

CALIFORNIA COASTAL COMMISSION

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



Filed: July 6, 1998
49th Day: August 24, 1998
180th Day: January 2, 1999
Staff: SFR-LB *jl*
Staff Report: July 23, 1998
Hearing Date: August 11-14, 1998
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-010

APPLICANT: City of Newport Beach **AGENT:** Chia-Chi Lu, Noble Consultants

PROJECT LOCATION: Buck Gully just inland of the beach at Little Corona Beach,
City of Newport Beach, County of Orange

PROJECT DESCRIPTION: El Niño related storm damage repairs to Buck Gully which is a stream that outlets into the Pacific Ocean at Little Corona Beach. Follow-up to a previously issued emergency permit. Reconstruction of a damaged concrete outlet structure, reconstructing an existing 8" sewer line which crosses Buck Gully, removal of approximately 30' of a 24" storm drain, restoration of the stream bed, repair of the public access ramp to Little Corona State Beach, and revegetation of the project site with native vegetation. Grading consists of approximately 2400 cu. yds. (500 cu. yds. of cut and 1900 cu. yds. of fill). The fill includes the import of 1400 cu. yds. of material to replace material lost through storm caused erosion.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with three special conditions requiring: adherence to the streambed alteration agreement, approval of the restoration program by the Department of Fish and Game, and that the repair of the access ramp not restrict public access during the summer months. The applicant concurs with the special conditions.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of Newport Beach.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, coastal development permits: 5-93-006 (LHC Investments) and 5-93-276 (Metropolitan Water District), California Department of Fish and Game Agreement Regarding Proposed Stream of Lake Alteration (5-141-98), California Regional Water Quality Control Board (Letter of June 10, 1998), and U.S. Army Corps of Engineers application 98-00483-ES.

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 effects 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 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

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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. The permittee shall undertake development in conformance with the conditions of approval for the Department of Fish and Game's *"Agreement Regarding Proposed Stream or Lake Alteration"* (5-141-98). No changes to the approved development shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines no amendment is required.
2. Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director, written confirmation that the "Conceptual Revegetation Plan and Monitoring Program" dated June 1998 for Buck Gully has been approved by the Department of Fish and Game. No changes to the approved development shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines no amendment is required. The permittee shall undertake development in accordance with the "Conceptual Revegetation Plan and Monitoring Program" for Buck Gully dated June 1998.
3. Development shall not interfere with the public's ability to access the ramp from Ocean Boulevard leading to the beach between the beginning of the Memorial Day weekend to the end of the Labor Day weekend.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Location

The project is located in the City of Newport Beach, County of Orange. The project site is immediately inland of Little Corona Beach where the stream Buck Gully empties into the Pacific Ocean (Exhibit 1). The project consists of the reconstruction of a damaged concrete outlet structure, reconstructing an 8" existing sewer line which crosses Buck Gully, restoration of the stream bed, construction of a temporary access road, repair of the public access ramp to Little Corona Beach, and revegetation of the project site to restore habitat values. This permit is a follow-up to an Emergency Permit issued on January 29, 1998 for partial repair.

These repairs were made necessary as a result of El Niño related storm damage. The original Buck Gully outlet structure was built in 1969. The storms of December 6, 1997 and February 23, 1998 undermined and finally destroyed the structure including the lower portion of the public access ramp to Little Corona State Beach. Storm related flows also resulted in headcutting 300 feet upstream of the structure. This lowered the elevation of the stream bed by approximately 8 to 12 feet and exposed a 8 inch sewage pipeline which crosses the stream approximately 180 feet upstream of the destroyed outlet structure. The sewer line was damaged and a report prepared by the California Regional Water Quality Control Board states that leakage of the pipeline has been observed.

According to the "*Conceptual Revegetation Plan and Monitoring Program*" submitted with the application, prior to the El Niño related storms, the site was dominated by slender cattail with scattered shrubby arroyo willows. Native plants included salt grass, alkali heath, western ragweed, and bulrush. Non-native and naturalized plants included common celery, white sweet clover, cocklebur, rabbitfoot grass, giant reed, myoporum, acacia, garden nasturtium, and hottentot fig. The El Niño related storm devastated .6 acres of vegetation.

Although the proposed project involves the replacement of structures destroyed by disaster, the proposed project does not qualify for a permit exemption under Section 30610(g) because elements of the proposed project involve more than replacement, would be sited in a slightly different location, and project itself is a public works facility.

The new outlet structure will consist of an 85 foot long weir wall, supporting caisson piles, upstream subdrain system, riprap bank protection and downstream

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toe protection. New riprap is being placed at the two ends of the outlet structure where it adjoins the bank (Exhibit 2). Riprap for the downstream toe protection replaces previously existing riprap. To maintain a lower level of water during summer nuisance flow conditions, an enhanced subdrain system will be installed to collect low flows and direct them downstream through weep holes.

A new eight (8) inch steel sewer pipeline will be installed to replace the existing damaged 8" sewer line. The new pipeline will be placed three feet lower in the streambed than the existing damaged pipeline. A non-grouted riprap toe structure will be provided so the pipeline will not be exposed under future severe rainfall conditions.

During construction, a temporary access road will be located on the west bank of the gully. The access road will be removed after completion of the sewer pipeline repair.

The stream and adjacent banks will be graded and recontoured with 2:1 (horizontal:vertical) slopes over an area of about 0.6 acres for a distance of about 300 feet upstream from where the stream outlets onto Little Corona State Beach (Exhibit 3). Recontouring of the slopes will result in the removal of approximately 30' of an existing 24" storm drain (Exhibit 2). The grading plan consists of filling and recontouring the scoured stream bed with imported material to restore the stream grade and prevent ponding upstream of the new outlet structure. The graded and recontoured areas will be revegetated using only native plant species. Revegetation will involve erosion control, seeding, planting container plants, and willow cuttings, plus a program for the control of exotic species including weeds and ornamental that would compete with the newly planted native species. The revegetation plan includes a management program to keep the channel free of cattail vegetation to enhance stream flow and eliminate ponding.

The Executive Director issued an emergency permit on January 29, 1998 (Exhibit 6) for the removal of broken concrete, flattening of the winwall debris, the placement of filter fabric, and approximately 120 cubic yards of rip-rap to be placed around the existing landing to protect it from further damage. The emergency work did not qualify for a waiver under Section 30611 of the Coastal Act because the work that would be authorized is valued at more than \$25,000. The emergency permit was reported to the Commission at its February 3, 1998 meeting. This permit application is the required follow-up to the emergency permit and would permanently authorize the development approved under the emergency permit as well as the development currently proposed.

B. Marine Environment

Buck Gully is a small canyon which has a stream flowing through it that outlets into the Pacific Ocean at Little Corona State Beach. The project site is approximately 100 feet wide where it meets Little Corona beach and extends about 300 feet inland from the Beach (Exhibits 2 and 3). El Niño related storms occurring on December 6, 1997 and February 23, 1998 resulted in uncharacteristically large flows of water in Buck Gully. These large water flows caused extensive erosion which resulted in headcutting 300 feet upstream of the outlet structure and the lowering of the streambed by 8 to 12 feet. As a consequence man-made structures and habitat were destroyed. Manmade structures which were damaged include: a sewer line crossing Buck Gully, the base of a coastal access trail, and an outlet structure. Habitat impacts were the loss of .6 acres of native and non-native vegetation. The proposed project plans to repair this storm related damage and to enhance habitat values.

The Coastal Act contains several policies that are applicable in this situation. Section 30230 states that marine resource shall be maintained, enhanced, and where feasible restored. Section 30231 of the Coastal Act states that the biological productivity of and quality of coastal waters and streams shall be maintained and where feasible restored. Section 30236 allows the substantial alteration of streams provided that the project incorporates the best mitigation feasible and it is either necessary for flood control or where the primary function is the improvement of fish and wildlife habitat. The full text of these policies is listed below.

Section 30230.

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.

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 30236.

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

The proposed development is consistent with the requirements of these Coastal Act sections in the following manner. Sections 30230 and 30231 state that marine resources shall be restored and enhanced for purposes of promoting biological productivity. Further, human health shall also be protected through minimizing the adverse effects of waste water discharges. El Niño related storms, as previously stated, resulted in the destruction of .6 acres of habitat and damage to an existing sewer line which has been observed leaking. To restore and enhance habitat functionality the applicant proposes to replant the damaged area with native vegetation, to institute a program to control exotic species (both weeds and ornamentals that compete with native vegetation), to keep the stream channel free of cattail vegetation, and to monitor the revegetation program to assure that it is successful (Exhibits 2 and 3).

In terms of improving water quality to protect both human health and habitat values the damaged sewer line will be buried under the streambed and the restored stream will be designed to eliminate low flow ponding. The new 8" steel sewer pipeline will be placed three feet lower than the existing damaged 8" sewer line. A non-grouted riprap toe structure will be provided so the pipeline will not be exposed under future severe rainfall conditions (Exhibit 2).

The remainder of the project constitutes a flood control project necessary for public safety and to protect existing development and which incorporates the best mitigation measures feasible. Prior to the El Niño related storms an existing outlet structure maintained streambed elevations by limiting headcutting through erosion. The destruction of the outlet structure allowed headcutting which resulted in the lowering of the streambed by eight to twelve feet through rapid erosion. The headcutting moved inland by approximately 300 feet. The effect of this erosion was the destruction of approximately .6 acres of habitat, the exposure of an existing 8" sewer line, and increased potential for slope failure. The slopes adjoining the stream have both public and private development located on them.

To manage flood waters to protect existing public and private development and to provide the best mitigation measures feasible the applicant proposes to construct a new outlet structure to prevent headcutting, restore the streambed and raise the

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streambed's elevation to reduce the potential for slope failure, and enhance the destroyed habitat through the planting of native vegetation and a monitoring program to control non-native plant species.

Though the project proposes to improve habitat values the Commission finds it necessary to impose special conditions to assure that proposed habitat values are achieved to comply with the Sections 30230, 30231, and 30236 of the Coastal Act. The applicant has obtained a streambed alteration agreement from the Department of Fish and Game. This agreement contains conditions that the applicant must abide by to minimize adverse impacts of construction on the streambed of Buck Gully (Exhibit 4) and to minimize adverse impacts to water quality. To assure that these conditions are complied with, the Commission finds it necessary to impose a special condition requiring that the applicant abide by the *"Agreement Regarding Proposed Stream or Lake Alteration"* (5-141-98).

To assure that water quality at Buck Gully is protected, the *"Agreement Regarding Proposed Stream or Lake Alteration"* (5-141-98) contains requirements that the applicant must comply with. Specifically, the applicant can not dispose spoils into the stream, that no equipment maintenance shall be done in or near the stream, and that the site be cleaned up following construction. The Regional Water Quality Control Board has also reviewed the project and through a letter of June 10, 1998 issued a *"Waiver of Waste Discharge Requirements and Water Quality Certification for the Proposed Replacement of a Damaged Concrete Outlet Structure and Sewer Pipeline, City of Newport Beach, Orange County"*. Compliance with *"Agreement Regarding Proposed Stream or Lake Alteration"* (5-141-98) through the special condition will assure that water quality at Buck Gully will be maintained and enhanced.

In addition, the *"Conceptual Revegetation Plan and Monitoring Program"* submitted by the applicant has not yet been reviewed by the Department of Fish and Game. To assure that the proposed restoration program is adequate for accomplishing the proposed restoration objectives, the Commission requires that prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director, written approval of the *"Conceptual Revegetation Plan and Monitoring Program"* from the Department of Fish and Game. Further, the approved restoration program shall be carried out as approved by the Executive Director.

The proposed development will repair existing man-made structures and will restore and enhance the functionality of the habitat at the project site. The Commission has conditioned the applicant to have the restoration program reviewed by the Department of Fish and Game, to implement the project as approved, and to comply with the conditions assuring the protection of water quality. Therefore, the Commission finds that the project, as conditioned, is consistent with the marine resource policies of the Coastal Act.

C. Public Access and Recreation

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road.

The proposed development is located within a beach area located between the sea and the first public road paralleling the sea. Public access to the beach has been provided by a ramp which is located at the southern end of Ocean Boulevard. The base of the ramp was destroyed as a result of the stream overflowing which created an unsafe condition for the public when traversing from the ramp to the beach. The emergency permit authorized the temporary stabilization of the ramp. The base of the ramp will be permanently repaired as part of this project which will restore the public's ability more easily use the ramp. Permanent ramp repairs include installing curbs and gutters to improve drainage, installing new pavement, repairing damaged concrete stairs, constructing a catch basin extension, the placement of rip-rap at the base of the ramp, and replacing rusted handrails.

Construction activity could affect the public's ability to enter Little Corona Beach. According to the applicant, repairs to the public access ramp will be undertaken after the summer beach season is over. To assure that construction activity does not significantly adversely affect the public's ability to recreate at the beach the Commission finds it necessary to impose a special condition to require that construction activity that could affect the public's ability to use the ramp not result in a closure of the access way to the beach between Memorial Day weekend and Labor Day. These repairs will restore the functionality of the public access ramp to the beach from Ocean and the special condition imposed will assure that the public will have continued access to the beach during the peak summer season. Therefore, the Commission finds that the project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act. The proposed development will not prejudice the City's ability to prepare a Local Coastal

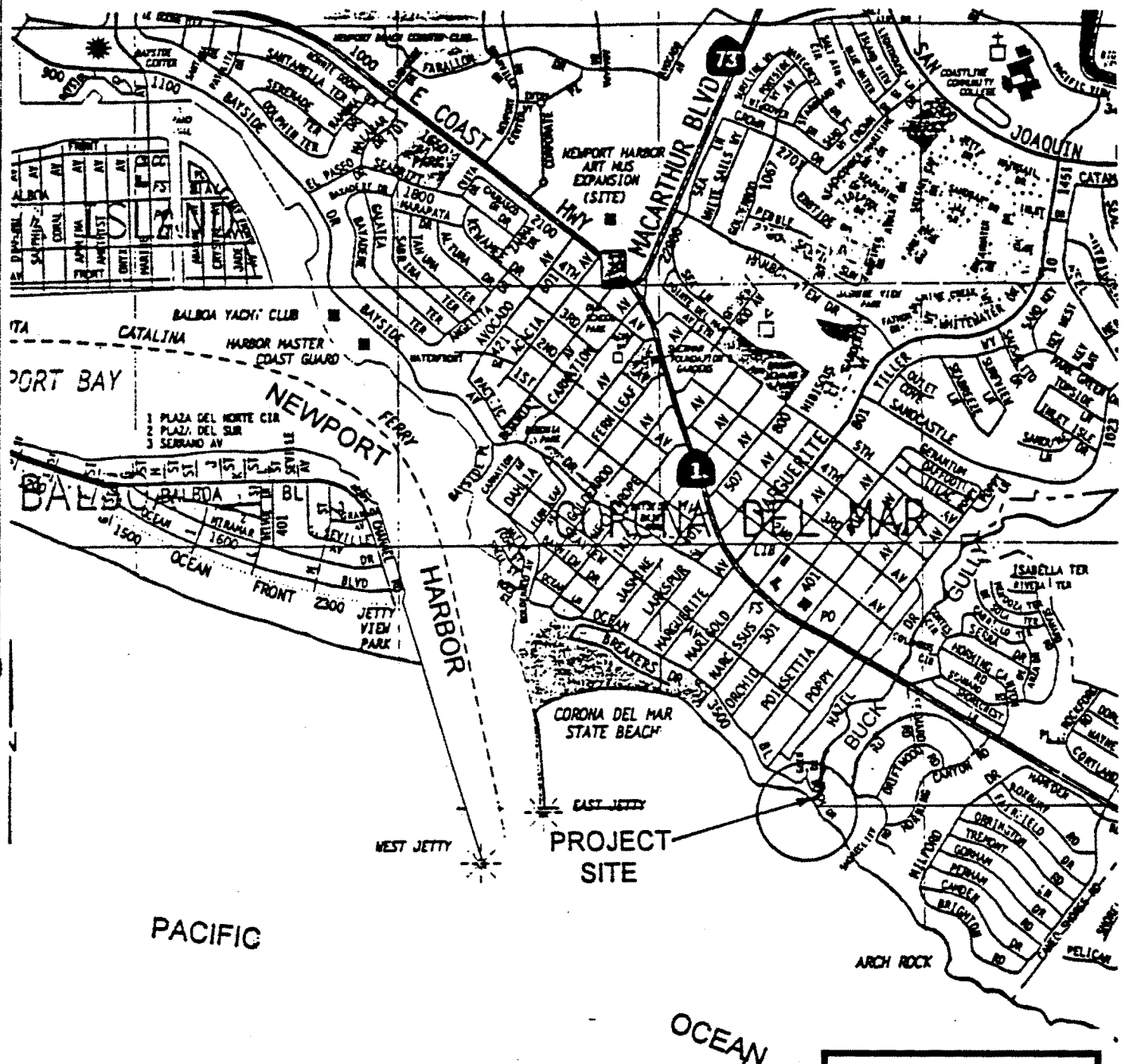
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Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096 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). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The project is located in an existing urbanized area. Development already exists in the project vicinity and all necessary utilities needed to serve the proposed development are available. The proposed development will restore habitat values and has been conditioned to be consistent with the marine protection policies in Chapter 3 of the Coastal Act. There are no other feasible mitigation measures or alternatives available which will lessen an significant adverse impacts. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



SOURCE: NOBLE CONSULTANTS

EXHIBIT No. 1

Application Number:

5-98-010

Location Map



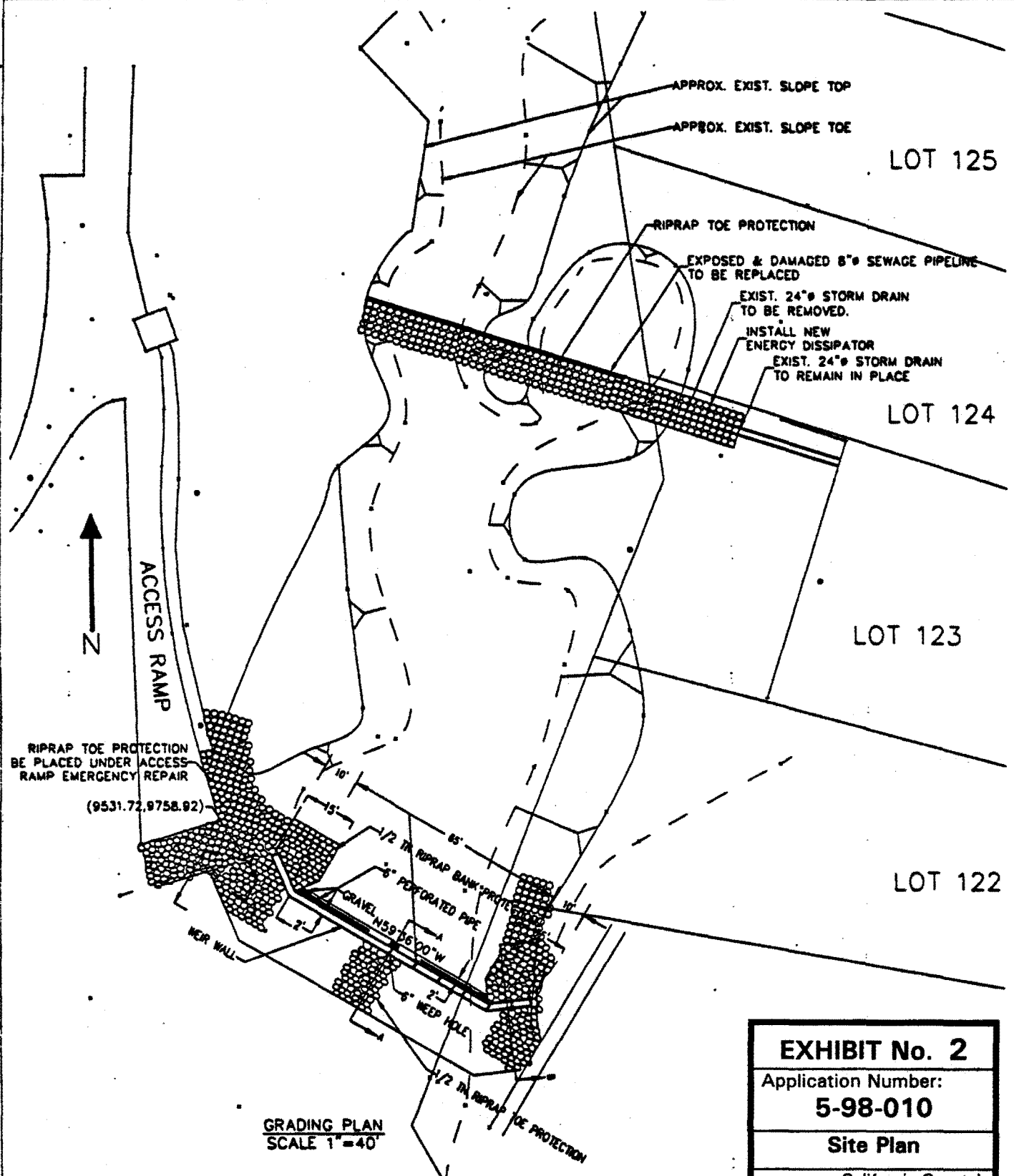
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Commission

BUCK GULLY / LITTLE CORONA BEACH

Martha Blane & Associates
Habitat Restoration Consulting

OUTLET STRUCTURE & SEWAGE
PIPELINE REPLACEMENT PROJECT

Figure 1
PROJECT VICINITY MAP



SOURCE: NOBLE CONSULTANTS

EXHIBIT No. 2

Application Number:

5-98-010

Site Plan

California Coastal
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Martha Blane & Associates
Habitat Restoration Consulting

BUCK GULLY / LITTLE CORONA BEACH

OUTLET STRUCTURE & SEWAGE
PIPELINE REPLACEMENT PROJECT

Figure 2
PROPOSED PROJECT

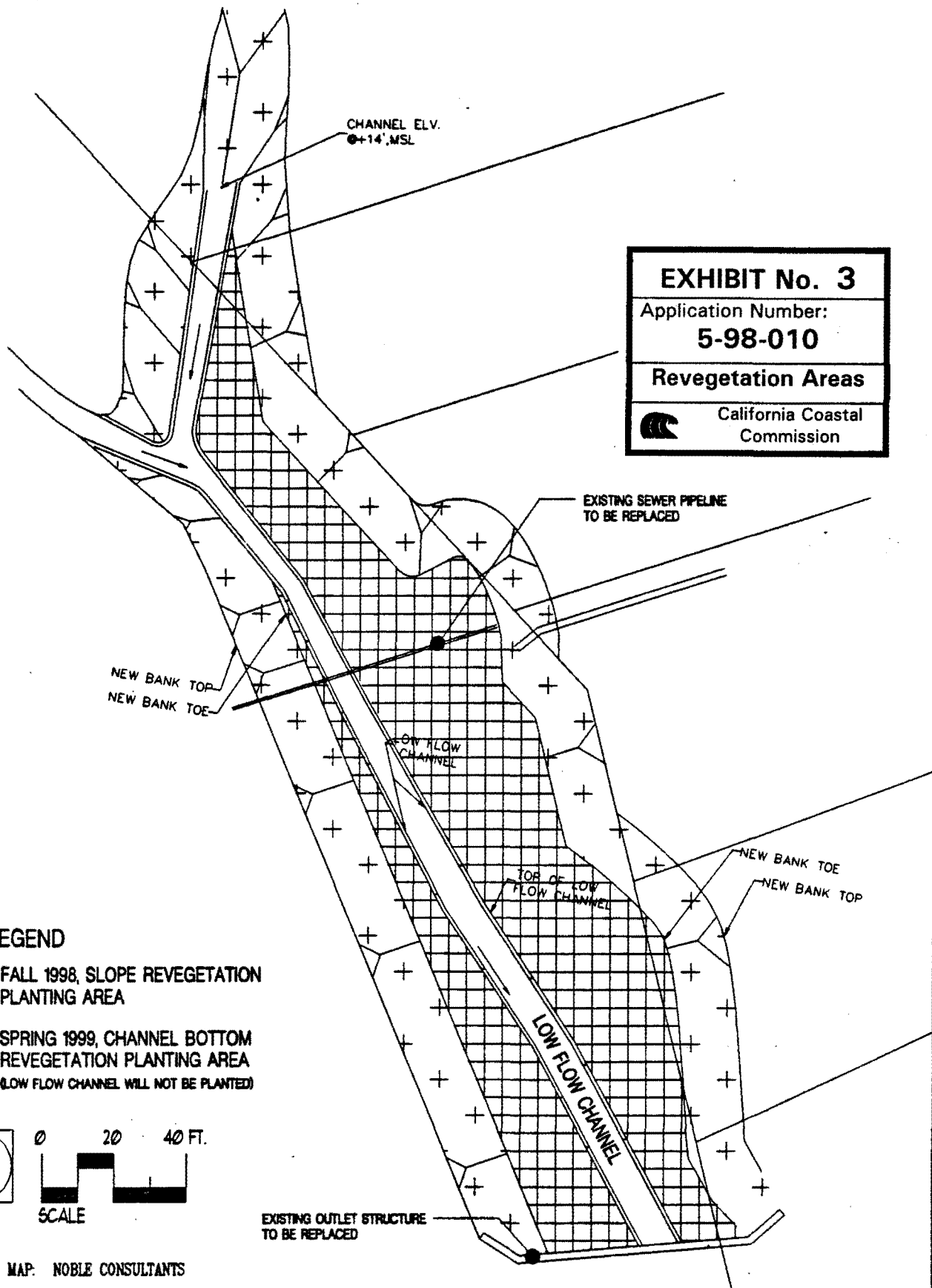


EXHIBIT No. 3
Application Number: 5-98-010
Revegetation Areas
 California Coastal Commission

BUCK GULLY / LITTLE CORONA BEACH

Martha Blane & Associates
Habitat Restoration Consulting

OUTLET STRUCTURE & SEWAGE
PIPELINE REPLACEMENT PROJECT

Figure 3
REVEGETATION AREAS

CALIFORNIA DEPARTMENT OF FISH AND GAME
330 Golden Shore, Suite 50
Long Beach, California 90802

RECEIVED
JUL - 8 1998

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CALIFORNIA
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AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Marla Matlove-Dole of City of Newport Beach, 3300 Newport Beach Blvd., Newport Beach, CA (714) 644-3322, State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 13th day of April, 1998, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): Buck Gully, tributary to the Pacific Ocean, Orange County, California, Section - Township - Range 9W.

WHEREAS, the Department (represented by Terri Dickerson through a site visit on the 10th day of September, 1997) has determined that such operations may substantially adversely affect those existing fish and wildlife resources within Buck Gully, tributary to the Pacific Ocean, specifically identified as follows: birds: mockingbird, common yellowthroat, song sparrow, house finch, other songbirds; riparian vegetation which provides habitat for those species; willows, cattails; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates October 31, 1999 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

EXHIBIT No. 4

Application Number:

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Stream Agreement



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1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
 2. The Operator proposes to alter the streambed to reconstruct a damaged outlet structure (85-foot weir wall section, supporting caisson piles, upstream subdrain system); replace an exposed and damaged sewage pipeline (temporary access road, install the pipe to a lower elevation and place non-grouted rip rap); repair approximately 250 feet of head cutting upstream of the structure; and conduct cattail maintenance, impacting approximately 1/2 acre of stream. The project is currently undergoing an alternatives analysis regarding options to stabilize and restore the streambed. The outlet structure will be reconstructed with a notch in the middle to allow for consideration of different elevations in the alternatives analysis in the long term solution/ultimate project.
 3. The agreed work includes activities associated with No. 2 above. The project area is located in Buck Gully, tributary to the Pacific Ocean in Orange County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, and shall be implemented as proposed unless directed differently by this agreement. *0.5 acre mo 6/16/98*
 4. The Operator shall not impact more than ~~1/2~~ of stream.
 5. The Operator shall mitigate with the restoration of native wetland habitat in a minimum 1/2-acre area. The Operator shall submit a Revegetation/Mitigation plan for Department review and approval within 30 days of signing this Streambed Alteration Agreement. Due to the possibility of long-term maintenance of cattails within the mitigation area, the Department recommends additional mitigation in the form of additional wetland restoration/enhancement. The plan shall: identify specific, onsite habitat restoration areas and enhancement areas; include a long-term maintenance provision; and include a plant palette. Revegetation shall use only native species.
- All mitigation shall be installed within 120 days of project impact and no later than October 31, 1999
6. The Operator shall not remove vegetation within the stream, this includes project implementation and cattail maintenance, from March 1 to August 15 to avoid impacts to nesting birds.
 7. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and removal shall normally proceed from downstream in an upstream direction.
 8. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.
 9. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired.
 10. Water containing mud, silt or other pollutants from project activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

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11. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
 12. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.
 13. Staging/storage areas for equipment and materials shall be located outside of the stream.
 14. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
 15. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
 16. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 5 years for the life of the project, and shall be free of irrigation and maintenance. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.
 17. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season.
 18. An annual report shall be submitted to the Department by Jan. 1 of each year for 5 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.
- If after 3 years of monitoring the mitigation meets the 5-year success criteria, AND the Department reviews and approves the mitigation status in writing, the Operator may consider the sites have been successful and cease monitoring.
19. Access to the work site shall be via existing roads and access ramps.
 20. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
 21. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
 22. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
 23. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

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24. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.

25. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

26. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 330 Golden Shore, Suite 50, Long Beach, CA 90802, Attn: ES.

27. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

28. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

29. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

(Operator's name)

California Dept. of Fish and Game

M. Dwyer 6/18/98
(signature) (date)

Levi Dickerson 6/16/98
(signature) (date)

Senior Civil Engineer
(title)

Environmental Specialist III
(title)



Peter M. Rooney
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Santa Ana Region

Internet Address: <http://www.swrcb.ca.gov>
3737 Main Street, Suite 500, Riverside, California 92501-3339
Phone (909) 782-4130 FAX (909) 781-6288




Pete Wilson
Governor

June 10, 1998

City of Newport Beach
Attn: Marla Matlove-Dole, Senior Engineer
3300 Newport Beach Blvd.
Newport Beach, CA 92658-8915

R E C E I
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EXHIBIT No. 5
Application Number: 5-98-010
RWQCB Letter
 California Coastal Commission

**WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION
FOR THE PROPOSED REPLACEMENT OF A DAMAGED CONCRETE OUTLET STRUCTURE
AND SEWER PIPELINE, CITY OF NEWPORT BEACH, ORANGE COUNTY (ACOE
REFERENCE NUMBERS 98-00394-ES AND 98-00483-ES)**

Dear Ms. Matlove-Dole:

On April 13, 1998, we received a transmittal dated April 10, 1998 from your agent, Noble Consultants (Agent), for the above-referenced project. We received information regarding the U.S. Army Corps of Engineers permits that apply on April 30, 1998, and the filing fee on May 15, 1998. We received all requested materials for a complete application as of May 15, 1998.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project described below will not violate State water quality standards:

1. Project description: The City of Newport Beach, Public Works Department (Applicant) is proposing to replace a damaged concrete outlet structure and sewer pipeline where Buck Gully outlets to Little Corona Beach in the City of Newport Beach.

The original Buck Gully outlet structure was built in 1969. The storms of December 6, 1997 and February 23, 1998 undermined and finally destroyed the structure. Storm flows also resulted in headcutting 300 feet upstream of the outlet structure at depths of 8 to 12 feet. A 10-inch sewage pipeline across the streambed, located approximately 180 feet upstream of the outlet structure, was exposed and damaged. Leakage at the pipeline section joints has been observed.

The proposed project consists of: 1) replacing the damaged sewage pipeline; 2) reconstructing the destroyed outlet structure; 3) grading the upstream creek bed to the desired elevations; 4) providing a maintenance program for cattail removal; and 5) initiating a planting plan to enhance the biodiversity for the area. The U.S. Army Corps of Engineers (Corps) plans to issue Nationwide Permits for Items 1 and 2; Item 3 will be covered by an Individual Permit. Alternative designs for

California Environmental Protection Agency

Item 3 have been proposed; the final design will be determined by the Corps. Preliminary information on Items 4 and 5 has been provided and will be refined during the review process for the Individual Permit in consultation with the U.S. Army Corps of Engineers, the California Department of fish and Game, and other pertinent agencies.

2. Receiving water: Buck Gully, tributary to Little Corona Beach and the Pacific Ocean
3. Fill area: The proposed project is a restoration of an area that was damaged during El Niño storms. Any wetland vegetation that existed was washed out by the storms and cannot be accurately estimated. Total project impacts are approximately 0.56 acres.
4. Dredge volume: None. Construction will use cut and fill, with some soil being imported, possibly from Orange County Water District's sedimentation basins.
5. Federal permit: 98-00394-ES
Nationwides 12 and 33 - Item 1
Nationwide 3 - Item 2
98-00483-ES
Individual Permit - Items 3, 4, and 5
6. Compensatory mitigation: The details of the proposed compensatory mitigation have not been finalized. The U.S. Army Corps of Engineers has issued a Public Notice for the Individual Permit which requests comments on the proposed activities and mitigation plan. The comment period for the Public Notice is from June 1, 1998 to July 1, 1998. In the Notice, mitigation includes restoring the creekbed with native riparian vegetation and instituting a cattail control program. A low-flow channel between 5 and 15 feet wide will be kept clear; the remainder of the creekbed (between 50 and 75 feet wide) will be allowed to support native riparian vegetation.

Estimated mitigation area and habitat types include:

- 0.23 acres wetland
- 0.25 acres riparian
- 0.08 acres streambed

There is wetland vegetation in the project area. The proposed project is not expected to impact state- or federally-listed endangered or threatened species or their critical habitat. Best Management Practices will be implemented during construction, including diverting flows around the construction area.

You have submitted an application for a nationwide permit to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act and have filed for a Coastal Development Permit from the California Coastal Commission. You have obtained Streambed Alteration Agreement No. 5-141-98 from the California Department of Fish and Game. The proposed construction activities are exempt from the requirements of CEQA under Section 15269.

Ms. Maria Matlove-Dole
City of Newport Beach
June 10, 1998

Page 3

Resolution No. 96-9 (copy enclosed) provides that waste discharge requirements for certain types of discharges are waived provided that criteria and conditions specified in the Resolution are met. Provided that the criteria and conditions for Projects Which Impact Wetlands and/or Riparian Habitats specified on page 2 (of Attachment "A" to the Resolution), Minor Stream Channel Alterations specified on page 3, and the general conditions specified on page 4, and the additional condition(s) listed below are met, waste discharge requirements are waived for this project. Additional conditions include:

- Provide a description of the final creek bed grading design.
- Provide a copy of the final mitigation maintenance and monitoring plan.

Pursuant to California Code of Regulations Section 3857, this action is equivalent to waiver of water quality certification. We anticipate no further action on your application, however, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, the project description for Items 3, 4, and 5 as submitted by your Agent prior to the date of this letter significantly changes, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

Should there be any questions, please contact Hope Smythe at (909) 782-4493 or Linda Garcia at (909) 782-4469.

Sincerely,


GERARD J. THIBEAULT
Executive Officer

Attachment

cc (with attachment):

Noble Consultants, Inc. - Chia-Chi Lu

cc (w/out attachment):

U.S. Environmental Protection Agency, Wetlands and Sediment Management Section - Jerry Bock
(WTR-10)

U.S. Army Corps of Engineers - Eric Stein

U.S. Fish and Wildlife Service - Martin Kenney

State Water Resources Control Board, OCC - Ted Cobb

State Water Resources Control Board, DWQ-Nonpoint Source Certification and Loans Unit -
William R. Campbell, Chief

California Department of Fish and Game, San Diego - Tim Dillingham

California Coastal Commission - Meg Vaughn

LCG:\data\401\buckgull.401

California Environmental Protection Agency

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

EMERGENCY PERMIT

City of Newport Beach
3300 Newport Beach Blvd
Newport Beach, CA 92658-8915

29 January 1998

Emergency Permit No.) 5-98-010-G**Location of Emergency Work**

Buck Gully at Little Corona Beach (APN(s) 052-180-01, 052-180-02)


Work Proposed

The removal of broken concrete on the landing, flattening of winwall debris, the placement of filter fabric, and approximately 120 cubic yards of rip-rap around storm damaged landing.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of a damaged access ramp requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the reverse.

EXHIBIT No. 6
Application Number: 5-98-010
Emergency Permit
 California Coastal Commission

Very Truly Yours,

Peter M. Douglas
Executive Director

By: *Leresa Henry*
District Manager

cc: Local Planning Department
Noble Consultants, Attn: Chia-Chi Lu

Enclosures: 1) Acceptance Form; 2) Regular Permit Application Form

