

**CALIFORNIA COASTAL COMMISSION**

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 Hearing Date: October 12-15, 1999  
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-99-244

**APPLICANT:** County of Orange  
 Jona Goldrich, Sol Kest and Mel Grau

**AGENT:** Moffatt & Nichol Engineers

**PROJECT LOCATION:** Sunset Harbor Marina (i.e. Sunset Aquatic Park)  
 2901-A Edinger Avenue, Seal Beach, Orange County

**PROJECT DESCRIPTION:** The applicant proposes to demolish an existing 255 slip marina and construct a 240 slip marina in a different configuration. This development includes the removal and replacement of piers, ramps, pilings, and dock floats. No dredging is proposed. In addition, re-surface existing parking areas and implement non-structural, aesthetic improvements to existing restroom buildings and the administrative building.

**SUMMARY OF STAFF RECOMMENDATION:**

The major issues of this staff report include possible impacts upon eelgrass and the California least tern as well as a change to the quantity of berthing slips available in a public recreational marina. Staff recommends **APPROVAL** of the proposed development with seven special conditions including: 1) Eelgrass identification and mitigation; 2) construction responsibilities and best management practices; 3) identification of a construction debris disposal site; 4) U.S. Army Corps of Engineers approval; 5) Evidence of legal ability to comply with the terms and conditions of this approval; 6) Restrictions on the timing of construction; and 7) Notification of the need to obtain a coastal development permit amendment for any change to the proposed project.

**LOCAL APPROVALS RECEIVED:** Approval in Concept, City of Seal Beach dated September 14, 1999.

**OTHER AGENCY APPROVALS RECEIVED:** Waiver of Waste Discharge Requirements and Water Quality Certification from California Regional Water Quality Control Board, Santa Ana Region...dated August 25, 1999.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal development permit; 5-97-231 (County of Orange); P-80-7042 (Stern-Goldrich & Kest); 5-82-430 (County of Orange EMA); 5-87-074 (County of Orange EMA); 5-96-107 (County of Orange EMA); 5-93-110 (County of Orange); 5-92-067-G (County of Orange); 5-87-444-A (County of Orange);

5-98-317 (Newport Beach Townhome Owners Association); 5-95-011 (Newport Beach Townhome Owner's Association, 5-94-166 (Haseko Marina Development Inc.), 5-95-160 (The Irvine Company), 5-98-254 (California Recreation Company); *Eelgrass Survey (Zostera marina), Impact Assessment, and Mitigation Plan* prepared for the County of Orange Sunset Harbor Maintenance Dredging Project, Phase II, Sunset Harbor, Orange County, California prepared by Coastal Resources Management of Corona Del Mar, California dated February 28, 1997; Negative Declaration for the Sunset Harbor Marina Improvement Plan (File IP 99-053) prepared by the County of Orange Planning and Development Services Department; Letter from Moffatt & Nichol Engineers to the California Coastal Commission regarding the Sunset Harbor Marina Improvement Plan dated August 17, 1999.

## **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 will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies of the Coastal Act, 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 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. EEL GRASS MITIGATION**

- A. Compliance with Eelgrass Mitigation Plan. The applicant shall implement and comply with the "*Eelgrass Survey (Zostera marina), Impact Assessment, and Mitigation Plan*" prepared for the County of Orange Sunset Harbor Maintenance Dredging Project, Phase II, Sunset Harbor, Orange County, California prepared by Coastal Resources Management of Corona Del Mar, California dated February 28, 1997. The mitigation plan shall be undertaken in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service. Any changes to the approved mitigation plan, including but not limited to changes to the monitoring program to ensure success of the eelgrass mitigation site, shall require an amendment to this permit from the Coastal Commission or written concurrence from the Executive Director that the changes do not require a permit amendment.
- B. Pre-construction Eelgrass Survey. Not more than one hundred twenty (120) days prior to commencement of construction, the applicant shall undertake a survey of the project site to determine the existence of eelgrass. The survey shall be prepared in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the new eelgrass survey for the review and written approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than ten (10) working days prior to commencement of construction. If the new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in Special Condition No. 1.A. above, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 ratio at the same transplantation locations identified in the eelgrass mitigation plan described in Special Condition No. 1.A. above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition 1.A.
- C. Post-construction Eelgrass Survey. Within one month after the conclusion of construction in coastal waters, the applicant shall survey the project site to determine

if any eelgrass was adversely impacted, as proposed. The survey shall be prepared in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a 1.2:1 ratio at the transplantation site and in accordance with the mitigation plan described in Special Condition No. 1.A. above.

**2. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

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

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- (c) No machinery or construction materials not essential for project improvements shall be allowed at any time in the intertidal zone;
- (d) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- (e) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity;
- (f) Measures shall be taken to ensure that barges do not ground and impact eelgrass sites;
- (g) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (h) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;

**3. LOCATION OF DEBRIS DISPOSAL SITE**

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

**4. U.S. ARMY CORPS OF ENGINEERS APPROVAL**

PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the

applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

5. **LEGAL INTEREST**

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to undertake the proposed development as conditioned herein.

6. **TIMING OF PROJECT**

In order to reduce impacts on the California least tern during nesting and foraging season, no construction activity which may generate noise or turbidity in the water column shall occur during the period commencing March 1 and ending September 15 of any year.

7. **FUTURE DEVELOPMENT**

This coastal development permit 5-99-244 is only for the development, located at 2901-A Edinger Avenue, in the City of Seal Beach, County of Orange, as expressly described and conditioned herein. The permittee shall undertake development in accordance with the approved coastal development permit. Any proposed changes to the development, including any change to the sequence of construction, shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

## IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

### A. Project Description and Location

The existing and proposed marina is a public recreational boating facility, located at 2901-A Edinger Avenue, City of Seal Beach, Orange County (Exhibit 1).

The applicant proposes to demolish a 255 slip marina (Exhibit 2, page 1) and construct a 240 slip marina (Exhibit 2, page 2). All existing dock floats, ramps, and pilings within the main basin (i.e. Bolsa Chica Basin - identified as docks "C" through "K" on Exhibit 2, page 1) will be removed and new floats, ramps, and pilings will be constructed in a new configuration. In this area a total of 72 12-inch diameter pilings will be removed and 80 14-inch diameter piles will be installed (Exhibit 2, page 3). In addition, two 12-inch diameter pilings will be replaced with two 14-inch diameter pilings at the harbor patrol's dock area located west of the basin (at dock "A"). The existing 74 pilings to be removed constitute 58 square feet of fill, while the proposed pilings have a total fill of 85.5 square feet, for a total increase of 27.5 square feet of fill of coastal waters with pilings. In the other channel areas west of the basin (docks "A" and "B") only the dock floats and ramps will be removed and replaced. The existing 12 inch diameter pilings will remain in place. The existing and proposed boat slip lengths are as follows:

	<i>Slip Length ( in feet)</i>											<i>Total</i>
	<i>20</i>	<i>23</i>	<i>24</i>	<i>25</i>	<i>30</i>	<i>35</i>	<i>40</i>	<i>42</i>	<i>45</i>	<i>48</i>	<i>50</i>	
<b><u>Bolsa Chica Basin (dock C - K)</u></b>												
Existing	4	0	8	63	88	0	12	0	1	0	0	176
Proposed	0	0	0	38	66	40	0	8	0	9	0	161
<b><u>Main Channel (dock A &amp; B)</u></b>												
Existing	2	1	0	0	2	68	0	0	5	0	1	79
Proposed	2	1	0	0	2	68	0	0	5	0	1	79
<b>Total (existing)</b>	6	1	8	63	90	68	12	0	6	0	1	255
<b>Total (proposed)</b>	2	1	0	38	68	108	0	8	5	9	1	240
<b>Change</b>	-4	No Change	-8	-25	-22	+40	-12	+8	-1	+9	No Change	-15

In addition to the reconfiguration of the dock floats, the applicant is proposing to resurface existing parking areas. In total, there are 307 existing parking spaces dedicated to the following uses: 5 for use by the Sheriff Department; 7 guest handicap parking; 4 tenant handicap parking (permit required); 221 open guest parking spaces (no permit required); and 70 tenant parking spaces (permit required). There is no proposed change to the existing parking configuration (Exhibit 3).

Finally, the applicant proposes to renovate three of five existing restroom buildings and one administrative building. The three existing restroom buildings to be renovated are key-locked and restricted to use by the tenants of the boats berthed in the marina. A fourth key-locked restroom building and one public restroom building will not be renovated under this proposal. There are no proposed changes to the floor plan, foot print, or use of the restrooms or administrative building.

The proposed project is anticipated to begin in October 1999 or as soon as all necessary approvals have been obtained. According to the applicant's Mitigated Negative Declaration the proposed project will take approximately 12-18 months to complete. Construction will occur in phases in order to maintain access to some berthing areas during the proposed development. In addition, the proposed project will be constructed in conjunction with the dredging project authorized under coastal development permit 5-97-231. First, the existing dock floats will be removed and any guide pilings planned for removal will be extracted. Next, the dredging proposed under coastal development permit 5-97-231 will commence. Upon completion of the dredging, the proposed floats and guide pilings will be constructed.

**B. Previous Commission Action on Site**

Coastal development permit P-80-7042

On September 22, 1980, the California Coastal Commission, South Coast Regional Commission approved coastal development permit P-80-7042 for the addition of 49 boat slips to Sunset Aquatic Park. No special conditions were imposed.

Coastal development permit 5-82-430

On March 23, 1983, the California Coastal Commission approved the deposition of 50,000 cubic yards of material dredged from Huntington Harbor on an existing disposal site at Sunset Aquatic Park. The Commission imposed four special conditions which restricted the location of dredged spoil disposal, required the applicant to utilize all suitable dredged material for beach replenishment, informed the applicant regarding any assertions of public trust rights, and required the applicant to obtain approval from the State Lands Commission.

Coastal development permit 5-87-074

On April 7, 1987, the Executive Director issued coastal development permit waiver 5-87-074 for the demolition of one dock and the construction of three docks - one for Harbor Patrol boats and two public docks. The waiver was reported to the Commission at the April 21-24, 1987 meeting.

Coastal development permit 5-87-444 and 5-87-444-A1

On July 9, 1987, the Commission approved coastal development permit 5-87-444 for maintenance dredging in the main channel, Sunset Aquatic Park Access Channel, Sunset Channel of Sunset Harbor and Huntington Harbor. The Commission imposed a special condition requiring the applicant to submit a final eelgrass mitigation plan including details of transplanting, timing, and performance standards. The permit was issued on October 2, 1987. In addition, permit amendment 5-87-444-A1 was issued on October 16, 1989, to authorize 10,000 additional square feet of dredging between the pierhead line of Sunset Aquatic Park and the bulkhead line of Portofino Coves.

Coastal development permit 5-92-067-G

On April 3, 1992, the Executive Director issued emergency coastal development permit 5-92-067-G to repair the footings of the Sunset Aquatic Park bridge damaged by heavy winter rains and flooding. The emergency permit was reported to the Commission on June 10, 1992.

Coastal development permit 5-92-067

On June 10, 1992, application 5-92-067 was submitted as the follow-up regular coastal development permit for emergency coastal development permit 5-92-067-G. This application was withdrawn on March 1, 1993 in order for the applicant to refine and reconsider mitigation options.

Coastal development permit 5-93-110

On March 22, 1993, application 5-93-110 was submitted as the follow-up regular coastal development permit for emergency coastal development permit 5-92-067-G. On July 15, 1993, the California Coastal Commission approved coastal development permit 5-93-110 to repair the west end of the Sunset Aquatic Park bridge including removing and replacing concrete deadman, timber abutment, two pier trusses and the road surface. In addition 90 tons of rip rap covering 108 square feet of the channel bank was authorized. The Commission imposed a special condition requiring the applicant to verify mitigation credits required to mitigate the loss of eelgrass. Based upon the Commissions records the Notice of Intent to Issue Permit was sent July 21, 1993, however, the permit was not issued and has therefore lapsed.

Coastal development permit 5-97-231

On December 10, 1997, the Commission approved coastal development permit 5-97-231 and issued consistency determination CC-137-97 for maintenance dredging of up to 106,400 cubic yards of material and offshore disposal at disposal site LA-2. In addition, the proposed project included removal of 0.181 acres of eelgrass and transplanting of 0.217 acres of eelgrass. Several special conditions were imposed regarding eelgrass mitigation, water quality, navigation, and the timing of construction (see Exhibit 4). Special condition A regarding eelgrass requires the applicant to comply with the eelgrass mitigation plan titled "Eelgrass (Zostera Marina) Survey, Impact Assessment, and Mitigation Plan, County of



Orange Sunset Harbor Maintenance Dredging Project, Phase II" dated February 28, 1997. The proposed mitigation plan includes the removal of 7,896 square feet (0.181 acres) of eelgrass to be transplanted at a nearby location within Sunset Harbor. As mitigation for the removal of the eelgrass, the eelgrass will be replanted at a 1.2:1 ratio. Therefore, in addition to the 7,896 square feet of eelgrass to be transplanted, 1,565 square feet of eelgrass will be planted adjacent to the transplanted eelgrass. Also, since the eelgrass survey submitted with the application was not current, the Commission required the applicant to submit a pre-construction eelgrass survey not more than 120 days prior to the commencement of dredging, consistent with the standards of the Southern California Eelgrass Mitigation Policy (Exhibit 10), in order to establish an updated baseline quantity of eelgrass. A post-construction eelgrass survey is the required to assess any inadvertent impacts to the eelgrass beds by the dredging. Eelgrass mitigation must occur for any such impacts at a 1.2:1 ratio. The applicant is also required to identify and limit activity near any eelgrass which is not proposed to be transplanted.

**C. Marine Resources**

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.*

1. Water Quality and Construction Impacts

The proposed project is the demolition of an existing marina and construction of a new marina located in coastal waters. Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and the marine environment.

In order to assess impacts upon water quality, the proposed project was submitted to the California Regional Water Quality Control Board (RWQCB) for their review and approval. The RWQCB determined that water quality would not be affected by the proposed project if the

applicant implements proposed best management practices to minimize the dispersal of silt, debris, and chemicals (Exhibit 8). The best management practices include the use of floating booms to contain debris, recovery of any non-buoyant debris by divers as soon as possible after loss, and compliance with the Orange County Drainage Area Management Plan regarding the control of chemicals used on site. The applicant's project description submitted with this coastal development permit application did not list the best management practices described by the RWQCB. The Commission finds that since construction of the proposed project requires the use of best management practices to minimize impacts upon water quality the Commission imposes a special condition requiring the applicant to utilize best management practices including those described above. In addition, the Commission finds it necessary to identify the following other construction related responsibilities: no local sand, cobbles, or shoreline rocks may be used for construction material; all construction materials and equipment shall be stored landward of the bulkhead, on impervious surfaces only; all construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; no machinery not essential to project construction may be placed in the intertidal zone at any time, and that any and all construction equipment, materials and debris are removed from upland areas at the conclusion of construction. In addition, demolition of existing structures will generate debris that will not be recycled into the proposed development. Since the applicant has not identified a disposal site and in order to prevent impacts to coastal waters, the Commission imposes a special condition which requires that all demolition debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

The proposed project will maintain the present use and is not expected to create additional adverse impacts on marine resources. Additionally, the Regional Water Quality Control Board has reviewed the project and determined that no significant adverse effects will occur upon water resources as a result of the project. However, the Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

## 2. Eelgrass and other Sensitive Species Impacts

Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) (Exhibit 10).

The proposed project could impact eelgrass through the removal of existing pilings and placement of pilings in a different location where eelgrass may be located. In addition, the proposed project will result in a change to the configuration of the floats with a subsequent change to the shading pattern cast by the floats upon eelgrass beds. Changes to shading can effect the ability of eelgrass to grow. Finally, construction activity, including barge anchoring, vessel propeller wash, and propeller contact with the harbor bottom could cause scarring to

eelgrass beds. However, as noted next, no eelgrass has been identified in the project area subject to this application.

The applicant has submitted an eelgrass survey dated February 28, 1997, titled *Eelgrass (Zostera marina) Survey, Impact Assessment, and Mitigation Plan* which does not identify the presence of any eelgrass in the area of the proposed marina-related construction that is the subject of the application. Consequently, the applicant is not proposing any eelgrass impacts. The applicant is proposing to coordinate the proposed development with implementation of Orange County's dredging project approved under CDP 5-97-231. As outlined previously, coastal development permit 5-97-231 includes dredging of up to 106,400 cubic yards with offshore disposal of the dredge spoils. Part of this proposed dredging will occur within the area occupied by the marina that is the subject of this application (5-99-244). The dredging project will result in impacts to eelgrass (Exhibit 5 and 6) which will be mitigated as required by CDP 5-97-231 (Exhibit 4). A pre-construction eelgrass survey, not prepared as of the date of this staff report, is required to be submitted under the special conditions of CDP 5-97-231. This pre-construction survey will document the presence of any eelgrass in the areas subject to dredging, including the area occupied by the subject marina. The special conditions of CDP 5-97-231 also require a post-construction survey to document any eelgrass impacts related to the proposed dredging (see Exhibit 4). The applicant has stated that any eelgrass in the area of the marina will be impacted by Orange County's dredging project. Since dredging will precede the construction of the marina, any impacts to eelgrass will be a result of the proposed dredging and not the construction of the marina. Such impacts to eelgrass will be mitigated under the requirements of the special conditions of CDP 5-97-231.

While the applicant is proposing to coordinate the proposed development with the Orange County dredging project, there is no guarantee that the dredging and proposed marina reconstruction will occur in the anticipated sequence. Therefore, the Commission finds that it is necessary to condition the project to ensure that any eelgrass that will be impacted by the proposed marina development is transplanted and mitigated. First, the Commission imposes a condition which requires that transplantation and mitigation be performed in accordance with the proposed mitigation plan (i.e. *Eelgrass (Zostera marina) Survey, Impact Assessment, and Mitigation Plan* dated February 28, 1997) and the SCEMP. Next, the eelgrass survey in the proposed mitigation plan was conducted in July and August of 1996. Due to the ephemeral nature of eelgrass locations, the SCEMP recommends that eelgrass surveys be conducted not more than one hundred twenty (120) days prior to the start of a project that would impact eelgrass. Therefore, based on this criteria, the eelgrass survey in the proposed mitigation plan is outdated, and no new eelgrass survey is proposed. Therefore, the Commission finds that a special condition is necessary requiring that a new eelgrass survey within the boundaries of the proposed project be undertaken 120 days prior to commencement of any development. The Commission previously imposed similar conditions for pre-construction eelgrass surveys on coastal development permits 5-97-230 (City of Newport Beach) for the Balboa Island Bridge retrofit project, 5-97-231 (County of Orange) for proposed dredging at Sunset Harbor, and 5-97-071 (County of Orange) for dredging of Upper Newport Bay. The pre-construction survey will also identify any eelgrass beds not previously identified which will be impacted and which must be transplanted prior to the commencement of development. Such transplantation shall occur at a 1.2:1 ratio at the location identified in the eelgrass mitigation plan. Finally, the Commission finds that a post-construction eelgrass survey must be submitted to determine whether any eelgrass not proposed to be impacted was inadvertently

impacted. Any eelgrass inadvertently impacted which was not proposed to be impacted must be mitigated under the proposed mitigation plan in the same manner as any planned eelgrass transplantation and mitigation – i.e. the same ratio of 1.2:1, the same transplantation site, same procedures, etc. The Commission required similar post-construction eelgrass surveys and mitigation for inadvertently impacted eelgrass in coastal development permit approvals 5-97-230, 5-97-231, and 5-97-071. Therefore, if the Orange County dredging project does not go forward as anticipated, the applicant must transplant eelgrass prior to commencement of development and mitigate any inadvertent losses to eelgrass caused by the demolition and reconstruction of the marina.

Eelgrass growth occurs primarily between March 1 and September 1 of each year. In addition, endangered wildlife and species of concern, such as the California Least Tern (*Sterna antillarum browni*), which use eelgrass for foraging, forage primarily between April 1 and September 15 of each year. Construction activity, such as pile driving, may cause turbidity in the water column which would shade eelgrass and limit eelgrass growth and affect foraging species ability to see food normally visible in the water. In addition, pile driving would generate noise in the water column that would disturb fish and other species normally present upon which foraging least terns would normally feed. In order to ensure that impacts upon eelgrass growth and sensitive species are avoided, the Commission finds that it is necessary to impose a condition which prohibits construction, between March 1 and September 15 of any year during which construction occurs, that would impact eelgrass and foraging species. The Commission has previously imposed similar time limits on construction in approved coastal development permits 5-97-230, 5-97-231 and 5-97-071.

Also, staff with the U.S. Army Corps of Engineers have verbally indicated to Commission staff that there is no objection to issuance of a coastal development permit provided that there are time limits on construction so that there are no impacts to the least tern. Evidence of final approval from the U.S. Army Corps of Engineers will pinpoint for the Commission whether such approvals have any effect upon this coastal development permit approval. Therefore, the Commission imposes a special condition which requires that the applicant submit evidence of approval from the U.S. Army Corps of Engineers prior to commencement of construction.

The Commission finds that by sequencing the proposed project to occur after the dredging proposed under coastal development permit 5-97-231 the proposed project would minimize adverse impacts to eelgrass. However, the Commission also finds it necessary to require an amendment to this permit for any changes to the proposed construction sequence, or concurrence from the Executive Director that the changes do not require a permit amendment. This would ensure that the Commission is specifically notified, along with other resources agencies, of any changes. This would allow the Commission to review, for example, remediation measures which may be necessary to ensure the success of any required eelgrass mitigation. Therefore, the Commission imposes special condition seven (7).

CDFG staff have verbally indicated to Commission staff that the CDFG would not oppose the project provided that the proposed project follows the proposed sequencing and provided that any impacts upon eelgrass are mitigated according to the SCEMP, and that a more recent eelgrass survey is prepared. As conditioned, the proposed development is consistent with CDFG's verbal comments.

Thus, as conditioned, the Commission finds that the proposed project would eliminate significant adverse impacts to eelgrass and sensitive species such as the least tern. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with section 30231 of the Coastal Act.

3. Fill of Coastal Waters and Loss of Marine Habitat

The proposed project will involve the removal of 72 dock float guide pilings and the placement of 80 concrete guide pilings in open coastal waters. These dock float guide piles constitute fill of open coastal waters. More specifically, the existing 74 pilings to be removed constitute 58 square feet of fill, while the proposed pilings have a total fill of 85.5 square feet, for a total increase of 27.5 square feet of fill of open coastal waters with pilings. Under Section 30233 of the Coastal Act, fill of open coastal waters is only allowed when several criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided. Section 30233 of the Coastal Act states, in part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

The proposed project meets the first criteria because it is the replacement of an existing public boating facility. Fill of open coastal waters for the construction of a public boating facility is an allowable use under Section 30233(a)(4) of the Coastal Act.

Next, the proposed project is the replacement of a boating marina in a different configuration. Alternatives to the proposed project include no project, no change to the existing configuration, or a change to the proposed configuration.

Under the no project alternative, the applicant could only pursue simple maintenance repair activity. However, simple maintenance repair could not feasibly repair the docks, nor bring them up to present engineering and safety standards. Simple maintenance would only prevent further deterioration of the docks. In addition, marine habitat would not significantly benefit from the no project alternative since this alternative would necessitate that the structure remain in place. Continued, safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system.

The second alternative, replacement of the project in the same configuration would not reduce the number of piling required. The proposed project is within the same footprint as the existing marina. However, modern engineering standards require a larger number of pilings.

Therefore, even if the marina were demolished and reconstructed in the same configuration, the number of proposed pilings required would not change.

Under the proposed alternative, the dock and guide piling layout is changing from the existing layout. However, the number of proposed pilings is the minimum necessary to adhere to present engineering standards. Furthermore, it should be noted that the installation of the new pilings will result in temporary disturbance to the existing vertical substrate. The guide pilings provide a vertical substrate for mollusks and other marine organisms. However, the proposed project is will replace and increase the quantity of vertical substrate upon which mollusks and other marine organisms may settle. Therefore, no long-term impact will occur to this habitat. In addition, the proposed project will not result in any significant adverse impacts to eelgrass because the applicant is required to document and transplant any eelgrass which may be in the vicinity of the proposed development prior to the commencement of development. Furthermore, the applicant is required to obtain a coastal development permit amendment if the applicant is unable to adhere to the proposed sequencing. Therefore, the proposed project is the least environmentally damaging, feasible alternative, and includes feasible mitigation measures to minimize adverse environmental effects.

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. In addition, the proposed project is the least environmentally damaging alternative, and does provide feasible mitigation measures. Therefore, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

**D. Public Access and Recreation**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

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

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:  
(2) adequate access exists nearby, or,*

Section 30224 of the Coastal Act states:

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating*

*facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234 of the Coastal Act states:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

The proposed project is located between the nearest public road and the sea as well as within coastal waters. The project is the demolition and reconstruction of a public boating marina in a different configuration. In addition, the existing parking lot will be resurfaced and re-stripped in the same as existing configuration. Finally, three restrooms and one administrative building will be provided with aesthetic improvements. The public marina also has dry storage, a public boat launch, and landscaped picnic areas that will not be modified by the proposed development.

The existing and proposed marina is a public facility with berthing slips available to the general public, on a month-to-month basis for a fee. There are three boat slips reserved for transient boaters. The proposed project does not include any proposed change to the method of leasing or the fee schedule nor the quantity of transient slips available. Upon completion of the proposed development, the marina will remain open to the general public.

There are four key-access only restrooms for marina tenants and one public restroom. Three of the restrooms will be renovated. However, there is no proposed change to the use of these restrooms. The existing publicly accessible restroom is near existing public picnic areas and the existing public boat launch.

The proposed project will occur concurrently with Orange County's dredging project approved under coastal development permit 5-97-231, and will take approximately 12 to 18 months to complete. Concurrent implementation of the marina replacement and the dredging proposed under 5-97-231 will reduce the amount of time that berthing slips would be inaccessible if the projects were undertaken separately. In addition, the proposed marina replacement will be phased so that only portions of the marina, not the entire marina, will be out of service at any one time. This phasing will further reduce impacts upon access to the marina. Boats using the existing facility will either be dry docked, moved to other slips within the marina, or moved to other nearby facilities in Huntington Harbor during project construction. Also, the existing dry dock storage area and public boat launching facility will remain operational throughout implementation of the proposed development. In addition, no regional public accessways will be blocked during project construction.

The existing and proposed project is a public recreational boating facility. No change to the use or operation of the facility is proposed. Project construction will result in temporary impacts upon access to berthing facilities at the site. However, the project has been designed to coincide with another development project and will reduce the cumulative time that access

would be limited by the individual developments. In addition, the project has been phased to reduce impacts upon access to the facility. Also, the public boat launching facility will remain open during construction, therefore, some functionality of the public facility will be retained during construction. Therefore, the Commission finds the proposed project is consistent with section 30210 and 30212 of the Coastal Act.

As outlined more fully in the project description, the proposed project will result in a reduction in the quantity of berthing slips available, but will increase the quantity of larger boat slips available for lease. Overall, there will be a net reduction of 15 berthing slips. The applicant has submitted an analysis which shows that there is substantial demand and limited availability of larger boat slips, and limited demand and excess supply of small slips during most of the year (see Exhibit 7). Since the proposed project will increase the number of slips available to the members of the public demanding such slips and decrease the number of slips for which there is limited demand, the proposed project will not have an adverse impact upon public access to recreational facilities. Increasing the number of slips available for which there is a demand will increase recreational boating use of coastal waters. Therefore, the Commission finds the proposed project is consistent with section 30224 of the Coastal Act.

**E. Legal Ability to Undertake Development**

In 1987 Commission staff prepared a summary of ownership of the subject site for coastal development permit application 5-87-074. This summary is as follows:

*Sunset Aquatic Regional Park consists of two parcels totaling 63 acres. Located within the City of Seal Beach, the park's southern boundary is Huntington Harbor. Orange County bought the property in 1962 from the U.S. government at 50% of its "fair market" value with a condition that the property be developed as a regional recreational facility. The Orange County Environmental Management Agency began park improvements in 1964 and currently operates much of the area.*

*About 38 acres of the 44 acre easterly parcel have been partially filled. Twenty-four of these filled acres have been leased for development of boating related facilities. A 260 slip marina, harbor masters office, boat yard sales office, parking lot and other support facilities are located on this parcel.*

*The Seal Beach Naval Weapons Station lies immediately north of the park. About 674 of the station's 4,969 acres are tidal marsh habitat which is supervised by the U.S. Department of Fish and Game.*

*Orange County leases about 31 acres of adjoining tidelands in the adjacent main channel.*

*The project site is in the Harbor/Marina sub-area of Sunset Aquatic Park. This 4.5 acre segment accommodates boat slips, Harbor District offices, commercial structures and boat storage area of the Sunset Aquatic Marina, parking areas, park and picnic areas, a pump-out facility, and a 8 lane public launch ramp facility. Across the channel lies land area for proposed Least Tern nesting and flocking sites.*



Commission staff have confirmed through documentation submitted that all necessary applicants are before the Commission. However, documentation which would confirm that all the applicants have the present legal ability to undertake all of the proposed development and comply with all the conditions of approval has not been submitted. Specifically, Commission staff require a complete copy of the final, fully executed lease between the State Lands Commission and the County of Orange for certain lease and sub-lease areas (see Exhibit 9). Commission staff have received draft copies of this lease, but not a final, fully executed copy of the lease. Section 30601.5 of the Coastal Act requires states in part,

...prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Therefore, the Commission imposes a special condition which requires that, prior to issuance of the permit, the applicant shall submit evidence of their legal ability to undertake development at the subject site as conditioned herein. As conditioned the Commission finds the proposed project is consistent with Section 30601.5 of the Coastal Act.

#### **F. Land Use Plan**

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three policies of the Coastal Act.

#### **G. California Environmental Quality Act**

Section 13096 of the Commission's 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 proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal resources. These conditions are as follows: 1) Eelgrass identification and mitigation; 2) construction responsibilities; 3) identification of a construction debris disposal site; 4) U.S. Army Corps of Engineers approval; 5) Evidence of legal ability to comply with the terms and conditions of this approval; 6) Restrictions on the timing of construction; and 7) Notification of the need to obtain a coastal development permit amendment for any change to the proposed project. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

# DEVELOPMENT LOCATION MAP

**PROJECT WEED**  
JUL 6 1989

631 - 635 - 234

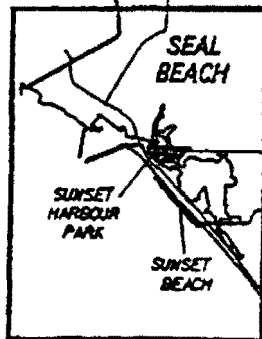
CALIFORNIA  
COASTAL COMMISSION

N  
Not to Scale

LOS ANGELES  
COUNTY

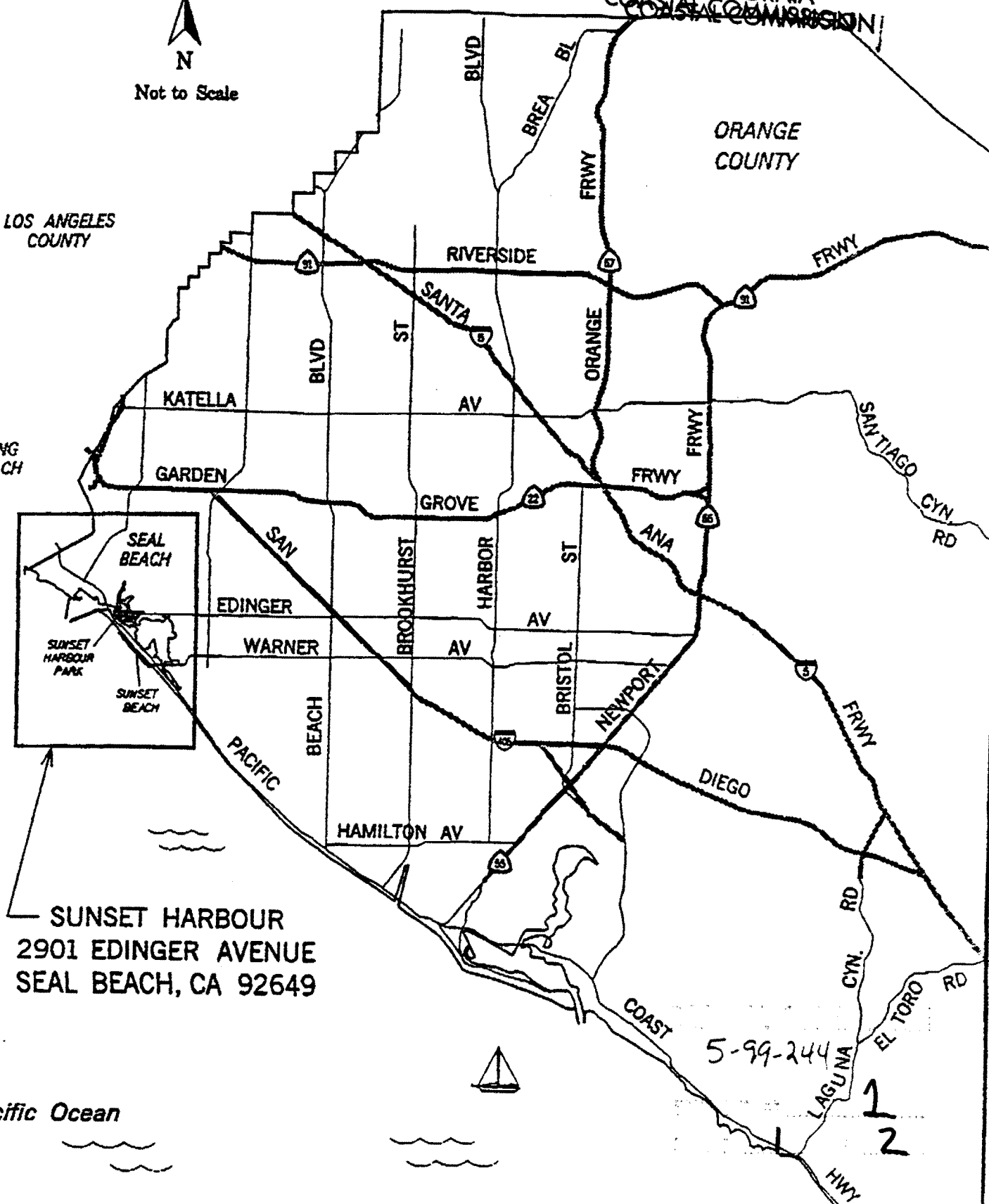
ORANGE  
COUNTY

LONG  
BEACH



SUNSET HARBOUR  
2901 EDINGER AVENUE  
SEAL BEACH, CA 92649

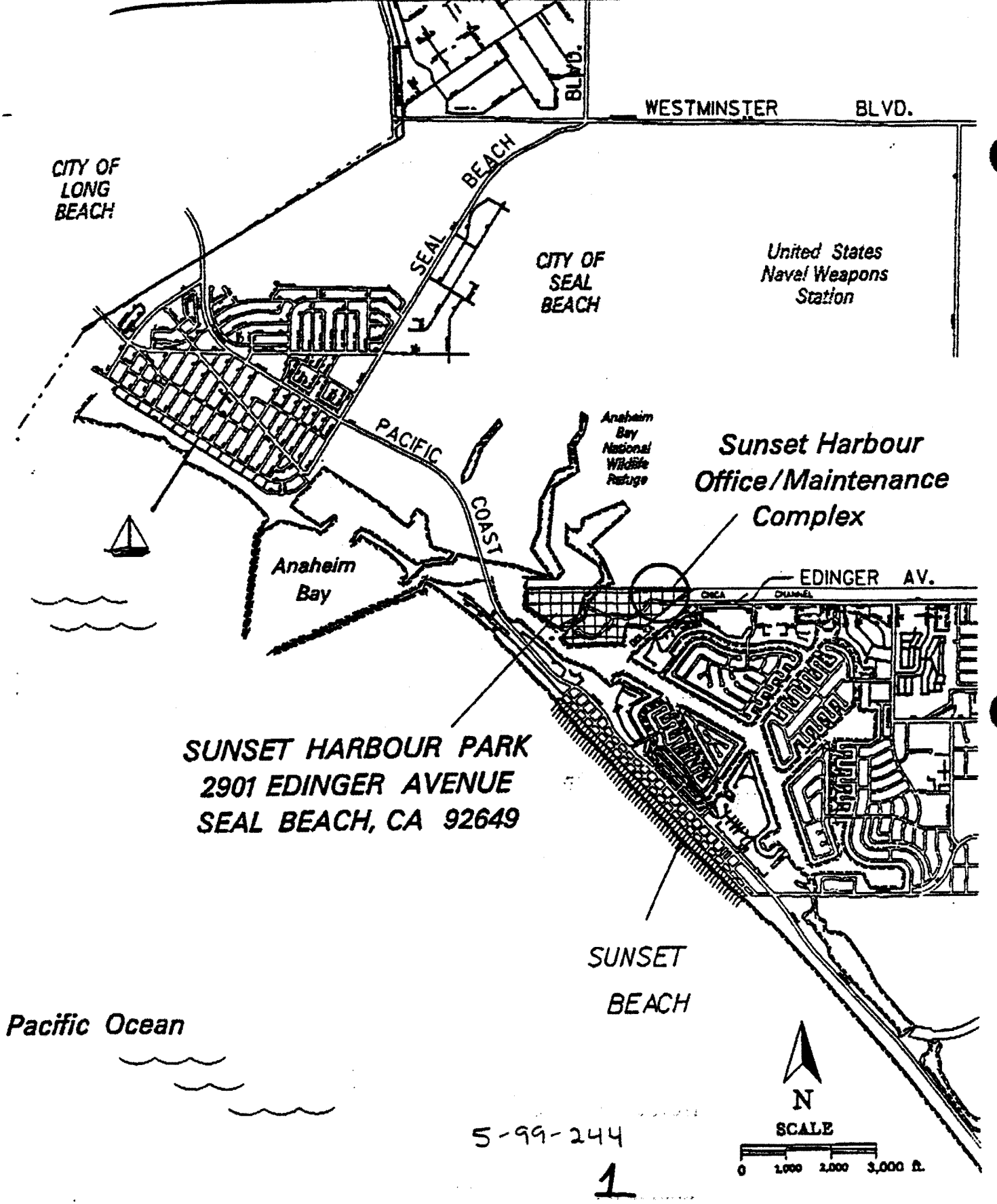
Pacific Ocean



5-99-244

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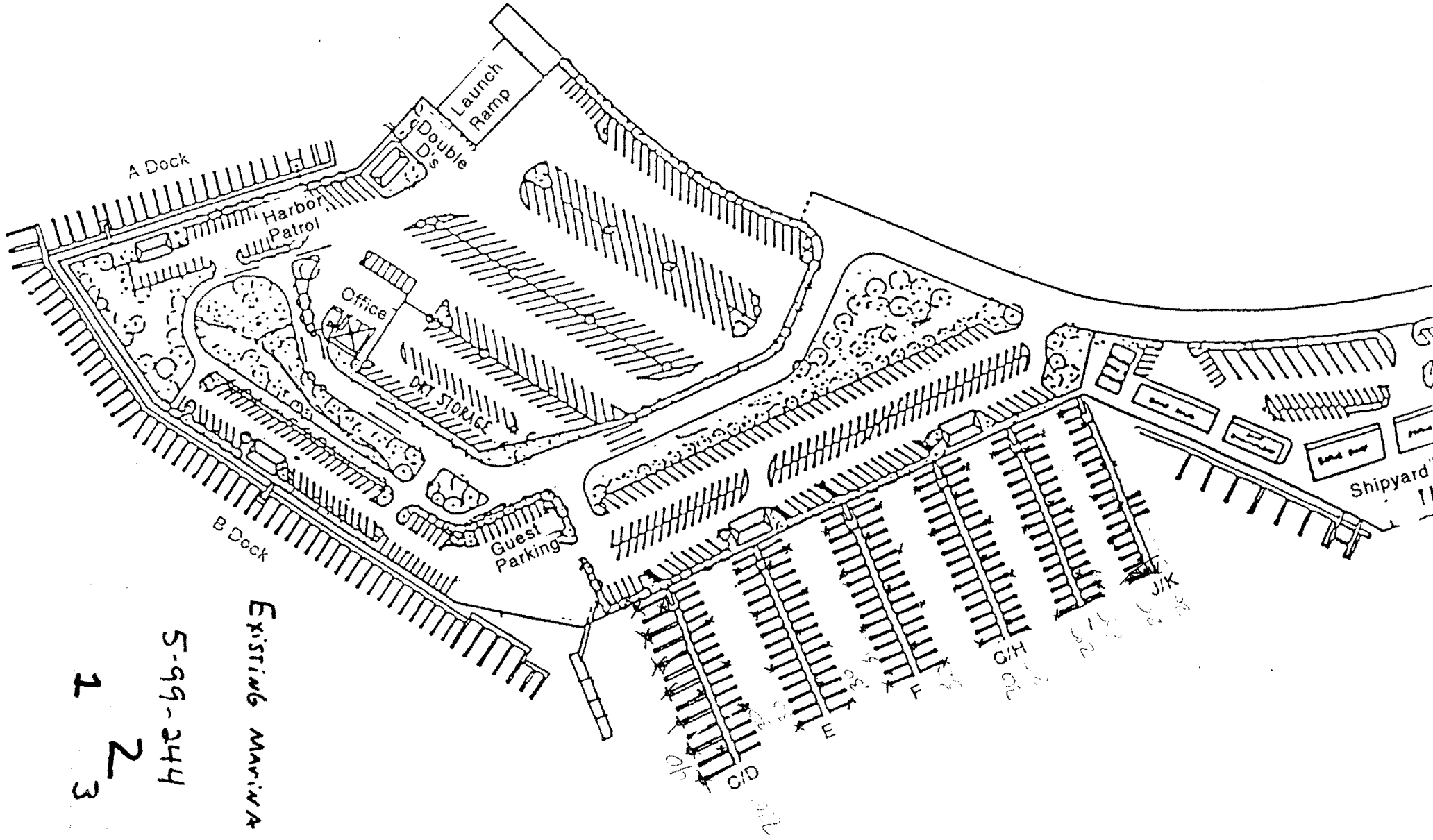
**SUNSET HARBOUR PARK**  
**2901 EDINGER AVENUE**  
**SEAL BEACH, CA 92649**

5-99-244

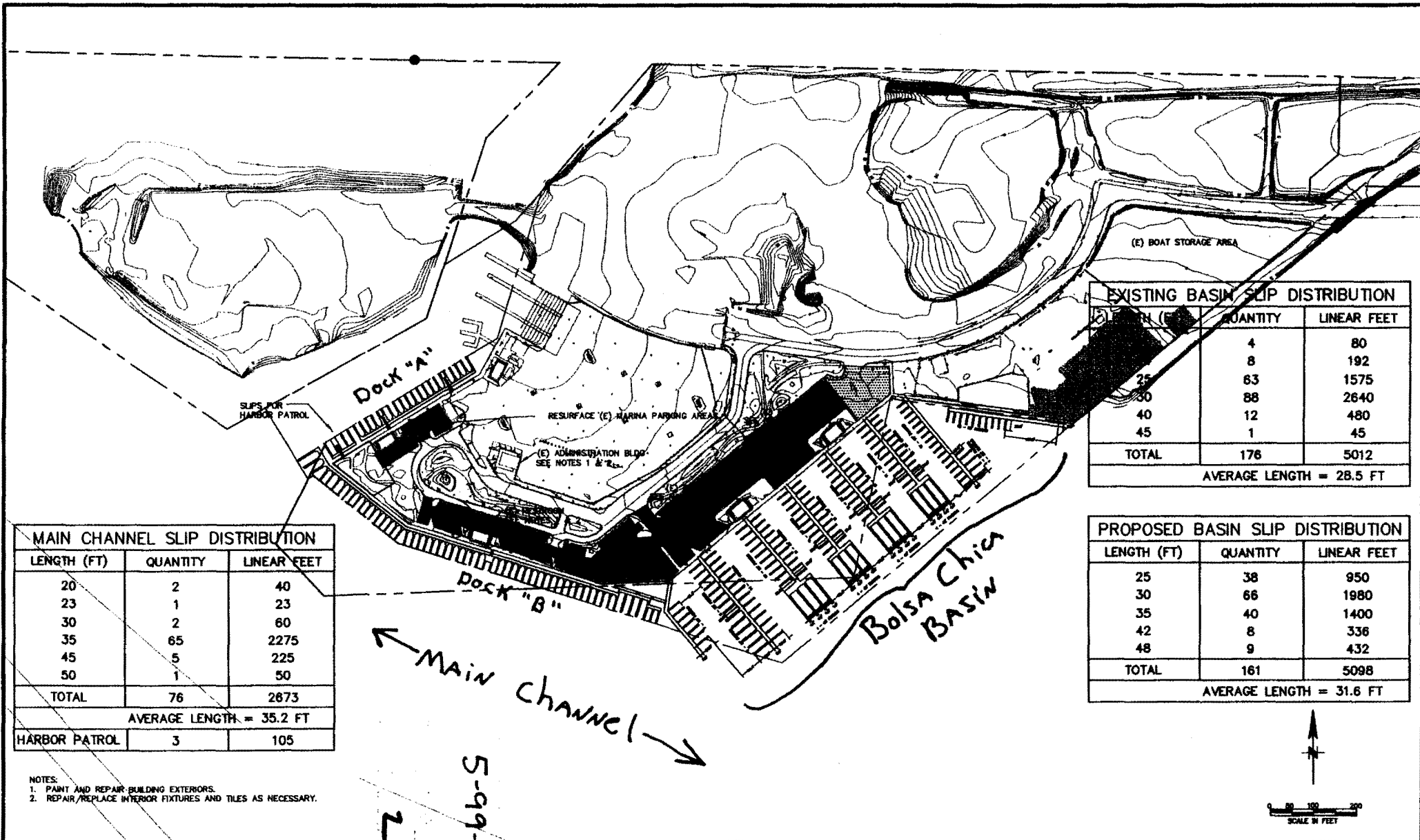
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**DEVELOPMENT VICINITY MAP**

EXISTING LAYOUT OF MARINA



1  
2  
3  
5-99-244  
EXISTING MARINA



MAIN CHANNEL SLIP DISTRIBUTION		
LENGTH (FT)	QUANTITY	LINEAR FEET
20	2	40
23	1	23
30	2	60
35	65	2275
45	5	225
50	1	50
<b>TOTAL</b>	<b>76</b>	<b>2873</b>
AVERAGE LENGTH = 35.2 FT		
HARBOR PATROL	3	105

EXISTING BASIN SLIP DISTRIBUTION		
LENGTH (FT)	QUANTITY	LINEAR FEET
25	4	80
30	8	192
35	63	1575
40	88	2640
45	12	480
50	1	45
<b>TOTAL</b>	<b>176</b>	<b>5012</b>
AVERAGE LENGTH = 28.5 FT		

PROPOSED BASIN SLIP DISTRIBUTION		
LENGTH (FT)	QUANTITY	LINEAR FEET
25	38	950
30	66	1980
35	40	1400
42	8	336
48	9	432
<b>TOTAL</b>	<b>161</b>	<b>5098</b>
AVERAGE LENGTH = 31.6 FT		

NOTES:  
 1. PAINT AND REPAIR BUILDING EXTERIORS.  
 2. REPAIR/REPLACE INTERIOR FIXTURES AND TILES AS NECESSARY.

← MAIN CHANNEL →

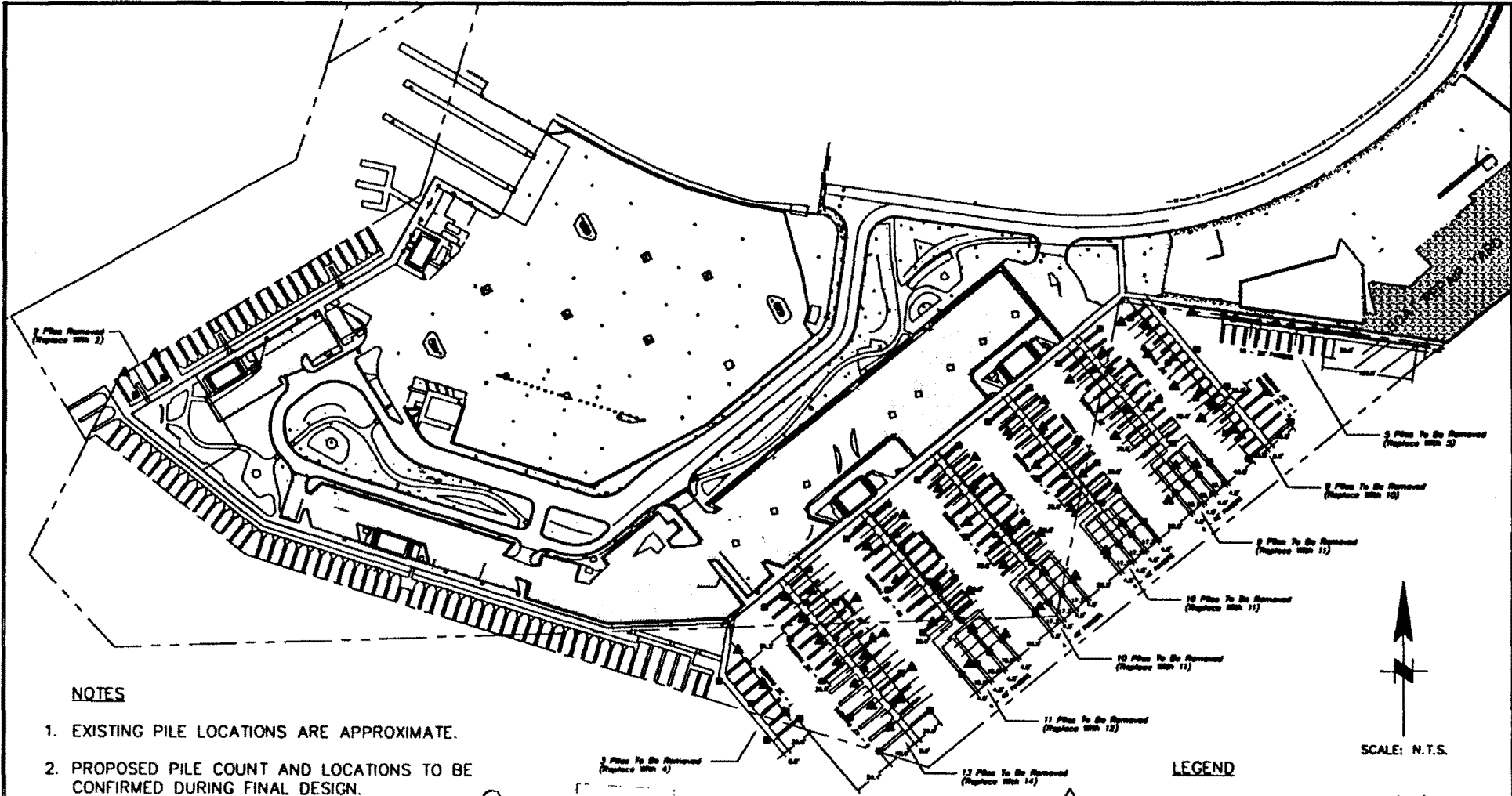
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 2  
 3  
 5-99-244

**MOFFATT & NICHOL**  
 ENGINEERS

S MARINA IMPROVEMENT PLAN  
 A HARBORS, BEACHES AND PARKS  
 M SUNSET HARBOUR MARINA

DATE  
 11/29/98



J:\2001\Marina\MarinaImprovementPlan.dwg



**NOTES**

1. EXISTING PILE LOCATIONS ARE APPROXIMATE.
2. PROPOSED PILE COUNT AND LOCATIONS TO BE CONFIRMED DURING FINAL DESIGN.
3. FINGER PIERS AND PILES TO BE A MINIMUM OF 10' FROM BULKHEAD FOR BOLSA CHICA CHANNEL.

**LEGEND**

-  EXISTING PILES TO BE REMOVED (72)
-  PROPOSED PILE LOCATIONS (80)

**S MARINA IMPROVEMENT PLAN**  
**A HARBORS, BEACHES AND PARKS**  
**M SUNSET HARBOUR MARINA**

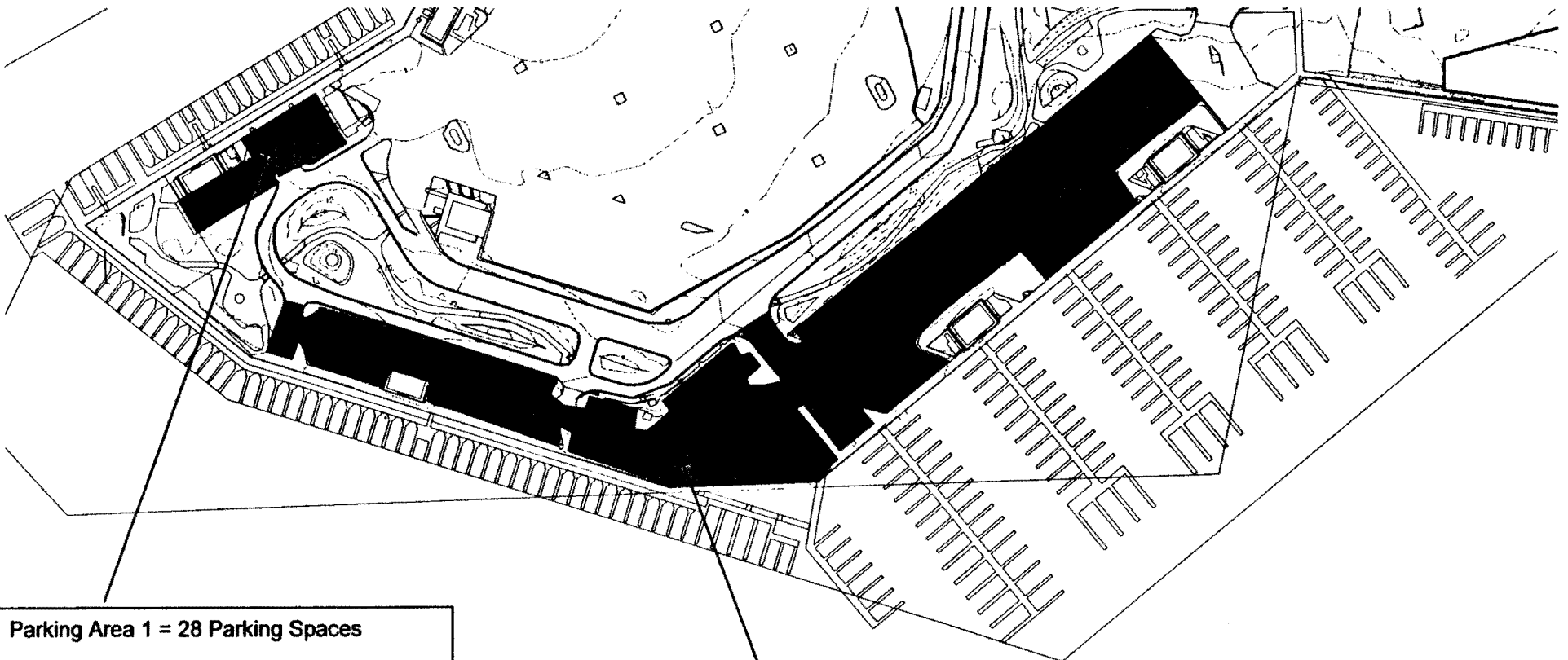
DATE  
7/20/99  
DESIGNER  
R.M.S.  
CHECKER  
T.B.

**MOFFATT & NICHOL**  
ENGINEERS

RECEIVED  
 JUL 22 1999  
 CALIFORNIA  
 CENTRAL COMMISSION

Proposed  
 Piling Replacements  
 5-99-244  
 3  
 2  
 3

M. L. BROWN, CIVIL ENGINEER, LICENSE NO. 7108



**Parking Area 1 = 28 Parking Spaces**

5 Sheriff Dept.  
 2 Handicap Tenant Parking  
 21 for tenant boaters only (permits)

**Parking Area 2 = 279 Parking Spaces**

Permit Parking = 51 total  
 (49 tenant boaters + 2 Handicap Tenant Parking)

Open/Guest/Tenant Parking = 228 Total  
 (221 spaces + 7 Handicap Parking)

- Existing and proposed parking include 307 TOTAL parking spaces including:**
- 5 Sheriff Department Parking
  - 7 guest Handicap Parking
  - 4 permitted Handicap Parking for tenant boaters only
  - 221 open guest parking
  - 70 permitted parking for tenant boaters only.

**(no changes to parking configuration are proposed)**

5-99-244  
 + EXISTING PROPOSED PARKING  
 1  
 3  
 1



**CALIFORNIA COASTAL COMMISSION**

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

Page: 1 of 5  
Date: February 9, 1998  
Permit No: 5-97-231



**COASTAL DEVELOPMENT PERMIT**

On 10 December <sup>1997</sup> 1998, the California Coastal Commission granted to County of Orange Coastal Development Permit 5-97-231, subject to the attached Standard and Special Conditions, for development consisting of: maintenance dredging of up to 106,400 cubic yards (overdepth dredge) with offshore disposal of the dredge spoils at LA-2 (except for spoils used in the eelgrass mitigation plan), removal of 0.181 acres of eelgrass, and implementation of an eelgrass mitigation plan (including transplantation of 0.217 acres of eelgrass). More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at Dredging project: Sunset Harbor; from the outer Entrance Channel to the Bolsa Channel (including the entrance channel, main channel, access channel, Sunset Harbour, Bolsa Channel, and Portofina Marina), cities of Seal Beach and Huntington Beach, County of Orange.

Issued on behalf of the California Coastal Commission on February 9, 1998.

**PETER DOUGLAS**  
Executive Director

By: John T. Auyang  
Title: Coastal Program Analyst

**ACKNOWLEDGMENT**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

5-99-244

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of Permittee

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# COASTAL DEVELOPMENT PERMIT

No. 5-97-231

Page 2 of 5

Please sign and return one copy of this form to the Commission office at the above address.

## 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 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.

## SPECIAL CONDITIONS:

### A. Eelgrass Mitigation.

1. **Compliance with Eelgrass Mitigation Plan.** The applicant shall implement and comply with the "Eelgrass (Zostera Marina) Survey, Impact Assessment, and Mitigation Plan, County of Orange Sunset Harbor Maintenance Dredging

5-99-244

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# COASTAL DEVELOPMENT PERMIT

No. 5-97-231

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Project, Phase II", dated February 28, 1997 prepared by Coastal Resources Management for Noble Consultants, Inc. The mitigation plan shall be undertaken in full compliance with the most recent version of the "Southern California Eelgrass Mitigation Policy" adopted by the National Marine Fisheries Service. Any changes to the approved mitigation plan, including but not limited to changes to the monitoring program to ensure success of the eelgrass mitigation site, shall require an amendment to this permit from the Coastal Commission or written concurrence from the Executive Director that the changes do not require a permit amendment.

2. Pre-construction Eelgrass Survey. Not more than one hundred twenty (120) days prior to commencement of dredging, the applicant shall undertake a new survey of the project site to determine the existence of eelgrass. The applicant shall submit the new eelgrass survey for the review and written approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than ten (10) working days prior to commencement of dredging. If the new survey identifies, within the proposed dredging area, any eelgrass which is not documented in the eelgrass survey described in Special Condition No. A.1. above, the newly identified eelgrass shall be transplanted prior to commencement of dredging at a 1.2:1 ratio at the same transplantation locations identified in the eelgrass mitigation plan described in Special Condition No. A.1. above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition A.1.
3. Post-construction Eelgrass Survey. Within one month after the conclusion of the dredging, the applicant shall survey the project site to determine if any eelgrass was adversely impacted, as proposed. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a 1.2:1 ratio at the transplantation site and in accordance with the mitigation plan described in Special Condition No. A. 1. above.
4. Eelgrass Identification. Prior to commencement of construction, all identified eelgrass which is not proposed to be removed shall be identified with buoys or markers, as proposed, to ensure that dredging activities do not occur in the protected eelgrass.
5. Department of Fish and Game Approval. PRIOR TO ISSUANCE of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, final written comments from the California Department of Fish and Game demonstrating their approval of the proposed eelgrass mitigation plan described in Special Condition No. A.1.

**COASTAL DEVELOPMENT PERMIT**

No. 5-97-231

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6. Dredging Monitor. The permittee shall retain, as proposed, a qualified eelgrass biologist who will; 1) monitor the dredging process and assist the project engineer and the County of Orange in avoiding and minimizing impacts to eelgrass, including turbidity impacts to eelgrass, and 2) monitor the eelgrass transplantation.

B. Water Quality.

1. Compliance with Water Quality Approvals. The permittee shall comply with all requirements set forth in California Regional Water Quality Control Board, Santa Ana Region, Order No. 97-81, "Waste Discharge Requirements for Orange County Public Facilities and Resources Department, Sunset Harbor Maintenance Dredging Phase II". The permittee shall also comply with "Monitoring and Reporting Program No. 97-81" issued by the RWQCB. Any changes made by the RWQCB to either Order 97-81 or "Monitoring and Reporting Program" 97-81 shall require an amendment to this permit or written concurrence from the Executive Director that the changes do not require a permit amendment. The permittee shall comply with any changes to RWQCB Order 97-81 and "Monitoring and Reporting Program" 97-81 approved by the Coastal Commission or which have received Executive Director concurrence.

2. Turbidity Control. The permittee shall use a hydraulic dredge in all proposed dredging areas to the maximum extent feasible. If it is not feasible to use a hydraulic dredge, (such as in areas where boat docks are located, or if a hydraulic dredge is not available for use) the permittee may use a closed-bucket clamshell dredge provided silt curtains with boom devices or other similar structural turbidity controls are placed around the areas in which the clamshell dredge would be in operation during all times of operation to contain turbid water, as indicated by RWQCB Order No. 97-81 Finding #6 (Page 2).

Silt curtains or other structural turbidity controls shall be employed in accordance with RWQCB Order 97-81 and RWQCB Monitoring and Reporting Program 97-81. Copies of the weekly monitoring reports required by RWQCB Order No. 97-81 and RWQCB Monitoring and Reporting Program 97-81 shall be submitted to the Executive Director at the same time they are submitted to the RWQCB.

C. Navigation.

1. Marking of Construction Equipment. All dredges, barges, pipelines, and other construction equipment located in the water which have the potential to interfere with navigation shall be marked in accordance with the

# COASTAL DEVELOPMENT PERMIT

No. 5-97-231

Page 5 of 5

requirements of the U. S. Coast Guard and the Orange County Sheriff's Harbor Patrol.

2. Relocation of Navigation Aids and Construction Markers. The temporary removal of any local aids to navigation, or construction equipment markers described in Special condition C.1 above, shall be approved by the U.S. Coast Guard and Orange County Sheriff's Harbor Patrol.
  3. Removal of Construction Equipment. Construction equipment shall not obstruct navigation in the channels or make navigation difficult or endanger the passage of vessels. Construction equipment which does so shall be promptly removed.
- D. Timing of Construction.

Dredging activities located near Least Tern Island or located within eelgrass areas identified in the pre-construction eelgrass survey required in Special Condition No. A.2 above shall not occur between March 1 and September 1. Dredging in these areas may occur between March 1 and September 1 only if the California Department of Fish and Game makes a written determination that dredging in these areas will not result in adverse impacts to eelgrass and least terns, and a copy of said written determination is submitted to the Executive Director. No dredging activities shall occur between and including the Memorial Day and Labor Day holiday weekends.

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EELGRASS MITIGATION PLAN  
SUNSET HARBOR MAINTENANCE DREDGING  
COUNTY OF ORANGE, ENVIRONMENTAL MANAGEMENT AGENCY 8 1999  
June 6, 1997

RECEIVED

CALIFORNIA  
COASTAL COMMISSION

The County of Orange proposes transplanting approximately 9,476 square feet of substrate area with Zostera Marina (eelgrass) to mitigate for the loss of eelgrass due to maintenance dredging in Sunset Harbor. The mitigation plan consists of the following:

LOCATION:

Transplanting will occur near the West Bank of the outer entrance channel among pre-existing transplanted eelgrass beds. Sheet 1 shows the impacted eelgrass beds and the location of the transplant beds.

MITIGATION RATIO:

The area of impacted eelgrass is 7,896 square feet. According to the regulations of the Southern California Eelgrass Mitigation Policy, the transplant area ratio is required to be 1.2 to 1. The actual area transplanted will be 9,476 square feet.

SUBSTRATE:

Approximately 1,500 cubic yards of sandy material, if approved, will be deposited in the transplant area to obtain optimum depths for eelgrass growth. The transplant area will be 9,476 square feet. The current average elevation in the transplant area is -5 feet, MLLW, with final elevations ranging from -2 to -8 feet, MLLW. Dredging and disposal techniques including low exit velocities, high material concentrations, and disposal pipe placement (applicable for line dredge, not clamshell) will be implemented for accuracy and to prevent damage to the existing beds.

TRANSPLANTING STOCK:

There are two options for obtaining stock plants for the transplant. The favored option is to remove the eelgrass from the impacted beds and place it in nursery stock prior to the dredging. It is unknown whether or not this is a feasible option at this time. The other option is to collect stock from several regions within Sunset Harbor. The first option is attractive because it will minimize the environmental impact on the existing eelgrass beds in the harbor, but the second option provides genetic variation in the eelgrass which may increase the success rate of the transplant. It is estimated that 10,510 shoots of eelgrass will be required for the transplant.

DREDGING AND TRANSPLANTING PROCEDURE:

The following steps will be performed before or during the transplant:

1. Transplant stock will be obtained using one of the previously mentioned options.
2. Donor material will be harvested by biologists and transplanted using the bundle method. In this procedure the stock is collected by divers, transferred to shore, divided into planting units, and replanted along a pre-determined grid.

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MITIGATION MEASURES:

The following measures will be taken to reduce disturbances to the existing eelgrass habitats during dredging:

1. Operations will be scheduled during low eelgrass productivity (September 31-March 1).
2. Dredging will be done using the least environmentally damaging techniques.
3. Eelgrass meadows will be marked off by buoys so that dredgers and vessel operators can avoid damaging plants.
4. Barges and vessels will be anchored away from meadows to prevent anchors and anchor chains from disturbing vegetation. Equipment will only pass over eelgrass meadows at high tides to prevent grounding in the meadows.

DREDGING AND TRANSPLANTING PROCEDURE:

The following steps will be performed before or during the transplant:

1. Dredged substrate will be placed in the transplant area to create ideal water depths for eelgrass growth.
2. Transplant stock will be obtained using one of the previously mentioned options.
3. Donor material will be harvested by biologists and transplanted using the bundle method. In this procedure the stock is collected by divers, transferred to shore, divided into planting units, and replanted along a pre-determined grid.

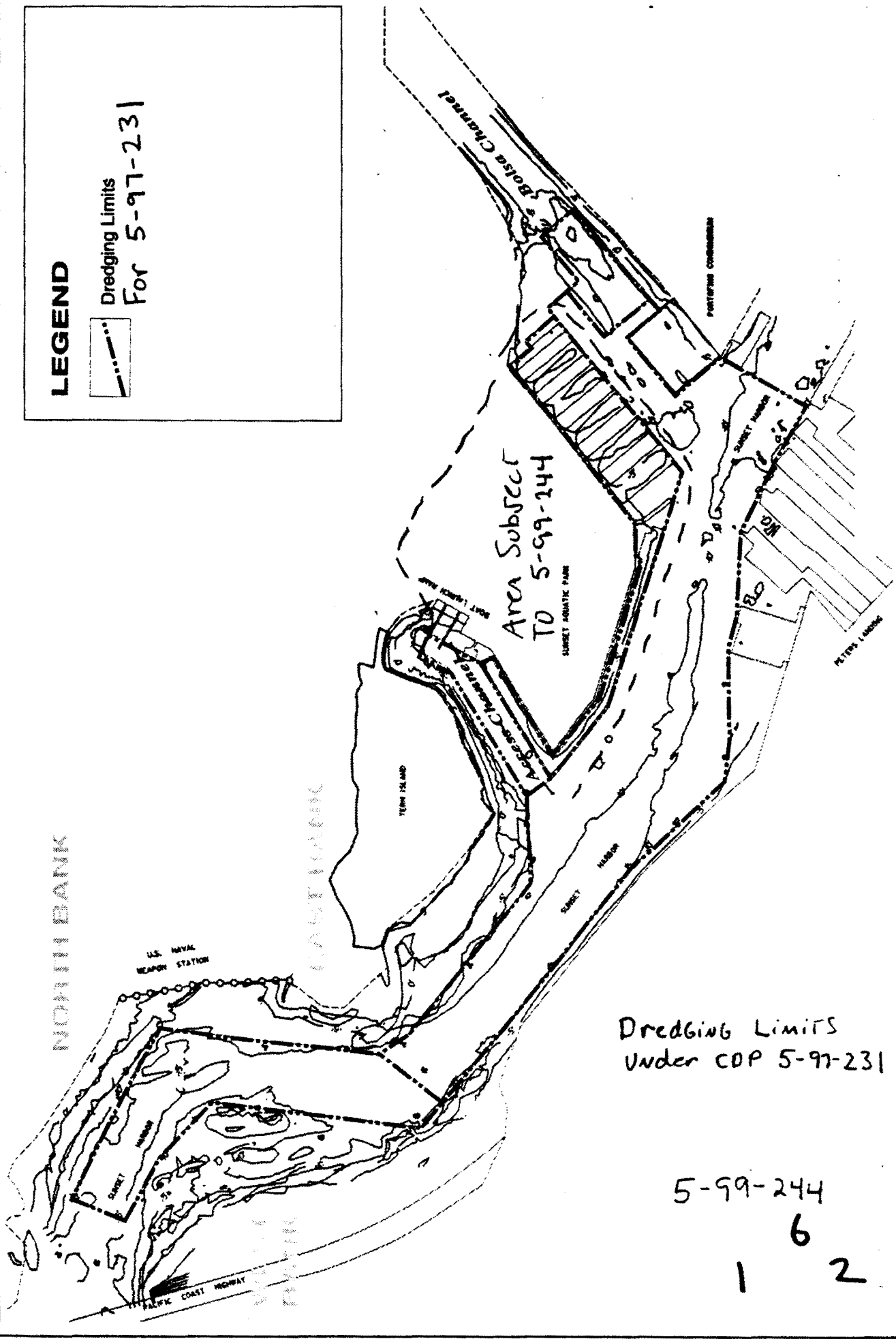
MONITORING AND SUCCESS:

Post transplant monitoring will be conducted to evaluate transplant success during the high growth rate months (March - October). The survey intervals will be at 3 months, 6 months, 12 months, 24 months, 36 months, 48 months, and 60 months as required by the Southern California Eelgrass Mitigation Policy. Each survey will determine the percent cover and the shoot density of eelgrass. The success of the transplants will be judged using control eelgrass beds located north and south of the transplant sites as a comparison for the transplanted beds. If yearly criteria are not maintained then the areas will be replanted. The amount of the replant will be based on the area and density deficiencies. The monitoring procedure will be conducted as detailed in Rick Ware's Eelgrass Mitigation Plan.

5-99-244  
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2 2

**LEGEND**

Dredging Limits  
For 5-97-231



Dredging Limits  
Under COP 5-97-231

5-99-244  
1 6 2



100' 0'

100'

300'

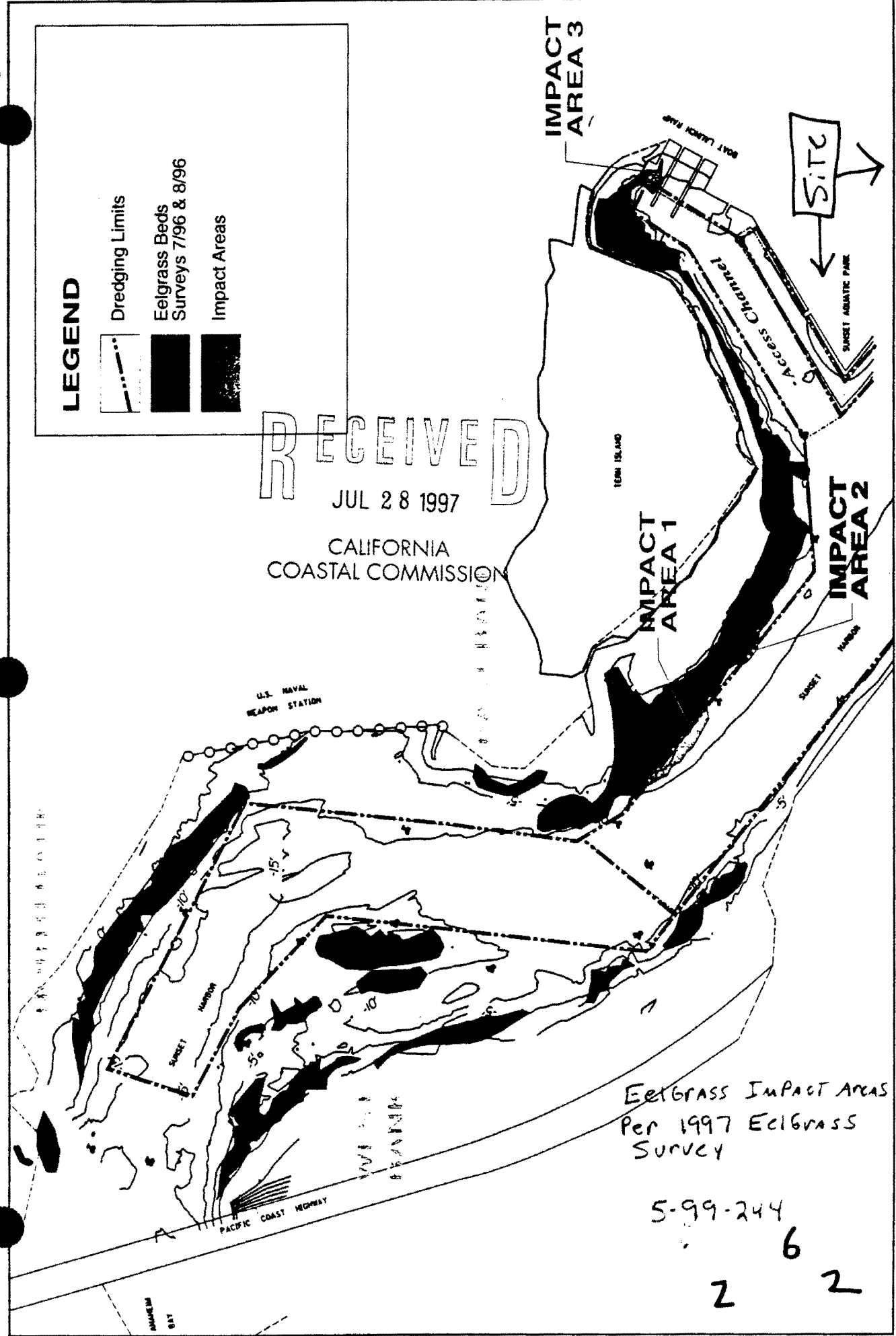
March 1997

SCALE IN FEET




**FIGURE ONE  
PROJECT LOCATION  
SUNSET HARBOR MAINTENANCE DREDGE PROJECT, PHASE II**



**FIGURE TWO  
EELGRASS (ZOSTERA MARINA) MAPPING SURVEY  
JULY-AUGUST 1996  
SUNSET HARBOR MAINTENANCE DREDGE PROJECT, PHASE II**



**LEGEND**

-  Dredging Limits
-  Eelgrass Beds  
Surveys 7/96 & 8/96
-  Impact Areas

**RECEIVED**  
JUL 28 1997

CALIFORNIA  
COASTAL COMMISSION

Eelgrass Impact Areas  
Per 1997 Eelgrass  
Survey

5-99-244

2 6 2



150' 0' 150' 450' March 1997



150' 0'

SCALE IN FEET

August 17, 1999

California Coastal Commission  
South Coast Area  
2000 Oceangate 10<sup>th</sup> Floor  
Long Beach, CA 90802-4325

RECEIVED  
AUG 18 1999  
CALIFORNIA  
COASTAL COMMISSION

Attn: Mr. Karl Schwing

Subj: Sunset Harbor Marina Improvement Plan (application #5-99-244)  
M&N File: 3561

Dear Mr. Schwing:

We received your letter of Notice of Incomplete Application dated July 22, 1999. This letter provides a response to each item you requested.

1. Below is a descriptive analysis showing the need for an increase in average slip length at the Sunset Marina. The small reduction in the number of smaller slips will not have an adverse effect upon recreational boating opportunities at the site. In fact, the reconfiguration is considered necessary to increase boating opportunities as there is a demand for larger slips and an excess of small slips during most of the year.

Currently, there is a waiting list for larger slips at the Sunset Harbor Marina dating back to 1990. There are approximately 70 individuals waiting for slips 40 feet or greater. In speaking with the marina manager, there are continual requests for larger slips and about three requests per week are turned away.

During the off-season (September to May) about 1/4 to 1/3 of the small slips (<30 ft) are vacant, while generally all of the larger slips remain occupied year-round. The exact number varies from year to year, but generally, the occupancy of the small slips is directly related to the peak/off-peak season. For example, in November 1998 there were 34 empty slips, of these, 12 were 25-ft slips, 20 were 30-ft slips, and 2 were 35-ft slips. Many small boat owners put their boats in dry storage during the off season since slip rental is more expensive than the storage and many do not use their boats often during the off-season. In 1992, the facility had about 90 dry boat storage units available and now they have about 160 units.

RELEVANT PORTION OF LETTER DISCUSSING PROPOSED CHANGE  
TO SLIP CONFIGURATION

5-99-244  
7



# 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

RECEIVED  
SEP 9 1999



Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

CALIFORNIA  
COASTAL COMMISSION  
RECEIVED

SEP 1 1999

MOFFATT, NICHOL &  
FERVER  
ENGINEERS

August 25, 1999

Monica Melkesian  
Goldrich & Kest  
5150 Overland Avenue  
P.O. Box 3623  
Culver City, CA 90231-3623

### WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR THE SUNSET HARBOR MARINA, CITY OF SEAL BEACH, ORANGE COUNTY (ACOE REFERENCE NUMBER 1999-16013 VW)

Dear Ms. Melkesian:

On June 21, 1999, we received a transmittal letter dated June 18, 1999 from Moffatt & Nichol Engineers requesting a water quality certification or waiver of waste discharge requirements for the above-referenced project. We received all the requested materials for a complete application as of August 19, 1999.

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

**Project description:**

Sunset Harbor Marina, owned by the County of Orange, is located in the City of Seal Beach at the confluence of the Bolsa Chica Flood Control Channel and the Bolsa Chica Main Channel. Goldrich and Kest is proposing to remove and replace all the existing docks and reconfigure the dock adjacent to the Bolsa Chica Channel to accommodate larger boats. Goldrich and Kest is also proposing to re-surface and re-strip the existing parking areas, and upgrade the structures in the restroom facilities. The dock replacement part of the project will result in an overall decrease in the number of slips in the marina, from 176 slips to 161 slips. The slip configuration for the 76 slips along the Main Channel will not change. The resurfacing and re-stripping of the parking areas will include re-grading and re-paving the parking areas to control runoff. Upgrading of the structures in the restroom facilities will focus on structural and aesthetic improvements such as replacing tiles and other fixtures.

The slip replacement will not result in dredging. The following best management practices will be implemented to keep silt, debris and chemicals from impacting downstream beneficial uses:

1. Using floating booms to contain debris,
2. Divers will recover any misplaced non-buoyant debris, as soon as possible, after loss, and

5-99-244

California Environmental Protection Agency

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3. Compliance with Appendix G, Sections N2 and N7 of the Orange County Drainage Area Management Plan regarding the restriction of chemicals entering the water and the development of a spill contingency plan.

Receiving Water: 132 Pacific Ocean at Huntington Harbor

Fill Area: Ocean: 7.2 acres of temporary impact and 5.3 acres of navigational area around the marina facilities. No wetland impacts.

Federal permit: Letter of Permission, Application Number 1999-16013

Compensatory mitigation: None

Based on Orange County's 1997 survey of the general area, there is no vegetation in the project area. Once this year's survey is completed and if vegetation is found in the project area, the County of Orange will implement a mitigation plan for the project area. In addition, it is our understanding that the proposed project is not expected to impact state- or federally listed endangered or threatened species or their critical habitat.

The U. S. Army Corps of Engineers intends to issue a Letter of Permission for the project in compliance with Section 404 of the Clean Water Act. You have also filed for a Coastal Development Permit with the Coastal Commission. A Negative Declaration was certified for this project on August 18, 1999.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This is equivalent to waiver of water quality certification. Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, 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 (e-mail address: [hsmythe@rb8.swrcb.ca.gov](mailto:hsmythe@rb8.swrcb.ca.gov)) or Pavlova Vitale at (909) 782-4920 (e-mail address: [pvitale@rb8.swrcb.ca.gov](mailto:pvitale@rb8.swrcb.ca.gov)).

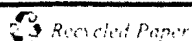
Sincerely,

for Gerard J. Thibeault  
GERARD J. THIBEAULT  
Executive Officer

cc:

Moffatt & Nichol Engineers, Anne-Lise Lindquist  
U.S. Environmental Protection Agency, Wetlands and Sediment Management Section - Joel Jones (WTR-10)  
U.S. Army Corps of Engineers, Los Angeles District - Vicki White  
U.S. Fish and Wildlife Service - Will Miller  
State Water Resources Control Board, DWQ-Nonpoint Source Certification and Loans Unit - William R. Campbell, Chief  
California Department of Fish and Game, Long Beach - Terri Dickerson  
California Coastal Commission - Meg Vaughn

California Environmental Protection Agency

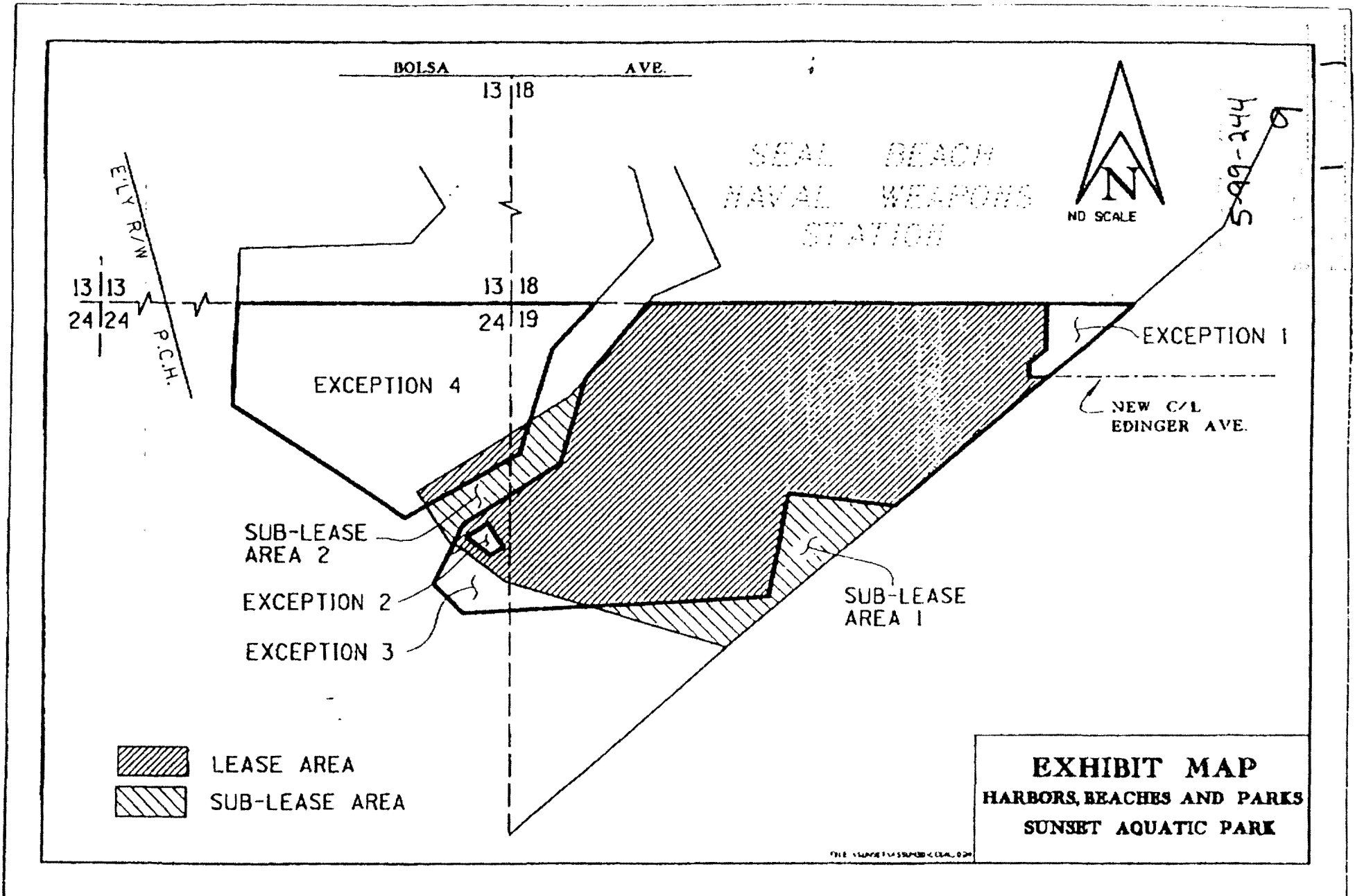


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This draft parcel map shall be finalized by Lessor and said final version shall be substituted therefore in place of the draft parcel map.

# EXHIBIT B

# SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY

(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas function as important habitat for a variety of fish and other wildlife. In order to standardize and maintain a consistent policy regarding mitigating adverse impacts to eelgrass resources, the following policy has been developed by the Federal and State resource agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game). This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 8).

For clarity, the following definitions apply. "Project" refers to work performed on-site to accomplish the applicant's purpose. "Mitigation" refers to work performed to compensate for any adverse impacts caused by the "project". "Resource agencies" refers to National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

**1. Mitigation Need.** Eelgrass transplants shall be considered only after the normal provisions and policies regarding avoidance and minimization, as addressed in the Section 404 Mitigation Memorandum of Agreement between the Corps of Engineers and Environmental Protection Agency, have been pursued to the fullest extent possible prior to the development of any mitigation program.

**2. Mitigation Map.** The project applicant shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as areas having the proper depth and substrate requirements for eelgrass but which currently lack vegetation.

Protocol for mapping shall consist of the following format:

**1) Coordinates**

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11

Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

**2) Units**

Transects and grids in meters.

Area measurements in square meters/hectares.

All mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days with the exception of surveys completed in August - October.

A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). After project construction, a post-project survey shall be completed within 30 days. The actual area of impact shall be determined from this survey.

**3. Mitigation Site.** The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

**4. Mitigation Size.** In the case of transplant mitigation activities that occur concurrent to the project that results in damage to the existing eelgrass resource, a ratio of 1.2 to 1 shall apply. That is, for each square meter adversely impacted, 1.2 square meters of new suitable habitat, vegetated with eelgrass, must be created. The rationale for this ratio is based on, 1) the time (i.e., generally three years) necessary for a mitigation site to reach full fishery utilization and 2) the need to offset any productivity losses during this recovery period within five years. An exception to the 1.2 to 1 requirement shall be allowed when the impact is temporary and the total area of impact is less than 100 square meters. Mitigation on a one-for-one basis shall be acceptable for projects that meet these requirements (see section 11 for projects impacting less than 10 square meters).

Transplant mitigation completed three years in advance of the impact (i.e., mitigation banks) will not incur the additional 20% requirement and, therefore, can be constructed on a one-for-one basis. However, all other annual monitoring requirements (see sections 8-9) remain the same irrespective of when the transplant is completed.

Project applicants should consider increasing the size of the required mitigation area by 20-30% to provide greater assurance that the success criteria, as specified in Section 9, will be met. In addition, alternative contingent mitigation must be specified, and included in any required permits, to address situation where performance standards (see section 9) are not met.

**5. Mitigation Technique.** Techniques for the construction and planting of the eelgrass mitigation site shall be consistent with the best available technology at the time of the project. Donor material shall be taken from the area of direct impact whenever possible, but also should include a minimum of two additional distinct sites to better ensure genetic diversity of the donor plants. No more than 10% of an existing bed shall be harvested for transplanting purposes. Plants harvested shall be taken in a manner to thin an existing bed without leaving any noticeable bare areas. Written permission to harvest donor plants must be obtained from the California Department of Fish and Game.

Plantings should consist of bare-root bundles consisting of 8-12 individual turions. Specific spacing of transplant units shall be at the discretion of the project applicant. However, it is understood that whatever techniques are employed, they must comply with the stated requirements and criteria.

**6. Mitigation Timing.** For off-site mitigation, transplanting should be started prior to or concurrent with the initiation of in-water construction resulting in the impact to the eelgrass bed. Any off-site mitigation project which fails to initiate transplanting work within 135 days following the initiation of the in-water construction resulting in impact to the eelgrass bed will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

**7. Mitigation Delay.** If, according to the construction schedule or because of any delays, mitigation cannot be started within 135 days of initiating in-water construction, the eelgrass replacement mitigation obligation shall increase at a rate of seven percent for each month of delay. This increase is necessary to ensure that all productivity losses incurred during this period are sufficiently offset within five years.

**8. Mitigation Monitoring.** Monitoring the success of eelgrass mitigation shall be required for a period of five years for most projects. Monitoring activities shall determine the area of eelgrass and density of plants at the transplant site and shall be conducted at 3, 6, 12, 24, 36, 48, and 60 months after completion of the transplant. All monitoring work must be conducted during the active vegetative growth period and shall avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 3 and 6 month surveys shall be allowed in order to ensure the work is completed during this active growth period. Additional monitoring beyond the 60 month period may be required in those instances where stability of the proposed transplant site is questionable or where other factors may influence the long-term success of transplant.

The monitoring of an adjacent or other acceptable control area (subject to the approval of the resource agencies) to account for any natural changes or fluctuations in bed width or density must be included as an element of the overall program.

A monitoring schedule that indicates when each of the required monitoring events will be completed shall be provided to the resource agencies prior to or concurrent with the initiation of the mitigation.

Monitoring reports shall be provided to the resource agencies within 30 days after the completion of each required monitoring period.

**9. Mitigation Success.** Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project and mitigation sites. Extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than one meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative samples



within the control or transplant bed. Specific criteria are as follows:

- a. a minimum of 70 percent area of eelgrass bed and 30 percent density after the first year.
- b. a minimum of 85 percent area of eelgrass bed and 70 percent density after the second year.
- c. a sustained 100 percent area of eelgrass bed and at least 85 percent density for the third, fourth and fifth years.

Should the required eelgrass transplant fail to meet the established criteria, then a Supplementary Transplant Area (STA) shall be constructed, if necessary, and planted. The size of this STA shall be determined by the following formula:

$$STA = MTA \times (|A_t + D_t| - |A_c + D_c|)$$

MTA = mitigation transplant area.

$A_t$  = transplant deficiency or excess in area of coverage criterion (%).

$D_t$  = transplant deficiency in density criterion (%).

$A_c$  = natural decline in area of control (%).

$D_c$  = natural decline in density of control (%).

Four conditions apply:

- 1) For years 2-5, an excess of only up to 30% in area of coverage over the stated criterion with a density of at least 60% as compared to the project area may be used to offset any deficiencies in the density criterion.
- 2) Only excesses in area criterion equal to or less than the deficiencies in density shall be entered into the STA formula.
- 3) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 4) Any required STA must be initiated within 120 days following the monitoring event that identifies a deficiency in meeting the success criteria. Any delays beyond 120 days in the implementation of the STA shall be subject to the penalties as described in Section 7.

**10. Mitigation Bank.** Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in section 9, may be considered as credit in a "mitigation bank". Establishment of any "mitigation bank" and use of any credits accrued from such a bank must be with the approval of the resource agencies and be consistent with the provisions stated in this policy. Monitoring of any approved mitigation bank shall be conducted on an annual basis until all credits are exhausted.

## 11. Exclusions.

1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than ½ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed ½ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the ½ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.

2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

( last revised 2/2/99)