

CALIFORNIA COASTAL COMMISSION

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Staff: MV-LENN
Staff Report: 11/18/99
Hearing Date: 12/7-10/99
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-152

APPLICANT: Robert Voit

AGENT: Shellmaker Inc. & Noble Consultants

PROJECT LOCATION: 2140 E. Balboa Blvd., Newport Beach, Orange County

PROJECT DESCRIPTION: Replacement of an existing deteriorating bulkhead with a new bulkhead immediately seaward. The bulkhead is comprised of an approximately 67 foot long fronting segment and a 66 foot long return section. The replacement bulkhead is proposed to be a 3 foot wide, shotcrete wall supported by steel pipe piles below the grade beam. Also proposed is the creation of 2,016 square feet of low intertidal tidal channel habitat in Upper Newport Bay to offset the loss of 336 square feet of like habitat at the bulkhead replacement site.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department Approval in Concept, City Harbor Permit No. 108-2140; California Regional Water Quality Control Board, Santa Ana Region, Waiver of Waste Discharge Requirements and Water Quality Certification dated June 9, 1999.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Big Canyon Tidal Channel Mitigation Project, Upper Newport Bay California, prepared by Coastal Resources Management, dated August 24, 1999; Marine Biological Impact Assessment, Voit Seawall Replacement, prepared by Coastal Resources Management, dated April 8, 1999; Coastal Engineering Analysis for Proposed Seawall Replacement at 2140 East Balboa Blvd., prepared by Noble Consultants, Inc. dated April 7, 1999.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project subject to three special conditions which require 1) that the mitigation plan be carried out as proposed; 2) that impacts to intertidal areas be minimized; and 3) that the location of the disposal site for construction debris be identified.

RECOMMENDATION:

Staff recommends that the Commission APPROVE the permit application with special conditions.

MOTION

I move that the Commission approve CDP #5-99-152 pursuant to the staff recommendation.

Staff recommends a YES vote.

This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

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, 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. Mitigation Shall be Carried Out as Proposed

a. The intertidal sandflats mitigation plan described in the document titled Big Canyon Tidal Channel Mitigation Project, Upper Newport Bay, California, prepared by Coastal Resources Management, and dated August 24, 1999 shall be carried out as proposed.

b. The eelgrass mitigation plan described in the document titled Marine Biological Impact Assessment, Voit Seawall Replacement, prepared by Coastal Resources Management, and dated April 8, 1999 shall be carried out as proposed.

c. The monitoring reports described in the mitigation plans identified above shall each be submitted for the review and approval of the Executive Director within forty five (45) days of the date of completion of the reports.

2. Eelgrass Surveys

a. Pre-construction Eelgrass Survey

As proposed, the pre-construction eelgrass survey shall be conducted not more than one hundred twenty (120) days prior to commencement of construction of the bulkhead. 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 eelgrass survey for the review and written approval of the Executive Director within five (5) working days of

completion of the eelgrass survey and in any event no later than ten (10) working days prior to commencement of construction.

b. Post-construction Survey

Within one month after the conclusion of the bulkhead construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. 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.

3. Construction Materials

Disturbance to sand and intertidal areas shall be minimized. No local sand, cobbles, or shoreline rocks, not presently used in existing on-site development, shall be used for backfill or construction material. All construction materials shall be stored landward of the bulkhead, in improved areas only, and shall be removed at the conclusion of construction.

4. Disposal of Construction Material

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a letter identifying the location of the disposal site of the construction debris. If the disposal site is in the coastal zone, a coastal development permit may be required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant is proposing the replacement of an existing deteriorating bulkhead with a new bulkhead immediately seaward. The new bulkhead is proposed to be comprised of an approximately 67 foot long fronting segment and a 66 foot long return section. The replacement bulkhead is proposed to be a 3 foot wide, shotcrete wall supported by steel pipe piles below the grade beam. The existing bulkhead was constructed in the 1950s.

The subject site is a residential lot fronting on Newport Harbor. The majority of lots in Newport Harbor are supported by bulkheads. The harbor was created in the first half of the century. To the northwest of the subject site are additional bulkheaded

residential lots. To the southeast of the subject site is a public sandy beach and small public pier. There is a bulkhead across the public beach lot approximately 65 feet landward of the applicant's bulkhead. The public beach consists of a sandy area landward of the bulkhead, and additional tidal area bayward of the bulkhead. Also located along the public beach area is a 90 foot concrete groin perpendicular to the public beach's bulkhead, approximately 86 feet from the applicant's property (see exhibit E). Beyond the public beach area are additional residential bulkheaded lots.

Replacement of the bulkhead three feet seaward of the existing wall will result in the loss of 336 square feet of low intertidal sandflats. To mitigate this loss, the applicant is proposing to create a minimum of 2,016 square feet of low intertidal tidal channel habitat in Upper Newport Bay. The mitigation site is proposed to be located on Back Bay Drive, at the confluence of Big Canyon Creek and Upper Newport Bay in the Upper Newport Bay Ecological Reserve. The proposed mitigation is a cooperative effort between the applicant and the California Department of Fish and Game.

B. Protective Structures

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30235 requires that bulkheads be permitted when they are required to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. A residence exists at the subject site. The existing bulkhead was inspected by Noble Consultants, Inc. engineering firm. Noble Consultants prepared a Coastal Engineering Analysis for the subject site (dated April 7, 1999). The Coastal Engineering Analysis found the bulkhead to be in an extremely deteriorated stage. The Coastal Engineering Analysis states: "Pocket voids, resulting from cracks and severe sediment leakages along the entire wall segment, are observed within the patio and side yard areas of the subject property. These pocket voids result in severe degradation of the supporting footings for the residential building."

The Coastal Engineering Analysis further states:

The existing aged seawall shows severe deterioration which results in sediment loss within the property limits. Pocket voids, observed on the patio and side yard areas, severely weaken the building's footings. The building could

collapse as the degraded foundation may not be able to support the residential structure. Therefore, the current site condition necessitates the construction of a new seawall to prevent the potential damage to the residential building due to the degradation of the existing seawall.

The deteriorated state of the existing bulkhead is threatening the stability of the on-site residence. Failure to replace the deteriorated bulkhead would lead to eventual damage to the existing residence. As discussed below, there are no other feasible alternatives to protect the existing structure. Therefore, the bulkhead replacement is required to protect the existing structure.

With regard to adverse impacts on shoreline sand supply, the subject site is located near the entrance to Newport Harbor at the outer end of the Balboa reach embayment (see exhibit B). This stretch of water is relatively sheltered by the surrounding harbor islands and mainland as well as by the moored boats, docks and groin structures in front of the lots. Because this residential site is fairly protected and unobstructed fetches are limited for wave generation, little wave activity occurs. Consequently, sediment transport is primarily influenced by currents associated with the daily tidal fluctuation in the bay. These currents propagate generally southeast and northwest past the property corresponding to the ebb and flood tides, respectively. The coastal engineer estimates that currents are mainly confined to the deeper portions of the bay and decelerate closer to the bank as the water is slowed by the frictional effects of the more shallow bottom.

Regarding the impacts of the proposed project on coastal processes, the Coastal Engineering Analysis states:

During tidal exchange periods, it is expected the right angle of the existing seawall configuration will induce some water gyration near the corner location. Since the new wall proposed in the preferred plan follows the original seawall alignments, it is not expected to induce any additional gyration motion other than the one which currently exists. In addition, the existing 90-foot long concrete groin extends another 25 feet bayward compared to the subject lot's seawall location. This implies that the existing concrete groin would induce more impacts to local coastal processes than the existing seawall located at the subject property.

Thus impacts arising from the proposed wall are not expected to differ significantly from the existing conditions. In addition, because the subject site is located in a protected harbor, shoreline processes including sand movement, are not effected by wave action. Therefore the proposed bulkhead will not create adverse impacts on the local shoreline sand supply.

The proposed development is necessary to protect an existing structure. The proposed bulkhead replacement will not have adverse impacts on local shoreline sand

supply. Therefore, the Commission finds that the proposed development shall be permitted consistent with Section 30235 of the Coastal Act.

C. Marine Environment

Section 30233 of the Coastal Act allows fill of open coastal waters only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In addition, Section 30233 limits fill to eight specifically enumerated uses.

1. Allowable Use

The proposed use, replacement of a bulkhead, is not one of the uses specifically allowed under Section 30233 of the Coastal Act. However, Section 30235 of the Coastal Act requires that structures such as bulkheads must be approved when they are necessary to protect existing structures and designed to mitigate adverse impacts on shoreline sand supply. As described above, this type of project is consistent with Section 30235 of the Coastal Act and so must be allowed.

2. Alternatives

A number of alternatives were considered to address the issue of the deteriorating bulkhead and the threat to the existing residence. Alternatives considered included: 1) stabilizing the existing bulkhead by casting a continuous waler at the bottom of the wall and supporting the waler by either driven or jetted piles; 2) removal of the existing seawall and jetting-in new walls; 3) driving sheet piles behind the existing seawall, then removing a small section of the existing wall and immediately installing a tie back, and continue removing only a portion of the existing wall at a time until all the existing wall has been removed; 4) demolishing a minimum of one third of the existing residence and the entire bulkhead and replacing the bulkhead in the same location as the existing bulkhead; and, 5) the proposed alternative.

Alternative No. 1, use of a continuous waler at the bottom of the wall, was dismissed because although it would stabilize the bulkhead, it would not control the erosion problem. The second alternative, removal of the existing bulkhead and jetting-in new walls, was dismissed because removal of the existing bulkhead would eliminate the soil confinement thus jeopardizing the structural integrity of the existing residence. The third alternative, driving sheet piles behind the existing seawall, was dismissed because the driving required to set a steel sheet pile wall could seriously damage the existing residence and possibly cause the existing bulkhead to fail. Failure of the existing bulkhead would then cause the house to settle or fail. Alternative No. 4, demolishing all or a portion of the existing residence and the entire existing bulkhead, was not considered a feasible alternative. Portions of the residence would have to be demolished in order for the necessary construction equipment to access the bulkhead area in order to reconstruct in the same location. The existing house is set back 4

feet from each of the side yard property lines and a minimum 10 feet from the bayfront bulkhead.

The alternatives considered would not adequately protect the existing structure and/or result in a competent bulkhead replacement. Consequently, the proposed alternative was chosen as the most feasible, least environmentally damaging alternative. Environmental impacts have been minimized by limiting the scope of the project to the minimum necessary to achieve the project goal of protecting the existing residence. The three foot width of the proposed wall is the minimum width necessary for the piles and connecting bond beam. If the wall were narrower than three feet, there would be inadequate strength to support and hold back the soil behind the wall, as determined by the structural engineer. Limiting the width of the replacement bulkhead minimizes the area of impact to tidal flat habitat.

In addition, impacts to eelgrass are expected to be avoided by employing the following measures: 1) boundaries of the eelgrass bed in the vicinity of the bulkhead construction project will be marked with buoys prior to the initiation of any barge movement; 2) the barge shall maintain a minimum depth of 4 feet when maneuvering over eelgrass beds; 3) barges or other vessels shall avoid anchoring over eelgrass meadows to prevent possible damage to eelgrass vegetation; water quality BMPs (discussed later in this report) will be implemented to reduce potential turbidity and water quality impacts on eelgrass. Therefore, the Commission finds the proposed alternative is the least environmentally damaging alternative as required by Section 30233 of the Coastal Act.

3. Mitigation

Coastal Resources Management conducted marine biological reconnaissance surveys in conjunction with the proposed project. Observations were recorded for habitat types, the types and relative abundances of intertidal life, sediment types, and shoreline features within the limits of the project as well as adjacent areas. CRM also mapped the extent of eelgrass beds in front of the existing bulkhead and recorded eelgrass shoot densities at various locations within the bed.

a) Intertidal Sandflats

The marine biological reconnaissance surveys identified impacts to 336 square feet of unvegetated low intertidal sandflats and an associated long-term loss of tidal flat organisms (worms, clams, snails, and crustaceans). This impact is caused by placement of the three foot wide replacement bulkhead in a bayward location along the length of the existing bulkhead.

The applicant has proposed to mitigate for this loss by creating a minimum of 2,016 square feet (up to 3,440 square feet) of low intertidal tidal channel habitat in Upper Newport Bay. The proposed mitigation site is located on Back Bay Drive, in the Upper Newport Bay Ecological Reserve, at the confluence of Big Canyon Creek and Upper

Newport Bay. Damage to the site during the storms of 1997-1998 severely degraded the mudflat habitat by increasing their elevations and ultimately, decreasing the value of the low intertidal habitat.

Several areas of Upper Newport Bay have been restored to functional tidal channel habitat since the mid-1980s. These areas include 1) tidal channel cuts on Shellmaker Island; 2) habitat that surrounds "New Island" immediately south of the Dike; and 3) in the uppermost part of the Bay where tidal channels surround the tern nesting islands. These tidal channels provide sources of water exchange, habitat for benthic invertebrates, channel-associated fishes, and foraging habitat for both foraging shorebirds and larger marsh birds.

The proposed mitigation plan will restore between 2,016 and 3,440 square feet of channel. The 2,016 square foot plan represents a proposed mitigation plan replacement ratio of 6:1. However, in order to design a channel that would extend out to the main channel of Upper Newport Bay approximately 180 feet to a depth of -1.5 feet, a slightly larger and deeper channel design is required (3,440 square feet). In addition, the slightly larger and deeper channel design features will ensure that the minimum 6:1 ratio is achieved over the five year monitoring period, and takes into account natural sedimentation processes in the project area. The amount of material to be excavated is estimated to be 130 cubic yards.

The proposed channel will be located between the main channel of Upper Newport Bay and the shoreline of Big Canyon in front of the California Department of Fish and Game (CDFG) parking lot (see exhibits F and G). The proposed tidal channel will meander from the main channel to the shoreline and bisect existing low-to-high elevational mudflats. The proposed elevations will ensure that the channel has open water habitat during all but extreme low tide periods. The proposed tidal channel will be located in the vicinity of a very shallow, natural tidal depression and will in effect deepen the depression to a depth that will allow for continual water cover during most tidal conditions. The channel habitat will provide bottom habitat for invertebrates (clams, snails, crustaceans, and polychaete worms), and will attract fishes (i.e. gobies, topsmelt, and halibut), shorebirds (sandpipers, willets, avocets, godwits), and larger marsh birds (blue herons, snowy egrets, and common egrets).

The mitigation site will be excavated by a qualified contractor and in accordance with the mitigation plan and design specifications approved by CDFG. A qualified wetlands biologist and coastal engineer will be onsite during construction to monitor progress, ensure that the proper site contours are attained, prevent damage to nearby sensitive habitats, and to provide technical assistance to the contractors. In addition, the project biologist will monitor wildlife use of the area during the two-day construction period.

Post-construction monitoring will occur over a five-year period beginning with surveys immediately following habitat construction. The project biologist will monitor wildlife use of the channel and surrounding mudflats immediately prior to construction and at

intervals of 3 months, 12 months, 24 months, 36 months, 48 months, and 60 months following the tidal channel construction. The tidal channel depth contours, sedimentation rates, and biological colonization process will be monitored by a qualified wetlands biologist who will report physical and biological observations within 30 days after conducting each site survey. A final report will be prepared at the end of the five-year monitoring period.

The mitigation plan provides the following criteria for the definition of mitigation success: 1) the establishment and maintenance of a minimum of 2,016 square feet of tidal channel for a period of five years following construction of the tidal channel, and 2) documented use of the tidal channel by shorebirds and/or marsh birds during each of the six monitoring surveys over a five-year period.

b. Eelgrass

Eelgrass is a marine angiosperm that forms meadows in mud and sand substrates of bays and wetlands channels. It is an important biological habitat for invertebrates and fishes. In Newport Bay, eelgrass grows in the lower intertidal and the shallow subtidal substrates at depths between 0.0 and -15 feet MLLW, although more commonly, at depths shallower than -8 feet MLLW.

Eelgrass covers approximately 1,033 square feet of tidal flat and shallow bay benthos within the project area (see exhibit K). The shoot density varies from 108 to 347 per square meter. And averages 148.2 shoots per square meter at depths from -0.5 feet to -1.0 feet MLLW.

The proposed project intends to avoid impacts to eelgrass. However, if unforeseen, unavoidable impacts do occur during construction, a mitigation plan has been prepared consistent with the National Marine Fisheries Southern California Eelgrass Mitigation Policy. If the project impacts to eelgrass are less than 10 square meters, the applicant proposes to compensate out-of-kind at a mitigation ratio of 1.2 to 1 (as allowed by the National Marine Fisheries Southern California Eelgrass Mitigation Policy. This mitigation is proposed to be conducted in combination with mitigation of tidal flat losses as described above. If the project impacts to eelgrass are greater than 10 square meters, the applicant proposes to conduct an eelgrass replant at the site at a mitigation ratio of 1.2 to 1.

The mitigation plan is intended to ensure no net loss of eelgrass habitat. The post-construction area of eelgrass habitat will constitute approximately 1,330 square feet. The actual amount of eelgrass habitat to be used to measure any project impacts will be determined during a pre-construction eelgrass survey at the site to be conducted no more than 120 days prior to the initiation of construction.

c. Mitigation Conclusion

The applicant's proposed mitigation plan is adequate to offset the loss of intertidal sandflats and the possible loss of eelgrass. The mitigation plan includes detailed information of how, when, and where the mitigation will occur. In addition, the proposed mitigation plan includes a five year monitoring period and criteria for determining success. Therefore, the Commission finds that the proposed mitigation plan meets the requirements of Section 30233 of the Coastal Act. However, there must be an assurance that the mitigation plan is carried out as proposed. In addition, the monitoring reports and pre- and post-construction eelgrass surveys described in the mitigation plans should be submitted to the Coastal Commission for review. This is not part of the mitigation plan. A special condition of approval requires that the applicant carry out the mitigation plan as proposed and that the monitoring reports be submitted for the review and approval of the Executive Director of the Coastal Commission. Therefore, as conditioned, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

D. Water Quality

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 that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development will involve work in coastal waters. Construction activities are expected to temporarily degrade water quality in the vicinity of the project site due to increases in water turbidity. However, this project is located in an area of adequate tidal flushing and as a result, any turbidity effects will be short-term.

In addition, the applicant has proposed Best Management Practices (BMPs) to reduce adverse impacts to water quality arising from the proposed project. The BMPs proposed by the applicant are: 1) adherence to the Regional Water Quality Control

Board's water quality specifications for the duration of the construction project; 2) silt curtains will be deployed around the work barge and around the in-progress bulkhead reconstruction to minimize the spread of turbid waters outside the project area; 3) all debris and trash will be disposed of in suitable trash containers at the end of each construction day; and 4) discharge of any hazardous materials into Newport Bay will be prohibited. Based on the project site's location in an area of adequate tidal flushing and implementation of BMPs, water quality impacts are expected to be less than significant and are not expected to result in mortality or long-term damage to marine organisms.

Nevertheless, to assure that all adverse impacts to water quality are minimized, all construction materials and machinery (with the exception of the barge, which will be stored adjacent to the bulkhead or tied to the applicant's private dock) shall be stored away from the water. In addition, no construction materials not essential for the project improvements shall be placed in the bay. Local sand, cobbles, or shoreline rocks shall not be placed in the bay. Local sand, cobbles, or shoreline rocks shall not be used for backfill or construction material pursuant to Special Condition 2.

The removal of the deteriorated seawall will create unwanted debris. In order to prevent adverse impacts on marine resources, the debris must not be allowed to enter the marine environment. In order to assure that the debris is disposed of properly, the location of the disposal site must be identified and approved as acceptable. As a condition of approval, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the debris resulting from removal of the existing bulkhead and any construction spoils. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act which limit adverse impacts on water quality.

E. Public Access and Recreation

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

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.

Sections 30210, 30211 and 30212 of the Coastal Act require that new development provide maximum public access and recreation, not interfere with the public's right of acquired

access, and provide public access from the nearest public roadway to the shoreline and along the coast except under certain circumstances. The subject site is located on the Balboa Peninsula in Newport Harbor. Public access exists adjacent to the subject site at the public beach and small public pier. In addition, public access exists approximately three blocks south of the subject site at the wide sandy beach which extends the entire length of the oceanward side of the Balboa Peninsula.

The proposed project will encroach three feet onto the adjacent public beach area for the 66 foot length of the return section. This constitutes an area of 198 square feet ($3 \times 66 = 198$). The area of public beach encroachment is bayward of the public beach bulkhead. No encroachment will occur on the sandy beach area landward of the public beach bulkhead. Hence, the proposed bulkhead will only impact the tidal area and not the dry sand area (see exhibit E). The City has approved the encroachment, subject to Coastal Commission approval (see exhibit L).

The proposed project is the only feasible alternative to protect the existing residence. The area of encroachment is minor compared to the public area remaining. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on existing public access and recreation and is consistent with Section 30212 of the coastal Act.

F. Land Use Plan

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

The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan and with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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 project has been conditioned in order to be found consistent with the marine resource protection policies of Sections 30230, 30221, and 30233 of the Coastal Act. Mitigation measures, in the form of a special condition requires removal of construction debris and minimization of construction impacts, and adherence to the mitigation plan as proposed, will minimize all adverse effects. Feasible alternatives to the proposed project that would not result in bayward encroachment and encroachment, were considered but were found to be infeasible because they would not result in protection of the existing residence. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



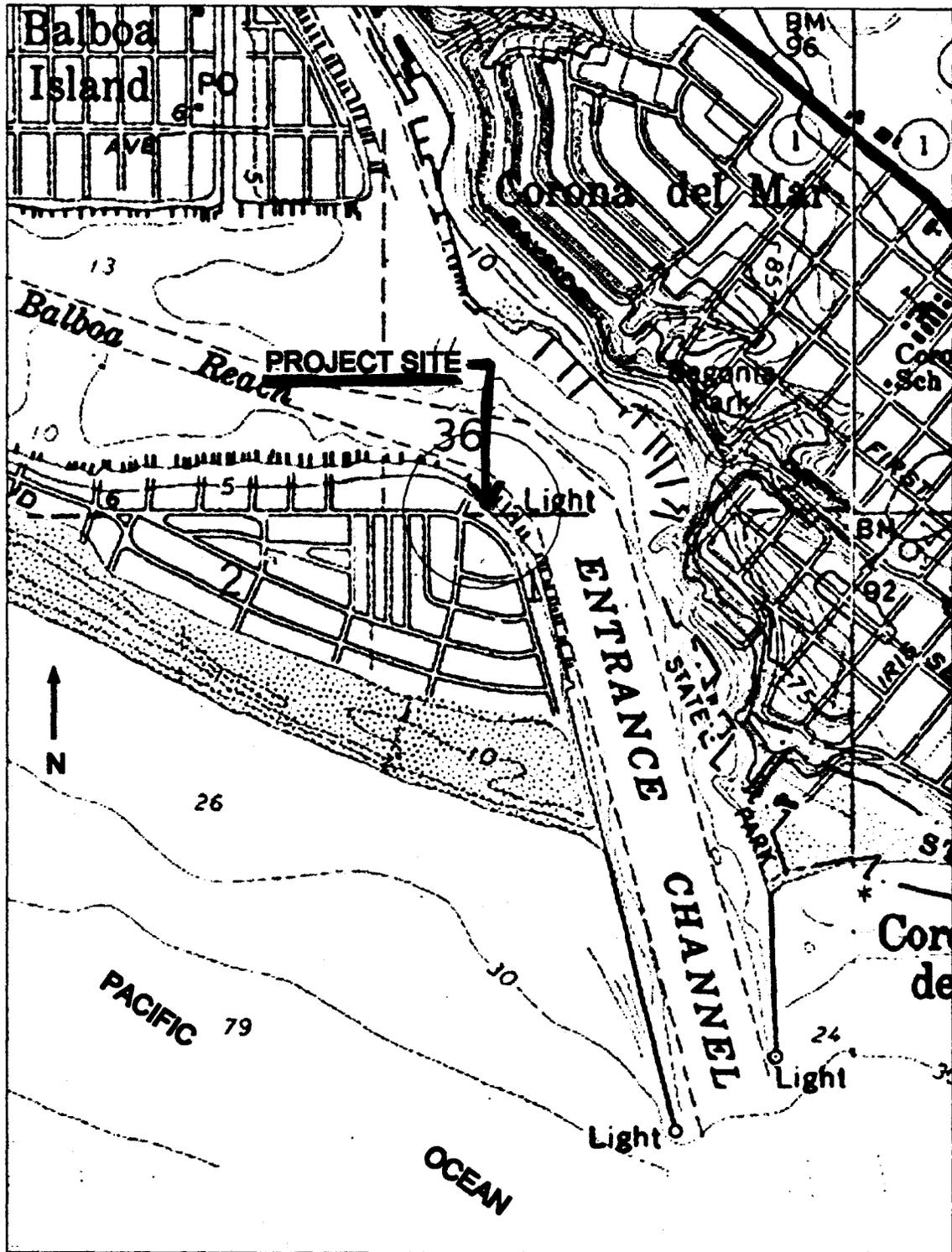
ORANGE CO

MAP 32 SEE

Subject site

EXHIBIT NO. A
APPLICATION NO.
5-99-152
California Coastal Commission

Regional
VICINITY MAP



N. T. S.

VICINITY MAP

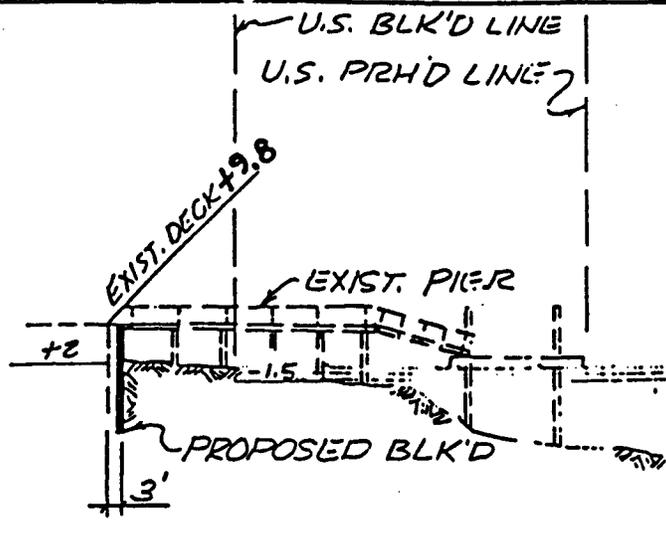
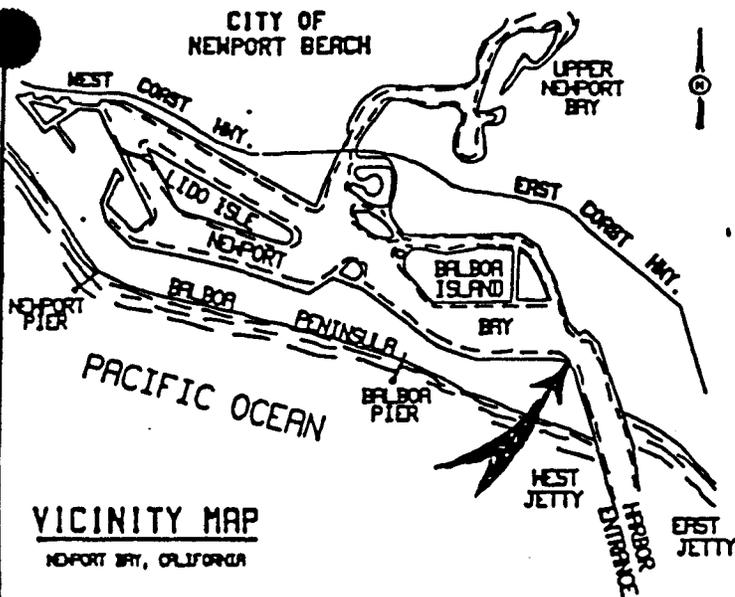


Figure 1

5-99-152

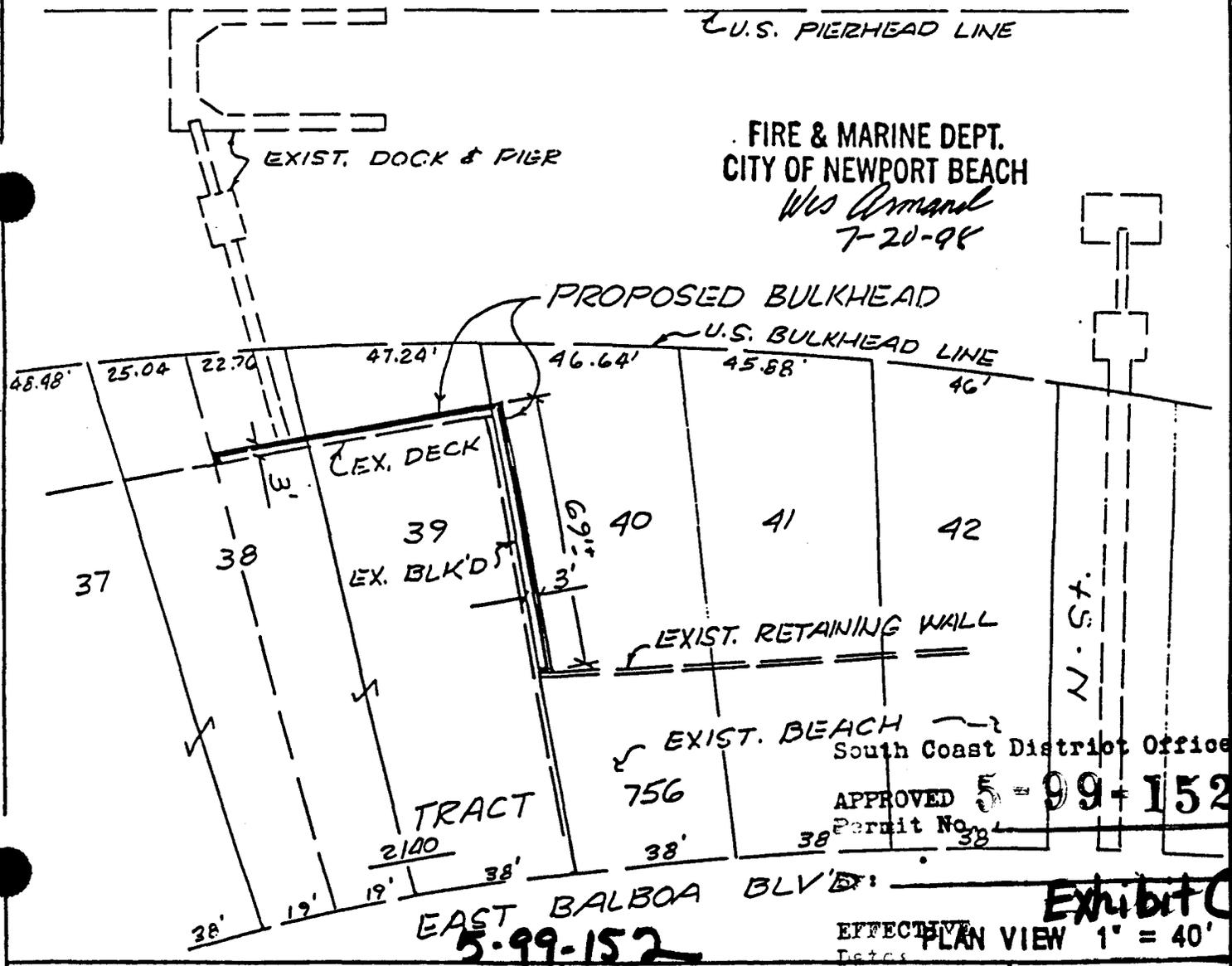
Exhibit B

CITY OF NEWPORT BEACH



PROFILE 1" = 40'

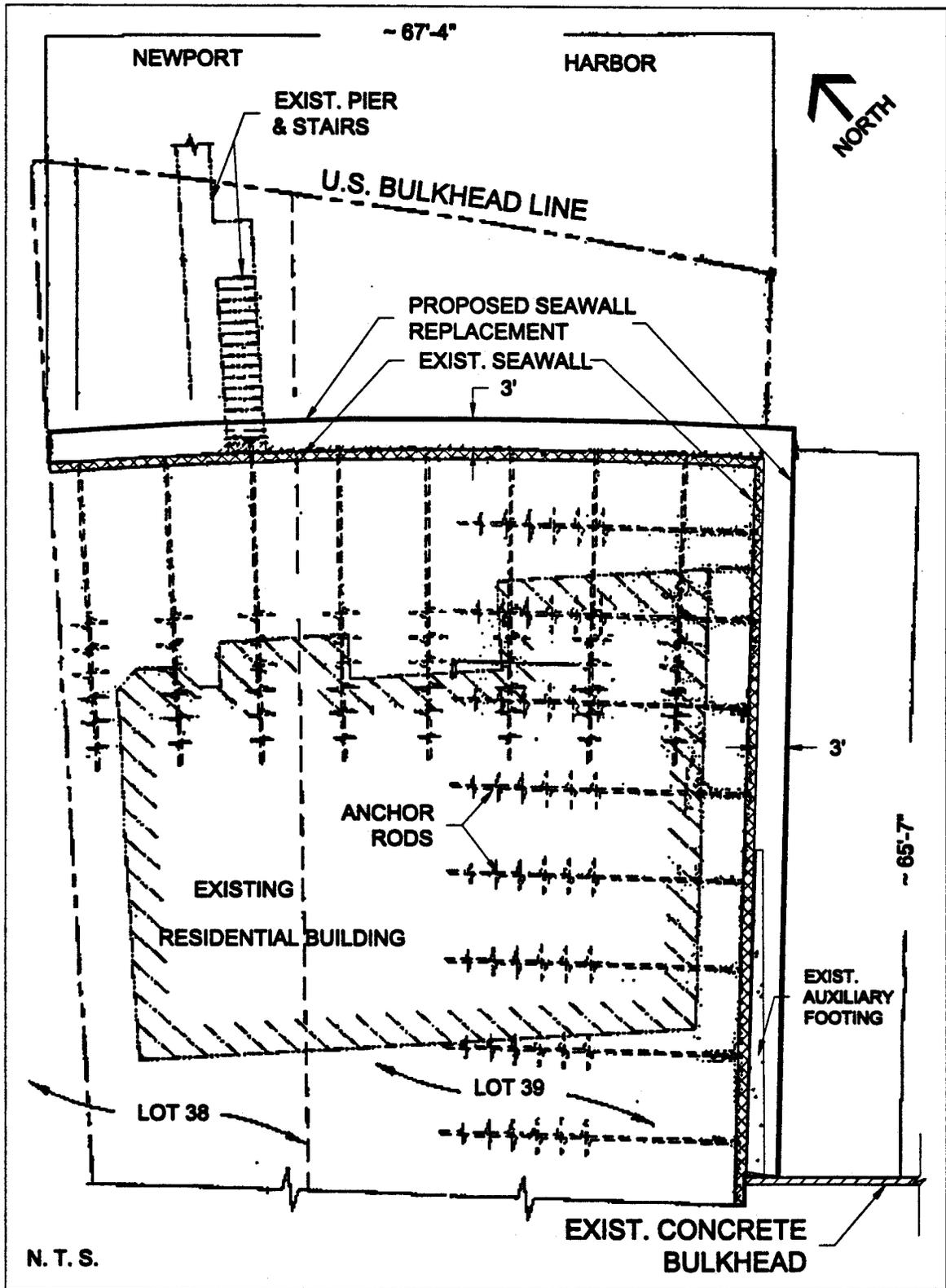
SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.



5-99-152

Exhibit C

APPLICANT'S NAME VOIT RESIDENCE JOB ADDRESS 2140 E. BALBOA BLVD DATE 6/27/98



Source: William Simpson & Associates Inc., 1999

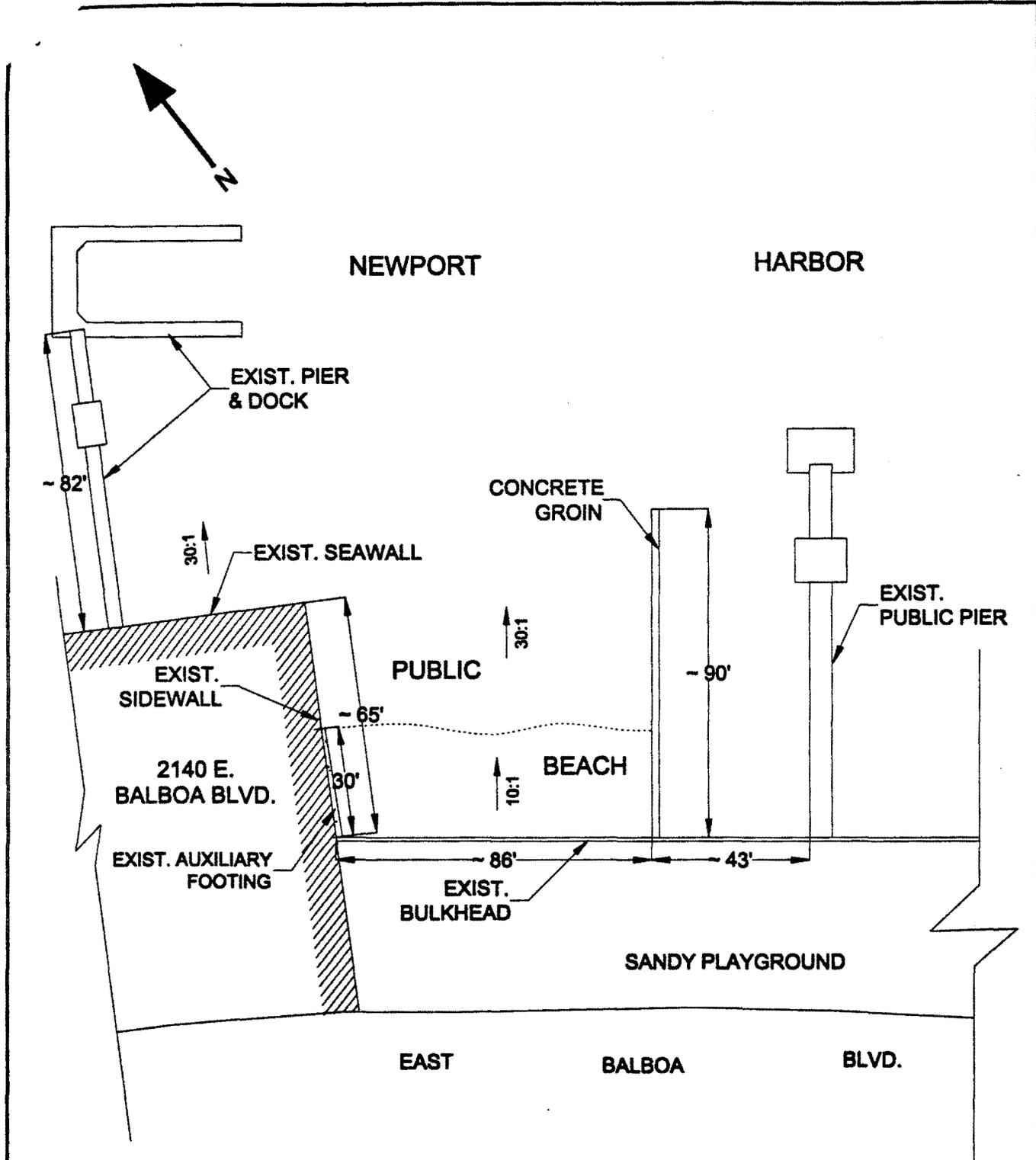
PROJECT PLAN



Exhibit
D

Figure 2

5-99-152



SCALE 1"=40'

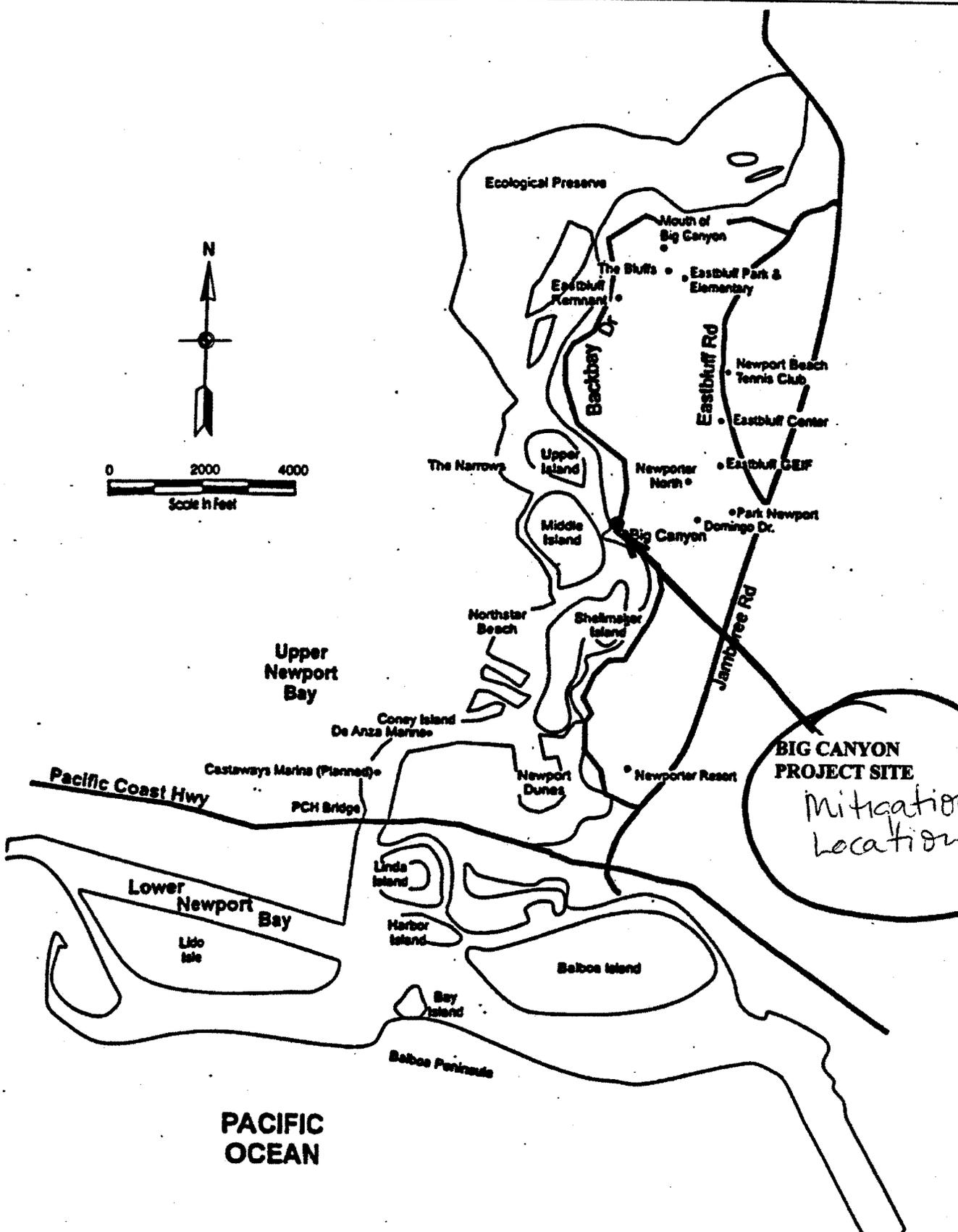
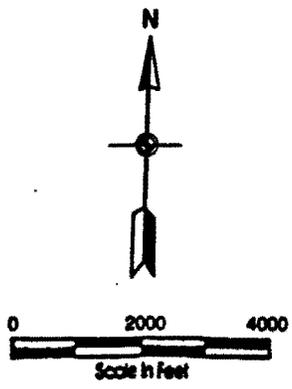
Exhibit E

PUBLIC BEACH LAYOUT



5-99-152

Figure 3

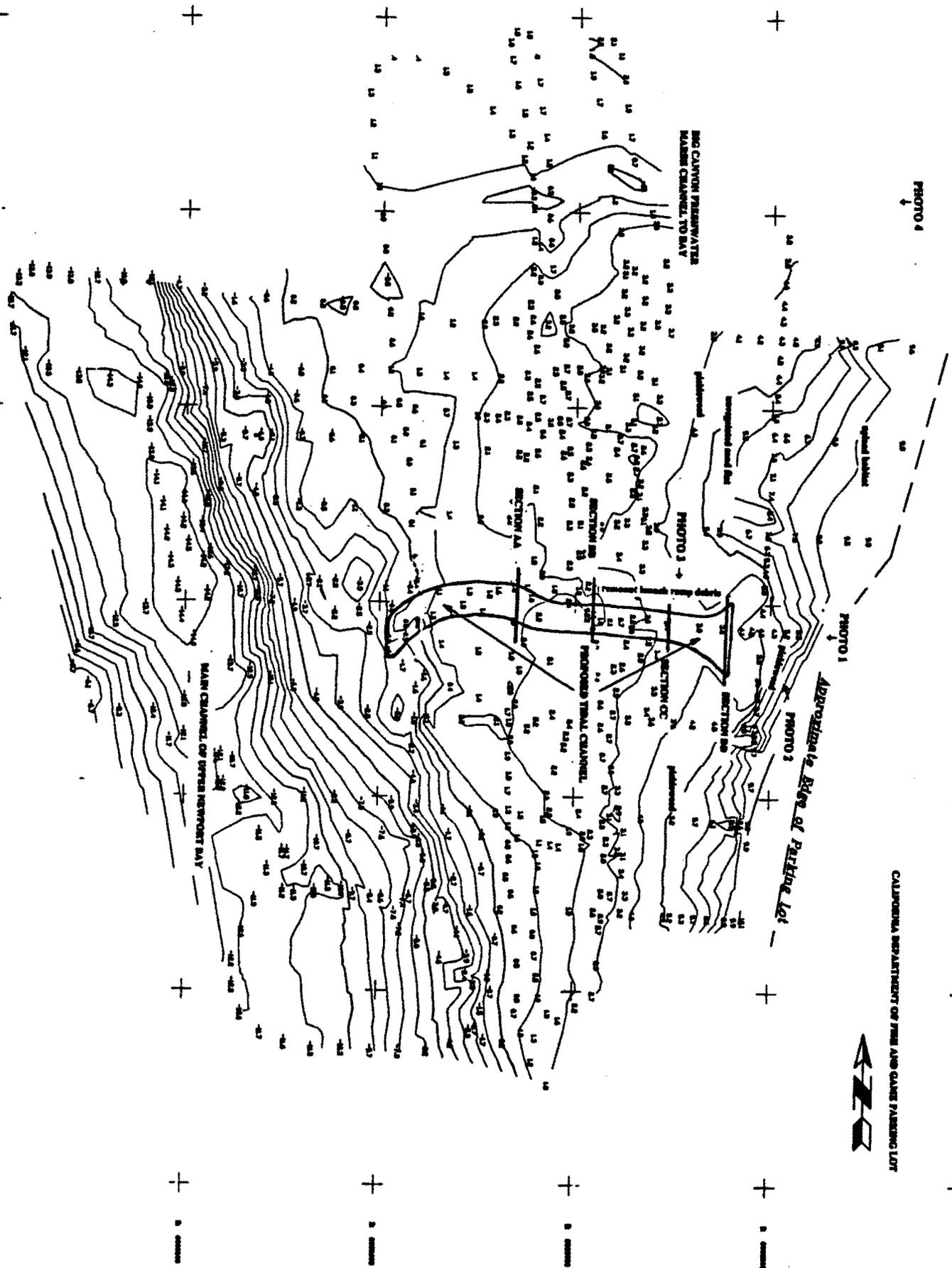


NOTE: Upper Newport Bay - Area North of Pacific Coast Highway
Lower Newport Bay - Area South of Pacific Coast Highway

Exhibit F

PROJECT AREA
Figure 1

5-99-152



Mitigation Site Plan

5.99-152

Exhibit G

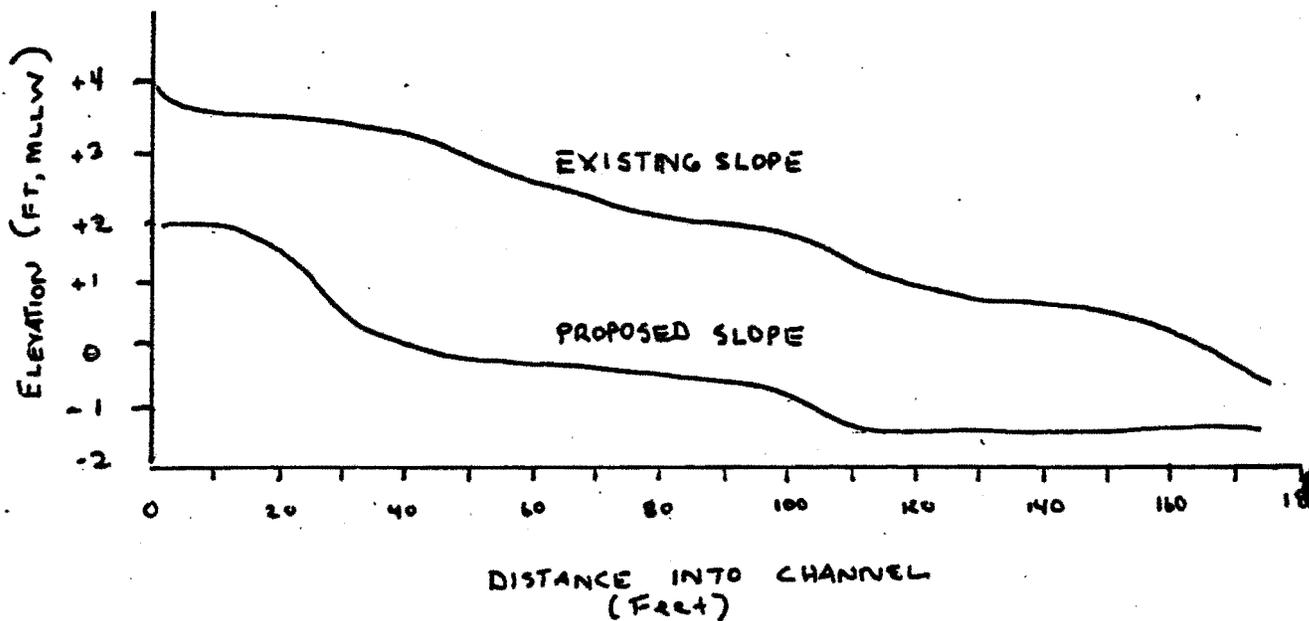


FIGURE 3. Existing slope of the mudflat and the slope of the proposed tidal channel
Big Canyon Tidal Channel Mitigation Project

5.99-152

Exhibit H

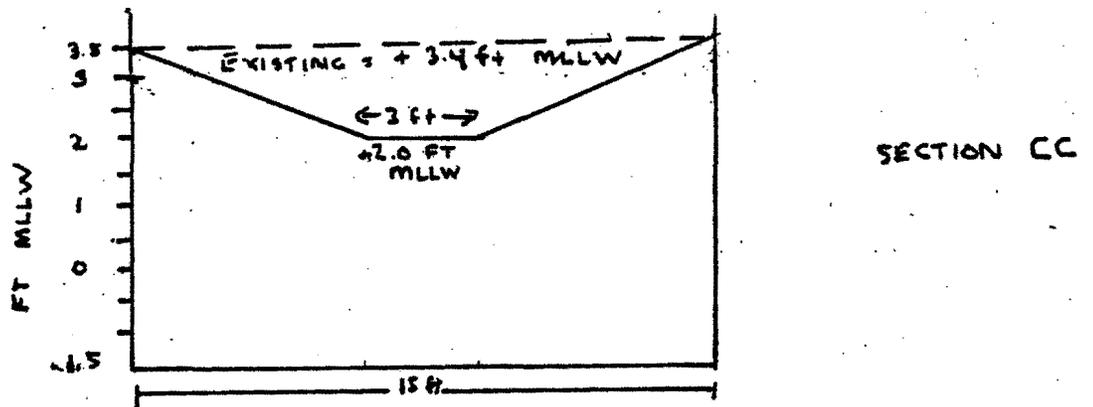
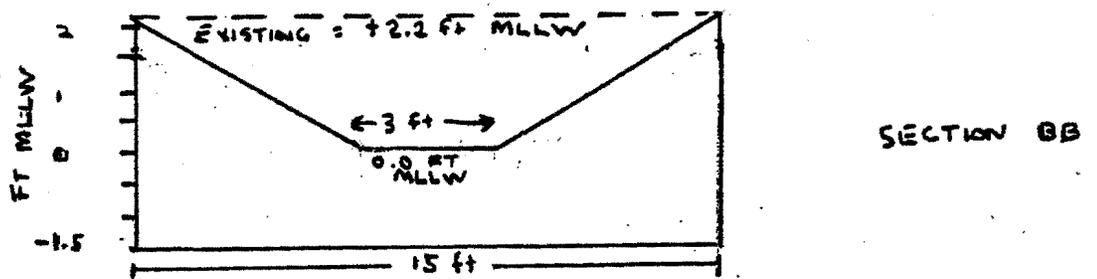
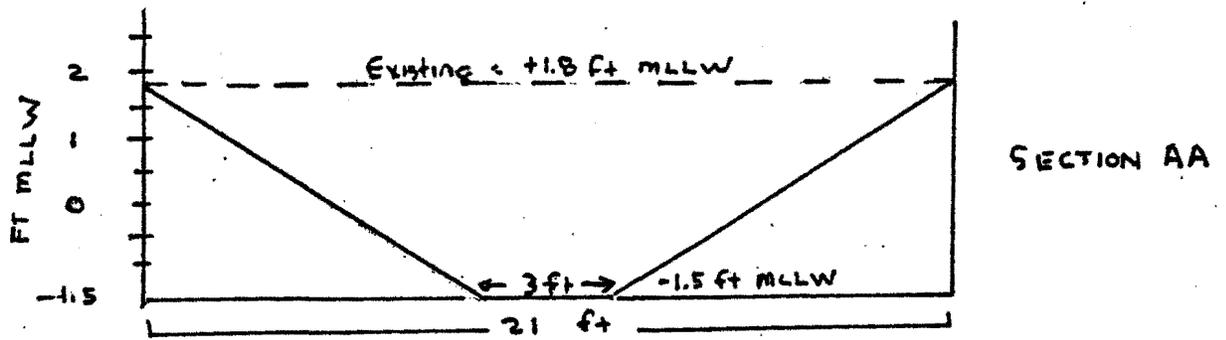


FIGURE 4. Section Views. Section AA through CC (Refer to Figure 2). Cross-sectional views of the tidal channel. Section AA is farthest from the shoreline.

Mitigation Plan
Cross Sections

5-99-152

Exhibit I

5-99-152

Mitigation Plan
X-section

Exhibit J

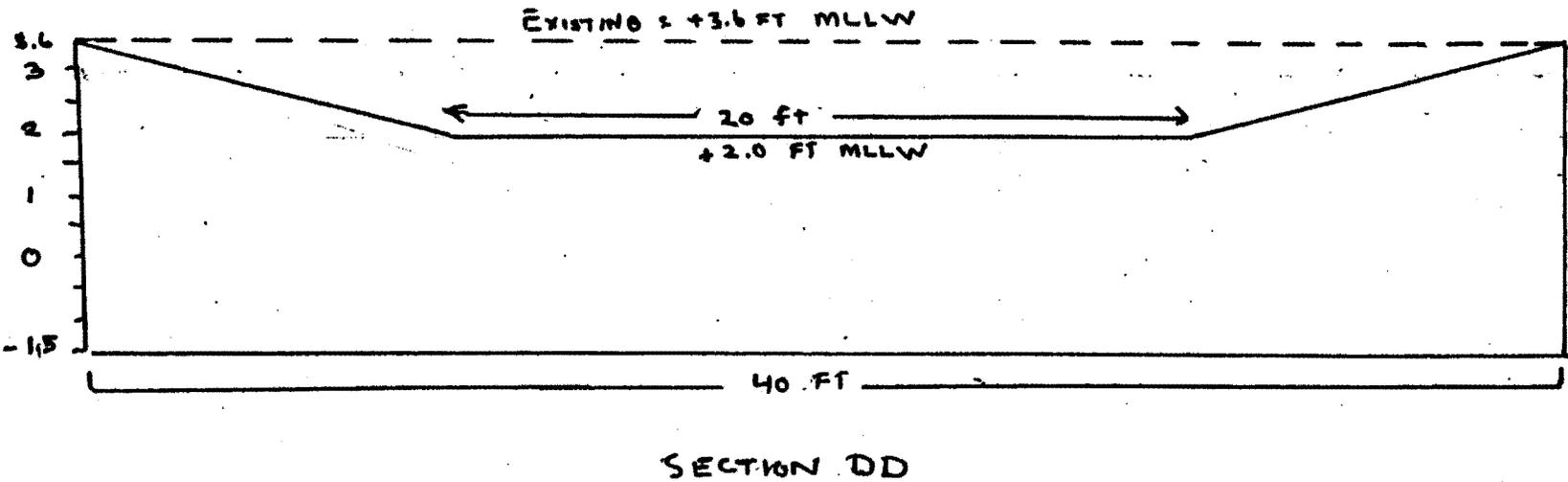


FIGURE 4. Section Views. Section DD (Refer to Figure 2). Cross-sectional view of the tidal channel. Section DD is nearest the shoreline.

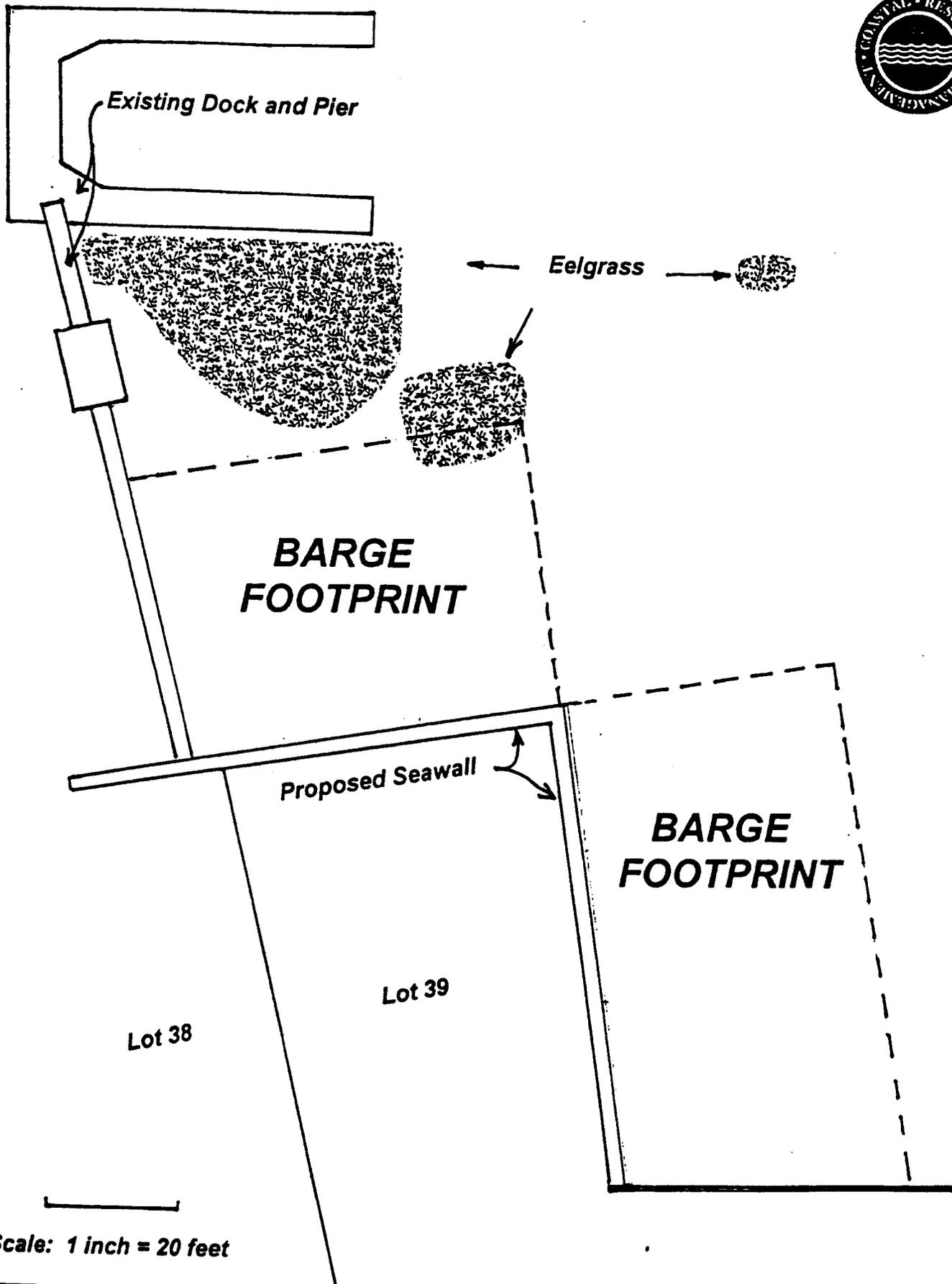


Figure 4.
Location of Eelgrass Habitat and Barge Footprint
Coastal Resources Management March 1999

Exhibit K

5-99-152

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL
 FROM: PUBLIC WORKS DEPARTMENT
 SUBJECT: PROPOSED SEAWALL ADJACENT TO 2140 E. BALBOA BOULEVARD
 OWNER: Robert Voit
 RECOMMENDATIONS:

RECEIVED
 South Coast Region
 APR 23 1999
 CALIFORNIA
 COASTAL COMMISSION

Approve the application subject to:

1. Execution of an Encroachment Agreement for non-standard improvements.
 - a. Authorize the Mayor and City Clerk to execute the Agreement;
 - b. Authorize and direct the City Clerk to have the agreement recorded with the Orange County Recorder.
2. An Encroachment Permit issued by the Public Works Department.
3. General Services Department approval.
4. Approval from all affected/adjacent property owners.
5. A Harbor Permit issued by the Fire and Marine Department.
6. A Building Permit issued by the Building Department.
7. Coastal Commission approval.

DISCUSSION:

Paul Tennyson, the contractor representing the owner of the property located at 2140 E. Balboa Boulevard, has requested that he be permitted to install a new concrete seawall along the outside of the existing seawall (see attached letter, photo, and exhibit).

The existing seawall has deteriorated and it would be very difficult to replace the existing seawall without damaging/demolishing the house. Currently, the existing seawall is leaking and undermining the foundation of the house. The proposed concrete seawall will stop the leakage and support the old seawall and have new tie-back supports located on private property.

APPROVED BY CITY COUNCIL

DATE 8-10-98

City Council
 Encroachment Approval
 5-99-152

Exhibit L

The proposed concrete seawall encroachment will have minimal impact on view, affecting the adjacent and immediate surrounding property owners. The Fire and Marine Department has reviewed the proposed seawall and issued a preliminary "Approval In Concept" (attached).

The proposed concrete seawall will encroach 3 feet into the bayfront and City-owned beach property (ending at the existing beach retaining wall). Hence, the wall will only impact the tidal area and not the existing beach area used by the public.

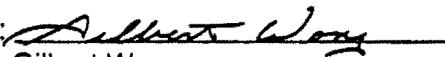
Council Policy L-6, "Private Encroachment in the Public Right-of-Way", requires the prior approval of City Council for private structural improvements such as walls in public easements or rights-of-way. The encroachment agreement allows construction of the seawall in the City-owned property as approved by the Public Works Department and requires the property owner to maintain the proposed and existing encroachments and hold the City harmless from all liability resulting from the private encroachments within the public-owned property.

Respectfully submitted,



Public Works Department
Don Webb, Director

By:



Gilbert Wong
Associate Civil Engineer

Attachment: "Approval In Concept"
Letter
Photos
Exhibit
Encroachment Agreement

5-99-152

Exhibit L2

DEPARTMENT OF FISH AND GAME

South Coast Region

MARINE REGION
411 BURGESS DRIVE
MENLO PARK, CA 94025
(650) 688-6340

OCT 6 1999

CALIFORNIA
COASTAL COMMISSION**Memorandum**

To : Ms. Meg Vaughn
California Coastal Commission
200 Ocean Gate Ave., Suite 1000
Long Beach, California 90802

Date: September 30, 1999

From : Department of Fish and Game

Subject: Voit Residence Seawall Replacement Project, 2140 E. Balboa Blvd.

Department of Fish and Game (Department) personnel have reviewed the Big Canyon Tidal Channel Mitigation Project Plan, Upper Newport Bay, Orange County, California. The proposed plan is a solution to mitigate for the loss of 336 square feet (sf) of intertidal/subtidal habitat as a result of a proposed seawall replacement project at 2140 E. Balboa Blvd., Newport Beach, Orange County, California. The proposed mitigation plan would restore between 2,106 and 3,440 sf of channel in Upper Newport Bay.

The Department concurs that the proposed mitigation plan is the only feasible alternative for the seawall replacement project. We agree that the other project alternatives, i.e., tearing down one-third or all of the residence, would be extremely costly, destructive, and unreasonable. The Department also finds the proposed Big Canyon Tidal Channel Mitigation Project Plan an acceptable alternative to mitigate for the loss of 336 sf of intertidal/subtidal habitat. Therefore, the Department concurs with the issuance of a Coastal Development Permit for the seawall replacement project at 2140 E. Balboa Blvd., provided the Big Canyon Tidal Channel Mitigation Project Plan is included as a special requirement of the permit.

As always, Department personnel are available to discuss our comments, concerns, and recommendations in greater detail. To arrange for a discussion, please contact Ms. Marilyn Fluharty, Environmental Specialist, California Department of Fish and Game, 4949 Viewridge Avenue, San Diego, CA 92123, telephone (619) 467-4231.

Sincerely,

Robert N. Tasto, Supervisor
Project Review and Water Quality Program
Marine Region

CDFG Approval 5-99-152

Exhibit M



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

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



Gray Davis
Governor

June 9, 1999

RECEIVED
SANTA ANA REGION

AUG 4 - 1999

CALIFORNIA
COASTAL COMMISSION

Mr. Robert Voit
2140 E. Balboa Boulevard
Newport Beach, CA 92661

WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR THE PROPOSED REPLACEMENT OF A FAILING SEAWALL, CITY OF NEWPORT BEACH, ORANGE COUNTY (NO ACOE REFERENCE NUMBER)

Dear Mr. Voit:

On April 15, 1999, we received a transmittal dated April 14, 1999 from your agent, Shellmaker Inc., for the above-referenced project. We received all requested materials for a complete application as of April 15, 1999.

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

1. Project description: You are proposing to replace a failing seawall to protect your and your neighbors' properties. Because of the seawall is in close proximity to your house, the existing seawall cannot be replaced along its existing alignment without losing part of the house. The existing wall will be used as temporary shoring and a new seawall will be installed in front. Installation of the seawall will involve pile driving, hydrojetting and pumping concrete to construct the seawall panels.
2. Receiving water: Lower Newport Bay
3. Fill area:

Wetland	336 sq. ft. of permanent impact to tidal flat habitat
Eelgrass	85-225 sq. ft. of temporary impact
Ocean	544 sq. ft. of temporary impact
4. Dredge volume: None
5. Federal permit: At the time of this letter, the U.S. Army Corps of Engineers is processing the permit application, but has not made a nationwide permit determination.

CRWQCB
Approval

California Environmental Protection Agency



5-99-152

Exhibit N

6. **Compensatory mitigation:**
- Mitigation Bank** Mitigation for the loss of tidal flat habitat will be provided for by monetary compensation for 2,016 square feet (6:1 ratio) either:
- a) to the California Department of Fish and Game (CDFG) for the restoration of Shellmaker Island in Upper Newport Bay, or
 - b) for a wetland restoration project in Upper Newport Bay for a yet-to-be determined project to be designed by the CDFG.

Mr. Erick Burres, Coastal Ecological Reserve Manager for the CDFG, will oversee the administration of this wetland mitigation project. The dollar amount to be contributed will be agreed upon by the applicant and resources agencies and will be based upon mitigation costs for a period of five years.

Plans for mitigation for the loss of eelgrass habitat are outlined in the application and will be at a 1.2:1 mitigation ratio, either in conjunction with the tidal flat mitigation or by replanting.

There is eelgrass in the project vicinity. Eelgrass is an important biological habitat for invertebrates and fishes. The proposed project is not expected to impact state- or federally-listed endangered or threatened species or their critical habitat. The applicant proposes to implement Best Management Practices during construction, including installing silt curtains around the construction barge and keeping trash and debris from falling into Newport Harbor.

You have submitted an application for a nationwide permit to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act and have filed for a Coastal Development Permit from the California Coastal Commission. The proposed construction activities are exempt from the requirements of CEQA under Section 15301.

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

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.

Mr. Robert Voit
June 9, 1999

Page 3

Should there be any questions, please contact Hope Smythe at (909) 782-4493 (e-mail address: hsmythe@rb8.swrcb.ca.gov) or Linda Garcia at (909) 782-4469 (e-mail address: lgarcia@rb8.swrcb.ca.gov).

Sincerely,



GERARD J. THIBEAULT
Executive Officer

Attachment

cc (with attachment):

Shellmaker Inc. - Lisa Miller

cc (w/out attachment):

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

U.S. Army Corps of Engineers, Los Angeles District - Jae Chung

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, San Diego - Tim Dillingham

California Coastal Commission - Meg Vaughn

LCG:\data\401\voit.401

5-99-152

Exhibit N₃

California Environmental Protection Agency

