

CALIFORNIA COASTAL COMMISSION

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RECORD PACKET COPY

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 Hearing Date: June 10-14, 2002
 Commission Action:



TU 12a

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-01-104

APPLICANTS: Russel Fluter

AGENT: N/A

PROJECT LOCATION: 2410 Newport Boulevard,
City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Construction of two (2) new mixed use buildings (2,000 square feet total commercial space total and 4,852 square feet total of residential space) each approximately 31 feet high on a vacant, bulkheaded lot. Each building will consist of a commercial use space on the ground floor and a residential unit located above. Seven (7) new parking spaces for the commercial uses and two (2) new two (2) car (800 square feet in total) garages for the residential units will be provided. In addition, the replacement of 90 feet of bulkhead slightly landward of the previous location will occur. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves construction of two new mixed use buildings and demolition of an existing seawall/bulkhead and construction of a new seawall/bulkhead in the similar location. The ground floor units would provide marine incentive uses, while the 2nd floor units would provide residential units. The major issues before the Commission relate to water quality and adequate parking. Staff recommends the Commission **APPROVE** the proposed development with six (6) special conditions.

Special Condition #1 requires the applicant to record a deed restriction stating that the commercial streetside ground floor unit shall only be used for boat sales or rentals. Special Condition #2 requires that the applicants dispose of all demolition and construction debris at an appropriate location. Special Condition #3 requires the applicant to submit the debris and disposal site. Special Condition #4 requires conformance to the drainage plan prepared by Duca-McCoy Inc. Special Condition #5 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. Special Condition #6 requires submittal of a revised landscaping plan which only consists of native plants or non-native drought tolerant plants which are non-invasive.

LOCAL APPROVALS RECEIVED: Approval in Concept (#120-2410) from the City of Newport Beach Harbor Resources Division dated March 6, 2001; Approval in Concept (No. 0502-2001) from the City of Newport Beach Planning Department; Use Permit No. 3685, Site Plan Review No.79 and Variance No. 1239 from the City of Newport Beach Planning Commission; Approval from the California Department of Fish & Game dated November 26, 2001; Section 401 Permit from the Regional Water Quality Control Board (Santa Ana Region) dated June 18, 2001 and Site Plan Review No. 79 Amendment (PA2002-033) from the City of Newport Beach Planning Commission.

SUBSTANTIVE FILE DOCUMENTS: Letter to Russel Fluter from Staff dated April 23, 2001; Letter to Russel Fluter (Attn. Michelle) dated May 7, 2001; *Eelgrass Survey by Rick Ware (Coastal Resources Management)* dated September 6, 2001; *Seawall Report for North and East Seawalls, 2410 Newport Boulevard, Newport Beach, CA 92663 by AEC Associates* dated October 23, 2001; *Seawall Design, 2410 Newport Boulevard, Newport Beach, California* [Job No. 6127-02] by AEC Associates; *Preliminary Geotechnical Investigation, Commercial Development* [Project File No. 21112-101], *2410 Newport Boulevard, Newport Beach, California by P.A. Associates, Inc.* dated March 12, 2001; Letter from *Skelly Engineering* dated November 21, 2001; Letter to Russel Fluter from Staff dated November 29, 2001; Letter from AEC Associates dated December 4, 2001; Letter from Russel Fluter to James Campbell (City of Newport Beach) dated December 18, 2001; Letter from DMI (Duca-McCoy, Inc.) to Staff dated December 6, 2001; letter from Russel Fluter to Staff dated January 25, 2002, letter from Russel Fluter to Staff dated March 26, 2002 and letter from Russel Fluter to Staff dated April 9, 2002.

LIST OF EXHIBITS:

1. Location Map
2. Assessor's Parcel Map
3. Approval in Concept
4. Site Plan
5. Floor Plans
6. Elevations
7. Planting Plan
8. Seawall/Bulkhead Plans
9. Drainage Plan
10. Section 401 Permit from the Regional Water Quality Control Board (RWQCB) dated June 18, 2001
11. Approval from the California Department of Fish & Game dated November 26, 2001

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-01-104 pursuant to the staff recommendation.

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

RESOLUTION:

I. Approval with Conditions

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and 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 of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Commercial Streetside Ground Floor Unit Limitation

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, stating that the commercial streetside ground floor unit shall only be used for boat sales or rentals.

The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction shall not be removed or changed without a Coastal Commission amendment to this coastal development permit.

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

2. Construction Responsibilities and Debris Removal

- (a) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave wind, or rain erosion and dispersion.
- (b) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (e) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

3. Location of Debris and Disposal Site

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris and export earth material resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

4. Conformance With Submitted Drainage Plan

- A. The permittee shall undertake development in accordance with the approved drainage plan prepared by Duca-McCoy Inc. The plan demonstrated structural and non-structural Best Management Practices (BMPs) designed to minimize, to the maximum extent practicable, polluted runoff and nuisance flow from this development. The drainage plan was prepared by a qualified professional with expertise in the control of water quality impacts related to coastal development, and included a site plans depicting BMPs, written descriptions, and supporting calculations. In addition, the plan shall include:

- (1) The drainage plan shall also include street sweeping program for the entire parking lot at least on a weekly basis. The applicant shall submit, with the drainage plan, a schedule and maintenance for the street sweeping program. The applicant shall not spray down or wash down the parking lot or impervious surfaces unless the water used is directed through the sanitary sewer system or a structural BMP.
- (2) In landscaped areas, the use of chemical pesticides, fertilizers, and herbicides shall be minimized to the maximum extent practicable. No chemical pesticides, fertilizers, or herbicides that are known to be toxic to marine species may be used on site.
- (3) All trash and recycling receptacles shall be covered and maintained to be waterproof and watertight. No stormwater shall ever come into contact with trash and recycling debris.

Monitoring and Maintenance

- (4) All drainage plan elements (BMPs) shall be permanently operated and maintained, and:
 - (a) At a minimum, all storm drain inlets, traps/separators, and/or filters shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) after every major storm event; and,
 - (b) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner.
 - (5) It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification.
- B. 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.

5. Pre-construction *Caulerpa Taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Landscaping Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a revised landscaping plan to the Executive Director for review and approval. The revised landscaping plans shall show the following change to the project:
 - 1. *Landscaping shall only consist of native plants or non-native drought tolerant plants which are non-invasive.*
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

IV. **Findings and Declarations**

The Commission hereby finds and declares as follows:

A. **LOCATION AND PROJECT DESCRIPTION**

The subject site is located between the first public road and the sea and is a bayfront lot located at 2410 Newport Boulevard in the City of Newport Beach, County of Orange (Exhibits #1-3). The site is a currently undeveloped bulkheaded lot. The project site is within the Recreational

and Marine Commercial (RMC) District of the Cannery Village/McFadden Square Specific Plan Area as stated in the City's LUP. Some of the commercial uses envisioned for the site include: yacht brokers, boat charters, boat sales, sports fishing establishments, retail marine sales, and marine-related offices (e.g. marine surveyors, marine insurance brokers). The RMC designation is applied to waterfront commercial areas where the City wishes to preserve and encourage uses, which facilitate marine commercial and visitor serving orientation. The City's LUP states that the Cannery Village/McFadden Square areas both permit residential uses on the second floor above permitted uses, which must be a marine incentive use. In addition, 40% of the subject site must be occupied by marine incentive uses, in order to allow uses such as general retail and service commercial uses, professional and business offices, and light manufacturing on site as described in the City's LUP.

Surrounding uses are varied including marine uses, restaurants, and visitor serving commercial and mixed use developments. The project is a continuation of the mixed-use development concept prevalent in the Cannery Village/McFadden Square area. The Cannery Village/McFadden Square areas both permit residential uses on the second floor above permitted uses as discussed above. To the north of the site is the Balboa Boat Yard, a boat haul out and repair facility. To the East is Newport Bay with a commercial boat slip and Lido Peninsula. To the South is an eating and drinking establishment (Hooters). To the West is a City parking lot and commercial uses. Further to the south and west is a public beach (Balboa Beach).

The proposed project consists of construction of two (2) new mixed use buildings (2,000 square feet total of commercial space and 4,852 square feet total of residential space) each approximately 31 feet high on a vacant lot (Exhibits # 4-6). Each building will consist of a commercial use space on the ground floor and a residential unit located above. The building located along the bayfront will have marine related commercial (office/retail) related uses located on the first floor. The building located along the street (Newport Boulevard) will also contain a marine related commercial use on the first floor, but more specifically "Boat Sales." Seven (7) new parking spaces for the commercial uses and two (2) new two (2) car (800 square feet in total) garages for the residential units will be provided. In addition, the project includes a 6 foot wide public walkway along the bayfront within the 10 foot setback between the bayside building and the bulkhead, an approximate 3 foot high railing along the bulkhead located at the north and east property lines, an automobile and pedestrian gate and landscape area will be constructed. Two existing boat slips are located along the bulkhead of the project site. No work will be conducted on these boat docks and they will be provided for residents of the proposed project. No grading will take place with the proposed project.

Demolition and construction of a new seawall/bulkhead will also take place with the proposed project (Exhibit # 8). There is currently an existing seawall located at the east and north sides of the subject property approximately 90 feet in length. The east edge of the east seawall cap beam is located one foot east of the property line, outside of the property line (Exhibit # 8, page 1). The north edge of the north seawall cap beam is located 1.30 feet south of the property line, inside the property, except its west end is slightly skewed towards the property line. The top elevation of the cap beam is +/- 6.00 Mean Sea Level. The proposed project consists of demolition of an existing bulkhead and construction of a new bulkhead slightly landward of the previous location (Exhibit # 8, page 2). The new bulkhead will be placed in the similar location and will not extend seaward of the original location and will be constructed with 10 inch thick concrete sheet piles. The east segment of the new seawall will be placed 1'-0" inland from the existing seawall within the property line. The north segment of the new seawall will be placed at

the same location of the existing wall on a straight line without the skew of the present wall at the west end. The seawall will have a 1'-6" wide 2'-0" high cap beam and will be supported at the top by tie-backs connected to a deadman. The new seawall/bulkhead will not mechanically connect to the adjacent bulkheads, but rather abut up to them. All geometrical parameters of the new seawall, except the depth of the sheet piles, will be the same as the existing seawall. The new bulkhead height will be at +9 above Mean Low Lower Water to meet present City of Newport Beach engineering standards.

B. PREVIOUS COMMISSION ACTION ON SITE

Coastal Development Permit De Minimis Waiver 5-93-063

The applicant proposed to remove an existing boat dock and replace it with a single finger dock that extends 60 feet beyond the bulkhead. The proposed dock exceeded the City's adjudicated pierhead line, but was within the project line as approved by the City Council. This waiver was approved by the Commission April 9, 1992

C. PUBLIC ACCESS, PARKING AND NEW DEVELOPMENT

Section 30212 of the Coastal Act states in 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...*
- (b) *For purposes of this section, "new development" does not include:*
 - (4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.*

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 (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relates to development at the subject site:

Recreational and Marine Commercial. It is the intent of this designation to guide development approvals on building sites on or near the bay in a manner that will encourage a continuation of marine-oriented uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor services, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites or near the bay. Uses permitted are as follows:

- I. Permitted uses: highest priority uses, not requiring a use permit.
 - A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.
 1. Boat haul-out facilities
 2. Commercial fishing facilities
 3. Sport fishing establishments and fishing docks
 4. Marinas
 5. Marine construction
 6. Boat rentals and charters
 7. Retail marine sales
 8. Marine service businesses
 9. Dry boat storage
 - B. Other permitted uses:
 1. Marine-related offices where services are offered to the general public
 2. Visitor-serving retail
- II. Uses which require a Use Permit:
 - A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.
 1. Manufacturing of marine uses
 2. New boat construction
 3. Marine service stations and gas docks
 4. Yacht clubs
 - B. Other uses:
 1. Social clubs
 2. Commercial recreation
 3. Drive-in facilities
 4. Hotels and Motels
 5. Restaurants
 - C. Uses which must be in conjunction with an incentive use occupying at least 40% of the site
 1. General retail and service commercial uses

2. *Professional and business offices*
3. *Light manufacturing*

Cannery Village. *On all commercial lots, residential uses are permitted on the second floor or above the where the ground floor is occupied by another permitted use up to a total floor area ratio of 1.25.*

Cannery Village. *All commercial areas allow residential development on the second floor in conjunction with ground floor commercial up to a total floor area ration of 1.25.*

1. Public Access

The site is a bulkheaded lot within the protected bay (Newport Bay) located between the first public road and the sea. Public access is proposed as part of this project on site as well as in the immediate project vicinity. A 6 foot wide public walkway along the bayfront within the 10 foot setback between the bayside building and the bulkhead is part of the proposed project, which was a City of Newport Beach Planning Commission Site Plan Review No. 79, Condition of Approval. Vertical public access is available at a public street end at 26th Street located approximately 50 feet northwest of the project site (Exhibit #2). In addition, a public walkway providing lateral public access along the bay is located approximately 50 feet northwest of the project site, beginning at the end of 26th Street.

Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

2. Parking and New Development

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

The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor and marina facilities, and its coastal amenities. Like many beach communities, Newport Beach receives an annual influx of visitors during the summer. The project site fronts Newport Boulevard, which is a major arterial route for public access to coastal opportunities (Exhibits # 1-2). Surrounding uses are varied including marine uses, restaurants, and visitor serving commercial and mixed use developments. The project is a continuation of the mixed-use development concept prevalent in the Cannery Village/McFadden Square area. To the north of the site is the Balboa Boat Yard, a boat haul out and repair facility. To the East is Newport Bay with a commercial boat slip and Lido Peninsula. To the South is an eating and drinking establishment (Hooters). To the West is a City parking lot and commercial uses. Further to the south and west is a public beach (Balboa Beach).

Due to its location, the project site is ideally suited to support visitors to the beach and the marine community. The immediate project vicinity consequently experiences high vehicular volumes during the summer months. A lack of public parking discourages

visitors from coming to the beach and other visitor-serving activities in the coastal zone. The lack of parking would therefore have an adverse impact on public access. All development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

a. Proposed Uses and Parking Evaluation

The subject site is located between the first public road and the sea and is a bayfront lot located at 2410 Newport Boulevard in the City of Newport Beach, County of Orange. The site is a currently undeveloped bulkheaded lot. The project site is within the Recreational and Marine Commercial (RMC) District of the Cannery Village/McFadden Square Specific Plan Area as stated in the City's LUP. Some of the commercial uses envisioned for the site include: yacht brokers, boat charters, boat sales, sports fishing establishments, retail marine sales, and marine-related offices (e.g. marine surveyors, marine insurance brokers). The RMC designation is applied to waterfront commercial areas where the City wishes to preserve and encourage uses, which facilitate marine commercial and visitor serving orientation. The City's LUP states that the Cannery Village/McFadden Square areas both permit residential uses on the second floor above permitted uses, which must be a marine incentive use. In addition, 40% of the subject site must be occupied by marine incentive uses, in order to allow uses such as general retail and service commercial uses, professional and business offices, and light manufacturing on site as described in the City's LUP (see pages 9-10). The proposed project has obtained a Use Permit, which would allow uses stated in the previous sentence as long as 40% of the site is occupied by marine incentive uses.

The applicant proposes three types of land uses on-site, 1) residential; 2) office/retail; and 3) boat sales. The office/retail component would be located on the 1st floor of the bayside building and the boat sales component would be located on the 1st floor of the streetside building (Newport Boulevard). A residential unit will be located above each building. Locating the retail and service commercial development on the first floor is consistent with the Coastal Act since it places higher priority use on the more easily accessible lower floor and the lower priority use on the upper floor. The boat sales use will ensure that the project is compliant with the 40% marine incentive use requirement. The applicant is proposing seven (7) new parking spaces for the office/retail and boat sales components and two (2) new two (2) car garages for the residential units (Exhibit # 4). The following is an evaluation of the Commission's regularly used parking requirements for each proposed land use.

i. Residential

The Commission has consistently found that two parking spaces per residential unit is adequate to satisfy the parking demand generated by one individual residential unit. The two (2) proposed residential units would each have a two (2) car garage.

ii. Office/Retail

The Commission typically imposes a parking standard of 1 space per each 225 square feet of gross floor area for retail and commercial service uses. The proposed retail and service commercial portion of the project is 1,000 square feet in size. Based on the standard of 1 space per 225 square feet of gross floor area for retail and service commercial uses, the parking demand totals five (5) spaces.

iii. Boat Sales

The Commission typically imposes a parking standard of 1 space per each 500 square feet of gross boat sales or rental space. The boat sales or rental portion of the project is 1,000 square feet in size. Based on the standard of 1 space per 500 square feet of gross boat sales or rental space, the parking demand totals two (2) spaces.

iv. Parking Conclusion

The applicant is proposing seven (7) new parking spaces for the office/retail and boat sales components and two (2) new two (2) car garages for the residential units. Therefore, as proposed, the parking is consistent with the Commission's regularly used parking standards.

3. Ground Floor Usage

Though the applicant is providing an adequate number of spaces based on generic uses, the applicant has not defined the specific types of businesses that will be occupying the proposed building. Furthermore, at this time specific tenants for the proposed building are not known. Consequently, the actual number of parking spaces required could be significantly different depending on the future tenants' commercial intentions, which at this time are currently unknown. Therefore, the Commission needs to impose one special condition, which assures that the first floor of the streetside building (Newport Boulevard) will only provide boat sale or rental use, marine incentive uses.

The Coastal Act encourages commercial development that enhances the experiences of visitors to the coast and marine community. The project site is located along Newport Boulevard, a major arterial route for visitors to the coast and is in an area frequented by visitors to the coast. The certified land use plan (which is used a guidance since the City does not have a certified Local Coastal Program) designates the site for Recreational and Marine Commercial (RMC) uses. The agent has stated that the 1st floor of the streetside building will provide boat sales uses. The boat sales use will ensure that the project is compliant with the 40% marine incentive use requirement. However, the applicant has not identified specific tenants. Once the building is constructed, a variety of tenants could occupy the 1st floor of the streetside building inconsistent with the proposed use. To assure that this is not the case, a special condition must be imposed to assure that only boat sales uses are allowed to occupy the 1st floor of the streetside building. Special Condition #1 requires the applicant, prior to issuance of this permit, to record a deed restriction that accomplishes this objective.

4. Conclusion

Thus only as conditioned for a deed restriction to require conformance with boat sales or rentals uses allowed on the 1st floor of the proposed structure does the Commission find that the proposed development would be consistent with Section 30252 of the Coastal Act.

D. PROTECTIVE STRUCTURES AND HAZARDS

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

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.

Section 30253 of the Coastal Act states in 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...*

1. Seawall/Bulkhead

An evaluation conducted by AEC Associates described in a letter dated October 23, 2001 determined that the existing seawall/bulkhead needs to be replaced. The site is a bulkheaded lot within the protected bay (Newport Bay) located between the first public road and the sea. The east segment of the seawall cap beam had deteriorated beyond repair: 1) it has numerous concrete cracks and the effectiveness of some of the tie back connections had been lost; 2) the cap beam has lost its alignment and 3) some of the

panels have shifted out of line. AEC Associates determined that repair of the east seawall segment would be practically impossible; therefore its demolition was recommended. The north seawall segment appeared to be relatively in good condition and repairable by construction of a wale and tie-back anchor system located about three feet below the cap beam. In order to determine the effectiveness of this repair, the north segment's concrete strength was tested by core sampling and the reinforcing size and spacing was investigated by pachometer readings. The north seawall segment was found to have insufficient reinforcing to support the design lateral forces safely. Therefore, its demolition was also recommended. Also, the existing seawall/bulkhead does not comply with current City codes regarding the strength and height requirements of the City of Newport Beach. In addition, a letter from *Skelly Engineering* dated November 21, 2001 was submitted providing further information regarding the need and design of the seawall. Due to age, poor quality concrete, inadequate steel reinforcement, and deficient tieback systems, aging concrete seawalls/bulkheads in Newport Beach, such as the one at the subject site, are commonly replaced when redevelopment occurs on bayfront lots. The proposed development will demolish the existing seawall/bulkhead and replace it with a new seawall/bulkhead in the similar location.

2. Conclusion

The existing seawall/bulkhead does not meet present engineering standards and poses a risk to life and property because lot stability may be threatened by failure of the aging, poorly designed and constructed existing seawall/bulkhead. In addition, the seawall/bulkhead is required at the subject site to protect the structural integrity of the lot from tidal activity as well as the adjacent commercial uses from tidal activity. If the seawall/bulkhead were removed and not replaced, tidal activity would erode and destabilize the project site and eventually the adjacent lots. Also, the new seawall/bulkhead will not be moved seaward, which would result in the additional fill of coastal waters or changes to shoreline sand supply/erosion at the site. Therefore, the Commission finds that the proposed development conforms with Section 30235 and 30253 of the Coastal Act.

E. WATER QUALITY AND THE MARINE ENVIRONMENT

The proposed project is located in and over the coastal waters of Lower Newport Bay (Exhibits #1-3). Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include the Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water quality should be examined to assure that potential impacts are minimized. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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 construction of the bulkhead will occur in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition #2 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible. In order to prevent impacts to coastal waters, Special Condition #3 requires that all demolition and cut material debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

2. Drainage Plan

The protection of water quality is an important aspect of the Coastal Act. 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. The site is a bulkheaded lot within the protected bay (Newport Bay) located between the first public road and the sea and uncontrolled runoff on the site could have adverse effects as described above.

In order to minimize adverse impacts to water quality, the applicant has submitted a drainage plan prepared by Duca-McCoy Inc. Catch basins with "Kristar" fossil filters will be installed on site and parking stall drainage will also be directed to a planter area for natural filtration prior to entering the inlets fitted with fossil filters to reduce any adverse impacts to water quality. These catch basins will connect to a proposed underground drainage system that will outlet to the bay. Therefore, to lessen the potential for pollutants to enter the storm drain system at the subject site, the Commission imposes Special Condition #4 related to water quality. Special Condition #4 requires the applicant to conform to the drainage plan prepared by Duca-McCoy Inc. In addition, the plan shall include a street sweeping program for the entire parking lot at least on a weekly basis, minimized use of chemical pesticide, fertilizers and herbicides in landscaped areas, covered trash and recycling receptacles and monitoring and maintenance of all drainage plan BMP's.

Therefore, to lessen the potential for pollutants to enter the storm drain system at the subject site, the Commission imposes Special Condition #4 related to water quality. Special Condition #4 requires the applicant to conform to the drainage plan prepared by Duca-McCoy Inc.

3. Eelgrass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

An eelgrass inspection has been performed by the City of Newport Beach, which declared that no eelgrass is in the vicinity of the project site. In addition, an *Eelgrass Survey* by Rick Ware (*Coastal Resources Management*) dated September 6, 2001 was completed and also stated that no eelgrass was located in the project vicinity. Therefore, no eelgrass will be affected by the bulkhead repair construction.

4. Caulerpa taxifolia

Also, as noted above, eelgrass is a sensitive aquatic plant species which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments which provide plenty of sunlight. Recently, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies similar habitat. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in

¹ References

Meinesz, A. (Translated by D. Simberloff) 1999. *Killer Algae*. University of Chicago Press

Chisholm, J.R.M., M. Marchioretta, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California Caulerpa Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. An *Eelgrass Survey by Rick Ware (Coastal Resources Management)* dated September 6, 2001 was conducted to evaluate if any eelgrass was located on site as well as to determine if *C. taxifolia* was present within the project vicinity. The survey stated that no *C. taxifolia* was located in the project area. However, this survey was conducted nine months ago. Therefore, in order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes Special Condition #5. Special Condition #5 requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

The proposed project was submitted to the California Regional Water Quality Control Board (RWQCB) for their review and approval. The RWQCB issued a Section 401 Permit for the proposed project on June 18, 2001, which contained a pre-construction *C. taxifolia* survey condition (Exhibit # 10). In addition, the proposed project was submitted to the California Department of Fish & Game (DF&G) for their review and approval. The DF&G has determined that the proposed project would not have a significant adverse effect on existing marine resources and habitats within the area, and therefore, concur with issuance of a Coastal Development Permit (Exhibit # 11).

5. Conclusion

To minimize the adverse impacts upon the marine environment, four (4) Special Conditions have been imposed. Special Condition #2 requires that the applicant dispose of all demolition and construction debris at an appropriate location. Special Condition #3 requires that all demolition and cut material debris be disposed of at a legal site approved by the Executive Director. Special Condition #4 requires the applicant to conform to the drainage plan prepared by Duca-McCoy Inc. Special Condition #5 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. Only as conditioned, the Commission finds that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

F. LANDSCAPING/INVASIVE VEGETATION

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 area, and shall be compatible with the continuance of those habitat and recreation areas.*

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...

The project site is located immediately adjacent to Newport Bay and also further to the south and west is a public beach (Balboa Beach). Development, if not properly regulated, could have adverse effects on the sustainability of any existing native vegetation in the approximate area. For example, seeds from possible invasive plants on the project site could settle down in areas where native vegetation exists and then they could possibly be supplanted by these invasive plants. The proposed project's landscaping plan contains elements, which could affect the sustainability of any existing native vegetation. The submitted landscaping plan proposes use of the following vegetation: *Agonis Flexuosa*, *Strelitzia Nicolai*, *Agave Attenuata*, *Bambusa Oldhamii*, *Coprosma Variegata*, *Diets Bicolor*, *Festuca Ovina "Glauca"*, *Laurus Noblis "Saragota"*, *Limonium Perezii*, *Liriope Gigantea*, *Pittosporum Crassifolium*, *Prunus Caroliniana "Compacta"*, *Raphiolepis "Enchantress White"*, *Trachelospermum Jasminoides*, *Westringia Fruiticosa*, *bigonia Riversii* and *Distictis Buccinatoria* (Exhibit # 7). Ten of the seventeen plants are non-natives, while one is not native and the nature of the remaining six are unknown. Much of the existing vegetation is of ornamental non-native variety due to surrounding residential development. However, use of native or non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. Consequently, staff reviewed the proposed landscaping to determine if it contained any non-native invasive vegetation or plants that were not drought tolerant by researching the *Ocean Trails-Restricted Plant List* dated October 6, 1997, *Recommended List of Native Plants for Landscaping in the Santa Monica Mountains* dated January 22, 1992, the *Sunset Western Garden Book* dated 1988, the *California Exotic Pest Plant Council (CalEPPC) Exotic Pest Plant List* dated October 1999 and also the *CalFlora* database. *CalFlora* is an independent non-profit organization which maintains a comprehensive database of plant distribution information for California.

Four of the seventeen plants require moisture or regularly watering, while seven are determined to be drought tolerant. The watering needed for six of the plants could not be determined. The four plants that need watering are: *Agave Attenuate*, *Coprosma Variegata*, *Trachelospermum*

Jasminoides and *Bigonia Riversii*. Since these plants are not drought tolerant, they should be removed from the landscaping plan.

Furthermore, Staff determined that five of the seventeen listed vegetation in the landscape plan were either to have relatives that were considered invasive or where themselves an invasive plant. The submitted landscaping plan was found to contain a mix of vegetation that included five plants that could or are possibly invasives, which would potentially displace native vegetation. These five plants are *Agave Attenuata*, *Coprosma Variegata*, *Festuca Ovina "Glauca"*, *Limonium Perezii* and *Prunus Caroliniana "Compacta"* and the use of these five plants in the landscaping plan should be prohibited. *Agave Americana* is a related species of *Agave Attenuata*, which is found in the proposed landscaping plan, that is located in the *Ocean Trails-Restricted Plant List* dated October 6, 1997 listed as an invasive ornamental plant. *Coprosma Repens* is a related species of *Coprosma Variegata*, which is found in the proposed landscaping plan, that is located in the *California Exotic Pest Plant Council (CalEPPC) Exotic Pest Plant List* dated October 1999. *Festuca Arundinacea* is a related species of *Festuca Ovina "Glauca"* which is found in the proposed landscaping plan, that is located in the *California Exotic Pest Plant Council (CalEPPC) Exotic Pest Plant List* dated October 1999. *Prunus Cerasifera* is a related species of *Prunus Caroliniana "Compacta"* which is found in the proposed landscaping plan, that is located in the *California Exotic Pest Plant Council (CalEPPC) Exotic Pest Plant List* dated October 1999. Lastly, *Limonium Perezii*, which is found in the proposed landscaping plan, is located in the *Ocean Trails-Restricted Plant List* dated October 6, 1997 listed as an invasive ornamental plant.

The use of California native plants or drought tolerant plants will minimize any adverse impacts that the landscaping plan would have on native plants. To minimize any effect on any native vegetation in the area, either native or non-native drought tolerant vegetation, which would not supplant native species, should be used. Therefore, the Commission imposes Special Condition #6, which requires the applicant to submit a revised landscaping plan, which consists of native plants, or non-native drought tolerant plants, which are non-invasive. Therefore, the Commission finds that, as conditioned, the proposed development would be consistent with Section 30240 and 30251 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a) the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's 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. The City's LUP that the City seeks to insure the highest quality of water in the bay and along their beaches. As conditioned, the proposed project is not expected to create additional adverse impacts to marine resources, water quality and the marine environment and therefore attempts to insure the highest quality of water in the Bay and along the beaches. In addition, City's LUP designates the site for Recreational and Marine Commercial (RMC) uses.

The agent has stated that the 1st floor of the streetside building will provide boat sales uses. The boat sales use will ensure that the project is compliant with the 40% marine incentive use requirement. However, the applicant has not identified specific tenants. As conditioned, the project is not proposed to create additional adverse impact to public access.

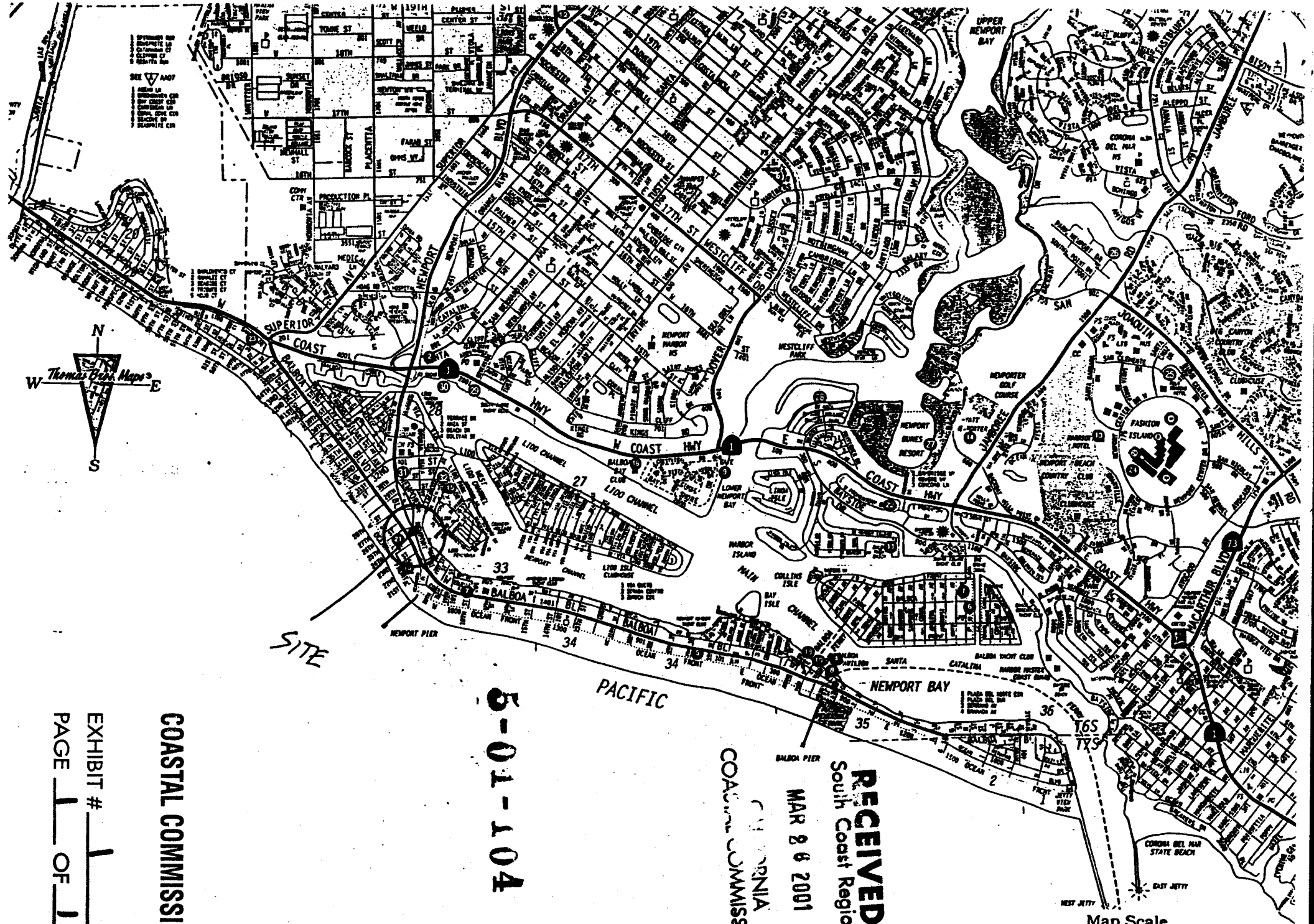
The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of Title 14 of the California Code of 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 further 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) the applicant records a deed restriction, which requires the applicant to record a deed restriction stating that the commercial streetside ground floor unit shall only be used for boat sales or rentals, 2) the applicant disposes of all demolition and construction debris at an appropriate location; 3) that all demolition and cut material debris be disposed of at a legal site approved by the Executive Director; 4) conformance to the drainage plan prepared by Duca-McCoy Inc., 5) a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia* and 6) submittal of a revised landscaping plan which only consists of native plants or non-native drought tolerant plants which are non-invasive.

As conditioned, no feasible alternatives or further 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 alternative and is consistent with CEQA and the policies of the Coastal Act.

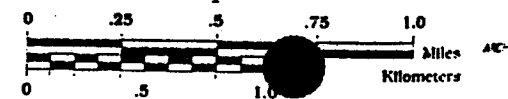


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EXHIBIT # 1
PAGE 1 OF 1

B-01-104

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COASTAL COMMISSION

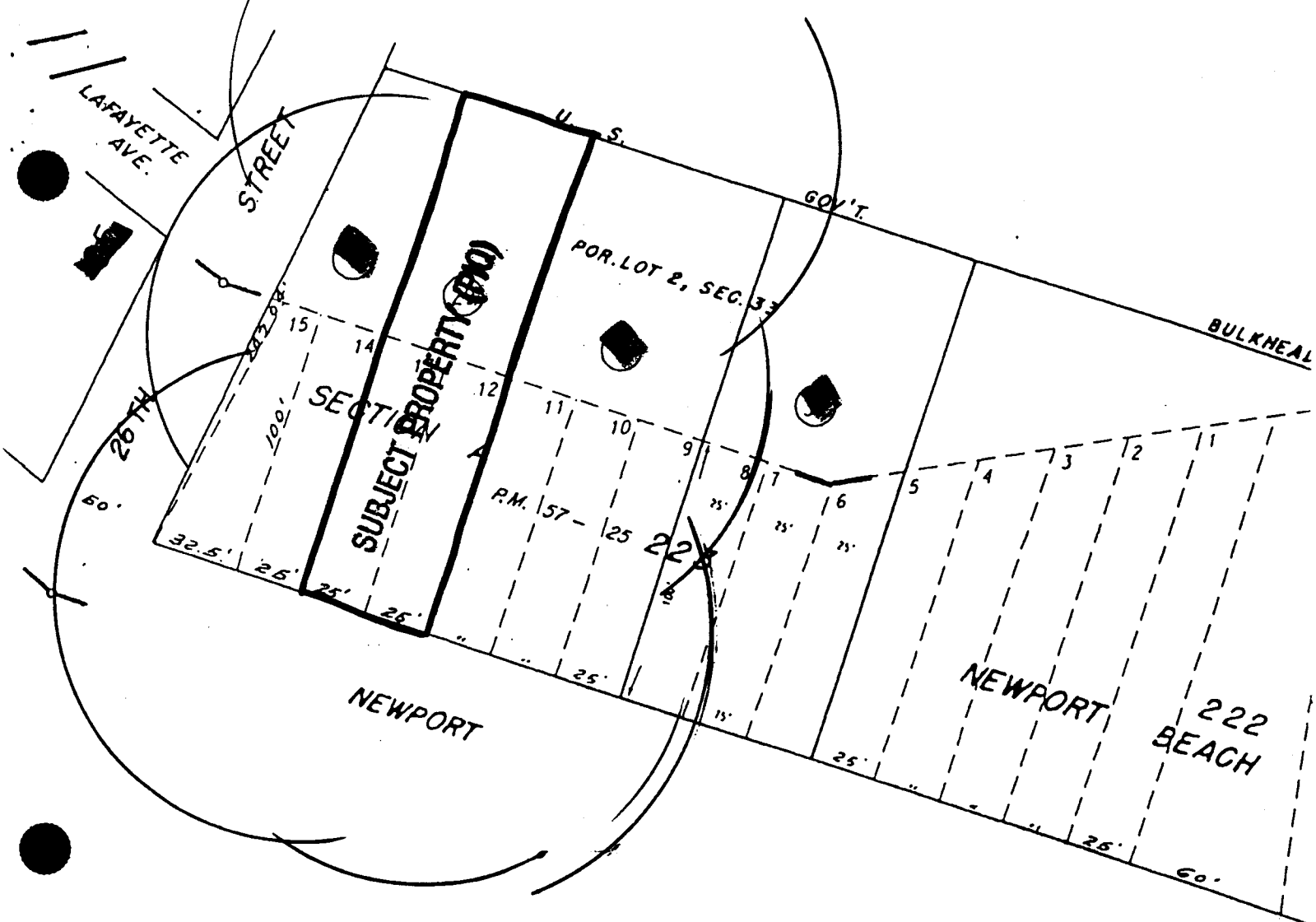


SITE

PACIFIC

NEWPORT BAY

Map Scale

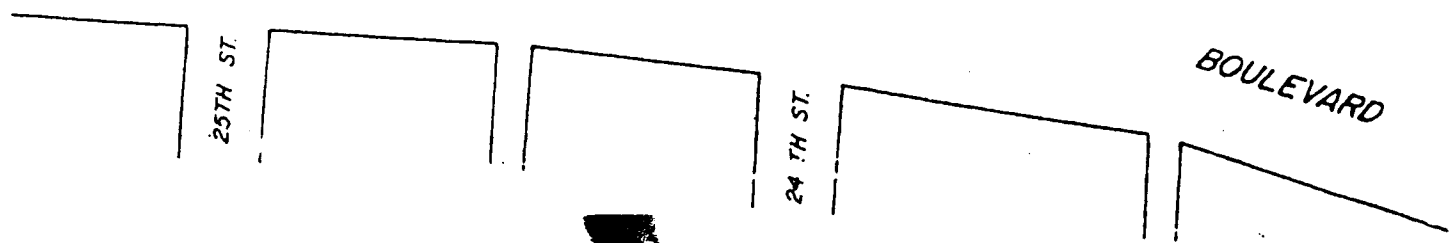


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COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

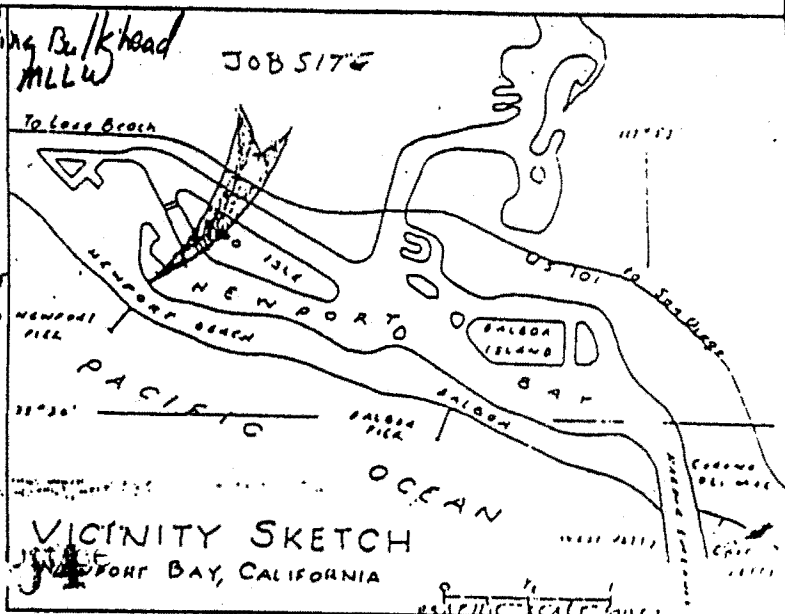
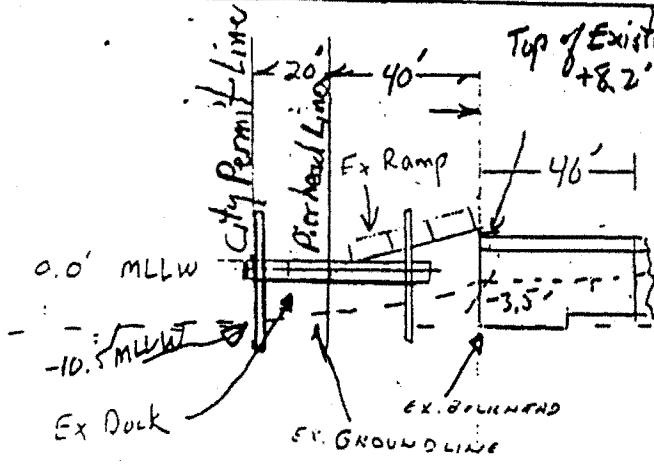
BALBOA



SEC. A, NEWPORT BEACH
TR. NO. 814

M.M. 4-21
M.M. 24-31

MARCH 1949

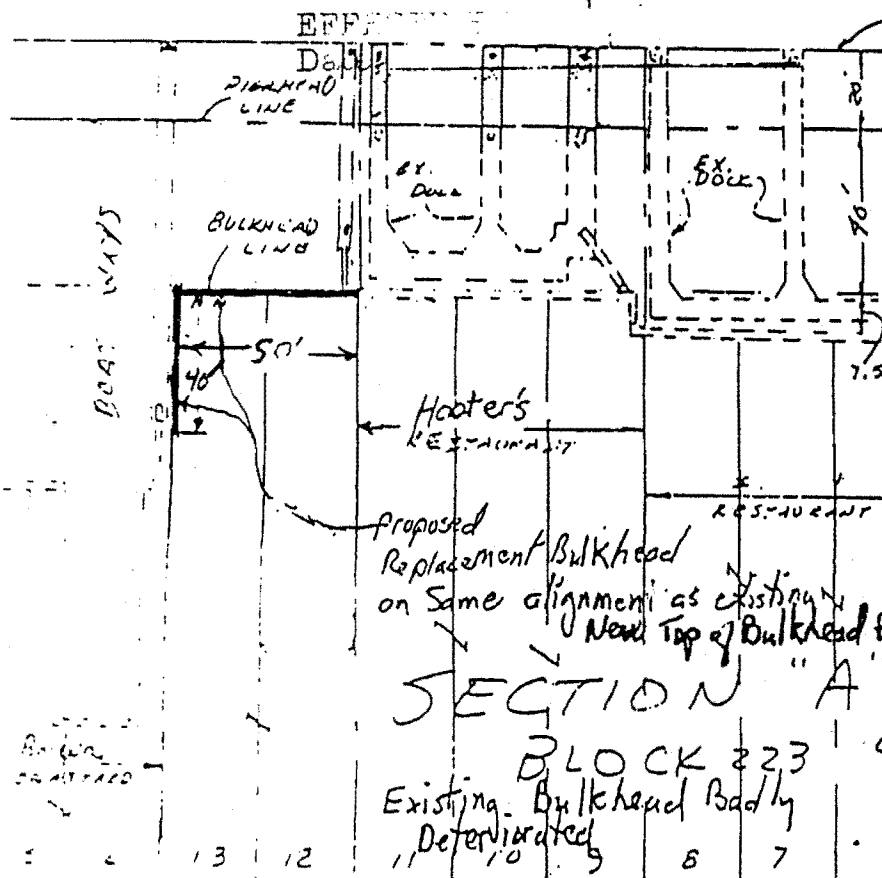


PROFILE
 1" = 5'-0"

VICINITY SKETCH
 NEWPORT BAY, CALIFORNIA

APPROVED PERMIT BY
THE RHINE

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet Harbor lines are established in this section of Newport Bay



HARBOR RESOURCES DIV.
 CITY OF NEWPORT BEACH

Tom Melium
 3/6/01

COASTAL COMMISSION

EXHIBIT # **3**

PAGE **1** OF **1**

SECTION "A"
 BLOCK 223
 Existing Bulkhead Badly Deteriorated

EEL GRASS INSPECTION
 NO EEL GRASS WITHIN 15' OF PROJECT
 EEL GRASS IN THE PROJECT AREA

Tom Melium
 SIGNATURE

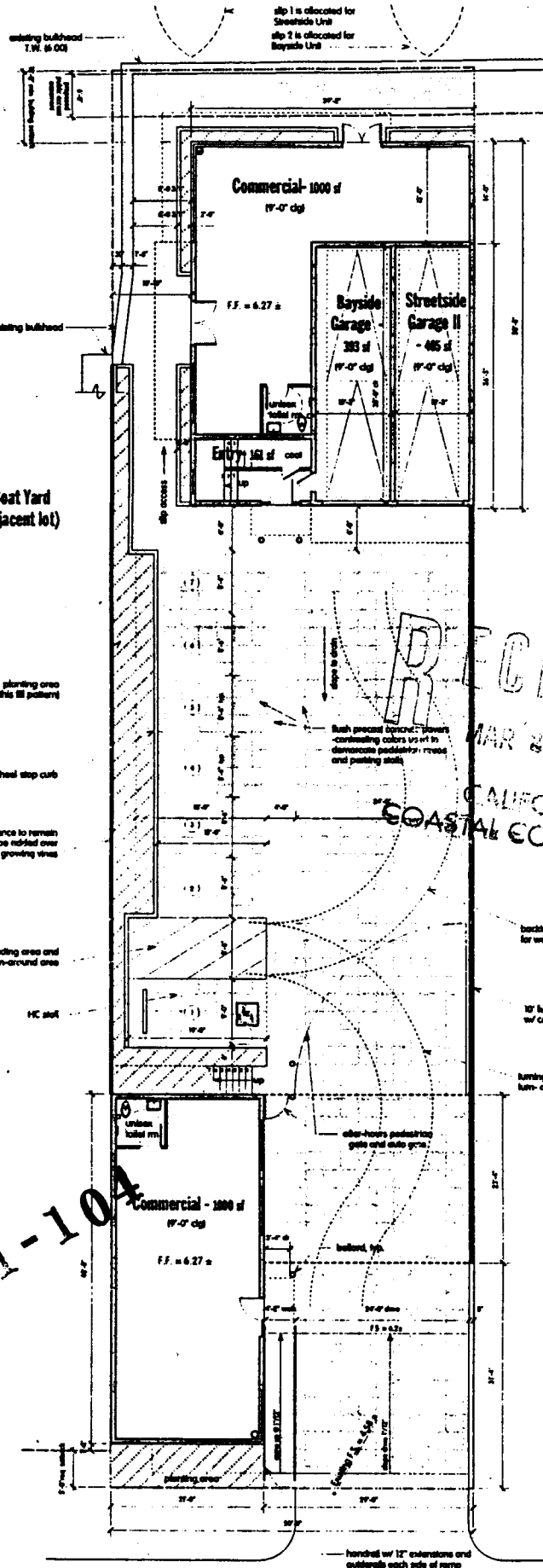
120-2410 NEWPORT BLVD
 PERMIT # DATE
 90' OF REPLACE SEAWALL

Russell E. Fluter
 APPLICANT'S NAME

2410 NEWPORT BLVD.
 JOB ADDRESS

SECT. A 223 12 + 13
 TRACT BLOCK LOT

Shellmaker Inc. 2/27/01
 DRAWN BY L. S. Miller 2075



SA
Stearns
ARCHITECTURE
 1100 S. Coast Highway, 4002
 Laguna Beach, CA 92653
 949-276-7160
 949-276-1500 Fax
 stearnsarchitect.com

Owner
 Russell E. Flator
 2825 West Balboa Blvd.
 Newport Beach, CA
 92663

Applicant
 Stearns Architecture
 1100 S. Coast Highway
 Laguna Beach, CA 92653
 949-276-7160
 949-276-1500 Fax
 Contact: Glenn Butler

**Newport Blvd
 Mixed Use**
 2818 Newport Blvd.,
 Newport Beach, CA 92663

Applicant
 Stearns Architecture
 1100 S. Coast Highway
 Laguna Beach, CA 92653
 949-276-7160
 949-276-1500 Fax
 Contact: Glenn Butler



Tabulation (sf)

Bayside Unit	
garage	393 sf
1st floor	161 sf
2nd floor	2796 sf
total	3350 sf
residential = 3250 sf - 393 sf of bayside garage	
office / retail = 800 sf	
Total = 4643 sf (w/o streetside garage)	
Streetside Unit	
garage total connected	405 sf
1st floor	0 sf
2nd floor	1495 sf
total	1900 sf
residential = 1995 sf - 405 sf of garage	
office / retail = 800 sf	
Total = 3495 sf of the streetside garage	
Site	
site area	1084 sf
residential FAR	2000 sf/1000 sf = 204
residential FAR	5045 sf/1000 sf = 504
gross FAR	8030 sf/1000 sf = 803
landed	6642 sf / 2400 sf = 2.77
retailer placed parking area & other	4220 sf =
landscaping in front parking area	2114 sf
423 sf of 21% of required 1992% of 4220 sf	
landscaping in front yard setback	80 sf/224 sf
100 sf/224 sf required 50% of 100 sf	
retailer parking = 1422 - 104 - 67 = 1251 sf	
required side yard setback	64 sf
required front yard setback	64 sf
parking ratio for off-street	1 car/750 sf
parking ratio for total site	1 car/750 sf
commercial parking ratio	1 car/750 sf
Great Safety Office 8000 sf @ 2500 sf = 3 units	
Office / Retail 1000 sf @ 2500 sf = 1 units	
total commercial parking required = 1 units	
note: for commercial uses 99% CIO	
800 sf = 1 occupant / 700 sf = 5 occupants	
5 < 10 occupants therefore 1 occupant = 0.1	

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**Site Plan &
 Floor Plans**

Scale	Description
1/8" = 1'-0"	Site Plan
1/4" = 1'-0"	Floor Plans
1/2" = 1'-0"	Section Views
3/4" = 1'-0"	Detail Views
1" = 1'-0"	Other Views

COASTAL COMMISSION

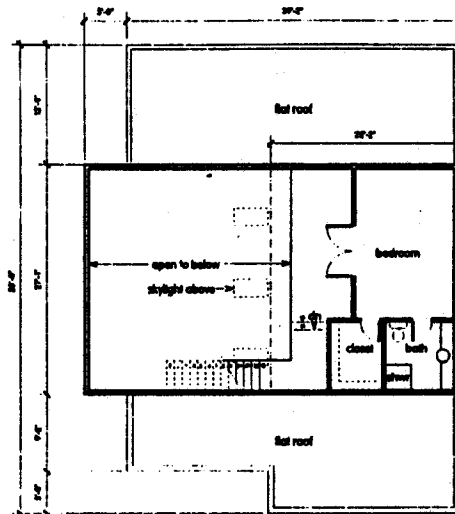
EXHIBIT # 4
 PAGE 1 OF 1

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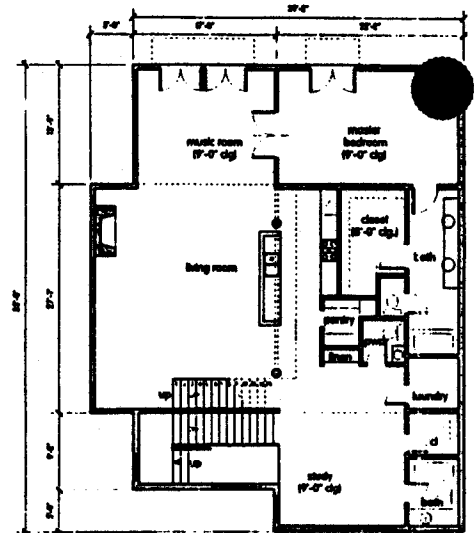
5-01-10A



Site Plan w/ Ground Floor Plans



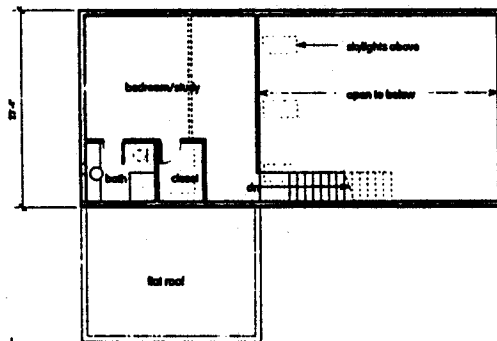
Mezzanine- 403 of
Bayside Unit



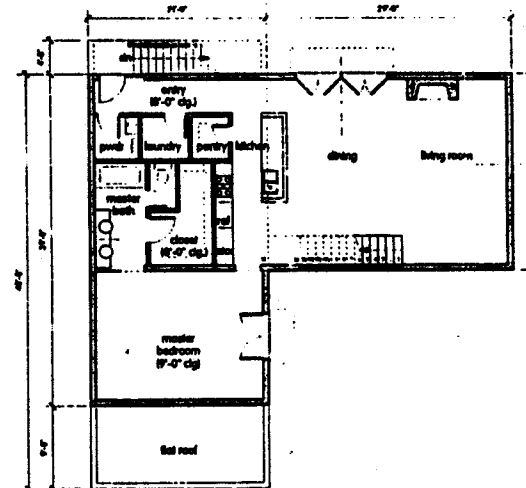
2nd Floor- 275 of
Bayside Unit

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5-01-104



Mezzanine- 403 of
Streetside Unit



2nd Floor- 153 of
Streetside Unit
COASTAL COMMISSION



George
ARCHITECTURE
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Laguna Beach, CA 92653
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www.georgearchitecture.com

Owner

Russell E. Flator
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Newport Beach, CA
92663

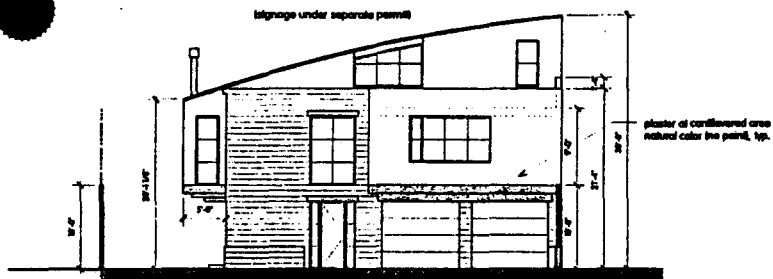
**Newport Blvd
Mixed Use**

2410 Newport Blvd.,
Newport Beach,
CA 92663

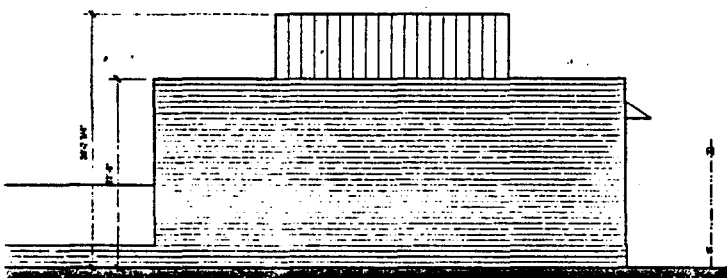
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South Coast Region

MAR 26 2001

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COASTAL COMMISSION

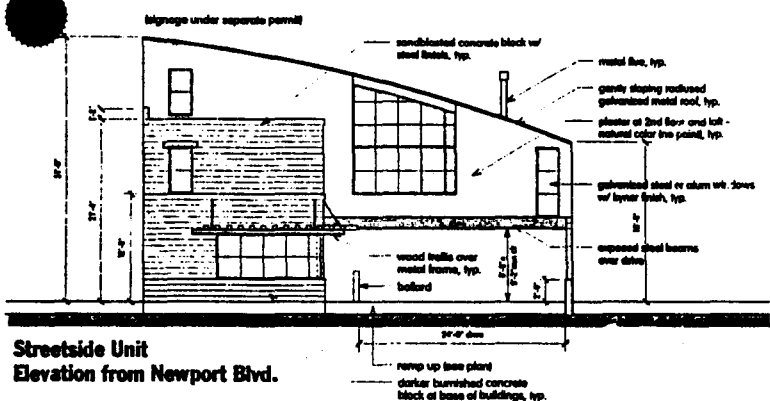


**Bayside Unit
Elevation from Parking Court**

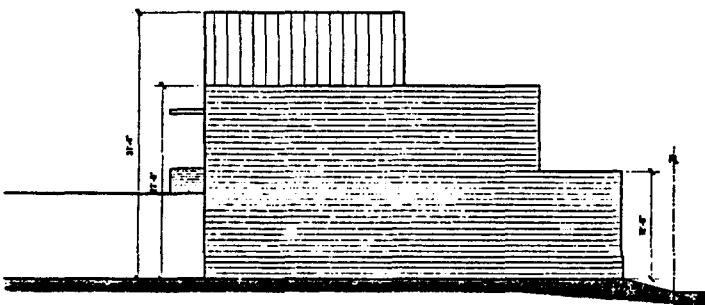


**Bayside Unit
Elevation from Hooters**

5-01-104!



**Streetside Unit
Elevation from Newport Blvd.**



**Streetside Unit
Elevation from Boat Yard**

Elevations

scale 1/8"=1'-0"

Description

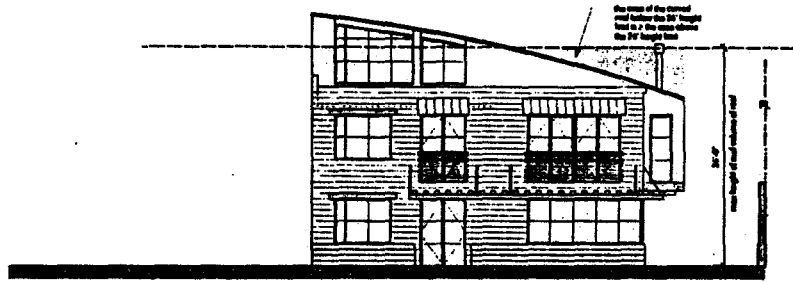
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Project Number

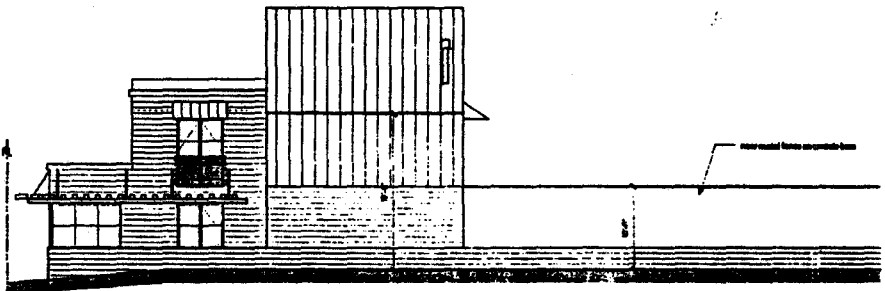
COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 2

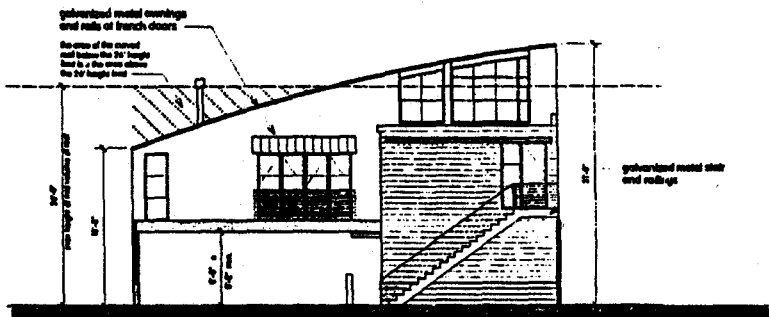
A2



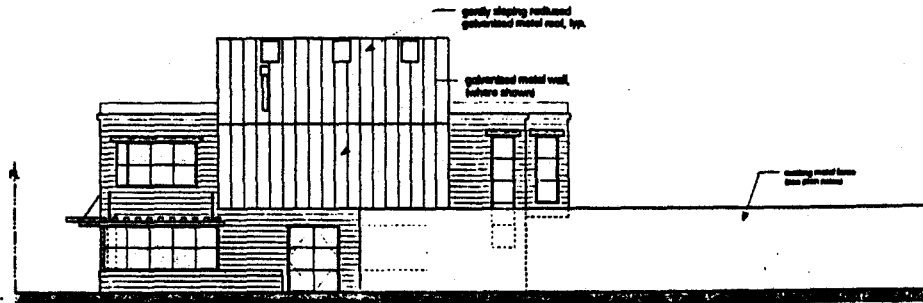
**Bayside Unit
Elevation from Bay**



**Streetside Unit
Elevation from Hooters**



**Streetside Unit
Elevation from Parking Court**



**Bayside Unit
Elevation from Boat Yard**

5-01-104

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EXHIBIT # 6
PAGE 2 OF 2

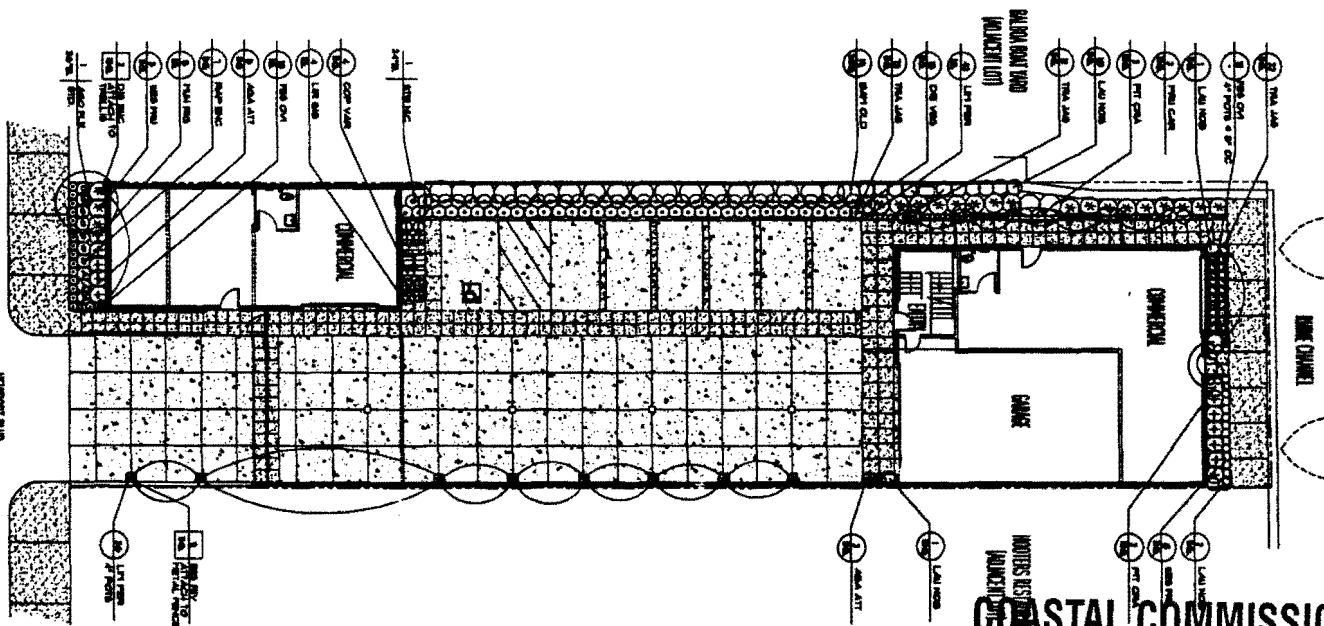
PLANTING LEGEND:

SYMBOL	PLANTING	PLANTING	PLANTING
1	Yucca glauca	1	Yucca glauca
2	Yucca glauca	2	Yucca glauca
3	Yucca glauca	3	Yucca glauca
4	Yucca glauca	4	Yucca glauca
5	Yucca glauca	5	Yucca glauca
6	Yucca glauca	6	Yucca glauca
7	Yucca glauca	7	Yucca glauca
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17	Yucca glauca	17	Yucca glauca
18	Yucca glauca	18	Yucca glauca
19	Yucca glauca	19	Yucca glauca
20	Yucca glauca	20	Yucca glauca

PLANTING NOTES:



1. SEE SHEET LP-1 FOR PLANTING DETAILS.

2. SEE SHEET LP-3 FOR PLANTING SPECIFICATIONS.



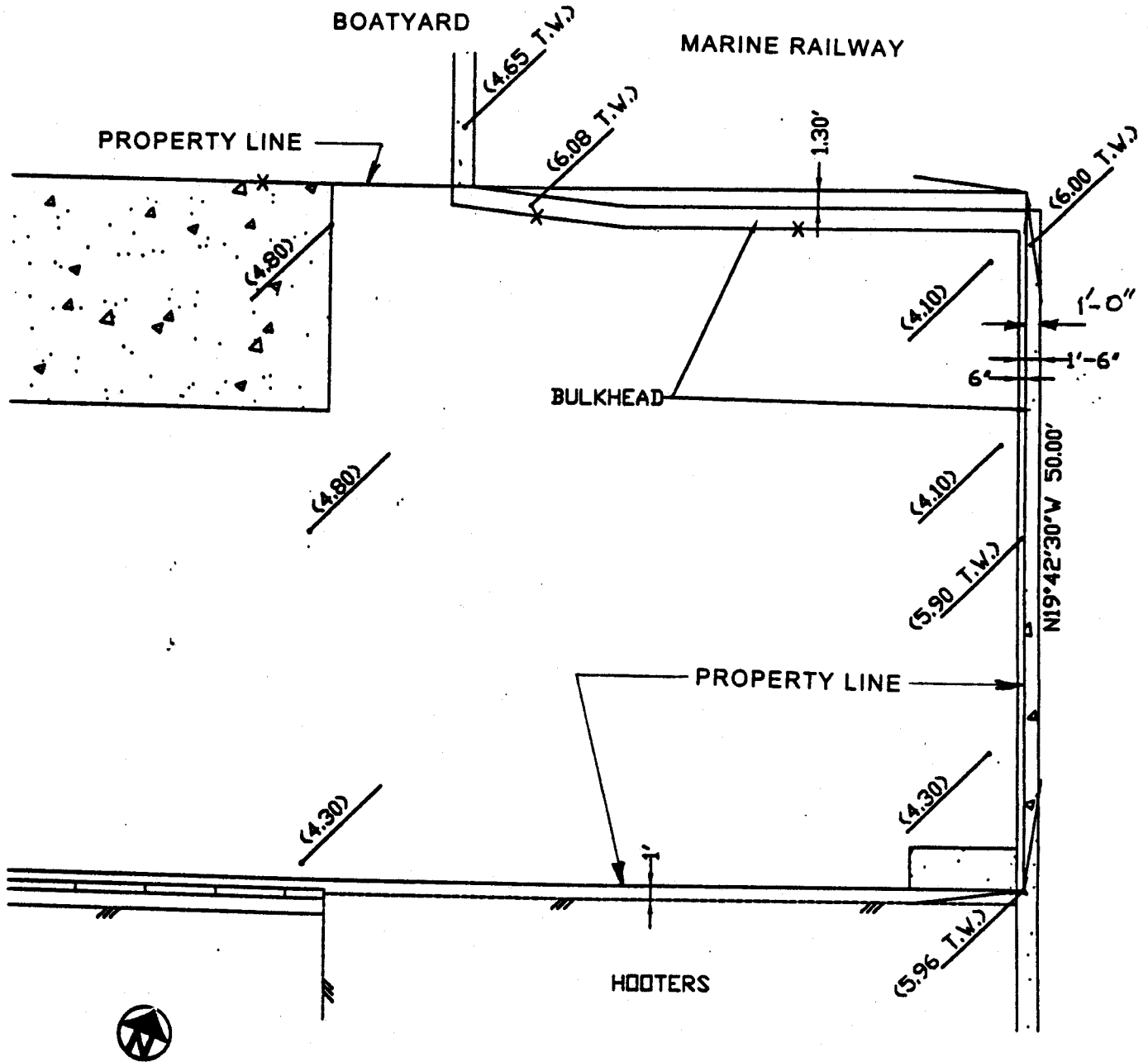
COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF 1

<p>LP-1 PLANTING PLAN</p>		<p>MICHAEL E. FLITEN 2025 WEST BALBOA BLVD. NEWPORT BEACH CA 92663</p>	<p>NEWPORT BULEVARD INDEX INC 2410 NEWPORT BLVD. NEWPORT BEACH, CA 92663</p>	 <p>MSDDesign Group Civil Engineering Landscape Architecture Surveying Site Planning</p>
-------------------------------	---	---	---	---

AEC Associates

North and East Seawalls
2410 Newport Boulevard
Newport Beach, California
October 23, 2001
Sketch No. 1



EXISTING SEAWALL PLAN

NTS

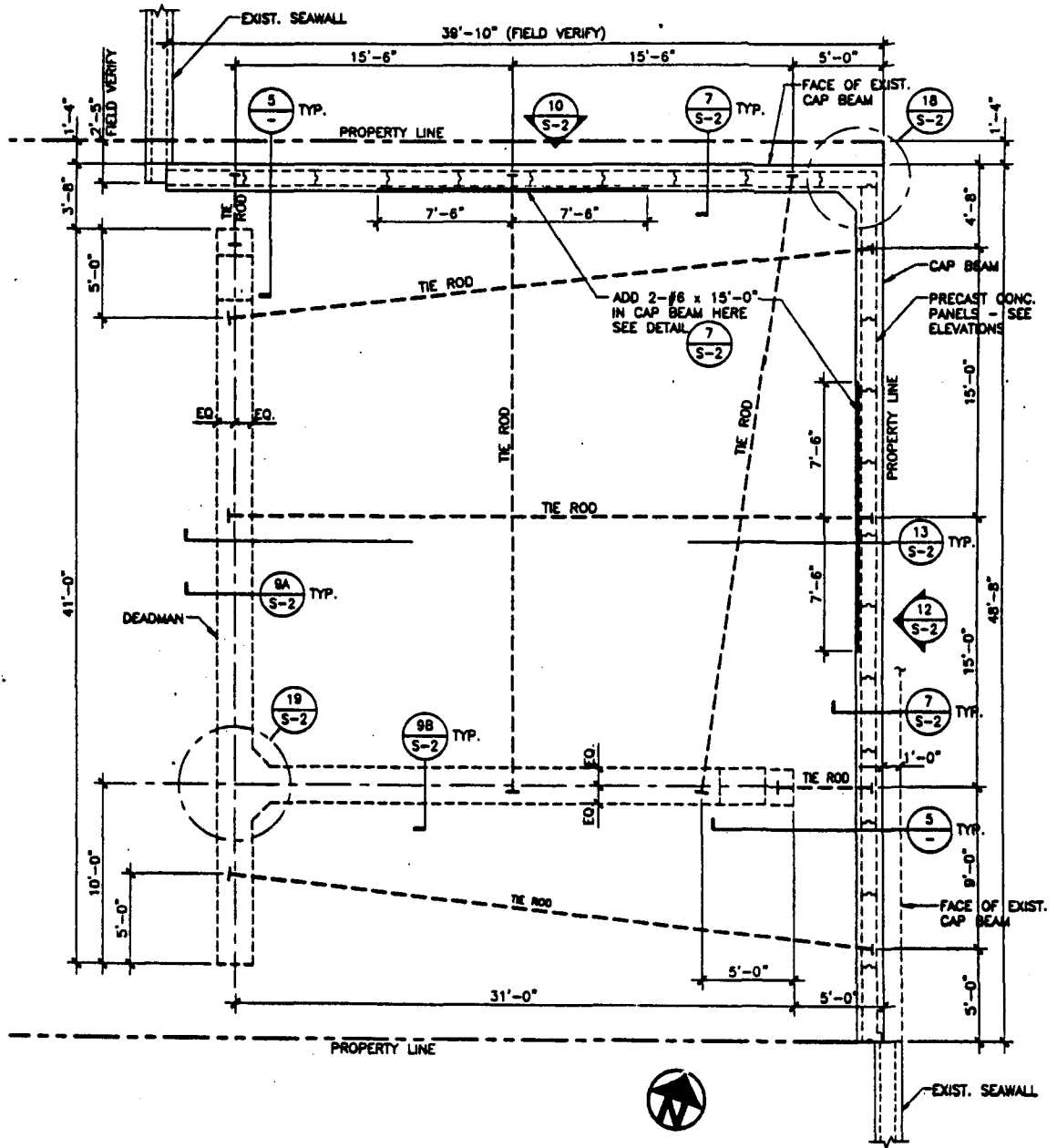
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COPIED FROM TOPOGRAPHIC SURVEY DRAWING

EXHIBIT # 8
PAGE 1 OF 5

AEC Associates

North and East Seawalls
2410 Newport Boulevard
Newport Beach, California
October 23, 2001
Sketch No. 2



SEAWALL PLAN NTS

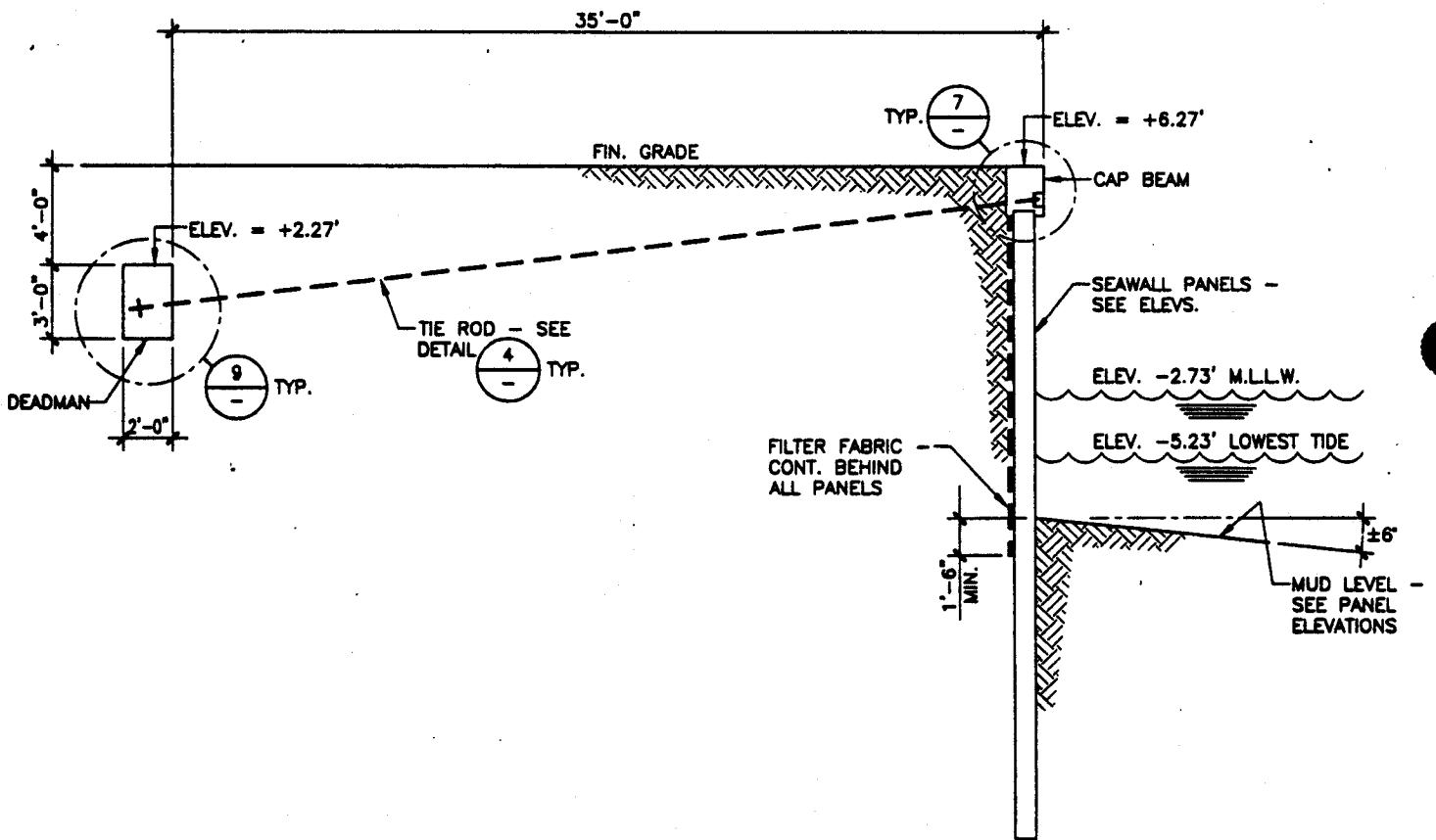
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EXHIBIT # 8
PAGE 2 OF 5

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North and East Seawalls
2410 Newport Boulevard
Newport Beach, California
October 23, 2001
Sketch No. 3



SEAWALL CROSS SECTION

NTS

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COASTAL COMMISSION

AEC Associates
2001 Harbor Ave., Suite 110
Newport Beach, CA 92660
Phone: 949.261.2222
Fax: 949.261.2223

RUSSEL E. FLUTER
2001 Harbor Ave., Suite 110
Newport Beach, CA 92660
949.261.2777

SEAWALL CONSTR.
2610 Newport Blvd.
Newport Beach, CA 92663

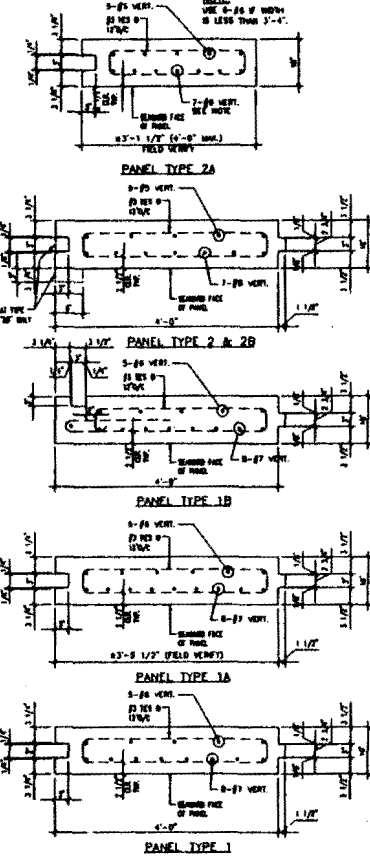
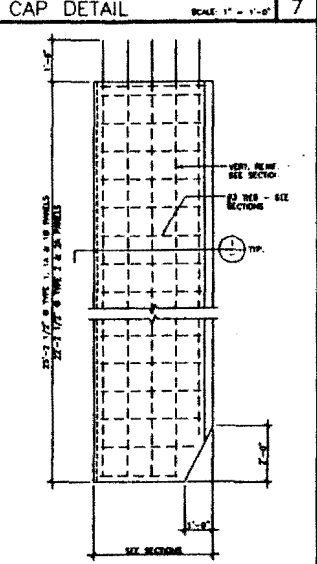
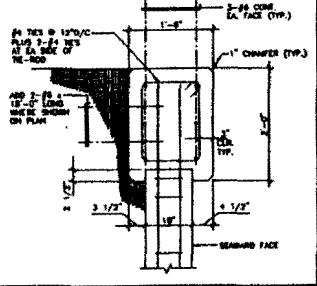
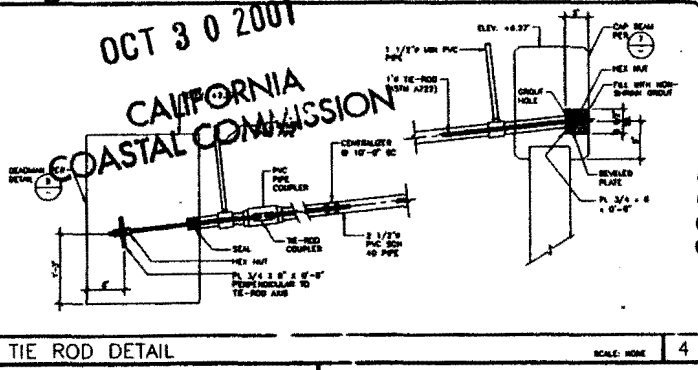
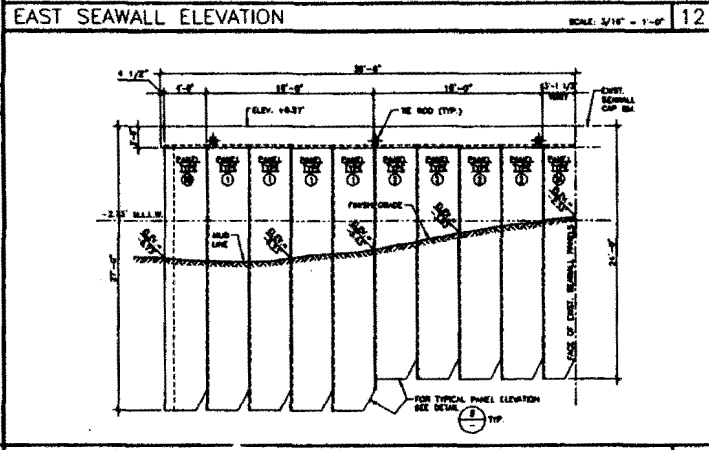
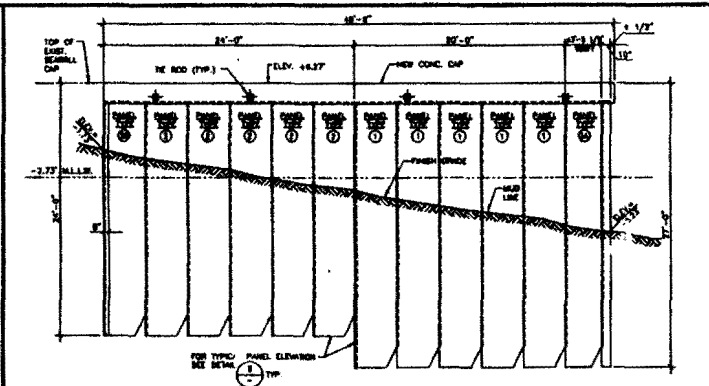
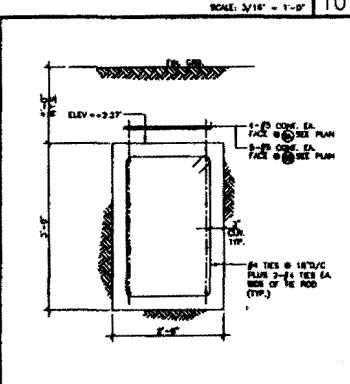
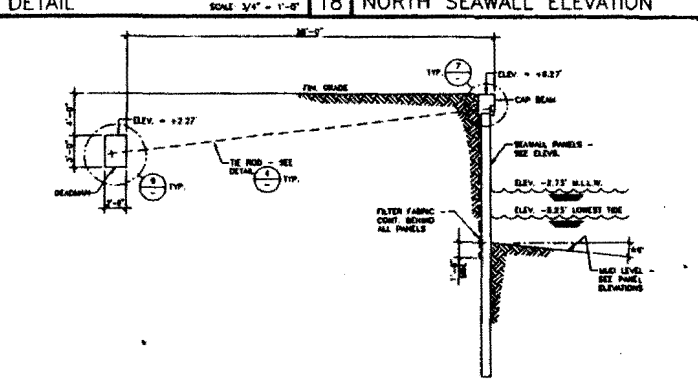
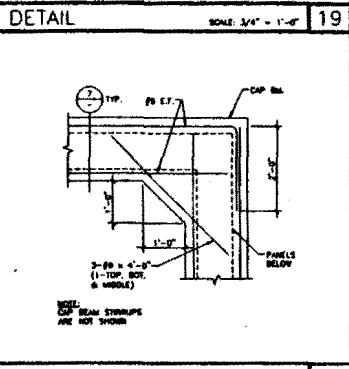
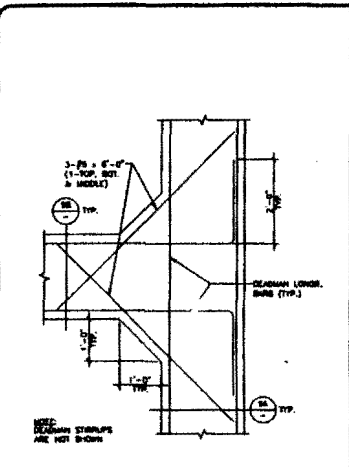
SECTIONS, DETAILS AND ELEVATIONS

DESIGNED BY: JMF
CHECKED BY: JMF
DATE: 8/01
SCALE: AS NOTED
PROJECT NO.: 6127-02
SHEET NO.: 1

S-2

EXHIBIT # 98

PAGE 4 OF 6



DATE: 10

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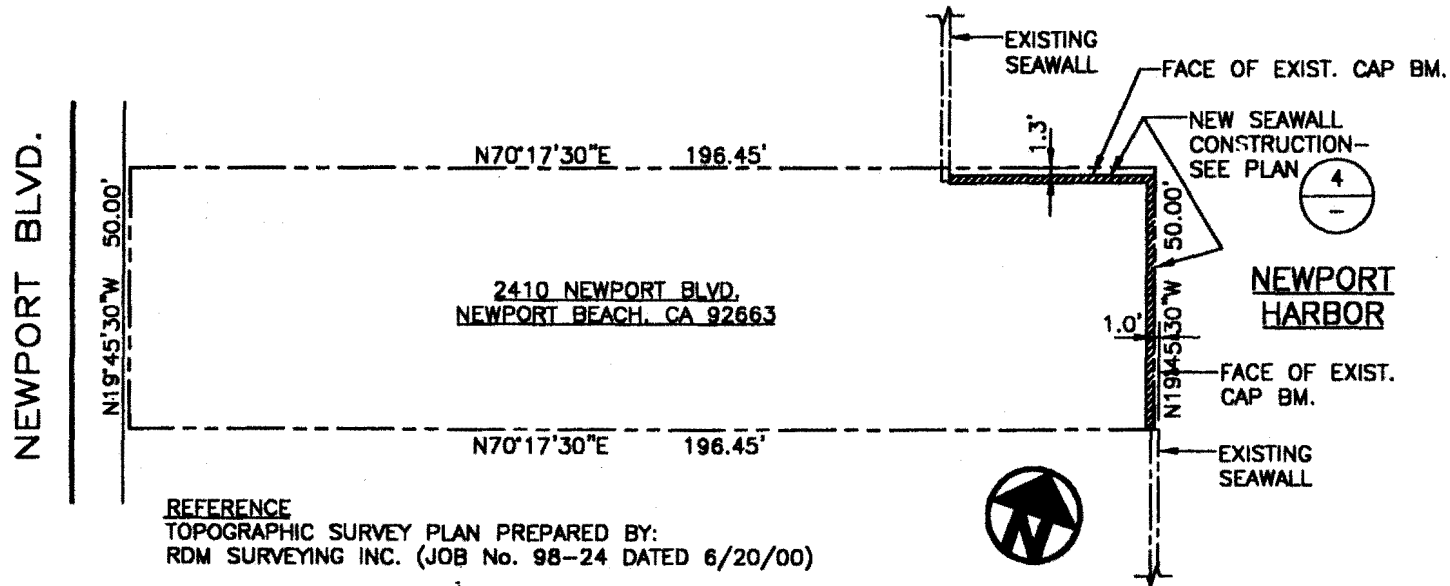
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CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # 6

PAGE 5 OF 5



SITE PLAN

1

CITY OF NEWPORT BEACH
P.O. BOX 1768, NEWPORT BEACH, CA 92659-1768
CITY OF NEWPORT BEACH - BUILDING DEPARTMENT
GENERAL GRADING SPECIFICATIONS

- GENERAL**
1. ALL WORK SHALL COMPLY TO CHAPTER 19 OF THE NEWPORT BEACH MUNICIPAL CODE (NBMC). THE PROJECT SOILS REPORT AND ALL OTHER INFORMATION SHALL BE REVIEWED AND APPROVED BY THE CITY ENGINEER PRIOR TO THE START OF CONSTRUCTION.
 2. ALL WORK SHALL BE COMPLETED BY 5:00 PM ON SATURDAY, 8:00 AM TO 8:00 PM SUNDAY, AND NO WORK SHALL BE PERMITTED ON PUBLIC HOLIDAYS.
 3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
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 19. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 20. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.

- EROSION CONTROL**
1. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
 2. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
 3. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
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 9. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
 10. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.

- REQUIRED INSPECTIONS**
1. THE CITY ENGINEER SHALL BE NOTIFIED 48 HOURS PRIOR TO THE START OF CONSTRUCTION.
 2. THE CITY ENGINEER SHALL BE NOTIFIED 48 HOURS PRIOR TO THE START OF CONSTRUCTION.
 3. THE CITY ENGINEER SHALL BE NOTIFIED 48 HOURS PRIOR TO THE START OF CONSTRUCTION.
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 9. THE CITY ENGINEER SHALL BE NOTIFIED 48 HOURS PRIOR TO THE START OF CONSTRUCTION.
 10. THE CITY ENGINEER SHALL BE NOTIFIED 48 HOURS PRIOR TO THE START OF CONSTRUCTION.

GRADING DETAILS

1. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
2. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
3. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
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19. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
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DOCUMENTATION

1. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
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9. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
10. ALL GRADING SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.

NOTE:

1. ALL WORK SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
2. ALL WORK SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.
3. ALL WORK SHALL BE TO FINISH GRADE UNLESS OTHERWISE NOTED.

NOTE: ALL WORK WITHIN PUBLIC RIGHT-OF-WAY SHALL BE PERMITTED FROM THE PUBLIC WORKS DEPT.

NOTICE TO CONTRACTOR

THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES PRIOR TO THE START OF CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES PRIOR TO THE START OF CONSTRUCTION.

CONSTRUCTION NOTES:

1. CONSTRUCT ON-SITE PAVEMENT/WALKWAY, SEE LANDSCAPE ARCH PLAN FOR MATERIAL TYPE.
2. CONSTRUCT DRIVE APPROACH FOR 30' BY 37' PER CITY OF NEWPORT BEACH SPECIFICATIONS.
3. CONSTRUCT FULL HEIGHT CURB AND GUT PER CITY SPEC.
4. CONSTRUCT NEW CONC. SIDEWALK PER CITY SPEC.
5. INSTALL SPOTS BOTH OF SANDWICH C DRAIN PANS FOR MICROFIL CONTROL.
6. LOCATE EXIST. POWER POLE BY OTHERS.
7. CONSTRUCT 1' OR 1.5' WALL, SEE ARCHITECTURAL PLAN FOR WALL DETAIL.
8. CONSTRUCT CONCRETE CURB PER DETAIL, SHOW TIEBACK.
9. CONSTRUCT 12" OPENING IN CURB FOR DRAINAGE.
10. CONSTRUCT 4" CURB DRAIN PER CITY SPEC, NO. 1644, (DEFLECTED BLOKE TO 4" DIA).
11. CONSTRUCT DRIVE APPROACH FOR 30' BY 37' PER CITY OF NEWPORT BEACH SPECIFICATIONS.
12. CONSTRUCT FULL HEIGHT CURB AND GUT PER CITY SPEC.
13. CONSTRUCT NEW CONC. SIDEWALK PER CITY SPEC.
14. INSTALL SPOTS BOTH OF SANDWICH C DRAIN PANS FOR MICROFIL CONTROL.
15. LOCATE EXIST. POWER POLE BY OTHERS.
16. CONSTRUCT 1' OR 1.5' WALL, SEE ARCHITECTURAL PLAN FOR WALL DETAIL.

DIRT QUANTITY ESTIMATE:

TYPE	CU. YDS.
CUT	5.0
FILL	2.0

NOTE: ALL QUANTITIES ARE ESTIMATED AND SHALL BE BASED ON THE INFORMATION PROVIDED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES PRIOR TO THE START OF CONSTRUCTION.

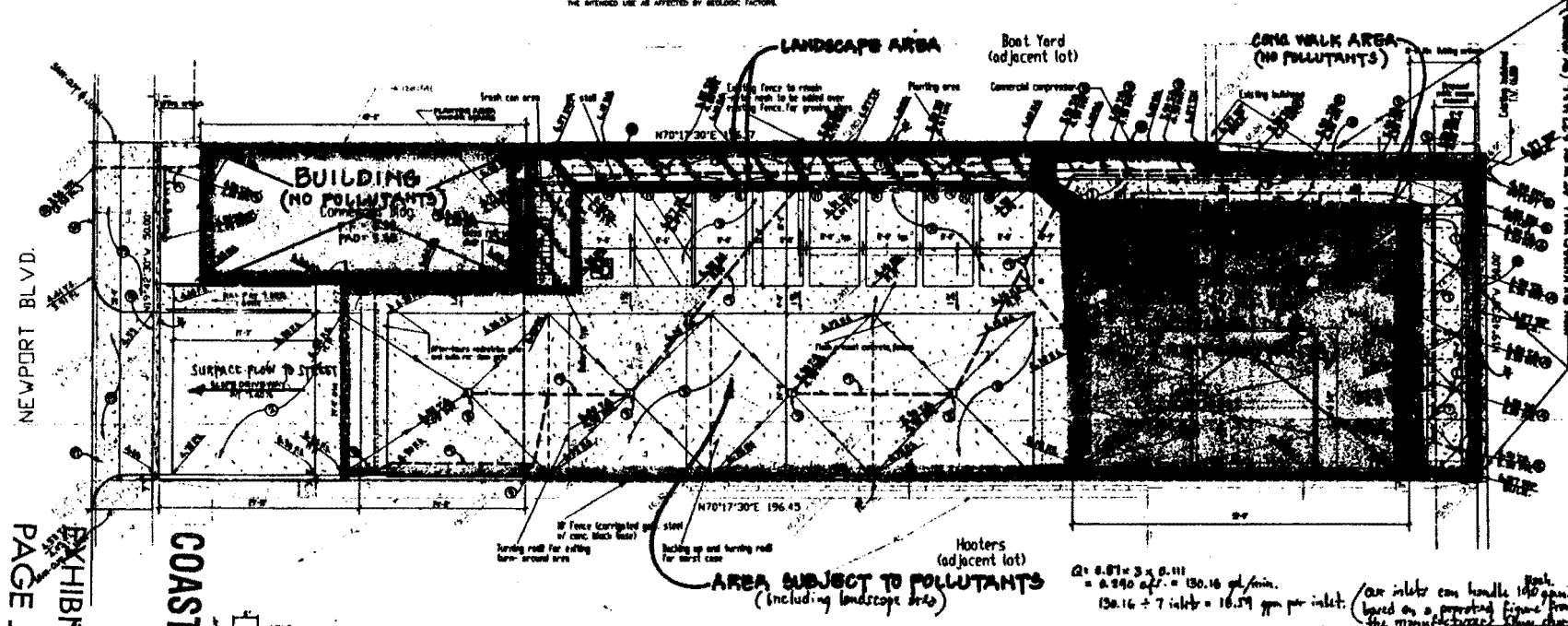
ENTERING SITE:

$$Q = C \cdot I \cdot A$$

$$Q = 0.87 \times 3 \times 0.111 = 0.290 \text{ cfs} = 130.16 \text{ gpm}$$

$$130.16 \div 7 \text{ inlets} = 18.74 \text{ gpm per inlet}$$

(one inlet can handle 100 gpm based on a standard figure from the manufacturer's flow chart)



LEGEND:

---	EXIST. GRADE	---	PROPOSED GRADE
---	EXIST. CURB	---	PROPOSED CURB
---	EXIST. DRIVE	---	PROPOSED DRIVE
---	EXIST. SIDEWALK	---	PROPOSED SIDEWALK
---	EXIST. WALL	---	PROPOSED WALL
---	EXIST. POWER POLE	---	PROPOSED POWER POLE
---	EXIST. TREE	---	PROPOSED TREE
---	EXIST. FENCE	---	PROPOSED FENCE
---	EXIST. SIGN	---	PROPOSED SIGN
---	EXIST. LIGHT	---	PROPOSED LIGHT
---	EXIST. UTILITY	---	PROPOSED UTILITY
---	EXIST. EROSION CONTROL	---	PROPOSED EROSION CONTROL

ON-SITE CURB DETAIL:

PROPERTY OWNER: RUSSELL E. FLUTER 2025 WEST BALBOA BLVD. NEWPORT BEACH, CA 92663	SOILS ENGINEER: P.A. & ASSOCIATES 19811 MULLEN DRIVE, SUITE 204 LAGUNA HILLS, CA 92653 (949) 581-7474	BENCHMARK: ICE 30 278 ELEVATION 4.74'
--	--	--

PREPARED BY:
DUCA-MCCOY, INC.
2410 NEWPORT BLVD.
NEWPORT BEACH, CA 92663
(949) 675-3487

PETE J. BECA R.E.C. 20448 DATE

GRADING PLAN
OF
2410 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

SHEET 1 OF 1

NEWPORT BLVD.
PAGE 1 OF 1
EXHIBIT A
9

EXHIBIT "A"



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

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

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JUN 22 2001

June 18, 2001

Russell Fluter
2025 W. Balboa Blvd.
Newport Beach, CA 92663

CALIFORNIA
COASTAL COMMISSION

ORDER FOR A TECHNICALLY CONDITIONED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED BULKHEAD REPAIR PROJECT, CITY OF NEWPORT BEACH, ORANGE COUNTY (ACOE REFERENCE NUMBER 2000100987)

Dear Mr. Fluter:

On March 29, 2001, we received a request for 401 Water Quality Standards Certification dated March 22, 2001, from your agent Shellmaker Inc., for the above-referenced project. We received all requested materials for a complete application as of April 17, 2001.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401 that the proposed project described below will comply with State water quality standards outlined in the Basin Plan (1995):

- | | |
|---|---|
| 1. Project Description: | The proposed project, located at 2410 Newport Boulevard in the City of Newport Beach, involves replacing 90 feet of a failing bulkhead, along its existing alignment, in order to protect a new building that will be built on the lot. |
| 2. Receiving water: | Rhine Channel, Newport Bay, Orange County |
| 3. Fill/excavation area: | Ocean: No fill - footprint of the lot will remain exactly the same.
No wetlands will be impacted. |
| 4. Dredge volume: | N/A |
| 5. Federal permit: | U. S. Army Corps of Engineers (USACOE) Nationwide Permit 3 |
| 6. Fill/excavation and dredge mitigation: | None |
| 7. Water quality impacts mitigation: | The proposed project is not expected to impact or disturb sediment. There is no eelgrass present within 15 feet of the project site. The work will be accomplished consistent with the requirements of the California Coastal Commission. |

No vessel waste is to be discharged as a result of this project.

COASTAL COMMISSION

California Environmental Protection Agency

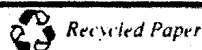


EXHIBIT # 10
PAGE 1 OF 3

There is no wetland vegetation in the project area site. The proposed project is not expected to impact state- or federally-listed endangered species or their habitat.

The project's description indicates that stream diversion or dewatering will not be necessary during construction.

You have submitted an application under Nationwide Permit 3 to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have filed for a Coastal Development Permit with the California Coastal Commission. This project has been determined to be ministerial or categorically exempt in accordance with CEQA Guidelines.

This order for 401 Certification is contingent upon the execution of the following conditions:

1. There shall be no fueling, lubrication, or maintenance of construction equipment within 500 feet of waters of the State.
2. Adhere to the *Caulerpa taxifolia* stipulation.

Caulerpa taxifolia Stipulation:

In June 2000, *Caulerpa taxifolia*, an invasive marine seaweed, which has severe adverse effects on the ecosystem, was reported to be found in a lagoon off Huntington Harbour. Since then, it has been located within Huntington Harbour itself. The Regional Board, California Department of Fish and Game (CDFG), and other agencies are involved in extensive efforts to eradicate this seaweed and prevent its transport to other areas. Projects that entail dredging in marine waters are required to survey for *Caulerpa* to help locate and prevent its spread. If *Caulerpa* is found prior to or during implementation of the project, no work should begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board must be notified immediately with report of the location and date of discovery. Should no *Caulerpa* be observed during the bulkhead repair, please notify the Regional Board of this fact when all property repairs have been completed. This will help us to establish a database on the occurrence or absence of *Caulerpa*.

Regional Board Staff has determined that your proposed project, if constructed in accordance with the conditions of the 401 Water Quality Standards Certification, will be in compliance with the State of California's Anti-degradation Policy.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter owed by the applicant.

COASTAL COMMISSION

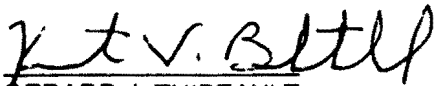
June 18, 2001

Any discharge from the above-referenced project must comply with applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), (306 National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality standards certification. Although we anticipate no further regulatory involvement, 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 formulate Waste Discharge Requirements. Please notify our office five (5) days before construction begins on this project.

Should there be any questions, please contact Stephanie M. Gasca at (909) 782-3221 or Wanda Smith at (909) 782-4468.

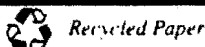
Sincerely,



GERARD J. THIBEAULT
Executive Officer

CC: U.S. Environmental Protection Agency, Director of Water Division (WTR-1) – Alexis Strauss
U.S. Army Corps of Engineers, Los Angeles District – Susan Sturges
California Coastal Commission, Long Beach Branch – Karl Schwing
State Water Resources Control Board, Watersheds Project Support Section –
William R. Campbell, Chief
Shellmaker Inc. – Lisa E. Miller

California Environmental Protection Agency



COASTAL COMMISSION

EXHIBIT # 10
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DEPARTMENT OF FISH AND GAME

Marine Region
4949 Viewridge Avenue
San Diego, CA 92123



November 26, 2001

Mr. Fernie Sy
California Coastal Commission
South Coast Area
200 Oceangate Ave., 10th Floor
Long Beach, California 90802-4325

NOV 27 2001
CALIFORNIA COASTAL COMMISSION

Dear Mr. Sy:

This letter is in response to a request from Ms. Lisa Miller, of Shellmaker, Inc., concerning a bulkhead replacement project at 2410 Newport Blvd (applicant Russell Fluter), City of Newport Beach, Orange County, California. Based on information provided by Ms. Miller, it is our understanding that the current bulkhead has deteriorated and will be replaced with a new bulkhead along the same alignment (same footprint), but with a new elevation of 9.0 feet Mean Lower Low Water. It is also our understanding that there is no eelgrass, *Zostera marina*, habitat within 15 feet of the project area. Therefore, we believe that the proposed project, as currently described, would not have a significant adverse effect on existing marine resources and habitats within the area, and therefore, we concur with the issuance of a Coastal Development Permit.

Sincerely,

Marilyn J. Fluharty
Environmental Scientist
Marine Region

cc: Ms. Lisa Miller
Shellmaker, Inc.
Newport Beach, CA

COASTAL COMMISSION

EXHIBIT # 11
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