

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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(562) 590-5071

RECORD PACKET COPY**Fr 6 a**

Filed: 7/19/04
49th Day: 9/6/04
180th Day: 1/15/05
Staff: MV-LB
Staff Report: 8/19/04
Hearing Date: 9/8-10/04
Commission Action:

STAFF REPORT: CONSENT CALENDAR**APPLICATION NUMBER: 5-03-290****APPLICANTS: GREG & JANE KRIESEL****AGENT: Marco Fernandez****PROJECT LOCATION: 3512 Venture Drive
Huntington Beach, Orange County****PROJECT DESCRIPTION:** Construction of a new 50 foot long concrete deck cantilevered 5 feet beyond the existing bulkhead.**LOCAL APPROVALS RECEIVED:** City of Huntington Beach Approval in Concept dated 6/30/03.**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending **APPROVAL** of the proposed project with four special conditions which require that proper construction methods be employed during construction of the cantilevered deck; and, submittal of evidence that the applicant has obtained all permits, leases or other authorizations necessary from the California State Lands Commission. Special condition No. 1 describes appropriate construction methods to assure protection of water quality.

SUBSTANTIVE FILE DOCUMENTS: City of Huntington Beach certified Local Coastal Program (used as guidance in this area of original permit jurisdiction).

I. STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

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

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Construction Responsibilities and Debris Removal

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (b) Any and all construction material shall be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.

2. California State Lands Commission Approval

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by California State Lands Commission, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Legal Interest

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to carry out the proposed project and all conditions of approval of this permit.

4. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The applicant proposes to construct a new 50 foot long concrete deck cantilevered 5 feet beyond the bulkhead. The subject site is located at 3512 Venture Drive, on the main channel in Huntington Harbor in the City of Huntington Beach. Drainage from the deck will be directed back onto the lot, not into the waters of the harbor. The nearest public access in the area is at a small public park adjacent to the Trinidad Lane bridge, located approximately 3 blocks south of the subject site. Public access also exists at Sunset County Beach, less than one mile to the southwest.

The proposed deck would cantilever over the waters of Huntington Harbor. In this area of Huntington Harbor, the water area is owned by the State of California, administered by the California State Lands Commission (CSLC). The State Lands Commission is aware of the project and, in a letter dated July 15, 2004 (see exhibit C), does not object to it. However, CSLC letter states: "However, the CSLC reserves the right to make a final determination as to its interest relative to this project. We would ask that the CCC [California Coastal Commission] require the CSLC jurisdictional determination and, if applicable a lease, as a condition of any Coastal Development Permit that is proposed for this project." Thus special conditions are imposed which require the applicant to obtain all necessary permits and legal interest (lease) that the State Lands Commission may require before issuance of this coastal development permit. If CSLC ultimately determines that no additional permits or lease is necessary, the Executive Director could accept a letter from CSLC stating this conclusion. Furthermore, a special condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

The subject site is in an area of the Commission's original permit jurisdiction. However, the City's certified Local Coastal Program may be used as guidance. The proposed development is consistent with the City's certified LCP Implementation Plan, specifically Chapter 210, which provides standards for cantilevered decks in Huntington Harbor.

Most of the existing residences that front along the waters of Huntington Harbor have cantilevered decks. The proposed deck is similar in function to the other cantilevered decks associated with residential development within Huntington Harbor. The proposed development is consistent with past Commission actions in the area. Thus the proposed deck will have no adverse impact on coastal access or resources in the project vicinity, and is consistent with the Chapter 3 policies of the Coastal Act.

B. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as

conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. WATER QUALITY

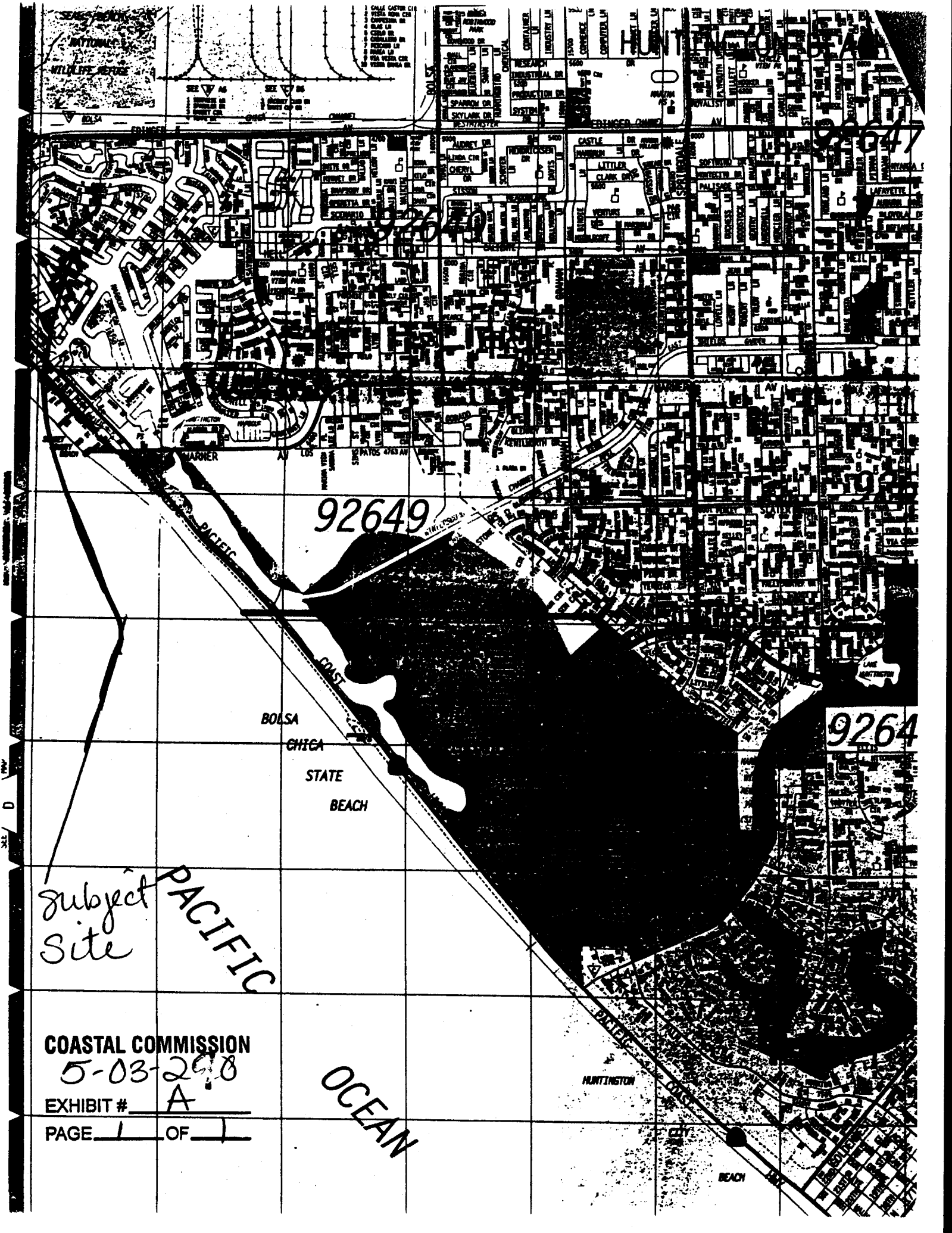
The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive, drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

D. 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. An LCP for the City of Huntington Beach was effectively certified in March 1985. However, the proposed development is occurring within an area of the Commission's original permit jurisdiction, due to the project location seaward of the mean high tide line. Consequently, the standard of review is the Coastal Act and the City's LCP is used only as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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



subject
Site

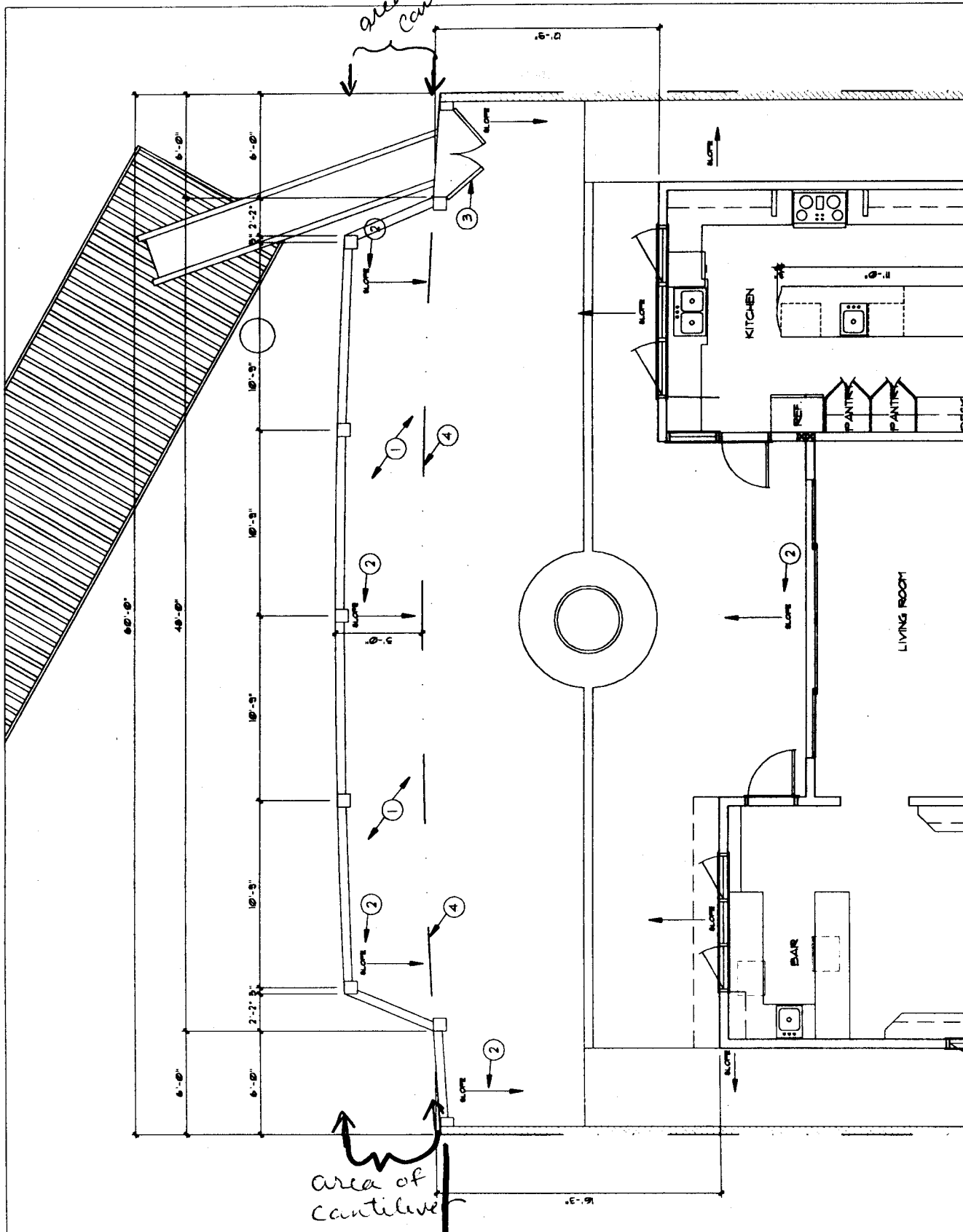
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5-03-268

EXHIBIT # A

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OCEAN



PARTIAL FLOOR PLAN (CANTILEVER DECK)

SCALE: 1/4" = 1'-0"

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WATER — LAND

Project Plans
site plan

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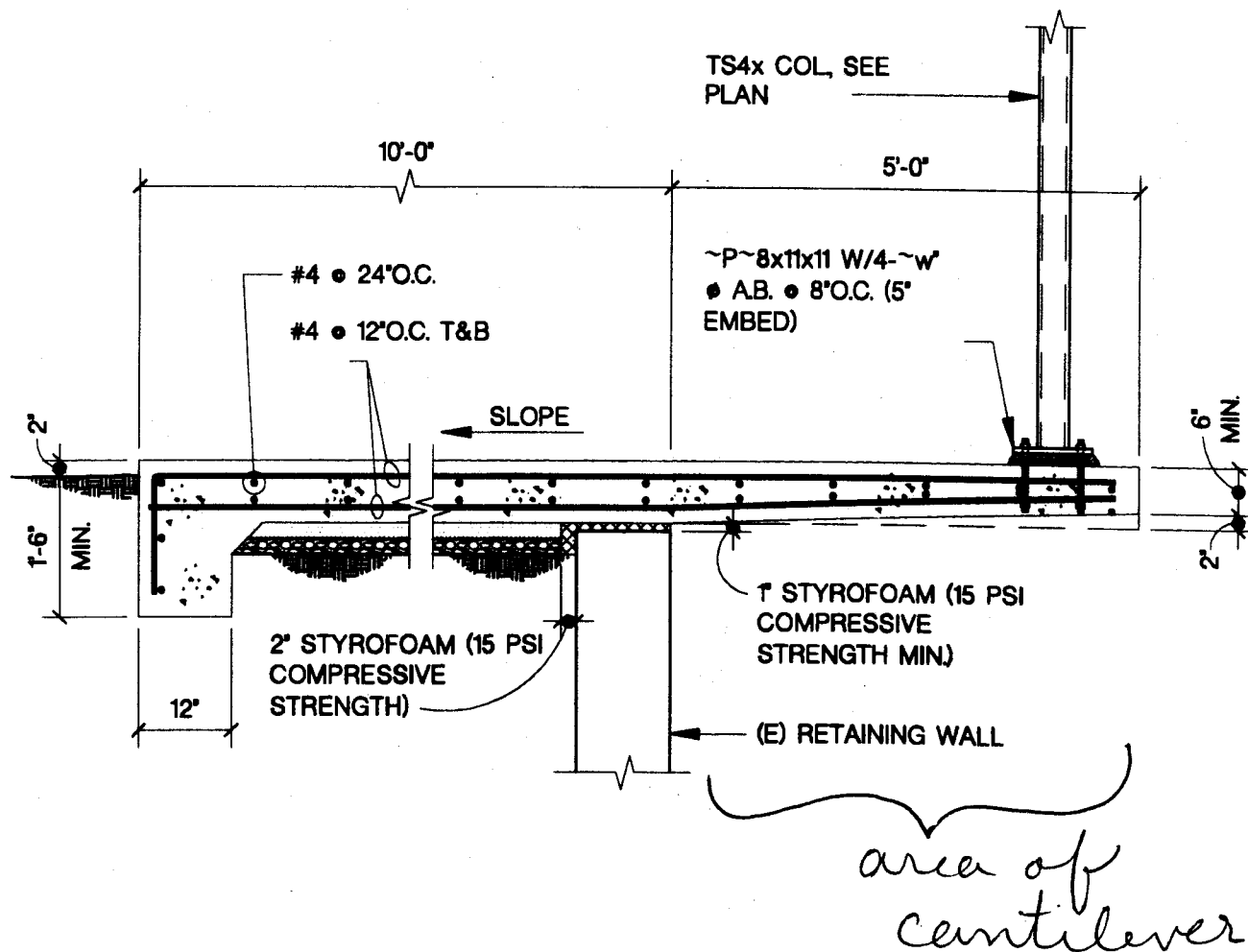
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EXHIBIT # B

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Cross section

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Exhibit B₂



DETAIL

SCALE

1/2"=1'-0"

STATE OF CALIFORNIA

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



ARNOLD SCHWARTZBERGER, Governor

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July 15, 2004

File Ref: SD 2003-08-25.2

Meg Vaughn
South Coast District Office
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Vaughn:

**Subject: Kriesel, Greg and Jane – Proposed Construction of a Five Foot
Cantilevered Deck Over the Waters of Huntington Harbour Adjacent to
3512 Venture Drive, Huntington Beach, Orange County**

As you are aware, Marco Fernandez, of MAF Architects, on behalf of his clients Greg and Jane Kriesel, has requested a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters. A determination is required for these types of projects prior to the processing of the applications for Coastal Development Permits issued by your agency.

The facts pertaining to the Kriesel project, as we understand them, are these:

Mr. Fernandez's clients propose to construct a concrete deck that extends five feet waterward of the existing bulkhead with a five-foot setback at either side of the parcel located at 3512 Venture Drive adjacent to the Main Channel of Huntington Harbour, Huntington Beach. The resulting dimension of the cantilevered portion of the proposed deck is five feet x 50 feet, which appears to represent 80% of the bulkhead frontage limit established by the City of Huntington Beach. It is our understanding that the City of Huntington Beach Planning Department has approved the plans "in concept" for this project. It appears that the parcels immediately west and east of the Kriesel parcel have existing cantilevered decks that extend over the bulkhead within the five-foot limit.

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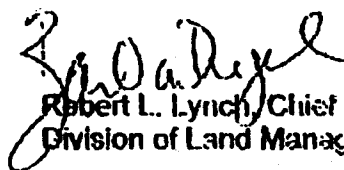
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With regard to the jurisdiction of the CSLC, pursuant to two agreements entered into in 1961 and 1962, BLA 18 and SLL 34, the CSLC settled certain property (boundary and title) ownership issues with the Huntington Harbour Corporation involving Huntington Harbour. The CSLC's area of leasing jurisdiction extends over the State's fee title ownership including the areas that are referred to as the Main and Midway Channels. The State retains a Public Trust easement over much of the remaining area within Huntington Harbour.

The CSLC is currently investigating its jurisdictional boundaries to determine whether a lease will be required for the area occupied by the cantilevered decks within the Main and Midway Channels of Huntington Harbour. Staff is continuing the information gathering process and is working diligently with the City of Huntington Beach in order to identify the relationship of improvements constructed vis-à-vis property boundaries. As this process is continuing and has not been completed at this time, CSLC staff does not object to the California Coastal Commission (CCC) beginning the Coastal Development Permit (CDP) application process for this project. However, the CSLC reserves the right to make a final determination as to its interest relative to this project. We would ask that the CCC require the CSLC jurisdictional determination and, if applicable a lease, as a condition of any Coastal Development Permit that is proposed for this project.

This letter is not intended, nor shall it be construed as a waiver of limitation of any right, title, or interest of the State in any lands under the jurisdiction of the California State Lands Commission. Should you have any questions regarding the above, please contact Susan Young at (916) 574-1879.

Sincerely,

for 
Robert L. Lynch, Chief
Division of Land Management

cc: M. Fernandez - MAF Architects
J. VonHolle - City of Huntington Beach
S. Young

Exhibit C₂