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W 11 b

December 10, 2012

Commissioners
California Coastal Commission
45 Fremont Street, #2000
San Francisco, California 94105

See the original staff report.

See the report addendum.

Re: Application No. 5-11-178 (Morehart)

Dear Commissioners:

The undersigned represents Lisa Cervantes-Morehart, the Applicant on the Application No. 5-11-178 (Morehart). The Applicant seeks to construct a bulkhead on the Applicant's property at 2808 Lafayette Avenue, Newport Beach. The property is a bay front property on the Rhine Channel, the former fish cannery and industrial part of Newport Harbor. Every property on both sides of the Rhine Channel has a bulkhead except the Applicant's property. The staff has recommended that you approve the bulkhead with Special Conditions 1, 6, 10, 11 & 12 requiring specific design and construction requirements. The Applicant accepts these Special Conditions. The Applicant also does not object to Special Conditions 7, 8 and 13. (The Applicant asks the Commission to note that the Staff Report appears to have reversed north and south in its recommendation and findings. The Applicant has notified Staff of this problem.)

However, the Applicant does object to Special Conditions 2, 3, 4 and 5 which require a public access easement across the Applicant's property, and to Special Condition 9 which requires a waiver of further efforts to protect the property.

1. The Project.

As described in the staff report, the project is a vertical bulkhead wall in a body of water called the Rhine Channel. The bulkhead protects an existing building built in 1977. From the 1920's until 1977, there was building on a wharf that extended to the property line over the water. The 1976 permit authorized the removal of a 50 year old wharf over the water and its replacement with a new wharf over the water. The new wharf extended 5 feet past the property line. A two story building on the new wharf was also approved. A photograph of the building approved by the Commission is attached as Exhibit A. In 2000, the new wharf suffered a structural collapse and the City ordered the wharf and building removed. (See Exhibit B.) The

structural design of the new wharf and the building on the land was integrated. The wharf constructed in 1977 provided lateral support to the buildings that remain today.

The Rhine Channel was the historical location of fish canneries and other industrial uses in Newport Beach. In 1966, canneries, fishing boats and other industrial uses lined both sides of the Rhine Channel. A wharf and building had first been constructed on the Applicant's property in the 1920's. This wharf and building remained until 1977 when the new wharf and building approved by the Commission was constructed. A 1966 photograph showing the previously existing building is attached hereto as Exhibit C.

For many years the City of Newport Beach had been planning a dredging project for the Rhine Channel to remove contaminated sediments that had been associated with the canning and other industrial uses along the Channel. This Commission approved the dredging project to remove 150,000 cubic yards of sediment on January 12, 2011 in CDP No. 5-10-162. The Applicant was advised that the dredging project would significantly lower depths abutting the Applicant's property. The deeper channel depth could adversely affect the stability of the existing building which now lacks the lateral support of the failed wharf. It was recommended that the Applicant place a bulkhead on the property to assure stability. Almost all property in western Newport Harbor is improved with a bulkhead. Along five blocks on both sides of the north end of the Rhine Channel (a distance of more than 1,600 feet) only the 60 feet on the Applicant's property lacks a bulkhead. Two structural engineers have stated that a bulkhead is needed to stabilize the footings of the existing buildings. (See Exhibit D.)

The Applicant had anticipated that permits for the bulkhead could be obtained and the bulkhead constructed before the City dredging project in the Rhine Channel was commenced. The Applicant began design in 2010. The City approved the project in July 2011. A CDP permit application was submitted on July 14, 2011. The Commission Staff made three separate requests for additional documents and for additional governmental review before accepting the application on July 1, 2012. The dredging project was started in the fall of 2011 and completed by February 2012.

Although accepted on July 1, 2012, the Application was not placed before the Commission for hearing until this meeting in December 2012. The Applicant had been notified by Staff in writing that the Application would be heard in November 2012. That commitment was not met. December 2012 was promised. On November 20, 2012, the Staff notified the Applicant that the matter would not be considered in December 2012. Staff requested that the Applicant sign a time waiver because of the permit streamlining act. The Applicant was also notified for the first time that the Staff intended to recommend a public access condition. Frustrated at the delay and anxious for the stability of the building, the Applicant declined to

waive time. The Staff Report was issued on November 29, 2012, a few days after I was retained.

Both the project engineer Plamen Petrov and a second opinion from engineer Alexander Robertson attest to the urgency to complete the project. (See Exhibit D) The consequences from the dredging project pose a higher risk of failure than existed before the dredging. The Staff recommends favorably on the construction of the bulkhead with numerous Special Conditions related to design and construction practices. All of these Special Conditions are acceptable to the Applicant. What is not acceptable is the demand for an easement for public access and a waiver of further construction to protect the existing structure.

2. The Applicant's Objections to Public Access Conditions.

Special Condition 2 requires that the Applicant offer to dedicate a public access easement between the existing building and the bulkhead, a distance of 7-10 feet. (See Staff Report Exhibit #4.) Special Condition 2 further requires that (i) the access easement be open 24 hours a day, and (ii) the Applicant must maintain the access easement unless the party accepting the easement opts to provide maintenance (which is inconsistent with Public Resources Code §30212).

Special Condition 3 requires the Applicant to maintain the access easement. Special Condition 4 requires that the Applicant build all improvements necessary to facilitate public access as a part of the project, even though no offer to dedicate has been accepted. Special Condition 5 requires the Applicant to post signs to direct the public to the use of the Applicant's property.

All of these conditions are unacceptable. The findings on pages 25 to 30 of the Staff Report do not support these conditions. Several of the proposed findings are not supported by the evidence.

- a) The findings on Page 27-28 concerning the 1976 condition by the City for a contingent easement for a public walkway on the approved wharf are inaccurate.
- b) The finding on Page 28 that the Newport Beach LUP supports the condition is inaccurate.
- c) The findings on Page 28 that Newport Beach in the past had required similar conditions on other properties do not support the an access condition here.
- c) The finding on Page 29 that the bulkhead would fill tidelands is incorrect in that the bulkhead is located on privately-owned lands.

A. There Has Never Been a Public Access Easement on the Applicant's Property.

The Staff Report claims that the recommended public access easement replaces a public walkway on the Applicant's property that had been required by the City of Newport Beach in the approval of the wharf and building in 1976. (See, CDP No. P-5-19-76-7903 (Ziemer)) In Ziemer's case, a proposed public walkway was placed at the waterside of the wharf to be built. The Staff Report on page 28 states that the pier on which the access was located still exists today. This is not true. The pier or wharf collapsed in 2000 and was removed as a nuisance. (See, Exhibit B.) The Staff Report confuses the float to which a boat is moored with the former wharf. Exhibit #3 to the Staff Report and Exhibit E hereto are aerial photograph comparing the wharf before it failed to the present condition. The walkway along the end of the wharf is clearly shown distinct and separate from the float.

Second, the plans in the Coastal Commission file for CDP No. P-5-19-76-7903 clearly show the proposed public walkway at the wharf level, not on a float. (See Exhibit G.) The proposed public walkway is also shown beyond the Applicant's property line, overhanging the Rhine Channel, and not on the Applicant's property. The walkway is also shown beyond the property line on the construction drawing sheet A-1 dated 10-27-76 submitted to the City for a building permit and assigned plan check PC 202-76. (See Exhibit H.) An easement was necessary because the structure was owned by the property owner.

Consequently, the proposed public walkway was never on the Applicant's real property, only on an improvement over the water attached to a structure on the Applicant's property. The photograph attached as Exhibit A shows the wharf and building constructed in 1977. The location of the proposed public walkway is identified.

Third, the minutes of the Newport Beach Planning Commission for April 1, 1976 show that although the access condition in the City staff report read "boat dock", it was changed to "pier or wharf". (See, Exhibit F, page 8.) The final condition read:

"That the pier or wharf extend across the entire bayside of the property and that the owner grant an easement or enter into an agreement with the City to grant an easement for public access. Said easement or agreement shall only become effective at such time as this property is connected to adjacent property to form a continuous walkway." (Exhibit F, page 10, condition 6.)

Fourth, the City's public walkway condition was a Contingent Offer for Public Access. A copy of the Contingent Offer was obtained from the City files and is attached as Exhibit I. The Contingent Offer satisfied the public walkway condition and expired by its own terms in 2002. There are two facts in this Contingent Offer that rebut the existence of any public access

easement or continuing offer of a public access easement. First, the Contingent Offer does not become an easement until

“such time as the parcel located immediately to the north **and** the parcel located immediately to the south of the property become connected with the pier or wharf adjacent to the property by piers or wharfs or other similar structures to form a continuous walkway.” (Page 2, emphasis added.)

Therefore, there was no right for the public to enter the Applicant’s wharf until connections on both sides of the wharf had been made. Although a structure was built to form the connection from 2806 Lafayette Avenue, no physical connection was ever made. The railing seen on the wharf in Exhibit A remained in place. Nor was there any structure ever constructed on the north side of the wharf which would provide access to the proposed walkway.

Fifth, the Contingent Offer expired 25 years after 1977. (See, Exhibit I, ¶ 2.) Since both connections were never satisfied by 2002, the Contingent Offer expired and did not create any alleged easement.

Sixth, the Staff Report states on page 28 that there was a public access connection from an adjacent pier built at 2806 Lafayette Avenue. This adjacent pier was a permit condition required by the City. The project was approved by the Commission in CDP 5-90-471, but no access condition was imposed by the Commission. Although the pier was built, it was never connected to the wharf on the Applicant’s property. No connection was ever made because the City condition required connections on both sides of the wharf. There was not yet, and is not now, a structure to connect to the property further north.

Finally, the wharf is gone. The wharf fell down including the part proposed for public walkway. In substance, the Staff Report asks the Commission to require a public access easement on an 7-10 foot strip of the Applicant’s private property (12-15% of the usable land) based on the following facts: (1) there was a contemplated public walkway on a wharf bayward of the Applicant’s property line, (2) the walkway was never open to the public, (3) the walkway was never connected to adjoining property, (4) the conditions to the creation of an easement were not satisfied, (5) the offer for the easement has expired, and (6) the structure on which the walkway was placed collapsed 12 years ago. The Commission cannot base a public access condition on these facts.

B. Policies in the Newport Beach Certified Land Use Plan Cannot Justify the Exaction of an Easement.

The Staff Report cites several policies in the Newport Beach Certified Land Use Plan in the justification of the access conditions. Policy 3.1.1-9 includes that the City must act in a manner that does not violate private property rights. (Staff Report, page 26.) This is consistent with the Coastal Act provision in Public Resources Code §30010 which states:

“The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor.”

As described in Section E, below, the Commission cannot require that the Applicant grant to the state an easement through the Applicant’s property without violating Public Resources Code §30010, Article 1, §7 of the California Constitution, and the Fifth and Fourteenth Amendments of the United States Constitution.

C. Prior Decisions of the City of Newport Beach or the Commission do not Support the Present Access Conditions.

The Staff Report cites several decisions of the City of Newport Beach that required access be provided at 2800 and 2804-2806 Lafayette Avenue. Other property owners may have agreed to grant access for projects that were not so limited as a bulkhead to protect an existing building. Each property owner has their own choice whether or not to assert their Constitutional right to be free of uncompensated taking of property. Most permits cited predated 1987. The fact that other property owners may have made a grant is not evidence that the Applicant can be compelled to make a grant.

D. THE POSSIBLE EXISTENCE OF TIDELANDS ON PRIVATE PROPERTY DOES NOT SUPPORT AN ACCESS CONDITION.

1. A Bulkhead to Protect and Existing Building is Not Inconsistent with a Public Trust Tideland Interest.

The Applicant owns the property a distance of 100 feet from the street. This includes approximately 37 feet previously occupied by the wharf over the water. This 37 feet is behind the U.S. Bulkhead Line and is private property, even when covered by water. (See Exhibit J.) Even if the property contains tidelands, there is no restriction on constructing a bulkhead on private tidelands. The City is the owner and administrator of the tidelands within its jurisdiction. The City has given the approval for the bulkhead. Numerous bulkheads have been approved by the Commission over the years protecting private homes and other commercial businesses without a requirement for access. This bulkhead is no different.

Since 1913, the Federal Government has jurisdiction over navigation improvements in Newport Harbor. (*Newcomb v. City of Newport Beach* (1936) 7 Cal.2d 393, 401; 33 U.S.C. §424.) The U.S. Bulkhead Line is established by the Army Corps of Engineers as the limit of where a bulkhead can be erected within Newport Bay. The Applicant proposes to place the bulkhead approximately 27 feet landward of the U.S. Bulkhead line. Special Condition No. 1 will move it back to 30 feet. The Applicant has the property interest necessary to carry out the project and the City as administrator of the tidelands, to the extent that there are tidelands on the property, has given approval to the bulkhead.

The bulkhead does not block any public use that has been made or reasonably could be made of the area where the bulkhead is located. The Applicant has a building in danger and the Staff recommends that the Applicant cannot protect the building within her own property without giving up all rights in 12-15% of the property. The public access easement which would be required by Special Conditions 2, 3, 4 and 5 is so broad that it is the equivalent of fee title.

The Staff Report claims that the existence of a tideland public trust interest alone is sufficient to justify exaction of an easement on private property. The public is excluded from many areas of privately owned tidelands. It is a reasonable use of a privately owned tideland to place a structure to protect an existing structure from damage. The location where the bulkhead is located was underneath a wharf for 75 years. It has been covered by rubble for the past 12 years. The present condition of the location of the proposed bulkhead can be seen in Exhibit K. The public has never used the area. The land serves no public purpose. The public does not own the land. To the extent that there may be a public trust interest, the holder of that interest has consented to the bulkhead. Under these facts, the Commission cannot justify an exaction of private property rights as a condition to this permit.

2. The Property is Subject to a Navigational Easement, Not a Public Trust Interest.

The Applicant's property is not subject to a public trust interest. Just because a property has salt water on it is not conclusive of a public trust interest. This part of Newport Beach was first granted by the State of California to James McFadden in 1892 as "swamp and overflow lands". (See Exhibit L.) Public Resources Code §7552.5 provides that swamp and overflow lands which are dredged to create navigable waters, no public trust interest arises. Only a navigational easement arises. The project does not interfere with navigation.

The City of Newport Beach is holder of the tidelands interests under a grant from the State Lands Commission. The City has mapped its tidelands and other navigational channels. On the map prepared by the City, the Rhine Channel is not shown as tidelands. The Rhine channel is shown as "Waterways Dedicated or Reserved". (See Exhibit M) This is consistent with the dedication of a navigational easement over the water when the Rhine Channel was

dredged from property above the mean high tide line.

The characterization of the Rhine Channel as a waterway dedicated to a navigational easement (as opposed to a tideland) is supported by the City's mapping of its tidelands over which the City administers the public trust. The public trust property is shown in light blue. Waterways that were dedicated to navigation are shown in green. The Rhine Channel is shown in green, a dedicated waterway, not a tideland trust. There are several important distinctions between a public trust interest and a navigational easement. (1) The public trust interest can never be terminated. (California Constitution, Article 10, §3.) The navigational easement can be terminated. (Public Resources Code §7552.5.) (2) Under the public trust doctrine, property uses must not conflict with the public trust. This does not limit the many private uses which can be, and are, made. As burdened only by a navigational easement, the property owner retains the right to do anything with its property that does not unreasonably interfere with the navigational easement. (*O'Banion v. Borba* (1948) 32 Cal.2d 145, 155.) The Applicant's proposed bulkhead does not interfere with navigation.

The location of the Applicant's bulkhead does not interfere with any navigation. The proposed bulkhead is 30 feet landward of the U.S. Bulkhead line established by the Army Corps of Engineers as the maximum extent to which a bulkhead may be built,

E. The Findings Do Not Support the Access Conditions and the Evidence Will Not Support the Access Conditions.

No easement exists and no right to an easement exists. Therefore, the Commission cannot justify exaction of a new easement to replace an easement that does not and never did exist. Any exaction of an easement must now comply with the constitutional standards set forth in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374.

As the Commission is well aware, *Nollan* requires that the Commission articulate in specific findings the rational relationship between the burden which the Applicant places upon the public and the exaction of the property owner's rights for the public benefit. *Dolan* requires that there be a rough proportionality between the burdens which the Applicant places on the public and the scope of intended deprivation of the property owner's rights. Construction of the bulkhead to protect existing structures places no burden on public access. The recommended findings do not support the public access easement requirement.

Special Conditions 2, 3, 4 and 5 should be deleted.

3. The Applicant Cannot be Required to Waive the Right to Apply to Protect the Property by Any Means which May Prove Necessary in the Future.

Special Condition No. 9 requires the Applicant to permanently waive the right to seek a permit to construct any other type of protection which may prove necessary in the future if that protection is on the bay side of the bulkhead. The justification for this condition is claimed in Public Resources Code §30235 and §30253.

“30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.”

“30253. New development shall do all of the following: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”

As to §30235, the Staff Report agrees that the Applicant's proposed bulkhead is necessary to protect the existing structures in danger from erosion. The building foundation used to rely upon adjacent support from the failed wharf structure. Recently, the Rhine Channel dredging project deepened the channel to -19 feet MLLW directly in front of the Applicant's property. (Exhibit N.) The dredging approved by the Commission changed the depth of the bottom in front of the Applicant's property to exceed the 4V:1H slope which was the design criteria of the dredging project. This was likely unavoidable since the contaminated sediments were significant in this location and the Rhine Channel dredging project design standard was to excavate one foot into natural uncontaminated soils.

Whatever the reason for the deepened channel, it creates a greater concern about the stability of the structure and the urgent need to provide support. (See, Exhibit D.) The proposed bulkhead has no impact upon local shoreline sand supply. No portion of the Applicant's property has ever been a source of local shoreline sand supply. If in the future there were to be a failure of the bulkhead or of bulkhead's on adjoining properties, the Applicant may be required to do other work in front of the bulkhead to protect the structures. The Applicant is not in control of all of the factors that could affect the future stability of the property. Section 30235 provides no basis to waive the right to protect a structure as a condition of approving one particular form of protection.

The Staff Report finds that the Applicant's proposed bulkhead will assure stability and structural integrity as required by Public Resources §30253. There is no evidence that the proposed bulkhead will create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The portion of §30253 which prohibits new development from "in any way requiring construction of protective devices" applies only to those protective devices that "would substantially alter natural landforms along bluffs and cliffs." The Applicant's proposed bulkhead would not affect any bluffs or cliffs. There is no basis in §30253 to impose Special Condition No. 9.

3. Conclusion.

The Recommended Findings do not support the imposition of an access condition. The cited provisions of the Coastal Act do not support the imposition of the protection waiver condition. The development is necessary to protect an existing building in danger from erosion, the danger of which has increased from a recently completed dredging project approved by the Commission. The Commission should make an amending motion as follows:

I MOVE TO AMEND THE STAFF RECOMMENDATION TO
REMOVE SPECIAL CONDITIONS NO. 2, 3, 4, 5 AND 9.

The project when moved back as required by Special Condition No. 1 is the least environmentally damaging alternative and the elimination of Special Conditions 2, 3, 4, 5 and 9 does not affect the environmental impacts of the project.

Sincerely,

SHERMAN L. STACEY

SLS

cc: Lisa & John Morehart

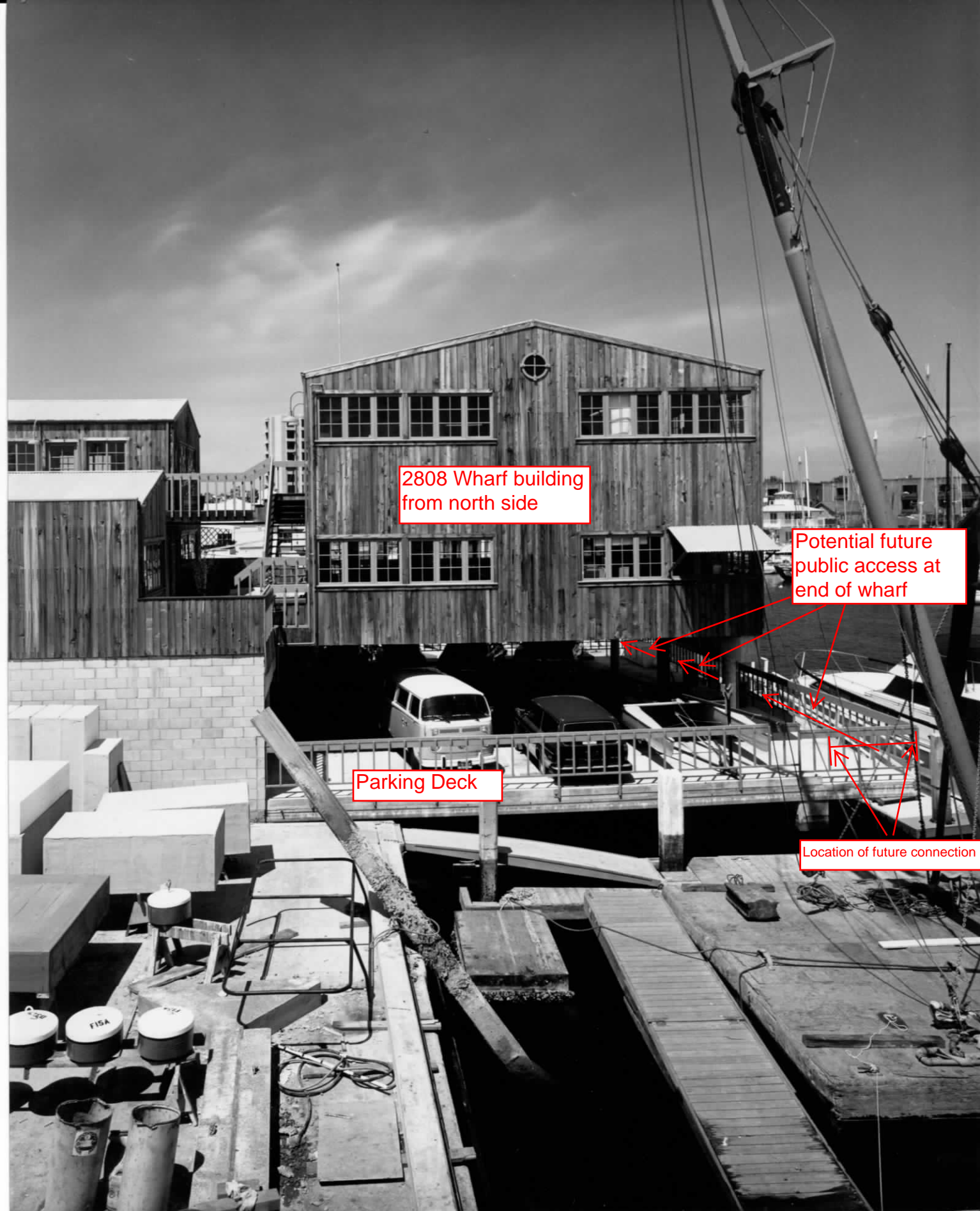


Exhibit A

The Rhine Channel in 1966

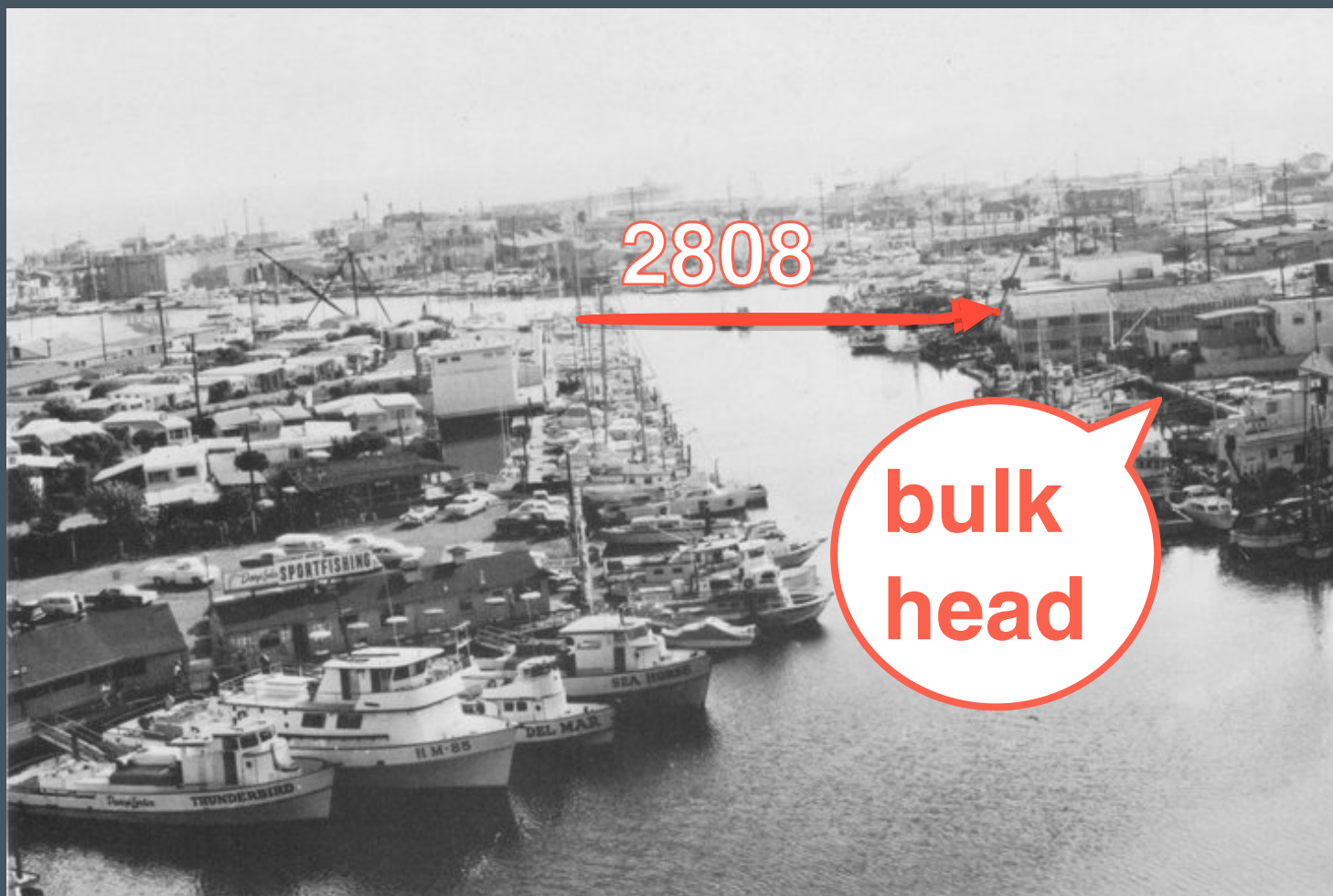


Exhibit C



10 December 2012

Mr. Sherman L. Stacey, Esq
Gaines & Stacey
1111 Bayside Drive, #280
Corona del Mar, CA 92625

Subject: 2808 Lafayette, Newport Beach, CA
California Coastal Commission Application No. 5-11-178

Mr. Stacey:

At your request, I have reviewed the California Coastal Commission Staff Report dated 29 November 2012 pertaining to the subject property in addition to numerous supporting documents that you provided, including the engineering design plans of the existing structure(s) prepared by Arch+Tekton dated 27 October 1976 and the design plans for proposed new concrete seawall prepared by William Simpson & Associates dated 30 June 2011. I have reviewed the post project report of the City of Newport Beach for the Rhine Channel Remediation dated 23 February 2012. Additionally, I conducted a preliminary visual reconnaissance of the subject property on 30 November 2012 for purposes of familiarizing myself with existing site characteristics.

The existing structure is a three story building with a parking structure located at grade and two-story office building located above. The parking structure is Type I/II construction with masonry bearing/shear wall system, interior concrete columns and beams supporting openings in the masonry walls, and spancrete structural slab supporting the two story structure above. The two story office structure above the parking structure is Type V construction. According to the original design plans, referenced above, the existing structure's foundation system consists of concrete piles and concrete structural grade beam.

Based upon my visual observations of the existing structure, I believe that the existing structure is experiencing some degree of movement. Since the pre-existing structure that collapsed into the Rhine Channel provided lateral support of the remaining structure's foundation system, I am very concerned about possible erosion of the Channel that has occurred and could continue to occur if remedial measures are not implemented to mitigate continued reduction in lateral support of the existing structure's foundation system. The City's Report dated 23 February 2012 identifies that the Rhine Channel was dredged in the immediate vicinity of the property to a depth of -19 MLLW, 5-6 feet deeper than the normal channel. This dredging occurred during the fall/winter 2011-2012. It is my opinion that the proposed concrete seawall (bulkhead) will mitigate against potential further erosion of the adjacent Channel bed and resultant adverse conditions that reduce the lateral support of the existing structure's foundation. The recent dredging makes the need for the immediate installation of the bulkhead more significant.

I hope that the material presented above adequately responds to your request. If you require additional information, please let me know. If you any questions please contact me at 714-504-3984.

Sincerely,

A. A. Robertson
Professional Engineer
State of California No. 26368

Enclosure: Resume

MEMBER STRUCTURAL ENGINEERS ASSOCIATION OF SOUTHERN CALIFORNIA, STRUCTURAL ENGINEERING INSTITUTE, AMERICAN SOCIETY OF CIVIL ENGINEERS, AMERICAN INSTITUTE OF STEEL CONSTRUCTION, AMERICAN CONCRETE INSTITUTE, AMERICAN WELDING SOCIETY, SOCIETY OF AMERICAN MILITARY ENGINEERS AND NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Exhibit D

June 04, 2012

Anchor QEA
Attn: Joshua Burnam
26300 La Alameda, Suite 240
Mission Viejo, CA 92691

RE: NOTICE OF INCOMPLETE APPLICATION
Application No. 5-11-178
Site Address: 2808 Lafayette Road, Newport Beach, Orange County

WSA Job #6127-2

Dear Mr. Burnam,

Pursuant to the request of Mr. & Mrs. Morehart, the following is in response to the questions of the above referenced NOTICE OF INCOMPLETE APPLICATION.

RESPONSE TO QUESTION 1a:

To the best of my knowledge, a seawall/bulkhead has never existed onsite. It seems like in the project description in the submitted application, the applicant has referred to the existing concrete beam on piles as an existing bulkhead.

RESPONSE TO QUESTION 1b:

Two sets of plans in 11"x17" format as obtained from the City of Newport Beach are a part of this response.

RESPONSE TO QUESTION 1c:

The subject concrete beam and piles are a part of the foundation for the existing 3 story structure on the lot. I have personally observed the exposed part of the concrete beam, and did not notice signs of distress. The piles are buried in the ground underneath the concrete beam and slab, thus could not be observed. It is our opinion that at this point the concrete beam and piles are still functional. Due to the recent dredging of Rhine Channel right in front of the subject site though, erosion will remove soil alongside the beam and piles and will jeopardize their structural integrity, if they remain unprotected. Installation of a seawall as proposed in the aforementioned application will protect the subject beam and piles, and the 3 story structure on the lot as a whole. From structural engineering stand point we do not see a need of engineering analysis of the concrete beam and piles at this time.

Exhibit D

RESPONSE TO QUESTION 2:

The plans have been revised and the originally proposed fill has been omitted. Thus, currently there is no fill proposed on this project. The existing mudline/rubble covered surface is to remain unchanged.

RESPONSE TO QUESTION 3:

Two sets of plans in format 24"x36" signed by the City of Newport Beach Harbor Resources Division are a part of this submittal.

RESPONSE TO QUESTION 4:

Two sets of reduced plans by William Simpson & Associates in format 11"x17" are a part of this submittal.

RESPONSE TO QUESTION 5:

Two copies of the requested soils report are a part of this submittal.

The above answers were prepared based on the existing conditions, and within the inherent limitations of this study, in accordance with generally acceptable engineering principles and practices. We make no further warranty, either expressed or implied.

William Simpson & Associates, Inc. appreciates the opportunity to work with you towards the successful completion of your project.

If we can be in further assistance, please contact us.

Respectfully submitted,



Plamen Petrov, P.E.
Senior Project Manager

Masoud Jafari, S.E.
Principal

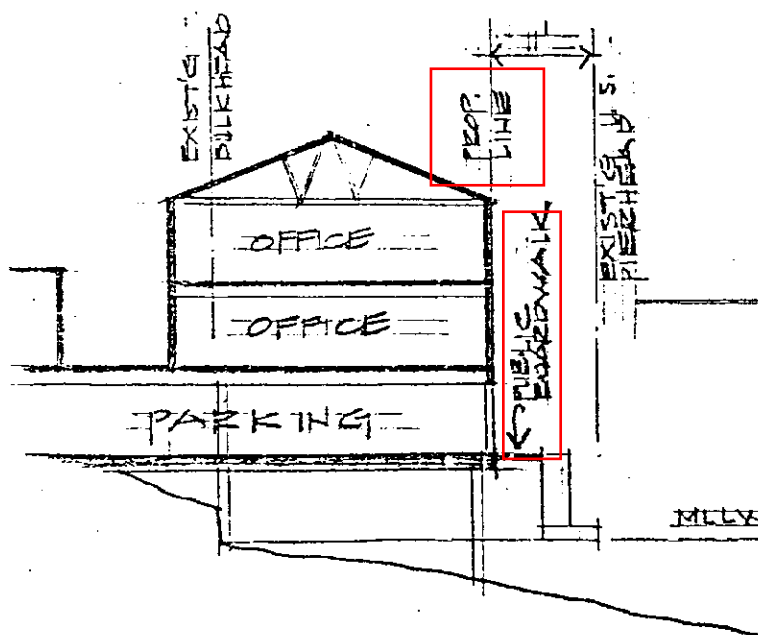


Photograph 2. Property prior to failure.

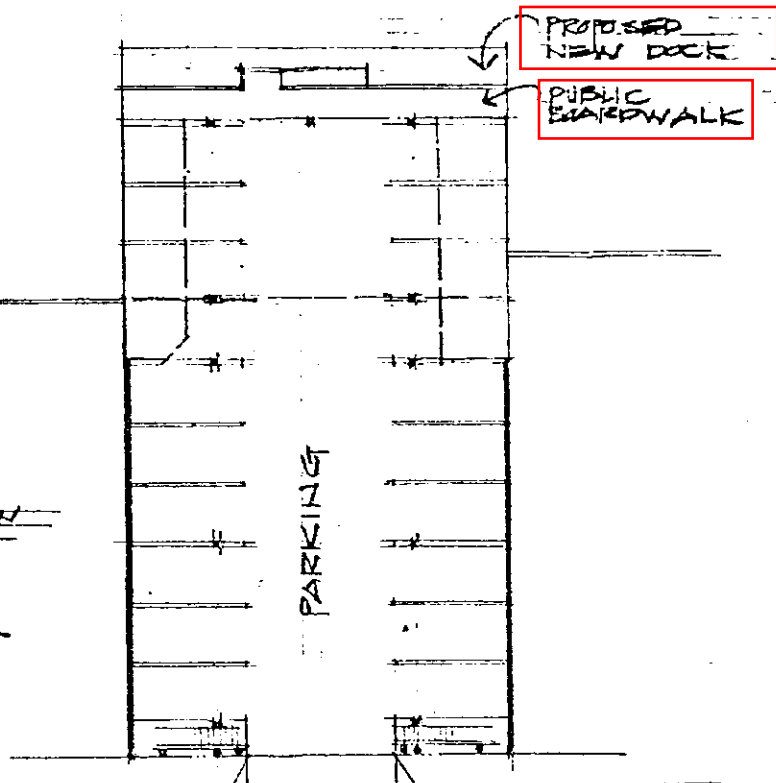


Photograph 3. Property after failure.

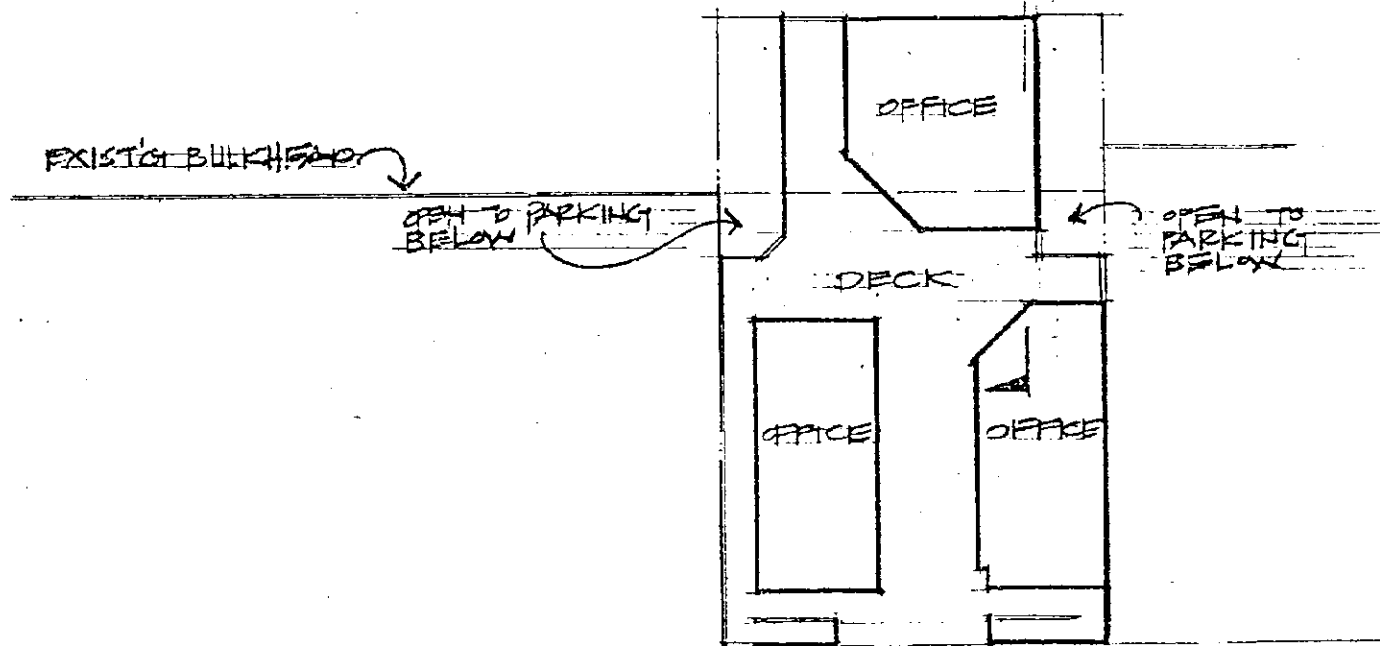
The structure caved in when rusty support beams gave way causing extensive structural damage. The collapse required the immediate removal of the three-story structure, but asphalt and concrete debris remains on site and within the channel. Currently, the building's footing is exposed and unstable. The remaining debris and exposed footing are visible in Photograph 1.



PARTIAL SECTION 'A'
1" = 20'-0"



FIRST FLR PLAN (A) LAFAYETTE AVENUE
1" = 30'-0"



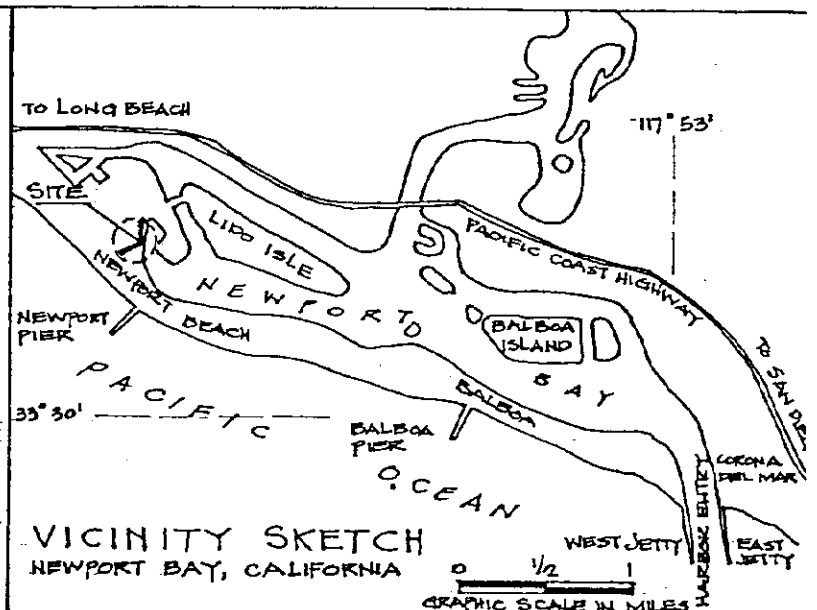
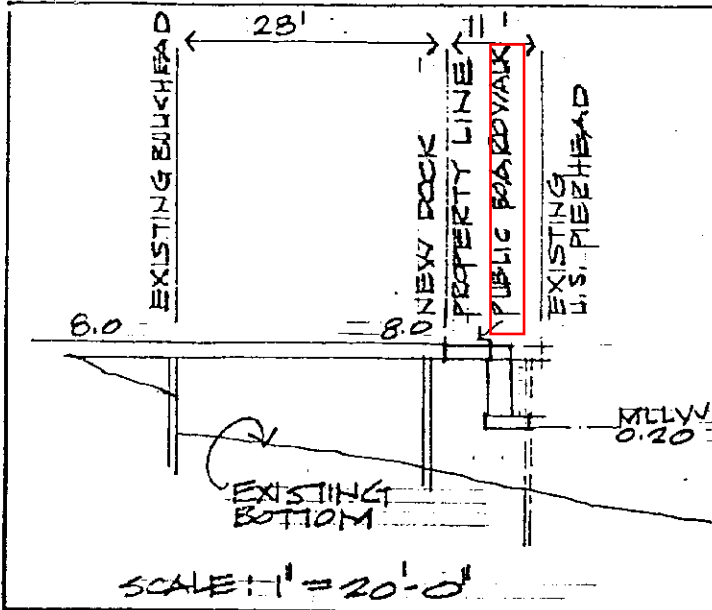
SECOND FLR PLAN
1" = 30'-0"

APPROVAL

714/40-5060
359 San Mateo Rd.
Newport Center
Newport Beach, Ca.
92660

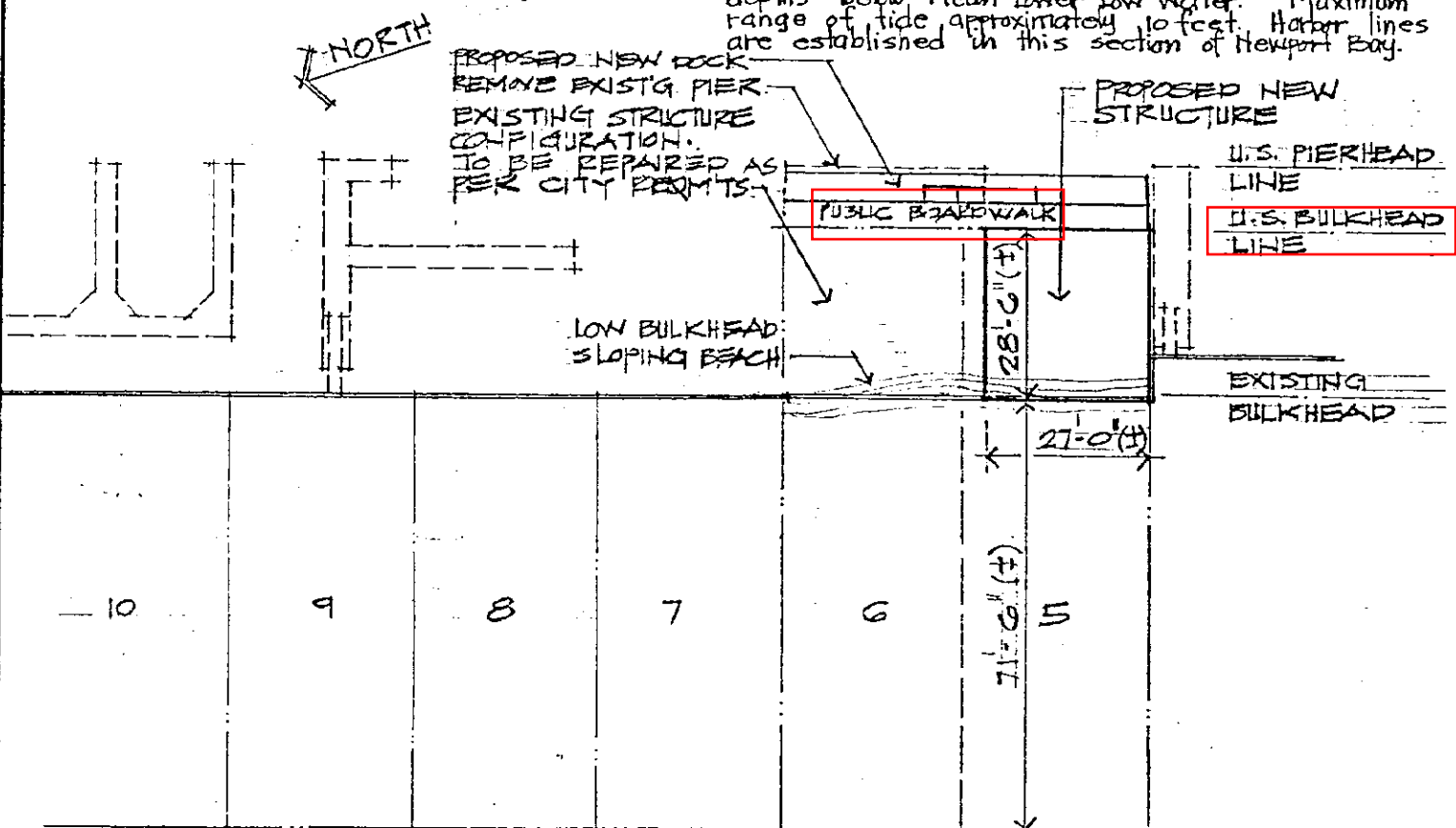
2808 & 2810 LAFAYETTE AVE.
NEWPORT BEACH, CA.
Exhibit G
APPLICATION NO. 76-111

CITY OF NEWPORT BEACH HARBOR APPLICATION NO. _____



NEWPORT BAY (THE RHINE)

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.



ARCHIT-TEKTON, INC. (WM.C. CLAPET)
APPLICANT'S NAME

2808 & 2810 LAFAYETTE AVE.
JOB ADDRESS

LANCASTER ADDITION 425 5 & 6
TRACT BLOCK LOT

Exhibit G

ARCHIT-TEKTON, INC. 2/19/76
DRAWN BY DATE

AND WHEN RECORDED RETURN TO:

City Clerk
3300 Newport Boulevard
Newport Beach, California

Book 12055 Page 115
Official records of Orange County
12:05 am Feb. 1, 1977
Instrument No. 1367
Npt. Bch Deed No. 1378

Space Above This Line for Recorder's Use Only

CONTINGENT OFFER FOR PUBLIC ACCESS

This Contingent Offer for Public Access is made into this 19 day of January, 1977, by ED ZIEMER, an individual, hereinafter referred to as "Ziemer".

W I T N E S S E T H:

A. The Planning Commission of the City of Newport Beach on April 1, 1976, approved Use Permit No. ¹⁷⁸²~~1779~~ and Resubdivision No. 513 related to the proposed office use on the property owned by Ziemer located at 2808 and 2810 Lafayette Avenue, City of Newport Beach, State of California, hereinafter referred to as "the property".

B. As a condition of approval, Ziemer was required to offer to the City public access rights over a pier or wharf to be constructed and owned by Ziemer, extending across the entire bayside of the property bayward of the bulkhead line, which rights should become effective at the time the property or said pier or wharf become connected with adjacent property on either side of the property to form a continuous walkway.

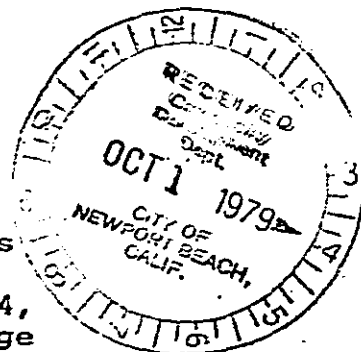
C. This Offer is intended to fulfill said conditions of approval of Use Permit No. 1779 and Resubdivision No. 513.

THEREFORE, in consideration of the covenants and conditions herein contained, and further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ziemer hereby:

1. Offers to the City, for the benefit of the general public, a non-exclusive right of access to and the right to use, but not to obstruct, the pier or wharf constructed across the entire bayside of the property, more particularly

described as:

Lots 5 and 6, Block 425, Lancaster's Addition to Newport Beach as shown on a map recorded in Book 5, Page 14, Miscellaneous Maps, Records of Orange County, State of California



Said Offer shall automatically ripen into an easement for public access at such time as the parcel located immediately to the north and the parcel located immediately to the south of the property become connected with the pier or wharf adjacent to the property by piers or wharfs or other similar structures to form a continuous walkway. City may, at its option, connect the pier or wharf adjacent to the property with piers or wharfs on the parcels to the north or south of the property to form the above referenced continuous walkway.

2. This Offer shall be irrevocable by Ziemer for a period of twenty-five (25) years after the date of execution hereof.

3. Ziemer agrees to repair and keep in good and safe condition, and free from obstructions, said pier or wharf adjacent to the property, at his sole cost and expense.


ED ZIEMER

STATE OF CALIFORNIA)) ss:
COUNTY OF ORANGE)

On January 19, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared ED ZIEMER known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.



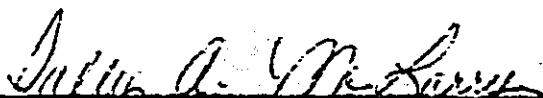
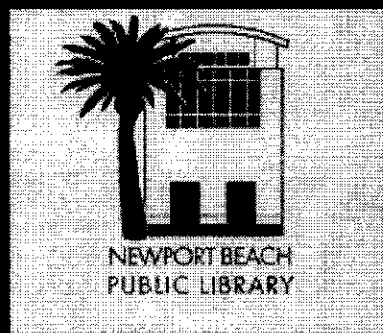

Notary Public in and for said State





Exhibit K



NEWPORT

PUBLIC

Newport Beach Chronological Timeline

1776 Franciscan fathers of San Juan Capistrano Mission began administration of Newport Bay area.

1810 Spanish land grant of Rancho Santiago de Santa Ana (including the Newport mesa and western mainland shoreline of Newport Bay) made to Jose Antonio Yorba and Juan Pablo Peralta.

1842 Mexican land grant of Rancho San Joaquin (including the Newport Upper Bay and most of the mainland shoreline of lower bay) made to Jose Andres Sepulveda.

1860 First attempt by U.S. Coast Survey to make a preliminary examination of the Santa Ana River estuary (lower bay).

1864 Newport Bay holdings of Joss Sepulveda are sold to Flint, Bixby, and Irvine. James Irvine obtains partners' interests in 1876.

1868 Rancho Santiago de Santa Ana partitioned, its holdings bordering Newport Bay going to Flint, Bixby, and Irvine, and to attorneys Andrew Classell and Albert B. Chapman.

1870 The steamer Vaquero enters Newport Bay; Newport Landing established on the inner shores. "The name 'Newport' was suggested by a Mrs. Perkins," according to Ellen Lee.

1870 Vaquero is sold; little if any activity on Newport Bay for three years.

1878 Steamer Newport sold to Pacific Coast Steamship Co., but continues on San Francisco-Newport run until 1889.

1887 Survey made by W.H.H. Benyuard of U.S. Army Corps of Engineers to determine feasibility of U.S. government-financed improvements to Newport Bay. Estimated cost: \$1.2 million. Failing to get a federal appropriation for this work, the McFaddens build an ocean wharf in the summer and fall of 1888.

1889 McFadden brothers move their shipping business from inside the bay to new "outside landing" on peninsula oceanfront.

1891 Completion of the Santa Ana and Newport Railway. Wharf damaged when outer 600 feet are washed away by storm on Feb. 22, but repairs soon made.

1892 James McFadden receives title to peninsula from 40th St. to 9th St., purchased for a dollar an acre as government swamp and overflow land. McFadden has town site laid out near the wharf, where lots are leased by the year.

1896 James McFadden buys marsh island in the bay (later dredged) and filled to create Balboa, Lido, and Harbor islands.

1899 Santa Ana and Newport Railroad and wharf sold to the Southern Pacific.

1902 Remaining McFadden Newport Bay holdings sold to W.S. Collins and A.C. Hanson.

1903-07 Establishment of subdivisions of West Newport, East Newport, Bay Island, Balboa, Corona del Mar, Balboa Islands, and Port Orange.

Events Calendar

Reference Services

Children's Services

teens@nbpl

Literacy

Cultural Arts Division

Support NBPL

About NBPL

About Newport Beach

News & Press

Contact Us

1904 Pacific Electric trolley lines reach Orange County, first at Seal Beach.

1905 Pacific Electric Railroad reaches Newport in 1905, connecting city by rail with Los Angeles - the start of rapid transit.

1906 Pacific Electric rails extended to Balboa. Balboa Pavilion completed at cost of \$15,000. Newport Beach becomes a city. Newport annexes Balboa. Balboa Ferry starts.

1907 West Newport canals dredged, creating Newport Island.

1908 Gondolier G. Scarpa launches idea for Tournament of Lights.

1909 Famed actress and cosmopolite Madame Helena Modjeska dies at her home on Bay Island.

1910 McFadden brothers sell Newport, Lido, and Balboa Island for \$35,000.

1911 Glenn Martin flies from Newport Bay to Catalina in 37 minutes setting longest over-water record in aviation history Newport Harbor lines established, ratified by Congress in 1917.

1914 County Hospital opens in Orange. Storm inundates Newport.

1915 Bond issue brings 108 miles of good roads to county, including Newport Beach.

1916 Balboa Island annexed to city of Newport Beach. Flood inundates county when Santa Ana River and Santiago Creek burst banks.

1917-21 Harbor work done by city of Newport Beach and Orange County, including construction of 1,900-foot-long west jetty, construction of Bitter Point Dam, diversion of Santa Ana River from bay, and dredging of city and county channels. Cost to city: \$290,000; to county, \$500,000.

1917 Barge scene for silent movie spectacle, Cleopatra, starring Theda Bara, filmed in Newport Harbor. Newporters register for draft as war is declared on Germany.

1918 Spanish influenza hits county. 12 dead in one day at Delhi.

1919 City of Newport Beach receives title to tidelands adjacent to its boundaries. First Tournament of Lights.

1920 Santa Ana River rechanneled by building Bitter Point dam.

1921 Santa Ana River rechanneled from Newport Bay, to the sea. Madam Larue, The Green Dragon, and Soto's curio shop thrive in Balboa.

1922 First Newport Yacht Regatta. Duke Kahanamoku introduces surfboarding to the western United States at Newport Beach. First sanitary sewers installed under supervision of Paul Kressley, city engineer.

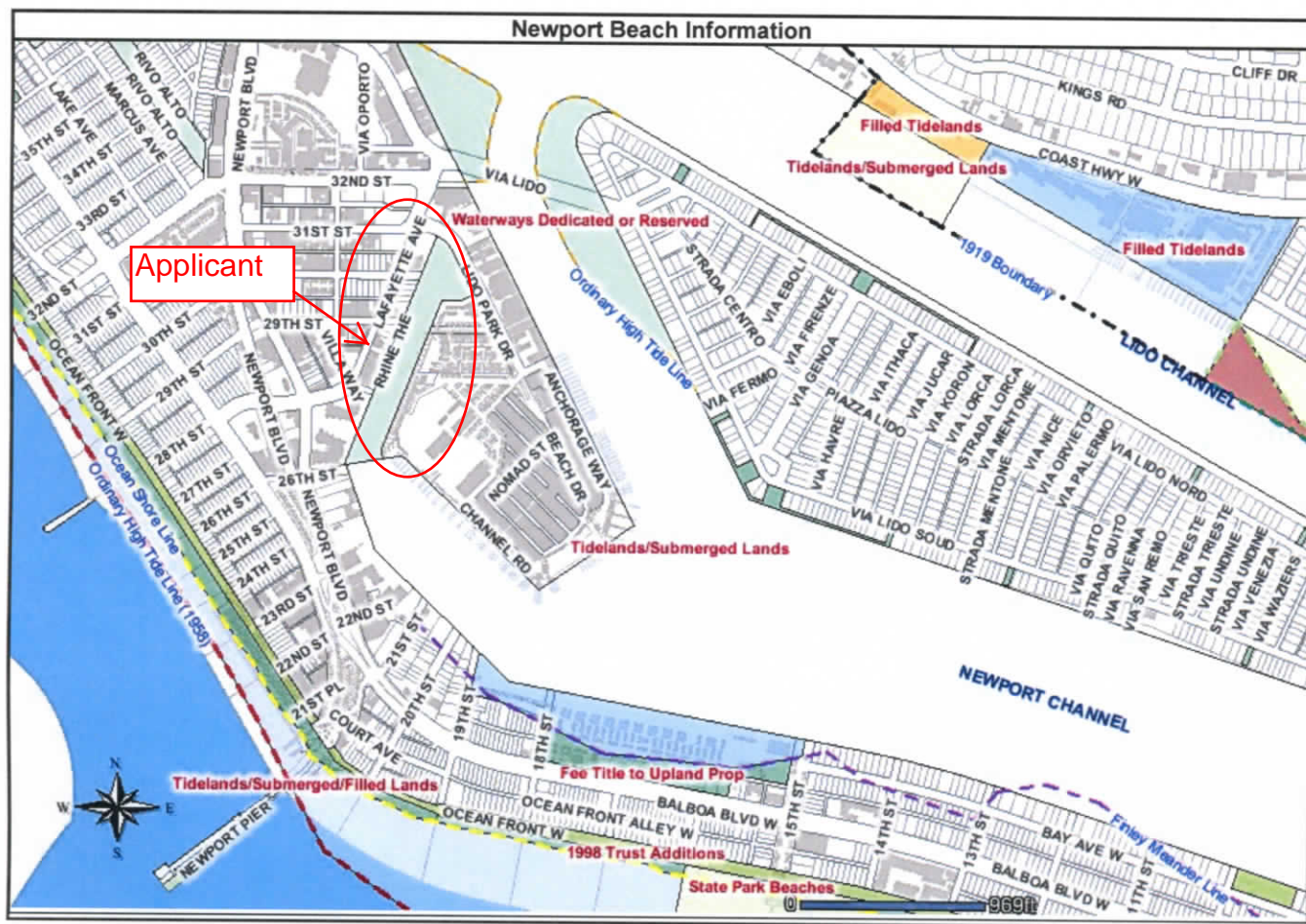
1923 Corona del Mar annexed to city of Newport Beach. The Eddie Martin Airport opens, later to become Orange County Airport, the nation's second busiest. Old McFadden area cleaned up. First public restrooms built at McFadden place.

1924 General Lansing Beach, retired chief of the U.S. Army Corps of Engineers, conducts survey and recommends expenditure of \$1.2 million for Newport Harbor improvements. Eight drown at Newport when launch Adieu capsizes. Balboa Yacht Club founded.

1925 Dr. Albert A. Michelson establishes speed of light with mile-long experimental tube on Irvine Beach.

1926 County voters defeat bond issues to finance \$1.2 million in Harbor improvements. Coast Highway opened by Douglas Fairbanks and Mary Pickford.

1927 City of Newport Beach votes \$500,000 to extend west jetty and build new east jetty. Metropolitan Water District organized, eventually to bring Colorado River water to Southern California. Typhoid epidemic hits area.



Boundaries

- 1919 Boundary
- 1919 Conflicting Boundary
- 1919 Conflicting Boundary
- Ocean Shore Line
- Ordinary High Tide Line
- Ordinary High Tide Line (1958)
- County Tideland Boundary
- Finley Meander Line
- Wildlife Preserve Boundary

Managing Agency

City Maintained

- Tidelands/Submerged Lands
- Tidelands/Submerged/Filled Lands
- Filled Tidelands
- Fee Title to Upland Prop
- Waterways Dedicated or Reserved
- 1998 Trust Additions

O.C. Maintained

- Tidelands/Submerged Lands
- Filled Tidelands
- Fee Title to Upland Prop

State Maintained

- State Park Beaches
- State Highways

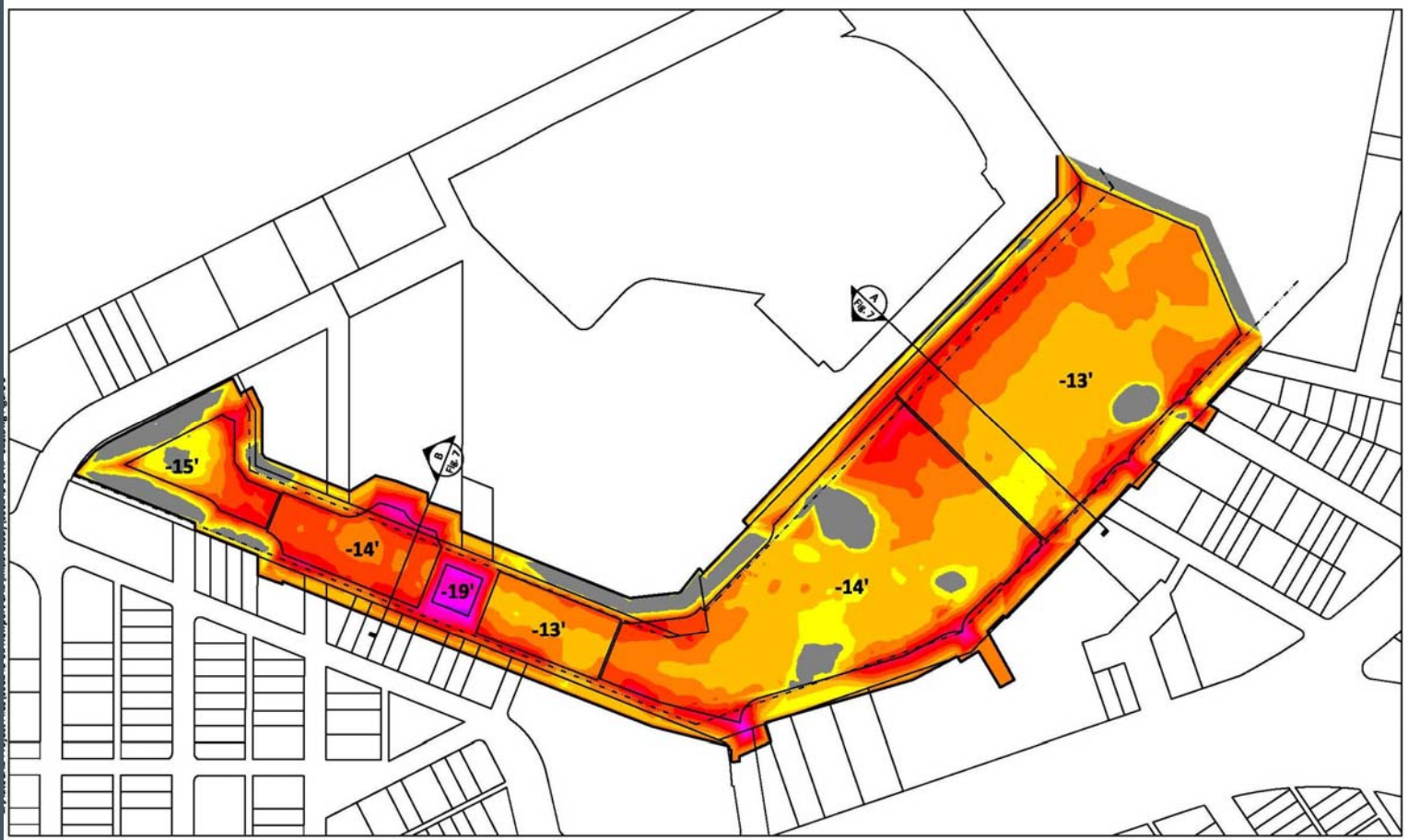
Federally Maintained

- Conveyed to US Gov. by City

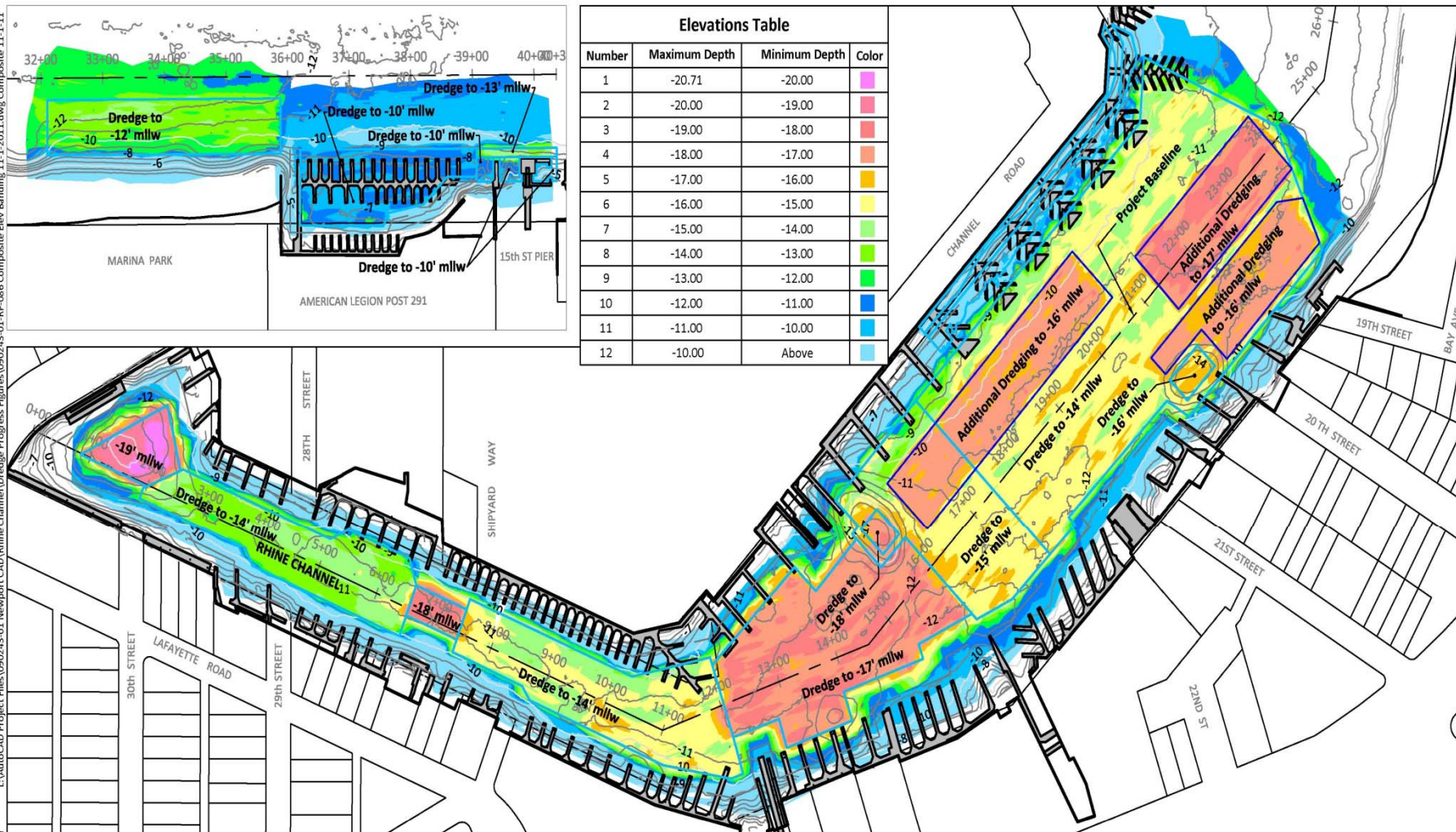
Conflicting Title/Design

- Tidelands, Unclear 1919 Boundary
- Harbor Island Tidelands
- Bay Island Waterway

Depth of Dredging



L:\AutoCAD Project Files\090243-01 Newport CAD\Rhine Channel\Dredge Progress Figures\090243-01_RP-086 Composite Elev. Banded 11-1-2011.dwg Composite 11-1-11-1

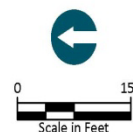


Elevations Table			
Number	Maximum Depth	Minimum Depth	Color
1	-20.71	-20.00	
2	-20.00	-19.00	
3	-19.00	-18.00	
4	-18.00	-17.00	
5	-17.00	-16.00	
6	-16.00	-15.00	
7	-15.00	-14.00	
8	-14.00	-13.00	
9	-13.00	-12.00	
10	-12.00	-11.00	
11	-11.00	-10.00	
12	-10.00	Above	

SOURCE: Drawing prepared from City of Newport Beach and ESRI basemaps, and all Dutra Surveys performed as of November 1, 2011.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83, feet.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

NOTES:
 Contours shown are from pre-dredge bathymetric survey conducted by Gahagan and Bryant Associates, Inc., on July 1, 2011.

- LEGEND:**
- Dredge Footprint
 - Additional Dredging
 - Limits of Work (Top of Slope)



CALIFORNIA COASTAL COMMISSION

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

W 11b**ADDENDUM**

December 11, 2012

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **SECOND ADDENDUM TO ITEM W11b, COASTAL COMMISSION PERMIT APPLICATION NO. 5-11-178-(CERVANTES-MOREHART) FOR THE COMMISSION MEETING OF WEDNESDAY, DECEMBER 12, 2012.**

Changes to Staff Report

Commission staff recommends modifications to the staff report. Deleted language is in ~~strike through~~ and new language is in underlined text, as shown below:

On page 4, add the following exhibit:

EXHIBITS

Exhibit #1 – Vicinity Map

Exhibit #2 – Coastal Land Use Plan Area Map

Exhibit #3 – Before and after aerial pictures of the project site

Exhibit #4 – Project Plans

Exhibit #5 – Plans showing revised seawall/bulkhead located either within the ‘stringline’ drawn between the corners of the seawall/bulkheads on the adjacent sites or in alignment with the bulkhead/seawall to the north

Exhibit #6 – Aerial showing public access

Exhibit #7 – Surveys, aerials, City maps and written documentation relating to public trust lands on subject property

Global Change Throughout Staff Report:

At various locations throughout the staff report the directional references (i.e. north/south) were inadvertently reversed, including, but not limited to, in the text of the findings, in Special Condition No. 1, and on exhibits 4 and 5, relating to the location of the existing bulkheads on the adjacent properties. As written, the words and exhibits indicate that the bulkhead on the adjacent site to the “south” is more seaward than the adjacent bulkhead to the “north”. This is an error. Instead, the bulkhead to the north is the one that is most seaward, and the bulkhead to the south is the one that is most landward. Commission’s staff recommendation is to require that the

bulkhead proposed to be constructed on the subject site be aligned with the one that is currently most landward (i.e. the one to the south, not the north) or in accordance with a stringline. The incorrect references should be corrected throughout the staff report and the exhibits.

On page 24, add the following after the third full paragraph:

Therefore, to ensure that the approved project maintains, enhances, and where feasible, restores marine resources such as soft bottom habitat, the Commission imposes **SPECIAL CONDITION 9** which prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-11-178, seaward of the approved bulkhead. Prohibiting such activities will ensure that the proposed bulkhead is the least environmentally damaging alternative because no repair or maintenance activities will be allowed seaward of the approved bulkhead which may impact newly enhanced and restored marine resources, like the soft bottom habitat that will be restored once the asphalt/concrete debris is removed from the property and the bulkhead is redesigned by bringing the bulkhead further landward to open up more bay bottom for the reestablishment of soft-bottom habitat on the site.

On page 25, revise the following paragraph:

CONCLUSION

To minimize the adverse impacts upon the marine environment, ~~THREE (3)~~ **FOUR (4) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 9** ensures that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-11-178 only occur within the footprint or landward of the approved bulkhead so that the enhanced and restored soft bottom habitat seaward of the approved bulkhead is not disturbed in the future. **SPECIAL CONDITION NO. 10** outlines construction related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 11** identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction. **SPECIAL CONDITION NO. 12** requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

On page 29, add the following after the first full paragraph:

Staff has received a letter of opposition from the applicant, through her attorney, Sherman Stacey. Generally, the applicant opposes the special condition requiring her to offer to dedicate a public access easement over the bulkhead fill, and special conditions associated with the access condition, which will fill privately-owned submerged lands. Citing Public Resources Code,

section 7552.5¹, the applicant claims that since the predecessor-in-interest, James McFadden, acquired title to the subject property as swamp and overflow lands from the state in 1892, then the property is not subject to the public trust doctrine, but only a navigation servitude (requiring free navigation over the submerged lands should the swamp and overflow lands be dredged to a level that allows navigable waters to flow over them). Beyond a statement made in a City publication about the history of Newport Beach which noted this transfer to James McFadden in 1892 (Applicant's Exhibit attached to letter of opposition dated 12/10/2012), the applicant did not submit any further evidence to support her position that the subject property was actually included in the McFadden conveyance. Further, the historical note on the City's website, cited by applicant, indicates that the transfer to McFadden included "title to [sic] peninsula from 40th St. to 9th St., purchased for a dollar an acre as government swamp and overflow land. McFadden has town site laid out near the wharf, where lots are leased by the year." This historical reference to the grant includes several acres of land, and is vague enough that it is impossible to know if the subject property, a lot of a mere 6000 square feet, is included in the grant of the peninsula, especially given the dramatic changes to the bay shoreline of the peninsula since the late 1800s. (See Exhibit #7, below.) Public Resources Code section 7552.5 also requires a showing that the transfer was executed pursuant to an adopted act by the legislature and that the subject property was in fact part of "lands above the ordinary high-water mark, granted to the state by the Arkansas Swamp Lands Act, Act of September 28, 1850." The applicant has not submitted evidence that the subject property was part of such a grant consistent with Public Resources Code, section 7552.5.

City documentation indicates that the submerged/tide lands at issue here are subject to the public trust. The City of Newport Beach includes Rhine Channel in its Tidelands Map as a reserved and dedicated waterway.² (See Exhibit #7, below) Further, a 2010 Initial Study and Mitigated Negative Declaration (MND) for a dredging project in Rhine Channel, adopted by the City in Resolution No. 2010-91 in its entirety, includes a figure depicting the project area which includes the full breadth and length of Rhine Channel³ (See Exhibit #7, below), and text in the MND unequivocally states that the project area land use designations are submerged and tide lands

1

Pub. Res. Code, §7552.5 provides:

Where lands above the ordinary high-water mark, granted to the state by the Arkansas Swamp Lands Act, Act of September 28, 1850, have been conveyed into private ownership by the State of California pursuant to an act authorizing the sale and conveyance of swamp and overflowed lands, such swamp and overflowed lands, by definition, are taken free of the common law public trust for commerce, navigation, and fisheries. Where a private owner, deriving title by virtue of such a conveyance of swamp and overflowed lands, dredges or has dredged such lands pursuant to then existing law, and such dredging results or has resulted in the navigable waters of the state flowing over such lands, such acts shall not operate to create or impose the common law public trust for commerce, navigation, and fisheries with respect to such lands. Such acts shall operate to create a navigational easement, in favor of the public, upon the waters which flow over the affected real property. The navigational easement so created may be extinguished only upon the lawful removal of the navigable waters from the real property.

² <http://www.newportbeachca.gov/Modules/ShowDocument.aspx?documentid=11256>. (map on p. 13)

³ <http://www.newportbeachca.gov/Modules/ShowDocument.aspx?documentid=10340>, Figure 2.

subject to the public trust, citing the City's zoning code for support.⁴ (Relying on General Plan 2006; General Plan Figure LU1; and Coastal Land Use Plan 2009; see Exhibit #7.) The applicant also appears to concede that the subject property is privately owned tideland, stating that "use of a privately owned tideland to place a structure to protect an existing structure from damage" is a reasonable use of that property. (Applicant's letter of opposition, dated 12/10/2012, page 7) The applicant, nonetheless, argues that the subject lot is not subject to the public trust servitude because the submerged/tide land area has had private development on it for over 75 years and no one has complained that it is inconsistent with public trust principles. The applicant claims that this constitutes consent of using public trust resources for private purposes. The only way, however, in which the public trust servitude is removed from property, either private or public, is if the legislature enacts a statute doing so or a grantee of a Mexican land grant perfected title of submerged/tide lands during patent proceedings shortly after California joined the union. (Marks v. Whitney (1971) 6 Cal.3d 251, 260-261; Summa Corp. v. California State Lands Commission (1984) 466 U.S. 198.) Neither exception applies to the subject property and the applicant has not submitted any documentation indicating these exceptions do, in fact, exist on the subject property.

On page 29, add the following after the second full paragraph:

When the Commission acts on proposed development at a public hearing, the Commission is required to act in a manner such that it approves a project that is the least environmentally damaging feasible alternative. In this case, staff found that bringing the proposed bulkhead further landward is a feasible alternative that is the least environmentally damaging alternative on public access since the redesigned bulkhead will result in less fill of submerged lands which will further ensure the project is consistent with section 30210 in providing maximum access to and along the water consistent with Section 4 of Article X of the California Constitution. Therefore, to ensure that the redesigned bulkhead maintains its approved configuration and doesn't encroach further seaward into the public trust easement over the applicant's property, the Commission is imposing **SPECIAL CONDITION 9**, requiring that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-11-178 only occur within the footprint of the approved bulkhead or landward of it so that maximum access is provided consistent with section 30210 of the Coastal Act.

On page 30, revise the following paragraph:

CONCLUSION

To minimize the adverse impacts upon public access, ~~FOUR (4)~~ **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** requires the applicant irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access walkway along the top of the proposed seawall/bulkhead (between the building and the bulkhead). **SPECIAL CONDITION NO. 3** requires the applicant to submit a Public Access and Recreation Easement Area Management and Maintenance Program for the public access

⁴ <http://www.newportbeachca.gov/Modules/ShowDocument.aspx?documentid=10340> at page 50. (Relying on General Plan 2006; General Plan Figure LU1; and Coastal Land Use Plan 2009.)

walkway. **SPECIAL CONDITION NO. 4** requires that the public access walkway and seawall/bulkhead be constructed concurrently and shall be made available for public use immediately upon completion. **SPECIAL CONDITION NO. 5** requires submittal of Public Access Signage Plan, which will indicate the availability of the on-site public amenities. **SPECIAL CONDITION NO. 9 ensures that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-11-178 only occur within the footprint of the approved bulkhead or landward of it so that maximum access is provided consistent with section 30210 of the Coastal Act.**

Therefore, the Commission finds that the proposed development would be consistent with Sections 30210 and 30213 of the Coastal Act regarding public access.

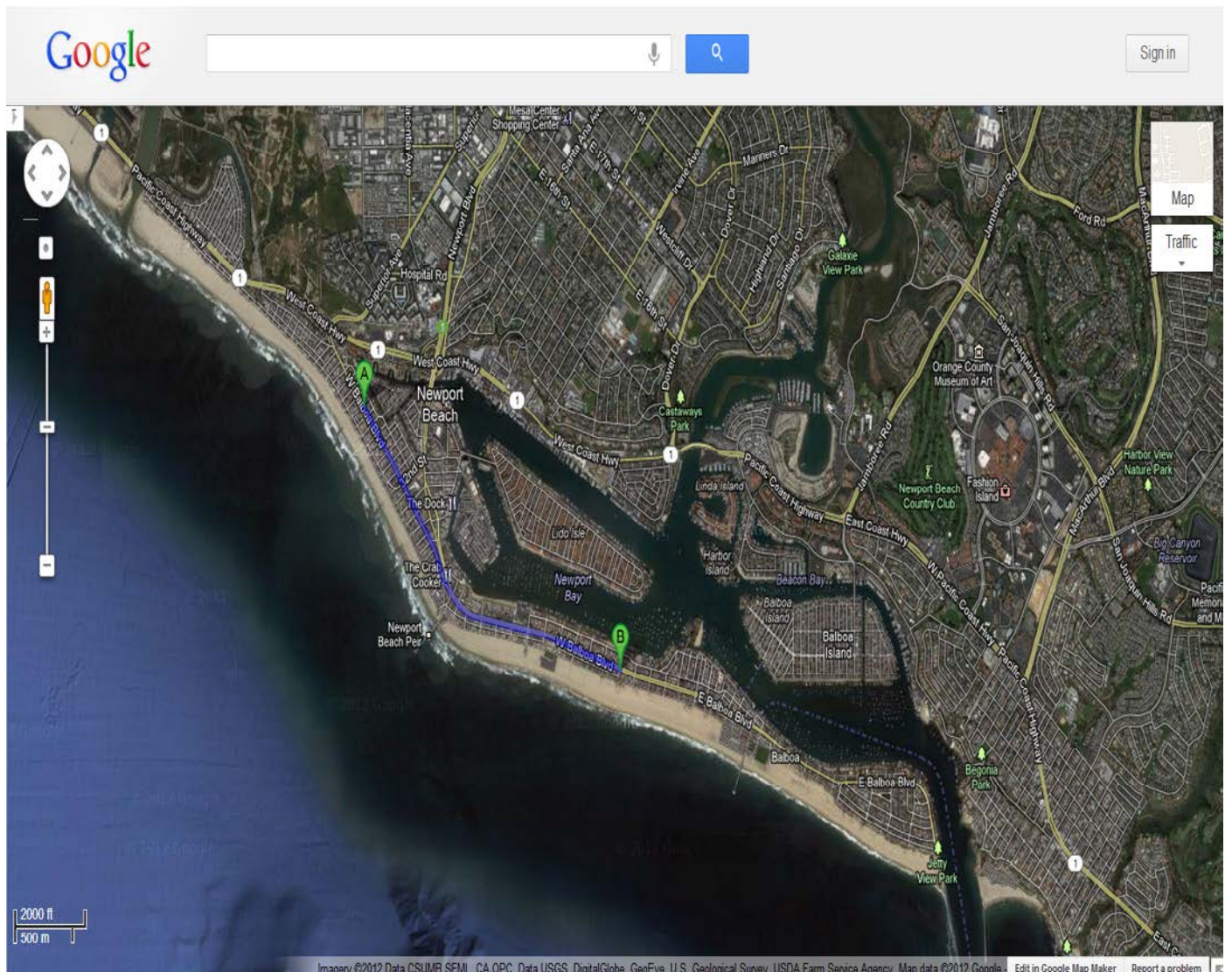


1875 US Coast Survey of Newport Bay- Balboa Peninsula is at the bottom of the image, following, generally, the black outlined area.

(Source- Coastal Land Use

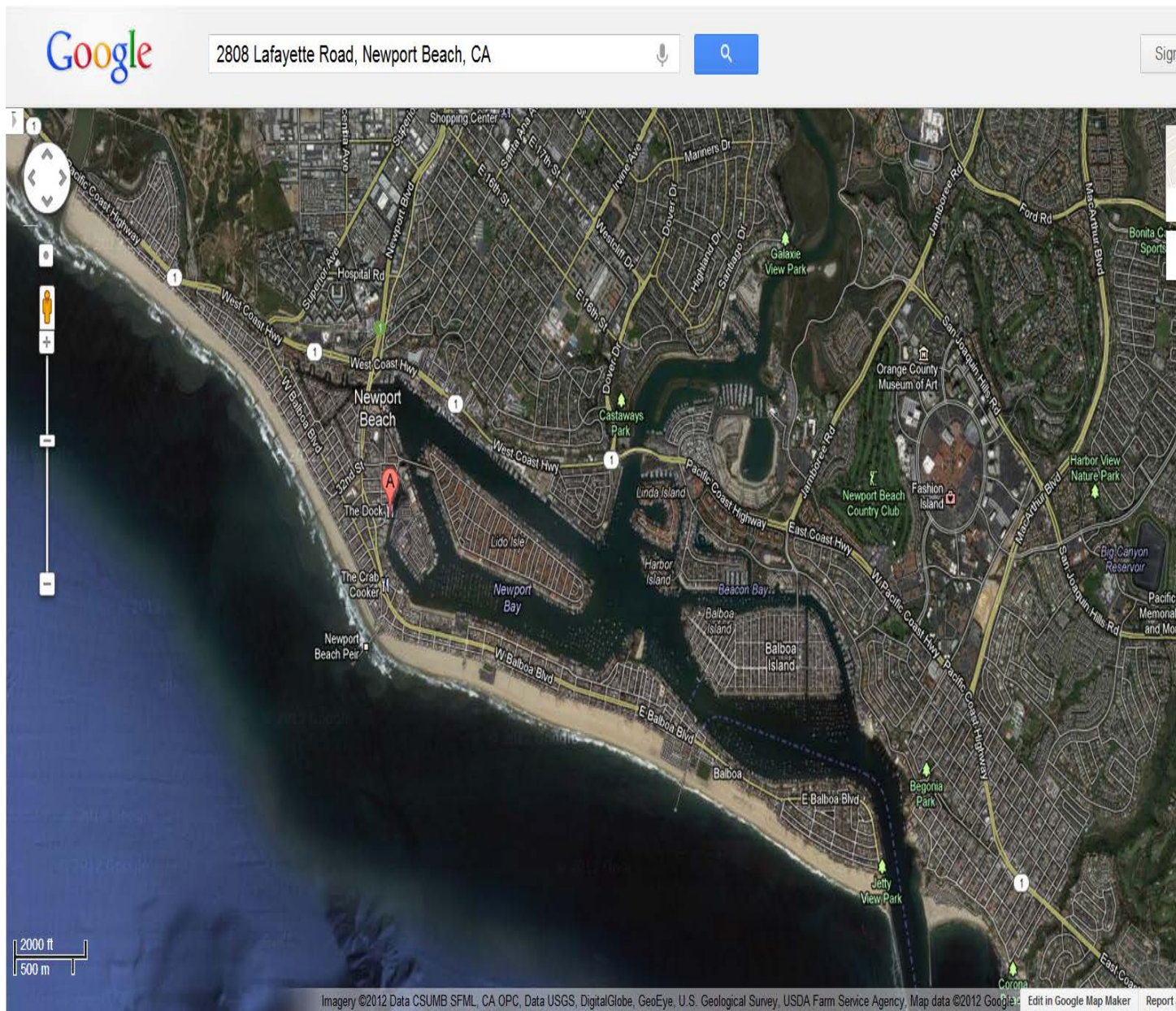
Plan, [http://www.newportbeachca.gov/PLN/LCP/Internet%20PDFs/CLUP_Part%201_Introducti](http://www.newportbeachca.gov/PLN/LCP/Internet%20PDFs/CLUP_Part%201_Introducti%20on.pdf)
[on.pdf](http://www.newportbeachca.gov/PLN/LCP/Internet%20PDFs/CLUP_Part%201_Introducti%20on.pdf), page 5.)

Exhibit # 7
Page 1 of 7



Pins indicate the distance between 40th Street and 9th Street along the Newport Beach Peninsula to provide the scale of the land granted to James McFadden in 1892, using 2012 aerial image of the Peninsula.

Exhibit #7
Page 2 of 7



Pin Marking Applicant's Property as Newport Beach appears in 2012.

(Source- <https://maps.google.com/maps?q=rhine+channel&hl=en&ie=UTF-8&mid=1355269358>.)

Exhibit #7
Page 3 of 7

Tidelands Survey
Newport Harbor
City of Newport Beach

Rhine Channel

Boundaries

- 1919 Boundary (Statutes of 1919, pg 1133)
- 1919 Conflicting Boundary (Per Patterson Map - July 9, 1968)
- 1919 Conflicting Boundary (Per Aerialson Documents / SCC 95376)
- Ocean Shore Line (Per Record Maps)
- Ordinary High Tide Line
- Ordinary High Tide Line (1956)
- County Tideland Boundary
- Finley Meander Line (1885)
- Wildlife Preserve boundary
- Bulkhead (1950 USACE Harbor Survey)
- Pierhead (1950 USACE Harbor Survey)

Managing Agency

City of Newport Beach

- Tidelands & Submerged Lands in Newport Bay (Statutes of 1919, Ch 494 pg 1011 & Statutes of 1927, Ch 79 pg 125)
- Tidelands, Submerged Lands & Filled Lands bordering upon, in and under the Pacific Ocean (Statutes of 1929, Ch 813 pg 1704)
- Filled Tidelands
- Fee Title to Upland Property
- Waterways Dedicated or Reserved for some
- 1968 Trust Additions (SB 673, 1997)

County of Orange

- Tidelands & Submerged Lands in Newport Bay
- Filled Tidelands
- Fee Title to Upland Property

State of California

- State Park Beaches
- State Highways

Federally Owned

- Property Conveyed by City to US Government

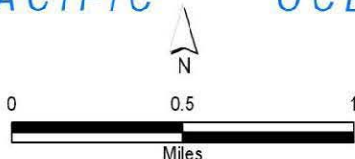
Conflicting Title/Designation

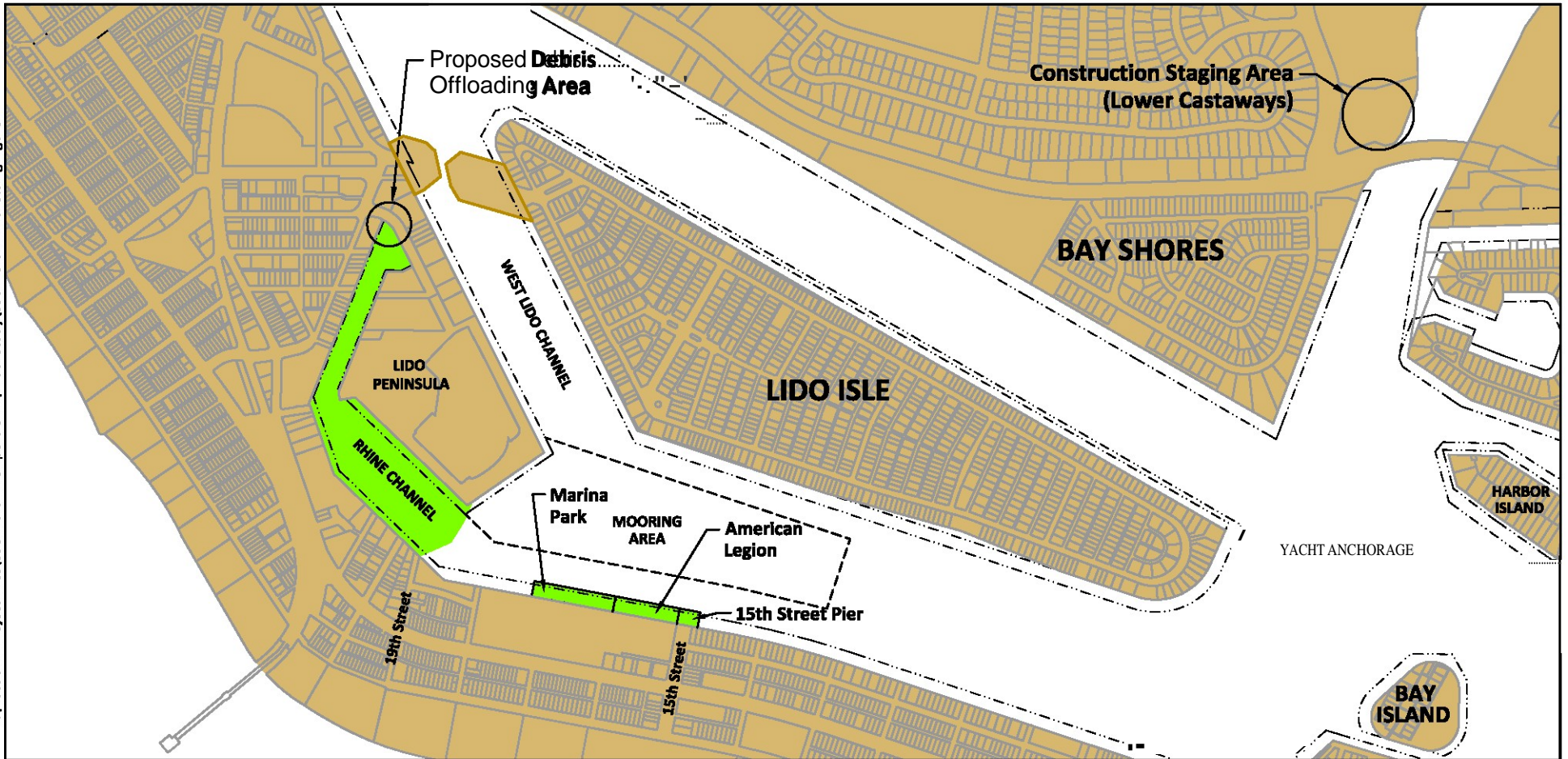
- (1) Tidelands in area of unclear 1919 Boundary definition
- (2) Harbor Island Tidelands
- (3) Bay Island Waterway

Key noting that the Rhine Channel is a waterway dedicated or reserved for same

Exhibit #7
page 4 of 7

PACIFIC OCEAN





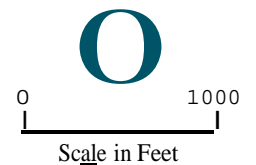


SOURCE: Basemap prepared from City of Newport Beach GIS files.




NOTE: Temporary moorage areas are located throughout Lower Newport Bay.

LEGEND:

-  Proposed Project Area
-  Pierhead Lines (Approximate)



X. LAND USE AND PLANNING

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Physically divide an established community?	⑤	⑤	⑤	
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	⑤	⑤	⑤	
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	⑤	⑤	⑤	

Environmental Setting

The General Plan (2006) and the Coastal Land Use Plan (CLUP; 2009) designations for land use within the Project Area are tidelands and submerged lands (General Plan 2006; General Plan Figure LU1; CLUP 2009). This designation is intended to address the use, management, and protection of tidelands and submerged lands of Newport Bay and the Pacific Ocean immediately adjacent to Newport Beach. The designation is generally not applied to historic tidelands and submerged lands that are presently filled or reclaimed. Tidelands and submerged lands are subject to a public trust that, among other things, limits their use to

navigation, fishing, commerce, public access, water-oriented recreation, open space, and environmental protection. The vast majority of tidelands and submerged lands in Newport Beach have been granted to the City or the County of Orange to administer in a manner consistent with the public trust limitations relative to use of the property and revenue derived from that use.

Local Land Use Planning. Determination of consistency with the relevant goals and policies stated in the adopted General Plan, Land Use Element, Harbor and Bay Element, Natural Resource Element, and Noise Element, as well as the Coastal Land Use Policy, are provided as Tables LU1 through LU5. Some aspects of these elements that address public access, water quality, the environment, and plan administration are also covered in other elements. These overlapping policies or goals are parenthetically noted within each element. Redundancy is avoided by not repeating each overlapping element.

Exhibit #7
Page 7 of 7

CALIFORNIA COASTAL COMMISSION

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

W 11b**ADDENDUM**

December 6, 2012

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W11b, COASTAL COMMISSION PERMIT APPLICATION NO. 5-11-178-(CERVANTES-MOREHART) FOR THE COMMISSION MEETING OF WEDNESDAY, DECEMBER 12, 2012.**

Changes to Staff Report

Commission staff recommends modification to Section II (Findings and Declarations) of the staff report. Language to be deleted is in ~~strike-out~~, as shown below

Page 27 – Modify Section II.D., as follows:

~~This section of the Constitution~~ Section 30213 of the Coastal Act states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Additionally, the City of Newport Beach's Certified Land Use Plan also contains several policies regarding protecting, encouraging and providing public access. Some of these LUP policies are even specific to the area of the project site.

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W 11b

Filed: July 5, 2012
180th Day: January 1, 2013
Staff: F. Sy-LB
Staff Report: Nov. 29, 2012
Hearing Date: Dec. 12-14, 2012

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-11-178

Applicant: Lisa Cervantes-Morehart

Location: 2808 Lafayette Road, Newport Beach (Corona Del Mar)
(Orange County)

Project Description: Installation of a new concrete seawall/bulkhead to protect an existing business/commercial building on a property fronting Lower Newport Bay (Rhine Channel). The proposed new seawall/bulkhead would be installed 10-feet into the bay from the existing building and would extend the 60-foot width of the property, with a return wall at each terminus.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the removal of asphalt/concrete debris left from the failure of the previous structure and the installation of a new seawall/bulkhead, where one did not previously exist. On November 6, 2000, part of an office building and parking structure (approved by the Commission under Coastal Development Permit No. P-5-19-76-7903-(Zimmer)) located at the project site over the Rhine Channel collapsed. The structure caved into the Rhine Channel when rusty support beams gave way causing extensive structural damage to the portion of the building that collapsed and exposing the footing of the remaining building, which was never subsequently stabilized. Remnants of the failed structure were removed, but some of the asphalt/concrete debris that fell into the water was never removed and has since effectively acted as a revetment that protected the foundation of the remaining structure. The property owner seeks approval to install a concrete seawall/bulkhead to protect the site since any further erosion in the channel, or maintenance dredging (i.e., Rhine Channel dredging) immediately along the building's foundation would remove lateral support of the foundation which would destabilize it. So, a bulkhead/seawall is required to protect the existing structure.

While the seawall/bulkhead is necessary to protect an existing structure, the proposed seawall/bulkhead is not located as far landward as possible or designed to minimize the amount of fill of coastal waters. There are two (2) alternative wall alignments that would achieve the required stabilization and be located further landward. Thus, the project has been conditioned to submit revised plans showing that the seawall/bulkhead has been moved to be either within the 'stringline' or in alignment with the bulkhead/seawall to the north. As conditioned, the proposed seawall/bulkhead will have no new impacts because the device will be located as far landward as possible, minimizes fill to the maximum extent feasible and is the least environmentally damaging alternative. As part of the bulkhead/seawall installation the applicant is proposed to remove the remaining debris from within the footprint of the seawall/bulkhead installation. However, by only limiting the removal of the debris from within the footprint of the installation, ongoing impact to soft bay bottom habitat would continue. Thus, the project has been conditioned to remove all asphalt/concrete debris. As conditioned, the proposal will result in a final condition that is far better from a habitat stand point from the prior or existing condition. The project will restore soft bottom habitat that was either previously shaded from sunlight by the previous structures or covered by asphalt/concrete debris.

Another significant issue with the proposed project relates to coastal access along the bay front. Prior to failure of the structure on site, lateral public access was available on site that also linked with adjacent existing lateral public access along the Rhine Channel (i.e. in front of the adjacent buildings). The existing bay front access on the subject site was lost with the partial building collapse. Although the proposal includes a flat deck/walkway between proposed bulkhead/seawall and the remaining existing building, the applicant is not proposing to reestablish the public access on site. The public access lost on the subject site creates a new impediment to the City's long term goal of providing continuous public access along the bay front in the subject area. The City's intent and desire to maintain and enhance access along the bay is demonstrated in prior actions by the City to establish maintain and enhance access on other sites nearby. This goal is also memorialized in the City's certified LUP (in both maps and policies). Furthermore, the proposed bulkhead/seawall and accompanying deck/walkway would be located on privately-owned submerged lands that are subject to a public trust easement. (See *Marks v. Whitney* 6 Cal.3d 251, 261.) The public trust doctrine requires that such lands be used consistent with the doctrine, which includes, but is not limited to, the right for the public to use the navigable waters of the state, like the Rhine Channel, for fishing, hunting, bathing, swimming, boating and general recreation purposes and to use the bottom for anchoring, standing, or other purposes. (Id at p. 259.) Since the public has these rights over submerged lands subject to the public trust doctrine, any development, such as the current proposal, in submerged lands must provide a public use consistent with the public trust doctrine. Thus, the project has been conditioned to require the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access on the walkway/deck area that is proposed between the existing building and the proposed seawall/bulkhead so that the public may continue to use the public trust easement area of the filled submerged lands to access the navigable waters of the Rhine Channel for public trust purposes.

Commission staff is recommending **APPROVAL** of the proposed project with **THIRTEEN (13) SPECIAL CONDITIONS** regarding: **1)** submittal of revised final project plans showing: a) the seawall/bulkhead relocated to be either within the 'stringline' or in alignment with the bulkhead/seawall to the north; b) to the maximum extent feasible, the revised location of the

seawall/bulkhead will provide connectivity to the existing adjacent lateral public access along the Rhine Channel; and c) that all asphalt/concrete debris from the collapse of the building be removed from the Rhine Channel and not just that debris located within the footprint of the seawall/bulkhead installation; **2)** submittal of an irrevocable offer to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of the area between the existing building foundation and the proposed seawall/bulkhead; **3)** submittal of a Public Access and Recreation Easement Area Management and Maintenance Program for the public access walkway; **4)** construction and development phasing ;**5)** submittal of Public Access Signage Plan; **6)** conformance with geotechnical recommendations; **7)** assumption of risk; **8)** future development; **9)** no future seaward extension of shoreline protection device; **10)** construction responsibilities and debris removal; **11)** identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction; **12)** requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*; and **13)** 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 (LCP). The City of Newport Beach only has a certified Land Use Plan (LUP) 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.

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APPENDICES

Appendix 1 – Substantive File Documents

EXHIBITS

Exhibit #1 – Vicinity Map

Exhibit #2 – Coastal Land Use Plan Area Map

Exhibit #3 – Before and after aerial pictures of the project site

Exhibit #4 – Project Plans

Exhibit #5 – Plans showing revised seawall/bulkhead located either within the ‘stringline’ drawn between the corners of the seawall/bulkheads on the adjacent sites or in alignment with the bulkhead/seawall to the north

Exhibit #6 – Aerial showing public access

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-11-178 pursuant to the staff recommendation.

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:

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, located between the first public road and the sea, 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 will 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

1. Revised Final Project Plans

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a revised final project plans, including site, elevation, section, etc. The revised final project plans shall be in substantial conformance with the plans received by South Coast District staff on July 14, 2007, except they shall be modified as follows: 1) the location of the seawall/bulkhead shall be revised, so as to be located either within the 'stringline' drawn between the corners of the seawall/bulkheads on the adjacent sites or in alignment with the bulkhead/seawall to the north as generally depicted in Exhibit #5, and thus will result in a seawall/bulkhead located as far landward as possible that minimizes fill to the maximum extent feasible; 2) the plans for the revised location of the seawall/bulkhead and deck/walkway to be built between it and the existing building foundation shall provide connectivity to the existing adjacent lateral public access along the Rhine Channel at 2806 Lafayette (including removal of any barriers thereto) and be constructed such that continuous public access to 2812 Lafayette can be easily provided in the future; and 3) all asphalt/concrete debris resulting from the collapse of the building be removed from the Rhine Channel and not just that debris located within the footprint of the seawall/bulkhead installation. The revised final project plans shall be reviewed by the City of Newport Beach and determined to be consistent with City standards prior to submittal to the Executive Director.
- 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.

2. Offer to Dedicate Public Access and Recreational Use Easement

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner(s) shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of the proposed deck/walkway area on the seaward side of the existing building located between the building and the proposed seawall/bulkhead, as generally depicted on Exhibit #4 to the staff report dated November 29, 2012. The easement area shall extend along the full width of the subject property, from one side lot-line to the other. Minor adjustments to the aforementioned alignment may be authorized by the Executive Director to ensure that a continuous minimum 6-foot wide public access and recreation easement is formed which connects with any accessways on adjacent lands.

The recorded irrevocable offer to dedicate a public access and passive recreation easement described above shall reflect the following restrictions: i) The public pedestrian access and passive recreation easement area shall be open to the general public for use 24-hours per day; ii) The landowner(s) shall, or, at the election of the easement holder, the easement holder shall, maintain the easement area in accordance with the Public Access and Recreation Easement Area Management and Maintenance Program approved by the Executive Director in accordance with **SPECIAL CONDITION NO. 3**; iii) Any development, as defined in Section 30106 of the Coastal Act, that acts as an impediment to permanent public pedestrian access and passive recreational use of the easement area is prohibited; iv) No development, as defined in Section 30106 of the Coastal Act, shall occur within the public access and recreation easement area except for the following development: grading and construction necessary to construct the public access walkway/deck and appurtenances (e.g. signs, benches, trash receptacles, safety railing) and the proposed seawall/bulkhead as modified in accordance with the final plans approved by the Executive Director pursuant to **SPECIAL CONDITION NO. 1**, underground utilities, if any, to serve the proposed development on the subject lot in accordance with the final plans approved by the Executive Director pursuant to **SPECIAL CONDITION NO. 1**, and maintenance and repair of the approved development within the easement as identified in the Public Access and Recreation Easement Area Management and Maintenance Program approved by the Executive Director pursuant to **SPECIAL CONDITION NO. 3**.

The recorded irrevocable offer to dedicate a public access and passive recreation easement shall include legal descriptions and graphic depictions, prepared by a licensed surveyor, of both the entire project site and the area of the offered public access and recreation easement. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. Subject to the review and approval of the Executive Director, easements for subsurface drainage devices and subsurface or overhead utilities within the offered public access and recreation easement areas may be allowed provided such utility/drainage easements and associated facilities will not adversely impact public use of the public access and recreation easement. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording. If the offer is not accepted and expires, the above described easement area shall continue to be made available for public access and recreation subject to the same restrictions identified in this special condition.

3. Public Access and Recreation Easement Area Management and Maintenance Program

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, a Management and Maintenance Program for the public access and recreation easement area. The final management and maintenance program shall include the following:

- (1) **IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE OF THE PUBLIC ACCESS AND RECREATION EASEMENT AREA.** In general, the owner(s) of the land

shall maintain the public access and recreation easement area(s) until such time as any easement required to be offered by this permit is accepted. Where an easement is accepted by an entity in accordance with the terms and conditions of the offer to dedicate required by this permit, the holder of the easement area shall be responsible for management and maintenance of the public access and recreation facilities within the easement area unless the arrangements between the landowner(s) and the easement holder dictate that the landowner(s) shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved Management and Maintenance Program.

- (2) **IDENTIFICATION OF MANAGEMENT AND MAINTENANCE AND ASSOCIATED FUNDING PROGRAM.** The Management and Maintenance Program shall include a) a funding program sufficient to fund the actual cost of maintenance and periodic repair and replacement of the public access walkways and associated appurtenances including, but not limited to, surfaces, landscaping (if any), and signage; and b) maintenance activities include but are not limited to trash collection, repairs or replacement of surfaces due to cracks, spalling, broken concrete, etc., maintenance of gutters, curbs and sidewalks (keep free of debris, wax, gum buildup, etc.), remove and/or trimming of vegetation that is interfering with public use of the easement area, repair/replacement of public access signs, trash receptacles, benches, handrails, stairs, and lighting.

- B.** The landowner(s) or entity assigned to be responsible for management and maintenance shall undertake management and maintenance in accordance with the approved final management and maintenance program. Any proposed changes to the approved final management and maintenance program shall be reported to the Executive Director. No changes to the approved final management and maintenance program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Construction/Development Phasing

Construction of the public access improvements depicted on the final plans approved by the Executive Director pursuant to **SPECIAL CONDITION NO. 1** in the public access and recreation easement shall be phased so that they are open and available to the public upon completion of the concurrent construction of the seawall/bulkhead and public access walkway as approved by this Coastal Development Permit.

5. Public Access Sign Plan

The final plans submitted for review and approval to the Executive Director shall include a detailed signage plan that directs the public to the public access and recreation easement areas on the project site. Some signs shall be included that are located and sized such that they are visible from existing publicly accessible areas (e.g. sidewalks, public roads) adjacent to the site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations. Signage shall include facility identification/directional monuments (e.g. location of amenities); informational signage and circulation; and roadways signs. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

6. Conformance with Geotechnical Recommendations

- A.** All final design and construction plans shall be consistent with all recommendations contained in the following documents: *Geotechnical Investigation, Proposed Seawall at 2808 Lafayette, Newport Beach, California* prepared by Petra Geotechnical, Inc., dated January 24, 2011; Letter from William Simpsons & Associates, Inc. Consulting Structural Engineers dated June 4, 2012; and Letter from William Simpsons & Associates, Inc. Consulting Structural Engineers dated July 6, 2012. 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.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C.** 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 unless the Executive Director determines that no amendment is legally required.

7. 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 sea level rise, flooding, wave attack, and erosion; (ii) to assume the risks to the applicants 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.

8. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-11-178. 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 the Coastal Development Permit No. 5-11-178. Accordingly, any future improvements to the structure 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. 5-11-178 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. No Future Seaward Extension of Shoreline Protective Device

- A.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-11-178, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device (seawall/bulkhead). By acceptance of this permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- B.** Prior to the issuance by the Executive Director of the NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the shoreline protective device approved by this permit, as generally described in **SPECIAL CONDITION NO. 1.A.1** to be approved by the Executive Director pursuant to that Special Condition; and which shall show the footprint of the device and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

10. Construction Responsibilities and Debris Removal

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

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.

- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- K.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- L.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures 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. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

- O.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

11. Eelgrass Survey(s)

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.
- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

12. Pre-construction *Caulerpa Taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

13. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, documentation demonstrating that the landowner has executed and recorded against the parcel(s) owned by the applicant that are 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.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION, PRIOR COMMISSION ACTIONS ON ADJACENT SITES AND ON SITE AND STANDARD OF REVIEW

1. PROJECT LOCATION AND DESCRIPTION

The project site is located at 2808 Lafayette Road along the Rhine Channel in Lower Newport Bay (LNB) in the City of Newport Beach (County of Orange) (Exhibit #1). The subject parcel includes privately-owned tidelands and submerged lands within its boundary. As will be discussed further, below, these privately-owned tidelands and submerged lands are subject to a public trust easement. The project site is bordered by the Rhine Channel on the west, a residential use on the south, Lafayette Avenue on the east and a commercial/residential use on the north. The property is occupied by an existing business/commercial building. The lot size is 6,000 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Mixed Use-Water Related (Mu-W), which "...is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor..." No changes are proposed to the existing business/commercial building; nevertheless it is unclear as to whether the existing uses in the building conform to the land use designation.

The project site is located within the Cannery Village area of Newport Beach, which is the historic center of the City's commercial fishing and boating industry and contains a mix of small shops, art galleries, professional offices, and service establishments (Exhibit #2). Marine-related commercial (boat sales) and marine-related industrial uses (boat repair) are also found in the area.

The project site fronts the Rhine Channel and from the 1930's through the 1950's, shipyard and cannery operations, boat building activities, and metal plating facilities were located along the Rhine Channel and other portions of LNB.

The applicant states that on November 6, 2000, a three-story structure consisting of an office building and parking structure located on the project site that was constructed partly over the Rhine Channel collapsed into the channel (Exhibit #3). According to the applicant, the structure caved in when rusty support beams gave way causing extensive structural damage and substantial debris in the Rhine Channel. The collapse required the immediate removal of part of the 3-story structure, but the exposed concrete bond beam and piles (footing of the

existing structure) supporting the remaining structure were never stabilized. The asphalt/concrete debris that fell into the water during the collapse and subsequent demolition were never removed and has since effectively acted as a revetment. The exposed building foundation (i.e. concrete bond beam and piles) remain unstable.

The proposed project includes installation of a concrete seawall/bulkhead along the (western) side of the property. The new seawall/bulkhead would extend the length of the property for 60-feet, with a return wall at each terminus (Exhibit #4). The seawall/bulkhead would be installed approximately 10-feet out into the Rhine Channel of the existing landside terminus of the building (location where the exposed concrete bond beam and piles are located). The seawall/bulkhead would be installed with the aid of a barge-mounted crane operating within the channel. This 10-foot span (currently occupied by asphalt/concrete debris and to be removed by the project, work to be described below) would be backfilled with sand and covered by a new reinforced concrete slab deck extending from the landside terminus of the building to the new seawall/bulkhead, covering an approximate area of 600 square feet of tidelands and submerged lands within the subject parcel. The seawall/bulkhead would be installed at the existing approximate elevation of +2.5 feet mean lower low water (MLLW) and has been designed to be at a height of +9.0 Mean Lower Low Water (MLLW). It would be jetted into place and secured with helical anchors extending into the adjoining subsurface soils underlie the building.

Prior to installation of the seawall/bulkhead, the remaining asphalt/concrete debris (approximately 100 cubic yards) from the failed structure would be removed from within the footprint of the installation, currently at +2.5 feet MLLW. These activities would take place using a barge-mounted crane operating within the channel. No other dredging or discharge of fill to the Rhine Channel or other waterbodies would occur as a result of the project. Removed asphalt/concrete debris would be transported via truck and disposed of at an appropriate recycling center outside of the Coastal Zone.

2. PRIOR COMMISSION ACTIONS ON ADJACENT SITES AND ON SITE

a. ON ADJACENT SITES

(1) 2800 Lafayette Avenue

On December 8, 1980, the Commission approved Coastal Development Permit No. P-80-7354-(Tonti) for: the reconstruction and change in use of an existing 6,000 square foot, 2-story structure being used for wholesale marketing and warehousing of frozen foods on a 6,000 square foot M-1 lot adjacent to the Rhine Channel. Docking facilities existed for commercial fishing boats. The project included the demolition of on site structures consisting of a fashion shop, a storage shed, a single-family residence and a small accessory structure and changed the use to a 6,500 square foot, 2-story restaurant and a 550 square foot retail fish market on the 1st floor facing the street. The project also included a provision of a 5-foot wide public walkway along the channel. Additionally, the project included construction of parking facilities on two off-site areas, one a 4,050 square foot M-1 Parcel (2 lots)

and the other an 11,500 square foot C-1 parcel (5 lots). The remainder of the parking requirements were met by an existing lot below an office complex (2808 Lafayette Avenue i.e. the subject site) owned by the applicant. Staff recommended approval of the project subject to three (3) Special Conditions: SPECIAL CONDITION NO. 1 required a deed restriction that provided: a) that the applicant shall retain the same number of boat slips that were then present; and b) that these slips shall be used only by commercial fishing vessels. SPECIAL CONDITION NO. 2 required recording of a document irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for a public access way along the shoreline. Such easement was to be 5-feet wide and located along the 5-foot walkway between the seawall/bulkhead and restaurant. Such easement was to be recorded free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer was to run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The period of dedication was to be irrevocable for a period of 21 years, such period running from the date of recording. SPECIAL CONDITION NO. 3 required that the applicant provide proof that the eighteen (18) parking spaces on off-site Lot #3 2808 Lafayette Avenue), which were to be removed from the project and substituted with other parking, be replaced within 300-feet of the project. Said parking spaces were to be operated at least between the hours of 6:00 pm to 12:00 pm.

At the December 1985 Commission Hearing, the Commission approved De Minimis Waiver No. 5-85-717-(Zimmerman) for: the construction of two (2) new commercial docks with three (3) new pilings.

(2) 2804 Lafayette Avenue

On March 15, 1990 the Commission approved Administrative Permit No. 5-90-075-(Fluter) for: the demolition of a storage shed and construction of a 26-foot high, 3,063 square foot mixed-use commercial and residential structure with four (4) parking spaces (each use has two (2) parking spaces). Additionally, the project included construction of a 6-foot wide public walkway on piles on the waterfront side of the parcel. Staff recommended approval of the project with no Special Conditions.

(3) 2806 Lafayette Avenue

On July 25, 1984 the Commission approved Administrative Permit No. 5-84-393-(Barrett) for: the construction of a new private boat dock, ramp and

finger float. Staff recommended approval of the project with no Special Conditions.

On July 12, 1990 the Commission approved Coastal Development Permit No. 5-90-471-(701 Lido Park Partnership) for: the demolition of a storage shed and construction of a mixed-use commercial/residential facility consisting of 500 square feet of office space and a 1,656 square foot residential unit on the 2nd level with a 402 square foot two (2) car garage for residential use and a two (2) covered parking spaces for the commercial use. Additionally, the project included construction of a 6-foot wide public walkway on piers abutting the existing seawall/bulkhead. Staff recommended approval of the project with no Special Conditions:

b. ON SITE

(1) 2808 Lafayette Avenue

On July 26, 1976, the Commission approved Coastal Development Permit No. P-5-19-76-7903-(Zimmer) for: the demolition of an existing building and construction of a 3-story marine oriented commercial building with a ground level (1st floor) twenty (20)-space parking garage and construction of a boat dock and deck areas. Staff recommended approval of the project subject to one (1) Special Condition: SPECIAL CONDITION NO. 1 required a deed restriction limiting the use of the proposed structure to marine service commercial use.

On March 24, 2006, an application for Coastal Development Permit No. 5-06-119-(Morehart) was submitted for dock work consisting of the removal and replacement of the existing dock with a new dock, gangway and pile. On April 29, 2008, due to inactivity, the file was returned to the applicant.

3. STANDARD OF REVIEW

The City of Newport Beach has a certified Land Use Plan (LUP) but the Commission has not certified a Local Coastal Program (LCP) for the City. As such, the Coastal Act polices are the standard of review with the certified LUP providing guidance.

B. PROTECTIVE STRUCTURES AND HAZARDS

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in relevant part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...*

1. Seawall/Bulkhead Required to Protect Existing Development

Section 30235 of the Coastal Act states that seawalls/bulkheads shall be permitted when required to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of high flood hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion or destruction of the site or surrounding area.

The purpose and need for this project is to install a new seawall/bulkhead to stabilize the exposed footing of an existing bayfront commercial building that has become unstable following the collapse of part of the building into the bay and to allow the removal of the remaining asphalt/concrete debris from the failed structure.

The existing concrete bond beam and piles compose the eastern (shoreward) footing of the existing structure. The footing supports the existing building. The footing was exposed when the 3-story structure consisting of an office and parking structure collapsed into the bay. The concrete bond beam and piles were never stabilized, and the adjoining structural elements (the former parking structure slab) have not been replaced, nor has the lateral support that these elements originally provided. The asphalt/concrete debris was never removed and has since effectively acted as a revetment. Any further erosion in the channel, or maintenance dredging immediately along the footing/beam and piles, would remove additional materials from alongside these elements and would have the effect of further reducing lateral support to this important structural element. According to the applicant, it is crucial that some degree of lateral support be returned to the waterward edge of the building to offset the loss of lateral support that occurred when the parking structure was lost. The applicant states that the installation of a properly designed seawall/bulkhead would provide this stability.

In order to analyze and fully assess the situation, several studies were conducted. In the letter from William Simpson & Associates, Inc. Consulting Structural Engineers dated June 4, 2012, the engineer asserts that the existing concrete bond beam and piles are still functional; however, due to the recent dredging of the Rhine Channel (CDP No. 5-10-162) in front of the site, erosion would remove soil alongside the concrete bond beam and piles and would jeopardize their structural integrity, if they remain unprotected. Installation of the seawall/bulkhead as proposed would protect the concrete bond beam and piles and the existing structure from erosion. In order to ensure that the work does not adversely affect adjacent properties, that they minimize risks to life and property, and to assure stability and structural integrity, the Commission imposes **SPECIAL CONDITION NO. 6** which requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations.

The proposed project involves the fill of coastal waters with a new seawall/bulkhead. The purpose of the proposed fill is to protect existing structures in danger from erosion, which is not one of the eight allowable uses enumerated under section 30233 of the Coastal Act. However, as stated in the policy above, section 30235 of the Coastal Act requires the Commission to approve revetments and other similar structures provided that such structures are for the purpose of protecting existing structures in danger from erosion and provided that the structures are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The proposed structure is for the purpose of protecting existing structures. In addition, the proposed project is occurring within an urban harbor at a location isolated from the nearest open coastal shoreline and longshore littoral sand transport mechanisms.

2. Wall Alignment

Typically, the Commission's approach has been to require protective devices to be located as far landward as feasible in order to mitigate adverse effects that protective devices typically have (e.g. public access impediment, adverse visual impacts, etc.). The proposed seawall/bulkhead would be installed approximately 10-feet out into the Rhine Channel seaward of the existing landside terminus of the building's foundation (location where the exposed concrete bond beam and piles are located). The applicant has not provided any written structural/engineering justification for placing the seawall/bulkhead 10 feet away from the foundation the seawall/bulkhead is designed to protect. However, in a telephone call with Commission staff, on November 19, 2012, the applicant explained that additional construction-phase shoring would be required in order to place the bulkhead/seawall immediately adjacent to the building or a short distance from it. Such shoring would involve additional expense and increased construction-phase risk to destabilizing the building. The proposed alignment would avoid any need for additional shoring and it would be in alignment with the wall to the south. While it has been determined that the seawall/bulkhead is necessary to protect an existing structure, the seawall/bulkhead is not located as far landward as possible or designed to minimize the amount of fill of coastal waters so alternatives must be considered in order to identify the option that is least environmentally damaging feasible alternative.

Section 30108 of the Coastal Act states that "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. However, as proposed, the currently designed project is not the

least environmentally damaging feasible alternative. The following alternatives were considered for the proposed project:

a. No work

This option would leave the building and slope in a continuously exposed state. The exposed concrete bond beam and piles would remain unprotected and subsequent natural erosion would jeopardize the structural integrity of the existing structure. Additionally, this alternative would not result in a final condition that is far better from a habitat stand point from the prior or existing condition. This alternative would not restore soft bottom habitat that was either previously shaded from sunlight or covered by asphalt/concrete debris. Therefore, this alternative is not a feasible solution to the present problem nor is it the least environmentally damaging feasible alternative.

b. Installation of a seawall/bulkhead at the location of the existing building foundation (i.e. concrete bond beam and piles)

The applicant states that while this alternative is conceptually advantageous, this solution proves to be technically infeasible because there would be no room for installation of the new seawall/bulkhead (a driving hammer is envisioned and would require a few feet of space over the line of installation) nor for installation of the tieback elements that would be needed to support the wall. Additionally, the applicant states that there are geotechnical and constructability concerns if placed this close to the landside terminus of the property.

c. Installation of a seawall/bulkhead aligned with the adjacent seawalls/bulkheads located to the south (10 ft. encroachment into bay)(current proposal)

The bulkhead/seawalls located on the adjacent properties are not in alignment with one another. The wall to the south is about 3-feet more seaward than the wall to the north. With the location of adjacent bulkhead to the south as a guide the applicant chose the most seaward possible alignment to place the bulkhead for the subject site. The applicant considers this concept the most feasible and has chosen it because the applicant states that this alternative allows an adequate amount of space for seawall/bulkhead installation equipment (i.e., a driving hammer) and provides room for tieback anchor rods to extend into the subsurface behind the wall without interfering with the existing piles and concrete bond beam that form the building's eastern foundation. However, the applicant does not provide any written justification as to the need to choose the most seaward possible alignment (which is 10-feet into the channel) instead of using the bulkhead alignment that is 3-feet further landward and would result in less fill of the channel (i.e. a 7-foot encroachment). The applicant is also proposing to remove concrete debris from within the footprint of the proposed structure and cites this as a habitat benefit. However, the benefit would not be significant in this case because the debris would be replaced with the proposed structure and backfill.

d. Installation of a seawall/bulkhead aligned with the adjacent seawalls/bulkheads located to the north (7 ft. encroachment into bay) or using a 'stringline'

The bulkhead on the adjacent property to the north is about 3-feet further landward than the wall to the south. Aligning the bulkhead here would still provide adequate space to build the seawall without construction phase shoring, and would reduce the amount of encroachment into the bay. Similarly, aligning the wall in accordance with a 'stringline' drawn between the two adjacent bulkheads would render an alignment that is more landward than the one proposed. The existing structure would be protected and the proposed seawall/bulkhead would be located as far landward as possible. As noted above, the applicant is only proposing to remove debris within the footprint of the proposed work. However, the debris field extends beyond this footprint. If the entirety of the debris from the building collapse were removed there would be a net increase in soft bay bottom habitat exposed as a result of the project. Removal of that debris would increase the environmental benefits of the proposed project. Thus, this alternative would result in the least amount of fill and be the least environmentally damaging feasible alternative.

The current proposal results in the seawall/bulkhead being installed approximately 10-feet out into the Rhine Channel from the existing building foundation and is not the least environmentally damaging alternative. In order to minimize the encroachment of the seawall/bulkhead into the channel while taking into account the difficulties that the applicant has stated and thus resulting in the least environmentally damaging feasible alternative, a revised location for the proposed seawall/bulkhead is necessary. Part of the bulkhead/seawall installation includes the applicant's proposal to remove the remaining debris from within the footprint of the seawall/bulkhead installation. However, this raises concerns since limiting the removal of the debris to only within the footprint of the installation results in ongoing impact to soft bay bottom habitat. Therefore, all the asphalt/concrete debris should be removed. Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit revised plans showing that the seawall/bulkhead has been moved to be either within the 'stringline' or in alignment with the bulkhead/seawall to the north (Exhibit #5) and that all asphalt/concrete debris be removed and not just within the footprint of the seawall/bulkhead installation. The revised final project plans shall be reviewed by the City of Newport Beach and determined to be consistent with City standards.

The proposed seawall/bulkhead is necessary to protect an existing structure. As conditioned, the proposed development is the least environmentally damaging feasible alternative. Therefore, the Commission finds that the proposed project is consistent with Section 30235 of the Coastal Act.

3. Flooding Hazards

The project site is a seawall/bulkhead lot adjacent Newport Bay. Due to its location, the property may be subject to wave and flooding hazards. The seawall/bulkhead has been designed to be at a height of +9.0 Mean Lower Low Water (MLLW) in order to deal with future sea level rise, a minimum standard the City of Newport Beach Harbor Resources has been using for some time now. The Commission Staff Engineer has reviewed the design of the seawall/bulkhead and concluded that the seawall/bulkhead has been designed to adequately deal with wave and flooding hazards and is safe from these hazards at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to "*assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices...*"

Although it has been determined that the site is safe for development at this time, shoreline areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect shoreline processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as shoreline process altering structures, such as jetties, are modified, either through damage or deliberate design. The effects of sea level rise also adds some uncertainty. In order to address this situation with respect to Coastal Act policy, **THREE (3) SPECIAL CONDITIONS** are necessary.

1. Assumption of Risk

Given that the applicant has chosen to implement the project despite potential risks from sea level rise, wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission imposes **SPECIAL CONDITION NO. 7** for an assumption-of-risk agreement. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

2. Future Development

As discussed previously, the project site is a bayfront property where no seawall/bulkhead currently exists and it may be subject to future flooding and wave attack as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **SPECIAL CONDITION NO. 8**, which states that any future development or additions on the property, including but not limited to any future improvements to the seawall/bulkhead, requires a Coastal Development Permit from the Commission or its successor agency. Section 13253 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

3. No seaward placement of seawall/bulkhead

The seawall/bulkhead design will conform to the current minimum elevation requirements set by the City of Newport Beach, that the seawall/bulkhead elevation be at least +9 foot MLLW. This elevation has been established as a minimum standard and, according to the City of Newport Beach's Harbor Committee Report on Global Warming and Sea Level Rise Effects on Newport Harbor, many of the existing seawalls/bulkheads are lower than the +9

foot MLLW standard. Seawall/Bulkhead standards for Dana Point and Huntington harbor require new seawalls/bulkheads be built to +10 foot MLLW elevation. The City of Newport Beach recommended minimum elevation does not take into account a significant rise in sea level. The proposed seawall/bulkhead reinforcement results in a wall height that will provide protection against flooding from some forecasted sea level rise. However, if the water level or waves exceed the design condition, the current wall will then have to be raised. **SPECIAL CONDITION NO. 9** requires that any future maintenance or work to address changing sea level, increased flooding or other coastal hazards be undertaken on or inland of the proposed development and that there not be any seaward encroachment beyond the identified and recorded line of development.

CONCLUSION

To assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area and to make sure the proposed project does not result in future adverse effects to coastal processes, **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 1** requires the applicant to submit revised plans showing that the seawall/bulkhead has been moved to be either within the 'stringline' or in alignment with the bulkhead/seawall to the north and that all asphalt/concrete debris be removed and not just within the footprint of the seawall/bulkhead installation. **SPECIAL CONDITION NO. 6** requires incorporation of the recommendations in the seawall/bulkhead evaluation. **SPECIAL CONDITION NO. 7** require an assumption-of-risk agreement. **SPECIAL CONDITION NO. 8** states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements requires a Coastal Development Permit from the Commission or its successor agency. **SPECIAL CONDITION NO. 9** requires that any future maintenance or work to address changing sea level, increased flooding or other coastal hazards be undertaken on or inland of the proposed development and that there not be any seaward encroachment beyond the identified and recorded line of development. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30235 and 30253 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.

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored and that the use of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. Section 30231 of the Coastal Act requires that biological productivity and the quality of coastal waters to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and where feasible, restored.

A biological survey of the project site was conducted and a report completed (Marine Biological Resources Assessment for the Rhine Channel, Ca prepared by Ecomarine, Consulting LLC for Anchor QEA, LLC received July 14, 2011) that stated that the project site was devoid of any Eelgrass and *Caulerpa taxifolia*. Additionally, no fish were observed in the water column and only very few invertebrates were found. What was abundantly found on site though, were the asphalt/concrete debris from the failed structure were found in the project site. Prior to the failure of the structure, part of the building was located over the channel and sunlight was prevented from reaching the channel floor (soft bottom habitat). This situation continued with the failure of the structure, but in this case the channel floor became littered with the failure debris. The proposed project would change this situation, as it would include some removal of the asphalt/concrete debris (within the footprint of the proposed seawall/bulkhead and walkway/deck).

As noted in the findings above, the least environmentally damaging feasible alternative would include removing the entire debris field that remains from the collapse of the building. With such removal the final condition would be far better from a habitat stand point compared with the prior or existing condition. As conditioned, the project would restore soft bottom habitat that was either previously shaded from sunlight or covered by asphalt/concrete debris. Thus, the project would enhance the marine environment.

The site has been surveyed for eelgrass and no eelgrass was discovered within the project area. The eelgrass survey took place on October 24, 2010 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the January 2012 Coastal Commission

Hearing and by this time the eelgrass survey would not continue to be valid since it is now during the period of eelgrass active growth. Thus, an up-to-date eelgrass survey must be conducted. In addition, a pre-construction *Caulerpa taxifolia* survey was completed on October 24, 2010 by the City of Newport Beach Harbor Resources Division. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendaized for the January 2012 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 11** and **12**, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **SPECIAL CONDITION NO. 12** also identifies the procedures necessary to be completed prior to beginning any construction.

The proposed development will occur adjacent to and within Newport Bay, specifically Lower Newport Bay. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the harbor habitat, potential water quality issues must be examined as part of the review of this project. The applicant has stated that the project will adhere to established best management practices (BMPs) throughout construction to minimize or eliminate environmental impacts. Additionally, a silt curtain/debris boom will be employed to ensure no debris enters the Rhine Channel. However, additional water quality measures are necessary in order to minimize any adverse water quality impacts. Thus, in order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 10** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 10** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 11** identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction. **SPECIAL CONDITION NO. 12** requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be

provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

City of Newport Beach Coastal Land Use Plan (CLUP)

Policy 3.1.1-9. Protect, expand, and enhance a system of public coastal access that achieves the following:

- *Maximizes public access to and along the shoreline;*
- *Includes pedestrian, hiking, bicycle, and equestrian trails;*
- *Provides connections to beaches, parks, and recreational facilities;*
- *Provides connections with trail systems of adjacent jurisdictions;*
- *Provides access to coastal view corridors;*
- *Facilitates alternative modes of transportation;*
- *Minimizes alterations to natural landforms;*
- *Protects environmentally sensitive habitat areas;*
- *Does not violate private property rights.*

Policy 3.1.1-11. Require new development to minimize impacts to public access to and along the shoreline.

Policy 3.1.1-14. Require a direct dedication or an Offer to Dedicate (OTD) an easement for vertical access in all new development projects causing or contributing to adverse public access impacts, unless adequate access is available nearby. Vertical accessways shall be a sufficient size to accommodate two-way pedestrian passage and landscape buffer and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent.

Policy 3.1.1-15. Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.

Policy 3.1.1-16. Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts

responsibility for maintenance and liability.

Policy 3.1.1-17. *Require new development in waterfront commercial areas to provide public access easements to and along the waterfront. Where appropriate, integrate public access easements into the project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels.*

Policy 3.1.1-21. *Provide a continuous waterfront walkway along the Rhine Channel connecting Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19th Street.*

Policy 3.1.1-26. *Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.*

The subject site is located on the bayfront/Rhine Channel, between the street ends at 28th Street and 29th Street. There is presently bayfront lateral access from the 28th Street, street end to the subject site (Exhibit #6). There is also lateral bayfront access from the 29th Street, street end, but that access ends at 2816 Lafayette Avenue due to an existing building that obstructs continuous access. So, continuous public lateral access along the bay front is presently obstructed by several properties at the mid-point between 28th and 29th Street.

Section 30210 of the Coastal Act provides that maximum access and recreational opportunities shall be provided to carry out the requirement of Section 4 of Article X of the California Constitution, which states the following:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

This section of the Constitution Section 30213 of the Coastal Act states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Additionally, the City of Newport Beach's Certified Land Use Plan also contains several policies regarding protecting, encouraging and providing public access. Some of these LUP policies are even specific to the area of the project site.

On July 26, 1976, the Commission approved Coastal Development Permit No. P-5-19-76-7903- (Zimmer) for development on the project site; a portion of that development is what failed on site and collapsed into the channel in 2000. The development approved in 1976 was for the demolition of an existing building and construction of a 3-story marine oriented commercial building with a ground level (1st floor) twenty (20)-space parking garage and construction of a boat dock and deck areas. The City of Newport Beach in its' approval required that a pier extend across the entire bayside of the property and that the owner grant an easement for public access. Thus, the owner

complied by providing public access on site on a pier/boardwalk along the channel. The pier appears to still exist to this day, but the structure adjacent to it failed and collapsed into the channel. In addition, the connection from this pier to the adjacent existing public access walkway to the north of the project site (at 2806 Lafayette Ave.)(to be discussed below) also failed; thus debilitating on site public access, which currently extends along the bayfront starting from the 28th Street, street end from being reached. The applicant is not proposing to reestablish connectivity on site to the existing public walkway adjacent to the site.

Lateral public access along the Rhine Channel in the project area is highlighted in the City's Certified LUP with some policies requiring that new development along waterfront commercial areas provide public access to and along the waterfront; and also that a continuous waterfront walkway along the Rhine Channel connecting Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19th Street be established. Additionally, the Coastal Access and Recreation Map of the Certified LUP shows continuous lateral public access as a goal along this block fronting the Rhine Channel. The existing impediments to continuous lateral access are between 2812 and 2816 Lafayette Avenue which are to the south of, and adjacent to, the project site, and at the subject site due to the collapse of the accessway connection in 2000. Continuous public access along all of the properties between the 28th Street and 29th Street, street ends is anticipated as these sites redevelop.

As shown by the City's requirements for public access easements or offer to dedicates for public access on adjacent properties in prior approvals, the City has invested time and effort to provide public access along the channel, consistent with its' Certified LUP. For the properties (2804 & 2806 Lafayette Road) to the adjacent north of the project site, the City required that they each dedicate to the City a 6-foot wide public access easement along the entire water frontage (Exhibit #6). Additionally, for the property located at 2806 Lafayette Road, the City required that the dedication also include a portion of the northeasterly side property line sufficient to make the required physical connection with the public access easement on the adjoining property located at 2808 Lafayette Avenue (the project site and this easement was described previously). Subsequently, these two properties applied for Coastal Development Permits (CDP NO. 5-90-075 for development at 2804 Lafayette Road and CDP No. 5-90-471 for development at 2806 Lafayette Road) from the Commission and both proposals included a 6-foot wide public walkway along the waterfront side of the parcel and were approved by the Commission. On the property south of 2806 & 2804 Lafayette Road, located at 2800 Lafayette Road (Exhibit #6) which is adjacent to the 28th Street, street end, the Commission approved development (CDP NO. P-80-7354) with a Special Condition requiring an offer to dedicate a 5-foot wide public access easement along the 5-foot wide walkway between the existing bulkhead and the proposed restaurant along the channel. Therefore, these four (4) properties together establish a lateral public access walkway along the Rhine Channel consistent with the City's Certified LUP and the Coastal Act.

As stated previously, the applicant is not currently proposing to reestablish the public access that existed on site, which would adversely impact the existing lateral public access on site and that currently still continues to exists along the Rhine Channel along the adjacent properties, as described above. Sections 30210 and 30213 of the Coastal Act requires that maximum access to navigable waters be provided for all people and it further provides that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. The proposed new development provides an opportunity to reestablish public access that was adversely impacted when

the existing structure failed. Additionally, the City's certified LUP provides a number of policies that require public access along the bayfront, including the bayfront at the subject site. The project would be consistent with the City's Certified LUP and prior actions the City has taken on adjacent sites if public access were re-established at the subject site.

Furthermore, the proposed bulkhead/seawall and accompanying deck/walkway would be located on privately-owned submerged lands that are subject to the public trust doctrine. (See *Marks v. Whitney* 6 Cal.3d 251, 261.) The public trust doctrine requires that such lands be used consistent with the doctrine, which includes, but is not limited to, the right for the public to use the navigable waters of the state, like the Rhine Channel, for fishing, hunting, bathing, swimming, boating and general recreation purposes and to use the bottom for anchoring, standing, or other purposes. (Id. at p. 259.) Since the public has these rights over submerged lands subject to the public trust doctrine, any development, such as the current proposal, in submerged lands must provide a public use consistent with the public trust doctrine. Placing a private structure on public trust lands without a public trust use associated with the structure, as is the case with the current proposal, is inconsistent with the public trust doctrine and Section 30210 of the Coastal Act. Thus, the project has been conditioned to require the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access on the walkway/deck area that is proposed between the existing building and the proposed seawall/bulkhead so that the public may continue to use the public trust easement area of the filled submerged lands to access the navigable waters of the Rhine Channel for public trust purposes.

The area between the proposed seawall/bulkhead and the existing building, where a walkway/deck is to be constructed, offers an ideal location for public access and recreation that can be provided on site and also can be linked to the existing public access walkway along the Rhine Channel at 2806 Lafayette Avenue, and linked in the future to access at 2812 Lafayette Ave., whenever that access is provided. Therefore, in order to reestablish public access on the project site, the Commission is imposing **SPECIAL CONDITION NO. 2**, which requires the applicant irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access to the area described above. According to City standards, public access easements along the bay shall be a minimum of 6-feet in width. Thus, as stated in **SPECIAL CONDITION NO. 1**, the revised plans shall be reviewed by the City of Newport Beach in order to determine that the revised design is consistent with City standards, including that the width of the public access walkway is consistent with City standards.

In order to ensure that this proposed public access walkway is maintained and kept in operating order consistent with the Commission's requirements, the Commission imposes, **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a Public Access and Recreation Easement Area Management and Maintenance Program for the public access walkway.

To ensure that the lateral public access walkway is made available on site, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires that the public access walkway and seawall/bulkhead be constructed concurrently and shall be made available for public use immediately upon completion.

To ensure that the public is aware that lateral public access is available on site, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires submittal of Public Access Signage Plan, which will indicate the availability of the on-site public amenities.

CONCLUSION

To minimize the adverse impacts upon public access, **FOUR (4) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 2** requires the applicant irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access walkway along the top of the proposed seawall/bulkhead (between the building and the bulkhead). **SPECIAL CONDITION NO. 3** requires the applicant to submit a Public Access and Recreation Easement Area Management and Maintenance Program for the public access walkway. **SPECIAL CONDITION NO. 4** requires that the public access walkway and seawall/bulkhead be constructed concurrently and shall be made available for public use immediately upon completion. **SPECIAL CONDITION NO. 5** requires submittal of Public Access Signage Plan, which will indicate the availability of the on-site public amenities. Therefore, the Commission finds that the proposed development would be consistent with Section 30213 of the Coastal Act regarding public access.

E. 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 **SPECIAL CONDITION NO. 13**, which requires 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 and the requirements related to public access.

F. LOCAL COASTAL PROGRAM (LCP)

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.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach Harbor Resources Division 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 Categorically Exempt from Provisions of CEQA for the construction. 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 follows: **1)** submittal of revised final project plans showing: a) the seawall/bulkhead relocated to be either within the ‘stringline’ or in alignment with the bulkhead/seawall to the north; b) to the maximum extent feasible, the revised location of the seawall/bulkhead will provide connectivity to the existing adjacent lateral public access along the Rhine Channel; and c) and that all asphalt/concrete debris be removed and not just within the footprint of the seawall/bulkhead installation; **2)** submittal of an irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of: 1) the area between the proposed seawall/bulkhead and the existing building; **3)** submittal of a Public Access and Recreation Easement Area Management and Maintenance Program for the public access walkway; **4)** construction and development phasing ;**5)** submittal of Public Access Signage Plan; **6)** conformance with geotechnical recommendations; **7)** assumption of risk; **8)** future development; **9)** no future seaward extension of shoreline protection device; **10)** construction responsibilities and debris removal; **11)** identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction; **12)** requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*; and **13)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

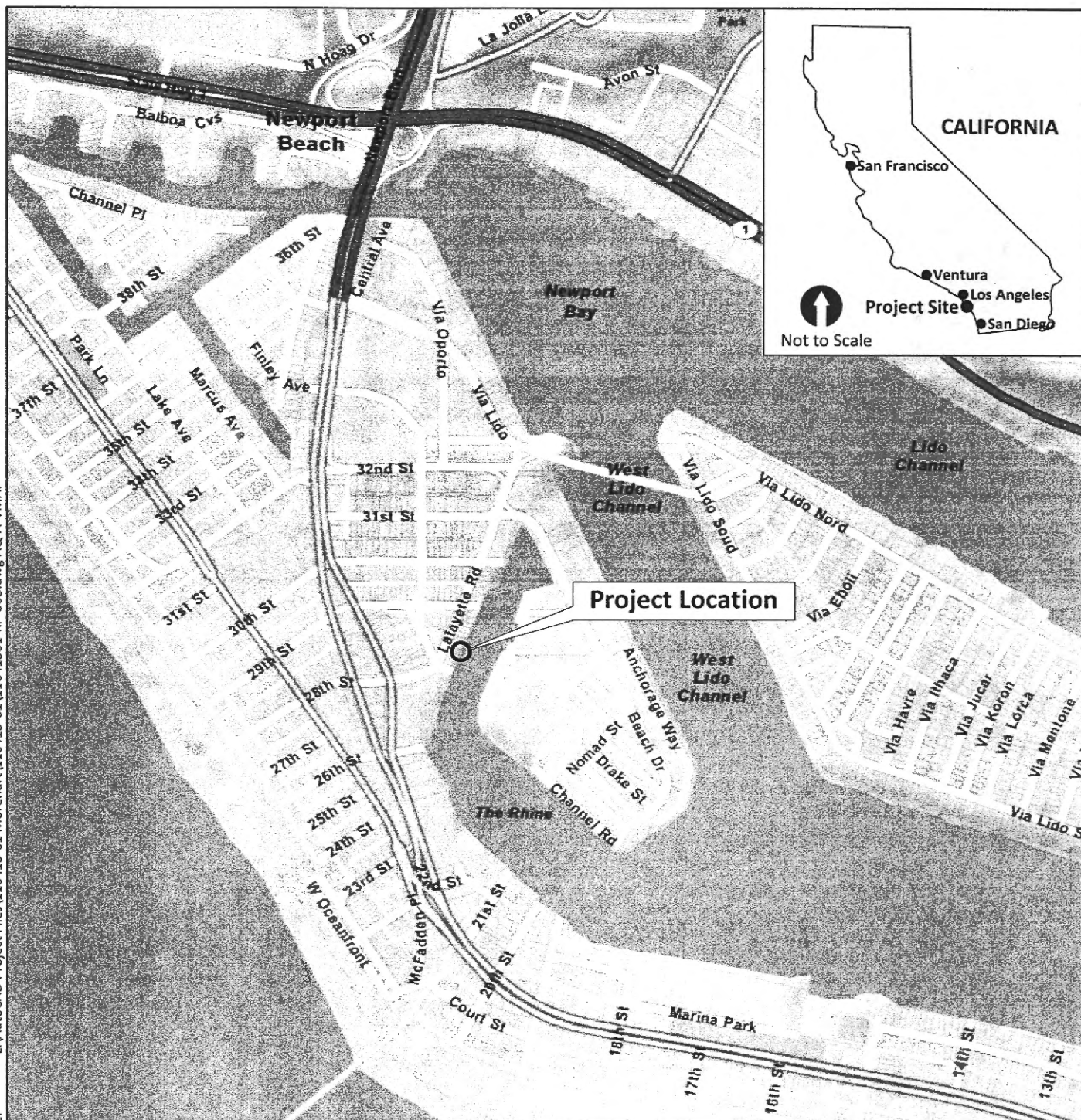
Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed 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.

APPENDIX 1

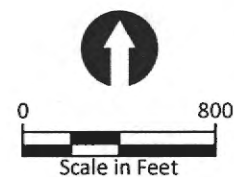
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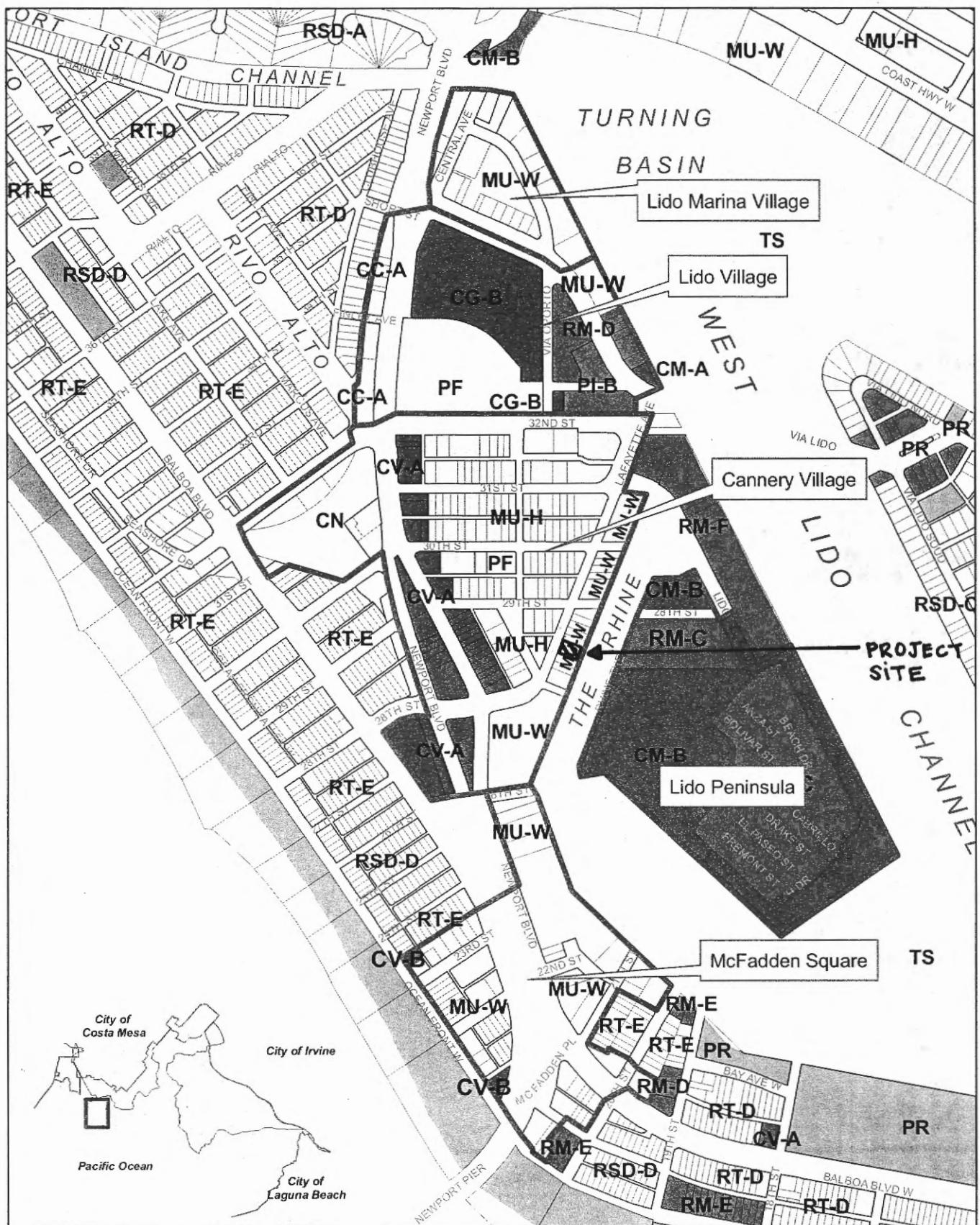
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Jul 12, 2011 10:58am mpratschner



SOURCE: Drawing prepared from ESRI GIS data.
HORIZONTAL DATUM: California State Plane, Zone VI, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).





Lido Village / Cannery Lido Peninsula / McFadden

Figure 2.1.5-1
Local Coastal Program
Coastal Land Use Plan

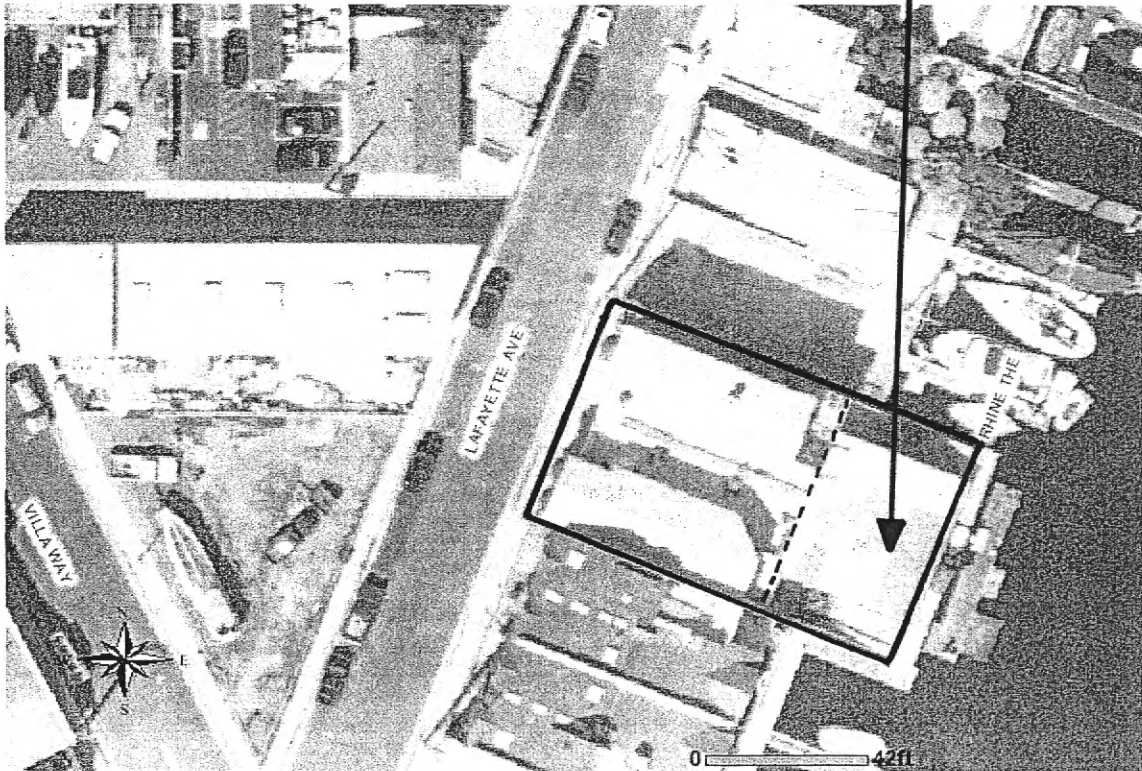
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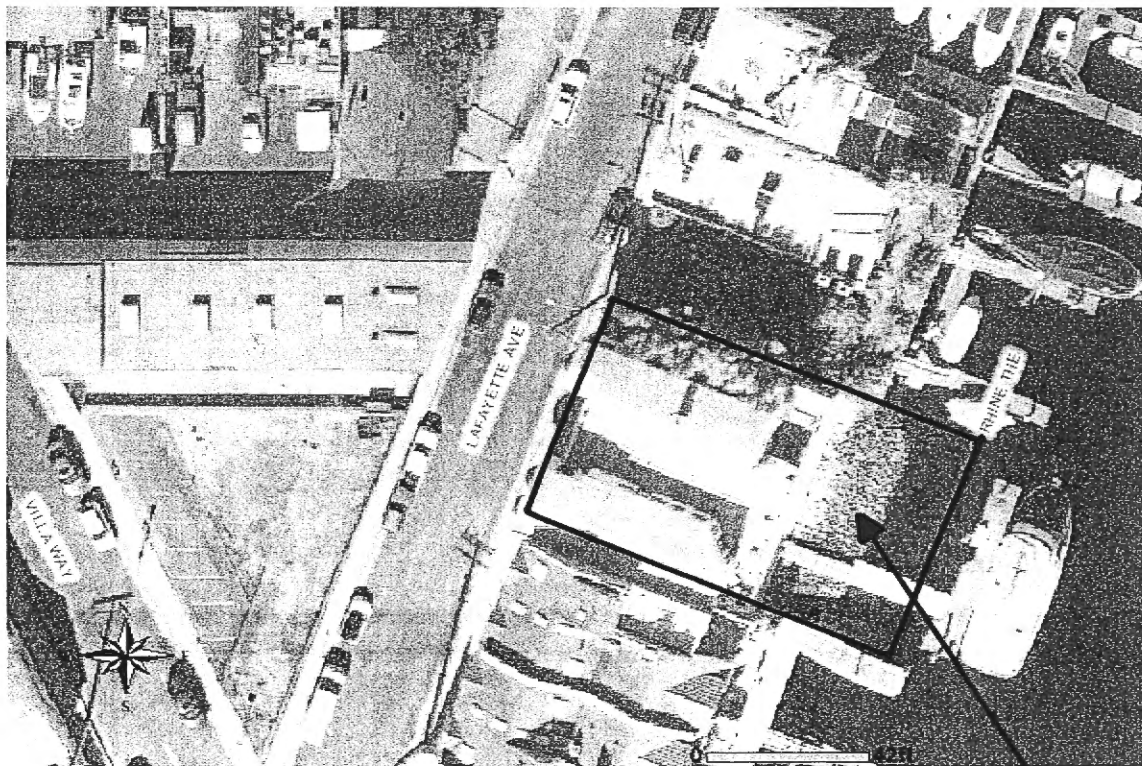
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STRUCTURE THAT FAILED



Before

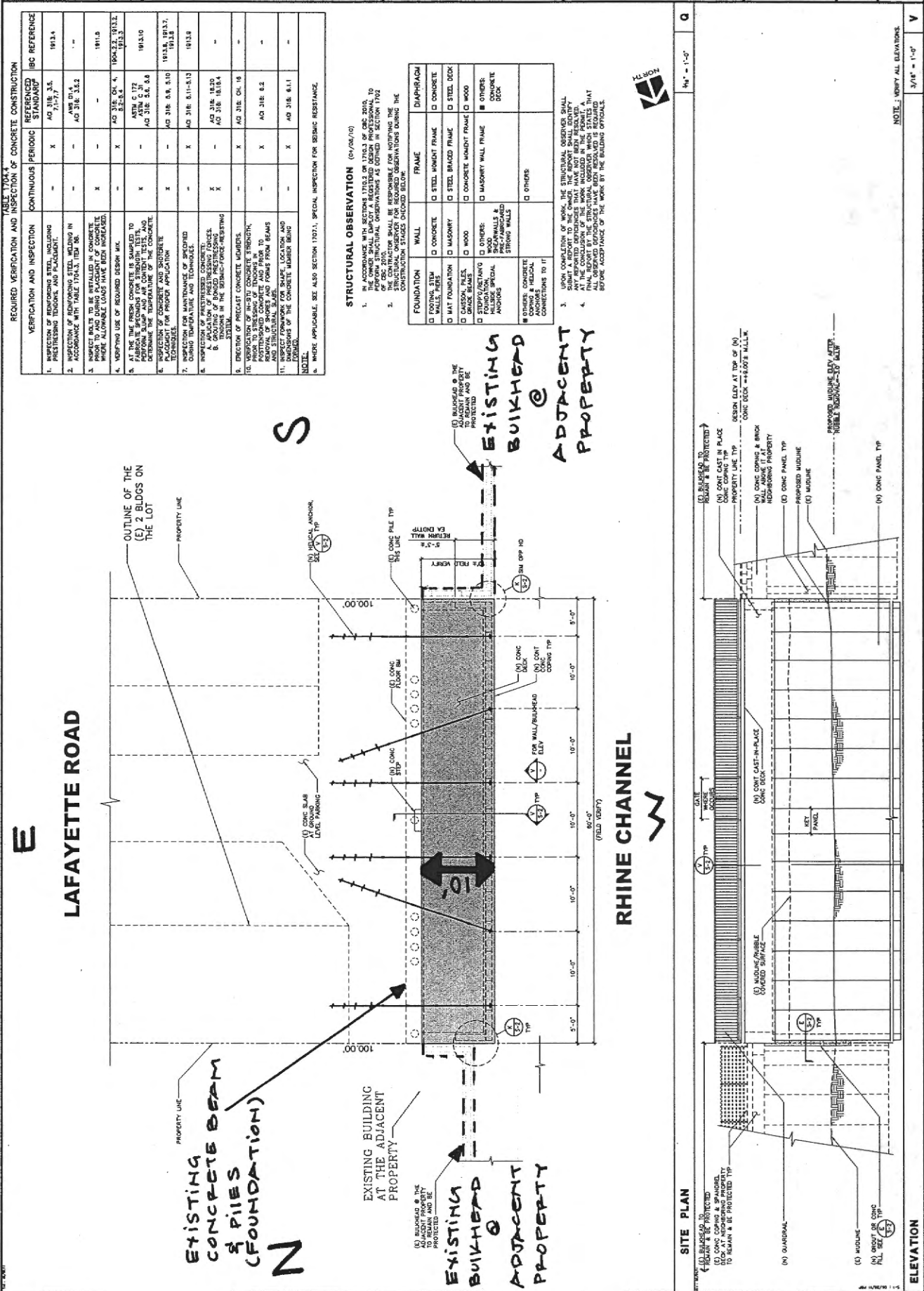


After

ASPHALT/CONCRETE
DEBRIS

Figure 2

Aerial View Before and After Structural Collapse
2808 Lafayette Road Seawall Installation



CONCLUDING REMARKS

CONCLUDING REMARKS

