

CALIFORNIA COASTAL COMMISSION
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 Staff: MV-LB
 Staff Report: 11/18/04
 Hearing Date: 12/8-10/04
 Commission Action:



W 21 f

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-04-320

APPLICANTS: Joel Sewell & Neilia LaValle

AGENT: James Rushing

PROJECT LOCATION: 16141 Santa Barbara Lane, Huntington Beach, Orange County

RECORD PACKET COPY

PROJECT DESCRIPTION: Relocate an existing bulkhead approximately 28 feet channelward of the existing bulkhead's location and backfill 265 cubic yards between existing bulkhead and new bulkhead to create additional rear yard area. Also construct a new 44 foot long concrete deck that cantilevers 5 feet over the proposed bulkhead.

SUMMARY OF STAFF RECOMMENDATION:

The applicant proposes to construct a new bulkhead approximately 28 feet channelward of the existing bulkhead on a harbor front lot in the City of Huntington Beach. The project also includes fill of coastal waters within the area between the proposed and existing bulkheads, a total area of approximately 1,540 square feet (approximately 28 feet by the 55 foot width of the lot). The proposed bulkhead will result in the fill of 1,540 square feet of intertidal mudflat habitat.

The primary issue before the Commission is whether construction of the proposed bulkhead and proposed backfill are consistent with Coastal Act Section 30233, which does not allow the fill of coastal waters for purposes of converting marine habitat to private yard space. Section 30233 of the Coastal Act identifies a list of eight uses for which fill of open coastal waters is allowed. The proposed bulkhead and fill do not qualify as any of the eight permitted uses. Furthermore, Section 30233 requires that even when a project would result in allowable fill of coastal waters, that the project be the least environmentally damaging alternative, and that adequate mitigation be provided. The applicant has not demonstrated that the proposed project is the least environmentally damaging alternative. In addition, the applicant has not demonstrated a need to replace the existing bulkhead. No evidence has been submitted indicating that the bulkhead needs to be replaced at all. Even if it were to be demonstrated that such a replacement is necessary, there are less environmentally damaging alternatives

available, including re-constructing the bulkhead within the same footprint, reconstruction of the bulkhead immediately in-land of the existing bulkhead, and if neither of these are feasible, re-construct the bulkhead immediately landward of the existing bulkhead. Moreover, the applicant has not proposed any mitigation. Thus the proposed project fails all three of the tests posed in Section 30233.

Furthermore, the project is not consistent with Sections 30230 and 30231 of the Coastal Act which require that marine resources be protected. The project would result in the direct loss of approximately 1540 square feet of intertidal habitat which is required to be protected under Sections 30230 and 30231. Therefore, staff recommends that the Commission **DENY** the proposed project.

LOCAL APPROVALS RECEIVED: Approval-In-Concept from the City of Huntington Beach dated 6/17/04

SUBSTANTIVE FILE DOCUMENTS: City of Huntington Beach Certified Local Coastal Plan; Coastal Development Permits: 5-02-378-[Johnson]; 5-00-495-[Schulze]; 5-01-104-[Fluter]; 5-01-117-[Childs]; Limited Geotechnical Engineering Investigation, Rear Yard Addition, prepared by Norcal Engineering, dated January 23, 2004; Environmental Assessment prepared by Harmsworth Associates, dated September 17, 2002.

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission 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. 5-04-320 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. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures 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 Description

The applicants are proposing to construct a new bulkhead approximately 28 feet channelward of the existing bulkhead. The existing bulkhead is proposed to remain in place. Backfill of 265 cubic yards is proposed between the existing bulkhead and the new bulkhead to create additional rear yard area. According to the project plans, the location of the proposed new bulkhead would fall along the applicant's channel side property line. Also proposed is the construction of a new 44 foot long concrete deck that cantilevers 5 feet over the proposed bulkhead.

The project site fronts on Long Channel in Huntington Harbor. Long Channel is not one of the areas of Huntington Harbor owned by the California State Lands Commission. A boat dock currently exists at the subject site. The boat dock currently is accessed via an approximately 28 foot long pier and gangway. Although not included as part of the project description, it appears that the pier will be removed and the gangway modified to accommodate the relocated bulkhead and fill.

The bulkheads of the properties on either side of the subject site currently do not fall along a straight line alignment. Neither would the project, as proposed, create a straight line alignment. To the west of the subject site, there would be an approximately 17 foot wide by approximately 28 foot deep inlet in the bulkhead. And it appears that to the east, there would be a right angle jog of approximately 22 feet in the bulkhead alignment. The project plans indicate that the existing bulkhead on the west side of the subject site is in the same location as the current bulkhead at the subject site for a length of 17 feet. After the 17 feet, the neighboring bulkhead makes a right angle turn channelward and then extends along that property's channelward property line (see exhibit E). The plans do not show the location of the bulkhead on the neighboring property to the east. However, photographs submitted with the application indicate that that bulkhead is located approximately five feet channelward of the existing bulkhead at the subject site.

The proposed relocation of the bulkhead to a new, approximately 28 foot channelward location, would necessitate construction of two, approximately 25 foot long return walls on either side of the proposed bulkhead's new location. Thus, the proposed project will not result in a uniform bulkhead location across the subject site and two adjacent sites (on either side). Instead the proposed bulkhead would jut out channelward of the existing bulkheads on either side of the subject site.

The City of Huntington Beach has a certified Local Coastal Program (LCP). However, because the proposed project would occur seaward of the mean high tide line, it falls within the Commission's original permit jurisdiction. Thus, the Chapter 3 policies of the Coastal Act provide the standard of review. In this area, the policies of the LCP are not the standard of review, but may be used as guidance.

B. Fill of Coastal Waters

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.*

Section 30233 establishes a three prong test for fill of coastal waters. Fill of coastal waters may only be allowed when it: 1) is for one of the eight specifically enumerated purposes; 2) is the least environmentally damaging alternative that is feasible; and, 3) provides feasible mitigation to minimize adverse environmental effects.

The City of Huntington Beach has a certified Local Coastal Program (LCP). Because the proposed project would occur seaward of the mean high tide line, and thus within the Commission's original permit jurisdiction, the policies of the LCP are not the standard of review, but may be used as guidance. The City's LUP policies reflect the Coastal Act requirements with regard to fill of coastal waters. The Huntington Beach LCP Land Use Plan (LUP) includes the following policy:

C 6.1.20

Limit diking, dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Section 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier and marina docks. Conduct any diking, dredging and filling activities in a manner that is consistent with Section 30233 and 30607.1 of the Coastal Act.

Allowable Use

The fill is proposed to accommodate an expansion of the rear yard area associated with the existing single family residence. Private yard area is not one of the uses specifically identified by Section 30233(a) (1-8). The proposed fill does not meet the Section 30233 allowable use test. For this reason the proposed development is inconsistent with Section 30233 of the Coastal Act.

Alternatives

The biological assessment summary (see exhibit D) prepared for the proposed project by Harmsworth Associates, dated September 17, 2002, states:

The project site consists of an intertidal mudflat adjacent [to] one of the channels in Huntington Harbor. The project area extends from the existing sea wall [bulkhead] at the back of 16141 Santa Barbara Lane out as far as the existing [boat dock] pilings (approximately three feet above MLW tide mark) and across for 55 feet. The project site is surrounded by sea walls for residential areas and boat docks.

The biological assessment prepared for the project identified the area to be filled as unvegetated intertidal mudflat and identified green algae mats, barnacles (Cirripedia) and small flat fish at the site, as well as evidence of marine worms (Polychaeta). It is likely that clams, snail and crustaceans may exist at the site as well, as these organisms are typically associated with tidal flats. The proposed development would result in the permanent loss of this 1540 square foot habitat area.

The proposed development is not the least environmentally damaging alternative. As proposed, the project would result in the loss of 1540 square feet of intertidal habitat. The loss of intertidal habitat is an adverse environmental impact. In addition, the cumulative impacts of the loss of intertidal habitat must be considered. Section 30250 requires that new development not create significant adverse effects, either individually or cumulatively, on coastal resources. Historically, the amount of intertidal habitat has significantly diminished. In addition, intertidal habitat is sometimes lost as a result of uses that are consistent with Section 30233 and/or 30235. Thus, even incremental loss must be guarded against. The proposed development would result in the outright loss of 1540 square feet of intertidal habitat, which would contribute to the incremental overall loss of intertidal habitat statewide. Thus, the proposed project would result in adverse environmental impacts.

The applicant has submitted a Limited Geotechnical Engineering Investigation, prepared by Norcal Engineering, dated January 23, 2004. The Geotechnical Engineering Investigation finds that the proposed development is "feasible from a geotechnical standpoint provided that the recommendations presented in this report are followed in design and construction of the project." However the Geotechnical Engineering Investigation does not assess the current condition of the existing bulkhead, thus no evidence has been submitted that the existing bulkhead must be replaced, leaving the No Project alternative as a viable alternative. Further, neither the Geotechnical Engineering Investigation nor anything else submitted with the application provides an assessment of other alternatives to the current proposal. It appears that there are a number of less environmentally damaging alternatives.

As a standard practice the Commission requires that adverse environmental impacts to coastal resources be avoided through appropriate siting and design. The construction of a bulkhead does not entitle the applicant to maximize yard space. Yard space is not one of the uses identified under Section 30233 for which fill is allowed. There are alternatives that would result in less or no fill of coastal waters. For example, without evidence documenting that the existing bulkhead is inadequate and must be replaced in

order to assure the structural stability of the existing residence, the no project alternative is feasible. If evidence is provided that identifies a need to replace the existing bulkhead, specific alternatives must be evaluated. Among those alternatives is repairing the existing bulkhead in place. If that is not feasible, replacing the existing bulkhead landward of the existing location must be evaluated. In addition, other alternatives that should be considered include removing the existing bulkhead and constructing the replacement bulkhead in the same location, constructing the new bulkhead adjacent to and immediately channelward of the existing bulkhead, and other alternatives that eliminate or reduce the amount of fill required.

These alternatives appear to be feasible and all would result in less fill than the proposed project. Consequently, the proposed fill does not meet the Section 30233 alternatives test. Therefore, the proposed development is inconsistent with Section 30233 of the Coastal Act.

Mitigation

Section 30233 requires that, in addition to being an allowable use and the least environmentally damaging alternative, any project resulting in fill of coastal waters must also provide adequate mitigation. The proposed project does not include any mitigation. With no mitigation proposed, the adverse environmental impacts arising from the loss of approximately 1540 square feet of intertidal habitat will not be offset in any way. Because the proposed project would result in fill of coastal waters without any mitigation, the project does not meet the Section 30233 mitigation test. Therefore, the proposed development is inconsistent with Section 30233 of the Coastal Act.

It should be noted that Section 30235 of the Coastal Act requires that structures such as bulkheads be approved if the structure is required to protect existing structures that are in danger from erosion, and provided it is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. A bulkhead is required at the subject site to protect the structural integrity of the applicant's lot and the neighboring lots from tidal activity. In addition, a bulkhead is necessary to protect the existing residences on those lots. If the existing bulkhead were removed and not replaced, tidal activity would erode the project site and eventually the adjacent lots, destabilizing existing development at those sites which include single family residences. Therefore, the existing bulkhead at the subject site is necessary to protect existing structures. Thus, maintenance of the existing bulkhead in the existing alignment at the subject site is consistent with the Coastal Act. Whereas, the proposed bulkhead is not necessary to protect any existing development, thus Section 30235 does not mandate approval of the proposed bulkhead.

Conclusion

The proposed project does not meet any of the three tests outlined in Section 30233 for fill of coastal waters. The proposed project is not an allowable use, is not the least

environmentally damaging alternative, and will not provide any mitigation. Therefore, the Commission finds that the proposed development is not consistent with Section 30233 of the Coastal Act and must be denied.

D. Marine Resources

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 City of Huntington Beach has a certified Local Coastal Program (LCP). Because the proposed project would occur seaward of the mean high tide line, and thus within the Commission's original permit jurisdiction, the policies of the LCP are not the standard of review, but may be used as guidance. The Huntington Beach LCP Land Use Plan (LUP) includes the following policies:

C 6.1

Promote measures to mitigate the adverse impacts of human activities on marine organisms and the marine environment through regulation of new development, monitoring of existing development, and retrofitting [when] necessary and feasible.

C 6.1.2

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.

C 6.1.3

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 30230 of the Coastal Act requires that, where feasible, marine resources be maintained. It also requires that use of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. In addition, Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters appropriate to maintain optimum populations of marine organisms be maintained and, where feasible, restored. The City's LUP policies, cited above, reflect these Coastal Act requirements.

Intertidal areas support organisms such as barnacles, littorine snails, limpets, and bay mussels. In addition, water-oriented birds may use the area for foraging. Marine habitat has been lost to development through the years, due to major development as well as in incremental losses. Increasing habitat area increases the likelihood of biological productivity of the habitat. In order to maximize the amount of tidal habitats, the Coastal Act requires that they be maintained where feasible.

The proposed project would result in the loss of approximately 1540 square feet of open coastal water and the associated intertidal habitat. The loss is proposed in order to accommodate a new rear yard area to serve an existing residential use. The proposed bulkhead relocation and associated back fill are not necessary to protect the existing structure. The loss of open coastal waters and intertidal habitat that would result from the proposed project would not maintain marine resources or the biological productivity of coastal waters at the project site.

Even if a bulkhead is needed at the site, Sections 30230 and 30231, which state that marine resources and biological productivity be maintained, among others, would govern the determination of the appropriate location of the bulkhead. Intertidal habitat is a marine resource, the loss of which decreases biological productivity. In order to maintain the intertidal area at the site, the bulkhead cannot be approved in a location approximately 28 feet channelward of its existing location with the associated fill of 1540 square feet of coastal waters. This is especially true when the need to replace the bulkhead has not been substantiated.

Fill of the intertidal area is not consistent with Section 30233 of the Coastal Act, as described above. In addition, it would result in the loss of intertidal habitat which is a marine resource that requires protection under Coastal Act Sections 30230 and 30231. Maintaining the current area of intertidal habitat is feasible in that there is already a single family residence at the site, and some yard space does exist as well. In addition, the site includes a pier and boat dock, affording the applicant additional recreational

opportunities. In order to protect marine resources that currently exist at the subject site, as required by Sections 30230 and 30231 of the Coastal Act, the proposed 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, that the activity may have on the environment.

As described above, the proposed project would have significant adverse environmental impacts, and no mitigation for those impacts has been proposed. Also as described above, there are feasible alternatives available to the project as proposed. Moreover, 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. 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.

VICINITY MAP

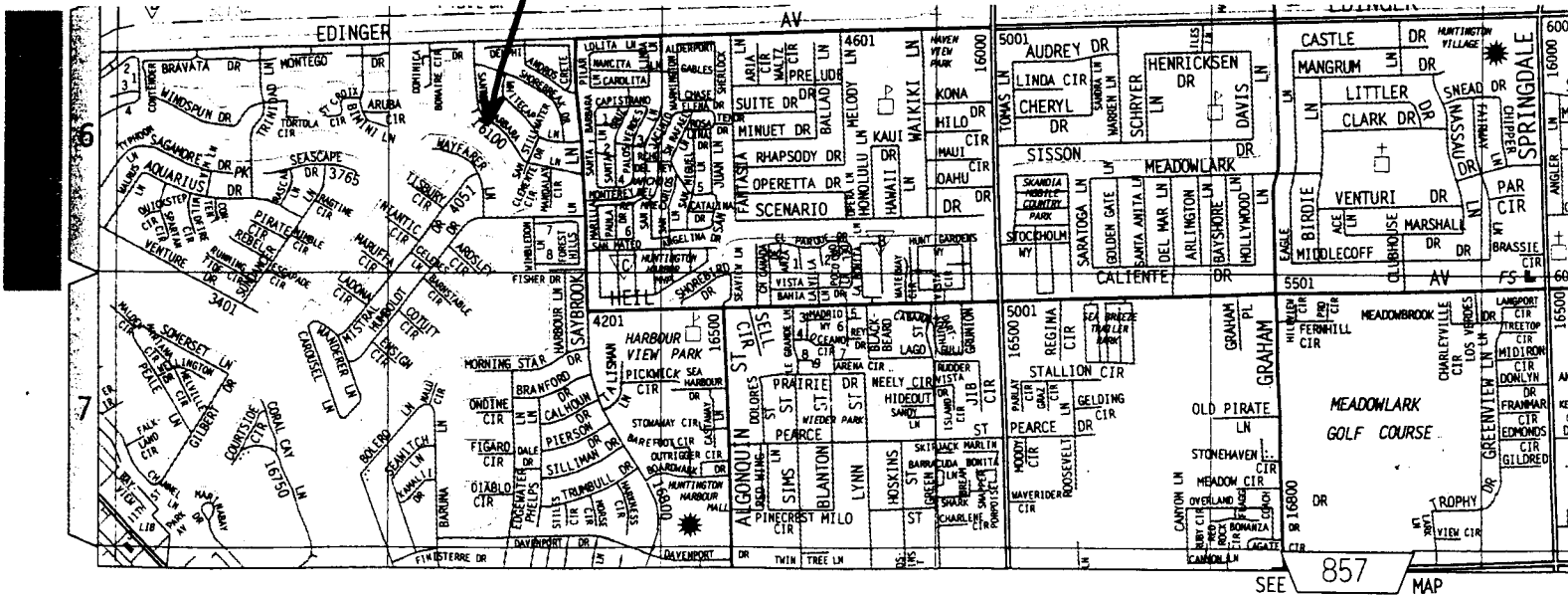
project site

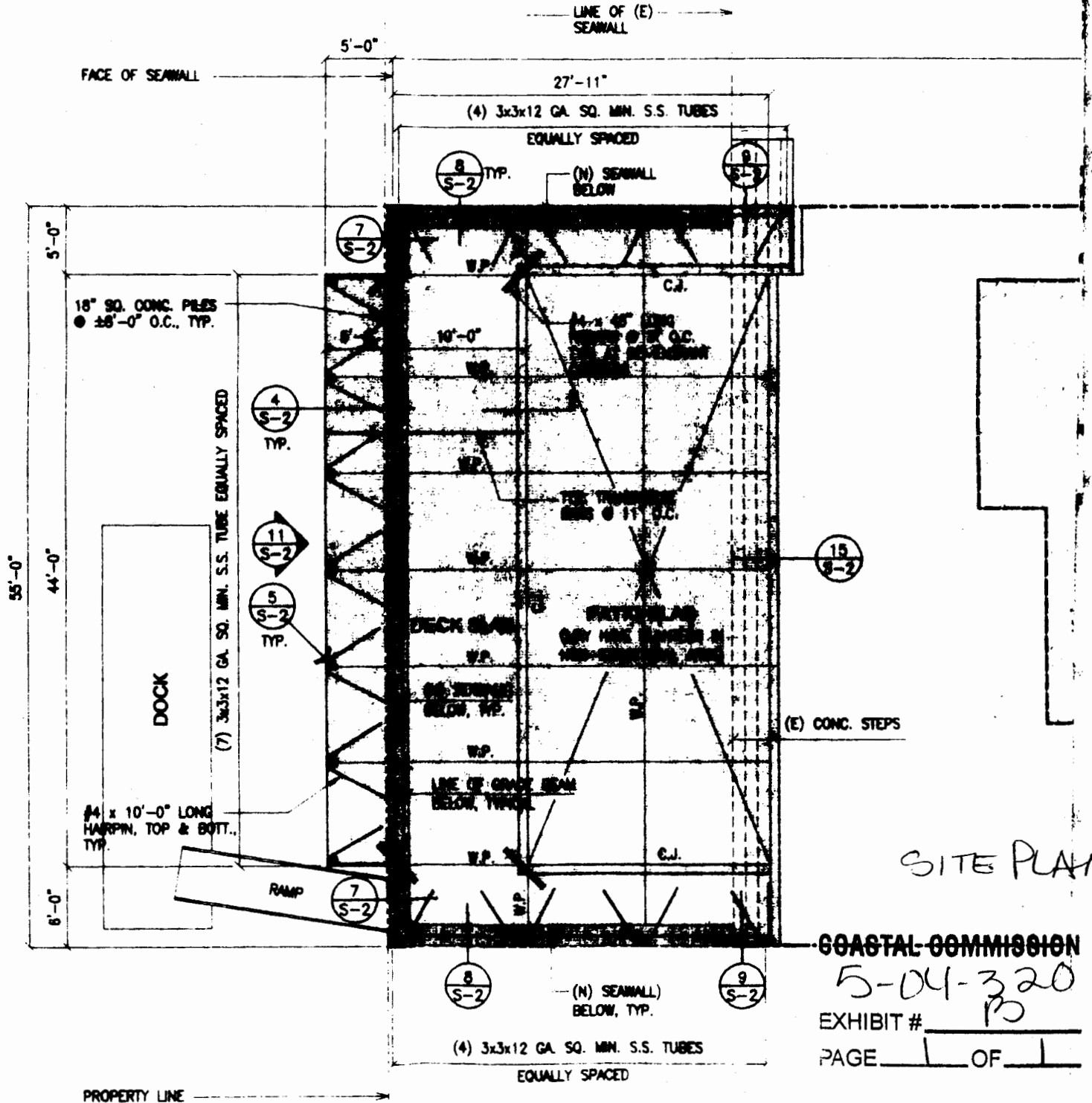
COASTAL COMMISSION

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EXHIBIT # A

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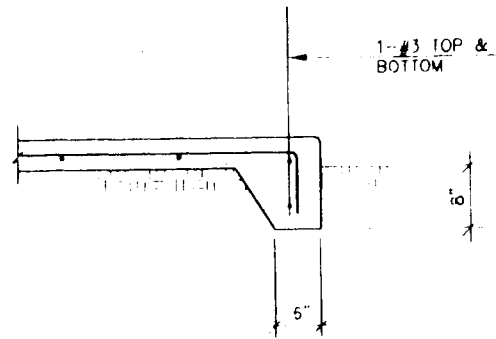
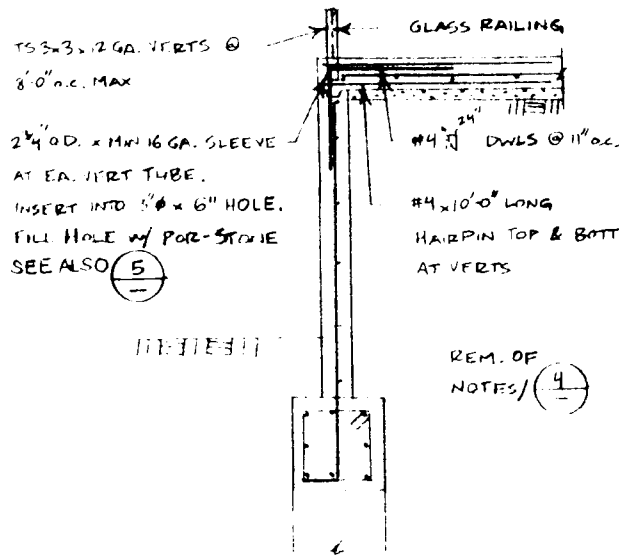
SITE PLAN

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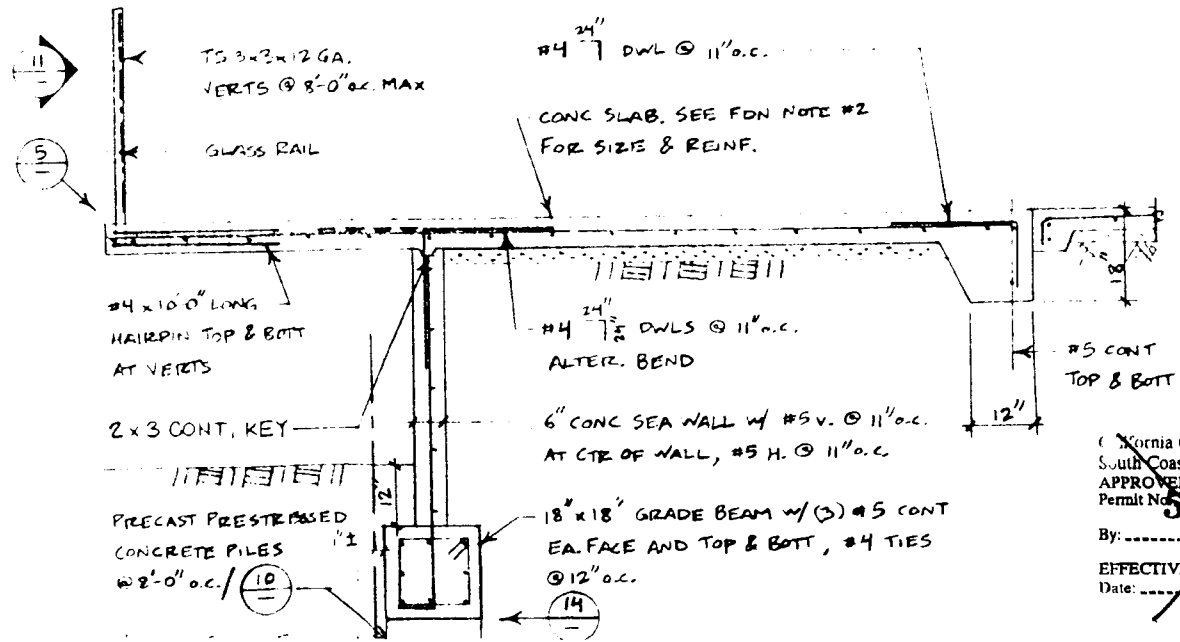
FUTURE CONCRETE DECK PROJECTING BEYOND

TOTAL LENGTH OF EXISTING SEAWALL	55'
WATERFRONT DECK LENGTH	44'
Σ	80'

Cross Section Plans



7 TURNDOWN EDGE



California Coastal Commission
 South Coast District Office
 APPROVED
 Permit No. ~~5-04-3~~
 By: _____
 EFFECTIVE
 Date: _____

5-04-320
HARMSWORTH ASSOCIATES
Environmental Consultants

Joel Sewell
16141 Santa Barbara Lane
Huntington Beach, CA 92649

September 17, 2002

SEP 12 2004

RE: Sea Wall Project

Dear Joel,

This letter report summarizes the results of the biological assessment conducted by Harmsworth Associates at your residence, 16141 Santa Barbara Lane, for the proposed new sea wall project. The site visit was conducted on September 17, 2003 and consisted of a review of existing conditions and a habitat assessment for assessing potential for special status plant and wildlife species¹ to occur onsite.

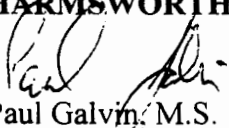
The project site consists of an intertidal mudflat adjacent one of the channels in Huntington Harbor. The project area extends from the existing sea wall at the back of 16141 Santa Barbara Lane out as far as the existing pilings (approximately three feet above the MLW tide mark) and across for 55 feet. The project site is surrounded by sea walls for residential areas and boat docks (see attached photographs).

The project site was completely devoid of vegetation at the time of the survey. Beyond the project site, approximately at the MLW tide mark, green algae mats were present. Some barnacles (Cirripedia) occurred on the pilings, small flatfish were present in the water and there were evidence of marine worms (Polychaeta) in the mudflat area. No other fauna was evident during the site visit.

No special status plant or animal species were detected during the site visit and based on site conditions none are expected to occur within the project site.

If you require additional information or if you have any questions please contact me at (714) 389-9527.

Sincerely,
HARMSWORTH ASSOCIATES


Paul Galvin, M.S.
Vice President

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5-04-320
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¹ Special status species = federal or state listed threatened or endangered species, or proposed endangered, threatened or candidate species, or otherwise sensitive species.

approximately 20 feet
 adjacent property to the WEST

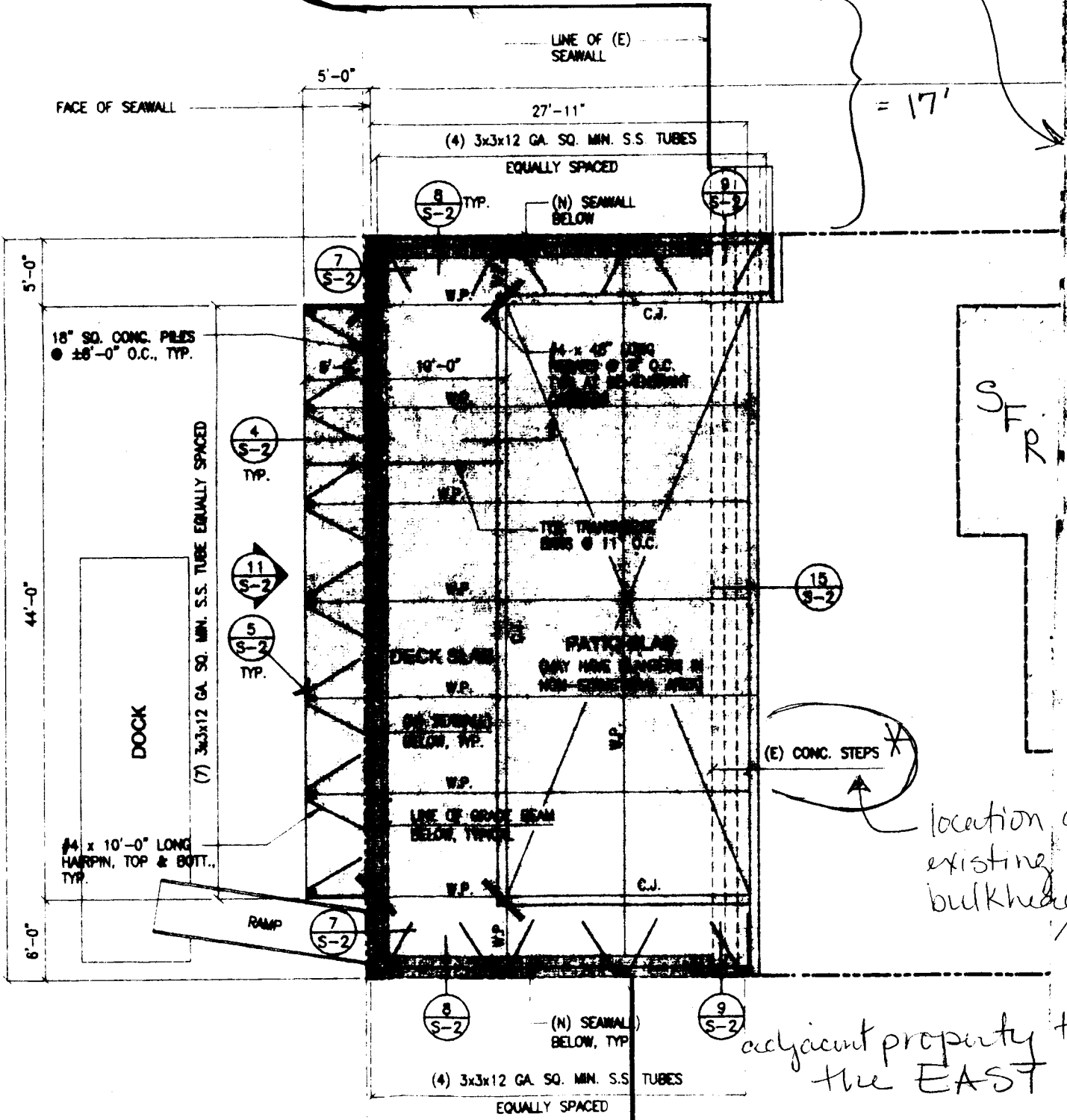


EXHIBIT E

FUTURE CONCRETE DECK PROJECTING BEYOND

TOTAL LENGTH OF EXISTING SEAWALL	55'
WATERFRONT DECK LENGTH	44'
	80'

