

MINUTE ITEM

This Calendar Item No. 63
was submitted for information
only, no action thereon
being necessary.

**Informational
Minute Item
63**

12/16/02
AD 396
C. FOSSUM

**California State Lands Commission
(Informational)**

Regular Calendar Item 63: Commissioners listened to a staff report regarding the compliance with conditions and requirements of public trust lands.

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S 29

C. Fossum

J. Lucchesi

CONSIDERATION OF AN INFORMATIONAL REPORT ON THE STATUS OF THE QUEENSWAY BAY DEVELOPMENT PROJECT AND THE CITY OF LONG BEACH'S COMPLIANCE WITH THE QUEENSWAY BAY EXCHANGE AGREEMENT, AS REQUESTED BY THE COMMISSION

At its October 1, 2002 meeting, the California State Lands Commission (CSLC or Commission) directed staff to provide an update on the status of the Queensway Bay Development Project and compliance with the terms of the City of Long Beach / California State Lands Commission subject agreement (Agreement), approved by the Commission on September 17, 2001, at the next meeting.

BACKGROUND

In response to various concerns raised by Long Beach residents about the Queensway Bay Development Plan, the Commission at its April 20, 2000 meeting, directed staff to hold a public workshop in Long Beach to gather information about the issues being raised and to then prepare a report containing the analysis of the issues and recommendations for Commission consideration.

On July 20, 2000, CSLC staff held the public workshop in Long Beach and heard from approximately 45 participants.

The staff report was subsequently completed and considered by the Commission at its April 24, 2001 meeting. The report analyzed the Queensway Bay Development Plan within the scope of the Public Trust Doctrine, the statutes that affect the Long Beach tidelands grant, the authority/jurisdiction/responsibility of the CSLC, the jurisdiction/responsibility of the City in managing its legislatively granted tide and submerged lands, and addressed other issues raised at the workshop not related to the Queensway Bay Development Plan. The primary issue raised by the project opponents and addressed by the staff report was whether the Long Beach granting statutes and the Common Law Public Trust Doctrine allowed certain uses proposed in the Phase II land use plans of the Queensway Bay Development Plan.

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required that the project proceed without phasing. Third, the Commission was concerned that the actual development, facilitated by lifting the Public Trust from the five parcels, reflect the uses set forth in the plans before them and that the uses not be changed. And finally, the Commission required that should the May 31st deadline not be met the Agreement would expire, and if the other conditions were not met the parcels would revert back as Public Trust lands.

In order to implement the Commission's concerns, staff incorporated the following conditions into the Agreement: (1) All necessary agreements between the City and the Developer shall be in place and effective prior to June 1, 2002, meaning that the close of escrow must take place on or before May 31, 2002; (2) The Developer must proceed with the development of the project without phasing and the City shall deliver to the CSLC a copy of the final plans for construction no later than 21 days prior to commencement of construction; (3) The initial uses of each structure on the five Queensway Bay parcels must be as follows: A1 - large screen format theater, C1 - day spa or retail, C/D (second floor) - multiplex movie theater, D1 - retail, and E - retail; (4) Should the deadline not be met, the Commission's approval of the land swap would be of no further force and effect. If a violation of (2) or (3) above occurs, the relevant parcel(s) revert back to their prior public trust status. These conditions are set forth in Section I.H. of the Agreement and the required uses are illustrated in Exhibit O of the Agreement (both in Exhibit A attached).

CURRENT STATUS

Commission staff has determined that subsection 1 of Section I.H. of the Agreement, requiring that all necessary agreements between the City and the Developer be in place and effective prior to June 1, 2002, has been complied with. Compliance took place upon close of escrow of the Agreement and related documents on May 23, 2002.

In addition, staff was sent the final plans for construction on June 17, 2002, copies of which are on file at the Sacramento CSLC Office, as required by subsection 2 of Section I.H. Staff reviewed final construction plans and confirmed their location within the five QWB parcels. Staff conducted a site inspection to determine whether construction was beginning immediately upon close of escrow, confirming the City's report that an old storm drain line was being removed in preparation for grading and construction activities. One condition that remains in subsection 2 is "completion" without phasing. Staff recently completed an on-site investigation of the project area confirming the City's report that the project site, including the five parcels, has been graded and the subject parcels are being prepared for pouring of foundations. Therefore, staff has determined that the project, thus far, is progressing without phasing

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contemplated for those parcels were deemed by the Commission to be inconsistent with the Public Trust Doctrine.

EXHIBITS:

- A. Section I.H. and Exhibit O of the Queensway Bay Exchange Agreement
- B. Current Leasing Status
- C. November 7, 2002, City of Long Beach letter

RECOMMENDATIONS:

IT IS RECOMMENDED THAT THE COMMISSION:

1. DIRECT STAFF TO CONTINUE TO MONITOR THE LEASING STATUS AND COMPLIANCE WITH THE QUEENSWAY BAY EXCHANGE AGREEMENT.
2. DIRECT STAFF TO BRING TO THE COMMISSION'S ATTENTION ANY ACTIONS CONSTITUTING NON-COMPLIANCE, INCLUDING LEASING ACTIVITIES THAT IT BELIEVES ARE INCONSISTENT, WITH THE TERMS OF THE QUEENSWAY BAY EXCHANGE AGREEMENT.

EXHIBIT A
SECTION I.H. AND EXHIBIT O OF THE QWB EXCHANGE AGREEMENT

H. CONDITIONS OF STATE APPROVAL.

1. The CITY and DEVELOPER shall have all necessary agreements in place and effective prior to June 1, 2002. This means that the "Closing" under the **D&D AGREEMENT** must take place on or before May 31, 2002.
2. The DEVELOPER must proceed with development of the project without phasing, except as otherwise provided in Section 3 of the **SECOND AMENDED AND RESTATED GROUND LEASE**, between the City of Long Beach, as Landlord and DDR Urban LP, as Tenant (hereinafter the "**GROUND LEASE**"), a copy of which is attached to the **SUPPLEMENT** as Exhibit C. CITY shall deliver to STATE a copy of the final plans for construction no later than 21 days prior to commencement of construction; the scope of STATE's review of said plans shall be limited to verifying that the improvements to be constructed on a particular **QUEENSWAY BAY PARCEL** are within the boundaries of that parcel and substantially as shown on Exhibit O. Construction, commencing with grading activities, shall begin immediately upon the Close of Escrow, as defined in paragraph IV. E., below, and shall be diligently pursued to completion. For purposes of this paragraph I.H., "completion" shall be deemed to have occurred with respect to the improvements to be constructed on a **QUEENSWAY BAY PARCEL**, and such improvements shall be deemed to have been "completed", when both of the following have occurred with respect thereto: (i) such improvements shall have opened for business, meaning that the tenant or operator thereof has commenced doing business with the public from such improvements; and (ii) a Certificate of Completion shall have been recorded in the Official Records of Los Angeles County for such parcel as provided for in Section 5.2 of the **D&D AGREEMENT**.
3. The initial use of each structure on the five **QUEENSWAY BAY PARCELS** (or in the case of **QUEENSWAY BAY PARCEL C/D**, on the second floor thereof) shall be as stated and reflected on Exhibit O.
4. If the deadline described in paragraph I. H. 1. above, is not met, subject to the provisions of paragraph I. H. 7. below, the PARTIES agree that this Agreement shall be of no further force and effect and escrow shall automatically terminate as provided in paragraph IV. G. 3. below.

EXHIBIT A (CONT'D)

5. Should the conditions provided for in paragraphs I. H. 2. and 3. above, not be met, this Agreement shall remain in force and effect. However, as to any parcel in violation of the conditions in paragraphs I. H. 2. or I. H. 3. above, if the violation has not been cured by the date that is 60 days after STATE's delivery of written notice thereof to CITY, DEVELOPER and each person or entity that is holder or beneficiary of a deed of trust, mortgage or similar lien recorded against the GROUND LEASE affecting that parcel, then that parcel shall revert to its status as lands held by TRUSTEE subject to the Granting Statutes, and CITY shall execute and record a deed and any other necessary instrument transferring the parcel to its prior trust status.
6. The Close of Escrow provided for in paragraph IV. E. below may occur simultaneously with the Closing under, and as provided in Section 4.2. of the **D&D AGREEMENT**, but shall otherwise not occur prior to the Closing under the **D&D AGREEMENT**.
7. The deadlines provided for in paragraphs I. H. 1. and 2. above shall be extended when a Party to this Agreement or a party to the **D&D AGREEMENT** is unable to meet a deadline for close of escrow or commencement of construction due to one or more of the following events which proximately causes such delay: strikes, lockouts, acts of war, acts of God, acts of the public enemy, or litigation by third parties that results in a court order temporarily preventing closing of escrow or construction. The extension shall be only for so long as the event causing the delay continues and is the proximate cause of the delay.
8. This Agreement shall survive its recordation; provided, however, that the foregoing provisions of this paragraph I. H. shall cease to be of any further force and effect as to each of the **QUEENSWAY BAY PARCELS** when the initial improvements to be constructed thereon have been completed, as such term is defined in paragraph I. H. 2. above. Without limiting the foregoing, from and after the date of such completion with respect to a particular **QUEENSWAY BAY PARCEL**, CITY, or its lessee, as authorized by CITY, may alter the use of such parcel and shall not be required to seek any sort of approval from STATE with regard to any future use. Not later than thirty (30) business days after CITY's, or its lessee's, request therefor at any time after the date of completion with respect to a particular **QUEENSWAY BAY PARCEL**, the Executive Officer of the California State Lands Commission shall deliver to CITY and CITY's lessee an instrument in recordable form that recites that the terms of paragraphs I. H. 1 through I. H. 7. of this Agreement have been complied with and are of no further force or effect as to such parcel.

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EXHIBIT A (CONT'D)

EXHIBIT O

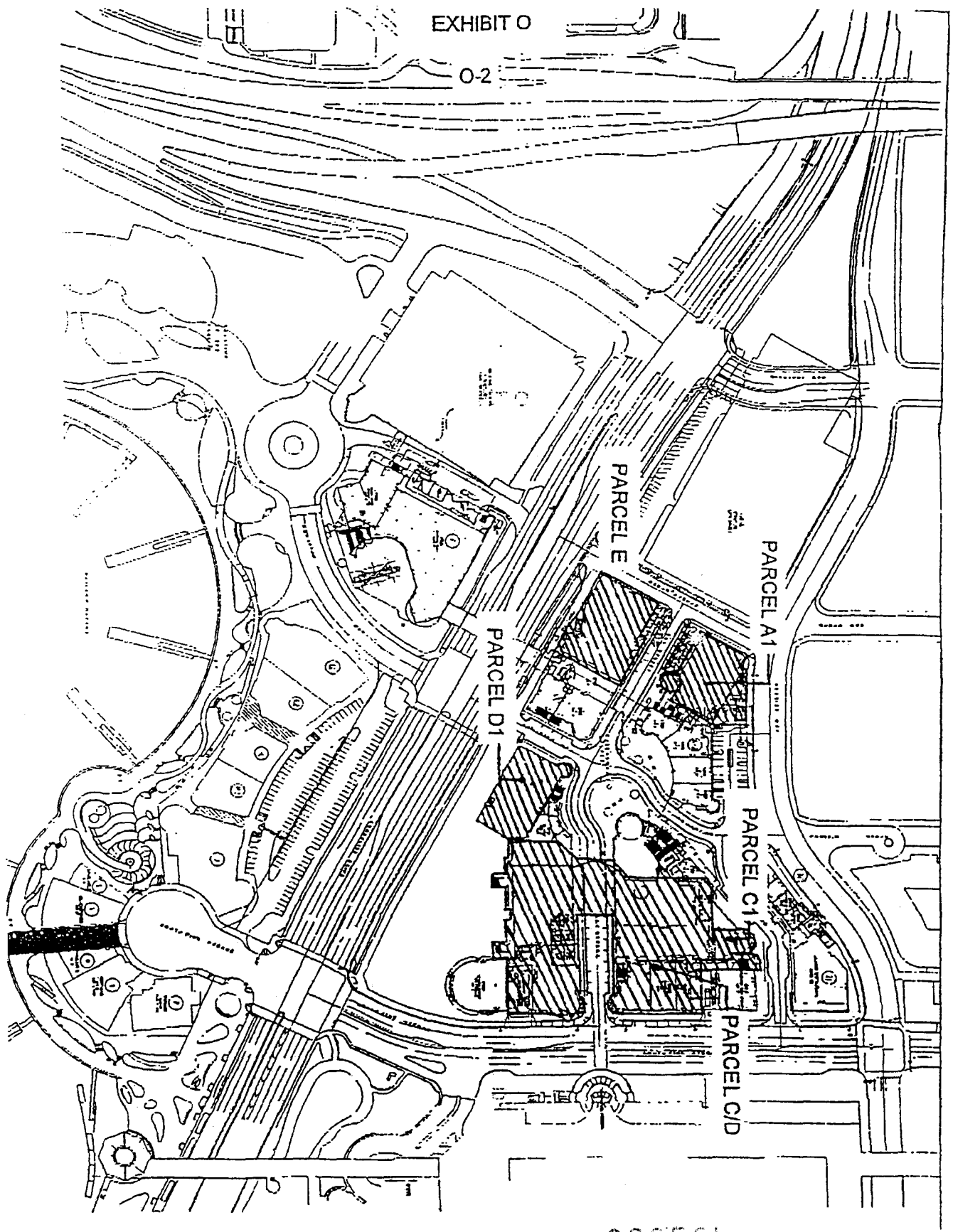
Pursuant to Section I.H.3., the following are the designated initial uses for each structure on the five QUEENSWAY BAY PARCELS. The location of each respective parcel is shown crosshatched on the attached Site Plan, Exhibit O, page O-2.

| Parcel | Initial Use |
|--------------------------|----------------------------------------|
| Queensway Bay Parcel A1 | large screen format theater |
| Queensway Bay Parcel C1 | day spa or retail |
| Queensway Bay Parcel C/D | second floor - multiplex movie theater |
| Queensway Bay Parcel D1 | retail |
| Queensway Bay Parcel E | retail |

EXHIBIT A (CONT'D)

EXHIBIT O

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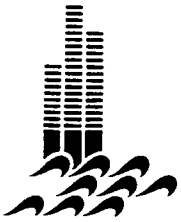


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EXHIBIT B
CURRENT LEASING STATUS

| PARCEL | USE AS CONTEMPLATED BY THE AGREEMENT | CURRENT LEASING STATUS |
|--------|-------------------------------------------------|-----------------------------------------------|
| | (Pursuant to I.H.3 as illustrated in Exhibit O) | |
| A1 | Large Screen Format Theater | No current tenant |
| C1 | Day Spa or Retail | No current tenant |
| C/D | Second Floor - Multiplex Movie Theater | Crown Theatres - Executed Operating Agreement |
| D1 | Retail | No current tenant |
| E | Retail | No current tenant |



CITY OF LONG BEACH

DEPARTMENT OF COMMUNITY DEVELOPMENT

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802

November 7, 2002

Curtis L. Fossum
Senior Staff Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

RE: City of Long Beach/State Lands Commission Queensway Bay Exchange Agreement

Dear Mr. Fossum:

This letter is in response to your October 29, 2002, letter to Vince Coughlin requesting an update on the progress of construction and leasing activities on The Pike at Rainbow Harbor project.

As to the construction, attached is a brief summary of the status of each building and the parking structure prepared by the City's construction manager, along with photos of the construction activities.

Also attached is a list of current tenants for the Pike project. Unfortunately, I could not obtain a site plan detailing suite locations prior to your deadline this morning. I will attach this information in future progress reports.

Please be advised that Vince Coughlin is no longer with the City of Long Beach. If you have any questions, please call me at (562) 570-6876.

Sincerely,

RMS
RUTH MIZOBE SHIKADA
Property Services Bureau Manager

RMS/nb

cc: James McCabe, Deputy City Attorney

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QUEENSWAY BAY STATUS AS OF OCT.31,2002

Queensway Bay Parcel A1

The building pad has been graded and concrete piles haven been driven for the foundation of Building A.

Queensway Bay Parcel C1

The building pad has been graded, concrete piles driven, and concrete foundations poured for Building C.

Queensway Bay Parcel C/D

The building pad has been graded, concrete piles driven, the foundations have been excavated, and reinforcing steel placed for Building D.

Queensway Bay Parcel D1

The building pad has been graded.

Queensway Bay Parcel E

The pad has been graded and concrete piles driven for Building E.

The utilities for the above sites; sewer mains, storm drains and water mains are under construction and approximately 95% complete. The gas mains have yet to be constructed.

Pike Parking Structure

All concrete piles have been driven and foundations and columns to the second level are being constructed. Under ground electrical and plumbing underway. The parking structure is approximately 14% complete.

Building South of Shoreline Drive

Building F- The pad has been graded and the foundation piles driven.

Buildings G,H,J,K,L,M,N,&P-No activity.

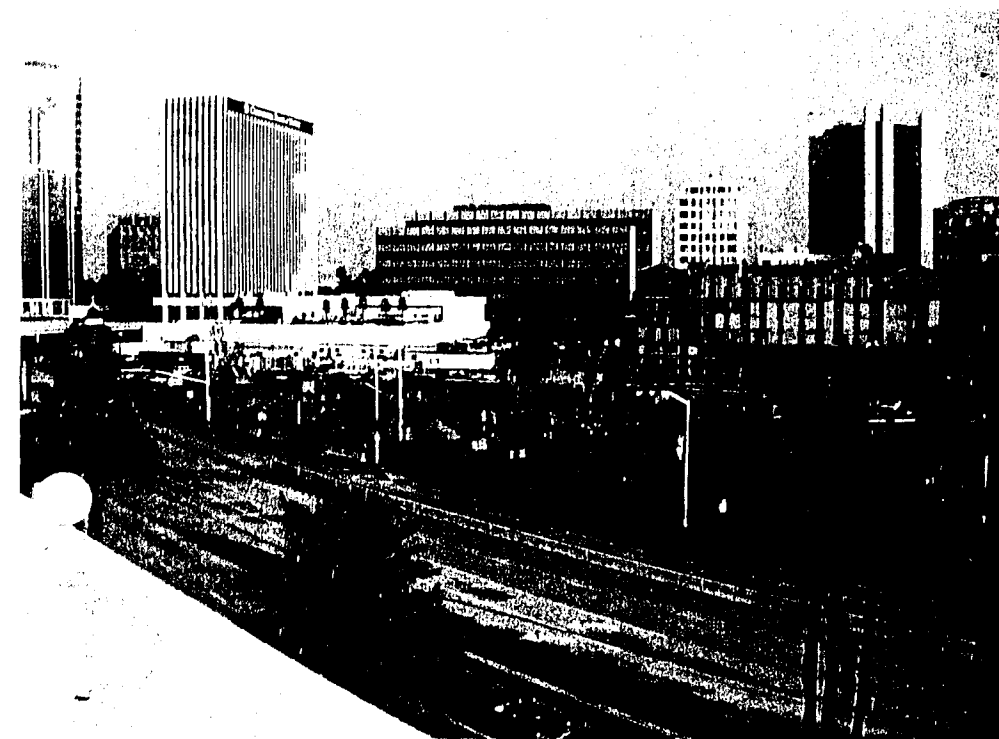
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VIEWS FROM...

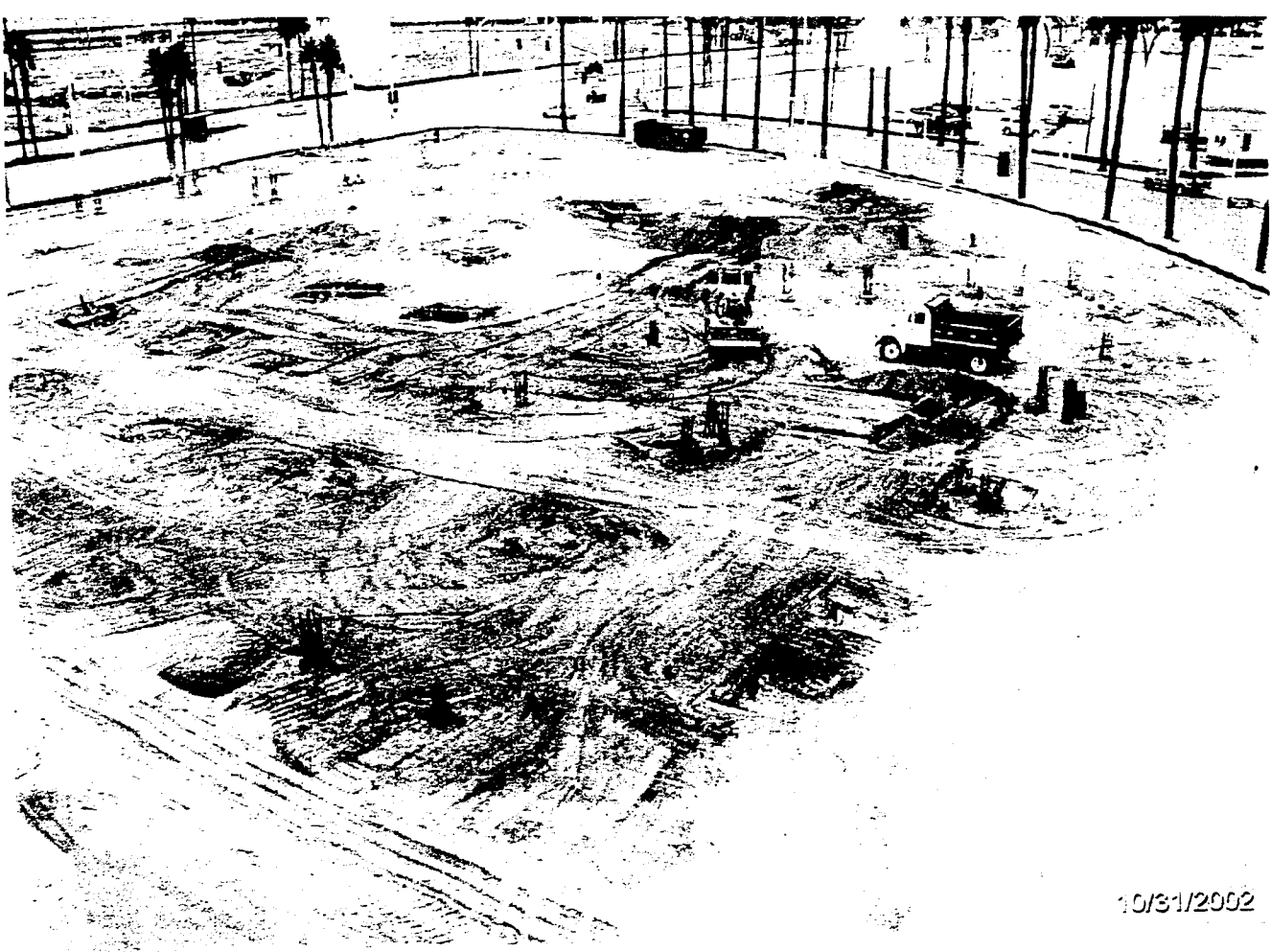


Aquarium structure looking northwest.



looking north.





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Parcel F from Aquarium garage.

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View from Pine Avenue looking west.

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View from Pine Avenue looking southwest.

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View from Pine Avenue looking west.



View from south of Shoreline Drive looking west.

| | Square | Proposed | |
|-------------------------------------------|---------|-----------|-----------------------------------------------|
| Tenant | Footage | Space | USE |
| Coldstone Creamery | 1,500 | A150 | Quick Service Food |
| Islands Burgers | 5,550 | B100 | Restaurant |
| Quizno's | 1,011 | B110 | Quick Service Food |
| Busy Bee (proposed relocation) | 1,300 | B or D100 | Quick Service Food |
| Daphne's Greek Café (proposed relocation) | 1,193 | B150 | Quick Service Food |
| GameWorks (Operating Agreement) | 40,000 | C100 | Family Entertainment, Retail, Food & Beverage |
| California Pizza Kitchen | 4,845 | C195 | Restaurant |
| Crown Theatres (Operating Agreement) | 78,514 | C/D250 | Cinema |
| Harry's Bar | 7,446 | D130 | Restaurant |
| National Sports Grill | 8,997 | D180 | Restaurant |
| Bubba Gump Shrimp Co. | 8,045 | F100 | Restaurant |
| Carnival Club | 23,520 | F120 | Music Entertainment, Food & Beverage |
| Mai Tai | 2,591 | F201 | Restaurant |
| Gladstone's | 9,600 | K | Restaurant |
| Prego | 9,268 | N | Restaurant |
| Guaymas | 8,345 | P | Restaurant |
| PF Changs | 7100 | J | Restaurant |