

**CALIFORNIA COASTAL COMMISSION**

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**RECORD PACKET COPY**

Filed: February 14, 2000  
 49th Day: Waived  
 Staff: ALK-LB *ALK*  
 Staff Report: March 22, 2001  
 Hearing Date: April 10-13, 2001  
 Commission Action:

**Item W 13a**

**STAFF REPORT AND RECOMMENDATION ON APPEAL**  
**SUBSTANTIAL ISSUE AND DE NOVO**  
**COASTAL DEVELOPMENT PERMIT**

**APPEAL NUMBER:** A-5-SNB-00-054

**LOCAL GOVERNMENT:** County of Orange

**DECISION:** Approval with Conditions

**APPLICANT:** Philip J. Wyatt      **AGENT:** Deborah Rosenthal,  
 Rosenthal & Zimmerman

**PROJECT LOCATION:** 16902 Pacific Coast Highway, Sunset Beach (Orange County)

**PROJECT DESCRIPTION:** Removal of a wooden groin structure, replacement of a wooden bulkhead with cement bulkhead, installation of up to eight (8) pilings, and construction of a concrete deck from the pilings to the bulkhead.

**APPELLANTS:** Commissioners Sara Wan and Cecilia Estolano

**SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:**

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which the appeal has been filed because the locally approved development raises issues of consistency with the Sunset Beach segment of the County of Orange certified Local Coastal Program (LCP). More specifically, the project approved by the County involves fill of coastal waters for an unspecified commercial use, which raises issues of consistency with certified LCP policies and standards that limit the fill of open coastal waters and wetlands to eight uses. The approved concrete deck and pilings are intended to serve an unspecified future commercial development. Consequently, it was not assured that the future use would prove to be a use consistent with the certified LCP and Section 30233 of the Coastal Act. Since the type of development has not yet been specified, it is unclear how the County determined that the use is in fact allowable. In addition, the approved project site is located adjacent to an inland waterway and is subject to tidal action, which raises the issue of permit issuance authority as a portion of the development may be located within the Commission's retained jurisdiction for purposes of issuing coastal development permits. Lastly,

the approved project could adversely affect public access inconsistent with the requirements of the Sunset Beach certified LCP and the public access and recreation policies of the Coastal Act.

If the Commission finds a substantial issue of consistency exists with regard to the County's approval of the project, the Commission will then consider a de novo coastal development permit for the proposed development. Staff has based the de novo review of the project on a revised project description received on March 12, 2001. The applicant has agreed to limit the project to replacement of the bulkhead only.

For the reasons described in the findings below, staff recommends that the Commission, at the **DE NOVO** public hearing, **APPROVE** the proposed project subject to five (5) special conditions requiring the submittal of revised plans which demonstrate removal of the concrete deck and pilings; approval by the State Lands Commission; approval by the Regional Water Quality Control Board (RWQCB); use of construction best management practices (BMPs); and appropriate disposal of construction debris. The condition requiring the removal of the concrete deck and pilings will assure that no fill of open coastal waters will occur.

At the time of this staff report, the applicant's agent has indicated agreement with the staff recommendation.

**SUBSTANTIVE FILE DOCUMENTS:**

- Local Coastal Program for Sunset Beach Segment of Orange County.
- County of Orange Administrative Record for Coastal Development Permit PA-99-0101.
- California Coastal Commission Staff Report and Recommendation on Implementation of Orange County Local Coastal Program, Sunset Beach Segment for Public Hearing on June 24, 1983.
- California Coastal Commission Staff Report and Recommendation on Map of Commission Post-LCP Certification Jurisdiction, Sunset Beach Segment, County of Orange for Public Hearing on January 10-13, 1983.

**LIST OF EXHIBITS:**

- A. Vicinity Map
- B. Site Plan
- C. Project Plans
- D. Site Photos
- E. Post LCP Certification Permit and Appeal Jurisdiction Map
- F. Copy of County of Orange "Notice of Final Decision" for Coastal Development Permit PA-99-0101.
- G. Copy of Appeals by Commissioners Wan and Estolano
- H. Rosenthal & Zimmerman letter of February 3, 2000
- I. Rosenthal & Zimmerman letter of February 9, 2000
- J. California State Lands Commission letter of February 18, 2000
- K. California State Lands Commission letter of April 11, 2000
- L. California State Lands Commission letter of February 27, 2001
- M. Rosenthal & Zimmerman letter of March 8, 2001

I. **STAFF RECOMMENDATIONS FOR SUBSTANTIAL ISSUE AND DE NOVO PERMIT:**

A. **MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE**

The staff recommends that the Commission make the following motion and adopt the following resolution:

**Motion: *I move that the Commission determine that Appeal No. A-5-SNB-00-054 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.***

**Staff Recommendation:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

**Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal No. **A-5-SNB-00-054** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. **MOTION AND RESOLUTION FOR APPROVAL OF DE NOVO PERMIT AS CONDITIONED**

The staff recommends that the Commission make the following motion and adopt the following resolution:

**Motion: *I move that the Commission approve De Novo Coastal Development Permit No. A-5-SNB-00-054 pursuant to the staff recommendation.***

**Staff Recommendation of Approval:**

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

**Resolution to Approve the De Novo 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 the Local Coastal Program and with the policies Chapter 3 of the Coastal Act, where applicable. 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.

**C. CONDITIONS OF DE NOVO PERMIT**

**i. 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.

**ii. Special Conditions**

1. Revised Project Plans
  - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, revised project plans which demonstrate the following:
    - 1.) Pilings and concrete deck shall be removed, and
    - 2.) New bulkhead shall be constructed in the same location as the existing bulkhead and may not encroach channelward
  - 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.

2. State Lands Commission Approval

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall obtain a written determination from the State Lands Commission that:

- (a) No State lands are involved in the development; or
- (b) State lands may be involved in the development and all permits required by the State lands Commission have been obtained; or
- (c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to that determination.

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

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion or enter a storm drain;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) 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, and a pre-construction meeting should be held to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- (d) 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 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 debris disposal site outside the coastal zone, pursuant to Special Condition No. 4.

4. Location of Debris Disposal Site

The applicant shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone.

If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

5 Regional Water Quality Control Board Approval

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall provide to the Executive Director a copy of a permit issued by the Regional Water Quality Control Board, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

## II. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

### A. APPEAL PROCEDURES

#### i. Standard of Review

The Sunset Beach segment of the County of Orange (the County) LCP was certified in October 1983 (amended July 1991). As a result, the County has coastal development permit (CDP) jurisdiction except for development located on tidelands, submerged lands, or public trust lands (Section 30519 of the Coastal Act).

The standard of review for development located on tidelands, submerged lands, or public trusts lands is the California Coastal Act. The standard of review for development in areas *not* located on tide lands, submerged lands, or public trusts lands is the Sunset Beach LCP.

#### ii. Appealable Development

Section 30603 of the Coastal Act states:

(a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*

(1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*

(2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(2) of the Coastal Act establishes the proposed project site as being appealable by its location within 300 feet of the mean high tide line of the sea (Exhibits A and B).

#### iii. Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth*

*in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

In this case, the grounds for appeals are that the development does not conform to the standards set forth in the certified LCP and is inconsistent with the public access and recreation policies of the Coastal Act.

#### **B. LOCAL GOVERNMENT ACTION**

On November 4, 1999, the Orange County Zoning Administrator held a public hearing on the proposed project. At the conclusion of the public hearing, the Zoning Administrator approved with conditions local CDP No. PA-99-0101, finding that the project, as conditioned, conformed to the County's certified LCP for Sunset Beach (Exhibit F). The action by the Zoning Administrator was appealable to the Planning Commission within the County's fifteen- (15) calendar day appeal period. No appeals were filed to the Planning Commission. The County's action was then final and an appeal was filed by two Commissioners during the Coastal Commission's ten- (10) working day appeal period.

#### **C. APPELLANTS' CONTENTIONS**

The Commission received the notice of final action on local CDP No. PA-99-0101 on January 31, 2000. On February 14<sup>th</sup>, within ten working days of receipt of the notice of final action, Commissioners Wan and Estolano appealed the local action on the grounds that the approved project does not conform to the requirements of the certified LCP (Exhibit G). The appellants contend that the proposed development does not conform to the requirements of the certified LCP in regards to the following issues:

##### **i. Fill of Coastal Waters**

The Sunset Beach segment of the County's certified LUP specifically incorporates Section 30233 of the Coastal Act. Policy No. 35 in the Land and Water Conservation Section of the LUP states that "all diking, dredging and filling activities shall conform to the provision of Sections 30233 and 30607."



Section 30233 of the Coastal Act limits fill to eight enumerated uses. The County staff report for the project indicates that the subject site "*may be developed later with some type of commercial use.*" Commercial development is not an allowable use under Section 30233, unless in such cases as an appropriate land use has been identified. Therefore, the project approved by the County raises a substantial issue as to its consistency with the certified LUP policies that limit the types of use for which coastal waters can be filled.

**ii. Commission Original Jurisdiction**

The project site is located adjacent to an inland waterway subject to tidal influence. The channelward portion of the lot is intermittently below the water line. The development authority delegated to the County of Orange in the certified LCP extends only to development outside of areas of the Commission's retained jurisdiction, which includes land lying below the mean high tide line, as described in Section 30519 of the Coastal Act. The project description contained in the Notice of Final Action and the site plan included in the administrative record are unclear concerning which, if any, project components may fall within the Commission's coastal development permit jurisdiction. A proper delineation of the mean high tide line is necessary to determine whether the County had the authority to issue CDP No. PA 99-0101 consistent with its certified LCP because a portion of the approved development may be located within the Commission's original jurisdiction. Therefore, a substantial issue exists as to the County's permit issuance authority at the subject site.

**iii. Impacts to a Public Beach**

The certified LCP requires the 11<sup>th</sup> Street public beach to be retained in its present configuration, or if reconfigured, provide equivalent recreational opportunities. The approved project would adversely impact access to the 11<sup>th</sup> Street public beach located directly adjacent to the subject site as the pilings and deck would obstruct the effective use of this segment of the public beach. The County does not address the effect of the project's channelward encroachment (specifically, the deck & pilings) on access to the 11<sup>th</sup> Street public beach in their review of the project and does not discuss the provision of recreational opportunities in the subject area. Therefore, the project approved by the County raises substantial issue as to its consistency with the recreation policies of the certified LCP and the public access and recreation policies of the Coastal Act.

**D. SUBSTANTIAL ISSUE ANALYSIS**

**i. Project Description and Location**

The subject site is located on the inland side of Pacific Coast Highway, north of Park Avenue, at an area known as the "11<sup>th</sup> Street Beach". The site address is 16902 Pacific Coast Highway in the unincorporated area of Sunset Beach, Orange County (Exhibits A and B). The County's approval of local CDP NO. PA-99-0101 allows the removal of a wooden groin structure, replacement of a wooden bulkhead with cement bulkhead, installation of up to eight (8) pilings, and construction of a concrete deck from the pilings to the bulkhead (Exhibit C).

The site is in the Sunset Beach Specific Plan/ Local Coastal Program and has a commercial land use designation of Sunset Beach Tourist (SBT). The site measures approximately 39 feet by 65 feet (on the waterway property line), with an area of 2,350 square feet. The site is bordered by Pacific Coast Highway (PCH) to the west, the Sunset Beach Waterway to the north, an alley to the east and another commercial lot to the south. The "11 Street Beach" is a narrow stretch of sandy beach located along the channel edge abutting PCH. The beach is subject to tidal influence and can be used as a launching point for small vessels.

The site is currently developed with a commercial billboard. An existing wooden groin and bulkhead will be removed. The concrete bulkhead, concrete deck and pilings as approved by the County are intended to serve a future commercial development at the subject site. The nature of the commercial development was not disclosed at the time of the County's approval of the project and has not been identified in subsequent discussions between Commission staff and the applicant's agent.

**ii. Analysis of Consistency with Certified LCP**

As stated in Section A (iii) of this report, the local CDP may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public recreation policies of the Coastal Act. The Commission must assess whether the appeal raises a substantial issue as consistency with the LCP. In making that assessment, the Commission considers whether the appellants' contentions regarding the local government action raise significant concerns in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In this case, the appellants contend that the County's approval of the proposed project does not conform to the requirements of the certified LCP. For the reasons discussed further below, the Commission finds that a substantial issue does exist with respect to the grounds on which the appeal has been filed.

**a. Fill of Coastal Waters**

The County's certified LCP Land Use Plan contains the following policy regarding the fill of coastal waters:

*All diking, dredging and filling activities shall conform to the provisions of Sections 30233 and 30607.1 of the Coastal Act. (Resource Component, Land and Water Conservation Section, Policy No. 35)*

In approving the current project, the County allowed the fill of open coastal waters to serve a future commercial development. The nature of the commercial development was not specified.

Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for eight enumerated purposes where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The project approved by the County was characterized in the following manner in their Planning and Development Service Department (PDSD) Report:

*"Replace an old wooden bulkhead (located approximately 11 feet from the channel side property line) with a cement bulkhead on a lot adjacent to the Sunset Beach Waterway. Also proposed is the installation of pilings on the waterway property line and construction of a concrete deck from the piling to the bulkhead. The pilings will be installed along a line, which is a continuation of an existing bulkhead on the adjoining property. A cement deck will be constructed between the pilings and the bulkhead."*

Section 30108.2 of the Coastal Act defines fill as "earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area." Therefore, the placement of pilings in open coastal waters to support associated with the approved concrete deck is considered "fill."

Section 30233 allows the fill of open coastal waters for "new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities." However, at the time of the County's approval of the project, the applicant had not indicated that the deck would be utilized for public recreational opportunities. Consequently, the project approved by the County raises a substantial issue of conformity with the certified LCP.

At the time the appeal was filed, the applicant's agent contended that the subject property does not contain open coastal waters. However, as defined in Section 30115 of the Coastal Act, "Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels. A portion of the subject site, located directly adjacent to the Sunset Beach Waterway, is subject to tidal action and is therefore open coastal waters. Consequently, the placement of pilings and construction of a concrete deck to serve a future, unidentified commercial use at the subject site raises a substantial issue of consistency with the LCP provisions that incorporate Section 30233 of the Coastal Act.

**b. Commission Original Jurisdiction**

Section 30519 of the Coastal Act states, in pertinent part:

*(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.*

*(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone...*

As described previously, the applicant intends to place up to eight (8) piles to support a concrete deck. The piles will extend from the bulkhead to the applicant's property line, located immediately adjacent to an area designated as the "Sunset Beach Waterway."

The County and agent, at the time of the appeal, contended that the proposed project is not located within the Coastal Commission's jurisdiction, as the property is "*clearly located within the area to which the Sunset Beach LCP applies.*"

The Post Certification map shows the Sunset Beach Waterway as lying within the Commission's original jurisdiction (Exhibit E). The map appears to show the subject lot (16902 Pacific Coast Highway) as "Potential Public Trust Land," thereby lying within the Commission's appealable area. However, the scale of the Post Cert map is such that the boundary between the Commission's jurisdiction and County jurisdiction is unclear. The map does not indicate where the Mean High Tide Line is located, and therefore does not provide a precise delineation of the Commission's retained jurisdiction in relation to its appealable area. The Commission's Staff Report findings for the Post Cert Map approved in 1983 address permit jurisdiction in the following manner:

*The continuing permit jurisdiction exists only on lands lying below the mean high tide line (MHTL). (Permit Jurisdiction, p. 2)*

The supplemental language of the staff report provides clarification of the Commission's retained jurisdiction within the Sunset Beach area. As it applies to the current project, the portion of the applicant's property that exists below the MHTL is within the Commission's retained jurisdiction and the portion upland of the MHTL is within the Commission's appealable area.

The project plans approved by the County indicate that the Mean Low Level Water Line is located channelward of the property line. However, the Mean High Tide Line (MHTL) is not delineated on the project plans. Commission staff had requested a MHTL delineation on several occasions, but has yet to receive such information from the County or applicant. Consequently, Commission staff contacted the California State Lands Commission for additional information regarding the location of the MHTL at the subject site. The State Lands Commission provided a letter indicating that a portion of the subject site lies below the MHTL and is therefore subject to the Public Trust Easement, which "*provides the right for public use of these lands for waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes...*" (Exhibit J).

In addition, Commission staff has observed the water level at the subject site during both high and low tides and determined that the applicant's channelward (waterway) property line is intermittently under water (Exhibit D).

As stated in Section 30519 of the Coastal Act, the Commission retains jurisdiction over all tidelands, submerged lands and public trust lands, including land below the Mean High Tide Line. Based on the information provided by the State Lands Commission and site visits conducted by Commission staff, a portion of the subject site, including the base of the bulkhead, appears to be located below the MHTL. For that reason, any development occurring below the MHTL requires that the project be approved through a coastal development permit issued by the Commission. Without a determination of the Mean High Tide Line at the time of project approval, the County did not have the information necessary to determine which project components were or were not within the County's jurisdiction.

Due to the project's location on partially submerged public trust tidelands, the development raises a substantial issue with regards to the local permit issuance authority exercised by the County of Orange. As defined in Section 30519 of the Coastal Act, the Commission retains jurisdiction over any land lying below the mean high tide line. Therefore, a portion of the project lies within the Commission's retained permit issuance jurisdiction and should not have received CDP approval from the County of Orange. This presents a substantial question as to which portion of the project falls under the Commission's retained jurisdiction and which is subject to original and appellate review by the Commission for conformance with Section 30233 of the Coastal Act.

**c. Impacts to a Public Beach**

Section 30210 of the Coastal Act states, in pertinent part:

*...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 30213 of the Coastal Act states, in pertinent part:

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

The County's certified LCP Land Use Plan and Development Guidelines contain the following policies regarding public access and recreational use of the 11<sup>th</sup> Street Beach and adjacent waterway:

*18. Construction in coastal waters must be evaluated relative to its effects on recreational uses. (Resource Component, Habitat Constraints and Protection, Policy No. 18)*

*7. To meet visitor serving needs, the 11<sup>th</sup> Street public beach shall be retained in its present general configuration, or if reconfigured, shall provide equivalent recreational opportunities and shall be properly maintained. Small boats may be launched at the 11<sup>th</sup> Street beach provided there is no use of trailers, sand dollies, or mechanical launching equipment. In accordance with Section 2-2-47*

*of the County of Orange Codified Ordinances, the launching of boats is specifically prohibited at all other publicly owned properties adjacent to the channel. (Section (d) (7) Sunset Beach Waterways (SBW) of the LUP and Section 2. 3 Inland Waterways of the LUP Development Guidelines, Boating Facilities)*

While the project is not located within the Sunset Beach Waterway (SBW) land use designation, the subject lot abuts the waterway and therefore has a direct impact on recreational opportunities available at the 11<sup>th</sup> Street Beach. The configuration of the development approved by the County allows the construction of a concrete deck and pilings to extend immediately adjacent to the 11<sup>th</sup> Street beach. Due to its close proximity to the sandy stretch of beach along PCH, the deck (while located on the applicant's property) will lessen the usability of the public beach area. The County did not address potential impacts to recreation in their approval of the project.

The project, as approved by the County, would allow construction of a concrete deck and pilings to extend immediately adjacent to the 11<sup>th</sup> Street Beach. Therefore, the approved project raises a substantial issue with the Sunset Beach LCP provisions regarding recreation opportunities and the public access and recreation policies of the Coastal Act.

### III. DE NOVO FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

#### A. STANDARD OF REVIEW

The action currently before the Commission is the de novo review of a proposed project located within the jurisdiction of the certified Sunset Beach segment of the County of Orange Local Coastal Program (LCP). The County has coastal development permit (CDP) jurisdiction except for development located on tidelands, submerged lands, or public trust lands. A portion of the approved development is located on land lying below the mean high tide line. Therefore, the standard of review for this de novo permit decision is both the County's certified LCP for Sunset Beach and the Coastal Act. For portions of the project lying below the mean high tide, the standard of review is the Coastal Act. For portions above the mean high tide line, the standard of review is the certified LCP and the public access policies of the Coastal Act.

#### B. INCORPORATION OF SUBSTANTIAL ISSUE FINDINGS

The findings and declarations on substantial issue are hereby incorporated by reference.

#### C. PROJECT DESCRIPTION AND LOCATION

The proposed project involves the removal of a wooden groin structure and the replacement of an approximately 65' long wooden bulkhead with a new concrete bulkhead of the same size in the same location. Pursuant to correspondence from the agent received by Commission staff on March 12, 2001 (Exhibit M), the proposed concrete and deck have been deleted from the applicant's project.

The site is located at 16902 Pacific Coast Highway in the unincorporated area of Sunset Beach in the County of Orange (Exhibits A and B). The site is located adjacent to the 11<sup>th</sup> Street Beach within an inland waterway. No further development is proposed channelward of the bulkhead; nor is development proposed on the landward portion of the site. Commission staff has observed the water level at the subject site to fluctuate with the tide, rising toward the top of the bulkhead during high tide. The subject lot has a commercial land use designation of Sunset Beach Tourist (SBT) and is currently developed with a commercial billboard.

#### D. ALLOWABLE DEVELOPMENT

As discussed below, the proposed development is considered an allowable use consistent with Section 30235 of the Coastal Act and the County's certified LCP for Sunset Beach. Section 30235 of the Coastal Act states, in pertinent part,

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing*

*structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

While the County's certified LCP does not specifically incorporate Section 30235 of the Coastal Act, the LCP allows for the maintenance and operation of protective devices along the channels and waterways. The LCP requires channels and waterways to be "properly bulkheaded to prevent erosion and resultant land-filling." In addition, LCP District Regulation No. D 3(d) states,

- 1) *"...All navigable channels shall be retained and maintained at the present width, no part of the channels shall be filled, and no encroachments shall be allowed except for bulkheads, gangways, and docks as provided in item number 2 below.*
- 2) *In addition to a Coastal Development Permit from the State, a Public Property Encroachment Permit (encroachment permit) is required for all existing and proposed bulkheads, gangways and docks within the Sunset Beach Waterways. Bulkheads not within the SBW will require evidence of sound construction (building permit) concurrent with the application for an encroachment permit for dock and gangway attachments. The right to said permit shall be attached to the property and run with ownership or the bulkhead frontage."*

The LCP also contains the following regulation for the protection of 11<sup>th</sup> Street Beach, located adjacent to the subject site.

- 7) *To meet visitor-serving needs, the 11<sup>th</sup> Street public beach shall be retained in its present configuration, or if reconfigured, shall provide equivalent recreational opportunities and shall be properly maintained."*

The proposed development is consistent with the certified LCP policies and Section 30235 of the Coastal Act for the following reasons: 1) replacement of the bulkhead in the same location will not alter shoreline processes and consequently will not have an adverse impact on shoreline sand supply and 2) the new bulkhead will serve the same function as the existing structure as it will continue to protect an existing structure.

In this instance, the bulkhead protects the structural integrity of the applicant's lot. The bulkhead has deteriorated to the point that the structural integrity of the lot could be adversely affected if the bulkhead fails and the subject site is exposed to wave/current action leading to erosion of the subject site. In addition, the site immediately to the northeast is currently developed with a residential structure protected by a concrete bulkhead, which would also be affected by failure of the applicant's bulkhead.

The existing wooden bulkhead is deteriorated and in need of repair or replacement. Failure of the bulkhead at the subject site would result in erosion of the subject lot (16902 Pacific Coast Highway) and would create a potentially hazardous condition for the adjacent structure to the northeast. If the existing bulkhead were to fail, scour may occur behind the neighboring bulkhead, thereby affecting the functionality of the adjacent protective structure. Replacement of the bulkhead in its present location will not have any adverse effect on coastal resources. Consistent with Section 30235 of the Coastal



Act, replacing the bulkhead in its current footprint will not affect shoreline processes. Consequently, it will not have an adverse impact on local shoreline sand supply at the subject site. Furthermore, replacing the bulkhead will protect the structural integrity of the subject lot and the existing structure to the northeast. Therefore, the proposed replacement of a wooden bulkhead with a concrete bulkhead in the same location is consistent with the certified LCP policies for Sunset Beach and Section 30235 of the Coastal Act.

The applicant had initially proposed to construct a concrete deck and pilings extending from the reconstructed bulkhead. On March 8, 2001, the applicant's agent revised the project description in writing to delete the concrete deck and pilings as components of the proposed project (Exhibit M). However, the project plans forwarded to the Commission from the County of Orange are for the project as originally proposed by the applicant. These plans no longer represent the project under consideration. Since the project has now been revised to eliminate the concrete deck and pilings, new project plans must be submitted for review prior to issuance of the permit.

To ensure that the bulkhead replacement is carried out in conformance with the regulations of the LCP and Section 30235 of the Coastal Act, the Commission has imposed a condition of approval of the de novo permit (Special Condition No. 1) requiring the applicant to submit final project plans demonstrating the removal of the deck and pilings from the project plans. The condition also specifies that the bulkhead shall be constructed in the same location as the existing bulkhead and may not encroach further into the channel. The applicant's agent has indicated acceptance of this condition.

Because portions of the proposed development are located below the Mean High Tide Line, the project must also be reviewed by the California State Lands Commission (CSLC) to determine whether any State property is involved. As discussed in their letters of February 18, 2000, April 11, 2000 and February 27, 2001, there is outstanding information that the applicant has yet to provide to the CSLC for review (Exhibits J, K & L). In order to ensure that the project, as conditioned, meets CSLC requirements, the Commission imposes Special Condition No. 2. Special Condition No. 2 requires the applicant to submit, for the review and approval of the Executive Director, written evidence from the State Lands Commission demonstrating that the proposed project has been approved or that no further review is required.

As conditioned for the submittal of revised project plans and approval by the State Lands Commission, the proposed development is found to be consistent with the Sunset Beach segment of the County's certified LCP and the Chapter 3 policies of the Coastal Act.

#### **E. WATER QUALITY**

The Sunset Beach segment of the County's LCP incorporates Sections 30230 and 30231 of the Coastal Act.

Section 30230 of the Coastal Act states, in pertinent part:

*Marine resources shall be maintained, enhanced, and where feasible, restored.*

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states, in pertinent part:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

Construction impacts have the potential to negatively affect water quality. Storage or placement of construction materials, debris, or waste in a location which may be discharged into coastal waters would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition No. 3 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Special Condition No. 4 requires the debris disposal site to be located outside the coastal zone. These conditions ensure that construction activities will not have a negative impact on coastal resources.

Since the proposed project has the potential to affect water quality, the development may require approval by the Regional Water Quality Control Board (RWQCB). At the time of this staff report, evidence of RWQCB approval had not been received. To ensure that the project will not adversely affect water quality, special condition No. 5 requires that the applicant provide written evidence of RWQCB approval, or evidence that no such approval is required, prior to issuance of a coastal development permit.

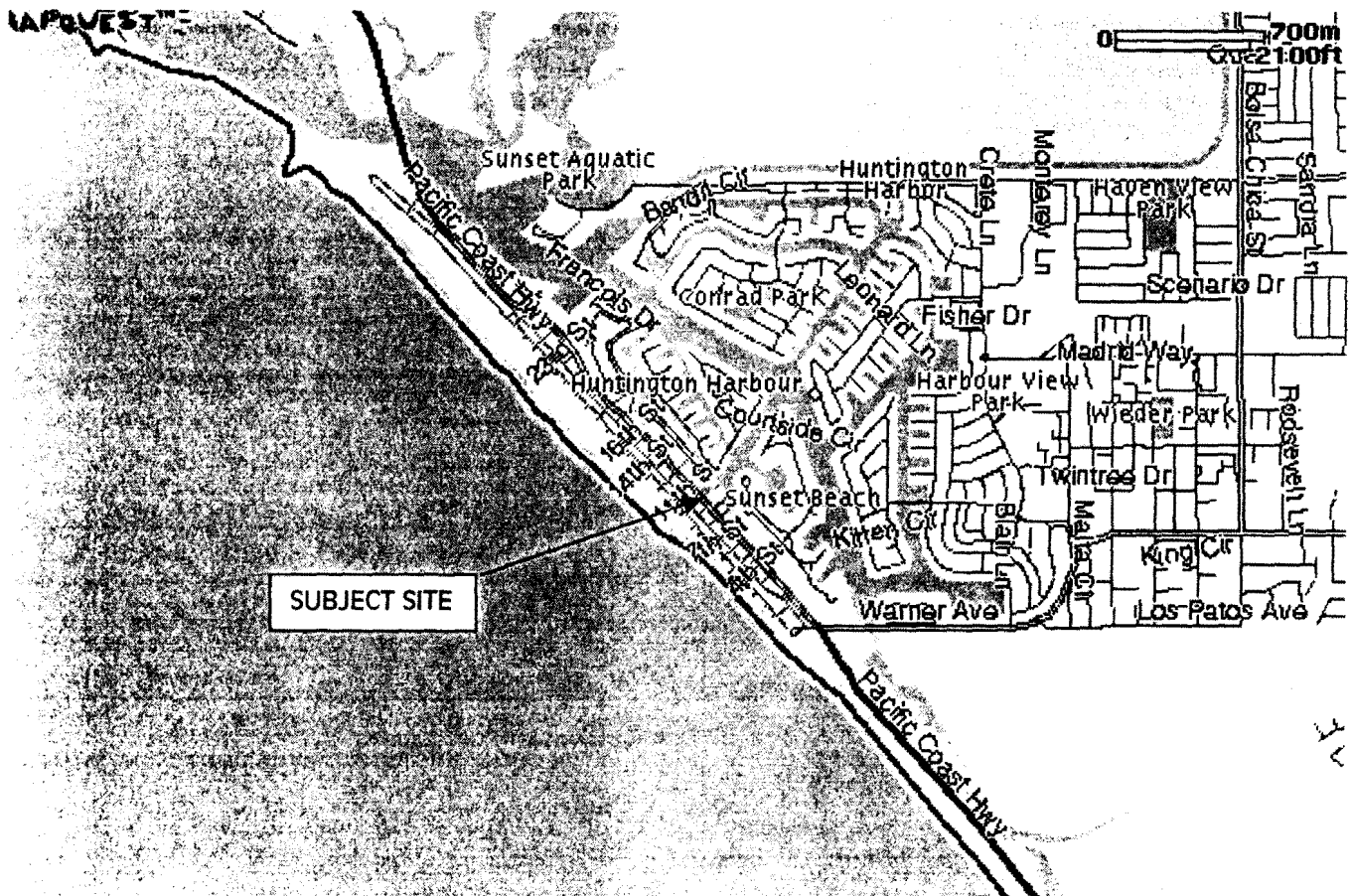
Additionally, during construction, special precautions will be followed to ensure that materials are stored properly and debris is disposed of at an appropriate location. Only as conditioned for appropriate construction practices and proper maintenance does the Commission find that the proposed development is consistent with the Sunset Beach segment of the County's certified LCP and Sections 30230, 30231 and 30232 of the Coastal Act.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable

requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require requiring the submittal of revised plans which demonstrate removal of the concrete deck and pilings; approval by the State Lands Commission; approval by the Regional Water Quality Control Board (RWQCB); use of construction best management practices (BMPs); and appropriate disposal of construction debris. No further alternatives, or mitigation measures, beyond those imposed by this permit amendment, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

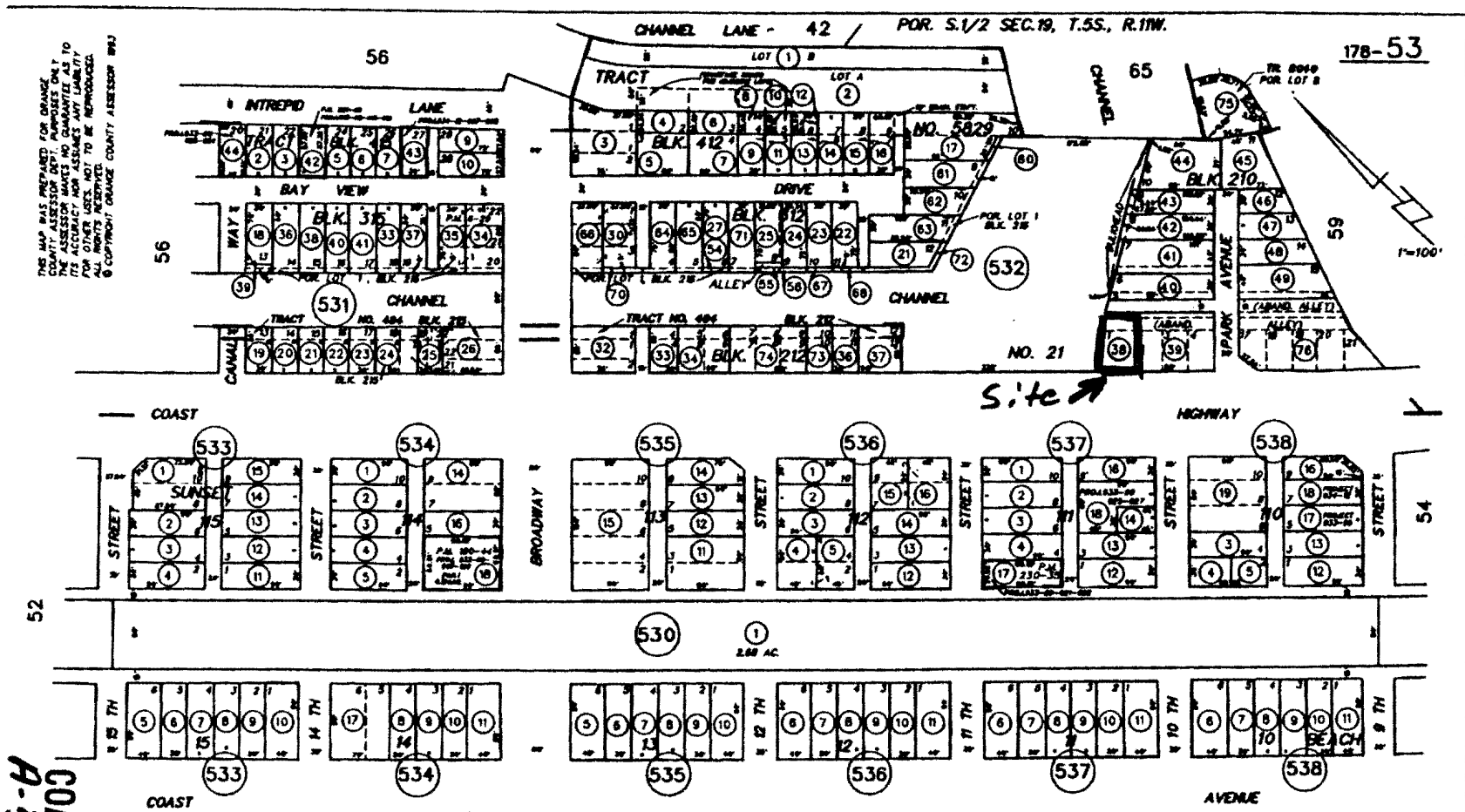


## VICINITY MAP

COASTAL COMMISSION  
A-5-SNB-00-054

EXHIBIT # A  
PAGE 1 OF 1

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO THE ACCURACY NOR ASSUMES ANY LIABILITY FOR THE INFORMATION CONTAINED HEREIN. ALL RIGHTS RESERVED. © COPYRIGHT ORANGE COUNTY ASSESSOR 1998



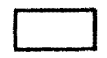
COASTAL COMMISSION  
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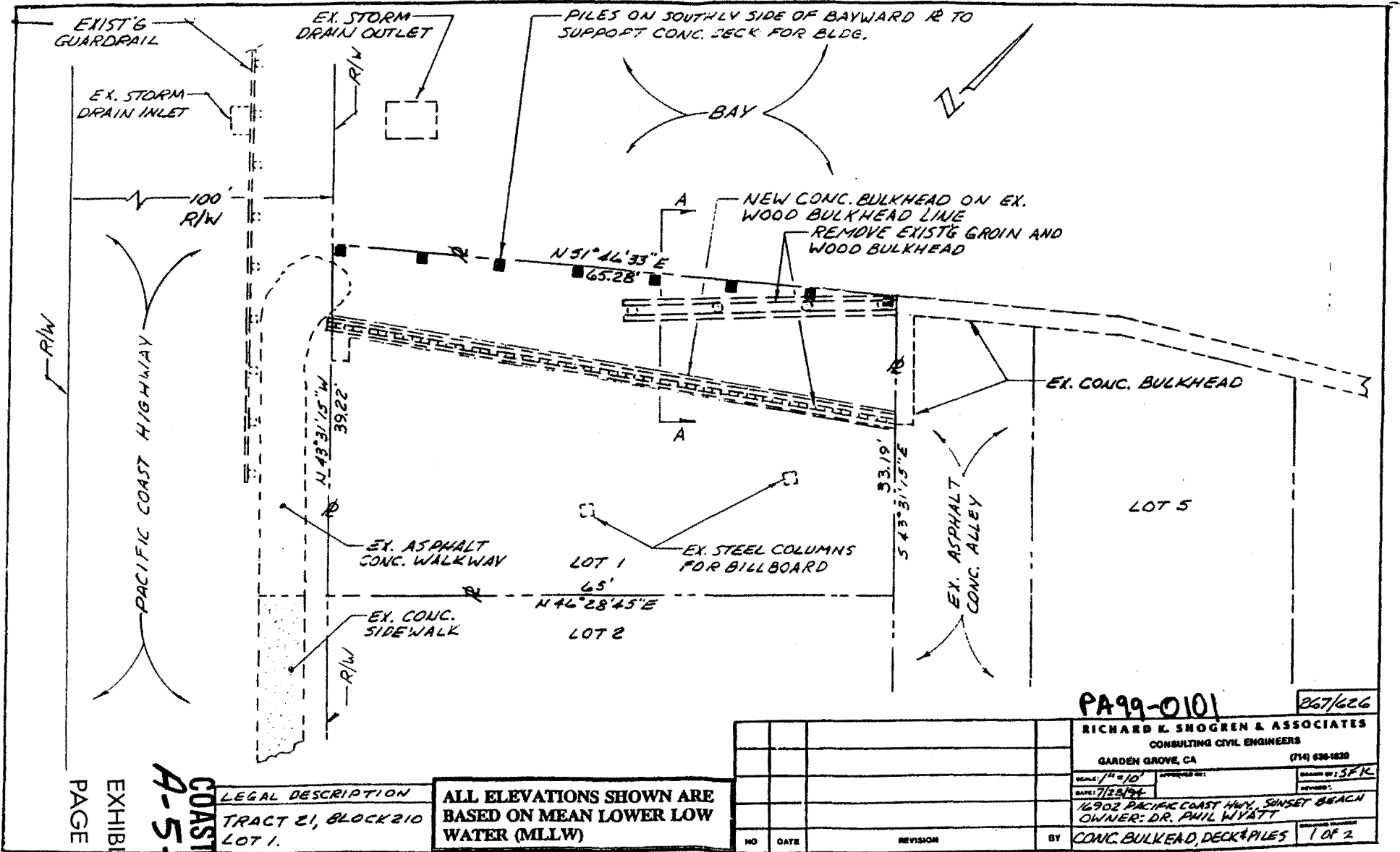
EXHIBIT # B  
 PAGE 1 OF 1

TRACT	M.M.
SUNSET BEACH TRACT NO. 21	M.M. 3-38,40
TRACT NO. 494	M.M. 9-22
TRACT NO. 5829	M.M. 31-29
TRACT NO. 8040	M.M. 222-13,14
PARCEL MAP	M.M. 350-27 TO 37 INC.
	P.M. 80-44-221-48,230-35

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 178 PAGE 53 COUNTY OF ORANGE





PAGE

EXHIBIT #

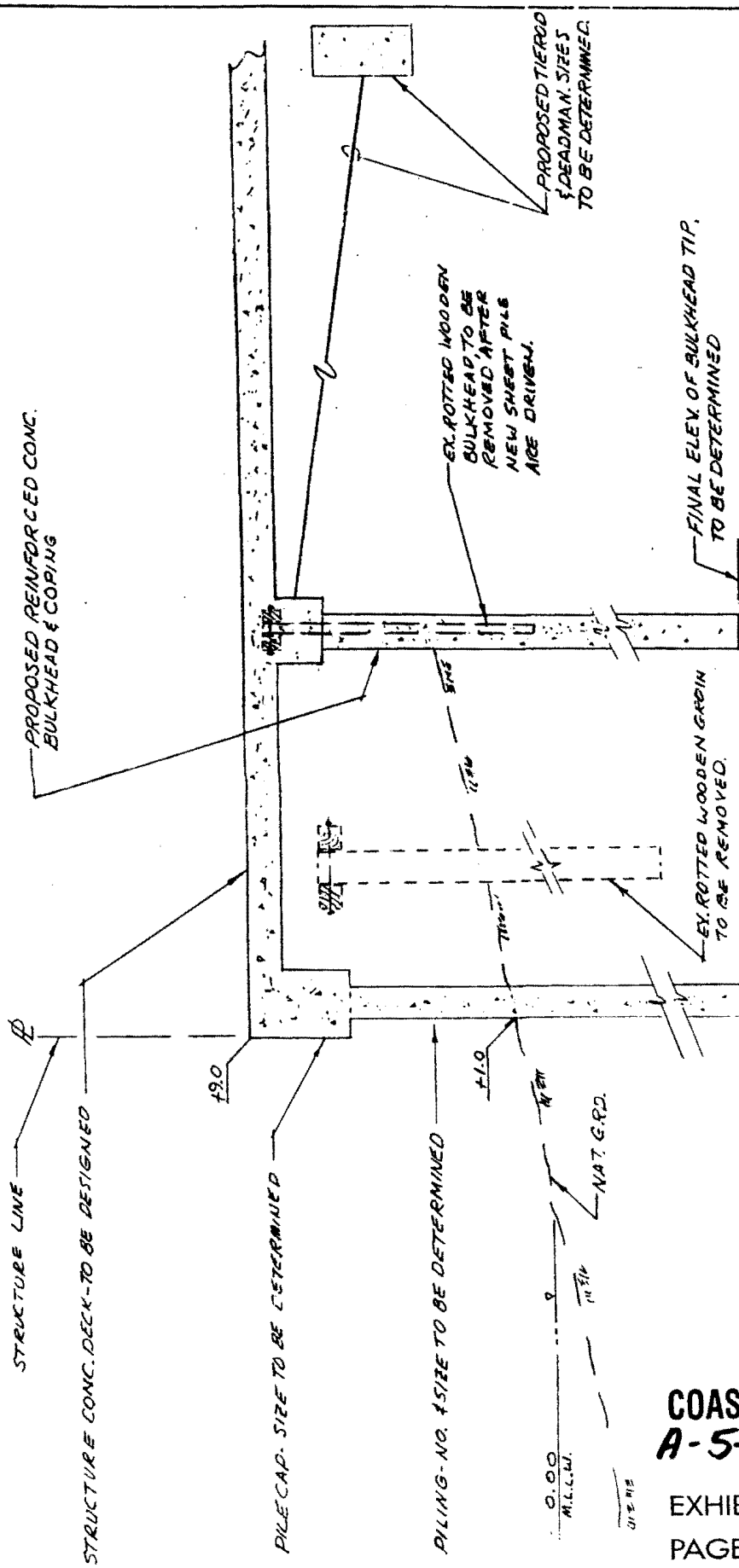
1 OF 2

A-5-SNB-00-054

COASTAL COMMISSION

LEGAL DESCRIPTION  
TRACT 21, BLOCK 210  
LOT 1.

ALL ELEVATIONS SHOWN ARE  
BASED ON MEAN LOWER LOW  
WATER (MLLW)



267/626

**RICHARD M. SHOGREN & ASSOCIATES**  
CONSULTING CIVIL ENGINEERS  
GARDEY GROVE, CA (714) 534-8688

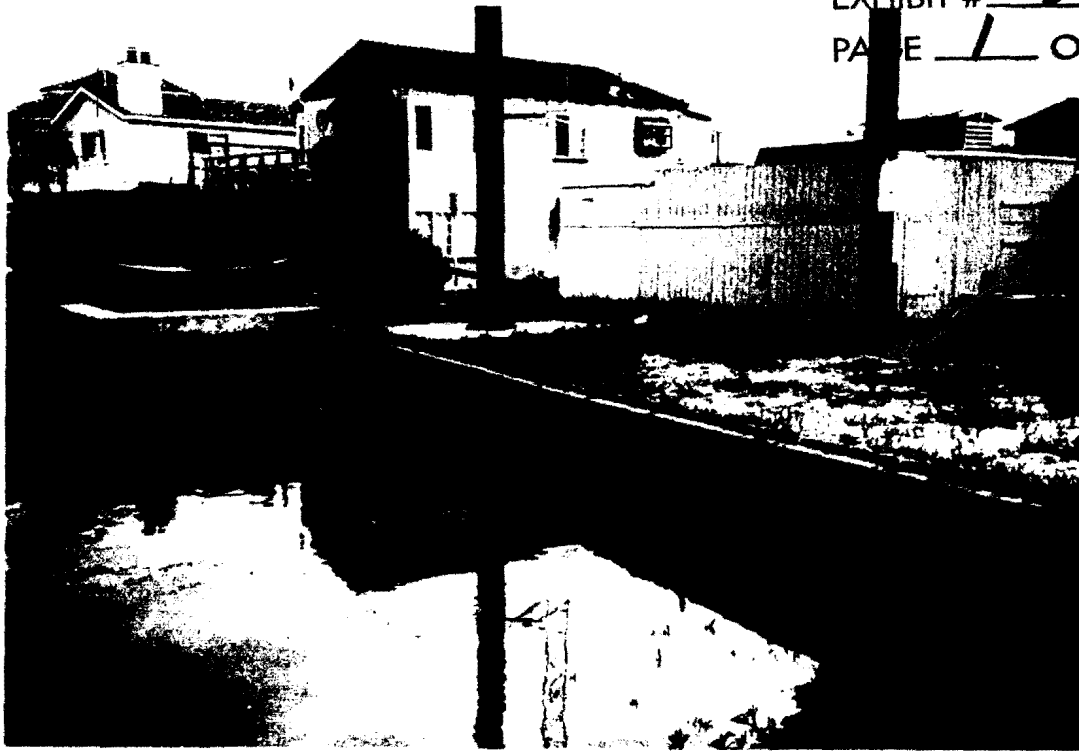
PROJECT: 722524  
DATE: 11/22/24  
DRAWN BY: [signature]

16902 PACIFIC COAST HWY., SAUSET BEACH  
OWNER: DR. PHIL WYATT  
CONC. BULKHEAD, C.P.P. & PILES

NO.	DATE	REVISION	BY

**COASTAL COMMISSION**  
**A-5-SNB-00-054**

EXHIBIT #   C    
PAGE   2   OF   2



VIEW OF EXISTING BULKHEAD AND GROIN LOOKING NORTHEAST



VIEW OF 11<sup>TH</sup> STREET BEACH (FOREGROUND) AND BULKHEAD (BACKGROUND) LOOKING SOUTHEAST





VIEW OF SUBJECT SITE WITH KAYAKS AND  
DRAINAGE OUTLET LOOKING SOUTHEAST

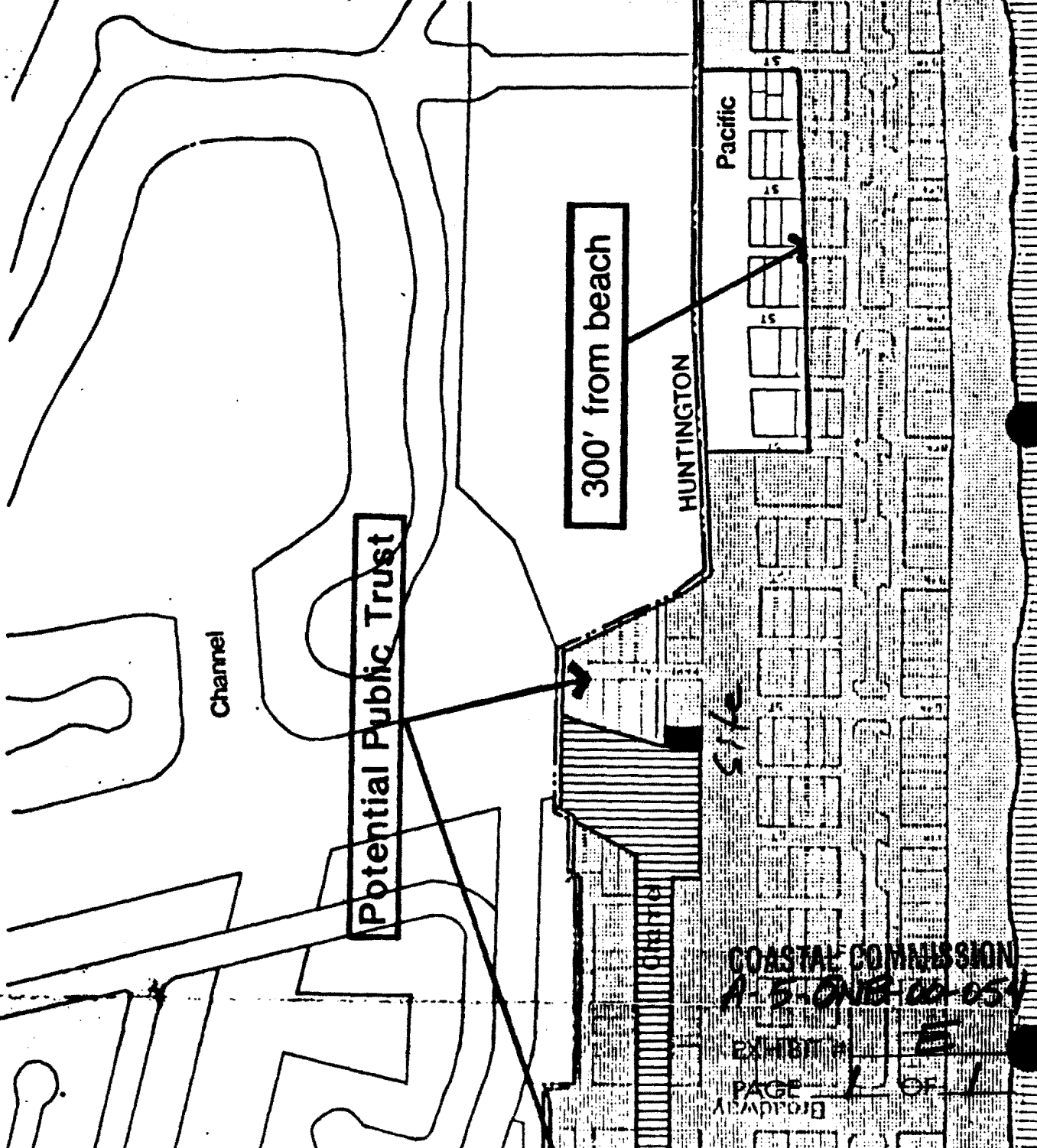


VIEW OF 11<sup>TH</sup> STREET BEACH LOOKING NORTHWEST

I hereby certify that this map portrays the  
diction for the County of Orange  
Segment of the  
adopted by the California Coastal Commission

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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COASTAL COMMISSION  
A-5-018-02-054  
PAGE 1  
EXHIBIT



**County of Orange**  
 Planning & Development Services Department

THOMAS B. MAT  
 DH

300 N FLOW  
 THIRD  
 SANTA ANA, CALIF

MAILING AD  
 P.O. BOX  
 SANTA ANA, CA 927

TELEPHONE  
 (714) 8  
 FAX # 8

REC'D  
 JAN 31 2000  
 CALIFORNIA  
 COASTAL COMMISSION

DATE: 1-27-00

**NOTICE OF FINAL DECISION**

On November 4, 1999, the Orange County Zoning Administrator took action to Conditionally Approve Planning Application PA99-0101 for Coastal Development Permit by Phillip J. Wyatt, P.O. Box 3388, Santa Barbara, CA 93130. **Proposal:** Replacement of a wooden groin structure (which is presently both above and below the mean high water line) with new pilings; and, replacement of an old wooden bulkhead (located approximately 11 feet back from the property line and the Sunset Beach Waterway) with a new cement bulkhead on a lot adjacent to the Sunset Beach Waterway. Also proposed is construction of a concrete deck from the piling to the bulkhead. All work to be performed is on private property and outside of the Sunset Beach Waterway. The project is located at 16902 Pacific Coast Highway, Sunset Beach. Assessors Parcel Number: 178-532-31

     AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.

XX THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED WITHIN THE LOCAL APPEAL PERIOD ENDING NOVEMBER 19, 1999.

County contact: William V. Melton, Project Manager  
 P&DSD/Site Planning Section  
 P. O. Box 4048, Santa Ana, CA 92702-4048

**This project is in the coastal zone and is an "appealable development" subject to Coastal Commission appeal procedures.**

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission, South Coast Area Office, 200 Oceangate, 10th Floor, Long Beach, CA, 90802-4302, or call (562) 590-5071.

**MAIL TO:**

California Coastal Commission (including: minutes, Findings, Conditions and Staff Report)  
 Applicant

**COASTAL COMMISSION**  
**A-5-SNB-00-054**

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 PAGE 1 OF 15

MINUTES

ORANGE COUNTY ZONING ADMINISTRATOR HEARING – November 4, 1999

ZONE TAPE NO.: ZAC24

TIME 2:15 P.M.

ITEM 1.: PUBLIC HEARING – Planning Application No. PA99-0101 for Coastal Development Permit, Negative Declaration, of Philip J. Wyatt.

The Zoning Administrator introduced the project.

Planner IV Melton gave the staff presentation. He stated that the applicant is requesting approval of a Coastal Development Permit. He stated that the project consists of removal of an existing wooden bulkhead located 11 feet from the Sunset Beach Waterway and replacement with a concrete bulkhead. Mr. Melton stated that the applicant also proposes the installation of pilings on the waterway property line and the construction of a concrete deck from the piling to the bulkhead. He noted that the pilings will be installed along a line, which is a continuation of an existing bulkhead on the adjoining property. Mr. Melton stated that the project site is in the Sunset Beach Specific Plan and has a designation of "Sunset Beach Tourist." He noted that the project site is very small.

Mr. Melton stated that staff did sent this project to the Coastal Commission for their review. He stated that staff did receive comments from Mr. Rynas of the Coastal Commission. He stated that Mr. Rynas felt that the new bulkhead would be constructed approximately eleven (11) feet seaward of an existing bulkhead. He stated that Mr. Rynas stated that the Coastal Commission would have permit jurisdiction over this proposal because the proposal was taking place in coastal waters.

Mr. Melton stated that he telephoned Mr. Rynas and explained that the proposed bulkhead would be constructed in the same location as the existing bulkhead, which is 11 feet back from the channel line. He noted that staff also informed Mr. Rynas that the proposed pilings are also located on the applicant's property and would not be located in the Sunset Beach Waterway. Mr. Melton stated that Mr. Rynas agreed that the bulkhead was indeed location on the applicant's property but that the pilings even though they will be on the applicant's property are classified as "fill in coastal waters" and may be in violation of Section 30233 of the Coastal Act. Mr. Melton stated that the entire project is located on private property and disagrees with Mr. Rynas. He stated that planning staff supports the project and recommends approval.

Mr. Melton discussed a letter that staff received from Mr. Craig O'Brien expressing his concerns. (See attachment #1). Mr. Melton stated that he telephoned Mr. O'Brien and sent him a copy of the staff report. Me Melton stated that Mr. O'Brien's concerns are addressed in the conditions of approval in the staff report.

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Mr. Melton discussed a letter from the applicant's agent indicating that they agreed with the staff report and the conditions except condition number 14 requiring the removal of the billboard.

Mr. Melton stated that an encroachment permit is also required and that the applicant has applied for an encroachment permit. He stated that a permit is required from the Army Corps of Engineers and that the applicant has been approved for such a permit and that the expiration date is March 2000. He noted that at this time staff does not have a detailed set of plans but that the plans submitted to the Zoning Administrator are the identical plans approved by the Army Corps of Engineers. Mr. Melton noted that there is an existing billboard on the project site and that the Sunset Beach LCP no longer allows billboards staff has supplied condition #14 to apply to the removal of the billboard. He noted that if the Zoning Administrator determined that the billboard did not apply to this application, condition #14 should be deleted.

2:23 P.M.: The Zoning Administrator opened the public hearing.

Mr. Buzas asked if the Army Corps of Engineers stamped their plans when they approved them because there was no stamp on the submitted plans. He asked how staff was to determine if the submitted plans were approved.

Mr. Melton responded that the wording in the Corps permit is the same as the site plan and that he is satisfied that the submitted site plan is the same as approved by the Army Corps of Engineers.

Debra Rosenthal, representing Mr. Wyatt, responded that the letter from the Corps of Engineers stated that the plans were approved and the plans submitted to the Zoning Administrator were the only plans that the applicant submitted to the Corps of Engineers. She stated that she could request the Corps of Engineers to give her a copy of plans they submitted which they have on file.

Ms. Cristine Trapp, representing Mr. Wyatt, stated that her client agreed with all the Conditions of Approval except condition #14. She listed her reason why the applicant did not agree with condition #14. (See attachment #2).

Mr. Buzas stated that he has a change to condition #10 and that he felt that the billboard was not tied into this project. He stated that he would delete condition #14. He stated that condition #7 address the run off into the channel which was a concern of Mr. O'Brien.

Ms. Zimmerman stated that an encroachment permit has been issued and that the County is just holding so that the expiration date would match the Corps of Engineer's expiration date.

Mr. Melton stated that an encroachment permit can not be issued until the applicant has approval of the Coastal Development Permit that has been requested today.

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2:33 P.M.: No one else wishing to be heard, the Zoning Administrator closed the public hearing.

Mr. Buzas discussed the appeal period with the applicant's agent.

ACTION: 2:33 P.M.: The Zoning Administrator approved Planning Application No. PA 99-0101 with 12 Findings and 13 Conditions as recommended in the Current Planning Division report, dated November 4, 1999 with the deletion of condition number 14 and the revision to condition number 10 as shown below.

Revised Condition #10 to read as follows:

10. CP BP BP BULKHEAD AND PILINGS PA990101 (Custom)  
A building permit is required for the bulkhead, pilings and deck structure. Prior to the issuance of the first building permit, grading permit or encroachment permit, the applicant shall submit final construction and grading plans to the Manager, Current Planing Division for review ~~and approval~~ to determine consistency with the Coastal Development Permit.

2:35 P.M.: The Zoning Administrator adjourned the public hearing.

---

John B. Buzas  
Zoning Administrator

wvm

COASTAL COMMISSION  
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**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

**DATE:** November 4, 1999

**TO:** Orange County Zoning Administrator

**FROM:** Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA99-0101 for Coastal Development Permit

**PROPOSAL:** Replace an old wooden bulkhead (located approximately 11 feet from the channel side property line) with a cement bulkhead on a lot adjacent to the Sunset Beach Waterway. Also proposed is the installation of pilings on the waterway property line and construction of a concrete deck from the piling to the bulkhead. The pilings will be installed along a line, which is a continuation of an existing bulkhead on the adjoining property. A cement deck will be constructed between the pilings and the bulkhead. See applicant's Letter of Explanation, Exhibit 1.

**LOCATION:** On the inland side of Pacific Coast Highway, north of Park Avenue at an area known as the "11th Street Beach". The site address is 16902 Pacific Coast Highway, Supervisorial District

**APPLICANT:** Philip J. Wyatt, property owner

**STAFF CONTACT:** William V. Melton, Project Manager  
Phone: (714) 834-2541 FAX: (714) 834-4652  
E-Mail: MELTONW@PDS.CO.ORANGE.CA.US

**SYNOPSIS:** Current Planning Services Division's review and analysis of the proposed bulkhead/piling structure finds that it is consistent with the policies and development standards of the Sunset Beach Specific Plan/LCP regarding bulkheads. Staff recommends Zoning Administrator approval of Planning Application PA99-0101 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The project site is in the Sunset Beach Specific Plan/ Local Coastal Program (SBSP) and has a commercial land use designation of SBT "Sunset Beach Tourist". The site measures approximately 39 feet by 65 feet (on the waterway property line), with an area of 2,350 square feet. The site is bordered by Pacific Coast Highway to the west, the Sunset Beach Waterway to the north, an alley to the east and another lot to the south. Access to the site is from Pacific Coast Highway to Park Avenue to an alley way on the east side of the lot. The lot's legal description, which is Lot 1, Block 210 of Tract 21, was recorded in 1914, making this site a legal building site.

**COASTAL COMMISSION**  
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The site is developed with an existing 67 feet long wooden bulkhead setback approximately 11 feet from the north property line (waterway property line); an existing 31 feet long wood groin structure located near the north property line; and, an outdoor advertising sign (billboard) mounted on two steel columns. A building permit (permit no. 64189) for the billboard was issued in 1971 when the site was zoned C2 "General Business" and billboards were a permitted use. The billboard will remain on site until some future development is approved for the site.

The applicant proposes to replace the existing wooden bulkhead with a new concrete bulkhead in the same location as the existing wooden bulkhead. The existing wooden groin structure, located between the bulkhead the north property line, will be removed. Also, approximately eight (8) equally spaced concrete pilings are proposed to be installed at the property line and a concrete deck constructed over the pilings and new bulkhead. The top of the proposed concrete deck will be constructed at an elevation of 9.0 feet above M.L.L.W. (Mean Low Low Water). The top elevation of the bulkhead structure will be the same elevation as is the adjacent bulkhead. The site may be developed later with some type of commercial use. Approval of a new Coastal Development Permit would be required for any future development.

**SURROUNDING LAND USE:** (assumes Pacific Coast Highway runs north/south)

Direction	Land Use Designation	Existing Land Use
Project Site	SBT "Sunset Beach Tourist"	Outdoor advertising sign
North	SBW "Sunset Beach Waterway"	Waterway
South	SBT "Sunset Beach Tourist"	Commercial business
East	SBR "Sunset Beach Residential"	Residential
West	Pacific Coast Highway, then SBT "Sunset Beach Tourist"	Commercial

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to four County Divisions, the Sunset Beach LCP Review Board, the California Coastal Commission, South Coast Area Office (Coastal Commission) and the Army Corps of Engineers.

As of the writing of this staff report, no comments raising issues with the proposal have been received from other County divisions by staff. The Sunset Beach LCP Review Board returned a "no comment". The Coastal Commission submitted comments on the proposal, which are discussed later in this report. The Army Corps of Engineers did not submit comments.

**COASTAL COMMISSION**  
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**CEQA COMPLIANCE:**

Negative Declaration No. PA990101 (Exhibit 6) has been prepared for this proposal. It was posted for public review on October 4, 1999 and became final on October 25, 1999. Prior to project approval, this ND must be found adequate to satisfy the requirements of CEQA by the Zoning Administrator. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

With few exceptions, all lots on the Sunset Beach channel have bulkheads at the rear property line. Additionally, all public streets ending at the channel have bulkheads. Most of these bulkheads were constructed prior to the approval of the Coastal Act and the Sunset Beach LCP. Prior to adoption of the Sunset Beach LCP, the Board of Supervisors, in consultation with the City of Huntington Beach, the Army Corps of Engineers and the State Lands Commission, had adopted on February 5, 1965 Resolution No. 65-112 approving pier lines for what was then called the Sunset Harbor. In general, this pier plan adopted regulations for bulkheads and docks in the waterways of Sunset Beach. The pier plan allowed existing bulkheads in any waterway right-of-way area to remain if an encroachment permit was obtained; and, it established guidelines for new bulkheads and docks.

When the Sunset Beach LCP was first approved by the Board of Supervisors in March 1983 and certified by the Coastal Commission in October 1983, Board Resolution 65-112 was incorporated by reference into the LCP. It was recognized that all properties on the waterway would have bulkheads. Evidence of that is found in the LCP, under Land Use Regulations Section IV.D.3.d.1) which states (emphasis added): "For greater use by the general public, all channels and public waterways in existence as of February 5, 1965 (on which date, by Resolution 65-112, the Orange County Board of Supervisors established the channel widths) shall be maintained and operated as public waterways, subject to Sections 5 through 11 of the Codified Ordinances and Codes governing waterways. They shall be properly bulkheaded to prevent erosion and resultant land filling, and dredged to maintain navigable depth and regulated to prevent impediment of channel navigation (as described in Sections 2-3-63 and 2-2-65 of the Orange County Codified Ordinances. All navigable channels shall be retained and maintained at the present width, no part of the channels shall be filled, and no encroachments shall be allowed except for bulkheads, gangways, and docks as provided in item number 2 below". The complete text of the Sunset Beach Waterway District, Section IV.D.3.d, is included with this report as Exhibit 4.

Staff's understanding since the adoption of the Sunset Beach LCP that bulkheads abutting the Sunset Beach Waterway are permitted subject to the approval of a Coastal Development Permit. It is obvious from the above LCP regulations that the Sunset Beach LCP requires bulkheads on all properties that abut the waterway and that bulkheads must be maintained in a state of good repair. This proposal is no exception to those established LCP policies and development standards.

It is not known when the existing wooden bulkhead and groin were constructed. The two structures are in a state of disrepair. The applicant is entitled, if not required by the Sunset Beach LCP, to provide a proper bulkhead to prevent erosion. The applicant is also entitled to construct a new concrete bulkhead on the common property shared with the SBW District. The LCP does not indicate the type of material to be used in a bulkhead. Most bulkheads in Sunset Beach are concrete, so the concrete bulkhead in place of the wooden bulkhead seems appropriate.

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While the applicant has the option to construct a new bulkhead on the property line, he has opted to construct the new bulkhead at the same location as the existing bulkhead, located approximately 11 feet away from the property line, place concrete pilings at the property line and connect the bulkhead and the pilings with a concrete deck type structure. Since all new construction is being carried out on private property outside of the channel, it is permitted subject to the approval of a Coastal Development Permit. In order to perform the proposed piling construction, the applicant must do some of the work from within the channel. A Public Properties Encroachment Permit will be required for construction work carried out within the channel.

While the Army Corps of Engineers did not comment on this proposal, they are aware of the proposal. In addition to approval of a Coastal Development Permit, under the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) the Army Corps of Engineers must also approve this proposal. The Army Corps of Engineers, in April 1995, gave the applicant permission (Permit No. 94-00916-BAH) to remove the wooden bulkhead and groin, and construct a new concrete bulkhead and pilings as shown on the submitted site plans. On March 10, 1998, the Army Corps of Engineers notified the applicant that the completion date of the proposal was extended from March 30, 1998 to March 30, 2000. The approvals from the Army Corps of Engineers is included as Exhibit 2.

Staff sent a copy of the planning application and plans to the Coastal Commission. Mr. Stephen Rynas, Orange County Area Supervisor, for the Coastal Commission returned comments on the proposal. These comments are included in this report as Exhibit 3. Mr. Rynas noted that his comments were based on his review of the proposal that "a new bulkhead would be constructed approximately eleven (11) feet seaward of an existing bulkhead." He also indicated that the Coastal Commission would have permit jurisdiction over this proposal because the proposal was taking place in coastal waters.

After receiving the Coastal Commission comments, planning staff telephoned Mr. Rynas, and explained that the proposed bulkhead would be constructed in the same location as the existing bulkhead, which is 11 feet back from the channel line. Planning staff also informed Mr. Rynas that the proposed pilings are also located on the applicant's property and would not be located in the Sunset Beach Waterway. After discussing the proposal, Mr. Rynas agreed that the bulkhead is not proposed to be located in the waterway. However, he did indicate that in his opinion the proposed pilings, even though they will be installed on private property, are classified as "fill in coastal waters" and may be in violation of Section 30233 of the Coastal Act.

The Coastal Commission comments addressed several sections of the Coastal Act that Mr. Rynas felt were applicable to this proposal. These sections dealt with filling of coastal waters. The proposal, however, is not located in coastal waters. The project is constructed entirely on private property and not located within coastal waters; which are addressed in the Sunset Beach LCP under the, SBW "Sunset Beach Waterway" District. Based on this fact, planning staff disagrees with Coastal Commission staff's interpretation that the proposal is inconsistent with the policies of the Sunset Beach Land Use Plan and Section 30233 of the Coastal Act.

Coastal Commission staff suggested that the Coastal Commission has permit jurisdiction for this proposal. Planning staff disagrees with this assertion. The Permit Jurisdiction of the Coastal Commission is clearly shown on the *Post LCP Certification Permit and Appeal Jurisdiction map* (Figure 4.1.1) of the Sunset Beach LCP, included as Exhibit 5). The Coastal Commission has permit jurisdiction only in the

Sunset Beach Waterway and the Pacific Ocean. Since this project is not located within either location, the County has permit jurisdiction. The Coastal Commission does have Appeal Jurisdiction on this proposal. Most of Sunset Beach property is within the Coastal Commission appeal jurisdiction.

After completion of this proposal, the applicant is considering construction of some type of commercial building on the site. His agent indicated that plans for a future building have not been finalized. The applicant will be required to submit an application for Coastal Development Permit for the construction of a commercial building on the site. Because the applicant has received Army Corps of Engineers approval for the construction of the bulkhead/piling structure, he is going forward with the bulkhead construction before future plans are finalized and before the Army Corps of Engineers permit expires on March 30, 2000.

As indicated in the Background section of this report, there is a billboard on the site. The billboard was a permitted use prior to the adoption of the Sunset Beach SP/LCP and a building permit for the billboard was approved. Under the current Sunset Beach regulation however, billboards are a prohibited use. At a time in the past the County was considering an ordinance to have all the billboards in Sunset Beach removed. The ordinance was never enacted by the Board of Supervisors. The applicant does not propose nor does he want the billboard removed as part of this permit. The billboard would be removed at a later date when a commercial building is approved for the site.

Under Section 7-9-151 Nonconforming Uses And Structures, the billboard is classified as a legal nonconforming use. Section 7-9-151 (a) states, in part: "Uses that were lawfully established but are now nonconforming with existing zoning regulations may be continued. However, except per subsection "(c)" below, the use may not be increased and the structures or land area related to the nonconforming use may not be expanded in size..." To bring the lot into conformance with the Sunset Beach SP/LCP, the Zoning Administrator may wish to consider a staff included Condition of Approval addressing the nonconforming billboard. Staff is submitting Condition of Approval No.14 requiring the removal of the billboard 90 days after the completion of the bulkhead/piling structure. If the Zoning Administrator determines the Coastal Development Permit should be approved and the billboard conforms to the spirit of Section 7-9-151, then the Zoning Administrator should delete Condition of Approval No. 14 prior to approval of the project.

**CONCLUSION:**

After extensive review of the regulations and policies contained in previous Board resolutions, the Sunset Beach PC/LCP and the Coastal Act, staff has determined that the project is in compliance with the policies and regulations applicable to the site. Staff believes that the comments made by Coastal Commission staff did not take into account the fact that the certified Sunset Beach LCP requires bulkheads on all properties abutting the Sunset Beach Waterway and that bulkheads must be maintained in state of good repair. Staff acknowledges the Coastal Commission's appeal authority within the Sunset Beach LCP area, which raises a possibility that they could appeal an approval action by the Zoning Administrator. Staff supports the applicant's Coastal Development Permit request for the bulkhead, pilings and deck and provides a recommendation as shown below.

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**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA99-0101 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted



C. M. Shoemaker, Chief  
CPSD/Site Planning Section

WVM: Folder: D/Sunset Beach

**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

1. Applicant's Letter of Explanation
2. Correspondence from the Army Corps of Engineers
3. Comment letter from the Coastal Commission
4. Sunset Beach Specific Plan Section IV.D.3.d.
5. Sunset Beach Post Certification Map
6. Environmental Documentation
7. Site Plans and Site Photos

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. Additionally, this project is within the Coastal Zone and is an "appealable project" under the Coastal Commission appeal procedures.

**COASTAL COMMISSION**

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Appendix A  
Findings  
PA990101

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1 GENERAL PLAN PA990101

That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.

---

2 ZONING PA990101

That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.

---

3 COMPATIBILITY PA990101

That the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

---

4 GENERAL WELFARE PA990101

That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

---

5 NOTIFICATION PA990101

That all organizations and associations approved by the Planning Commission for receiving a copy of the application have been mailed said copy at least forty-five (45) days in advance of the public hearing on the use permit.

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6 COASTAL DEVELOPMENT PERMIT 1 PA990101

The development project proposed by the application conforms with the certified Local Coastal Program.

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7 COASTAL DEVELOPMENT PERMIT 2 PA990101

The project conforms with the public access and public recreation policies of the California Coastal Act.

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8 COASTAL DEVELOPMENT PERMIT 3 PA990101

The approval of this application will result in no modification to the requirements of the certified land use plan.

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9 COASTAL DEVELOPMENT PERMIT 4 PA990101

Approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.

---

10 NEGATIVE DECLARATION PA990101 (Custom)

In accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines Section 15074, Negative Declaration No. PA990101, which reflects the independent judgment of the lead agency, satisfies the requirements of CEQA and is approved for the proposed project based upon the following findings:

- a. The Negative Declaration and Comments on the Negative Declaration received during the public review process were considered and the Negative Declaration was found adequate in addressing the impacts related to the project; and
  - b. There is no substantial evidence that the project, with the implementation of the mitigation measures, if any, which are included in the Negative Declaration, will have a significant effect on the environment.
- 

11 FISH & GAME - EXEMPT PA990101

Find that pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.

---

12 NCCP NOT SIGNIFICANT PA990101

Find that the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.

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Appendix B  
Conditions of Approval  
PA990101

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1 CP CP BASIC/ZONING REG PA990101

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

---

2 CP CP BASIC/TIME LIMIT PA990101

This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

---

3 CP CP BASIC/PRECISE PLAN PA990101

Except as otherwise provided herein, this permit is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

---

4 CP CP BASIC/COMPLIANCE PA990101

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

---

5 CP CP NA BASIC/OBLIGATIONS PA990101

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant will reimburse the County for any court costs and attorneys fees which the county may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

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**COASTAL COMMISSION**

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6 CP CP NA BASIC OBLIGATIONS PA990101

Pursuant to Government Code Section 66020, the applicant is informed that the 90-day period in which the applicant may protest the fees, dedications, reservation or other extraction imposed on this project through the conditions of approval has begun.

7 SG SG RG DRAINAGE IMPROVEMENTS PA990101 (Custom)

A. Prior to the issuance of any grading permit or building permit, whichever comes first, the applicant shall in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff.

SG C RU DRAINAGE IMPROVEMENTS

B. Prior to the issuance of any certificates of use and occupancy said improvements shall be constructed in a manner meeting the approval of the Manager, Construction.

8 SG SG G GEOLOGY REPORT PA990101 (Custom)

Prior to the issuance of a grading permit or building permit, the applicant shall submit soils engineering and geologic studies to the Manager, Subdivision and Grading, for approval. These reports would primarily involve assessment of potential soil related constrains and hazards such as settlement, liquefaction, or related secondary seismic impacts where determined to be appropriate by the Manager, Subdivision and Grading Services. The report shall include evaluation of potentially expansive soils and recommend construction procedures and/or design criteria to minimize their effect of these soils on the proposed project.

9 BP BP G CONSTRUCTION NOISE PA990101

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permits, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of grading plans, will be considered as adequate evidence of compliance with this condition.

COASTAL COMMISSION

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10 CP BP BP BULKHEAD AND PILINGS PA990101 (Custom)

A building permit is required for the bulkhead, pilings and deck structure. Prior to the issuance of the first building permit, grading permit or encroachment permit, the applicant shall submit final construction and grading plans to the Manager, Current Planning Service Division for review and approval to determine consistency with the Coastal Development Permit.

(As revised by the Zoning Administrator on November 4, 1999)

11 CP BP BP ENCROACHMENT PERMIT PA990101 (Custom)

A Public Properties Encroachment Permit is required if any work is preformed from the Sunset Beach Waterway.

12 CP CP BP CLEAN-UP PA990101 (Custom)

All construction and building materials shall be placed on private property. No construction, building or excavated materials shall be placed in the Sunset Beach Waterway public roads or public alleys during construction. Excavated materials not used for fill on the site shall be exported to a legal disposal site. Applicant shall provide erosion plans to the Building Department showing that no materials will enter the channel during construction in the event of rain.

13 CP CP NA FUTURE CONSTRUCTION PA990101 (Custom)

This Coastal Development Permit authorizes only the following: 1) removal of the existing wooden bulkhead and groin; 2) construction of a new cement bulkhead to replace the wood bulkhead; 2) installation of up to eight (8) cement piling landward of the Sunset Beach Waterway; and 3) a concrete deck between the piling and the bulkhead. Any additional or future construction will require the approval of a new Coastal Development Permit.

COASTAL COMMISSION  
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**CALIFORNIA COASTAL COMMISSION**

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



**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Sara Wan, Pedro Nava, and Cecilia Estolano  
200 Oceangate, Suite 1000  
Long Beach, CA 90802 (562) 590-5071

**SECTION II. Decision Being Appealed**

1. Name of local/port government: County of Orange
2. Brief description of development being appealed: Removal of a wood groin structure, the replacement of a wooden bulkhead with a cement bulkhead, the installation of up to eight pilings, and the construction of a concrete deck from the pilings to the bulkhead.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 16902 Pacific Coast Highway, Sunset Beach, Orange County. APN# 178-532-38
4. Description of decision being appealed:
  - a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: XX
  - c. Denial: \_\_\_\_\_

**NOTE:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-5-SNB-00-054 **COASTAL COMMISSION**

DATE FILED: February 14, 2000 **A-5-SNB-00-054** FEB 14 2000 **RECEIVED**

DISTRICT: South Coast EXHIBIT # G CALIFORNIA COASTAL COMMISSION

PAGE 1 OF 6

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: XXX
  - b. City Council/Board of Supervisors: \_\_\_\_\_
  - c. Planning Commission: \_\_\_\_\_
  - d. Other: \_\_\_\_\_
6. Date of local government's decision: November 4, 1999
7. Local government's file number: PA 99-0101

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties.  
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:  
Phillip J. Wyatt  
P.O. Box 3388  
Santa Barbara, CA 93130
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - b. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**COASTAL COMMISSION**  
**A-5-SNB-00-054**  
 EXHIBIT # G  
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#### **SECTION IV. Reasons Supporting This Appeal**

**Note:** Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The County of Orange through CDP PA-99-0101 (Wyatt) would allow the placement of eight pilings into coastal waters and the construction of a concrete deck from the bulkhead to the pilings for an unspecified future commercial use. Additional work incorporated into the project description includes the removal of an existing wooden groin structure and the replacement of the existing wooden bulkhead with a cement bulkhead. The proposed development is located in Sunset Beach, which is a segment of the certified Local Coastal Program (LCP) for Orange County. The proposed project raises a substantial issue with the Orange County Local Coastal Program for the reasons described below.

**Fill of Coastal Waters:** Based on the plans reviewed by Commission staff, the applicant proposes to place eight pilings in coastal waters. Policy 35 of the Sunset Beach segment of the Orange County LCP incorporates Sections 30233 and 30607.1 of the Coastal Act. Section 30233 of the Coastal Act states that the fill of coastal waters can be allowed for eight specified uses. According to the County's coastal development permit, the proposed concrete deck, which is to be supported by the eight pilings, is for a future commercial use, which has not been specified. Therefore the use approved by the County is not one of the eight uses allowed for the fill of open coastal waters and wetlands. Accordingly, an appeal of the local action must be made to assure that any approved development is consistent with the requirements of Section 30233 of the Coastal Act which has been incorporated into the Orange County Local Coastal Program.

**Commission Original Jurisdiction:** Given the project's location next to an inland waterway, portions of the project may be within the Commission's retained jurisdiction for purposes of issuing coastal development permits. The development review authority delegated to the County of Orange in the certified local coastal program only extends to development outside areas of the Commission's retained permit jurisdiction. The project description contained in the Notice of Final Action and the site plan reviewed by Commission staff are unclear concerning which, if any, project components may fall within the Commission's coastal development permit jurisdiction. Further review of the local action is needed to determine whether the County had the authority to issue the coastal development permit consistent with its certified LCP because all or portions of the approved development may be located within the Commission's original jurisdiction.

As previously stated, Policy 35 of the Sunset Beach LCP incorporates Sections 30233 and 30607.1 of the Coastal Act. Consequently, the requirements of Sections 30233 and 30607.1 of the Coastal Act would apply to the entire project whether it is located in the jurisdiction of the County of Orange or the Commission. If the Commission finds substantial issues of conformity with the certified LCP, the Commission can evaluate the portion of the project within its retained jurisdiction as well as the appealable portion of the approved project for its consistency with Sections 30233 and 30607.1 during the "De Novo" phase of the appeal process.

**Impacts to a Public Beach:** The approved development is immediately adjacent to a public beach commonly referred to as the "11<sup>th</sup> Street Beach". Though the approved development does not propose any development outside of the applicant's property line, the undeveloped portion of the applicant's property constitutes a continuation of the 11<sup>th</sup> Street Beach. Additionally, the pilings and concrete deck extending to the applicant's property line could have an adverse impact on the public's ability to use the 11<sup>th</sup> Street Beach by reducing the width of the beach and reducing the view corridor of the channel from Pacific Coast Highway should a commercial structure be placed on the deck.

The Sunset Beach Land Use Plan Development Guidelines and Regulation IV.D.3.d.3 state that the 11<sup>th</sup> Street Beach will be retained in its present general configuration, or if reconfigured, be redesigned to preserve its recreational opportunities. Small boats for example are allowed to be launched from this beach. Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access. Section 30210 of the Coastal Act requires that access opportunities be maximized. Accordingly, an appeal of the local action must be made to assure that any approved development is consistent with the requirements of Sunset Beach segment of the certified County of Orange Local Coastal Program and the public access policies of the Coastal Act.

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COASTAL COMMISSION  
A-5-SNB-00-054

EXHIBIT # GT  
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State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Page 3

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

RECEIVED  
FEB 14 2000

[Signature]  
Signature of Appellant(s) or  
Authorized Agent

Date \_\_\_\_\_

CALIFORNIA  
COASTAL COMMISSION

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

COASTAL COMMISSION  
A-5-SNB-00-05

EXHIBIT # G

PAGE 5 OF 6

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Page 3

\_\_\_\_\_  
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\_\_\_\_\_

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

RECEIVED  
FEB 14 2000

*Chloe E. Lewis*  
\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date \_\_\_\_\_

CALIFORNIA  
COASTAL COMMISSION

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

COASTAL COMMISSION  
A-5-SNB-00-054

\_\_\_\_\_  
Signature of Appellant(s) EXHIBIT # GT

Date \_\_\_\_\_ PAGE 6 OF 6

# ROSENTHAL & ZIMMERMAN

ATTORNEYS AT LAW

895 TOWN CENTER DRIVE SUITE 1410  
COSTA MESA, CALIFORNIA 92626-7187  
TELEPHONE: (714) 557-4808  
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DEBORAH M. ROSENTHAL  
MARC A. ZIMMERMAN  
CRISTINE M. TRAPP

12807 LEWIS STREET, SUITE 201  
GARDEN GROVE, CALIFORNIA 92640  
TELEPHONE: (714) 760-8888  
FAX: (714) 760-8888

February 3, 2000

669.002

Via Telecopier

Mr. Steve Rynas  
South Coast Area Office  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802

Re: Wyatt Coastal Development Permit/PA 99-0101

Dear Mr. Rynas:

Thank you for discussing your concerns about Coastal Development Permit ("CDP") PA 99-0101 approved by the County of Orange on November 4, 1999. As we explained by telephone, this permit is for replacement of an existing deteriorated bulkhead and metal groin located at 16902 Pacific Coast Highway, a privately-owned lot adjacent to the Sunset Beach Waterway. The existing wooden bulkhead will be replaced with a concrete bulkhead at its current location. The property is subject to the certified Sunset Beach Local Coastal Plan.

We understand that you will be reviewing issues related to the CDP with counsel for the Coastal Commission and other Staff today. As you explained it, your review will primarily address (a) whether the County or the Coastal Commission has primary jurisdiction over issuance of a CDP for the subject property and (b) the applicability of Public Resources Code Section 30233 to the bulkhead replacement project. While we have not had time to prepare a full analysis of the CDP, we would like to draw your attention to the following items:

1. You explained your concern that a portion or component of the project (the bulkhead and/or the pilings) may be located below the mean high tide line. Because the Coastal Commission's appeal jurisdiction is defined to include all projects within 300 feet of the mean high tide line under Public Resources Code Section 30603, you conclude that the Commission must have original permit jurisdiction over all projects "below the mean high tide line." We believe that this interpretation creates an unnecessary internal inconsistency with other provisions of the Coastal Act.

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Mr. Steve Rynas  
February 3, 2000  
Page 2

For instance, Section 30500(a) provides that "each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction." In this case, the County of Orange prepared the Sunset Beach LCP. As certified by the Commission, the Sunset Beach LCP clearly contemplates that the subject property is "within the jurisdiction" of the County of Orange.

Section 30519(a) provides that "except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at the time be delegated to the local government that is implementing the local coastal program or any portion thereof." (Emphasis added.) Section 30519(b) sets forth the only circumstances under which the Commission retains original permit jurisdiction, none of which is applicable here. As noted above, the subject property is clearly located within the area to which the Sunset Beach LCP applies. In fact, the lot is shown on Figure 12 of the LCP. See also Section 30600(d) ("After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.")

Section 30600.5(b) provides that "the authority for issuance of coastal development permits provided for in Chapter 7 (commencing with Section 30600) shall be delegated to the respective local governments within 120 days after (1) the effective date of certification of a land use plan pursuant to Chapter 6 (commencing with Section 30500) or (2) the effective date of this section, whichever occurs last. This delegation shall only apply with respect to those areas governed by the certified land use plan or a certified portion thereof, applicable to an identifiable geographic area." As explained above, the subject property is clearly "governed" by the certified Sunset Beach LCP.

It would be inconsistent with all of the above provisions of the Coastal Act for the Commission to certify the Sunset Beach LCP as applicable to the subject property, but then refuse to delegate permit authority over property clearly covered by the LCP. This interpretation is also inconsistent with the Sunset Beach LCP itself. The LCP establishes local permit jurisdiction over projects on the subject property, with original Commission jurisdiction limited only to projects on public property within the Sunset Beach Waterways.

The Sunset Beach LCP provides that a CDP is required from the Coastal Commission for bulkheads and other structures "within the Sunset Beach Waterways." Bulkheads not within the Sunset Beach Waterways require only a building permit and, if applicable, an encroachment permit from the local agency. The LCP permits bulkheads to be installed at the private property line and establishes a forty foot "channel encroachment line" at the location of the subject property where bulkheads and other structures are "permitted" with

COASTAL COMMISSIC.  
A-5-SNB-00-054

EXHIBIT # H

PAGE 2 OF 6

Mr. Steve Rynas  
February 3, 2000  
Page 3

the channel itself. While the proposed bulkhead project on the Wyatt property does not encroach into the channel (i.e. it is located entirely on private property, it is relevant that the LCP clearly defines the Sunset Beach Waterway to exclude both private property and the channel encroachment areas shown on Figure 12. Under the LCP, therefore, the Commission's area of original jurisdiction extends only to the edge of the channel encroachment areas shown on Figure 12.

The Coastal Commission certified the Sunset Beach LCP as consistent with the Coastal Act, and thereby delegated original permit authority to the County of Orange in accordance with the provisions of the LCP. The Commission did not purport to retain jurisdiction over any areas, except those within the Sunset Beach Waterways themselves. It would be inconsistent with both the structure and the express language of the certified LCP for the Commission to claim original permit authority over projects on private property within the area where the County was delegated permit authority.

Finally, in addition to the general delegation provisions discussed above, Section 30601 sets forth the scope of the Commission's original permit jurisdiction prior to certification of the local coastal program. Section 30601(a) provides that the Commission's CDP jurisdiction applies to development "within 300 feet of ... the mean high tide line where there is no beach." The definition of the scope of the Commission's pre-certification permit jurisdiction is identical to the scope of its appeal jurisdiction after certification. The combined effect of Sections 30519, 30601 and 30602 is to establish the scope of the Commission's permit jurisdiction prior to certification, require it to be delegated to the local agency upon certification and reserve appeals jurisdiction over the delegated permit authority. The Coastal Commission obviously interpreted the Coastal Act to require (and allow) such delegation when it certified the Sunset Beach LCP.

2. You also explained your concern that the pilings proposed along the line of the existing groin (and possibly the replacement bulkhead) would constitute impermissible fill under Public Resources Code Section 30233. This section limits activities within "open coastal waters, wetlands, estuaries, and lakes. We believe that application of Section 30233 to this project is both incorrect on its face and inconsistent with the Commission's interpretation of the Coastal Act when it certified the Sunset Beach LCP.

As a preliminary matter, the subject property does not contain "open coastal waters" and is not a wetland, estuary or lake. Neither the Coastal Act nor the Sunset Beach LCP defines "open coastal waters." However, the LCP specifically allowed construction of bulkheads along private property lines within Sunset Beach and established a permitted encroachment area within the channel at the location of the subject property. Neither the Coastal Commission nor the County have ever considered the subject property to contain "open coastal waters." As a practical matter, the property is tucked between an existing bulkhead at the property line of the adjacent lot and Pacific Coast Highway; there is nothing "open" about the waters at this location. Section 30233 therefore does not apply on its face.

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Mr. Steve Rynas  
February 3, 2000  
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More importantly, interpretation of Section 30233 to prevent installation of a replacement bulkhead and pilings on private property at this location would effectively de-certify a large portion of the certified Sunset Beach LCP. As set forth in Section IV.D.3.d. of the certified LCP, construction of bulkheads and related structures is specifically permitted, not only on private lots bordering the Sunset Beach channel, but for a distance of 40 feet into the channel. In fact, bulkheads bordering the public channels are required to prevent erosion and resultant land filling. LCP at p. IV-16. Figure 13 of the LCP contains detailed drawings of the "Criteria for Sunset Beach Channel Encroachments." When the LCP was approved, therefore, both the Coastal Commission and the County agreed that bulkheads and other structures at this location were allowed by the Coastal Act and in the public interest. There is no basis in the Coastal Act for the Commission suddenly to rescind its long-standing certification of this portion of the Sunset Beach LCP.

There are a number of other factual items which we would be happy to discuss with you, including the configuration of the subject property and the timing of the notification. In the meantime, we understand that you have refused to accept the "Notice of Final Decision" provided by the County because it contained a hand-written date and does not specifically locate the project with respect to the "mean high tide line." We understand that the Commission has routinely accepted similar notices in the past, and that this represents a new position by Commission Staff. We find nothing in the Coastal Act or the Commission regulations which requires the entire notice to be typed or printed. We also find nothing which requires reference to the "mean high tide line" for projects within the delegated jurisdiction of the County under a certified local coastal program.

We are available to discuss all of the above items with you or Commission counsel. As you may imagine, the property owner is anxious to proceed as expeditiously as possible. The County approved the CDP on November 4, 1999 and advised us that the time for Commission action had passed in early December 1999. The property owner has been proceeding to comply with the terms of the CDP and other permits in good faith reliance on this authorization. After so many months, we were all shocked to learn that the Commission might now be attempting to assert jurisdiction over this small project to prevent badly-needed replacement and improvement of existing deteriorated structures.

We look forward to hearing from you on Friday, February 4<sup>th</sup>.

Very truly yours,

*Deborah M. Rosenthal*  
Deborah M. Rosenthal

DMR:ead

DIR669002LTR/CCAFF/ULR

cc: Phillip J. Wyatt, Ph.D., Owner  
Mr. William V. Melton, County Project Manager

COASTAL COMMISSION  
A-5-SNB-00-054

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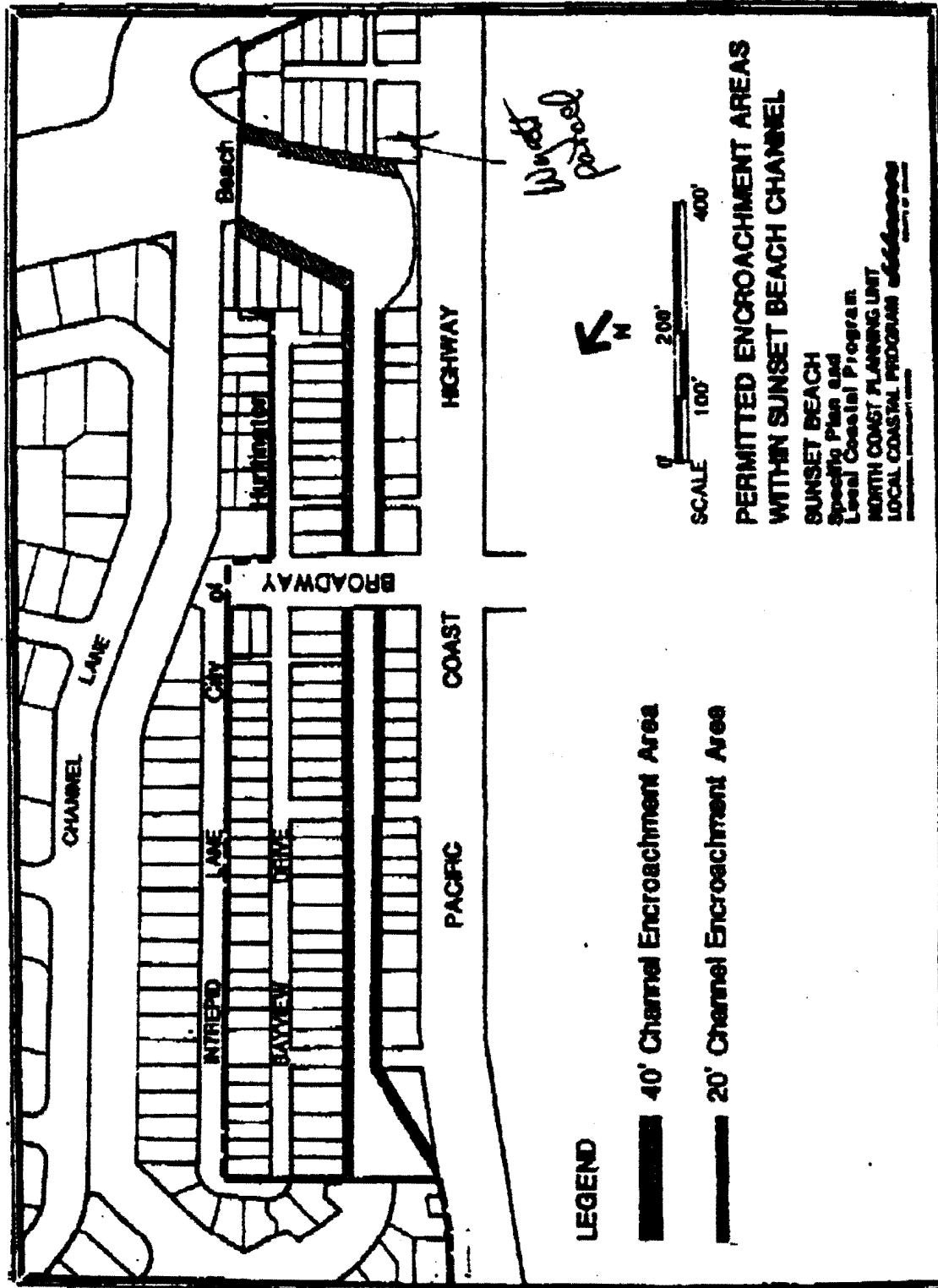


Figure 1.

COASTAL COMMISSION  
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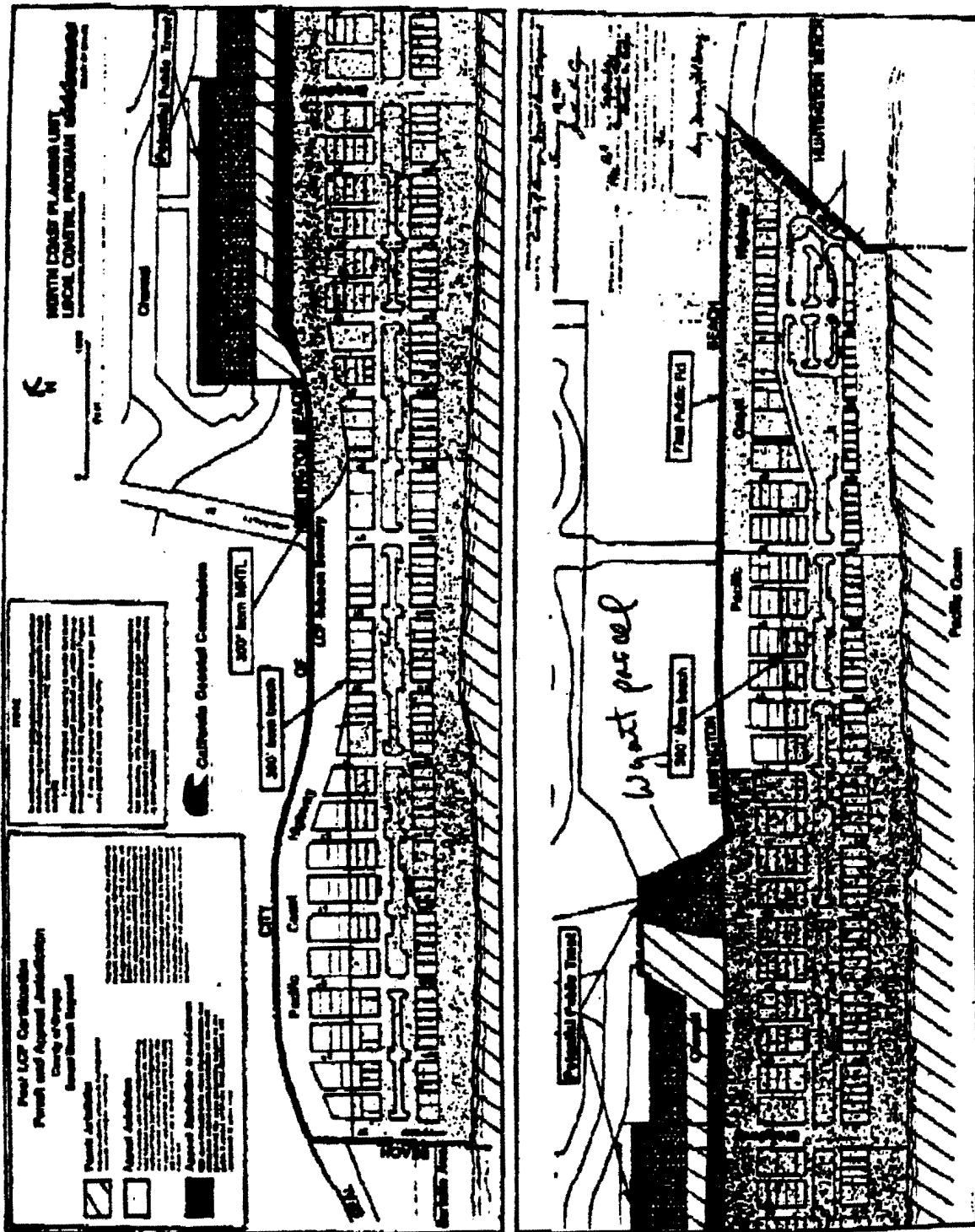


Figure 14

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FEB 11 2000

ATTORNEYS AT LAW

695 TOWN CENTER DRIVE SUITE 1410  
COSTA MESA, CALIFORNIA 92626-7187  
TELEPHONE: (714) 557-4005  
FAX: (714) 540-3219

CALIFORNIA  
COASTAL COMMISSION

DEBORAH M. ROSENTHAL  
MARC A. ZIMMERMAN  
CRISTINE M. TRAPP

12387 LEWIS STREET, SUITE 201  
GARDEN GROVE, CALIFORNIA 92840  
TELEPHONE: (714) 740-2329  
FAX: (714) 740-2308

February 9, 2000

669.002

Via Telecopier

Mr. Steven L. Rynas  
South Coast Area Office  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, California 90802

Re: Wyatt Coastal Development Permit  
Local Permit No. PA99-0101  
Commission File No. 5-SNB-99-242

Dear Mr. Rynas:

As representatives of the property owner, Philip Wyatt, Ph.D, we were pleased to receive notice of the commencement of the 10-day appeal period for the above-referenced Coastal Development Permit ("CDP"). We believe that the Commission's appellate jurisdiction in this case is clearly defined under both the Coastal Act and the certified Sunset Beach LCP.

We understand that the Commission will conduct its review under Sections 30600.5(c) and 30603(b)(1) of the Coastal Act. Section 30600.5(c) provides that "a coastal development permit *shall* be issued by the ... commission on appeal, if ... the commission on appeal finds that the proposed development is *in conformity with the certified land use plan.*" Section 30603 provides that the appeal "shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." In the absence of public access concerns, the only question on appeal is whether the proposed activity is authorized under the existing LCP; there is no opportunity to reopen the prior certification through an appeal of an individual CDP.

As set forth in our prior letter, the CDP is wholly consistent with the approved Sunset Beach LCP, as it has been implemented by both the County and the Commission since its adoption. The LCP specifically contemplates construction in this area, not only on the private property owned by Dr. Wyatt, but into the publically owned waters for a distance of up to 40 feet

COASTAL COMMISSION  
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PAGE 1 OF 2

Mr. Steven L. Rynas  
February 9, 2000  
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Dr. Wyatt's neighbors have taken advantage of this authorization to fill their property and construct decks within the designated encroachment area. Dr. Wyatt's property is the only parcel along the eastern side of the channel which is not already filled in to the property line; it is therefore tucked between Pacific Coast Highway and the adjacent owner.

The subject CDP authorizes *less* development than is allowed under the certified Sunset Beach LCP and enjoyed by Dr. Wyatt's neighbors. In this case, the plans call for construction of a deck along the line of the existing groin, to avoid filling the 11-foot wide strip between Dr. Wyatt's property line and the current bulkhead which would otherwise be permitted under the plan. In addition, the desire of the County to encourage replacement of the existing wooden bulkhead and groin is well documented in its Staff Report.

Under the facts of this case, especially where the Commission has already certified that development on Dr. Wyatt's property is consistent with the Coastal Act, we do not believe that Section 30233 has any applicability. We or the property owner are available to answer any questions which you may have about conformity of the CDP with the certified LCP pursuant to Sections 30600.5 and 30603.

Very truly yours,

*Deborah M. Rosenthal*

Deborah M. Rosenthal, AICP

DMR:ead  
DR'669002\LTR\CCCAPPJUR.SLR

cc: Philip J. Wyatt, Ph.D.  
Mr. William Melton  
Jack Golden, Esq.

**COASTAL COMMISSION**  
**A-5-SNB-00-054**

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PAGE 2 OF 2

**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

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COASTAL COMMISSION

February 18, 2000

File Ref: YC

Stephen Rynas  
California Coastal Commission  
200 Ocean Gate, Suite 1000  
Long Beach, CA 90802-4302

Dear Mr. Rynas:

**SUBJECT:** Orange County Planning Application 99-0101, Proposed Bulkhead, Groin Wall Removal and Installation of Eight Pilings and Concrete Platform in the Channel Adjacent to 16902 Pacific Coast Highway, Sunset Beach, Orange County

This will acknowledge our conversation concerning the subject project and your request for information on the mean high tide line relative to the subject project. As I understand it, the County of Orange issued a Coastal Development Permit pursuant to its Local Coastal Program. The County's action is being appealed by the California Coastal Commission (CCC).

Based on our cursory review of the information you faxed, a portion of the pilings will be located at an elevation of one foot above mean lower low water. This would place the waterward extent of the structure at an elevation below sea level. Our historic information appears to show that this is an open water area adjacent to a marsh. This area was included within lands sold and patented as tidelands in 1903, pursuant to Tide Land Location 221 (TLL 221). In 1961 and 1962, the CSLC settled certain property (boundary and title) ownership issues with the Huntington Harbour Corporation involving a major portion of Huntington Harbour pursuant to two agreements (BLA 18 and SLL 34). The subject property was not a part of those agreements and, therefore, the title issues remain unresolved. However, much of Huntington Harbour within TLL 221, including the subject property, remains subject to the Public Trust Easement. That easement provides the right for public use of these lands for waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. The CSLC has the authority to ensure that any projects proposed are consistent with this easement.

**COASTAL COMMISSION**

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Therefore, by copy of this letter, we are requesting that the property owner provide us with the information listed on the attached coastal project review form. Upon receipt and review of that information, we will provide the CCC, the County, and the property owner with a determination of interest letter.

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

Sincerely,

Jane E. Smith  
Public Land Management Specialist  
Southern California Region

Enclosure

cc: Bill Melton, Orange County w/attachment  
Philip J. Wyatt, w/attachment  
P.O. Box 3388  
Santa Barbara CA 93130-3388  
John Van Coops, CCC/San Francisco

**COASTAL COMMISSION**  
**A-5-SNB-00-054**  
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## COASTAL PROJECT REVIEW PLAN

In order for California State Lands Commission staff to analyze your coastal development project, we will need the following:

1. Brief project description.
2. One legible copy of a plot plan at a usable scale, (not a reduced copy) depicting the existing and proposed improvements with a stringline showing the most seaward extent of the structures on either side. The plot plan will generally show two-foot contour lines and whether the project extends onto the beach. All elevations and contour lines will be referenced to the National Geodetic Vertical Datum-1929 (N.G.V.D.). The plot plan will depict the nearest street centering or right-of-way line and the subject property boundary lines.
3. Current (with date and time) ground level photography depicting the project site and adjacent properties in relation to the shoreline. In addition, we require a duplicate set of photographs of the project site, marked to indicate the approximate location of the proposed development.

Please submit the above to:

California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202  
Attn: Jane Smith

You should be aware that the above information will enable staff to make a preliminary determination only. Additional information may be requested to complete the initial review process.

Please contact Jane E. Smith, Public Land Management Specialist at (916) 574-1892, if you have further questions.

g:forms:Ltr\_Coastal

**COASTAL COMMISSION**  
**A-5-SNB-00-054**  
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PAGE 3 OF 3

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



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COASTAL COMMISSION

Contact Phone: (916) 574-1892  
Contact FAX: (916) 574-1925

April 11, 2000

File Ref: SD 00-02-22.2

Philip J. Wyatt  
P.O. Box 3388  
Santa Barbara, CA 93130-3388

Dear Mr. Wyatt:

SUBJECT: Proposed Bulkhead and Groin Wall Removal; Installation of Eight  
Pilings and Concrete Platform in the Channel Adjacent to 16902  
Pacific Coast Highway, Sunset Beach, Orange County

Staff of the California State Lands Commission (CSLC) has been contacted by the California Coastal Commission (CCC) concerning the subject project. As background, the State acquired sovereign ownership of all previously ungranted tidelands, submerged lands, and beds of navigable waterways upon its admission to the United States in 1850. Tidelands are those lands that lie between the lines of ordinary high and ordinary low tide. Submerged lands lie below the line of ordinary low water as it last naturally existed. The landward boundaries of the State's sovereign interest are generally based upon the ordinary high water marks (Civil Code '830) of these waterways as they existed prior to any filling or artificial accretion, and thus may not be readily apparent from present day site inspection.

Based on our review, your project will be located within Tideland Location 221 (TLL 221). The State of California sold the tidelands within TLL 221 to R. J. Northam in 1901 and issued a patent for the tidelands on January 6, 1903. Historic data (1873 United States Coast Survey Topographic Sheet T-1345) appears to show at least a portion of your property, in a natural state, covered by the ordinary tides of Sunrise/Anaheim Bay.

Pursuant to two agreements entered into in 1961 and 1962, BLA 18 and SLL 34, the CSLC settled certain property (boundary and title) ownership issues with the Huntington Harbour Corporation involving the majority of Huntington Harbour. It does not appear that your property is located within the area covered by BLA 18. More recently, in 1998, the CSLC settled certain ownership and boundary issues with two nearby property owners at the end of Park Avenue (AD 340).

COASTAL COMMISSION  
A-5-SNB-00-054  
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April 11, 2000

Therefore, it appears that the CSLC may have both a sovereign fee interest as well as a public trust easement with regard to the property involved in this proposed project. Please provide us with the information listed on the attachment, in order that we may determine the extent of the State's property interest.

If you have any questions concerning the CSLC's jurisdiction, please contact Curtis L. Fossum, Senior Staff Counsel, at (916) 574-1828.

Sincerely,

  
Jane E. Smith  
Public Land Management Specialist  
Southern California Region

Attachment

cc: Steve Rynas, CCC/Long Beach  
Bill Melton, Orange County

**COASTAL COMMISSION**  
**A-5-SNB-00-054**  
EXHIBIT # K  
PAGE 2 OF 2

**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



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South Coast Region

Contact Phone: (916) 574-1892  
Contact FAX: (916) 574-1925

MAR 2 2001  
February 27, 2001

CALIFORNIA COASTAL COMMISSION  
File Ref: W 25655

Deborah M. Rosenthal  
Rosenthal & Zimmerman  
650 Town Center Drive, 6th Floor  
Costa Mesa, CA 92626-1925

Dear Ms. Rosenthal:

SUBJECT: 16902 Pacific Coast Highway, Sunset Beach

This will acknowledge your letter of February 15, 2001, wherein you advise staff of the California State Lands Commission (CSLC) that your client, Dr. Philip Wyatt, has modified his project to replacement of an existing bulkhead only. It is still our position that the CSLC must review the project, as it does with all waterfront projects to be brought before the California Coastal Commission, to determine whether it may have any jurisdiction or interest in the property involved. In order that we may determine whether there is any State property interest, please have your client provide the information requested on the attached form.

Upon receipt and review of this information, we will advise you and your client as to the extent of the CSLC's jurisdiction, if any. If you have any questions, please feel free to contact me at (916) 574-1892.

Sincerely,

Jane E. Smith  
Public Land Management Specialist  
Southern California Region

Attachment

cc: Anne Kramer, CCC/San Francisco  
Curtis L. Fossum, Senior Staff Counsel

**COASTAL COMMISSION**  
*A-5-SNB-00-054*

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**ROSENTHAL & ZIMMERMAN**

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South Coast Reg.

ATTORNEYS AT LAW

650 TOWN CENTER DRIVE 6TH FLOOR  
COSTA MESA, CALIFORNIA 92626-1925  
TELEPHONE: (714) 557-4005  
FAX: (714) 540-3219

MAR 12 2001

CALIFORNIA  
COASTAL COMMISSION

DEBORAH M. ROSENTHAL  
MARC A. ZIMMERMAN  
CRISTINE M. TRAPP

11037 WARNER AVENUE  
FOUNTAIN VALLEY CA 92708  
TELEPHONE: (714) 531-7669  
FAX: (714) 531-8560

March 8, 2001

669.002

Ms. Anne Kramer  
South Coast Area Office  
California Coastal Commission  
200 Oceangate, 16<sup>th</sup> Floor  
Long Beach, CA 90802

Re: Wyatt Coastal Development Permit  
Commission Appeal No. A-5-SNB-00-054

Dear Ms. Kramer:

This letter confirms that Dr. Wyatt has agreed to limit the above-referenced project to replacement of the existing bulkhead only. We understand that this limitation is consistent with the Staff recommendation for conditional approval of the project.

Dr. Wyatt resides in Santa Barbara. He, therefore, requests that the bulkhead project be placed on the agenda for the April meeting, which will be in Santa Barbara.

Thank you for your assistance in this matter.

Very truly yours,

Deborah M. Rosenthal

cc: Philip J. Wyatt, Ph.D.

DMR:ead  
669.002-A Kramer ltr. 3-8-01.wpd

**COASTAL COMMISSION**  
**A-5-SNB-00-054**

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