

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: October 21, 2002
 49th Day: December 9, 2002
 180th Day: April 19, 2003
 270th Day: June 25, 2003
 Staff: FSY-LB FSY
 Staff Report: April 17, 2003
 Hearing Date: May 6-9, 2003
 Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-02-256

APPLICANTS: Woodman Sylvan Properties, Attn: Harvey DePauw

PROJECT LOCATION: 503 East Balboa Boulevard, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Demolition of an existing residence and construction of a new mixed-use building (a 1,654 square foot single family residence over a 691 square foot retail space with 4 parking spaces. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **DENIAL** of the proposed project because it is not in conformity principally with Section 30252 policies of the Coastal Act. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking. Staff is recommending denial of the proposed project because the project would not provide adequate parking and would therefore be inconsistent with the public access policies of the Coastal Act. Furthermore, approving a project with a parking deficiency, even if the deficiency is minor, would lead over time to a significant adverse cumulative effect on coastal access. Private retail/commercial development that does not provide adequate on-site parking would promote the use of public parking spaces for a private development. Patrons of the retail/commercial development would consequently displace the public's ability to make use of public parking spaces, resulting in an adverse impact upon coastal access.

Though Commission staff is recommending denial of the project, the City of Newport Beach provided conceptual approval for the proposed project since the proposed parking for the development was determined to be adequate based upon the City's parking standards. Nonetheless, based upon the Commission's regularly used parking requirements, the project does not provide an adequate amount of parking and must be denied.

Furthermore, approvable feasible alternatives to the proposed project that comply with Coastal Act policies exist. Two feasible project alternatives are the no project alternative or a reduction in the intensity of development when compared to the proposed project. These alternatives are additional reasons why the current proposal cannot be approved.

LOCAL APPROVALS RECEIVED: Approval In Concept from the City of Newport Beach Planning Department dated July 29, 2002.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Letter from staff to Harvey DePauw dated August 29, 2002; *Balboa Pier Parking Lot and Main Street Access Improvements Final Report* dated May 12, 1999 by Austin-Foust Associates, Inc.; and *Preliminary Foundation Soils Exploration at 503 East Balboa Boulevard Newport Beach, California* dated May 6, 2002 by Geo-Etka, Inc.

STAFF NOTE:

The subject application was scheduled for the March 2003 hearing. On February 24, 2003, staff received a letter dated February 20, 2003 from the agent requesting that the project be postponed. This postponement was requested in order for the applicant to have additional time to assess the parking situation in the area before the public hearing. Staff postponed the project and removed it from the March 2003 hearing agenda. In connection with its postponement request, the applicant submitted a 90 day extension, which was approved when staff signed it on March 27, 2003. The "270th day" under the Permit Streamlining Act is therefore June 25, 2003.

EXHIBITS

1. Central Balboa Area Map
 2. Location Map
 3. Assessor's Parcel Map
 4. Roof Plan and Drainage Plan
 5. Floor and Elevation Plans
-

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission vote **NO** on the following motion and thereby adopt the following resolution to deny the coastal development permit application. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-02-256 for the development proposed by the applicant.

B. Staff Recommendation of Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. **Resolution to Deny the Permit**

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. **FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

A. **PROJECT LOCATION AND DESCRIPTION**

1. **Project Location**

The subject site is located at 503 East Balboa Boulevard approximately 400 feet from the public beach and is not located between the sea and the first public road paralleling the sea (Exhibits #1-3). The project area and its immediate vicinity are characterized by mixed commercial recreational and residential uses in the area known as "Balboa Village" on the Balboa Peninsula in the City of Newport Beach (Exhibits #1-2). The boundaries of the project area are Adams Street, Edgewater Street, A Street, Peninsula Park and the Balboa Pier Parking Lot. The area consists of commercially developed uses and is a unique mixture of visitor-oriented and neighborhood retail and service use area. Some of these commercially developed uses, which are located on the ground floor, have residential units located above them. North of the project site is East Balboa Boulevard; South of the project site is an alley, a residential structure, Oceanfront, which is a major pedestrian walkway in this area, the Balboa Pier Parking Lot and the beach and to the East and West are existing residential and commercial structures.

The project site is within the Recreational and Commercial District of the Central Balboa Area according to the City's certified Land Use Plan (LUP). Residential development is permitted on the second floor in conjunction with ground floor commercial development.

2. **Project Description**

The proposed project consists of demolition of an existing residence and construction of a new 26 foot above finished grade mixed-use building (a 1,654 square foot single family residence with a 126 square foot deck over a 691 square foot retail space and 875 square foot two-car garage and one-car garage and one-car covered carport) (Exhibits #4-5). No grading is proposed.

B. PUBLIC ACCESS/PARKING

Section 30252 of the Coastal Act states, in relevant 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...

Section 30213 of the Coastal Act states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

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, among other means, providing adequate parking. In addition, Section 30252 of the Coastal Act states that new development should maintain and enhance public access to the coast by providing commercial facilities within adjoining residential development that will minimize the use of coastal roads. Section 30213 of the Coastal Act states that lower cost visitor and recreational facilities, such as the availability of public parking for public beach use, shall be protected, encouraged and where feasible, provided.

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 influx of visitors during the summer. More specifically, the project area and its immediate vicinity are characterized by mixed commercial recreational and residential uses in the area known as "Balboa Village" on the Balboa Peninsula in the City of Newport Beach; and due to its location next to the ocean, the area supports visitors to the coast. The project area serves as a popular destination point for the public to come and enjoy the visitor and recreational facilities since it is easily accessible for those people going to the beach, Balboa Pier, Peninsula Point or visiting the Balboa Village area. In addition, Oceanfront, which serves as a major pedestrian path along the beach and provides lateral access for the public in this area, is not far from the project site.

Due to its location, the project site is ideally suited to support visitors to the beach and surrounding area. 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.

Although the proposed project is a commercial development adjoining residential development, it will not reduce the use of coastal roads. The project site is already located on a coastal road and will result in an intensification of use. In addition, the project site is located in an area that serves as a popular destination point for the public to come and enjoy the lower cost visitor and recreational facilities located in the area. Patrons to these lower cost recreational uses would typically come from afar and park in public parking spaces. However, if adequate on-site

parking for commercial developments is not provided, such as the proposed project, these spaces would be occupied by patrons to these private commercial areas. Therefore, adequate on-site parking is necessary to minimize adverse impacts on public access.

1. **Parking Impacts**

Section 30252 of the Coastal Act mandates that new development maintain and enhance public access to the beach. An adequate quantity of on-site parking spaces to accommodate new development helps to maintain this public access. However, public access can be adversely affected if private retail/commercial development in the coastal zone does not provide adequate on-site parking. In cases of inadequate parking, patrons of the retail/commercial development who arrive by private car would displace public beach goers from utilizing public parking spaces.

The project site is within the Recreational and Commercial District of the Central Balboa Area stated in the City's LUP. Residential development is permitted on the second floor in conjunction with ground floor commercial. The applicant is proposing two types of uses on-site: 1) residential and 2) retail. The retail component would be located on the 1st floor and the 2nd floor would comprise the residential component.

The City of Newport Beach parking standard of two spaces per residential unit requires the same amount of parking as the Coastal Commission generally requires. Thus, there is no issue in regards to the parking to be supplied by the residential component of this project. However, in this case, the City of Newport Beach parking standard for the proposed retail component of the overall proposed project does not satisfy the Commission as providing adequate parking. The City requires one parking space per 350 square feet, and the Commission concludes that one (1) parking space should be required per 225 square feet of gross floor area.

According to the to the City of Newport Beach Zoning Code regarding this area (Specific Plan District #8: Central Balboa) and the proposed type of use, the applicant has provided adequate parking for the retail component. For the retail component of the project, the City requires that a parking ratio of one (1) space per 350 square feet of gross floor area be achieved. The proposed retail portion of the project is 691 square feet in size. Based on the City standard of 1 space per 350 square feet of gross floor area for retail uses, the required parking totals two (2) spaces.

Though the proposed parking is adequate based on the City's parking standards, it does not appear adequate to the Commission's commonly used parking standards in the surrounding areas (see, e.g., CDP's: 5-00-406 (Fluter); 5-01-063 (Balboa Inn); and 5-01-104 (Fluter)). The Commission typically requires that one (1) parking space be provided per each 225 square feet of gross floor area for retail and commercial service uses. The proposed retail portion of the project is 691 square feet. Based on the Commission's common practice of 1 space per 225 square feet of gross floor area for retail and service commercial uses, the parking requirement is for three (3) spaces. The applicant is only proposing two (2) spaces for the retail development. Therefore, the retail development is deficient by one (1) space based on the Commission's typically applied parking standard.

The applicant, to demonstrate that adequate parking is available in the surrounding area, submitted a copy of the *Balboa Pier Parking Lot and Main Street Access Improvements Final Report* dated May 12, 1999 by Austin-Foust Associates, Inc. However, this parking study was not intended for the subject site, which is located within this "Balboa Village" area, was not site specific to the applicant's proposed project, and consequently does not substantiate that the proposed development provides adequate on-site parking consistent with the requirements of Section 30252 of the Coastal Act. This study was intended for the development of the Balboa Village Improvement Plan (CDP #5-02-029), which was approved by the Commission in August of 2001.

The key elements of the Balboa Village Improvement Plan (CDP #5-02-029) were to widen the sidewalks to encourage pedestrian passage along Balboa Boulevard and the side streets connecting Oceanfront and Edgewater and to solve existing flooding problems of the Balboa Village area. In order to encourage pedestrian passage, the quantity of existing parallel parking was reduced. The loss of parallel parking spaces was offset by the net gain of metered parking spaces in the proposed Balboa Pier Parking Lot. Thus, this study was not designed to, and does not, address the parking demands for the subject site. Therefore, based on the lack of a site-specific parking evaluation, the submitted report contains insufficient information to substantiate that the proposed development would provide adequate parking. A site-specific parking study was requested, however no such study was submitted.

As noted previously, the proposed project is located in a visitor oriented commercial area. This commercial area is also located in close proximity to a popular beach, which is located along the Balboa Peninsula. Parking demand in such areas with a high visitation rate for both the beach and the commercial area would tend to be higher than a typical commercial center which is not located next to a popular beach. Additionally, Section 30213 of the Coastal Act mandates that lower cost visitor serving public facilities shall be protected, encouraged and where feasible, provided. By preventing the public from using the public parking spaces necessary for the public to access the lower cost visitor and recreational facilities located in the area, the project is inconsistent with Section 30213 of the Coastal Act.

As noted above, both beach access and visitor serving commercial development are priority uses. A proposed project must be consistent with all Coastal Act policies in order to be approvable. Although this proposal is in a location well suited to provide a visitor serving use, the proposal is for a "retail" use on the ground floor, which will not necessarily be visitor-serving. Moreover, even if it does provide a visitor-serving use, it is imperative that proposed commercial development provide adequate parking, based on the Commission's evaluation of parking demand, to assure that existing public parking spaces are not over-used and are retained for beach goers. Section 30252 of the Coastal Act mandates that new development should maintain and enhance public access to the coast by, among other means, providing adequate parking. If new development does not provide adequate parking in this location, the patrons of the development would compete and displace the beach going public from the public parking spaces. This adverse parking impact would consequently make the proposed project inconsistent with Section 30213 of the Coastal Act as well, by preventing the public from using the public parking spaces necessary for the public to access the lower cost visitor and recreational facilities located in the area. This adverse potential exists as the Commission's review of CDP 5-02-029 noted that the area is highly used by the

both the patrons of the commercial development and beach goers, which makes parking very competitive.

Furthermore, even though this project is only deficient by one (1) space, which would not normally be considered significant, overtime the incremental approval of these parking deficiencies would result in a significant adverse cumulative impact. Overtime, the cumulative loss of public parking spaces for beach goers would be inconsistent with Sections 30213 of the Coastal Act which mandates that lower cost visitor serving uses be protected. Protecting beach access can be accomplished, pursuant to Section 30252 of the Coastal Act by requiring the proposed retail development to supply adequate parking to serve the development.

2. Conclusion

Based on the Commission's typically imposed parking standard of one (1) space per each 225 square feet of gross floor area for retail service use, the proposed development is deficient by one (1) parking space. Therefore, the Commission finds that the proposed development does not have adequate parking. Inadequate on-site parking will create a situation where the patrons of the retail development will displace beach visitors from public parking spaces. Furthermore, the approval of projects with deficient parking would result, over time, in a significant adverse cumulative effect on the public's ability to access the beach. Therefore, the proposed development will have an adverse impact upon public access. Therefore, the Commission finds that the proposed development is not consistent with Sections 30252 and 30213 of the Coastal Act. As discussed below, there are feasible alternatives such as reduction in the intensity of development of the proposed project. Therefore, since the proposed development is not consistent with Sections 30252 and 30213 of the Coastal Act and feasible alternatives are available which would result in no adverse impact upon coastal access, the project must be denied.

C. PROJECT ALTERNATIVES

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owners' reasonable investment backed expectations of the subject property. The applicant already possesses a substantial residential development of significant economic value on the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. With this alternative, the applicant would be able to continue to use the existing home. This alternative would not result in the construction of a new structure with deficient parking, which would adversely impact public access.

2. Reducing the Intensity of the Development

Another alternative to the proposed project would be removal of one of the components of the proposed project. For example, the proposed project could be modified to only consist of a retail use. Under this alternative the parking spaces that would otherwise have been used by the residential component could be allocated to the retail use.

D. 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 LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. Since the City has an LUP but no LCP, the policies of the LUP are used only as guidance.

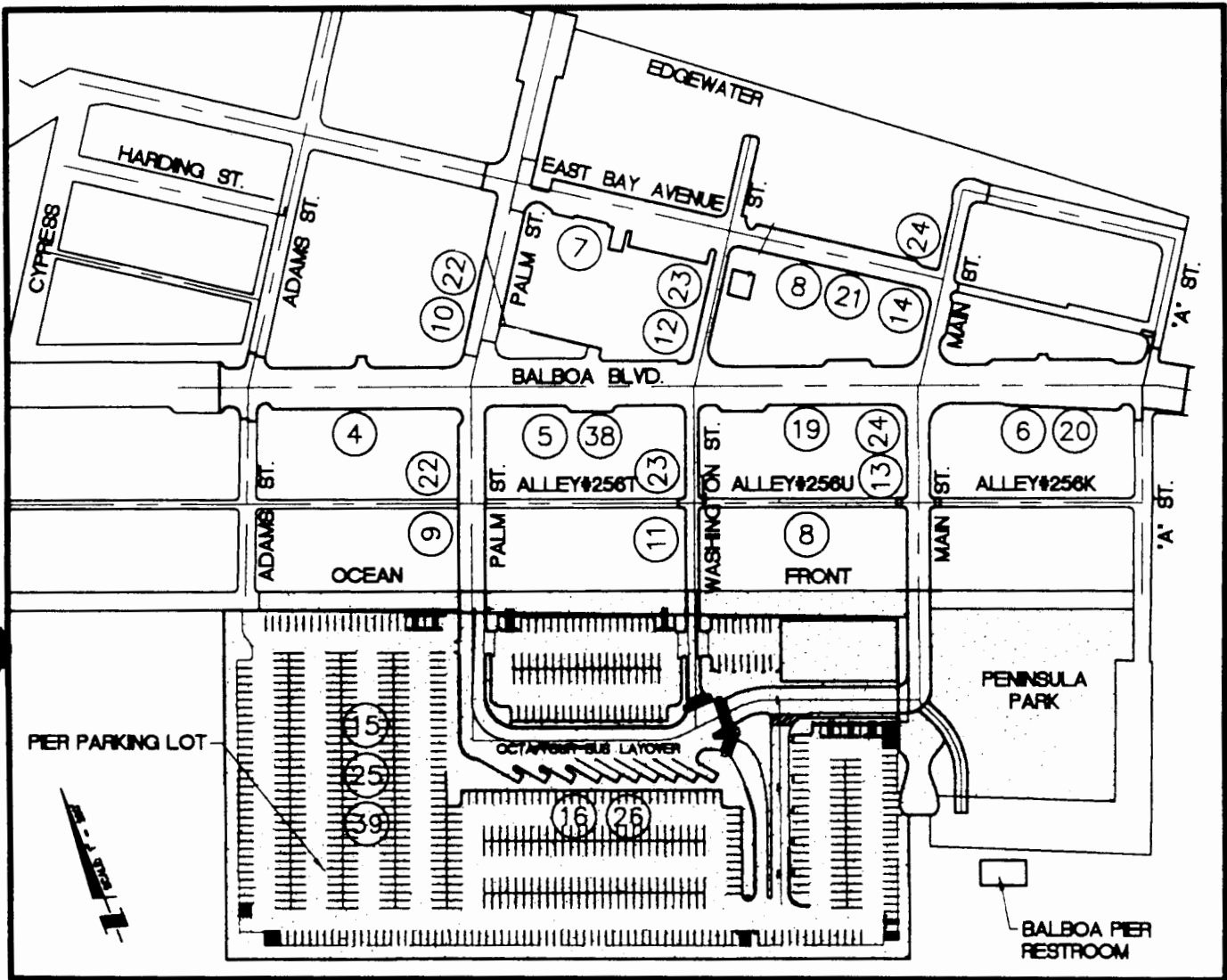
The construction of the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act discussed previously, specifically Section 30252. Approval of the proposed development and construction of the project would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act, as required by Section 30604(a). Therefore, approval of the project would violate Section 30604(a), and the project must be denied.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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 described above, the proposed project, and the cumulative effects of similar projects, would have significant adverse impacts to public access. There are feasible alternatives available, such as the no project alternative and reducing the intensity of development of the proposed project. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives that would lessen significant adverse impacts that the activity would have on the environment. Therefore, the project must be denied.

CENTRAL BALBOA AREA



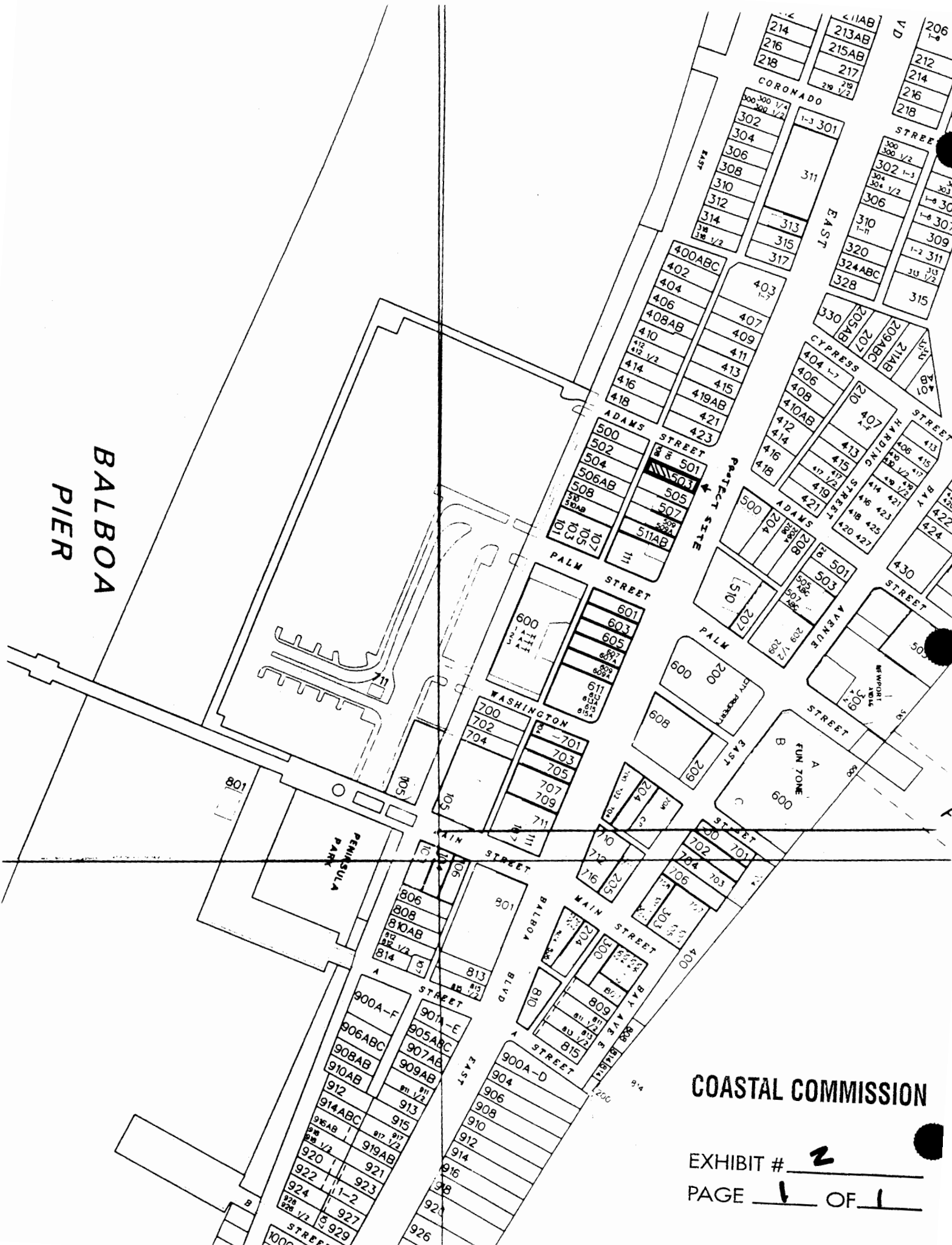
LOCATION MAP

SCALE 1" = 200'

COASTAL COMMISSION

EXHIBIT # 1
 PAGE 1 OF 2

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EXHIBIT # 2
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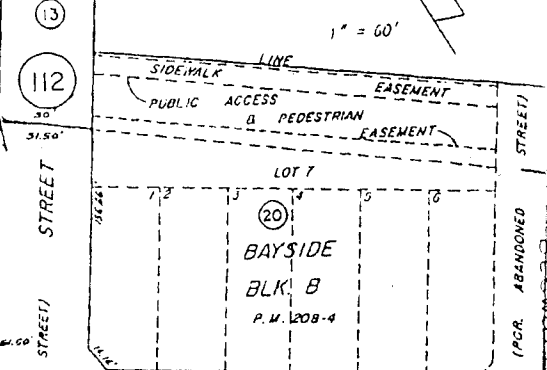
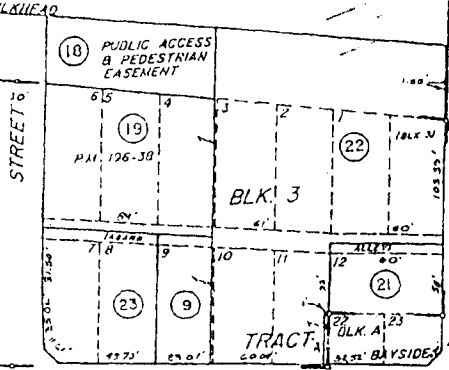
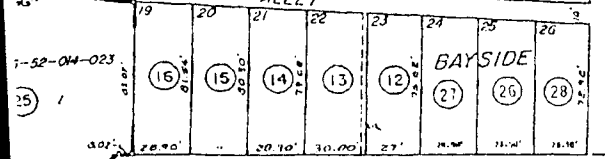
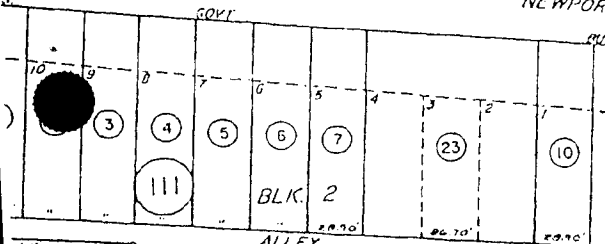
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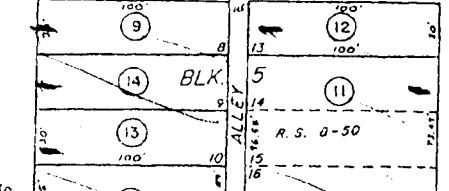
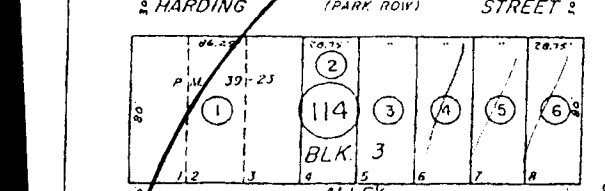
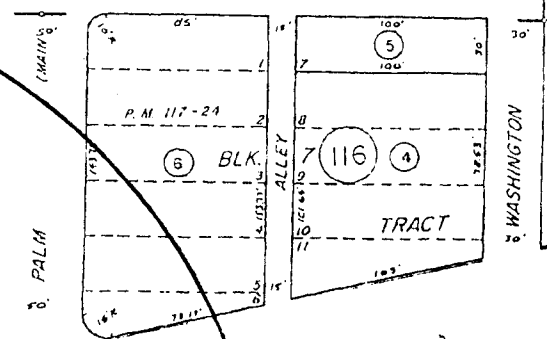
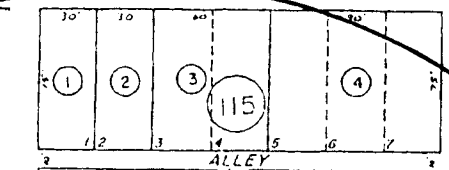
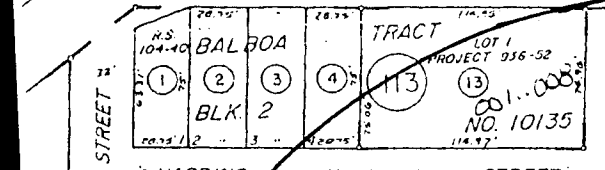
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FERRY LANDING

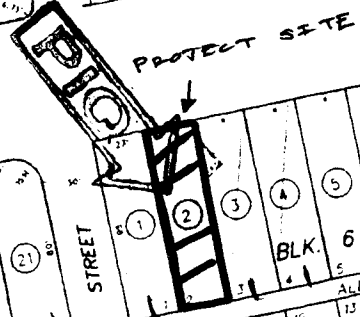
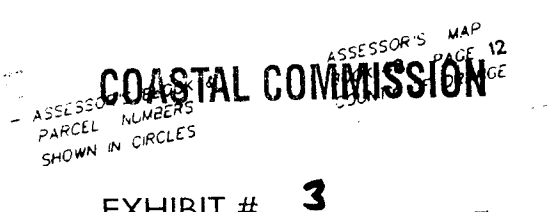
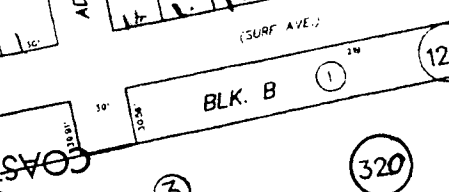
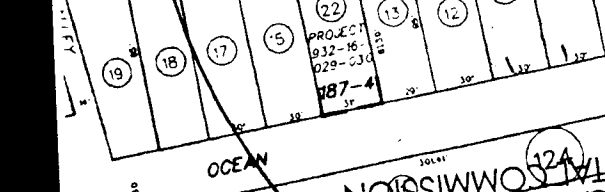
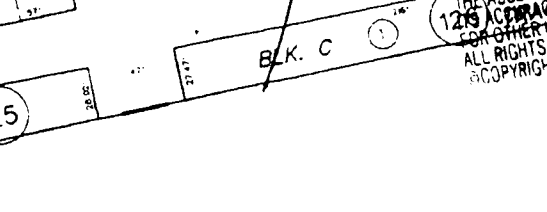
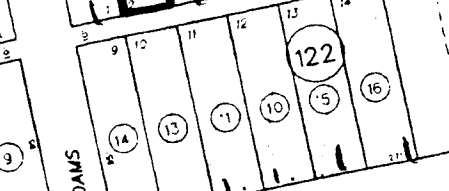
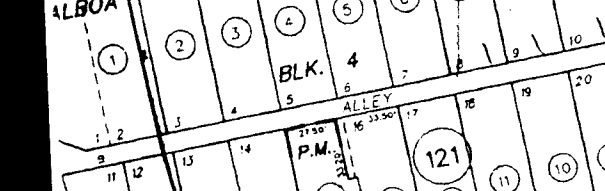
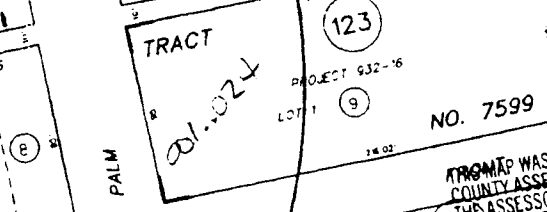
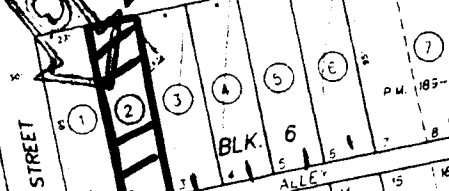
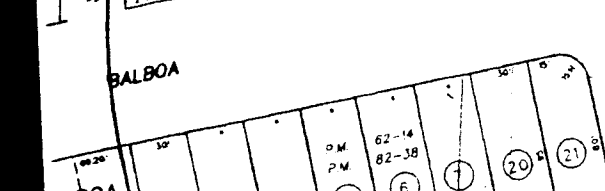
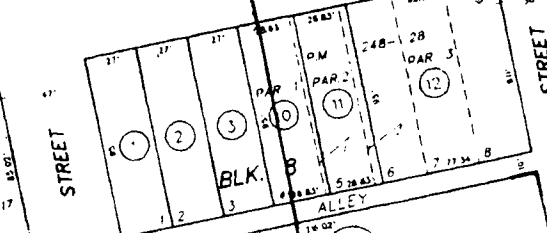
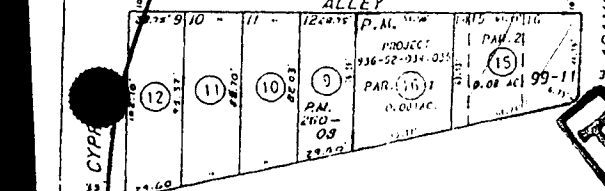
1" = 60'



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BOULEVARD



BLK. A

OCEAN

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RECEIVED BALBOA TRACT PARCEL MAP

MARCH 1949

COASTAL COMMISSION ASSESSOR'S MAP PAGE 12

EXHIBIT # 3 PAGE 1 OF 1

FROM MAP WAS COUNTY ASSES THE ASSESSOR'S MAP FOR OTHERS' P & COPYRIGHT

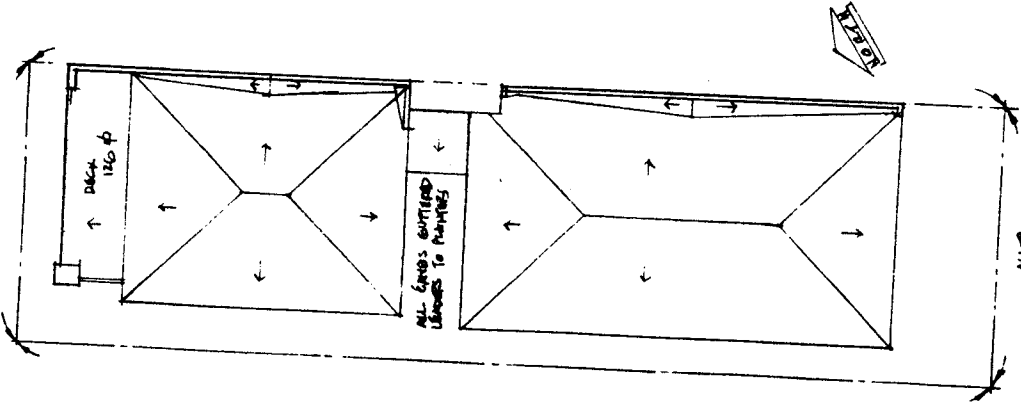
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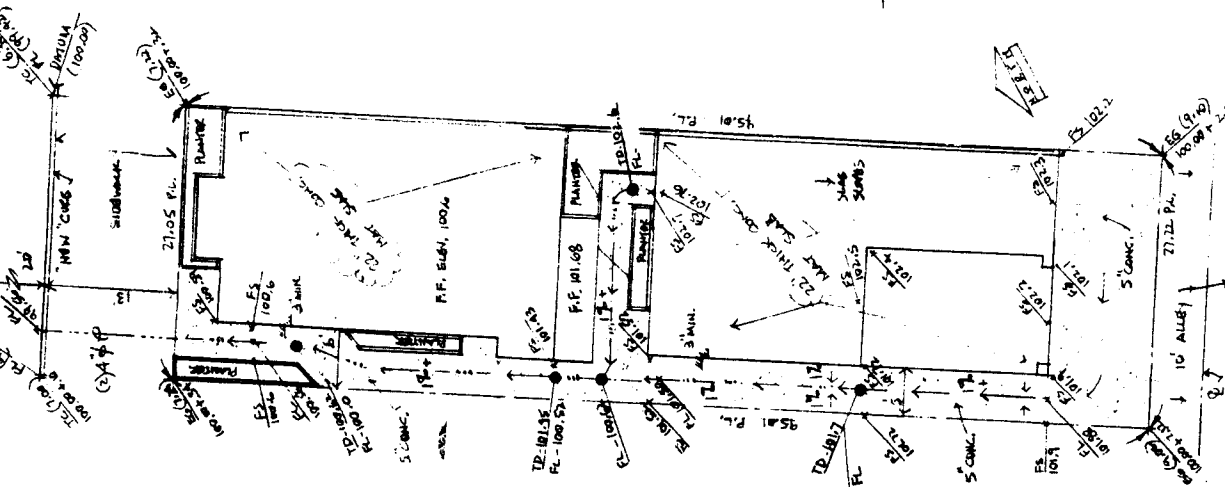
PAGE 1 OF 1
 EXHIBIT # 4

COASTAL COMMISSION

ROOF PLAN



DRAINAGE PLAN

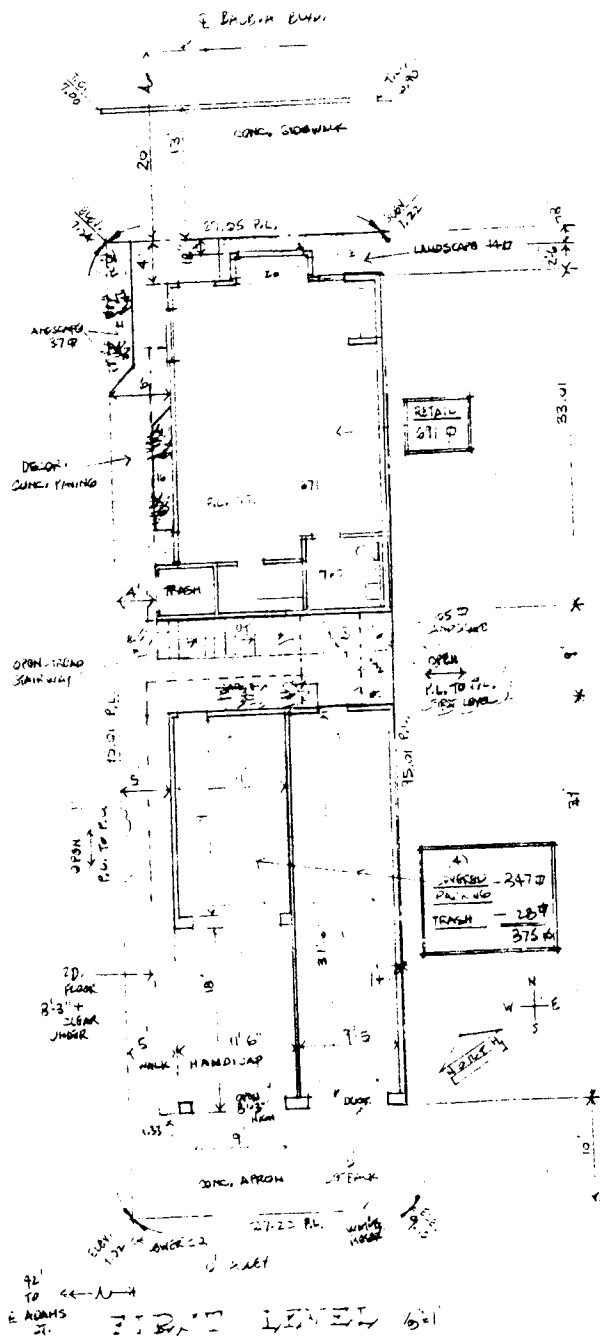
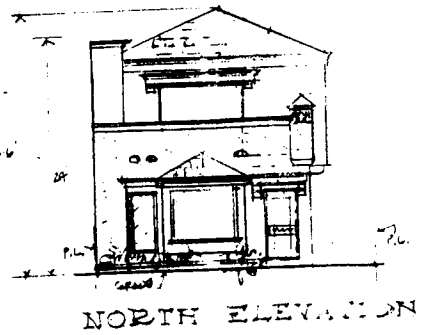
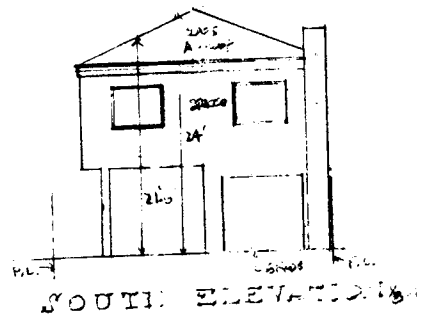
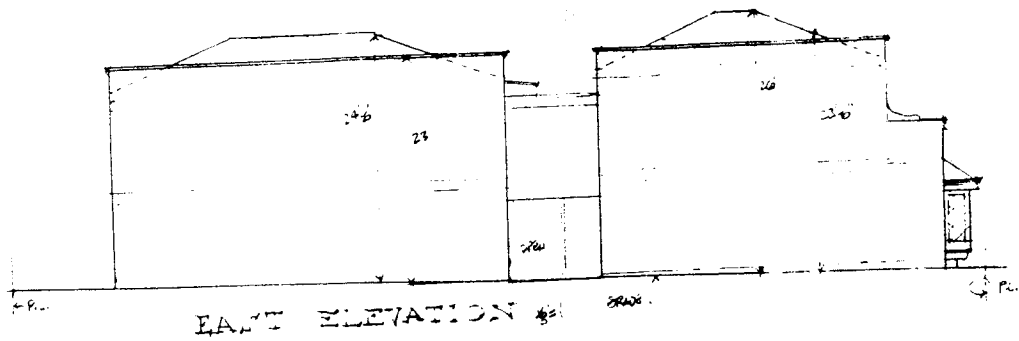


- Add work shall conform to 1015 of the Newport Beach Municipal Code (11)
- Work shall be controlled by waterline and/or utility (existing)
- Work shall be limited from 7:00 AM to 6:30 PM Monday through Friday
- 8:00 AM to 5:00 PM Saturdays; and no work on Sundays and Holidays
- PER SECTION 10-28 of THE NEMC
- HOUSE EXCAVATION, DRAINAGE AND REMOVAL SHALL BE CONTROLLED PER SECTION 10-28 OF THE NEMC
- THE STATED SET OF APPROVED PLANS SHALL BE ON THE JOB SITE AT ALL TIMES
- PERMITS AND CONTRACTOR ARE RESPONSIBLE FOR LOCATING AND PROTECTING ALL EXISTING UTILITIES AND MAINTAINING THEM FROM ALL EXCAVATION AND SURFACE FAILURE TO FOLLOW INSTRUCTIONS AND/OR HAVE REMOVED EXCAVATION/SURFACE DEVICES ON SITE AT THE APPROPRIATE TIMES SHALL RESULT IN PENALTIES OF THE CORPORATION AND OTHERS SHALL RESULT IN ALL MATERIAL AND WORK SHALL BE REMOVED FROM THE SITE NEMC 17.32.1
- NO PAINT, PLASTER, CONCRETE, SOIL, MORTAR, OR OTHER RESIDUAL SHALL BE ALLOWED TO ENTER STREETS, COURTS, YARDWAYS, OR OTHER PUBLIC AREAS
- SEPARATE FENCING REQUIRED FOR FENCES
- MINIMUM DRAINAGE GRADIENT 1% ALL PAVED AREAS
- EXCAVATION PERMITS FROM PUBLIC WORKS REQUIRED FOR IMPROVEMENTS WITHIN PUBLIC RIGHT OF WAY INCLUDING INCLUDING FROM THE PAVED CURB
- 3' CLEARANCE MINIMUM FROM ADJACENT SIDE WALKS
- DRAIN LINES 4" φ ABS SCHEDULE 40 - 11 1/8" V" ABOVE GROUND FL
- SAND BAG SLOTTING CONTROL AT HIGHWAY WALKS REQUIRED FOR WALK BETWEEN OCTOBER 15 AND MAY 15
- REQUIRED INSTRUCTIONS FOR DRAINAGE PIPE AND FINAL INSPECTION

- ALL PLANNERS TO HAVE CONCRETE BATTERIES AND BE COMPLETED WATER PROOF WITH COPPER DRAIN LINES AT BASE ON TO ADJACENT PAVED WALK WAYS (3/4" φ @ 12" OC)
- BALCONY PENINSULA HAS BEEN DETERMINED TO HAVE SOIL CONDITIONS SUBJECT TO LIQUIDIFICATION WITH A HIGH WATER TABLE; REQUIRING THAT SLABS AND FOOTINGS SHALL HAVE NO SOURCE OF INDUCED EROSION OR DISPLACEMENT OF COMPACTED SAND SOILS OR OF ANY SITUATION WHICH WOULD CAUSE FURTHER SOIL LIQUIDATION

EG = EXISTING GRADE (EXISTING FINISH)
 FS = FINISH GRADE
 FL = FLOW LINE (NEW FINISH)
 TD = TOP OF DRAIN
 ● FUSH AND ALSO DRAIN V/GROVE
 TW = TOP OF PLUMBING WALL

RESIDENCE OVER RETAIL
WOODMAN SILVAN
 PROPERTIES
 503 E. SALBON BLVD.
 NEWPORT BEACH



RESIDENCE 1654
 PERM 491

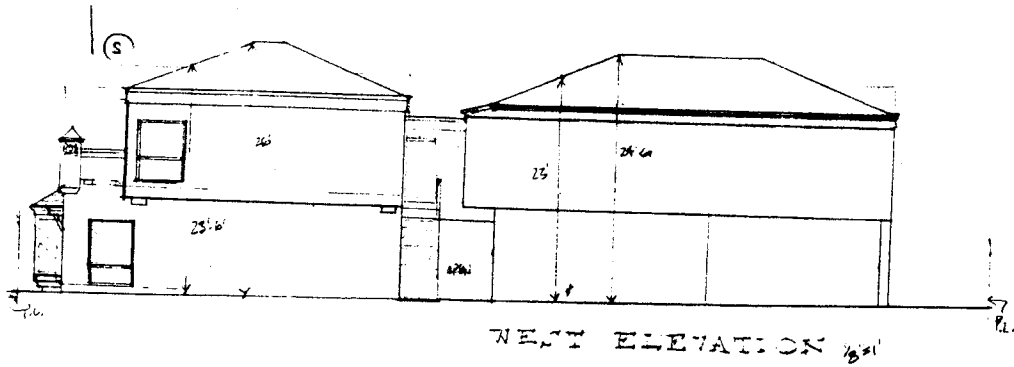
COASTAL COMMISSION

EXHIBIT # 5
 PAGE 1 OF 2

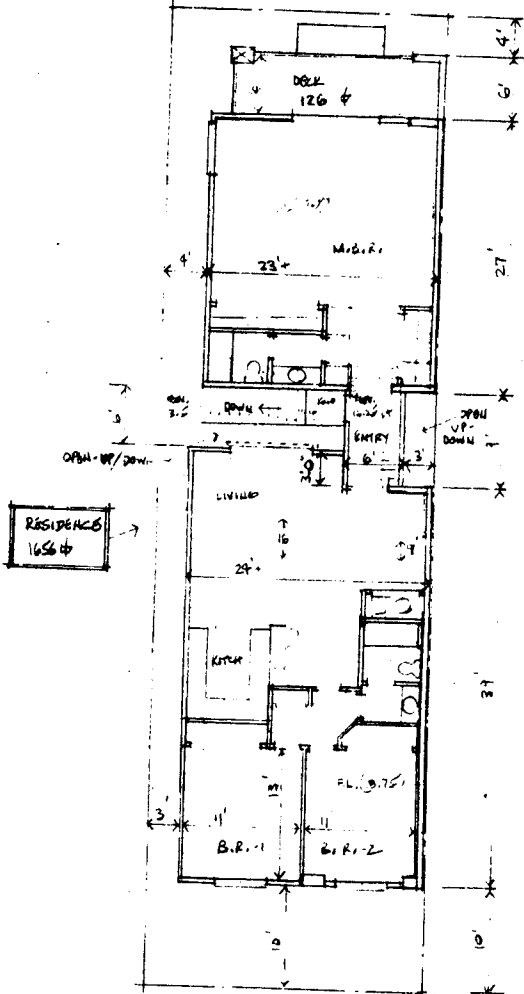
LOT 2 - BLOCK 6 - BANGOR TRACT

RESIDENCE OVER RETAIL
WOODMAN - SYLVAN
 PROPERTIES
 503 E. BALBOA BLVD.
 NEWBERRY BEACH

WOODMAN - H. DEPAUW
 1514 MORRIS ST. #B
 STUDIO CITY, CA. 91604
 TEL. 506-4660



11/23/82



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EXHIBIT # 5
 PAGE 2 OF 2

WOODMAN -SYLVAN
 PROPERTIES
 503 E. RALPH BLVD.
 NEWPORT BEACH

SECOND LEVEL