

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
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Staff: John T. Auyong
Staff Report: March 22, 1996
Hearing Date: April 9-12, 1996
Commission Action:



John

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-96-026

APPLICANT: City of Newport Beach AGENT: Emmet Berkery

PROJECT LOCATION: From Coast Highway (State Route One) between Newport Center Drive and Clubhouse Drive, through Irvine Terrace Park, along portions of Seadrift Drive and El Paseo Drive, and through the Bahia Corinthian Yacht Club (seaward of the intersection of El Paseo and Bayside Drives) where it would join the existing discharge point into Newport Harbor (Lower Newport Bay).

PROJECT DESCRIPTION: Construction of a reinforced concrete pipe storm drain approximately 1,800 linear feet long with a variable diameter (69" at Coast Highway, 84" from Coast Highway to midway through Irvine Terrace Park, 75" from midway through Irvine Terrace Park, along Seadrift Drive and along El Paseo Drive to Bayside Drive, and 102" through the Bahia Corinthian Yacht Club), temporary closure of a portion of Coast Highway, temporary removal of street trees, temporary impacts to Irvine Terrace Park, and grading consisting of 7,500 cubic yards for excavation and 2,000 cubic yards for backfill.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept D-5219-S

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-90-604 (Irvine Office Co./City of Newport Beach); Geotechnical Update Project No. 10400-01/Report No. 6-4663 and referenced reports dated January 29, 1996, prepared for Emmet Berkery by Stoney-Miller Consultants, Inc.; Negative Declaration adopted by the City of Newport Beach on June 11, 1990 (State Clearinghouse Number 90010342) and Addendum dated February 15, 1996; Orange County Drainage Area Management Plan dated April 1993 to comply with NPDES Stormwater Permits No. CA 8000180 and No. CA 0108740; California Regional Water Quality Control Board, Santa Ana Region, Order No. 96-31 (NPDES No. CAS618030, The County of Orange, Orange County Flood Control District, and Incorporated Cities--Areawide Urban Storm Water Run-off); City of Newport Beach Certified Land Use Plan

SUMMARY OF THE STAFF RECOMMENDATION

Staff is recommending approval of the proposed project with special conditions regarding (1) timing of construction to mitigate adverse public access impacts, (2) compliance with geologic recommendations to mitigate adverse geologic hazards, and (3) water quality measures to mitigate adverse impacts on water quality in Newport Harbor (Lower Newport Bay). The Commission approved essentially the same project, with related conditions, under permit 5-90-604.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS.

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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. Timing of Construction

The portion of the proposed development which requires the temporary closure of one lane of Pacific Coast Highway (State Route One) shall not take place from the Memorial Day holiday weekend through the Labor Day holiday weekend, inclusive.

2. Geotechnical Recommendations

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, plans incorporating the geotechnical recommendations contained in geotechnical investigation dated December 4, 1989 (Project No. 10400-00, Report No. 9-1037) prepared by Stoney-Miller Consultants, Inc. for The Irvine Company, and as confirmed in the Geotechnical Update dated January 29, 1996 (Project No. 10400-01/Report No. 6-4663) prepared for Emmet Berkery by Stoney-Miller Consultants, Inc., into the final design of the proposed development. The project shall be constructed in compliance with said plans incorporating the geotechnical recommendations as approved by the Executive Director.

3. Water Quality

a. Construction Impacts

Prior to issuance of the coastal development permit, the applicant shall submit a copy of the Stormwater Pollution Prevention Plan ("SWPPP") prepared in compliance and consistent with the latest State General Construction Activity Storm Water Permit as required by Order No. 96-31 (NPDES No. CAS618030) of the California Regional Water Quality Control Board, Santa Ana Region. The applicant shall comply with the SWPPP and all requirements of the latest State General Construction Activity Storm Water Permit during all phases of the proposed project.

b. Stormwater Impacts

The applicant shall comply with NPDES requirements set forth by either the State Water Resources Control Board or the California Regional Water Quality Control Board, Santa Ana Region or their successor agencies, including but not limited to Order No. 96-31 (NPDES No. CAS618030), and the Orange County Drainage Area Management Plan prepared in compliance with NPDES Storm Water and Urban Runoff Permits CA 0108740 and CA 8000180.

c. Structural Best Management Practices

The applicant shall install structural Best Management Practices (BMPs) such as, for example, grease/oil separators or inlet trash racks, on the existing catch basins which would drain into the pipe approved by this permit instead of the existing pipes. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a plan indicating the type(s) of BMPs to be installed, and the locations where the BMPs would be installed.

IV. FINDINGS AND DECLARATIONS.

A. PROJECT DESCRIPTION / BACKGROUND

1. Description of Project

The applicant is proposing to construct an 1,800 lineal foot long reinforced concrete pipe storm drain and to divert two existing catch basins from existing pipes to the proposed pipe. The proposed storm drain would be one segment of an existing storm drain pipe system. This pipe system connects primarily to catch basins located in Newport Center, the majority of which is located outside the coastal zone. Thus, this pipe system primarily conveys storm water from outside the coastal zone into Newport Harbor (Lower Newport Bay). However, there are two existing catch basins within the coastal zone that will be diverted so that they drain directly into the proposed pipe.

The proposed storm drain would parallel, and in some cases be immediately adjacent to, an existing storm drain pipe. The proposed storm drain would actually have two segments (see Exhibit B). The proposed storm drain would have a variable diameter, starting at 69" as it crosses Coast Highway (State Route One), then becoming 84" as it goes from Coast Highway to midway through Irvine Terrace Park, then becoming 75" from midway through Irvine Terrace Park and then along Seadrift Drive and along El Paseo Drive to Bayside Drive, and finally becoming 102" through the Bahia Corinthian Yacht Club. The proposed pipe would end at an existing discharge point which empties into Newport Harbor (Lower Newport Bay) just offshore from the yacht club.

One lane of Coast Highway would be closed temporarily during the construction of the portion of the proposed project crossing Coast Highway. The proposed development would also result in temporary impacts to a tot lot in Irvine Terrace Park and the temporary removal of street trees. Also proposed would be grading consisting of 7,500 cubic yards of excavation/trenching to lay the proposed pipe, and 2,000 cubic yards of backfill to bury the proposed pipe.

The proposed storm drain's route would begin in Coast Highway between Newport Center Drive and Clubhouse Drive. It would then continue seaward through the adjacent Irvine Terrace Park, and then along portions of Seadrift Drive and El Paseo Drive down to Bayside Drive. It would then pass through the Bahia Corinthian Yacht Club located seaward of the intersection of El Paseo and Bayside Drives, and finally end just short of the existing outlet structure in Newport Harbor, located underwater offshore adjacent to the yacht club, for the existing storm drain.

According to the applicant, the proposed project is necessary to bring the storm drain system up to current hydrology standards. The capacity of the overall system would be expanded, but the area drained would not. Rather, the proposed pipe would redistribute existing storm water within the existing system. By diverting a part of the existing storm water flow from existing pipes to the proposed pipe, the proposed project would allow the drainage system to better accommodate runoff from major storm events.

2. Previous Commission Action

The Commission approved permit 5-90-604 for essentially the same project. Permit 5-90-604 was conditioned for conformance of the project with geotechnical recommendations, water quality, and timing of construction so that the closure of one lane of Coast Highway would not occur during the summer season. The permit has expired.

The Irvine Company ("TIC") was a co-applicant with the City for permit 5-90-604, but is no longer a co-applicant. As a condition for allowing TIC to proceed with the planned build-out of Newport Center, the City has required the proposed pipe to be built before the build-out occurs. Since TIC decided not to proceed with the build-out at that time, TIC also decided not to go ahead with the proposed pipe at that time. However, the need still exists for the proposed pipe to accommodate runoff from major storm events, so the City has decided to proceed with the proposed pipe at this time.

B. CHAPTER THREE COASTAL ACT ISSUES

1. Water Quality

Section 30231 of the Coastal Act states, in relevant part:

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 . . .

Newport Harbor (Lower Newport Bay) is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support beneficial recreation and aquatic uses. The listing is from the California Regional Water Quality Control Board, Santa Ana Region ("RWQCB"), and the State Water Resources Control Board ("SWRCB"), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its new Watershed Initiative.

a. Construction Impacts to Water Quality

The Negative Declaration Addendum states that the applicant will file a Notice of Intent ("NOI") with the SWRCB for coverage of the proposed project under the General Construction Activity Storm Water Runoff Permit ("GCASWRP"). The NOI would include such information as site characteristics, construction activities, and material building/management practices. Further, the applicant will develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") as required by the GCASWRP. The SWPPP would ensure that adverse water quality impacts resulting from construction activities, such as polluted construction materials draining off the site and entering the storm drains, would be mitigated.

To ensure that adverse water quality impacts from the construction of the proposed project are mitigated, a special condition is necessary requiring the submission of the SWPPP, to be prepared in compliance with the latest State GCASWRP and the requirements of the RWQCB and SWRCB. Further, the special condition must require compliance with the SWPPP and the latest State GCASWRP. Only as conditioned can the Commission find the proposed project to be consistent with Section 30231 of the Coastal Act regarding water quality.

b. Runoff Discharged into the Proposed Project

The proposed development would be a part of the existing drainage system serving Newport Center. The drainage system discharges directly into the waters of Newport Harbor. Pollutants such as sediment or toxic substances such as grease, motor oil, and heavy metals contained within the runoff discharged into the harbor would have significant adverse impacts on the harbor's water quality.

The Negative Declaration Addendum states that the proposed project would not result in additional erosion/siltation impacts to the harbor. The capacity of the overall system would be expanded, but the area drained would not. Rather, the proposed pipe would redistribute existing storm water within the existing system in order to allow City streets to clear more rapidly after rain events. The Commission finds that the proposed pipe would not result in additional pollutants entering the harbor, since the amount of runoff would not be increased by the proposed pipe.

However, on-going adverse cumulative impacts to the harbor's water quality results from the continued entry of polluted runoff from the surrounding developed areas. Except for two catch basins, most of the runoff flowing through the proposed pipe would originate from other existing pipes that would feed into the proposed pipe. Many of the pipes originate outside the coastal zone. Further, the runoff collected from two existing catch basins in the curbs on the eastern side of El Paseo Drive within the Coastal Zone would be diverted from existing pipes to the proposed pipe.

While the proposed pipe would only redistribute existing runoff and not increase it, pollutants carried in the existing runoff affect the water quality of Newport Harbor. Although the harbor is considered an "impaired" water body, and much of the pollutants entering the harbor come from inland developed area outside the coastal zone, or from other sources within the coastal zone besides the proposed or existing pipes such as boats in the harbor, the Commission finds that it is important to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from continued entry of existing pollutants into the harbor. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to water quality.

Thus, to ensure that the amount of pollutants contained in the proposed pipe would be reduced, a special condition is necessary requiring the applicant to comply with National Pollutant Discharge Elimination Systems ("NPDES") requirements set forth by either the SWRCB or the RWQCB or their successor agencies.

The NPDES includes requirements such as the provisions contained in the Orange County Drainage Area Management Plan ("plan"). Components of the plan include, for example, public education, water quality monitoring, and the use of structural and non-structural Best Management Practices ("BMPs") as methods to improve water quality. The plan, dated April 1993, was created to develop measures to comply with the requirements of NPDES Storm Water and Urban Runoff Permits CA 0108740 and CA 8000180. A goal of the permits is to reduce pollutants entering storm drain systems and eventually coastal waters. In addition, the RWQCB recently issued Order No. 96-31 (NPDES No. CAS618030) setting forth additional requirements and the latest in a series of orders which build upon previous water quality improvement efforts.

Further, a special condition is necessary requiring the applicant to install structural BMPs on the two existing catch basins along El Paseo Drive that would be diverted to drain into the proposed pipe. Currently, these existing catch basins drain into the existing storm drain pipes. Installation of structural BMPs would reduce pollutants, such as trash, motor oil and grease, that normally are carried in the gutters along streets by runoff into storm drains. By catching the pollutants before they enter the storm drains, structural BMPs would reduce pollutant levels in runoff entering Newport Harbor through the proposed pipe, thus minimizing to the extent feasible cumulative adverse impacts on the water quality of Newport Harbor.

In addition, water quality impacts were an issue when the Commission previously approved essentially the same project under permit 5-90-604. The special condition regarding water quality in permit 5-90-604 has been expanded and updated to reflect developments in the area of water quality improvement which have occurred since the approval of permit 5-90-604. Thus, only as conditioned can the Commission find the proposed development to be consistent with Section 30231 of the Coastal Act regarding water quality.

2. Public Access / Recreation

a. Maximum 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.

The proposed project would result in the temporary closure of portions of El Paseo and Seadrift Drives. Neither of these roads is the first public road paralleling the shoreline, nor a major access route leading to the shoreline. However, the temporary closure of one lane total of Coast Highway (State Route One) would have adverse impacts on public access. Coast Highway is the major lateral coastal access road linking the coastal cities of Orange County. As a result, it is heavily used by beachgoers travelling to and through Newport Beach.

Therefore, it is necessary to impose a special condition requiring that the portion of the proposed project involving the closure of one lane of Coast Highway shall not occur during the peak summer season from the Memorial Day weekend through the Labor Day weekend, inclusive. In addition, in approving the previous version of the project under permit 5-90-604, the Commission imposed a similar condition. Thus, only as conditioned can the Commission find the proposed project consistent with Section 30210 of the Coastal Act.

b. Access from the First Public Road to the Sea

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby . . .

The portion of the proposed project within the Bahia Corinthian Yacht Club would be located between the nearest public roadway and the shoreline. However, since public access currently is not available at the yacht club, the proposed development would not have impacts on public access. Further, adequate access exists nearby at Bayside Drive Beach. Thus, the Commission finds the proposed development to be consistent with Section 30212 of the Coastal Act since adequate access exists nearby.

3. Growth Inducement

Section 30254 of the Coastal Act states, in relevant part:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division . . .

The applicant has asserted that the proposed pipe is not necessary to serve an increase in planned growth, but rather to serve more adequately existing planned growth based on changed hydrology standards which have evolved since the construction of the existing parallel storm drain in 1962. In 1962, the existing pipes were thought to be adequate to accommodate the buildout of the City in this area. However, according to the Negative Declaration Addendum for the proposed pipe, major storm events in 1969, 1973, and 1983 proved that existing hydrology standards were not adequate to handle major storms. Thus, older existing storm drains need to be upgraded. In approving permit 5-90-604, the Commission previously found the project consistent with Section 30254. Since the proposed project would not induce additional growth, the Commission finds that proposed project to be consistent with Section 30254 of the Coastal Act.

4. Geotechnical Recommendations

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) 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 part of the original project, a geotechnical investigation dated December 4, 1989 (Project No. 10400-00, Report No. 9-1037) was prepared by Stoney-Miller Consultants, Inc., for The Irvine Company. The report found that the proposed pipe alignment would be suitable provided the report's recommendations addressing the presence of relatively shallow groundwater and loose unconsolidated sands, and the surcharging effect of the adjacent slope along El Paseo Drive were incorporated into the project design.

In Geotechnical Update Project No. 10400-01/Report No. 6-4663, dated January 29, 1996, prepared for Emmet Berkery by Stoney-Miller Consultants, Inc., the consultants concluded that the proposed project plans are essentially the same as those they previously reviewed and approved in 1990, and the recommendations in the 1989 geotechnical investigation have been incorporated into the plans for the proposed project. Incorporation of the geotechnical recommendations contained in the 1989 report referenced in and confirmed by the 1996 update would minimize risks from geologic instability.

To ensure that the geotechnical consultants' recommendations are complied with, it is necessary to impose a special condition requiring compliance with the plans which incorporate the geotechnical consultants' recommendations as updated in 1996. Therefore, the Commission finds that the proposed project, as conditioned, would be consistent with Section 30253 of the Coastal Act regarding hazards.

C. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that a coastal development permit shall be issued only if the proposed development would not prejudice the ability of the local government having jurisdiction to prepare a local coastal program (LCP) which conforms with, and is adequate to carry out, the Chapter Three policies of the Coastal Act.

The Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The proposed project would be conditioned to be consistent with the hazards, public access, and water quality policies of Chapter 3 of the Coastal Act. The proposed project as submitted is also consistent with the growth inducement policies of the Coastal Act.

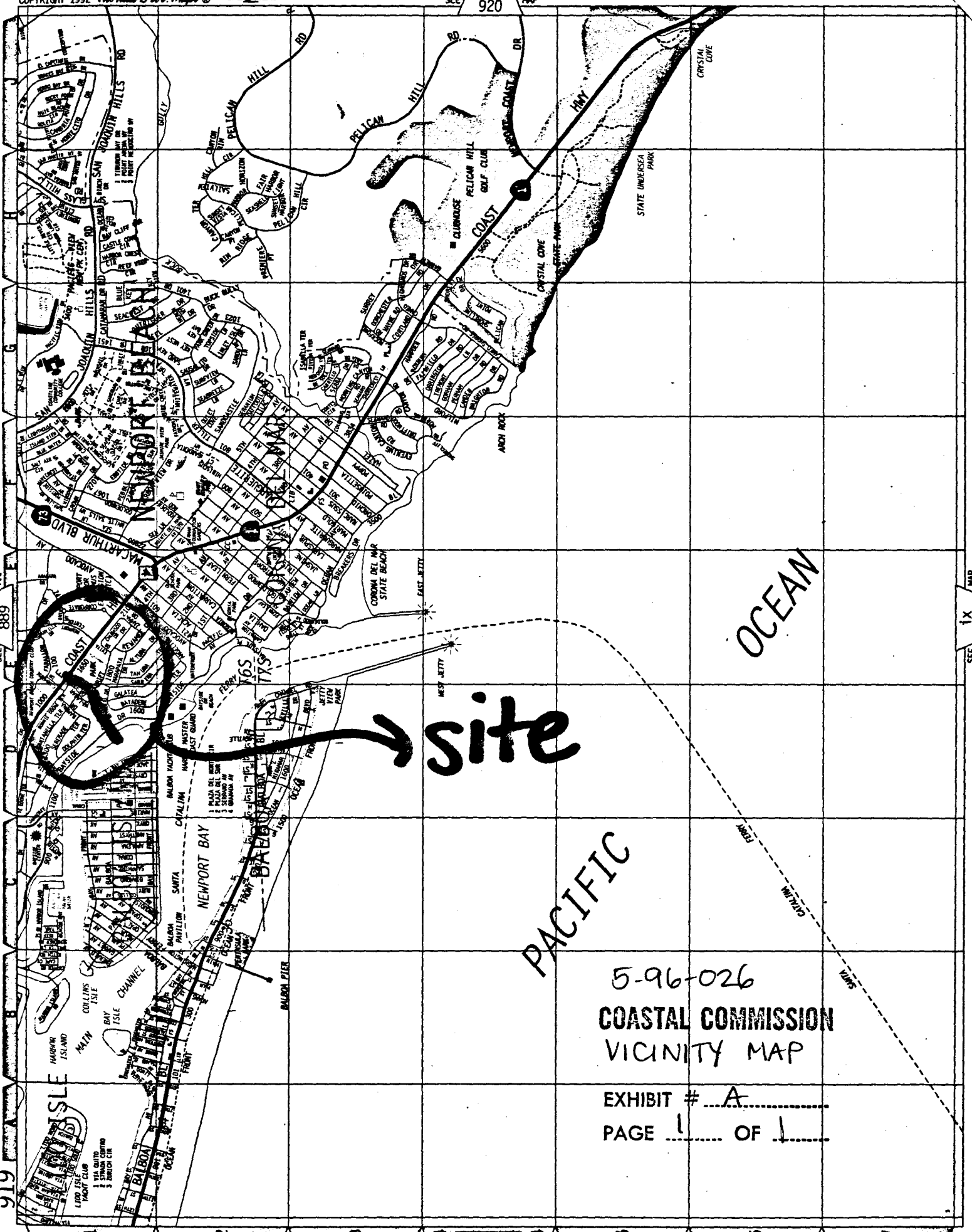
Therefore, the Commission finds that approval of the proposed project as conditioned would not prejudice the ability of the City of Newport Beach to prepare an LCP consistent with the Chapter 3 policies of the Coastal Act.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The subject site is located in an urban zone. The proposed project would not result in additional growth, but rather is necessary to serve existing growth because of changed hydrology standards. The proposed project has been conditioned in order to be found consistent with the hazards, water quality, and public access policies of Chapter 3 of the Coastal Act. Mitigation measures including (1) compliance with geologic recommendations, (2) submission of the Stormwater Pollution Prevention Plan, compliance with National Pollutant Discharge Elimination Systems requirements, and installation of structural Best Management Practices, and (3) prohibitions on the closure of Coast Highway during the peak summer season, will minimize all impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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site

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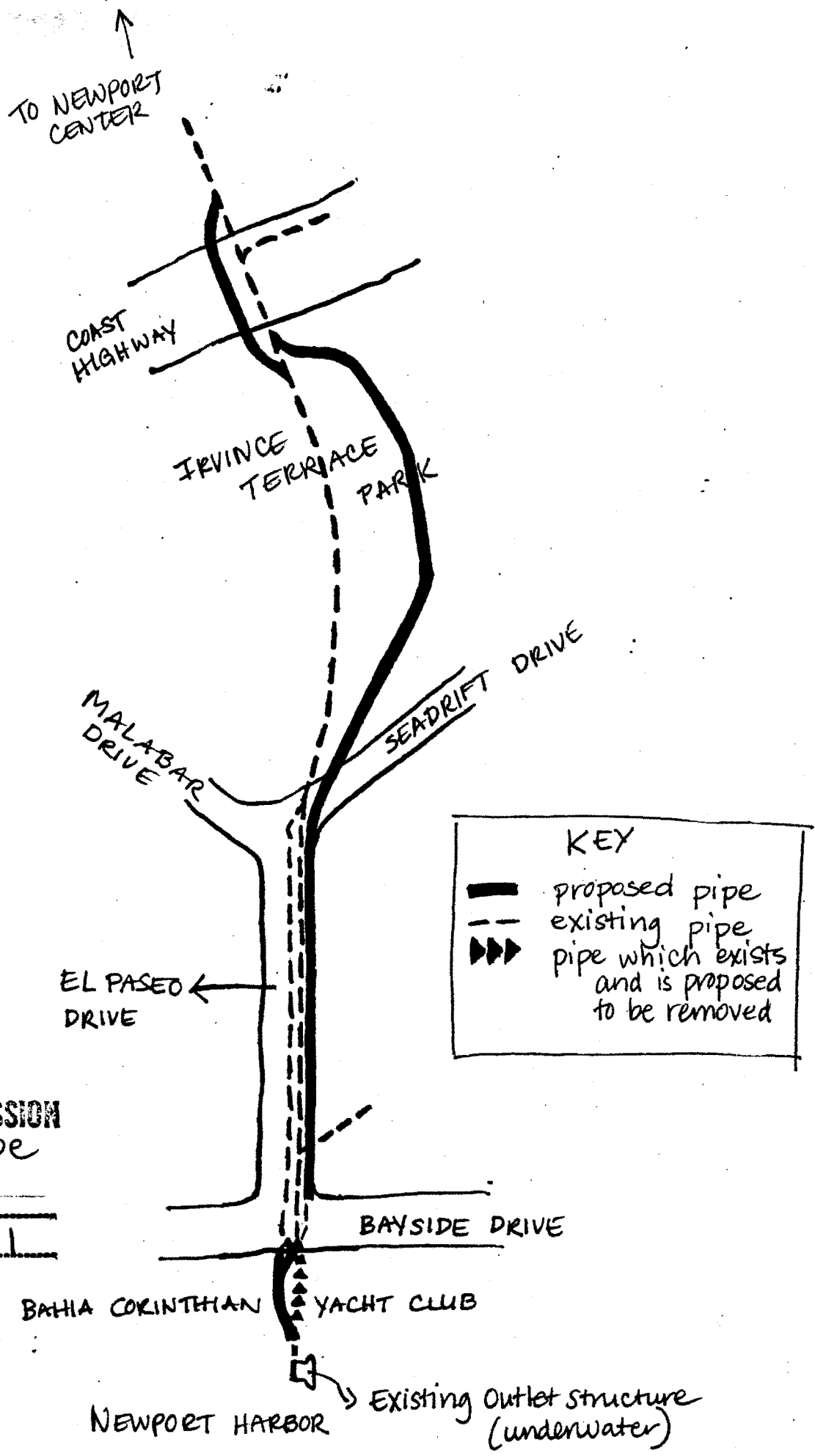
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VICINITY MAP

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SEE 889 MAP

SEE 1X MAP



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 proposed pipe
 EXHIBIT # B
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KEY

- proposed pipe
- existing pipe
- pipe which exists and is proposed to be removed