

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



August 31, 2007

MEMORANDUM

TO: Commissioners and Interested Parties

FROM: John Ainsworth, South Coast Deputy Director (Los Angeles County)
Sherilyn Sarb, South Coast Deputy Director (Orange County)

SUBJ: **Orange & Los Angeles County Addendum to Commission Meeting
Wednesday, September 5, 2007 at 9:00**

<u>AGENDA</u>	<u>APPLICANT</u>	<u>DESCRIPTION</u>	<u>PAGE#</u>
<u>CONSENT PERMIT:</u>			
W4f(5-07-212)	2126 The Strand	Correspondence	1
<u>COASTAL PERMIT:</u>			
W15a(5-05-235)	Balboa Performing Arts	Revisions to staff report Letter from applicant	3 7
W15b(5-06-301)	Mc Namara	Correspondence	9
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Im/g addendum September. 07 hearing

CALIFORNIA COASTAL COMMISSION

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**W 15a****ADDENDUM**

August 31, 2007

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W 15a**, COASTAL COMMISSION PERMIT APPLICATION #5-05-235-(**Balboa Performing Arts Theater Foundation**) FOR THE COMMISSION MEETING OF **September 5, 2007**.

Changes to Staff Report

Commission staff recommends modifications and additions to first page of the staff report, Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

1] Page 1 – Modify the following language, as follows:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-05-235

APPLICANTS: Balboa Performing Arts Theater Foundation; Attn: Mary Lonich
and The City of Newport Beach

...No intervening changes...

2] Page 4 – Modify Special Condition No. 3, as follows:

3. PARKING MONITORING AND ENHANCEMENT PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a plan for monitoring **and enhancing** parking within the Balboa Pier ~~P~~arking ~~L~~ot (control booth lot, large metered lot and small metered lot) for the proposed development. The monitoring plan shall be prepared by the City and/or a person with expertise in parking/traffic analyses.

(1) The monitoring plan shall gather lot usage data during peak and non-peak beach usage and during times when performances are being held and not being held, at statistically appropriate intervals

for a time of two years to determine the adequacy of the parking provided to serve the development authorized under Coastal Development Permit No. 5-05-235 and this will be accomplished by surveying the Balboa Pier Parking Lot usage; The plan shall include a) the methods of gathering parking lot usage data during all seasons when the proposed development operates; b) the method of analyzing the data and the criteria for determining the adequacy of the parking provided to serve the development authorized under Coastal Development Permit No. 5-05-235;

- (2) The plan shall include the submission of a **quarterly report for two years on usage of the Balboa Pier Parking Lot** yearly monitoring report to the Executive Director of the Coastal Commission which includes a) results from the parking monitoring data collection; b) an analysis of the adequacy of the parking to serve the development authorized under Coastal Development Permit No. 5-05-235 along with an analysis of whether theater patron's use of the Balboa Pier ~~P~~**Parking Lot** is adversely impacting the public's ability to use this parking lot to access the pier, beach and other public **recreational facilities** access available in the area; c) recommendations to reduce or avoid any parking deficiencies identified as they relate to the development authorized under Coastal Development Permit No. 5-05-235;

In addition to the monitoring plan, the applicant shall also adhere to the following enhancement measures proposed by the City of Newport Beach in a letter dated August 28, 2007 to ensure the adequacy of parking for the public to access the pier, beach and other public recreational facilities available in the Balboa Village area;

- (a) **Improve management of municipal parking, including increased signage to assist visitors in locating available parking in the area (Balboa Village);**
- (b) **Pursue additional parking opportunities within Balboa Village; and**
- (c) **Not issue any special event permits for activities that will draw crowds to the Balboa Pier Parking Lot during theater performances.**

- (3) If **in the opinion of the Executive Director, the parking monitoring and enhancement plan** shows that the parking identified by the permittee is not adequate to support the development authorized under Coastal Development Permit No. 5-05-235 or the monitoring shows that theater patron's use of the Balboa Pier parking lot is adversely impacting the public's ability to use this parking lot to access the pier, beach and other public **recreational facilities** access available in the area, the permittee shall seek to remedy the parking inadequacy and shall obtain an amendment to this coastal development permit or a new coastal

development permit to implement the remedy unless the Executive Director determines that no amendment or new permit is legally required.

- 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.

3] Page 7 – Modify Section IV.A., as follows:

The theater has been closed since the early 1990's and until recently has been showing signs of decay. A recent facade restoration undertaken by the applicant has cleaned up and repaired the exterior. Several years ago, a seismic retrofit and remediation ~~has been~~ was designed and partially completed. At present, the interior has been completely gutted, the...*No intervening changes...*

4] Pages 13 -14– Modify Section IV.B., as follows:

The parking demand on the Balboa Pier parking lot generated by the rehabilitated theater will be reduced compared with pre-project conditions because of the proposed reduction in seating from the original 450 to 325 seats. According to the parking standards/requirements in the certified Land Use Plan (LUP), the project requires 1 parking space for every three (3) seats ($325/3 = 108$ spaces). In a letter dated December 5, 2006, the applicant submitted information regarding the availability of parking at the Balboa Pier Parking Lot (control booth lot, large metered lot and small metered lot). This information was obtained from the City and it states that there were 588 parking spaces in the control booth lot, 79 parking spaces in the large metered lot and 16 parking spaces in the small metered lot for a total of 683 parking spaces in the Balboa Pier Parking lot. In addition, the submitted information states that approximately 80% of the lot (546 parking spaces) was used during the summer weekdays. Based on the City's observed demand for parking in the Balboa Pier lot, and including the demand calculated to be generated by the theater, the City estimates that there would still be an excess of 29 parking spaces available ($683-546-108 = 29$ parking spaces). Therefore, based on information provided by the applicant, there is sufficient parking available in the Balboa Pier parking lot for the proposed project. Additionally, Coastal Development Permit No. 5-01-029-(City of Newport Beach) was recently approved in 2001 for the Balboa Village Rehabilitation Project, which included expanding the Balboa Pier parking lot to 718 spaces (97 metered parking spaces and 621 parking fee parking spaces). Therefore, more parking has been provided. As the Balboa Pier parking lot has historically provided parking for the theater with its ~~665~~ 683 parking space capacity, it appears that the revised Balboa Pier parking lot with its increased parking capacity to 718 parking spaces and the reduced seating capacity within the theater (which translates to lower parking demand), that the Balboa Pier parking lot will adequately provide parking for the theater use, based on known use at the present time.

...*No intervening changes...*

CONCLUSION

To minimize the adverse impacts upon the public access, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 1** requires additional approvals for any future

development identifies construction-phase best management practices. **SPECIAL CONDITION NO. 2** states that during the summer between Memorial Day and Labor Day, that no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends. **SPECIAL CONDITION NO. 3** requires a Parking Monitoring Plan. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30212 and 30252 of the Coastal Act.

5] Page 16 – Modify Section IV.C.2. and Conclusion, as follows:

...*No intervening changes*... such, appropriate measures must be taken to assure that adverse effects on water quality are minimized. In order to deal with these post construction water quality impacts, the applicant has submitted a Water Quality Management Plan (WQMP) dated July 24, 2006 prepared by DMJM H&N, Inc. The existing structure drains the roof to the alley at the rear and pumped the water onto the alley surface where it drains to adjacent drop inlet storm drain structures. However, the applicant now proposes that the roof drainage will be directed to a pervious concrete area. Roof drainage will be directed to the rear of the roof and will drop into conductor piping to the alley. The existing impervious paving and unsuitable base material will be removed, and the alley will be repaved using pervious concrete. This will allow the infiltration of the roof storm water, and also reduces the impervious area in the vicinity of the project. While this measure to deal with post construction water quality is acceptable, no plans have been submitted and in addition additional measures are necessary, verifying that post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant to submit a Final Water Quality Management Plan (WQMP).

CONCLUSION

To minimize the adverse impacts upon the marine environment, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 4** identifies construction-phase best management practices. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Final Water Quality Management Plan (WQMP). Only as conditioned does the Commission find that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

6] Page 20 – Modify Section IV.F., as follows:

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the public access, water quality, and visual resources policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** additional approvals for any future development; **2)** that during the summer between and inclusive of Memorial Day and Labor Day, no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends; **3) a Parking Monitoring Plan**; **4)** construction-phase best management practices; and **5)** submittal of a Final Water Quality Management Plan (WQMP).

WISA



CITY OF NEWPORT BEACH

August 28, 2007

Ms. Teresa Henry
Mr. Fernie Sy
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

Re: Application No. 5-05-235 Balboa Performing Arts Theater Foundation

Dear Ms. Henry and Mr. Sy:

As the co-applicant on the above application, the City of Newport Beach wishes to comment on Special Condition 3 which requires a Parking Management Plan. Our co-applicant, the Balboa Performing Arts Theater Foundation has signed below in concurrence with these comments.

We wish to request a revised condition (as proposed below) given multiple circumstances that make an annual monitoring plan by the theater infeasible. First, it is important to recognize the following circumstances:

- The theater, over its long history, has always relied on the municipal parking lot which is practically adjacent to the theater site; and the current application significantly reduces the number of seats in theater and therefore the parking demand.
- The theater is an historic, in-line building that is consistent with the development pattern of its time, completely covering its parcel of land and having no property other than its own. The Theater Foundation has no capability to acquire additional property.
- The rehabilitation of the historic theater building and its reuse to attract visitors who will support other visitor serving uses in Balboa Village year-round -- not just during the summer peak season -- is part of the City's plans for the rejuvenation of the Balboa Village area to maintain it as a vital visitor serving district.
- We have demonstrated that the only capacity issues with the municipal parking lot and the surrounding metered parking is during some afternoons in the months between Memorial Day and Labor Day, during which time the theater has agreed, and the staff has conditioned, not to allow any matinee performances.

- There is no parking reserved specifically for many of the surrounding uses, so each use is treated equally in the demand for parking. This includes everything from the Balboa Pavilion with its restaurant and ballroom to the various retail establishments and the Catalina Flyer which takes passengers to Catalina on a daily basis and the day users of the beach and pier.
- Monitoring of parking has never been able to demonstrate conclusively how parking is used by the many varied visitor serving uses in the Balboa Village area. And a monitoring of the parking after the theater is open will not be conclusive as to the nature of any changes in the parking demand either.
- The City has the right and is willing to limit special event permits to ensure that other events with high parking demand do not occur at the same time as theater performances during the peak summer season.
- Any new development in the area will also be subject to Coastal Commission review and approval.

In consideration of these special circumstances of the Balboa Theater, and its importance in maintaining Balboa Village as a successful visitor destination, we request the substitution of the following wording for the staff recommended Special Condition 3:

"In recognition of the on-going need to ensure the adequacy of parking for multiple visitor serving uses in the Balboa Village area, the City of Newport Beach shall continue to improve management of municipal parking, including increased signage to assist visitors in locating available parking in the area, shall pursue additional parking opportunities within Balboa Village, shall not issue any special event permits for activities that will draw crowds to the municipal parking lot during theater performances, and shall provide to the Executive Director a quarterly report on usage of the Balboa Pier parking lot for two years."

Please let us know of the staff position on the proposed language for Special Condition 3. We are prepared to meet with you as soon as possible and to make a presentation at the Coastal Commission meeting on September 5th. You can reach me at 949/644-3222.

Sincerely,


Sharon Wood
Assistant City Manager

In concurrence:

Mary Lonich, Executive Director
Balboa Performing Arts Theater Foundation

cc: Nancy Gardner, Newport Beach City Council
Carol McDermott, Government Solutions, Inc.

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W 15a

Filed: April 9, 2007
49th Day: May 28, 2007
180th Day: October 6, 2007
Staff: Fernie Sy-LB
Staff Report: August 16, 2007
Hearing Date: September 5-7, 2007
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-05-235

APPLICANT: Balboa Performing Arts Theater Foundation; Attn: Mary Lonich

AGENT: Government Solutions, Inc.; Attn: Carol McDermott

PROJECT LOCATION: 707 East Balboa Boulevard, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Remodel and addition to the existing Balboa Theater. The façade will be retained and restored, and a 2nd floor, plus roof deck with tower and rooftop mechanical equipment will be added to the building which will increase the existing height of the building to 45'-6" with roof top projections up to 55'. Also, the seating will be reduced from 450 to 325 seats. The proposal includes a prohibition of weekend matinee performances during the summer between Memorial Day and Labor Day to address parking issues. No landscaping is proposed.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves the remodel and addition to the existing Balboa Theater, a locally designated historic building. The major issues before the Commission relate to adequate parking, public access, water quality and visual resources. Staff is recommending **APPROVAL** of the proposed project subject to **FIVE (5) SPECIAL CONDITIONS** requiring: **1)** additional approvals for any future development; **2)** that during the summer between and inclusive of Memorial Day and Labor Day, no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends; **3)** a Parking Monitoring Plan; **4)** construction-phase best management practices; and **5)** submittal of a Final Water Quality Management Plan (WQMP).

Section 30600(c) 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 City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval-in-Concept (No. 0976-2005) dated April 19, 2005; and Use Permit No. 2004-003 (PA2004-032) from the City of Newport Beach Planning Department.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-01-029-(City of Newport Beach); Coastal Development Permit No. 5-01-063-(Balboa Inn); Letter from Commission staff to Government Solutions, Inc. dated July 22, 2005; Letter from Government Solutions, Inc. to Commission staff dated April 5, 2006; Letter from City of Newport Beach, Office of the Mayor to Commission staff dated April 7, 2006; Letter from Commission staff to Government Solutions, Inc. dated May 11, 2006; Letter from Government Solutions, Inc. to Commission staff dated December 5, 2006; Water Quality Management Plan (WQMP) dated July 24, 2006 prepared by DMJM H&N, Inc.; Letter from Government Solutions, Inc. to Commission staff dated December 7, 2006; Letter from Commission staff to Government Solutions, Inc. dated January 4, 2007; Letter from City of Newport Beach to Commission staff dated March 5, 2007; Letter from Government Solutions, Inc. to Commission staff dated April 27, 2007; and Letter from City of Newport Beach Planning Department to Commission staff dated April 30, 2006.

LIST OF EXHIBITS

1. Vicinity Map
2. Site Plan
3. Demolition Plan/Floor Plans
4. Section Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-05-235 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.

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 CONDTIONS

1. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-05-235. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-05-235. Accordingly, any future improvements to the Balboa Theater building authorized by this permit, including repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-235 from the Commission or shall require an additional coastal development permit from the Commission.

2. THEATER HOURS OF OPERATION & EVENT MANAGEMENT

By acceptance of this permit, as proposed, the applicant agrees to minimize adverse impacts to public access as required below:

- A. During the summer between and inclusive of the Memorial Day and Labor Day holidays, no weekend matinees will be provided and evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends; and
 - B. At all times the theater operates, concurrent events in the auditorium and upon the roof deck, which have an independent parking demand, are prohibited.
- #### **3. PARKING MONITORING PLAN**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a plan for monitoring parking within the Balboa Pier parking lot (control booth lot, large metered lot and small metered lot) for the proposed development. The monitoring plan shall be prepared by a licensed engineer with expertise in parking/traffic analyses.

- (1) The plan shall include a) the methods of gathering parking lot usage data during all seasons when the proposed development operates; b) the method of analyzing the data and the criteria for determining the adequacy of the parking provided to serve the development authorized under Coastal Development Permit No. 5-05-235;
- (2) The plan shall include the submission of a yearly monitoring report to the Executive Director of the Coastal Commission which includes a) results from the parking monitoring data collection; b) an analysis of the adequacy of the parking to serve the development authorized under Coastal Development Permit No. 5-05-235 along with an analysis of whether theater patron's use of the Balboa Pier parking lot is adversely impacting the public's ability to use this parking lot to access the pier, beach and other public access available in the area; c) recommendations to reduce or avoid any parking deficiencies identified as they relate to the development authorized under Coastal Development Permit No. 5-05-235; and
- (3) If parking monitoring shows that the parking identified by the permittee is not adequate to support the development authorized under Coastal Development Permit No. 5-05-235 or the monitoring shows that theater patron's use of the Balboa Pier parking lot is adversely impacting the public's ability to use this parking lot to access the pier, beach and other public access available in the area, the permittee shall seek to remedy the parking inadequacy and shall obtain an amendment to this coastal development permit or a new coastal development permit to implement the remedy unless the Executive Director determines that no amendment or new permit is legally required.

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. CONSTRUCTION BEST MANAGEMENT PRACTICES

A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) 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;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) 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.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

5. SUBMITTAL OF A FINAL WATER QUALITY MANAGEMENT PLAN (WQMP)

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction

project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall be in substantial conformance with the Water Quality Management Plan (WQMP) dated July 24, 2006 prepared by DMJM H&N, Inc. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (1) The WQMP shall incorporate appropriate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site;
- (2) Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
- (3) Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
- (4) Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate pollutants of concern (including trash, debris and vehicular fluids such as oil, grease, heavy metals and hydrocarbons) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
- (5) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
- (6) All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals;
- (7) At a minimum, all BMP traps/separators and/or filters shall be, at a minimum, inspected and cleaned/repared or otherwise maintained in accordance with the following schedule: (1) prior to the start of the winter storm season, no later than October 15th each year, (2) inspected monthly thereafter for the duration of the rainy season (October 15th -April 30), and cleaned/maintained as necessary based on inspection and, (3) inspected and maintained where needed throughout the dry season;

- (8) The proposed pervious concrete areas shall be checked regularly for signs of erosion;
 - (9) Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner;
 - (10) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

1. Project Location

The Balboa Theater is located at 707 East Balboa Boulevard in the City of Newport Beach, Orange County (Exhibit #1). The Balboa Theater was constructed circa 1927 and is one of the few remaining structures in Newport Beach from that era. The structure is listed on the City's Register of Historical Property in recognition of its local historical significance¹. Its history has seen a number of public entertainment uses, from vaudeville to cinema. The original theater had two storefront retail lease spaces at street level, with the theater ticket window and entry located between these retail stores. The theater had a main floor with a shallow slope and a balcony. There were over 400 seats in the theater. The theater utilized nearby offsite public lots and street parking. The property is owned by the City of Newport Beach.

The theater has been closed since the early 1990's and until recently has been showing signs of decay. A recent façade restoration undertaken by the applicant has cleaned up and repaired the exterior. Several years ago, a seismic retrofit and remediation has been designed and partially completed. At present, the interior has been completely gutted, the balcony has been removed, and portions of the slab were removed to accommodate a partial installation of the seismic retrofit elements.

The project site is 5,130 square feet in size and the City of Newport Beach Land Use Plan (LUP) designates use of the site for General Commercial (GC-C). The project site is also located within Planning Study Area 4 (Balboa Village) of the LUP which has restrictions on use of the lower floor for commercial purposes and an allowance for use of upper floors for residential use, and the proposed project adheres to this designation. Balboa Village is the area bounded by Newport Bay, A Street, the oceanfront beach and Adams Street. This area is a unique mixture of visitor-oriented and neighborhood oriented retail and service

¹ The structure IS NOT listed as a California Historical Landmark, nor on the National Register of Historic Places.

uses, including coastal dependent visitor uses such as sport fishing establishments, day-boat rentals, ferry service, fishing docks, and the historic Balboa Pavilion.

To the north of the project site is East Balboa Boulevard and, on the opposite side of the street, a single story commercial building. To the east is a two-story mixed use building with ground floor commercial and second floor residential. To the south of the site is a three-story hotel (The Balboa Inn), then the Balboa Pier Parking lot, and then the sandy public beach. To the west of the site is a two-story commercial building. The subject site is located between the first public road and the sea and is approximately 600-feet inland of the beach (Exhibit #1).

2. Project Description

The applicant states that the purpose of the Balboa Theater renovation and rehabilitation project is to bring back life to the historic Balboa Theater, to serve as a catalyst for revitalization of Balboa Village and to restore the public serving activity to the heart of Newport Beach. The Balboa Performing Arts Theater Foundation hopes to develop the Balboa Theater as a multi-use facility that will serve: music, dance, theater and the spoken word, film and education. The restored theater will provide entertainment, educational and community functions.

The proposed project will consist of the following components (Exhibits #2-4):

- a. The building façade located along East Balboa Boulevard will be retained and restored to its original condition to the extent existing evidence permits;
- b. The existing front and both side walls will be preserved, but the rear (south) wall will be completely removed. The applicant foresees the reuse of 60% of the brick materials from the south wall as veneering on the new south wall to meet a City condition of approval that the project retains the brick character of the existing building.
- c. A 2nd floor 'support level', plus roof deck with gathering space, an elevator/stairway enclosed in a decorative tower, and a rooftop mechanical equipment enclosure will be added to the building (described more fully below) which will increase the height of the existing 32'-10" building to 45'-6" for a majority of the building, and two higher projections, one to 54'-10" for the Tower/elevator shaft/stairs feature, and a second projection to 51' for the roof-top mechanical equipment enclosure;
- d. Complete renovation of the theater, including reducing the Auditorium seating capacity from 450 seats to 325 seats;

Upon completion, the renovated and expanded theater will have two (2) floors with tiered seating and a roof deck. The theater has four (4) main elements: 1) Lobby, 2) Auditorium, 3) Support Level, and 4) Roof.

The Auditorium level (1st Floor) will hold the bulk of the seating and projection, sound; and lighting facilities. The Support Level (2nd Floor) located above the Auditorium includes accessible restrooms for the public,

dressing rooms and restrooms for the performers, storage areas and equipment rooms. The Roof is accessed by both stairs and elevator. At this roof level there is a screened enclosure for mechanical equipment and roof deck with gathering space which will be used to hold pre and post performance functions;

- e. The theater will be expanded from 7,695 square feet to approximately 11,014 square feet. Although the theater is being expanded, the expansion is entirely within the original theater footprint. The additional building square footage will provide for larger areas for cast and crew accommodations, accessible elevators and a roof deck.

To maintain compatibility with the character of the area and to be respectful of the original Landmark building heritage, the new elements will use materials and architectural elements that are similar to the original façade. Using similar “re-created” surface texture, color, and architectural detail the new construction will match the original historic façade;

- f. Grading will consist of 178 cubic yards of recompaction, 64 cubic yards of fill, and 107 cubic yards of export;
- g. The Theater will agree to restrict theater operations such that during the summer between and inclusive of Memorial Day and Labor Day, no weekend matinees will be provided and evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends; and
- h. No landscaping is proposed.

3. Use Permit (No. 2004-003 (PA2004-032))

The applicant has obtained a Use Permit (No. 2004-003 (PA2004-032)) from the City of Newport Beach Planning Department to alter and increase the height of the existing Balboa Theater building up to a maximum height of 55-feet.

The existing theater is non-conforming use and non-conforming structure as it does not operate pursuant to an approved Use Permit, the building exceeds the 26-foot basic height limit (35-foot maximum height limit), the site provides no parking, and the building does not comply with the alley setback requirement.

The Balboa Theater qualifies as a “Landmark Theater (Building).” The City’s Zoning Code defines a ‘Landmark Theater’ as any building constructed for use as a cinema or theater that (a) was constructed on or before December 12, 1950; (b) has a single screen or stage; and (c) was designed to seat more than 300 people. Since the Balboa Theater was constructed in 1927, has a single stage and currently has approximately 450 seats, it qualifies as a ‘Landmark Theater.’”

Two special provisions relating to Landmark Buildings are included within the Zoning Code. Section 20.62.065 (Landmark Buildings) of the Nonconforming Structures and Uses chapter was adopted by the City in March 2003 to preserve historic structures, encourage their adaptive reuse, and revitalize the older commercial areas in which they are located by

granting relief from restrictions on nonconforming uses and structures while maintaining the principal use and minimizing impacts on the surrounding area. These provisions allow for Landmark Buildings to be modified, maintained, altered, increased or intensified without obtaining a Use Permit subject to a specific list of development and operational conditions.

Section 20.65.070(H) (Exceptions to Height Limits) for Landmark Buildings allows structural alterations and additions to exceed the height of the existing building provided they do not exceed 55-feet with the approval of a Use Permit. This provision was added by the City to their zoning code in December 1993 to grant relief from the height limits for Landmark Buildings to encourage the reuse and redevelopment of properties such as the Balboa Theater.

Thus as discussed previously, since it qualifies as a “Landmark Theater” pursuant to City provisions, the expansion and alteration of the non-conforming structure is exempt from obtaining Use Permits as long as it meets the specific conditions under Section 20.62.065 (Landmark Buildings). These specific conditions are:

- 1) Any new use that is initiated, and any use that is intensified by way of a change in operational characteristics, is accessory and remains subordinate to the then current and ongoing principal use of the Landmark Building.
- 2) The principal use of the Landmark Building occupies, at all times, no less than seventy percent (70%) of the gross floor area of the Landmark Building.
- 3) A use permit is issued pursuant to the provisions of Chapter 20.89 (Alcoholic Beverage Outlets) prior to the initiation of any accessory use that involves the sale or consumption of alcoholic beverages.
- 4) Any permit required by any other titles (other than Title 20) of the Municipal Code has been issued prior to the initiation or intensification (by way of a change in operational characteristics) of any accessory use of the Landmark Building.
- 5) Any accessory use in any Landmark Theater is conducted between the hours of 8:00 a.m. and 12:00 a.m.
- 6) The required off-street parking of all uses after any additions, intensification, modification or expansion (including credit for reductions in off-street parking resulting from the elimination of accessory uses existing on January 1, 2003) is less than the required off-street parking for the principal and accessory uses prior to any additions, intensification, modification or expansion.
- 7) The façade and/or exterior architectural features of the Landmark Building are not substantially altered or are restored to original condition and the exterior walls of the Landmark Building remain in substantially the same location as they existed on January 1, 2003.

The City states that the proposed project adheres to these specific conditions as follows: *“The theater, as proposed, will occupy in excess of 70% of the building and the only accessory use proposed involves the hosting of theater-related social gatherings before and after performances that will include the service of food and beverages, including alcoholic beverages. However, in this instance a Use Permit per the ABO [Alcohol Beverage Outlets] is not required because the Type 64 license and Development Plan applications are the only applications required by Title 20 that are not specifically exempt by Section 20.65.065. The applicant is required to obtain any permits required by other titles of the Municipal Code (i.e. live entertainment permits, building permits, encroachment permits, etc.). The proposed hours for accessory uses are 8:00AM to 12:00AM. The*

existing theater does not provide off-street parking and the number of seats will be reduced thereby reducing the required parking. The introduction of the accessory theater-related social functions will not occur at the same time as assembly occupancy of the theater and the total capacity of the roof-top deck is below 325 people: therefore, parking for the accessory use will not increase parking requirements. The proposed front elevation restores the theater to original condition through use of window boxes and related architectural features, water downspouts, stucco surface and marquee sign. The design of the addition that faces the street is intended to complement the existing elevation by the use of identical roofing, stucco treatment and similar architectural features. The rear and portions of the side elevations that exceed the height of the adjacent buildings will re-use existing bricks as a new veneer to the new building walls. Therefore, staff believes that the project meets all conditions for the proposed project to proceed pursuant to Section 20.62.065 (Landmark Buildings).

B. PUBLIC ACCESS

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

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

(2) adequate access exists nearby...

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Until adequate public transportation is provided, all private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor and marina facilities, and its coastal amenities. Like many beach communities, Newport Beach receives an annual influx of visitors during the summer. The project site and its immediate vicinity are characterized by mixed commercial recreational and residential uses in the area known as "Balboa Village". This area is a popular destination point for the public to come and enjoy the low cost visitor and recreational facilities because it is sited near the Balboa Pier, Peninsula Park, and "Oceanfront," which serves as a major pedestrian path for the public in this area. Surrounding uses include retail and service commercial uses, restaurants, residential

developments and to a large extent visitor and recreational facilities. The City of Newport Beach Land Use Plan (LUP) designates use of the project site for General Commercial with restrictions on use of the lower floor for visitor serving commercial purposes and an allowance for use of upper floors for residential use, and the proposed project adheres to this designation. The proposed project would be consistent with the LUP and the surrounding uses since it is proposing a commercial use on site (no residential use is proposed on the upper levels) that provides a visitor and recreational facility in the area. The project site also lies along Balboa Boulevard, which is a major arterial route for public access to the coastal opportunities located on the Balboa Peninsula. Due to its location, the project site is ideally suited to support visitors to the beach and surrounding area.

As previously discussed, the project site is located in an area that serves as a popular destination point for the public to come and enjoy the lower cost visitor and recreational facilities located in the area. Patrons of these lower cost recreational uses typically come from afar and park in public parking spaces. However, if adequate on-site parking for commercial developments, such as the proposed project, is not provided, these public parking spaces would be occupied by patrons of these private commercial areas. While adequate on-site parking for commercial development, such as the proposed project, is necessary in order to minimize adverse impacts on public access, each project is analyzed on a case-by-case basis.

Since it was built in approximately 1927, the existing theater has never provided any off-street parking; however, parking for the Balboa Theater has always been served through the years by on-street parking and more so the Balboa Pier public parking lot located within a block of the facility that serves visitors to the beach and Pier. Projects consisting of re-development of a site (usually considered to be when 50% or more of the exterior walls of a building are demolished) would be required to provide adequate parking on site or with dedicated, non-public, off-site parking. Typically, use of a public parking lot to satisfy parking for a proposed project would not be allowed due to its potential impact to public access. However, the proposed project will preserve the existing front and both side walls and only demolish the rear (south) (i.e. less than 50% of the exterior walls of the building are being demolished). The existing building covers the entire parcel. Adding on-site parking could only be accomplished with an at-grade or subterranean parking lot, which would require complete demolition of the existing building, and significant re-design, which would likely impact the historic character of the building. Such demolition is not proposed in this case. In addition, there are no significant private reservoirs of parking nearby that the applicant could tap into. Furthermore, as discussed more fully below, with the proposed restrictions on daytime performances during the summer, there appears to be sufficient parking within the Balboa Pier parking lot, which has historically served as the parking reservoir for the theater.

The parking demand on the Balboa Pier parking lot generated by the rehabilitated theater will be reduced compared with pre-project conditions because of the proposed reduction in seating from the original 450 to 325 seats. According to the parking standards/requirements in the certified Land Use Plan (LUP), the project requires 1 parking space for every three (3) seats ($325/3 = 108$ spaces). In a letter dated December 5, 2006, the applicant submitted information regarding the availability of parking at the Balboa Pier Parking Lot (control booth lot, large metered lot and small metered lot). This information was obtained from the City and it states that there were 588 parking spaces in the control booth lot, 79 parking spaces in the large metered lot and 16 parking spaces in the small metered lot for a total of 683 parking spaces in the Balboa Pier Parking lot. In addition, the submitted information states that approximately 80% of the lot (546 parking spaces) was used during the summer weekdays. Based on the City's observed demand for parking in the Balboa Pier lot, and including the demand calculated to be generated by the theater, the City estimates

that there would still be an excess of 29 parking spaces available (683-546-108 = 29 parking spaces). Therefore, based on information provided by the applicant, there is sufficient parking available in the Balboa Pier parking lot for the proposed project. Additionally, Coastal Development Permit No. 5-01-029-(City of Newport Beach) was recently approved in 2001 for the Balboa Village Rehabilitation Project, which included expanding the Balboa Pier parking lot to 718 spaces (97 metered parking spaces and 621 parking fee parking spaces). Therefore, more parking has been provided. As the Balboa Pier parking lot has historically provided parking for the theater with its 665 parking space capacity, it appears that the revised Balboa Pier parking lot with its increased parking capacity to 718 parking spaces and the reduced seating capacity within the theater (which translates to lower parking demand), that the Balboa Pier parking lot will adequately provide parking for the theater use, based on known use at the present time.

However, there still remains a concern with the theater using the Balboa Pier parking lot during the summer, that use of the parking lot by the theater would conflict with visitors coming to enjoy the low cost visitor recreational uses in the area. In order to make sure that visitors to the beach and pier using the parking lot during the summer do not find themselves without parking due to patrons of the theater using the parking lot, the applicant has proposed that the theater will agree to restrict theater operations such that during the summer between and inclusive of Memorial Day and Labor Day, no weekend matinees will be provided and evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends. Thus, peak day use of the beach during the peak season will not be adversely impacted. In addition to the applicant's proposed restriction on the hours of operation, the applicant states that accessory theater-related social functions that will take place on the new roof deck will not occur at the same time as assembly occupancy of the theater and that the total capacity of the roof-top deck is below 325 people. Thus, parking for the theater use will be adequately provided and parking for the public to access the beach and pier during the peak summer season will not be adversely impacted.

In addition, recently a shuttle service called the OC Cruiser has begun operations in the Balboa Peninsula area that would provide alternative public access to the theater as well as the beach and pier and reduce the number of cars on the road and help alleviate parking for these uses in the area.

Thus, with the proposed project, there is no significant potential for adverse impacts to public beach access as a result of any parking deficiency. However, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 1**, which is a future improvements special condition. Also, to ensure that the applicant adheres to the hours of operation that they have proposed, the Commission imposes, **SPECIAL CONDITION NO. 2**, which states that during the summer between and inclusive of Memorial Day and Labor Day, that no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends. In addition, to make sure that the proposed parking plan works accordingly, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires a Parking Monitoring Plan. If parking monitoring shows that the parking identified by the permittee is not adequate to support the theater or the monitoring shows that theater patron's use of the Balboa Pier parking lot is adversely impacting the public's ability to use the Balboa Pier parking lot to access the pier, beach and other public access available in the area, the permittee shall seek to remedy the parking inadequacy and shall obtain an amendment to this coastal development permit or a new coastal development permit to implement the remedy unless the Executive Director determines that no amendment or new permit is legally required

CONCLUSION

To minimize the adverse impacts upon the public access, **THREE (3) SPECIAL CONDITION** have been imposed. **SPECIAL CONDITION NO. 1** requires additional approvals for any future development identifies construction-phase best management practices. **SPECIAL CONDITION NO. 2** states that the during the summer between Memorial Day and Labor Day, that no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends. **SPECIAL CONDITION NO. 3** requires a Parking Monitoring Plan. Only as conditioned does the Commission finds that the proposed project is consistent with Sections 30212 and 30252 of the Coastal Act.

C. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The protection of water quality is an important aspect of the Coastal Act. Section 30230 of the Coastal Act requires that marine resources shall be maintained, enhanced and where feasible, restored. Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters be maintained and where feasible restored. Water from the project site will flow into the City of Newport Beach's storm drain system and will ultimately drain to the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Newport Beach have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

1. Construction Impacts to Water Quality

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 avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 4** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. 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.

2. Post-Construction Impacts to Water Quality

The proposed development will result in urban runoff entering the storm water system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the existing structure is built to the property lines and will remain the same with the proposed project, so all storm drainage was and will continue to be generated from the roof. Therefore, the primary post-construction water quality concerns associated with the proposed project include roof particulates and trash.

The proposed development would result in the discharge of storm water into the storm water conveyance system. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach.

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. As discussed previously, the existing structure is built to the property lines and will remain the same with the proposed project, so all storm drainage was and will continue to be generated from the roof. As such, appropriate measures must be taken to assure that adverse affects on water quality are minimized. In order to deal with these post construction water quality impacts, the applicant has submitted a Water Quality Management Plan (WQMP) dated July 24, 2006 prepared by DMJM H&N, Inc. The existing structure drains the roof to the alley at the rear and pumped the water onto the alley surface where it drains to adjacent drop inlet storm drain structures. However, the applicant now proposes that the roof drainage will be directed to a pervious concrete area. Roof drainage will be directed to the rear of the roof and will drop into conductor piping to the alley. The existing impervious paving and unsuitable base material will be removed, and the alley will be repaved using pervious concrete. This will allow the infiltration of the roof storm water, and also reduces the impervious area in the vicinity of the project. While this measure to deal with post construction water quality is acceptable, no plans have been submitted and in addition additional measures are necessary, verifying that post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-

based BMPs. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant to submit a Final Water Quality Management Plan (WQMP).

CONCLUSION

To minimize the adverse impacts upon the marine environment, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 4** identifies construction-phase best management practices. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Final Water Quality Management Plan (WQMP). Only as conditioned does the Commission find that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

D. VISUAL IMPACTS

Section 30251 of the Coastal Act states:

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

One of the most important aspects of the Coastal Act is the protection of scenic resources. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance.

The proposed project will increase the height of the existing 32'-10" building to 45'-6" for a majority of the building, and 54'-10" for a Tower/elevator shaft/stairs feature and to 51' for a roof-top mechanical equipment enclosure. The highest point of the proposed Balboa Theater is the top of the Tower/elevator shaft/stairs feature. The additions will provide larger areas for cast and crew accommodations, a roof deck area for special events and pre/post event gatherings, accessible elevators, stairs, restrooms and access areas. Although the proposed height of the Theater exceeds the maximum 35-foot height restriction established in the City's certified Land Use Plan (see discussion below under 'Local Coastal Program'), the Landmark Building status of the Theater allows buildings up to 55-feet in height with the approval of a use permit (Section 20.65.070 (H) Exceptions to Height Limits, of the City of Newport Beach Zoning Code).

The most historically significant aspect of the building, the Balboa Boulevard Facade, will be retained and restored to its original condition to the extent existing evidence permits with the proposed project. The majority of the tile mansard roof will be retained, maintained and protected. Tiles removed in the Tower area will be reused on the Tower roof. New gutters and downspouts will be installed based on the original design. The classical architraves of the upper windows will be repaired, and iron grillwork will be installed in the openings per the original design. A new rectangular marquee sign will be designed and detailed to re-create the original. Discreet metal standards for the attachment of performance related banners and pennants will be provided. The street level will maintain the original organization of the plan, with a transparent entry element in the entry bay. This design of this entry is intended to make reference to the original scheme with its recessed doors. Additions to the building such as the Tower, which contains the vertical

circulation elements (stair and elevator), and the Support Level over the auditorium will be set back from the original façade to avoid dominating the sidewalk. To maintain compatibility with the character of the area and to be respectful of the original Landmark Building heritage, the new elements will use materials and architectural elements that are similar to the original façade. Using similar “re-created” surface texture, color, and architectural detail the new construction will match the original historic facade.

Currently, no public views of the ocean or beach are provided on site and this will not change with the proposed project. In addition, the proposed project is not located within any public view corridor identified for protection in the certified Land Use Plan. The project site is flanked on both sides by two story commercial buildings, to the west and east that are approximately 22-feet and 24-feet high, respectively. There are no setbacks between these buildings (i.e. they are built with zero side yard setbacks). Although the height of the remodeled theater will be higher than the two adjacent buildings, it will be of similar height to the Balboa Inn (a historic three-story structure listed on the *National Register of Historic Places*), which is located directly south (seaward) of the subject site. The building will also be of similar height to the Balboa Pavilion, another nearby historic building. Thus, the proposed building would be consistent with the character of the area.

Even if the Balboa Theater were to be maintained at the existing height (33-feet), reduced in height or the building was demolished and the site left vacant, the Balboa Inn, located seaward of the site, would prevent any public views of the ocean from East Balboa Boulevard. In addition, along this stretch of East Balboa Boulevard, no views of the ocean are available as existing development prevents it. However, views of the ocean and beach are available from the Balboa Pier parking lot, Peninsula Park, the Balboa Pier and the beach. Thus, the increased height will not impact public views as there are currently no public views through or across the subject property. However, public views are available near the project site.

CONCLUSION

Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

E. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Visitor-Serving and Recreational Development, Policy 2.3.1-5 states,

Protect special communities and neighborhoods which, because of their unique characteristics, are popular destination points for recreational uses.

Visitor-Serving and Recreational Development, Policy 2.3.1-3 states,

On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependent industry.

Parking, Policy 2.9.3-3 states,

Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations in the Zoning Code as of October 13, 2005.

Public Access and Recreation, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.

Water Quality, Policy 4.3.2-14 states,

Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into receiving waters.

Bulk and Height Limitation, Policy 4.4.2-1 states,

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3.

Bulk and Height Limitation, Policy 4.4.2-2 states,

Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.

By remodeling and bringing the Balboa Theater back into operation, the project is consistent with Policy 2.3.1-5 which protects special communities and neighborhoods. The project is consistent with Policy 2.3.1-3 since operation of the Balboa Theater enhances public opportunity for coastal recreation. Adequate parking spaces are available based on the parking standards/requirements identified in Policy 2.9.3-3. By being consistent with the parking standards of the LUP and conditioning the project for a future improvements special condition and requiring that during the summer between and inclusive of Memorial Day and Labor Day, that no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends, the project is consistent with Policy 3.1.1-1. By conditioning the project for submittal of a Final Water Quality management Plan (WQMP), the project is consistent with Policy 4.3.2-14.

The proposed project will increase the height of the existing 32'-10" building to 45'-6" with roof top projections up to 55', but Policy 4.4.2-1 of the LUP states that there is a 35-foot height limitation in this area of Newport Beach. Based on review of the City's zoning code provisions cited above,

clearly City policy is to encourage protection and reuse of historic buildings through the waiver of certain development standards where such waivers wouldn't have an adverse impact. However, existing policy in the LUP does not incorporate such provisions. Nevertheless, it has been demonstrated that the project would not have any adverse visual impacts, is consistent with community character, and can be found consistent with the Coastal Act. Since Newport Beach has only a certified Land Use Plan the standard of review for development remains Chapter 3 of the Coastal Act. The policies of the LUP are used only as guidance. Finally, it is notable that the City of Newport Beach certified Land Use Plan was updated in October 2005, whereas the proposed project was acted on by the City and then submitted to the Commission in June 2005, all of which was prior to the adoption of the updated LUP, which included Policy 4.4.2-1 (i.e. the 35-foot height limit).

Since the building is consistent with the character of the area, the proposed project is consistent with Policy 4.4.2-2.

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

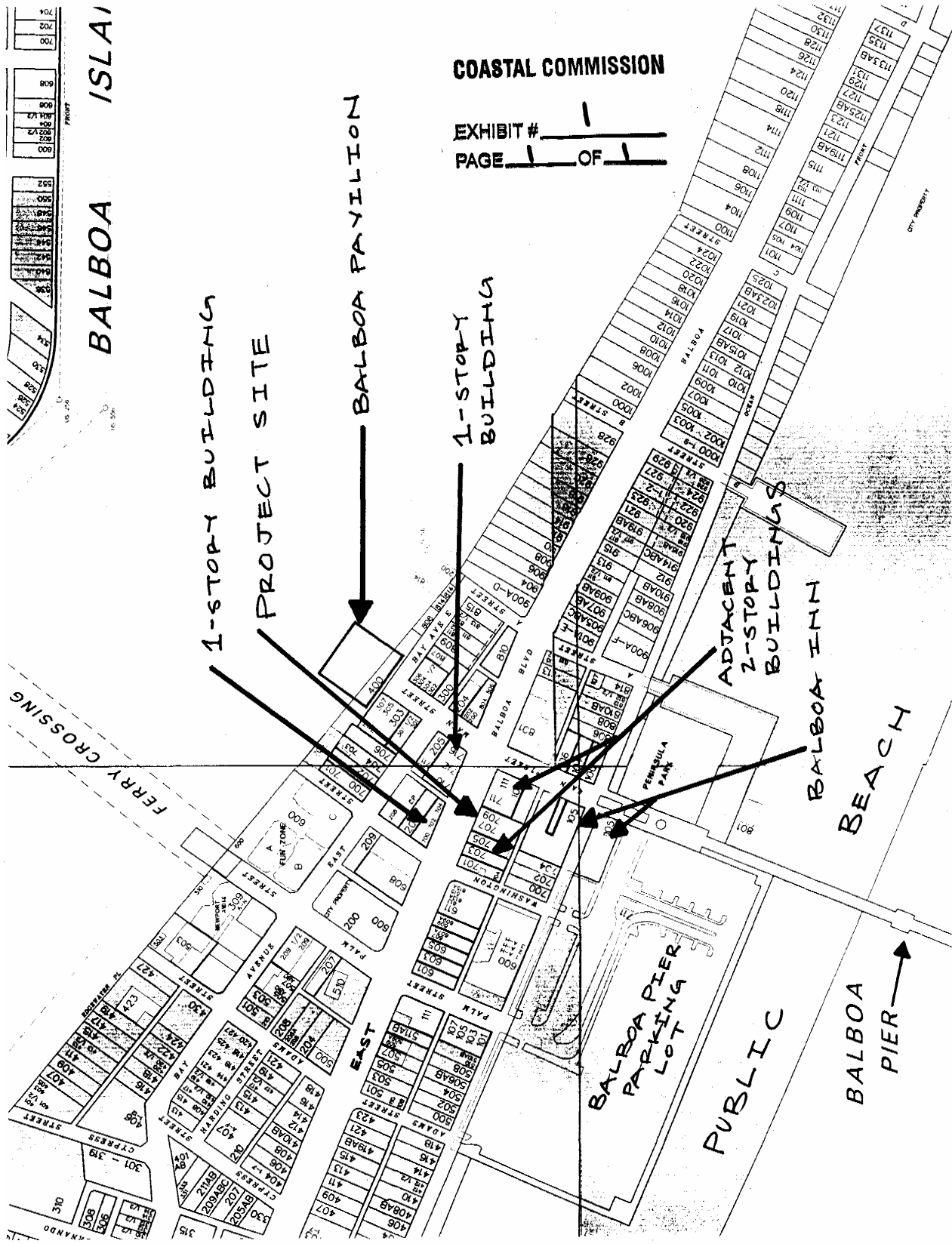
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

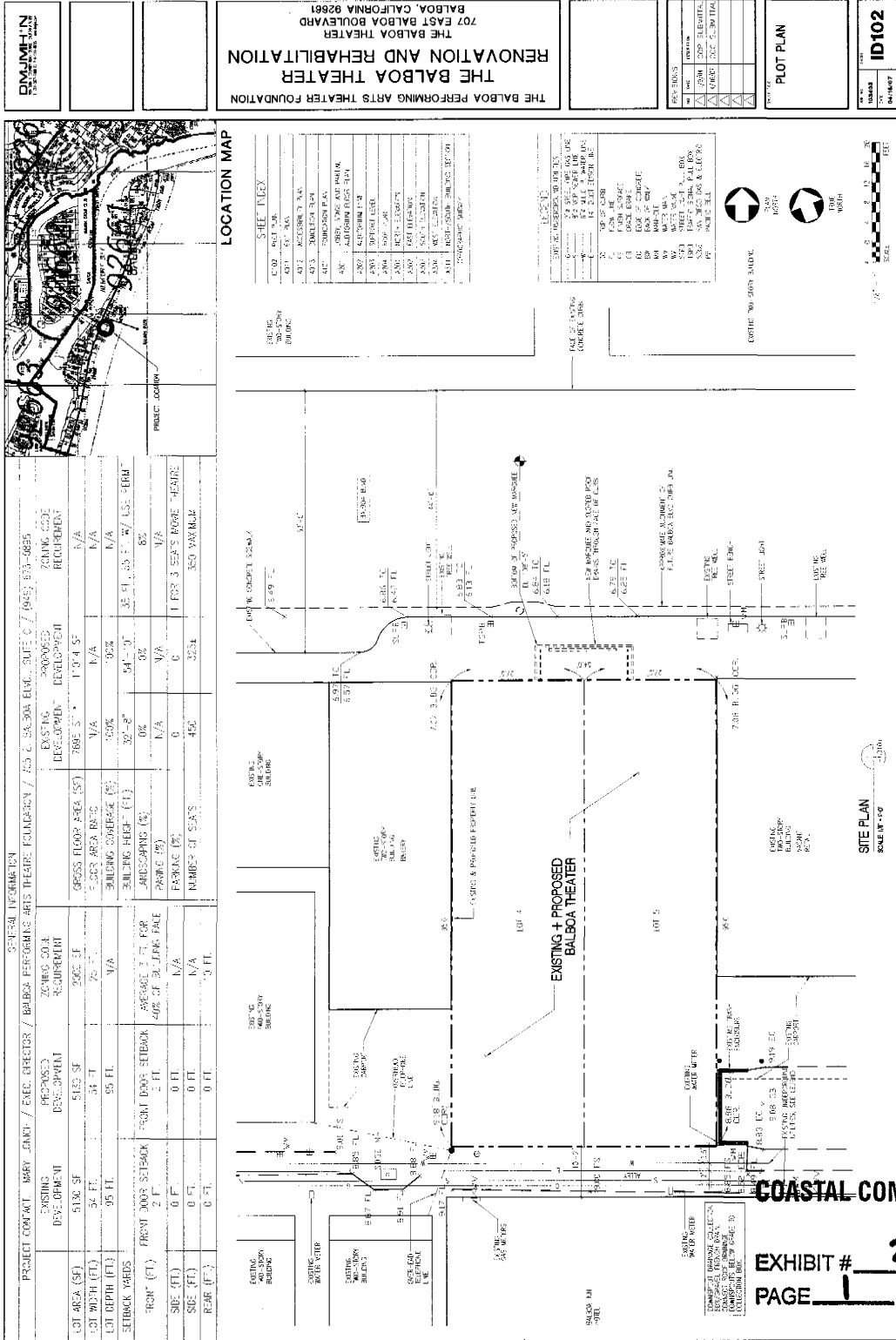
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 City of Newport Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to be Categorical Exempt (Class 3, Item a).

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the public access, water quality, and visual resources policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** additional approvals for any future development; **2)** that during the summer between and inclusive of Memorial Day and Labor Day, no weekend matinees will be provided and that evening events will not start before 7:30pm on weekdays and not before 8:00pm on weekends; **4)** construction-phase best management practices; and **5)** submittal of a Final Water Quality Management Plan (WQMP).

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which 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.





DMJM-HIN
 1000 10th Street, Suite 100
 San Francisco, CA 94103
 Tel: 415.774.1111
 Fax: 415.774.1112

THE BALBOA THEATER
 707 EAST BALBOA BOULEVARD
 BALBOA, CALIFORNIA 92661

THE BALBOA PERFORMING ARTS THEATER FOUNDATION
 RENOVATION AND REHABILITATION

PLOT PLAN

ID102

NO.	DESCRIPTION
1	EXISTING BUILDING
2	PROPOSED BUILDING
3	EXISTING DRIVE
4	PROPOSED DRIVE
5	EXISTING DRIVE
6	PROPOSED DRIVE
7	EXISTING DRIVE
8	PROPOSED DRIVE
9	EXISTING DRIVE
10	PROPOSED DRIVE

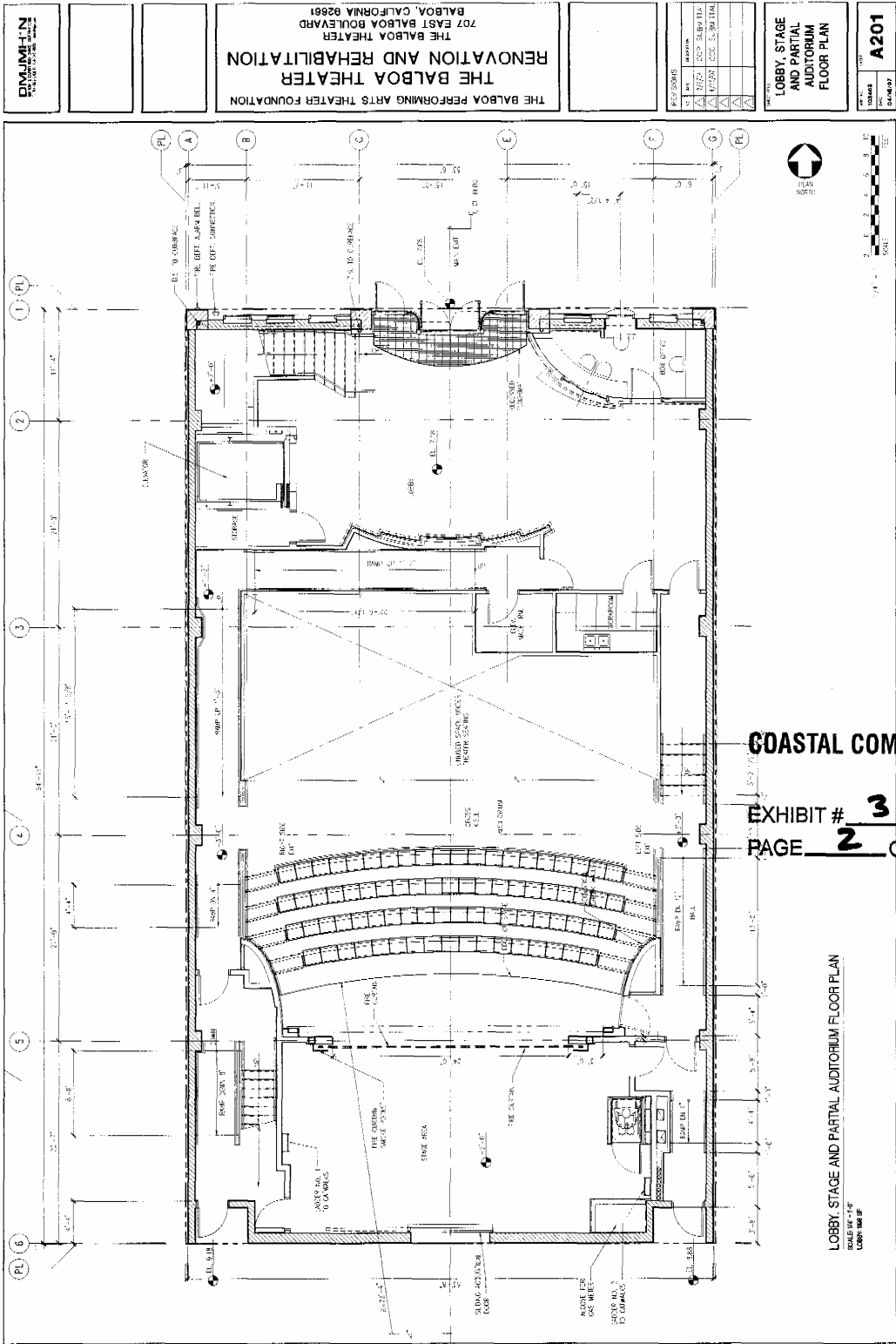
GENERAL INFORMATION

PROJECT CONTACT: MARY JONES	EXISTING DEVELOPMENT: 170,457 SF	PROPOSED DEVELOPMENT: 170,457 SF	ZONING CODE: 2605 SF
EXISTING AREA (SF): 5130 SF	PROPOSED AREA (SF): 170,457 SF	NET AREA (SF): 170,457 SF	REQUIREMENT: 170,457 SF
LOT WIDTH (FT): 34 FT	LOT DEPTH (FT): 95 FT	LOT AREA (SF): 3,230 SF	REQUIREMENT: 3,230 SF
SETRUCK YARDS: 2 FT	FRONT DOOR SETBACK: 2 FT	FRONT DOOR SETBACK: 2 FT	FRONT DOOR SETBACK: 2 FT
FRONT (FT): 0 FT	REAR (FT): 0 FT	FRONT (FT): 0 FT	REAR (FT): 0 FT
FRONT (FT): 0 FT	REAR (FT): 0 FT	FRONT (FT): 0 FT	REAR (FT): 0 FT
FRONT (FT): 0 FT	REAR (FT): 0 FT	FRONT (FT): 0 FT	REAR (FT): 0 FT

COASTAL COMMISSION

EXHIBIT # 2

PAGE 1 OF 1



DYNAMIC
 ARCHITECTURE
 1000 AVENUE OF THE STARS
 SUITE 1000
 COSTA MESA, CA 92626
 TEL: 714.440.1000
 FAX: 714.440.1001
 WWW.DYNAMICARCH.COM

THE BALBOA PERFORMING ARTS THEATER FOUNDATION
 RENOVATION AND REHABILITATION
 THE BALBOA THEATER
 707 EAST BALBOA BOULEVARD
 BALBOA, CALIFORNIA 92661

NO.	REV.	DATE	BY	CHKD.	DESCRIPTION
1					ISSUED FOR PERMIT
2					ISSUED FOR PERMIT
3					ISSUED FOR PERMIT
4					ISSUED FOR PERMIT
5					ISSUED FOR PERMIT
6					ISSUED FOR PERMIT

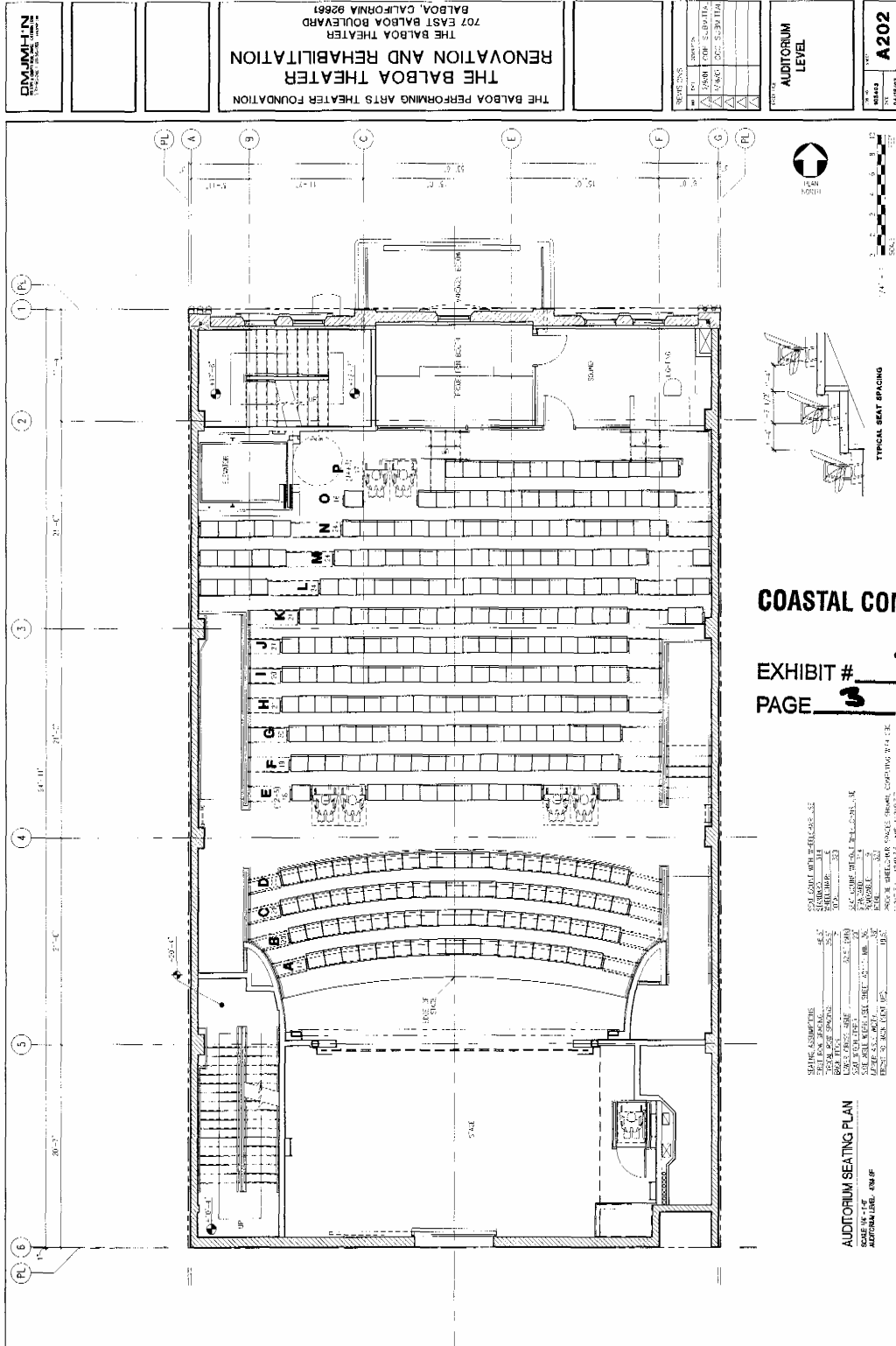
LOBBY, STAGE AND PARTIAL AUDITORIUM FLOOR PLAN

A201

COASTAL COMMISSION

EXHIBIT # 3
PAGE 2 OF 5

LOBBY, STAGE AND PARTIAL AUDITORIUM FLOOR PLAN
 SCALE: 1/4" = 1'-0"
 DATE: 10/15/10



DWAMM-LIN
 ARCHITECTS
 1111 S. GAVIN AVENUE
 SUITE 300
 BALBOA, CALIFORNIA 92261

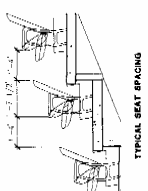
THE BALBOA PERFORMING ARTS THEATER FOUNDATION
 THE BALBOA THEATER
 707 EAST BALBOA BOULEVARD
 BALBOA, CALIFORNIA 92261

**THE BALBOA THEATER
 RENOVATION AND REHABILITATION**

AUDITORIUM LEVEL

NO.	DATE	DESCRIPTION
1	02/28/2019	ISSUED FOR PERMITTING
2	03/06/2019	ISSUED FOR SUBMITTAL
3	04/29/2019	ISSUED FOR SUBMITTAL

A202

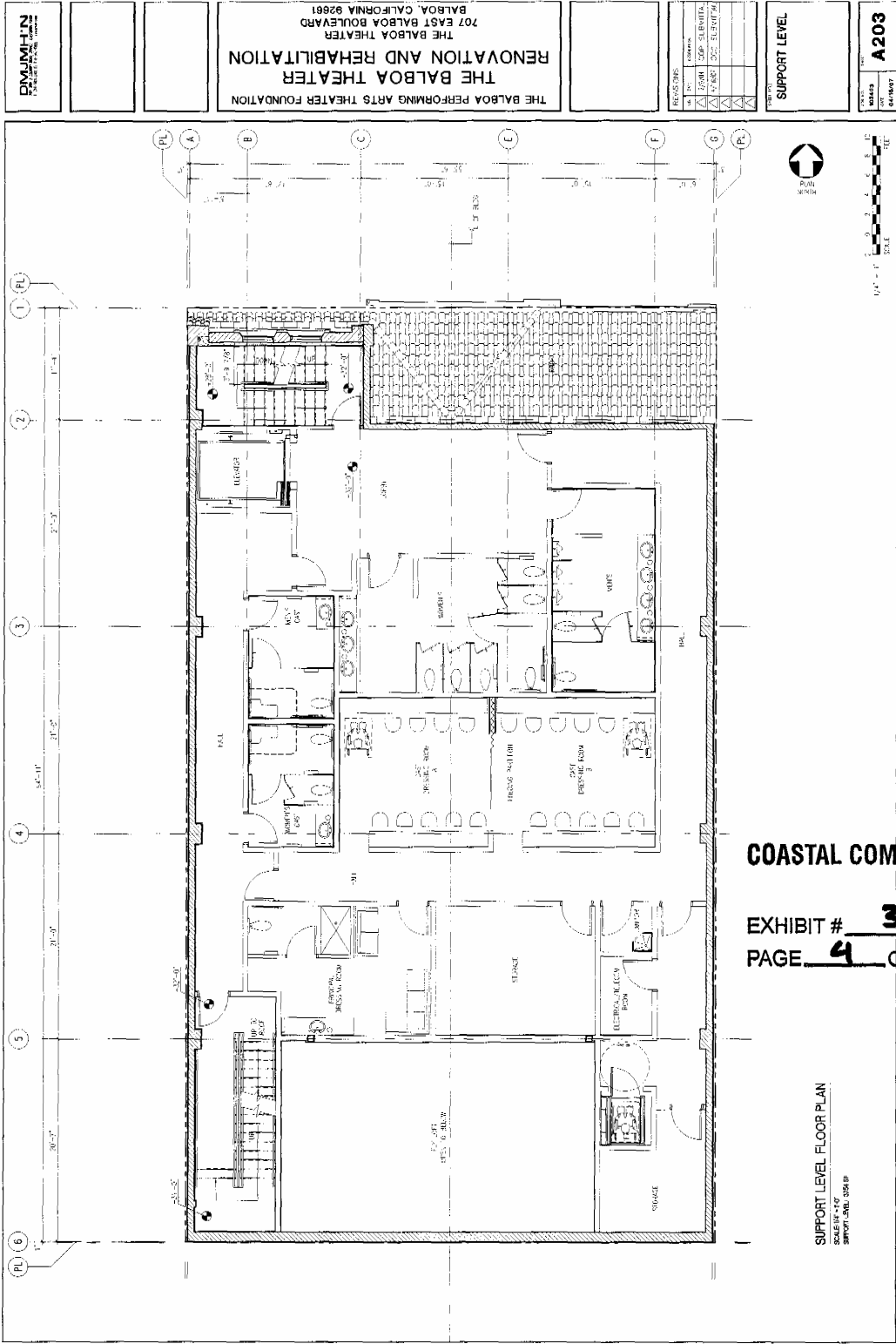


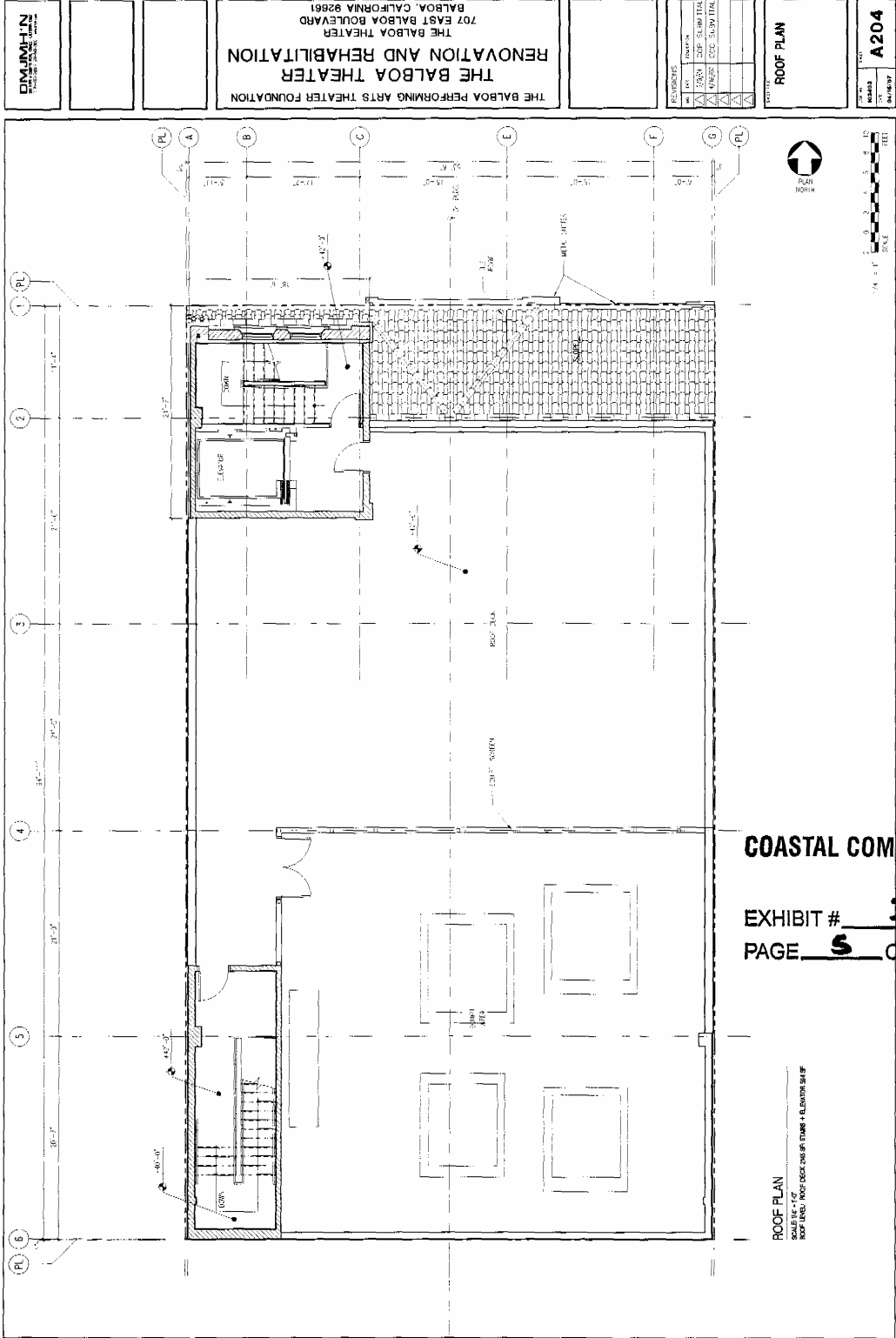
COASTAL COMMISSION

EXHIBIT # 3
 PAGE 3 OF 5

SEATING CAPACITY:	463
SEATING WIDTH:	44.5"
SEATING DEPTH:	16.5"
SEATING HEIGHT:	18.5"
SEATING SPACING:	11.5"
SEATING TOTAL LENGTH:	111.5'
SEATING TOTAL WIDTH:	78.5'
SEATING TOTAL AREA:	8745.0
SEATING TOTAL VOLUME:	158400.0
SEATING TOTAL WEIGHT:	1267200.0

AUDITORIUM SEATING PLAN
 SCALE 1/8" = 1'-0"
 AUDITORIUM LEVEL - 4/18/19





DMJM/HJN
 ARCHITECTS
 1000 PINE AVE.
 SAN FRANCISCO, CA 94109

THE BALBOA PERFORMING ARTS THEATER FOUNDATION
 707 EAST BALBOA BOULEVARD
 THE BALBOA THEATER
 BALBOA, CALIFORNIA 92661

**THE BALBOA THEATER
 RENOVATION AND REHABILITATION**

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	05/05/23	JM
2	ISSUED FOR PERMIT	05/05/23	JM
3	ISSUED FOR PERMIT	05/05/23	JM

ROOF PLAN

A204

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 5 OF 5

ROOF PLAN
 SCALE: 1/8" = 1'-0"
 ROOF DECK SURF PERIMETER + JOIST SURF

