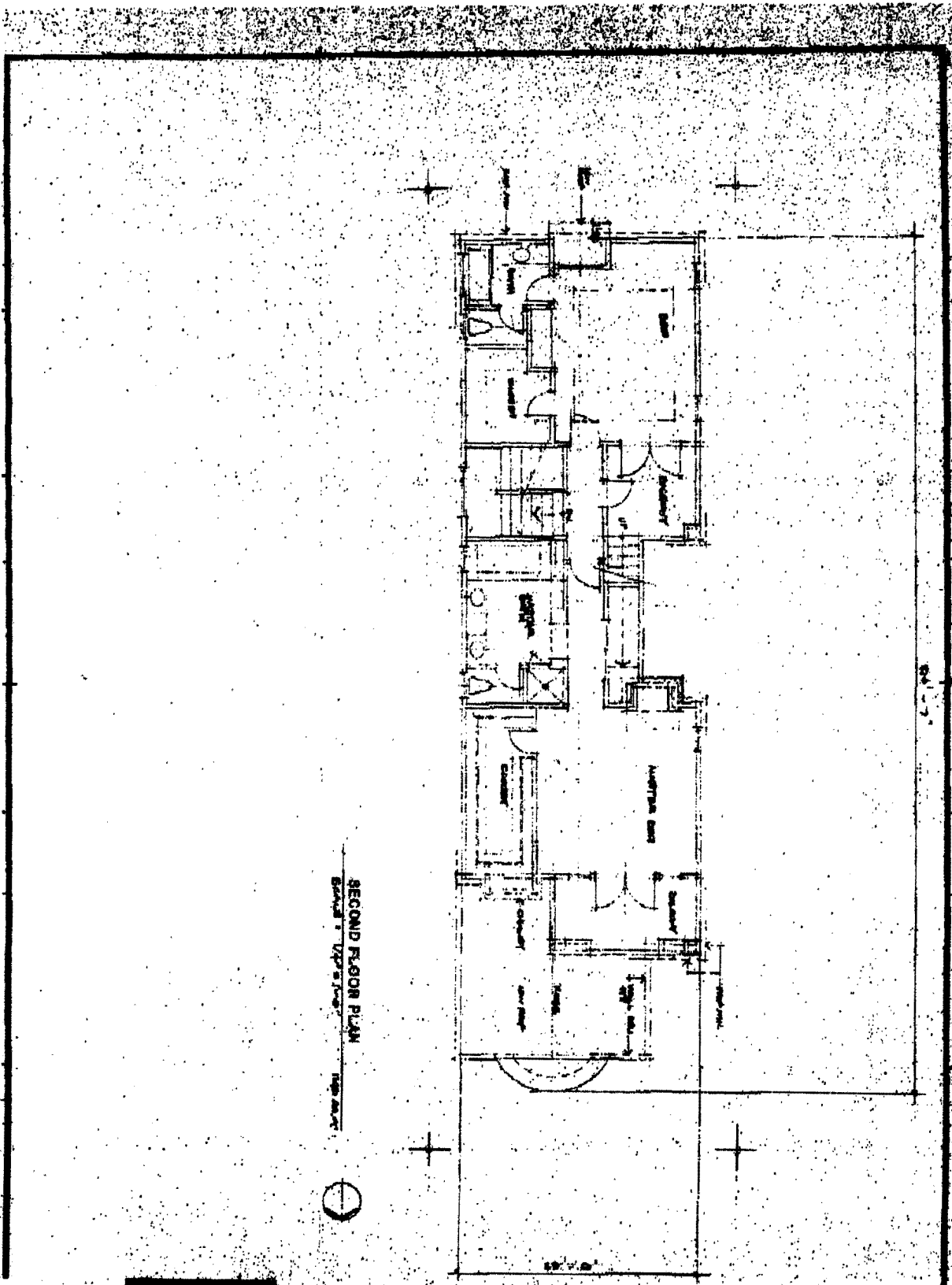
FOR THE RECORD
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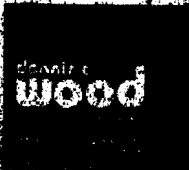
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SECOND FLOOR PLAN
Scale: 1/8" = 1'-0"



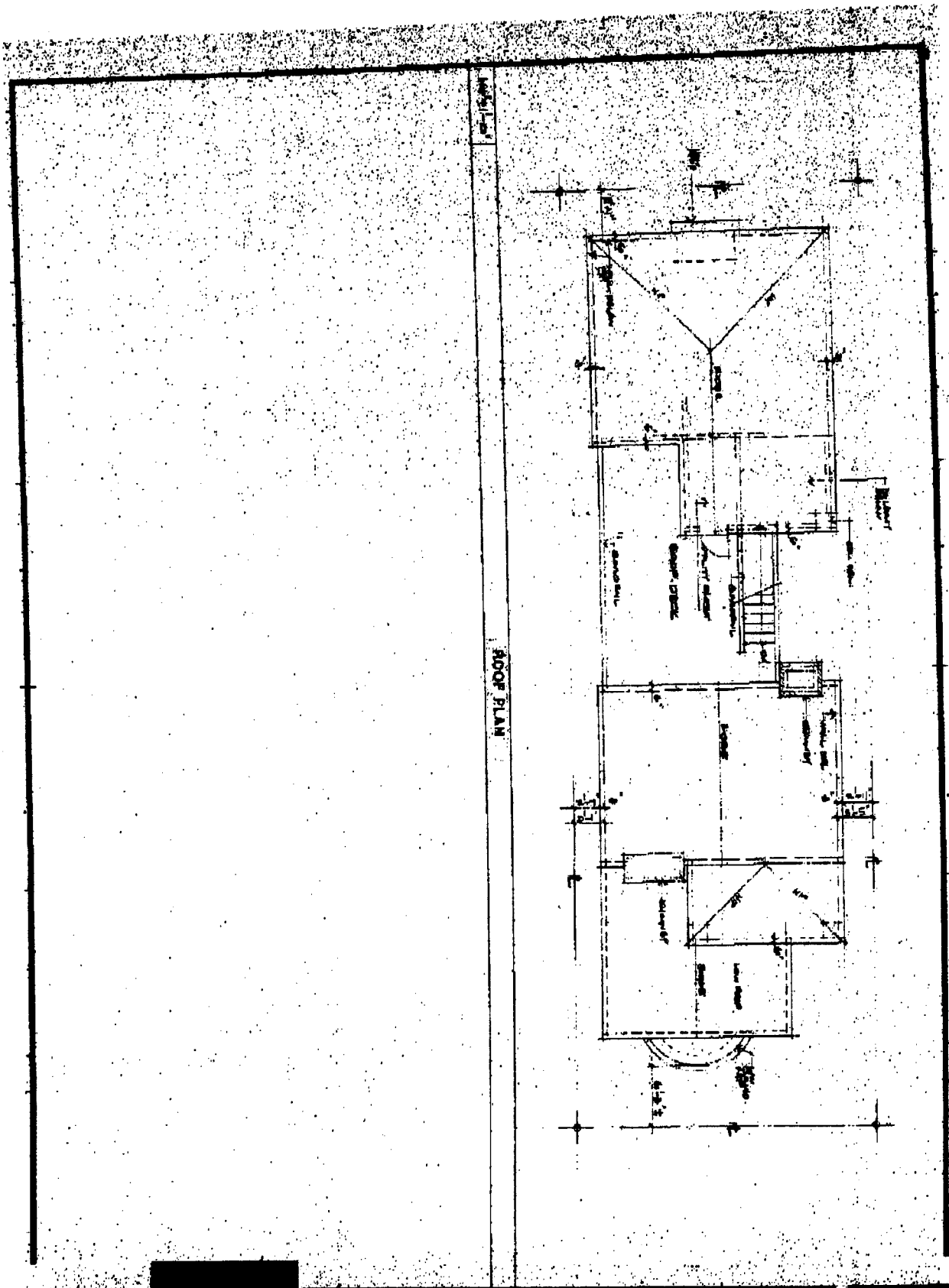
SECOND FLOOR PLAN
 SECOND FLOOR PLAN
 SECOND FLOOR PLAN



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wood

ROOF PLAN

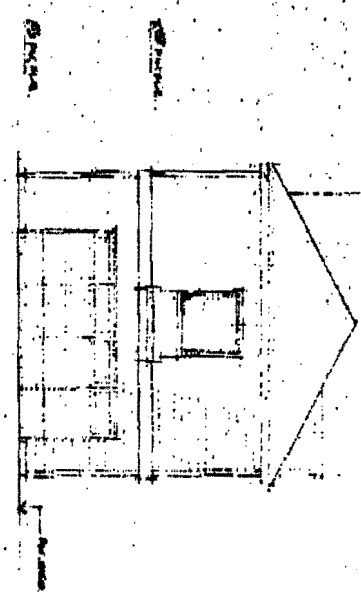
AMERICAN SOUND & VIDEO



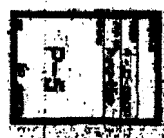
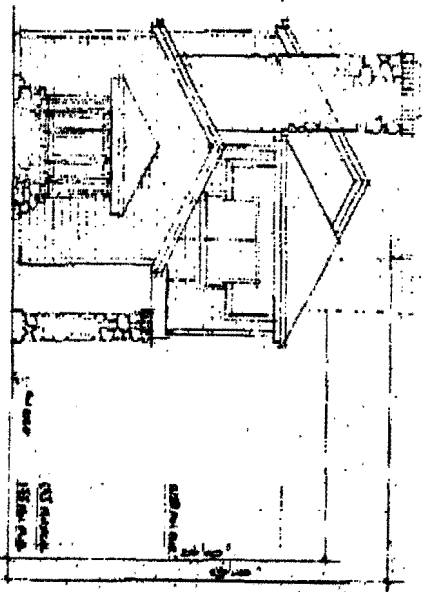
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EXHIBIT # 2
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1/4" = 1'-0"
SOUTH ALLEY ELEVATION



1/4" = 1'-0"
NORTH STREETFRONT ELEVATION



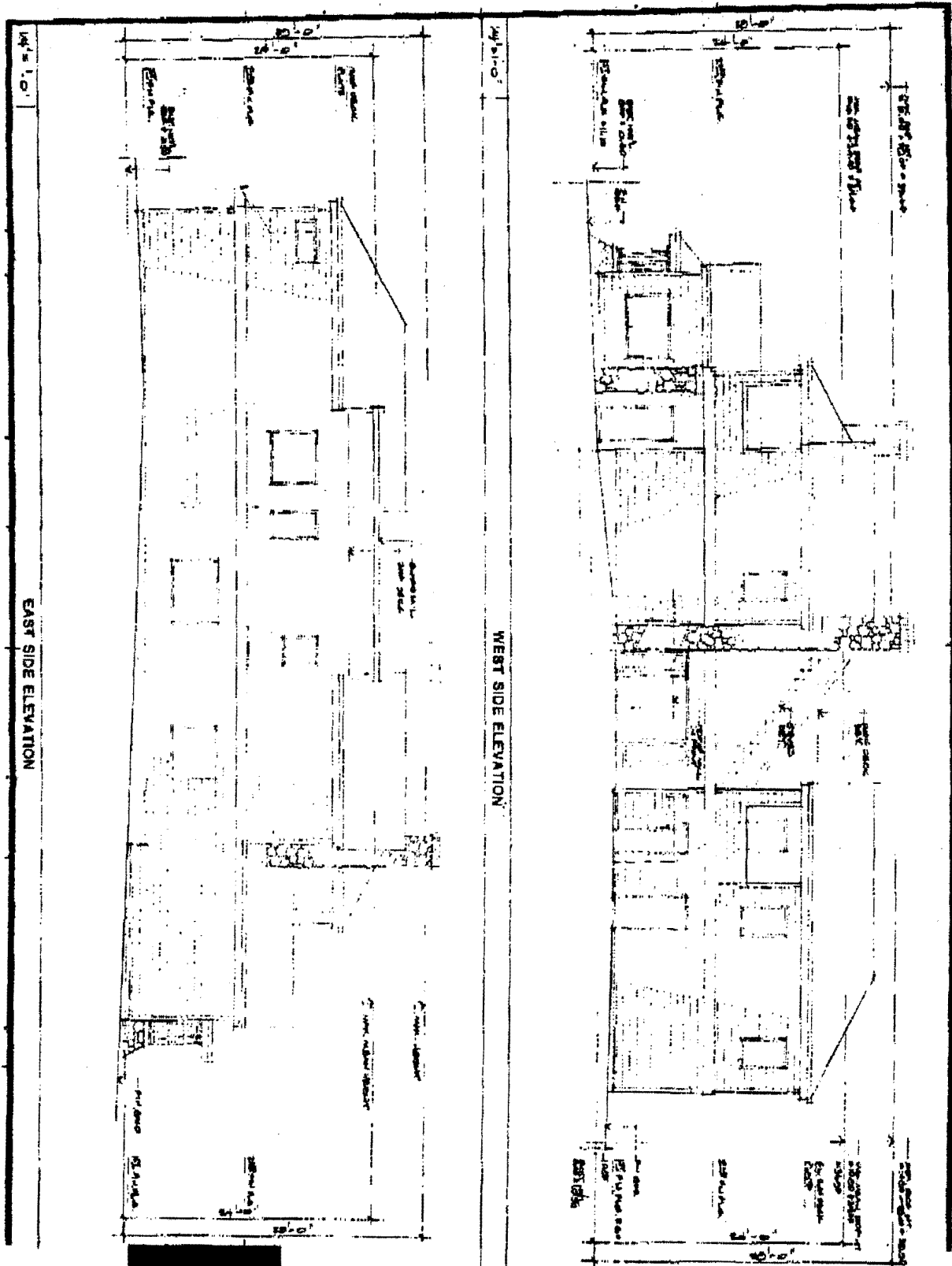
EXTERIOR ELEVATIONS

RESIDENTIAL ARCHITECTURE
408 E BALBOA BLVD
SEASIDE BEACH, CALIFORNIA



COASTAL COMMISSION
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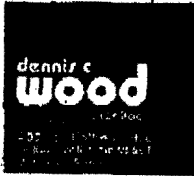
EXHIBIT # 2
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EAST SIDE ELEVATION

WEST SIDE ELEVATION

P-6
 4-13-00
 10:45 AM



EXTERIOR ELEVATIONS

EVBANKS RESIDENCE
 408 E SALBOA BLVD.
 NEWPORT BEACH CALIFORNIA

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EXHIBIT # 2

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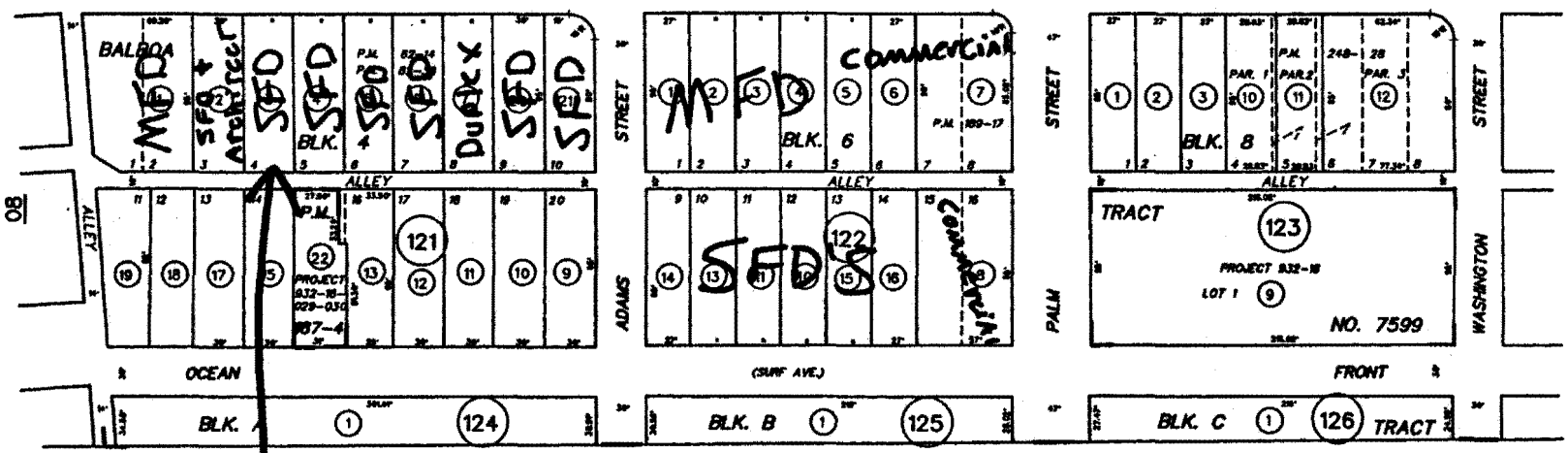
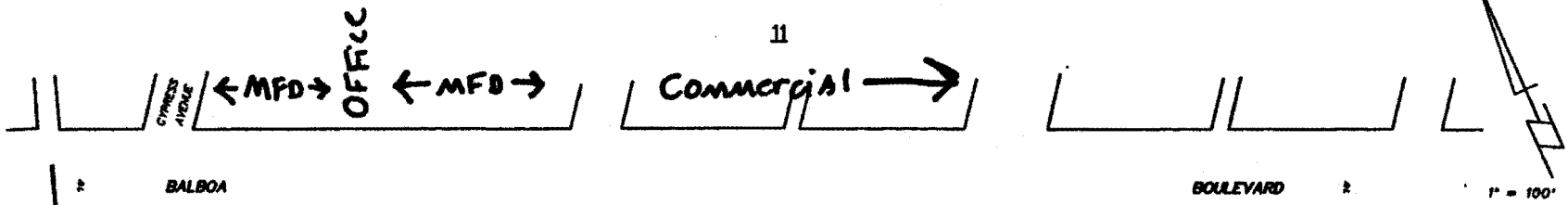
BAY

Fun Zone

48-12

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MFD = Multi Family Dwelling
SFD = Single Family Dwelling
Existing Uses

Site

Beach

32

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 48 PAGE 12 COUNTY OF ORANGE

MARCH 1949

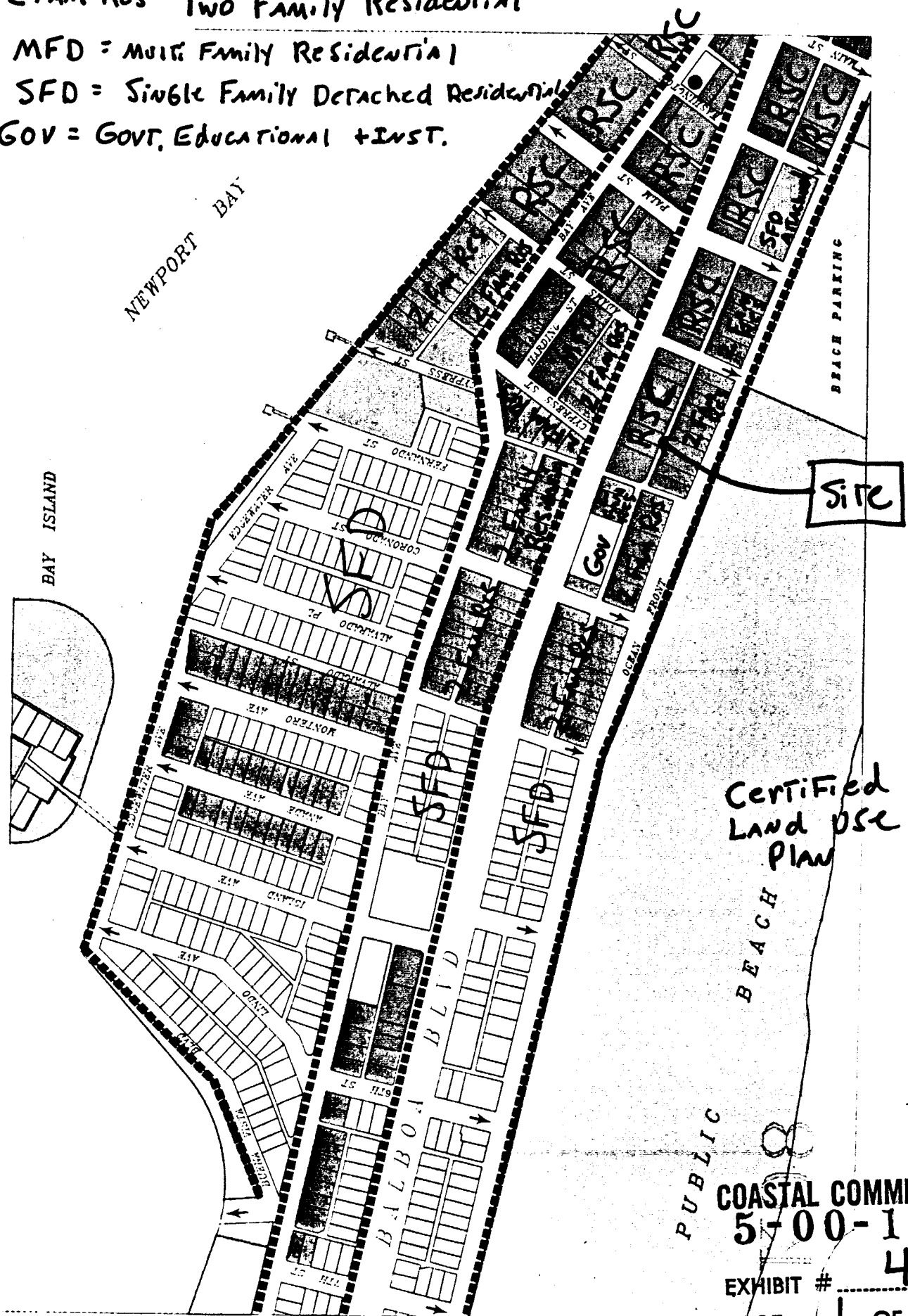
RSC = Retail + Service Commercial

2 FAM RES = Two Family Residential

MFD = Multi Family Residential

SFD = Single Family Detached Residential

GOV = GOVT, Educational + INST.



Certified
Land Use
Plan

PUBLIC
BEACH

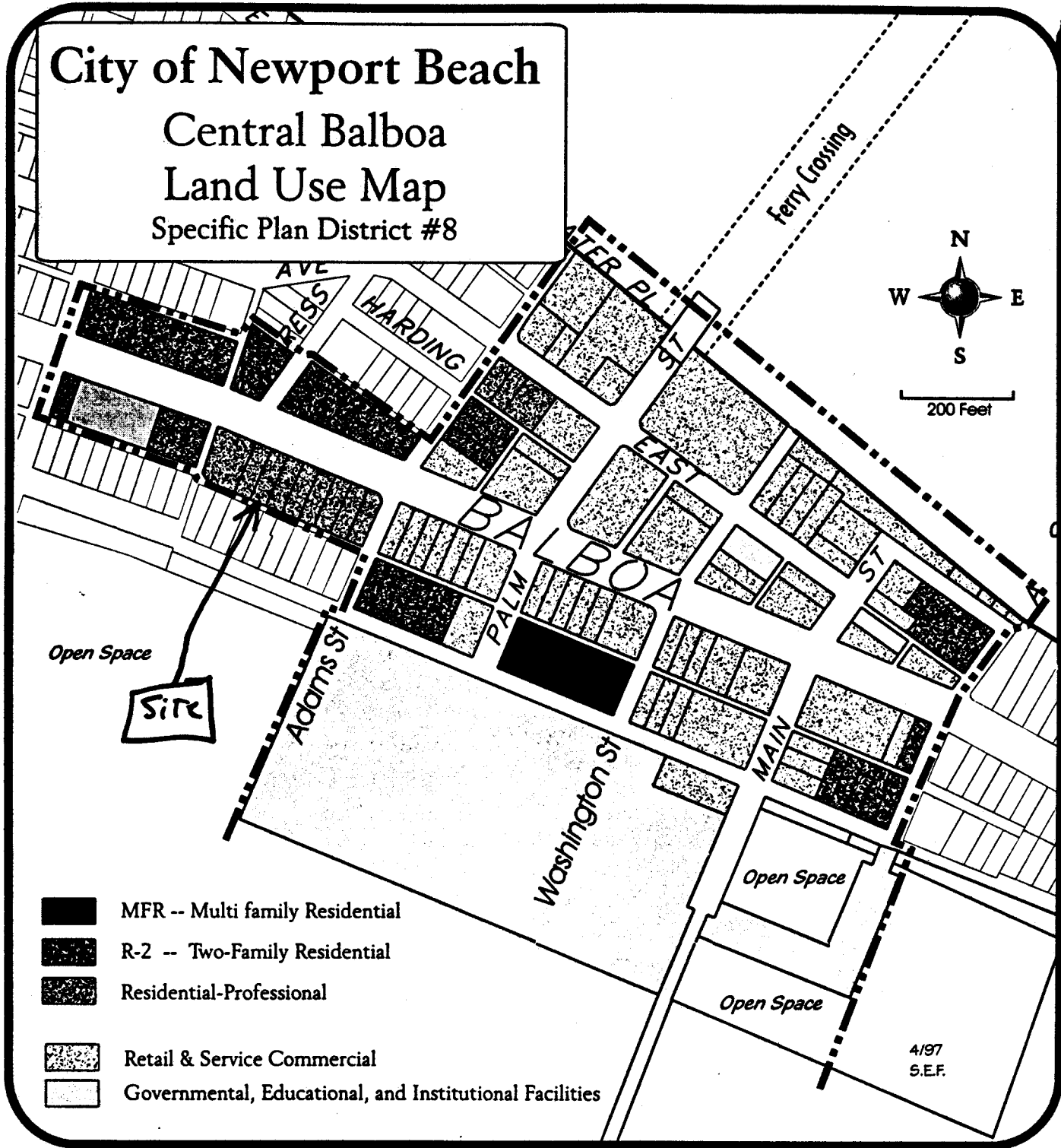
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

EXHIBIT # 4

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City of Newport Beach

Central Balboa Land Use Map Specific Plan District #8



-  MFR -- Multi family Residential
-  R-2 -- Two-Family Residential
-  Residential-Professional
-  Retail & Service Commercial
-  Governmental, Educational, and Institutional Facilities

CITY OF Newport Beach
SPECIFIC PLAN FOR
Central Balboa Area
NOT CERTIFIED BY COMMISSION

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EXHIBIT # 5
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