

CALIFORNIA COASTAL COMMISSION

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Staff: FSY-LB FSY
Staff Report: January 17, 2002
Hearing Date: February 5-8, 2002
Commission Action:

**W 21k****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-01-401**APPLICANT:** Jim Collins

RECORD PACKET COPY

AGENT: John Morgan**PROJECT LOCATION:** 7100 West Oceanfront, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolish an existing single family dwelling and construct an approximately 26 foot high, two story, 2,343 square foot single family residence with an attached 440 square foot, two-vehicle garage on a beach front parcel. In addition, there will be a total of 86 square feet of 2nd floor decks. Grading is proposed for this project. There will be 208 cubic yards of cut and 208 cubic yards of fill, which will balance on site, for purposes of excavation and recompaction.

LOCAL APPROVALS RECEIVED: City of Newport Beach approval-in-concept dated October 10, 2001.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project subject to four (4) special conditions requiring 1) recordation of an Assumption-of-Risk deed restriction; 2) recordation of a No Future Protective Device deed restriction; 3) recordation of a Future Development deed restriction; and 4) conformance to the drainage plan. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-01-197 (Jacobs & Dolansky); 5-01-186 (Doukoullus); 5-01-084 (Muench); 5-00-492 (Palm); 5-00-420 (Collins); 5-00-285 (Collins); 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-192 (Blumenthal); 5-00-114 (Heuer); 5-00-086 (Wells); 5-00-059 (Danner); 5-99-477 (Watson); 5-97-380 (Hasket); 5-87-813 (Corona); 5-86-676 (Jonbey); City of Newport Beach certified Land Use Plan, *Wave Runup Study* for 7100 & 7102 W. Oceanfront, Newport Beach, CA prepared by Skelly Engineering dated September 2001; *Preliminary Geotechnical Investigation (Project File No. 21143-201)* for 7100 West Oceanfront, Newport Beach, CA prepared by P.A. & Associates, Inc. dated September 26, 2001; *Orange County Beach Erosion Control Project, San Gabriel River to Newport Bay, Orange County, California* prepared by the U.S. Army Corps of Engineers Los Angeles District dated April 1995.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Floor Plan
 5. Elevations
 6. Drainage Plans
 7. Data (table 3) from the Orange County Beach Erosion Control Project by the Army Corps of Engineers
 8. Graph (figure 7) from the Orange County Beach Erosion Control Project by the Army Corps of Engineers
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STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-01-401 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of 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 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. No Future Shoreline Protective Device

A(1). By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development

Permit No. 5-01-401 including future improvements, in the event that the property is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- A(2). By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, garage, foundations, and patios, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that any portion of the development is destroyed, the permittee shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- 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, which reflects the above restriction on development. 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.

3. Future Development Deed Restriction.

- A. This permit is only for the development described in Coastal Development Permit No. 5-01-401. 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 this development. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to, change in use to a permanent residential unit, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-01-400 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 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. The deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.

4. Submittal of a Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall conform to the drainage plan received by the Commission on November 16, 2001 prepared by Eric F. Mossman. The applicant shall maintain the functionality of the approved drainage plan.
- 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. **PROJECT LOCATION AND DESCRIPTION**

The subject site is located at 7100 West Oceanfront within the City of Newport Beach, Orange County (Exhibits #1-2). The site is a beachfront lot located between the first public road and the sea. Unlike the beachfront areas of Newport Beach south of 36th Street, there is no paved public walkway between the site and the public beach. The project is located within an existing urban residential area, located north of the Newport Beach Pier. There is a wide sandy beach (approximately 400-500 feet wide) between the subject property and the mean high tide line. Vertical public access to this beach is available to the southeast at the end of Highland Street, which is adjacent to the project site.

The applicant is proposing to demolish an existing single family dwelling and construct an approximately 26 foot high, two story, 2,343 square foot single family residence with an attached 440 square foot, two-vehicle garage on a beach front parcel (Exhibits #3-5). In addition, there will be a total of 80 square feet for 2nd floor decks. Grading is proposed for the project. There will be 208 cubic yards of cut and 208 cubic yards of fill, which will balance on site, for purposes of excavation and recompaction.

B. **PREVIOUS COMMISSION ACTION ON BEACHFRONT LOTS**

The Commission has been approving new development and residential renovation projects on beachfront lots in Orange County and southern Los Angeles with special conditions requiring the recordation of an assumption of risk deed restriction and no future protective device deed restriction. The Commission is imposing these special conditions as new development which will necessitate a future shoreline protective device in the future cannot be permitted. Though this project is in Orange County, projects in both Orange County and Los Angeles County are used for comparative purposes in the current situation because of their similar site characteristics, including the existence of a wide sandy beach between the subject site and the mean high tide line. Since 1999, the Commission has approved coastal development permits with the no future shoreline protective device and assumption-of-risk special conditions in Los Angeles County and Orange County. Recent Los Angeles County examples in Hermosa Beach include Coastal Development Permits 5-01-186 (Doukoullos), 5-00-086 (Wells), 5-00-059 (Danner) and 5-00-114 (Heuer). The

most recent Orange County examples in Seal Beach and Newport Beach include Coastal Development Permits 5-01-197 (Jacobs & Dolansky), 5-01-084 (Muench), 5-00-492 (Palm), 5-00-420 (Collins), 5-00-285 (Collins), 5-00-262 (Puntoriero), 5-00-261 (Pearson), 5-00-192 (Blumenthal), and 5-99-477 (Watson).

C. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30251 of the Coastal Act states that:

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

1. Wave Uprush and Flooding Hazards

The subject site is located on a beach parcel on the Balboa Peninsula north of the Newport Pier. Presently, there is a wide sandy beach between the subject development and the ocean. According to the Wave Runup Study prepared by Skelly Engineering dated September 2001, the mean high tide line is approximately 400-500 feet from the seaward edge of the subject property. This wide sandy beach presently provides homes and other structures in the area some protection against wave uprush and flooding hazards. However, similar to other nearby beach fronting sites such as those at A1 through A91 Surfside in Seal Beach (approximately 16 miles northwest of the subject site), the wide sandy beach is the only protection from wave uprush hazards. Similar situations exist in downtown Seal Beach and Hermosa Beach (Los Angeles County).

Even though wide sandy beaches afford protection of development from wave and flooding hazards, development in such areas is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside, which is approximately 16 miles northwest of Newport Beach. Additionally, heavy storm events such as those in 1994 and 1998 caused flooding of the Surfside community. As a result, the Commission has required assumption-of-risk deed restrictions for new development on beachfront lots throughout Orange County and southern Los Angeles County.

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 appears to be sufficiently setback from potential wave hazards. There is currently a wide sandy beach in front of the proposed development. In addition, the existing development was not adversely affected by the severe storm activity, which occurred in 1983, 1994, and 1998. Since the proposed development is no further seaward of existing development, which has escaped storm damage during severe storm events, the proposed development is not anticipated to be subject to wave hazard related damage. Nonetheless, any development on a beachfront site may be subject to future flooding and wave attack as coastal conditions (such as sand supply and sea level) change.

To further analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer), that anticipates wave and sea level conditions (and associated wave run-up, flooding, and erosion hazards) through the life of the development. For a 75 to 100 year structural life, the hazard analysis would need to take the 1982/83 storm conditions (or 1988 conditions) and add in 2 to 3 feet of sea level rise in order to determine whether the project site would be subject to wave run-up, flooding, and erosion hazards under those conditions. The purpose of this analysis is to analyze the potential for future storm damage and any possible mitigation measures, which can be incorporated into the project design.

The applicant provided the Wave Uprush Study prepared by Skelly Engineering dated December September 2001 which addresses the potential of hazard from flooding and wave attack at the subject site. The report concludes the following:

"...[W]ave runup and overtopping will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup protection. The proposed project minimizes risks from flooding."

Commission staff has reviewed the Wave Runup Study and, based on the information provided and subsequent correspondence, concurs with the conclusion that the site is not subject to hazards from flooding and wave uprush 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 the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. For instance, there is a jetty at the mouth of the Santa Ana River which is several hundred feet north of the project site. This jetty, as well as other groins in this area of Newport Beach result in littoral transport patterns that are complex. A study prepared by the U.S. Army Corps of Engineers in April 1995 titled Orange County Beach Erosion Control Project, San Gabriel River to Newport Bay, Orange County,

California, suggests that the effect of changes to the littoral pattern in the project area is difficult to predict. This report states:

The shoreline in the Newport Beach groin field region has experienced mild yet continual erosion. The groin field was constructed during Stage 4b and Stage 5 of this project during the 1970's. The project involved an initial fill after construction of the groins. Under this project authority, the groin field has never received any fill material as part of periodic nourishment and/or maintenance since initial construction completed in 1973. The littoral transport patterns in the groin field region are complex due to the influences of the Newport Submarine Canyon. The great depths of the canyon dramatically influence the wave climate and subsequently the littoral transport patterns. The littoral material exhibits bi-directional longshore movement. It is generally believed that the submarine canyon acts as a sink for a portion of the longshore littoral transport.

In the project area, the report goes on to suggest that erosion patterns are difficult to predict because areas near the project site where beach erosion is expected to be either static or slightly eroding, are actually experiencing accretion. Regarding erosion in the Newport Beach groin field, the report states:

...The shoreline at STA 664+21, which is just upcoast of the groin field but downcoast of the Santa Ana River, has been stable or accretionary which further indicates the complexity of sediment transport behavior in the groin field region.

The beach width monitoring station STA 664+21 is located at 62nd Street, approximately 9 blocks downcoast of the subject site. The Army Corps study indicated that the beach in the vicinity of the project site is growing (Exhibits #7-8). However, the information in the Army Corps study also suggests that the wide beach exists in part due to the presence of groins and jetties in the vicinity of the project site. The suggestion is confirmed by the applicants site specific Wave Uprush Study. Regarding the littoral cell and the function of structures in beach stability at the subject site, the applicant's site specific Wave Uprush Study states:

...Almost all of the shoreline in this littoral cell has been stabilized by man. The site is within a stabilized portion of the river delta. The local beaches near the site were primarily made by man through nourishment as a result of major shoreline civil works projects (Newport Bay, Huntington Harbor, channelization of Santa Ana River, etc.) and the construction of nearby coastal structures. The up-coast and down-coast movement of sand along the shoreline is mostly controlled by the nearby groins and jetties. There is little if any long term beach erosion at the site. The daily movement of sand along the shoreline depends upon the orientation of the shoreline and the incoming wave direction. The net movement of sand along this northern section of Newport Beach is generally to the east but under wave conditions from the south the direction reverses. The source of sediment for this compartment is beach nourishment and sands from nearby rivers. The sink for sands is the Newport Submarine Canyon. This submarine canyon focuses and de-focuses the incoming wave energy. Both the man made structures and the canyon play a major role in the local coastal processes.

Therefore, it is clear that the existing groins and jetties in the project area function in a manner which allows the existing wide sandy beach to persist. However, damage to these groins and jetties could dramatically and unpredictably change littoral transport mechanisms at the site. Such changes may cause the wide sandy beach to erode. Therefore, the presence of a wide sandy

beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development. In order to address this situation with respect to Coastal Act policy, two special conditions are necessary.

2. Assumption of Risk

Given that the applicant has chosen to implement the project despite potential risks from wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission imposes Special Condition No. 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 assumption-of-risk condition is consistent with prior Commission actions for development along the beach. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona) and most recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed and no future protective device restrictions on new development. Examples include Coastal Development Permits 5-01-197 (Jacobs & Dolansky); 5-01-084 (Muench); 5-00-492 (Palm); 5-00-420 (Collins); 5-00-285 (Collins); 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-192 (Blumenthal) and 5-99-477 (Watson).

3. Future Shoreline Protective Devices

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

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. The proposed project involves the demolition of an existing structure and construction of a new single family residence. The proposed single family home is new development. Allowing new development that would eventually require a shoreline protective device would conflict with Section 30251 of the Coastal Act; which states that permitted development shall minimize the alteration of natural landforms, including beaches which would be subject to increased erosion from such devices.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. While the Commission recognizes that the

applicant is proposing a patio wall parallel to the seaward property line, the wall is not designed to function as a shoreline protective device and cannot be relied upon to provide protection from wave uprush. The Wave Runup Study concludes that the *"There is little if any long term beach erosion at the site"* and that *"The Santa Ana River Jetty is a barrier to the movement of sand and thereby creates a very wide and relatively stable beach."* However, as discussed, nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Furthermore, as noted above, the existing wide beach persists due to the presence of groins and jetties in the area. Damage to the groins and jetties could cause shoreline processes to change resulting in erosion of the beach. Therefore, it is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards.

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

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

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

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

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion.

In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms. This includes sandy beach areas which would be subject to increased erosion from shoreline protective devices. The applicant is not currently proposing a seawall and does not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is a wide sandy beach in front of the proposed development that provides substantial protection from wave activity.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 2 which requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Section 30251 and 30253.

By imposing the "No Future Shoreline Protective Device" special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future.

4. Conclusion

The Commission finds that hazards potentially exist from wave uprush and flooding at the subject site. Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions No. 1 and No. 2 require the applicant to record Assumption-of-Risk and No Future Shoreline Protective Devices deed restrictions. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

D. PUBLIC ACCESS

1. Encroachments

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 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 proposed development is located in an area where a 15 foot encroachment onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home is allowed. The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront Street (Exhibit #2). The portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway. In the vicinity of the subject site, however, the City has never constructed any part of the Oceanfront street, but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. Currently, the existing site has a patio and wall located within the public right of way. In addition, the adjacent neighbor located at 7102 has a patio and wall that occupy a portion of the public right of way. However, the proposed development is not proposing to construct a patio or wall onto the City of Newport Beach Oceanfront public right-of-way.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area which is owned by the City of street purposes. This cumulative impact is addressed by a mitigation plan. The mitigation plan requires that all encroachments onto the City's Oceanfront public right-of-way, including the proposed encroachment, must be approved by an Annual Oceanfront Encroachment Permit issued by the City. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of two metered public parking spaces per street end. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with this mitigation plan for street improvements which enhance vertical public access, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

Section 13250 of the California Code of Regulations provides that development such as encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur unless the coastal development permit is amended, the Commission imposes Special Condition No. 3, which requires a future development deed restriction. This requires that any future improvements to the structure (such as for any construction to take place in the encroachment area) obtain an amendment to Permit No. 5-01-401 from the Commission or obtain an additional coastal development permit from the Commission or from the applicable certified local government. Section 13250 (b) (6) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve risk of adverse environmental effect. Special Condition No. 3 would allow the Commission to evaluate any future encroachment deviations for adverse public access and recreation impacts.

Thus, as conditioned, the Commission finds that the proposed development is consistent with Sections 30210 and 30212 of the Coastal Act.

2. New Development

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 beachfront lot located between the nearest public roadway and the shoreline on the Balboa Peninsula in the City of Newport Beach. There is a wide public sandy beach (Approximately 400-500 feet wide) seaward of the subject site which provides lateral public access. Vertical public access to this beach is available at the end of Highland Street, which is immediately adjacent to the project site. Therefore, the Commission finds adequate access is available nearby and the proposed development is consistent with Section 30212 of the Coastal Act.

3. Parking

Section 30252 of the Coastal Act states, in part:

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

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed single family residence provides two parking spaces located in an attached garage. Therefore, as currently designed, the development provides adequate parking. Thus, the Commission finds that the proposed development is consistent with Section 30252 of the Coastal Act.

E. 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.

The protection of water quality is an important aspect of the Coastal Act. Water from the project site 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.

In order to minimize adverse impacts to water quality, the applicant has included protective measures into the proposed project. These measures include drainage pockets for roof drain lines/downspouts and a continuous trench drain across the entire rear of the property which drains into each side yard (Exhibit #6). The trench drains located within the side yards will have holes drilled at the bottom of the trench drain to facilitate drainage into a section of pea gravel below. The benefits of these drainage pockets and trench drains are that they capture the first flush, collect and retain runoff allowing it to seep into the ground reducing offsite discharge and they also increase infiltration. The patio adjacent to the beach will drain into the existing sand, while the remaining property will drain down the side yards to the alley at the rear of the property. Water draining toward the alley will encounter the drainage pockets and also the trench drain.

Therefore, to lessen the potential for pollutants to enter the storm drain system at the subject site, the Commission imposes Special Condition No. 4 related to water quality. Special Condition No. 4 requires the applicant to conform to the drainage plan. By implementing this condition, the project will be in compliance with Sections 30231 of the Coastal Act.

F. 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).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The project is located in an urbanized area. Development already exists on the subject site. The 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 prohibition of future shoreline protective devices, 3) a future development deed restriction and 4) conformance to the drainage plan. 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 the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

H:\FSY\Staff Reports\Feb02\5-01-401-[Collins]RC(NB)

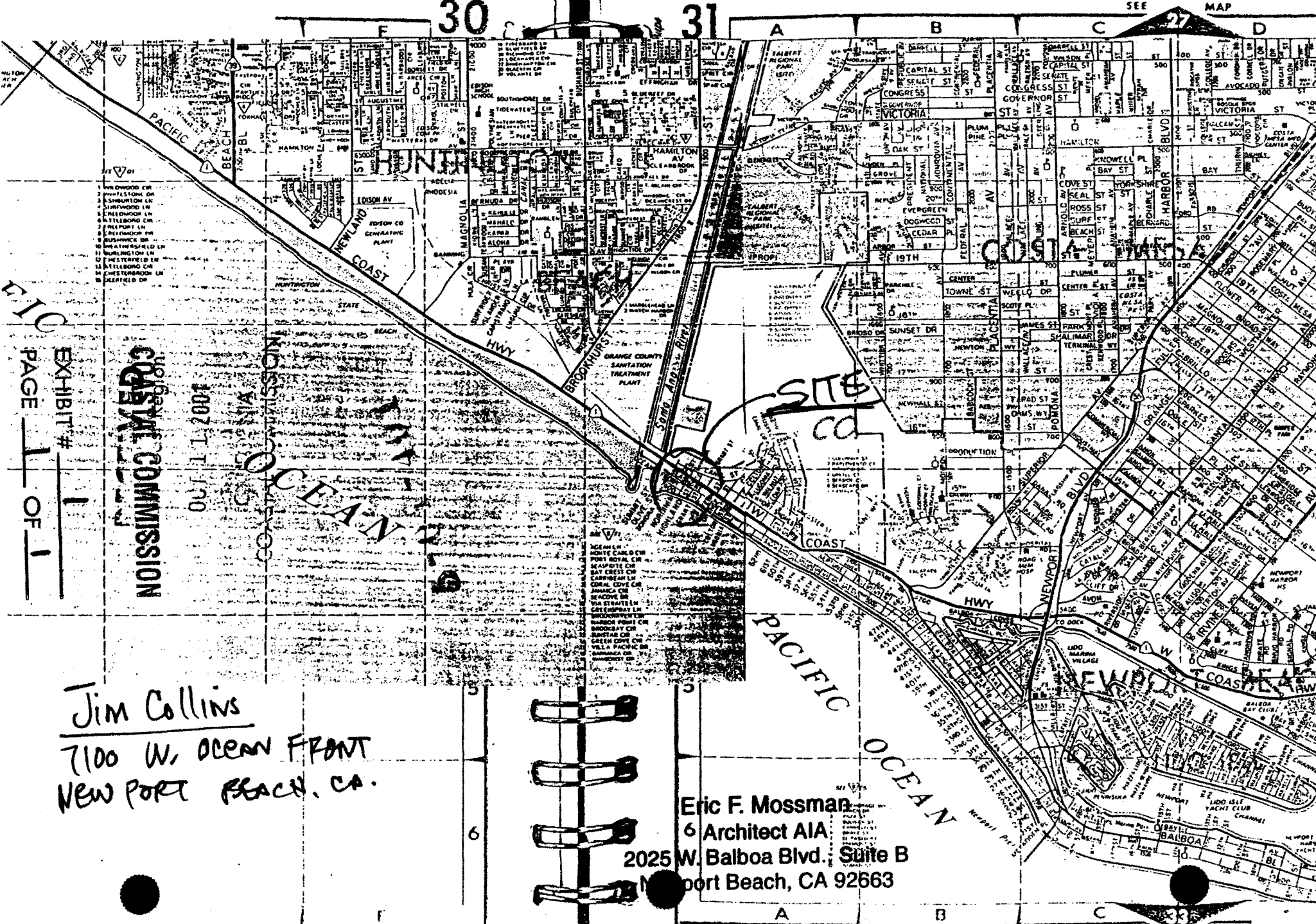


EXHIBIT # 1
PAGE 1 OF 1
COSTA COMMISSION

10071100

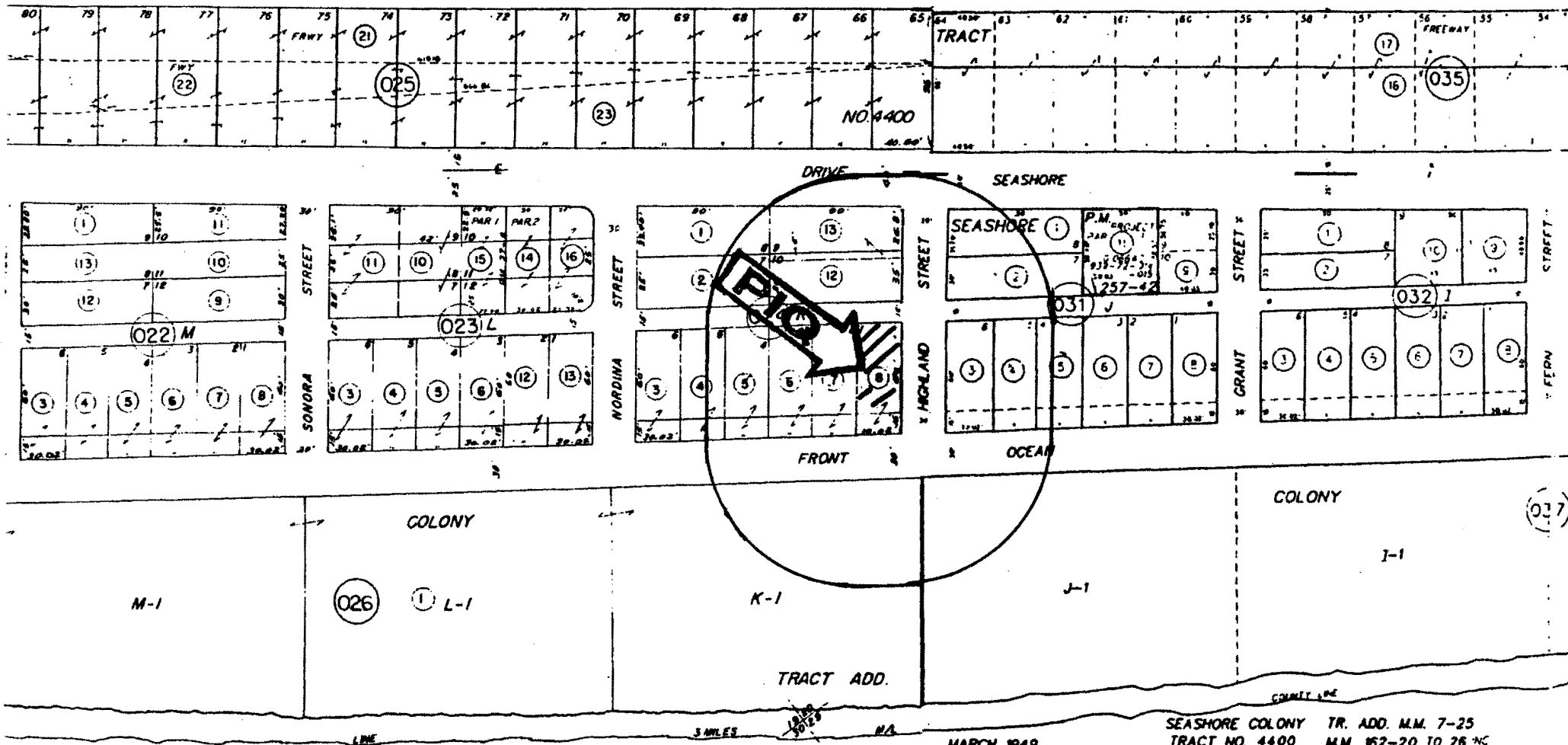
Jim Collins
7100 W. OCEAN FRONT
NEWPORT BEACH, CA.

Eric F. Mossman
6 Architect AIA
2025 W. Balboa Blvd., Suite B
Newport Beach, CA 92663

BOULEVARD

COAST

01



SEASHORE COLONY TR. ADD. M.M. 7-25
TR. NO. 4400 M.M. 162-20 TO 26 INC.
PARCEL MAP 27-4

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

ASSESSOR'S
BOOK 45 PA
COUNTY OF

MARCH 1949

SEASHORE COLONY TR. ADD. M.M. 7-25
TRACT NO. 4400 M.M. 162-20 TO 26 INC.
PARCEL MAP 27-4

EXHIBIT # 2
PAGE 1 OF 1

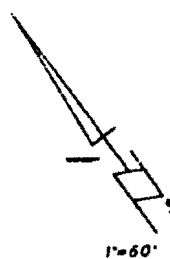
COASTAL COMMISSION

CALIFORNIA
COASTAL COMMISSION

OCT 11 2001

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South Coast Region

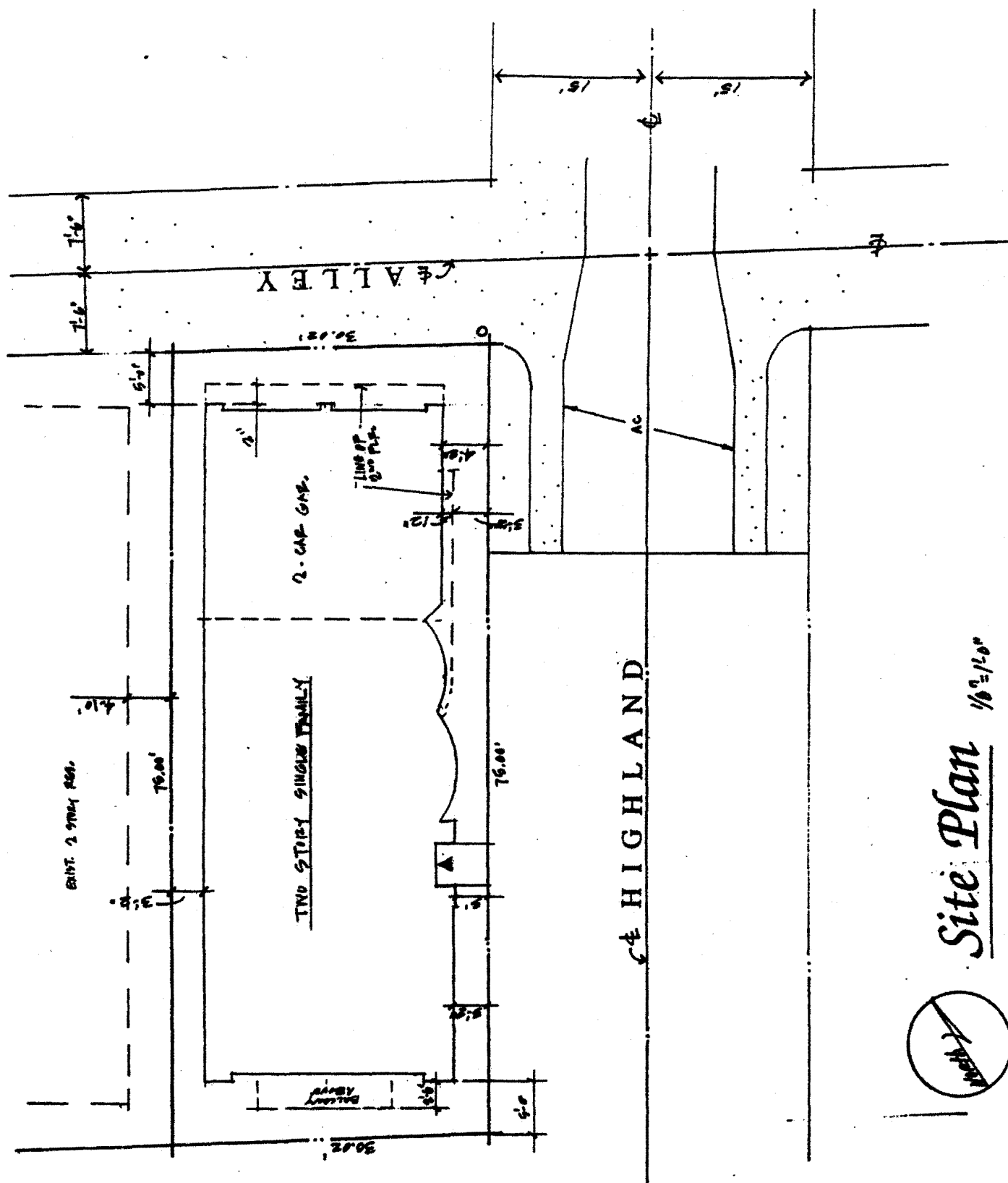
5-01-401



1"=60'

104-700

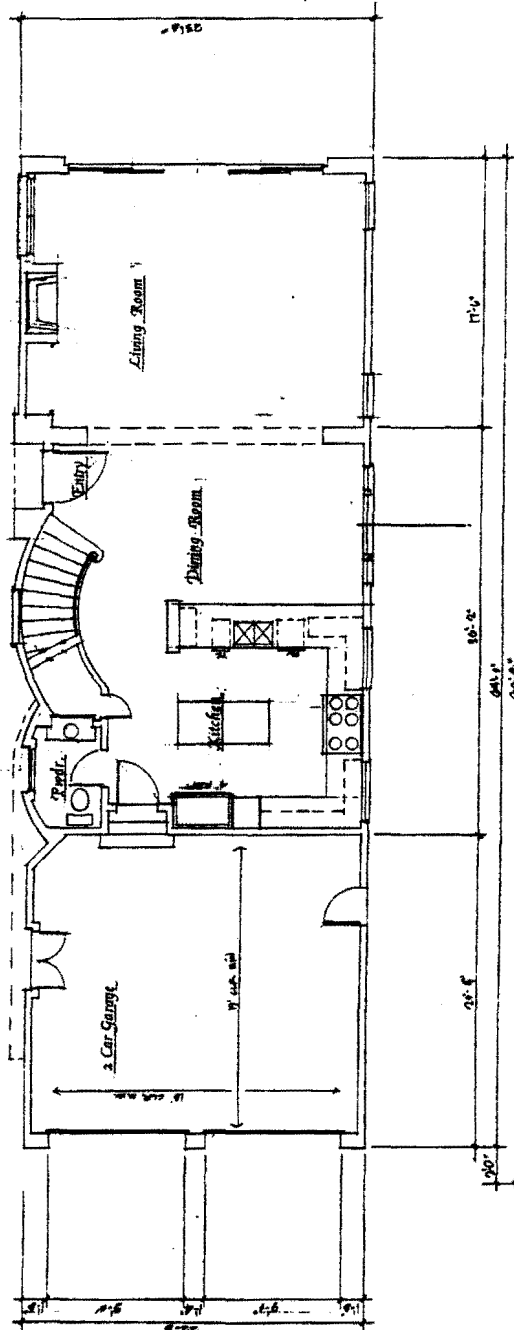
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South Coast Region
OCT 11 2001
EXHIBIT # 3
PAGE 1 OF 1
CALIFORNIA COASTAL COMMISSION



LEGAL DESCRIPTION:
Portion of Lot 1, Block K of Seashore
Colony Tract and a portion of
Oceanfront as vacated.

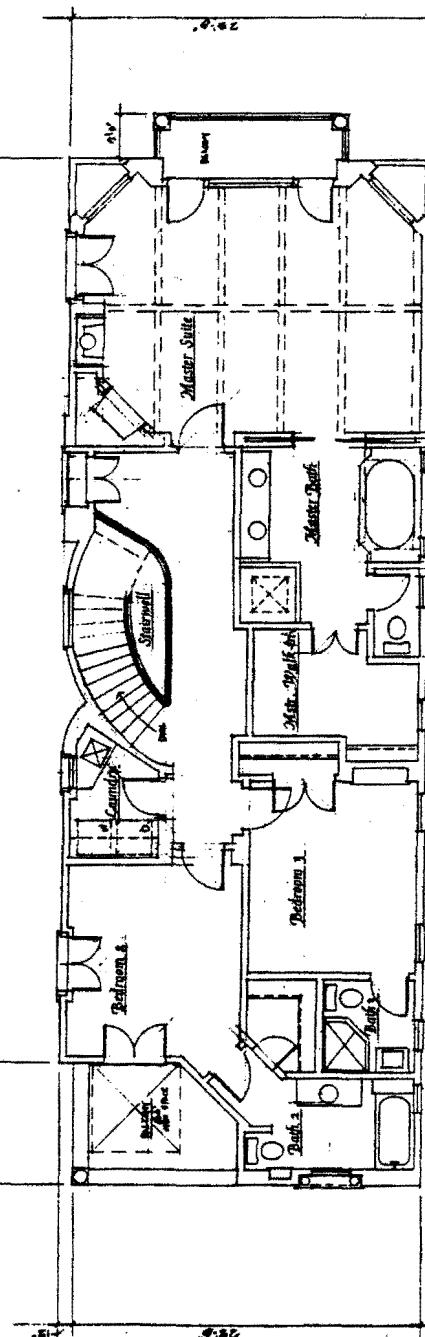
First Floor

6017 S.P. 614. 4409.5 cm.



Second Floor

0761

[illegible]

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1

Customer Relationship Port:

ERIC F. MOSSMAN

AIA RAIC NCARB (949) 675-1252

(LIFE 5-6, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 264

North Elevation

[illegible]

Exterior Elevations

West Elevation

South Elevation

Владимир Владимирович (В. В.)

East Elevation

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 1

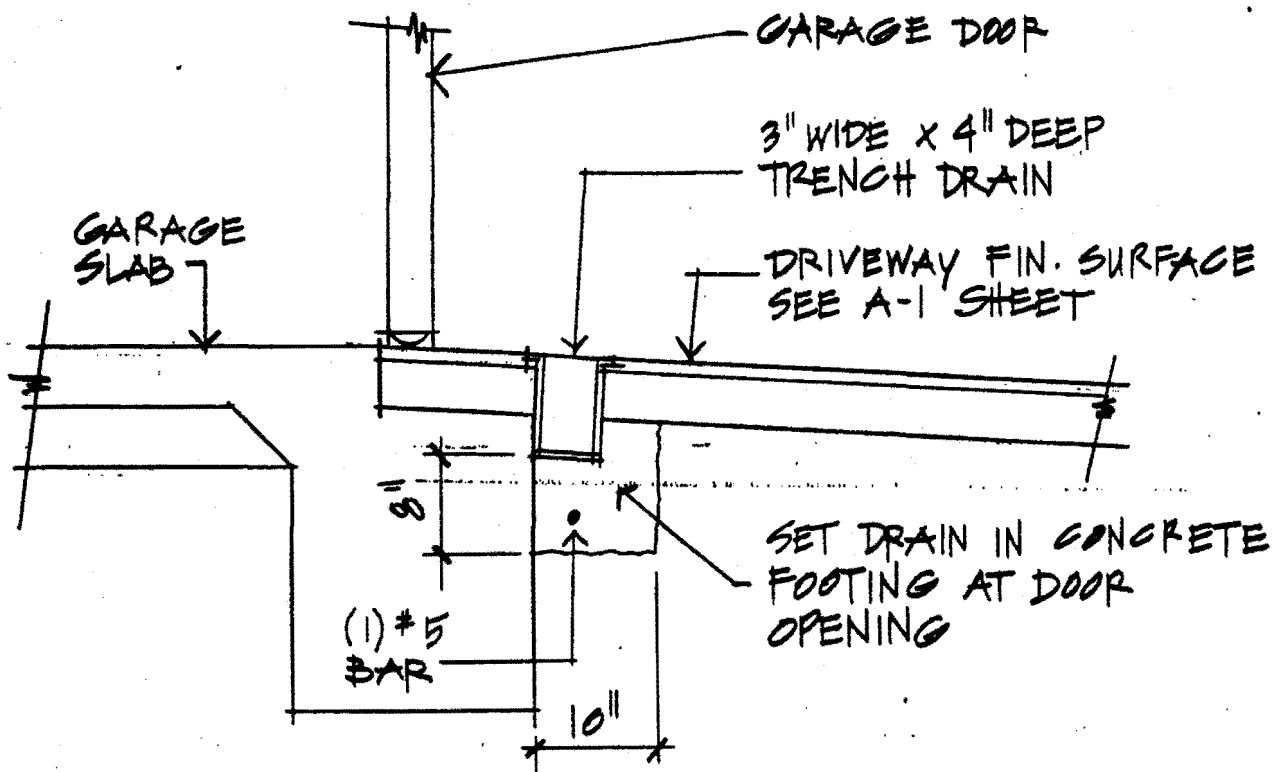
NOTE: SEE SHEET A7 FOR CITY MAPSHEET
PACH GRADING NOTES.

LEGEND

FF	FINISH FLOOR
FS	FINISH SURFACE
ES	EXISTING GRADE
TC	TOP OF CURB
FL	FLOWLINE
PUC	PUBLIC UTILITIES EASEMENT
L/S	LANDSCAPING
C/S	CURB & GUTTER
R/W	RIGHT-OF-WAY
R	PROPERTY LINE
STLT	STREET LIGHT
GM	GAS METER
WM	WATER METER
CM	CONCRETE BLOCK
WI	WIRING IN RM
FW	TYPE OF WALL

EXHIBIT # 6
PAGE 1 OF 2

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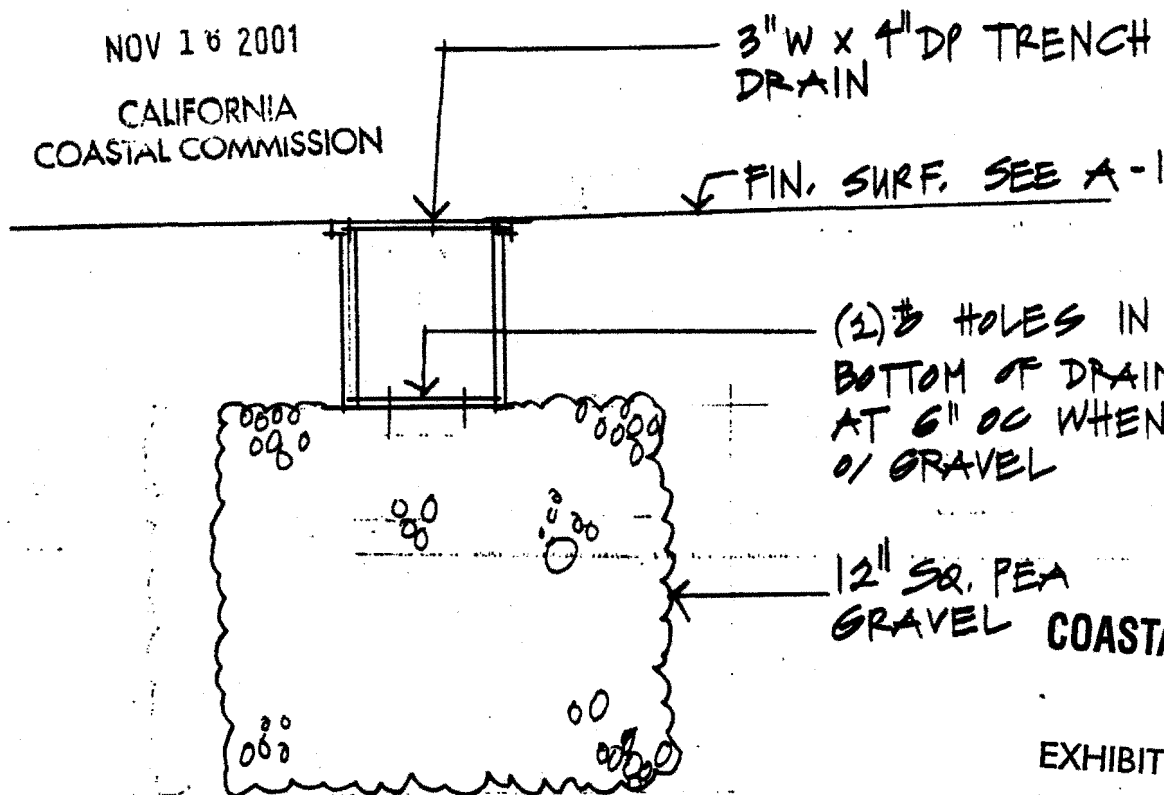
(A) TRENCH DRAIN AT GARAGE DOOR

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South Coast Region

NOV 16 2001

CALIFORNIA
COASTAL COMMISSION



COASTAL COMMISSION

EXHIBIT # 6

PAGE 2 OF 2

(B) TRENCH DRAIN WITHIN 3'-0" SIDYARD.

Year	Annual Erosion Rate (feet/year)				
	Sta 97+71	Sta 107+84	Sta 116+43	Sta 127+84	Sta 137+84
1979 - 1983	-	80	59	37	18
1984 - 1988	140	109	65	61	26
1990 - 1994	126	78	80	45	31
Average	133	89	68	48	25
Maximum	140	109	80	61	31

Table 2 Surfside/Sunset Shoreline Movement Rates

Year	Annual Rate of Shoreline Movement (feet/year)			
	Sta 664+21	Sta 680+67	Sta 688+97	Sta 697+77
1977 - 1984	+3.5	+3.4	+2.4	-0.3
1989 - 1994	+3.4	+3.1	-5.0	-7.9
1977 - 1994	+3.3	-3.1	-3.4	-4.1
Erosion Rate	N/A	-3	-3	-4

Year	Annual Rate of Shoreline Movement (feet/year)			
	Sta 706+21	Sta 715+63	Sta 725+94	Sta 735+44
1977 - 1984	-2.7	-3.2	-8.8	-1.1
1989 - 1994	-10.8	-13.4	-16.8	-3.9
1977 - 1994	-5.2	-5.4	-5.8	-4.8
Erosion Rate	-5	-5	-6	-5

Note: Positive rate indicates accretion and negative rate indicates erosion.

Table 3 Newport Beach Shoreline Movement Rates

COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF 1

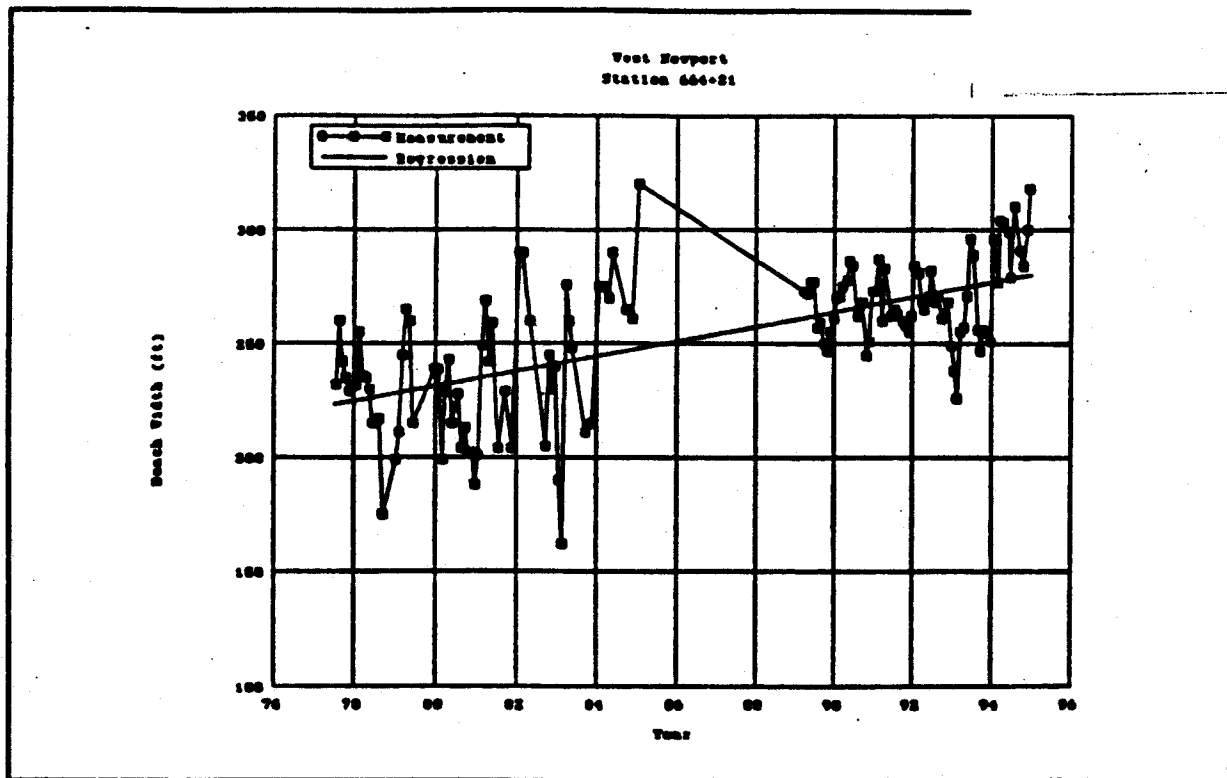


Figure 7 Beach Width Measurement of Sta 664+21

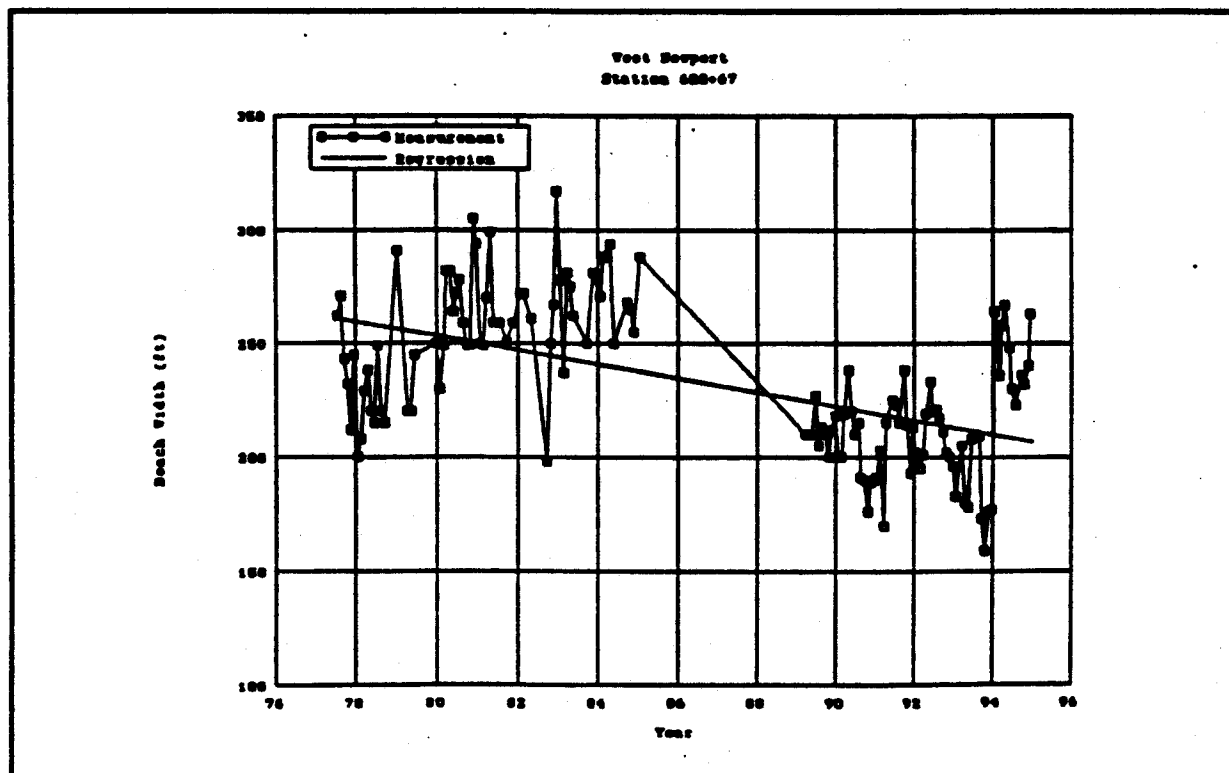


Figure 8 Beach Width Measurement of Sta 680+67

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 1