

## CALIFORNIA COASTAL COMMISSION

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## RECORD PACKET COPY

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Staff: EL-SD  
Staff Report: December 9, 1999  
Hearing Date: January 11-14, 2000

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-90-A1

Applicant: City of Coronado

Agent: Thomas R. O'Toole

Original Description: Erection of temporary safety fencing around an existing storm drain outlet and associated pond and surface discharge area. The fence has already been erected under Emergency Permit #6-98-90-G, issued July 8, 1998.

Proposed Amendment: Amend Special Condition #1 to allow the temporary fence to remain until May, 2000.

Site: North Beach, west of Ocean Boulevard and just south of North Island NAS, Coronado, San Diego County.

Substantive File Documents: Certified City of Coronado LCP  
RWQCB Tentative Cease and Desist Order No. 98-74  
CCC File #6-96-51

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the amendment request to continue to provide maximum public safety while the City develops and implements a permanent solution to an ongoing water pollution problem. Special Condition #1 of the original permit is replaced herein to require removal of the fence no later than May 26, 2000, the beginning of next Memorial Day weekend. Although the fence raises potential concerns over both public access and visual resources, in reality it does not significantly impact either one, since full public access is available all around the relatively small fenced area and existing adjacent facilities associated with the North Island Naval Air Station already impact visual resources to a far greater degree.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:** *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-98-90 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment complies with the California Environmental Quality Act because there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development as amended on the environment.

II. **Special Conditions.**

The permit is subject to the following condition:

1. **Removal of Fence.** The temporary fence surrounding the North Beach storm drain outfall shall be removed on, or prior to, May 26, 2000. This deadline may be extended by the Executive Director for good cause.

III. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Project History/Amendment Description.** The City of Coronado applied for an emergency permit in July, 1998 to erect a temporary fence around an existing storm drain outfall on the public beach in the northern part of the City. The outfall includes three pipes carrying stormwater discharge from the City's street system and a pipe which also carries pumped groundwater discharge. All the pipes end at a headwall where the combined discharges typically pond then flow across the beach to the ocean. Due to high fecal coliform counts in the groundwater discharge pipe, the City had been served with a tentative cease and desist order by the California Regional Water Quality Control Board (RWQCB). The order required the City to locate the source of the pollution and to address the issue in both the short-term and through a permanent solution.

To this end, the City proposed the temporary fence to immediately prevent public contact with contaminated water while it investigated the situation and analyzed potential solutions. The emergency permit was approved on July 8, 1998, with a condition

requiring the temporary fence to be removed by August 12, 1998, the date identified in the order for implementation of short-term measures, unless the deadline were extended by the Executive Director for good cause. As originally installed, the 6-foot-high, chain-link fence extended from just inland of the outfall to the surf zone, enclosing approximately 2,250 sq. ft. of sandy beach and upland area, inclusive of the outfall itself and its associated pond and surface discharge flow path. The fence runs seaward along both sides of the flow path, but is open on the seaward end. Except at the highest tides, there is ample beach area available seaward of the fence for lateral access along the shoreline. There are several signs posted on the fence itself warning the public to avoid the contaminated discharge.

The City was unable to meet the August 12 deadline for removal of the fence, and requested additional time to continue working on a short-term measure to treat the effluent. After the RWQCB verified that the City was acting in good faith, but needed to install and test its interim solution, additional time was granted by the Executive Director on August 18, 1998 to allow the fence to remain while testing of the interim solution continued and the follow-up coastal development permit was being processed. As a short-term means to address the issue, the City subsequently installed an ultraviolet (UV) treatment system upstream in the identified groundwater discharge pipe, outside the Coastal Commission's permit jurisdiction. This has reduced the bacterial counts, except immediately following storm events.

Based on a November 25, 1998 meeting between the City and RWQCB, the City continued to test samples at the outfall and in the pond seaward of the headwall. The RWQCB required this change in the testing procedure, and the results of testing intermittently showed unsafe bacterial counts in the pond, even when the discharge pipe itself tested clean. The City determined that the fence, which surrounds the headwall, pond and flow path, should remain in place to provide maximum protection to the public.

In January, 1999, the Commission approved the City's follow-up application to the emergency permit. The approval included a special condition requiring removal of the fence within two weeks of approval by the RWQCB, but in no case later than May 28, 1999, Memorial Day, which is considered to mark the beginning of the summer beach season, when beach use is at its peak. The condition allowed this deadline to be extended by the Executive Director for good cause, and this occurred on May 27, 1999 when the Executive Director extended the deadline for removal to Labor Day (September 6, 1999). The letter authorizing that extension also advised the City that any future requests to extend the deadline for removal might require formal review by the Coastal Commission as an amendment to this permit. In August, 1999 the City again asked for additional time and was directed to submit a formal amendment request.

During this whole time, the City has been testing to try to determine the cause of the contamination and analyzing various potential remedies. It has also turned off the pumped groundwater discharge, such that current flows do not result in ponding. However, the City maintains that it will have to turn the groundwater discharge back on

during winter storms, since the intensity of flows experienced during storm events would otherwise cause significant flooding both on City streets and private properties.

The City has also modified the length of the fence to a small degree during the past few months, providing greater area along the immediate shoreline for public passage. This was done both to diminish the impacts of the fence on access and also to better maintain the fence, since it proved difficult to maintain the fence in an upright position within the surf zone itself. The City anticipates modifying the length of the fence periodically, based on shoreline movement, but these minor adjustments do not significantly alter the overall site conditions or project scope.

The current amendment application requests maintenance of the temporary fence until May, 2000. The City is confident that it can determine the appropriate permanent solution, process any required permits and build the selected project by next Memorial Day weekend.

2. Public Access and Recreation. The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies address the protection of public access and recreational opportunities, and state, in part:

#### Section 30210

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

#### Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

#### Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby....

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The existing temporary development, which is proposed herein to be retained until May, 2000, is located on the public beach in Coronado. The specific site is North Beach, the area of the City's municipal beach just south of North Island Naval Air Station (NAS). The storm drain outfall is just south of the air station. There is an existing fence separating the City and air station (federal lands), but it does not extend all the way to the water line; however, the public is not encouraged to use the sandy beach or ocean areas within the air station. Thus, legal lateral access ends roughly at the location of the outfall, although the area just west and immediately north of the outfall is utilized by pet owners as an area where dogs can be off the leash.

As stated previously, except perhaps at the highest tides, there is ample area seaward of the temporary fence for the public to pass and repass, although there is very little area available north of the outfall (between the outfall and the air station) for public recreation in any case. There is also ample area landward of the fence for public lateral access and area both north and south of the fence for vertical access from the road (Ocean Boulevard) to the shoreline.

This northern end of the beach is located approximately half a mile from the public restrooms and lifeguard facility, which are located in the central portion of the beach. Moreover, the nearness of the naval facility and loose dogs on the beach make this area less popular for sunbathing and swimming than areas further south. Even so, North Beach still receives a fair level of public use year round. However, because of the wideness of the beach, and the relatively small area occupied by the temporary fence, the Commission finds the fence does not represent a significant impediment to public access in this area. In addition, the Commission recognizes the public safety issue raised by the contaminated discharge on the beach.

The Commission previously found that the fence, as a short-term temporary measure, did not significantly impact public access and recreational use of this area of Coronado's municipal beach. The Commission finds that the City's amendment request, to retain the fence until May, 2000, will likewise not result in significant impacts. It is the City's intent to remove the fence as soon as it is able to install a permanent solution to the water quality problem and expects this to occur prior to Memorial Day, 2000. Special Condition #1 requires the City to remove the fence no later than May 26, 2000, the beginning of Memorial Day weekend, when public use of the beach areas in Southern

California typically begins to increase. If unavoidable delays in providing a permanent solution are adequately documented, this date can be extended by the Executive Director for good cause (i.e., if the fence's continued retention is found to be necessary for public safety). Because the temporary fence is found not to have a significant adverse effect on public access and because it will be removed as soon as public safety allows, the Commission finds the temporary fence consistent with the cited public access policies of the Coastal Act. Moreover, since the development is located between the first coastal road and the sea, the Commission finds it consistent, as conditioned, with all other public access and recreation policies as well.

3. Water Quality. Section 30231 of the Coastal Act is most applicable to the subject development, and 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 temporary fence installed under an emergency permit is at the location of an existing storm drain on North Beach in Coronado. The storm drain system and outfall was rebuilt a couple years ago pursuant to Coastal Development Permit (CDP) #6-96-51, which authorized the installation of larger storm drains, enlargement of the existing headwall and addition of a riprap dissipater. The Commission's permit approval included a monitoring program for the outfall.

Testing of the discharge from this outfall approximately a year and a half ago revealed the presence of unacceptable levels of fecal coliform and resulted in a tentative cease and desist order from the RWQCB. The City installed the temporary fence and began testing to try and locate the source of the contamination. Although the City has still not isolated the source of the pollution, it has installed an ultraviolet (UV) treatment system upstream in the groundwater pipe, which was determined to be the problem. Because that pipe collects groundwater discharge as well as stormwater, it flows year round; the other pipes at the outfall just carry storm flows, so they only generate significant discharges during the rainy season. The UV system has significantly reduced the fecal coliform counts at the end of the identified pipe, except immediately after storm events. However testing of the pond formed by the discharge has shown elevated coliform counts. The pond is accessible to birds and dogs, such that test sampling within the pond may not be truly indicative of the actual discharge from the pipes, but nonetheless identifies a public safety and water quality concern.

The Commission is concerned that the marine environment be maintained in optimum health, both for the benefit of marine resources and public recreation. In this particular

case, the amendment request to retain the temporary fence already authorized by the Commission for an additional period of time does not result in any modification of the existing facilities. However, construction of a permanent solution to the contamination problem will likely require a coastal development permit; at that time the Commission may address the appropriateness of additional monitoring and reporting for this discharge point. Therefore, the Commission finds the retention of the existing temporary fence until May, 2000 consistent with the cited Coastal Act policy.

4. Visual Resources. Section 30251 of the Coastal Act addresses the visual impacts of development, and states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The existing temporary fence is a six-foot high, chain-link fence extending along both sides of the existing headwall and flowpath at the North Beach storm drain outfall. There are warning signs attached to the fence on both sides at regular intervals. It has been installed in the interest of public safety, to prevent beachgoers from contact with contaminated discharge from the storm drain. In its approval of the temporary fence, the Commission found it visually unappealing, and incompatible with the open aspect of the nearby municipal beaches. Although it does not block existing public views, since it is open in character, it does diminish the enjoyment of those views.

A mitigating factor in this particular location is that there are other, permanent fences nearby associated with North Island NAS. A taller, chain-link and barbed wire fence runs along the boundary separating the City and federal property, from the terminus of Ocean Boulevard to the sandy beach. In addition, there are several landing lights on the City's beach, highlighting the approach to the runway at NAS; each set of lights is also surrounded by a chain-link and barbed wire security fence. Although these other permanent fences do not make the subject, temporary fence more acceptable under the policies of the Coastal Act, they at least make the fence less noticeable. However, the Commission found the fence acceptable under Section 30251 of the Act only because it is temporary and serves a necessary public safety purpose at present. The proposed amendment to retain the fence for a longer period of time does not result in any changes to the fence's appearance or the Commission's prior findings.

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

The City of Coronado has a certified LCP and has assumed permit issuing authority for the majority of the City, all of which is in the coastal zone. The site of the subject amendment request, however, is located in an area that is subject to the Commission's original permit jurisdiction because it is located on public trust lands. Thus, Chapter 3 of the Coastal Act is the standard of review. As addressed in the previous findings, the temporary fence, as conditioned to be removed before next Memorial Day weekend, can be found consistent with the applicable policies of the Coastal Act.

The subject site is designated "beach" in Coronado's certified LCP. Although the use of the area is not permanently changed by the temporary fence, some impacts on the public's full enjoyment of the immediate area are occurring while the fence remains in place. However, since both the certified LCP and the Coastal Act strive to secure the public's safe use of coastal waters, an argument could be made that the public, until the cause of contamination can be remedied, has healthier enjoyment of the area with the temporary fence providing protection from bodily contact with the contaminated discharge. A permanent obstruction on the public beach could not easily be supported by either the Coastal Act or certified LCP. However, the City is proposing the fence to remain only until it can install a permanent solution. As a short-term, temporary measure to increase public safety, the Commission again finds the existing development consistent with the Coastal Act, and further finds that approval of the requested extension of time to retain the fence until May, 2000 will not prejudice the ability of the City of Coronado to continue implementation of its LCP.

6. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits, or permit amendments, to be supported by a finding showing the amended permit, as conditioned, 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.

As a temporary public safety measure, the existing fence has previously been found consistent with all applicable policies of the Coastal Act; authorizing retention of the fence for an additional period of time does not result in any new or different impacts. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA



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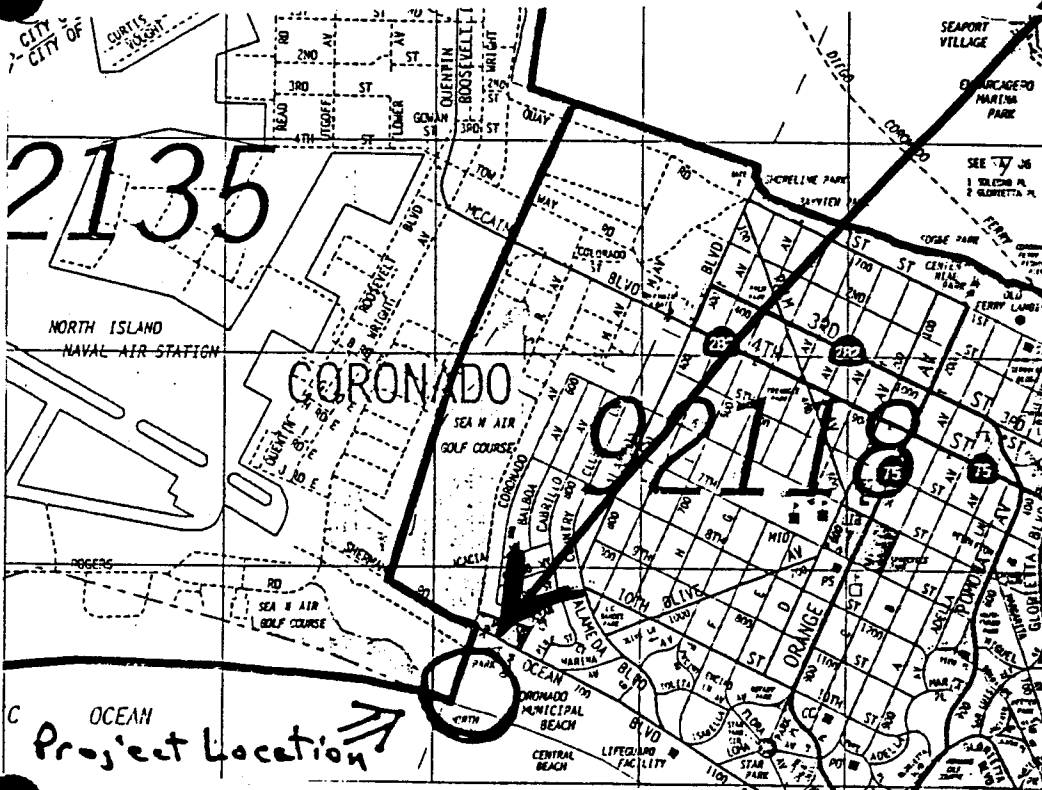
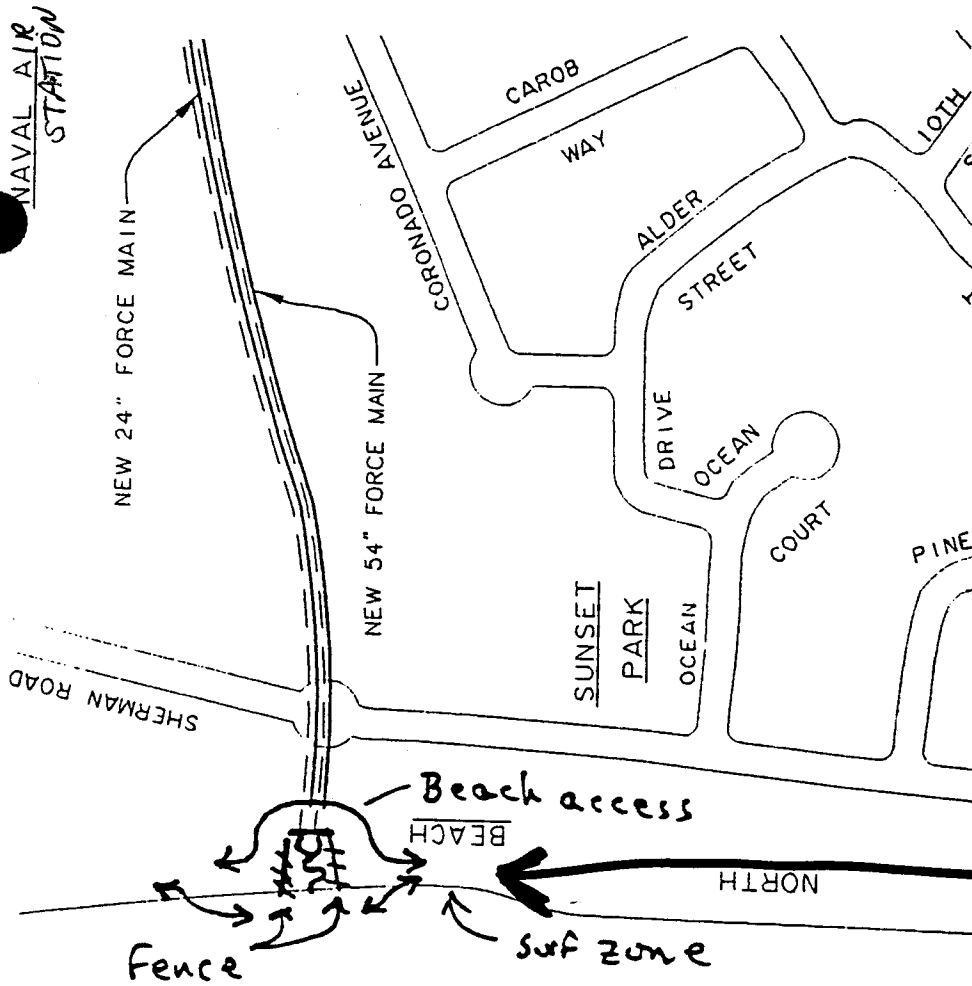


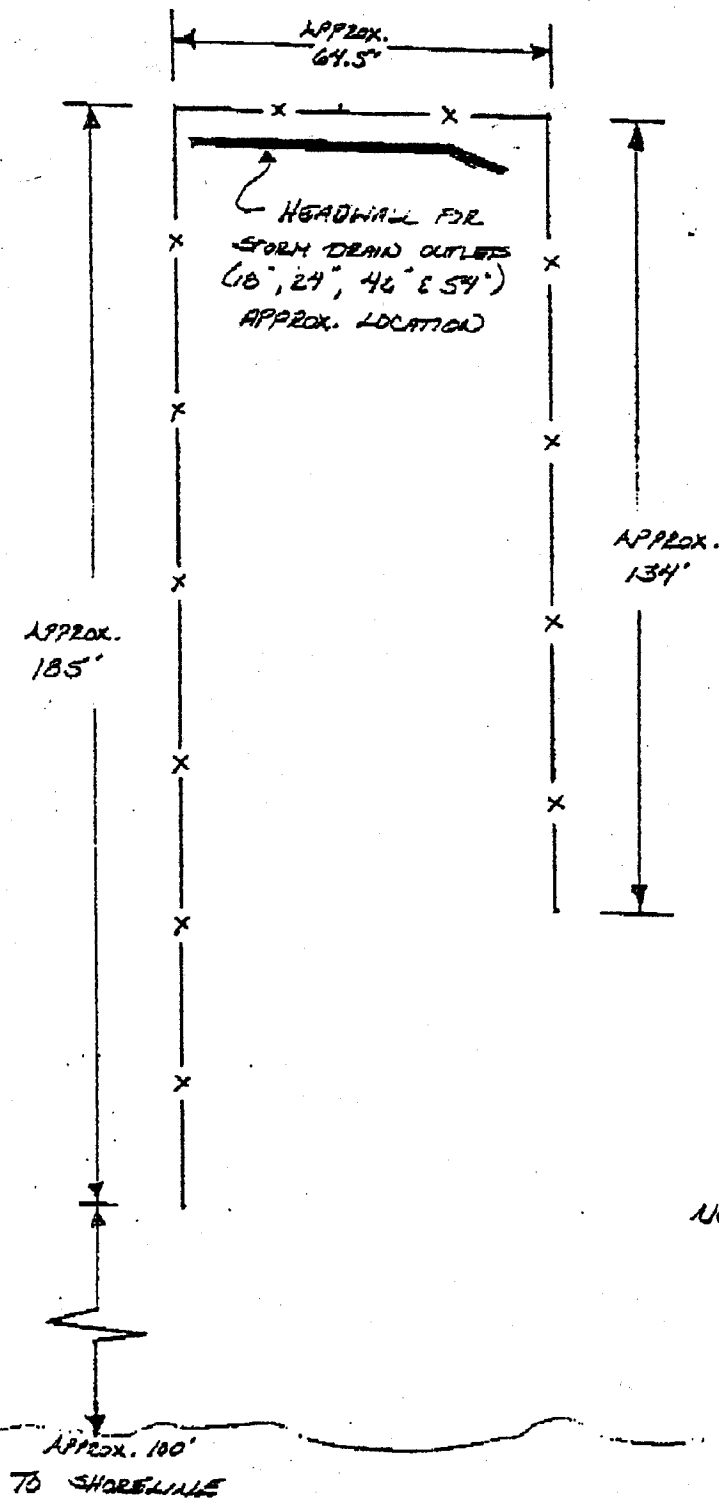
EXHIBIT NO. 1

APPLICATION NO.

6-98-90-A1

Location Maps

6-98-90-A1



NOTE: FENCE LENGTH WILL BE  
MODIFIED BASED ON  
SHORELINE MOVEMENT.

NORTH BEACH STORM DRAIN OUTFALL  
TEMPORARY FENCE PLAN  
CITY OF CORONADO

EXHIBIT NO. 2

APPLICATION NO.

6-98-90-A1

Site Plan