

CALIFORNIA COASTAL COMMISSION

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Filed: 6/18/03
49th Day: 8/6/03
180th Day: 12/15/03
Staff: MV-LBY
Staff Report: 10/16/03
Hearing Date: 11/5-7/03
Commission Action:

W 9 c**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER: 5-03-188****APPLICANT: Violet Snyder, Vonna Martin, Rita Lund, & Janice Fairbanks****AGENT: Mark Fairbanks****PROJECT LOCATION: 205 Orange Street, Newport Beach, Orange County**

PROJECT DESCRIPTION: Demolish existing single family residence and construct new 4,409 square foot, two story plus non-habitable attic and roof deck, 23 feet high, duplex with two attached, two car garages

Lot Area:	2537 square feet
Building Coverage:	1722 square feet
Pavement Coverage:	816 square feet
Landscape Coverage:	0
Parking Spaces:	4
Zoning:	SP-4 Residential
Ht above final grade:	23 feet

LOCAL APPROVALS RECEIVED: Newport Beach Approval in Concept No. 0720-2003**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Land Use Plan Amendment 1-03 A, City of Newport Beach Land Use Plan**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed project subject to one special condition which requires submittal of a drainage plan indicating that, to the maximum extent feasible, site drainage infiltrate on-site and any drainage that must be directed offsite will be treated/filtered. Landscaping shall use plants native to coastal Orange County or non-native drought tolerant plants that are non-invasive.

This condition is necessary in order to protect water quality to promote the biological productivity of coastal waters as required by Coastal Act Sections 30230 and 30231.

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-03-188 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit 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. **Drainage and Run-Off Control Plan**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant 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 plants native to coastal Orange County 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.

IV. **FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

A. **Project Description and Location**

The applicants propose to demolish an existing single family residence and construct a new 4,409 square foot, two story plus non-habitable attic and roof deck, 23 feet high, duplex with two attached, two car garages. Each garage will have one set of tandem parking spaces.

The subject site is located in the northwestern-most portion of the City, immediately inland of Pacific Coast Highway (Exhibit 2). The subject lot is 2,537 square feet, which is considered legally non-conforming since it was subdivided prior to August 2, 1943. The site is currently designated Retail and Service Commercial in the City's Certified Land Use Plan. The site is developed with a non-conforming single-family residence constructed in 1953. Surrounding development consists of multi-family residential to the north and west and commercial to the east and south. The site fronts on Orange Street, a predominantly residential street.

B. **New Development**

Section 30252 of the Coastal Act states, in part:

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

Section 30250 (a) of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

When a private development does not provide adequate on site parking, users of that development are forced to occupy public parking that would otherwise be available to visitors to the coastal zone. Thus, all private development must provide adequate on site parking to minimize adverse impacts on public access.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed project provides four parking spaces on site, adequate to meet the demand of the proposed two residential units.

Also, the proposed construction of a duplex is new development. The site is presently occupied by a single family residence which will be demolished. In addition, the area where the proposed new development is occurring is predominantly residential. Therefore, the proposed development is contiguous with existing development able to accommodate it.

Therefore, the Commission finds that the proposed development is consistent with Sections 30250 and 30252 of the Coastal Act.

C. Land Use

The Coastal Act encourages the provision of lower cost visitor and recreational facilities and provides that development should maintain and enhance public access to the coast. In the certified Land Use Plan (LUP) the subject site is designated Retail and Service Commercial. The City has submitted a request to amend the LUP (Newport Beach LUPA 1-03 A) to change the designation at the subject site to Two Family Residential, which would allow the proposed development. The LUPA is scheduled to be heard by the Commission at this same hearing. Commission staff is recommending approval of the proposed land use designation change. Use of the subject site as residential rather than commercial is acceptable for the following reasons.

The applicants are proposing to replace an existing single family residence with a new

duplex in an area designated by the certified Land Use Plan for Retail and Service Commercial (RSC) use. The certified Land Use Plan states that separate residential uses in the RSC area are prohibited. Accordingly, the proposed development is not consistent with the certified Land Use Plan.

However, the standard of review for development in Newport Beach is Chapter 3 of the Coastal Act and not the certified Land Use Plan. In areas, such as Newport Beach, where there is a certified Land Use Plan but which has no certified implementation program (which is required for a city to have a certified Local Coastal Program) the certified Land Use Plan is used for guidance, but is not the standard of review.

Coastal Act Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30252 states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by... (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

The site is currently developed with a single-family residence and is surrounded on two sides by residential development. The subject site, which fronts on Orange Street, is comparably sized to other residentially designated lots. The pattern of development along Orange Street is predominately residential, while the pattern of development along Pacific Coast Highway is predominantly commercial. As such, the use of this site for two-family residential development is consistent with the pattern of development in the surrounding area.

The proposed change will not affect priority visitor-serving development. The Retail Service Commercial designation does not restrict commercial uses to those that are solely tourist/visitor-serving in nature. As such, the site may be developed with any type of commercial use, including those that are neighborhood serving and/or community serving. The City has chosen to focus visitor-serving development in other areas of the City. The surrounding neighborhood is a mix of residential and small-scale commercial development that does not attract a substantial amount of visitors. There is no demonstrated demand for additional commercial space in this area of the City. Therefore, the proposed development will not have an adverse effect on the priority "visitor serving commercial recreational facilities" that are contemplated under Section 30222 of the Coastal Act

In addition, the City has found the small size of the subject site to preclude commercial development, as adequate parking could not be accommodated on site. However, the site will be able to accommodate a duplex with adequate parking to serve the proposed development. In addition, residents of the new duplex will be able to patronize the nearby commercial developments on foot, thereby minimizing the use of coastal access roads. As such, the proposed project is consistent with Section 30252 of the Coastal Act.

D. Water Quality

Section 30231 of the Coastal Act states:

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

The proposed residential development has impervious surfaces, such as roofs where pollutants such as particulate matter may settle, as well as driveways where pollutants such as oil and grease from vehicles may drip. In addition, landscaped areas may contain fertilizers and pesticides. During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution decreases the biological productivity of coastal waters.

The applicant has submitted a drainage plan that would collect site drainage and direct it to the street. No infiltration or other treatment is proposed. In addition, the yard areas are proposed as impervious surface (concrete). Drainage from the driveway is directed to the street untreated.

Adverse water quality impacts to coastal waters can be avoided or minimized by directing storm water discharges from roof areas and other impervious surfaces to landscaped areas and/or other pervious areas where pollutants may settle out of the storm water. In addition, reducing the quantity of impervious surfaces and increasing pervious water infiltration areas can improve water quality. Filtering runoff that must leave the site is a further method of improving the quality of storm water runoff.

Another way to improve water quality is the use of native/drought tolerant plantings. Low water use, drought tolerant, native plants require less water than other types of vegetation. As these plantings use less water than ornamental plants, incidents of over-watering causing excess runoff, is substantially reduced. As previously stated, reducing site runoff

reduces the extent of pollutants carried into the storm drain system and into coastal waters.

In order to maximize infiltration of drainage on-site, the 3 foot by approximately 80 foot concrete side yard areas could be replaced with permeable surface, such as gravel and stepping stones, turf block, or un-mortared brick. Such materials would also work well in the 5 foot by 30 foot front yard area, or the area could be landscaped. If landscaped, site drainage could then be directed to the landscaped areas. In addition, a trench drain or similar drainage device with a permeable bottom could be placed at the base of the driveway and at other appropriate locations on-site to filter runoff. Thus as proposed, water quality protection will not be maximized as required by Section 30231 of the Coastal Act. The project's drainage plan could feasibly be revised as described above to maximize permeable area and increase on-site infiltration and other forms of water filtration and treatment, thus improving water quality. Therefore, a special condition is imposed which requires that site drainage be retained on site to the maximum extent feasible, and any runoff that must leave the site be filtered prior to being discharged off site.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

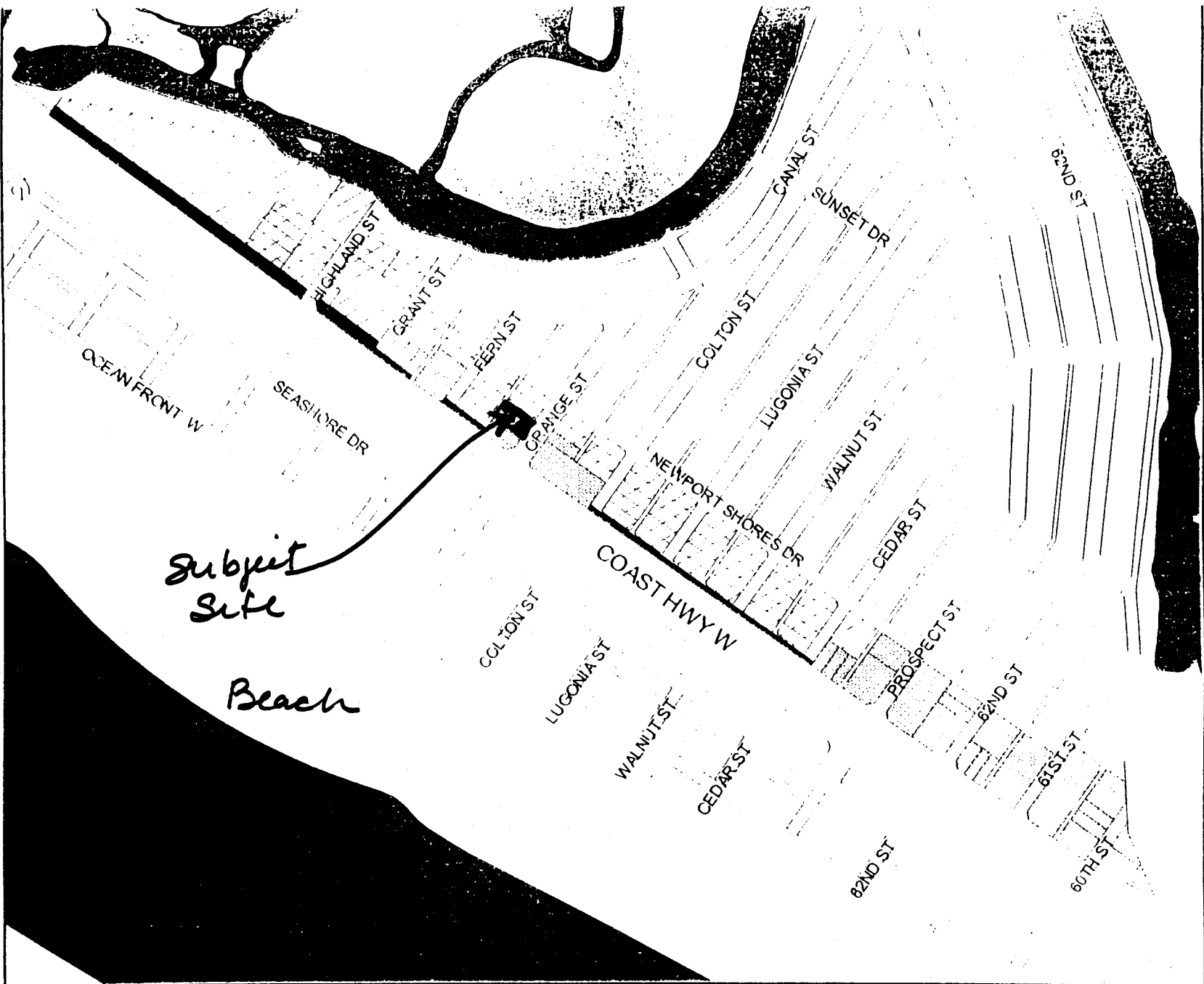
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As noted above, since the site is presently designated Retail and Service Commercial by the certified Land Use Plan, development of the site for residential purposes would be inconsistent with the land use. However, the site been used for residential purposes since the 1950's and is in a predominantly residential neighborhood. Due to its location, the site is more appropriately used for residential purposes than commercial purposes. As noted above, use of the site for residential purposes rather than commercial purposes will not adversely affect the City's ability to provide adequate visitor serving commercial facilities within the City.

The proposed development, as conditioned, 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

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

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which 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.



Attachment No. 1 of Ordinance No. 2002-22

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City of Newport Beach

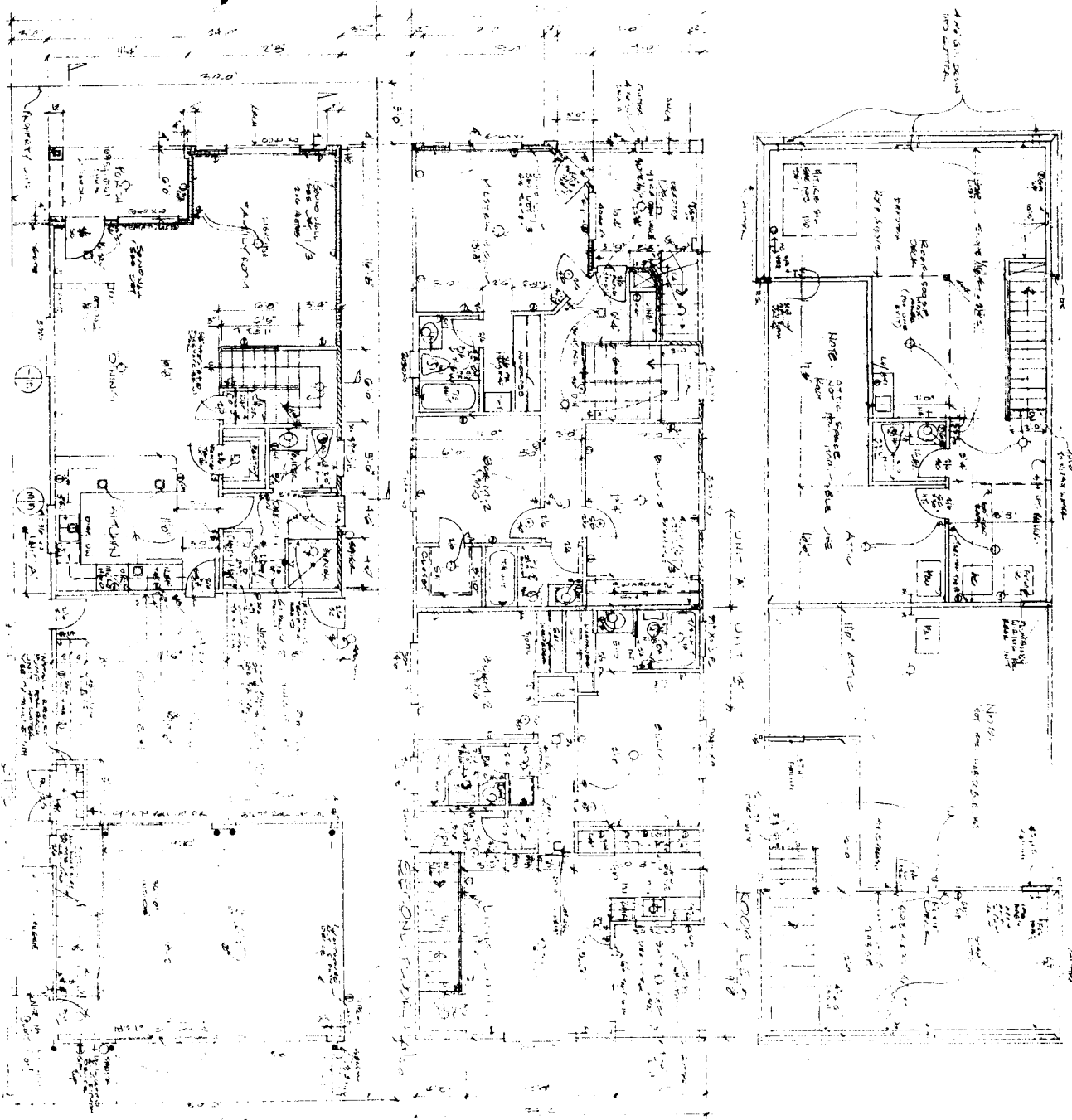
Newport Shores
Specific Plan District #4
Land Use Map

	Commercial
	Residential
	Landscape buffer



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Site plan



NOTE:
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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EXHIBIT #

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SCALE

