

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Staff:
Staff Report:
Hearing Date:
Commission Action:

FSY-LB FSY
August 21, 2003
September 10-12 2003

**TH 15b****RECORD PACKET COPY****STAFF REPORT: REVISED FINDINGS**

APPLICATION NO.: 5-02-302

APPLICANTS: Neil & Kerry Barth

AGENT: D.B. Neish, Inc.

PROJECT LOCATION: 1806 East Balboa Boulevard & 1813 East Bay Avenue, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolish an existing single-family residence, garage & storage structure at 1806 East Balboa Boulevard and adjust lot lines. No further development is proposed at 1806 East Balboa Blvd. Demolish an existing single-family residence, garage and storage structure and construct a 9,488 square foot 2-story single-family home with a basement, attached 921 square foot garage and rear yard (bayside) pool, with 785 cubic yards of grading & export and adjust lot lines, at 1813 East Bay Avenue.

DATE OF COMMISSION ACTION: May 6, 2003

COMMISSIONERS ON PREVAILING SIDE: Commissioners Desser, Hart, Luna, Curtis, Ruddock and Burke.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of May 6, 2003 approving the proposed project. The major issues raised at the public hearing related to the project's visual compatibility with community character and whether the proposed development would cause the fill of open coastal waters. These issues relate to policies listed in Sections 30251 and 30233 of the Coastal Act.

The Commission approved the project subject to **nine (9) Special Conditions**. In their approval, the Commission modified Commission Staff's proposed **Special Condition No. 5** to eliminate a requirement that would have required the project to adhere to an "accessory structure stringline." The Commission found that since the proposed accessory development was located inland of both the intertidal zone and the line of existing bulkheads located on properties that surround this site it conformed visually with existing community character. These findings have been incorporated beginning on page 17.

In summary, the following **nine (9) Special Conditions** were imposed on the proposed project: **1) geotechnical conformance; 2) assumption of risk; 3) no future shoreline protective device; 4)**

future development restriction; **5)** the permittees shall undertake development in accordance with the approved final plans; **6)** storage of construction materials, mechanized equipment and removal of construction debris; **7)** a final drainage and run-off control plan; **8)** a revised landscape plan, and **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. On June 6, 2003, the Notice of Intent to Issue Permit was issued.

LOCAL APPROVALS RECEIVED: Approval In Concept #1879-2002 from the City of Newport Beach Planning Department dated August 19, 2002; Approval In Concept #0637-2002 from the City of Newport Beach Planning Department dated June 12, 2002; Lot Line Adjustment No. LA2001-002 (PA2001-156) from the City of Newport Beach Planning Department dated September 5, 2001; and Parcel Map No. NP20020-020 (PA2002-143) from the City of Newport Beach Planning Department dated August 14, 2002.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; *Geotechnical Investigation, New Residence, 1813 East Bay Avenue, Newport Beach, CA (Job No. 2066)* prepared by Coleman Geotechnical dated December 28, 2001; Letter from Staff dated September 27, 2002; Anonymous letter dated October 18, 2003; Letter from Charles Howell dated October 21, 2002; Letter from Coleman Geotechnical (Job No. 2066) dated October 18, 2002; Letter from Staff dated November 22, 2002; Letter from Charles Howell dated December 2, 2002; *Waste Discharge Requirements, Order No. 98-67, NPDES No. CAG998001 (De Minimum Discharges), Dewatering at Various Locations* from the California Regional Water Quality Control Board (RWQCB) dated November 8, 2002; Letter from Staff dated January 31, 2003; Letter from Harold Larson to Tim (Charles) Howell dated February 3, 2003; Letter from Charles Howell dated February 3, 2003; and *Coastal Hazard Study for New Development at 1813 East Bay Drive* prepared by Skelly Engineering dated December 5, 2002.

EXHIBITS

1. Vicinity Map
 2. Assessor's Parcel Map
 3. 1813 East Bay Avenue Site Plan
 4. 1813 East Bay Avenue Floor Plans
 5. 1813 East Bay Avenue Sections & Elevations
 6. 1813 East Bay Avenue Roof Plan
 7. 1813 East Bay Avenue Foundation Plan for Home
 8. 1813 East Bay Avenue Foundation Plan for Pool
 9. 1813 East Bay Avenue Lot Line Map
 10. 1813 East Bay Avenue Stringline Plan
 11. 1813 East Bay Avenue Stringline Plan on Aerial
 12. 1813 East Bay Avenue Stringline Plan by Commission Staff
 13. 1813 East Bay Avenue Drainage Plan
 14. 1813 East Bay Avenue Landscape Plan
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STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission adopt the revised findings in support of the Commission's action of May 6, 2003 in approving coastal development permit application 5-02-302 with conditions."

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the May 6, 2003 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for its approval of coastal development permit application 5-02-302 with conditions on the grounds that the findings support the Commission's decision made on May 6, 2003 and accurately reflect the reasons for it.

I. 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.

II. **SPECIAL CONDITIONS**

1. **Geotechnical Recommendations**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the engineering geologic investigations: *Geotechnical Investigation, New Residence, 1813 East Bay Avenue, Newport Beach, CA (Job No. 2066)* prepared by Coleman Geotechnical dated December 28, 2001; and Letter from Coleman Geotechnical (Job No. 2066) dated October 18, 2002.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, all the final design and construction plans and evidence that an appropriately licensed professional has reviewed and approved those final plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic investigations approved by the California Coastal Commission for the project site.
- C. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

2. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. **No Future Shoreline Protective Device**

- A(1). By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-02-302, including, but not limited to, the residence and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants

hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- A(2). By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the house, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-02-302. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-02-302. Accordingly, any future improvements to the single-family house and associated structures authorized by this permit, including repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-02-302 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Final Project Plans

The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans 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.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittees shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- C. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

- D. All mechanized machinery shall be removed from the beach at the end of the working day. No storage of mechanized equipment is allowed on the beach;
- E. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent run-off/sediment transport into Lower Newport Bay;
- F. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

7. **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 final drainage and run-off control plan showing roof drainage and run-off from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants common to coastal Orange County and/or non-native drought tolerant plants, which are non-invasive.
- B. The permittees 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.

8. **Revised Landscaping Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a revised landscaping plan to the Executive Director for review and approval. The revised landscaping plans shall only consist of native plants common to coastal Orange County and/or non-native drought tolerant plants which are non-invasive.
- B. The permittees 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.

9. **Deed Restriction**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the

Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. LOCATION, PROJECT DESCRIPTION AND BACKGROUND

1. Project Location

The subject site consists of the properties located at two separate locations at 1813 East Bay Avenue and 1806 East Balboa Boulevard within the City of Newport Beach, Orange County (Exhibits #1-2) and are located within an existing urban residential area. The 1813 East Bay Avenue property is a beachfront (narrow sandy beach) lot located between the first public road and Newport Bay and is surrounded to the North by a narrow sandy beach and Newport Bay; to the East by "K" Street; to the West by an existing single-family residence and to the South by an alley. The 1806 East Balboa Boulevard property is an inland lot and is surrounded to the North by an alley; to the East by an alley; to the West by existing single-family residence and to the South by East Balboa Boulevard.

2. Project Description

Development proposed on the 1806 East Balboa Boulevard property consists of: demolition of an existing single-family residence, garage & storage structure and merging of four (4) lots into one (1) lot. No further development is proposed at 1806 East Balboa Blvd.

At the 1813 East Bay Avenue property, the following development will take place: demolition of an existing single-family residence, garage and storage structure and construction of a 9,488 square foot 2-story single-family home with a basement, attached 921 square foot garage with two (2) additional outdoor parking spaces (Exhibits #3-8, #13 and #14). Construction of a pool, spa, pool fencing and wall in the rear yard (bayside), outdoor rear yard (bayside) bar, barbeque and fire ring, covered patio/veranda, a 254 square foot 2nd floor balcony, fountain, planters, and landscape and hardscape work will also take place (Exhibits #3-8, #13 and #14). In addition, there will be 785 cubic yards of grading & export to a location outside of the coastal zone and merging of three (3) lots into one (1) lot (Exhibit #9). The foundation system for the proposed home and pool will consist of matt foundations with caissons. Lastly, the existing pier/dock will remain as is in place.

3. Prior Commission Action at Subject Site

1813 East Bay Avenue

On June 14, 2001, the Commission approved Waiver 5-01-142-W (Barth). Waiver 5-01-142-W allowed the demolition of an existing two-story single-family residence with an attached garage on two lots. No additional development or grading was proposed.

On May 7, 2001, the Commission approved Waiver 5-01-102-W (Barth). Waiver 5-01-102-W allowed the removal of an existing 670 square foot pier with fourteen (14) 10" piles, gangway, float, and two (2) guide piles and replace with a new 4' x 64' (256 sq. ft.) pier with four (4) 14" "T" piles; 10' x 14' platform; 3' x 24' gangway; 6' x 30' float with 2' x 8' gangway landing (or lobe) and two (2) 12" guide piles.

On March 17, 1994, the Commission approved Waiver 5-94-041-W (Barth). Waiver 5-94-041-W allowed the revision of an existing boat dock and gangway.

On March 22, 1988, the Commission approved Waiver 5-88-101-W (Voit). Waiver 5-88-101-W allowed the removal and demolition of an existing dock and construction of a new dock.

B. HAZARDS

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

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30251 of the Coastal Act states:

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

1. Geotechnical Hazards

The 1813 East Bay Avenue project site is adjacent to Newport Bay. Development adjacent to the bay is inherently risky due to the potential for flooding and beach erosion resulting from significant storm events and changes in littoral processes.

To evaluate the feasibility of undertaking the proposed development, a *Geotechnical Investigation, New Residence, 1813 East Bay Avenue, Newport Beach, CA (Job No. 2066)* was prepared by Coleman Geotechnical dated December 28, 2001. The purpose of the investigation was to 1) obtain information on the general regional geologic conditions and specific substrate conditions within the project area; 2) perform an engineering and geologic evaluation of the collected data and its influence on the project; and 3) provide geotechnical conclusions and recommendations for design and construction. This was accomplished through two exploratory borings to depths of 6-feet and 51-feet below the existing grades. According to the geotechnical investigation, the site is underlain by fill and/or beach deposits to at least 61-feet, the maximum depth explored. The soils consist predominantly of fine and medium sized sand, although localized zones of silty sand also occur. Most of the grading on the site will involve overexcavation and recompaction of soils below the building area and the excavation of the basement. Groundwater and saturated soils appeared at approximately 5 to 6 feet below existing grade. To allow construction of the basement walls, temporary dewatering and permanent waterproofing will be required. Consequently, the applicants obtained a dewatering permit from the Regional Water Quality Control Board (RWQCB): *Waste Discharge Requirements, Order No. 98-67, NPDES No. CAG998001 (De Minimum Discharges), Dewatering at Various Locations* dated November 8, 2002. The geotechnical investigation also analyzed liquefaction potential for the site and determined that the sediments are, in some limited vertical limits, susceptible to liquefaction. The resulting ground deformation is anticipated to include some settlement, but not lateral spreading or any other horizontal deformation.

To address geotechnical issues such as groundwater and liquefaction, recommendations were provided. The following geotechnical recommendations were made: 1) shoring for construction of the easterly and westerly basement walls to protect off site properties and structures, 2) recommendations to reduce the effects of soil expansion and other chemical factors, and 3) a deep foundation system, such as drilled, cast-in-place caissons, driven piles, or other suitable foundation into the compact soils found below a depth of about 35 feet. The agent has stated and submitted plans regarding the foundation system for the proposed home, which will consist of a mat foundation with approximately sixty (60), 24-inch caissons ranging from 30 feet to 43 feet in length (Exhibit #7). The report concludes that it is the opinion of their office [Coleman Geotechnical] that the site is suitable for support of the proposed development without detrimental effects on the adjacent properties.

The proposed project also includes a pool, which requires subterranean work. As such, a geotechnical investigation was also required to investigate this aspect of the proposed project. To evaluate the feasibility of undertaking the proposed pool development, a letter from Coleman Geotechnical (Job No. 2066) dated October 18, 2002 was submitted. The letter stated: "*The soil conditions on the Balboa Peninsula area of Newport Beach are relatively uniform, thus it is our opinion that the soil conditions in the proposed pool area are virtually identical to those described in our [previous] report ...*

Assuming the pool will be below grade, it should be noted that swimming pools do not add significant stresses to the soils below the pool, since the soil removed during excavation is typically of greater average density than the concrete and water which comprise the pool. As a result, no specific foundation design is considered necessary for the pool. The major concern regarding the pool foundation is to make the shell heavy enough, or provide anchors, to prevent the pool shell from floating upward when it is emptied." The applicants have stated and submitted plans regarding the foundation system for the proposed pool. The foundation system for the proposed pool will consist of a mat foundation with approximately twelve (12), 24-inch caissons ranging from 29 feet to 34 feet in length (Exhibit #8). Construction of the proposed pool will also require dewatering, which will also be covered under the previously discussed dewatering permit obtained from the RWQCB: *Waste Discharge Requirements, Order No. 98-67, NPDES No. CAG998001 (De Minimum Discharges), Dewatering at Various* dated November 8, 2002.

As long as the geotechnical investigation and recommendations are adhered to, the proposed project site is suitable for support of the proposed development without detrimental effects on the adjacent properties. To affirm that the proposed development will assure stability and structural integrity, neither create nor contribute significantly to geologic instability or destruction of the site or surrounding area and to assure that risks to life and property are minimized, in accordance with Coastal Act section 30253, **Special Condition No. 1** must be imposed to require the submission of final plans that incorporate the geologist's recommendations into the final design and construction plans of the proposed project.

2. Erosion/Flooding/Wave Run-Up Hazards

To further analyze the suitability of the 1813 East Bay Avenue project site for the proposed development relative to potential wave hazards, Commission Staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer), that anticipates wave and sea level conditions (and associated wave run-up, flooding, and erosion hazards) through the life of the development. For a 75 to 100 year structural life, the hazard analysis would need to take the 1982/83 storm conditions (or 1988 conditions) and add in 2 to 3 feet of sea level rise in order to determine whether the project site would be subject to wave run-up, flooding, and erosion hazards under those conditions. The purpose of this analysis is to analyze the potential for future storm damage and any possible mitigation measures, which can be incorporated into the project design.

In response to this request, the applicants provided the *Coastal Hazard Study for New Development at 1813 East Bay Drive* prepared by Skelly Engineering dated December 5, 2002. The Hazard Study discussed the three (3) potential oceanographic hazards for the site, which are: 1) Shoreline Erosion, 2) Flooding, and 3) Waves.

a) Erosion Hazard

The 1st potential hazard to be discussed was shoreline erosion. The Study states that the site is not subject to open coastal waves, but is subject to slow erosion due to relatively fine native sand moving down an unnaturally steep beach slope into deeper water, which is created by the periodic maintenance

dredging activity. It normally takes about 3 to 5 years for the vessel berthing area adjacent to the docks to become filled with sand. When the area becomes full, the sand is dredged and placed back onto the beach, primarily in the intertidal area. The Study further states: *"The actual position of the high water line does not significantly change because the erosion and subsequent dredging/beach nourishment is performed below the high water line. The estimated amount of material dredged is approximately 2 cubic yards of sand per yard of beach. This is a relatively small amount of material as compared to the size of the beach and not considered significant."* The Study concludes by stating that there will be no major changes in the position of the shoreline in the future and that there is no potential significant erosion hazard at the site over the next 75 to 100 years: *"Analysis of aerial photographs shows no change in the position of the shoreline over the last several decades. The future shoreline changes over the next 75 to 100 years can be assumed to be the same as in the previous decades. It is unlikely that there will be any significant change in Newport Bay with regards to the dredging program, the vessel traffic, and local wind waves in the next 75 to 100 years. Recent studies by Titus and Narayanan have estimated sea level to rise about 0.75 feet in the next 75 to 100 years. This rise in sea level may result in a small (1 or 2 feet) landward movement of the high water line. However, this increase will not result in an increase in the erosion that already occurs because this erosion is a result of the action of wind waves and boat wakes neither of which will change in the next 75 to 100 years. There is no potential significant erosion hazard at the site over the next 75 to 100 years."*

b) Flooding Hazard

The 2nd potential hazard to be discussed was flooding. The Study states that the project site is located adjacent to Newport Bay and any flooding hazard that the site may be subject to are due to water level changes in Newport Bay. A super-elevation of the bay would be the primary hazard due to ocean/bay waters. The Study further states that the maximum wave runup on the project site is at about elevation +6.4' MSL, while the finished floor level of the proposed residence is at +7.5' MSL: *"The finished floor level of the proposed residence is at +7.5' MSL. Any improvements lower than +6' MSL will be extensively water proofed including sump pumps in the event of minor flooding. The site is safe from flooding from the bay/ocean over the next 75 to 100 years."*

c) Waves and Wave Runup

The 3rd and final potential hazard to be discussed was wave runup. The Study states that the typical waves in this area that arrive at the site are small (less than 0.5') wind waves and boat wakes. These two types of waves are dampened by the moored vessels and dock systems that are located in front of the site. Boat wakes are smaller than the wind waves and were not used in the wave runup analysis. The energy from the small wind waves are very small and do not pose a hazard to the docks or any improvements that the waves may encounter. The Study concludes: *"The calculated maximum wave runup under the highest water level with a sea level rise of 0.75 feet is to about elevation +6.4' MSL. This is not significant and will not impact the proposed development."*

There is no potential hazard from waves or wave runup to the proposed development." The Study also discussed how the narrow sandy beach, location of the site within the protected bay, the series of timber wall groins and bay front boat docks and piers provide protection against wave uprush and flooding hazards.

d) Conclusion

The Study concludes the following: *"In conclusion, flooding, erosion and wave runup will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for erosion, ocean flooding or wave runup protection."*

Commission Staff has reviewed the *Coastal Hazard Study* and, based on the information provided and subsequent correspondence concurs with the conclusion that the site is not subject to hazards from flooding and wave uprush at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to *"assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices..."*

Although the applicants' report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a narrow sandy beach, location of the site within the protected bay, the series of timber wall groins and bay front boat docks and piers at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those, which occurred in 1983, 1984 and 1998, resulting in future wave and flood damage to the proposed development. In order to address this situation with respect to Coastal Act policy, **three (3) Special Conditions** are necessary.

3. Assumption of Risk

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

Section 30253 (1) states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. Based on historic information and current conditions at the subject site, the proposed development appears to be sufficiently setback from potential wave hazards. The narrow sandy beach, location of the site within the protected bay, the series of timber wall groins in the surrounding area and the bay front boat dock and pier provide protection against wave uprush and flooding hazards. In addition, the existing development was not adversely affected by the severe storm activity, which occurred in 1983, 1994, and 1998. Though the proposed development is further bayward of existing development, the proposed development is not anticipated to be subject to wave hazard related damage. However, beach areas are dynamic environments, which may be subject to unforeseen changes in the future such as changes in beach width. Therefore, the presence of a narrow sandy beach, location of the site within the protected bay, the series of timber wall groins in the surrounding area and the bay front boat dock and pier at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future.

Given that the applicants have chosen to implement the project despite potential risks from wave attack, erosion, or flooding, the applicants must assume the risks. Therefore, the Commission imposes **Special Condition No. 2** for an assumption-of-risk agreement. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

4. Future Shoreline Protective Devices

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

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

As stated previously, there will be construction of a pool, pool safety fence, walkway and block wall located in the rear of the property adjacent to the bay, over which

Commission Staff had concerns since these structures could potentially act as a bulkhead/seawall. The pool safety fence will be 5 feet in height and will consist of a 3-foot high block wall and topped with a 2-foot high glass rail (Exhibit #8, page 2). Bayward of this 5-foot high pool safety wall will be a sunken walkway 2-feet, 6-inches below the natural grade and then a 2-foot block wall located below the natural grade as well (Exhibit #8, page 2). The City of Newport Beach does not allow structures greater than 3 feet in height above natural grade in the setback areas adjacent to the bay. Therefore, in order to meet the safety requirements of a 5-foot pool safety wall around the pool, the applicants proposed a sunken walkway 2-feet, 6-inches below the natural grade to meet the required height. Commission Staff had concerns that the pool safety wall, walkway, and block wall would act as a bulkhead/seawall. In a letter dated October 21, 2002, the agent states that no bulkhead/seawall is proposed and that the foundation for the required pool fencing (5 feet high) does not constitute a bulkhead situation. Also, a letter from Harold Larson, Structural Engineer, was submitted which states: *"This letter is written to certify that the proposed pool safety wall and walkway at the above referenced project [Barth Residence 1813 East Bay Avenue, Newport Beach], have not been designed as either a bulkhead or a seawall, nor once constructed they will not act as such."* Also, the Commission Staff Engineer has reviewed the project plans and has determined that the wall, walkway and pool safety wall would not act like a bulkhead/seawall. As stated previously, the applicants do not intend to construct a bulkhead/seawall.

Thus, in the case of the current project, the applicants do not propose the construction of any shoreline protective device to protect the proposed development. However, as discussed, nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Therefore, it is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards and that the applicant could seek a shoreline protective device at that time in response to such hazards.

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

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

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such

devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, this portion of Newport Beach is currently characterized as having a narrow sandy beach. Severe storm events can have an impact upon the beach, which is already narrow. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

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

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

In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms. This includes sandy beach areas, which would be subject to increased erosion from shoreline protective devices. The applicants are not currently proposing a bulkhead/seawall and do not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. As stated in the *Coastal Hazard Study*, the narrow sandy beach, location of the site within the protected bay, the series of timber wall groins and bay front boat docks and piers provide protection against wave uprush and flooding hazards, therefore no recommendations are necessary for erosion, ocean flooding or wave runup protection.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes **Special Condition No. 3**, which prohibits the applicants, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved as consistent with Sections 30251 and 30253.

By imposing the "No Future Shoreline Protective Device" Special Condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is

threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future.

5. Future Development

As discussed previously, the subject site is located on a beach parcel that may be subject to future flooding and wave attack as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing a **Special Condition No. 4** which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the California Coastal Commission or its successor agency. Section 13250 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

6. Conclusion

The Commission finds that hazards potentially exist from wave uprush and flooding at the subject site. Although these hazards do not rise to a level that would make the current proposal inconsistent with Section 30253, to ensure that the applicant is aware of the hazards and that the proposed project remains consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, **three (3) Special Conditions** have been imposed. **Special Condition No. 2** requires an assumption-of-risk agreement. **Special Condition No. 3** prohibits the applicants, or future landowner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. **Special Condition No. 4** states that any future development or additions on the property requires a permit. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

C. COMMUNITY CHARACTER

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, 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.

Bayward encroachment of new development can often have adverse environmental impacts. The adverse environmental impacts include, but are not limited to, visual impacts and the hazards that the new development will be subject to due to wave attack and shoreline erosion. Because of its location the project site is highly visible from the sandy beach. In order to determine whether the proposed project is consistent with the established line of development, the Coastal Commission has typically used two methods to review bayward encroachment of development along this section of East Bay Avenue in Newport Beach: 1) setbacks from the bayward property line; and 2) string line evaluation. The City of Newport Beach setback requirement for habitable space in this area varies from the bayward property line. For the project site, the City of Newport Beach setback requirement for habitable space varies from 11-feet to 2-feet. However, use of the City setback and/or stringline to establish the bayward limit of development is determined at a site-specific level. Setbacks and string lines are applied to limit new development from being built any further bayward than existing adjacent development.

In addition to using fixed setbacks and development stringlines as means of preventing visual impacts, on a case-by-case basis, the Commission has also given consideration to the overall pattern of development in an area in determining whether development is appropriately sited on a particular lot. This approach differs from the stringline approach described herein in that the stringline approach focuses on the line of development established by the two adjacent, flanking residential properties, whereas consideration of the overall pattern of development in the area would look at the predominant line of development on several similarly situated residential properties adjacent to the bay upcoast and downcoast of the project site.

1. City Setbacks

Section 30251 of the Coastal Act states that permitted development shall be designed "*to be visually compatible with the character of the surrounding area.*" Therefore, proposed development must be compatible with its surroundings. Though the plans submitted by the applicant show that the project conforms to the City zoning setback requirements ranging from 11-feet to 2-feet, conformance to the City required setback would allow bayward encroaching development here. Allowing development to be sited and configured based solely on the City setbacks would not achieve the objectives of Coastal Act Section 30251, as the proposed project would encroach bayward significantly and would not, therefore, be compatible with the character of the surrounding area. Section 30251 of the Coastal Act states that permitted development should protect views and be visually compatible with the surrounding area. Therefore, the City setback cannot be used in this particular situation.

2. Stringline Policy

The stringline policy is used by the Commission as one means of determining the appropriate setback for coastal developments. Since the City setback cannot be used in this particular situation, the stringline may be used instead. This policy applies to infilling development and establishes two separate types of stringlines, a structural stringline for the principal structure and an accessory structure (i.e., deck, patios, etc.) stringline. A structural stringline for principal structures refers to the line drawn between the *nearest* adjacent corners of adjacent principal structures. Similarly, an accessory structure (i.e., deck, patios, etc.) stringline refers to the line drawn between the *nearest* adjacent corners of adjacent accessory structures.

A principal structure stringline and accessory structure stringline use the corners of *nearest* adjacent principal structures and accessory structures, normally located to the adjacent sides of the development. However, in this case there is an existing street ("K" Street) to the East instead of an existing principal structure or accessory structure. In this case the residence located East of this street is used and serves as the *nearest* adjacent corner for principal structures and accessory structures.

The applicants have submitted two stringline drawings to the Commission for analysis (Exhibits #10-11). Each of the applicants' two stringline drawings shows a "principal structure stringline" which results in protection of visual resources consistent with Section 30251 of the Coastal Act. The proposed principal structure adheres to the "principal structure stringline". Thus, the principal structure would be located no further bayward than adjacent principal structures. Furthermore, since the siting of the proposed principal structure is consistent with the existing pattern of development for principal structures, the project would not cause any adverse cumulative visual impacts.

An "accessory structure stringline" is also depicted on the stringline drawings submitted by the applicant. However, the "accessory structure stringlines" are drawn in an unconventional manner. In order to show the "accessory structure stringline" drawn using conventional methods, Commission Staff used one of the applicant's stringline drawings and drew the "accessory structure stringline" based on the normally applied methods (Exhibit #12). Adhering to the "accessory structure stringline" drawn using the normally applied methods would require the applicants to move the proposed pool, spa, fire ring and walkway landward. However, in this case, the accessory structure stringline fails to recognize the pattern of accessory development that predominates in this area.

3. Overall Pattern of Accessory Structure Development

Many properties that surround the project site have bulkheads and the accessory improvements located on these sites extend out to the bulkheads. Accessory improvements such as patios regularly extend out to the bulkhead. The project site does not have a bulkhead nor is a bulkhead proposed for the project site. However, the proposed accessory improvements for the project site would extend bayward, but would not be located any further bayward than the existing predominant pattern of accessory development defined by the downcoast (1903-1913 East Bay Avenue) and upcoast (1801 and 1803 East Bay Avenue) bulkheaded properties and their accessory improvements. In addition, the accessory improvements would not be located within the intertidal zone. These accessory improvements would be located landward of the intertidal zone.

4. Conclusion

The Commission finds that the principle structure conforms with the structural stringline and is visually compatible with the surrounding area. Furthermore, the accessory

¹ An accessory structure (i.e., deck, patios, etc.) stringline drawn using conventional methods refers to the line drawn between the *nearest* adjacent corners of adjacent accessory structures. The point of the nearest adjacent corner of the accessory structure to the East of the project site should be the edge of the covered deck. The point of the nearest adjacent corner of the accessory structure to the West of the project site should be the patio edge (Exhibits #10-12).

development is proposed to be located landward of the line of the intertidal zone and is consistent with the predominant pattern of accessory development in this area. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

D. MARINE RESOURCES

Section 30233 of the Coastal Act, in relevant part, states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable

for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City has an LUP, which is one component of a complete Local Coastal Program (LCP), but does not have a full LCP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries

1. *Only the following types of developments and activities may be permitted in the parts of Newport Bay which are not within the State Ecological Reserve where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:*
 - a. *Construction or expansion of Port/marine facilities.*
 - b. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, haul-out boat yards, commercial ferry facilities.*
 - c. *In open coastal waters, other than wetlands, including estuaries, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, haul-out boat yards, and pleasure ferries. (Fishing docks and swimming and surfing beaches are permitted where they already exist in Lower Newport Bay).*
 - d. *Maintenance of existing and restoration of previously dredged depths in navigational channels and turning basins associated with boat launching ramps, and for vessel berthing and mooring areas. The 1974 U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
 - e. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
2. *New developments on the waterfront shall take into consideration existing usable water area for docking facilities. Residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line. However, **this policy shall not be construed to allow development which requires the filling of open coastal waters, wetlands or estuaries which would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.** No bayward encroachment shall be permitted except where there is no feasible less environmentally damaging alternative and where mitigation is provided through payment of in-lieu fees to the Upper Newport Bay Mitigation Fund Administered by the City. (Emphasis Added)*

3. *The City shall examine proposals for construction of anti-erosion structures, offshore breakwaters, or marinas, and regulate the design of such structures to harmonize with the natural appearance of the beach.*

Section 30108.2 of the Coastal Act defines "Fill" as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the fill of wetlands and open coastal waters to the eight uses enumerated above. In addition, the City has the LUP policy directly above regarding Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries, which is similar to Section 30233 of the Coastal Act.

As stated previously, with respect to accessory structures, the development is located both landward of the intertidal zone and conforms with the predominant pattern of accessory improvements in the project area. The accessory structures to be placed in the rear (bayside) of the project site consist of a pool, spa, fire ring and walkway. The placement of these structures will not result in fill of open coastal waters since they will be located landward of the intertidal zone. In order to verify that the proposed development will occur as proposed and that the fill of open coastal waters does not occur, **Special Condition No. 5** has been implemented. **Special Condition No. 5** states that the proposed development will be in accordance with the approved final plans. Therefore, as conditioned, the project is consistent with Section 30233 of the Coastal Act and the policies of the certified LUP.

E. WATER QUALITY AND THE MARINE ENVIRONMENT

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 protection of water quality is an important aspect of the Coastal Act. Water from the project site lot will flow into the City of Newport Beach's Storm drain system and will ultimately drain to the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban run-off discharging into the ocean through outfalls. As illustrated by these beach closures, polluted run-off negatively affects both marine resources and the public's ability to access coastal resources.

1. Construction Impacts to Water Quality

The project site is located immediately adjacent to the beach and bay. 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 No. 6** 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 remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

2. Post-Construction Impacts to Water Quality

In order to minimize adverse impacts to water quality, the applicants have included protective measures in the proposed project, detailed in a narrative dated October 21, 2002 and a Drainage Plan (Exhibit #13) received by the Commission on October 24, 2002 prepared by Charles Howell. These measures include: *"Residence will have a BMP roof drain, downspout and gutter array all directed to an under-surface drainage system that will terminate in a "dry" sump with mesh filters for percolation into the sand base. Overflow bubblers will disburse any excessive sheet flow to minimize erosion effects ... Landscape area drains will direct sheet flow from walkways and patios to the subsurface system. Guest parking areas will be a permeable surface to the above sub-surface system."*

The applicant's Drainage Plan conceptually provides appropriate ways to minimize water quality impacts raised by the project; however, **Special Condition No. 7** is necessary in order to verify that the proposed project will not result in adverse impacts to water quality and that acceptable methods of preventing adverse impacts to water quality are implemented. **Special Condition No. 7** requires the applicants to submit a final Drainage Plan for review and approval by the Executive Director. In addition, vegetated landscaped areas shall only consist of native plants common to coastal Orange County and/or non-native drought tolerant plants, which are non-invasive. Any proposed changes to the approved final plan shall be reported to the Executive Director.

3. Conclusion

To minimize the adverse impacts upon the marine environment, **two (2) Special Conditions** have been imposed. **Special Conditions No. 6** outlines construction-related requirements to provide for the safe storage of construction materials and the

safe disposal of construction debris. **Special Condition No. 7** requires the applicants to submit a final Drainage Plan for the review and approval of the Executive Director. Only as conditioned, the Commission finds that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

F. DEVELOPMENT ADJACENT TO THE BEACH

Section 30240(b) of the Coastal Act states, in relevant part:

- (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, in relevant part:

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 a beach and Newport Bay. Development, if not properly regulated, could have adverse effects on the sustainability of any existing native vegetation. The applicants have submitted a Landscaping Plan (Exhibit #14), which contains elements that could affect the sustainability of any existing native vegetation. The submitted landscaping plan proposes use of the following vegetation: *Howea Foresterana*, *Pittosporum Tenuifolium*, *Pittosporum Silver Sheen*, *Citrus*, *Podocarpus Gracillior Low Branching*, *Magnolia "Little Gem" Low Branching*, *Prunus Caroliana Low Branching*, *Cycas Revoluta*, *Hymenosporum Flavum*, *Azalea "Alaska"*, *Azalea "George L. Taber"*, *Buxus "Green Beauty"*, *Camellia Japonica "Nuccio's Gem"*, *Pittosporum Tobira "Variegata"*, *Roses "Iceberg"*, *Cuphea Hyssopifolia*, *Fuschia "Bonsted Gartenmeister"*, *Assorted Ferns*, *Clivia Miniata*, *Gardenia Jasminoides*, *Gardenia Veitchii*, *Annual Flowers*, *Pandorea Alba*, *Pandorea Rosea*, *Parthenocissus Tricuspidata*, *Geranium "Balcom Mix"*, *Marathon II*, *Trachelospermum Jasminoides*, *Vegetables*, *Impatiens*, *Hedera Helix Needle Point Variegated* and *Solanum Jasminoides*.

Much of the existing vegetation is of ornamental non-native variety due to surrounding residential development. However, use of 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 native plants that were common to coastal Orange County or 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 and also the *CalFlora* database. *CalFlora* is an independent

non-profit organization, which maintains a comprehensive database of plant distribution information for California. Staff reviewed the submitted Landscape Plan and determined that the plan did not contain any invasive plants. However, the Landscape Plan did contain plants that were determined to be non-drought tolerant or that could potentially be non-drought tolerant because the watering needs for these plants could not be determined.

Fifteen of the thirty-two plants required moisture or regularly watering, while eleven were determined to be drought tolerant. The watering needed for six of the plants could not be found and also since one of the listed plants was only listed as "*Annual Flowers*," the watering requirement for these plants could not be found. The fifteen plants that need watering are: *Howea Forsterana*, *Podocarpus Gracillior* Low Branching, *Magnolia "Little Gem"* Low Branching, *Cycas Revoluta*, *Hymenosporum Flavum*, *Azalea "Alaska"*, *Azalea "George L. Taber"*, *Roses "Iceberg"*, *Cuphea Hyssopifolia*, *Fuschia "Bonsted Gartenmeister"*, *Gardenia Veitchii*, *Parthenocissus Tricuspidata*, *Geranium "Balcom Mix"*, *Trachelospermum Jasminoides*, and *Impatiens*. Since these plants are not drought tolerant, they should be removed from the landscaping plan. The six plants in which the watering need could not be found are: *Citrus*, *Clivia Miniata*, *Annual Flowers*, *Pandorea Alba*, *Pandorea Rosea*, and *Solanum Jasminoides*. Since the watering needs of these plants could not be determined, they should either be removed from the landscaping plan or have information submitted by a licensed landscape architect that these plants are drought tolerant.

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 No. 8**, which requires the applicants to submit a revised Landscaping Plan, which consists of native plants common to coastal Orange County and/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. PUBLIC ACCESS, PARKING AND NEW DEVELOPMENT

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

The subject site is located between the nearest public roadway and the shoreline. The proposed development would not result in an intensification of use on site because it is demolition and reconstruction of a single-family residence. The proposed development would provide four (4) parking spaces, which is sufficient to prevent adverse impacts on public parking.

The proposed development would not result in direct adverse impacts, either individually or cumulatively on public access. Public access to the bay is available to the adjacent west at the "K" Street, street end (Exhibit #2).

The proposed project would not result in direct adverse impacts, either individually or cumulatively on public access. Therefore, the Commission finds that the proposed

development would not result in significant adverse impacts on public access nor public recreation. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

H. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 9** requiring that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

I. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

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. The City's LUP states 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 substantial 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. Therefore, the project, as conditioned, is not proposed to create additional adverse impact to marine resources.

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).

J. 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 regard: **1)** geotechnical conformance; **2)** assumption of risk; **3)** no future shoreline protective device; **4)** future development restriction; **5)** development in accordance with the approved final plans; **6)** storage of construction materials, mechanized equipment and removal of construction debris; **7)** a final drainage and run-off control plan; **8)** a revised landscape plan and **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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.

H:\FSY\Staff Reports\Sept03\5-02-302-[Barth]RF(NB)

MAP 688 335

919

EXHIBIT # 1
PAGE 1 OF 1

© COPYRIGHT ORANGE COUNTY ASSESSOR 2000

† = WATER LINE AS PER AERIAL PHOTO, 1947

048-23

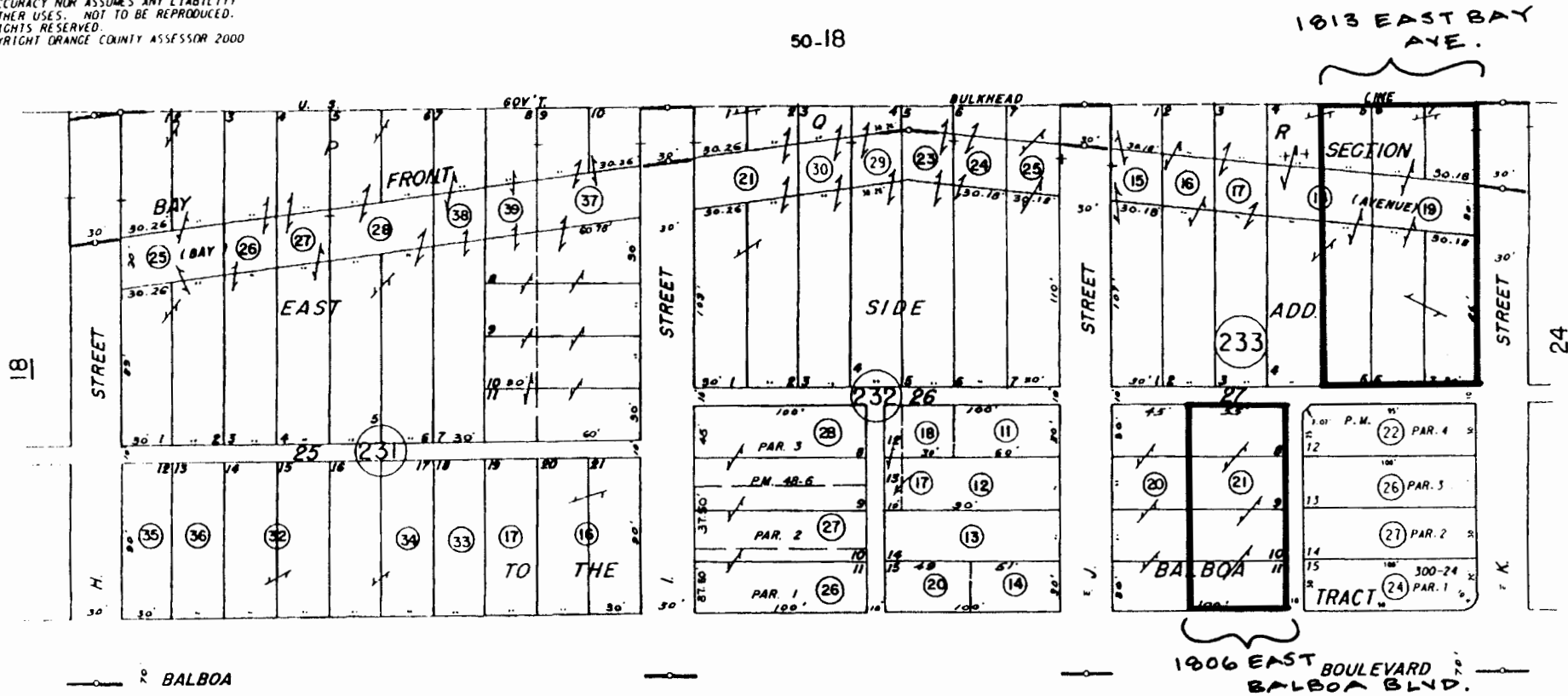


EXHIBIT # 2
PAGE 1 OF 1
MARCH 1949

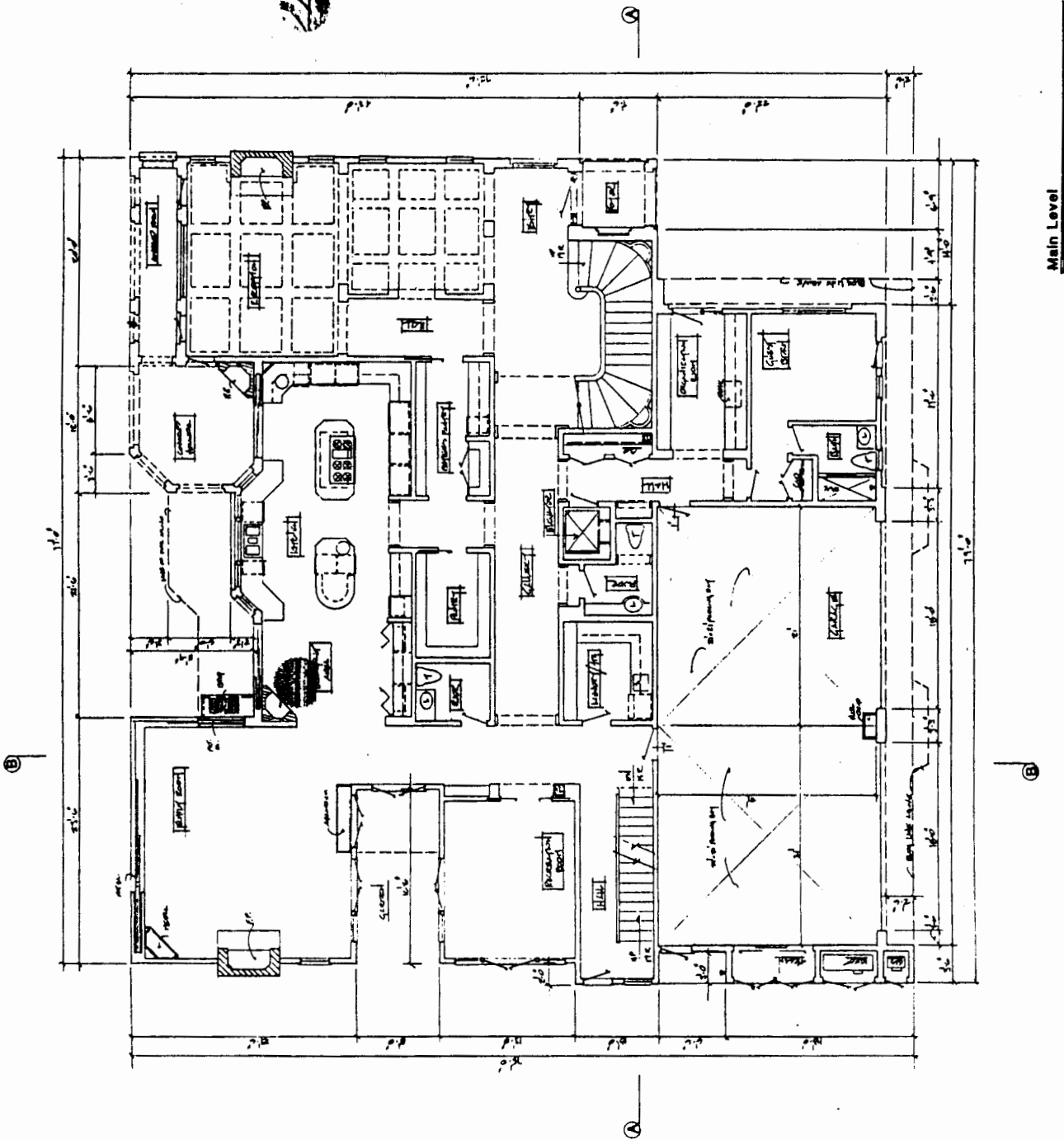
COASTAL COMMISSION

PARCEL MAP
BAY FRONT SECTION
THE EAST SIDE ADD. TO THE
BALBOA TRACT

48-6. 300-24
M.M. 6-15
M.M. 4-20

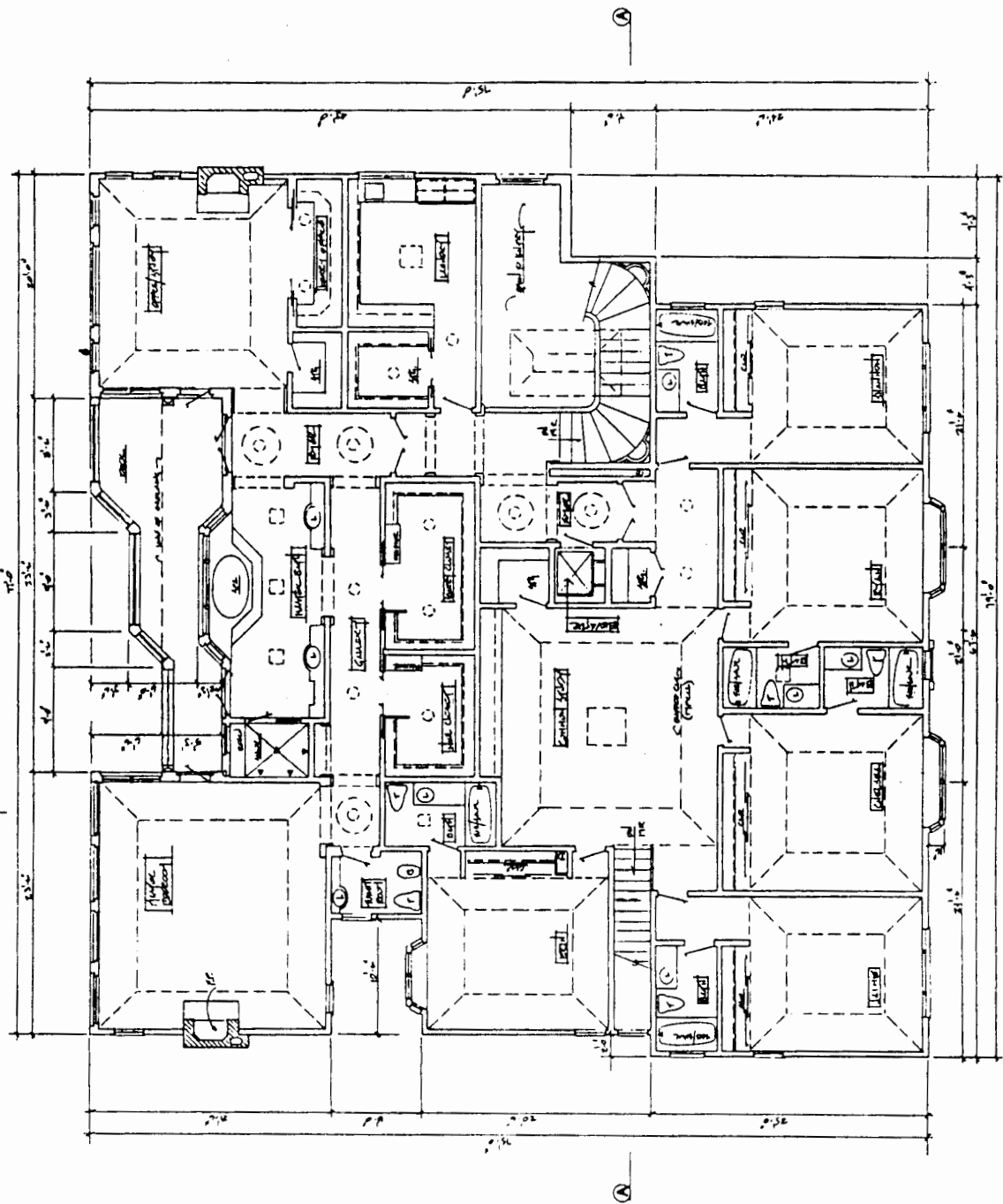
NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

ASSESSOR'S MAP
BOOK 048 PAGE 23
COUNTY OF ORANGE



COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 3



Upper Level

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 3

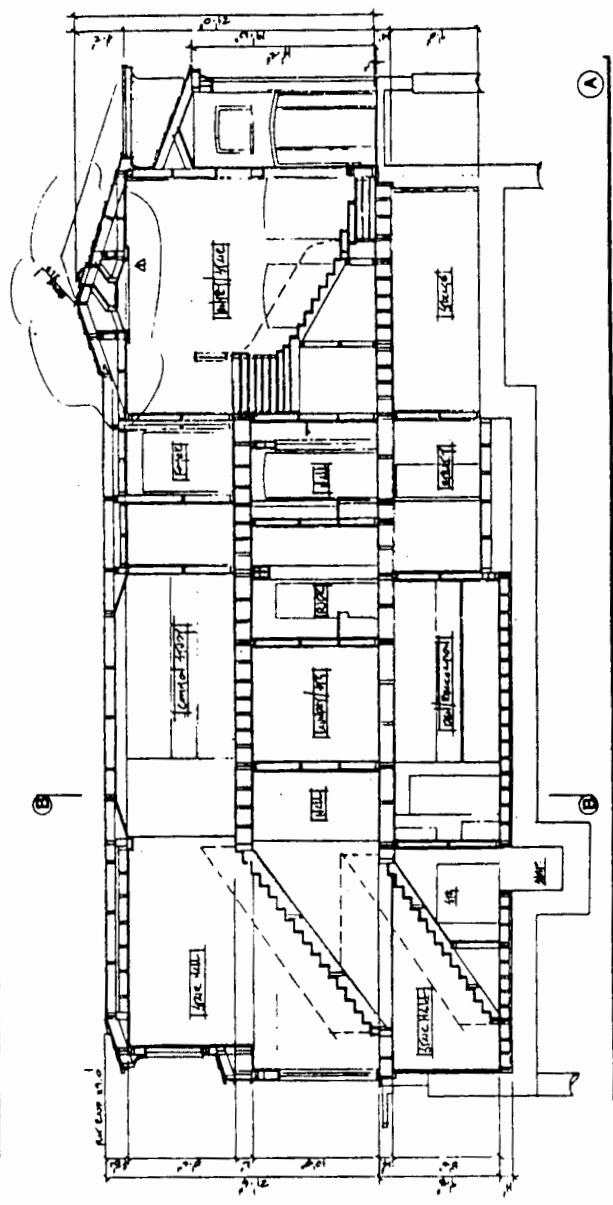
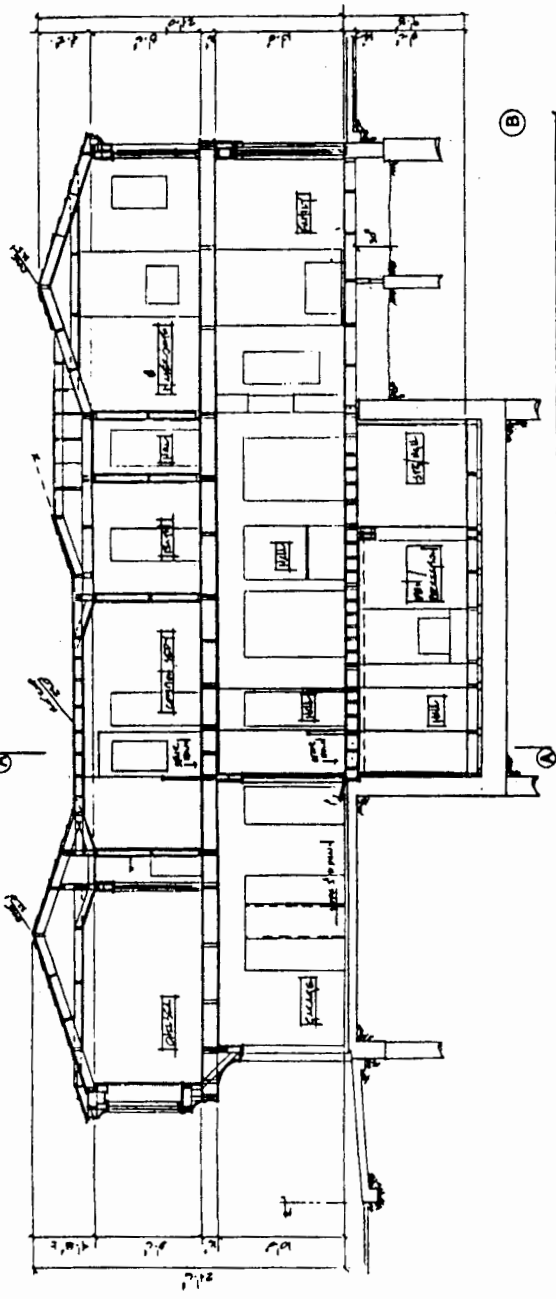
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Charles L. Howell, Architect
 870 Glenhurst Street, Laguna Beach, CA 92651
 (949) 497-3134

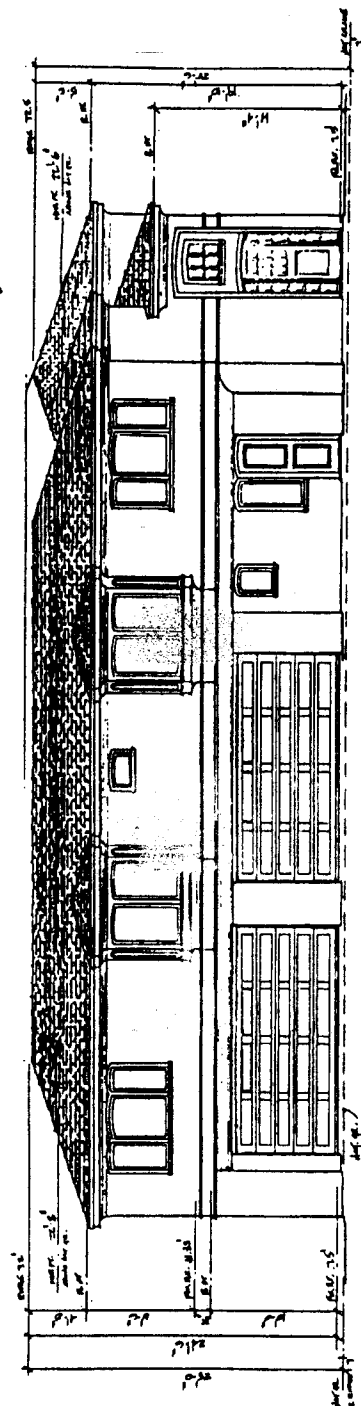
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 1810 East Bay Avenue
 Newport Beach, CA 92661

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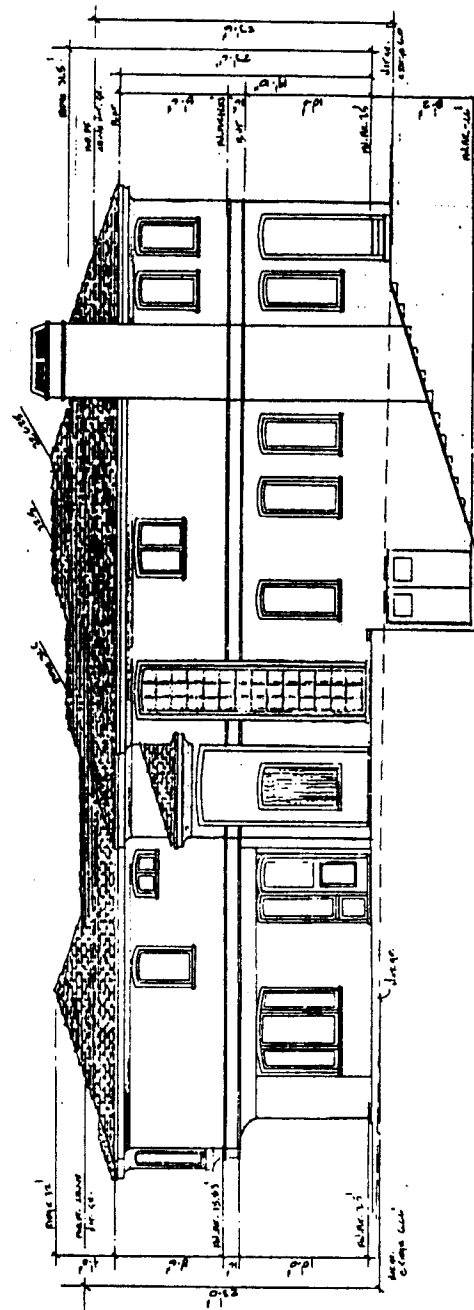
Sections 4'-1 1/2"



COASTAL CONSTRUCTION
 EXHIBIT # 5
 PAGE 1 OF 3



South

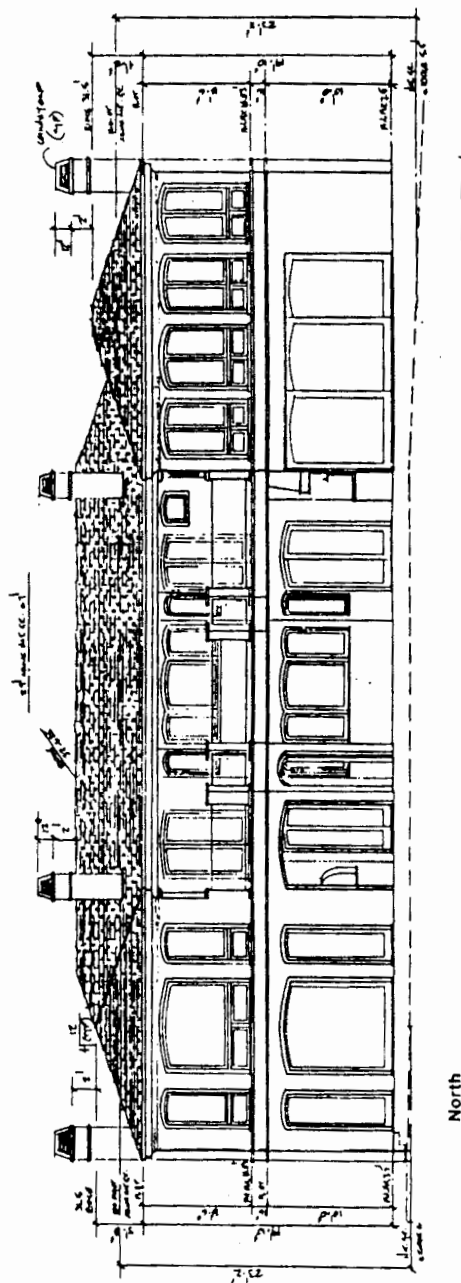
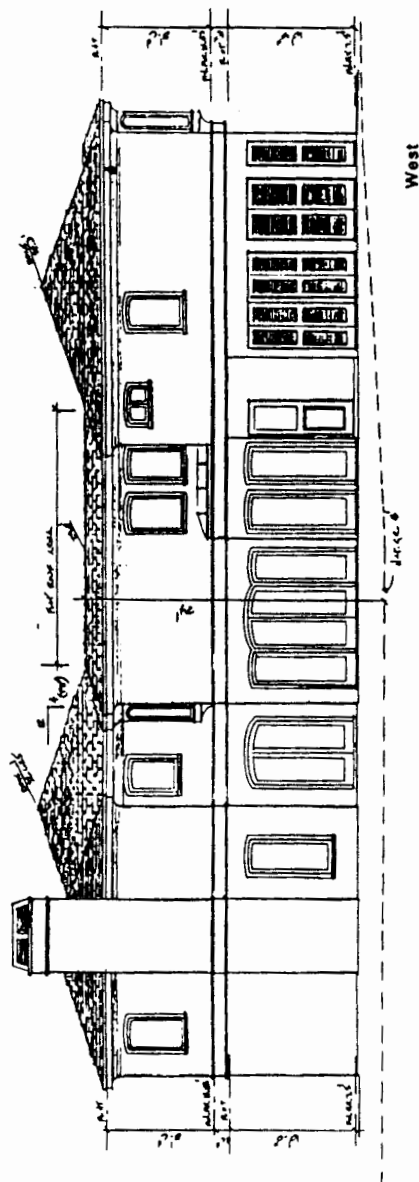


East

Elevations 4.10'

CONFIDENTIAL

EXHIBIT 5
PAGE 2 OF 3



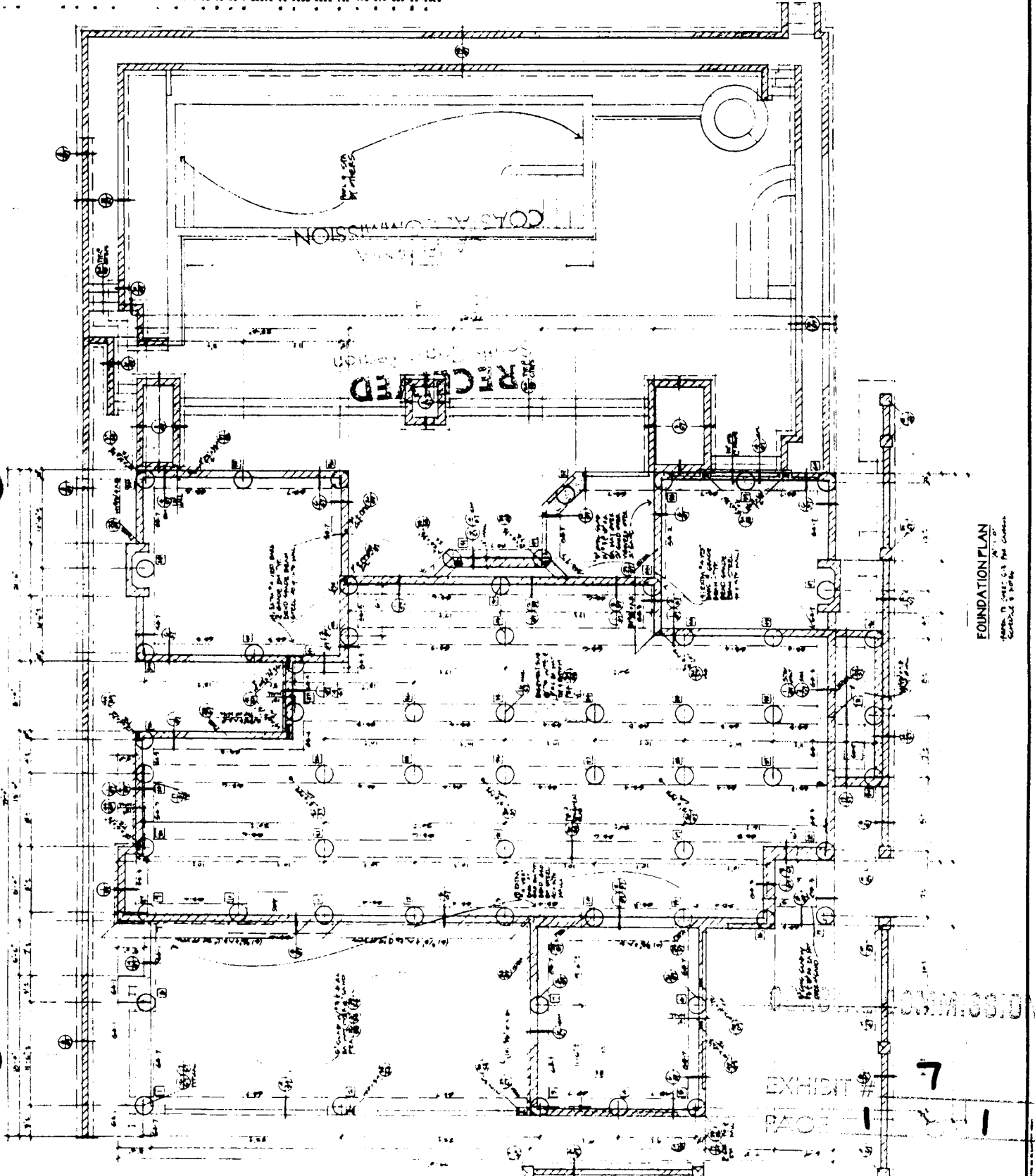
Elevations

2.10.2. COMMISSION

EXHIBIT # 5
PAGE 3 3

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1437 Glenmore Laguna beach CA 92651
848 487 5203 fax 948 487 4671

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FOUNDATION PLAN
 10'-10"
 PARTIAL TO 10'-0" 6'-0" PER CROSS
 SECTION & MORE

EXHIBIT
PAGE 1

7

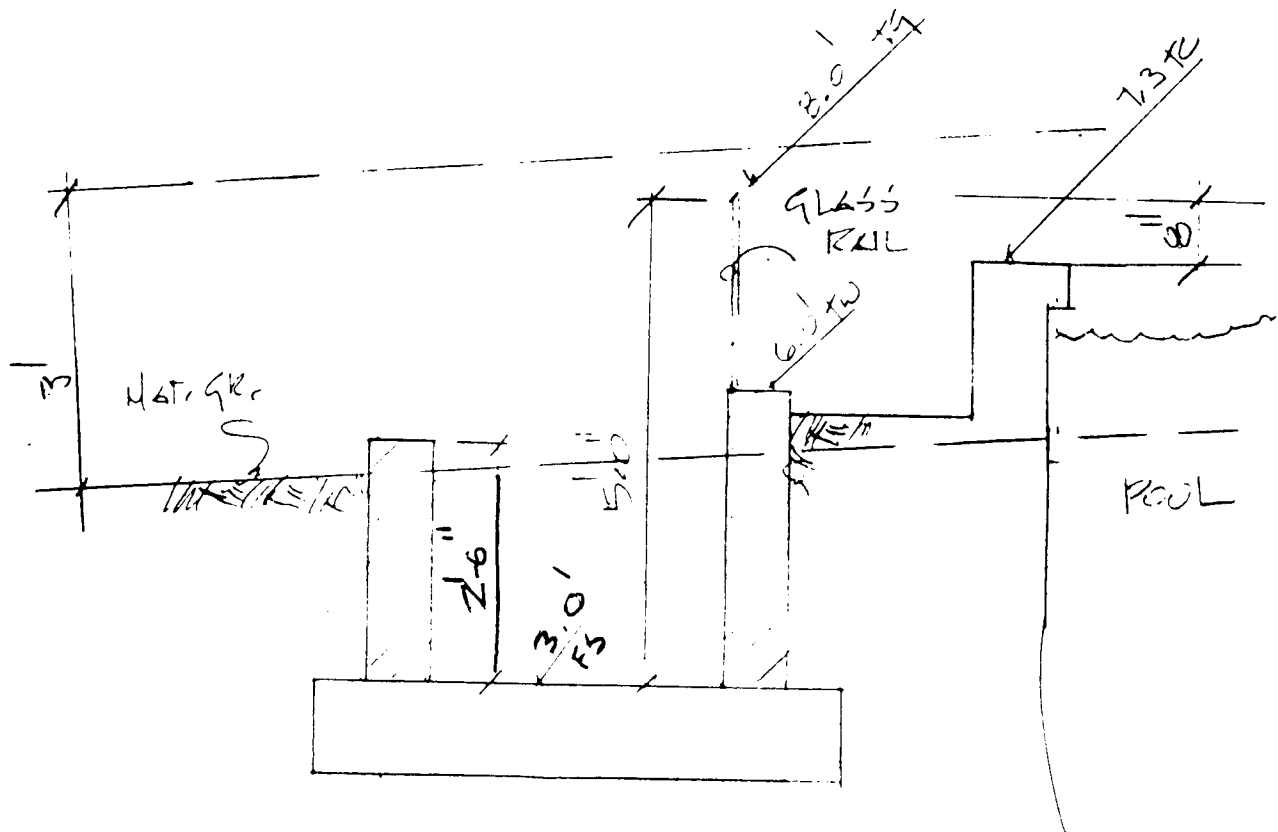


RECEIVED

South Coast Region

DEC 4 2002

CALIFORNIA
COASTAL COMMISSION



(15) POOL SAFETY FENCE
 $\frac{1}{2}'' = 1.0''$

NOTE: POOL SAFETY RAIL NOT TO
EXCEED 3' ABOVE NAT. GRADE

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 2

OWNERS	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
NEIL M. BARTH AND KERRY O'NEIL BARTH	048-233-18	PARCEL "A"
NEIL M. BARTH AND KERRY O'NEIL BARTH	048-233-19	PARCEL "A"



Larry E Barnes
LARRY E. BARNES
LAND SURVEYOR, P.L.S. 7766
EXPIRES: JUNE 30, 2004

8.1.01
DATE

LEGEND:

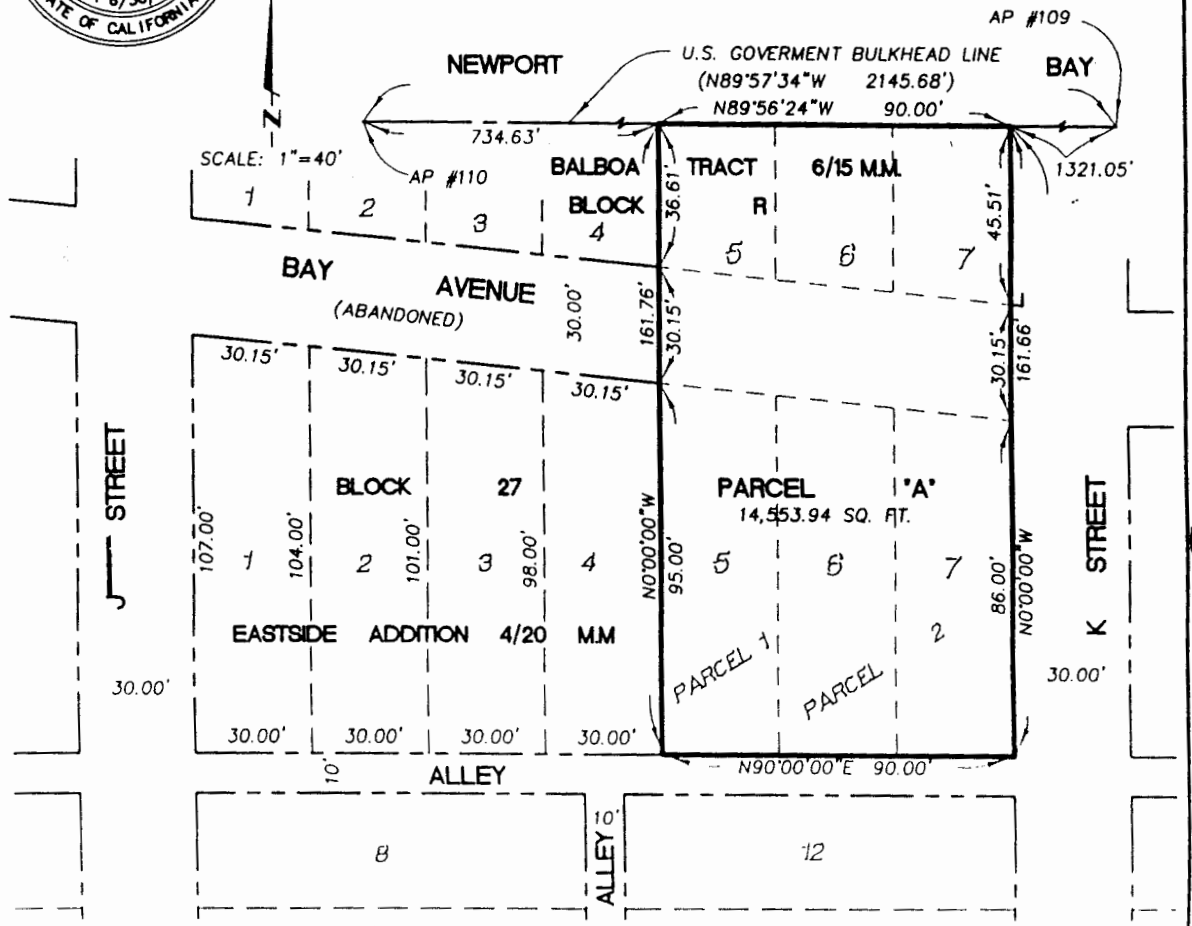
BOUNDARY LINE

LOT LINE

LOT LINE TO BE REMOVE

LOT NUMBER

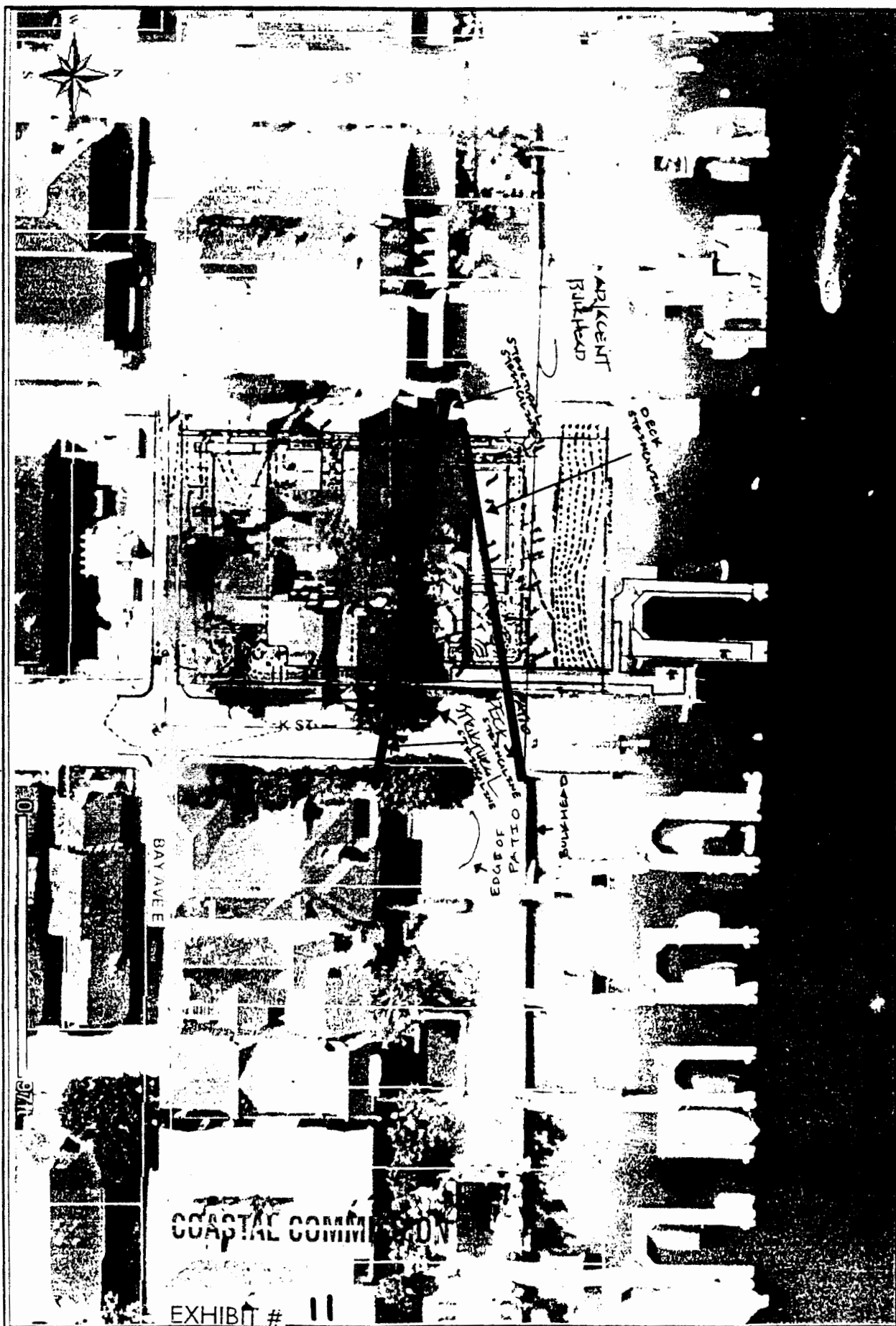
1813 EAST BAY AVENUE



COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1

[illegible]



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BUILDING LINE

COVERED DEC 1

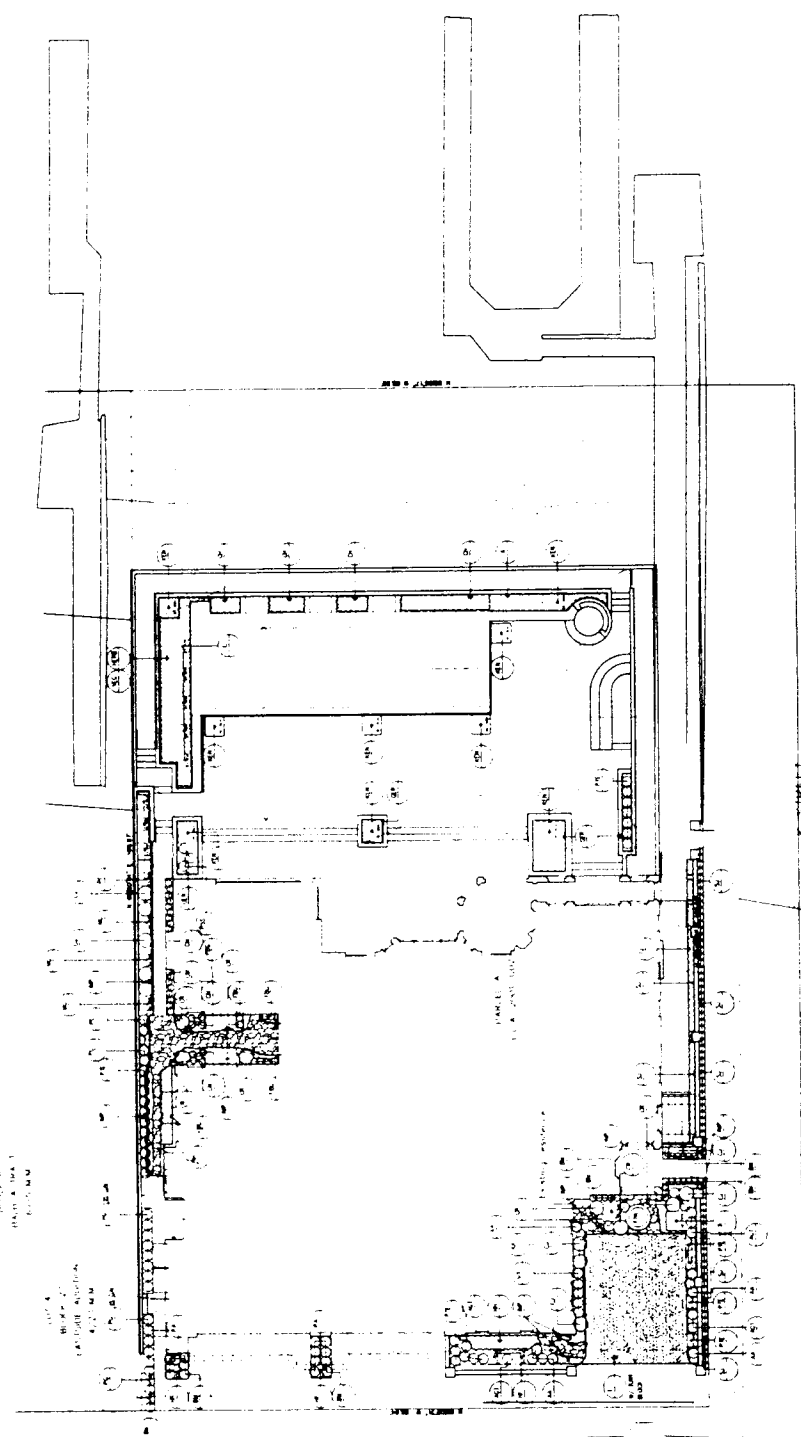
LOT 2
BLOCK B
BALBOA TRNC
6/15 MM

EXHIBIT # 12
PAGE 1 OF 1

N
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Onwards

NO.	DESCRIPTION	QTY.	UNIT	PRICE	TOTAL
1	CONCRETE	100	CU YD	10.00	1000.00
2	CEMENT	100	CU YD	10.00	1000.00
3	IRON	100	CU YD	10.00	1000.00
4	STEEL	100	CU YD	10.00	1000.00
5	BRICK	100	CU YD	10.00	1000.00
6	ROOF	100	CU YD	10.00	1000.00
7	WALL	100	CU YD	10.00	1000.00
8	FLOOR	100	CU YD	10.00	1000.00
9	CEILING	100	CU YD	10.00	1000.00
10	PAINT	100	CU YD	10.00	1000.00
11	GLASS	100	CU YD	10.00	1000.00
12	DOOR	100	CU YD	10.00	1000.00
13	WINDOW	100	CU YD	10.00	1000.00
14	STAIR	100	CU YD	10.00	1000.00
15	BATH	100	CU YD	10.00	1000.00
16	KITCHEN	100	CU YD	10.00	1000.00
17	LIVING	100	CU YD	10.00	1000.00
18	DINING	100	CU YD	10.00	1000.00
19	SLEEPING	100	CU YD	10.00	1000.00
20	BEDROOM	100	CU YD	10.00	1000.00
21	BATH	100	CU YD	10.00	1000.00
22	KITCHEN	100	CU YD	10.00	1000.00
23	LIVING	100	CU YD	10.00	1000.00
24	DINING	100	CU YD	10.00	1000.00
25	SLEEPING	100	CU YD	10.00	1000.00
26	BEDROOM	100	CU YD	10.00	1000.00
27	BATH	100	CU YD	10.00	1000.00
28	KITCHEN	100	CU YD	10.00	1000.00
29	LIVING	100	CU YD	10.00	1000.00
30	DINING	100	CU YD	10.00	1000.00
31	SLEEPING	100	CU YD	10.00	1000.00
32	BEDROOM	100	CU YD	10.00	1000.00
33	BATH	100	CU YD	10.00	1000.00
34	KITCHEN	100	CU YD	10.00	1000.00
35	LIVING	100	CU YD	10.00	1000.00
36	DINING	100	CU YD	10.00	1000.00
37	SLEEPING	100	CU YD	10.00	1000.00
38	BEDROOM	100	CU YD	10.00	1000.00
39	BATH	100	CU YD	10.00	1000.00
40	KITCHEN	100	CU YD	10.00	1000.00
41	LIVING	100	CU YD	10.00	1000.00
42	DINING	100	CU YD	10.00	1000.00
43	SLEEPING	100	CU YD	10.00	1000.00
44	BEDROOM	100	CU YD	10.00	1000.00
45	BATH	100	CU YD	10.00	1000.00
46	KITCHEN	100	CU YD	10.00	1000.00
47	LIVING	100	CU YD	10.00	1000.00
48	DINING	100	CU YD	10.00	1000.00
49	SLEEPING	100	CU YD	10.00	1000.00
50	BEDROOM	100	CU YD	10.00	1000.00



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ARCHITECT
Karl Moser
1000 N. 10th St.
Phoenix, Arizona
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