

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 Oceangate, Suite 1000
 Newport Beach, CA 90802-4302
 (949) 590-5071

**RECORD PACKET COPY**

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Filed: 8/6/01
 49th Day: 9/24/01
 180th Day: 2/2/02
 Staff: MV-LB
 Staff Report: 9/19/01
 Hearing Date: 10/8-12/01
 Commission Action:

STAFF REPORT: PERMIT AMENDMENT

**AMENDMENT
 APPLICATION No.:**

5-97-348-A1

APPLICANT:

Bruce & Rosemary Hezlep

AGENT:

Eric Jon Berger Construction, Inc.

PROJECT LOCATION:

**2832 Bayshore Drive, Newport Beach
 Orange County**

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolition of a single family residence and construction of a 3 story (including basement level), 9,408 square foot single family residence with a 1,981 square foot garage. Also approved were a basement, 1,158 cubic yards of cut and six parking spaces.

DESCRIPTION OF AMENDMENT: Repairs to an existing bulkhead consisting of excavation landward of the bulkhead, removal of concrete coping, placement of a new deadman approximately 20 feet landward of the bulkhead, installation of new tieback bars, installation of new concrete coping, and backfill behind the landward side of the repaired bulkhead. The proposed bulkhead repairs were constructed in 2001 without benefit of a coastal development permit.

LOCAL APPROVALS RECEIVED: City of Newport Beach Marine Department Approval No. 130-2832.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit 5-97-348 (Hezlep); City of Newport Beach certified Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed coastal development permit amendment with three special conditions which require: 1) retention of conditions previously imposed, 2) that the Best Management Practices be carried out as proposed, and 3) approval of the proposed project from the Regional Water Quality Control Board.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The project proposed affects conditions required by the underlying permit for the purpose of protecting a coastal resource. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit Amendment No. #5-97-348 A1 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** the amendment to coastal development permit 5-97-348, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. **STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
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. **Conditions Imposed Under Original**

All conditions of the previously approved permit remain in effect.

2. **Water Quality Best Management Practices**

Construction of the proposed project, bulkhead repairs, shall incorporate the Best Management Practices (BMPs) as proposed by the applicant and as described in the findings of this staff report. Specifically, the proposed bulkhead repair project shall: 1) include placement of a platform on the seaward side of the bulkhead to collect any debris which might fall from the project; and 2) all construction equipment and materials shall be placed on the landward side of the bulkhead only, no work is to occur from the seaward side of the bulkhead.

3. **Approval from the Regional Water Quality Control Board**

Within ninety (90) days of the date of issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, written evidence of project review and approval by the Regional Water Quality Control Board. If the Regional Water Quality Control Board requires additional development the applicant shall immediately notify the Executive Director in writing for a determination as to whether the additional development requires a coastal development permit or an amendment to this permit. No additional development shall occur prior to such Executive Director determination.

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IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. AMENDED PROJECT DESCRIPTION

The applicant proposes to make repairs to an existing bulkhead consisting of excavation landward of the bulkhead, removal of concrete coping, placement of a new deadman approximately 20 feet landward of the bulkhead, installation of new tieback bars, installation of new concrete coping, and backfill behind the landward side of the repaired bulkhead. The proposed bulkhead repairs were constructed in 2001 without benefit of a coastal development permit.

The need for the proposed repairs is addressed by the applicant's structural engineer (see Exhibit D). The structural engineer states:

"On our first site visit after the house was nearly completed, we noticed that the existing concrete coping along the existing bulkhead panels had either severely cracked or spalled throughout the years. Additionally the tieback system had deteriorated to a point it was beyond repair.

It was decided that the best course of action was to replace the bulkhead's coping and tieback system. However, we concluded the existing bulkhead panels could adequately support the property, therefore they are not being replaced and are left intact."

Because the bulkhead panels are not proposed to be replaced, no seaward encroachment will occur as part of the proposed project. Consequently no fill of coastal waters is necessitated by the proposed development. In addition, an inspection performed by the City determined that no eelgrass exists in the vicinity of the proposed project. No eelgrass will be impacted by the proposed project.

The project previously approved included demolition of a single family residence and construction of a 3 story (including basement level), 9,408 square foot single family residence with a 1,981 square foot garage. Also approved were a basement, 1,158 cubic yards of cut and six parking spaces.

Approval of original permit was subject to five special conditions: 1) an Assumption of Risk deed restriction; 2) Conformance with Geotechnical Recommendations; 3) Evidence of Regional Water Quality Control Board Approval; 4) Identification of the Location of the Disposal Site for the Cut Material; and 5) clarification that any future work on the existing bulkhead would require notification of the Executive Director of the Coastal Commission for a determination as to whether the work would need a new coastal development permit or an amendment. Special Condition No. 3, approval from the Regional Water Quality Control Board, was required because dewatering was proposed in order to accommodate the proposed basement. The "prior to issuance" special conditions were met and the coastal development permit was issued on August 21, 1998.

Because the proposed development affects the existing bulkhead, Special Condition No. 5 of the underlying permit requires that the applicant notify the Executive Director for a determination as to whether a new coastal development permit or an amendment is required. Pursuant to California Code of Regulations Section 13252(a)(1)(D), the proposed development does not qualify for an

exemption because it constitutes repair or maintenance of a seawall (bulkhead) that involves the presence of mechanized construction equipment or construction materials within 20 feet of coastal waters.

The proposed amendment will not affect any of the other four previously imposed special conditions. The project site is a harbor front lot in Newport Harbor.

B. Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

The proposed project, repair of a bulkhead, will take place adjacent to the coastal waters and marine environment of Newport Harbor. The Coastal Act requires that adverse effects of this project on coastal waters and the marine environment be minimized. In order to assure that these adverse effects are minimized, best management practices (BMPs) must be incorporated into the project. BMPs are used, among other things, to reduce the amount of pollutants introduced into the adjacent water by the proposed project.

The proposed project includes a BMP that would require the placement of a platform to catch any debris that may inadvertently fall from the project site and would otherwise enter the adjacent harbor water. The platform would be put on the seaward face of the bulkhead, adjacent to the location of each day's work. This proposed BMP will significantly minimize the potential amount of pollutants that could otherwise accidentally fall into the water as a result of the proposed project.

In addition, another BMP proposed as part of the project is to conduct all work from the landward side of the bulkhead. Thus, no construction equipment or materials will need to be placed in the harbor water or on barges in the water. By eliminating the possibility of using the water area for construction or construction staging, the potential for debris and pollutants to enter the water is significantly reduced.

However, in order to assure that water quality impacts are indeed minimized by these BMPs, there must be an assurance that they will be carried out as proposed. Therefore a special condition is imposed which requires that the BMPs described above are incorporated into the project as proposed. Only as conditioned can the project be found to be consistent with Sections 30230 and 30231 of the Coastal Act which require that coastal water quality be maintained and enhanced.

The Regional Water Quality Control Board (RWQCB) oversees water quality issues in the region. The RWQCB may be aware of additional measures that may be taken to further reduce any potential adverse water quality impacts from the proposed project. Such measures would be required by the RWQCB as a matter of its approval of the project. In order to ensure that the applicant complies with any requirements of the RWQCB, the Commission finds that the applicant shall submit written evidence of review and approval by the Regional Water Quality Control Board. Only as conditioned does the Commission find that the proposed development conforms with Sections 30230 and 30231 of the Coastal Act.

C. Public Access & Recreation

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

The proposed project is located within an existing locked gate community (Bayshores) located between the sea and the first public road paralleling the sea (see Exhibit A). Public access through this community to the harbor does not currently exist. The proposed development, repairs to an existing residential bulkhead, will not significantly effect the existing public access conditions. The proposed bulkhead repairs will not result in any seaward encroachment of the existing bulkhead footprint, and so will not displace any public area. It is the locked gate nature of the community, not this project, that impedes public access. The nearest public access in the area exists along the Balboa Peninsula approximately one mile south of the subject site and at various street end and other accesses spaced throughout Newport Harbor. The proposed development, as conditioned, will not result in any adverse impacts to existing public access or recreation in the area. Therefore the Commission finds that the project is consistent with the public access and recreations policies of the Coastal Act.

D. 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 Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that, as conditioned, the proposed development would not prejudice the ability of the City to prepare a total Local Coastal Program that is consistent with the Chapter 3 policies of the Coastal Act.

E. Unpermitted Development

Prior to applying for the required coastal development permit amendment for the proposed project, the applicant conducted the proposed bulkhead repairs described previously herein. Although unpermitted development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon Chapter 3 policies

of the Coastal Act. Action on the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

F. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal resources, specifically water quality. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



Subject site

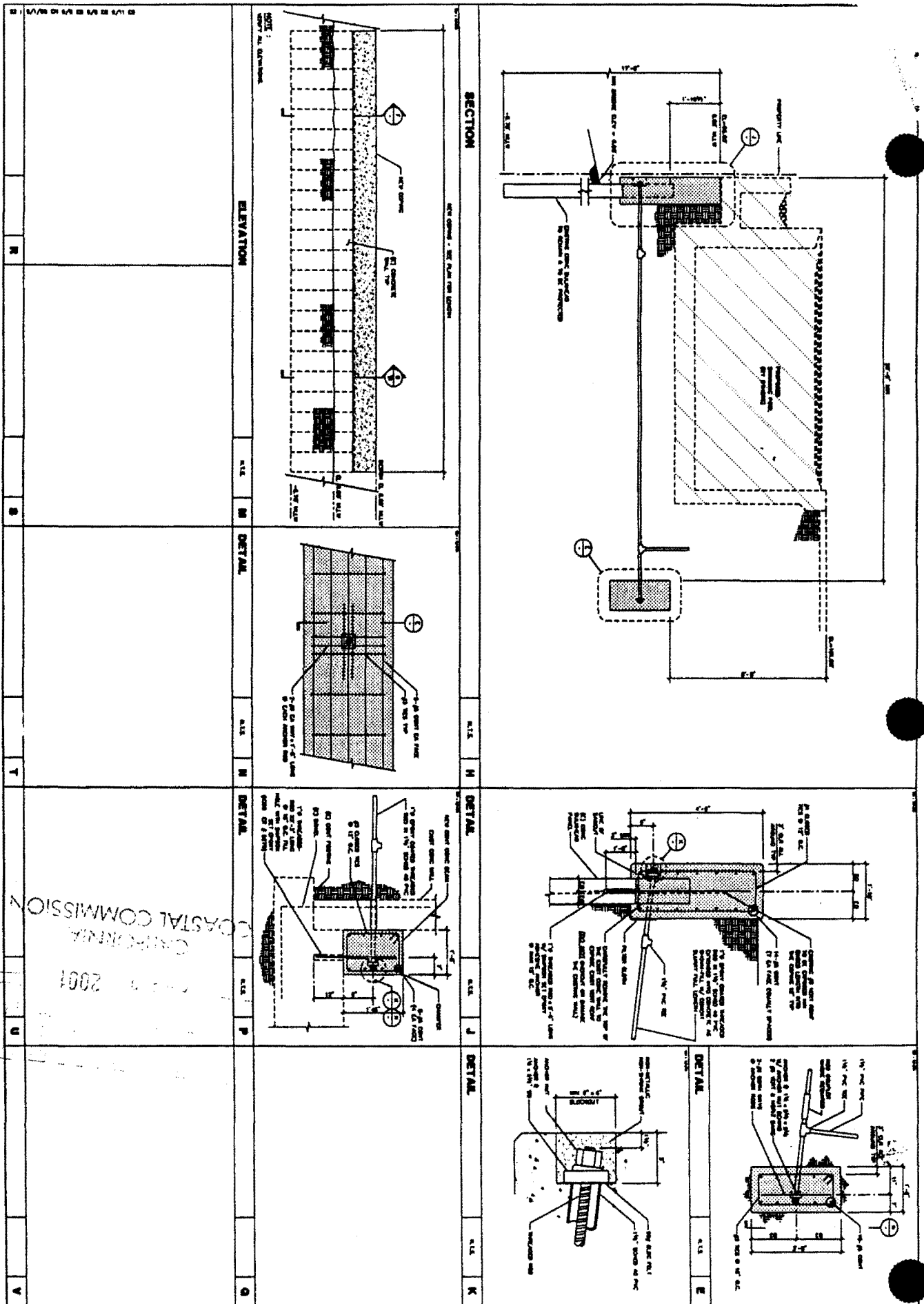
EXHIBIT NO. A
APPLICATION NO.
5-97-348A1
California Coastal Commission

VICINITY MAP

5-98-348A1

Project Plans

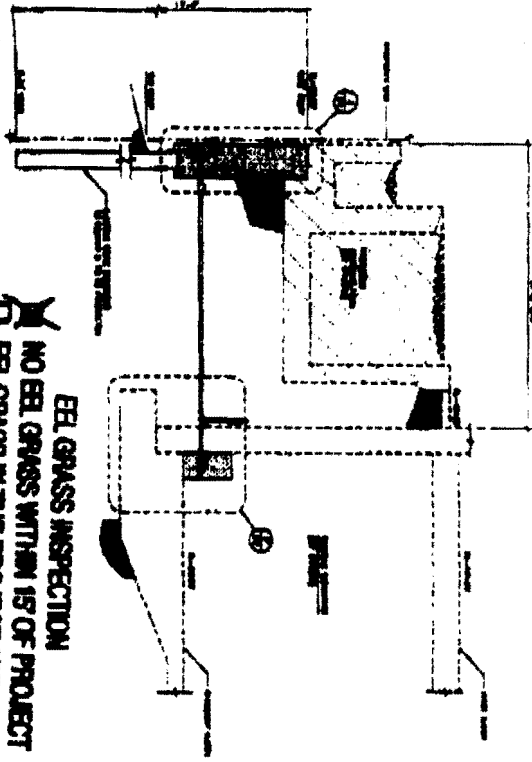
Exhibit B2



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 2001

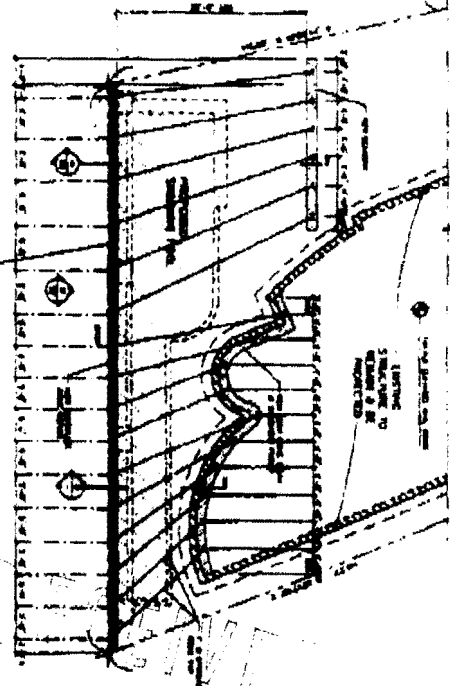
130-2832
 PERMIT #
 SIGNATURE
 DATE 7/23/01

EEL GRASS INSPECTION
 NO EEL GRASS WITHIN 15' OF PROJECT
 EEL GRASS IN THE PROJECT AREA



FOUNDATION PLAN

SEE SHEET 5-98-348A1 FOR DETAILS



APR 6 2001

CALIFORNIA
 COASTAL COMMISSION

STRUCTURAL GENERAL NOTES

1. ALL CONCRETE SHALL BE CAST IN PLACE AND SHALL BE FINISHED TO THE FINISH SURFACE UNLESS OTHERWISE NOTED.

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19. ALL CONCRETE SHALL BE CAST IN PLACE AND SHALL BE FINISHED TO THE FINISH SURFACE UNLESS OTHERWISE NOTED.

20. ALL CONCRETE SHALL BE CAST IN PLACE AND SHALL BE FINISHED TO THE FINISH SURFACE UNLESS OTHERWISE NOTED.

Project Plans with
 Marine Dept Stamp

5-98-348A1
 Exhibit C

WILLIAM B. BERGER & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 2450 E. OLA WEA, SAN CLEMENTE, CA 92672
 TEL: (949) 451-1111

ERIC JON BERGER
 CONSULTING AND
 GENERAL CONTRACTOR
 2450 E. OLA WEA, SAN CLEMENTE, CA 92672
 TEL: (949) 451-1111

ERIC JON BERGER
 CONSULTING AND
 GENERAL CONTRACTOR
 2450 E. OLA WEA, SAN CLEMENTE, CA 92672
 TEL: (949) 451-1111

DATE: 7/23/01
 SHEET: 5-98-348A1

June 25, 2001

Mr. Eric Jon Berger
Construction & General Contracting
2450 South Ola Vista
San Clemente, CA 92672

RE: **Hezlep Residence**
2832 Bayside Drive
Newport Beach, CA 92672
WSA Job 5694-5

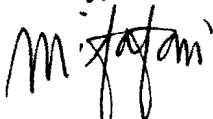
RECEIVED
AUG 8 2001
CALIFORNIA
COASTAL COMMISSION

The following is in response to your verbal inquiry on why the existing coping & tiebacks had to be replaced on the subject property. On our first site visit after the house was nearly completed, we noticed that the existing concrete coping along the existing bulkhead panels had either severely cracked or spalled throughout the years. Additionally the tieback system had deteriorated to a point it was beyond repair.

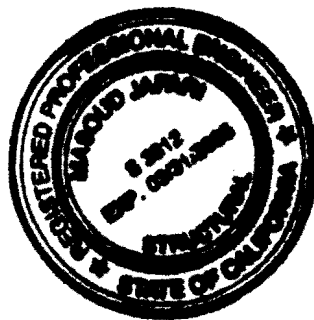
It was decided that the best course of action was to replace the bulkhead's coping and tieback system. However, we concluded the existing bulkhead panels could adequately support the property, therefore they are not being replaced and are left intact.

If no action were taken to correct the above conditions, the existing wall was in imminent danger of collapse. If a collapse of the wall were to occur, the yard soil would fall into the bay and the new house, and two neighboring houses would probably sustain damage.

Sincerely,



Masoud Jafari
Principal Structural Engineer



Structural
Engineer's
Letter
WF

COASTAL COMMISSION

5-97-348A1

EXHIBIT # D

PAGE 1 OF 1