

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: November 6, 2002
49th Day: December 25, 2002
180th Day: May 5, 2003
Staff: FSY-LB ~~FSY~~
Staff Report: February 13, 2003
Hearing Date: March 4-7, 2003
Commission Action:

**TU 5a****STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 5-02-109

APPLICANTS: Martin & Gail O'Hea **RECORD PACKET COPY**

AGENT: Shellmaker Inc.

PROJECT LOCATION: 4001 Marcus Avenue, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Removal and replacement of a 30' long concrete bulkhead and 12' long return wall in the same location. No work is proposed to the existing dock and gangway.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves demolition of an existing bulkhead and construction of a new bulkhead in the same location. The subject site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of the Newport Harbor. The proposed new 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 and water quality. No eelgrass is located within the project area at this time.

Staff recommends the Commission **APPROVE** the proposed development with three (3) special conditions. Special Condition No. 1 requires that the applicant dispose of all demolition and construction debris at an appropriate location. Special Condition No. 2 assures that impacts to eelgrass are avoided and, if necessary, mitigated. Special Condition No. 3 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 applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*.

LOCAL APPROVALS RECEIVED: Approval in Concept (#340-4001) from the City of Newport Beach Harbor Resources Division dated March 20, 2002, Approval from the California Department of Fish & Game (DF&G) dated June 3, 2002, Section 401 Permit from the Regional Water Quality Control Board (Santa Ana Region) dated July 23, 2002; and Addendum to Section 401 Permit from the Regional Water Quality Control Board (Santa Ana Region) dated October 31, 2002.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permits 5-00-495 (Schulze); 5-01-104 (Flutter); 5-01-117 (Childs); 5-02-042 (Rands); *Geotechnical Investigation (J.N. 442-01), Proposed Replacement of Existing Seawall, 4001 Marcus Street, Newport Beach, California* prepared by Petra dated January 25, 2002; *Structural Calculations for a New Sea Wall* prepared by William Simpson & Associates, Inc. dated February 6, 2002; Letter from William Simpson & Associates, Inc. to Staff dated May 29, 2002; Eelgrass (*Zoostera marina*) and Noxious Algae (*Caulerpa taxifolia*) Survey at 4001 Marcus, Newport Beach, CA for the Marty Ohea Residence (CDP 5-02-019) by Coastal Resources Management dated May 28, 2002; Letter from staff to Lisa Miller from Staff dated May 10, 2002; Letter from Lisa Miller to Staff received Jun 5, 2002; Letter to Lisa Miller from Staff dated July 1, 2002; Letter from Lisa Miller to Staff dated July 25, 2002; Letter to Lisa Miller from Staff dated August 20, 2002; Letter to Staff from Lisa Miller dated August 21, 2002; Letter to Lisa Miller from Staff dated September 7, 2002; Letter to the Regional Water Quality Control Board (RWQCB) from Lisa Miller dated September 17, 2002; Letter from Lisa Miller to Staff dated November 4, 2002; Letter from Lisa Miller to Staff dated November 15, 2002 and Letter from Orange County Coastkeeper to Martin O'Hea dated November 14, 2002.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Approval-In-Concept Plan from the City of Newport Beach Harbor Resources Division
 4. Project Plans
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STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-02-109 pursuant to the staff recommendation.

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

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Construction Responsibilities 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. 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.

3. 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:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is located on a bayfront lot fronting Newport Bay at 4001 Marcus Avenue in the City of Newport Beach, County of Orange (Exhibits #1-2). Northeast of the project site is Marcus Avenue; Southwest of the project site is the Rivo Alto Waterway and to the Southeast and Northwest are existing residential structures on bulkheaded lots. The site currently contains an existing residence and an existing dock and gangway. No work is proposed to the existing dock and gangway

The applicant wishes to replace an existing 30' long concrete bulkhead and 12' long return wall in the same location as it has deteriorated to the point that it needs to be replaced (Exhibits #3-4). In addition, a new deadman and rods will be constructed. The new bulkhead will be made up of concrete sheets with tongue and groove panels held together with a concrete coping tied to a deadman system. Closures will be formed and poured at the end of the property to form a tight seal with the neighbor's bulkheads. The top of the new bulkhead will be at +9 feet Mean Low Lower Water to meet present City of Newport Beach engineering standards. The proposed new 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.

Public access to the Rivo Alto Waterway is available to the adjacent Southeast of the site, at the 40th Street, street end.

A biological survey conducted on May 20, 2002 determined that no eelgrass or *Caulerpa taxifolia* was present in the project area. It appears that construction may be initiated during the next period of active eelgrass growth (typically March through October), therefore an additional eelgrass survey is required. To confirm that no *Caulerpa* is present at the time of construction, a subsequent survey must be conducted not earlier than 90 days nor later than 30 days prior to commencement of the proposed project.

B. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

C. MARINE RESOURCES

The proposed development is the replacement of an existing bulkhead in the same location or landward of the existing bulkhead that is necessary to protect an existing structure. The proposed development will not result in the additional fill of coastal waters as the new bulkhead will be located either in the same location or landward of the existing bulkhead. In the event that the bulkhead is being reconstructed in the same location, it is infeasible to relocate the new bulkhead further landward. The proposed development has been conditioned to minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass, and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project conforms with Sections 30233 and 30235 of the Coastal Act.

D. PUBLIC ACCESS

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

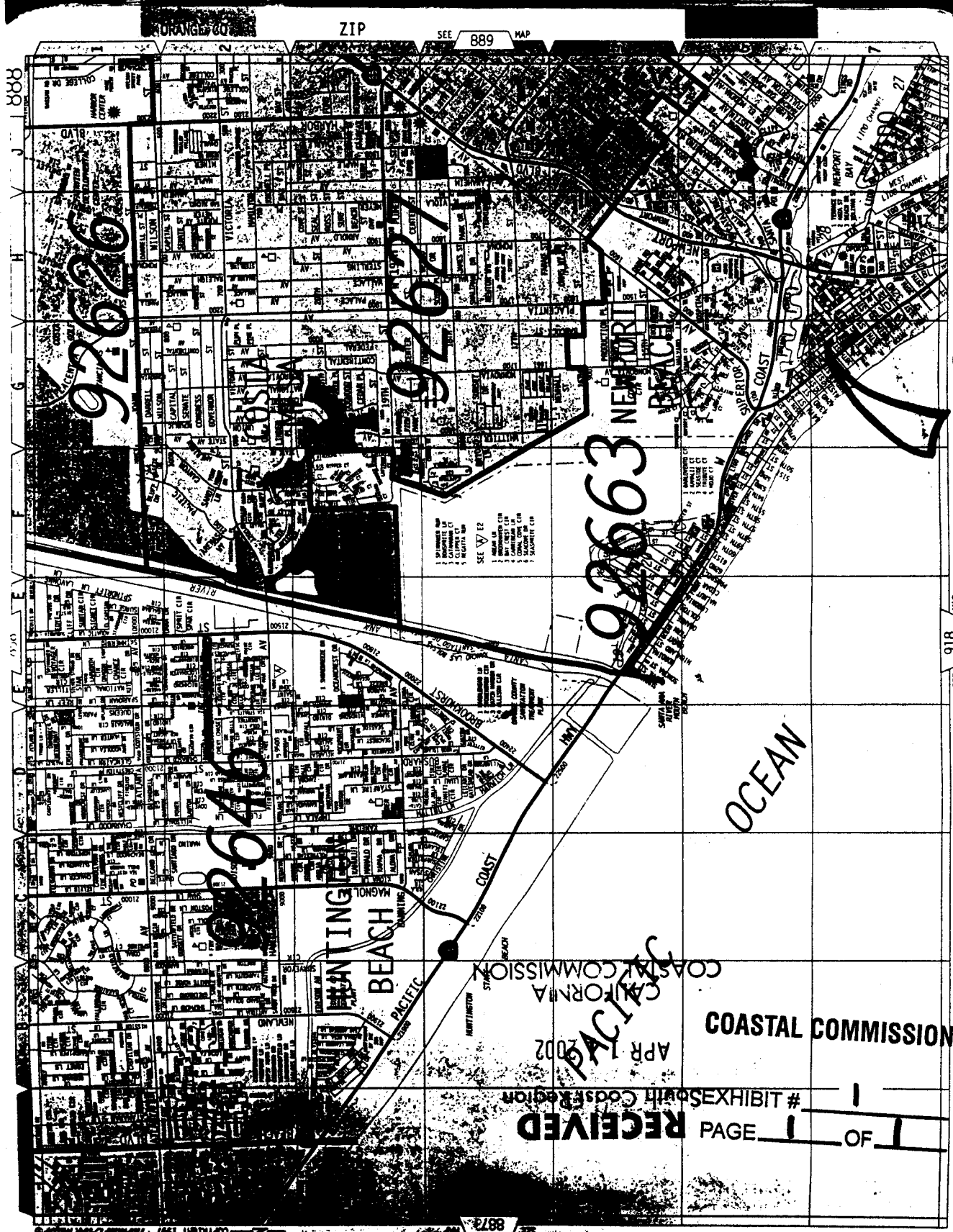
E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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PAGE 1 OF 1

PROJECT ESTE

SEE 918 MAP

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 BY ITS ATTACHMENT TO THE
 INSURANCE OF
 INSURANCE COMPANY.

THIS MAP WAS PREPARED FOR ORANGE COUNTY
 ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR
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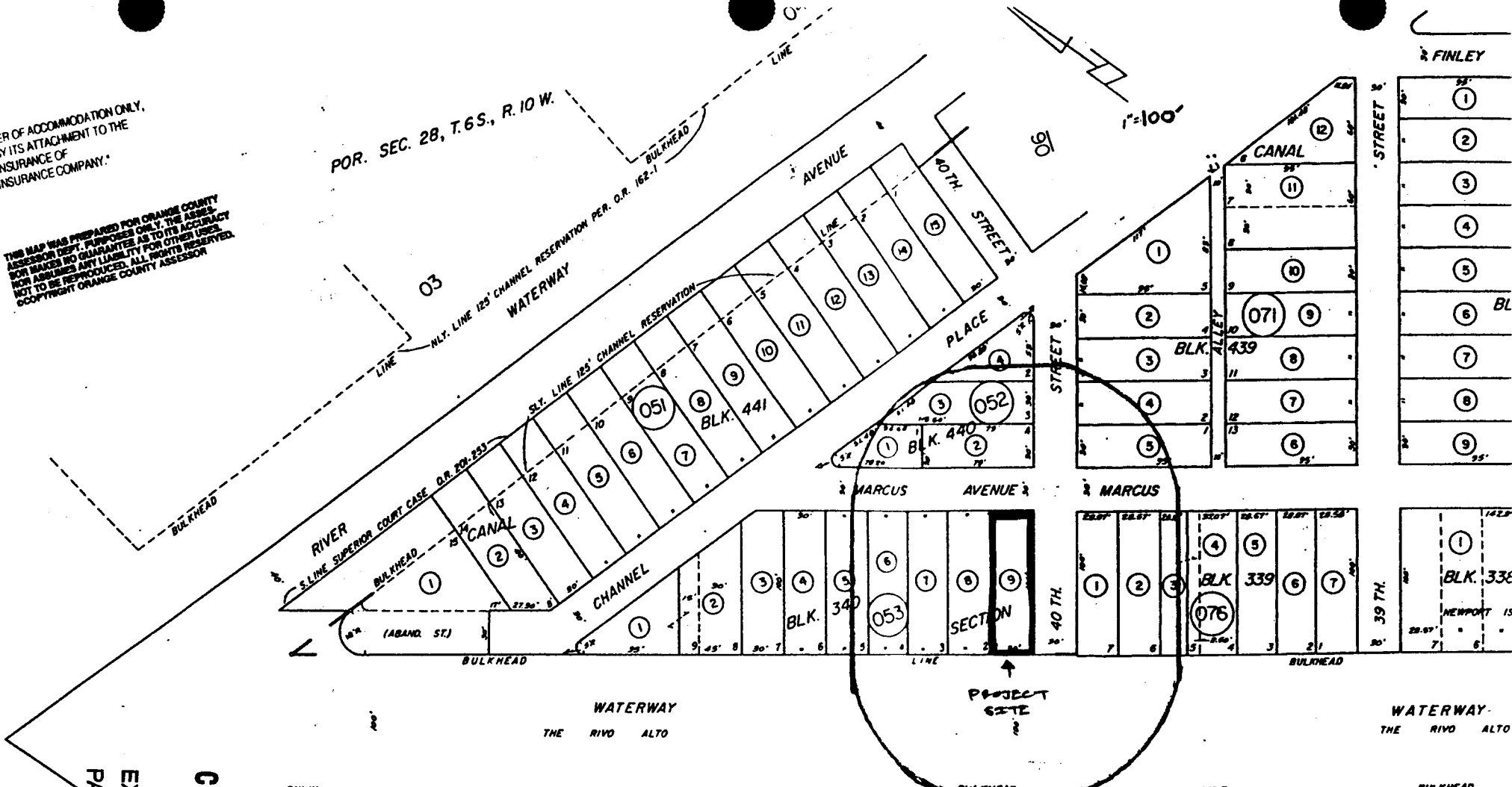
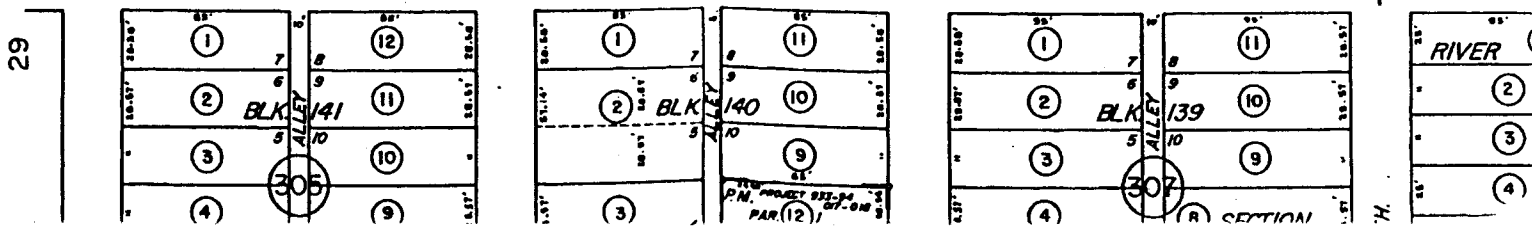
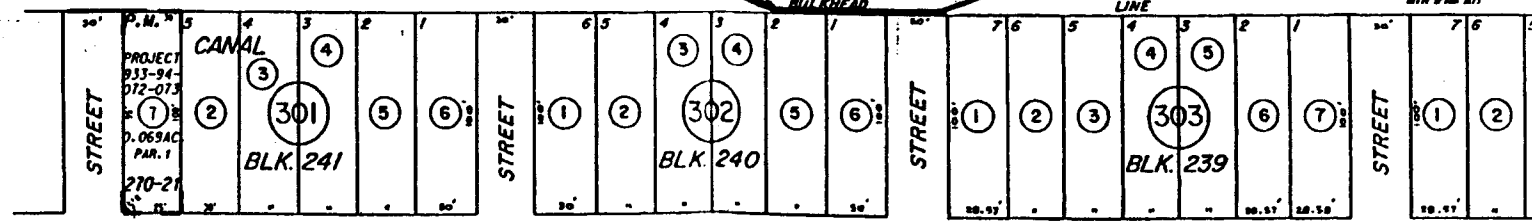


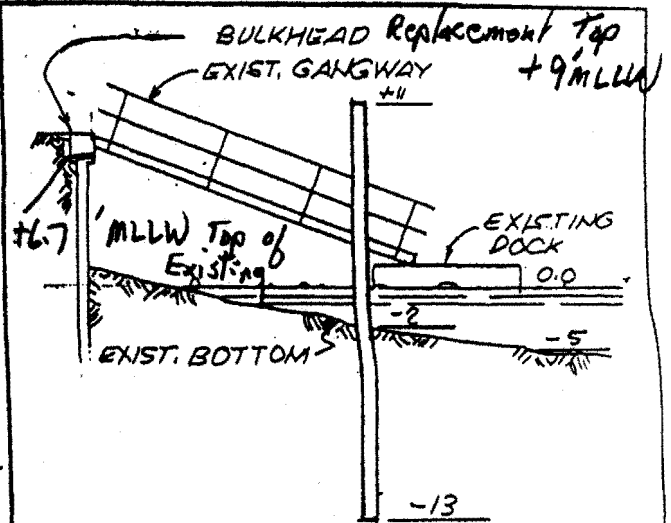
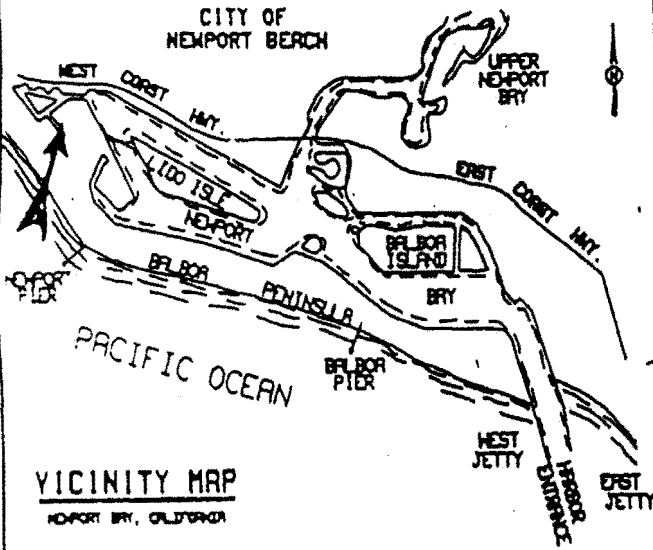
EXHIBIT # 2
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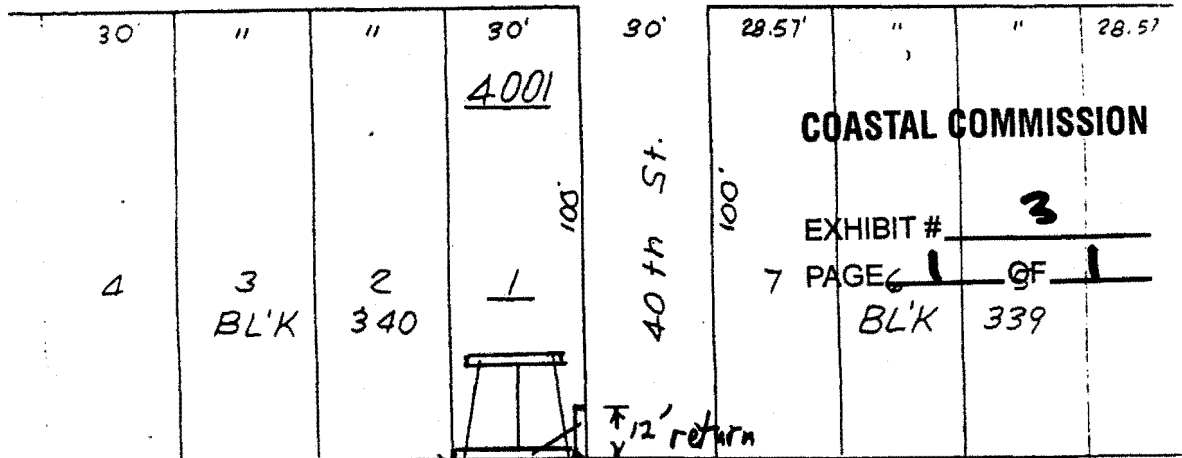
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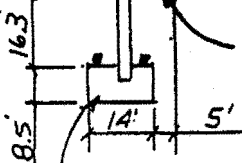
STREET



COASTAL COMMISSION

EXHIBIT # 3
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BL'K 339

RIVO



alignment of Existing and replacement bulkhead
ALTO

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

EXIST. DOCK & GANGWAY TO REMAIN

Tony Melum
SIGNATURE

3/20/02
HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

340-4001 3/20/02
PERMIT # DATE

Tony Melum

PLAN VIEW 1" = 40'

APPLICANT'S NAME: MARTIN O'HEA

JOB ADDRESS: 4001 MARCUS ST.

DATE

