

**CALIFORNIA COASTAL COMMISSION**

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Hearing Date: Feb. 2-5, 1999  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-98-349

**APPLICANT:** CALTRANS

**AGENT:** Tam Nguyen

**PROJECT LOCATION:** 0.06 kilometers east of the Route 55/Route 1 Interchange to Newport Harbor, Newport Beach, County of Orange

**PROJECT DESCRIPTION:** Construction of an 80 foot long reinforced concrete box (RCB) transition structure to connect existing box culverts which run parallel to the eastern side of Route 55 between Route 55 and Old Newport Boulevard just north of Route 1. Construction of a new 450 foot long, 9 foot by 4 foot reinforced concrete box culvert parallel to the existing box culvert from the western terminus of the transition structure to a point 65 feet from Newport Harbor. Construction of a 65 foot long 12 foot by 5 foot reinforced concrete box culvert from a transition structure at the terminus of the 9 foot by 4 foot parallel reinforced concrete box to Newport Harbor. Construction of a cofferdam and an opening in an existing seawall for an outfall into Newport Harbor for the new storm drain box culvert. Off-site mitigation consisting of 0.30 acres of native plant revegetation in Lower Big Canyon for impacts to 0.09 acres of wetland vegetation and 0.01 acres for temporary impacts to Newport Harbor.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends the Commission approve the proposed development with special conditions regarding implementation of the mitigation and monitoring plan devised by LSA and Associates dated 08-14-98, provision of monitoring reports, compliance with success criteria, submittal of a CDP amendment in the event that the project mitigation fails, measures to protect birds during the nesting

season, measures to prevent sedimentation during grading and construction, and measures to prevent chemicals, oils and other construction debris from entering Newport Harbor.

**ISSUES OF CONTROVERSY:**

There are no issues of controversy associated with this project. No public comments have been received. The applicant does not object to the special conditions.

**LOCAL APPROVALS RECEIVED:** Approval in concept from the planning department of the City of Newport Beach

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan, Coastal Development Permits 5-96-277 (City of Newport Beach), Consistency Certification No. CC-18-84, Coastal Development Permit 5-89-724, Department of the army Nationwide Permit Authorization dated June 26, 1998, California Department of Fish and Game Agreement Regarding Proposed Stream or Lake Alteration 5-142-98, Waiver of Waste Discharge Requirements and Water Quality Certification by the California Regional Water Quality Control Board dated Sept. 30, 1998

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**LIST OF EXHIBITS**

- |                          |                                   |
|--------------------------|-----------------------------------|
| 1. Vicinity Map          | 7. Ownership of Mitigation Site   |
| 2. LUP Land Use Map      | 8. Streambed Alteration Agreement |
| 3. Highway Configuration | 9. Location of Lower Big Canyon   |
| 4. Site Plan             |                                   |
| 5. Site Photos           |                                   |
| 6. Site Photos           |                                   |

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**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, is located between the sea and the first public road nearest the shoreline and in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Mitigation Plan

The mitigation plan shall be implemented according to the plan described in this staff report and contained in the document prepared by LSA and Associates 08-14-98 regarding the number and type of container plants selected, the amount and type of seed, site preparation and removal of non-native invasive vegetation. The mitigation plan shall be implemented within six weeks of issuance of the Coastal Development Permit and the applicant shall notify the Executive Director in writing immediately upon implementation of the planting plan.

#### 2. Monitoring Plan Reports

The applicant shall supply monitoring reports to the Executive Director at intervals of three (3) years and five (5) years. The time period for submittal of reports shall commence at the time the applicant notifies the Executive Director of the implementation of the mitigation as per special condition 1.

The reports shall detail the performance of the mitigation site and shall include photographs, discuss conformance with success criteria (plant growth, distribution, spread, health, and height), plant replacement, presence of wildlife, weed abatement measures and site hydrology. The report shall discuss any deficiencies and include measures to correct those deficiencies. In the event that the site is not progressing according to schedule, the applicant shall include a new monitoring schedule.

The final report shall contain the information required in the three year report (above) and shall also include a statement regarding the success or failure of the mitigation site.

#### 3. Success Criteria

All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements.

#### 4. Alternative Contingency Plan

In the event that the applicant states in the final five year report that the mitigation site is not successful, the applicant shall submit for the review and approval of the Commission a coastal development permit amendment for a contingency mitigation plan. The contingency plan can include off-site

acquisition and/or establishment of comparable habitat for dedication as open space or participation in an established mitigation banking program. Any such contingency plan shall be reviewed and approved by the California Department of Fish and Game and the Army Corps of Engineers and a coastal development permit amendment shall be submitted within 60 days of Commission receipt of the final monitoring report.

5. Protection of Nesting Birds

The California Department of Fish and Game identifies the nesting period of local birds as taking place from March 15 to July 15. The applicant or applicant's agent shall not remove vegetation at the mitigation site during this time period unless a qualified biologist has conducted a survey for nesting birds and determined that no nesting birds will be impacted by the project.

6. Site Grading

Should grading take place during the rainy season (November 1 – March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the mitigation site prior to or concurrent with the initial grading operations and maintained through the planting process to minimize sediment from runoff waters during construction.

Prior to the Issuance of the Coastal Development Permit the applicant shall submit, for the review and approval of the Executive Director, a letter stating where the applicant intends to dispose of any excess cut dirt from excavation of the mitigation site. If the disposal site is in the coastal zone, a coastal development permit may be required.

7. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

Disturbance to the harbor bottom and intertidal areas shall be minimized. The applicant agrees not to store any construction materials, oils or liquid chemicals or other waste where it is subject to wave erosion and dispersion into the harbor waters. The applicant shall remove from the harbor bottom and bulkhead area any and all debris resulting from the construction of the coffer dam and the new storm drain outfall through the existing seawall into Newport Harbor.

#### IV. Findings and Declarations

The Commission hereby finds and declares:

##### A. Project Description

The applicant is proposing storm drain improvements to an existing storm drain system situated between Newport Harbor, Route 55 (Newport Boulevard) and Old Newport Boulevard just east of Route 1 (Pacific Coast Highway) (see Exhibits 1-3). Beginning at the junction of Old Newport Boulevard and Route 1 and bearing north there is an existing box culvert, a space of about 80 feet of natural ditch and then a closed box culvert again. The closed box culvert crosses underneath Route 1 and outlets at a seawall protecting a parking lot adjacent to Newport Harbor (see Exhibits 3 and 6).

The existing open channel and storm drain improvements were constructed previously when Newport Blvd. was widened (prior to the Coastal Act). The sides of the channel are concrete lined and the channel bottom is covered with rubble and patches of concrete (see Exhibit 5, upper photo). Open dirt areas of the channel and adjacent slope areas were covered with ice plant, acacia, myoporum and other non-native plants.

The proposed development has 5 aspects to it (see Exhibit 4): 1) placing 80 feet of natural ditch in a transition structure connecting two existing box culverts, 2) constructing a new 450 feet long 9 foot by 4 foot reinforced concrete box connecting from the new 80 foot transition structure to a transition structure seaward of Route 1, 3) constructing a 65 foot long 12 foot by 5 foot reinforced concrete box connecting a small transition structure with the new 450 foot long 9 foot by 4 foot concrete box, 4) construct a new storm drain outfall opening in a seawall at Newport Harbor connecting with the 65 foot long reinforced concrete box, and 5) mitigating for the loss of wetland vegetation on a 3:1 ratio by revegetating a section of Lower Big Canyon. Existing wetland vegetation consists of 0.10 acres of cat-tail (*Typha domingensis*), white water-cress (*Rorippa nasturtium-aquaticum*), African umbrella sedge (*Cyperus alternifolius*), alkali bulrush (*Scirpus maritimus*) and spikerush (*Eleocharis macrostachya*).

The development is part of the larger project involving the widening of Route 55 and the Route 55 and Route 1 interchange improvements for which CDPs or consistency determinations have already been issued (see project history, below). The purpose of this proposed development is to facilitate the enclosed flow of storm water runoff and prevent flooding on Route 1 by: 1) enclosing the currently open section of storm drain and 2) constructing an additional, parallel reinforced concrete box to handle the excess storm drain runoff which the existing culvert cannot accommodate. Upon completion the project will be

designed to handle a 100 year storm event. Caltrans reports that Route 1 has been flooded several times each rainy season for the last several years, causing closure of the right turn lane and the number 2 lane of northbound Route 1.

The proposed development is located on the southern side of Route 55 between Newport Harbor and extending just east of Route 1 (see Exhibits 1-3) and west of Old Newport Boulevard. The project area at Newport Harbor forms a triangle with the Route 55 bridge to the north, a marina to the south and a parking lot and Route 1 to the east. East of Route 1 the project area is located in the right-of-way of either Route 55 or Old Newport Boulevard. There is commercial development located along Route 1 and Old Newport Boulevard.

#### B. Project History

The proposed project is part of a larger Newport Boulevard widening project. In 1984, an Environmental Impact Statement (Route 55 Transportation Study) was prepared for the U.S. Department of Transportation, Federal Highway Administration, and the State of California Department of Transportation (Caltrans). The project considered under the EIS included improvements to Newport Boulevard from Route 73 in Costa Mesa to 32<sup>nd</sup> Street in Newport Beach. The project was divided into two segments. The first segment included a depressed freeway between Industrial Way and Bristol Street in Costa Mesa. The first segment is located outside the Coastal Zone.

The second segment of the overall project included design changes and widening of the State Routes 55/1 interchange, widening of the Newport Channel Bridge, and widening both the north and south bound lanes of State Route 55 from the Interchange to 32<sup>nd</sup> Street, all within the City of Newport Beach. The second segment is located within the Coastal Zone.

On November 11, 1984 the Commission approved Consistency Certification No. CC-18-84 for the overall project, subject to the stipulation that any parking lost due to the project is replaced on a one for one basis. On October 11, 1989 the Commission approved Coastal Development Permit No 5-89-724 with no special conditions. Development approved under Coastal Development Permit No. 5-89-724 included the following portions of the second segment of the overall project: widening the east side of Newport Boulevard, widening the east side of Newport Channel Bridge, construction of new ramps in the southwest quadrant of the interchange of Coast Highway and Newport Boulevard, widening the sidewalk on the east side of the bridge of bicyclists and pedestrians, ramp construction and sidewalk modifications on the west side of Newport Boulevard to provide for bike and pedestrians during construction, modification of the Newport Beach City Hall parking lot, and utility and storm drain relocations.

CDP 5-96-277 was approved by the Commission for construction of the interchange improvements of Route 55 and Route 1, the widening of Route 55 between Hospital Road and Finley Ave. east of Route 1, the widening of the Newport Channel Bridge, and the addition of sidewalks, bicycle paths and other improvements. The CDP was approved with two special conditions requiring the applicant to implement construction mitigation measures regarding boat and vehicular traffic and implement best management practices.

C. Fill in Coastal Waters and Protection of Environmentally Sensitive Habitat

The proposed development includes the filling of 80 linear feet of an open storm drain channel between two box culverts, removal of 0.10 acres of wetland vegetation and mitigation for wetland habitat loss at a 3:1 ratio.

1. Coastal Act Policies

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project includes the placement of fill in coastal waters in the form of filling an 80 foot long stretch of open storm drain channel between two box culverts and a temporary coffer dam in Newport Harbor.

Section 30233 of the Coastal Act addresses the placement of fill within coastal waters and the protection of environmentally. It states:

- (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:
  - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
  - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
  - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in



conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

- (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.
  - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
  - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
  - (7) Restoration purposes.
  - (8) Nature study, aquaculture, or similar resource dependent activities.
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

- (d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30240 of the Coastal Act contains policies concerning the protection of environmentally sensitive habitat. It states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

2. Section 30233

The policies in Section 30233 of the Coastal Act set forth a number of different limitations on what fill projects may be allowed in coastal waters. For analytical purposes, the limitations can be grouped into four general categories of tests. These tests are:

- that the purpose of the fill is limited to one of eight uses allowed under Section 30233;
- that the project has no feasible less environmentally damaging alternative;
- that adequate mitigation measures to minimize the adverse environmental impacts of the proposed project have been provided; and
- that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

a. Allowable Use of Fill

Section 30233 (a) states that projects involving the fill of coastal waters must be one of eight allowable uses. Route 55 trends north and south, while Route 1 trends east and west. The proposed storm drain improvement project runs parallel to Route 55 (see Exhibits 3 and 4). A portion of the project involves the filling of 80 feet of an earthen storm drain channel situated between two existing box culverts. The existing 80 foot long section of open storm drain channel is sandwiched between the base of a large retaining wall supporting Route 55 and Old Newport Boulevard. Storm water or residential runoff is outletted by the northern box culvert opening into the earthen channel, runs through the open channel and is deposited into the downstream or southern box culvert. The downstream/southern box culvert takes the runoff and deposits it into Newport Bay. Any runoff which exceeds the capacity of the existing storm drain overflows out from the earthen channel, is deposited on Old Newport Boulevard and eventually onto Pacific Coast Highway. Correction of this storm drain problem is an integral part of the storm drain improvements proposed by Caltrans for the Route 55/Route 55 and Route 1 interchange project.

The project is for the public service purpose of facilitating storm drainage from existing public roadways and preventing a public safety hazard by eliminating flooding of the Pacific Coast Highway near the intersection of Route 55. The project will be conducted by Caltrans, a public agency. Therefore, the Commission finds that the purpose of the proposed filling of the 80 feet of earthen storm drain channel is an incidental public service purpose consistent with subsection (5) of Section 30233(a) of the Coastal Act.

b. No Feasible Less Environmentally Damaging Alternative

The second limitation set forth in Section 30233 is that any proposed fill project must have no less environmentally damaging feasible alternative.

1. No Project Alternative – Leaving the earthen and concrete lined storm drain channel intact is a less environmentally damaging alternative but is not a feasible alternative because it does not solve the public safety problems caused by excess sheetflow runoff and subsequent flooding of Pacific Coast Highway.

2. Box Culvert and Low-Flow Diverter Channel – This alternative involves containing the present open channel in a box culvert and establishing a low flow pipe to divert water to a surface swale. This is an environmentally less damaging alternative but is not feasible because once the storm drain is boxed, there is not enough room on top for a low flow diverter system. Therefore, this alternative is not practical.

The existing wetland vegetation consists of 0.10 acres of cat-tail, white water-cress, African umbrella sedge, alkali bulrush and spikerush. In evaluating alternatives and whether it is desirable to leave this 80 foot section of storm drain channel intact, it is necessary to consider several factors. First there is the quality of habitat. Second there is the possibility for growth or expansion of habitat. Third there is the location of the habitat in relation to other resources. In evaluating wetland habitat all these factors must be considered.

In this case, the quality and the quantity of habitat is very low. There is no possibility for growth or expansion of the habitat because the open channel is limited to 80 linear feet surrounded by retaining walls and urban streets. Third, there are no natural resources nearby to connect with because the existing habitat is located near the junction of two major coastal highways. Habitat in the project area is largely confined to manufactured slopes adjacent to Route 55. Finally, there are questions as to whether it is desirable to keep this very limited segment of habitat and attract wildlife to a high traffic area. To the south is roadway. To the east is Old Newport Boulevard. To the west is Route 55.

c. Mitigation for Adverse Impacts

A third limitation set forth by Section 30233 is that adequate mitigation to minimize the adverse impacts of the proposed project on habitat values must be provided. The adverse impact in this case is that the 80 foot section of open earthen channel containing wetland vegetation will be eliminated. The applicant is providing mitigation on a 3:1 ratio for impacts to .09 acres of the existing ditch and .01 acres of area temporarily impacted by the coffer dam at Newport Harbor.

In considering mitigation sites several factors need to be considered: 1) the advisability of on- or off-site mitigation, 2) the size of the surrounding habitat area, 3) the diversity of the habitat area, 4) the quality of the habitat area, and 5) connectivity with diverse habitats. Also to be considered are the quality and quantity of the impacted site and the ratio of mitigation to impacts. An additional factor is that it is the policy of the State of California that there be no net loss of wetlands.

The applicant is proposing to mitigate the loss of 0.09 acres of wetland habitat and temporary impacts to 0.01 acres of Newport Harbor by providing 0.3 acres of replacement wetlands and riparian habitat in Lower Big Canyon. Therefore, the applicant is proposing a mitigation ratio of 3:1 which is consistent with prior Commission-approved mitigation plans. In addition, the applicant is proposing to remove non-native vegetation from a 150 foot buffer area and plant this area with native seeds. Therefore, there will be no net loss of wetlands, which is consistent with State policy.

It is the position of the Coastal Commission that preservation of existing resources is preferable to off-site mitigation. However, as has been demonstrated earlier, the project site to be impacted is an isolated segment with low quantity and low quality habitat, no possibility of expansion and no connectivity.

The Lower Big Canyon is a 20-acre parcel of land owned by the City of Newport Beach and designated as permanent open space. For a detailed description of Lower Big Canyon, see the subsection of this staff report on ESHA, below. As can be seen from Exhibit 9, however, Lower Big Canyon provides upland and riparian habitat, connectivity from upland areas to the Upper Newport Bay Ecological Reserve and is an area set aside for open space and habitat restoration projects.

The U.S. Army Corps of Engineers reviewed the project and required off-site mitigation on a 3:1 ratio in Lower Big Canyon. The California Department of Fish and Game signed a Streambed Alteration Agreement (No. 5-142-98 dated 06-08-98) agreeing to the removal of non-native vegetation and the creation of wetlands at Lower Big Canyon.

1. Site Preparation and Planting -- A mitigation plan was prepared by LSA Associates dated 08-14-98. The applicant is proposing to eliminate the existing invasive, non-native plants and install a willow/mulefat scrub plant community which will provide habitat for a variety of wildlife. The proposed mitigation site is adjacent to the stream channel in Lower Big Canyon. The stream channel is fed by urban and golf course runoff and contains water all year round. The proposed mitigation site currently contains ruderal vegetation, including sweetclover (*melilotus alba*), myoporum (*Myoporum laetum*), Brazilian pepper (*Schinus terebinthifolius*), castor bean (*Ricinus communis*) and pampas grass (*Cortaderia selloana*).

The existing vegetation will be removed and the mitigation site will be excavated to within one foot of the groundwater table. After excavation the mitigation site will be seeded with a mix of herbaceous species which should help prevent recolonization by invasive non-native species. The mitigation plan includes a weed abatement strategy involving removing all weeds from the mitigation site and within a 150 foot buffer. Clearing the weeds and invasives from the buffer area will also facilitate recolonization of the buffer area by native plants.

The mitigation plan requires the planting of 29 one gallon container plants and 31 cuttings both with a guaranteed survival rate of 95 percent in the first year. 1.2 pounds of seed will be broadcast.

The container plants and cuttings are selected from three species: mulefat (*Baccharis salicifolia*), Gooding's willow (*Salix Goodingii*), and Arroyo willow (*Salix lasiolepis*). Cuttings and seeds will be obtained from local genetic sources, wherever possible, and all selected plants shall have a coastal genetic source. The seed will include: mugwort (*artemisia douglasiana*), green willow-herb (*epilobium ciliatum*), meadow barley (*Hordeum brachyantherum*), coastal goldfields (*Lasthenia californica*), marsh fleabane (*Pluchea odorata*), willow dock (*Rumex salicifolius*) and hoary nettle (*Urtica dioica*).

2. Maintenance and Monitoring -- The mitigation plan shall be implemented by a restoration consultant and supervised by a restoration ecologist, both hired by Caltrans. Caltrans requires that the restoration contractor have successfully completed three wetland restoration projects.

Temporary fencing and signage will be installed to protect the mitigation site. The plan calls for a five year maintenance and monitoring plan. The restoration ecologist shall prepare annual reports documenting the height, diameter growth and natural reproduction of the plants in the mitigation site. During monthly visits the restoration ecologist shall inspect: the survival and health of all plants, seed germination, presence of weeds, and the presence and utilization of the site by wildlife. The restoration ecologist reports both to the restoration contractor and to Caltrans. All dead or dying plants will be replaced upon notification. If at the end of three years the site is not performing as expected, the restoration ecologist is required to document any deficiencies, identify the source of the problem and propose remedial action. If there are problems requiring major remedial action, the monitoring timeline will be extended.

Annual monitoring reports will be submitted to Caltrans and the Army Corps beginning within six weeks following installation of plants. The reports will evaluate the maintenance and the performance of the project and will include photographs. The Corps will be notified at the completion of five years or at such time as the success criteria have been met and the deadline extended to. Special condition 2 of this staff report requires the applicant to submit reports to the Executive Director at 3 year and five year intervals.

In the event that the performance criteria are not met and the remediation is not successful, the restoration ecologist will prepare a contingency mitigation plan. Special condition 4 of this staff report requires the applicant to submit a coastal development permit amendment for any above-mentioned contingency plan. The amendment application shall be submitted within 6 weeks of the submittal of the final report to the Executive Director.

e. Environmentally Sensitive Habitat Area

The proposed mitigation will occur in Lower Big Canyon which is an environmentally sensitive habitat area dedicated to open space, passive recreation and wildlife habitat restoration.

The City of Newport Beach LUP discusses the canyon as follows:

*Mouth of Big Canyon.* This area is northerly of Park Newport between Upper Newport Bay and Jamboree Road. The site is designated for Recreational and Environmental Open Space, for passive recreation and wildlife habitat restoration.

The LUP continues:

**Mouth of Big Canyon.** This 58-acre canyon area is located between Upper Newport Bay Ecological Reserve, Jamboree Road, East Bluff, and Park Newport and is owned partially by the City of Newport Beach and partially by the California Department of Fish and Game. The outstanding feature of the mouth of Big Canyon is a lush riparian growth which dominates much of the canyon bottom. The sides of the canyon are covered largely by southern coastal sage scrub vegetation with some disturbed grasslands.

A large spoil deposition site is located at the mouth of the canyon. This area is subject to ponding on at least a seasonal basis and the dominant species in the area is *Salicornia*. The Light-Footed Clapper Rail (an endangered species) is known to utilize Big Canyon.

The Canyon empties out into the Upper Newport Bay Ecological Reserve. Open space habitat adjacent to the preserve is utilized by wildlife, including some endangered species. The proposed mitigation project will create 0.3 acres of mulefat and willow riparian habitat. The mitigation project also involves the removal of exotic, non-native invasive plants and creation of a native plant buffer zone around the riparian zone.

Section 30240 of the Coastal Act requires ESHAs: 1) be protected against significant disruption of habitat values; 2) only resource dependent uses be allowed; 3) development in areas adjacent to ESHAs be sited and designed to prevent impacts and be compatible with the continuation of existing natural resources.

The proposed mitigation site is occurring in an ESHA. The mitigation project as conditioned for grading controls and protection of nesting birds does protect the

existing habitat against significant disruption. The mitigation project is also a resource dependent because it is compatible with existing habitat, removes invasive, non-native plants, and enhances riparian and associated habitat. The mitigation project is also compatible with the Upper Newport Bay Ecological Reserve in that it provides additional native, riparian/wildlife habitat and eliminates some invasive, undesirable plants.

Special conditions 1-4 of this staff report ensure that the mitigation project is implemented as proposed and includes the submittal of monitoring reports at 3 and 5 year intervals to ensure the project's success. The staff report also includes special conditions to require the applicant to submit a coastal development permit amendment for contingency plans in the event that the mitigation site is not successful. Finally, the staff report includes a special condition regarding the protection of nesting birds and a special condition regarding measures to be taken if the project is implemented during the rainy season. Therefore, the Commission finds that the proposed mitigation project is protective of and will enhance existing ESHA and is consistent with Section 30240 of the Coastal Act.

f. Coastal Act Consistency

The findings of this section of the staff report conclude that the proposed development is an allowable use under Section 30233(a)(5), is the least environmentally damaging alternative and includes the best possible mitigation measures. In order to ensure that the mitigation project is implemented as proposed, the staff report includes special conditions requiring the applicant to implement the LSA & Associates mitigation plan as submitted and described in this staff report, submit 3 and 5 year monitoring reports, provide identification of the disposal site of excess cut dirt from the mitigation site, submit a coastal development permit amendment for a contingency mitigation plan in the event the mitigation site is not successful, implement sediment control measures, conformance with success criteria and protection of birds during nesting season. As conditioned, the Commission finds that the proposed development is consistent with Section 30233 of the Coastal Act.

The proposed off-site mitigation project has also been found to be consistent with Section 30240 of the Coastal Act (see subsection "e" above).

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

The proposed storm drain improvements consisting of enclosing the existing 80 foot stretch of open storm drain channel and adding a parallel 9 foot by four foot reinforced concrete box (RCB) with a new harbor outfall through an existing seawall. The proposed development impacts the water quality of the harbor in two ways. First, through the construction of the 80 linear feet of enclosed storm drain box and the new section of storm drain box the project will increase the amount of storm water runoff taken to the harbor. The existing storm drain system can handle 25% of a 100 year storm event. Currently, in a flooding event excess storm water runoff which cannot be handled by the existing storm drain system overflows onto Old Newport Boulevard and onto Pacific Coast Highway.

Second, in order to construct the alternative storm drain outfall pipe, the applicants must construct a 40 foot wide by 10 foot deep coffer dam (0.01 ac.). The applicant will construct the coffer dam, de-water the construction area, cut an opening for the box culvert outfall in the seawall, and remove the coffer dam. Impacts to Newport Harbor will be temporary and involve 0.01 acres. The temporary impacts will be mitigated as part of the installment of 0.3 acres of native wetland habitat at the proposed mitigation site in Lower Big Canyon.

The hydrology report for this project reports that there will be no increased water draining into Newport Harbor. The report notes that stormwater runoff which exceeds the capacity of the existing system ends up as surface sheetflow when then ends up in Newport Harbor. Implementation of this project will not increase the amount of water which ends up in the harbor but will get more water to the harbor in less time. And because the area where sheetflow currently occurs is exclusively roadways or parking lots, capturing the runoff will reduce pollutant load by eliminating surface pollution carried by sheetflow.

Caltrans will employ construction best management practices to reduce sedimentation during roadway construction. The best way to prevent pollutants from entering the harbor is to prevent pollutants from entering the storm drain system, i.e., to hold back, filter or screen the water entering the storm drain system. This project is located at the terminus of the existing storm drain system. Roadway improvements inland of the project site have already been approved and constructed. Therefore, unless creative solutions were utilized upstream, storm water runoff and its attendant pollutant load will be taken intact to the project area. The impetus to prevent flooding in low-lying areas, such as the project site, necessitates removing the stormwater runoff as quickly as possible for safety reasons.

Another problematic factor is that the storm drain project is situated entirely on roadway or asphalt. It is situated at the confluence of two major coastal highways adjacent to Newport Harbor. Therefore there is a lack of open space to utilize creative solutions. The existing open channel provides a small degree of filtering. However, during a storm event it is likely that the existing plants would be washed into the harbor along with whatever pollutants they managed to filter out. Utilizing a low flow diverter channel would enable some vegetation to remain but would not provide any filtering for storm water runoff.

The applicant has obtained a waiver of discharge requirements from the State of California Regional Water Quality Control Board. The waiver notes that the project will involve a coffer dam in Newport Harbor which will be temporary and is located in an area of limited biological resources. The Regional Water Quality Control Board issued a waiver from the storm drain construction in a previous action. The waiver notes that the proposed project does not involve endangered, listed or threatened species or their habitat. The waiver also states that Caltrans will implement Best Management Practices during construction, including the placement of silt fencing around the marina construction site.

The applicant is providing mitigation for temporary impacts to Newport Harbor caused by Special conditions 1-4 of this staff report ensure that the mitigation project is implemented as proposed and includes the submittal of monitoring reports at 3 and 5 year intervals to ensure the project's success. The staff report also includes special conditions to require the applicant to submit a coastal development permit amendment for contingency plans in the event that the mitigation site is not successful. Finally, the staff report includes a special condition regarding the protection of nesting birds and a special condition regarding measures to be taken if the project is implemented during the rainy season. placement of the coffer dam. Special condition 7 of the staff report requires the applicant to minimize disturbance to the harbor, to store and construction materials, oils or liquid chemicals away from the harbor water, and to remove all debris resulting from the construction project. Only as conditioned does the Commission find that the proposed development is consistent with section 30230 of the Coastal Act.

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.

A portion of the proposed development is located between the sea and the first public road. Pacific Coast Highway is the first public road. Between Pacific Coast Highway and Newport Harbor the applicant is proposing to construct a portion of a reinforced concrete storm drain box and construct a new storm drain outfall in the existing seawall at Newport Harbor. The development occurs either in the public right-of-way of State Route 1 and 55 or under an existing parking lot.

As part of the previously approved Route 55 project Caltrans and the City of Newport Beach are installing pedestrian walkway and bicycle improvements. In addition, the proposed development is for public service purposes and involves improvements to an existing storm drain system. The development will have no adverse impacts on coastal access and recreation.

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. Public vertical and lateral access does exist in the immediate project vicinity.

In this case the proposed improvement, is the construction of storm drain improvements in association with a public works highway project on public property. The proposed development will not create additional significant adverse impact to public beach access. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on 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.

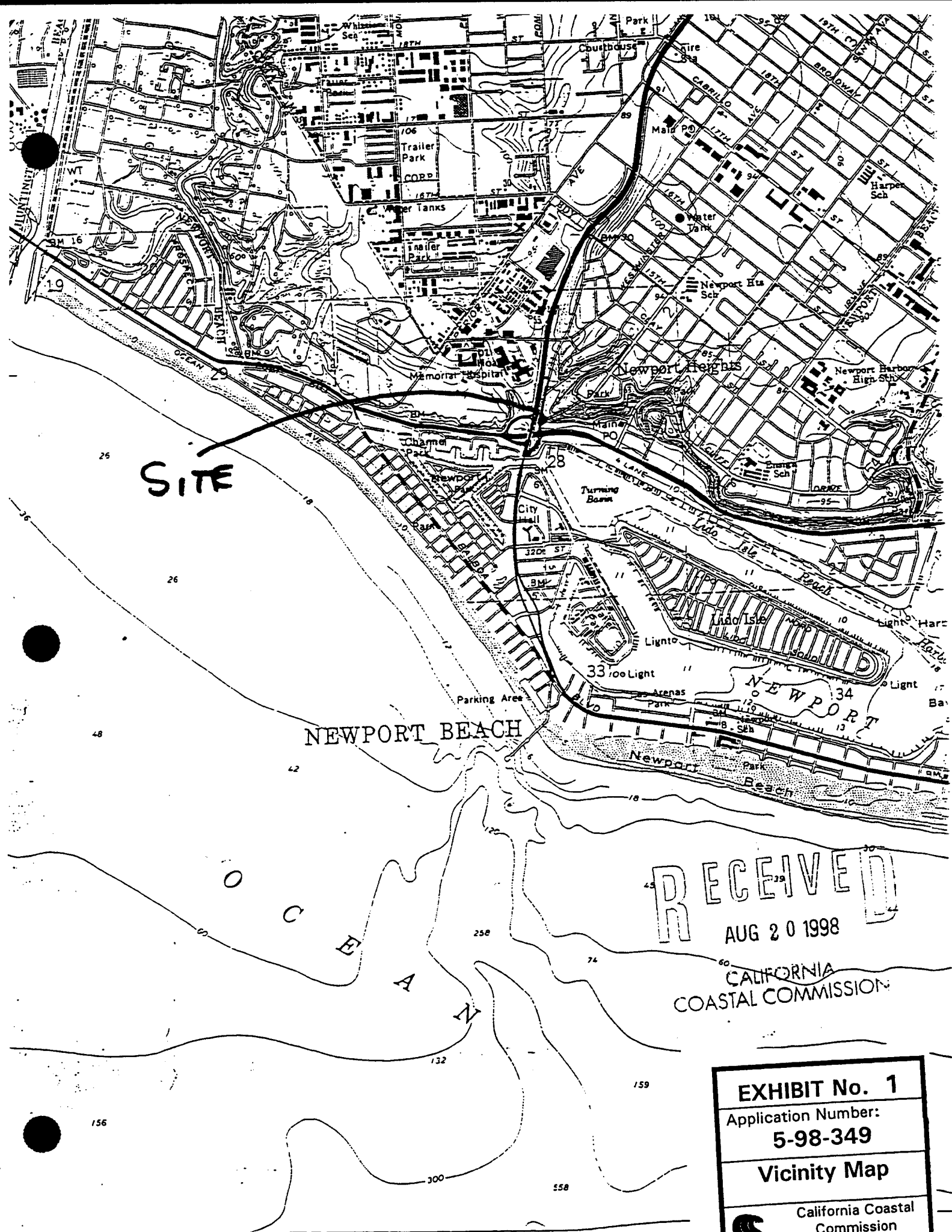
The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding development in coastal waters. Therefore, approval of the proposed development will not 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. Consistency with the California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the amendment to the coastal development permit, 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 Section 30230 of the Coastal Act and Section 30233 of the Coastal Act . Mitigation measures; special conditions requiring removal of construction debris, protection of nesting birds, site grading, provision of a coastal development permit amendment if the mitigation site fails, conformance with success criteria, provision of monitoring reports and implementation of the mitigation plan will minimize all adverse impacts. 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.



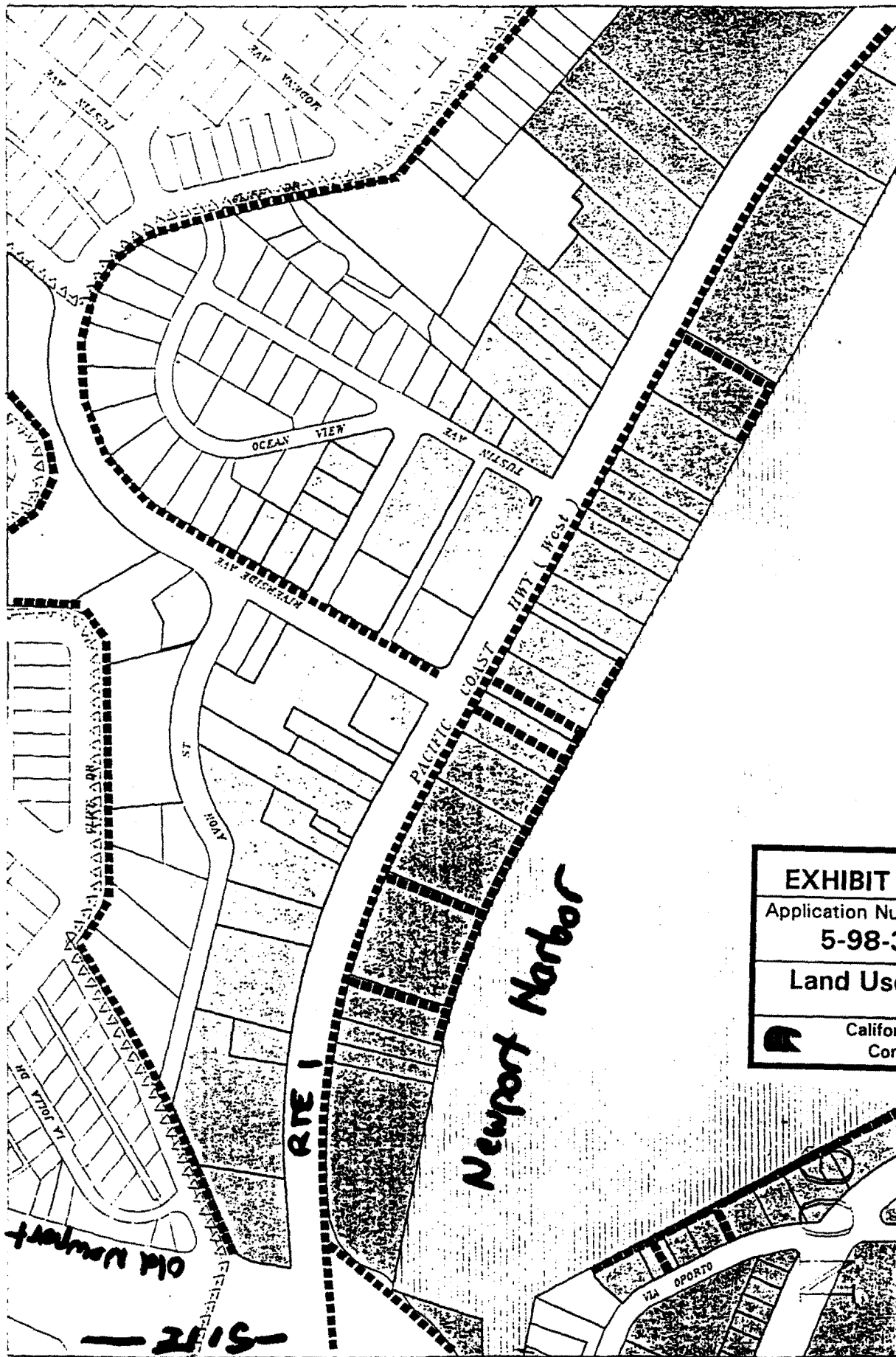
SITE

NEWPORT BEACH

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CALIFORNIA  
COASTAL COMMISSION

<b>EXHIBIT No. 1</b>
Application Number: <b>5-98-349</b>
<b>Vicinity Map</b>
California Coastal Commission



**EXHIBIT No. 2**

Application Number:

**5-98-349**

**Land Use Plan**



California Coastal  
Commission

*Old Newport Blvd*

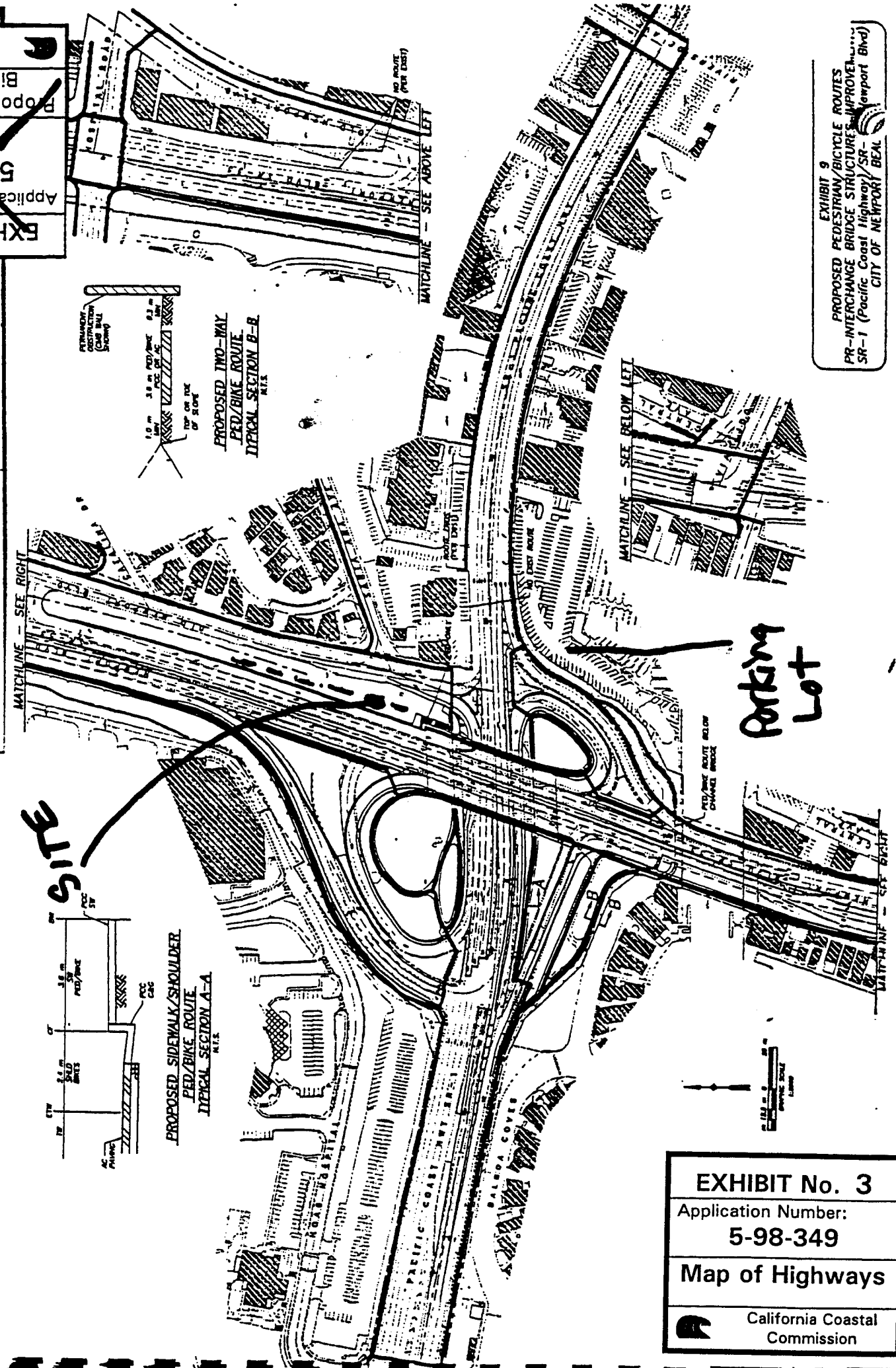
*SITE*

*Newport Harbor*

*RTE 1*

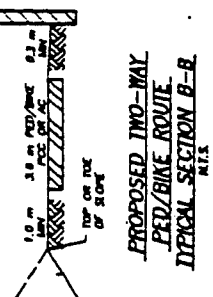
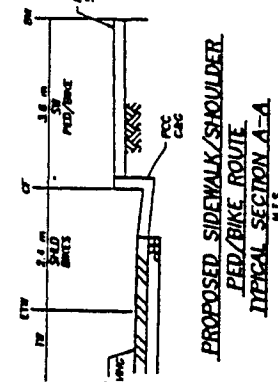
*BRIDGE - 55 -*

**EXHIBIT No.**  
 Application Number:  
 5-98-227  
 Proposed Pedestrian  
 Bicycle Path  
 California Coastal  
 Commission



**EXHIBIT 9**  
 PROPOSED PEDESTRIAN/BICYCLE ROUTES  
 PR-INTERCHANGE BRIDGE STRUCTURE IMPROVEMENTS  
 SR-1 (Pacific Coast Highway/SR-1 Newport Blvd)  
 CITY OF NEWPORT BEAL

**SITE**



**EXHIBIT No. 3**  
 Application Number:  
 5-98-349  
 Map of Highways  
 California Coastal  
 Commission

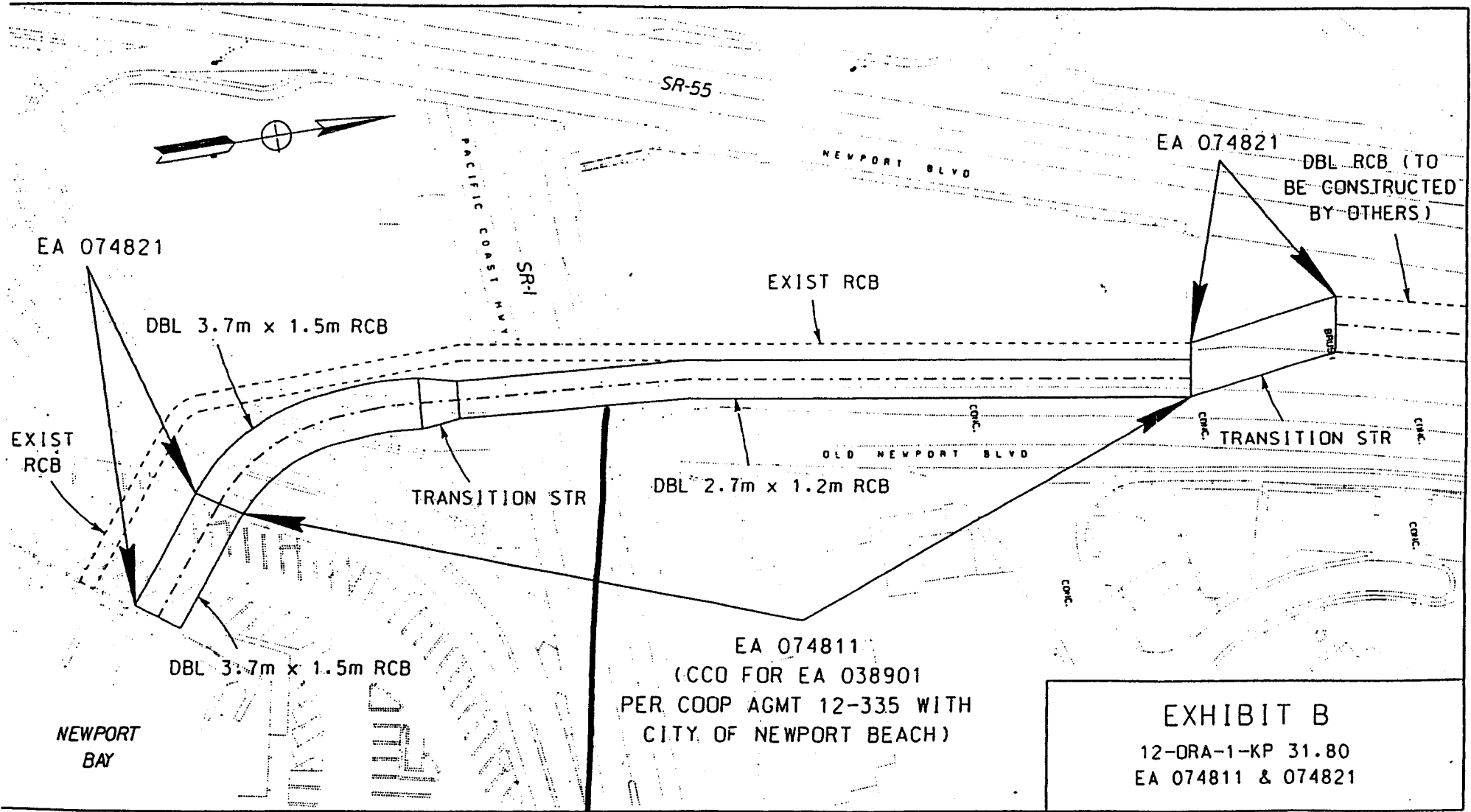



EXHIBIT B  
 12-DRA-1-KP 31.80  
 EA 074811 & 074821

**New RCB  
 Structure**

 California Coastal Commission	<b>EXHIBIT NO. 4</b>
	Application Number: <b>5-98-349</b>
	<b>Site Plan Map</b>





Existing drainage ditch

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Location of double concrete  
box culvert to replace existing  
open channel

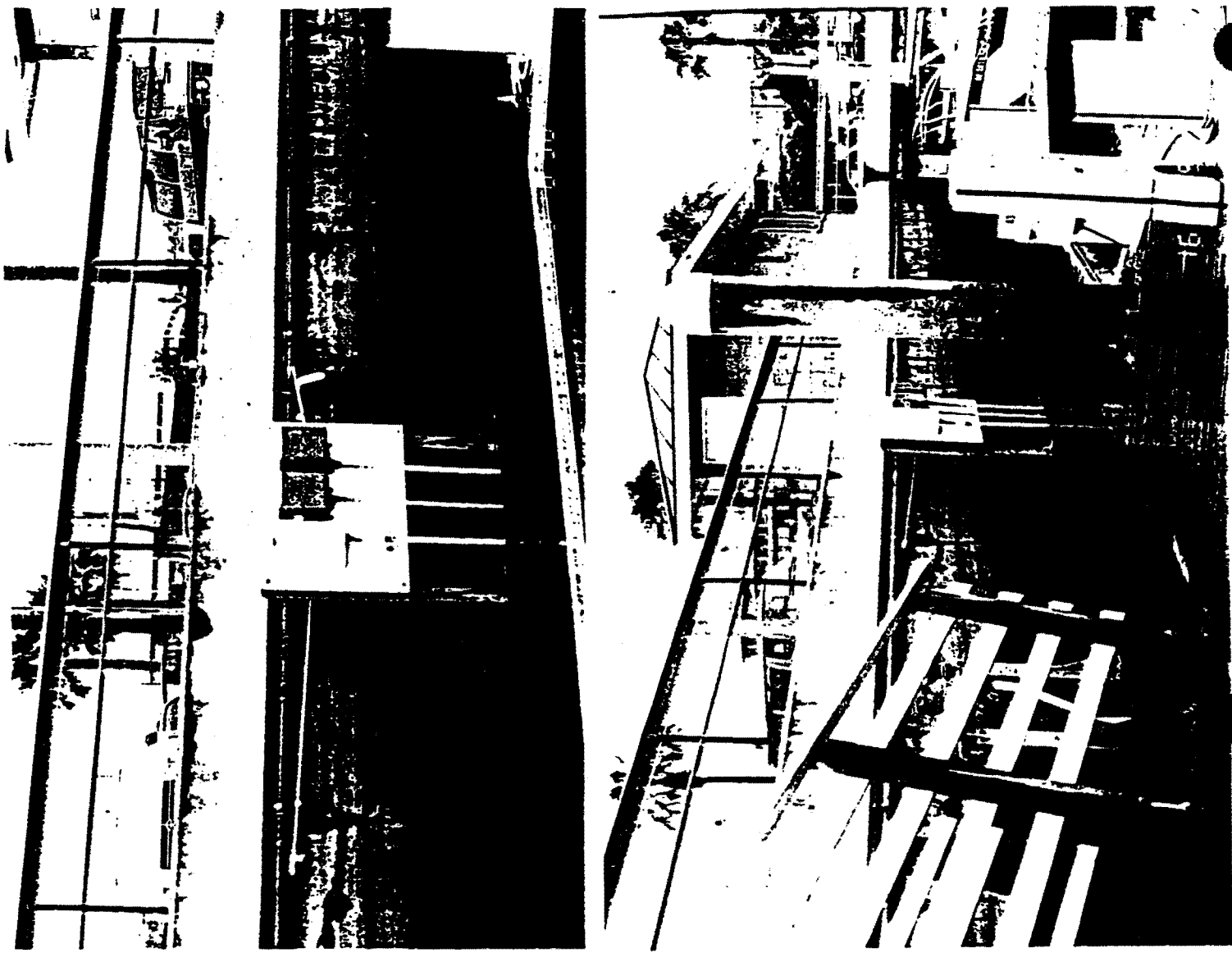


Existing  
Box  
Culvert

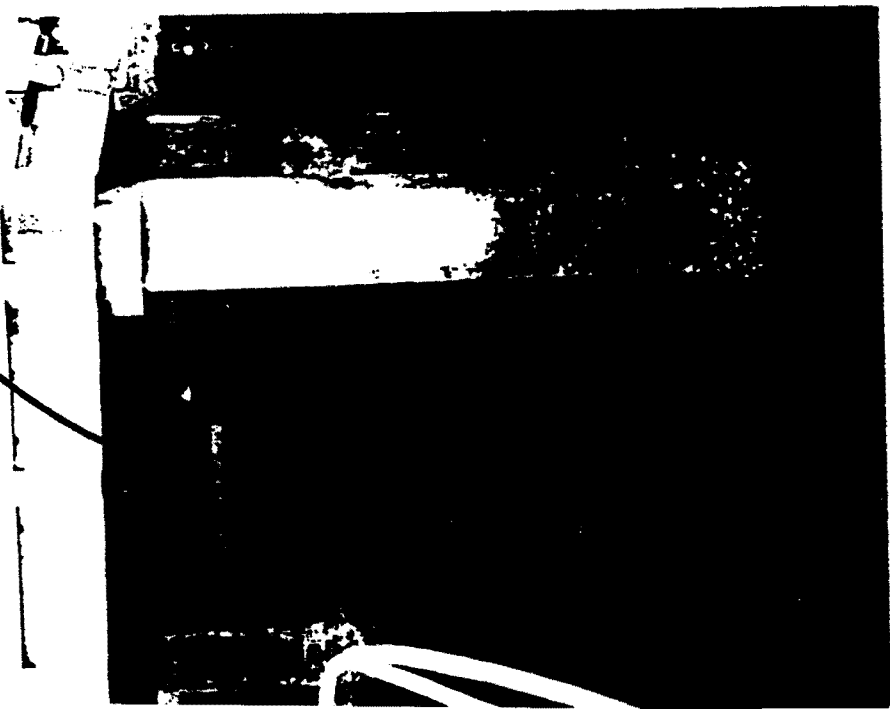


<b>EXHIBIT No. 5</b>
Application Number: <b>5-98-349</b>
<b>Site Photos</b>
 California Coastal Commission

Location of proposed drainage outlet



Location of existing drainage outlet



*Existing*

<b>EXHIBIT No. 6</b>	
Application Number: <b>5-98-349</b>	
<b>Site Photos</b>	
	California Coastal Commission



# CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT  
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915  
(714) 644-3311

December 2, 1998

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DEC 07 1998  
CALIFORNIA  
COASTAL COMMISSION

Robin Maloney-Rames, CPA II  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Subject: SR55/1 Interchange Storm Drainage Improvements  
(Coastal Development Permit Application 5-98-349)

Dear Mr. Maloney-Rames:

In support of Coastal Development Permit Application 5-98-349 submitted by Caltrans District 12 for the subject project, the City of Newport Beach hereby confirms that it is the owner of the real property commonly referred to as Lower Big Canyon on which 0.30 acres of riparian revegetation will be accomplished to replace the 0.10 acres of existing riparian habitat that is being eliminated by the subject project. Approximately 0.03 acres of the existing wetlands impacted by the storm drainage improvements is within the coastal zone and approximately 0.07 acres is outside the coastal zone.


The City of Newport Beach has assumed the responsibility for constructing the total 0.30 acres of wetlands replacement area at a ratio of 3:1 in accordance with the "Old Newport Boulevard Storm Drain - Habitat Mitigation and Monitoring Plan and Specifications at Lower Big Canyon" prepared by LSA Associates, Inc. Work is currently in progress to construct the 0.30 acres of replacement wetlands. The Lower Big Canyon area in which the replacement wetlands is being constructed was dedicated to the City of Newport Beach from The Irvine Company for open space and park purposes by a Corporation Grant Deed dated September 18, 1985, and recorded October 17, 1985, as Instrument No. 85-399606 in official records of the Orange County Recorder. A copy of that Grant Deed is enclosed for reference.

Sincerely,

William Patapoff  
City Engineer

By: Gail Pickart  
Gail Pickart  
Project Management Consultant

cc: Kelly O. Cohen, Caltrans District #12

<b>EXHIBIT No. 7</b>
Application Number: <b>5-98-349</b>
<b>Ownership Letter</b>
 California Coastal Commission

3300 Newport Boulevard, Newport Beach

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

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Notification No. 5-142-98  
Page 1 of 4

CALIFORNIA  
COASTAL COMMISSION

**AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Bill Patapoff of City of Newport Beach; Public Works Department; P.O. Box 1768; Newport Beach, CA 92658-8915; (714) 553-0666; (714) 574-0328, State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 13<sup>th</sup> day of April, 1998, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): unnamed tributary to Lower Newport Bay, Orange County, California, Section 28 Township 6S Range 10W.


WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within unnamed tributary to Lower Newport Bay, specifically identified as follows: reptiles: western fence lizard; birds: common yellowthroat, song sparrow, bushtit; mammals: ground squirrel; riparian vegetation which provides habitat for those species: willows, cattails; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

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

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

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

This Agreement becomes effective the date of Department's signature and terminates December 31, 1998 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

<b>EXHIBIT No. 8</b>
Application Number: <b>5-98-349</b>
<b>CDFG 1601-1603</b>
 California Coastal Commission

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The Operator proposes to alter the streambed to install a 500' long concrete box culvert, impacting 0.09 acre of stream. The project is located at Newport Boulevard and Pacific Coast Highway (SR55/1) in the City of Newport Beach.
3. The agreed work includes activities associated with No. 2 above. The project area is located in an unnamed tributary to Lower Newport Bay in Orange County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.09 acre of stream. All impacts are permanent.
5. The Operator shall mitigate as described in the submitted documents, including the creation and enhancement of 0.09 acre of wetlands at Mouth of Big Canyon. The Operator shall also conduct a minimum one-time herbicide spraying for pampas grass, removing 0.18 acre of pampas grass (approximately 200 plants).

All mitigation shall be installed no later than October 31, 1998. All planting shall be done between October 1 and March 31 to take advantage of the winter rainy season. The Operator shall submit a letter with photo documentation that the grading and plant installation planting with native species and exotics spraying has occurred no later than October 31, 1998. Thereafter, a letter report shall be submitted to the Department by Jan. 1 for 3 years after planting. This letter shall include the site success with % cover of native species, site recommendations and photo documentation.

6. The Operator shall not remove vegetation within the stream at either the impact site or the mitigation site from March 15 to July 15 to avoid impacts to nesting birds. However, the Operator may remove vegetation during this time at the impact site if a qualified biologist conducts a survey for nesting birds within one week of the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
7. The Operator shall comply all State of California Pesticide Use Regulations. Pesticide mixing sites shall only be located at existing road site and designated access site locations outside of the stream. Only areas devoid of vegetation shall be used as a mixing site. The Operator shall apply an herbicide approved for use in an aquatic environment (e.g. Rodeo). Great care shall be taken to avoid contact with any native vegetation, and it shall only be applied on calm days (wind less than 5 miles per hour) to prevent airborne transfer of the herbicide.
8. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and removal shall normally proceed from downstream in an upstream direction.

9. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.
10. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.
11. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
12. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
13. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
14. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.
15. Staging/storage areas for equipment and materials shall be located outside of the stream.
16. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
17. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
18. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 3 years after planting.
19. Access to the work site shall be via existing roads and access ramps.
20. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
21. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
22. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-142-98

23. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

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

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

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

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

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

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

CONCURRENCE

(Operator's name)

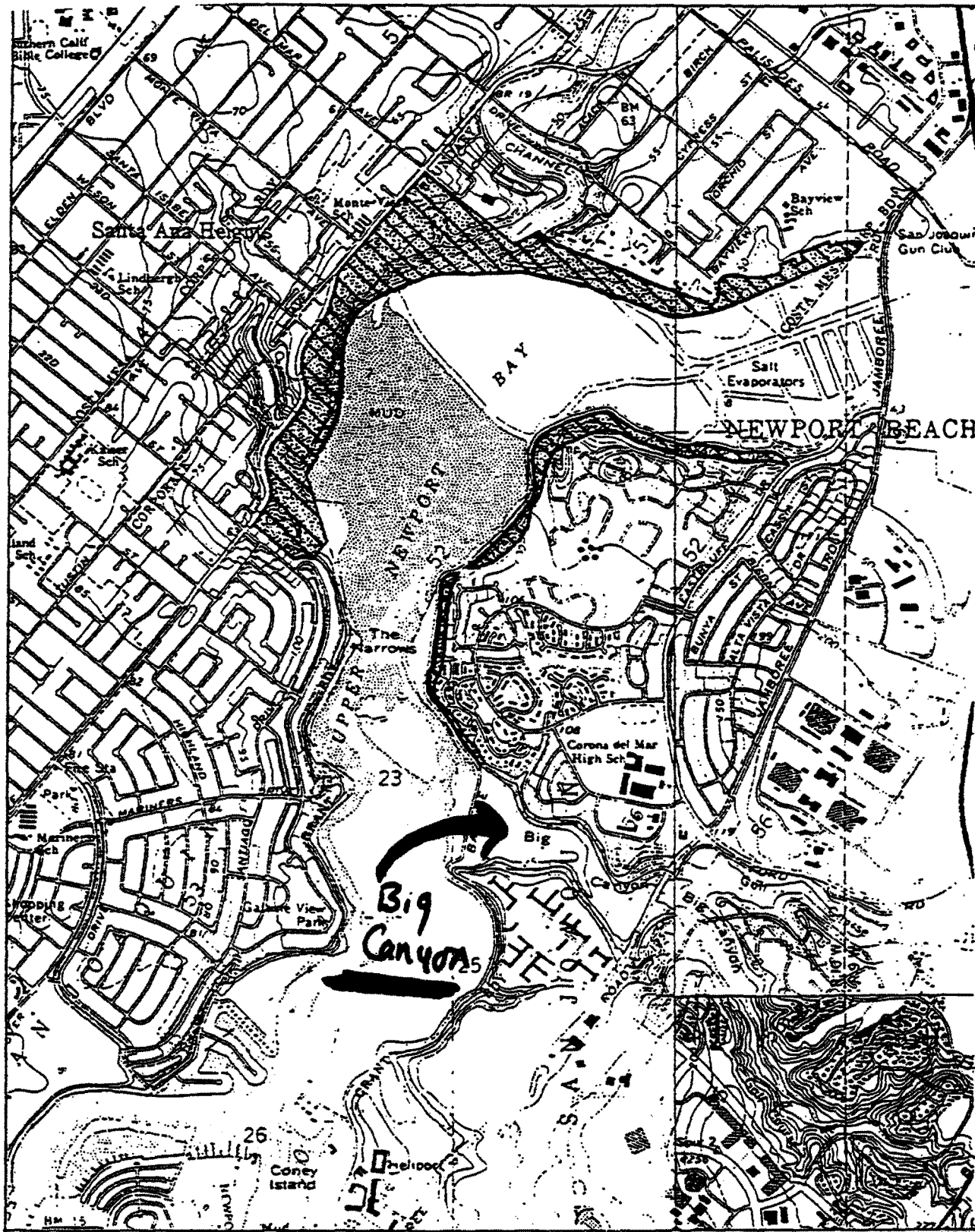
California Dept. of Fish and Game

W. Atanoff 5/26/98  
(signature) (date)

Ferris Dickerson 6/8/98  
(signature) (date)

City Engr.  
(title)

Environmental Specialist III  
(title)



PROJECT VICINITY MAP  
 USGS 7.5' Newport, Tustin,  
 and Laguna Beach Quadrangles



<b>EXHIBIT No. 9</b>
Application Number: <b>5-98-349</b>
<b>Big Canyon</b>
California Coastal Commission

# PROJECT VICINIT