

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Th6a

Filed: February 16, 2011
49th Day: April 6, 2011
180th Day: August 15, 2011
Staff: Fernie Sy-LB
Staff Report: June 23, 2011
Hearing Date: July 13-14, 2011
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-10-244

APPLICANT: Guy Inzalaco

AGENT: Walt Bushman

PROJECT LOCATION: 1211 East Balboa Blvd., City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolition of an existing beach fronting sports court and hardscape area (associated with an existing single-family residence on an adjacent lot) and construction of a new beach-fronting, 2,796 square foot, 28-feet above finished grade, two-story single-family residence with an attached 458 square foot two (2)-car garage. Grading will consist of 20 cubic yards of cut, 135 cubic yards of fill and 240 cubic yards of recompaction, which will balance on site. The project also involves the construction of a 3-foot high patio fence/wall around the perimeter of an at-grade, approximately 18-feet by 30-feet concrete or wood patio within the City's oceanfront encroachment area between the applicant's property and the paved boardwalk.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 2010-048) dated August 16, 2010.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach-fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with **EIGHT (8) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** conformance with the submitted drainage and run-off control plan; **4)** landscape controls; **5)** no deviation from approved encroachments/participation in the City mitigation program; **6)** City's right to revoke authorization of encroachment and compel removal of the encroachments; **7)** future development; and **8)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit No. 5-05-443-[Inzalaco]; *Geotechnical Investigation, Proposed Single-Family Residence, 1211 E. Balboa Boulevard, Newport Beach, California* prepared by Petra dated June 10, 2010 (J.N. 538-05); and *Coastal Hazard and Wave Runup Study for 1211 East Balboa, Newport Beach, CA* prepared by Geosoils, Inc. dated September 9, 2010.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Floor Plans
 5. Elevation Plans
-

STAFF RECOMMENDATION:

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

MOTION:

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

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. 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. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, wave uprush and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. NO FUTURE SHORELINE PROTECTIVE DEVICE

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-10-244 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from sea level rise, waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development

authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a Coastal Development Permit.

3. DRAINAGE PLANS AND RUN-OFF CONTROL PLANS

The applicant shall conform with the Drainage Plan received on February 16, 2011 showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive (Further described in **SPECIAL CONDITION NO. 4** below). 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 required.

4. LANDSCAPING – DROUGHT TOLERANT, NON-INVASIVE

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

5. DEVIATION FROM APPROVED ENCROACHMENTS/MITIGATION COMPLIANCE

- A. The only encroachments into the encroachment area within the City of Newport Beach Oceanfront public right-of-way allowed by this Coastal Development Permit are a patio fence/wall (no more than 3-foot high) around the perimeter of an at-grade approximately 18-feet by 30-feet concrete or wood patio. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this Coastal Development Permit or a new Coastal Development Permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is legally required.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit evidence, for the review and approval of the Executive Director, that the applicant has enrolled in the City’s public access impact mitigation program (i.e. annual payment to City for encroachment). Evidence that the initial payment has occurred shall also be submitted. The applicant and all other successors and assigns must remain enrolled in the City's public access impact mitigation payment program (i.e. annual encroachment payment system) and make the recurring annual payment so long as the encroachment remains in place.

6. CITY’S RIGHT TO REVOKE ENCROACHMENT PERMIT

Approval of this Coastal Development Permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right of way.

7. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-10-244. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-10-244. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to 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. 5-10-244 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

8. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION AND PREVIOUS ACTION AT THE PROJECT SITE

1. Project Location and Description

The subject site is located at 1211 East Balboa Boulevard within the City of Newport Beach, Orange County (Exhibits No. 1-2). The lot size is 2,400 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site Medium Density Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area, located between the entrance to Newport Bay and the Balboa Pier.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 375-feet wide) between the subject property and the Pacific Ocean.

Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. The project site is one of the ocean-fronting properties bordered by the City's paved beachfront public lateral access way (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 10-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of D Street, approximately 125-feet west of the site. Lateral public access is available along the boardwalk and wide sandy beach seaward of the subject site.

The applicant is proposing to demolish and remove an unpermitted area consisting of an existing basketball court within the front (Northern) portion of the site, a grass lawn in the middle of the site and a wooden deck within the back (Southern) portion of the site (which have been associated with an existing single-family residence on an adjacent lot). This Coastal Development Permit would permit the removal of this development. The project also involves the construction of a new beach-fronting, 2,796 square foot, 28-feet above finished grade, two-story single-family residence with an attached 458 square foot two (2)-car garage (Exhibits No. 3-5). Grading will consist of 20 cubic yards of cut, 135 cubic yards of fill and 240 cubic yards of recompaction, which will balance on site.

The project also involves the construction of a 3-foot high patio fence/wall around the perimeter of an at-grade, approximately 18-feet by 30-feet concrete or wood patio within the City's oceanfront encroachment area between the applicant's property and the paved boardwalk.

The applicant is proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to infiltration trenches and permeable areas.

The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. To make sure that vegetated landscaped areas only consist of native plants or non-native drought tolerant plants, which are non-invasive, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires only this type of vegetation.

As stated above, the proposed development includes new patio development that encroaches approximately 8-feet into the City of Newport Beach Oceanfront public right-of-way at the seaward side of the home (Exhibit No. 3). The City holds the public right-of-way for street/walkway/bikeway purposes. Within the subject area (located between the entrance to Newport Bay and the Balboa Pier) the right-of-way is developed with a paved public walkway/bikeway (boardwalk). At the subject site, the City has constructed the Oceanfront boardwalk approximately 8-feet from the applicant's property line. The City allows improvements up to the sidewalk (between the applicant's private property line and the boardwalk). The development now pending proposes to

construct a 3-foot high patio fence/wall around the perimeter of an at-grade, 18-feet by 30-feet concrete or wood patio encroachment.

Construction of the proposed encroachments would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way. Although the encroachments exist between private residential lots and the paved boardwalk, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area which is owned by the City for street/walkway/bikeway purposes. This cumulative impact is addressed in the certified LUP by imposition of a mitigation plan. The mitigation plan requires that payments to the City by encroaching homeowners be applied to improving public access in Newport Beach. The City has constructed a number of public access improvements (including street end improvements which provide additional parking spaces) using the encroachment fee funds. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with the mitigation plan, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. Those findings are incorporated herein by reference.

The LUP encroachment policies allow encroachment onto the Oceanfront right-of-way in the area of the subject site, which is between A Street and a point 250 feet southeast of E Street. Encroachments in this area may encroach 7 to 8-feet up to the sidewalk and within an oceanward prolongation of the property lines on the side of the parcel. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when no building permit is required, and subject to the mitigation payment. Except for an absence of evidence that the applicant has enrolled in the City's mitigation program, the proposed encroachment at the subject site complies with these standards.

The Commission finds that construction of the encroachments is consistent with the certified LUP encroachment policies. In addition, the City is continuing to carry out the public access improvements required by the LUP mitigation plan to offset any adverse impacts of the encroachments. However, in order to assure that the encroachments are consistent with the Land Use Plan policies addressing Oceanfront encroachments as certified by the Commission, and so are consistent with the public access policies of the Coastal Act, evidence must be submitted that the applicant has enrolled in the City's annual mitigation payment program. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant to submit evidence of enrollment in the City's program along with the initial payment. The applicant and any successors in interest must remain enrolled in the mitigation program and make the annual recurring payment to the City so long as the encroachment remains in place.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a Coastal Development Permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur without an approved amendment to this Coastal Development Permit or approval of a new Coastal Development Permit, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires that an amendment to this permit or a new Coastal Development Permit be obtained for any deviations

to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right of way. Thus, the proposed project is being conditioned (**SPECIAL CONDITION NO. 6**) to provide that issuance of the Coastal Development Permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of way. This would ensure future opportunities for public access and recreation.

2. Previous Action At The Project Site

On April 11, 2006, the California Coastal Commission approved Coastal Development Permit No. 5-05-443-[Inzalaco] for the demolition of an existing two-story duplex and construction of a new three-level, 28'-6" high, 2,876 square foot single-family residence with an attached 461 square foot two-car garage and landscape and hardscape improvements on a beachfront lot. The project also involved the construction of a 17-foot by 29-foot concrete patio, planters and maximum 3-foot high perimeter wall within the City's oceanfront encroachment area. Approximately 42 cubic yards of grading (21 cubic yards of cut, 21 cubic yards of fill) was also proposed. The project was approved with **SEVEN (7) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** conformance with the submitted drainage and run-off control plan (including landscaping controls); **4)** deviation from approved encroachments; **5)** City's right to revoke the encroachments; **6)** future development; and **7)** a deed restriction against the property, referencing all of the Special Conditions. The permit was issued on January 29, 2007. The existing residence was demolished, but the new residence was not constructed in its place. Instead, a hardscape area and sports court was constructed.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with

the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

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

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. 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.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of

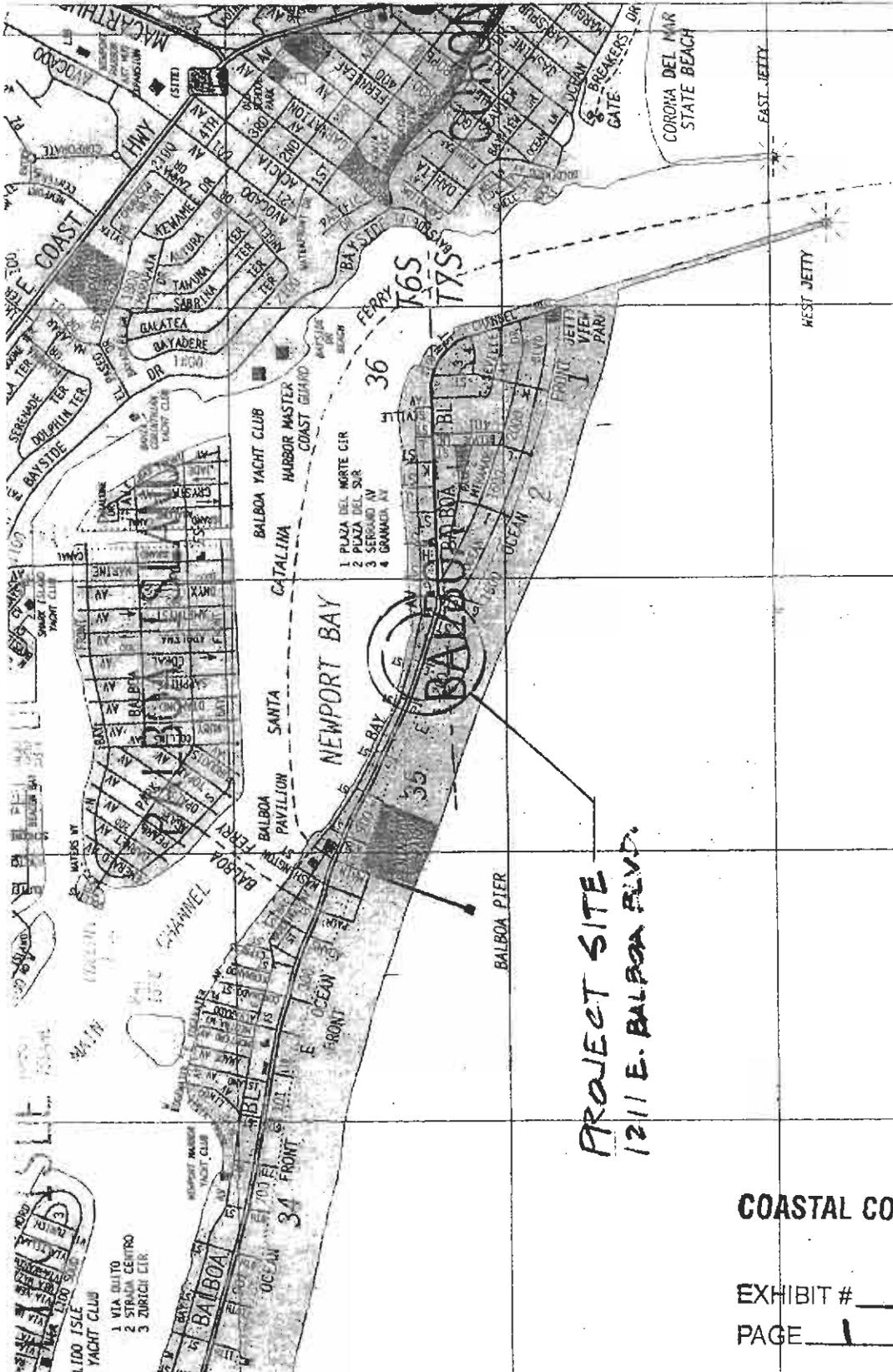
the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

RECEIVED
South Coast Region

OCT 20 2010

CALIFORNIA
COASTAL COMMISSION



PROJECT SITE
1211 E. BALBOA BLVD.



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VICINITY MAP

COASTAL COMMISSION

EXHIBIT # 1

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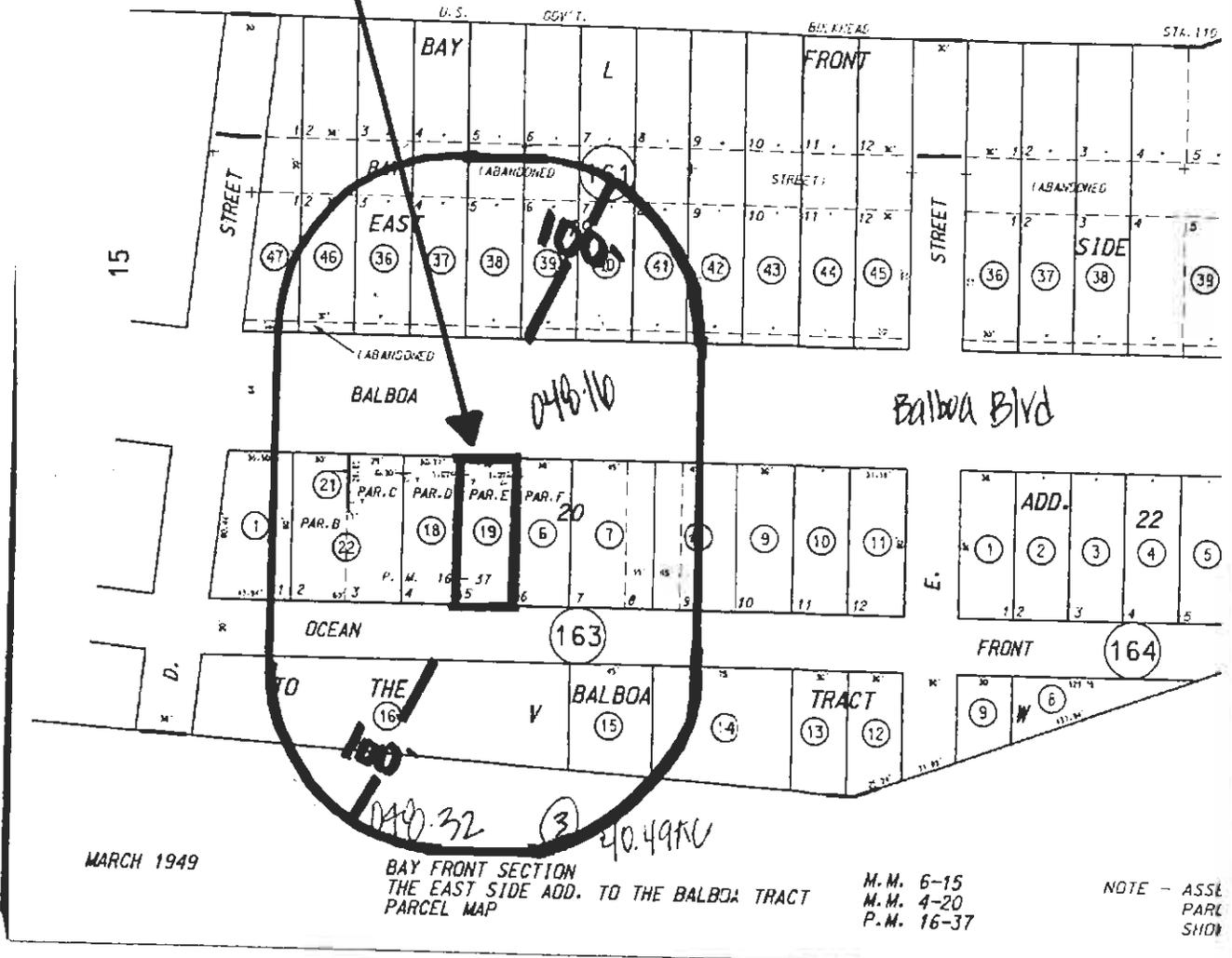
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+ = WATER LINE AS PER AERIAL PHOTO, 1947

NORTH

PROJECT SITE

50-11



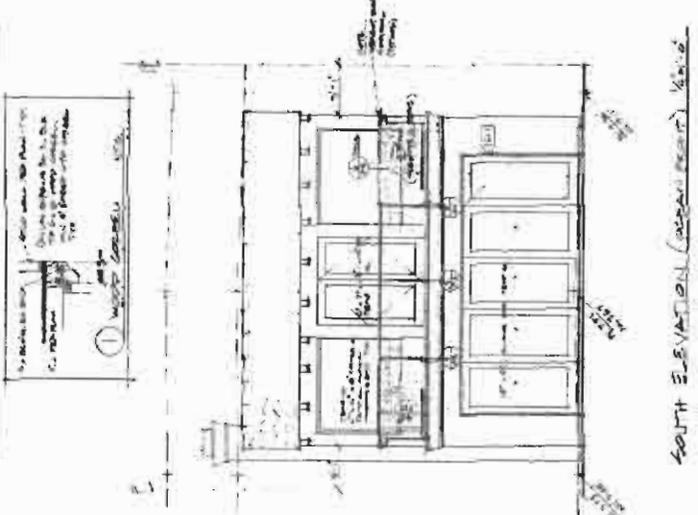
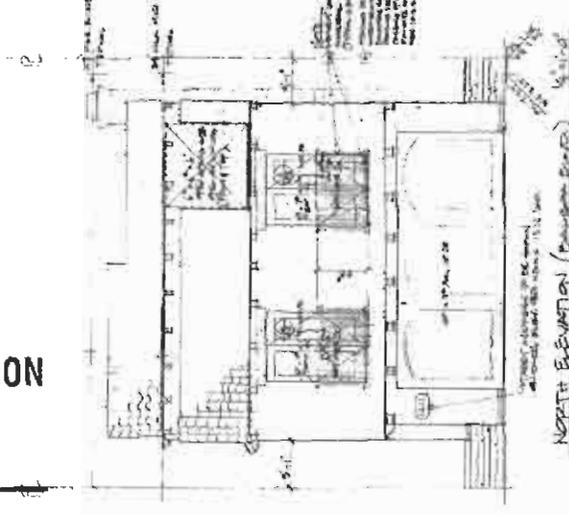
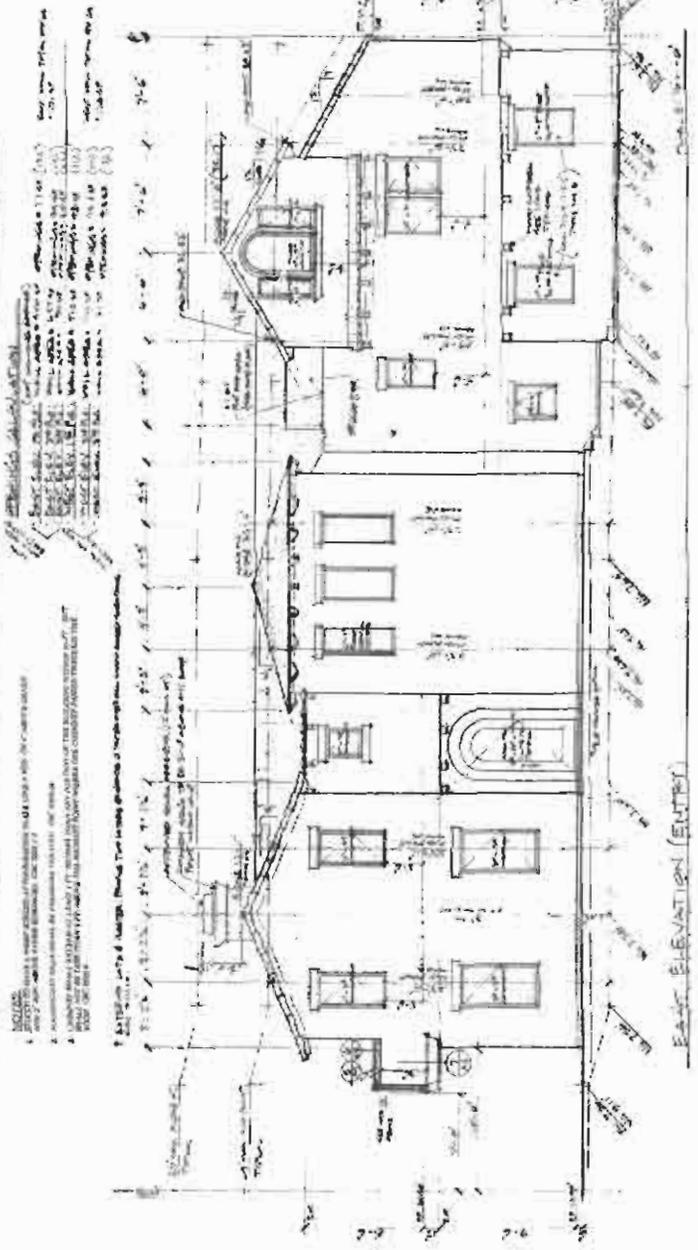
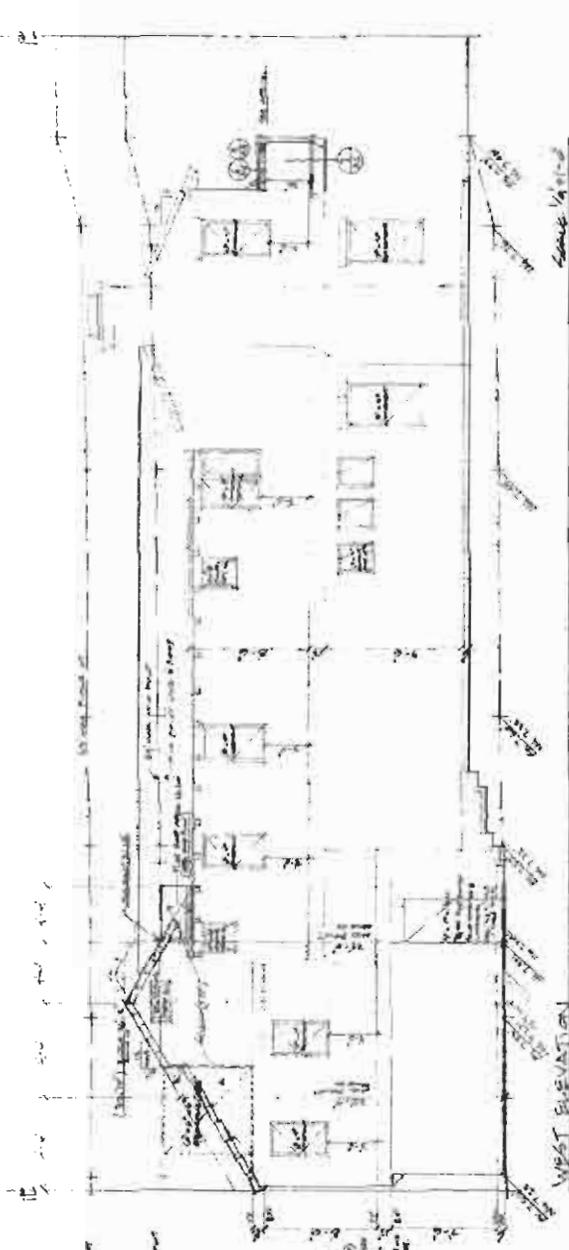
COASTAL COMMISSION

EXHIBIT # 2
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Ownership Map

1211 E. Balboa Blvd, NB
100 Coastal
09/07/2010 File #10101031

SUSAN W. CASE, INC.
917 GLENNEYRE ST #7
LAGUNA BEACH CA 92651
949 494 6105
susan@swcaseinc@yahoo.com



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EXHIBIT # 5
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