

CALIFORNIA COASTAL COMMISSION

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Filed: March 12, 2001
 49th Day: April 30, 2001
 180th Day: September 8, 2001
 Staff: KFS-LB
 Staff Report: May 24, 2001
 Hearing Date: June 12-15, 2001
 Commission Action:



Th19c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-00-360

RECORD PACKET COPY

APPLICANT: Debonis & Faubion Construction

AGENT: None

PROJECT LOCATION: 319 Canal Street, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Construction of an approximately 24'9" high, two story, 2,408 square foot single family residence with an attached 400 square foot, two-vehicle garage on a waterfront parcel. In addition, construction of a 57 square foot patio on the waterfront side of the residence. Minor surficial grading is proposed for foundation construction.

Lot Area:	2240 square feet
Building Coverage:	1394 square feet
Paved Area:	80 square feet
Landscape Coverage:	766 square feet
Parking Spaces:	2
Cert. Land Use Design:	Single Family Detached Residential
Zoning:	R-1
Ht above grade:	24 Feet at Mid Point/29 Feet at Ridge

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project subject to six special conditions requiring 1) recordation of an Assumption-of-Risk deed restriction; 2) submittal of and compliance with a drainage and polluted runoff control plan; 3) submittal of and conformance with a construction staging plan; 4) conformance with certain requirements related to the storage and management of construction debris and equipment; 5) recordation of a deed restriction which contains notification that future development requires a coastal development permit; and 6) conformance with plans approved by the Executive Director. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semenuk Slough).

LOCAL & OTHER AGENCY APPROVALS RECEIVED: City of Newport Beach approval-in-concept 1327-2000 dated August 29, 2000.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits related to hazards: 5-00-420 (Collins); 5-00-285 (Collins); 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-192 (Blumenthal); 5-00-086 (Wells); 5-00-059 (Danner); 5-00-114 (Heuer); 5-00-271 (Darcy); 5-99-477 (Watson); 5-99-289 (NMUSD); 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold); Coastal Development Permits for development along Semenuk Slough: P-6503 (Borthwick), P-

6670 (Graham), 5-83-21 (Graham), P-1033 (Brady), 5-96-002 (Bycott), 5-95-220 (Fairbanks), P-6245 (Interiors), P-6007 (McClaire), P-77-2640 (Ferguson), P-1957 (Mitchell & Uplinger); City of Newport Beach certified Land Use Plan; *Coastal Engineering Analysis and Assessment* prepared by Noble Consultants, Inc. dated March 12, 2001; *Preliminary Foundation Soils Exploration* (Job No. F-9196-00) by Geo-Etka, Inc. dated June 14, 2000; Letter from J.M. Wilson & Associates of Upland, California dated November 27, 2000 regarding presence of flood zones; *Jurisdictional Delineation and Biological Evaluation for Lots located at 315 and 319 Canal Street...* prepared by Glenn Lukos Associates of Lake Forest, California dated December 21, 2000.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-00-360 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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 TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit subject to the conditions below 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 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

1. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a drainage and polluted runoff control plan designed by a licensed engineer which will minimize the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with the geologists' recommendations. The plan shall include but not be limited to the following criteria:

- (1) Post-development peak runoff rates and average volumes shall be maintained at levels at or below pre-development conditions.

- (2) Design elements which will serve to reduce 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/stepping stones for walkways, and porous material for or near walkways and driveways;

- (3) Runoff from all roofs, parking areas, driveways and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices, where feasible. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge excess runoff from the building site to the street in a non-erosive manner.
- (4) The plan shall include provisions for maintaining the drainage and filtration systems in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

- 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. **STAGING AREA FOR CONSTRUCTION**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.
1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
 - (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.
 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s);

- (2) construction corridor(s);
- (3) construction site;
- (4) location of construction fencing and temporary job trailers with respect to existing wetlands.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **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 or be subject to tidal erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs shall be maintained in a functional condition throughout the duration of the project.

Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary 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.

5. **FUTURE DEVELOPMENT DEED RESTRICTION**

A. This permit is only for the development described in coastal development permit No. 5-00-360. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements to the permitted structure, including but not limited to repair and maintenance identified as not requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), which are proposed within the restricted area shall require an amendment to Permit No. 5-00-360 from the Commission or shall require an additional coastal development permit from the 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 in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. 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.

6. **PERMIT 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 herein. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. **PROJECT LOCATION AND DESCRIPTION**

The subject site is located at 319 Canal Street in the Newport Shores area within the City of Newport Beach, Orange County (Exhibit 1). The site faces upon the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. Semeniuk Slough is a remnant channel of the Santa Ana River which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. Semeniuk Slough is a wetland considered an environmentally sensitive habitat area and unique coastal resource in the City's Certified Land Use Plan.

The subject site is a vacant approximately 25' x 80' parcel of land within an existing developed residential community. The site is relatively flat with elevations ranging from approximately 4.5 feet to 6 feet above sea level. The subject site is flanked on the east by a residence, on the west by another vacant parcel (which is the subject of Coastal Development Permit Application 5-00-359), on the south by Canal Street, and to the north by Semeniuk Slough. Semeniuk Slough is within the City of Newport Beach and is designated as Recreational and Environmental Open Space in the certified Land Use Plan. The land on the far side of the slough is relatively undeveloped where there are wetlands and some oil production facilities. This relatively vacant land is within unincorporated Orange County and is part of the approximately 75 acre area known as the Newport Ranch. Vertical public access to the slough is available approximately 100 feet west and 125 feet east of the subject site at the ends of Lancaster Street and Sunset Drive, respectively. Lateral public access along the slough between the slough and the adjacent residences is possible but limited because the existing residences are located within feet of the water. The City's certified Land Use Plan indicates that lateral public access along the slough is present on the far (north) side.

The applicant is proposing the construction of an approximately 24'9" high, two story, 2,408 square foot single family residence with an attached 400 square foot, two-vehicle garage on the subject site (Exhibit 2). In addition, the applicant is proposing construction of a 57 square foot concrete patio on the waterfront side of the residence. Minor surficial grading is proposed for foundation construction.

The proposed residence would have a 6 foot to 7 foot enclosed living space setback from the waterfront property line (adjacent to Semeniuk Slough). This proposed setback is larger than the City's 5 foot required setback and larger than the setbacks of adjacent older residences which have 5 to 6 foot enclosed living space setbacks (Exhibit 4). The proposed 57 square foot patio would be constructed up to the waterfront property line (i.e. there would be a zero (0) foot setback from the property line for the patio). A wetland boundary delineation submitted by the applicant places the boundary between the wetlands (Semeniuk Slough) and the uplands approximately 4.5 feet beyond the property boundary of the subject site. Therefore, there would be a 4.5 foot setback between Semeniuk Slough and the proposed patio and a 10.5 to 11.5 foot setback between the proposed house and the slough. The proposed concrete patio would be located landward of other patios and decks along Semeniuk Slough – some of which extend over the water.

B. PREVIOUS COMMISSION ACTION ALONG SEMENIUK SLOUGH AND UPON OTHER WATERFRONT LOTS

The residential lots adjacent to Semeniuk Slough were created in the late 1940s. The subject site is one of a very few vacant lots remaining in the subdivision. Accordingly, the subject development is infill development. The Commission and it's predecessor, the California Coastal Zone Conservation Commission, have consistently approved residential development on these lots since the Commission's inception in 1972. For instance, Coastal Development Permit P-6503 (Borthwick) approved a new single family residence at 205 Canal Street. Coastal Development Permit P-6670 (Graham) and 5-83-21 (Graham) approved new single family residences at 207 Canal Street. Coastal Development Permit P-1033 (Brady) approved a new single family residence at 209 Canal Street. Other new single family residences have been approved at 211 Canal Street [5-96-002 (Bycott)], 217 Canal Street [P-6245 (Interiors)], 221 Canal Street [P-6007 (McClaire)], 339 Canal Street [P-77-2640 (Ferguson)], and 409 and 413 Canal Street [P-1957 (Mitchell & Uplinger)]. Meanwhile, additions and remodels of existing single family residences have been approved at 2 Canal Street [5-96-044 (Malcolm)], 6 Canal Circle [5-92-453 (Hall)], 207 Canal Street [5-84-292 (Graham)], and 215 Canal Street [5-95-220 (Fairbanks)]. The proposed development would be similar to development previously approved.

C. FLOODING AND EROSION 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.

The subject site is located adjacent to Semeniuk Slough, a tidally influenced wetland which branches off the Santa Ana River. Semeniuk Slough is part of the Lower Santa Ana River Marsh. According to the Jurisdictional Delineation prepared by Glenn Lukos Associates dated December 21, 2000, the high tide line of the slough is approximately 4.5 feet beyond the property line which fronts the slough. Water elevation within the slough is presently controlled by a series of flood control gates and one-way drainage pipes. These water elevation control devices allow for normal tidal circulation but minimize flooding hazards present when higher water levels occur within the Santa Ana River during storm events, according to the Coastal Engineering Analysis and Assessment prepared by Noble Consultants, Inc. dated March 12, 2001. As noted in the Noble Consultants report, "...the purpose of the culvert and drainage pipe system is to allow unrestricted circulation and normal tidal flows into and out of the marsh area and prevent flooding of the interior marsh and slough during times of river flood stage." The existing flood control devices are part of a 1.84 square mile marsh restoration and enhancement project known as the Federal Lower Santa Ana River Project which is part of the Santa Ana River Mainstem Project designed by the U.S. Army Corps of Engineers. The Federal Lower Santa Ana River Project includes habitat restoration, tidal circulation improvements, and flood control devices.

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. According to an affidavit submitted by the applicant, the proposed project is not located in any special flood hazard area as defined on the applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) for the area.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a flooding and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The Coastal Engineering Analysis prepared by Noble Consultants documents the presence of the previously cited flood control devices which are part of the Federal Lower Santa Ana River Project. These flood control devices are designed to allow normal tidal circulation but will close and isolate the Lower Santa Ana River Marsh—including the subject site—during flood flows within the Santa Ana River. The flood control devices are designed to accommodate a 190-year frequency storm. A storm of this frequency would produce a maximum water elevation of +6.0 feet MSL (Exhibit 3). Since the top of the proposed concrete patio would be +6.5 feet MSL and the first floor elevation is at +7.1 feet MSL, the maximum water inundation level of +6.0 feet MSL for the 190-year storm would not flood the proposed development (Exhibit 3). Furthermore, the modeling for the flood control project did not take into account several built in redundant flood control devices which further reduce the maximum water elevation.

The applicant also analyzed the potential for tidal currents to erode the project site which might result in the need for protective devices in the future. The Coastal Engineering Analysis reviewed the drainage hydraulics of the slough and determined "...that no current capable of causing significant erosion will occur near the proposed Canal Street property improvements." In addition, the analysis states that there are no visible signs of bank erosion in the site area. Furthermore, since depths within the slough are shallow there is evidence that scour forces are absent in the slough area. The analysis concludes that "...we do not believe that shoreline protection devices or flood control devices are practical or warranted at the proposed development."

The Commission's Senior Coastal Engineer has reviewed the Coastal Engineering Analysis and, based on the information provided, concurs with the conclusion that the site is not subject to hazards from flooding and erosion at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to "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..."

Although the applicant's report indicates that site is safe for development at this time, coastal areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect flooding and erosion regimes. Hydraulics are complex and may change over time, especially as flood control structures such as flood control gates and drainage pipes are modified, either through damage or deliberate design.

It is clear that flood and erosion hazards at the site are reliant upon mechanical structures. For instance, the Coastal Engineering Analysis states that "...Water levels within the marsh and slough are completely regulated by tide gates and one-way discharge pipes." In addition, it is clear from the Coastal Engineering Analysis that while flooding of the site is unlikely, extremely large storms or rare storm sequences may cause flooding: "Based upon the analysis performed by the U.S. Army Corps of Engineers, the estimated flood elevation for an extremely rare and unlikely storm sequence (less than or equal to 190-year return probability) will not exceed the proposed structures' patio deck or first floor elevations. However, it is possible that more severe storms could occur that may potentially impact the property. However, based on the analysis and conclusions reached by the U.S. Army Corps of Engineers, we believe that such extreme event planning may be considered unreasonable because it would be inconsistent with the design criteria of the existing development, community setting, and local infrastructure capabilities."

Therefore, it is clear that the existing flood control devices in the project area function in a manner that reduces flooding hazards. However, damage to these flood control devices could dramatically change flooding hazards at the site. In turn, flooding could cause increased erosion at the site. In order to address this situation with respect to Coastal Act policy, an assumption-of-risk special condition is necessary.

Given that the applicant has chosen to implement the project despite potential risks from erosion or flooding, the applicant must assume the risks. Therefore, the Commission imposes Special Condition 1 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.

The Commission finds that, based on the analysis submitted by the applicant, all significant risks of hazards from flooding and erosion at the site have been resolved, therefore, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act. However, hazards potentially exist from flooding and erosion at the subject site if existing flood control devices deteriorate or are damaged. Therefore, Special Condition 1 requires the applicant

to record an assumption-of-risk deed restriction. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Section 30253.

D. BIOLOGICAL RESOURCES AND WATER QUALITY

Section 30231 of the Coastal Act states:

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

Section 30240(b) of the Coastal Act states:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

a. Wetlands Buffer

The proposed development is occurring adjacent to Semeniuk Slough, which is a wetland as defined under the Coastal Act. One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Moreover, preserving, expanding, and enhancing Southern California's remaining wetlands is particularly critical because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Development, including grading and the construction of residential structures, could cause impacts upon adjacent wetlands by discharging silt to the wetlands. In addition, occupation and use of residential structures adjacent to wetlands can cause disturbances to the biological resources in the wetlands.

Section 30240(b) of the Coastal Act requires that development in areas adjacent to environmentally sensitive habitat areas, such as wetlands, must be sited and designed to prevent impacts which would significantly degrade those areas. In addition, Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters and wetlands be maintained. One way the Commission has sought to protect wetlands is to establish a buffer between wetlands and proposed development. Buffer areas are undeveloped lands surrounding

wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance. In addition, buffer areas can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Buffer areas provide obstructions which help minimize the entry of domestic animals and humans to wetlands. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Buffers can also reduce noise disturbances to wetland species from human development.

Under the proposed project, there would be an approximately 4.5 foot wide buffer between the wetlands and the patio (Exhibit 4). There would be an additional 6 to 7 foot setback from the waterfront property line for a total setback of 10.5 to 11.5 feet between the proposed house and the slough. This buffer is much smaller than the 100 foot buffer normally required by the Commission. However, since the subject 25' x 80' lot is only 80 feet deep, a 100 foot buffer would preclude the construction of any development on the lot.

As noted previously, the lot upon which the proposed development is being constructed was created in the late 1940's which pre-dates the Coastal Act. This lot was part of a larger residential subdivision which created 42 residential lots along Canal Street, 7 along Canal Circle, and 39 lots along 62nd Street which face upon Semeniuk Slough. The subject lot is one of a very few vacant lots remaining along Canal Street, Canal Circle and 62nd Street. The other lots have been developed with residential structures which are similar to the proposed development in square footage, dimension, and setback. The proposed development is in-fill development. In addition, the proposed development incorporates a larger setback from the waterfront property line than adjacent development (6 to 7 feet for the proposed house compared with 5 to 6 feet for adjacent houses). Any impacts upon Semeniuk slough related to light, noise and other disturbance related impacts have already been caused by the presence of the existing pre-Coastal Act development flanking the proposed project site. The presence of the proposed development would not cause any further encroachment upon the wetlands. Also, the additional light, noise and related impacts caused by the proposed development would not be significant compared with the pre-existing development.

Also, according to the Jurisdictional Delineation and Biological Evaluation by Glenn Lukos Associates there are no wetlands on the project site. Instead, there are a variety of non-native invasive plant species including hottentot fig, cheeseweed, foxtail barley, Bermuda buttercups, small-flowered ice plant, Bermuda grass, and spottleaf spurge. No sensitive habitats or endangered species are present on the project site. Furthermore, the biological analysis states that the presence of large quantities of domestic dog scat indicates frequent use of the site by dogs which would preclude use of the site by ground-nesting birds. Therefore, development on the site will not have any direct adverse impacts upon any sensitive biological resources.

The development as proposed and conditioned will not adversely impact the adjacent wetlands. However, in order to assure that no adverse impacts to wetlands occurs, the applicant must construct the project as proposed and conditioned herein. Therefore, the Commission imposes Special Condition 6 which requires the applicant to comply with the plans approved by the Executive Director. In addition, in order to assure that any future changes to the site do not adversely impact the adjacent wetlands, the Commission imposes Special Condition 5 which requires the applicant to execute and record a deed restriction which notifies the applicant and future land owners of the requirement to obtain a coastal development permit for future development on the property.

b. Water Quality

If construction equipment and staging is not appropriately managed, adverse impacts upon wetlands on the project site could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Therefore, the Commission imposes Special Condition 3. Special Condition 3 requires that, prior to issuance of the coastal development permit, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands. The plan shall demonstrate that construction equipment or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition and that construction equipment and activity shall not be placed in any location which would result in impacts to wetlands. The plan shall include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands.

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent wetlands, the Commission imposes Special Condition 4. Special Condition 4 requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

The proposed development is occurring upon a vacant lot. Storm water from storm events currently can percolate into the soil which comprises the subject site. However, the proposed project will result in an increase in the quantity of impervious surfaces on the site where pollutants such as particulate matter may settle. In addition, the proposed structure will include roof area where pollutants may settle. During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the Commission imposes Special Condition 2 which requires the applicant to submit a runoff and drainage control plan which includes the following elements: (1) Post-development peak runoff rates and average volumes shall be maintained at levels similar to pre-development conditions; (2) Design elements which will serve to reduce directly connected impervious area and maintain permeable space within the development shall be incorporated where feasible; (3) Runoff from all roofs, parking areas, driveways and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices, where feasible. Where not feasible, runoff is to be directed to the street; and (4) maintenance requirements. Maintenance of BMPs is essential to ensuring the function of the BMPs. These measures will serve to improve the quality of water discharged from the subject site.

As conditioned, the Commission finds the proposed project is consistent with Section 30231 and 30240(b) of the Coastal Act.

E. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

The subject site is a waterfront lot located between the nearest public roadway and the shoreline in the City of Newport Beach. There is wetland adjacent to the subject site. Vertical public access to the slough is available approximately 100 feet west and 125 feet east of the subject site at the ends of Lancaster Street and Sunset Drive, respectively. Lateral public access along the slough between the slough and the adjacent residences is possible but limited because the existing residences are located within feet of the water and the muddy upland adjacent to the water makes traversing the area difficult. The City's certified Land Use Plan indicates that lateral public access along the slough is present on the far (north) side. Therefore, the Commission finds adequate access is available nearby and the proposed development is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

F. VISUAL QUALITY

Section 30251 of the Coastal Act states:

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.

The proposed project includes the construction of a residential structure on an waterfront lot. If not sited appropriately, this structure would have adverse impacts upon views to and along the slough

and would be visually incompatible with the character of the surrounding area. Furthermore, appropriate siting can restore and enhance visual quality.

The subject site is visible from the street end at Lancaster Street. In addition, the site is visible from a trail which runs along the north side of the slough on the opposite shore from the proposed development. Development on this waterfront parcel can affect public views along the coast from the public areas. Degradation of those views would be inconsistent with Section 30251 of the Coastal Act. Degradation of views can occur when development is not consistent with the character of surrounding development. For instance, development seaward of the line of development established for an area can interfere with views to and along the shoreline leading to degradation of those views.

The Commission has recognized that, in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built further seaward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes. In this case, the structural and deck stringlines would be drawn from the properties flanking the subject site at 309 and 323 Canal Street. The proposed development does not conform with the enclosed living space stringline drawn between the flanking properties. Specifically, the proposed development encroaches approximately 1 foot beyond a stringline drawn between the nearest seaward corner of the adjacent structures (Exhibit 4).

The encroachment beyond the stringline occurs in this case because the residence at 323 Canal Street does not squarely face upon the waterfront lot line, rather it is turned slightly toward the west. The majority of development along Canal Street conforms with the City of Newport Beach's waterfront setback standards of 5 feet from the waterfront property line on the first floor. The proposed development provides a 6 to 7 foot setback from the waterfront property line which exceeds the City's standards. In Newport Beach, the Commission has commonly found that the City's enclosed living space setbacks establish a clear line of development for many areas of the city. Conformance with those setback standards for the proposed project site would be consistent with the line of development established for the area. In this case, the proposed project exceeds the City's setback standards and is therefore consistent with the line of development.

In addition to enclosed living space, the line of development for decks and patios must be analyzed for impacts upon public views to and along the slough. In this case, the line of development for decks and patios encroaches beyond the property boundaries of many of the residences along the slough. In this case, the applicant will not construct the patio beyond the property boundary. Thus the patio will be landward of adjacent decks and patios. Accordingly, the proposed development will not encroach beyond the existing line of development. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal 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 City of Newport Beach Land Use Plan (LUP) component of its LCP was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDPs within the City based on the development's conformance with the

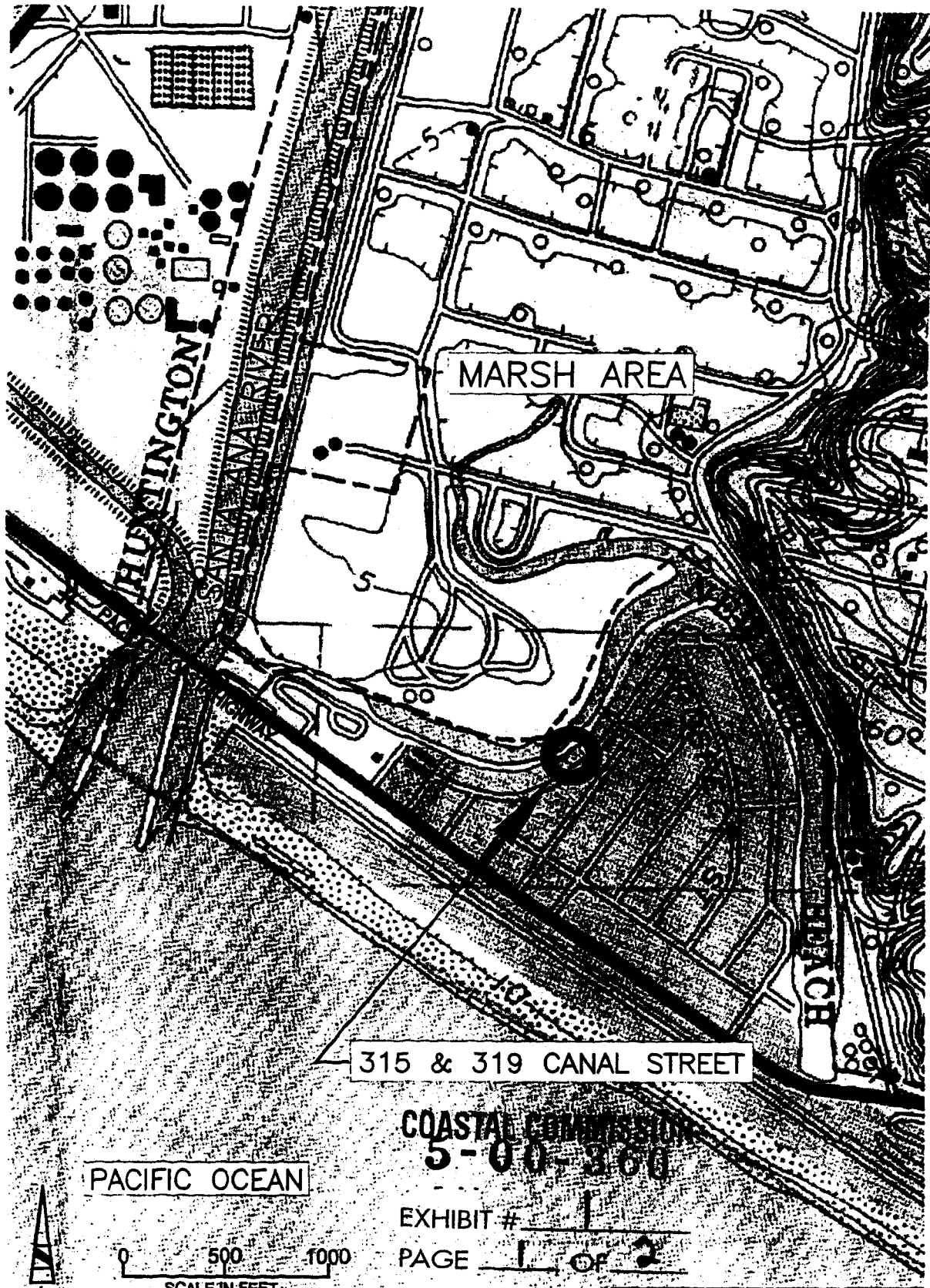
Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As explained above, the proposed development is consistent with the Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development 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 required by Section 30604 (a).

H. 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. In addition, the subject site is flanked by residential development. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. Conditions imposed are: 1) an assumption-of-risk agreement; 2) a requirement for a drainage and polluted runoff control plan; 3) a requirement for submittal and conformance with a construction staging plan; 4) requirements related to the storage and management of construction debris and equipment; 5) a notification that future development requires a coastal development permit; and 6) a requirement to conform with plans approved by the Executive Director. The subject lot is shaped and sized similar to other single family residential lots in the area. In addition, the proposed development is similar to surrounding development. 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.

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.



VICINITY MAP

Source: Portion of USGS Quadrangle
Newport Beach, CA. 1981



Figure 1

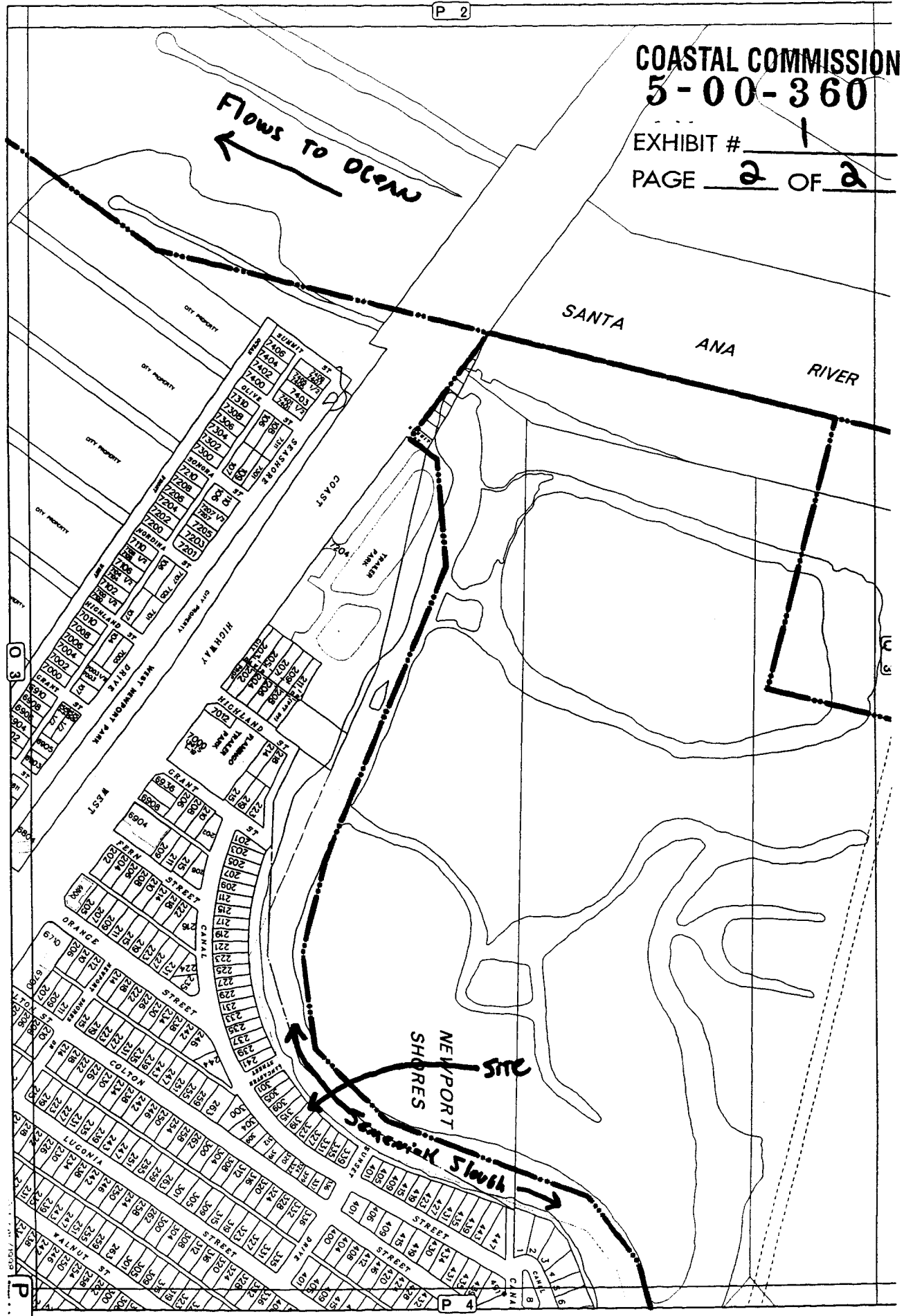
COASTAL COMMISSION
5-00-360

EXHIBIT # 1

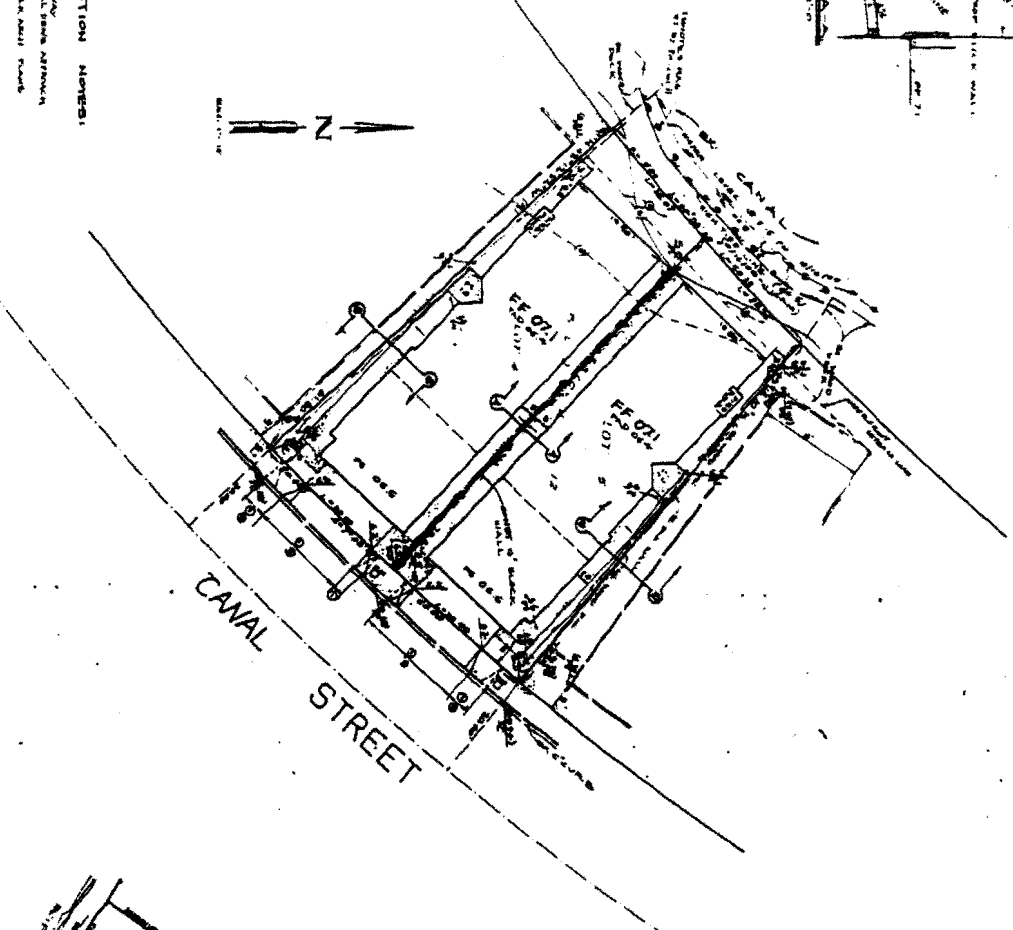
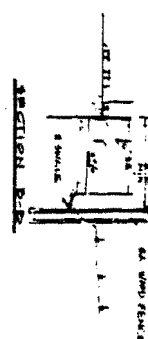
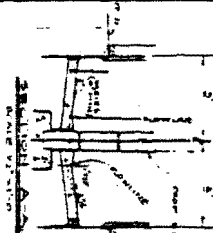
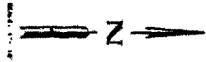
PAGE 2 OF 2

Flows to Ocean
←

SANTA ANA RIVER



CONSTRUCTION NOTES:
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND THE CALIFORNIA ELECTRICAL CODE.
 2. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
 3. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED.
 4. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE AND THE CALIFORNIA PLUMBING CODE.
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND THE CALIFORNIA ELECTRICAL CODE.



COASTAL COMMISSION
 5-00-360

EXHIBIT # 2

PAGE 1 OF 5

THIS GRADING PLAN IS A PART OF THE SUBMITTAL TO THE COASTAL COMMISSION FOR THE PROJECT DESCRIBED ABOVE.

DATE: 10/15/77

SCALE: AS SHOWN



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND THE CALIFORNIA ELECTRICAL CODE.
 2. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
 3. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED.
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 6. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED.
 7. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE AND THE CALIFORNIA PLUMBING CODE.
 8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND THE CALIFORNIA ELECTRICAL CODE.
 9. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED.
 10. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE AND THE CALIFORNIA PLUMBING CODE.

GRADING PLAN-LOTS 1 & 5, TRACT 772

NO.	DATE	REVISIONS
1	10/15/77	ISSUED FOR PERMITS
2		
3		
4		
5		

J. R. WILSON & ASSOCIATES
 CIVIL ENGINEERS
 272 NORTH FIRST AVENUE
 OAKLAND, CALIF. 94612

GRADING PLAN
 LOTS 1 & 5 OF TRACT 772, MAPS 100-100-000-000
 ACCORDING TO PLANS ON FILE IN THE OFFICE OF THE COUNTY CLERK, CALIFORNIA

DATE	
SCALE	
APP'D	

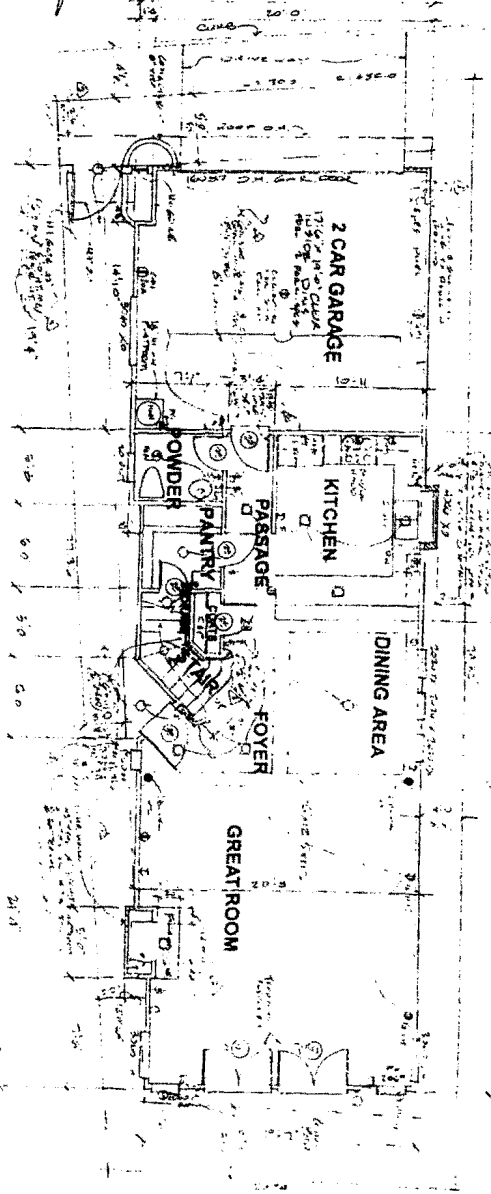
DESIGNED BY: D. BONIS AND FAUBION

1. Refer to Civil Plans 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
2. All work shall be in accordance with the latest editions of the California Building Code and the California Mechanical Code.
3. All work shall be in accordance with the latest editions of the California Electrical Code and the California Fire Code.
4. All work shall be in accordance with the latest editions of the California Plumbing Code and the California Gas Code.
5. All work shall be in accordance with the latest editions of the California Fire Prevention Code and the California Fire Alarm Code.
6. All work shall be in accordance with the latest editions of the California Fire Sprinkler Code and the California Fire Alarm Code.
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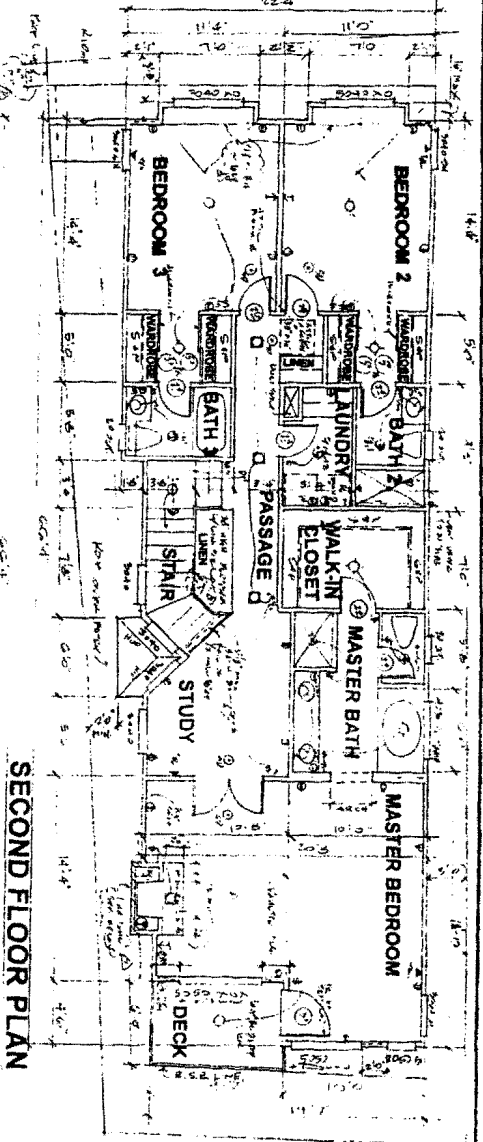
COASTAL COMMISSION
 5-00-360
 EXHIBIT # 2
 PAGE 2 OF 5

CANAL STREET

TOTAL	794 SF
GARAGE	1,414 SF
DECK	2,433 SF
STAIR	400 SF
CL.	57 SF



FIRST FLOOR PLAN SITE PLAN



SECOND FLOOR PLAN

NOTE: 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND THE CALIFORNIA MECHANICAL CODE.

NOTE: 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ELECTRICAL CODE AND THE CALIFORNIA FIRE CODE.

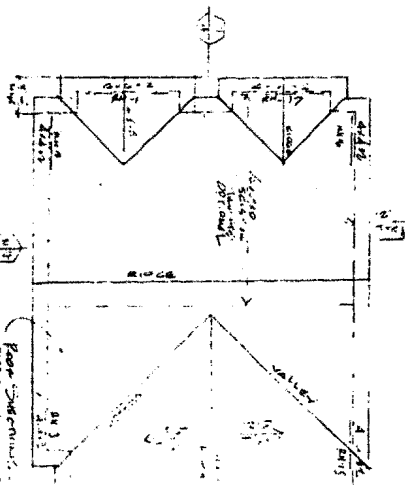
NOTE: 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA PLUMBING CODE AND THE CALIFORNIA GAS CODE.

NOTE: 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FIRE PREVENTION CODE AND THE CALIFORNIA FIRE ALARM CODE.

NOTE: 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FIRE SPRINKLER CODE AND THE CALIFORNIA FIRE ALARM CODE.

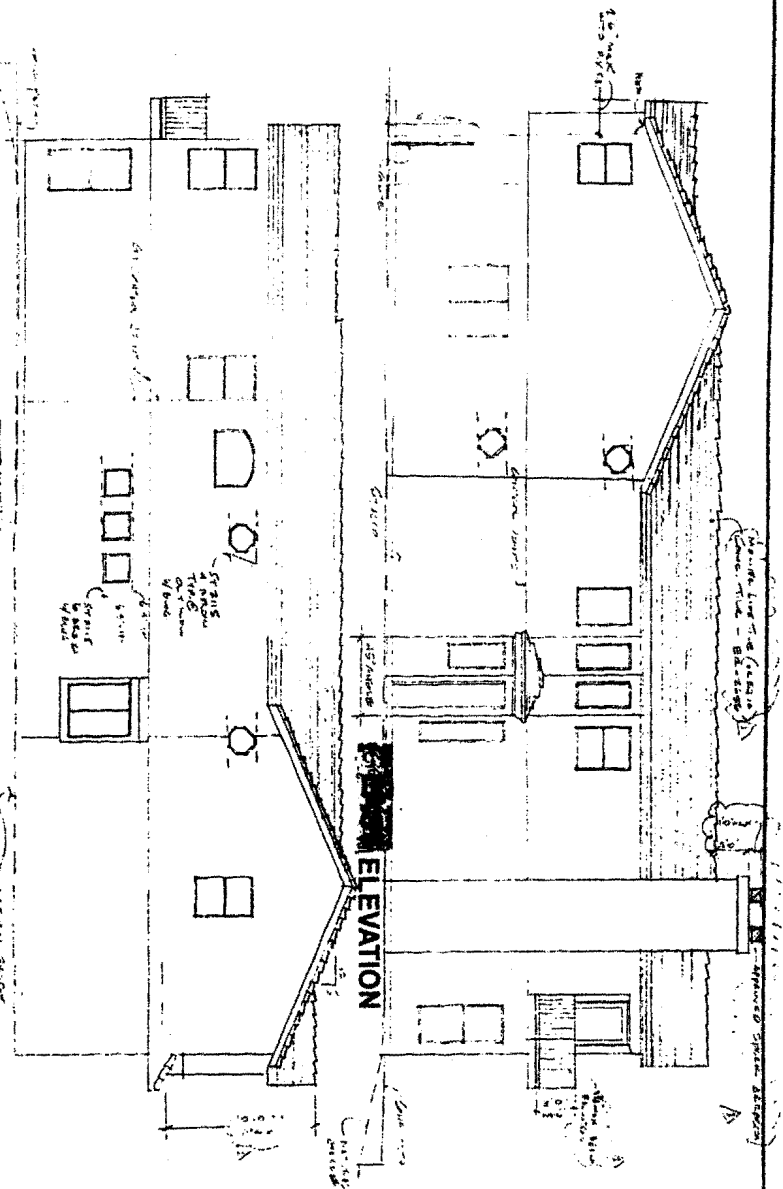
COASTAL COMMISSION
5-00-360

EXHIBIT # 2
PAGE 3 OF 5

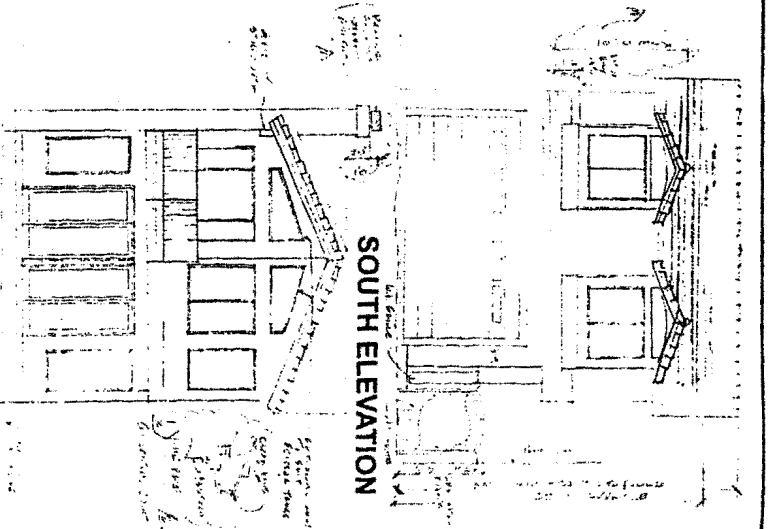


ROOF FRAMING PLAN

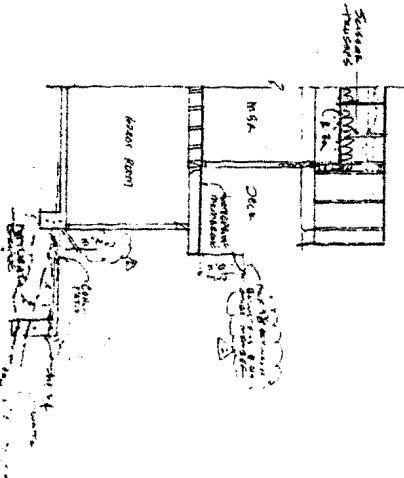
WEST ELEVATION



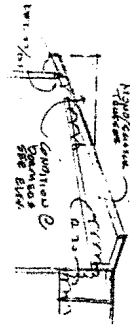
NORTH ELEVATION



SECTION 1
1/4" = 1'-0"



SECTION 2
1/4" = 1'-0"

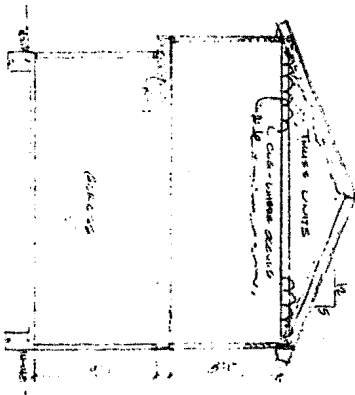


COASTAL COMMISSION
5-00-360

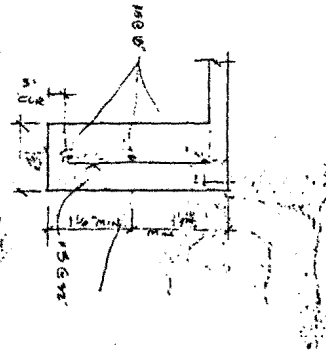
EXHIBIT # 2

PAGE 5 OF 5

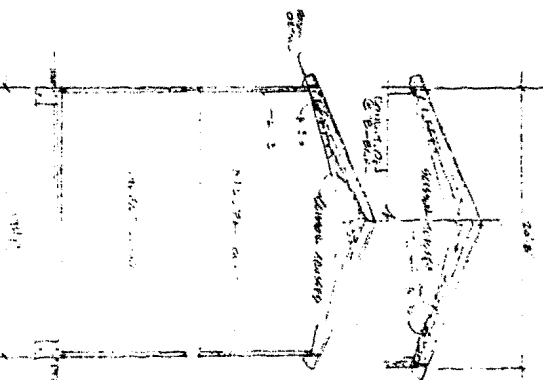
SECTION 3
1/4" = 1'-0"



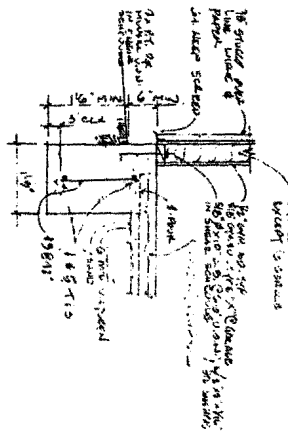
SECTION 4
1/4" = 1'-0"



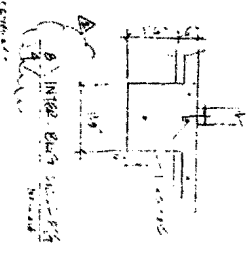
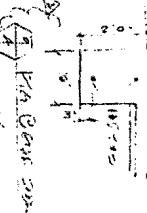
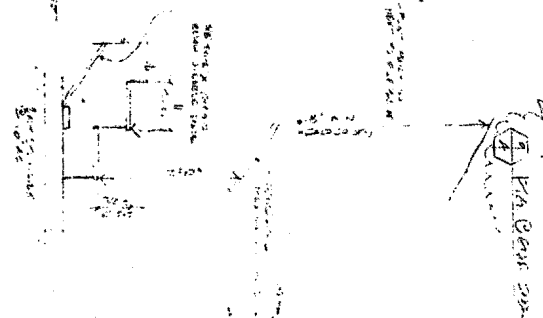
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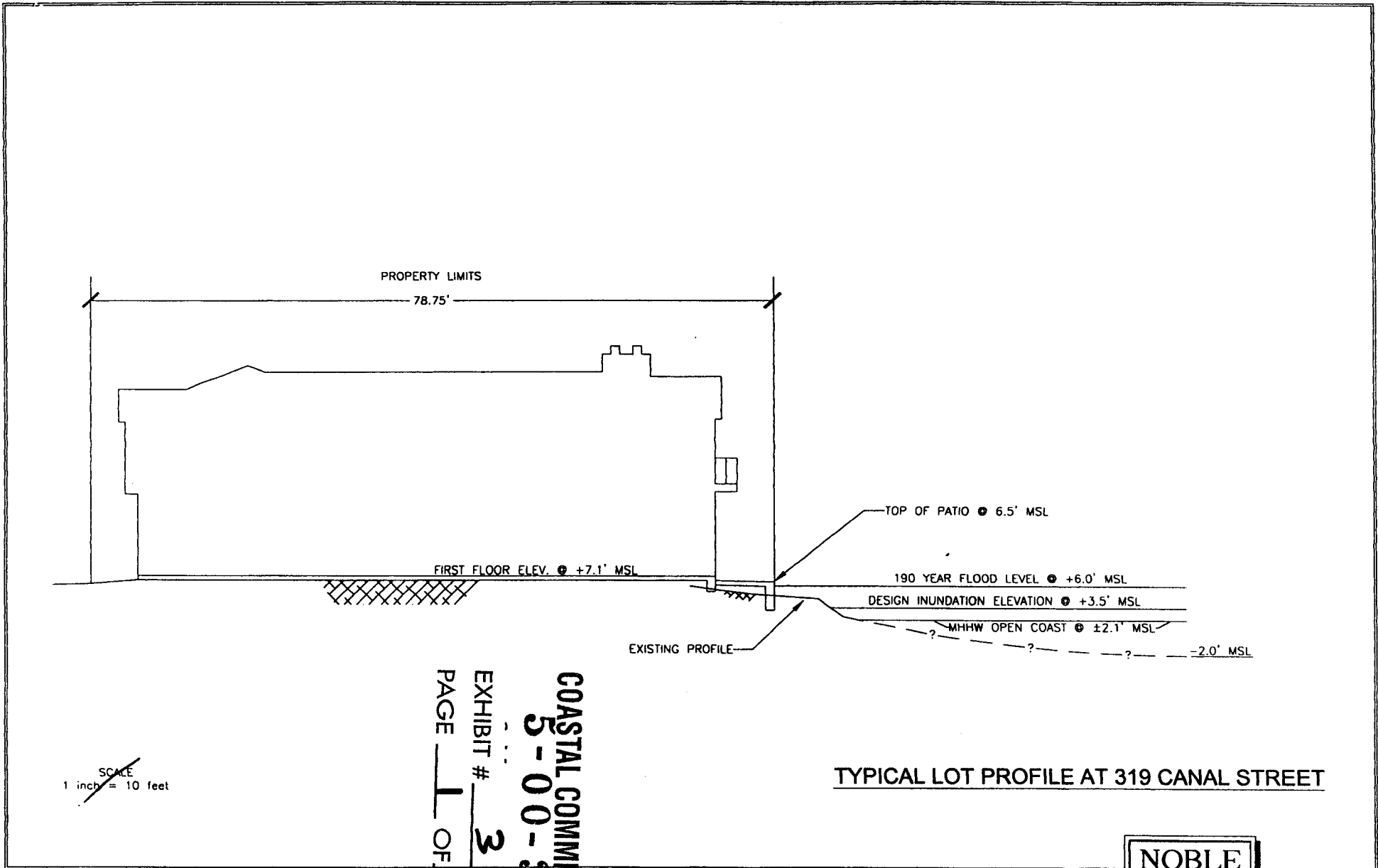


SECTION 6
1/4" = 1'-0"



SECTION 7
1/4" = 1'-0"





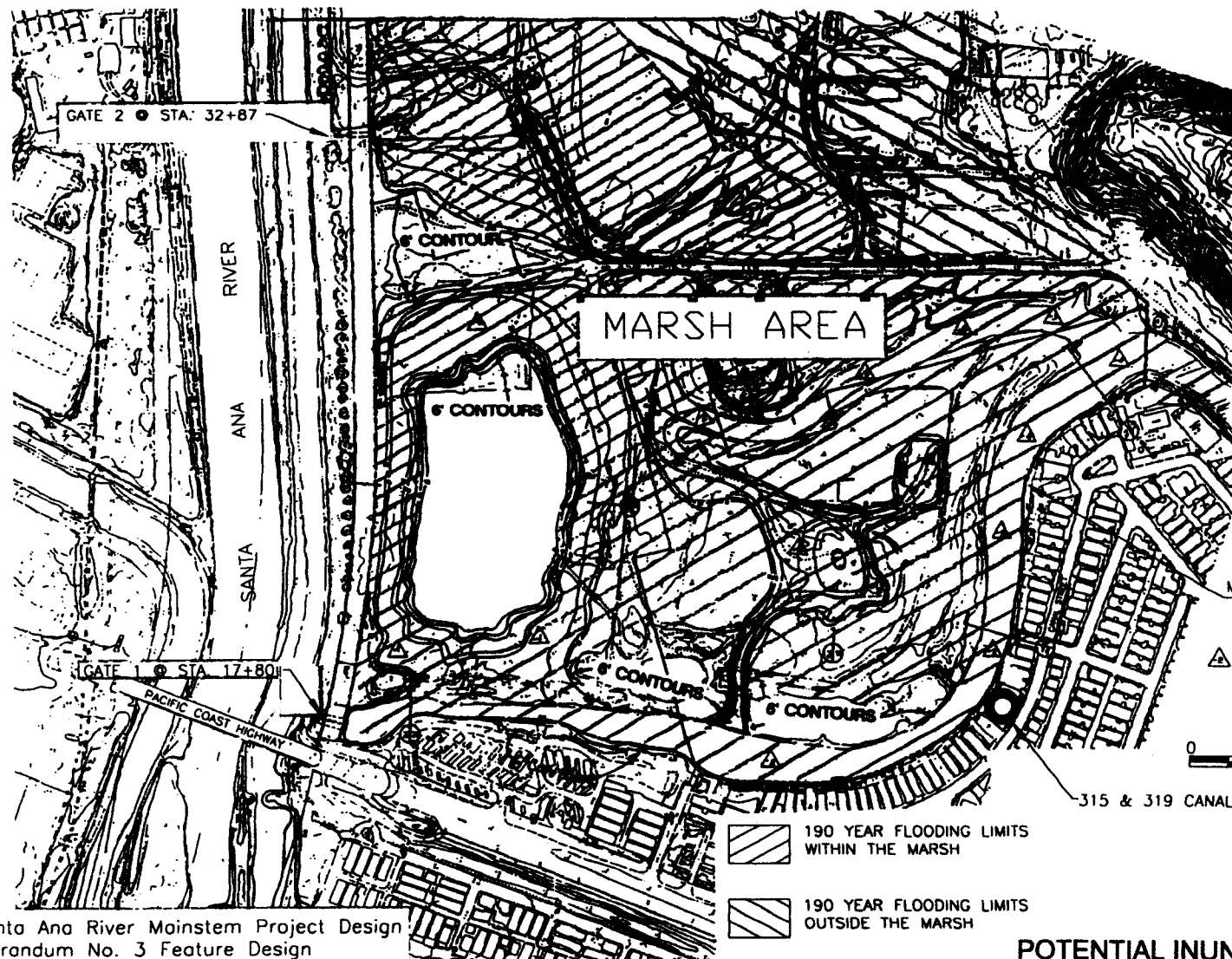
TYPICAL LOT PROFILE AT 319 CANAL STREET



Figure 3

COASTAL COMMISSION
 5-00-360
 EXHIBIT # 3
 PAGE 1 OF 2

SCALE
 1 inch = 10 feet

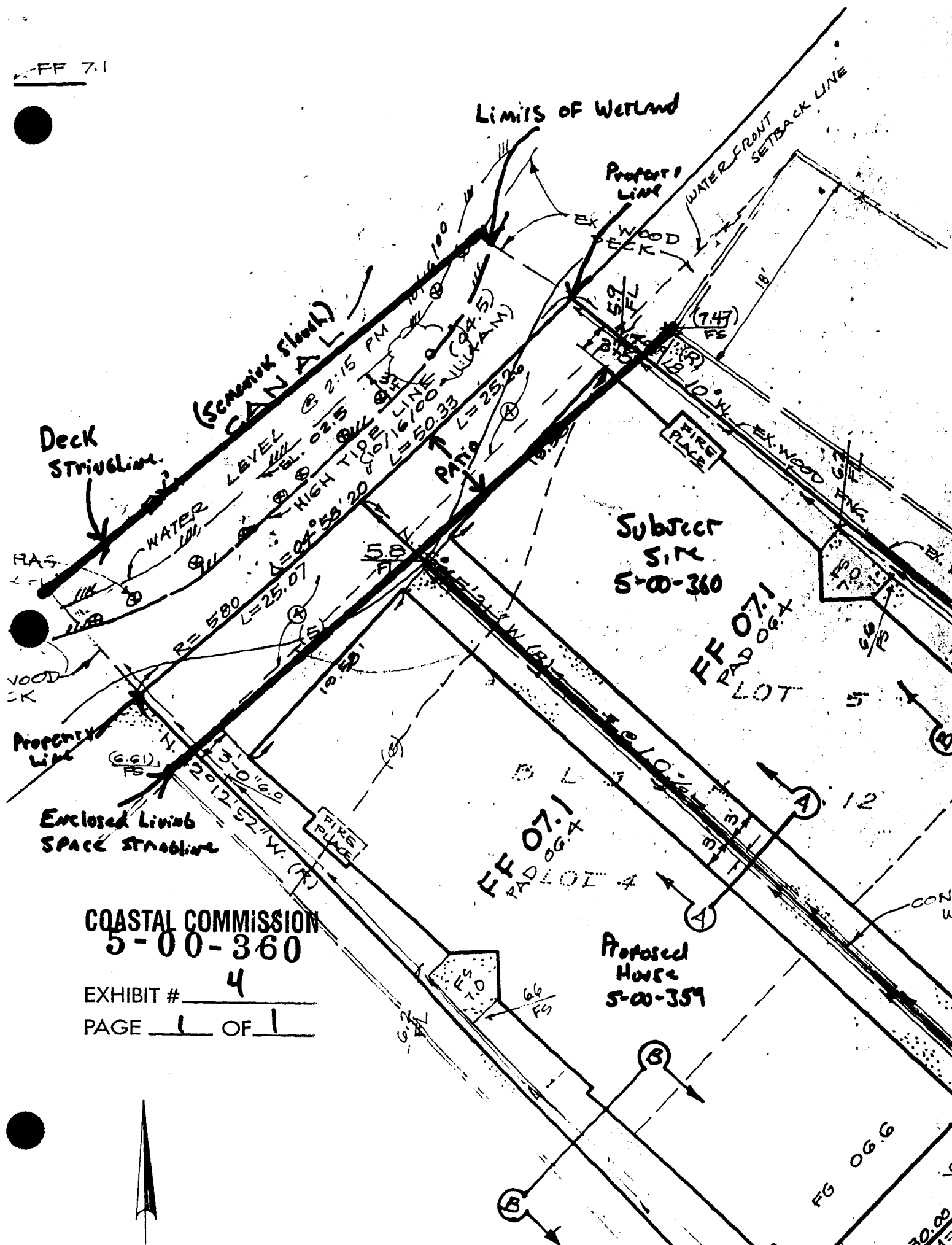


Source: Santa Ana River Mainstem Project Design
 Memorandum No. 3 Feature Design
 Lower Santa Ana River, USACE (1991)

POTENTIAL INUNDATION LEVELS



Figure 4



Deck Structure

(Semi-circular) CANAL

Limits of Wetland

Property Line

WATER FRONT SETBACK LINE

Subject Site 5-00-360

HH 07.1 PAD 06.7 LOT 5

Enclosed Living Space Structure

COASTAL COMMISSION 5-00-360

EXHIBIT # 4 PAGE 1 OF 1

Proposed House 5-00-359

HH 07.1 PAD 06.7 LOT 4

FG 06.6

30.00



California Regional Water Quality Control Board Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500,
Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis
Governor

December 28, 2000

Ted DeBonis, Vice President
DeBonis & Faubion Construction Inc.
846 W. Foothill Blvd., Ste. M
Upland, CA 91786

RECEIVED
South Coast Region

JAN 2 2001

CALIFORNIA
COASTAL COMMISSION

Dear Mr. DeBonis:

This letter is in response to information that you have provided regarding the construction of two single family residences on two improved and subdivided lots (319 and 315 Canal Street, Lot numbers 4 & 5) in Newport Beach, California.

From the description that you provided in your letter, and our subsequent telephone conversation, we see no apparent water quality problems associated with this project. You will, of course, need to comply with any and all local agency ordinances and requirements to assure that you do not discharge pollutants from the sites during the construction activities.

This project is not believed to fall under Section 404 of the Clean Water Act, for operations of dredge or fill to waters of the United States. If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may find it necessary to formulate waste discharge requirements at that time.

If you have any questions, please contact me at (909) 782-4993.

Sincerely,

Bob Whitaker
Storm Water Unit

cc: Carl Schwing, Coastal Commission

COASTAL COMMISSION

EXHIBIT # 5
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California Environmental Protection Agency

