

**CALIFORNIA COASTAL COMMISSION**

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# Th5a

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Staff:	L. Roman-LB
Staff Report:	6/21/12
Hearing Date:	7/12/12

## STAFF REPORT: CONSENT CALENDAR

<b>Application No.:</b>	<b>5-12-110</b>
<b>Applicant:</b>	<b>Ramy Elias</b>
<b>Agent:</b>	Harbour Bay Homes Development, Attn: Jim Caldwell
<b>Location:</b>	3581 Courtside Circle, Huntington Beach (Orange County)
<b>Project Description:</b>	Construction of a new 48' long concrete deck cantilevered 4'-6" beyond the bulkhead and beyond the private property line over open coastal waters. No railing is proposed along the perimeter of the proposed cantilevered deck.
<b>Staff Recommendation:</b>	Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The applicant proposes construction of a concrete deck cantilevered beyond the bulkhead over public waters in association with an adjacent single-family residence.

The City of Huntington Beach has a certified Local Coastal Program. However, the proposed project is seaward of the mean high tide line and therefore within an area of the Commission's retained permit jurisdiction. The City's certified Local Coastal Program (LCP) may be used as guidance. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private cantilevered decks abutting residential uses, and with Chapter 210, which provides standards for cantilevered

decks in Huntington Harbor in the Open Space Water Recreation zone.

Additionally, as this area of Huntington Harbor, the water area is owned by the State and administered by the State Lands Commission, the applicant must obtain a lease to use the water area for their proposed private uses from the State Lands Commission. The applicant has submitted proof of application for a State Lands lease to utilize the water area underneath the proposed cantilevered deck, but that process is not yet complete. Therefore, **Special Condition 3** requires submittal of the lease prior to issuance of the coastal development permit. Staff has received assurances from the State Lands Commission that the lease will be approved and finalized by the State Lands Commission at their August 2012 hearing. Furthermore, **Special Condition 2** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Other Coastal Act issues associated with this project include potential adverse impacts to water quality and marine resources as the proposed deck cantilevers over open coastal waters. To address these potential adverse impacts the Commission staff is recommending **Special Condition 1: Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris, Special Condition 2: Public Rights, Special Condition 3: California State Lands Commission Approval/Lease, and Special Condition 4: Future Improvements**

Commission staff recommends **approval** of coastal development permit application 5-12-110, as conditioned.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>4</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>4</b>
<b>III. SPECIAL CONDITIONS .....</b>	<b>5</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>6</b>
A. PROJECT LOCATION AND DESCRIPTION .....	7
B. HABITAT .....	7
C. DEVELOPMENT .....	7
D. PUBLIC ACCESS.....	7
E. WATER QUALITY.....	7
F. LOCAL COASTAL PROGRAM.....	8
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT .....	8

### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Site Map

Exhibit 2 – Project Plans

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the Coastal Development Permit Applications included in 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:

*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

This permit is granted subject to the following 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

This permit is granted subject to the following special conditions:

1. **Construction Responsibilities and Debris Removal.**
  - (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
  - (b) Any and all construction material shall be removed from the site within 10 days of completion of construction.
  - (c) Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone.
  - (d) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
  - (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
  - (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.
2. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
3. **California State Lands Commission Approval/Lease.** Prior to issuance of the coastal development permit, applicant shall provide to the Executive Director written evidence from the California State Lands Commission that the proposed development is consistent with the terms and conditions of any applicable tidelands grant and or lease as well as a copy of said lease issued by the California State Lands Commission, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the California State Lands Commission. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
4. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-12-132. 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 this development governed by the Coastal Development Permit No. 5-12-132. Accordingly, any future improvements to the structures 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. 5-12-132 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### **IV. FINDINGS AND DECLARATIONS:**

##### **A. PROJECT LOCATION AND DESCRIPTION**

The subject site is the public water area adjacent to a residentially zoned bayfront lot located at 3581 Courtside Circle, Huntington Beach (within Huntington Harbor) in Orange County (Exhibit 1). The applicant proposes to build a concrete cantilevered deck beyond the private property line over open coastal waters. The proposed deck is associated with the adjacent single family residential use. The site is currently developed with a single-family residence on a bulkhead lot and a private dock. Most of the Huntington Harbor water frontage is developed with single family homes, many of which also have cantilevered decks and boat docks over public waters. Virtually the entire water frontage in Huntington Harbor is supported by bulkheads.

Specifically, the applicant proposes construction of a new 48' long concrete deck cantilevered 4'-6" beyond the bulkhead and over open coastal waters. No railing is proposed along the perimeter of the proposed cantilevered deck, no glass or transparent medium is proposed. Project plans are included in Exhibit 2. To address water quality concerns, the applicant is proposing directing deck drainage and runoff to two filter boxes located landward of the deck on the subject lot. All work will occur from the landward side of the deck. No bottom disturbing activities are proposed.

The nearest public access in the area is at a small pocket beach located at Pacific Coast Highway and Park Avenue (approximately 1,000 feet southwest) and also at Sunset Beach located approximately 1,500 feet south of the site. Most of the existing residences that front along the waters of Huntington Harbor have cantilevered decks. The proposed deck is similar in function to the other cantilevered decks associated with residential development within Huntington Harbor. The proposed development is consistent with past Commission actions in the area.

The City of Huntington Beach has a certified Local Coastal Program. However, due to the project location seaward of the mean high tide line, the project is within an area of the Commission's retained permit jurisdiction. Nonetheless, the City's certified Local Coastal Program may be used as guidance. The land use designation at the site is Open Space – Water (OS – W). The site is zoned Open Space Water Recreation. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private cantilevered decks abutting residential uses, and with Chapter 210, which provides standards for cantilevered decks in Huntington Harbor in the Open Space Water Recreation zone.

The proposed deck would cantilever over the open waters of Huntington Harbor. In this area of Huntington Harbor, the water area is owned by the State and administered by the State Lands

Commission. Although cantilevered, the proposed deck would preclude the general public from utilizing the public water area underneath the dock for recreation or navigational purposes.

Therefore, the applicant must obtain a lease to use the water area for their proposed private uses from the State Lands Commission. The applicant has submitted proof of application for a State Lands lease to utilize the water area underneath the proposed cantilevered deck, but that process isn't complete yet. Therefore, **Special Condition 3** requires the applicant provide the Executive Director a copy of the said lease prior to issuance of the coastal development permit.

Furthermore, **Special Condition 2** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

#### **B. HABITAT**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

#### **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 any future repair and maintenance of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act and the Commission's regulations. Section 13252 of the Commission's regulations provides that certain repair and maintenance activities require a coastal development permit because they involve a risk of substantial adverse impacts to coastal resources. Activities that involve a risk of such impacts include, in part, using mechanized construction equipment or construction materials within 20 feet of coastal waters or streams. Since the proposed concrete deck cantilevers over open coastal waters, future maintenance activities on the concrete deck involve a risk of substantial adverse impacts to coastal waters because such activities may involve the use of mechanized equipment or construction materials over open coastal waters. Therefore, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 4** requiring the applicant to apply for an amendment to this CDP or a new CDP, if applicable, for any future development within the subject site. As conditioned the development conforms to 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 and as conditioned, the project conforms to 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 runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates construction best management practices to minimize the effect of construction activities on the marine

environment. These conditions include, but are not limited to, one or more of the following: the appropriate management of equipment and construction material and 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 to 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. LOCAL COASTAL PROGRAM**

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

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

#### **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the Commission's 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 feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Huntington Beach is the lead agency responsible for CEQA review. The City issued a Notice of Exemption from the project citing Categorical Exemption Section 15303 Class 3.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with CEQA and the policies of the Coastal Act.



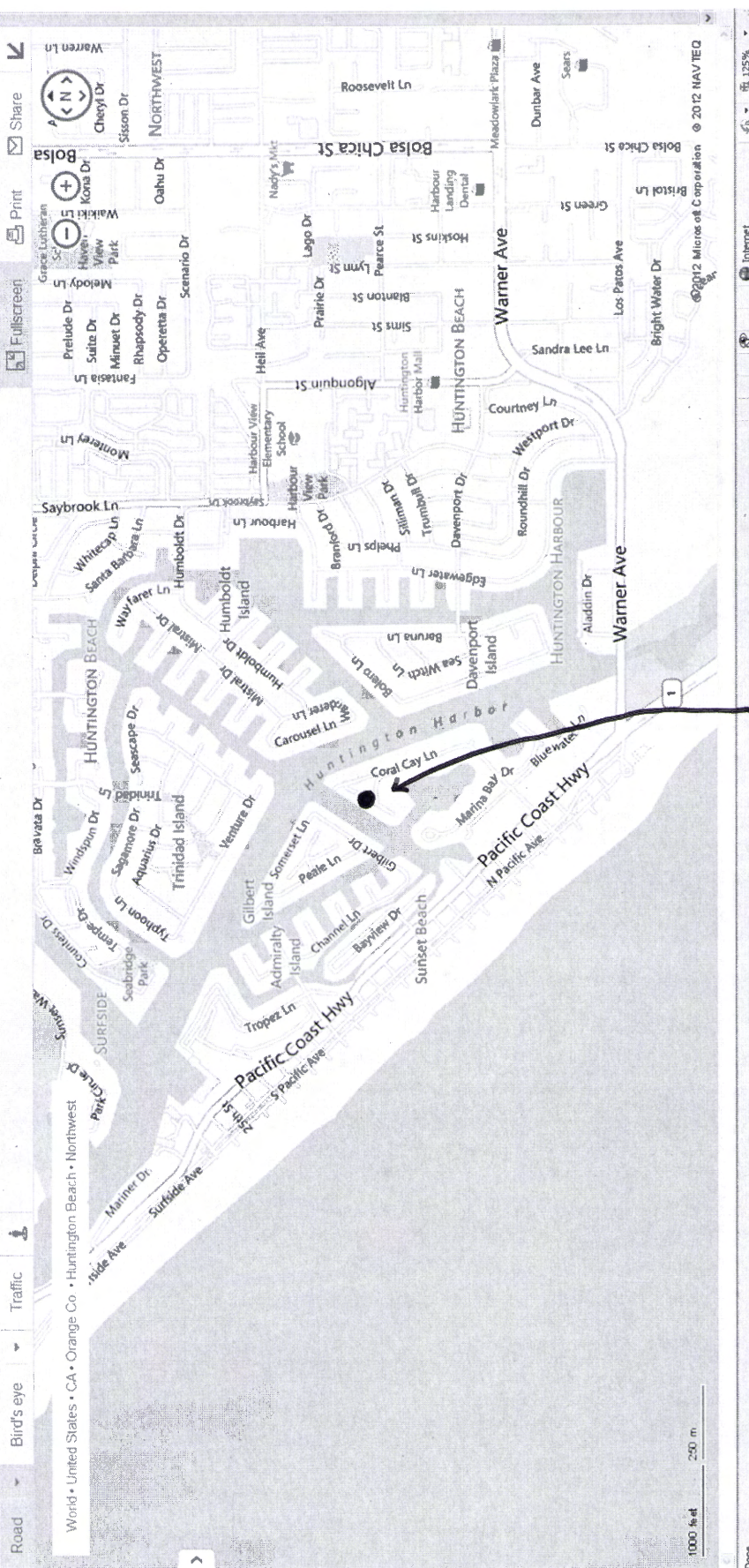
APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- 1) City of Huntington Beach LCP

3581 courtside circle, huntington beach, ca

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Subject  
site

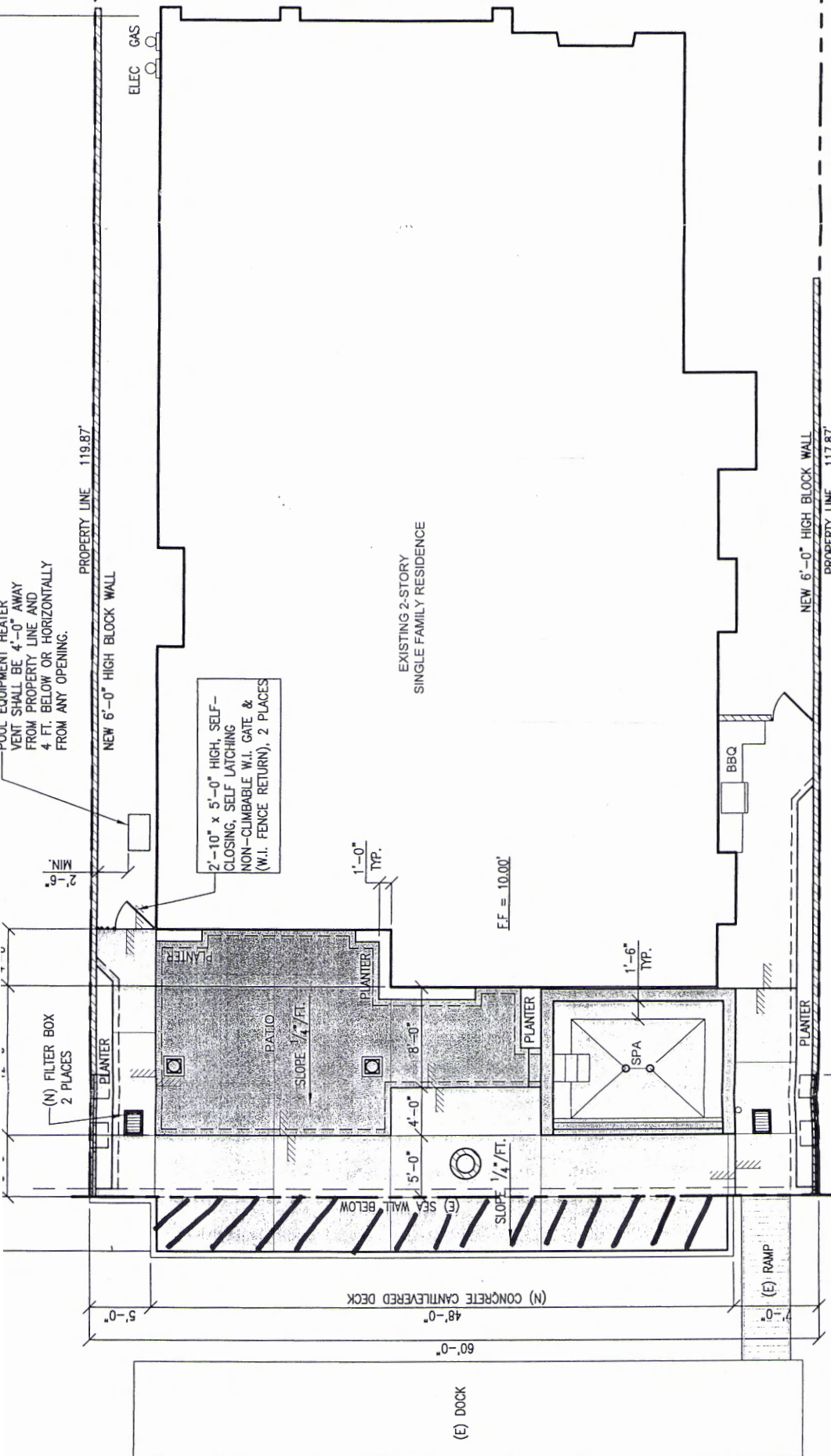
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EXHIBIT # 1  
PAGE 1 OF 1




# COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1



(N) 48" HIGH GLASS OVER 2'-0" HIGH  
CONCRETE STEM WALL EACH SIDE OF  
PROPERTY (REQUIRES SEPARATE PERMIT)

10'-0" TYP.

 proposed  
cantilevered  
deck  
beyond  
bulkhead