

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-51

Applicant: The Kelley Group/Bristol Cove
Property Owner's Association

Agent: Merkel & Associates

Description: Maintenance dredging of approx. 20,000 cu.yds. of accumulated silts from existing Bristol Cove boat channel in Agua Hedionda Lagoon including replacement of approx. 1,200 cu.yds. of existing rip rap and approx. 300 cu.yds. of new rip rap within footprint of existing deteriorated rip rap slopes and temporary removal of the marina's existing boat docks, gangways and guidepiles which will be replaced after dredging is completed. The applicant is proposing to mitigate for 0.69 acres of eelgrass impacts from the proposed dredging by harvesting eelgrass from other areas in the lagoon for replanting 0.73 acres of eelgrass at the project site, and to implement a detailed eelgrass mitigation monitoring program.

Site: Bristol Cove boat channel on north shore of Agua Hedionda Lagoon,
Carlsbad, San Diego County. APN 207-150-58

Substantive File Documents: CDP #6-97-83; Bristol Cove Maintenance Dredge Project and Eelgrass Mitigation and Planting Program by Merkel and Associates, Inc. - 12/24/97; City of Carlsbad Report to the Planning Commission - 5/6/98 and Planning Commission Resolution No. 4280 - 5/6/98

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the permit with special conditions which address compliance with the eelgrass mitigation and monitoring program pursuant to a biological assessment completed by Merkel and Associates, 12/24/97.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Eelgrass Impacts. A pre-construction survey of the existing eel grass beds shall be completed to establish the pre-impact conditions of the eelgrass beds and the density of the beds prior to the proposed maintenance dredging operation. The survey shall be submitted to the Executive Director before commencement of dredging and shall indicate the length, width, and density of the eel grass beds. A post-dredging survey shall be completed within 30 days following construction to determine the actual footprint of eelgrass impact. Within 30 days after completion of the post-construction survey, the permittee shall submit a report to the Executive Director that includes the post-construction survey. The report shall identify the amount of eelgrass impacted by the project based upon comparison of the pre- and post-construction surveys. The report shall also include recommendations for any changes to the restoration program, a restoration schedule and an estimate of the square footage of area to be replanted. Eelgrass impacts shall be mitigated by replanting eelgrass at the project site at a ratio of 1.2 square feet of mitigation area for each square foot of area impacted. Prior to commencement of the mitigation/transplant, the applicant shall obtain final approval for the method of transplant from the California Department of Fish and Game (CDFG). The replanting of eelgrass shall be completed within three months of the completion of the post-construction survey. No anchorage of dredging equipment is permitted outside the limits of the dredging operation as shown on the "Bristol Cove Homeowner's Association - Property Boundary Map: Limits of Dredging Activities" figure (reference Exhibit No. 2). All methods of maintenance dredging and eelgrass mitigation must be performed

consistent with the guidelines established in the "Bristol Cove Maintenance Dredge Project Eelgrass Mitigation and Planting Program" dated 12/24/97 by Merkel and Associates, Inc. Any deviations from this report must be reported immediately to the Executive Director.

2. Monitoring Program for Eelgrass Mitigation. Prior to the issuance of the coastal development permit, the applicant shall agree to undertake the monitoring requirements in accordance with the approved "Bristol Cove Maintenance Dredge Project Eelgrass Mitigation and Planting Program" dated 12/24/97 by Merkel and Associates. The mitigation monitoring program, as proposed, shall occur over a five-year period to ensure establishment and to verify that minimum coverage and density requirements are achieved. The monitoring shall consist of conducting a total of approx. 20 shoot-counts seven times during the five-year period at the following intervals: at the beginning, 6-months, 1- year, 2-years, 1/12 years, 2 years, 3 1/2 years and at 5 years. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. Proposed changes to the approved monitoring program shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The proposed project includes maintenance dredging of approx. 20,000 cu.yds. of accumulated silts from existing Bristol Cove boat channel. The Bristol Cove boat channel is a private cove and marina facility on tidelands and submerged land and subject to public rights of navigation. The cove is owned by the project applicant (Bristol Cove Property Owner's Association) which comprise the residential condominium complexes along the shoreline of the cove channel located along the north shore of Agua Hedionda Lagoon. The channel is approx. 1,200 feet long by 150 feet wide and encompasses 4.73 acres. The marina facility supports 32 docks which are held in place by pilings and tiebacks to the shoreline. The project will not increase the dock and mooring capacity or modify the configuration of the channel. The project also includes repair of approx. 1,200 cu.yds. of existing rip rap and approx. 300 cu.yds. of new rip rap within the footprint of existing deteriorated rip rap slopes along most of the channel banks of the cove (approx. 1,850 linear feet). The project will also involve the temporary removal of the marina's existing boat docks, gangways and guidepiles which will be replaced after dredging is completed. These latter improvements will be "floated" back into place after construction is completed. The material dredged from the channel will be placed in the SDG&E Inner Lagoon Borrow pit which has been permitted by state and federal agencies (U.S. Army Corps of Engineers, California Coastal Commission and Regional Water Quality Control Board)/(CCC CDP# 6-97-83).

The project is proposed to be completed in four phases. The first phase will include removal of dock pilings and floating of docks from their present locations to the mouth of the cove where they will be corralled in a temporary flotilla. The second phase will include the dredging. The third phase will consist of maintenance work to repair the rip rap slopes along the channel. The final phase includes demobilization of equipment and completion of the eelgrass restoration program in the cove.

The purpose of the project is to return the boat channel to the original 1966 dredged depth of -9 ft. MSL to assure the continued operation of marina activities within Bristol Cove. Bottom elevations of the lagoon near Bristol Cove are approx. -10 ft. MSL. Elevations between Bristol Cove's entrance and the main lagoon rise up to -8 ft. MSL. Elevations within Bristol Cove average between -6 ft. MSL at the northern terminus of the cove, to -8 ft. MSL near the cove's entrance to the main lagoon.

In recent years, boaters using the channel have hit bottom during low tides and docks and boats in the northern terminus of the channel have been damaged by settling on the accumulated sediment. The dredged materials will be deposited into an in-water borrow pit. Agua Hedionda Lagoon is a "man-made" water body that was originally dredged in 1954 to -11 ft. MSL, out of a historical 230 acre salt marsh slough to provide cooling water for the Encina Power Plant. Two settling basins were included in the design: one in the outer lagoon to trap sands carried in from the ocean, and one at the eastern end to trap incoming sediments from Hedionda Creek. However, sedimentation has occurred in the lagoon over the years which resulted in the inner basin of the lagoon being dredged under CDP #6-97-83. Under that permit, a borrow pit was established, as previously cited, to provide a place to dispose of the inner lagoon materials that are too fine and unsuitable for beach replenishment purposes. The proposed dredged materials from the subject permit are proposed to be deposited in this borrow pit where it will be buried and capped.

2. Sensitive Resources. Sections 30233 and 30240 of the Coastal Act provide for the protection, preservation and enhancement of coastal wetlands and species that depend on those wetlands as habitat. No sensitive wildlife habitat occurs in the vicinity of the project. An initial biological site assessment and eelgrass survey was conducted on 10/28/92 by Pacific Southwest Biological Services, Inc. to determine the condition and size of the eelgrass within the Bristol Cove channel. An update was conducted on 10/4/96 by Merkel and Associates. The studies concluded that the channel continues to suffer from a siltation problem caused by tidal leveling of the lagoon at the entrance to the cove channel. As the sediment has accreted in the inside of the lagoon, it has created a block to tidal flushing of the lagoon such that it no longer drains at low tide as far as it used to. This in turn has lead to problems related to non-flushing of the lagoon, which includes sedimentation. A total of 27,132 sq.ft. (0.69 acres) of eelgrass beds were identified within Bristol Cove with the largest beds being located near the mouth of the channel, gradually thinning out towards the northern end of the channel. Eelgrass provides habitat for many fish and invertebrates and is an important to maintenance of the biological

productivity and quality of the lagoon. As proposed, the dredging would destroy all of the eelgrass beds in the channel (0.69 acres) as identified in 1996.

The applicant has submitted a proposed mitigation and planting program prepared by Merkel and Associates to mitigate the adverse impacts to eelgrass. (See "Bristol Cove Maintenance Dredge Project Eelgrass Mitigation and Planting Program." prepared by Merkel and Associates, dated 12/24/97 (hereinafter "the Mitigation Program"). The program proposes to mitigate the eelgrass impacts at a 1.2:1 ratio as required by the Southern California Eelgrass Mitigation Policy. This policy addressing the eelgrass mitigation ratio was established pursuant to the National Marine Fisheries Service (NMFS) guidelines. The mitigation would consist of replanting 32,234 sq.ft. (0.74 acres) of eelgrass at the project site generally in the area where the existing eelgrass beds are located which is most stable. Some planting is also proposed to be extended along the shorelines in the back of the cove (northern end). The final location of the replanting will be based upon sediment levels, elevations and profiles.

Since the mitigation will involve planting more eelgrass beds than presently exist, the planting will occur beyond the area that currently has eelgrass beds and will extend into other places in the cove channel that are determined to be suitable for planting. Although the biological report by Merkel and Associates indicates that it may be possible for over an acre of eelgrass habitat to be restored at the site, a more conservative estimate would be the restoration of 0.74 acres of eelgrass which is necessary to mitigate the maintenance project. In other words, the intent is to plant approx. 1.6 acres of eelgrass to assure that the 1.2:1 acre of mitigation will be achieved and that the replanted eelgrass thrives. It is a common practice to plant more than what is needed to assure success with the replanting.

While approx. 0.69 acres are proposed to be impacted based upon the results of the 1996 survey conducted, a final assessment will be performed based on a comparison of pre-construction and post-construction habitat surveys. Eel grass beds shift and change over time and are not constant from either season to season or year to year. For this reason, even a survey done in 1996 may not accurately reflect the quantity or size of the beds at this location today. Thus, a pre-construction survey just prior to commencement of construction and a post-construction habitat survey 30 days after project completion is proposed which will result in a current estimate of the size of the existing eelgrass beds and the impacts to such resources and the amount of mitigation that will be necessary.

The Mitigation Program consists of harvesting from adjacent donor beds located within Agua Hedionda Lagoon. The harvesting from the donor beds will not exceed 20% of any given area so that adverse impacts to the donor beds would not occur and also facilitates a quick recovery. The donor beds were selected based upon several factors which include: 1) proximity to the transplant receiver site; 2) similarity in biological and physical characteristics to the receiver site; and 3) suitability of donor site size and eelgrass density to provide necessary transplant materials; 4) recovery potential for the donor site; and 5) accessibility of the donor site. The eelgrass restoration program is proposed to be

completed in fulfillment of the Army Corps of Engineers (ACOE) permit for the proposed project.

The maintenance dredging of the cove is scheduled to begin as soon as the permit is approved and will last approximately 30 calendar days using an 8-hour, five-day work schedule. Demobilization of the dredge and staging areas will take approximately 30 days. Repositioning docks and piles will take approximately 90 days. Dredging and construction guidelines will be implemented such as, using dredge anchors to control dredge movements, and establishing a survey control to prevent any adverse impacts to the lagoon as well as recreational use. According to the current schedule, the eelgrass restoration/mitigation will occur during the summer and will last approximately ten working days. The Mitigation Program proposes a number of mitigation measures including, in part, use of biodegradable anchors, use of bare-root transplant units, proper spacing between planting units, and consultation and approval by the California Department of Fish and Game for the method of transplant.

As noted in the project description, the applicant also proposes to repair a rip rap slope along the eastern shore of Bristol Cove for an approximate linear distance of 70 feet. The rip rap protects the shoreline along the channel from erosion. Individual condominiums are situated on each lot with a concrete patio that faces the cove. The rip rap is lagoonward of these accessory improvements. At the toe of the channel slope are boat docks, etc. The repair will largely consist of realigning existing rip rap (1,200 cu.yds.) at the top of the slope at elevation +6.0 ft. MSL. Approximately 300 cu.yds. of new rock is also proposed to augment the existing rip rap where slumping has occurred. The bottom of the slope in the channel at this location is at elevation -7.0 ft. MSL. Both the repositioning of the existing rip rap as well as placement of new rock at this location will not result in any adverse impacts to coastal resources and the rip rap will remain within the footprint of the existing revetment. As cited in the City of Carlsbad's report to the Planning Commission, the majority of the repair work is located well above the high tide line. To place rock, a barge would be moved around the channel and rock would be unloaded using a barge support crane. Hand labor would be used to position rock on the slopes in areas where existing rap rap has failed or is deteriorating. Rip rap that has migrated will be retrieved and placed back at the top of the slope.

The proposed project has been conditioned such that the eelgrass proposed to be impacted through the proposed dredging, will be mitigated at a ratio of 1.2:1, consistent with the submitted mitigation program. The project has also been conditioned such that post-construction monitoring will be consistent with the cited program. The mitigation monitoring program, as proposed, shall occur over a five-year period to ensure establishment and to verify that minimum coverage and density requirements are achieved. The monitoring consists of conducting a total of approx. 20 shoot-counts seven times during the five-year period (at the beginning and then at the following intervals: 6-months, 1 year, 2 years, 1 1/2 years, 3 years, 3 1/2 years and at five years). The program contains sufficient detail to address methods of mitigation, length and duration of monitoring,

performance criteria and required mitigation ratios, etc. The proposed dredging is consistent with Coastal Act policies since the dredging is intended to maintain the biological productivity and quality of the lagoon by removing accumulated silts. In so doing, navigation and safety for recreational boating will also be improved. As such, the project can be found consistent with past Commission precedent regarding dredging of the lagoon and the resource protection policies of the Coastal Act.

3. Public Access. Several policies of the Coastal Act call for the protection and enhancement of public access to and along the shoreline. Some policies also address placement of suitable material to supply the region's littoral zones with sand in order to create and protect coastal recreational areas for use by the general public. However, in the subject proposal, the silt that is proposed to be dredged is too fine to be used for beach sand replenishment purposes and will be deposited in the borrow pit of the lagoon cited earlier in this report. According to the Merkel and Associates, based on a sediment report that was completed, it was determined the sediment in the cove is well below the required 70% sand grain size. The ACOE typically require that materials for beach sand replenishment purposes be 70% sand grain size which is about .1 + millimeter in size. However, the material in Bristol Cove tested well below that sediment grain size. Although the material is clean, it simply is too fine for beach use and washes around and becomes muddy.

With respect to public access itself, Bristol Cove is a privately-owned (Bristol Cove Property Owner's Association) facility on tidelands and submerged lands and is subject to public rights of navigation. All of the docks and marina facilities are used by the residents of the area who belong to the homeowner's association; as such, the cove facilities are not accessible to the public for general recreational use. However, pedestrian access to the cove is present along much of the boat channel above the rip rap that lines its banks.

Agua Hedionda Lagoon is located entirely within the exterior boundaries of Rancho Agua Hedionda, a Mexican land grant confirmed pursuant to the Treaty of Guadalupe Hidalgo. As such, the State is precluded from asserting that it acquired sovereign interests, by virtue of its admission to the United States in 1850, pursuant to the holdings in Summa Corporation v. California 466 U.S. 198 (1984). The lagoon is subject to a public navigational easement. This easement provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor propelled small craft. Such uses may include, but not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses.

As noted earlier, the purpose of the project is to render the channel more accessible in terms of recreational boating for the residents who live there. In so doing, navigation will be improved along with boating safety for those who use the marina. It should also be noted that the repair of rip rap along the top of the slope along the channel cited in the previous finding will not impede or deter public access. The majority of the repair area is

located above the high tide line. Recreational boating for the general public is available at the lagoon at Whitey's Landing to the west and at Snug Harbor. As such, the proposed project should not result in any adverse impacts to public access opportunities in this area, consistent with Coastal Act policies.

4. Local Coastal Planning. Section 30604(a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as conditioned, such a finding can be made.

The project area is zoned and planned in the certified Carlsbad LCP as a residential waterway and for residential high-density uses. As conditioned, the proposed project is consistent with provisions of these designations. Therefore, approval of the project as conditioned is consistent with Chapter 3 policies of the Coastal Act and the resource protection policies of the certified Carlsbad LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, 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 could substantially lessen any significant adverse impact which the activity may have on the environment.

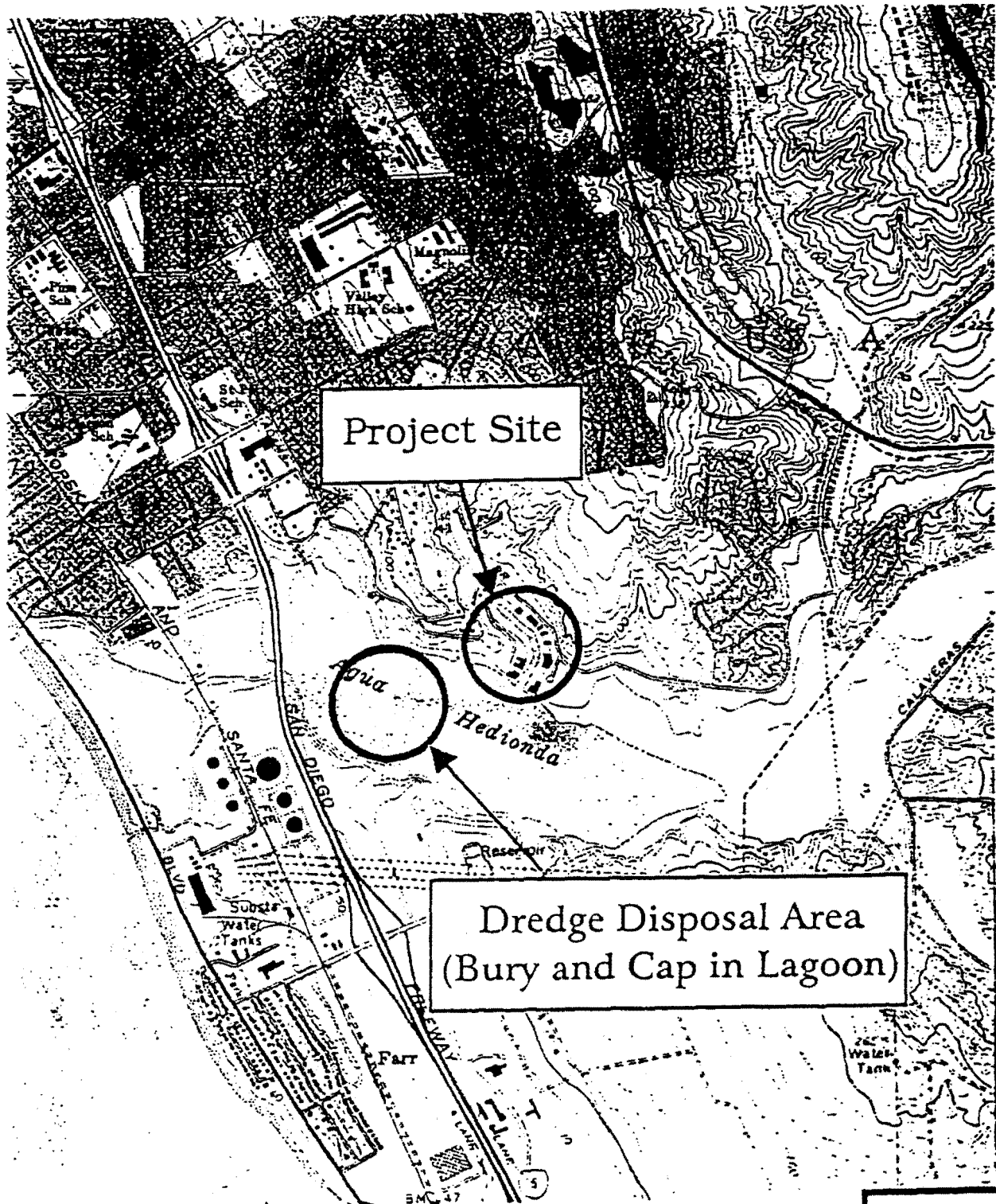
The proposed project has been conditioned to be found consistent with the resource protection and recreation policies of the Coastal Act and the Carlsbad LCP. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation 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, as conditioned, to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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. Compliance. All development must occur in strict compliance with the proposal as 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 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.



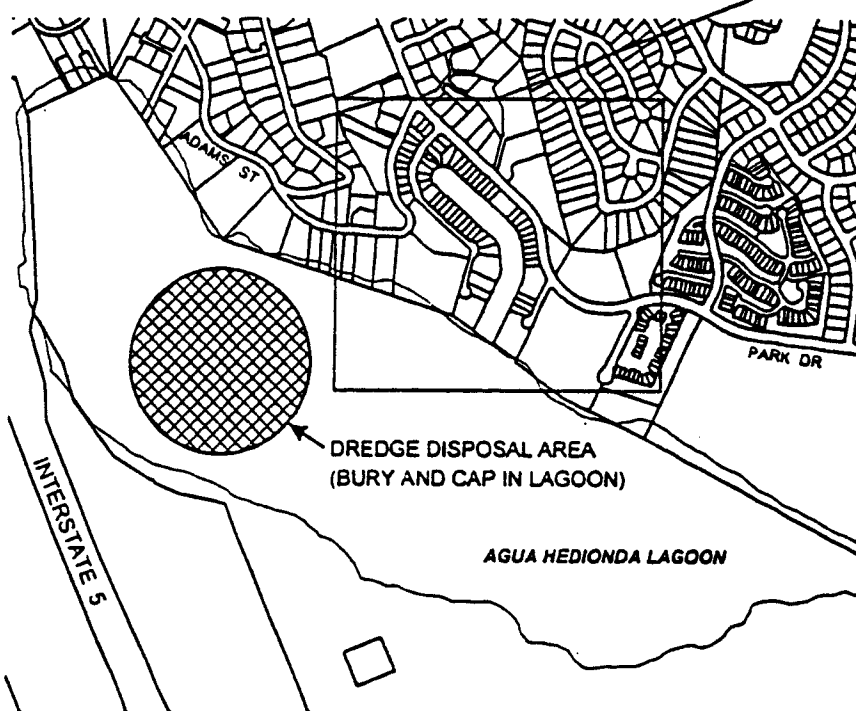
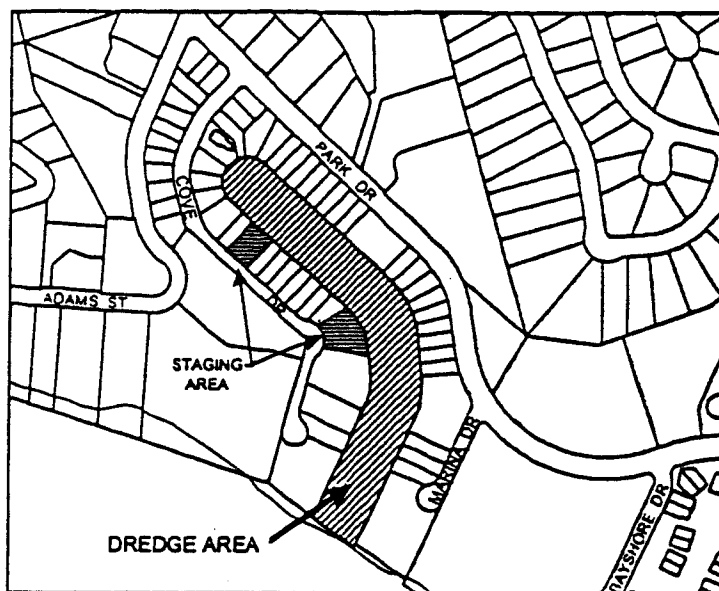
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Project Vicinity Map
Source: USGS 7.5' San Luis Rey, CA
Quadrangle

EXHIBIT NO. 1
APPLICATION NO.
6-98-51
Location Maps

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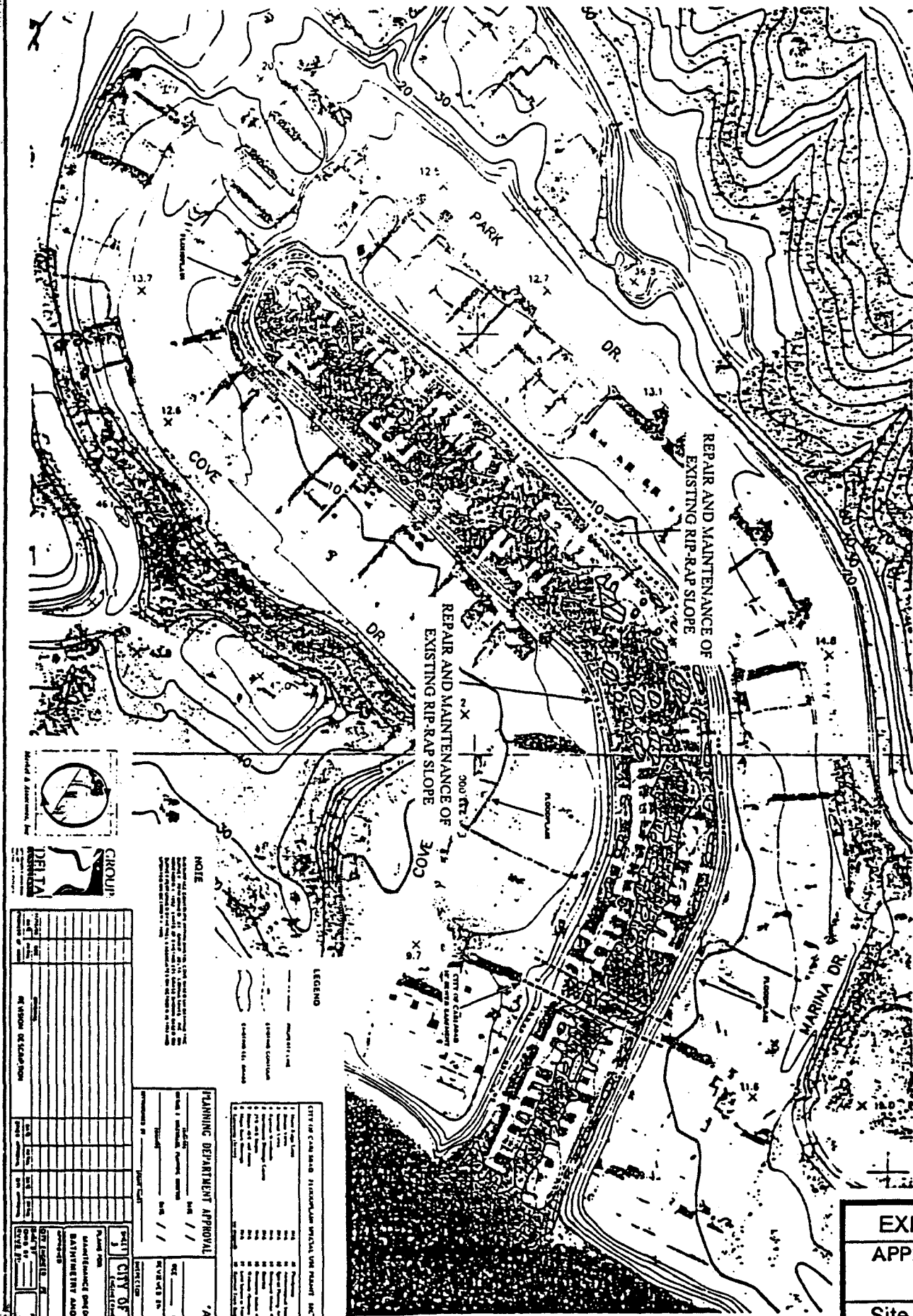
California Coastal Commission



BRISTOL COVE MAINTENANCE DREDGING PROJECT SUP 98-04

EXHIBIT NO. 1
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Location Map
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California Coastal Commission

= AREAS OF RIP RAP REPAIR

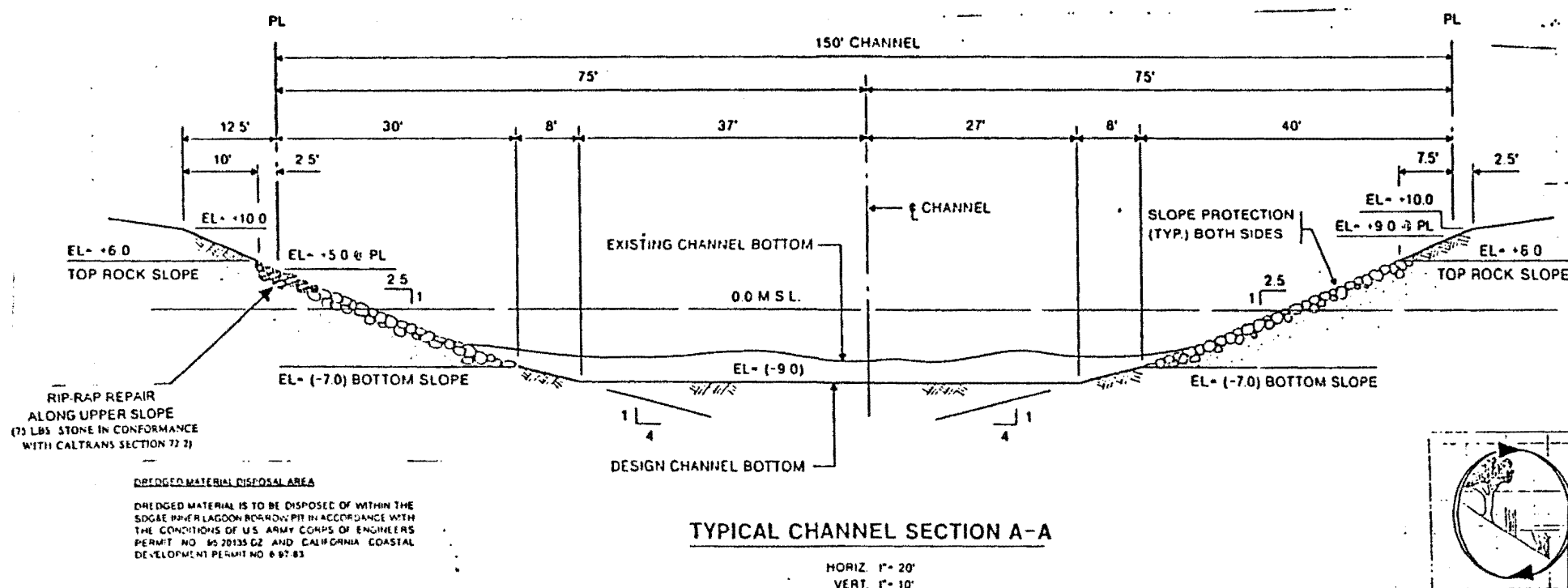


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Site Plan/Location of Rip Rap Repair

California Coastal Commission



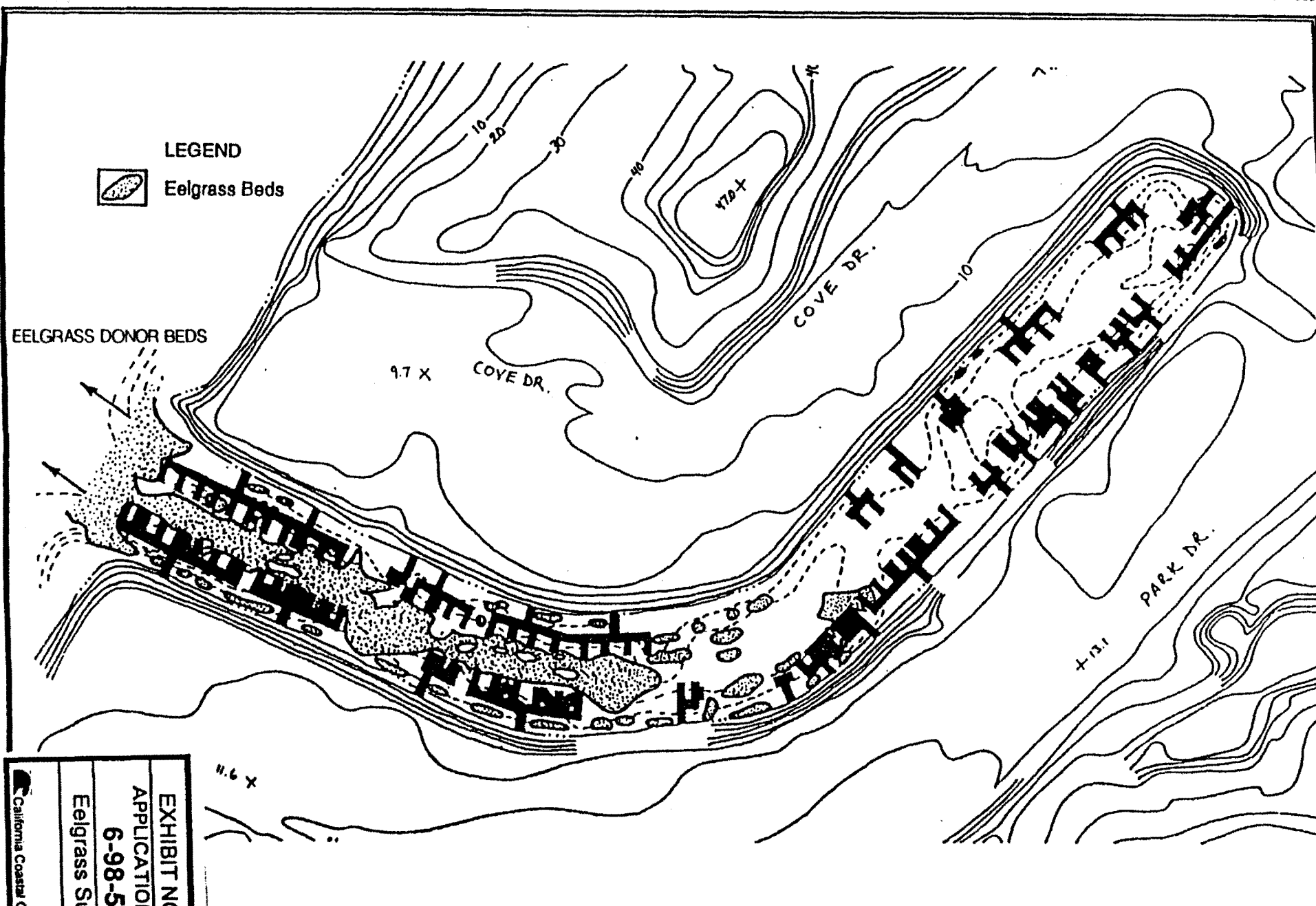


EXHIBIT NO. 5
APPLICATION NO.
6-98-51
Eelgrass Survey
California Coastal Commission

Eelgrass Distribution in Bristol Cove, Agua Hedionda Lagoon, Carlsbad, CA.

October 1996

Source: Pacific Southwest Biological Services, Inc.

Figure
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