

CALIFORNIA COASTAL COMMISSION

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Filed: 11/21/00
49th Day: 1/9/01
180th Day: 5/20/01
Staff: FSY-LB
Staff Report: 12/21/00
Hearing Date: January 9-12, 2001
Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-00-406

APPLICANT: Russell E. Fluter

AGENT: Michelle Vrbas

PROJECT LOCATION: 353 East Pacific Coast Highway,
City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolish an existing 10,000 square foot building and construct a new 15,000 square foot retail/office building (12,000 square foot 1st floor retail and a 3,000 square foot 2nd floor office.)

LOCAL APPROVALS RECEIVED: Approval in Concept No. 2212-2000 from the City of Newport Beach dated September 21, 2000.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, Coastal Development Permits (5-98-177) Finnemore, (5-98-054) Irvine Company, (5-98-048) La Quinta Homes, and (5-95-141) Yankee Tavern.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission **APPROVE** the proposed development with five (5) special conditions. The subject site is located on the south side of East Pacific Coast Highway in the City of Newport Beach. The major issues before the Commission relate to water quality, adequate parking, and assurances that the ground floor of the commercial structure will be limited to retail and service commercial which provide goods or services to the public. To assure that these issues are addressed staff recommends the imposition of five special conditions.

Special Condition 1 requires use of construction best management practices (BMPs). Special Condition 2 requires the debris disposal site to be located outside of the coastal zone. Special Condition 3 requires implementation of structural and /or non-structural best management practices (BMPs). Special Condition 4 requires the applicant to record a future improvements deed restriction. Special Condition 5 requires the applicant to record a deed restriction, which requires conformance with retail and service commercial uses that provide goods and services to the general public on the 1st floor of the proposed structure.

LIST OF EXHIBITS:

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Floor Plan
-

STAFF RECOMMENDATION:

The staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-00-406 pursuant to the staff recommendation.

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

RESOLUTION:

I. Approval with Conditions

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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 of 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

1. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain leading to the ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition 2.

2. Location of Debris Disposal Site

The applicant shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

3. Best Management Practices

A. The applicant shall implement structural and/or non-structural Best Management Practices (BMP's) designed to minimize pollutant loads contained in runoff prior to entering the storm water conveyance system and to maintain post-development peak runoff rate and average volume from the site at levels similar to pre-development conditions, to the extent feasible. The BMPs may include, but are not limited to:

- (i) Design elements that serve to minimize directly connected impervious area and maintain permeable space within the development shall be incorporated where feasible. Options include the use of alternative design features such as concrete grid driveways and/or pavers for walkways, and/or porous material for or near walkways and driveways;
- (ii) Sweep parking lot(s) with a vacuum regenerative sweeper on a monthly basis;
- (iii) Installation of catch basin inserts or vegetative or other media filtration devices effective at trapping and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals and particulates, in addition to trash and large debris. Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the stormwater runoff from each runoff event up to and including the 85th percentile, 24-hour runoff event for volume based BMPs and/or the 85th percentile, 1 hour event, with an appropriate safety factor, for flow-based BMPs;
- (iv) Routine maintenance, including inspection and regular cleaning of approved BMPs, to ensure their effectiveness prior to, and during, each rainy season from October 15th through April 31st of each year. Debris and other water pollutants contained in BMP device(s) will be contained and disposed of in a proper manner on a regular basis. All BMP traps/separators and/or filters must be cleaned prior to the start of the winter storm season, no later than October 15th each year. The BMP's shall be maintained to uphold their functionality.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a plan indicating the type(s) of BMPs to be installed, sizing specifications where applicable, and the locations where the BMPs will be installed.

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 necessary.

4. Future Development

- A. This permit is only for the development described in coastal development Permit No. 5-00-406. Except as provided in Public Resources Code Section 30610 (b) and applicable regulations, any future development as defined in Public Resources Code Section 30106, including but not limited to, a change in the density or intensity of the land use shall require an amendment to Permit No. 5-00-406 from the California Coastal Commission or from the applicable certified local government.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting 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.

5. Ground Floor Limitations

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, stating that the ground floor shall only be used for commercial uses which offer goods or services directly to the general public.

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. The deed restriction shall not be removed or changed without a Coastal Commission amendment to this coastal development permit.

- 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 necessary.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Location and Project Description

The subject site is located between Bayside Drive and Pacific Coast Highway at 353 East Pacific Coast Highway in the City of Newport Beach, County of Orange (Exhibits # 1-2). The site currently contains a 10,000 square foot abandoned restaurant. The lot measures 50,110 square feet. The lot fronts the coastal side of Pacific Coast Highway and also the inland side of Bayside Drive and backs up to another lot, where an automobile dealership resides. The subject lot is flat and roughly triangular in shape. To the north, across Pacific Coast Highway, is the De Anza Bayside Village and Marina and Pearson's Boat Storage; to the west, is an automobile service station; to the southwest, across Bayside Drive, is a restaurant and a commercial building, containing a dry cleaning pick-up facility and retail use on the ground floor and general offices on the second floor, and the Linda Isle residential area; to the east and southeast, is an automobile dealership; and to the south is the Harbor Island residential area.

The project site is designated "Retail and Service Commercial" under the City's certified Land Use Plan. Under the City's certified Land Use Plan, the "Retail and Service Commercial" Land Use designation allows retail sales, personal, and professional services, hotels, restaurants, and commercial recreation. Office uses which do not provide services directly to the public are 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.

The applicant is proposing construction of a new 15,000 square foot, two-story retail/office building. The 1st floor will provide 12,000 square feet of retail/commercial space, while the 2nd floor will provide 3,000 square feet of office space. The applicant is proposing 74 parking spaces (Exhibits # 3-4).

B. New Development and Public Access

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30211 of the Coastal Act mandates that development shall not interfere with the public's right of access to the sea. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking. When new development does not provide adequate on-site parking, users of that development are forced to occupy public parking that could be used by visitors to the coast.

The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor and marina facilities, and its coastal amenities. Like many beach communities, Newport Beach receives an annual influx of visitors during the summer. The project site fronts East Pacific Coast Highway, which is a major arterial route for public access to coastal opportunities (Exhibit # 1). The project site is near Upper Newport Bay, Lower Newport Bay and the Newport Harbor Nautical Museum. Across East Pacific Coast Highway at the northern end of Bayside Drive is the Newport Dunes Resort where coastal access is available. Various recreational opportunities are available in the immediate project vicinity such as boating and camping. Portions of Pacific Coast Highway by the project location have been identified by the City in its certified Land Use Plan as

coastal view areas. Views of Upper and Lower Newport Bay are available at the Pacific Coast Highway Bridge, immediately northwest of the project site. There are additional coastal views of Promontory Bay available southeast of the project site. Due to its location, the project site is ideally suited to support visitors to the coast. The immediate project vicinity consequently experiences high vehicular volumes during the summer months. A lack of public parking discourages visitors from coming to the beach and other visitor-serving activities in the coastal zone. The lack of parking would therefore have an adverse impact on public access. All development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

1. **Proposed Uses and Parking Evaluation**

The applicant proposes two types of land uses on-site, 1) retail and service commercial; and 2) office. The retail and service commercial component would be located on the 1st floor and the office component would be located on the 2nd floor. Locating the retail and service commercial development on the first floor is consistent with the Coastal Act since it places higher priority use on the more easily accessible lower floor and the lower priority use on the upper floor. The applicant is proposing a total of 74 parking spaces. (Exhibits # 3). The following is an evaluation of the Commission's regularly used parking requirements for each proposed land use.

a. **General Office**

The Commission typically imposes a parking standard of 1 space per each 250 square feet of gross office space. The proposed general office portion of the project is 3,000 square feet in size. Based on the standard of 1 space per 250 square feet of gross office space, the parking demand totals twelve (12) spaces.

b. **Retail and Service Commercial**

The Commission typically imposes a parking standard of 1 space per each 225 square feet of gross floor area for retail and commercial service uses. The proposed retail and service commercial portion of the project is 12,000 square feet in size. Based on the standard of 1 space per 225 square feet of gross floor area for retail and service commercial uses, the parking demand totals fifty-four (54) spaces.

c. **Parking Conclusion**

Based on the forgoing analysis, the applicant is required to provide a total of 66 spaces. The applicant is providing a total of seventy-four (74) parking spaces, or eight more than required. Therefore, as proposed, the parking is consistent with the Commission's regularly used parking standards.

2. Special Conditions

Though the applicant is providing an adequate number of spaces based on generic uses, the applicant has not defined the specific types of businesses that will be occupying the proposed building. Furthermore, at this time specific tenants for the proposed building are not known. Consequently, the actual number of parking spaces required could be significantly different depending on the future tenants' commercial intentions, which at this time are currently unknown. Therefore, the Commission needs to impose two special conditions, which assure that parking will be adequate and that the ground floor will be used for commercial purposes which provide goods and services directly to the public.

a. Parking Adequacy

The applicant is proposing to use the first floor for retail and service commercial purposes. Parking to support this type of development is based on the criteria of one parking space for each 225 square feet of gross floor area. Though this standard is commonly used by the Commission for retail stores, it is not applicable for all commercial uses that may be allowed in the building. For example, under the City's "Retail and Service Commercial" land use designation restaurants are an allowable use. The Commission typically requires that restaurants provide one parking space for every fifty square feet of service area. Under this scenario, if the ground floor were to have 6,000 square feet of restaurant service area, a total of 120 parking spaces would be needed to meet demand. Since only seventy-four spaces are being provided, a large restaurant could create a parking deficiency. A less extreme example relates to using the second floor for a commercial bank. The Commission typically requires that a financial institution, such as a commercial bank, provide 1 parking space for every 225 square feet. Under this scenario, adequate parking would still exist but the surplus of 8 spaces would be reduced to 6 parking spaces. The foregoing analysis documents that once built, the proposed structure could have a variety of uses, which have different parking demand. Thus it is possible that tenants with a high parking demand could move into the structure and create a parking deficiency. Moreover parking demand could change over time as tenants with different types of commercial uses move in and out.

Furthermore, in certain cases the calculation of parking demand based upon the Newport Beach Zoning Code differs from the number of parking spaces required by the Commission. For example, the City of Newport beach requires that an artist studio provide 1 parking space for each 1,000 square feet of retail space. The Commission typically requires one space for every 250 square feet. Thus it would be possible that a tenant could occupy the building with a commercial use that could create a parking deficiency based on the Commission's parking standards, but not the City's.

To guarantee that adequate and useable parking based on the Commission's parking standards consistent with Section 30252 of the Coastal Act, the Commission finds it necessary to impose Special Condition 4. Special Condition 4 requires the applicant, prior to issuance of this permit, to record a future improvements deed

restriction on the property so that the impact of future development on parking demand can be evaluated.

b. Ground Floor Usage

The Coastal Act encourages commercial development that enhances the experiences of visitors to the coast. The project site is located on Pacific Coast Highway, a major arterial route for visitors to the coast and is in an area frequented by visitors to the coast. The certified land use plan (which is used as a guidance since the City does not have a certified Local Coastal Program) requires that the first floor be limited to retail, sales, personal, and professional services, which provide services directly to the public. Office uses are allowed on the second floor. The applicant has not identified specific tenants for the building since it has yet to be built. Once the building is constructed, a variety of tenants could occupy the ground floor inconsistent with the requirements of the land use district if not properly monitored. To assure that this is not the case, a special condition must be imposed to assure that only retail, sales, personal, and professional services, which provide services directly to the public are allowed on the first floor. Special Condition 5 requires the applicant, prior to issuance of this permit, to record a deed restriction that accomplishes this objective.

Thus as conditioned for a future improvements deed restriction and a deed restriction to require conformance with retail and service commercial uses allowed on the 1st floor of the proposed structure does the Commission find that the proposed development would be consistent with development and public access policies of the Coastal Act.

c. Water Quality

The protection of water quality is an important aspect of the Coastal Act. Section 30230 of the Coastal Act states that all marine resources shall be maintained, enhanced and restored when possible. Section 30231 of the Coastal Act states that the biological productivity of coastal waters, streams, wetlands, estuaries and lakes shall also be maintained, enhanced and restored when possible. Section 30232 of the Coastal Act states that protection against the spillage of petroleum products and hazardous products will be provided for developments that have relation to any such materials. Water from the parking lot will flow into the City of Newport Beach's Storm drain system and will ultimately drain to the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources. Therefore, to lessen the potential for pollutants to enter the storm drain system at the subject site, the Commission imposes three (3) special conditions related to water quality. By implementing these conditions, the project will be in compliance with Sections 30230, 30231 and 30232 of the Coastal Act.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location which may be discharged into coastal waters via the storm drain system would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, sediment discharged to coastal waters may cause turbidity, which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition No. 1 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

In addition, Special Condition No. 2 requires that the applicant dispose of all demolition and construction debris at an appropriate location outside of the coastal zone and informs the applicant that use of a disposal site within the coastal zone will require an amendment or new coastal development permit.

Only as conditioned for appropriate storage of construction materials and equipment, and for location of an appropriate debris disposal site, does the Commission find that the proposed development is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

2. Post-Construction Impacts to Water Quality

The proposed development will result in urban runoff entering the existing storm water system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the site drains a new parking lot, paved walkways and landscaped areas. Therefore, the primary post-construction water quality concerns associated with the proposed project include grease, motor oil, heavy metals, pesticides and fertilizer.

The proposed development would result in the discharge of storm water into the storm water conveyance system. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach.

The proposed retail and service commercial and office project is new development, which affords an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. The currently proposed

project drains a new 74-space parking area. As such, appropriate measures must be taken to assure that adverse affects on water quality are minimized.

Therefore, in order to find the development consistent with Coastal Act sections 30230, 30231, and 30232 it is necessary to impose Special Condition 3, which requires the applicant to incorporate Best Management Practices effective at mitigating pollutants of concern, as highlighted above. Only as conditioned does the Commission find the proposed development to be consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

D. Local Coastal Program

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 the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act. 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).

E. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect, which the activity may have on the environment.

Mitigation measures, in the form of special conditions, requires 1) use of construction best management practices (BMPs); 2) identification of a debris disposal site; 3) implementation of structural and non-structural best management practices, 4) the applicant to record a future improvements deed restriction, 5) the applicant to record a deed restriction, which requires conformance with retail and service commercial uses that provide goods and services to the general public on the 1st floor of the proposed structure. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the policies of the Coastal Act.



COASTAL COMMISSION
EXHIBIT # 1
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SEE 919 MAP

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SEE 859 MAP



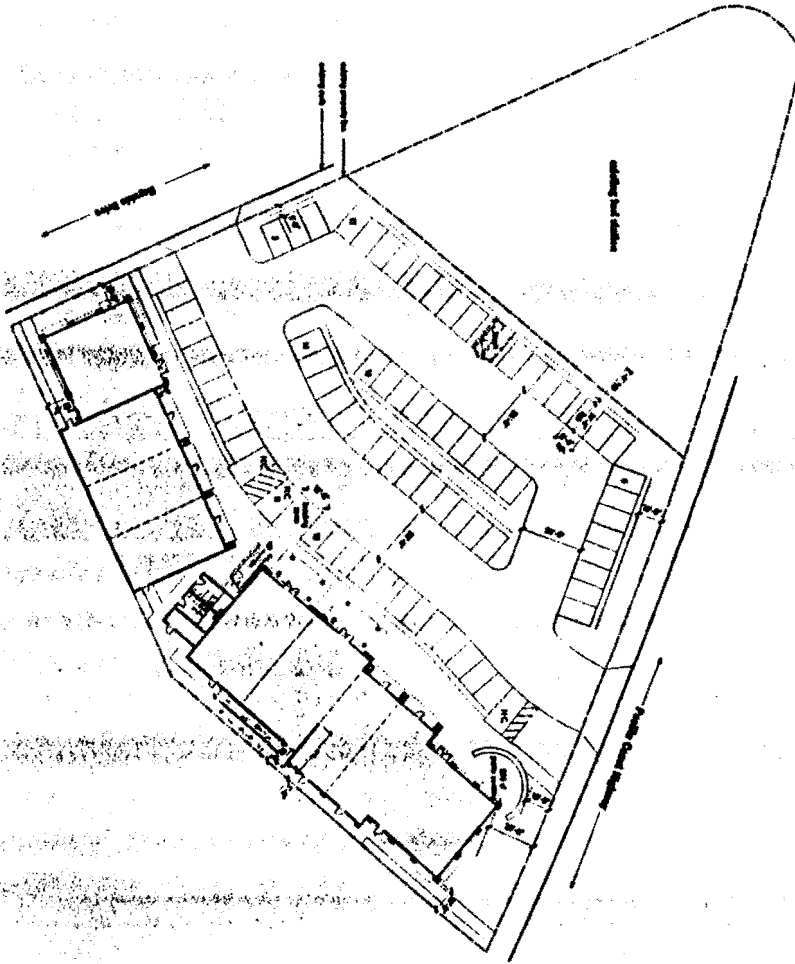
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353 E. P.C.H.
NEWPORT BEACH

15,000 SQ. FT.



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EXHIBIT # 3
PAGE 1 OF 1

Item	Description	Quantity
1	Site Plan	1
2	Site Plan	1
3	Site Plan	1
4	Site Plan	1
5	Site Plan	1
6	Site Plan	1
7	Site Plan	1
8	Site Plan	1
9	Site Plan	1
10	Site Plan	1
11	Site Plan	1
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13	Site Plan	1
14	Site Plan	1
15	Site Plan	1
16	Site Plan	1
17	Site Plan	1
18	Site Plan	1
19	Site Plan	1
20	Site Plan	1

A0

Item	Description	Quantity
1	Site Plan	1
2	Site Plan	1
3	Site Plan	1
4	Site Plan	1
5	Site Plan	1
6	Site Plan	1
7	Site Plan	1
8	Site Plan	1
9	Site Plan	1
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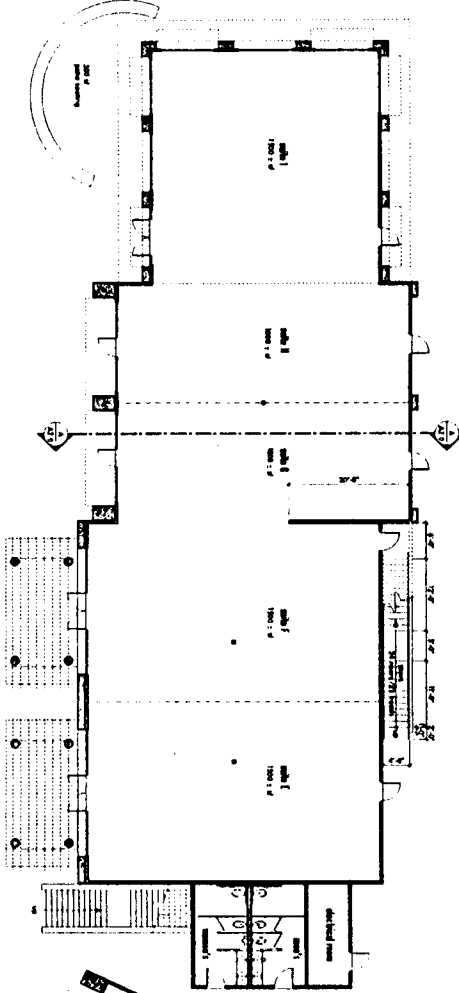
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Public Center
2500 Newport Blvd.
Newport Beach, CA
92660

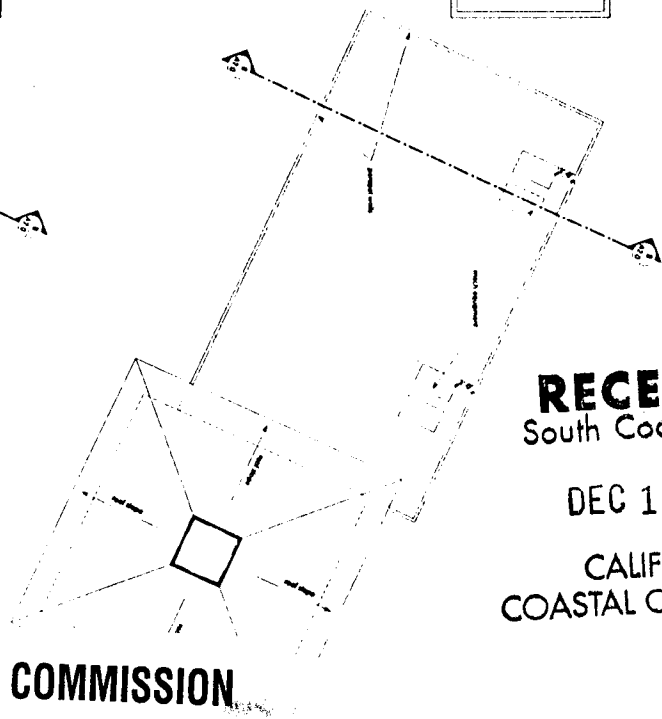
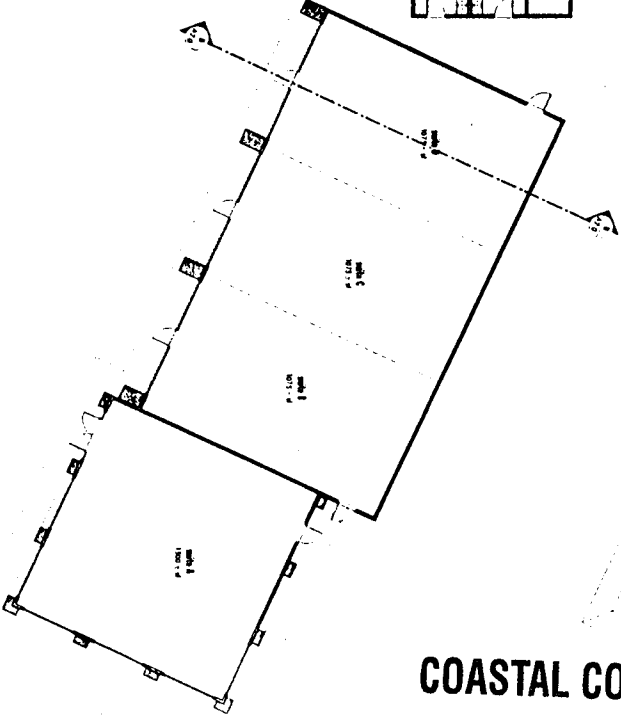
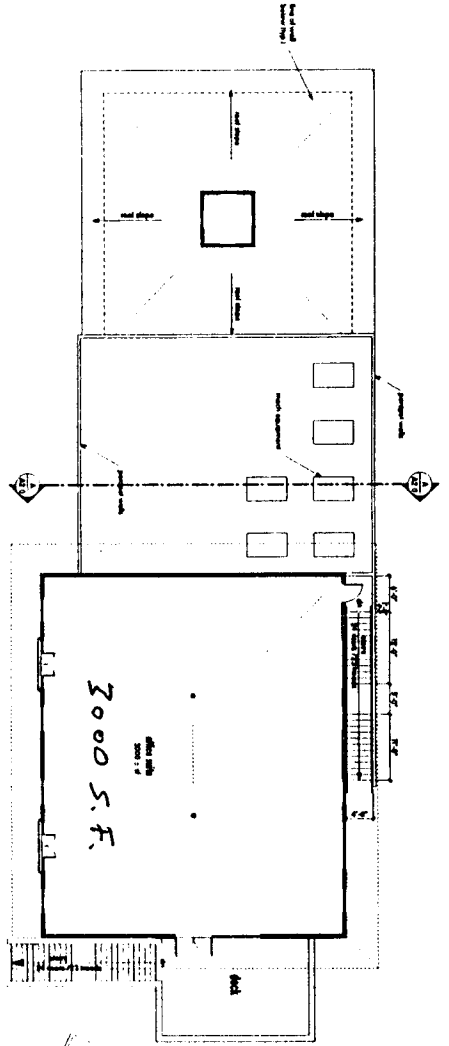
Office
2500 Newport Blvd.
Newport Beach, CA
92660

REGISTRATION
2500 Newport Blvd.
Newport Beach, CA
92660

First Floor Plan - 12,000 S.F.



Second Floor Plan 3000 S.F.



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EXHIBIT # 4
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Owner
Retail Center
33 Pacific Coast Highway
Newport Beach, CA 92659

A.1.0

Floor Plans
Scale: 1/8" = 1'-0"
Date: 11/15/00
Project: Retail Center

