

CALIFORNIA COASTAL COMMISSION

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Filed: June 14, 2006
49th Day: August 2, 2006
180th Day: December 11, 2006
Staff: Fernie Sy-LB
Staff Report: August 24, 2006
Hearing Date: September 13-15, 2006
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 5-06-094
APPLICANT: James Collings
AGENTS: Shellmaker, Inc., Attn: Lisa Miller
PROJECT LOCATION: 410 38th Street, City of Newport Beach (County of Orange)
PROJECT DESCRIPTION: Demolition of an existing bulkhead and construction of a new bulkhead in the same location associated with an existing single-family residence.

LOCAL APPROVALS RECEIVED: Approval-In-Concept from the City of Newport Beach Harbor Resources Division dated February 22, 2006.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the demolition and construction of a 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 new 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 or *Caulerpa taxifolia* 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** deals with construction responsibilities and debris removal. **Special Condition No. 2** requires that a pre-construction survey for eelgrass be done and 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 applicant shall not proceed with the project until 1) the applicant provide 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*.

Section 30600(c) 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 City of Newport Beach only has a certified Land Use Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; *Limited Geotechnical Engineering Investigation of Distressed Bulkhead at 410 38th Street, Newport Beach, California (W.O. 296005)* prepared by Coast Geotechnical, Inc. dated November 22, 2005; *Structural Calculations for a Proposed Seawall Replacement located at Collings Residence, 410 38th Street, Newport Beach, CA 92663 (WSA Job #6170)* prepared by William Simpson & Associates, Inc. December 23, 2005; and Letter to Mr. James Collings from William Simpson & Associates, Inc. dated January 25, 2006.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
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STAFF RECOMMENDATION:

MOTION: I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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.

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. **Eelgrass Surveys**

- 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” (SCEMP) 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 applicant 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 applicant 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” (SCEMP) 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 applicant 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 applicant 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. Implementation of 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 applicant 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 applicant shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) 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 applicant shall not proceed with the project until 1) the applicant provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and 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 applicant 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, DESCRIPTION AND PREVIOUS ACTION AT THE PROJECT SITE**

1. **Project Location and Description**

The proposed project is located on an approximately 3,000 square foot bayfront lot fronting Newport Bay at 410 38th Street in the City of Newport Beach, County of Orange (Exhibits #1-2). The site is designated Medium Density Residential in the City of Newport Beach Land Use Plan (LUP) and the proposed use conforms to this designation. North and South of the project site are existing residential structures on bulkheaded lots, East of the project site is The Rialto Waterway (Newport Bay) and West of the project site is 38th Street. The project site is located in a residential area where the homes fronting Newport Bay are located on bulkheaded lots. Site conditions on the bayward side of the site include an existing bulkhead, pier and dock. The applicant wishes to replace the bulkhead in the same location as it has deteriorated to the point that it needs to be replaced. No work will be done on the existing dock and pier.

Public access to the bay is available approximately 100-feet North of the project site at the Finley Avenue, street end and approximately 150-feet South of the project site at the 38th Street, street end.

The project consists of: **1)** remove and replace along the same alignment an existing, failing, cast-in-place concrete bulkhead (30-feet in length) with a new concrete bulkhead composed of tongue and groove pre-cast concrete sheet piles (10-inch thick, 4-foot wide,

13-feet long) with a 2-foot, 2-inch high x 1-foot, 10-inch wide x 30-foot long coping cast on top and a new guardrail (the new bulkhead will align with the adjacent existing bulkheads); **2)** there will also be a 4-foot, 10-inch return wall constructed landward on the West side of the property and a 5-foot return wall on the East side; **3)** the new wall will be tied back using 4 helical anchors that are anchored into the ground below the existing house and connected to the coping by means of tread bars and **4)** grading will consist of 13.7 cubic yards of cut, 44.5 cubic yards of import, and 58 cubic yards of fill (Exhibit #3);. The existing house is at +10.35 MLLW and the current bulkhead is at +7.9 MLLW and post project the bulkhead will be at +10 feet MLLW designed to meet the minimum elevation requirements established by the City of Newport Beach (typically +9.0 feet, MLLW for Newport Harbor).

The site has been surveyed for eelgrass and *Caulerpa taxifolia*. These surveys are valid for a limited period of time. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-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). *Caulerpa taxifolia* surveys shall be valid for 90-days. Subsequent surveys will be required if construction does not occur within the respective time periods. An eelgrass survey conducted on January 26, 2006 determined that no eelgrass was discovered within 15-feet of the project area. The project is agendized for the September 2006 Coastal Commission Hearing and by this time the eelgrass survey would not continue to be valid since it had passed 60-days from when the survey was completed. Thus, an up-to-date pre-construction eelgrass survey must be conducted. On January 26, 2006, the site was also surveyed for *Caulerpa taxifolia* and none was found. The project is agendized for the September 2006 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since it had passed 90-days from when the survey was completed. Thus, an up-to-date pre-construction *Caulerpa taxifolia* survey must be conducted as well. If any eelgrass or *Caulerpa taxifolia* are found on the project site, Special Conditions No. 3 and No. 4 identify the procedures necessary to be completed prior to beginning any construction.

A number of additional agencies have reviewed the proposed project. The proposed project has received an approval-in-concept from the City of Newport Beach Harbor Resources Division. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The California Department of Fish and Game (DFG) has reviewed the project and determined that the project would not result in a significant impact to fish and wildlife resources and their habitats. The National Marine Fisheries Service (NMFS) has also reviewed the project and has no objections to the proposed project. The applicant has applied for a permit from the U.S. Army Corps of Engineers.

2. Previous Action At The Project Site

On October 16, 2000, the Commission approved De-Minimus Waiver 5-00-350-(Collings) for the removal of a 4' x 26' pier platform and pilings; replacement of a 3' x 22' gangway in kind; replacement of a 12' x 12' float with an 8' x 16' float; and replacement of two 12" diameter concrete guide piles in kind. The pier platform was not replaced.

On October 15, 2002, the Commission approved De-Minimus Waiver 5-02-300-(Collings) for the demolition of an existing 600 square foot 2nd unit above the garage and the addition of 1,608 new square feet to remaining residential unit as a 2nd story. Resultant structure

was a 2,678 square foot, two-story, 24-foot high, single-family residential with an attached 510 square foot, two-car garage. No change was proposed to the existing footprint.

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 30231 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

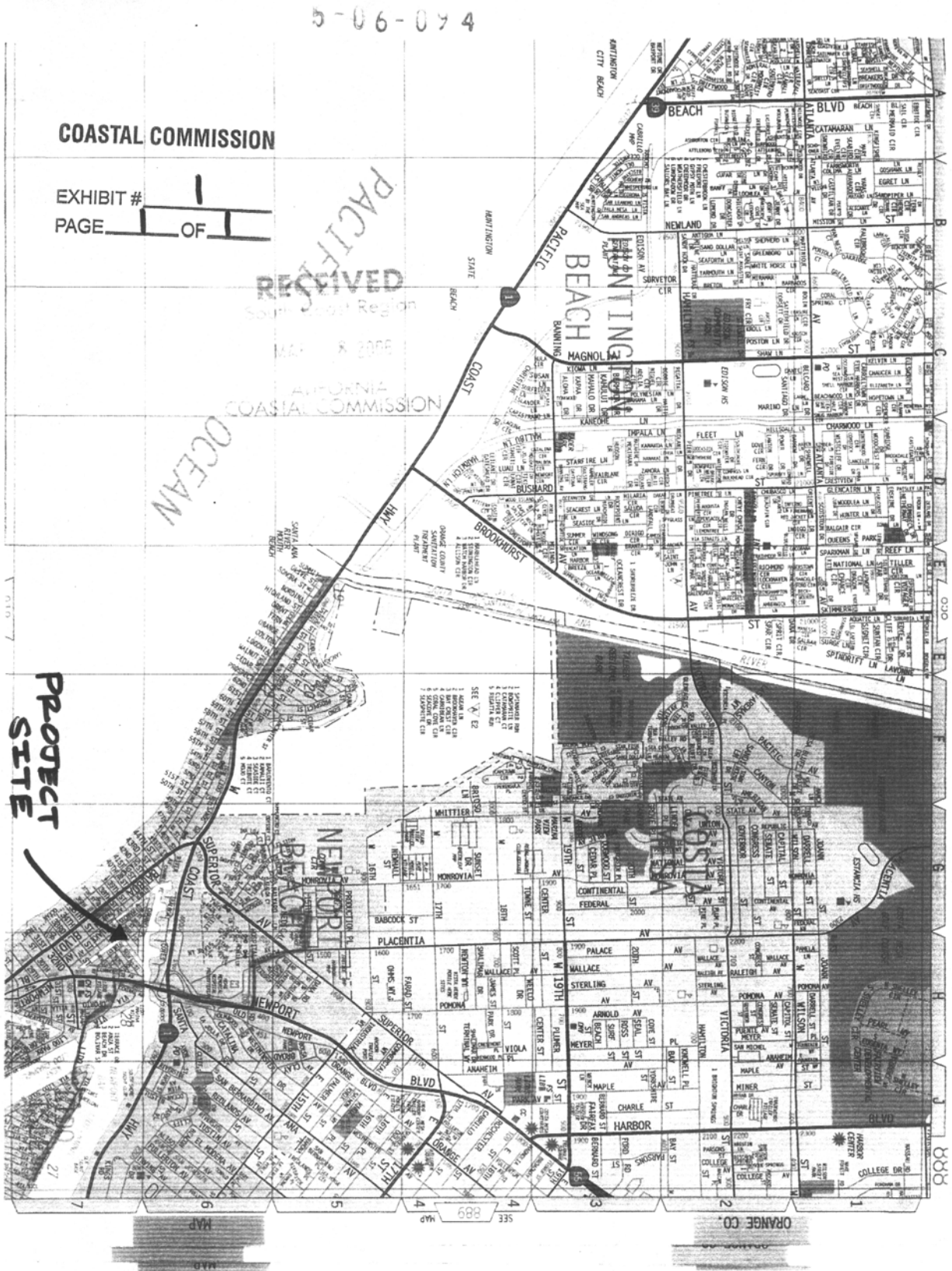
The LUP for the City of Newport Beach was effectively certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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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COASTAL COMMISSION

EXHIBIT # **2**
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MARCH 1981

CANAL SECTION

M. M. 4-98

38 TH. ST.

LAKE

36

AVENUE

37 TH. ST.

WATERWAY
THE RIVD ALTO



ASSESSOR'S MAP
BOOK 423 PAGE 01
COUNTY OF ORANGE

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

37

05

06

STREET

STREET

PROJECT
SITE

1" = 60'

