

STAFF REPORT



ITEM NO. 9

CITY OF OCEANSIDE

Date: April 4, 2007

To: The Honorable President and Members of the Board of Directors

From: Department of Harbor and Beaches

Subject: **APPROVAL OF A LEASE AMENDMENT FOR THE LEASE WITH HELGREN'S OCEANSIDE SPORTFISHING**

SYNOPSIS

Staff recommends that the Harbor Board approve Amendment 9 to the lease agreement with Helgren's Oceanside Sportfishing, expanding its leased premises by adding forty feet of the south side of the east end of the Cape Cod Dock; and authorize the City Manager to execute the amendment.

BACKGROUND

Richard F. and Caroline P. Helgren, d.b.a. Helgren's Oceanside Sportfishing, have operated a successful, full-service sport fishing business in the harbor since 1979. Their current lease allows them to operate sport fishing, whale watching, sightseeing and general boat-for-hire services. All boats operating under agreements with Helgren's provide these services to some extent.

ANALYSIS

Helgren's Sportfishing has requested that its lease be amended to include forty feet of additional dock space at the south side of the east end of the Cape Cod Dock, so as to allow Helgren's to operate an additional vessel for sport fishing, sightseeing, whale watching, and other boat-for-hire services.

FISCAL IMPACT

Additional revenue is anticipated to be generated by the addition of the boat, and will be reflected in the increased percentage rent payments. In FY 2005-2006 Helgren's paid approximately \$95,117 in percentage rent. Helgren's will continue to pay percentage rent; however, with the addition of the new boat, Helgren's revenue is expected to increase approximately 5 percent.

COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the Harbor Board approve Amendment 9 to the lease agreement with Helgren's Oceanside Sportfishing, expanding its leased premises by adding forty feet of the south side of the east end of the Cape Cod Dock; and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:


Heidi Janz
Program Specialist


Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Don Hadley, Harbor and Beaches Director

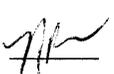
Joseph Arranaga, Acting Deputy Public Works Director

Douglas E. Eddow, Real Property Manager

Nita McKay, Financial Services Director







AMENDMENT NO. 9 TO LEASE

THIS AMENDMENT is made this _____ of _____, 2006, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter called "DISTRICT") and Richard F. and Caroline P. Helgren, d.b.a. Helgren's Oceanside Sportfishing (hereinafter called "LESSEE").

RECITALS

WHEREAS, DISTRICT AND LESSEE are parties to a Lease agreement dated January 10, 1979 and thereafter amended by eight written amendments (which lease, as amended, is hereinafter referred to as the "Master Lease") under the terms of which LESSEE leases real property commonly known as 315 Harbor Drive South and "U" dock, the south side of "V" dock and the headwalk between the docks.

WHEREAS, LESSEE leases from DISTRICT 45 feet of the north side of the east end of the Harbor Village Transient Dock per Amendment No. 7 to lease, dated August 19, 1997.

WHEREAS, LESSEE wishes to lease from DISTRICT certain additional premises beyond the premises described in the Master Lease, specifically 40 feet of the south side of the east end of the Harbor Village Transient Dock, from which LESSEE will operate commercial sportfishing boats,

WHEREAS, the DISTRICT and LESSEE are mutually desirous of making these amendments to the Master Lease.

LEASE

NOW, THEREFORE, BE IT AGREED UPON BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

The MASTER LEASE shall be amended as follows:

1. The description of said leased premises contained in the Master Lease, or in any amendments thereto, is hereby superseded and replaced by the following:

DISTRICT hereby leases to LESSEE and LESSEE leases from DISTRICT, in accordance with the terms of this agreement, all of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **315 Harbor Drive South, the old public restrooms at 320 Harbor Drive South, "U" dock, south side of "V" dock and the headwalk between the two docks, and the northwesterly half of the northeasterly 45 feet of the Cape Cod Dock, and 40 feet of the south side of the east end of the Cape Cod Dock.** The property is more particularly shown in Exhibits "C" and "D" attached hereto and by this reference made part of this Lease.

2. Said Exhibits "C" and "D" shall supplement Master Lease Exhibits "A" and "B."

3. Indemnity Clause and Casualty Insurance: Paragraph 22 of the Master Lease is hereby amended to read as follows:

Indemnity:

Lessee shall at all times relieve, indemnify, protect and save harmless the District and the City of Oceanside and their boards, councils, officers, agents and employees from any and all claims and liability, including reasonable attorneys' fees and any other reasonable expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of the District, any of its officers, agents, or employees, that may in whole or in part arise from or be caused by (a) the operation, maintenance, use or occupation by Lessee of the herein demised premises or any areas of permitted use described by Section 19 of this lease, (b) the acts, omissions or negligence of Lessee, its agents, officers, employees or permittees, or (c) the failure of Lessee to observe and abide by any of the terms or conditions of this lease or any applicable law, ordinance, rule or regulation of the District or City of Oceanside.

Further Lessee acknowledges the existence of rocks, rip rap and shallow water around the leased premises, and Lessee hereby waives any and all claims against District, the City of Oceanside, their boards, city councils, officers, agents and employees for damages caused to boats, vessels, motors, anchors, and any damage to persons or property, arising out of changes in the tide, tide surges, changes in the ocean floor, the structure of the ocean floor, rocks in or around the water, the docks, other boats, equipment from other boats, storms, or effects of storms and/or rip rap.

The obligation of Lessee to so relieve, indemnify, protect and save harmless the District, and each of its boards, officers and employees, shall continue during any periods of occupancy or holding over by Lessee, its agents, officers, employees, or permittees, beyond the expiration or other termination of this lease.

Casualty Insurance:

Lessee shall maintain in full force and effect during the term of this lease, comprehensive general liability insurance with bodily injury and property damage liability limits of not less than one million dollars (\$1,000,000) combined single limit, which coverage may be effected by use of primary coverage policies and/or umbrella policy coverage; and Lessee agrees that the District and the City of Oceanside, its boards, councils and members thereof, and the City and District's officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies.

A certificate of insurance evidencing such insurance coverage shall be filed with the City of Oceanside, Property Management Division within thirty (30) days of

A certificate of insurance evidencing such insurance coverage shall be filed with the City of Oceanside, Property Management Division within thirty (30) days of execution of this Amendment No. 9 to Lease by the District, and said policy shall provide that such insurance coverage shall not be cancelled or reduced without at least thirty (30) days prior written notice to the City of Oceanside, Property Management Division. At least thirty (30) days prior to the expiration of any such policy a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City of Oceanside, Property Management Division.

4. All other terms, conditions, covenants and provisions of the Master Lease shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment No. 9 to Lease.

DISTRICT:

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date _____

By _____

Interim City Manager

APPROVED AS TO FORM:

By *Robert J. Hamilton, ASSI*

City Attorney

LESSEE:

RICHARD F. AND CAROLINE P. HELGREN,
d/b/a HELGREN'S OCEANSIDE SPORT FISHING

Date 9/8/06

By *Richard F. Helgren*

Richard F. Helgren

Date Sept. 8, 2006

By *Caroline P. Helgren*

Caroline P. Helgren

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

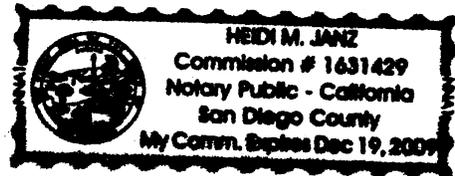
State of California)
County of San Diego)ss.

On September 8, 2006 before me, Heidi Janz, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Richard F. Helgren and Caroline P. Helgren
Name(s) of Signer(s)

[] personally known to me
[X] proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Heidi M. Janz
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment No. 9 to lease with Oceanside Harbor District

Document Date: _____ Number of Pages: 3

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: _____

- [] Individual
- [] Corporate Officer – Title(s): _____
- [] Partner – [] Limited [] General
- [] Attorney-in-Fact
- [] Trustee
- [] Guardian or Conservator
- [] Other: _____

Signer Is Representing: _____

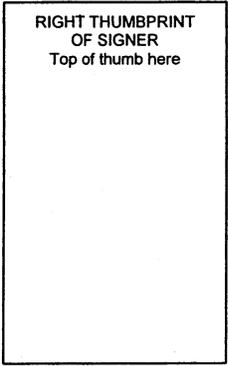
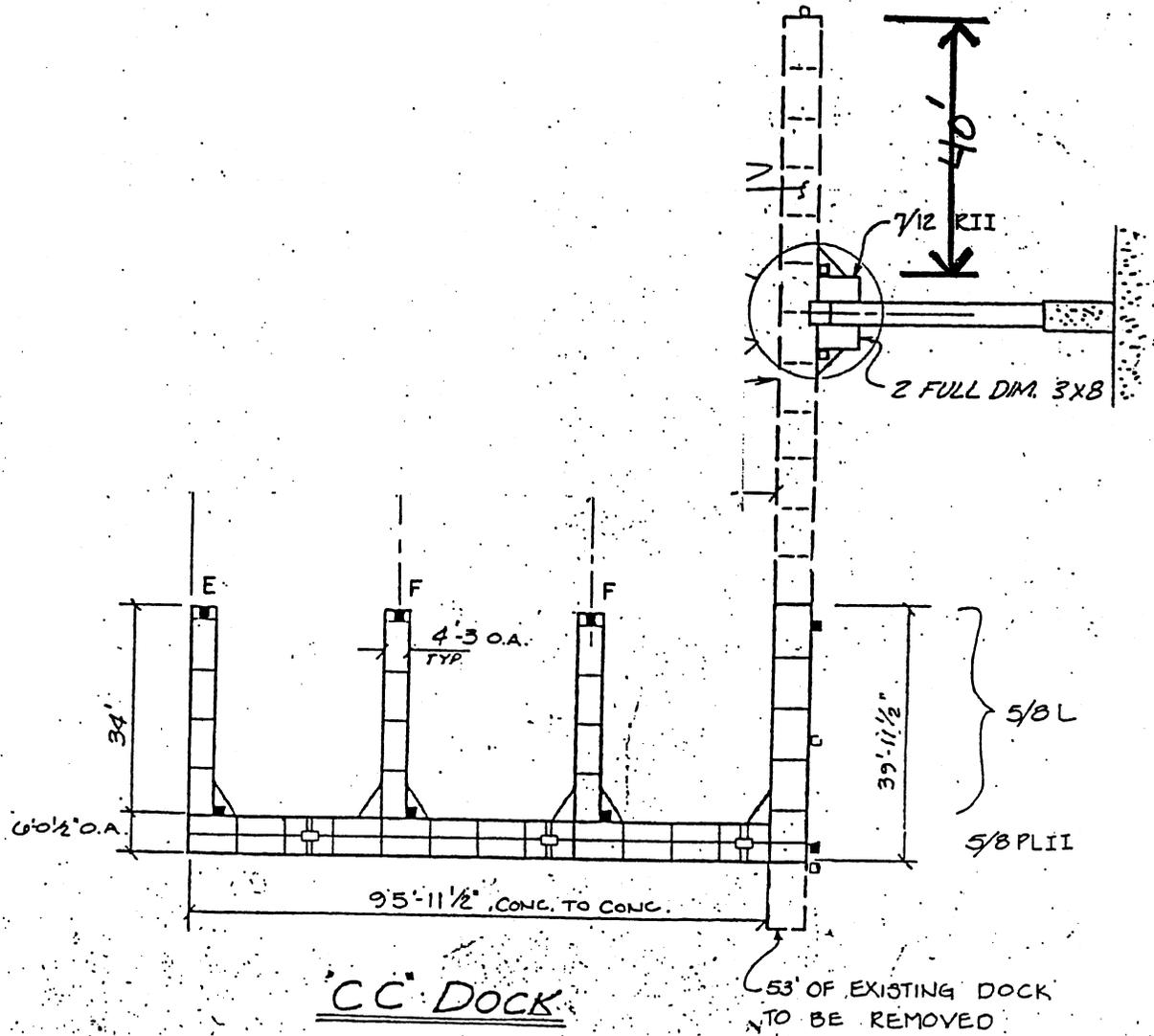
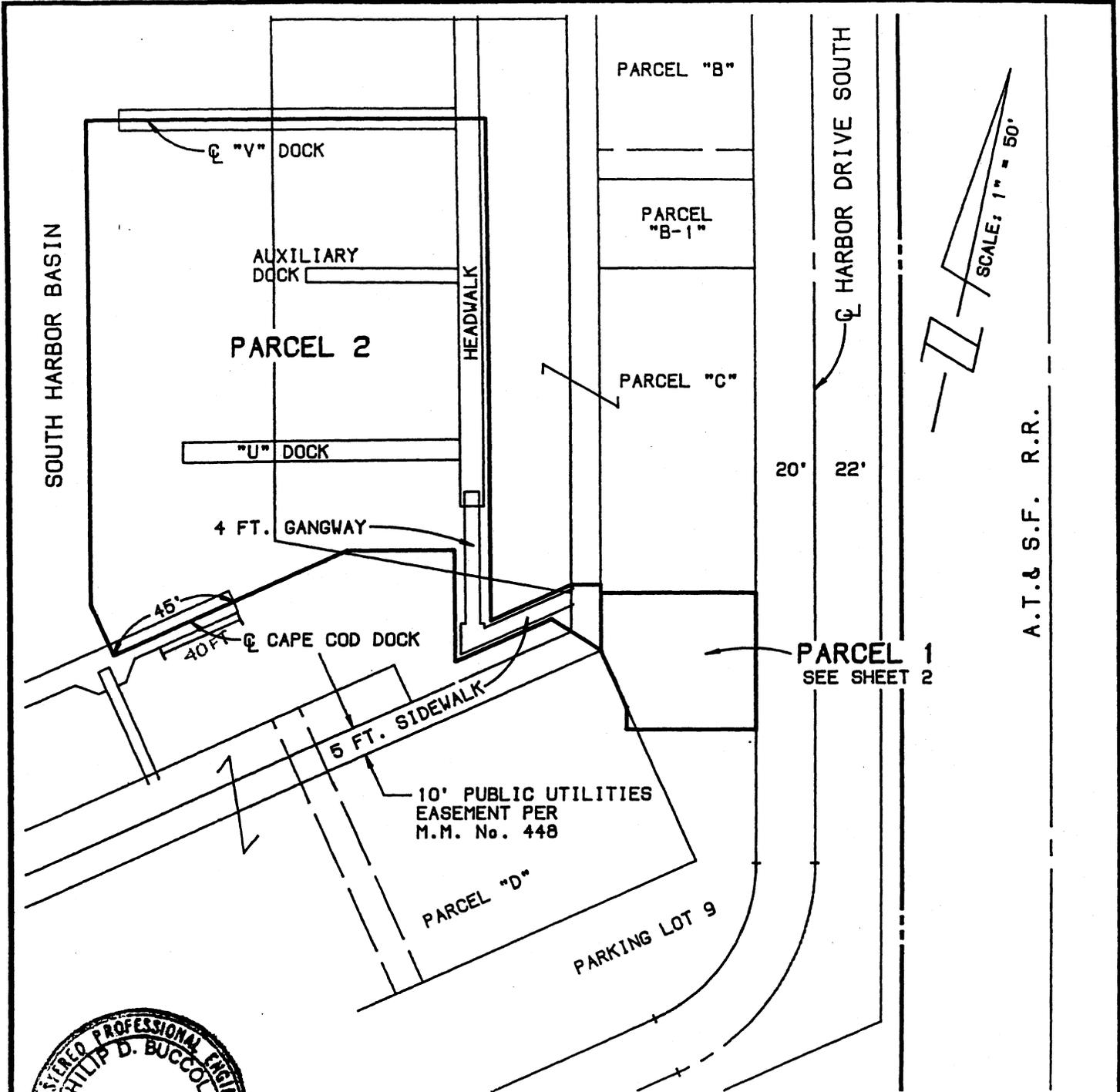


Exhibit C

Exhibit C shows the addition of the premises - 40 feet of the Cape Cod Dock.





A.T. & S.F. R.R.



PREPARED BY: *Philip D. Buccola*
 PHILIP D. BUCCOLA, RCE 27732

DATE: 7-14-97

PREPARED IN THE OFFICE OF:

BUCCOLA ENGINEERING, inc 760/721-2000

3142 Vista Way, Suite 301, Oceanside, CA 92056

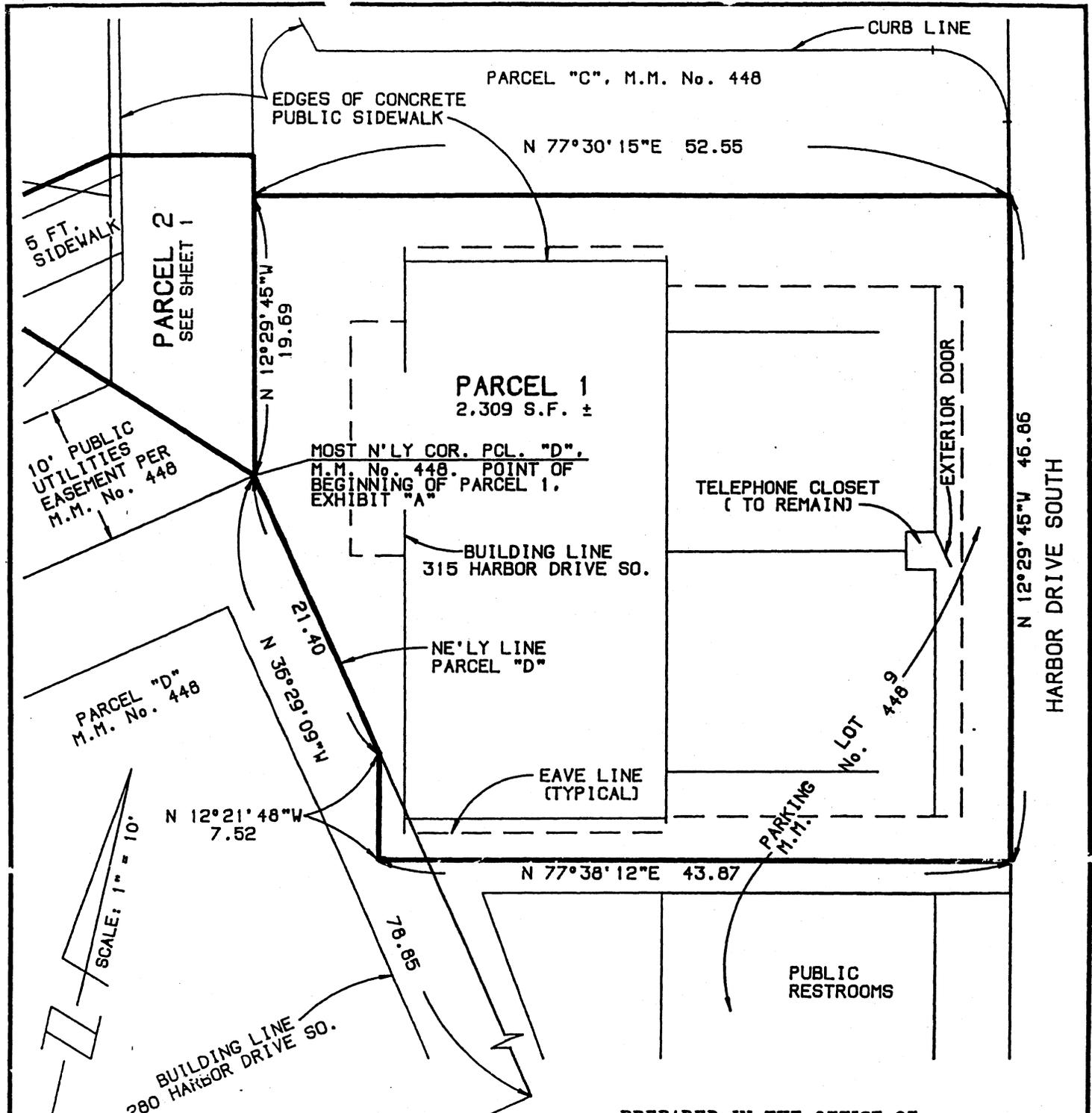
Revision	By	Approved	Date

OCEANSIDE SMALL CRAFT HARBOR DISTRICT

HELGREN'S OCEANSIDE SPORTFISHING
 315 HARBOR DRIVE SOUTH
 (PORTIONS OF THE OCEANSIDE SMALL CRAFT HARBOR PER MISC. MAP NO. 448)

EXHIBIT "D"

SHEET 1 OF 2 SHEETS



PREPARED IN THE OFFICE OF:

BUCCOLA ENGINEERING, inc 760/721-2000

3142 Vista Way, Suite 301, Oceanside, CA 92056

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EXHIBIT "D"

SHEET 2 OF 2 SHEETS