

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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Long Beach, CA 90802-4302  
(562) 590-5071

**F 8d & e****RECORD PACKET COPY**

Filed: August 18, 2004  
49th Day: October 6, 2004  
180th Day: February 14, 2005  
Staff: FSY-LB  
Staff Report: December 16, 2004  
Hearing Date: January 12-14, 2005  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO's.:** 5-04-241 & 5-04-242

**APPLICANT:** Newport Bay 505 LLC

**AGENTS:** Jack Heron & Phil Nielsen

**PROJECT LOCATION:** 505 & 507 East Bay Avenue, City of Newport Beach  
(Orange County)

**PROJECT DESCRIPTION:** Demolition of an existing residential building (triplex), which straddles the two project lots, construction of a new three-story, 2,713 square foot duplex with a four-car carport on each of the two lots. Grading, primarily for recompaction, will take place with the proposed project. Each duplex will be a two-unit condominium.

**SUMMARY OF STAFF RECOMMENDATION:**

The subject sites are located on inland lots along the Balboa Peninsula in the City Newport Beach (Orange County). The applicant proposes to demolish an existing triplex and construct two new duplexes. The major issue of this staff report is the construction of new residential development in an area designated as Retail and Service Commercial (RSC) in the Commission-certified Land Use Plan (LUP) for the City of Newport Beach. Commission staff recommends that the Commission **DENY** the proposed projects.

**LOCAL APPROVALS RECEIVED:** Approval-in-Concepts (#0829-2004 and #0831-2004) from the City of Newport Beach Planning Department dated May 19, 2004; Approval-in-Concepts (#1643-2004 and #1644-2004) from the City of Newport Beach Planning Department dated June 14, 2004; and Tentative Parcel Map (No. NP2004-012) approval (PA2004-107) from the City of Newport Beach Planning Department.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; Coastal Development Permit # 5-00-179-[Eubanks]; NPB-MAJ-1-03-[Parts B & C]; *Preliminary Geotechnical Study For The Proposed Single Family Residence 507 E. Bay Avenue, Newport Beach Orange County, California (Job. No. 04-267P-1)* prepared by Geo Environ dated March 31, 2004; Letters from Commission staff to David Hohmann dated July 21, 2004; Letter from City of Newport Beach Planning Department to Commission staff dated September 17, 2004; Notice-Of-Intent to issue a building permit (Categorical Exclusion Order (CEO) No. 42-04) dated August 27, 2004; and Letter from Commission staff to the City of Newport Beach Planning Department dated September 7, 2004.

**EXHIBITS**

1. Vicinity Map
2. Assessor's Parcel Map
3. Plot Plan
4. Commission Approved Land Use Plan (Central Balboa Area)
5. City of Newport Beach Specific Plan District #8 (Central Balboa)

**STAFF RECOMMENDATION:**

**I. STAFF RECOMMENDATION OF DENIAL**

Staff recommends that the Commission **DENY** the coastal development permit applications by voting **NO** on the following motions and adopting the following resolution.

**A. Motion I**

*I move that the Commission approve Coastal Development Permit No. 5-04-241 for the development proposed by the applicants.*

**Motion II**

*I move that the Commission approve Coastal Development Permit No. 5-04-242 for the development proposed by the applicants.*

**B. Staff Recommendation of Denial**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permits 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** coastal development permits for the proposed developments on the ground that the developments will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permits 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 developments on the environment.

## II. SPECIAL CONDITIONS

Not Applicable.

## III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

### A. **PROJECT LOCATION, DESCRIPTION & SITE HISTORY**

#### 1. Project Location

The proposed project sites are located along Balboa Peninsula at 505 & 507 East Bay Avenue in the City of Newport Beach, County of Orange (Exhibits #1-2). The City of Newport Beach certified Land Use Plan (LUP) designates the sites as Retail and Service Commercial (RSC). The project area and its immediate vicinity are characterized by a mixture of visitor-oriented and neighborhood oriented retail and service uses known as Central Balboa on the Balboa Peninsula. The boundaries of the Central Balboa area are: Newport Bay, "A" Street, the ocean beach and Adams Street, plus the lots that front on Balboa Boulevard between Adams Street and Coronado Street. The City of Newport Beach attracts visitors year round due to its recreational opportunities, such as those provided in the project vicinity. Like many beach communities, Newport Beach receives an influx of visitors during the summer. In addition, the project sites are one block south of an area known as the Balboa Fun Zone. The Balboa Fun Zone provides visitor recreational uses such as amusement rides, food, access to the bay and retail and commercial services along a public walkway or promenade adjacent to Newport Bay.

The project sites are currently developed with an existing triplex building that straddles both lots. North of the project sites are East Bay Avenue and a three-story retail and service commercial building beyond. South of the project sites are an alley and retail and service commercial uses. East of the project sites are a restaurant and a bar. West of the project sites are two single-family residences.

#### 2. Project Description

The proposed project consists of demolition of an existing residential building (triplex), which straddles the two project lots, construction of a new three-story, 2,713 square foot duplex with a four-car carport on each of the two lots (Exhibit #3). The applicant has stated that grading, primarily for recompaction purposes, will take place with the proposed project. However, the amount of grading is unclear and needs to be clarified. Each duplex will be a two-unit condominium.

#### 3. Project Site History

On August 31, 2004, Commission staff received a Notice of Intent to issue a building permit (Categorical Exclusion Order (CEO) No. 42-04) dated August 27, 2004 for the demolition of a residential triplex at 505 & 507 East Bay Avenue in the City of Newport Beach. Commission staff reviewed the notice and determined that the project did not qualify to be excluded from coastal development permit requirements under Commission

approved Categorical Exclusion Order E-77-5. Based on Commission staff's review of the categorical exclusion map, the project site is located in an area designated C-1 and not within any of the residential zones that are covered by the categorical exclusion. The certified Land Use Plan (LUP) designates the project sites as Retail and Service Commercial. The proposed demolition, as well as any new development on the site, would require a coastal development permit. On September 7, 2004, Commission staff sent a letter to the City of Newport Beach Planning Department informing them of Commission staff's determination regarding Categorical Exclusion Order (CEO) No. 42-04.

There are no records for previous Commission action on either site.

## **B. LAND USE PLAN**

The LUP for the City of Newport Beach was effectively certified on May 19, 1982, and subsequently amended multiple times. The subject site is located in an area with the Retail & Service Commercial (RSC) designation (Exhibit #4). The certified LUP identifies the following uses within the RSC area:

*Areas with this designation are to be predominantly retail in character, also accommodating some service office uses. It is the intent of this designation to provide contiguity of shopping and mutually supportive businesses. Uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior citizen housing facilities. Office uses which do not provide services directly to the public shall be prohibited on the ground level, but may be permitted on the second level or above where the ground level is occupied by a primary use. Separate "corporate" type offices are not allowed in these areas.*

The certified Land Use Plan breaks the City down into ten detailed land use planning areas. Each of these ten areas is further broken down into planning sub-areas. Application of the land use designation is tailored to the planning sub-areas and have a range of uses that is more expansive or more restrictive than the uses identified in the general description above.

The subject sites are located within the Balboa Peninsula planning area and the Central Balboa sub-area. The description of the planning intent and uses within the Central Balboa sub-area is described as follows in the certified Land Use Plan:

*Central Balboa is the area bounded by Newport Bay, A Street, the ocean beach and Adams Street, plus the lots fronting on Balboa Boulevard between Adams Street and Coronado Street. This area is a unique mixture of visitor-oriented and neighborhood-oriented retail and service uses, including coastal-dependent visitor uses such as sport fishing establishments, day-boat rentals, ferry service, fishing docks, and the historic Balboa Pavilion. The area is designated for Retail and Service Commercial land use, with some areas shown for Single Family Attached, Two Family Residential and Government, Educational and Institutional Facilities.*

*The Rendezvous Condominiums are shown for Single Family Attached and are allocated 24 dwelling units, which reflects the existing use. Two-Family Residential areas require 2,375 sq.ft. of buildable lot area for duplex development. No subdivision which will result in additional dwelling units is allowed.*

*Areas which are designated for Retail and Service Commercial or Governmental, Educational and Institutional land use are allowed a maximum floor area ratio of 0.5/1.0. **Separate residential uses are prohibited [emphasis added].** Residential development is permitted on the second floor in conjunction with ground floor commercial up to a total floor area ratio of 1.25. One dwelling unit is allowed for each 2,375 sq.ft. of buildable lot area with a minimum of one unit allowed per lot. The area is allocated 223 dwelling units. Office uses may be permitted on the second floor or above when the ground level is occupied by a primary use providing goods or services directly to the public.*

The applicant is proposing to construct separate duplex dwellings in areas designated by the certified Land Use Plan for Retail and Service Commercial uses. The certified LUP states that separate residential uses in the RSC area is prohibited. Accordingly, the proposed developments are not consistent with the certified Land Use Plan.

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

Section 30222 of the Coastal Act states:

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

Accordingly, visitor-serving commercial uses have priority over residential uses in the coastal zone. In addition, the subject area is in demand as a visitor-serving commercial area.

The area where the proposed development is located is designated RSC in the certified LUP. North of the project sites are East Bay Avenue and a three-story retail and service commercial building beyond. South of the project sites are an alley and retail and service commercial uses. East of the project sites are a restaurant and a bar. West of the project sites are two single-family residences. Further west along East Bay Avenue past Adams Street is an area that is residential in character. While residential uses exist along that stretch of East Bay Avenue, residential use is inconsistent with the area of the project sites. Even though there are two existing single-family residences located adjacent to the site, which also are inconsistent with the LUP designation, the project area (on three sides) is predominantly retail and service commercial in nature.

The existing residential triplex is inconsistent with the certified LUP land use designation of retail and service commercial. The retail and service commercial land use designation is in keeping with the Coastal Act priority for visitor-serving commercial recreational facilities (Section 30222). Allowing a new development that is inconsistent with this Coastal Act priority land use to replace the existing inconsistent development is prejudicial to the Local Coastal Program (LCP) process. The proposed projects present an opportunity to allow a development that would be consistent with the Coastal Act. Such projects would also be consistent with the LUP designation of RSC,

which is also consistent with the type of surrounding development. As noted previously, the project area and its immediate vicinity are characterized by a mixture of visitor-oriented and neighborhood oriented retail and service uses known as Central Balboa on the Balboa Peninsula and during the summer it receives an influx of visitors. Residential uses, especially at the ground floor level, can be incompatible with visitor-serving commercial recreational uses. In addition, the project sites are one block south of an area known as the Balboa Fun Zone. The Balboa Fun zone provides visitor recreational uses such as amusement rides, food, access to the bay and retail and commercial services along a public walkway or promenade adjacent to Newport Bay. Therefore, the Commission finds that the proposed project is inconsistent with Section 30222 of the Coastal Act and with the City's LUP regarding the Central Balboa area.

The City of Newport Beach Zoning Code Specific Plan District #8 (Central Balboa) designates the sites as Residential-Professional (RP) (Exhibit #5). In response to the inconsistency between the LUP designation and the Zoning Code designation, the City of Newport Beach Planning Department submitted a letter dated September 17, 2004 discussing the issue. The letter states that in 1994 when the City reviewed the Central Balboa Specific Plan District, it addressed the issue of a number of properties that were designated retail and service commercial, but were predominantly developed with residential uses. The subject sites were among these properties that were reviewed. The planning department recommended that the land use designation and zoning of these areas be changed to allow two Family Residential. However, there were those in the community that supported retaining the option that these locations be zoned as commercial. The City compromised by including a mixed-use zone known as Residential Professional (RP) District in the Central Balboa Specific Plan District. This designation allows two family residential development with the option of a limited amount of commercial development (i.e. offices and personal services). The Central Balboa Specific Plan has not been reviewed or acted on the by the Commission. It would be part of the Implementation Plan of the LCP.

The Commission-certified RSC designation for the subject sites under the LUP only allows a residential use in combination with some other retail or service commercial use (i.e. mixed use) and only when the residential use is above the ground floor. Therefore, the zoning under the Specific Plan would be inconsistent with the certified Land Use Plan. However, as stated above the Specific Plan zoning is not before the Commission and the Commission recognizes only the land use designation of the certified Land Use Plan at this point. The land use designation of RSC is consistent with the commercial priority provisions Section 30222 of the Coastal Act.

### **C. ALTERNATIVES**

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

#### **1. No Project**

No changes to the existing site conditions would result from the "no project" alternative. The existing triplex would remain in use. Although the existing residential use is inconsistent with the LUP designation of the site as retail and service commercial, no new development would occur.

2. Demolition and Construction of a Commercial Development

This project alternative would be consistent with the Coastal Act and the certified LUP. As stated in the LUP, retail and service commercial uses, such as retail sales and offices which provide goods and services to the general public are permitted.

3. Demolition and Construction of a Mixed Use Development

This project alternative would also be consistent with the certified LUP and Coastal Act. As stated in the LUP, residential uses, on the second floor, in conjunction with ground floor commercial use is permitted.

**D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as no construction or demolition and construction of a retail or service commercial or mixed use (commercial/residence) that could be found consistent with applicable Chapter 3 policies of the Coastal Act. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

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31 A B C D E F 31  
SEE 27 MAP



SEE 30 MAP

SEE 32 MAP

EXHIBIT # 1  
PAGE OF 1

PACIFIC OCEAN  
COASTAL COMMISSION

SEE 33 MAP

SITZ

- UPPER NEWPORT BAY
- 1 BAL OF CAMER
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- ECOLOGICAL RESERVE

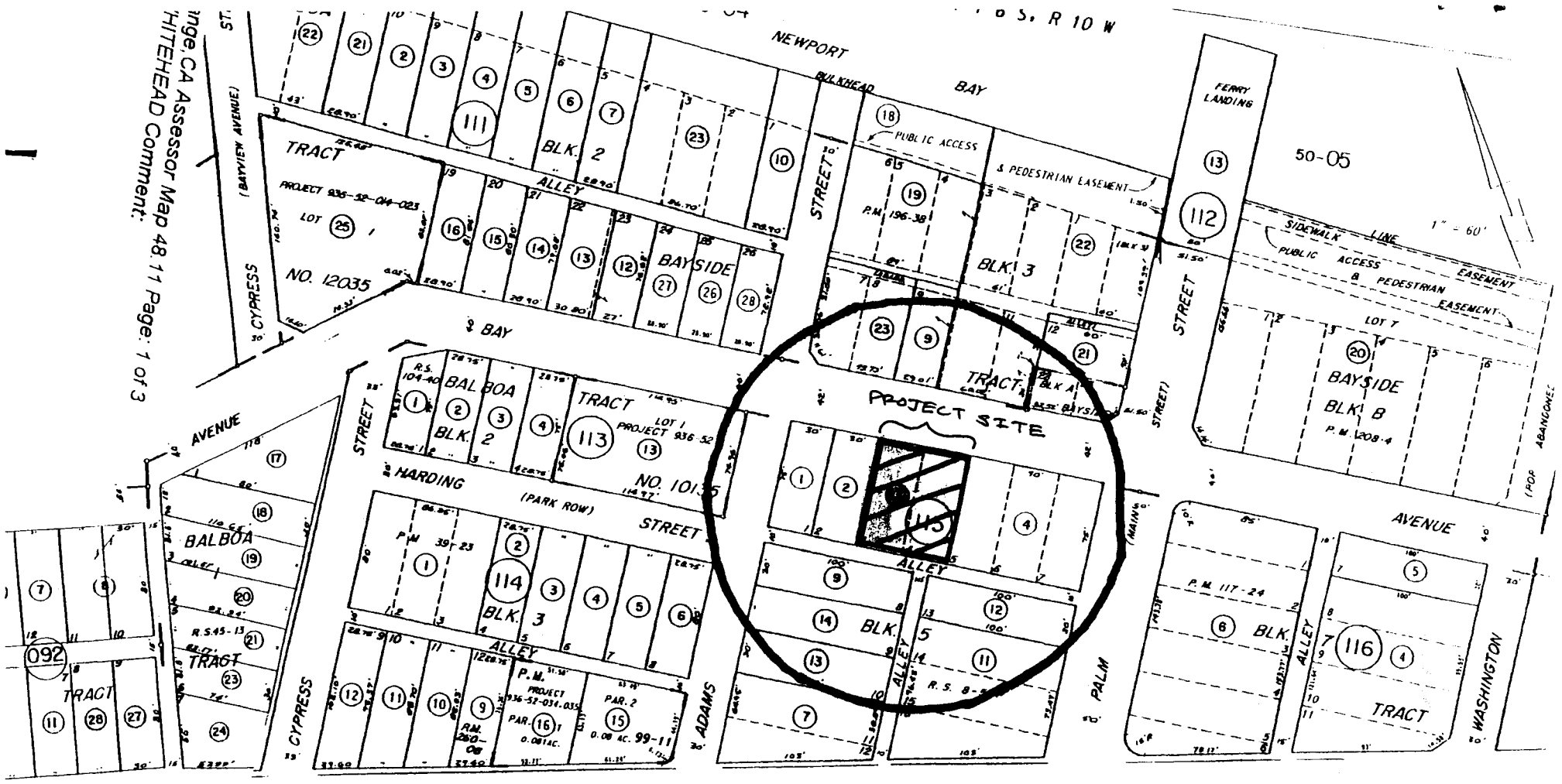
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Engineering Assessor Map 48 11 Page: 1 of 3  
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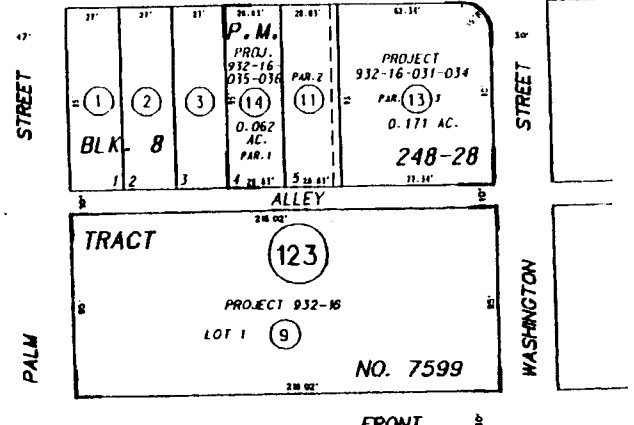
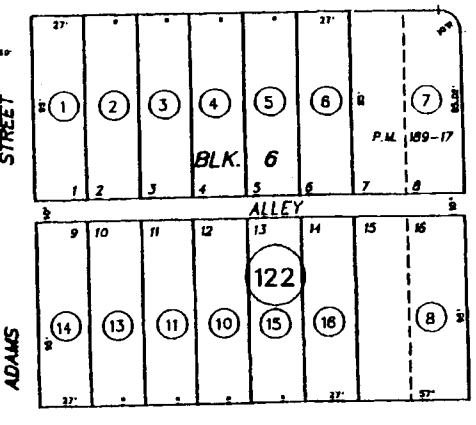
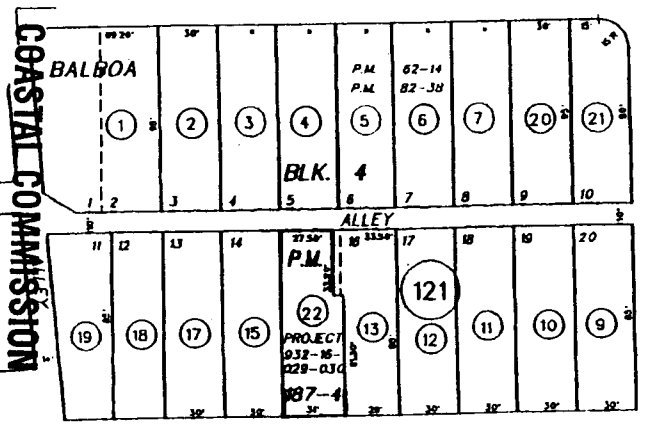


BOULEVARD

BALBOA

BOULEVARD

EXHIBIT # 2 of 3  
 PAGE 1 OF 1  
 COASTAL COMMISSION



(SURF AVE.)

FRONT



DAVID PIERCE HOHMANN  
ARCHITECT

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(714) 241-3900

KJI Inc.  
161 Fashion Lane Suite 110  
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P(714) 806-8118  
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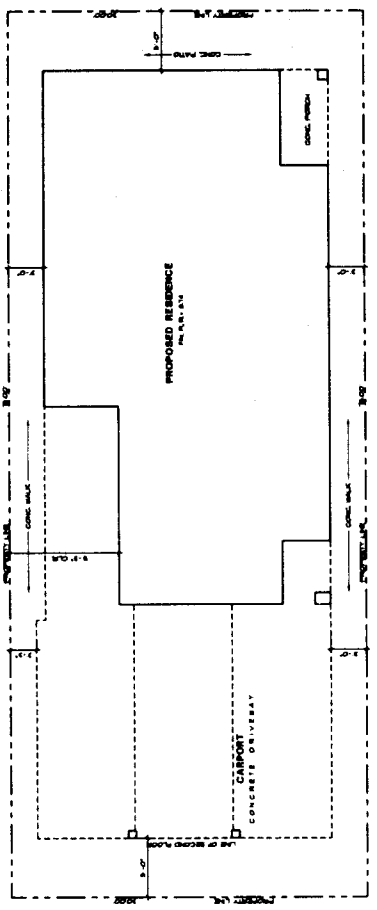
PROJECT LOCATION: 507 E. Bay Avenue, Newport Beach, California

PLOT PLAN NOTES

1. EXISTING UTILITIES SHALL BE MAINTAINED AND NOT REMOVED UNLESS NECESSARY FOR THE PROPOSED CONSTRUCTION.
2. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE UNLESS OTHERWISE SPECIFIED.
3. ALL UTILITIES SHALL BE PROTECTED BY A CONCRETE CURB AND GUTTER SYSTEM.
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20. ALL UTILITIES SHALL BE PROTECTED BY A CONCRETE CURB AND GUTTER SYSTEM.

EAST BAY AVENUE

ALLEY



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

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 1

SFA = SINGLE FAMILY ATTACHED RESIDENTIAL

SFD = SINGLE FAMILY DETACHED RESIDENTIAL

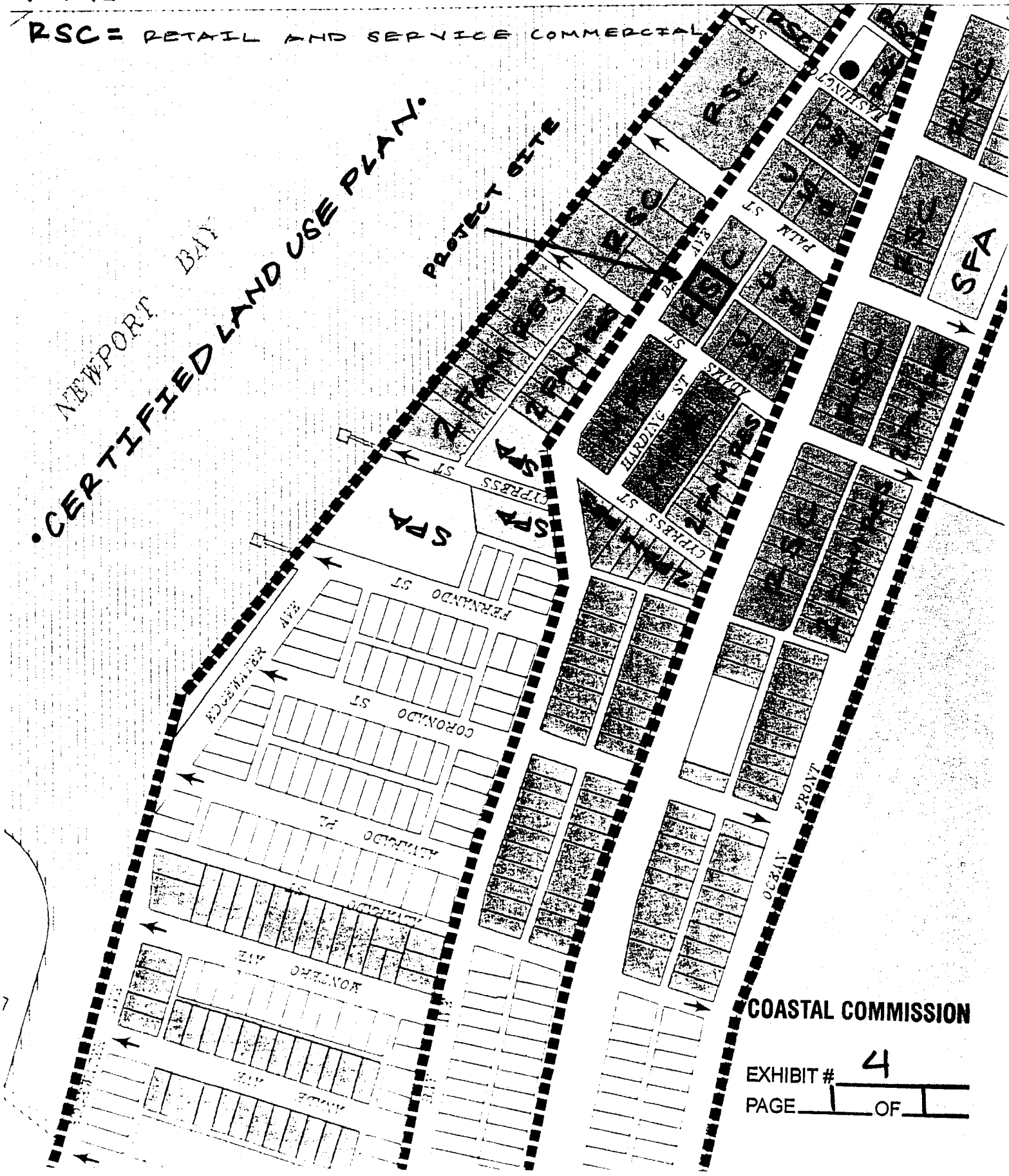
2 FAM RES = TWO FAMILY RESIDENTIAL

MFR = MULTI FAMILY RESIDENTIAL

RSC = RETAIL AND SERVICE COMMERCIAL

NEWPORT BAY  
CERTIFIED LAND USE PLAN

PROTECT SITE

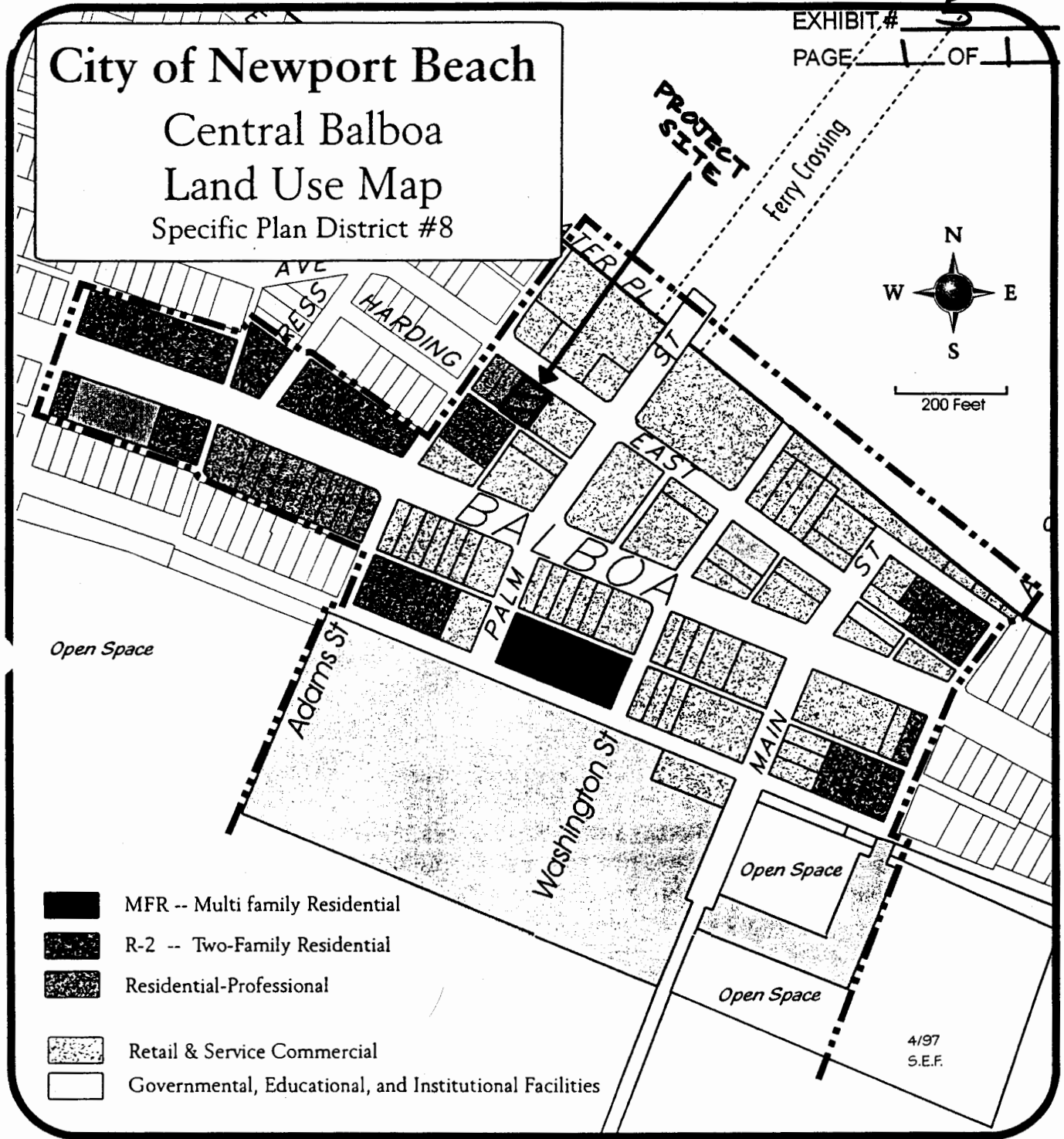


COASTAL COMMISSION

EXHIBIT # 4  
PAGE 1 OF 1

# City of Newport Beach

## Central Balboa Land Use Map Specific Plan District #8



• CITY OF NEWPORT BEACH SPECIFIC PLAN FOR CENTRAL BALBOA AREA •

• NOT CERTIFIED BY COMMISSION •



# CITY OF NEWPORT BEACH

## PLANNING DEPARTMENT

Patricia L. Temple, Director

September 17, 2004

Fernie Sy  
Program Analyst  
California Coastal Commission  
South Coast District Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

F 8d 58e

**RE: 505/507 East Bay Avenue**

Dear Mr. Sy,

When the City of Newport Beach reviewed the Central Balboa Specific Plan District in 1994, it had to address the issue of a number of properties that were designated commercial, but were predominately developed with residential land uses. Among these properties were 501, 503, and 505 East Bay Avenue. These properties were designated Retail and Service Commercial but were developed with duplexes. Initially, it was recommended that the land use designation and zoning of these areas be changed to Two Family Residential in order to reflect existing residential land uses. However, there was support in the community for retaining the option of developing these properties with commercial.

As a compromise, the Central Balboa Specific Plan District included a mixed-use zone, the Residential-Professional (RP) District. The RP District permits two-family residential development with the option of a limited amount of commercial development. Commercial development is limited to a maximum floor area ratio of 0.25 and limited to the front portion of the ground floor of the property. Commercial land uses are limited to offices and personal services. This approach was intended to minimize the land use conflicts that would likely occur as the area develops from predominantly residential to commercial. It was also intended to serve as a transitional zone, providing a buffer between residential and commercial areas.

Because the RP District continues to allow commercial uses and provides a transition from commercial to residential areas, it was found to be consistent with the Retail and Service Commercial land use designation in the Land Use Element of the General Plan and the Local Coastal Program Land Use Plan.

If you have any questions, please contact me at (949) 644-3232 or [ptemple@city.newport-beach.ca.us](mailto:ptemple@city.newport-beach.ca.us).

Sincerely,

Patricia L. Temple  
Planning Director