

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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Filed: July 3, 2007  
49th Day: August 21, 2007  
180th Day: December 30, 2007  
Staff: Liliana Roman-LB  
Staff Report: July 19, 2007  
Hearing Date: August 8-10, 2007  
Commission Action:



# W18g

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-07-168

**APPLICANT:** Wet Paws, LLC

**AGENT:** Shellmaker Inc., Attn: Lisa Miller, President

**PROJECT LOCATION:** 2136 E. Balboa Blvd., Newport Beach (Orange County)

**PROJECT DESCRIPTION:** Remove and replace an existing seawall/bulkhead with a new concrete seawall/bulkhead along the same alignment; remove concrete cantilevered beams that protrude from the seawall that originally supported a 3' wooden deck previously removed for safety considerations and replace with a new 3' concrete cantilevered deck.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing the demolition and construction of a seawall/bulkhead in the same location and replacement of a 3' wide cantilevered wooden deck with a 3' wide concrete cantilevered deck. The subject site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of the Newport Harbor. The proposed new bulkhead is necessary to protect existing structures from tidal induced erosion and will have no new impacts upon shoreline sand supply because the device will be located in the same location as the existing. The primary issues associated with this development relate to the effects of proposed underwater lights incorporated into the design of the new seawall on marine resources; and issues associated with water quality. No eelgrass is located within the project area at this time, but is found immediately adjacent.

Special Condition 1 requires submittal of revised plans showing the structural and deck encroachments further set back to the structural and deck stringlines.

Staff recommends Commission **APPROVAL** of the proposed development subject to **SIX (6) SPECIAL CONDITIONS**, requiring: 1) compliance with construction responsibilities and debris removal; 2) compliance with submitted cement slurry best management plan; 3) revised final plans that depict the removal of underwater lights; 4) Department of Fish and Game approval or proof that approval is not required; 5) eelgrass survey; and 6) Caulerpa survey.

At the time of this report, the applicant was in agreement with the staff recommendation and conditions of approval.

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**LOCAL APPROVALS RECEIVED:** Approval in Concept (No. 0671-2007) from the City of Newport Beach Harbor Resources Division dated May 2, 2007; Nationwide Permit Number 3 from Army Corps of Engineers and Clean Water Act Section 401 Water Quality Standards Certification.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; City of Newport Beach Approval-in-Concept #0671-2007; City of Newport Beach Harbor Permit #108-2136; Letters from William Simpson & Associates, Inc. dated May 8, 2007 and dated June 26, 2007; *Structural Calculations for Seawall with Dywidag Anchors located at 2136 East Balboa Blvd., Newport Beach, CA prepared by William Simpson & Associates, Inc. Job #6198-4, prepared March 22, 2007; Geotechnical Engineering Investigation of Proposed New Residence at 2136 E. Balboa Blvd. Newport Beach, CA by Coast Geotechnical Engineering Inc. W.O. 292005-01, dated October 19, 2005; Eelgrass Survey Reporting Form, January 11, 2007; and Caulerpa Survey Reporting Form, January 11, 2007.*

**LIST OF EXHIBITS**

1. Location Map
2. Assessor's Parcel Map
3. City of Newport Beach, Harbor Resources Division, Approval in Concept
4. Bulkhead Plans

**STAFF RECOMMENDATION:**

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 5-07-168 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**I. RESOLUTION TO APPROVE THE PERMIT:**

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 will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- B. Any and all construction material will be removed from the site within 10 days of completion of construction.
- C. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

- D. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- E. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- F. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- G. 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. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.
- H. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;

2. **Cement Slurry Best Management Plan**

The applicant shall comply with the Cement Slurry Best Management Plan submitted on July 3, 2007 that effectively assures no cement slurry or other construction byproduct will be allowed onto the sandy beach and/or allowed to enter into coastal waters. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Revised Final Plans**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final project plans to the Executive Director for review and approval. The plan shall substantially conform to the preliminary plans, except that those plans shall omit the proposed lights on the seaward side of the proposed bulkhead.
- B. The permittee 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 legally required.

4. **California Department of Fish and Game Approval**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by California Department of Fish and Game, 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 Department of Fish and Game. 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.

5. **Eelgrass Surveys**

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” (SCEMP) Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. **Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” (SCEMP) Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30)-days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of

mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

**6. Pre-construction *Caulerpa Taxifolia* Survey**

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
  - (1) for the review and approval of the Executive Director; and
  - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. Project Description and Location**

The proposed project is located on an approximately 9,560 square foot bay front lot fronting Newport Bay at 2136 East Balboa Blvd. in the City of Newport Beach, County of Orange (Exhibits #1-2). The site is designated as Single Family Detached Residential in the City of Newport Beach Land Use Plan (LUP). The project site is located in a residential area where the homes fronting Newport Bay are located on bulkhead lots. The bay ward side of the site includes an existing bulkhead, pier and dock.

At its November 17, 2005 meeting, the Commission issued CDP 5-05-372 for the demolition of a two-story, single-family residence on the landward side of the subject bulkhead, therefore, the site is currently vacant. The applicant chose to phase the project, first acquiring a coastal development permit (CDP) for the demolition of the existing residence, then applying for a second CDP for the seawall replacement (facilitating its construction by having a vacant lot on the landward side of the lot) and finally plans to return to the Commission with a separate coastal development permit application for the construction of the new residence at a later time. The applicant currently proposes to replace the bulkhead in the same location as it has deteriorated to the point that it needs to be replaced, prior to submitting an application for a coastal development permit for a new single-family residence on the lot. No work is proposed on the existing pier and dock.

Public access to the bay is available approximately five lots southeast of the project site at the terminus of "N" Street where there is a vertical access way adjacent to Newport Bay. There is also an existing access way along Balboa Blvd adjacent to the project site.

The proposed project includes the demolition of an existing seawall/bulkhead and construction of a new seawall in the same alignment, 67.5' between existing property lines. The existing seawall is a counter fort type retaining wall with a 7" thick cast in place concrete that stem 9'-6" high measured from the dredge line; a number of 1'-6" wide x 8'-0" long concrete counter forts perpendicular to the existing seawall spaced at 10'-0" on center; and a 1'-0" square continuous concrete beam parallel to the existing seawall that ties the ends of the counter forts together. Additionally, a 27' long x 10' deep return wall was found running parallel to the North – West property line offset 4' from the property line. From an engineering standpoint, the variety of existing structural elements with undeterminable strength makes the existing seawall as a whole, very hard to justify for compliance with the current Code. As the neighboring developments behind the existing seawall and the future residence depend on the seawall's strength and stability its replacement is justifiable. The new proposed seawall will not extend seaward of the original location and will align to the bulkheads of adjacent lots. The replacement of this portion of seawall is critical for continued protection from erosion and wave damage to existing residential structures adjacent to this lot until a new residence is constructed.

The new proposed seawall will consist of 10" thick pre-cast and jetted-in concrete panels held together with a new continuous reinforced concrete coping, including a 3' cantilevered deck cast in place. Eight (8) of the seawall panels include underwater lights. The new concrete coping is to be connected to fourteen (14) new 24" diameter concrete caissons with epoxy coated threaded Dywidag tie-rods at each caisson encased in 3" schedule 40 PVC sleeves fully grouted with slurry (Exhibit #4). The design top elevation with the

cooping will be at +9.75' above Mean Low Lower Water (MLLW) exceeding current City of Newport Beach engineering standards (typically +9.0 feet, MLLW for Newport Harbor).

Eelgrass and *Caulerpa taxifolia* surveys were conducted March 15 and 16, 2007. Eelgrass patches were found 32 feet from the project area and more extensive patches and beds farther bay ward. If any eelgrass or *Caulerpa taxifolia* are found *within* the project site in the results of up-to-date, pre-construction surveys, Special Conditions No. 3 and No. 4 identify the procedures required prior to the commencement of construction.

#### Previous Commission Action at the Project Site

On November 17, 2005, the Commission approved De-Minimus Waiver 5-05-372(Shapiro) for the demolition of an existing two-story single-family residence and attached two-car garage including removal of all utilities, hardscaping and landscaping. The site is therefore, currently vacant.

### **B. WATER QUALITY AND 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.*

Section 30232 of the Coastal Act states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Section 30235 of the Coastal Act states:



*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

The proposed development is the replacement of an existing bulkhead/seawall in the same location of the existing bulkhead that is necessary to protect existing neighboring structures and a future residence as the lot is currently vacant. The proposed development will not result in the additional fill of coastal waters as the new bulkhead will be located in the same location of the existing bulkhead. The project will not change conditions relative to local shoreline sand supply. As proposed and conditioned, the project conforms to Section 30235 of the Coastal Act.

The project requires review from a number of additional agencies. The project received an approval-in-concept from the City of Newport Beach Harbor Resources Division. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. Additionally, the applicant submitted the project to the California Department of Fish and Game (DFG) and the National Marine Fisheries Service (NMFS) for review and a permit from the U.S. Army Corps of Engineers is pending. **SPECIAL CONDITION NO. 4** requires the applicant submit evidence of DFG approval or proof that no approval is required.

#### Construction Impacts to Water Quality

The protection of water quality is an important aspect of the Coastal Act. The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. Water may potentially flow directly into Newport Bay from the site during construction. Polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

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 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. 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 minimize adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 1** provides construction-related requirements to provide for the safe storage of construction materials, the safe disposal of construction debris and best management practices (BMP) with the use of cement slurry in the marine environment. These BMPs are designed to minimize erosion and prevent debris from entering coastal waters. This condition requires

the applicant 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.

The applicant has submitted an acceptable Cement Slurry Best Management Plan to ensure that no cement slurry or any other construction by-product enters coastal waters or sandy beach during seawall construction. **SPECIAL CONDITION NO. 2** requires conformance with the submitted Cement Slurry Best Management Plan.

Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

### Marine Environment

Eelgrass and *Caulerpa taxifolia* surveys are required for seawall/bulkhead replacement projects in Newport Bay. These surveys are valid for a limited period of time. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August-October shall be valid until the resumption of active growth (i.e., March 1). *Caulerpa taxifolia* surveys shall be valid for 90-days. Subsequent surveys will be required if construction does not occur within the respective time periods.

An eelgrass survey conducted March 15 and 16, 2007 found eelgrass patches present 32 feet from the project area and more extensive patches and beds farther bay ward. The project will be considered by the Coastal Commission at its August 2007 hearing; by this time the eelgrass survey will no longer be valid as it is past the 60-days from when the survey was completed. Thus, an up-to-date pre-construction eelgrass survey must be conducted. On March 15 and 16, 2007, the site was also surveyed for *Caulerpa taxifolia* and none was found. An up-to-date pre-construction *Caulerpa taxifolia* survey must be conducted as well. If any eelgrass or *Caulerpa taxifolia* are found within the project site, **SPECIAL CONDITIONS NO. 5 and NO. 6** identify the procedures necessary to be completed prior to beginning any construction.

The vacant lot will facilitate construction of the seawall, as the work can be conducted from the landward side of the lot and minimize impacts to the sensitive eelgrass habitat in the Bay. The proposed development has been conditioned to further minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass, and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*.

The new proposed seawall is composed of sixteen pre-cast concrete panels. The applicant proposes to incorporate eight (8) underwater lights, approximately 8' apart along

the 67' long seawall, directly above the design grade elevation. The proposed lighting is an aesthetic element and does not serve any safety function. Artificial light in the water alters the natural marine setting. Plankton is drawn to light sources and concentrations of plankton draw fish to them. Larger marine organisms such as squid and other species are also known to aggregate at light sources, thereby subjecting them to greater risk of predation by other organisms. Although Newport Bay is already impacted by ambient lighting from marinas, piers, docks, and boats, it is unnecessary to add another source of artificial light into the Bay waters. There are numerous small islands in Lower Newport Bay, the majority with seawall/bulkhead residential lots, the possible proliferation of underwater lights incorporated into a new seawall/bulkhead replacement projects would create a cumulative adverse effect upon the marine environment. Therefore, the use of artificial lighting in the marine environment should be limited. **SPECIAL CONDITION NO. 3** requires revised project plans showing the use of underwater lights eliminated from the project for compliance with Section 30230 of the Coastal Act.

### **C. PUBLIC ACCESS AND RECREATION**

Section 30604 (c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the sea and the first public road.

Section 30212 of the Coastal Act states in 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...*

*(b) For purposes of this section, "new development" does not include:*

*(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.*

The proposed development, which occurs seaward of the first public road, includes the demolition of an existing bulkhead and construction of a new bulkhead in the same location. No changes are proposed for the existing pier and dock. The construction of the new seawall/bulkhead will not occur seaward of the existing wall. Therefore, as stated in Section 30212 (b) (4) of the Coastal Act, the proposed new seawall/bulkhead is not new development that is subject to the access requirements of Section 30212 of the Coastal Act.

Public access to the bay is available approximately five lots southeast of the project site at the terminus of "N" Street where there is a vertical access way adjacent to Newport Bay. There is also an existing access way along Balboa Blvd adjacent to the project site.

The proposed development will not adversely impact existing navigation. The development will not create adverse impacts on coastal access and recreation. The proposed development will not change the intensity of use on site. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

#### **D. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

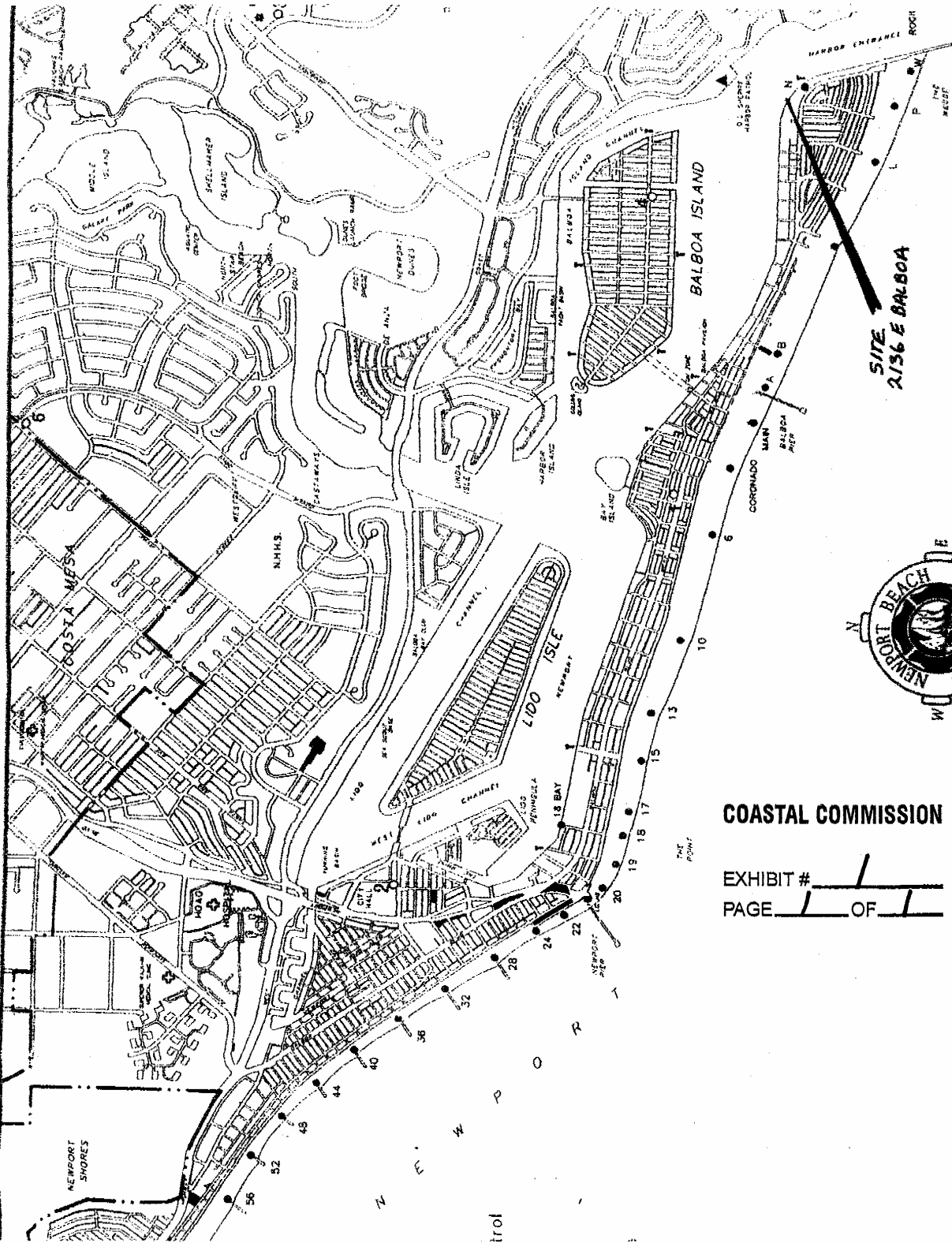
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues coastal development permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP 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 additional 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.

The proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

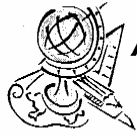
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 adverse impacts under CEQA. Conditions imposed are: 1) compliance with construction responsibilities and debris removal; 2) compliance with submitted cement slurry best management plan; 3) revised final plans; 4) Department of Fish and Game approval or proof that approval is not required; 5) pre-construction eelgrass survey; and 6) pre-construction Caulerpa survey. As conditioned, no feasible alternatives of 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.



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EXHIBIT #             
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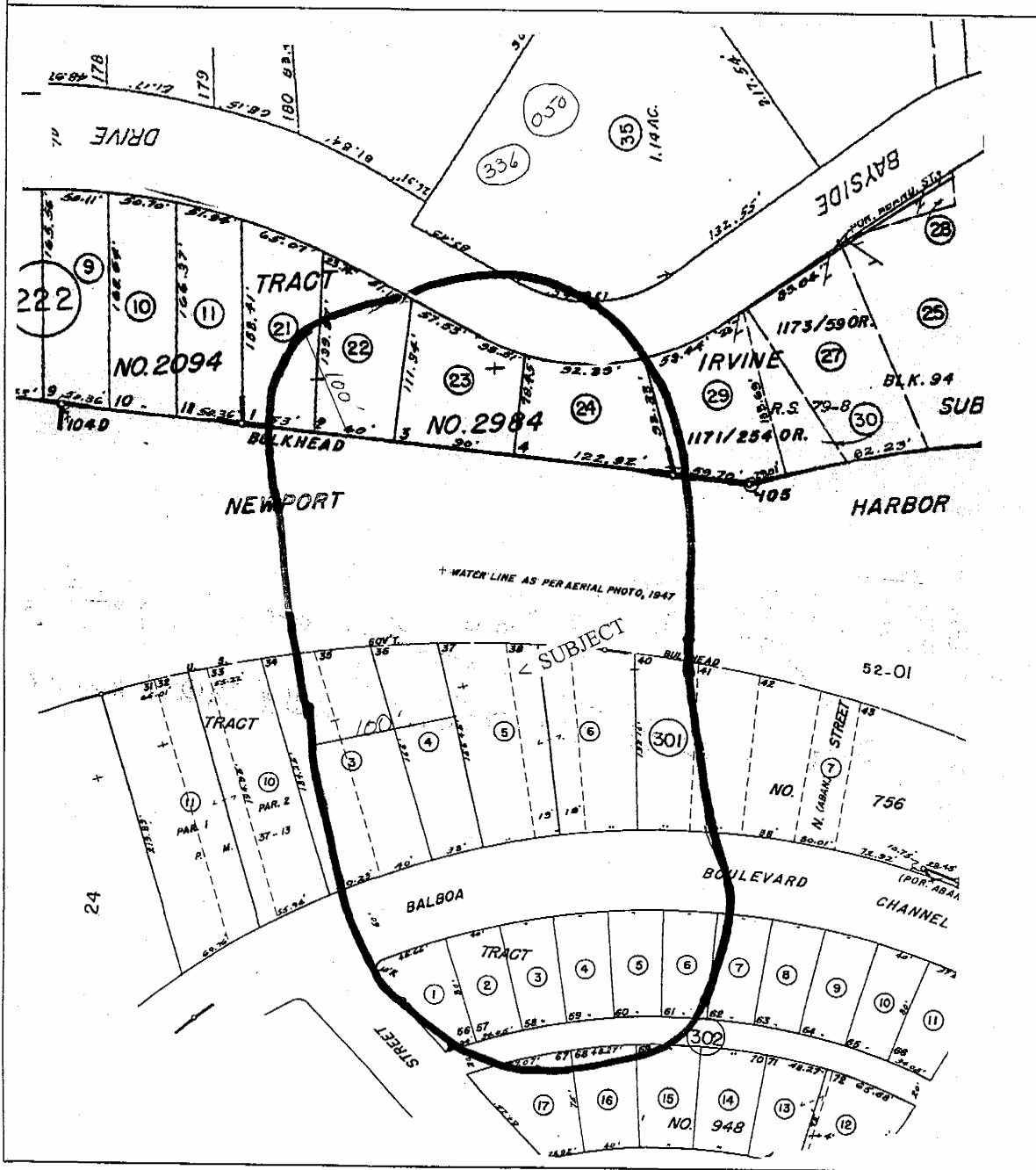
**COASTAL COMMISSION**

EXHIBIT # 2

Subject APN: 048-301-05  
100' Radius

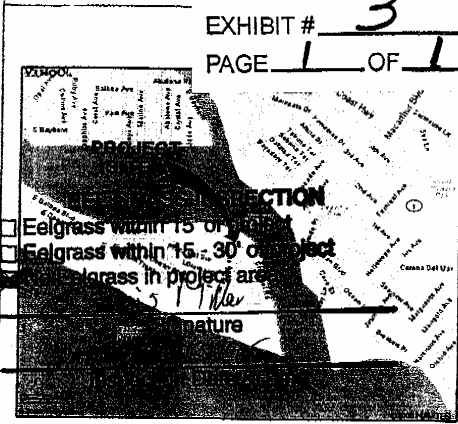
Address: 2136 E Balboa Blvd  
Newport Beach CA 92661

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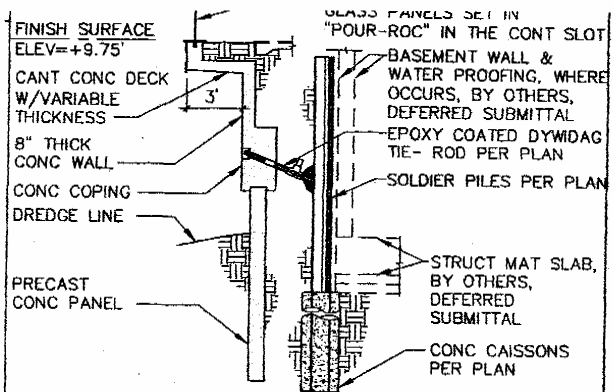


**COASTAL COMMISSION**

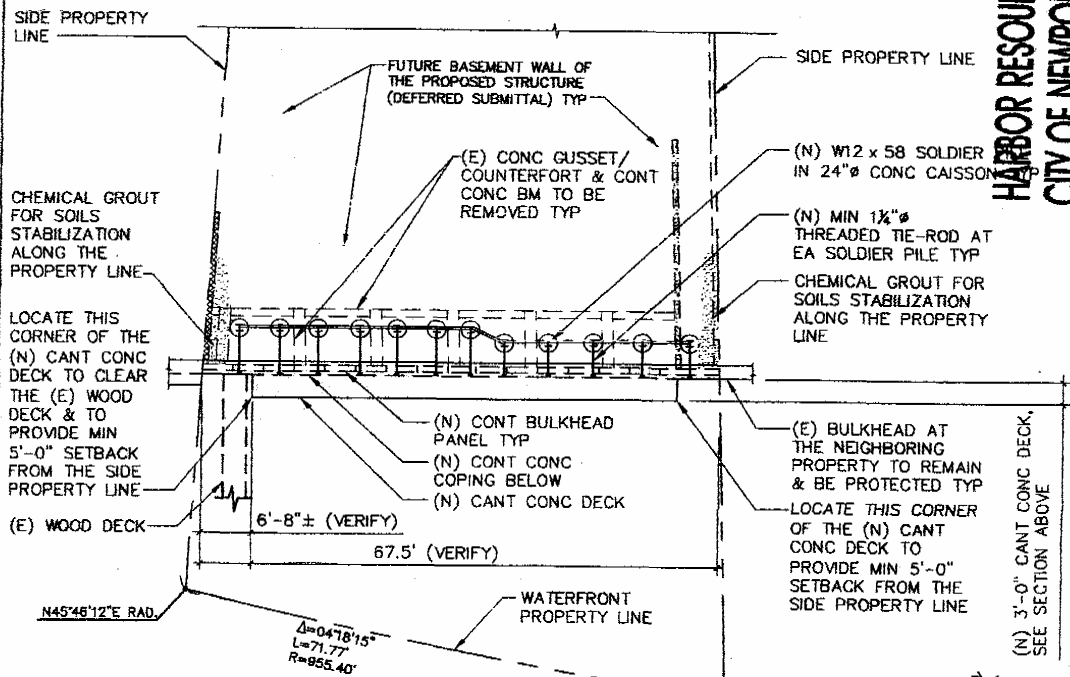
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**VICINITY MAP** N.T.S.  
 NEWPORT BEACH, CALIFORNIA



**TYPICAL BULKHEAD SECTION** N.T.S.  
 SOUNDINGS ARE EXPECTED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.



**PROJECT DESCRIPTION :**  
 PROPOSED NEW SEAWALL TO REPLACE EXISTING SEAWALL LIKE FOR LIKE. RECONNECT EXISTING PIER TO NEW SEAWALL. NEW SEAWALL TO CONTAIN 3'-0" CANTILEVERED CONCRETE DECK AS SHOWN PER PLAN.

**PLAN VIEW** N.T.S.

**HARBOR RESOURCES DIV.**  
**CITY OF NEWPORT BEACH**

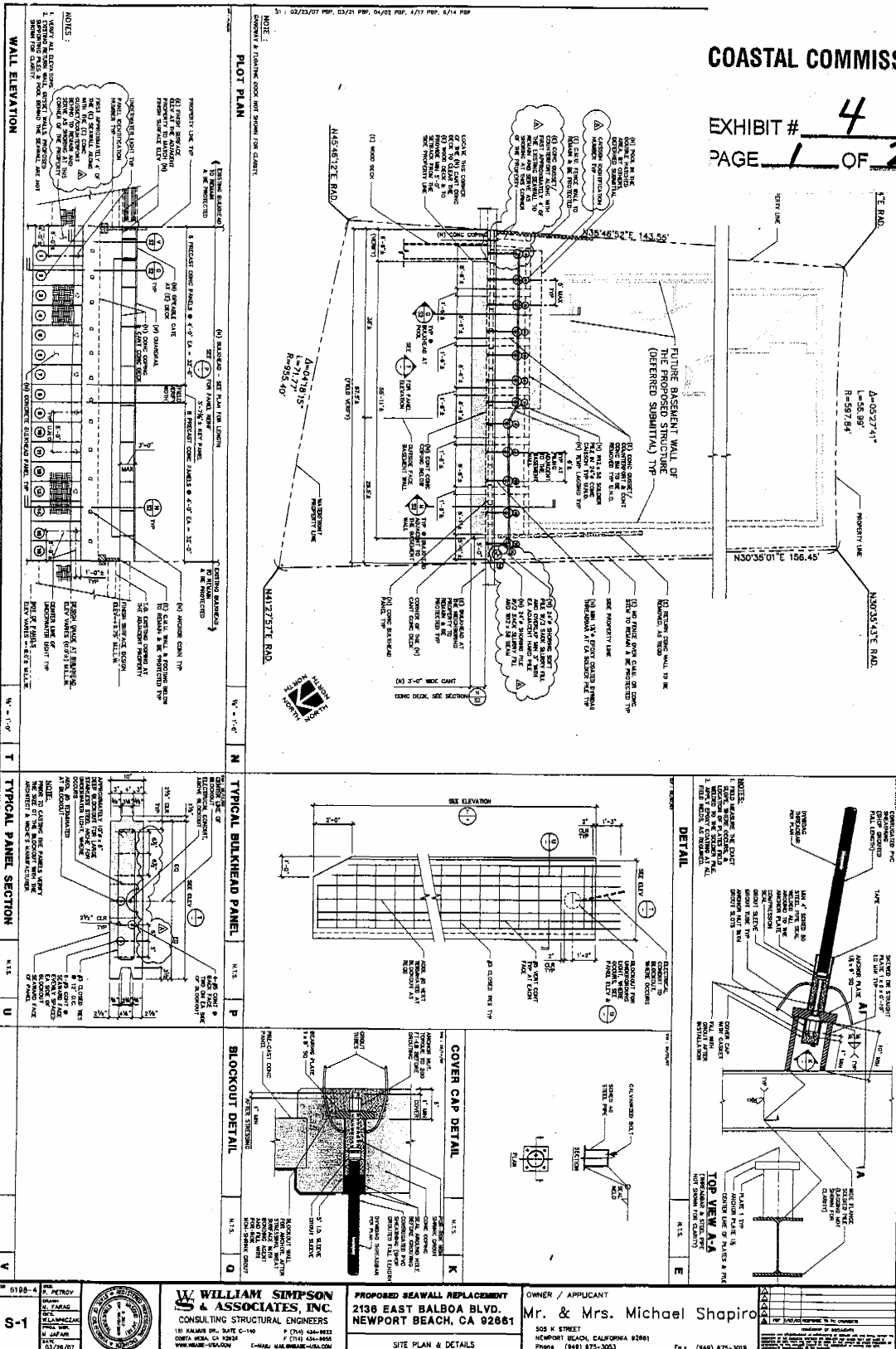
*Chris Miller 5/2/07*

APPLICANTS NAME : Mr. MICHAEL SHAPIRO	LOTS: 37 & 1/2 OF 38	BLOCK: 23
JOB ADDRESS : 2136 EAST BALBOA BLVD. NEWPORT BEACH, CA 92661	CONTRACTOR : SHELLMAKER, INC. 2035 F PLACENTIA AVENUE COSTA MESA, CA 92627	DATE : 04/16/07



COASTAL COMMISSION

EXHIBIT # 4  
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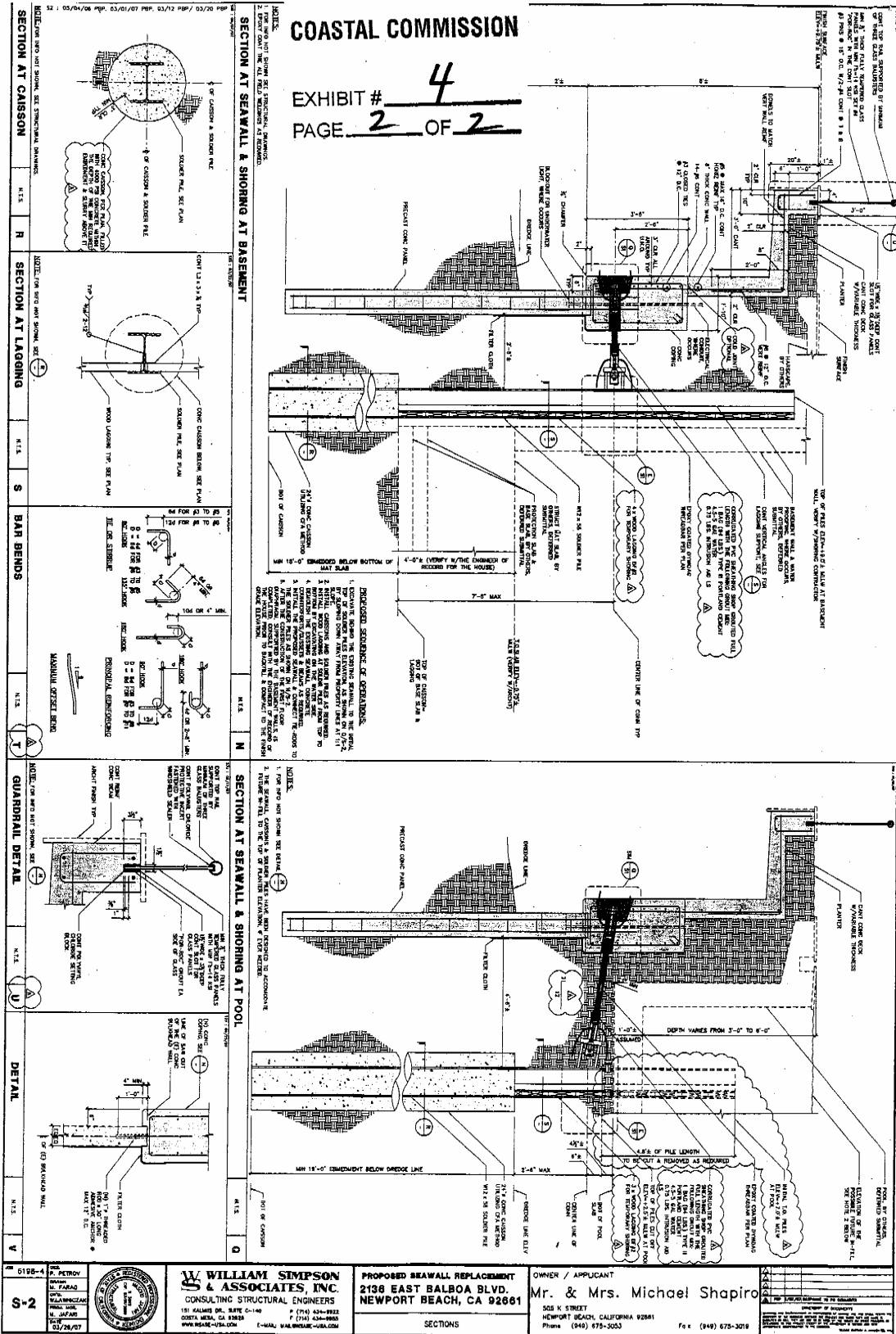


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	P. PETROV REGISTERED PROFESSIONAL ENGINEER No. 10000 STATE OF CALIFORNIA EXPIRES 12/31/2008	<b>WILLIAM SIMPSON &amp; ASSOCIATES, INC.</b> CONSULTING STRUCTURAL ENGINEERS 181 PALMER DR., SUITE C-140 COSTA MESA, CA 92626 TEL: 714.441.8800 FAX: 714.441.8801 WWW.WSIA.COM	PROPOSED SEAWALL REPLACEMENT 2138 EAST BALBOA BLVD. NEWPORT BEACH, CA 92661	OWNER / APPLICANT <b>Mr. &amp; Mrs. Michael Shapiro</b> 500 K STREET NEWPORT BEACH, CALIFORNIA 92661 Phone (949) 875-3003
	SITE PLAN & DETAILS No. 16189-4 S-1 DATE: 05/07/07			

**COASTAL COMMISSION**

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 PAGE 2 OF 2



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<p>5195-A                  S-2</p>		<p><b>WILLIAM SIMPSON &amp; ASSOCIATES, INC.</b>                  CONSULTING STRUCTURAL ENGINEERS                  181 GARDNER BLVD., SUITE 100                  COSTA MESA, CA 92626                  WWW.WS&amp;A.COM</p>	<p><b>PROPOSED SEAWALL REPLACEMENT</b>                  2138 EAST BALBOA BLVD.                  NEWPORT BEACH, CA 92661</p>	<p>OWNER / APPLICANT  <b>Mr. &amp; Mrs. Michael Shapiro</b>                  505 K STREET                  NEWPORT BEACH, CALIFORNIA 92661                  Phone: (949) 675-3053 Fax: (949) 675-3078</p>	<p>SECTIONS</p>
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