

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Filed: 4/1/97
 49th Day: 5/20/97
 180th Day: 9/28/97
 Staff: MV-LB *rw*
 Staff Report: 4/21/97
 Hearing Date: 5/13-16/97
 Commission Action:

STAFF REPORT: REGULAR CALENDAR*In 15c*

APPLICATION NO.: 5-96-260

APPLICANT: Ron E. Presta Trust

AGENT: Lisa Miller, Shellmaker, Inc.

PROJECT LOCATION: 2888 Bayshore Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Construct new concrete sheet pile bulkhead 6 feet seaward of an existing, deteriorated wooden bulkhead. The existing wooden bulkhead is proposed to remain in place. The area between the existing and proposed bulkheads will be filled with gravel. The proposed project will result in the loss of 0.01 acres of intertidal habitat at the subject site. The applicant is proposing to mitigate this loss at a ratio of 6:1 by contributing to the North Shellmaker Island Restoration fund..

Lot area:	n/a
Building coverage:	n/a
Pavement coverage:	n/a
Landscape coverage:	n/a
Parking spaces:	n/a
Zoning:	n/a
Plan designation:	Water
Project density:	n/a
Ht abv fin grade:	n/a

LOCAL APPROVALS RECEIVED: Approval in Concept, Newport Beach Marine Department; Harbor Permit No. 131-2888.

SUBSTANTIVE FILE DOCUMENTS: Swales Anchorage Bulkhead Construction Project Marine Biological Survey and Environmental Assessment prepared by Coastal Resources Management, dated November 21, 1996; City of Newport Beach certified Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with one special condition requiring that the applicant contribute to the North Shellmaker Island Restoration fund as proposed.

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 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 this permit is reported to the Commission. 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. Compliance. All development 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 or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, 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. Mitigation

Prior to issuance of the coastal development, the applicant shall submit evidence, for the review and approval of the Executive Director, that the applicant has contributed to the monetary restoration fund established by the Department of Fish and Game, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Army Corps of Engineers, and the City of Newport Beach for the restoration of North Shellmaker Island in Upper Newport Bay Ecological Reserve, Orange County. The exact amount to be contributed shall be determined by the Department of Fish and Game when the Final North Shellmaker Island Restoration Plan, with expected dredge volumes, is completed. The amount contributed to the fund will be based upon a cost to dredge and dispose of material. The amount contributed shall be sufficient to restore 0.06 acres of intertidal habitat.

IV. Findings and Declarations.

A. Project Description

The applicant proposes to construct a new concrete sheet pile bulkhead 6 feet seaward of an existing, deteriorated wooden bulkhead. The top of wall elevation of the proposed bulkhead is to be +9.0 feet Mean Lower Low Water (MLLW). The existing wooden bulkhead is proposed to remain in place. The area between the existing and proposed bulkheads will be filled with gravel (See exhibit A). The proposed bulkhead will extend the length of the existing bulkhead, except that the northern end of the bulkhead will return at the Orange County Sewer District easement. The bulkhead will not extend onto the Orange County Sewer District easement or onto the Caltrans Pacific Coast Highway easement. The proposed project will result in the loss of 0.01 acres of high intertidal habitat at the subject site. The applicant is proposing to mitigate this loss at a ratio of 6:1 by contributing to the North Shellmaker Island Restoration fund.

B. Marine Resources

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.

Bulkhead construction alters natural shoreline processes. The existing bulkhead is in a deteriorating state and will eventually fail if no action is taken. Section 30235 allows such construction if it is necessary to protect existing structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The proposed bulkhead replacement is necessary to protect an existing marina office at the site. In addition, if

the bulkhead is not replaced, 30 to 40 feet of new concrete parking area and possibly the Orange County Sewer District sewer force main valve vault could be subject to extensive damage.

In a letter dated December 3, 1996, one of the applicant's engineering consultants states:

The proposed new concrete bulkhead should have no impact on the coastal and shoreline processes. This new wall should help to improve the site's appearance, and will stabilize this shoreline segment since the existing bulkhead is in a deteriorating state and will eventually fail if no action is taken.

Thus the proposed project will not have adverse impacts on local shoreline sand supply.

The alternative of removing the existing, deteriorating bulkhead, and constructing the new bulkhead in the same location was considered. This alternative was considered infeasible for safety reasons. Removing the existing bulkhead would place the existing development behind the bulkhead in immediate jeopardy. Locating the new bulkhead only 1 to 2 feet seaward of the existing bulkhead was also considered. This too was determined to be infeasible. Due to the shallow depth and deteriorated condition of the existing bulkhead, construction of the new bulkhead within 2 feet would cause the existing bulkhead to fail. The applicant also considered replacing the bulkhead in a location 10 feet seaward of the existing bulkhead. This alternative was considered as a protective measure to avoid failure of the existing bulkhead. The proposed relocation 6 feet seaward, however, was determined by the marine engineering consultants to be feasible. Replacement of the bulkhead 6 feet seaward of the existing bulkhead was chosen as the least environmentally damaging feasible alternative because less fill of intertidal habitat would occur.

In a letter dated March 11, 1997 (see exhibit D) the marine engineering consultant (Marine Consulting & Design) states:

"Locating the the new bulkhead any closer than 6' from the existing bulkhead could cause a failure of the existing bulkhead resulting in the loss of supporting material under the existing office building, loss of 30' to 40' of new concrete parking area and possible extensive damage to the O.C.S.D. sewage force main valve vault.

Neither the contractor nor the engineer will assume any responsibility should said failure occur due to a revision of existing plans.

If cofferdaming were financially feasible it would still not solve anything since it would not relieve the pressure on the existing bulkhead or stabilize the sand at the toe of the existing bulkhead during jetting of the bulkhead panels."

Alternatives to the proposed project were considered, but the project as proposed has been determined to be the least environmentally damaging alternative that will successfully protect the existing structures at the site. Therefore, the Commission finds the proposed project is consistent with

Section 30235 because the bulkhead relocation is necessary to protect existing structures.

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.

The proposed project is allowable under the Coastal Act because it is necessary to protect existing structures. The Coastal Act also requires, however, that marine resources be enhanced and where feasible restored. Further, the Coastal Act requires the biological productivity and quality of coastal waters be maintained and where feasible enhanced. The proposed project would result in the loss of 0.01 acres of intertidal habitat due to the relocation of the bulkhead 6 feet seaward and the backfill of the area between the existing and proposed bulkhead.

Sand flat and rip rap are present at the toe of the existing bulkhead at tidal elevations between +5 and +6 feet Mean Lower Low Water. These habitats are inundated for short periods during the higher of the two high tides that occur each day. The sand flat extends seaward to the main channel of the Bay and is exposed on mid to lower tides. The Marine Biological Survey and Environmental Assessment (Assessment) prepared for the project by Coastal Resources Management dated November 21, 1996 identifies this area as high intertidal habitat. Marine communities in the general area include the bottom-dwelling (benthic) invertebrate community which is associated with the sand flat, the algae and invertebrate biofouling community which attaches to hard substrate (such as rip rap), the water column community of plankton and fish, and a bird community of shorebirds, waders, and seabirds. The sand flat provides foraging and roosting habitats for shorebirds, wading ducks, and seabirds. The Assessment found that few intertidal organisms live within the strip of sand flat where the proposed bulkhead will be constructed and no unique marine habitats, marine communities, or species occur in the project area. However, the Assessment finds:

"Despite the minimal loss of marine biota, the high intertidal sand flat habitat is an important buffer and transition zone between the waters of the bay and shoreline. This upper intertidal habitat is also important as a shorebird and seabird roosting habitat."

Intertidal habitat is valuable. As more development occurs, the cumulative effects of the habitat loss mount. Bulkhead development especially can have adverse impacts on intertidal habitat because, depending on the placement of the bulkhead, an area that previously supported intertidal habitat is lost and the area immediately waterward of the bulkhead tends to be subtidal habitat. Creation of intertidal habitat is difficult because it must occur in an area that is only submerged at higher tides.

0.01 acres of intertidal habitat will be lost at the subject site due to the proposed project. In order to offset the impacts arising from this loss the applicant has proposed to mitigate the habitat loss at a ratio of 6:1, totaling 0.06 acres. As mitigation the applicant proposes to contribute to a monetary restoration fund established by the Department of Fish and Game, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Army Corps of Engineers, and the City of Newport Beach for the restoration of North Shellmaker Island in Upper Newport Bay Ecological Reserve, Newport Beach. A draft North Shellmaker Island Restoration Plan has been developed. The plan was prepared by the California Department of Fish and Game. The restoration plan includes restoration of intertidal habitat at North Shellmaker Island.

The goal of the North Shellmaker Island Restoration Plan is to provide a single, major mitigation project which can be funded by applicants whose projects create incremental adverse impacts on marine habitat in Newport Harbor. Projects exist throughout Newport Harbor, such as the subject project, which are allowable under the Coastal Act but result in adverse impacts to water quality, biological diversity, or marine resources. They would be difficult to mitigate individually due to the relatively small area of impact. For example, a single, viable mitigation project comprised of 0.06 acres would be difficult to develop and may not contribute significantly to overall habitat enhancement in the area. It makes more sense to have a single, worthwhile mitigation project which the smaller projects combined can provide. That is why the North Shellmaker Island Restoration Plan was developed by the agencies listed above.

By participating in the North Shellmaker Island Restoration Plan, the applicant is able to assure like-kind mitigation for the adverse habitat impacts arising from the proposed project. Further, the applicant can contribute to a mitigation program that will provide meaningful habitat rather than trying to establish a viable 0.06 acre individual project. In addition, the location of the mitigation site is within the same Newport Bay ecosystem. The project site is within two miles of the mitigation site. For these reasons, the proposed mitigation will adequately offset the adverse impacts to marine resources, water quality, and biological diversity arising from the proposed bulkhead relocation project.

The California Department of Fish and Game is still finalizing the cost of the restoration plan. The restoration work will consist primarily of dredging. Therefore, the total cost of the plan will depend primarily on the cost to dredge and dispose of the material necessary to restore the mitigation site. The cubic yards dredged per acre of mitigation site will vary according to the depth of the dredged area. The acreage to be restored will be multiplied by the average depth to be dredged, which will yield an estimate of the total cubic yards to be dredged. The amount paid into the fund by the applicant will be based on the average cubic yards dredged to restore 0.06 acres. Thus,

the applicant would pay the cost to dredge and dispose of the amount of cubic yards equal to 0.06 acres multiplied by the average cubic yards dredged per acre. Although the final cost per cubic yard is not yet known, CDFG estimates that it will be between \$13.00 to \$20.00. The average cost per cubic yard could be higher or lower than this estimate. As the mitigation is proposed by the applicant, the applicant is responsible for contributing the amount necessary to restore 0.06 acres of habitat once the final cost of the restoration plan is determined.

Thus, if the applicant pays into the fund the amount needed to restore 0.06 acres as proposed the adverse impacts will be mitigated. There must be an assurance that the mitigation will occur consistent with the project as proposed. If the bulkhead relocation were to proceed without the mitigation as proposed, the adverse impacts would not be offset. Consequently, as a condition of approval, the applicant shall submit evidence, for the review and approval of the Executive Director, that the applicant has contributed the appropriate amount to the North Shellmaker Island restoration fund to restore 0.06 acres of intertidal habitat. Therefore, the Commission finds that, as conditioned, the proposed mitigation is adequate to meet the requirements of Sections 30230 and 30231 of the Coastal Act which require the maintenance, enhancement and restoration of marine resources, biological productivity and the quality of coastal waters.

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 3 policies of the Coastal Act.

The Newport Beach LUP was certified on May 19, 1982. The proposed development is consistent with the certified Land Use Plan land use designation for the site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City of Newport Beach to prepare a local coastal program consistent with the Chapter 3 policies of the Coastal Act.

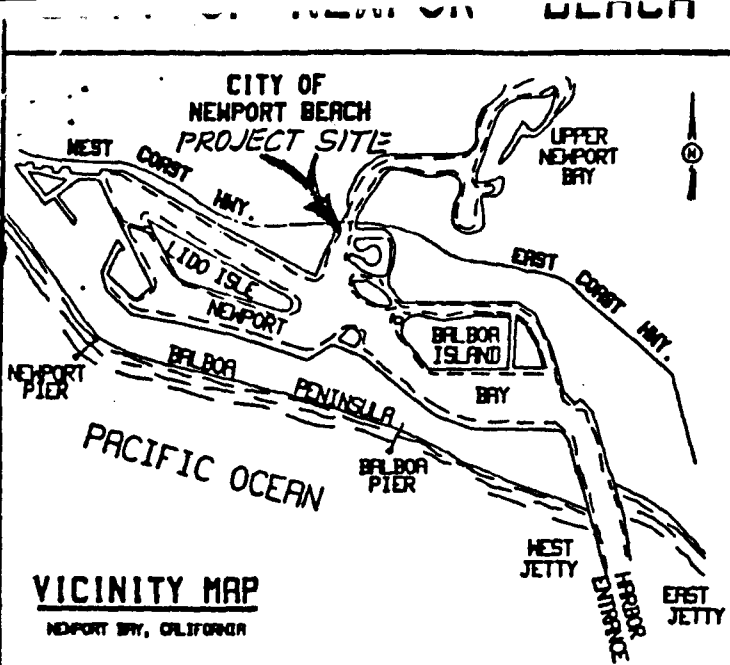
D. California Environmental Quality Act

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.

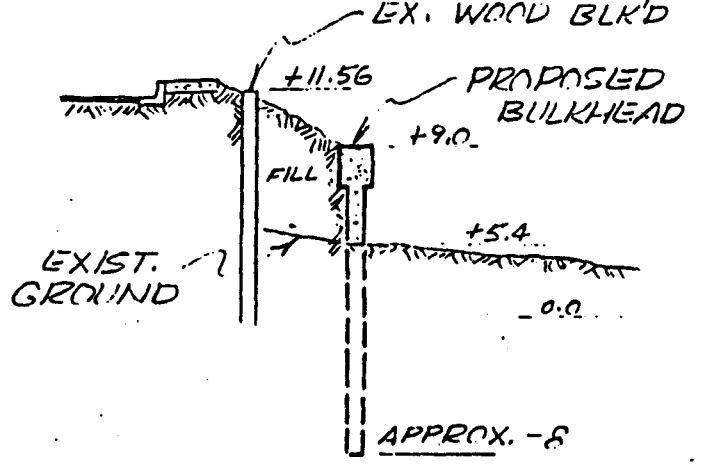
The proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures contained in the proposed project, including contribution to the North Shellmaker Island Restoration fund, will minimize all adverse impacts. As submitted, there are no feasible alternatives 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 as submitted can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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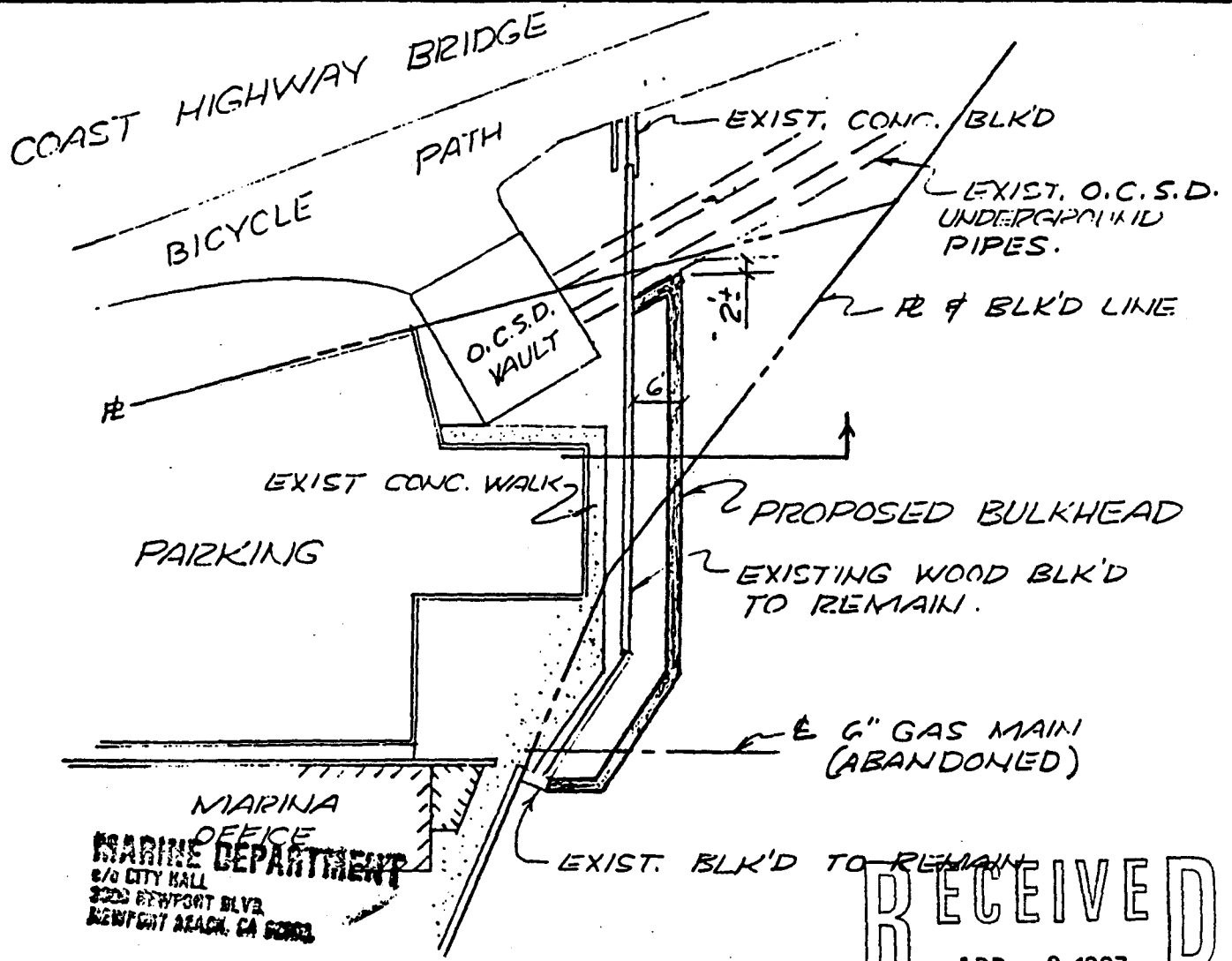


VICINITY MAP
NEWPORT BAY, CALIFORNIA



PROFILE 1" = 10'

SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.



RECEIVED
APR 3 1997

PLAN VIEW 1" = 20'

Tony Mulu 2/10/97

CLIENT'S NAME RON E. PRESTA JOB ADDRESS 2888 BAY ST. LOS ANGELES, CALIFORNIA

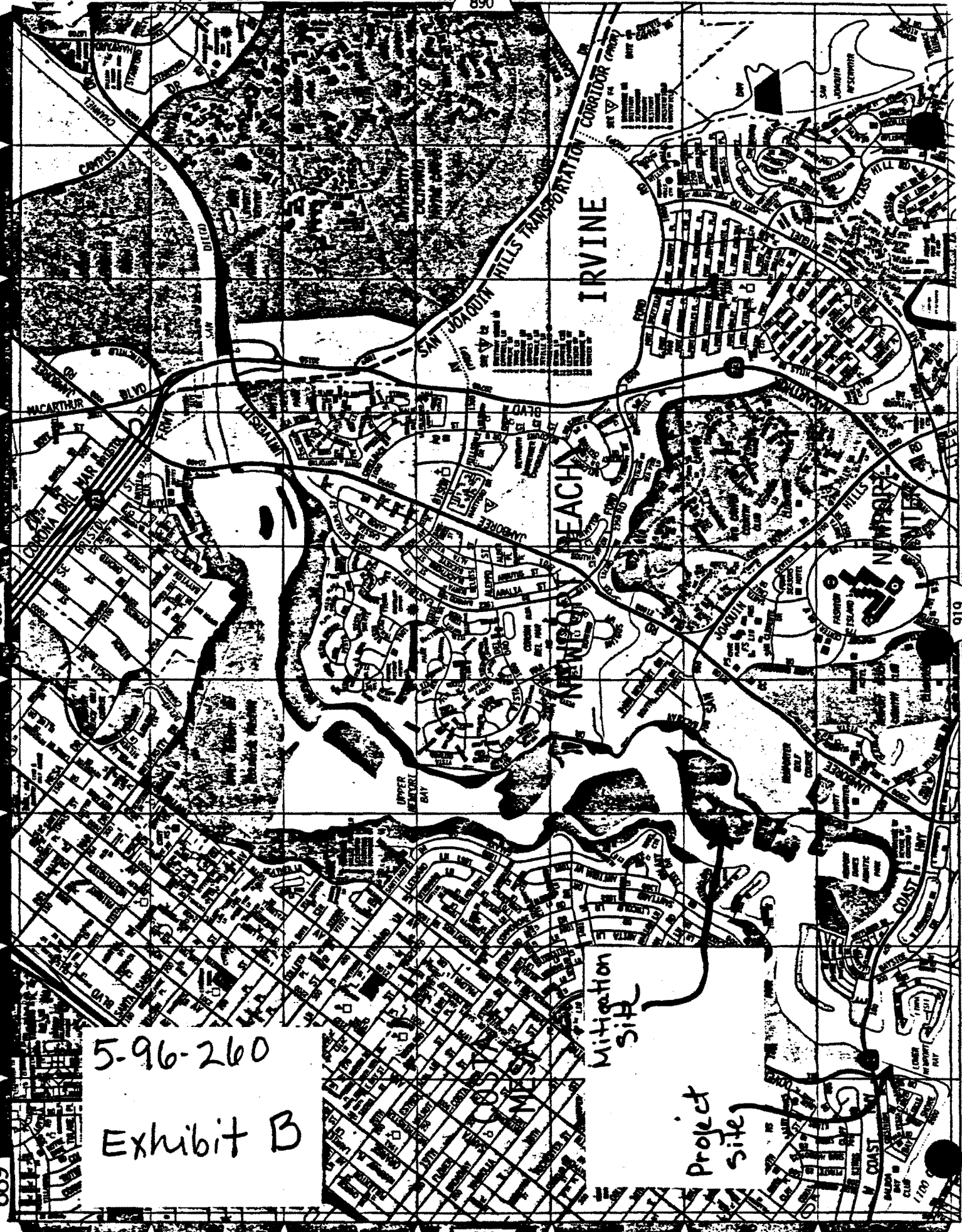
Project Plan

5-96-260

Exhibit A

SEE 859 MAP

889



5-96-260
Exhibit B

Mitigation site

Project site

Memorandum

To : California Coastal Commission
South Coast Area
P.O. Box 1450
Long Beach, California 90802-4416

From : Department of Fish and Game - Region 5

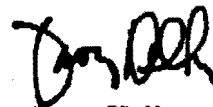
Subject : Biological Mitigation Measures for the Anchorage Marina Project
Coastal Development Permit Application No. 5-96-260

Date: March 28, 1997

The Department of Fish and Game (Department) has reviewed proposed mitigation measures, prepared by Coastal Resources Management, for the loss of intertidal habitat associated with the construction of a bulkhead for the Ron E. Presta project, located at 2888 Bayshore Drive, Newport Beach, California. The Department agrees to the following mitigation measures to be implemented for the loss of approximately 0.01 acres of intertidal habitat at the project site:

- The applicant will mitigate the loss of 0.01 acres of habitat at a mitigation ratio of 6:1, totaling 0.06 acres;
- The applicant will contribute to a monetary restoration fund established by the Department, National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and the City of Newport Beach for the restoration of North Shellmaker Island in Upper Newport Bay Ecological Reserve, Newport Beach, California. The amount contributed to the fund will be based upon a cost to dredge and dispose of material at approximately \$13 to \$20 per cubic yard (exact formula to be determined in conjunction with the Final North Shellmaker Island Restoration Plan); and
- The exact amount to be contributed by the applicant (based upon the amount of habitat to be mitigated) to the restoration fund will be determined by the Department when the Final North Shellmaker Island Restoration Plan, with expected dredge volumes, is completed. The Department is currently consulting with Coastal Resources Management and the aforementioned agencies in preparation of the North Shellmaker Island Restoration Plan.

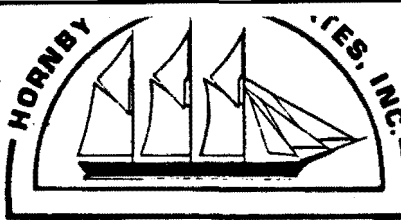
Thank you for your cooperation in this matter. If you have any questions or comments, please contact me at (714) 644-9612.



Troy Kelly
Coastal Ecological Reserve Manager

cc: see attached list

5-96-260
Exhibit C



dba. Marine Consulting & Design

324 EL MODENA AVE.:

NEWPORT BEACH, CA 92663 • USA • PHONE (714) 642-2206

March 11, 1997

Department of the Army
Los Angeles District, Corps of Engineers
911 Wilshire Boulevard
Los Angeles, CA 99017

Re: File #97-00059-SDM

Attention: Spencer MacNeil

Dear Sir,

With regard to the proposed bulkhead at Swales Marina we had originally hoped to set the new bulkhead 10' seaward of the existing wood bulkhead to lessen the chances of causing a failure of the wood bulkhead. After conferring with the contractor it was decided that we could install the new bulkhead as close as 6' if extreme caution was exercised.

Locating the new bulkhead any closer than 6' from the existing bulkhead could cause a failure of the existing bulkhead resulting in the loss of supporting material under the existing office building, loss of 30' to 40' of new concrete parking area and possible extensive damage to the O.C.S.D. sewerage force main valve vault.

Neither the contractor nor the engineer will assume any responsibility should said failure occur due to a revision of existing plans.

If cofferdamming were financially feasible it would still not solve anything since it would not relieve the pressure on the existing bulkhead or stabilize the sand at the toe of the existing bulkhead during jetting of the bulkhead panels.

This project has been carefully studied and we feel that the plans reflect the safest method of meeting the cities requirements for a new bulkhead.

If you have any further questions please do not hesitate to contact me.

Sincerely,

Roland S. Hornby
Roland S. Hornby

RSIL/bh



5-96-260
Exhibit D