

CALIFORNIA COASTAL COMMISSION

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Staff: KFS-LB
Staff Report: September 20, 2001
Hearing Date: October 8-12, 2001
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-00-339**APPLICANT:** City of Newport Beach**PROJECT LOCATION:** 999 S. Mariners Drive, City of Newport Beach, County of Orange

DESCRIPTION OF PROJECT: Backfill and grade to restore slope to pre-storm contours and construct a 10 foot wide by 60 foot long concrete spillway with rip rap energy dissipator at the toe of the spillway; remove non-native plants and re-vegetate with native plants; construct depressed sidewalk with curb and gutter and wood fence to match existing adjacent fence.

SUMMARY OF STAFF RECOMMENDATION:

The major issues of this staff report relate to the potential adverse impacts the project may have upon wetlands and sensitive habitat within the Upper Newport Bay Ecological Reserve as well as the potential adverse visual impacts of the proposed grading and construction of a concrete spillway on a bluff face within a scenic area. Staff is recommending approval of the proposed project with special conditions. Special Condition 1 identifies the applicants construction responsibilities including conformance with an identified construction staging area, avoidance of impacts to wetlands, use of construction barriers between the project area and sensitive habitat, and use of best management practices including erosion control. Special Condition 2 requires the applicant to submit a revised site plan to indicate avoidance of wetland impacts, implementation of measures to minimize the visual impact of the project, and possible modifications to nearby catch basins to include filters. Special Condition 2 also requires the applicant to submit a revised re-vegetation plan to include re-vegetation of areas denuded by construction of the proposed project. Special Condition 3 requires the applicant to agree to an assumption-of-risk and waiver of liability and indemnity. Finally, Special Condition 4 requires the applicant to submit final evidence of their legal ability to undertake the proposed development.

LOCAL AND OTHER AGENCY APPROVALS RECEIVED: City of Newport Beach

approval-in-concept 47-99 dated August 17, 2000; Draft Agreement and Grant of Easement from the California Department of Fish and Game Wildlife Conservation Board dated July 18, 2000; Verification from the U.S. Army Corps of Engineers stating that no CWA Section 404 approval is necessary dated August 9, 1999; Letter of Permission from the County of Orange to the City of Newport Beach to undertake work on jointly owned property dated May 18, 1999; California Department of Fish and Game Agreement Regarding Proposed Stream or Lake Alteration No. 5-102-99 dated October 25, 1999, and amended on August 10, 2001.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit 5-97-250 (Park Newport Apartments); 5-98-345 (Gerson, Bakar & Associates); 5-99-036 (Gerson, Bakar & Associates); Coastal Development Permit Application File 5-99-112 (City of Newport Beach); *Revegetation Plan for the Mariners Drive Spillway Project* by David Bramlet of Santa Ana, CA dated March 2001 and revised June 2001; *Biological Assessment of the Mariners Drive Spillway Project (Project 999.5)* by David Bramlet dated December 2000.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION:

"I move that the Commission approve with special conditions Coastal Development Permit 5-00-339 per the staff recommendation as set forth below."

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote, which would result in approval of the permit as conditioned and adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

RESOLUTION TO APPROVE A PERMIT:

The Commission hereby approves a coastal development permit for the proposed development 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:

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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. CONSTRUCTION RESPONSIBILITIES

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

- (a) Construction equipment, materials, and debris shall be stored within the 'construction staging area' on Mariners Drive as depicted on the project plans dated June 26, 2001.
- (b) Wetlands and any other environmentally sensitive habitats shall not be impacted by the project. All plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that no impact to wetlands or other environmentally sensitive habitat is authorized by the California Coastal Commission.
- (c) Prior to commencement of construction, a barrier (such as but not limited to plastic mesh fencing) shall be placed between the construction areas and wetlands and environmentally sensitive habitats. Furthermore, prior to commencement of construction the off-pavement work areas, as identified in Section 1.d. of this Special Condition, shall be identified at the site using staking, fencing, or similar means. Barriers and other work area demarcations shall be inspected and approved by a qualified biologist. All barriers, staking, fencing shall be removed upon completion of construction.
- (d) Off-pavement construction activity shall be confined to the areas titled "disturbed annual grassland and existing bare slope" and "existing washed out area" depicted on the project plans dated June 26, 2001.
- (e) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- (f) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (g) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be

implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, installation of proper sedimentation control measures including silt fences or anchored straw bales at the base of the slope of the Mariners Drive spillway site, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs that are selected shall be maintained in a functional condition throughout the duration of the project.

Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into wetlands and coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a legal disposal site outside the coastal zone.

2. REVISED PLANS

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall show the following changes to the project:

1. Revisions to Project/Site Plan

- (a) All impacts to wetlands habitat shall be eliminated. Construction notes shall indicate that no wetland impacts are authorized.
- (b) In order to minimize the visual impact of the spillway, the spillway shall be designed as follows:
 - i. the structure will be constructed with concrete that has been colored with earth tones that are compatible with the adjacent bluff face and vegetation;
 - ii. white and black tones will not be used;
 - iii. the color will be maintained through-out the life of the structure;
 - iv. the structure will have a non-reflective texture to match the adjacent bluff face;
 - v. native vegetation will be planted around the structure which will grow to obscure the spillway from view but which will not interfere with the function of the structure.
- (c) In order to minimize the visual impact of the proposed fence, the fence shall be designed as follows:
 - i. The fence shall be no more than 3 feet high;
 - ii. The fence shall be designed and constructed to maximize public views through the fence. No solid fencing is allowed.
- (d) The project plans shall be modified to indicate retrofit of the three catch basins shown on the project plans dated June 26, 2001, with water quality improvement devices (e.g. catch basin filters).
- (e) As proposed by the applicant and approved by the CDFG in the amendment to streambed alteration agreement dated August 10, 2001, certain non-native plants within 125 feet of the project area shall be removed, including a Brazilian pepper tree at the base of the bluff, a stand of Peruvian pepper trees and myoporum (*Myoporum laetum*) to the southeast of the project site, and pampas grass to the northeast of the project site. The project plans shall be modified to show this element of the proposed project.

2. **Revisions to Re-vegetation Plan**

- (a) The re-vegetation plan shall substantially conform with *Re-vegetation Plan for the Mariners Drive Spillway Project* prepared by David Bramlet dated March 2001 and Revised June 2001 except that the plan shall be revised as follows:
 - (i) The re-vegetation plan shall include re-vegetation of any areas disturbed or denuded by the proposed project.
 - (ii) The re-vegetation plan shall include a plant palette showing the quantity and species of plants to be planted;
 - (iii) Plantings shall be of southern California native plants;
 - (iv) No permanent irrigation system shall be allowed. Only temporary irrigation to help establish the landscaping shall be allowed. The period of temporary irrigation (if necessary) shall be specified (e.g. number of months);
 - (v) The plantings established shall provide 90% cover in 90 days; and
 - (vi) All required plantings will be maintained in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the re-vegetation plan.
 - (vii) Re-vegetated areas shall be monitored for compliance with performance criteria for a period of at least 5 years. At the conclusion of the 5 year monitoring period, the applicant shall submit a monitoring report to the Executive Director indicating whether the project has successfully met the performance criteria and provide recommendations if the success criteria have not been met. If the performance criteria have not been met after 5 years, the applicant shall apply for an amendment or new coastal development permit to implement contingency measures to ensure the success of the re-vegetation.
 - (viii) Since no impacts to wetlands are authorized, any reference to mitigation (i.e. restoration/re-vegetation) for direct wetland impacts shall be eliminated from the re-vegetation plan.
 - (ix) As proposed, the applicant shall re-vegetate the areas adjacent to the rip rap as described in *Re-vegetation Plan for the Mariners Drive Spillway Project*. No substantial changes to this portion of the proposed plan shall occur.
 - (x) The re-vegetation plan shall be reviewed and approved by the California Department of Fish and Game prior to submittal for review and approval by the Executive Director of the Coastal Commission.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. **ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, erosion, landslide/slope destabilization; (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; and (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.

4. LEGAL INTEREST

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 999 S. Mariners Drive in the City of Newport Beach (Exhibit 1). The site is at the end of Mariners Drive, which slopes steeply and then levels out at a cul-de-sac where the proposed project would be sited. The cul-de-sac is at the bottom of the steeply sloping road but at the top of the bluff which faces onto Upper Newport Bay. The development proposed will occur within the existing roadway and upon the blufftop and bluff face adjacent to and below the roadway. The bluff is approximately 40 feet tall at this location. A portion of the Upper Newport Bay wetlands are located at the toe of the slope (Exhibit 3). Part of the project is within the Upper Newport Bay Ecological Reserve which is owned and managed by the California Department of Fish and Game.

The proposed project is to backfill and grade a bluff face to restore the bluff to its pre-El Nino (i.e. storm) contours and to construct a concrete spillway (Exhibit 2). The bluff face was deeply eroded during the El Nino storm events in 1997 and 1998 when large storm flow discharges either bypassed or overwhelmed the existing 24 inch storm drains and flowed over the sidewalk and adjacent bluff face. These storm flows created a shallow gorge in the bluff face. The shallow gorge created by the storm flows would be backfilled with approximately 50 cubic yards of soil and compacted. The area disturbed by project construction would be approximately 40 to 55 feet wide and 70 feet long (approximately 3,850 square feet) (Exhibit 2). The proposed spillway would be constructed on top of the reconstructed bluff face and is designed to direct flows that bypass or exceed the capacity of the existing storm drain system, in a controlled manner down the bluff face to prevent future storm induced erosion of the bluff face. The spillway would only be in use during large El Nino-type storm events. The existing upstream catch basins and storm drains would provide drainage for non-storm related low-flows and more frequent average storm events.

The proposed spillway would be 10 feet wide and 60 feet long, constructed of "brown colored" concrete, and would include a 7 foot long by 10 foot wide rip rap energy dissipator at the toe of the spillway. The rip rap would be covered by 6 inches of soil to disguise the rip rap. Mulefat and willow would be planted adjacent to the rip rap for water quality purposes. In addition, selected non-native plants including Brazilian Pepper Trees and Pampas Grass would be removed within approximately 125 feet of the project disturbance area. The project area would be re-vegetated with native plants. A 10 foot wide depressed sidewalk with curb and gutter would be constructed at the top of the spillway on Mariners Drive to direct flows from the street onto the spillway. In addition, a wood fence would be constructed to match the existing adjacent fence at the top of the bluff along Mariners Drive.

As previously stated, a portion of the project site is located within the Upper Newport Bay Ecological Reserve upon bluffs and adjacent to wetlands. Project plans submitted by the applicant indicate that approximately 150 square feet of saltgrass meadow wetland located at the toe of the proposed spillway would be impacted by construction activity (Exhibit 2, page 2). A re-vegetation plan dated March 2001 (revised June 2001) has been submitted to address mitigation of this impact. Meanwhile, a letter dated June 26, 2001, by the City of Newport Beach indicates that the 150 square foot wetland disturbance is a "worse case situation" due to "inadvertent" impacts from personnel and/or equipment access during construction.

As noted above, the proposed development would occur within the existing roadway and upon the blufftop and bluff face adjacent to and below the roadway. Except for the roadway and an existing split-rail wood fence, the subject site is undeveloped. A portion of the project will occur within the street right-of-way, which is owned by the City of Newport Beach, and upon property adjacent to the road which is owned jointly by the City of Newport Beach and the County of Orange. For instance, construction staging will occur within the paved roadway and a new wood fence will be constructed to join together two existing adjacent fences. The County has granted the City permission to carry out the project on their jointly owned land and has not joined as co-applicant (Exhibit 7). Meanwhile, a majority of the work will occur upon property owned by the California Department of Fish and Game and is within the Upper Newport Bay Ecological Reserve (UNBER). This work includes grading, construction of the spillway, exotic plant removal, and re-vegetation. A letter dated July 18, 2000, from the CDFG Wildlife Conservation Board indicates that CDFG will be granting an easement to the City of Newport Beach to allow construction, operation and maintenance of the proposed project on their land (Exhibit 6). Also, there is land adjacent to the project site which is owned by the California State Lands Commission (CSLC). A letter dated October 12, 1999, from the CSLC states that "...to the extent that the subject project will not extend bayward (easterly) of the adjudicated [high tide] line as shown on...[the grant deed recorded April 22, 1975]...the project will be located solely on lands owned in fee by the DFG and no authorization from the CSLC is required" (Exhibit 8). As required by Section 30601.5 of the Coastal Act, Special Condition 4 requires the applicant to submit evidence of all landowner approvals that are necessary to demonstrate that the applicant has the legal ability to undertake the proposed project, including the ability to comply with all conditions of this approval. In this case, the applicant would need to submit a copy of the easement from the CDFG Wildlife Conservation Board.

B. HAZARD

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed project is the reconstruction of a bluff face and construction of a new concrete spillway down the bluff face to handle flows from El-Nino type storm events (i.e. the 100-year¹ event)(herein also referred to as the 'design storm'). According to the applicant, the existing storm drain system is designed to handle up to a 50 year storm event. Storms larger than the 50 year event can overwhelm the storm drain system on Mariners Drive. In addition, during 50+ year storm events which discharge at the intensity experienced during 1997/1998, the volume of water, the storm intensity, and area topography cause storm flows to bypass the existing catch basins and collect in the cul-de-sac at the end of Mariners Drive. Catch basins in the cul-de-sac do not have adequate capacity to discharge the water, causing it to pool in the cul-de-sac. As the water pools in the cul-de-sac it flows down a residential driveway and floods a single family residence located at the end of the cul-de-sac. In addition, high velocity storm flows from these large storm events flow over a curb and sidewalk and over a bluff face into Upper Newport Bay. The storm flows have carved a gully into the bluff face and have discharged sediment into the wetlands located at the toe of the bluff in Upper Newport Bay. If erosion were to continue, bluff stability could be compromised along with the stability of Mariners Drive. The proposed spillway would be constructed where the storm flows wash over the sidewalk and bluff face. The spillway is designed to rapidly discharge water which would otherwise pool in the cul-de-sac and flood the adjacent residence. The spillway is also located in a position within the cul-de-sac to capture and discharge into Upper Newport Bay the high velocity storm flows which bypass the 'upstream' catch basins. The spillway is designed to prevent erosion of the bluff face and wetlands located at the toe of the bluff.

The applicant has investigated several alternatives to the proposed spillway. In order to address the flooding and erosion problems observed at the site, any alternative would need to have the ability to handle the design storm conditions (i.e. capable of transmitting approximately 130 cubic feet per second of storm run-off). One alternative is to expand the existing storm drain system to handle larger flows. In response to storms in 1978 and 1983, the City did expand the existing storm drain system from a 25-year capacity to a 50-year capacity. However, this expansion did not fully address the problem because high velocity storm flows still bypass the expanded storm drains. Further expansion of the existing storm drains would not be able to capture the water flowing rapidly down Mariners Drive toward the cul-de-sac. In addition, expansion of the existing storm drains would require the installation of larger capacity storm drain outfall pipes. Installation of larger pipes would require grading within habitat that is presently undisturbed whereas the proposed project would grade only within areas that have already been disrupted by erosion. In addition, until this alternative, grading at the subject site would still be needed to repair the gully which was eroded into the bluff face. Therefore, this alternative would have larger landform alteration and habitat impacts than the proposed project.

A second alternative would be to install a new below grade catch basin and storm drain line in the alignment of the proposed spillway. A below grade system would be advantageous from a visual standpoint. However, the City has indicated that a very large catch basin and oversized storm drain line would need to be constructed to handle the large volume, high intensity storm flows that the proposed spillway is designed to handle. This structure would require extensive grading of the bluff face, rather than the minimal grading needed for the spillway. This additional grading would involve more landform alteration and would disturb more habitat than the proposed spillway.

¹ The City of Newport Beach has indicated that the spillway was designed to handle the flows generated by the large El-Nino storm events of 1997 and 1998. Calculations were based upon rainfall volume and intensity from that period. The City did not attempt to label the 1997/1998 El Nino storm events because various technical reports indicate that these storms represent anywhere between a 100-year event to a 200-year event. For simplicity, these findings will characterize the capacity of the spillway as handling a 100-year storm event.

The applicant also investigated a spillway designed as a vegetated swale with buried rip rap rather than construction of a concrete spillway. The applicant also looked at a vegetated stepped or terraced slope. However, the applicant determined that the large volume, high intensity storm flows would scour the vegetation that was planted and erode the bluff. Therefore, these designs would not address the erosion problem.

Finally, the applicant investigated the possibility of obstructing the overspill point with a raised curb or wall and directing flows back toward the existing storm drains. Increasing the curb height would deflect the flows and also provide additional water storage capacity within the cul-de-sac. The applicant calculated that the existing cul-de-sac has a retention capacity of 2,350 cubic feet of storm water. This capacity is exceeded during the design storm within 20 minutes. If the curbs were raised to 12 inches, the capacity of the cul-de-sac would increase to 4,030 cubic feet, which would be exceeded by the design storm within 30 minutes. Under this alternative, adjacent homes would continue to be flooded. In addition, once the retention capacity of the cul-de-sac was exceeded, water would flow around the raised curb or wall causing bluff erosion at two locations, as opposed to the current single location. Accordingly, since the proposed spillway design would provide design storm capacity, would minimize landform alteration and habitat impacts and would address the erosion problem, the proposed project was selected.

Although the proposed development will improve flooding and erosion issues at the site, flooding and erosion from storms which exceed the design capacity are still possible. Given that the applicant has chosen to implement the project despite the risks, the applicant must assume the risks. Accordingly, the Commission requires, as a condition of approval, Special Condition 3, which requires that the applicant to agree to assume the risks associated with the project and acknowledge that flooding, erosion, and associated landslide/slope destabilization hazards remain, even with implementation of this project, and that the applicant waives any claim of liability against the Commission. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

C. BIOLOGICAL RESOURCES

Section 30240(b) of the Coastal Act 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.

Section 30107.5 of the Coastal Act defines environmentally sensitive area as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an

ecosystem and which could be easily disturbed or degraded by human activities and developments.

The policies of the City of Newport Beach certified Land Use Plan state:

1. *Environmentally sensitive areas shall be preserved and protected. The following types of habitats shall be considered environmentally sensitive:*
 - a. *Areas supporting species which are rare, endangered, of limited distribution, or otherwise sensitive*
 - b. *Riparian areas*
 - c. *Freshwater marshes*
 - d. *Saltwater marshes*
 - e. *Intertidal areas*
 - f. *Other wetlands*
 - g. *Unique or unusually diverse vegetative communities*
2. *Except as provided in the following policies, no structures will be allowed in any of the sensitive areas listed above. The Planning Commission and/or City Council will determine whether the site in question falls within any of these areas consistent with the purposes of the Local Coastal Program and using information documented in the EIR. The mapping by the Department of Fish and Game will be used as a basis for the environmental studies.*
3. *Policies 1 and 2 above are not intended to prevent public agencies and private property owners from maintaining drainage courses and facilities, sedimentation basins, public infrastructure, and other related facilities in a safe and effective condition with minimal impact on the environment, nor are they intended to prohibit public infrastructure when the environmental process demonstrates that adverse impacts can be mitigated, or that the benefits outweigh the adverse impacts...*

The proposed project includes development located adjacent to and within the Upper Newport Bay Ecological Reserve (UNBER), a sensitive habitat area. Significant sensitive habitat and species are supported in UNBER. The City's certified Land Use Plan summarizes the importance of UNBER as follows:

The Reserve has been identified by the State Coastal Commission, State Department of Fish and Game, U.S. Fish and Wildlife Service, and the Southern California Association of Governments as a unique and valuable State resource. The upper bay is an integral part of the Pacific Flyway, and the saltwater marsh, bay waters, and upland of upper Newport Bay provide habitat for 158 species of birds, of which 81 species are wading or water-associated birds. Rare or endangered birds utilizing the Reserve include the California Black Rail, which nests in pickleweed, sedges, saltgrass, and bulrush; Belding's Savannah Sparrow, which nests in pickleweed; Light-footed Clapper Rail, which nests in pickleweed and cordgrass; California Least Tern, which lays its eggs in the sand; and California Brown Pelican, which occasionally visits the upper bay for purposes of resting and feeding. Also present in the Reserve are 18 species on the Audubon Blue List, a list of birds not considered rare or endangered, but which are showing evidence of non-cyclic population declines or range contractions. Over 60 species of fish and over 1,000 species of marine invertebrates have been reported in the bay.

The proposed development is located along the western flank of Upper Newport Bay at the western property boundary of UNBER. The subject property is largely undeveloped, however, property lots which flank the subject site and run along the top of the bluff are developed with single family homes. Disturbance of the bluff face by erosion and the encroachment of non-native vegetation from adjacent land uses have degraded any native habitat present along the top of the bluff and upon the face of the bluff at this location.

In order to document biological resources at the site, a biological impact assessment titled *Biological Assessment of the Mariners Drive Spillway Project (Project 999.5)* dated December 2000 by David Bramlett was prepared for the project site. This assessment states "...[t]he Mariners Drive spillway site is dominated by disturbed annual grassland with a small area of alkaline meadow, and horticultural plant communities." Upper tidal zone salt marsh is located east of and adjacent to the project site (Exhibit 3).

1. Habitats and Species Present

The habitat area identified as "disturbed annual grassland/bare ground" contains naturalized, annual grasses and forbs. Grass species present in the project area consist of ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis*), soft chess (*Bromus hordeaceus*), foxtail barley (*Hordeum murinum* ssp. *leporinum*), slender wild oat (*Avena barbata*), St. Augustine grass (*Stenotaphrum secundatum*), Bermuda grass (*Cynodon dactylon*) and foxtail fescue (*Vulpia myuros*). Forbs include summer mustard (*Hirschfeldia incana*), red-stemmed filaree (*Erodium cicutarium*), prickly ox tongue (*Picris echioides*), bur clover (*Medicago polymorpha*), common horseweed (*Conyza canadensis*), tocalote (*Centaurea melitensis*), nettle-leaved goosefoot (*Chenopodium murale*), common sow thistle (*Sonchus oleraceus*), scarlet pimpernel (*Anagallis arvensis*), cheese weed (*Malva parviflora*), curly dock (*Rumex crispus*), Italian thistle (*Carduus pycnocephalus*), yellow sweet clover (*Melilotus indica*), and common knotweed (*Polygonum arenastrum*). In addition, shrubs found in the area include coastal goldenbush (*Isocoma menziesii*), coastal prickly pear (*Opuntia littoralis*), and a single lemonade berry (*Rhus integrifolia*) shrub. This habitat type is located at the top and on the face of the bluff. The footprint of the proposed spillway and rip rap would occur within this habitat type.

At the base of the bluff and at the toe of the proposed spillway there are alkali meadow wetlands. The biological assessment states that "...the alkaline meadow is characterized by perennial, non-emergent herbs common to habitats of high alkalinity or salinity. This meadow is found at the base of the slope for the proposed project, and along a bench of habitat, approximately 3 ft. above the existing salt marsh. This meadow consists of dense stands of saltgrass (*Distichlis spicata*), that extend to the base of the slope. Other species found in this meadow habitat include slender wild oat, Bermuda grass, bristly ox tongue, wild radish (*Raphanus saliva*), ripgut brome, Saint Augustine grass, black mustard (*Brassica nigra*), and uncommonly alkali heath (*Frankenia salina*)."

Finally, the biological report states "...the upper salt marsh of Newport Back Bay is found approximately 20 ft. from the toe of the slope of the proposed project site. This marsh area is approximately 3 ft. below the alkaline meadow habitat found along the base of the slope. This community consists of dense stands of fleshy jaumea (*Jaumea carnosa*), common woody pickleweed (*Salicornia virginica*), Olney's bulrush (*Scirpus americanus*), saltgrass, and alkali heath. Other less common species consisted of curly dock, California marsh rosemary (*Limonium californicum*), saltgrass, alkali heath, bristly ox tongue, coastal bulrush (*Scirpus robustus*), arroyo willow (*Salix lasiolepis*), yellow sweet clover, and pampas grass (*Cortaderia selloana*).

The lower zone marsh composed of California cord grass (*Spartina foliosa*) is found 50 ft. to the east of this marsh. This marsh consists of extensive cord grass stands, along this portion of the west Bay."

As noted in the project description, there are several invasive plant species in the project area that the applicant will remove as part of the proposed project. These plants include a Brazilian pepper tree (*Schinus terebinthifolius*) at the base of the bluff, a stand of Peruvian pepper trees with a single myoporum (*Myoporum laetum*) to the southeast of the project site, and pampas grass to the northeast of the project site.

Wildlife observed in the project area include the side-blotched lizard. Other species such as the western fence lizard and gopher snake are expected to be present in the project area but were not observed. Mammals anticipated but not observed would include the California ground squirrel, Botta's pocket gopher, and desert cottontail. The biological report goes on to state that "...[b]irds on the project site would include those common in urban areas, as well as species found in the upland/wetland habitats around the Bay. Raptors noted flying over the project site included the turkey vulture and red-tailed hawk. European starlings, house finch, English sparrow, black phoebe, Anna's hummingbird (observed), American crow (observed) and mourning dove would be expected to occur on the upper margins of the site. Northern mockingbirds, red-shafted flicker, white-crowned sparrow, song sparrow, California towhee, and marsh wren were observed at the base of the slope or in adjacent areas along the base of the bluff."

Shorebirds and waterfowl observed in the salt marsh and mudflats east of the project site included American avocet, great egret, snowy egret, willet, and Belding's savannah sparrow. Species noted in the Bay included Brown pelican, western grebe, bufflehead, American widgeon, northern pintail green-winged teal, cinnamon teal, northern shoveler, and California gull.

2. Sensitive Habitats and Species

The biological report identifies sensitive plant and animal species as those listed by the state or federal government as endangered, threatened or rare and species which are candidate for future listing. In addition, the biological report considers species listed on the California Natural Diversity Database (CNDDDB), species noted by the County of Orange, and species on the California Native Plant Society (CNPS) rare plant inventory to be sensitive. The biological report identifies sensitive habitats as those considered to be "depleted" habitats of special interest to the CDFG, County of Orange or those communities considered Environmentally Sensitive Habitat Areas (ESHA) by the California Coastal Commission in the Statewide Interpretive guidelines.

According to the biological report, sensitive plants species which have the potential to occur in the project area include southern tarplant, spiny rush, California boxthorn, spiny rush, woolly seablite and Coulter's saltbush. However, none of these species were found on the proposed spillway site or within the adjacent alkaline meadow habitat. In addition, several sensitive animal species are found within UNBER, however, none were observed or would be anticipated to occur on the proposed spillway site.

The federally endangered California Brown Pelican was observed foraging in the open water of the bay, and the California endangered Belding's savannah sparrow was observed foraging in California cord grass, approximately 200 ft. northeast of the project site. However, the proposed project would not directly impact habitat occupied by these sensitive species.

Sensitive habitats within and adjacent to the project site includes the Alkaline meadow wetland which is along the boundary of the proposed spillway and could potentially be impacted by construction activity. The biological report states that "...[t]his habitat probably receives only infrequent inundation from extremely high tides, and fresh water from slope runoff. The dominant species in this meadow, saltgrass is considered a Facultative wetland species (Reed 1988), and the other species in this habitat are either Facultative or upland species. Although a marginal wetland habitat, the dense grasses of this meadow serve as an excellent filter to the upper zone of the salt marsh found below this habitat." As proposed, up to 150 square feet of this habitat would be impacted by the project.

In addition, the biological report identifies the salt marsh habitat at the base of the bluff to be sensitive habitat. This habitat receives regular tidal inundation and is considered an estuarine wetland.

3. Impacts

The City's certified Land Use Plan summarizes the types of impacts which have degraded habitat in UNBER:

Substantial sediment deposition has occurred in upper Newport Bay. Sources of sediment include...landslides, and construction projects. The occurrence of three extremely wet winters (1969, 1978, and 1980) resulted in the major transport of sediment to the bay. The extensive sedimentation that has occurred has adversely affected the Upper Newport Bay Ecological Reserve due to loss of tidal prism. In addition, suspended sediments can lead to reduction of photosynthetic activity and can interfere with filter feeding mechanisms of marine life-forms...the City of Newport Beach has participated in 208 planning studies to develop a solution to this problem. This solution involves utilization of Best Management Practices (BMP's) to retain...construction sediment on-site...

As outlined above, the bluffs at the subject site have been subject to erosion during significant storm events. The proposed project is necessary to prevent additional erosion and sedimentation of wetlands at the project site and within the UNBER. The proposed project will also address a flooding problem at the single family residence located at the end of Mariners Drive. If no action is taken the bluff would continue to erode resulting in sedimentation and subsequent degradation or elimination of the sensitive wetland at the base of the bluff. The proposed corrective measure is to backfill and compact the bluff face where erosion has occurred and install a concrete spillway that would direct and discharge storm flows in a non-erosive manner which would prevent erosion of the bluff face. Accordingly, protection of existing habitat within the project area is dependent upon installation of the spillway. The proposed project would also remove non-native invasive plant species in the project area that could displace native sensitive habitats and plant and animal species. Removal of non native invasive plants would protect and enhance native habitat. The California Department of Fish and Game has authorized the removal of selected non-native plants within UNBER (Exhibit 5b).

The proposed project could have several construction related impacts upon sensitive habitat. For instance, soil disturbed by grading could slough off the bluff face and cause sedimentation impacts upon the wetlands at the toe of the bluff. In addition, construction activity and equipment storage/staging could cause impacts by trampling adjacent sensitive habitats and discharging oil, grease and other chemicals to sensitive habitats.

The applicant has identified mitigation measures to address construction phase habitat trampling and construction phase sedimentation impacts upon existing wetlands. The proposed mitigation measures are as follows:

Mitigation Measure M-1. Environmentally sensitive habitats not to be impacted by the proposed project shall be marked by orange plastic mesh fencing, before the start of construction. Required storage areas for equipment or supplies at the base of the slope at the Mariners Drive spillway site shall also be marked and these will be the only areas allotted for use by the contractor on this project. The fencing of the ESH habitats shall be inspected and approved by a qualified biologist hired by the City of Newport Beach. Required staging and storage areas at the base of the slope will be limited to areas of bare ground/disturbed grassland found on the southern portion of the project area and these will be the only areas allotted for use by the contractor for this project. These areas will be clearly marked on the existing 1"=10' maps of the project site, and clearly marked in the field.

Mitigation Measure M-2. The contractor shall be required to install proper sedimentation control measures, including but not limited to silt fences, or anchored straw bales, at the base of the slope of the Mariners Drive spillway site, for either the duration of the construction period and/or before any potential rainfall event.

The applicant has indicated that up to 150 square feet of alkali meadow wetland at the toe of the bluff may be impacted by construction activity. The applicant has prepared a re-vegetation plan to address this impact which includes salvage of the saltgrass sod and topsoil in the disturbance area, soil preparation, erosion and weed control, sod re-planting, maintenance and monitoring, and contingency plan if the re-vegetation fails. In addition to the re-vegetation of the 150 square foot wetland disturbance area, the re-vegetation plan also includes the planting of approximately 50 square feet of mulefat and arroyo willow in two 25 square foot patches flanking the proposed rip rap. The applicant and CDFG have signed a Streambed Alteration Agreement which authorizes the impact and mitigation (Exhibit 5).

The applicant has indicated that the disturbance to 150 square feet of wetland is the maximum anticipated impact. However, the City has indicated that disturbance to wetlands is avoidable. Construction corridors and staging could be designed to avoid the wetland areas. Since wetland impacts are avoidable and since Section 30240 of the Coastal Act mandates the protection of sensitive environmental areas, the Commission imposes Special Condition 1.b. which requires the applicant to avoid all impacts to wetlands. Special Condition 1.c. requires the applicant to place a temporary barrier between construction areas and sensitive habitat areas on the project site and to provide an on-site biological monitor. Special Condition 1.a. and 1.d. requires that the applicant stage and store equipment and materials within the Mariners Drive cul-de-sac as shown on the applicant's plans dated June 26, 2001 and received in the Commission's offices on July 2, 2001. Other than the proposed non-native vegetation removal, Special Condition 1.d. requires the applicant to confine all off-roadway construction related activities to the area shown on the plans as "disturbed annual grassland and existing bare slope" and "existing washed out area". Special Condition 2.A.1.a. and 2.B. also requires the applicant to modify the plans to eliminate the proposed impacts to wetlands and to include a notation on all project plans and specifications that wetland impacts shall be avoided and no wetland impacts are authorized by the Coastal Commission. Special Condition 1 also incorporates the applicant's proposed mitigation measures with modifications to ensure the avoidance of impacts to wetlands and consistency with the requirement outlined herein.

Grading and site preparation associated with the project would disturb approximately 3,850 square feet of bare ground and non-native grassland habitat upon the bluff face. Upon completion of construction, the spillway itself would occupy approximately 700 square feet, leaving the balance of the area (approximately 3,150 square feet) as available habitat. At this location, the loss of bare ground and non-native grassland which is not occupied by sensitive plant and animal species would not result in the loss of any environmentally sensitive area as defined under Section 30107.5 of the Coastal Act. However, while the applicant is proposing construction phase measures to control soil erosion and associated impacts, the applicant has not proposed measures to re-vegetate the 3,150 square feet of denuded soil. Once the construction phase measures are removed upon completion of the project, this denuded soil could erode causing sedimentation of the wetlands at the toe of the slope. In order to avoid this impact, the Commission imposes Special Condition 2.A.2. and 2.B. which requires the applicant to submit a revised re-vegetation plan to re-vegetate any areas denuded by the proposed project. The plant palette shall be of plant species native to the project area. The final plan shall be reviewed and approved by the California Department of Fish and Game prior to submittal for review and approval by the Executive Director of the Coastal Commission.

Also, if not properly controlled, accelerated runoff from the concrete spillway could cause erosion of the wetlands below the spillway. However, the applicant proposes to mitigate this potential impact with the proposed 10 ft. wide rip-rap energy dissipator at the base of the spillway.

The proposed project is necessary to prevent impacts to the Upper Newport Bay Ecological Reserve. If left unabated, the bluff would continue to erode causing sedimentation of wetlands in the UNBER. As conditioned, the project is a use that is compatible with the continuance of the habitat and recreation values within UNBER. Therefore, as conditioned, the Commission finds that the proposed project is consistent with section 30240 of the Coastal Act.

D. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters 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.

The project site is a partially vegetated and un-vegetated bluff face. If left uncorrected, the eroding gully on the bluff face could continue to widen and deepen, removing vegetation and

discharging sediment into the Upper Newport Bay Ecological Reserve. The proposed project would backfill the gully and install structure to control storm water discharges and associated erosion. By correcting an erosion problem on the bluff face the proposed project decreases potential impacts upon water quality caused by sedimentation and turbidity.

The proposed project would discharge storm flows from developed residential areas and streets into the UNBER. Storm flows from residential areas are commonly polluted with petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity both of which reduces the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The proposed spillway would only operate during extreme El-Nino type storm events. Low flows from nuisance run-off and storm flows from more typical storms would be captured and discharged by existing catch basins which are located 'upstream' of the proposed spillway. The existing catch basins would continue to operate as they presently do and the catch basins are not going to be modified as part of the proposed project. Also, during the larger storm events, the first flush would be expected to be captured by the existing catch basins. Only the larger flows from the extreme storm events would bypass the existing catch basins and flow into UNBER via the proposed spillway. Accordingly, the most pollutant-laden water would be discharged via other existing facilities and not by the proposed spillway. If, on the other hand, low flows were to unexpectedly flow down the spillway, the flows would be filtered by the rip rap and proposed wetland vegetation at the toe of the spillway. If the spillway were to be fitted with filtration devices designed to detain and treat flows, these facilities would interfere with the intended function of the spillway which is to facilitate the rapid discharge of flows from large high intensity storms in a non-erosive manner.

Mariners Drive and the other streets within the drainage area are cleaned by street sweepers on a weekly basis. In addition, it should be noted that the existing catch basins are fitted with trash racks to capture large debris. These measures serve to improve the quality of water discharged from the drainage area to UNBER. However, the existing catch basins have not been retrofitted with modern water quality improvement devices such as catch basin filters. Since the existing catch basins, rather than the proposed infrequently used spillway, would transmit most of the pollutant laden water within the drainage area, logically these catch basins should be designed to filter water rather than require the proposed spillway to filter the storm flows. Accordingly, the applicant has proposed to retrofit the 3 catch basins near the spillway with water quality improvement devices, such as catch basin filters. In order to implement the City's proposal, the Commission imposes Special Conditions 2.A.1.d. and 2.B.

Also, as noted in the biological resources section of these findings, construction related impacts to water quality are possible under the proposed project. For instance, the project involves the removal of vegetation and grading of a bluff slope. During storm events, sediment from the un-vegetated slope could be discharged into UNBER causing degradation of water quality. The proposed development includes best management practices to reduce construction related sedimentation impacts to UNBER, including the placement of a barrier between the project site

and adjacent UNBER, to intercept any soils which may be discharged from the site during construction. In order to protect biological resources and water quality, the Commission has imposed Special Condition 1 and Special Condition 2.

Finally, the applicant submitted an application for review to the Santa Ana Regional Water Quality Control Board. However, according to a letter from the City of Newport Beach dated November 10, 1999, Mr. Ken Theisen of the RWQCB informed the City that no review by the board was necessary. As conditioned, the Commission finds the project is consistent with Section 30230 and 30231 of the Coastal Act.

E. VISUAL IMPACTS

Section 30251 of the Coastal Act states, in part:

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. New development in highly scenic areas...shall be subordinate to the character of its setting.

The proposed development is visible from Back Bay Drive, a public roadway and pedestrian and bicycle trail approximately one half mile east of the site on the opposite side of Upper Newport Bay. Upper Newport Bay is a scenic area that is identified in the City's certified Land Use Plan as a significant public view area.

The proposed project involves the installation of a fence at the top of the bluff and a 10 foot wide by 60 foot long concrete spillway from the top of the bluff down to the toe of the bluff. These structures will be present in an area visible from significant public viewing areas. If the fence is not designed to blend with the existing adjacent fence and the spillway is not designed appropriately, the proposed structures would not be subordinate to the character of their setting. In addition, an inappropriately designed fence could block existing public views from Mariners Drive where there is an expansive view of Upper Newport Bay.

The plans dated June 26, 2001, indicate that a fence will be constructed to match the existing adjacent fence. However, the design of the existing fence or proposed fence is not shown on the plans. The existing adjacent fence is a split rail, wood fence approximately 3 feet high. Views through the existing fence are largely unobstructed. In order to assure that the proposed fence will not obstruct views, the Commission imposes Special Condition 2.A.1.c. and 2.B., which requires the applicant to submit revised plans showing that the new fence will be designed to minimize the obstruction of public views similar to the existing adjacent split rail, wood fence.

Also, the proposed project would result in the grading of a bluff face, which is a natural landform. The project would have an adverse visual impact if it were to alter the natural appearance of the bluff. However, the gully which has formed in the bluff face was generated by the high volume of water flowing down impervious roadway and overwhelming or bypassing existing drainage systems. Accordingly, the gully was not formed by the natural mechanical erosion that is normally associated with bluffs. The proposed grading would simply restore the bluff to its previous contours, thus restoring and reducing the alteration of the natural landform. In addition, the proposed project would protect the natural bluff landform from future erosion caused by human development.

In addition, the applicant is proposing to construct the spillway structure of "brown colored" concrete in order to minimize the visual impact of the project. In order to assure that this proposal is implemented and to provide detailed specifications regarding the color and texture of the spillway, the Commission imposes Special Conditions 2.A.1.b. and 2.B. Special Conditions 2.A.1.b. and 2.B. requires the spillway to be colored to match the color of the adjacent soil on the bluff face and to be textured so that surfaces are not reflective. In addition, Special Condition 2.A.1.b. and 2.B. requires the applicant to plant native vegetation around the spillway to minimize the visibility of the structure from public vantage points. Thus, the project is designed to protect views and to be visually compatible with the character of the surrounding area. As conditioned, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act to protect scenic quality in the area.

F. PUBLIC ACCESS

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the first public road and the sea include a specific finding regarding the conformity of the proposed development with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the first public road and Upper Newport Bay.

Section 30210 of the Coastal Act requires that maximum public access and recreation opportunities be provided. Section 30210 states as follows:

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

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

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

...

(2) adequate access exists nearby.

The proposed project is being constructed along the bluff top and bluff face between Mariners Drive and Upper Newport Bay. Mariners Drive is a residential street where public use would tend to be low. However, views from the project site of Upper Newport Bay are impressive and public access to such views must be maintained. The proposed project would obstruct access to the site during project construction. However, upon completion of the project, access would be restored.

The City's certified Land Use Plan designates the subject site for "Recreational and Environmental Open Space". 'Drainage courses' such as the proposed project is an allowable use within this land use designation. In addition, the certified Land Use Plan shows a "walkway/bikeway/pedestrian way" along Mariners Drive, passing through the subject site and connecting to a fairly continuous "walkway/bikeway/pedestrian way" along the water's edge of Upper Newport Bay (Exhibit 4). Presently, there are no paved walkways, bikeways or pedestrian ways on the site. However, there are unpaved, informal paths going down the bluff face and paralleling the toe of the bluff at the

site. These paths appear to have been created by foot traffic and are not engineered or designed features.

There are at least two foot paths descending the bluff face at the subject site. The first proceeds due north from the end of the cul-de-sac at Mariners Drive. This foot path traverses the face of the bluff and provides relatively level access to the bottom of the bluff. The proposed project would not interfere with this pathway. The second foot path descends from the western edge of the cul-de-sac, immediately south of the proposed spillway. This foot path is very steep and difficult to traverse. Grading and re-vegetation from the proposed project could eliminate this pathway. However, the proposed spillway could be used as a foot path to the bottom of the bluff in place of the steep foot path which may be graded as part of the project. The spillway would be more level and safer to traverse than the foot path which may be impacted by the project.

There is also a foot path paralleling the toe of the bluff. The path at the toe of the bluff comes from the south along the edge of Newport Bay, passes through the site, and continues north for several hundred feet before fading into un-trampled vegetation. Steep bluffs and a promontory which intersects the wetlands of Upper Newport Bay obstruct passage beyond the northerly end of the path. The proposed spillway would intersect the informal path which parallels the toe of the bluff. However, the spillway structure would be placed flush with the ground. In addition, there will be an approximately 6 foot wide area between the rip rap at the toe of the spillway and adjacent wetlands. One branch of the existing informal path runs through this 6 foot wide buffer. Therefore, the proposed project would not obstruct passage of the existing foot path paralleling the toe of the bluff.

The proposed project would have a temporary construction phase impact on the ability of the public to access the site. However, the site is not in a frequently visited area and upon completion of construction, access to the site would be restored. In addition, the project would intersect, but not obstruct, an existing informal pathway along Upper Newport Bay. The proposed project would not prevent future trail improvements. Therefore, the Commission finds the proposed development is consistent with Section 30210 and 30212 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

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

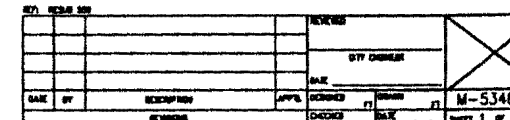
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal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

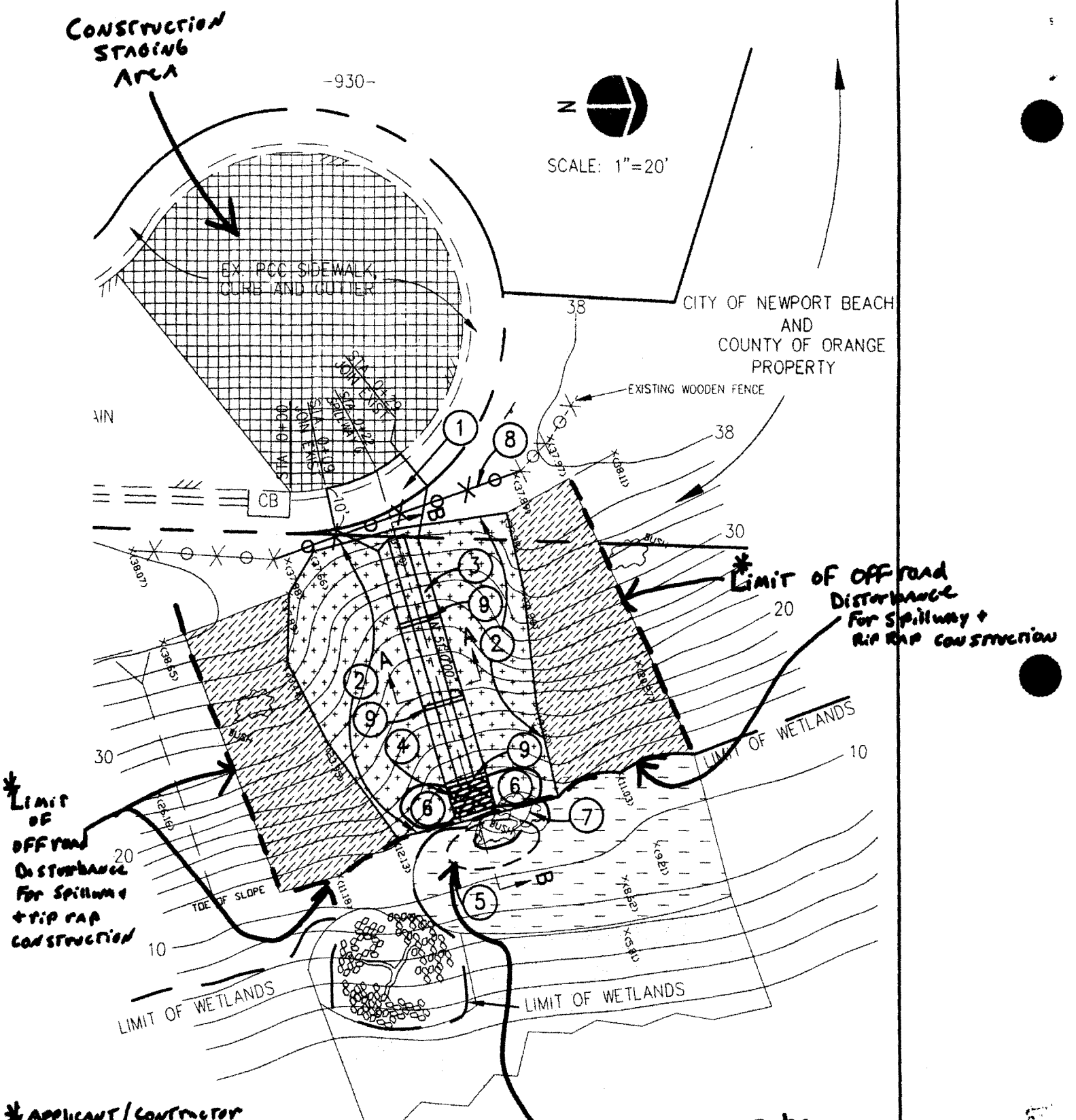
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a

proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located on a bluff face that is immediately adjacent to sensitive habitat area. The proposed development has been conditioned, as follows, to assure the proposed project is consistent with the resource protection policies of the Coastal Act: identification of construction responsibilities including restrictions on construction staging, protection of wetlands, and use of best management practices including erosion control; submittal and conformance with revised plans to indicate avoidance of wetland impacts, use of color, texture, and vegetation to disguise the spillway, and construction of a fence which will minimize the obstruction of public views; a requirement that the applicant agree to assume the risks associated with the development; requirements to re-vegetate soil disturbed by the proposed project; and submittal of proof of legal ability to undertake the proposed development. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the policies of the Coastal Act.





*APPLICANT/CONTRACTOR
ALLOWED TO REMOVE NON-NATIVE
VEGETATION OUTSIDE
BOUNDARY PER
PROPOSAL + CDPG
APPROVAL

-15-71
ATION 93.85

Wetland Impact Area To be
Avoided Per Special Cond. 142

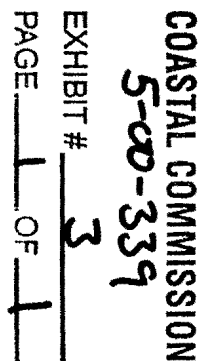
COASTAL COMMISSION

5400-339

EXHIBIT # 2
PAGE 2 OF 2

REF: RESUB 559				REVISED: 6/26/01				5	
					REVIEWED		EXHIBIT # PAGE		
					CITY ENGINEER				
					DATE				
DATE	BY	DESCRIPTION	APP'D.	DESIGNED	FT	DRAWN	FT	M-5346-S	
REVISIONS				CHECKED	LD	DATE	6/26/01	SHEET 1 OF 1	

FIGURE 4



DAG/BG - Disturbed Annual Grassland/Bare Ground

SM - Salt Marsh

AM - Alkaline Meadow

Ho-	Horticultural
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COASTAL COMMISSION

5-00-339

EXHIBIT # 4

PAGE 1 OF 1

CITY OF NB CERT. LUP

LUP
Trail
Designation
(currently an
informal path)

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

Notification No. 5-102-99
Page 1 of 4

RECEIVED
South Coast Region
AUG 21 2001
CALIFORNIA
COASTAL COMMISSION

OCT 25 1999

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 Ed Wimmer of City of Newport Beach: 3300 Newport Blvd. Newport Beach, CA 92663: 949-644-3325, 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 24th day of March, 1999, 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): Upper Newport Bay, a tributary to the Pacific Ocean, Orange County, California.

WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within Upper Newport Bay, specifically identified as follows: birds: clapper rail, great blue heron, common egret, mallard duck, other waterfowl, songbirds; 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 August 31, 2000 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

COASTAL COMMISSION

5-w-339

EXHIBIT # 5a

PAGE 1 OF 4

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 construct a brown concrete spillway (10 ft wide, 0.5 feet thick, 60 feet long) interspersed with rip rap for the purpose of protecting the adjacent properties from flooding during extreme storm events. This project will temporarily impact 50 ft² of stream. The project site is located below Mariners Drive in the City of Newport Beach.

3. The agreed work includes activities associated with No. 2 above. The project area is located in Upper Newport Bay, a tributary to the Pacific Ocean, 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 50 ft² of stream. All impacts are temporary.

5. The Operator shall mitigate as follows:

a) Rip rap shall be covered with native soil and vegetated with cattails, and 1 gallon willow and mulefat container plants or cuttings, as appropriate for hydrology.

b) Pepper trees that occur within 100 feet of the work area shall be removed by cutting with hand tools, painting the stumps with herbicide, and removing the debris.

All mitigation shall be installed within 30 days of project impact and no later than December 1, 1999.

6. The Operator shall not remove vegetation within the stream from March 15 to July 15 to avoid impacts to nesting birds.

7. No equipment shall be operated in ponded or flowing areas.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

COASTAL COMMISSION
3-00-339

EXHIBIT # 59
PAGE 2 OF 4

13. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.
14. Staging/storage areas for equipment and materials shall be located outside of the stream.
15. 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.
16. 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.
17. 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.
18. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season.
19. An annual letter shall be submitted to the Department by Jan. 1 of each year for 3 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species.
20. Access to the work site shall be via existing roads and access ramps.
21. 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.
22. 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.
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. 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.
25. 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.

COASTAL COMMISSION
5-102-339

EXHIBIT # 59
PAGE 3 OF 4

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

27. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 330 Golden Shore, Suite 50, Long Beach, CA 90802, Attn: ES.

28. 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.

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

- The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- The project or project activities as described in the Notification/Agreement have changed;
- 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.

30. 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

Edward J. Wimmer 6/10/99
(signature) (date)

SENIOR CIVIL ENGINEER
(title)

C. Raybrook 7/12/99
(signature) (date)

REGIONAL MANAGER,
DFG SOUTH COAST REGION
ENTHUSIASTIC
(title)

COASTAL COMMISSION
5-102-339

EXHIBIT # 59
PAGE 4 OF 4

DEPARTMENT OF FISH AND GAME

South Coast Region (Region 5)
Habitat Conservation Planning
4949 Viewridge Avenue
San Diego, California 92123
Tel. No. (858) 467-4201/02
FAX No. (858) 467-4299



August 10, 2001

William Patapoff, P.E.
City of Newport Beach
Public Works Department
P.O. Box 1768
Newport Beach, CA 92658-8915

Subject: Amendment No. 2 to Agreement Regarding Stream or Lake Alteration Notification
No. 5-102-99 (Mariners Drive Slope Repair Project)

Dear Mr Patapoff:

The City of Newport Beach has requested to amend Agreement Regarding Stream or Lake Alteration Notification No. 5-102-99 (Agreement) to expand the mitigation area associated with the project. Pursuant to the Agreement, the City has agreed to remove invasive exotic vegetation (consisting primarily of Brazilian Pepper trees) within 100 feet of the edges of project impact zone. Per your letter of June 26, 2001, you informed the Department of Fish and Game (Department) that the California Coastal Commission has requested that the City of Newport Beach remove all the Brazilian Pepper trees and Pampas Grass in the vicinity of the project area, which (per a August 7, 2001, telephone conversation with Mr. Fong Tse of your staff) would require the City to expand its mitigation work area by approximately 25 feet in each direction.

Per said telephone conversation, Public Works staff confirmed that no additional activity will occur in wetland areas delineated on the plan sheets enclosed with your letter, including foot traffic to access the invasive exotic vegetation. It is most probable that the Environmental Specialist that prepared the Agreement thought that these additional invasive exotic plants identified by the Coastal Commission staff were included in the mitigation work area identified in the Agreement. Therefore, the Department has no objection to the removal of the additional exotic invasive vegetation occurring within the project's vicinity, and hereby amends Condition No. 5(b) of the Agreement to expand the mitigation area to include the additional area, and to amended the mitigation installation date as follows: All mitigation shall be installed within 30 days of project impact, and no later than December 31, 2001.

In addition, Condition No. 25 of the Agreement is amended as follows:

COASTAL COMMISSION
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EXHIBIT # 5b
PAGE 10 OF 42

William Patapoff, P.E.
August 10, 2001
Page 2

Amendment No. 2 to SAA No. 5-120-99

25. The Operator shall provide a copy of this Agreement and all amendments and extensions thereto to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement and all amendments and extensions thereto 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.

All other conditions and terms of the Agreement and amendments and extensions thereto remain enforce. If you find the terms and conditions of this amendment acceptable, please countersign where indicated, make a copy of the amendment for your use, and return the signed amendment to the address listed above.

The Agreement and the amendment thereto dated November 22, 1999, contains a brief list of specific plant types to be used to restore the project impact area. As an informational note, the Department recommends the use of indigenous plants to the greatest extent feasible in the landscape areas adjacent and/or near the mitigation/open space and wetland/riparian areas. We appreciate any actions by the Public Works Department that will avoid the planting, seeding, or otherwise introducing invasive exotic plant species to the landscaped areas adjacent and/or near the mitigation/open space and wetland/riparian areas. Exotic plant species not to be used include those species listed on Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999." This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, tree of heaven, black locust, capeweed, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained by contacting the California Exotic Pest Plant Council at 32912 Calle del Tesoro, San Juan Capistrano, CA 92675-4427, or by accessing their web site at <http://www.caleppc.org>.

If I can be of further assistance, please call me at 858-467-4276.

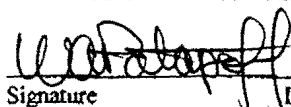
Sincerely



Donald R. Chadwick
Environmental Specialist Supervisor
Habitat Conservation Planning-South
1600/CEQA Programs

Concurrence:

CITY OF NEWPORT BEACH



8/13/01

Signature
WILLIAM PATAPOFF, P.E.
CITY ENGINEER

Please type or print name and title

COASTAL COMMISSION
5-00-339

EXHIBIT # 5b
PAGE 2 OF 2

DEPARTMENT OF FISH AND GAME

Region 5, South Coast Regional Office
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201
FAX 467-4239



November 9, 1999

NOV 13
RECEIVED
AUG 21 2000CALIFORNIA
COASTAL COMMISSION

Mr. Fong Tse
Public Works Department
City of Newport Beach
P.O. Box 1768
Newport Beach, CA 92658-8915

Dear Mr. Tse:

The Department of Fish and Game (Department) authorizes the City of Newport Beach to construct the concrete spillway with appurtenant rock slope as described in the previously reviewed and approved project description and as provided for in the Streambed Alteration Agreement issued by the Department for the said project located at 999.5 Mariners Drive, Newport Beach, Orange County. We understand the City has agreed to comply with all time lines and mitigation measures proposed.

The easement(s) necessary for the City to complete this project on State land are now being processed through our Sacramento office. The City will receive the easement directly from the Wildlife Conservation Board. Upon receipt of this easement, please notify the Department of your projected start and finish dates. Please contact Ms. Terri Stewart, Land Management and Monitoring Program Supervisor, 4949 Viewridge Avenue, San Diego, CA 92123, at (858) 467-4209, or FAX (858) 467-4239.

Sincerely,

C. F. Raysbrook
Regional Manager

TS:sl

cc: Department of Fish and Game
Terri Stewart, San Diego
Erick Burres, Huntington Beach
Terri Dickerson, Laguna Niguel
Chron

file:mariners2.ltr

COASTAL COMMISSION

5-00-339

EXHIBIT # 6PAGE 1 OF 2



2610

GRAY DAVIS, Governor
STATE OF CALIFORNIA-THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME,
WILDLIFE CONSERVATION BOARD

1807 13th Street, Suite 103
Sacramento, California 95814-7117
(916) 445-8448
Fax (916) 323-0

MEMBERS

Mike Chrisman, Chairman
President
Fish and Game Commission

B. Timothy Gage
Director
Department of Finance

Robert C. Hight
Director
Department of Fish and Game

**JOINT LEGISLATIVE
ADVISORY COMMITTEE**

Senators

Pat Johnston
Jack O'Connell
Byron Sher

Assembly Members

Mike Machado
Virginia Strom-Martin
Howard Wayne

W. John Schmidt
Executive Director
Wildlife Conservation Board

July 18, 2000

Bill Patapoff, P.E.
City Engineer
City of Newport Beach
Public Works Department
P. O. Box 1768
Newport Beach, California 92663

RECEIVED
AUG 21 2000
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Patapoff:

Upper Newport Bay Ecological Reserve
(City of Newport Beach-Drainage Easement)
Orange County

Please find enclosed the proposed Agreement and Grant of Easement to the City of Newport Beach which will, following recordation, permit the city to commence installation of the drainage facilities at Mariners Drive, in the City of Newport Beach. As we discussed on the telephone, the permanent easement includes a provision for the temporary construction area which will extend through December 31, 2001. As we also discussed, the Department of General Services (DGS) will record the easement in the State Property Index following recordation. It is our practice to pass charges by the DGS, in the amount of \$180.00, on to the project proponent.

Following your review of the easement, please have the document signed on behalf of the city, with the signature acknowledged by a notary public. Upon receipt of the originally signed document, and the city's check in the amount of \$180.00 (made payable to the Wildlife Conservation Board), the easement will be signed on behalf of the state and recorded in the official records of Orange County. A copy of the recorded document will be transmitted to the city for its records.

Please feel free to call me at (916) 445-1113, if you have any questions relative to the grant of easement.

Sincerely,

Debra K. Townsend
Senior Land Agent

Enclosure

COASTAL COMMISSION

5-00-339

EXHIBIT # 6

PAGE 2 OF 2



County of Orange

Public Facilities & Resources Department

John W. Sibley, Director

MAY 18 1999

Letter of Permission For The City of Newport Beach To Construct Improvements at 999.5 Mariners Drive

The City of Newport Beach is proposing to build a colored concrete spillway at 999.5 Mariners Drive to serve as an overflow facility for storm water that exceeds the capacity of the existing storm drain system.

The County as joint owner of the land on which the proposed construction will take place, hereby grants permission to the City of Newport Beach to construct the improvements shown in the attached exhibit.

Larry Paul, Manager
Coastal Facilities
County of Orange
Public Facilities and Resources Department

COASTAL COMMISSION
5-00-339

EXHIBIT # 7
PAGE 1 OF 1

LOCATION
300 N. FLOWER ST
SANTA ANA, CALIFORNIA

MAILING ADDRESS
P O BOX 4048
SANTA ANA, CA 92702-4048

TELEPHONE:
(714) 834-2300
FAX # 834-5188

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922

from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1892

Contact FAX: (916) 574-1925

OCT 18 1999

October 12, 1999

File Ref: SD 99-10-06.1

Mr. Bill Patapoff, P.E.
City Engineer
City of Newport Beach
Public Works Department
P.O. Box 1768
Newport Beach, CA 92663

Dear Mr. Patapoff:

SUBJECT: Proposed Concrete Spillway with Appurtenant Rock Slope
Protection Adjacent to 999.5 Mariners Drive, Newport Beach,
Orange County

Staff of the California State Lands Commission (CSLC) has received the City's application for the subject project. Based on our review of the application material and our in-house records, it appears that the project will be located on lands owned by the State Department of Fish and Game (DFG) as part of the 1975 settlement with the Irvine Company. The property was granted to DFG pursuant to a grant deed recorded April 22, 1975 in Book 11382, Pages 1876-1892, Official Records of Orange County. A copy of that deed is enclosed.

That document is reflected on the map labeled Exhibit "B" in the application package. Exhibit "B" also includes a line reflecting the Ordinary High Tide Line (OHTL) as adjudicated in Superior Court Case #20436.

To the extent that the subject project will not extend bayward (easterly) of the adjudicated line as shown on Exhibit "B", the project will be located solely on lands owned in fee by the DFG and no authorization from the CSLC is required.

Once you and the DFG have had an opportunity to review this letter and attachment, please confirm the location of the project in relation to the OHTL. If both agencies concur with our conclusion, a return of the application package and fees would be appropriate.

COASTAL COMMISSION

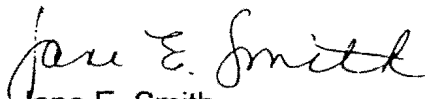
5-00-339

EXHIBIT # 8

PAGE 1 OF 2

If you have any questions, please give me a call at (916) 574-1892.

Sincerely,



Jane E. Smith
Public Land Management Specialist
Southern California Region

Attachment

cc: C. F. Raysbrook, DFG w/attachment
Erick Burres, DFG w/attachment

COASTAL COMMISSION

5-00-339

EXHIBIT # 8

PAGE 2 OF 2



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325
August 3, 1999

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Branch

Edward J. Wimmer
City of Newport Beach Public Works Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

Dear Mr. Wimmer:

Reference is made to your letter (No. 199916214-YJC) dated July 20, 1999 for a Department of the Army Permit to construct a 70 feet by 10 feet concrete spillway with riprap at 999.5 Mariners Drive in Newport Beach, Orange County, California.

Based on the information furnished in your letter, we have determined that your proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required from our office.

The receipt of your letter is appreciated. If you have any questions, please contact Jae Chung of my staff at (213) 452-3292.

Sincerely,

Mark Durham
Chief, South Coast Section
Regulatory Branch

COASTAL COMMISSION
5-00-339

EXHIBIT # 9
PAGE 1 OF 1