

CALIFORNIA COASTAL COMMISSION
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 Hearing Date: April 9-12, 2002
 Commission Action:



W15e

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-01-117

APPLICANTS: Thomas & Nancy Childs **RECORD PACKET COPY**

AGENT: Lisa Miller

PROJECT LOCATION: 1204 East Balboa Boulevard Avenue,
 City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolition of an existing bulkhead and construction of a new bulkhead in the same location. In addition, the existing dock, pier and ramp will be demolished and replaced in a new modified configuration. Five piles will be removed and replaced with new piles. The floating dock will only be used for boating related purposes.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves demolition of an existing seawall/bulkhead and construction of a new seawall/bulkhead in the same location. In addition, the existing dock, pier and ramp will be demolished and replaced with a new dock system in a modified configuration. The subject site is subject to tidal action but not to direct wave attack because the site is within the protected harbor. The proposed new seawall/bulkhead is necessary to protect existing structures from tidal induced erosion and will have no impacts upon shoreline sand supply because the device will be located in the same location as the existing. The major issues before the Commission relate to the effect of the proposed development on marine resources, water quality and the marine environment. Additional concern over these issues was raised due to the discovery of eelgrass located within the project area.

Staff recommends the Commission **APPROVE** the proposed development with five (5) special conditions. To assure that marine resources and water quality are protected, staff recommends the imposition of five (5) special conditions. Special Condition #1 requires that the applicants dispose of all demolition and construction debris at an appropriate location. Special Condition #2 requires the applicants to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Special Condition #3 requires the applicants to submit an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds. Special Condition #4 assures that impacts to eelgrass are avoided and, if necessary, mitigated. Special Condition #5 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicants provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicants has revised the project to avoid any contact with *Caulerpa taxifolia*.

LOCAL APPROVALS RECEIVED: Approval in Concept (#110-1204) from the City of Newport Beach Harbor Resources Division dated March 21, 2001, Approval from the California Department of Fish & Game dated November 9, 2001, Section 401 Permit from the Regional Water Quality Control Board (Santa Ana Region) dated June 18, 2001, and Addendum to the Section 401 Permit from the Regional Water Quality Control Board (Santa Ana Region) dated December 6, 2001.

SUBSTANTIVE FILE DOCUMENTS: Letter to Lisa Miller from staff dated April 23, 2001, Letter from Lisa Miller to staff dated May 10, 2001, Letter from Masoud Jafari (William Simpson & Associates, Inc. Consulting Structural Engineers) dated May 11, 2001, Letter from the Department of the Army, Los Angeles District, Corps of the Engineers dated May 15, 2001, Letter to Lisa Miller from staff dated June 12, 2001, Letter from Lisa Miller to staff dated September 11, 2001, Letter from the Department of the Army, Los Angeles District, Corps of Engineers, dated May 15, 2001, Eelgrass survey by Ware (Coastal Resources Management) dated September 6, 2001, Letter to Lisa Miller from staff dated October 12, 2001, Letter from Lisa Miller to staff dated November 6, 2001, Letter from the Department of the Army, Los Angeles District, Corps of the Engineers dated November 28, 2001, Letter from Thomas Childs to Lisa Miller dated October 26, 2001 and Letter to Lisa Miller from staff dated December 7, 2001.

LIST OF EXHIBITS:

1. Location Map
2. Assessor's Parcel Map
3. Approval in Concept/Project Plans
4. Site Plan
5. Dock and Pier Plans
6. Seawall/Bulkhead Plans
7. Letter from Masoud Jafari (William Simpson & Associates, Inc. Consulting Structural Engineers) dated May 11, 2001
8. The Southern California Eelgrass Mitigation Policy
9. Approval from the California Department of Fish & Game dated November 9, 2001
10. Section 401 Permit from the Regional Water Quality Control Board (RWQCB) dated June 18, 2001
11. Addendum to the Section 401 Permit from the Regional Water Quality Control Board (RWQCB) dated December 6, 2001
12. Site Plan Showing Location of the Eelgrass

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-01-117 pursuant to the staff recommendation.

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:

I. Approval with Conditions

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Construction Responsibilities and Debris Removal

- (a) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave wind, or rain erosion and dispersion.
- (b) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

- (d) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (e) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

2. **Best Management Practices Program**

By acceptance of this permit the applicants agree that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

(a) Boat Cleaning and Maintenance Measures:

- i. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
- ii. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.
- iii. The applicants shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(b) Solid and Liquid Waste Management Measures:

- i. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(c) Petroleum Control Management Measures:

- i. Oil absorbent materials shall be examined at least once a year and replaced as necessary. The applicants will recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters will use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. Clean and maintain bilges. Detergents will not be used for cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

3. **Anchor Management Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, a plan for the avoidance of adverse impacts upon eelgrass due to the placement of anchors utilized by barges in construction of the proposed project. The plan shall be prepared by a qualified professional and shall include the following:
- i. The plan shall demonstrate that the use of anchors by barges utilized in the proposed project will avoid impacts upon eelgrass beds.
 - ii. The plan shall include, at a minimum, the following components: a map showing the proposed location of barges and anchors with respect to existing eelgrass beds.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **Pre-Construction Eelgrass Survey**

- A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicants shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicants shall replace the impacted eelgrass at a minimum

1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Any off-site mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

5. Pre-construction *Caulerpa Taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. LOCATION AND PROJECT DESCRIPTION

The subject site is located between the first public road and the sea and is a bayfront lot located at 1204 East Balboa Boulevard (Exhibits #1-4). The site currently contains an existing home

and an existing dock. The proposed project consists of demolition of an existing bulkhead and construction of a new bulkhead in the same location (Exhibits #3 & 6). The existing bulkhead is located along the north and northeastern end of the rear of the property and is altogether 57 feet in length. The new bulkhead will be placed in the same location and will not extend seaward of the original location. The new seawall will be of conventional construction with tongue and groove panels held together with a concrete coping tied back to a deadman system. Closures will be formed and poured at either end of the property to form a tight seal with the neighbor's seawall. The new bulkhead height will be at +9 above Mean Low Lower Water to meet present City of Newport Beach engineering standards.

In addition, the existing dock, pier and ramp will be demolished and replaced with a new modified configuration, which will consist of a new 4' x 13' pier, 10' x 14' pier platform, a 3' x 24' gangway and a 5' x 52 dock with a 4' x 8' lobe (Exhibits #3 & 5). Five existing piles (2-12" square piles & 3-12" "T" piles) will be removed. Five new piles will be installed: 3-14' square piles for the new dock and 2-14" "T" piles for the new pier platform. The floating dock will only be used for boating related purposes.

To the north is Newport Bay, to the east and west are existing boat docks and to the south is the existing single family residence (Exhibits #1-4).

B. PROTECTIVE STRUCTURES AND HAZARDS

Section 30235 of the Coastal Act states:

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in part:

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...

The current bulkhead is constructed of creosote treated timber. An evaluation conducted by William Simpson & Associates, Inc. (Exhibit #7) discovered that the existing seawall/bulkhead has been damaged by "marine borers." The holes located in the timbers caused by the "marine borers" are allowing sand from the yard of the applicants to leak into the bay. In addition, because of the "marine borers", the mud line area of the wall is in imminent danger of failing completely. Also, the existing seawall/bulkhead does not comply with current City codes regarding the strength and height requirements of the City of Newport Beach. Due to age, poor quality concrete, inadequate steel reinforcement, and deficient tieback systems, aging concrete seawalls/bulkheads in Newport Beach, such as the one at the subject site, are commonly

replaced when redevelopment occurs on bayfront lots. The proposed development will demolish the existing timber seawall/bulkhead and replace it with a concrete seawall/bulkhead in the same location.

The seawall/bulkhead is required at the subject site to protect the structural integrity of the lot from tidal activity. In addition, the seawall/bulkhead is necessary to protect the adjacent residences from tidal activity. If the seawall/bulkhead were removed and not replaced, tidal activity would erode the project site and eventually the adjacent lots and destabilize the existing single family residences. Therefore, the proposed repair of the seawall/bulkhead is necessary to protect existing structures. In addition, the new seawall/bulkhead will not be moved seaward, which would result in the additional fill of coastal waters or changes to shoreline sand supply/erosion at the site.

The existing seawall/bulkhead does not meet present engineering standards and poses a risk to life and property because lot stability may be threatened by failure of the aging, poorly designed and constructed existing seawall/bulkhead. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior seawall/bulkhead system. This development will not have any adverse impacts upon shoreline processes because there will be no change from the existing structural footprint. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Section 30235 and 30253 of the Coastal Act.

C. MARINE RESOURCES

The proposed project is located in and over the coastal waters of Lower Newport Bay (Exhibits #1-4). Lower Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Newport Harbor, the listing cites elevated concentrations of metals, pathogens, nutrients, pesticides, and toxic organic compounds from a variety of sources including urban runoff, boatyards, contaminated sediments, and other unknown non-point sources as the reason for listing the harbor as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. The RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policy. Section 30233 of the Coastal Act limits the fill of open coastal waters.

Section 30233 of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

The Coastal Act limits the fill of open coastal water and also requires that any project which results in fill of open coastal waters provide adequate mitigation. Section 30233 of the Coastal Act allows fill of open coastal waters, such as Lower Newport Bay, for recreational boating purposes. Part of the proposed project requires the removal of five (5) existing piles (2-12" square piles & 3-14 "T" piles) installation of five (5) new piles (3-14" square piles & 2-14" "T" piles) for the dock and pier work. The installation of these piles will displace habitat bottom. The fill required by the project is for a recreational boating facility, an allowable purpose under 30233 (4) of the Coastal Act. The project can be consistent with Section 30233, however, only if it is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize environmental effects. One way to minimize environmental damage is to limit fill. In order to anchor the new float (3-14' square piles) and new pier platform (2-14" "T" piles), the removal of five existing piles and installation of five new piles is necessary. This is the minimum number of piles necessary to adequately support and anchor the new dock and pier. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the allowable use. Thus, the project as proposed is the least environmentally damaging alternative. Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The proposed project meets this requirement because the pilings are self mitigating by providing vertical habitat for marine organisms.

Therefore, for the reasons listed above, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

D. WATER QUALITY AND THE MARINE ENVIRONMENT

The proposed project is located over the coastal waters of Lower Newport Bay (Exhibits #1-4). Lower Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Newport Harbor, the listing cites elevated concentrations of metals, pathogens, nutrients, pesticides, and toxic organic compounds from a variety of sources including urban runoff, boatyards, contaminated sediments, and other unknown non-point sources as the reason for listing the harbor as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. The RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The construction of the bulkhead, float and dock will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind 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, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of 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 #1 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Special Condition #1 requires that the applicants dispose of all demolition and construction debris at an appropriate location. This condition requires the applicants to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

2. Best Management Practices

The proposed dock project will allow for the long term berthing of boat(s) by the homeowner. Some maintenance activities if not properly regulated could cause adverse impacts to the marine environment. Certain maintenance activities like cleaning and scraping of boats, improper discharges of contaminated bilge water and sewage waste, and the use of caustic detergents and solvents, among other things, are major contributors to the degradation of water quality within boating facilities. As mentioned above, Lower Newport Bay provides a home for marine habitat and also provides opportunity for recreational activities. The Bay eventually drains into the Pacific Ocean through tidal flushing.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes Special Condition #2 that requires the applicants to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Such practices that the applicants shall follow include proper boat cleaning and maintenance, management of solid and liquid waste, and management of petroleum products, all of which associated with the long term berthing of the boat(s) (more thoroughly explained in Special condition #1 of this permit).

3. Eelgrass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

The Approval in Concept from the City of Newport Beach Harbor Resources Division dated March 21, 2001 stated that no eelgrass was located in the project area (Exhibit #3). However, the applicants state in a letter dated September 11, 2001 that eelgrass is now located within the project area. The eelgrass was discovered in an eelgrass survey conducted by Coastal Resources Management on September 5, 2001 and stated in a letter dated September 6, 2001. A Site plan was also submitted that showed the location of the eelgrass (Exhibit #12). This letter further stated that the proposed dock project would not reduce the amount of eelgrass at the project site as a result of the long term use of the dock. Further, the new dock configuration would be relocated five feet to the east of the located eelgrass, providing additional habitat for the eelgrass to colonize. In addition, the eelgrass is located approximately 25 feet north of the existing and proposed seawall/bulkhead. The existing eelgrass located in the project area grew despite the presence of the existing and surrounding docks and seawalls/bulkheads, therefore the existing docks and seawalls/bulkheads may not have had an adverse impact on the eelgrass growth. However, the work associated with the removal and replacement of a dock and construction of the new seawall/bulkhead in the project area where eelgrass has been located may have an adverse impact on the eelgrass.

Even though the Coastal Resources Management eelgrass survey states that eelgrass will not be impacted by the proposed project, the proposed development will occur in an area adjacent to existing eelgrass beds that can possibly be adversely impacted. Construction activity, including barge anchoring, vessel propeller wash, and propeller contact with the harbor bottom could cause scarring to eelgrass beds. Therefore, Special Condition #3 requires the applicants to submit, prior to issuance of the permit, an anchor management plan for the review and approval of the Executive Director, which documents the location where anchors will be placed to avoid eelgrass beds.

According to the Coastal Resources Management eelgrass survey, eelgrass was present at the project site in late 2001, but would not be located where the new proposed dock or new seawall/bulkhead would be located. Approximately 6 months have elapsed since the eelgrass survey was conducted. Due to the ephemeral nature of eelgrass, the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game recommends that eelgrass surveys be conducted during the active growth phase of eelgrass (typically March through October in southern California). In addition, the resource agencies state that any eelgrass survey performed is only valid until the beginning of the next growing season. Therefore, based on this criteria, the eelgrass survey provided is outdated and no new eelgrass surveys are proposed. If eelgrass is present in the project area which could be impacted, measures to avoid or minimize such impacts must be utilized in order for the project to be consistent with Section 30230 of the Coastal Act. Therefore, the Commission imposes Special Condition #4 which requires that a valid pre-construction eelgrass survey be conducted within the boundaries of the proposed project be undertaken during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The pre-construction survey will identify any eelgrass beds which could be impacted and which must be avoided. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit. An amendment or new permit is required in order to address any eelgrass impacts. In addition, if there are any impacts upon eelgrass, you will be required to prepare appropriate surveys and mitigation plans in consultation with the California Department of Fish & Game and in conformance with the *Southern California Eelgrass Mitigation Policy* (Exhibit #8). The Commission previously imposed similar conditions for pre-construction eelgrass surveys on Coastal Development Permits 5-97-230 and 5-97-230-A1 (City of Newport Beach), 5-97-231 (County of Orange), 5-97-071 (County of Orange), 5-99-244 (County of Orange-Goldrich-Kest-Grau), 5-98-179 (Kompaniez), 5-98-201 (Anderson), 5-98-443 (Whyte), 5-98-444 (Barrad), 5-99-005 (Dea), 5-99-006 (Fernbach & Holland), 5-99-007 (Aranda et al.), 5-99-008 (Yacoel et. al.), 5-99-030 (Johnson), 5-99-031 (Lady Jr., et. al.), 5-99-032 (Appel et. al.), 5-99-108 (Pineda), 5-98-471 (Maginot), 5-99-472 (Bjork), 5-99-473 (Gelbard), 5-00-389 (Ashby et. al.), 5-00-390 (Burggraf et. al.), 5-00-401 (Baghdassarian et. al.), 5-00-402 (Buettner et. al.) and 5-01-358 (Rayhanabad).

The proposed project was submitted to the California Department of Fish & Game (DF&G) for their review and approval. The DF&G has similarly conditioned their approval of the proposed project (Exhibit #9)

In addition the proposed project was submitted to the California Regional Water Quality Control Board (RWQCB) for their review and approval. The RWQCB issued a Section 401 Permit for the proposed project on June 18, 2001 (Exhibit #10). This permit was issued before eelgrass was determined to be located within the project site. Therefore, the RWQCB was informed of the new eelgrass discovery and issued an Addendum to the Section 401 Permit on December 6, 2001 (Exhibit #11).

4. Caulerpa taxifolia

Also, as noted above, eelgrass is a sensitive aquatic plant species which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments which provide plenty of sunlight. Recently, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies similar habitat. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In

¹ References

Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchionetti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes Special Condition #5. Special Condition #5 requires the applicants, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicants shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required. The proposed project was submitted to the California Regional Water Quality Control Board (RWQCB) for their review and approval. The RWQCB issued a Section 401 Permit for the proposed project on June 18, 2001 and was similarly conditioned for their approval of the proposed project (Exhibit #10).

5. Conclusion

To minimize the adverse impacts upon the marine environment, five Special Conditions have been imposed. Special Condition #1 requires that the applicants dispose of all demolition and construction debris at an appropriate location. Special Condition #2 requires the applicants to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Special Condition #3 requires the applicants to submit an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds. Special Condition #4 assures that impacts to eelgrass are avoided and, if necessary, mitigated. Special Condition #5 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicants have revised the project to avoid any contact with *Caulerpa taxifolia*. As conditioned, the Commission finds that the proposed project is consistent with Section 30230 of the Coastal Act.

E. PUBLIC ACCESS AND RECREATION

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

Section 30212 of the Coastal Act states in part:

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

(2) adequate access exists nearby...

(b) For purposes of this section, "new development" does not include:

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.

The proposed development, which occurs between the first public road and the sea, includes the demolition of an existing bulkhead and construction of a new bulkhead in the same location. In addition, the existing dock, pier and ramp will be demolished and replaced with a new modified configuration. The construction of the new seawall/bulkhead will not occur seaward of the existing wall. Therefore, as stated in Section 30212 (b) (4) of the Coastal Act, the proposed new seawall/bulkhead is not new development that is subject to the access requirements of Section 30212 of the Coastal Act.

Public vertical and lateral access exist in the immediate project vicinity. A public street end at "D" Street offers coastal access is located approximately 60 feet west of the project site (Exhibit #2).

The proposed development also involves demolition of the existing dock, pier and ramp and replaced with a new modified configuration, which will consist of a new 4' x 13' pier, 10' x 14' pier platform, a 3' x 24' gangway and a 5' x 52 dock with a 4' x 8' lobe. Five existing piles (2-12" square piles & 3-12" "T" piles) will be removed and five new piles will be installed: 3-14' square piles for the new dock and 2-14" "T" piles for the new pier platform. The floating dock will only be used for boating related purposes. The proposed development will not adversely impact existing navigation. The development will not create adverse impacts on coastal access and recreation. The project site is a single-family residence and the proposed development will not change the intensity of use on site. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds

that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. The City's LUP states that the City seeks to insure the highest quality of water in the bay and along their beaches. As conditioned, the proposed project is not expected to create additional adverse impacts to marine resources, water quality and the marine environment and therefore attempts to insure the highest quality of water in the Bay and along the beaches.

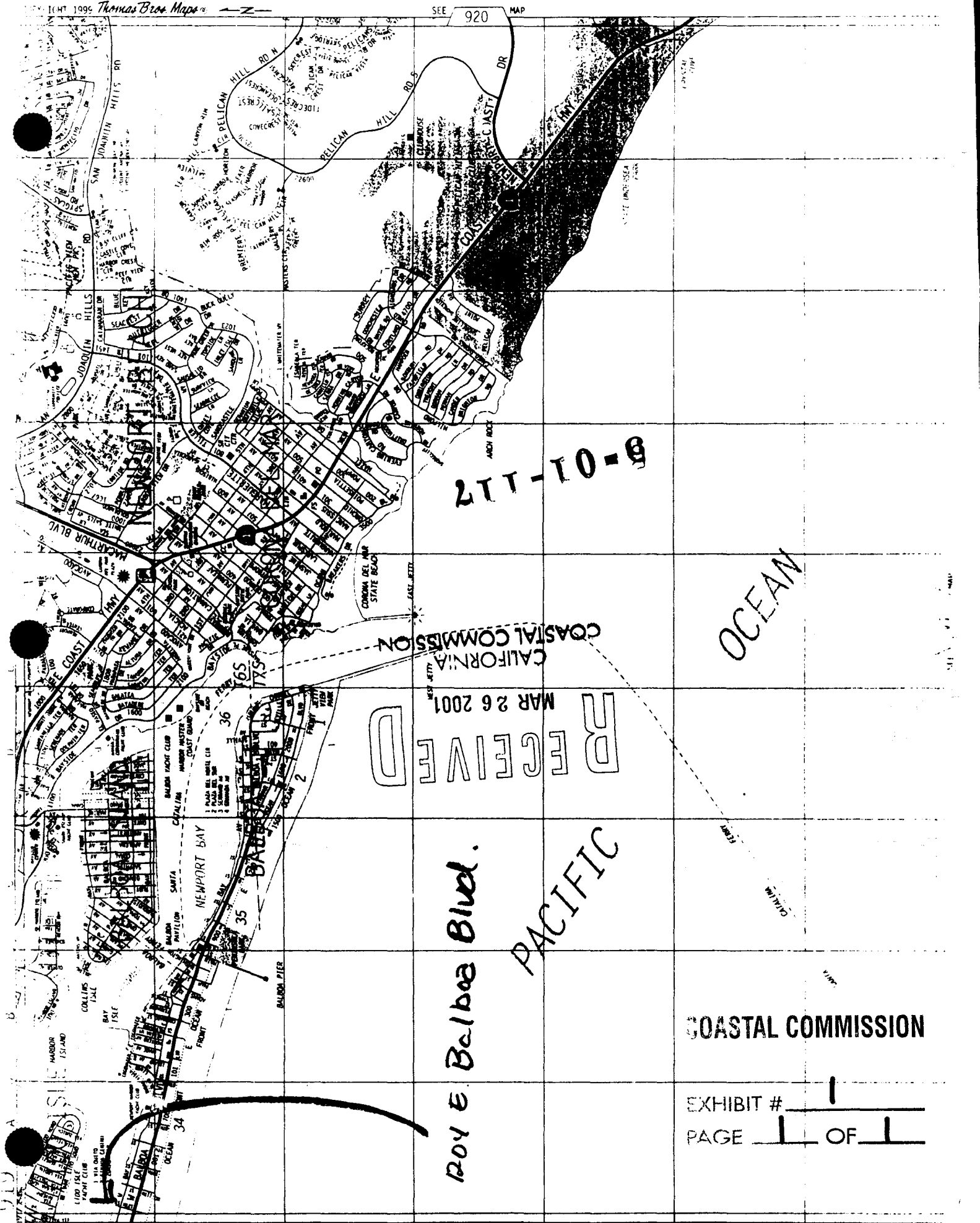
The proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. Conditions imposed are: 1) the applicants disposes of all demolition and construction debris at an appropriate location; 2) the applicants follows Best Management Practices to ensure the continued protection of water quality and marine resources; 3) the applicants submit an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds; 4) that impacts to eelgrass are avoided and, if necessary, mitigated and 5) that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicants have revised the project to avoid any contact with *Caulerpa taxifolia*. As conditioned, the Commission finds that the proposed project is consistent with Section 30230 of the Coastal Act.

As conditioned, no feasible alternatives of further feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging alternative and is consistent with CEQA and the policies of the Coastal Act.



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Roy E Balboa Blvd.

PACIFIC

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EXHIBIT # 1
 PAGE 1 OF 1

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+ = WATER LINE AS PER AERIAL PHOTO, 1947

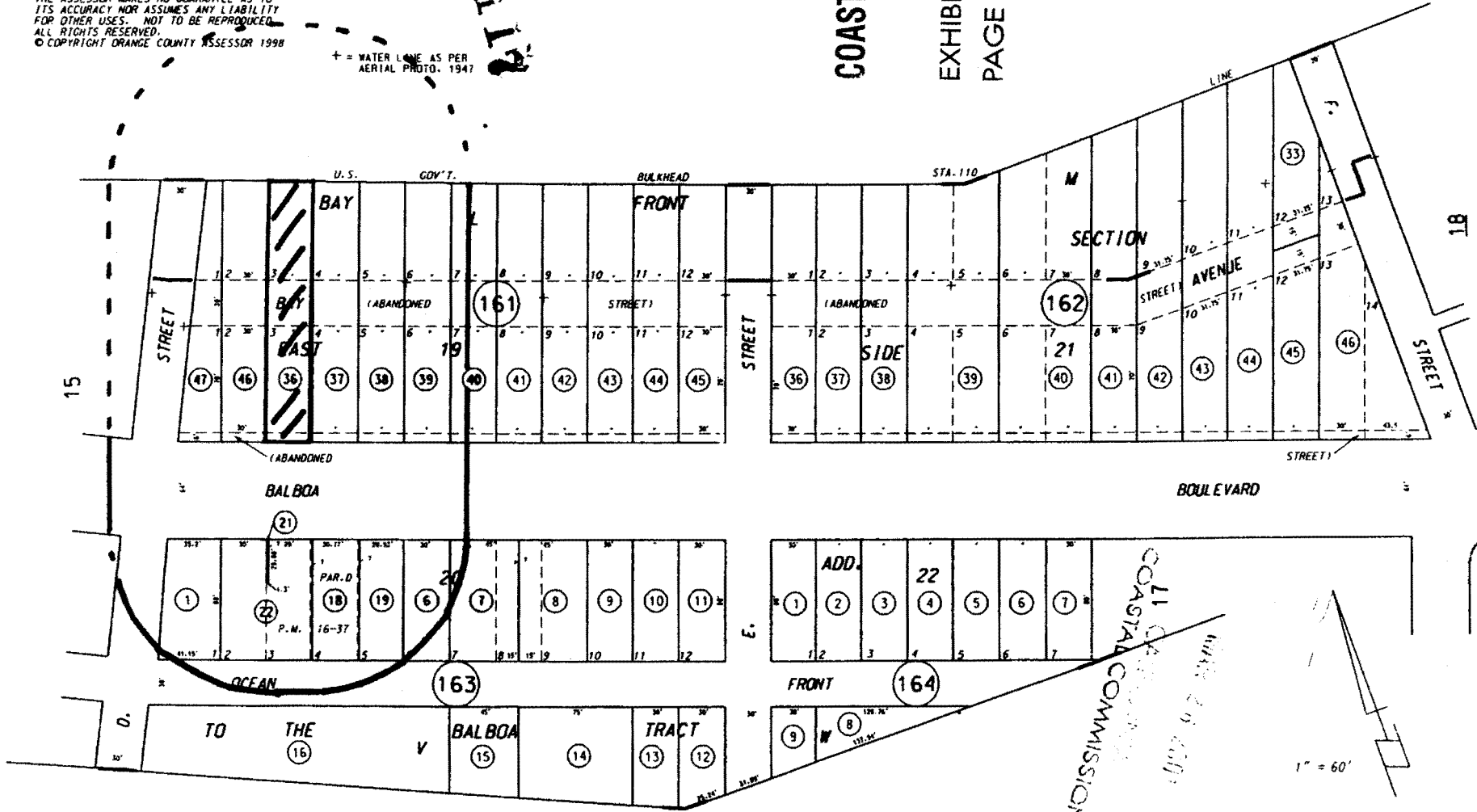
PLAT 10-C

COASTAL COMMISSION

EXHIBIT # 2

PAGE 1 OF 1

048-16



Order: maps Description: 48.16 Page 1 of 1 Comment:

MARCH 1949

BAY FRONT SECTION
THE EAST SIDE ADD. TO THE BALBOA TRACT
PARCEL MAP

M.M. 6-15
M.M. 4-20
P.M. 16-37

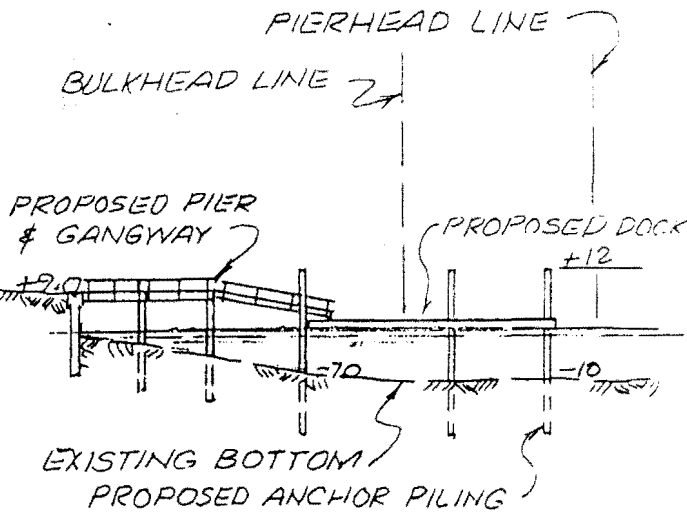
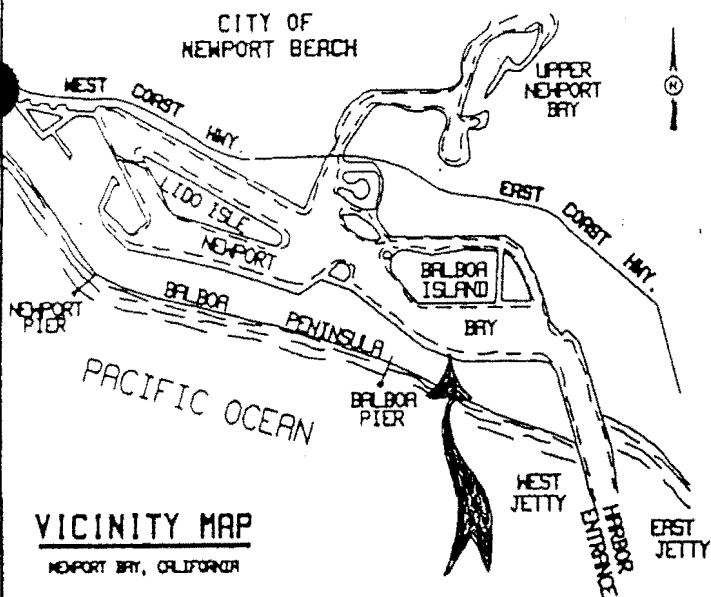
NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 048 PAGE 16 COUNTY OF ORANGE

COASTAL COMMISSION

1" = 60'

CITY OF NEWPORT BEACH



SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

U.S. PIERHEAD LINE

U.S. BULKHEAD LINE

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

Tony Miller
3/21/01

South Coast District Office
BLK'D ANCHOR SYSTEM
APPROVED
Permit No. 5-01-17

By: *Tony Miller*

EFFECTIVE DATE

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

EEL GRASS INSPECTION

Tony Miller
SIGNATURE

110-1204

PERMIT #

3/21/01

DATE

EASTSIDE ADDITION TO
BALBOA TRACT

BLVD

COASTAL COMMISSION

EXHIBIT # 3

PAGE 1 OF 1

PLAN VIEW 1" = 40'

APPLICANT'S NAME TOM CHILDS

JOB ADDRESS 1204 BALBOA BLVD DATE 2-8-0



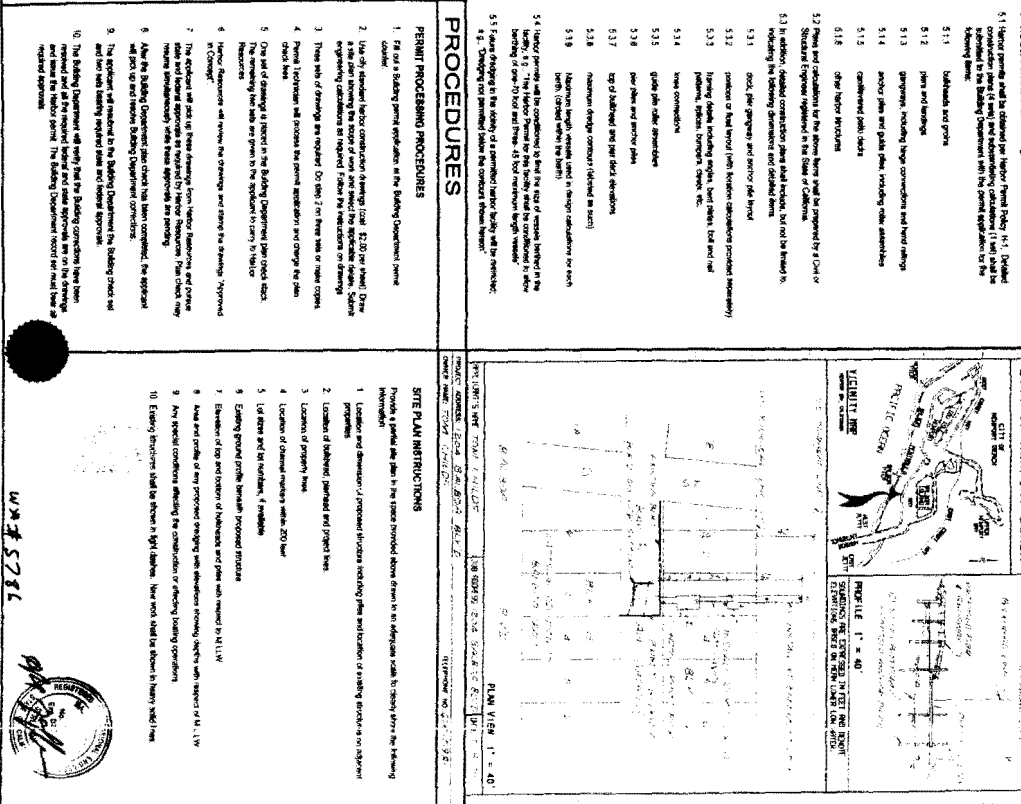
HARBOR CONSTRUCTION STANDARDS

CITY OF NEWPORT BEACH BUILDING DEPARTMENT

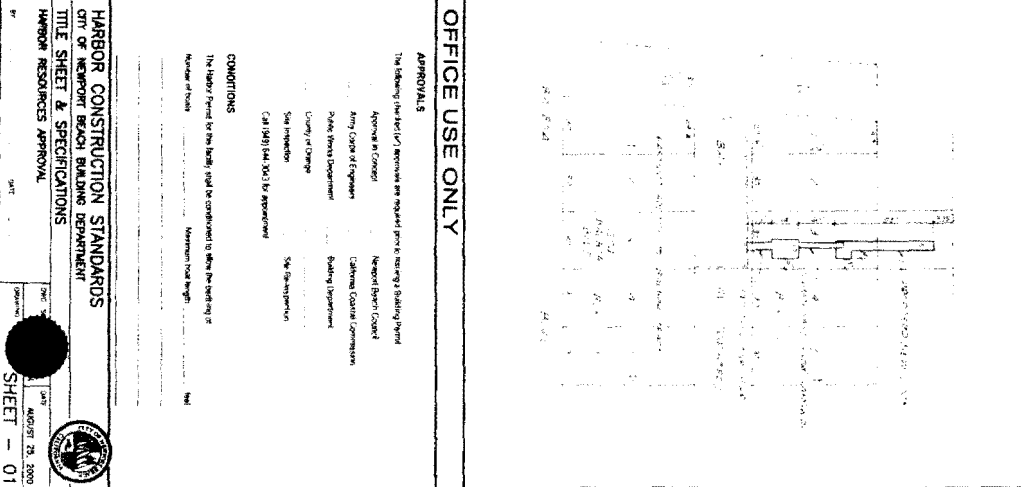
DESIGN CRITERIA

- 1 General
 - 22.15 Building shall be designed to meet the minimum design criteria set forth in the City of Newport Beach Building Department's Building Standards Manual, which shall be updated as necessary to reflect the latest building codes and standards.
 - 22.16 All construction shall conform to the City of Newport Beach Building Department's Building Standards Manual, which shall be updated as necessary to reflect the latest building codes and standards.
 - 22.17 All construction shall conform to the City of Newport Beach Building Department's Building Standards Manual, which shall be updated as necessary to reflect the latest building codes and standards.
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 - 22.40 All construction shall conform to the City of Newport Beach Building Department's Building Standards Manual, which shall be updated as necessary to reflect the latest building codes and standards.

SITE PLAN



PLAT PLAN



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EXHIBIT # 1
PAGE 1 OF 2

PROCEDURES

1. The applicant shall submit a complete set of plans to the Building Department for review.
2. The Building Department will review the plans and issue a decision within 15 business days.
3. If the plans are approved, the applicant shall pay the required fees.
4. The applicant shall obtain all necessary permits from the appropriate agencies.
5. The applicant shall construct the building in accordance with the approved plans.
6. The Building Department will conduct inspections at various stages of construction.
7. Upon completion of construction, the applicant shall apply for a Certificate of Occupancy.
8. The Building Department will issue the Certificate of Occupancy upon successful inspection.

PERMIT PROCESSING PROCEDURES

1. The applicant shall submit a complete set of plans to the Building Department for review.
2. The Building Department will review the plans and issue a decision within 15 business days.
3. If the plans are approved, the applicant shall pay the required fees.
4. The applicant shall obtain all necessary permits from the appropriate agencies.
5. The applicant shall construct the building in accordance with the approved plans.
6. The Building Department will conduct inspections at various stages of construction.
7. Upon completion of construction, the applicant shall apply for a Certificate of Occupancy.
8. The Building Department will issue the Certificate of Occupancy upon successful inspection.

REBUILT PROCEDURES

1. The applicant shall submit a complete set of plans to the Building Department for review.
2. The Building Department will review the plans and issue a decision within 15 business days.
3. If the plans are approved, the applicant shall pay the required fees.
4. The applicant shall obtain all necessary permits from the appropriate agencies.
5. The applicant shall construct the building in accordance with the approved plans.
6. The Building Department will conduct inspections at various stages of construction.
7. Upon completion of construction, the applicant shall apply for a Certificate of Occupancy.
8. The Building Department will issue the Certificate of Occupancy upon successful inspection.

OFFICE USE ONLY

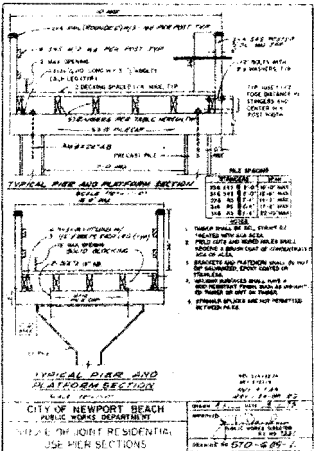
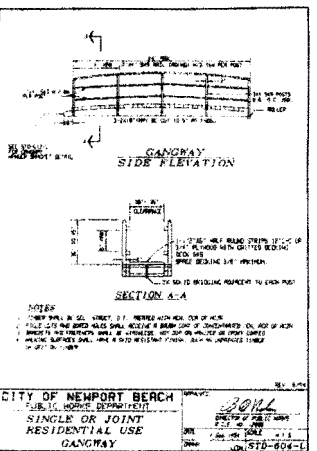
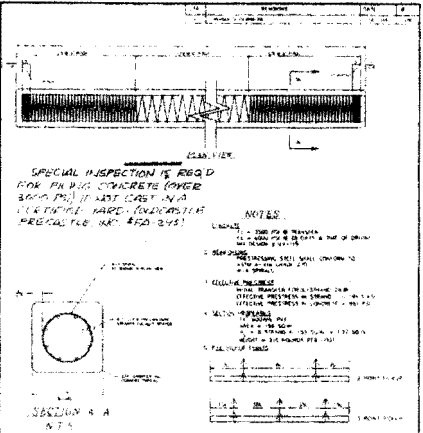
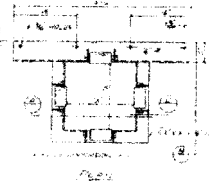
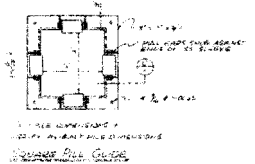
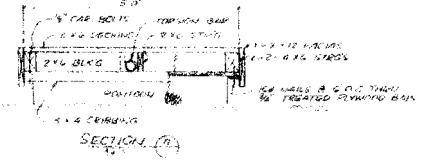
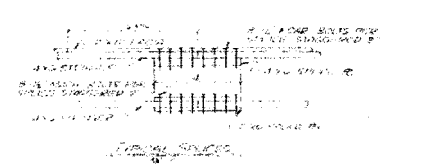
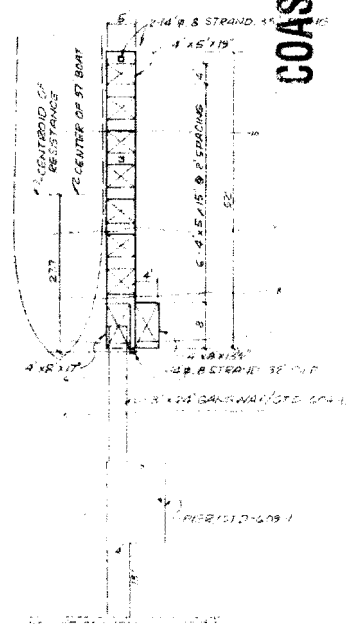
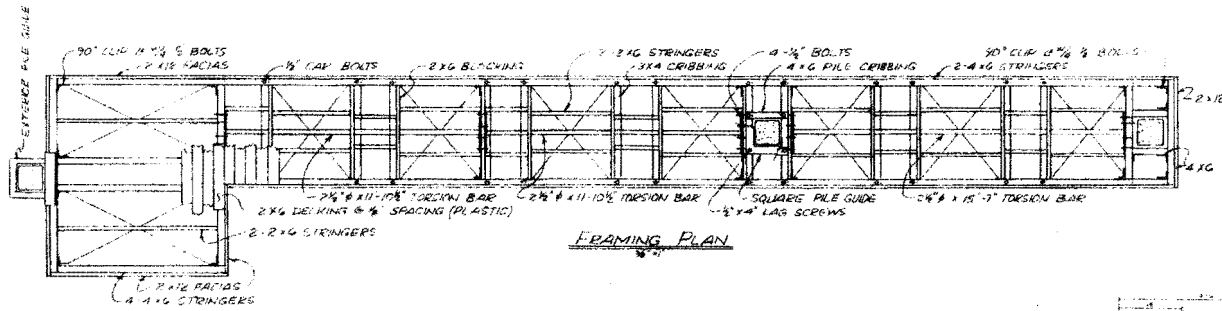
APPROVALS

The Building Department requires the following signatures and stamps:

- Applicant
- City Engineer
- City Clerk
- City Council
- City Manager
- City Attorney
- City Auditor
- City Treasurer
- City Controller
- City Assessor
- City Planner
- City Public Works Director
- City Police Chief
- City Fire Chief
- City Health Officer
- City Social Services Director
- City Housing Director
- City Parks and Recreation Director
- City Library Director
- City Senior Center Director
- City Community Development Director
- City Economic Development Director
- City Information Technology Director
- City Human Resources Director
- City Legal Services Director
- City Maintenance Director
- City Operations Director
- City Safety Director
- City Training Director
- City Transportation Director
- City Utilities Director
- City Waste Management Director
- City Water Department Director
- City Zoning Administrator

HARBOR CONSTRUCTION STANDARDS
CITY OF NEWPORT BEACH BUILDING DEPARTMENT
HARBOR RESOURCES APPROVAL

DATE: AUGUST 23, 2000
SHEET - 01



NO.	DATE	REVISION

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT
SINGLE OR JOINT
RESIDENTIAL USE
GANGWAY

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT
SINGLE OR JOINT RESIDENTIAL
USE PIER SECTIONS

TOM CHILDS DOCK

1204 BALBOA BLVD

NEWPORT BEACH, CALIF

MARINE CONSULTING & DESIGN

324 EL MODENA AVENUE NEWPORT BEACH CA 92647
949 642-2206

STRUCTURAL GENERAL NOTES

GENERAL REQUIREMENTS

FOUNDATIONS

PRECAST CONCRETE PANELS

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CONCRETE

SPECIAL INSPECTIONS

GRADING NOTES

ANCHOR RODS

BACKFILLING & COMPACTION

REINFORCING STEEL

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 2

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NOTE TO THE BIDDERS:

5796-1
S-0

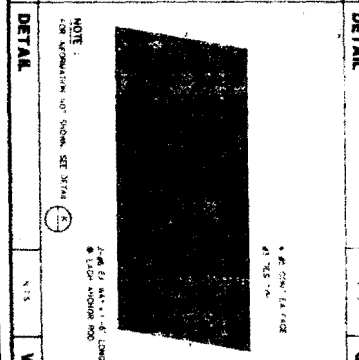
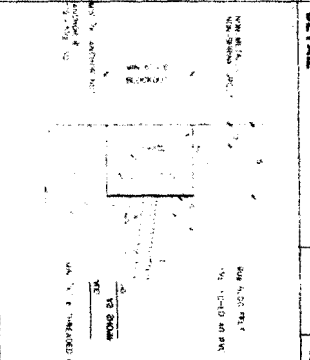
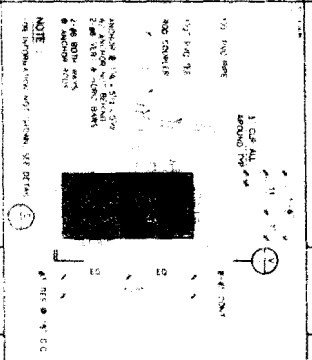
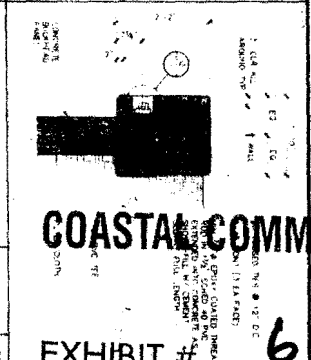
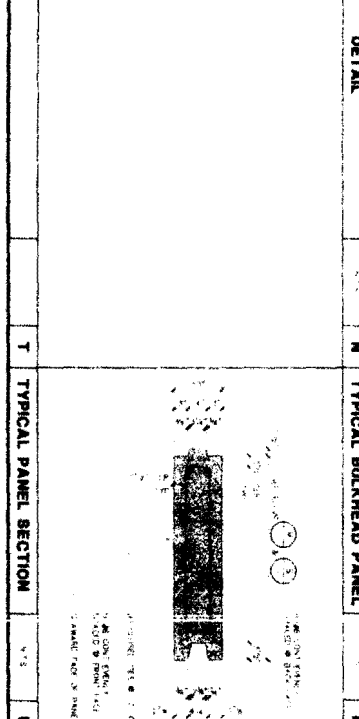
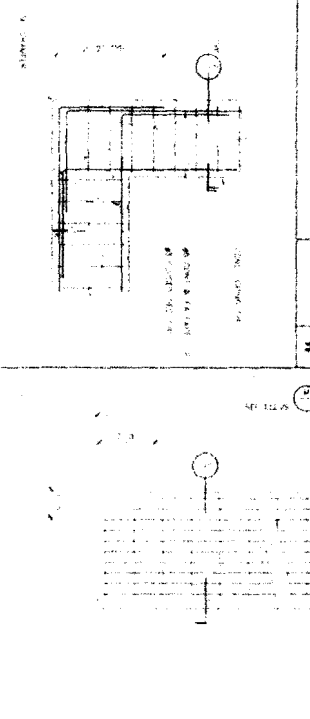
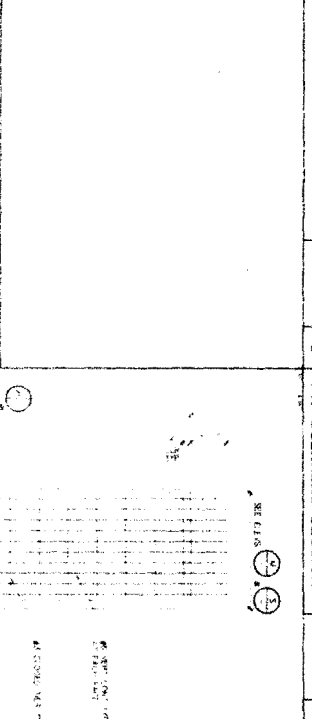
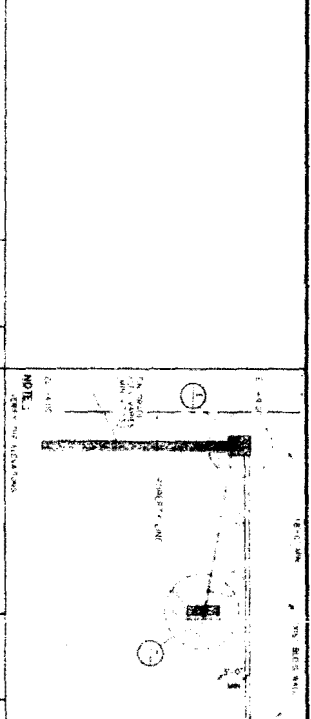
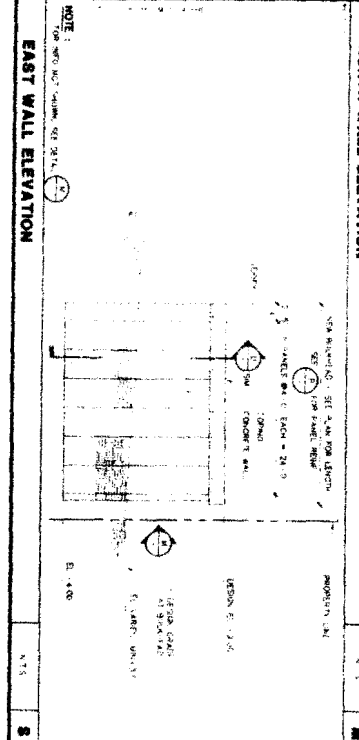
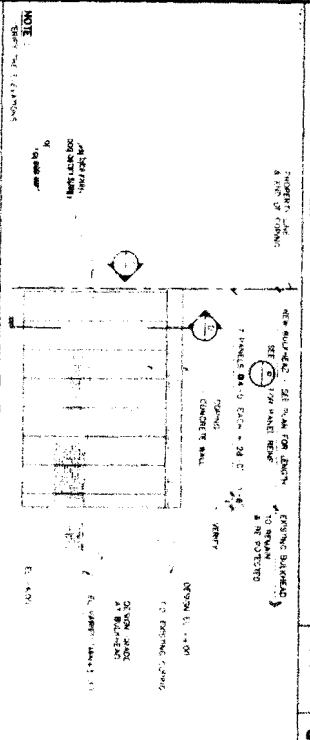
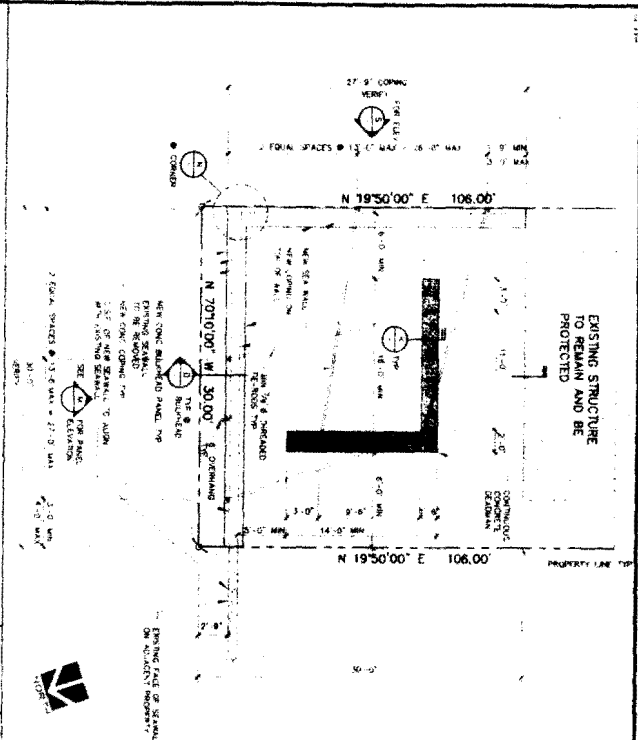


**WILLIAM SIMPSON
& ASSOCIATES, INC.**
CONSULTING STRUCTURAL ENGINEERS

PROPOSED SEAWALL
1204 E. BALBOA BOULEVARD
Newport Beach, CA 92661

STRUCTURAL GENERAL NOTES
& VICINIT- MAP

Mr. TOM CHILDS RESIDENCE
1127 E. BALBOA BOULEVARD
Newport Beach, CA 92661
Ph. (949) 675-0981



COASTAL COMMISSION
 EXHIBIT # 6

May 11, 2001

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

MAY 14 2001

CALIFORNIA
COASTAL COMMISSION

ATTN: Fernie Sy

**RE: Application #5-01-117
Tom Childs
1204 E. Balboa Blvd.
Newport Beach, CA
WSA Job # 5786-1**

Lisa Miller with Shellmaker Inc., has requested that I respond to your letter, dated April 23, 2001, regarding Item #3.

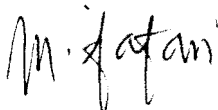
The existing creosote treated timber bulkhead has been damaged by "marine borers". The holes in the timbers, that were caused by the marine borers, are allowing sand from the yard of the applicant/owner, to leak into the bay. Additionally, because of these marine borers, the mud line area of the wall is in imminent danger of failing completely.

In addition to this, the existing wall does not comply with current City codes regarding the strength and height requirements. The proposed wall will be replaced on the same alignment as the failing existing wall.

If no action is taken to correct the above conditions, the existing wall will eventually collapse and the yard soil will fall into the bay.

If you have any questions, please call.

Very truly yours,



Masoud Jafari S. E.



COASTAL COMMISSION

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SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY

(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas function as important habitat for a variety of fish and other wildlife. In order to standardize and maintain a consistent policy regarding mitigating adverse impacts to eelgrass resources, the following policy has been developed by the Federal and State resource agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game). This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 8).

For clarity, the following definitions apply. "Project" refers to work performed on-site to accomplish the applicant's purpose. "Mitigation" refers to work performed to compensate for any adverse impacts caused by the "project". "Resource agencies" refers to National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

1. Mitigation Need. Eelgrass transplants shall be considered only after the normal provisions and policies regarding avoidance and minimization, as addressed in the Section 404 Mitigation Memorandum of Agreement between the Corps of Engineers and Environmental Protection Agency, have been pursued to the fullest extent possible prior to the development of any mitigation program.

2. Mitigation Map. The project applicant shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as areas having the proper depth and substrate requirements for eelgrass but which currently lack vegetation.

Protocol for mapping shall consist of the following format:

1) Coordinates

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11

Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

2) Units

Transects and grids in meters.

Area measurements in square meters/hectares.

All mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days with the exception of surveys completed in August - October.

A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). After project construction, a post-project survey shall be completed within 30 days. The actual area of impact shall be determined from this survey.

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3. Mitigation Site. The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from

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ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

4. Mitigation Size. In the case of transplant mitigation activities that occur concurrent to the project that results in damage to the existing eelgrass resource, a ratio of 1.2 to 1 shall apply. That is, for each square meter adversely impacted, 1.2 square meters of new suitable habitat, vegetated with eelgrass, must be created. The rationale for this ratio is based on, 1) the time (i.e., generally three years) necessary for a mitigation site to reach full fishery utilization and 2) the need to offset any productivity losses during this recovery period within five years. An exception to the 1.2 to 1 requirement shall be allowed when the impact is temporary and the total area of impact is less than 100 square meters. Mitigation on a one-for-one basis shall be acceptable for projects that meet these requirements (see section 11 for projects impacting less than 10 square meters).

Transplant mitigation completed three years in advance of the impact (i.e., mitigation banks) will not incur the additional 20% requirement and, therefore, can be constructed on a one-for-one basis. However, all other annual monitoring requirements (see sections 8-9) remain the same irrespective of when the transplant is completed.

Project applicants should consider increasing the size of the required mitigation area by 20-30% to provide greater assurance that the success criteria, as specified in Section 9, will be met. In addition, alternative contingent mitigation must be specified, and included in any required permits, to address situation where performance standards (see section 9) are not met.

5. Mitigation Technique. Techniques for the construction and planting of the eelgrass mitigation site shall be consistent with the best available technology at the time of the project. Donor material shall be taken from the area of direct impact whenever possible, but also should include a minimum of two additional distinct sites to better ensure genetic diversity of the donor plants. No more than 10% of an existing bed shall be harvested for transplanting purposes. Plants harvested shall be taken in a manner to thin an existing bed without leaving any noticeable bare areas. Written permission to harvest donor plants must be obtained from the California Department of Fish and Game.

Plantings should consist of bare-root bundles consisting of 8-12 individual turions. Specific spacing of transplant units shall be at the discretion of the project applicant. However, it is understood that whatever techniques are employed, they must comply with the stated requirements and criteria.

6. Mitigation Timing. For off-site mitigation, transplanting should be started prior to or concurrent with the initiation of in-water construction resulting in the impact to the eelgrass bed. Any off-site mitigation project which fails to initiate transplanting work within 135 days following the initiation of the in-water construction resulting in impact to the eelgrass bed will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

7. Mitigation Delay. If, according to the construction schedule or because of any delays, mitigation cannot be started within 135 days of initiating in-water construction, the eelgrass replacement mitigation obligation shall increase at a rate of seven percent for each month of delay. This increase is necessary to ensure that all productivity losses incurred during this period are sufficiently offset within five years.

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8. **Mitigation Monitoring.** Monitoring the success of eelgrass mitigation shall be required for a period of five years for most projects. Monitoring activities shall determine the area of eelgrass and density of plants at the transplant site and shall be conducted at 3, 6, 12, 24, 36, 48, and 60 months after completion of the transplant. All monitoring work must be conducted during the active vegetative growth period and shall avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 3 and 6 month surveys shall be allowed in order to ensure the work is completed during this active growth period. Additional monitoring beyond the 60 month period may be required in those instances where stability of the proposed transplant site is questionable or where other factors may influence the long-term success of transplant.

The monitoring of an adjacent or other acceptable control area (subject to the approval of the resource agencies) to account for any natural changes or fluctuations in bed width or density must be included as an element of the overall program.

A monitoring schedule that indicates when each of the required monitoring events will be completed shall be provided to the resource agencies prior to or concurrent with the initiation of the mitigation.

Monitoring reports shall be provided to the resource agencies within 30 days after the completion of each required monitoring period.

9. **Mitigation Success.** Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project and mitigation sites. Extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than one meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative samples within the control or transplant bed. Specific criteria are as follows:

- a. a minimum of 70 percent area of eelgrass bed and 30 percent density after the first year.
- b. a minimum of 85 percent area of eelgrass bed and 70 percent density after the second year.
- c. a sustained 100 percent area of eelgrass bed and at least 85 percent density for the third, fourth and fifth years.

Should the required eelgrass transplant fail to meet the established criteria, then a Supplementary Transplant Area (STA) shall be constructed, if necessary, and planted. The size of this STA shall be determined by the following formula:

$$STA = MTA \times (|A_t + D_t| - |A_c + D_c|)$$

MTA = mitigation transplant area.

A_t = transplant deficiency or excess in area of coverage criterion (%).

D_t = transplant deficiency in density criterion (%).

A_c = natural decline in area of control (%).

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D_c = natural decline in density of control (%).

Four conditions apply:

- 1) For years 2-5, an excess of only up to 30% in area of coverage over the stated criterion with a density of at least 60% as compared to the project area may be used to offset any deficiencies in the density criterion.
- 2) Only excesses in area criterion equal to or less than the deficiencies in density shall be entered into the STA formula.
- 3) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 4) Any required STA must be initiated within 120 days following the monitoring event that identifies a deficiency in meeting the success criteria. Any delays beyond 120 days in the implementation of the STA shall be subject to the penalties as described in Section 7.

10. Mitigation Bank. Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in section 9, may be considered as credit in a "mitigation bank". Establishment of any "mitigation bank" and use of any credits accrued from such a bank must be with the approval of the resource agencies and be consistent with the provisions stated in this policy. Monitoring of any approved mitigation bank shall be conducted on an annual basis until all credits are exhausted.

11. Exclusions.

- 1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than ½ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed ½ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the ½ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.
- 2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

(last revised 2/2/99)

- Policies
- Habitat Conservation
- Division
- Southwest Region Home
- Page

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PAGE 4 OF 4

DEPARTMENT OF FISH AND GAME

Marine Region
4949 Viewridge Avenue
San Diego, CA 92123



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COASTAL COMMISSION

Mr. Fernie Sy
California Coastal Commission
South Coast Area
200 Oceangate Ave., 10th Floor
Long Beach, California 90802-4325

November 9, 2001

Dear Mr. Sy:

I have reviewed the project description for the Thomas and Nancy Childs Coastal Development Permit (CDP) Application 5-01-117, for 1204 E. Balboa Boulevard, City of Newport Beach, California. Information on the project was provided by Ms. Lisa Miller, of Shellmaker, Incorporated. The proposed project involves demolition of an existing bulkhead, pier, ramp and dock, and reconstruction of a new bulkhead in the same location, pier, ramp, and dock, located approximately five-feet to the east of the original.

An eelgrass (*Zostera marina*) survey was performed by Mr. Rick Ware, of Coastal Resources Management, on September 5, 2001. The survey documented the presence of two patches of eelgrass, west of the gangway and dock. The report stated that "the proposed dock reconstruction project will not reduce the amount of eelgrass at the project site as a result of construction or the long term use of the dock." The report further recommends the use of debris and silt curtains around the pile driving area and collection of debris and trash as best management practices to reduce/prevent impacts to water quality. The Department approves of these mitigation measures but we feel that activities involved in demolition of the existing bulkhead, pier, ramp, and dock, and the reconstruction of the bulkhead, pier, ramp and dock, could potentially impact the adjacent eelgrass habitat. Thus, the Department recommends the applicant conduct a post- construction eelgrass within 30 days of project completion. A comparison of pre- and post-construction eelgrass surveys will determine if impacts to eelgrass have actually occurred. If a comparison of the surveys reveals that eelgrass habitat has been lost, eelgrass will need to be mitigated in accordance with the Southern California Eelgrass Mitigation Policy, as amended. With this provision, the Department concurs with the issuance of a CDP for the proposed project.

Thank you for the opportunity to express our concerns. If you have any questions, please feel free to call me at telephone (858) 467-4231.

Sincerely,

Marilyn J. Fluharty
Environmental Scientist

COASTAL COMMISSION

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PAGE 1 OF 1



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

June 18, 2001

Tom Childs
1127 Balboa Blvd.
Newport Beach, CA 92661

ORDER FOR A TECHNICALLY CONDITIONED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED BULKHEAD AND DOCK REPAIR PROJECT, CITY OF NEWPORT BEACH, ORANGE COUNTY (ACOE REFERENCE NUMBER 2000100988)

Dear Mr. Childs:

On March 30, 2001, we received a request for 401 Water Quality Standards Certification dated March 27, 2001, from your agent Shellmaker Inc., for the above-referenced project. We received all requested materials for a complete application as of April 17, 2001.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401 that the proposed project described below will comply with State water quality standards outlined in the Basin Plan (1995):

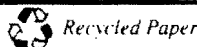
- | | |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Project Description: | The proposed project, located at 1204 E. Balboa Boulevard in the City of Newport Beach, involves replacing a 57-foot failing wooden bulkhead. The bulkhead will be placed in the same location as the existing bulkhead, in order to protect the new building that will be built on the lot. The project will also require that the existing dock, pier, and ramp be removed and replaced with a new modified configuration. |
| 2. Receiving water: | Newport Bay, Orange County |
| 3. Fill/excavation area: | Ocean: No fill - footprint of the lot will remain exactly the same. No wetlands will be impacted. |
| 4. Dredge volume: | N/A |
| 5. Federal permit: | U. S. Army Corps of Engineers (USACOE) Nationwide Permit 3 |
| 6. Fill/excavation and dredge mitigation: | None |
| 7. Water quality impacts mitigation: | The proposed project is not expected to impact or disturb sediment. There is no eelgrass present within 15 feet of the project site. The work will be accomplished consistent with the requirements of the California Coastal Commission. |

COASTAL COMMISSION

No vessel waste is to be discharged as a result of this project.

California Environmental Protection Agency

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There is no wetland vegetation in the project area site. The proposed project is not expected to impact state- or federally-listed endangered species or their habitat.

The project's description indicates that stream diversion or dewatering will not be necessary during construction.

You have submitted an application under Nationwide Permit 3 to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have filed for a Coastal Development Permit with the California Coastal Commission. This project has been determined to be ministerial or categorically exempt in accordance with CEQA Guidelines.

This order for 401 Certification is contingent upon the execution of the following conditions:

1. There shall be no fueling, lubrication, or maintenance of construction equipment within 500 feet of waters of the State.
2. Adhere to the *Caulerpa taxifolia* stipulation.

Caulerpa taxifolia Stipulation:

In June 2000, *Caulerpa taxifolia*, an invasive marine seaweed, which has severe adverse effects on the ecosystem, was reported to be found in a lagoon off Huntington Harbour. Since then, it has been located within Huntington Harbour itself. The Regional Board, California Department of Fish and Game (CDFG), and other agencies are involved in extensive efforts to eradicate this seaweed and prevent its transport to other areas. Projects that entail dredging in marine waters are required to survey for *Caulerpa* to help locate and prevent its spread. If *Caulerpa* is found prior to or during implementation of the project, no work should begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board must be notified immediately with report of the location and date of discovery. Should no *Caulerpa* be observed during the bulkhead repair, please notify the Regional Board of this fact when all property repairs have been completed. This will help us to establish a database on the occurrence or absence of *Caulerpa*.

Regional Board Staff has determined that your proposed project, if constructed in accordance with the conditions of the 401 Water Quality Standards Certification, will be in compliance with the State of California's Anti-degradation Policy.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

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California Environmental Protection Agency

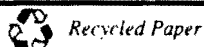


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Any discharge from the above referenced project must comply with applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), (306 National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality standards certification. Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements. Please notify our office five (5) days before construction begins on this project.

Should there be any questions, please contact Stephanie M. Gasca at (909) 782-3221 or Wanda Smith at (909) 782-4468.

Sincerely,

Gerard J. Thibault

GERARD J. THIBEAULT
Executive Officer

CC: U.S. Environmental Protection Agency, Director of Water Division (WTR-1) – Alexis Strauss
U.S. Army Corps of Engineers, Los Angeles District – Susan Sturges
California Coastal Commission, Long Beach Branch – Karl Schwing
State Water Resources Control Board, Watersheds Project Support Section –
William R. Campbell, Chief
Shellmaker Inc. – Lisa E. Miller

COASTAL COMMISSION

EXHIBIT # 10
PAGE 3 OF 3





California Regional Water Quality Control Board Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

113
112
111

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

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South Coast Region

December 6, 2001

DEC 11 2001

Tom Childs
1127 Balboa Blvd.
Newport Beach, CA 92661

CALIFORNIA
COASTAL COMMISSION

ADDENDUM TO THE ORDER FOR A TECHNICALLY CONDITIONED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED BULKHEAD AND DOCK REPAIR PROJECT, CITY OF NEWPORT BEACH, ORANGE COUNTY (ACOE REFERENCE NUMBER 2000100988)

Dear Mr. Childs:

On June 18, 2001, the Santa Ana Regional Water Quality Control Board (RWQCB) issued a technically conditioned Clean Water Act Section 401 Water Quality Standards Certification for the above-referenced project. On November 5, 2001, we received updated information pertaining to the project from your agent, Shellmaker, Inc. The letter indicated that upon conducting an eelgrass survey on September 5, 2001, the marine biologist located eelgrass that had recently grown within the project area.

Revised Project Description:

The proposed project, located at 1204 E. Balboa Boulevard in the City of Newport Beach, involves replacing a 57-foot failing wooden bulkhead and modifying the existing dock, pier, and gangway. The bulkhead will be placed in the same footprint as the existing bulkhead in order to protect an existing building on the lot. Due to the new growth of two patches of eelgrass located west of the gangway, the placement of the dock, pier, and gangway has been reconfigured in order to avoid disturbing the eelgrass. The proposed dock reconfiguration will involve moving the dock, pier, and gangway east of its present location and extending the dock seaward and closer to the U. S. Pierhead line. The new pier and dock will also be narrower than its present configuration. Dredging underneath the dock will not be required.

Revised Water Quality Impacts Mitigation:

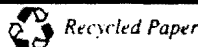
Pile driving will not occur in, nor directly impact the eelgrass beds. Mitigation measures will be implemented to reduce secondary impacts, such as increased turbidity, to the eelgrass beds, while pile driving activity is occurring in the project area. The following mitigation measures are to be complied with:

- All eelgrass within the project area should be appropriately marked and not disturbed;
- The project should not disperse suspended solids or cause turbidity or other water quality degradation for the duration of project construction;
- Debris and silt curtains shall be deployed around the pile driving area to minimize the dispersion of debris and turbid waters into Newport Bay;
- All debris and trash shall be collected in suitable trash containers on a barge, and must be disposed of appropriately at the end of each construction day, and
- There shall be no discharge of hazardous materials into Newport Bay.

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California Environmental Protection Agency

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This Addendum revises the Project Description and Water Quality Impacts Mitigation originally included as part of the technically conditioned Clean Water Act Section 401 Water Quality Standards Certification issued on June 18, 2001. All other tenets set forth in the June 18, 2001 401 Certification remain valid and must be upheld. Although we anticipate no further regulatory involvement, if the above-stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Santa Ana Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

Should there be any questions, please contact me or Stephanie M. Gasca at (909) 782-4468 or (909) 782-3221, respectively.

Sincerely,



Wanda Smith, Chief
Coastal Waters Planning Section

cc: U.S. Environmental Protection Agency, Director of Water Division (WTR-1) – Alexis Strauss
U.S. Army Corps of Engineers, Los Angeles District – Susan Sturges
✓ California Coastal Commission, Long Beach Branch – Fernie Sy
State Water Resources Control Board, Division of Water Quality, Water Quality Certification Unit –
Oscar Balaguer, Chief
Shellmaker Inc. – Lisa E. Miller

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California Environmental Protection Agency

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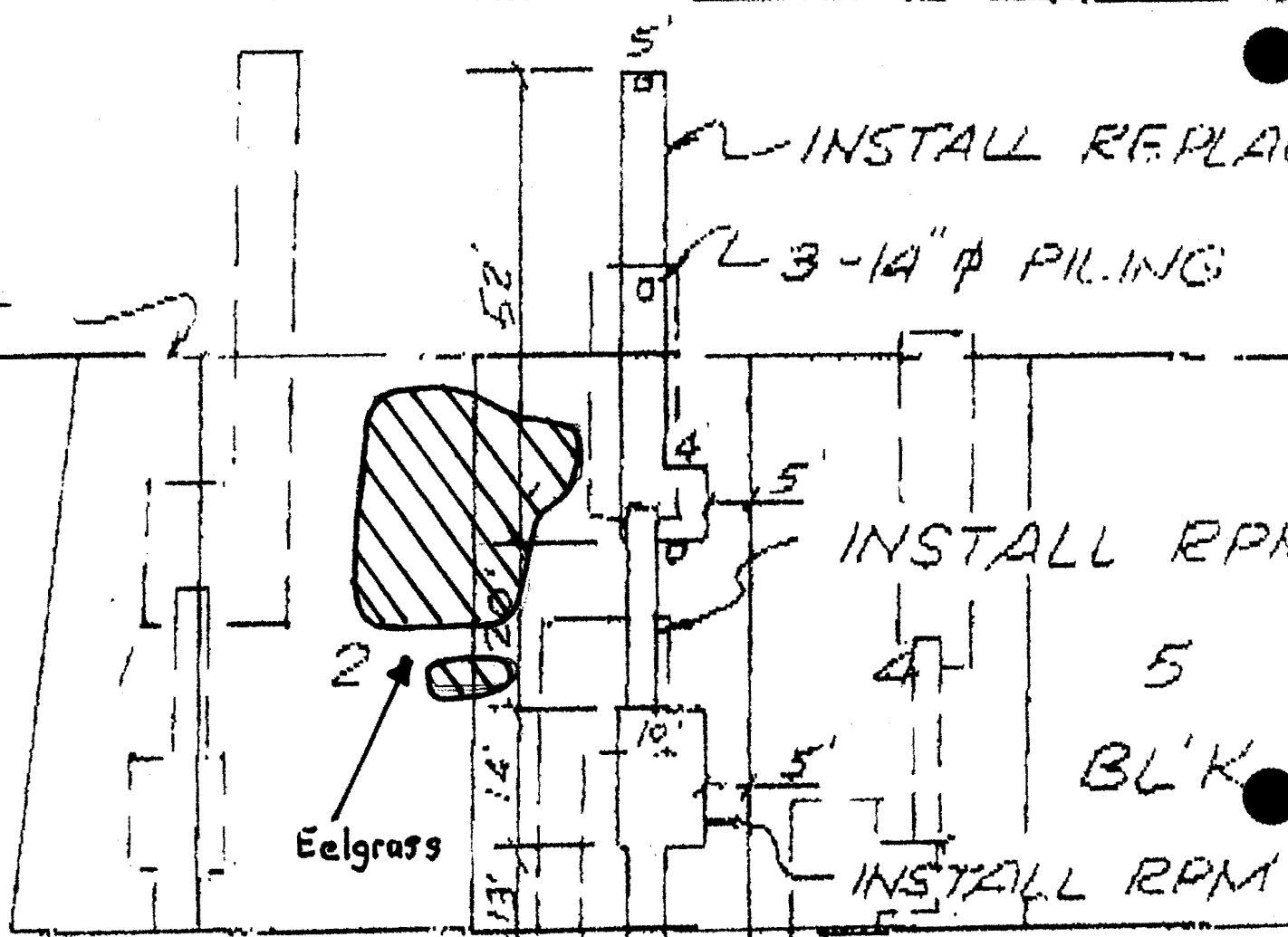
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LINE →

LINE →

57

ING BLK'D
BAY
ANCHOR SYSTEM



INSTALL REPLAC

3-14" PILING

INSTALL RPA

BL'K

INSTALL RPA

REMIT BL

AVE. TRACATE

Scale:
1" ≈ 20 FT

19 COASTAL COMMISSION

PROJECT,
REA

2

3

BL'K

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