

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: August 14, 2003
49th Day: October 2, 2003
180th Day: February 10, 2004
Staff: FSY-LB FSY
Staff Report: October 16, 2003
Hearing Date: November 5-7, 2003
Commission Action:

**W 4a****STAFF REPORT: CONSENT CALENDAR****APPLICATION NO.:** 5-03-162

RECORD PACKET COPY

APPLICANTS: Jan Erik & Diane Palm**AGENT:** Eric Mossman**PROJECT LOCATION:** 1104 West Bay Avenue, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new bayfronting 3,629 square foot two-story single-family residence with an attached 552 square foot three-car garage. In addition, an existing bulkhead/seawall will be demolished and a new bulkhead/seawall will be constructed in the same location. There will be 250 cubic yards of grading for recompaction purposes.

LOCAL APPROVALS RECEIVED: Approval In Concept (No. 0003-2003) from the City of Newport Beach Planning Department dated April 14, 2003; Approval In Concept (No. 116-1104) from the City of Newport Beach Harbor Resources Division dated April 9, 2003; and Clean Water Act Section 401 Water Quality Standards Certification: Palm Residence Bulkheaded Project, City of Newport Beach, Orange County (Our File Number 30-2003-12-DGW) dated July 9, 2003.

SUMMARY OF STAFF RECOMMENDATION:

The applicants are proposing the demolition and construction of a single-family residence, and demolition and construction of a bulkhead in the same location. The subject site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of the Newport Harbor. The proposed new bulkhead is necessary to protect existing structures from tidal induced erosion and will have no new impacts upon shoreline sand supply because the device will be located in the same location as the existing. The major issues before the Commission relate to the effect of the proposed development on marine resources and water quality. No eelgrass or *Caulerpa taxifolia* is located within the project area at this time.

Staff recommends the Commission **APPROVE** the proposed development with **four (4) Special Conditions**. **Special Condition No. 1** deals with construction responsibilities and debris removal. **Special Condition No. 2** requires submittal of a Drainage and Run-Off Control Plan. **Special Condition No. 3** assures that impacts to eelgrass are avoided and, if necessary, mitigated. **Special Condition No. 4** 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 applicants provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project

and/or buffer area has been eliminated or 2) the applicants have revised the project to avoid any contact with *Caulerpa taxifolia*.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permits 5-02-426 (Rosenblum), 5-02-042 (Rands), 5-02-237 (Riddle); *Preliminary Geotechnical Investigation, Proposed Residential Property, 1104 West Bay Avenue, Newport Beach, California (Project No.: 22141-101)* prepared by P.A. Associates, Inc. dated November 14, 2002; Letter from Masoud Jafari, S.E. (William Simpson & Associates, Inc.) to Staff dated April 9, 2003; *Marine Resources Impact Assessment For A Proposed Bulkhead Construction Project, 1104 West Bay Avenue, Newport Beach, CA* prepared by Coastal Resources Management dated April 10, 2003; Letter from Staff to Eric Mossman dated May 12, 2003; Letter from Lisa Miller (Shellmaker Inc.) to Staff dated July 11, 2003; Letter from Staff to Eric Mossman dated August 11, 2003; and Letter from Eric Mossman to Staff dated August 13, 2003.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan/Drainage Plan
 4. Floor Plans
 5. Elevations
 6. Bulkhead Plans
-

STAFF RECOMMENDATION:

MOTION: I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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 or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. 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.

2. **Drainage and Run-Off Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, a drainage and runoff control plan showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas 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 final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. **Pre-Construction Eelgrass Survey**

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. **Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicants shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicants shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an

amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

4. 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 applicants 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:
- (1) for the review and approval of the Executive Director; and
 - (2) 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is located on a bayfront lot fronting Newport Bay at 1104 West Bay Avenue in the City of Newport Beach, County of Orange (Exhibits #1-2). North of the project site is Newport Bay; South of the project site is West Bay Avenue and to the East and West are existing residential structures on bulkheaded lots. The project site is located in a residential area where the homes fronting Newport Bay are located on bulkheaded lots. Site conditions on the bayward side of the site include an existing bulkhead, pier and dock. The applicants wish to replace the

bulkhead in the same location as it has deteriorated to the point that it needs to be replaced. No work will be done on the existing dock and pier.

Public access to the bay is available approximately 42 feet East of the project site at the 11th Street, street end.

The project consists of: 1) demolition and construction of a 3,629 square foot two-story single-family residence with 552 square foot three-car garage, a total of 110 square feet for 2nd floor decks and a 290 square foot roof deck with a spa and fire place (Exhibits #3-5); 2) 250 cubic yards of grading for recompaction purposes; and 3) demolition of an existing bulkhead and construction of a new 35 foot long bulkhead in the same location (elevation of +9 feet MLLW) designed to meet the minimum elevation requirements established by the City of Newport Beach (typically +9.0 feet, MLLW for Newport Harbor) and new tiebacks and deadmen (Exhibit #6).

The applicant is proposing water quality improvements as part of the proposed project, including the direction of roof runoff and surface runoff to French drains and trench drains on the project site (Exhibit #3).

The proposed project consists of demolition of an existing bulkhead and construction of a new bulkhead in the same location (Exhibit #6). The existing bulkhead is located along the northern portion of the property and is 35 feet in length. The existing and re-constructed bulkhead is necessary to protect the existing development including off-site development on adjacent lots. The proposed bulkhead will be of a conventional construction with tongue and groove precast concrete panels held together with a concrete coping and tied back to a deadman system. The existing wall will be completely removed and replaced precisely in the same location. Closures will be formed and poured at the ends of the property to form a tight seal with the neighbors. Finally, the wall will be connected to the deadman with the tieback system and tensioned according to the specifications. The new bulkhead height will be at +9 above Mean Low Lower Water to meet present City of Newport Beach engineering standards.

A biological survey conducted on March 3, 2003 determined that no eelgrass or *Caulerpa taxifolia* was present in the project area. These eelgrass and *Caulerpa taxifolia* surveys are valid for a limited period of time (until the next growing season, typically March through October, for eelgrass and 90 days for *Caulerpa taxifolia*). A subsequent survey will be required if construction does not occur within the respective time periods. If any eelgrass or *Caulerpa taxifolia* are found on the project site, Special Conditions No. 3 and No. 4 identify the procedures necessary to be completed prior to beginning any construction. If eelgrass is present in the project area, an amendment or new permit to address eelgrass impacts must be obtained prior to commencement of development. To confirm that no *Caulerpa* is present at the time of construction, a subsequent survey must be conducted not earlier than 90 days nor later than 30 days prior to commencement of the proposed project.

B. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce

the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

C. MARINE RESOURCES

The proposed development is the replacement of an existing bulkhead in the same location or landward of the existing bulkhead that is necessary to protect an existing structure. The proposed development will not result in the additional fill of coastal waters as the new bulkhead will be located either in the same location or landward of the existing bulkhead. In the event that the bulkhead is being reconstructed in the same location, it is infeasible to relocate the new bulkhead further landward. The proposed development has been conditioned to minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass, and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project conforms with Sections 30233 and 30235 of the Coastal Act.

D. PUBLIC ACCESS

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act

E. LOCAL COASTAL PROGRAM

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

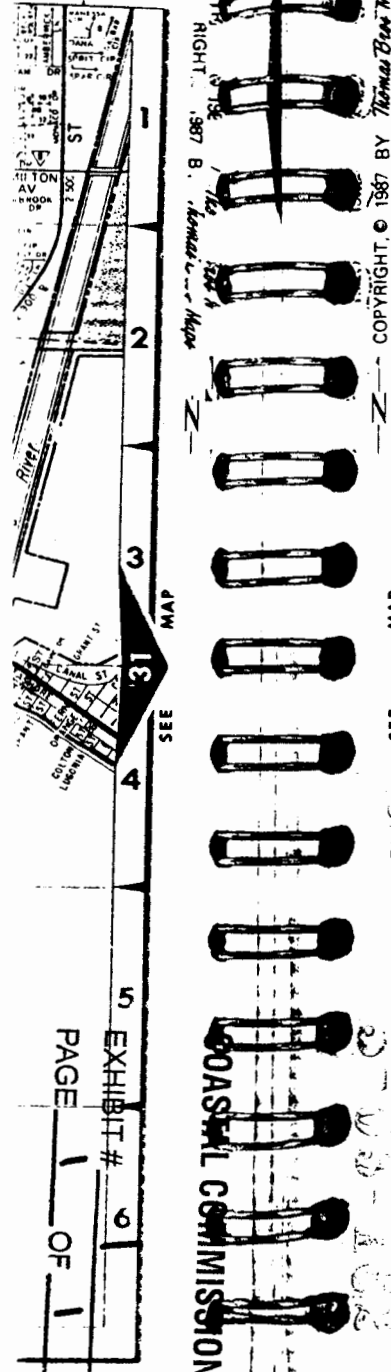
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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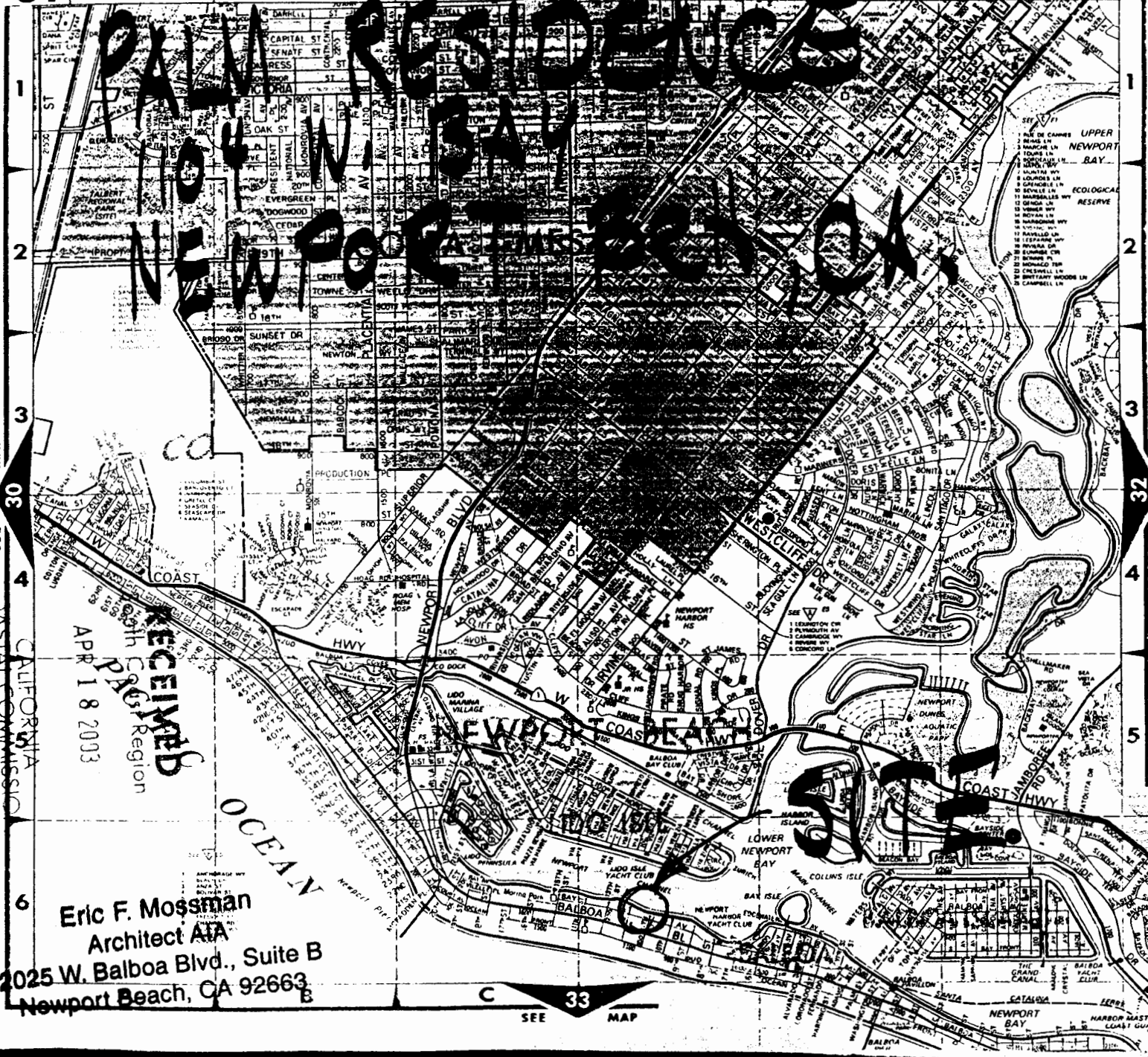
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PAGE 1 OF 1

COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

SEE MAP

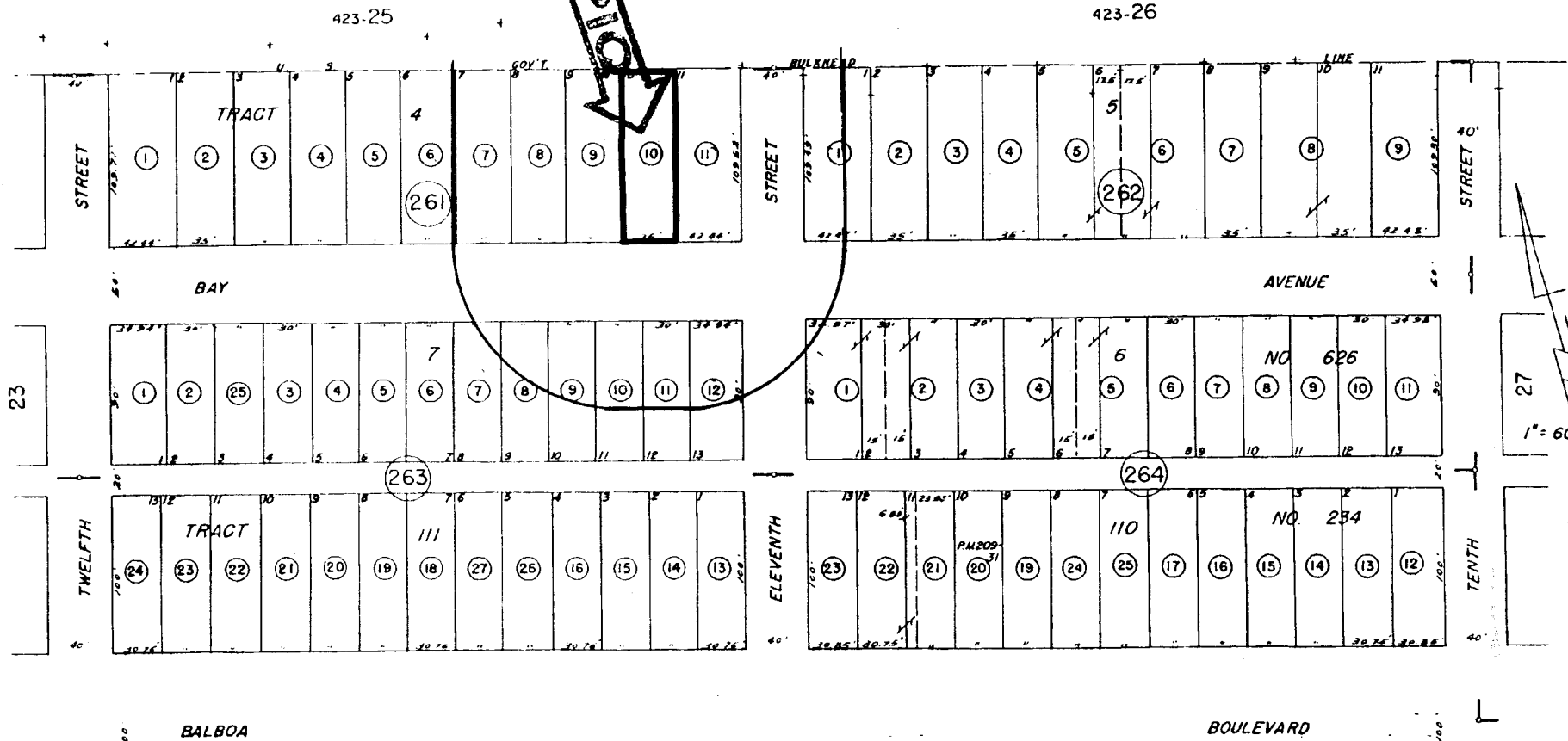
SEE MAP

SEE MAP

WATER LINE AS PER AERIAL PHOTO, 1947

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Stewart Title-CAOR Plat: 047261

MARCH 1949

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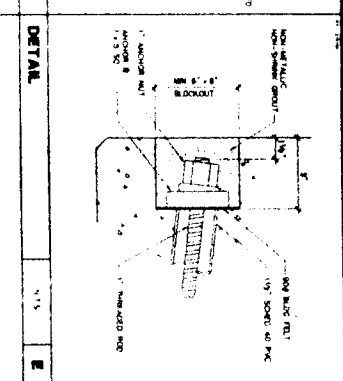
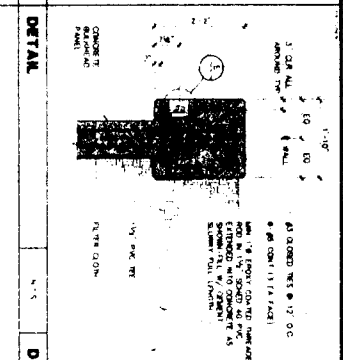
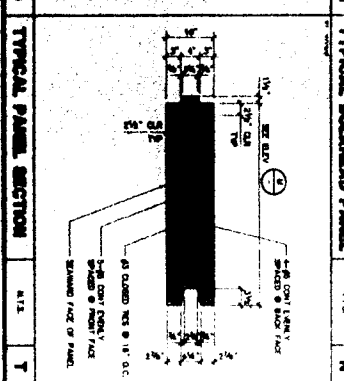
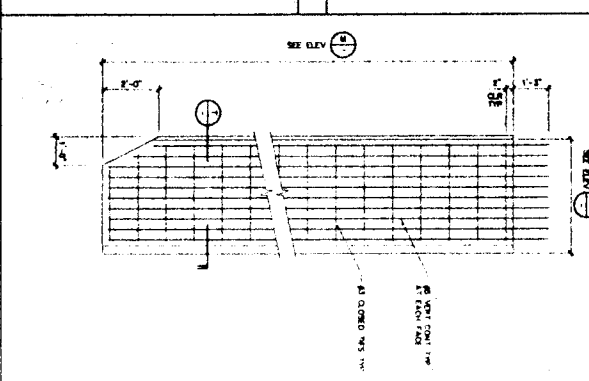
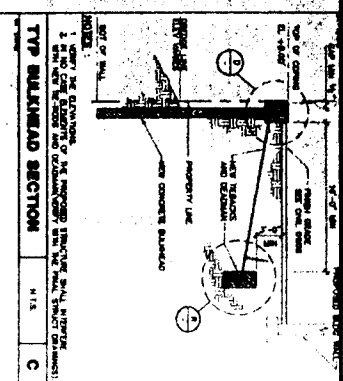
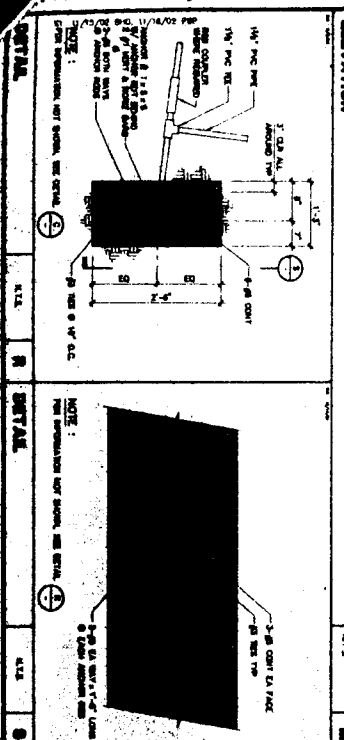
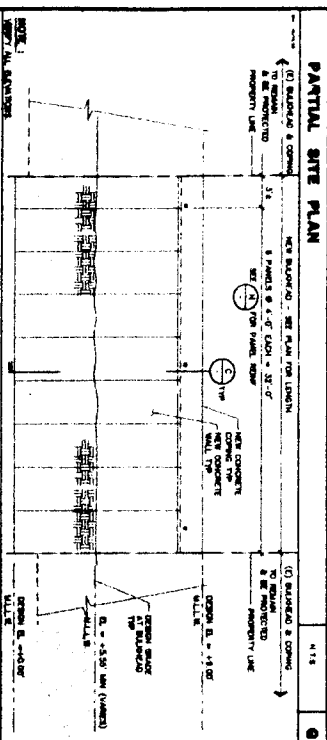
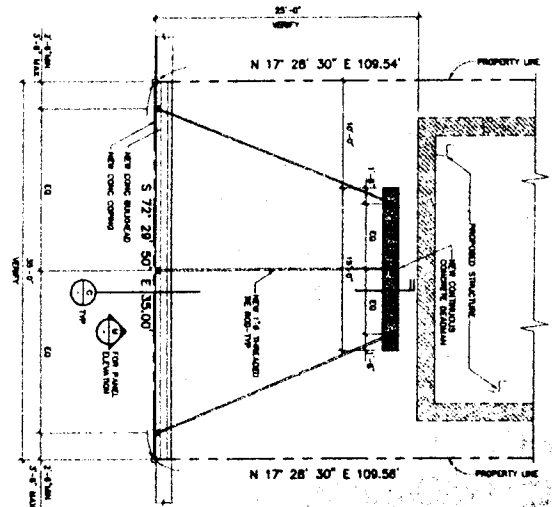
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NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 47 PAGE 26 COUNTY OF ORANGE

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1



COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1

8-1

WILLIAM SIMPSON & ASSOCIATES, INC.
CONSULTING STRUCTURAL ENGINEERS
2222 W. BAY BLVD., SUITE 200
NEWPORT BEACH, CA 92661

PROPOSED SEAWALL REPLACEMENT
1104 W. BAY AVE.
NEWPORT BEACH, CA 92661

STRUCTURAL GENERAL NOTES
& VICINITY MAP

Mr. Jan-Erik Palm
1104 W. BAY AVE.
NEWPORT BEACH, CA 92661

NO.	DATE	DESCRIPTION

