

CALIFORNIA COASTAL COMMISSION

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

**RECORD PACKET COPY****W 17a**

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Staff: MG-LB
Staff Report: May 25, 2000
Hearing Date: June 13-16, 2000
Commission Action:

STAFF REPORT: REGULAR CALANDER

APPLICATION NO.: **5-99-150 and 5-99-382**

APPLICANT: City of San Clemente

AGENT: Lynn Hughes

PROJECT LOCATIONS: San Clemente Pier, City of San Clemente, Orange County

PROJECT DESCRIPTIONS:**5-99-150**

Replacement of 9 pier pilings, 32 cross-braces, and approximately 880 sq. ft. of pier decking with preservative treated wood materials on existing wooden municipal pier.

5-99-382

Replacement of approximately 8,880 sq. ft. of pier decking with preservative treated wood materials on existing wooden municipal pier.

SUMMARY OF STAFF RECOMMENDATION:**5-99-150**

The subject application is to authorize after-the-fact replacement of decking, cross-braces, and pilings on the City of San Clemente's Municipal Pier. Staff recommends that the Commission **APPROVE** the proposed project subject to several special conditions. The adopted special conditions consist of: 1) the requirement that any future improvements to the property will require a permit from the Commission; 2) conformance with an existing assumption-of-risk lease restriction; 3) identification of construction and debris removal responsibilities; 4) a requirement that the applicant

obtain written evidence of Regional Water Quality Control Board review and approval or a determination that no review is needed for the proposed project; 5) a requirement that the applicant obtain written evidence of California Department of Fish and Game review and approval, or a determination that no review is needed for the proposed project; 6) a requirement that the applicant maintain the polyethylene wrapping around the proposed treated wood pilings, and 7) a requirement that condition compliance be completed within 90 days of the Commission's action on this coastal development permit.

5-99-382

The subject application is to authorize the after-the-fact replacement of decking on the City of San Clemente's Municipal Pier. Staff recommends that the Commission **APPROVE** the proposed project subject to several special conditions. The adopted special conditions consist of: 1) the requirement that any future improvements to the property will require a permit from the Commission; 2) conformance with an existing assumption-of-risk lease restriction; 3) identification of construction and debris removal responsibilities; 4) a requirement that the applicant obtain written evidence of Regional Water Quality Control Board review and approval or a determination that no review is needed for the proposed project; 5) a requirement that the applicant obtain written evidence of California Department of Fish and Game review and approval, or a determination that no review is needed for the proposed project; 6) a requirement that the applicant maintain the polyethylene wrapping around the proposed treated wood pilings, and 7) a requirement that condition compliance be completed within 90 days of the Commission's action on this coastal development permit.

PROCEDURAL NOTE:

This staff report and recommendation analyzes both coastal development permit applications 5-99-150 and 5-99-382. Although the staff report combines the analysis for the two permits, the Commission must vote separately on each permit. The two necessary motions and staff recommendations are provided on pages 3 and 4.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of San Clemente

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, Coastal development permits concerning the pier including: 5-90-1120-A1, 5-90-1120, 5-92-012, 5-92-012A, 5-92-470, 5-97-086, and 5-97-087

I. MOTIONS AND RESOLUTIONS

A. MOTION AND RESOLUTION FOR CDP NO. 5-99-150

MOTION: *"I move that the Commission approve Coastal Development Permit No. 5-99-150 pursuant to the staff recommendation."*

STAFF RECOMMENDATION OF APPROVAL:

APPROVAL WITH CONDITIONS

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned 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 PERMIT NO. 5-99-150:

The Commission hereby **APPROVES** coastal development permit No. 5-99-150 for the proposed development, which is located between the sea and the first public road, and adopts the findings set forth below on grounds that the development as conditioned 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 complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

B. MOTION AND RESOLUTION FOR CDP NO. 5-99-382

MOTION: *"I move that the Commission approve Coastal Development Permit No. 5-99-382 pursuant to the staff recommendation."*

STAFF RECOMMENDATION OF APPROVAL:

APPROVAL WITH CONDITIONS

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned 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 PERMIT NO. 5-99-382:

The Commission hereby **APPROVES** coastal development permit No. 5-99-382 for the proposed development, which is located between the sea and the first public road, and adopts the findings set forth below on grounds that the development as conditioned 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 complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS APPLICABLE TO BOTH COASTAL DEVELOPMENT PERMITS 5-99-150 AND 5-99-382:

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 APPLICABLE TO BOTH COASTAL DEVELOPMENT PERMITS 5-99-150 AND 5-99-382**

1. **FUTURE IMPROVEMENTS**

The subject permit is only for the development described in Coastal Development Permit Nos. 5-99-150 and 5-99-382. Any future structures or improvements to the property will require a Coastal Development Permit from the Coastal Commission.

2. **ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT**

- A. By acceptance of this permit, the applicant, on behalf of (1) itself; (2) its successors and assigns, and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards, and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement

to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv).

- B. The applicant shall conform to the lease agreement No. PRC 5542.9 between the applicant and the State of California acting through the State Lands Commission, which has been found to incorporate all of the above terms of subsection A of this condition.

3. **CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the beach, pier, bulkhead and dock area on a daily basis;
- (c) No machinery shall be allowed at any time on the beach or intertidal zone;
- (d) Disturbance to the harbor bottom and intertidal areas shall be minimized;
- (e) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- (f) Staging and storage of construction machinery and storage of debris shall not take place on the beach;
- (g) Any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible;
- (h) Any construction materials, oils or liquid chemicals or other waste shall not be stored where it is subject to wave erosion and dispersion into the harbor waters

4. REGIONAL WATER QUALITY CONTROL BOARD REVIEW

Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Executive Director, written evidence from the Regional Water Quality Control Board, Santa Ana Region (RWQCB) demonstrating that the RWQCB has reviewed and approved the proposed project, or a determination that no review by the RWQCB is necessary for the proposed project. If the RWQCB requires any substantial changes to the project, as approved by the Commission, the changes shall be submitted to the Executive Director for a determination as to whether the changes require an amendment to this permit. Any changes that require an amendment shall not occur without an amendment to this permit.

5. DEPARTMENT OF FISH AND GAME REVIEW

Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Executive Director, written evidence from the California Department of Fish and Game (CDFG) demonstrating that the CDFG has reviewed and approved the proposed project, or a determination that no review by the CDFG is necessary for the proposed project. If the CDFG requires any substantial changes to the project, as approved by the Commission, the changes shall be submitted to the Executive Director for a determination as to whether the changes require an amendment to this permit. Any changes that require an amendment shall not occur without an amendment to this permit.

6. FUTURE MAINTENANCE

The applicant shall maintain the polyethylene wrapping around the creosote and ACZA treated wood pilings installed at the subject site. Maintenance shall be conducted on a regular basis to ensure the following requirements are met at all times:

- a. Measures shall be taken to prevent creosote from dripping over the top of plastic wrapping into State Waters. These measures may include wrapping pilings to the top or installing collars to prevent dripping.
- b. The polyethylene wrapping shall remain sealed at all joints to prevent leakage.
- c. The polyethylene material is expected to maintain its integrity for at least ten years, however, wrappings that develop holes or leaks before that time shall be repaired or replaced in a timely manner.

Any replacements, changes or improvements that require an amendment shall not occur without an amendment to this permit.

7. CONDITION COMPLIANCE

- A. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations:

The Commission hereby finds and declares as follows:

A. Project Descriptions

The subject site is located in San Clemente, California (Exhibit 1). The pier is approximately 1,300 feet in length and is a 24,000 square foot structure that includes a restaurant and bar, public restrooms, a bait and snack shop, and a marine safety tower (Exhibit 2). The proposed project for application number 5-99-150 includes the after-the-fact replacement of 9 pier pilings, 32 cross-braces, and approximately 880 sq. ft. of pier decking with preservative treated wood materials on existing wooden municipal pier (Exhibit 2). The proposed project for application number 5-99-382 includes the after-the-fact replacement of approximately 8,800 square feet of decking and stringers with preservative treated wood materials under and around the restaurant area of the pier (Exhibit 3).

B. Site History

The San Clemente Pier has an extensive permit history. The permits can be broken down into two categories: building and deck expansions and other permit actions, primarily pier repair.

1. Building and Deck Expansions:

This category of development includes permits 5-92-012, 5-92-012A, 5-97-086 and 5-97-087. Coastal development permits 5-97-086 and 5-97-087 were for the development approved in CDP 5-92-012 and 5-92-012-A. All of these permits have since expired.

5-99-150 and 5-99-382
San Clemente Pier

Coastal Development Permit 5-97-086 was approved in June 1997 and issued on December 10, 1998 and subsequently expired. Development in this permit on the south building of the pier included a 740 square foot food service building with no interior seating and 744 square feet of new deck with tables and 70 seats. Development on the north building of the pier included a 360 square foot beach recreation-retail rental shop, 360 square foot gift shop and 352 square feet of new deck with tables and 30 seats (see Exhibits 7 and 8). Seven pilings were required for proposed development on the south building. Finally, the existing 800 square foot concession building landward of the pier in the railroad right-of-way was proposed to be vacated by the City.

This permit was approved with three special conditions. Special condition 1 required the applicant to provide 27 parking spaces. Special condition 2 stated that a permit would be required for the re-stripping of the Pier Bowl Municipal Parking Lot. Special Condition 3 stated that the 740 square foot food service building did not include interior seating.

Coastal Development Permit 5-97-087 was approved in May 1997 and issued on July 1, 1997 and subsequently expired. Development in this permit included a 570 square foot oyster bar on the south building and a 765 square foot fish market on the north building (see Exhibits 7 and 8). The oyster bar would displace 135 square feet of existing unenclosed deck with seating for 16 and the fish market would displace deck seating for 36. This permit was approved with two special conditions. Special condition 1 was for a seating plan for the oyster bar. Special condition 2 was for State Lands Commission review.

Coastal Development Permit 5-92-012 was approved by the Commission in 1992 and subsequently expired. This permit included all the development which was later divided into permits 5-97-086 and 5-97-087. Development in this permit included the expansion and relocation of the base of the pier beach concession from the Santa Fe Railroad right-of-way to City property, construction of an oyster bar, fish market, gift shop, beach rental shop and new deck and seating. The improvements would have added an 800 square foot fish market, 720 square foot food service, and 744 square feet of new deck to the south building. The improvements would have added a 360 square foot beach rental shop, 360 square foot gift shop, 396 square foot deck expansion for the oyster bar, and a 352 square foot deck and seating area to the north building.

CDP 5-92-012 was approved with special conditions regarding public access/parking, public use signs and State Lands Commission approval. The parking special condition required that 22 parking spaces be provided.

Coastal Development Permit 5-92-012A was approved by the Commission and allowed the City to obtain parking space credit for 4 of 8 newly constructed parking spaces in the North Alameda lot (5-92-470) and 9 parking spaces in the Marine Safety Headquarters. This permit has also expired.

Coastal Development Permit 5-90-1120 was issued in May 1991, for the addition of 1,710 square feet of exterior deck area and interior storage/refrigeration area to an existing 7,951 square foot restaurant on the Municipal Pier. The additional deck area added seating for 56 persons.

Coastal Development Permit 5-90-1120-A1 was for the addition of 4,656 square feet of space to the north and south buildings and 2,186 square feet of exterior deck area to restaurant on the Municipal Pier. The additional building and deck area added seating for 44 persons. The CDP was issued in February 2000 following the applicant's compliance with all of the special condition requirements.

2. Other Permit Actions

The Commission has approved a number of miscellaneous permits for the San Clemente Municipal Pier. These are:

Coastal Development Permit 5-82-205 -- for the remodel and conversion of an existing private boat club to a restaurant facility with 305 seats. The remodel included the construction of two exterior decks around the existing structures. This CDP was activated.

Coastal Development Permit 5-82-773 -- for the removal and replacement of 15 pier pilings and a portion of the pier decking because of dry rot. This CDP was activated.

Coastal Development Permit 5-83-249 -- for the reconstruction of 400 feet of the pier which had been damaged during the 1983 winter storms. This CDP was activated.

Coastal Development Permit 5-83-739 -- for Phase II of pier reconstruction for rebuilding 256 feet of the pier.

Coastal Development Permit 5-84-534 -- Phase III of pier reconstruction for reconstruction of 420 feet of pier and reconstruction of several fishing bays. This permit was activated.

Coastal Development Permit 5-86-793 -- for a 40% increase in seating from 305 to 419 and the replacement of 680 square feet of storage/refrigeration/food preparation

area, windscreens and pilings. This permit was conditioned to provide 28 parking spaces. This permit expired.

C. Public Access

Sections 30210, 30211, and 30252 of the Coastal Act apply to public access and recreational opportunities.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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.

The policies of the certified LUP are also useful in providing guidance for review of projects in the coastal zone. There are also policies in the certified LUP concerning the Pier and public access. Policy X.7 of Chapter 3 of the City's certified LUP states:

Existing recreation and visitor-serving uses, including public parking facilities, in the Pier Bowl and North Beach areas shall be protected. ... In no case, however, shall off-site parking displace existing visitor-serving and beach recreational parking on Avenida Victoria or in the Pier Bowl area.

The Fisherman's Restaurant and San Clemente Pier are unique and an attraction to residents and visitors within a 50 mile stretch of coast. The Pier Bowl Municipal Parking Lot provides parking for the popular Pier Bowl beach, the San Clemente Pier, the restaurant on the pier, and the retail stores and restaurants in the Pier Bowl. The Commission notes that though there are other beaches for beachgoers to use, the demand for the use of those beaches is growing rapidly as Orange County and the neighboring counties rapidly urbanize. The demand for beach use is increasing, but the beaches are limited resources. The Coastal Act requires that development not interfere with the public's right of access to the sea by providing adequate parking to serve that development.

The proposed projects are regular repair and maintenance activities at the Municipal Pier. For both projects 5-99-150 and 5-99-382, the applicant proposes to perform the proposed work in a manner that will allow the public access to the pier during construction. The project will take place during the winter season when there are fewer visitors to the pier, which will further reduce any adverse impacts to access. At all times during construction on projects 5-99-150 and 5-99-382, the ramp to the pier and the pier itself will remain open to the public. No more than half of the width of the ramp or pier will be blocked at any given point during the projects.

The proposed projects will not increase the size of the pier or the intensity of use that would require additional parking for the facility. In addition, the proposed projects will not block access to beach parking or the pier itself. Therefore, the Commission finds that the proposed projects 5-99-150 and 5-99-382 are consistent with the public access policies of Coastal Act and the City's certified Land Use Plan.

D. Visitor Serving/Recreation

Section 30213 of the Coastal Act states in part:

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

Policies in the certified LUP concern the San Clemente Pier.

Policy XI.4 of the certified LUP states:

Protect the City's recreational resources including the recreational facilities, parks, surfing areas, and community events identified in section 207 of this plan.

The importance of the Pier is mentioned on page 2-28 of the certified LUP, which states:

The pier offers fishing and scenic walks, as well as a small concession and bait-and-tackle shop at the end and the Fisherman's restaurant, bar, and beach concessions stand at the base. The Pier Bowl area is also known for its special community events—such as the Fourth of July fireworks show, the Chowder Cook-Off, and the Ocean Festival. Due to the diversity of attractions in the Pier Bowl, the Municipal Pier access receives the highest use of any access in the city.

The California Coastal Conservancy publishes a document entitled "California's Public Piers," which provides locations and descriptions of public piers in California. Among the piers listed in this document is the San Clemente Municipal Pier. The Coastal Conservancy notes that the services which piers provide include: views of the off-shore coast and fishing without a license. Public piers tend to become visitor serving attractions as in the case of the Santa Monica Pier, the Huntington Beach Pier, the Newport Beach Pier and the San Clemente Municipal Pier.

There is no admittance fee to piers. People can walk on the piers if they don't like walking on sand. People can spend the day sitting on the pier watching people or nature. Piers are an excellent viewing platform from which to view the beach and coastline.

In short, the San Clemente pier is a low-cost, visitor-serving facility which provides public fishing opportunities, fresh ocean air, an opportunity to walk and look out at the ocean and to get a panoramic view of the coastline. Any development on a public pier is therefore subject to scrutiny as to whether the development would affect the public's recreational interest. In this case, the improvements are routine repair and maintenance of the Municipal Pier that do not adversely impact public access or recreation. The repair and maintenance activities help maintain the function of the pier for its intended use as a visitor-serving facility. The pier will remain open and available to visitors during construction as discussed in the preceding section on page 11. Therefore, the Commission finds that the proposed development is consistent with the provisions of Section 30213 of the Coastal Act.

Due to the Pier's location over the beach and ocean, the majority of the repair and maintenance work proposed for both projects will take place on State owned lands. The applicant has obtained permission from the State Lands Commission for the development proposed in application numbers 5-99-150 and 5-99-382. The letters from the State Lands Commission state that the proposed projects are in conformance with the requirements of lease agreement number PRC 5542.9 (Exhibit 4). Section 4(c), in the "General Provisions" section, of the subject lease states that the City of San Clemente as leasee shall maintain the pier and property in good order and safe condition.

The proposed projects 5-99-150 and 5-99-382 are located over a sandy beach in an area that is subject to hazards from wave run-up, scour, and erosion. Lease agreement number PRC 5542.9 includes assumption-of-risk language that was approved by the Commission prior to the issuance of Coastal Development Permit No. 5-90-1120-A1. The assumption-of-risk language in the approved lease agreement includes a waiver of liability by the applicant and the landowner to indemnify the Commission for any damage to life and property which may occur as a result of the permitted development. The waiver of liability also shows that the

applicant and the landowner are aware of and appreciate the nature of the hazards which exists on the site and which may adversely affect the stability and safety of the proposed development. Special Condition No. 2 reiterates the requirement that the applicant conform to all requirements of lease agreement number PRC 5542.9, which contains assumption-of-risk language acceptable to the Commission. In addition, Special Condition No. 1 states that any future improvements to the property will require a Coastal Development Permit from the Coastal Commission. The Commission finds that the proposed projects 5-99-150 and 5-99-382, only as conditioned, are consistent with Sections 30253 of the Coastal Act.

E. 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.

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.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The applicant proposes, after-the-fact, to use Ammoniacal Copper Zinc Arsenate (ACZA) and Creosote treated wood pilings wrapped with polyethylene covers, and ACZA treated wood decking, stringers, and cross-braces for the projects. On

December 23, 1999, the applicant requested Regional Water Quality Control Board, Santa Ana Region (RWQCB) review of both proposed projects (5-99-150 and 5-99-382) and the materials to be used in the proposed projects. To date, no response has been received from the RWQCB.

On May 9, 2000, Staff contacted the California Department of Fish and Game (CDFG) to request information on the requirements for use of these materials for the proposed projects. According to the CDFG the use of any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous materials or substance is normally prohibited on pier pilings in state waters. Creosote is included in this category. However, there are exceptions such as creosote pilings that are "wrapped" with plastics are acceptable if the wrapping extends past the splash zone to ensure that creosote will not leach into the water. Also, the CDFG will accept use of plastic wrapped creosote treated wood products for repair of existing projects that were constructed using wood products. The repair of the pier falls into this category of development.

The proposed projects consist of repair and maintenance of wood pilings, cross-braces, stringers, and decking on an existing wooden pier. In order to address the concerns raised by the use of creosote and ACZA treated wood pilings for the proposed projects, and to comply with the CDFG regulations relating to the use of these materials, the Commission is imposing Special Condition 5 that requires CDFG review of the project, and Special Condition 6, which requires maintenance of the polyethylene wrapping that encases the proposed treated wood pilings.

The development is located on the water and adjacent to the beach and there is always the possibility that material from demolition or construction may end up in the harbor waters. In order to prevent adverse impacts to marine waters from construction and demolition, the Commission is imposing Special Condition 3 provides for the safe storage of construction materials and the disposal of demolition end-products. In order to ensure compliance with regulatory requirements, the Commission is imposing Special Condition 4 requires written evidence from the RWQCB demonstrating that the RWQCB has reviewed and approved the proposed projects, or a determination that no review by the RWQCB is necessary for the proposed projects. Due to the after-the-fact nature of the proposed projects, Special Condition 7 requires that condition compliance be completed within 90 days of the Commission's action on these projects.

Only as conditioned for provision of RWQCB and CDFG approval, storage of construction materials and equipment, removal of demolition and construction debris, maintenance of the polyethylene wrapping of the treated wood pilings, and the completion of condition compliance within 90 days of Commission action does

the Commission find that the proposed projects 5-99-150 and 5-99-382 are consistent with Sections 30230, 30231, and 30232 of the Coastal Act.

F. Unpermitted Development

Without benefit of a coastal development permit, the applicant has initiated construction of the proposed projects 5-99-150 and 5-99-382. Once aware that the development was underway, Coastal Commission staff informed City staff that the work required Commission approval. The applicant was then directed to complete their submittal of the coastal development permit application for Commission review. The applications were deemed complete on April 13, 2000.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision.

Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

G. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the projects 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.

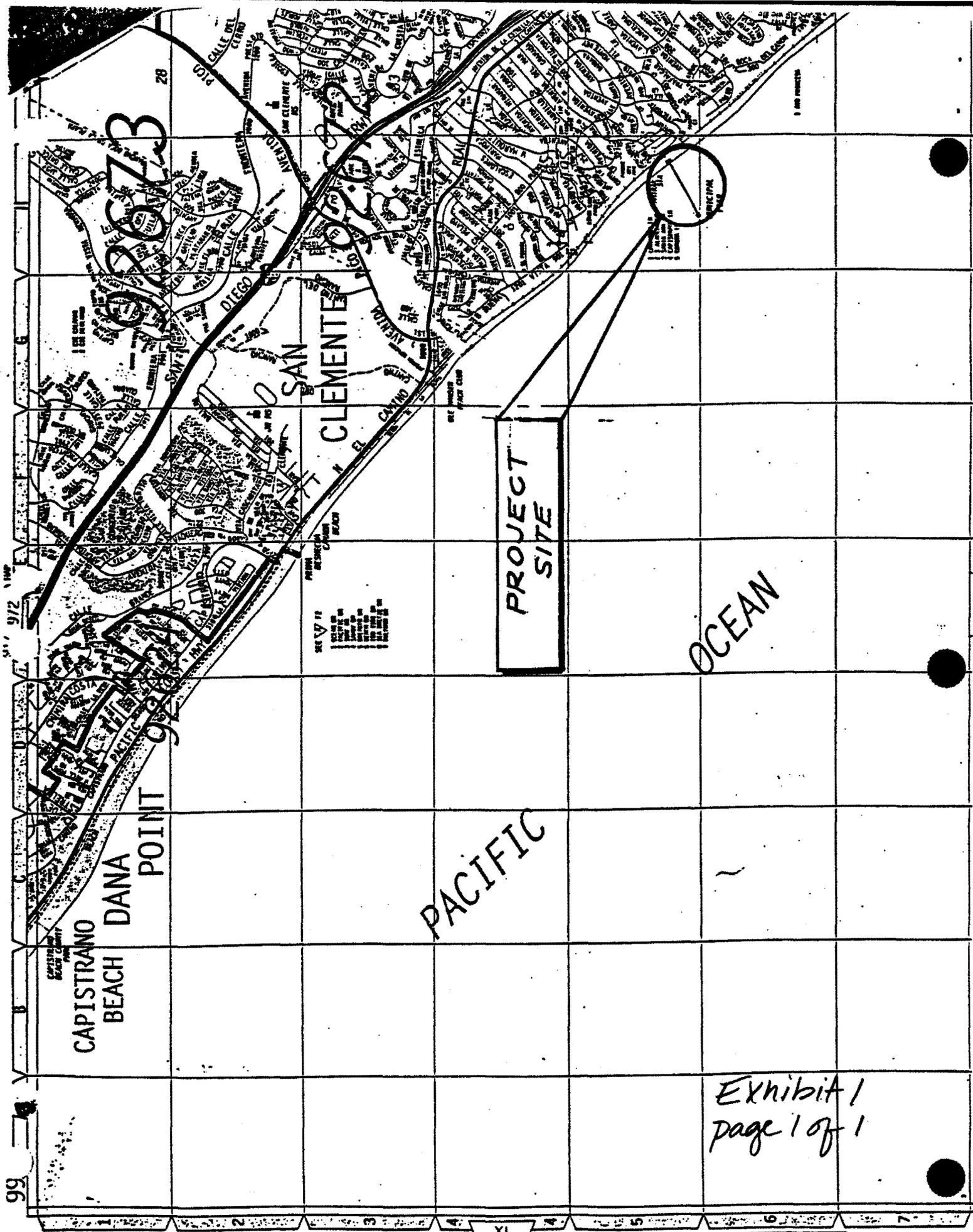
The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998 the Commission certified with suggested modifications the IP portion of the Local Coastal Program. The suggested modifications were not accepted by the City within the 6 month time period and therefore the Commission's approval of the IP has expired. As conditioned, proposed projects 5-99-150 and 5-99-382 are consistent with the policies contained in the certified Land Use Plan regarding public access and recreation. Therefore, approval of the proposed developments will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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

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 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 projects 5-99-150 and 5-99-382 have been conditioned in order to be found consistent with the access, recreation, and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect that the activities may have on the environment.

Therefore, the Commission finds that proposed projects 5-99-150 and 5-99-382, as conditioned to mitigate the identified effects, are the least environmentally damaging feasible alternatives and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



PROJECT SITE

OCEAN

PACIFIC

Exhibit 1
page 1 of 1

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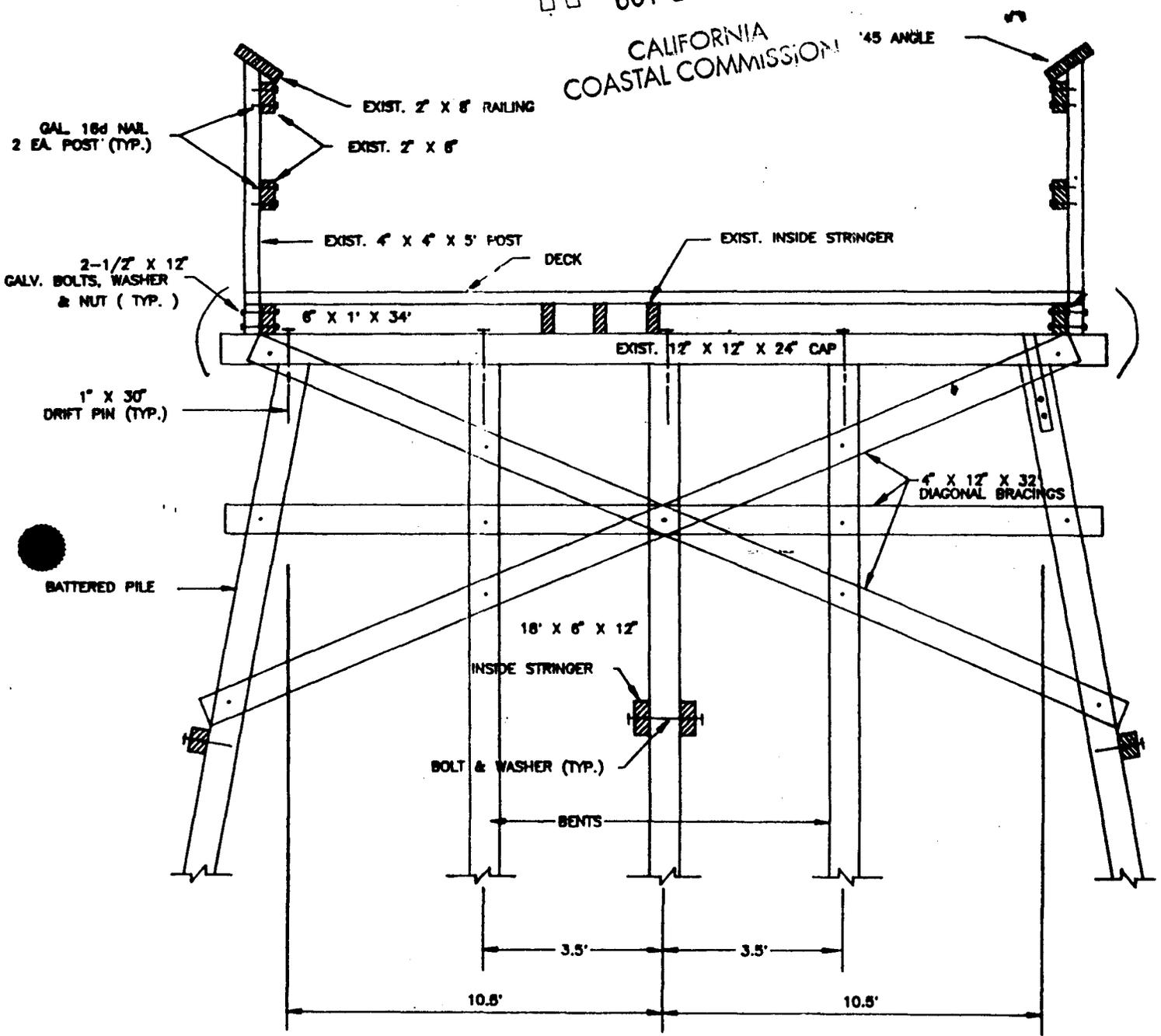
ORANGE CO.

ZIP

SE 1X 44

RECEIVED
OCT 13 1999

CALIFORNIA
COASTAL COMMISSION



CROSS SECTION

NOT DRAWN TO SCALE

5-99-150/5-99-382

Exhibit 2

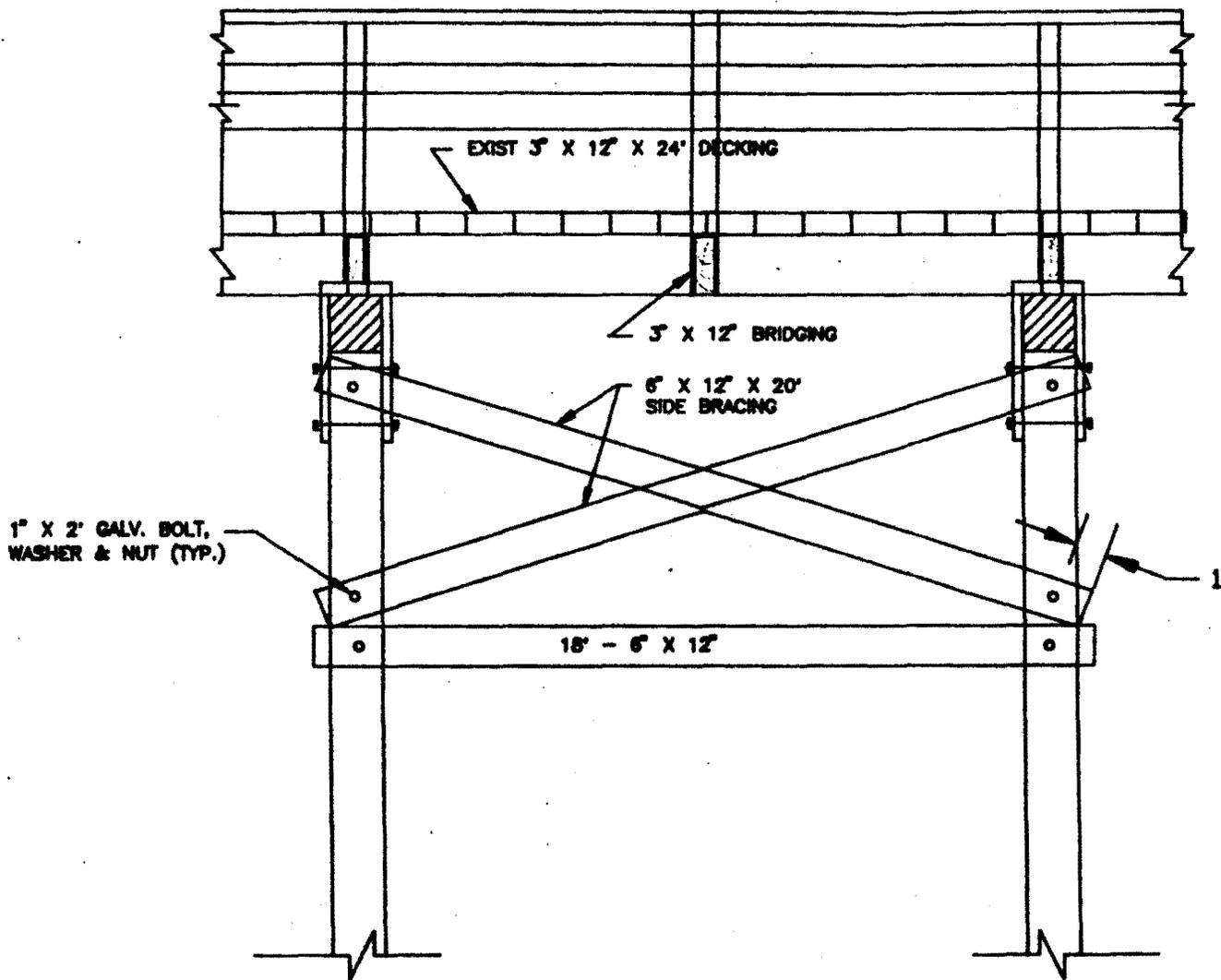
Page 1 of 9





RECEIVED
OCT 13 1999

CALIFORNIA
COASTAL COMMISSION



LONGITUDINAL SECTION

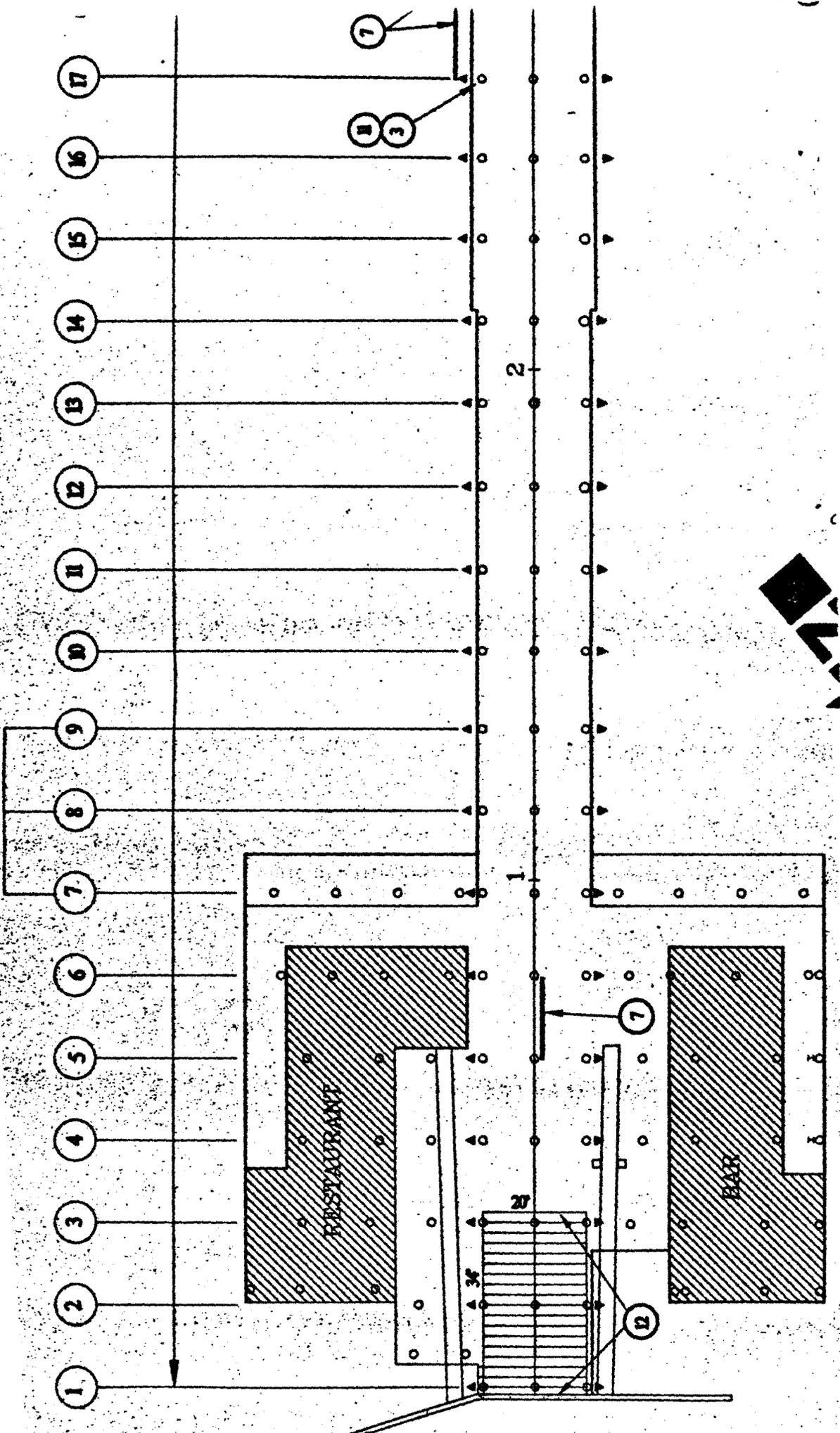
NOT DRAWN TO SCALE

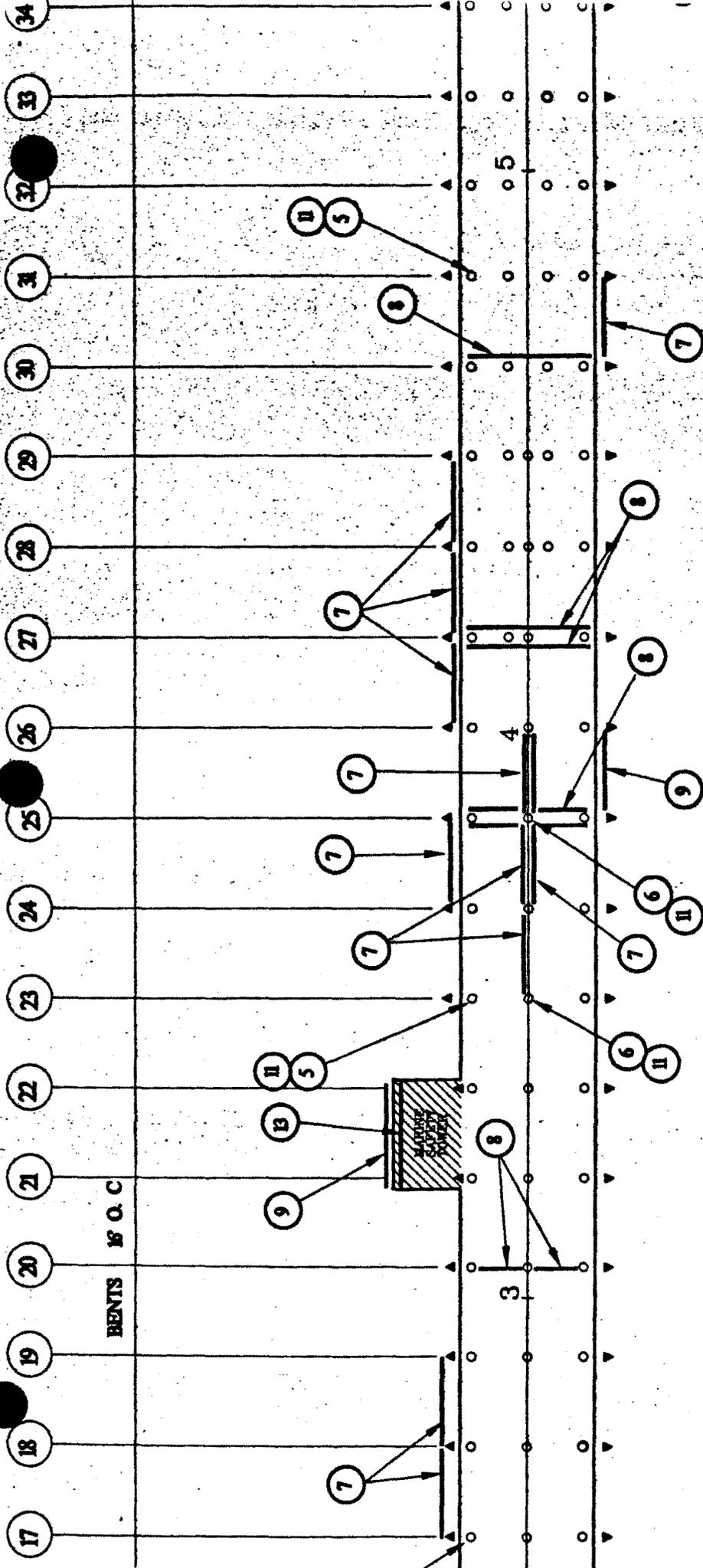
CONSTRUCTION NOTES :

- 1. DRIVE AND INSTALL 60' TREATED TIMBER FILE
- 2. DRIVE AND INSTALL 60' BATTERED TREATED TIMBER FILE
- 3. DRIVE AND INSTALL 50' BATTERED TREATED TIMBER FILE
- 4. DRIVE AND INSTALL 50' TREATED TIMBER FILE
- 5. DRIVE AND INSTALL 55' BATTERED TREATED TIMBER FILE
- 6. DRIVE AND INSTALL 55' TREATED TIMBER FILE

- 7. INSTALL LONGITUDINAL MEMBER
- 8. INSTALL CROSS MEMBER
- 9. RE-ATTACHED LONGITUDINAL MEMBER
- 10. REPAIR TORN FILE WRAP
- 11. FURNISH AND INSTALL POLYETHYLENE SHEET WRAPPING
- 12. REMOVE EXIST. RAMP DECKING AND REPLACE WITH NEW FULL LENGTH F
- 13. REMOVE AND REPLACE EXISTING OUTSIDE STRINGER

57	58	59	60	61	62	63	64	65	66	67	68	69	70
							BENT 20' O.C						





BENTS 16 O. C

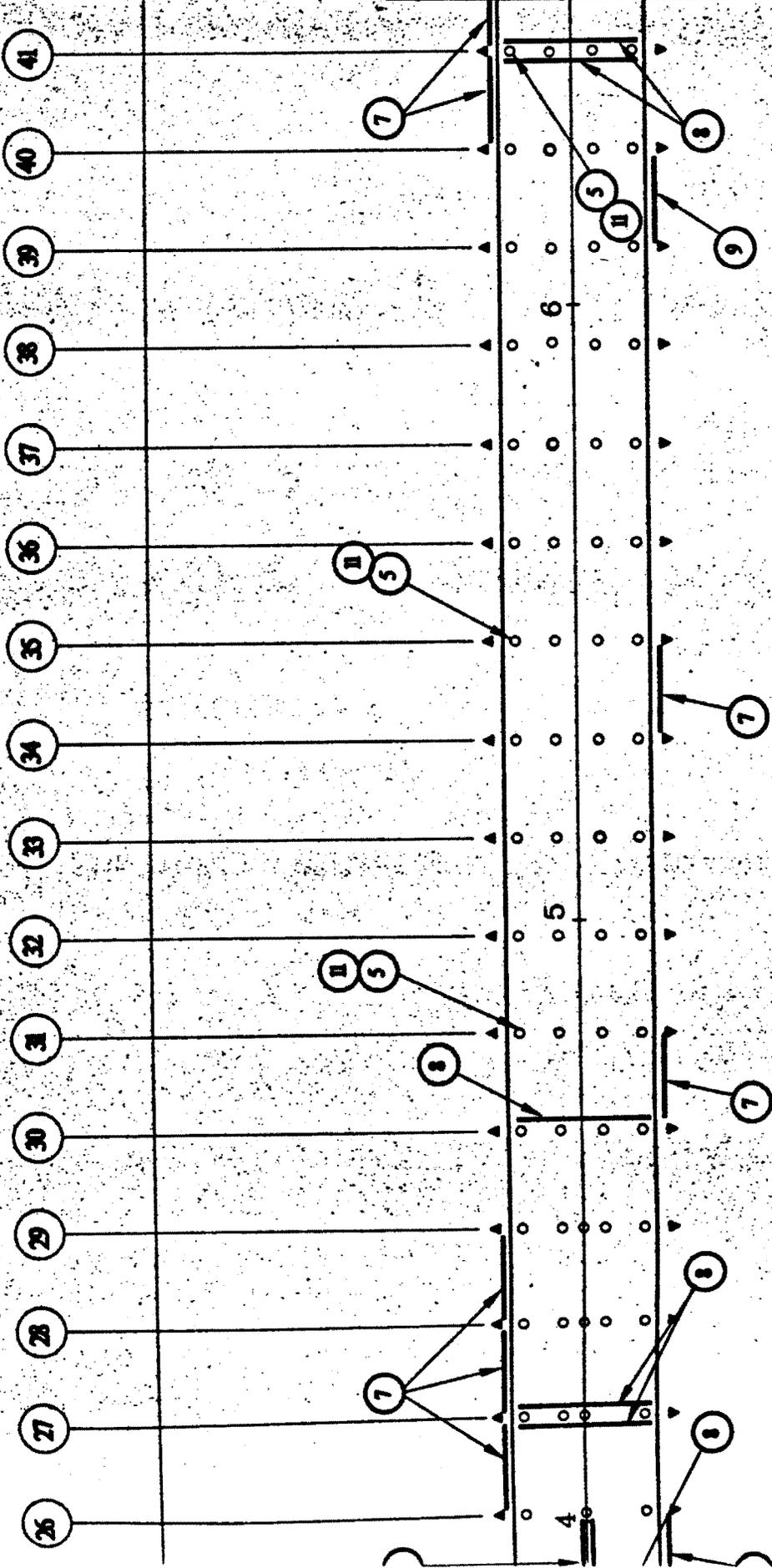
LAP JOINT
WOOD SHIMS

CONSTRUCTION NOTES :

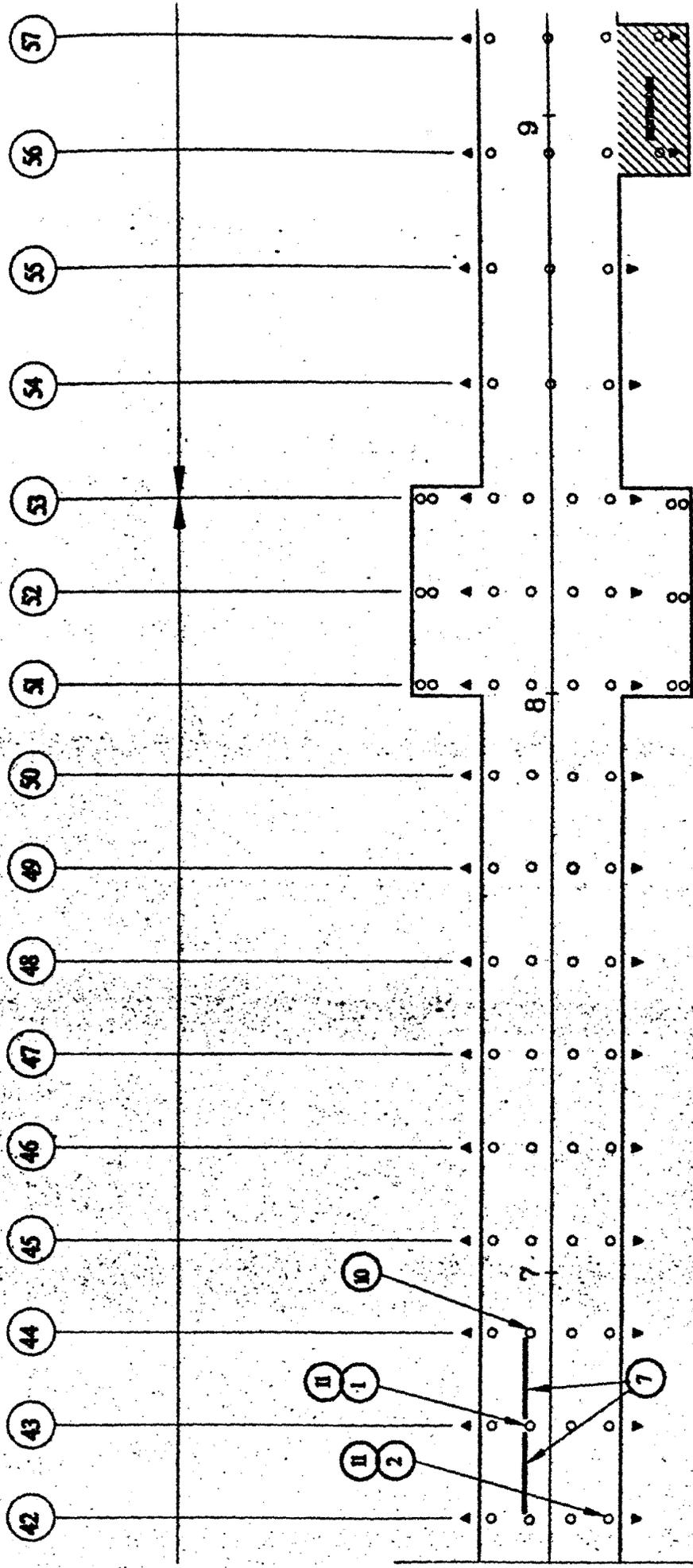
- 1 DRIVE AND INSTALL 60 TREATED TIMBER PILE
- 2 DRIVE AND INSTALL 60 BATTERED TREATED TIMBER PILE
- 3
- 4
- 5
- 6
- 7 INSTALL LONGITUDINAL MEMBER
- 8 INSTALL CROSS MEMBER
- 9

DE-ATTACHED LONGITUDINAL MEMBER

MATCH LINE SEE BELOW



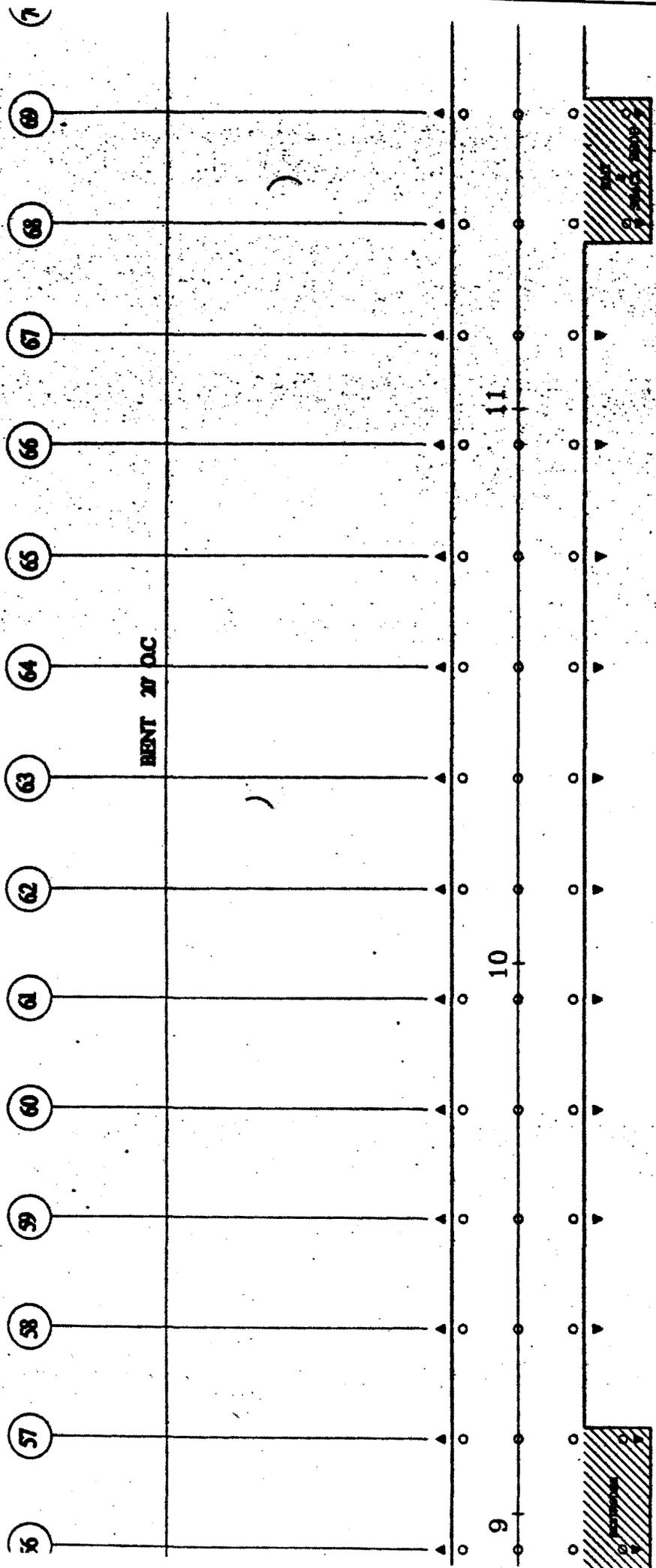
AS SHOWN IN SECTION 5 AND 6



MATCH LINE SEE ABOVE

LEGEND :
 (24) BENT NUMBER
 (7) STRAIGHT FILE

(13) REMOVE AND RELAYS ENDLIVE COURTESY

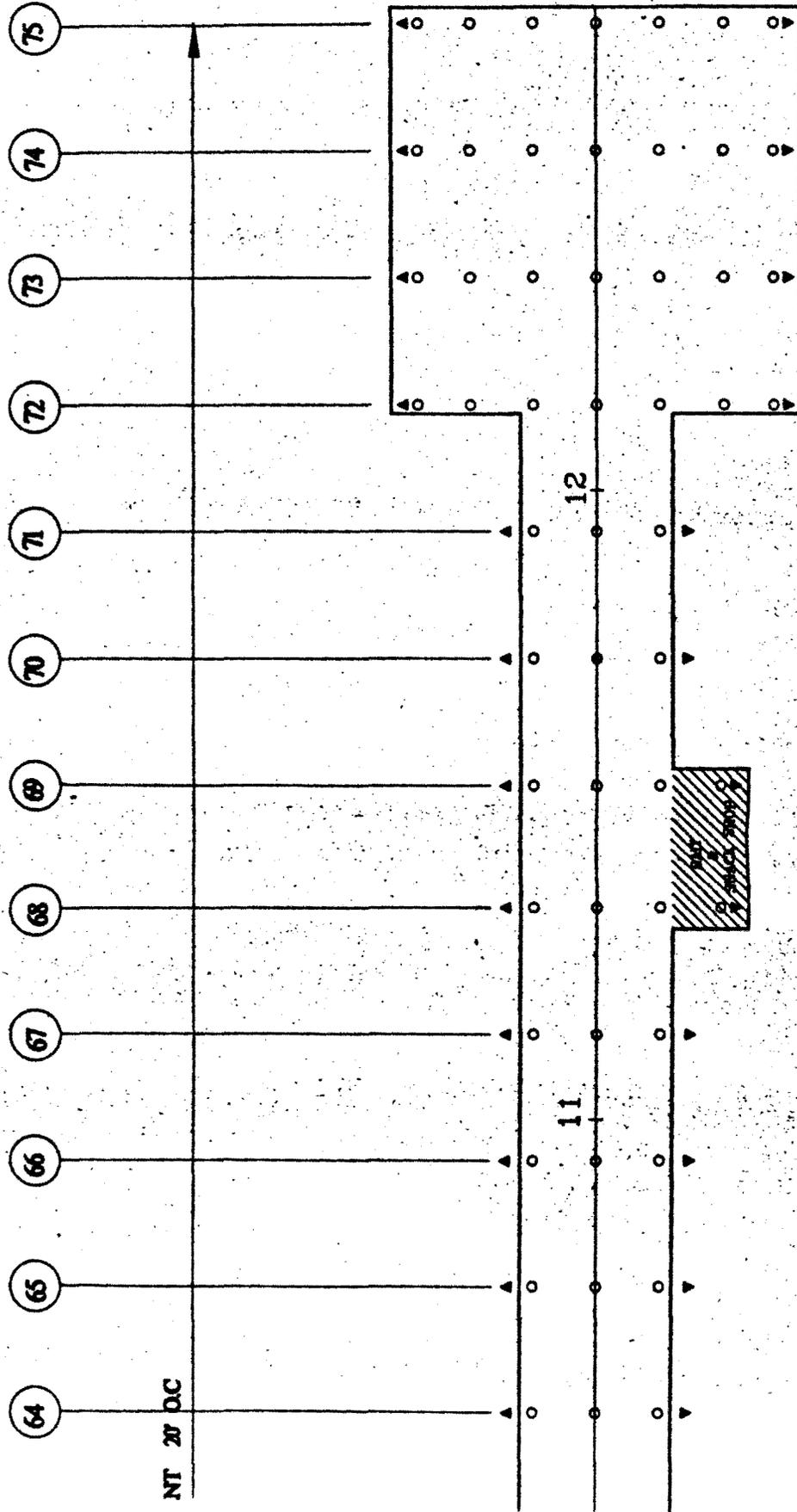


10. REPAIR TORN FIBER GLASS.

11. FURROW AND INSTALL POLYETHYLENE SHEET WRAPPING

12. REMOVE EXIST. RAMP DECKING AND REPLACE WITH NEW FULL LENGTH FLANKS (NO SPLICES)

13. REMOVE AND REPLACE EXISTING OUTSIDE STRINGER



RECEIVED
South Coast Region

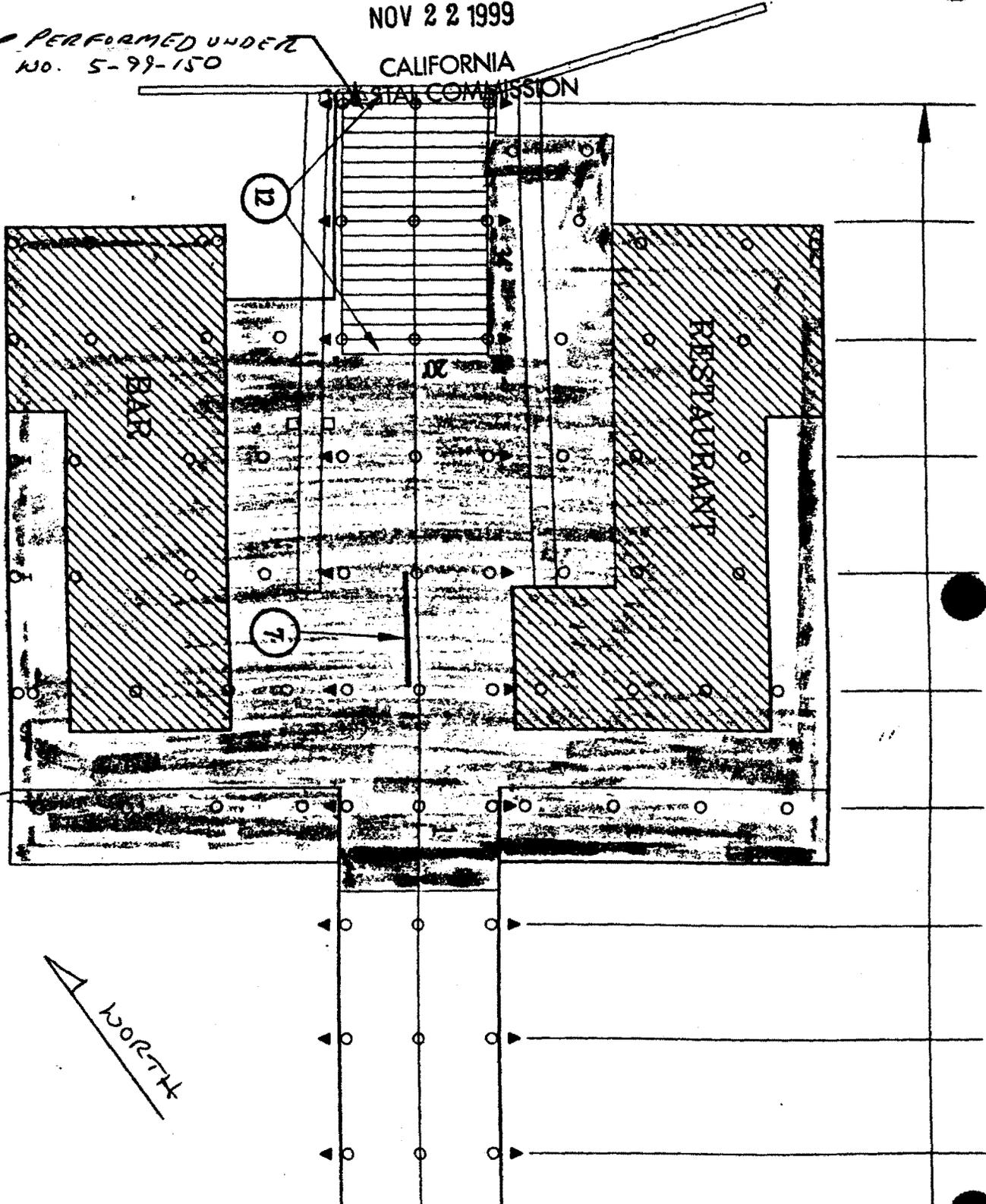
Deck repairs are shown with shaded area for Application 5-99-382

NOV 22 1999

*RAMP PERFORMED UNDER
APP NO. 5-99-150*

CALIFORNIA

CELESTIAL COMMISSION



5-99-150/5-99-382

Exhibit 3

Page 1 of 1

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 058-240-15
County: Orange

W P 5542.9

LEASE PRC 5542.9

This Lease consists of this summary and the following attached and incorporated parts:

- | | |
|-----------|---|
| Section 1 | Basic Provisions |
| Section 2 | Special Provisions Amending or Supplementing Section 1 or 4 |
| Section 3 | Description of Lease Premises |
| Section 4 | General Provisions |

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

CITY OF SAN CLEMENTE

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS: 100 Avenida Presidio
San Clemente, California 92672

those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

LEASE TYPE: General Lease - Public Agency Use

LAND TYPE: Tide and Submerged

LOCATION: Pacific Ocean, San Clemente, Orange County

LAND USE OR PURPOSE: Operation and maintenance of a public fishing pier and appurtenances thereto, including restrooms, restaurant, bait and tackle shop, and pier telescopes.

TERM: 35 years; beginning May 1, 1999; ending April 30, 2034, unless sooner terminated as provided under this Lease.

CONSIDERATION: Submission by the City of annual reports of the income and expenses on the lease premises. The State has the right to set a monetary rental for any reporting period in which the income exceeds the expenses, not to exceed the amount of such excess income.

Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS: Fishing pier and appurtenances thereto, including restrooms, restaurant, bait and tackle shop and pier telescopes.

EXISTING:

TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY: N/A

AND BE COMPLETED BY: N/A

LIABILITY INSURANCE: Combined single limit coverage of \$5,000,000.

SURETY BOND OR OTHER SECURITY: N/A

**SECTION 2
SPECIAL PROVISIONS**

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. The Lessee hereby agrees that any signs or other types of printed notices, installed to provide notification of the public use and benefit of the pier as set forth herein, shall contain and reasonably display a statement to the effect that the State Lands Commission has contributed the lands underlying the pier.

2. Execution of this lease by the parties hereto will terminate existing Lease No. PRC 5542.9 which began September 1, 1978.
3. This lease acknowledges the 25-year sublease between the City and the State Department of Fish and Game that began September 1, 1978 and will expire August 31, 2003. Such sublease was for purposes of a cost sharing agreement that financed renovation of the pier.
4. Lessee shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse. Refuse containers shall be located so as to be conveniently used by occupants of Lessee's facilities and shall be of sufficient size and number to contain the refuse generated from using Lessee's facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by Lessee or others acting pursuant to Lessee's direction at authorized land fills or other garbage reception areas as provided under law applicable at the time of collection.
5. Lessor and Lessee agree that the existing subleases granted by the City shall remain in full force and effect through their normal expiration date and the City is required to submit any renewals of these subleases to the State Lands Commission for approval.
6. Lessor and Lessee agree that copies of all proposed amendments to existing subleases will be provided to Lessor's staff for review prior to approval by the City.
7. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding and erosion.
 - b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) issued for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP or issuance of this lease, any new lease, renewal, amendment, or assignment by Lessor.

SECTION 3
LAND DESCRIPTION

PRC 5542.9

A parcel of tide and submerged land lying in the Pacific Ocean westerly of the City of San Clemente, Orange County, California, said parcel lying immediately beneath the San Clemente Municipal Pier and described as follows:

COMMENCING at the most southerly corner of Lot 1, Block 12, Tract 785, as filed for record in Book 23, Pages 36 and 37, Records of Orange County, California, said point also being on the easterly right-of-way line of Avenida Victoria; thence N 33° 28' 55" W, 63.92 feet; thence S 56° 31' 05" W, 30.00 feet to a point in the centerline of Lot 20, Block A, Tract 779, as filed for record in Book 23, Pages 19 through 25, Records of Orange County, California, and known as Avenida Victoria; thence S 33° 28' 55" E along the centerline of Avenida Victoria 122.97 feet; thence leaving said centerline S 56° 31' 05" W, 204.68 feet to the TRUE POINT OF BEGINNING; thence N 33° 28' 55" W, 57.00 feet; thence S 56° 31' 05" W, 87.00 feet; thence S 33° 28' 55" E, 45.00 feet; thence S 56° 31' 05" W, 696.00 feet; thence N 33° 28' 55" W, 12.00 feet; thence S 56° 31' 05" W, 35.00 feet; thence S 33° 28' 55" E, 12.00 feet; thence S 56° 31' 05" W, 56.00 feet; thence N 33° 28' 55" W, 12.00 feet thence S 56° 31' 05" W, 26.00 feet; thence S 33° 28' 55" E, 12.00 feet; thence S 56° 31' 05" W, 214.00 feet; thence N 33° 28' 55" W, 12.00 feet; thence S 56° 31' 05" W, 26.00 feet; thence S 33° 28' 55" E, 12.00 feet; thence S 56° 31' 05" W, 55.50 feet; thence N 33° 28' 55" W, 21.00 feet; thence S 56° 31' 05" W, 63.00 feet; thence S 33° 28' 55" E, 66.00 feet; thence N 56° 31' 05" E, 63.00 feet; thence N 33° 28' 55" W, 21.00 feet; thence N 56° 31' 05" E, 377.50 feet; thence S 33° 28' 55" E, 12.00 feet; thence N 56° 31' 05" E, 35.00 feet; thence N 33° 28' 55" W, 12.00 feet; thence N 56° 31' 05" E, 459.00 feet; thence S 33° 28' 55" E, 12.00 feet; thence N 56° 31' 05" E, 20.00 feet; thence N 33° 28' 55" W, 12.00 feet; thence N 56° 31' 05" E, 217.00 feet; thence S 33° 28' 55" E, 45.00 feet; thence N 56° 31' 05" E, 87.00 feet; thence N 33° 28' 55" W, 30.92 feet; thence N 56° 31' 05" E, 22.17 feet; thence N 33° 28' 55" W, 14.08 feet; thence S 56° 31' 05" W, 22.17 feet; thence N 33° 28' 55" W, 12.00 feet to the point of beginning.

TOGETHER WITH a use area extending 15 feet from the extremities of said pier.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

END DESCRIPTION

SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencement of this Lease of any authorized improvements and

within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability this Lease arising after the effective date of assignment not associated with Lessee's use, possession or occupation of

shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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