

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

W 12b

DATE: November 9, 2007

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item W 12b, Permit Amendment Application No. 4-04-104-A1
(Voss)

A. CORRESPONDENCE

The attached letter was submitted to the Commission by the applicant's agent. Most of the background discussion was previously conveyed in the agent's earlier letter to staff, which is attached as Exhibit 7 to the staff report. In fact, the agent's discussion of the project's background and alleged compliance with Section 30233 (a)(2) of the Coastal Act is already addressed on Pages 10 and 11 of the staff report.

B. FINDINGS

Staff recommends that the findings (beginning in the first full paragraph on Page 10 and ending on Page 11) for Permit Amendment Application 4-04-104-A1 be modified in the following ways (additions are shown in underlining and deletions are shown in ~~overstriking type~~) :

The applicant's agent has stated that the project as proposed to be amended is a use allowed under Section 30233 (a)(2) because it would restore the previously dredged depth in the boat dock area adjacent to the bulkhead. To support the applicant's assertion regarding the previously dredged depth, the applicant's agent has provided a discussion (Exhibit 7) of the common practice employed in the construction of bulkheads in situations similar to that on the subject site. Additionally, the agent has submitted a letter (Exhibit 15), dated November 6, 2007 that provides additional assertions. This letter again states that the project is allowed under Section 30233 (a)(2) because it would restore the previously dredged depth in the area adjacent to the bulkhead. The letter does not address the placement of fill in wetland or provide any argument that such fill is consistent with Section 30233.

However, there is additional discussion of the applicant's submittal of CDP Application 4-04-104 and the Commission's consideration of that application. The Commission disagrees with several of the agent's assertions regarding CDP 4-04-104. Contrary to the agent's statement, the construction of the 11 foot long bulkhead segment (and temporary cofferdam, etc.) was never identified as a portion of a larger project that would include some stabilization of the northern

slope. In fact, the application originally included a steel sheetpile stabilization wall along the northern slope (Exhibit 14). Commission staff informed the applicant's agent in 2005 that the sheetpile wall portion of the project would result in significant adverse impacts to wetland and other coastal resources and could not be recommended for approval. At that time, the applicant deleted the sheetpile wall from the project and submitted revised plans (January 2006) that did not include any stabilization of the northern slope. The applicant's agent gave no indication that consideration of the sheetpile wall or other slope stabilization would just be deferred to a later date. The Commission did not in any way suggest that such a future project would be approved. The Commission found that the bulkhead construction considered in CDP 4-04-104 was consistent with the policies of the Coastal Act only if the northern slope was restored and planted with native vegetation. The applicant agreed to the conditions at the time of Commission action and has since complied with all conditions, including the preparation of a restoration plan, but no construction has yet occurred.

As part of the two letters, the agent has submitted grading plans from 1972 for a subdivision (Tract 2026-3) that includes the existing parcels in the area of the project site. Based on a cross section from these plans that show the grading of the Reliant Energy slope below the bulkheads that hold the parcels on the west side of the canal, the agents have extrapolated the original depth of the channel adjacent to the subject site. The agent's first letter states that:

When constructing the end of a bulkhead it is common practice to create a slope perpendicular to the bulkhead with the top of slope two to five feet from the end of the bulkhead. This slope is usually protected in the tidal zone if it expected to remain for more than a few months. In addition, it needs to be stable below the tidal zone for both slipping failure and erosion.

Based on the agent's knowledge of common practice and the grading plans for Tract 2026-3, the agent concluded that dredging of the channel and grading of the slope were carried out in the past and that the proposed project therefore is an allowed use under Section 30233 (a)(2) of the Coastal Act.

However, as shown on the grading plans, the project site was not part of Tract 2026-3 and is therefore not part of the grading approved for that tract. The sheet showing the grading in the SCE Canal (later renamed as the Reliant Energy Canal) shows that the approved grading ended at the tract boundary. There is a note that says: "Daylight grading at tract boundary", indicating that the grading was not proposed, or presumably approved to extend beyond the tract boundary. This sheet also notes the location of the: "proposed face of seawall to be constructed per seawall plan..." along the eastern boundary of the parcels created in Tract 2026-3. This seawall is shown to end at the tract boundary (at the south edge of the subject site). It is unclear whether the subject site was graded at the same time as the adjacent Tract 2026-3 or at a subsequent time. Similarly, the construction of the bulkhead on the subject site is not shown on the plan for the tract so it is unclear whether the bulkhead wall was constructed at

the same time as the wall built for the tract or at a subsequent date. The only other evidence provided by the applicant is an Oxnard City Council resolution approving a parcel map that included the subject site. The City approved this parcel map with a condition requiring the owner to construct bulkhead or rip-rap for the entire length of the property adjacent to the Edison Canal, as necessary. However, this resolution does not describe how much of the subject property, if any, already contained a bulkhead wall along the channel. Further, as previously described, the bulkhead on this site does not extend across the northernmost 11 feet of the site. As such, it is not possible to determine if this area was graded consistent with the remainder of the channels in the area or the exact previous depth of the channel adjacent to the northern portion of the site. Finally, it is not possible, based on the information provided by the applicant's agent, to determine the purpose of any grading that was carried out in the area adjacent to the project site. Since boat facilities have never been approved on the project site, it cannot be concluded that the purpose of any grading or dredging was for boating. Section 30233 (a) (2) provides that dredging may be permitted for: "Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps". No evidence has been provided to demonstrate that the project site grading was intended to create any navigational channel, turning basin or berthing/mooring area. No such facilities currently exist on the site. As such, the Commission cannot conclude that the proposed dredging will maintain or restore the previously dredged depths in an existing boating facility, as provided in Section 30233 (a)(2) of the Coastal Act.

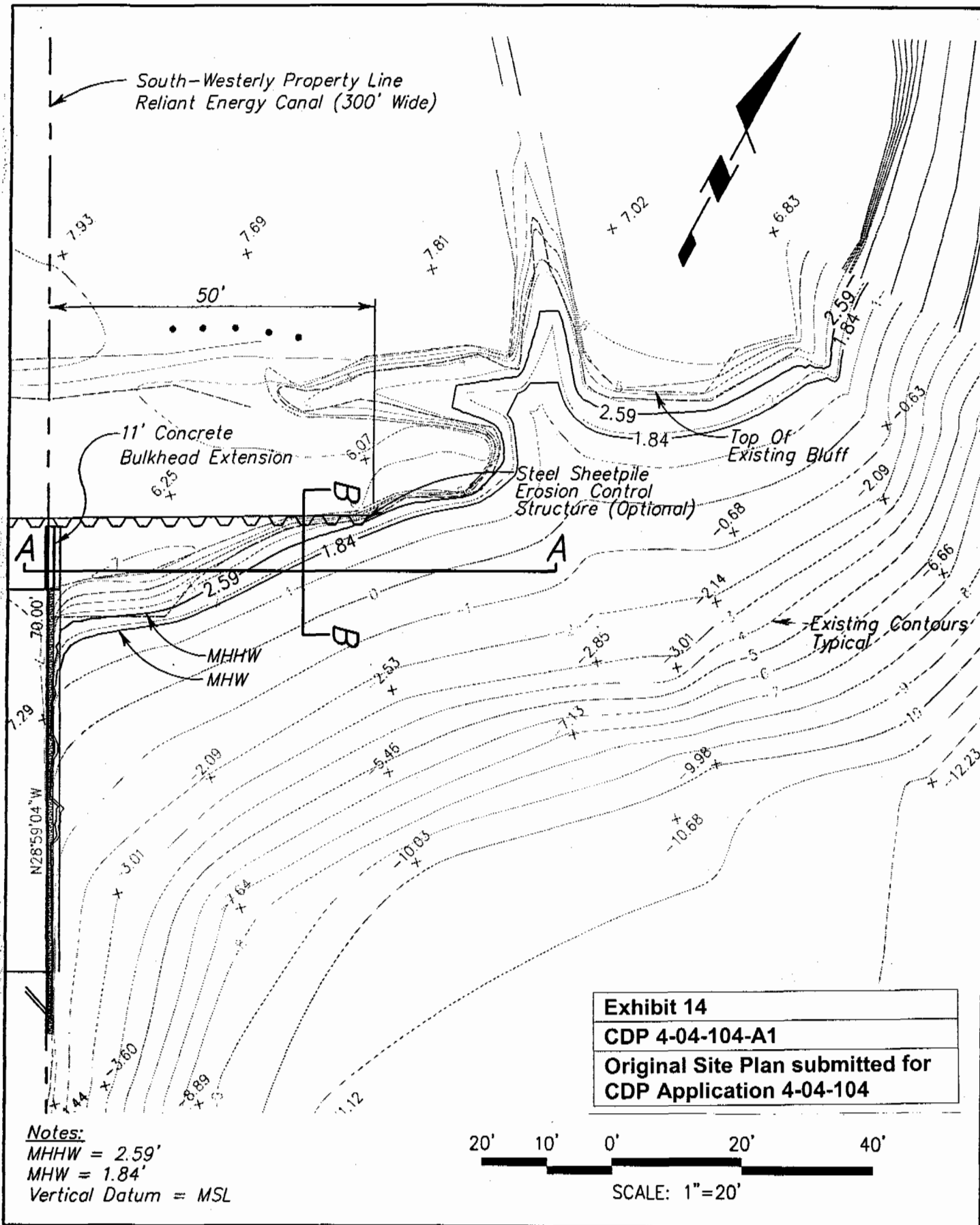
Moreover, even if the proposed dredging would only restore the previous depth of the a navigational channel or boating facility, the project as proposed to be amended, includes the placement of fill in a wetland. The fill would be 102 tons of rock rip-rap. This fill will result in the permanent loss of 922 sq. ft. of mudflat habitat. The proposed filling of wetland is not one of the 7 uses that are allowable pursuant to Section 30233 of the Coastal Act. There is a feasible alternative to the proposed project, namely the construction of the bulkhead wall extension previously approved in CDP 4-04-104. While this alternative would result in impacts to wetland and upland areas during construction, these impacts would be temporary in nature only and would not result in any permanent fill in wetland. As conditioned to include revegetation of the tidal and upland areas, this alternative minimizes adverse environmental impacts.

C. Exhibits

Staff recommends that the two following exhibits (attached) be added to the staff report:

Exhibit 14—Original staff report submitted for CDP Application No. 4-04-104

Exhibit 15—Moffatt & Nichol November 6, 2007 letter (not including full size plans that cannot be reproduced here, but already included as Exhibits 8-11 of the staff report)



DAN VOSS BULKHEAD PROJECT
4490 EASTBOURNE BAY

Plan

Figure
1



RECEIVED
NOV 09 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Office of Administrative
Services
California Coastal Commission

(862) 424 4041
Fax (862) 424 7439

November 6, 2007

Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Application 4-04-104 A1, Agenda Item W 12b

Honorable Commissioner:

The following discussion and the attachments are submitted for your consideration in evaluating the acceptability of our proposed project.

Discussion in support of Section 30233 (a)(2) being applicable to Permit 4-04-104 A1

The typical construction method for pile supported concrete bulkheads is to excavate a trench to footing level along the bulkhead line, leaving a dike to isolate the bulkhead construction from the existing waterway. After the bulkhead is constructed and backfilled, the dike is removed to allow the waterway to expand to the bulkhead.

When constructing the end of a bulkhead it is the common practice to create a slope perpendicular to the bulkhead with the top of slope two to five feet from the end of the bulkhead. This slope is usually protected in the tidal zone if it expected to remain for more that a few months. In addition, it needs to be stable below the tidal zone for both slipping failure and erosion.

The 1972 grading plans and sections for Tract 2026-3, from which the bulkhead at the subject property was constructed, indicate a dike of approximately 100 feet wide and a top elevation exceeding +10 MSL. Since none of this dike still exists, it is obvious that it was excavated.

Therefore, based on common practice in bulkhead and channel construction, our experience in the Mandalay Bay area, and the drawing details from the Tract 2026-3 construction, we believe that the berth area under permit 4-04-104 A1 was previously excavated, and is eligible to be excavated again under Paragraph (a)(2) of Section 30233.

Project Background

When the Area to the north of subject property was designated protected secondary dunes, the plan to develop the next project to the North (Tract 2026-4) was abandoned and the subject property was left unfinished. Subsequently, the applicant purchased the property and in 1989 filed a parcel map. As a condition of that parcel map he was required to extend the bulkhead the remaining eleven feet to the northerly property line. Because of the downturn in the real estate market the lot was not developed at that time, and agreement was reached between the City of Oxnard and the applicant to waive the condition as a requirement prior to Parcel Map approval, but as a requirement prior to building permits.

Exhibit 15
CDP 4-04-104-A1
Moffat & Nichol Correspondence (11/6/07)

November 6, 2007

Page 2



In 2004 the applicant started the process to extend the bulkhead, excavate a boat dock berthing area, and stabilize the ground along the extension of the northern property line. Preliminary plans were prepared for the bulkhead extension, berth excavation, and stabilization of the northerly edge using steel sheet piles within the 50 foot dredging and berthing easement, and slope grading beyond the easement. These plans were submitted for approval in concept by the City of Oxnard. The City at that time stated that the sheet piles solution was not acceptable. Since the bulkhead construction would precede the excavation for a berth, it was decided to submit for a permit on the bulkhead construction only, with the intent of asking for a permit for the creation of the berth and slope stabilization later when a plan was developed that was agreeable to the City. Therefore, permit application 4-04-104 was submitted and approved for the bulkhead extension. However, as a condition of that approval, there was a requirement to plant the slope perpendicular to the bulkhead and monitor the planting for five years. This condition signaled the intent to preserve the eroding bluff leaving the bulkhead forever covered with soil. This results in no net benefit to the owner of the property, the applicant, from constructing the bulkhead.

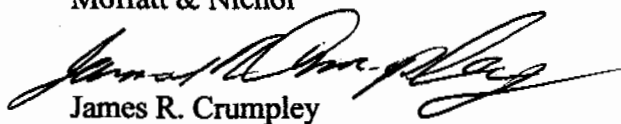
In discussions with the City about the situation, the City agreed to process a major modification which would delete the bulkhead extension in exchange for a ten foot easement along the northerly property line for maintenance access to the channel. In addition, they stated that they would add a new condition which required the owner to stabilize the northern edge and maintain navigable depth within the berth area.

The plan before you in the permit amendment is the minimum excavation necessary that would satisfy the City's requirement, and preserve the bluff. The City has given approval in concept to this plan. The processing of the Major Modification by the City is on hold pending the Coastal Commission action.

As stated in the beginning of this letter, we believe this channel was excavated during the original construction in the early seventies and allowed to silt in while the unprotected slope eroded since that time. Our proposed excavation closely matches the original excavation. Therefore, we believe this project does qualify for a Coastal Permit under Section 30233 (a)(2), and we ask that you vote yes to approve this permit amendment.

Attached are copies of 1989 agreement and conditions, a draft of the proposed new condition, communications from the City of Oxnard, and drawings showing the 1972 grading plan and a comparison of the probable 1972 excavation and the proposed excavation.

Sincerely,
Moffatt & Nichol


James R. Crumpley
Agent for Mr. Voss

Attachments



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF OXNARD
305 West Third Street
Oxnard, California 93030

AGREEMENT FOR COMPLETION OF IMPROVEMENTS

This Agreement For Completion Of Improvements is made by and between the City of Oxnard (hereinafter referred to as the "City") and Voss Construction Company, Inc. (hereinafter referred to as the "Developer") pursuant to the provisions of Government Code section 66462, subdivision (a)(1) and Oxnard City Code section 27-45.

WHEREAS, the City owns that certain easement in real property located in the City of Oxnard, County of Ventura, State of California (hereinafter referred to as the "City's Property"), described as:

WHEREAS, the Developer owns that certain real property located in the City of Oxnard, County of Ventura, State of California (hereinafter referred to as the "Property"), described as:

Parcel A as per parcel map filed on
_____, 19____, in Book _____, Pages
_____ of Parcel Maps, in the Office of the
County Recorder for the County of Ventura,
State of California.

CC DEANNA WALSH
PAUL WENDT PUBLIC WORKS C/O
1.
PAULA KIMBRELL C/ATTY
HAND DELIVER 11/16/89

WHEREAS, by Resolution No. 9341, passed and adopted on December 22, 1987, attached hereto and incorporated herein by this reference, the City Council of the City of Oxnard approved a tentative parcel map for the Property, subject to the Developer satisfying those conditions specified in Resolution No. 7119 of the Planning Commission of the City of Oxnard, passed and adopted on December 7, 1987, attached hereto and incorporated herein by this reference, prior to approval of a final parcel map for the Property; and

WHEREAS, the City's Property, which consists of an easement in the Edison Canal, is contiguous to the Property, which abuts the Edison Canal, and along the edge of which the Developer is to construct the seawall bulkhead or rip-rap pursuant to Condition No. 8 of Resolution No. 7119; and

WHEREAS, the City and the Developer wish to allow the Developer to comply with Condition No. 8 of Resolution No. 7119 after a final map is approved and before building permits are issued;

NOW, THEREFORE, THE CITY AND THE DEVELOPER AGREE AS FOLLOWS:

1. The City shall waive the Developer's compliance with Condition No. 8 of Resolution No. 7119 as a pre-condition of approval of the final parcel map for the subdivision for which Tentative Parcel Map No. 84-17 was approved, on the terms and conditions hereinafter stated.

2. The Developer shall comply with Condition No. 8 of Resolution No. 7119 before commencing construction of any other structural improvements on the Property. The City shall issue no building permits for the Property other than those building permits required for construction of the seawall referred to in Condition No. 8 until the construction required

by Condition No. 8 is completed by the Developer and approved in writing by the Public Works Director.

3. The Developer shall not sell or lease all or any part of the Property prior to receiving the written approval of the Public Works Director of the construction required by Condition No. 8 of Resolution No. 7119.

4. The Developer shall guarantee its performance of the duties of this Agreement by providing to the City a security, specified in section 66499 of the Government Code, of a type and in a form approved by the City, in an amount of not less than \$13,200.00

5. Within ten days of the execution of this Agreement, the City shall record this Agreement in the Official Records in the Office of the County Recorder for the County of Ventura. Such recordation shall occur before the final map is recorded for the project for which Tentative Parcel Map No. 84-17 was approved.

6. Condition No. 8 of Resolution No. 7119 and the Developer's agreement to construct a seawall bulkhead or rip-rap on the Property contiguous to the City's Property is for the benefit of both the City's Property and the Property and runs with both the Property and the City's Property and shall be binding on the Developer and each owner succeeding the Developer, during his or her ownership of any portion of the Property, and upon each person having an interest therein derived through any owner thereof, for the benefit of the City's Property. However, the Developer and the City agree that if such agreement is held by a court to be unenforceable as a covenant running with the City's Property and the Property, the City and the Developer intend that such agreement be enforceable as an equitable servitude binding on the

Developer and any and all of its successors in interest to the Property.

7. Should any litigation concerning this Agreement be commenced between the parties hereto, or their respective grantees or assigns, the prevailing party shall be entitled, in addition to such other relief as may be granted, to reasonable attorneys' fees and court costs, which amounts shall be determined by the court in such litigation or in any separate action brought for that purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on _____, 1989

CITY OF OXNARD

By: _____
NAO TAKASUGI
Mayor

VOSS CONSTRUCTION COMPANY, INC.

By: _____
DANIEL J. VOSS
President

ATTEST:

MABI PLISKY
City Clerk

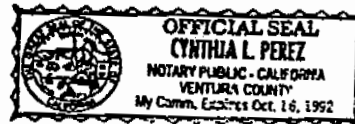
APPROVED AS TO FORM:

GARY GILLIG
City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

On Nov. 1, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared DANIEL J. VOSS, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President, and _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Secretary and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Cynthia L. Perez
NOTARY PUBLIC

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.

On _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared NAO TAKASUGI, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed this instrument as Mayor of the City of Oxnard and acknowledged that the City of Oxnard executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC

CITY COUNCIL OF THE CITY OF OXNARD

Resolution No. 9341

RESOLUTION APPROVING TENTATIVE PARCEL MAP NO. 84-17, FOR PROPERTY LOCATED AT EAST OF HARBOR BOULEVARD AT THE EASTERN TERMINUS OF EASTBOURNE BAY, FILED BY VOSS CONSTRUCTION, 1136 PATTERSON ROAD, OXNARD, CALIFORNIA 93030, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, the City Council of the City of Oxnard has received Tentative Parcel Map No. 84-17 for property located at east of Harbor Boulevard at the eastern Terminus of Eastbourne Bay, filed by Voss Construction, together with Planning Commission Resolution No. 7119, recommending approval thereof, subject to certain conditions; and

WHEREAS, the City Council has carefully reviewed said Planning Commission resolution and said tentative map; and

WHEREAS, the City Council finds that said tentative parcel map complies with all requirements of the Subdivision Map Act and Chapter 27 of the Oxnard City Code; and

WHEREAS, the City Council finds that said tentative parcel map and the design and improvement of the proposed development are consistent with the general Plan and any applicable specific plan thereunder; and

WHEREAS, the City Council finds that the site is suitable for the type and density of development and will not cause substantial environmental damage or serious public health problems or conflict with any public utility or service easements; and

WHEREAS, the Community Development Director finds that the project is categorically exempt, as defined in the California Administrative Code, as amended, and does not require an Environmental Impact Report or Negative Declaration, as established in the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES HEREBY RESOLVE AS FOLLOWS:

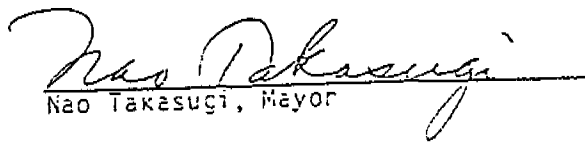
Tentative Parcel Map No. 84-17 is hereby approved, subject to the conditions set forth in Planning Commission Resolution No. 7119.

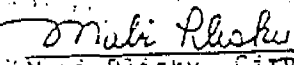
Passed and adopted this 22 day of December, 1987, by the following vote:

AYES: Council Members: Lopez, Maron, Plisky, Takasugi, and Johs.

NOES: Council Members: None.

ABSENT: Council Members: None.


Nao Takasugi, Mayor

ATTEST: 
Mabi Plisky, City Clerk

Standard Form approved by the City Attorney.

RESOLUTION NO. 7119

CITY OF OXNARD
CITY ATTORNEY

1989 APR 11 AM 10:53

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD RECOMMENDING TO THE CITY COUNCIL APPROVAL OF TENTATIVE PARCEL MAP NO. 84-17, FILED BY VOSS CONSTRUCTION, 1136 PATTERSON ROAD, OXNARD, CALIFORNIA 93030, LOCATED EAST OF HARBOR BOULEVARD AT THE EASTERN TERMINUS OF EASTBOURNE BAY, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, the Planning Commission of the City of Oxnard has considered Tentative Parcel Map No. 84-17, filed by Voss Construction; in accordance with Chapter 27 of the Oxnard City Code; and

WHEREAS, said tentative parcel map was referred to various public utility companies, City departments and the Staff Advisory Committee for recommendations; and

WHEREAS, the Planning Commission finds the tentative map to conform to the City's Coastal Plan and elements thereof; and

WHEREAS, the Planning Commission finds that the project is categorically exempt, and does not require an environmental impact report or negative declaration, as established in the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby recommends to the City Council approval of Tentative Parcel Map No. 84-17, filed by Voss Construction, subject to the following conditions:

1. All grading performed shall conform to the City of Oxnard Grading Ordinance, Chapter 70 of the Uniform Building Code, and/or as recommended by the soils report, with prior review and approval by the City.
2. Each lot shall drain into a street, alley, or approved drain in such a manner that there will be no undrained depressions.
3. The developer shall pay storm drainage fees in accordance with City Ordinance No. 1517, the County resolution establishing land development fees for flood zoned I, II, III, and IV adopted January 2, 1979.
4. All utility facilities shall be placed underground in accordance with the City Ordinance.
5. The developer shall pay all current development fees.
6. The developer shall remove and repair any existing broken or damaged curb, gutter, sidewalk, and a.c. paving (patch, repair, or overlay as necessary) adjacent to property as directed by the Public Works inspector.
7. The developer shall construct sidewalk along Eastbourne Bay per current City standards.
8. The developer shall construct seawall bulkhead or rip-rap for the entire length of property adjacent to the Edison Canal as necessary and in conjunction with the requirements of Southern California Edison Company as approved by the Public Works Director.

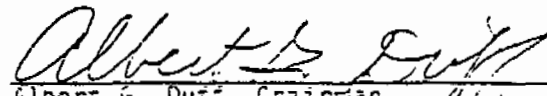
9. The Covenants, Conditions, and Restrictions (CC&R's) shall be consistent with existing CC&R's for Mandalay Bay Tract No. 2026-3.
10. The applicant shall submit evidence that an easement has been obtained from Southern California Edison for boat dock privileges.
11. Developer shall provide a covenant with the City of Oxnard so that property owner shall keep up the maintenance of Parcel B and shall keep said property free and clear of weed and debris.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 3rd day of December, 1987, by the following vote:

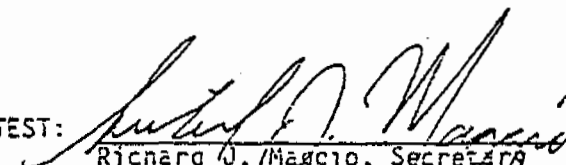
AYES: Commissioners: Elias, Racine, Perez, Flores, Grey, Duff

NOES: Commissioners: None

ABSENT: Commissioners: None


Albert G. Duff, Chairman

ATTEST:


Richard J. Maggio, Secretary



Southern California Edison Company

P. O. BOX 4757

10080 TELEGRAPH ROAD

VENTURA, CALIFORNIA 93004

NORTHERN REGION
LAND SERVICES DIVISION
REAL PROPERTIES AND ADMINISTRATIVE SERVICES

Mr. Ken D. Beckfeld
D.I. aL Services
300 Montgomery Avenue
Oxnard Ca 93030

November 6, 1989

SUBJECT: Southern California Edison
Mandalay Cooling Canal (Fee)
Request to Purchase Boat Dock Easement
Voss P. M. 84-17
RP File G3 -89-3023ABH (02-88-028)

Edison has reviewed the request made by Dan Voss to purchase a boat dock easement within Edison's 300 foot wide fee owned cooling canal, as shown on the enclosed print.

Mr. Voss's request has been approved subject to the following conditions:

1. All costs incurred for the project shall be borne by Dan Voss.
2. Additional structures or development shall not be permitted within Edison property, other than the boat dock approved herein.
3. The boat dock structure installed in the easement to be granted shall be designed in a manner that will not restrict the canal's ability to handle 3000 cubic feet of water per second.
4. Dan Voss agrees for himself, and for his agents and employees and any person or person or persons claiming under him, to save harmless and indemnify Edison, its successors and assigns and its and their officers, agents and employees, from and against all claims, demands, loss damage, actions, causes of action, expense and/or liability arising or growing out of loss of or damage to property including the property of Edison, its successors and assigns, and its and their officers, agents and employees, or injury to or death of persons resulting in any manner, directly or indirectly, from the maintenance, use, operation, repair or presence of said use.

Ken Beckfeld

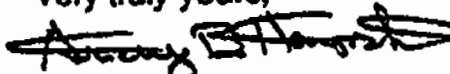
-2-

5. The easement to be granted shall be for the benefit of, and appurtenant to, proposed parcel A of tentative P.M. 84-17, and shall be granted for market value. Dan Voss shall provide a legal description and an 8 1/2" x 11" print identifying the description to scale. Edison shall provide the appraisal to be used for the easement. Payment shall be made upon presentation of the easement. In addition a processing fee of \$1500.00 shall be paid to Edison. Payment of the processing fee and the legal description for the easement, bearing the signature and seal of a licensed surveyor shall accompany the copy of this letter when signed by Dan Voss.

Please indicate your acceptance of the above conditions by signing and returning the enclosed copy of this letter.

Should you have any questions, please call me at (805) 654-7249.

Very truly yours,




Andy B. Harpster
Real Properties Agent

ABH/abh

Enclosures

ACCEPTED AND APPROVED:

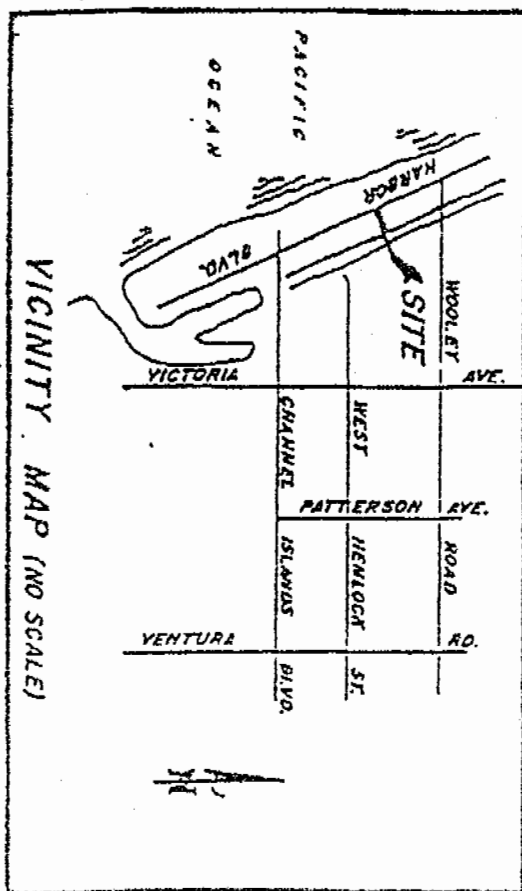
BY  DATE 11-14-89
DAN VOSS

cc: E. E. Gulbrand
A. J. Walker
A. T. Wilson

REQUESTED AREA FOR BRASS MONUMENT PRIVATE

AND REC. PER R2, D4)

Radius	Length	Tangent
60.00'	77.22'	45.00'
30.00'	19.31'	10.00'
30.00'	47.12'	30.00'
57.00'	13.05'	6.59'
73.00'	25.75'	13.01'



BCM PER RI
NOT FD.

1386.98' M
1000.00' RI

1822.51' M (1820.45' PER D2')

82°W (N27°46'59"W 04 (69.99' CF, D4)

04°W 2959.69' M (N27°46'59"W 2957.66' PER R1)(N28°56'33"W PER R2, R12, D1-4)

2NIA ENGINE COMPANY

FD BRASS CAP MONUMENT
PER RI.

FD BRASS CAP MONUMENT
PER RI. ACCEPTED AS B.C.

(435.35' PER R1)
435.53' M

Dredging Condition

After initial dredging and slope stabilization of the berthing area for the lot at 4490 Eastbourne Bay, Oxnard, CA, it will be the responsibility of the property owner to maintain a navigable depth of water for the berth. This responsibility includes physical dredging of soil deposits as well as obtaining all required approvals and permits. At no time shall the property owner allow the bottom surface under the berth to exceed the elevation of -4.0 mean-lower-low-water datum.



Planning and Environmental Services Division
305 West Third Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417

April 10, 2007

Dan Voss
4254 Harbor Island Lane
Oxnard, CA 93035

Subject: Major Modification to Parcel Map No. 84-17 (PZ No. 07-550-01)

Dear Mr. Voss:

Thank you for responding to my previous letter and submitting a current title report for your property located at 4490 Eastbourne Bay. The conceptual drawings of the rip-rap configuration you are proposing were forwarded to me.

As previously discussed with the City Engineer and Public Works, in order to remove Condition No. 8 from Parcel Map No. 84-17 (the bulkhead extension) you must come up with an alternate solution to stabilize the slope adjacent to your property. Whatever method of stabilization you come up with must be reviewed by the California Coastal Commission and be approved with a Coastal Development Permit.

It is recommended that you propose the addition of rip-rap to the coastal development permit (CDP 4-40-104) you already have approved by the California Coastal Commission. If you extend the bulkhead and install the rip-rap you could achieve your stated goal of a boat dock and this major modification could be withdrawn.

A combination of extending the bulkhead and installing rip-rap would give you the most flexibility in designing a berthing location for a boat(s) in the channel adjacent to your property; however the Planning Director, the City's Civil Engineer, and the Public Works Department are willing to consider a stabilization method that does not include a bulkhead extension.

The City of Oxnard does not have the authority to issue a building permit for development within a coastal waterway without a coastal development permit approved by the California Coastal Commission. You should contact the California Coastal Commission to discuss your new proposal.

Dan Voss; PZ No. 07-550-1
April 10, 2007
Page 2

If you proceed with the rip-rap only stabilization method you must continue with this major modification and include the rip-rap scheme on the plans that will be reviewed by the Planning Commission and the City Council. Please revise the plans and submit 10 copies as required by the application requirements (see enclosed requirements). Please show a potential dock arrangement on the site plan and include sections showing the depth of the channel that would be achieved by installing the rip-rap.

If you have questions regarding this matter, please call me at (805) 385-7952. I would be more than happy to explain the requirements for the plans if you need.

Sincerely,



Winston Wright
Associate Planner

Cc: James Crumpley, Moffatt & Nichol, 3780 Kilroy Airport Way, Long Beach, CA 90806

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Filed: 6/16/07
49th Day: 8/14/07
180th Day: 12/13/07
Staff: Barbara Carey
Staff Report: 11/1/07
Hearing Date: 11/14/07



W 12b

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-04-104-A1

APPLICANT: Dan Voss

AGENT: Moffat and Nichol Engineers

PROJECT LOCATION: Adjacent to vacant property at 4490 Eastbourne Bay
(Adjacent to Reliant Energy Canal), City of Oxnard, Ventura County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of an 11 foot-long concrete bulkhead wall extension, including temporary cofferdam with steel sheetpiles and earthen dike, excavation of 65 cu. yds. of material, use of 45 cu. yds. of fill to create earthen dike, replacement of 59 cu. yds. of material after construction, and restoration of mudflat and upland habitat area with native vegetation.

DESCRIPTION OF AMENDMENT: Deletion of the bulkhead wall extension, the temporary cofferdam, and the excavation of upland area from the project description, and instead conduct the excavation of a boat dock berthing area, including the increase of excavation to 334 cu. yds., the permanent placement of 102 tons of rock rip-rap slope protection in a 922 sq. ft. area of mudflat, and the construction of a 35-foot long boat dock.

SUBSTANTIVE FILE DOCUMENTS: City of Oxnard Local Coastal Program, CDP 4-04-104 (Voss); California Department of Fish and Game Streambed Alteration Agreement No. 1600-2007-0191-R5 revision 1

SUMMARY OF STAFF RECOMMENDATION

The standard of review for this proposed amendment is the Chapter 3 policies of the California Coastal Act. While the proposed project site is located within the City of Oxnard and the city has a certified local coastal program, the proposed development site is in an area subject to the retained permit jurisdiction of the Commission.

Staff recommends **denial** of the proposed amendment. The proposed development, as amended, will not minimize impacts to wetlands, is not an allowable use under the requirements of Section 30233 of the Coastal Act, and there is a less environmentally damaging alternative available.

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166. In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect conditions required for the purpose of protecting a coastal resource.

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve proposed amendment to Coastal Development Permit No. 4-04-104 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Amendment Description

The applicant proposes to modify the approved development, including the deletion of the bulkhead wall extension, the deletion of the temporary cofferdam, and the deletion of the excavation of upland area. Instead of constructing the final 11 feet of bulkhead across the eastern boundary of the project site, the applicant proposes to excavate the channel to create a boat berthing basin, to stabilize the resultant slope with rock rip rap and to construct 35 feet of boat dock. This includes the increase of excavation to a total of 334 cu. yds., and the permanent placement of 102 tons of rock rip-rap slope protection in a 922 sq. ft. area of mudflat. The applicant's agents have indicated that the amended project is proposed because the costs of constructing the project approved in CDP 4-04-104 are higher than anticipated.

The proposed project site is located at the east end of Eastbourne Bay (Street), adjacent to the Reliant Energy Canal (Exhibit 1). The site is located in an area developed with waterways and narrow peninsulas of streets and residences. These waterways are an extension of Channel Islands Harbor and contain private boat docks for the use of nearby residents. The waterways were created from dry land and connected to the waterways of Channel Islands Harbor. Construction of the development in this area was carried out throughout the 1970's. Aerial photos show that the area was graded and homes were constructed in the southern portion (near Channel Islands Boulevard) by 1972. The waterways and residences were completed throughout the area (including immediately adjacent to the project site) by 1979.

The proposed project site is located on the north end of the northernmost peninsula. Unlike the other residential peninsulas in the immediate area, there is only a waterway along the southern and eastern edges of this peninsula. The applicant's agent states that at the time the subdivision and bulkheads were constructed in this area, the developers intended to construct additional phases of waterways and residential development north of the project site. Such additional development would have included extension of the bulkhead on the project site to the north. However, no additional development was ever constructed to the north of the site and so the bulkhead was never extended.

B. Background

Project Site

The Commission approved CDP 4-04-104 (staff report contained in Exhibit 12) in May 2005. The approved project included the construction of an 11 foot-long concrete bulkhead wall extension. This 11 foot long portion of bulkhead would complete the wall

that was constructed in the past along the eastern property line of the project site and would allow for the docking of boats along the full 70-foot width of the parcel. The approved project included the excavation of 65 cu. yds. of material from the adjacent mudflat and upland area to the east of the proposed wall, and the creation of a temporary cofferdam with steel sheetpiles and earthen dike, (45 cu. yds. of the excavated material would be used as fill to create the earthen dike). A turbidity curtain was to be maintained around the work area during the construction and removal of the cofferdam and dike in order to ensure that the project did not adversely impact the waterways with sediment. The cofferdam and dike would allow the bulkhead wall area to be dewatered. The dewatering was necessary to allow the concrete wall to be poured in place. The water within the cofferdam would be pumped into a "Baker" tank where sediment would be settled out and the water filtered. The water would be replaced back into the channel. Construction staging and stockpiling of material would be located on the upland area of the project site.

After construction, 59 cu. yds. of material were to be replaced to restore the profile of the mudflat and channel areas. The finish elevation of the upland area would result in a more gentle slope than the existing slope. The proposed project would result in 6 cu. yds. of excess cut material and the applicant proposed to place this material on an adjacent parcel on the north side of Eastbourne Bay Street. The applicant proposed to revegetate the upland habitat area with native vegetation after the completion of construction. The applicant's agent estimated that the proposed construction would take two to three months to complete.

In application 4-04-104, the applicant stated that the construction of 11 feet of concrete bulkhead was necessary in order to extend the bulkhead the entire length of the eastern property boundary. Such bulkhead walls form the boundaries between the waterways and the residential development throughout the area. The bulkheads retain the cut slope at the edge of each channel and allow for the construction of the boat docks. The applicant's agent stated that the terms of the subdivision permit that created the subject site require that the bulkhead extend along the entire length of the parcel before the lot can be developed or sold.

CDP 4-04-104 was approved subject to 4 special conditions of approval (as shown in the staff report in Exhibit 12), including:

- 1) preparation and implementation of an erosion and sediment control plan and a construction phase storm water pollution prevention plan (SWPPP);
- 2) revised plans to delete the proposed placement of excess cut material on site;
- 3) removal of excess cut material; and
- 4) preparation, implementation, and monitoring of a revegetation plan for all tidal and upland areas impacted by the project with native plants.

The applicant complied with all "prior-to-issuance" requirements of the permit and the CDP was issued. The applicant has not undertaken any of the approved development to date.

Related Off-site Development

Additional water-oriented development has been carried out to the east and northeast of the project site. A development called “Harbour Island” was built to the east in the 1980’s. More recently, the Commission approved, through appeals of City of Oxnard CDPs, the “Westport” project (CDP 4-OXN-00-172, and 4-00-241) and the “Seabridge” project (CDP A-4-OXN-03-014) for the development of water-oriented residential and commercial projects northeast of the project site. These projects included the extension of waterways by grading across dry land and opening the channels to the existing waterways.

The Commission approved in Permit A-4-00-172 (Suncal) the development of the “Westport at Mandalay Bay” project on a 58.3-acre site, including: removal of prime agricultural soil, creation of channels and waterways; subdivision of three existing parcels (45.28-acres, 8.2-acres, and 5.02-acres) into 116 lots (95 single family lots, 17 duplex lots, 2 townhouse lots, and 2 “mixed use” lots); the construction of 95 single family residences (82 with private boat docks); 35 residential duplex units; 88 townhouse condominiums; mixed-use development with 88 multi-family residential units and 22,000 sq. ft. of visitor-serving or neighborhood commercial uses; and 8.16-acres of public park area with trail system.

The Commission approved CDP 4-00-241 (Suncal) for development in the channel and along the eastern channel bank of the Reliant Energy Canal. These aspects of the “Westport” development were within the Commission’s retained CDP jurisdiction. The development approved included the removal of a temporary earthen dike (38,130 cu. yds. of wet excavation) that formed the northern bank of the existing east-west trending “Harbour Island” channel and an approximately 180-foot long portion of the existing Reliant Energy Canal bank (along the eastern bank). The unnamed channel was created to provide boating access for the “Harbour Island” condominium development (existing just south of the project site). Additionally, CDP 4-00-241 included the removal of a portion of the eastern bank of the Reliant Energy Canal (13,670 cu. yds. of wet excavation), and placement of vertical bulkheads to create a boat turning basin accessed from the Reliant Energy Canal. The Commission approved in Permit A-4-00-172 (Suncal) the dry excavation and construction of bulkheads on the upper area of the boat turning basin as well as the creation of up to seven private boat docks serving adjacent single family residences.

The applicant proposed, as part of the project, to provide mitigation for the loss of mudflat (0.24-acre) and saltmarsh (0.11-acre) habitat areas resulting from the proposed modifications to the Reliant Energy Canal. The applicant proposed mitigation for mudflat at a 1:1 ratio and for saltmarsh at a ratio of 2.27:1. The Commission found that to ensure habitat values were maintained, it was necessary to require that mudflat habitat be created at a 2:1 ratio and that saltmarsh habitat be created or enhanced at a 4:1 ratio.

The proposed project included development in both wetland areas and open water areas to create boating facilities. The project would remove wetland area to create an entrance channel to the boating facilities approved in project A-4-OXN-00-172 (Suncal). Additionally, the project included the creation of a boat turning basin and access to private boat docks. Section 30233, as the Coastal Act existed at the time this project was first considered by the Commission in 2005, provided that entrance channels for new or expanded boating facilities was an allowable use in wetland areas. See former Section 30233 (a)(3). Further, Section 30233 allowed for and continues to allow for new or expanded boating facilities in open coastal waters. The Commission found that the project was consistent with these allowable uses. However, the Coastal Act was modified by the legislature, effective January 1, 2007, to delete Section 30233 (a) (3) and thus to end the treatment of new or expanded boating facilities in wetlands as an allowable use.

B. Wetlands.

Section **30233** of the Coastal Act states that:

(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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) 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.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

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.

As described above, CDP 4-04-104 (Exhibit 12 is the staff report) was approved for the construction of an 11 foot-long concrete bulkhead wall extension in order to provide a bulkhead across the full width of the channel adjacent to the project site. The approved project includes the construction of a temporary cofferdam with steel sheetpiles and earthen dike, the excavation of 65 cu. yds. of material, and the use of 45 cu. yds. of fill to create an earthen dike. The temporary cofferdam would be used to dewater the area to allow for the construction of the bulkhead using poured-in-place concrete. After the wall was constructed, the cofferdam was to be removed, and 59 cu. yds. of material replaced, and the mudflat and upland habitat area would be restored with native vegetation.

In approving the project, the Commission found that the development included temporary work in both wetland areas and open water areas, and that the proposed grading would result in temporary impacts to approximately 105 square feet of mudflat habitat and approximately 196 square feet of disturbed upland habitat. The Commission

further found that the project was consistent with the allowable uses under Section 30233 which provides that new or expanded boating facilities are allowable in open coastal waters, other than wetlands. While part of the temporary cofferdam would be located within wetland (mudflat), the project did not include any permanent fill in wetland. The Commission found that the proposed project was consistent with this allowable use, because it would be a completion of the bulkhead system that retains the channels, allowing boating use of the waterways and the construction of boating facilities like docks, and because it did not result in permanent fill in mudflat or saltmarsh habitat. As conditioned to require revegetation of disturbed areas, the Commission found that temporary impacts to coastal waters, wetland and upland habitat would be minimized.

The applicant now proposes to modify the approved development, including the deletion of the bulkhead wall extension, the deletion of the temporary cofferdam, and the deletion of the excavation of upland area. Instead of constructing the final 11 feet of bulkhead across the eastern boundary of the project site, the applicant proposes to excavate the channel to create a boat berthing basin, to stabilize the resultant slope with rock rip rap and to construct 35 feet of boat dock. This includes the increase of excavation to a total of 334 cu. yds., and the permanent placement of 102 tons of rock rip-rap slope protection in a 922 sq. ft. area of mudflat. The applicant's agents have indicated that the amended project is proposed because the costs of constructing the project approved in CDP 4-04-104 are higher than anticipated.

So, the amendment consists of excavation of material (or dredging) from a slope adjacent to the existing boating channels and the Reliant Energy Canal. As shown in Exhibits 3 and 4 (enlargement), the subject slope is perpendicular to the existing bulkhead. Additionally, a slope that is parallel to the bulkhead and that comprises the last 11 feet of the eastern property line on the site is also proposed to be excavated. These slopes were originally created by grading dry land and connecting it to the Reliant Energy Canal. Apparently, additional residential development and associated boat channels were planned for construction further north, but such construction was never undertaken. The slope that extends between the northernmost residential peninsula and the Reliant Energy Canal was left in a natural state, much the same as the earthen channel banks of the Canal itself. No bulkhead or revetment was ever constructed along this slope.

Although the waterways in this area were created from dry land, not existing wetlands, the channels are subject to tidal influence and in areas where the channel walls are comprised of soil, there is wetland habitat in many instances. Many areas of the earthen banks of the Reliant Energy Canal contain wetland and upland habitat areas in three general zones. There are mudflats in the lowest elevations of the bank that are tidally influenced. Above the mudflat areas, there is a zone of saltmarsh of varying widths. Vegetation in the saltmarsh areas includes pickleweed, Jaumea and alkali heath. Upland scrub vegetation occurs upslope and consists of both native and non-native vegetation.

The applicant has provided a biological report (Delineation of Waters of the United States and Sensitive Species Survey, dated April 2003, prepared by Impact Sciences) addressing the vegetation and habitat areas that exist on the proposed project site. The project biologist has identified the vegetation on the project site as non-native ruderal vegetation (primarily mowed grass). Exhibit 13 shows photos of the area. The report states that:

A dirt road separates the property boundary and a coyote brush scrub community in the north. This scrub is dominated by coyote brush (*Baccharis pilularis*) and mustard (*Hirschfeldia incana*). Tidal plant species include pickleweed (*Salicornia bigelovii*). Along the top of the existing bank is ruderal vegetation with ice plant (*Carpobrotus edulis*) separating the tidal zone.

No rare, threatened, or endangered plant or animal species were identified as existing or having the potential to exist on the proposed project site. The Oxnard LCP does not designate the area along the canal banks as environmentally sensitive habitat area (although the parcel to the immediate north does contain coastal dune habitat that is so designated. The Commission has not determined the habitat along the canal banks to be environmentally sensitive habitat area, in past permit decisions, including CDP 4-04-104 on the project site. The Commission has however determined this habitat to be wetland, both in CDP 4-04-104 for the subject site, and also in CDP 4-00-241 (Suncal) for development on the opposite bank of the Reliant Energy Canal.

The project, as proposed to be amended, includes the dredging of wetland (mudflat) and the placement of fill in wetland. The fill would be 102 tons of rock rip-rap. This fill will result in the permanent loss of 922 sq. ft. of mudflat habitat. The proposed filling of wetland is not one of the 7 uses that are allowable pursuant to Section 30233 of the Coastal Act. Section 30233 (a)(2) allows for "maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps". Section 30233 (a)(3) provides that: "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" (emphasis added).

The amendment includes dredging for a boating facility within open coastal waters and wetland which may be allowed if it were determined to maintain or restore the previously dredged depth of the channel. However, the amendment also includes fill in a wetland in order to stabilize the excavated slopes. Such fill is not provided as any of the allowable uses detailed in Section 30233 of the Coastal Act. The filling of 922 sq. ft. of mudflat habitat on the site will result in a permanent loss of this area as it will be buried. The applicant has not proposed any mitigation measure to avoid, lessen or compensate for this impact. The mitigation required under Section 30233 of the Coastal Act is clearly avoidance, since filling wetlands is not an allowable use.

In terms of alternative designs, there is at least one less damaging feasible alternative to the proposed project, namely the construction of the bulkhead wall extension

previously approved in CDP 4-04-104. While this alternative would result in impacts to wetland and upland areas during construction, these impacts would be temporary in nature only and would not result in any permanent fill in wetland. As conditioned to include revegetation of the tidal and upland areas, this alternative minimizes adverse environmental impacts.

The applicant's agent has stated that the project as proposed to be amended is a use allowed under Section 30233 (a)(2) because it would restore the previously dredged depth in the boat dock area adjacent to the bulkhead. The applicant's agent has provided a discussion (Exhibit 7) of the common practice employed in the construction of bulkheads in situations similar to that on the subject site. Additionally, the agent has submitted grading plans from 1972 for a subdivision (Tract 2026-3) that includes the existing parcels in the area of the project site. Based on a cross section from these plans that show the grading of the Reliant Energy slope below the bulkheads that hold the parcels on the west side of the canal, the agents have extrapolated the original depth of the channel adjacent to the subject site. The agent's letter states that:

When constructing the end of a bulkhead it is common practice to create a slope perpendicular to the bulkhead with the top of slope two to five feet from the end of the bulkhead. This slope is usually protected in the tidal zone if it expected to remain for more than a few months. In addition, it needs to be stable below the tidal zone for both slipping failure and erosion.

Based on the agent's knowledge of common practice and the grading plans for Tract 2026-3, the agent concluded that dredging of the channel and grading of the slope were carried out in the past and that the proposed project therefore is an allowed use under Section 30233 (a)(2) of the Coastal Act.

However, as shown on the grading plans, the project site was not part of Tract 2026-3 and is therefore not part of the grading approved for that tract. The sheet showing the grading in the SCE Canal (later renamed as the Reliant Energy Canal) shows that the approved grading ended at the tract boundary. There is a note that says: "Daylight grading at tract boundary", indicating that the grading was not proposed, or presumably approved to extend beyond the tract boundary. This sheet also notes the location of the: "proposed face of seawall to be constructed per seawall plan..." along the eastern boundary of the parcels created in Tract 2026-3. This seawall is shown to end at the tract boundary (at the south edge of the subject site). It is unclear whether the subject site was graded at the same time as the adjacent Tract 2026-3 or at a subsequent time. Similarly, the construction of the bulkhead on the subject site is not shown on the plan for the tract so it is unclear whether the bulkhead wall was constructed at the same time as the wall built for the tract or at a subsequent date. The only other evidence provided by the applicant is an Oxnard City Council resolution approving a parcel map that included the subject site. The City approved this parcel map with a condition requiring the owner to construct bulkhead or rip-rap for the entire length of the property adjacent to the Edison Canal, as necessary. However, this resolution does not describe how much of the subject property, if any, already contained a bulkhead wall along the channel. Further, as previously described, the bulkhead on this site does not extend

across the northernmost 11 feet of the site. As such, it is not possible to determine if this area was graded consistent with the remainder of the channels in the area or the exact previous depth of the channel adjacent to the northern portion of the site.

Moreover, even if the proposed dredging would only restore the previous depth of the channel, the project as proposed to be amended, includes the placement of fill in a wetland. The fill would be 102 tons of rock rip-rap. This fill will result in the permanent loss of 922 sq. ft. of mudflat habitat. The proposed filling of wetland is not one of the 7 uses that are allowable pursuant to Section 30233 of the Coastal Act. There is a feasible alternative to the proposed project, namely the construction of the bulkhead wall extension previously approved in CDP 4-04-104. While this alternative would result in impacts to wetland and upland areas during construction, these impacts would be temporary in nature only and would not result in any permanent fill in wetland. As conditioned to include revegetation of the tidal and upland areas, this alternative minimizes adverse environmental impacts.

Finally, the project, as proposed to be amended to include dredging and placement of rip-rap, is not designed to protect any existing structure or public beach in danger from erosion. As described above, the project site is vacant. As such, the provisions of Section 30235 of the Coastal Act are not implicated.

Therefore, the Commission finds that the project, as proposed to be amended, is not consistent with Section 30233 of the Coastal Act.

D. CEQA

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is not consistent with the policies of the Coastal Act. There are feasible alternatives to and mitigation measures for the proposed project that would lessen the impact on the environment. Therefore, for reasons previously cited in the findings above, the Commission finds that the project, as proposed to be amended, is not the least environmentally damaging feasible alternative and is determined to be inconsistent with CEQA and inconsistent with the policies of the Coastal Act.

VICINITY MAP

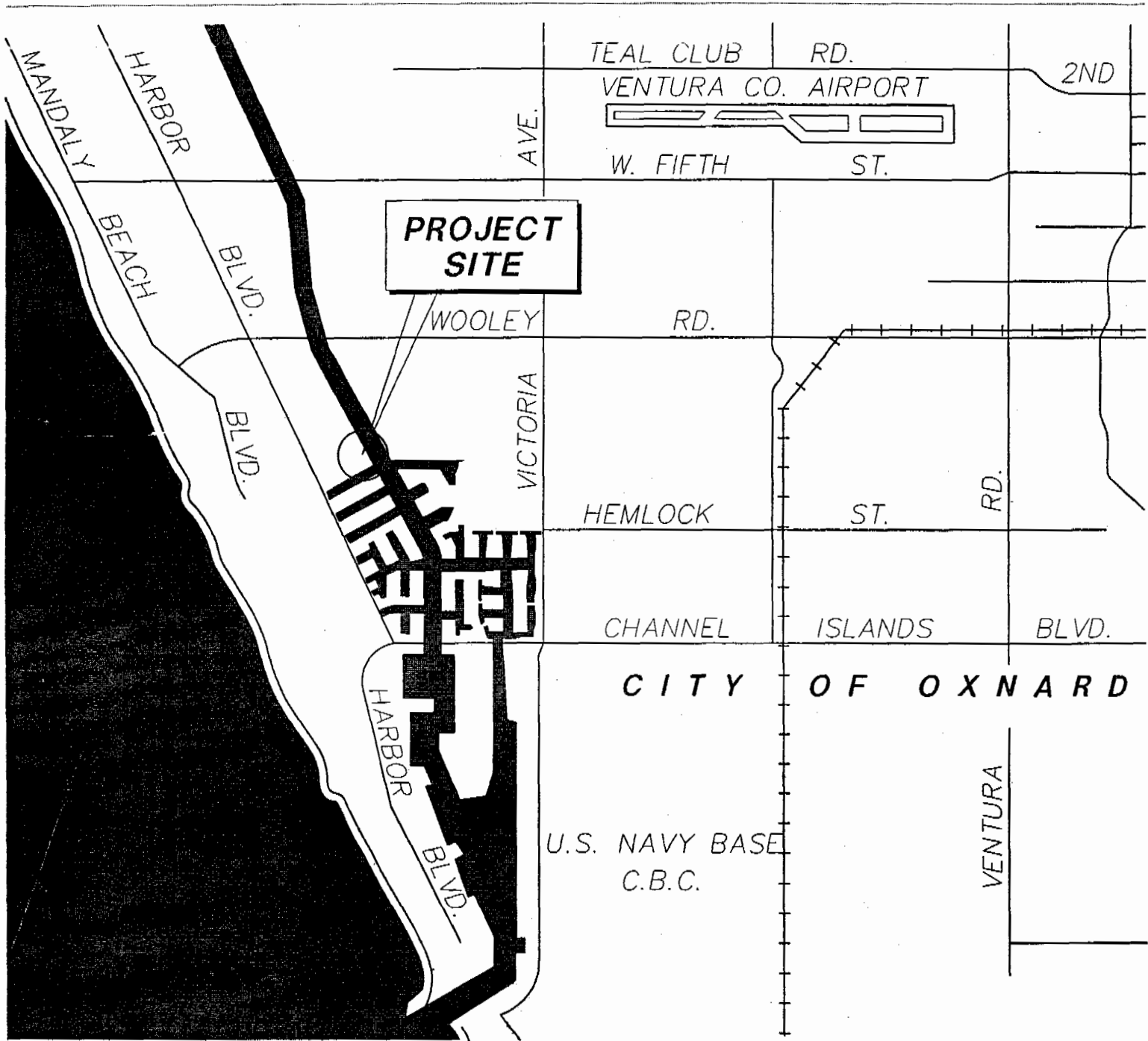


Exhibit 1 (1 of 2)

CDP Amendment 4-04-104-A1

Vicinity Map

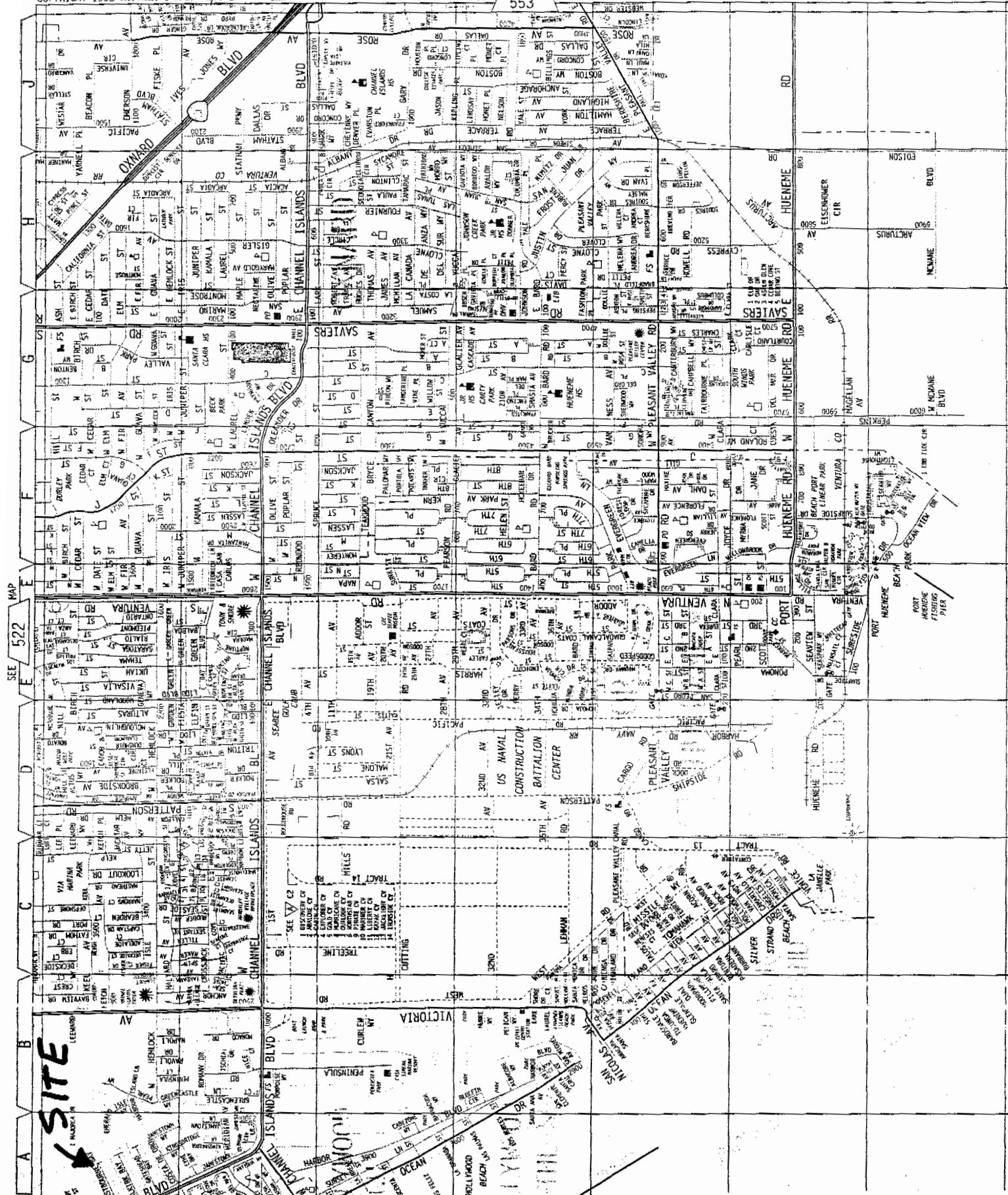
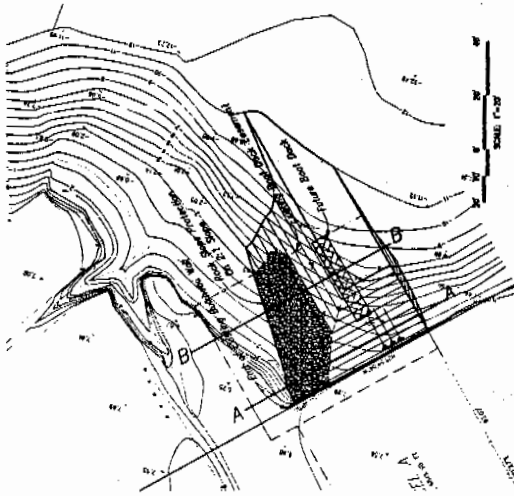
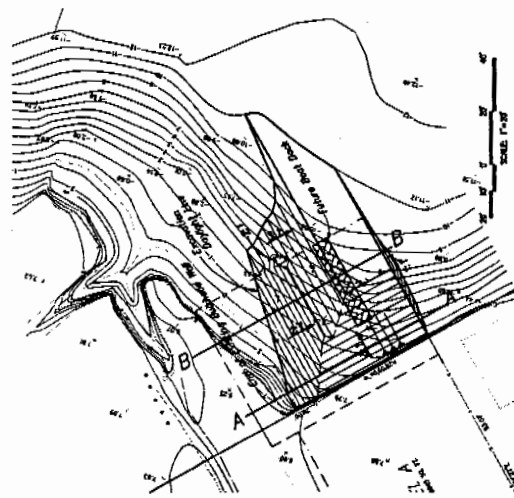


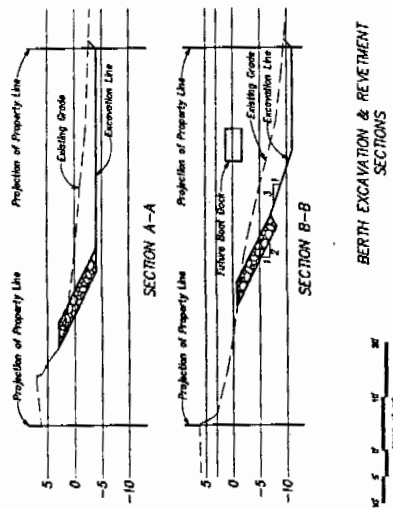
Exhibit 1 (2 of 2)
 CDP Amendment 4-04-104-A1
 Vicinity Map



PROPOSED SLOPE PROTECTION PLAN



PROPOSED BERTH EXCAVATION PLAN



BERTH EXCAVATION & RETENTION SECTIONS

"ENGINEERING CONCEPT"

APPROVAL IN CONCEPT
DEVELOPMENT SERVICE DEPARTMENT
CITY OF CHICAGO
DATE 5/17/77
NAME Paul J. [Signature]

Prepared by
MOFFATT & NICHOL
Under the direction of:
James E. Cummings, P.E., M.A.S.T.

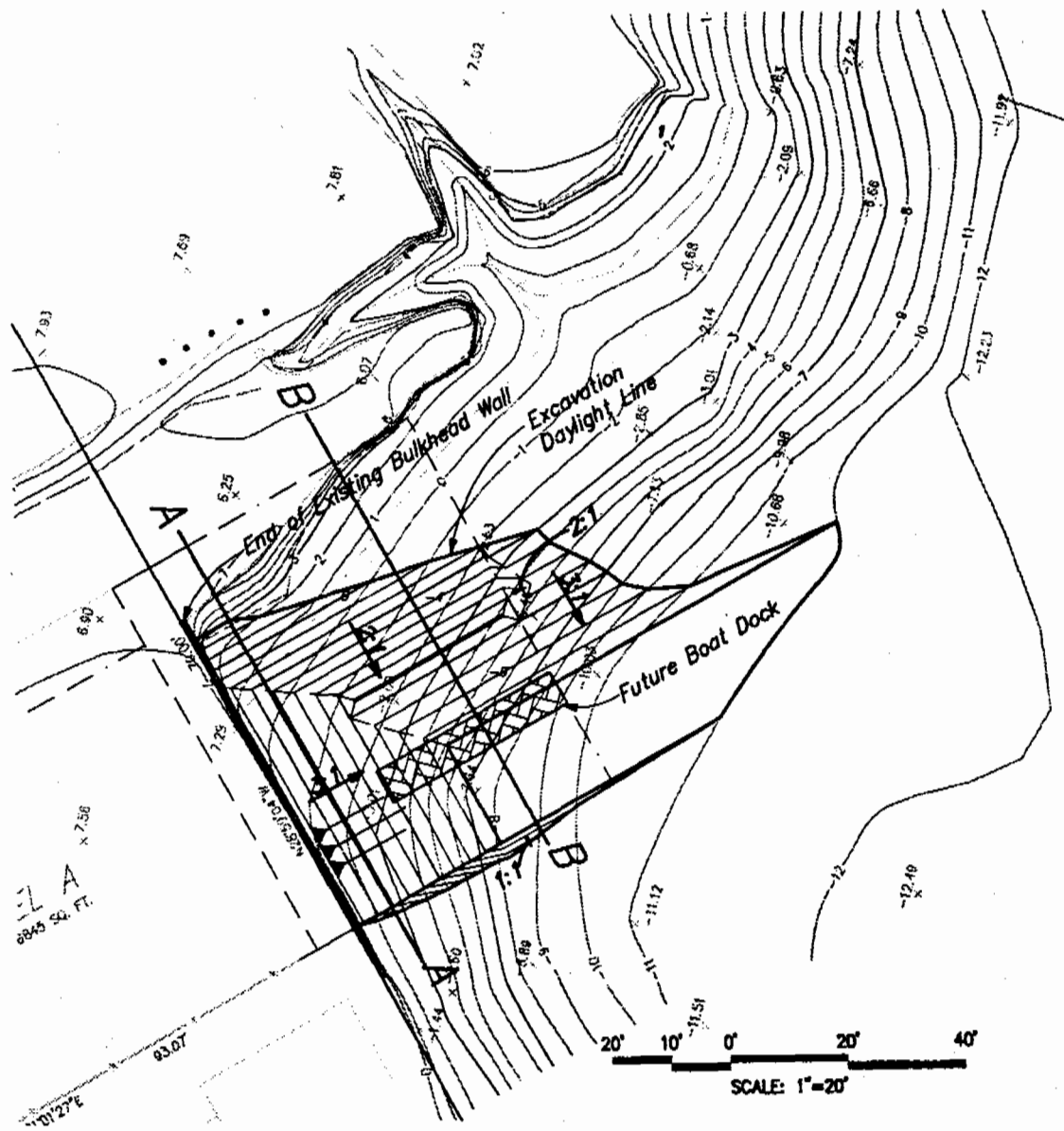


RECORD DRAWING
This record drawing has been prepared, in part, based upon information furnished by others. While the information is believed to be reliable, the engineer assumes no responsibility for its accuracy or the results of its use. Some errors may be made in the field. Some errors may be made in the office. Some errors may be made in the field. Some errors may be made in the office.

REVISIONS
DATE DESCRIPTION
1 1/1/77

PROJECT NO. 4490
SHEET NO. 2 OF 2
DATE 5/17/77
DRAWN BY [Signature]
CHECKED BY [Signature]

Don Voss Bulkhead Easement
4490 Eastbourne Bay
Excavation & Retention Plan
NP 07-XX
07-XXX

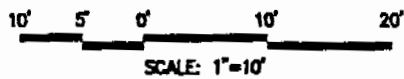
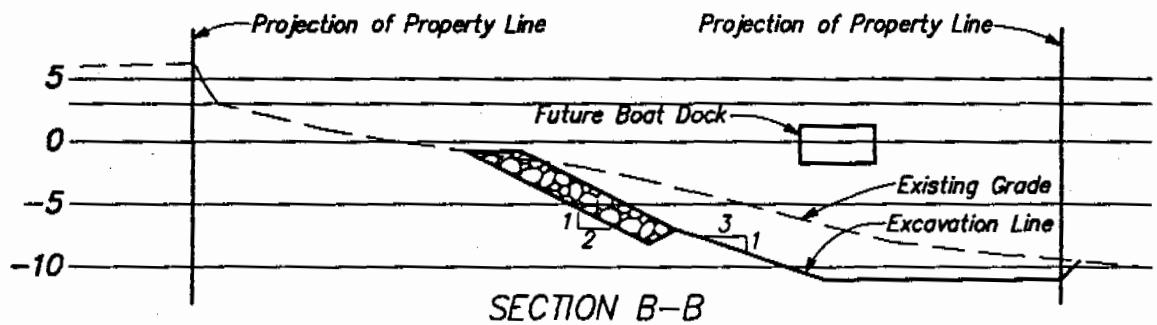
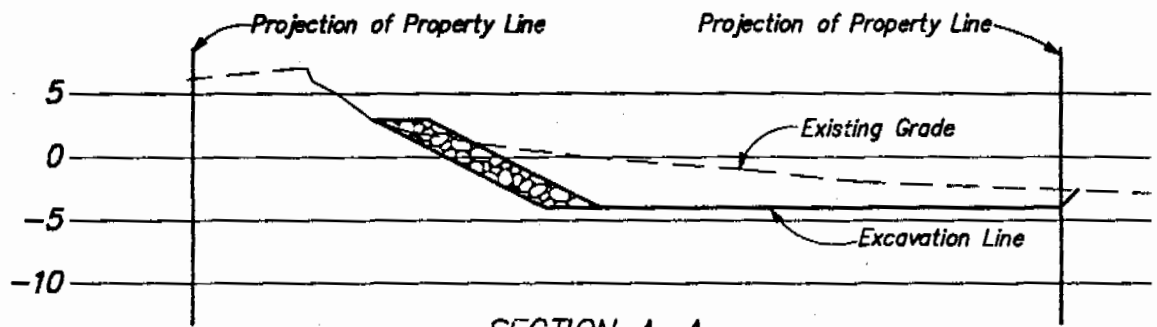


PROPOSED BERTH EXCAVATION PLAN

Exhibit 4

CDP Amendment 4-04-104-A1

Excavation Plan



BERTH EXCAVATION & REVETMENT SECTIONS

Exhibit 6
CDP Amendment 4-04-104-A1
Cross Sections



MOFFATT & NICHOL

October 8, 2007

Barbara Carey
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

RECEIVED
OCT 12 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Subject: Application 4-04-104 A1

Barbara:

The following discussion and the enclosed drawings are submitted for your consideration in re-evaluating the acceptability of our proposed project.

Discussion in support of Section 30233 (a)(2) being applicable to Permit 4-04-104 A1

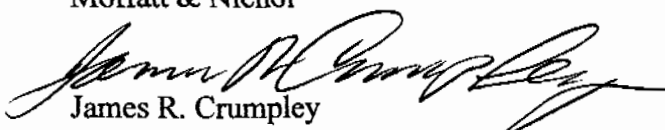
The typical construction method for pile supported concrete bulkheads is to excavate a trench to footing level along the bulkhead line, leaving a dike to isolate the bulkhead construction from the existing waterway. After the bulkhead is constructed and backfilled, the dike is removed to allow the waterway to expand to the bulkhead.

When constructing the end of a bulkhead it is the common practice to create a slope perpendicular to the bulkhead with the top of slope two to five feet from the end of the bulkhead. This slope is usually protected in the tidal zone if it expected to remain for more that a few months. In addition, it needs to be stable below the tidal zone for both slipping failure and erosion. A portion of the channel improvement plans for the Westport development on East side of the channel is attached as an example.

The grading plans and sections for Tract 2026-3, from which the bulkhead at the subject property was constructed, indicate a dike of approximately 100 feet wide and a top elevation exceeding +10 MSL. Since none of this dike still exists, it is obvious that it was excavated.

Therefore, based on common practice in bulkhead and channel construction, our experience in the Mandalay Bay area, and the drawing details from the Tract 2026-3 construction, we believe that the berth area under permit 4-04-104 A1 was previously excavated, and is eligible to be excavated again under Paragraph (a)(2) of Section 30233.

Sincerely,
Moffatt & Nichol


James R. Crumpley
Agent for Mr. Voss

Encls.

Exhibit 7

CDP Amendment 4-04-104-A1

Applicant's Letter

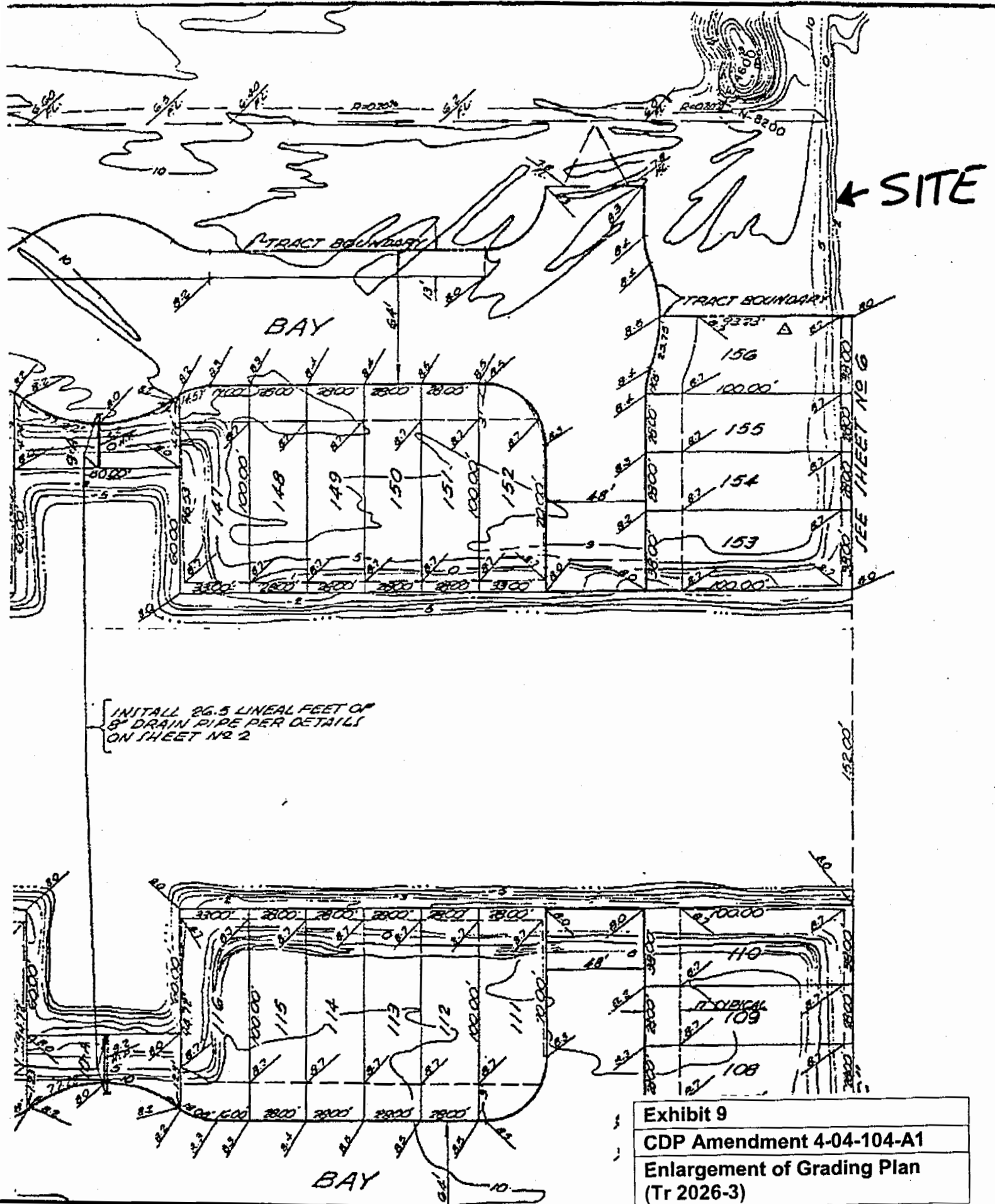


Exhibit 9

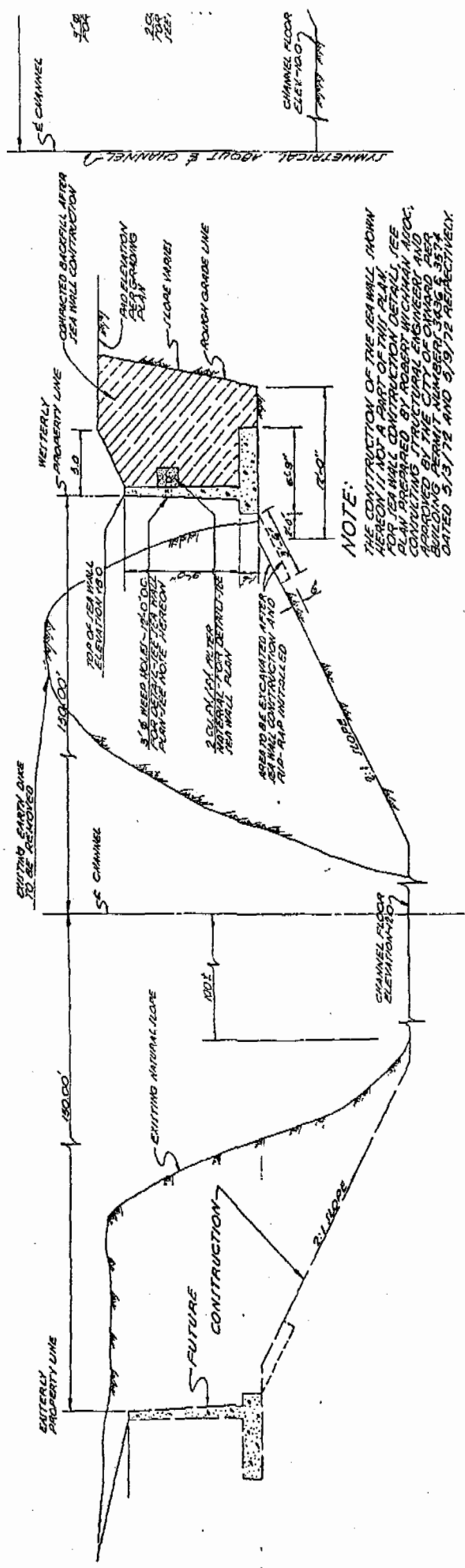
CDP Amendment 4-04-104-A1

Enlargement of Grading Plan
(Tr 2026-3)

SCALE 1"=20'

103 - FALKIRK BAY

HAMMER-HEAD - CUL-DE-SAC DETAIL
E'LY TERMINUS OF GATEHEAD BAY & FALKIRK BAY



SECTION D-D
NOT TO SCALE
*SEE SHEET 6 FOR LOCATION OF SECTION D-D

PREPARED BY:
JENNINGS-BARTLETT & AL
374 POLI STREET, VENTURA
Bartlett & Allen
REGISTERED CIVIL ENGINEERS

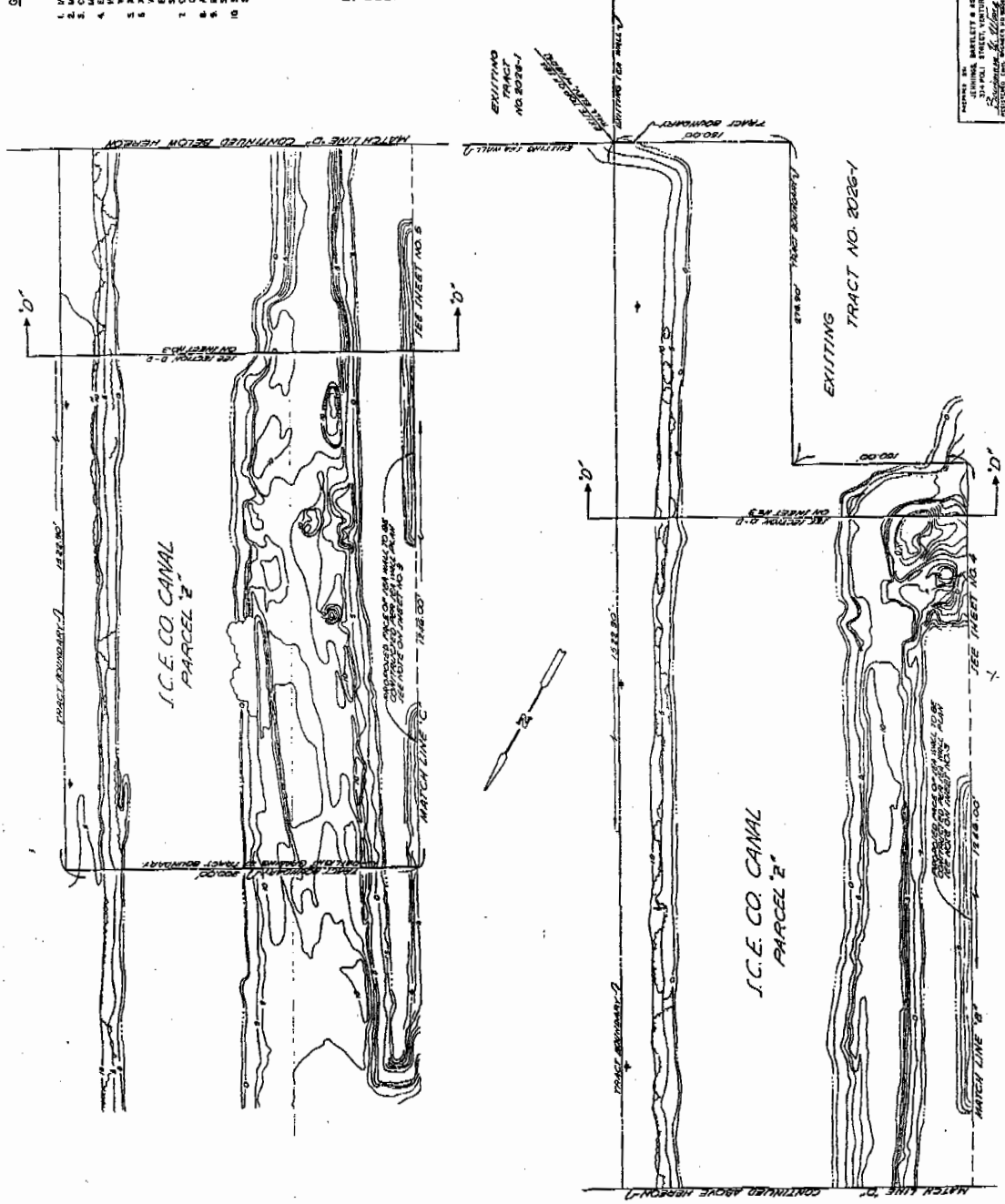
GENERAL GRADING NOTES:

1. MAXIMUM DUT SLOPES SHALL BE 1:1 UNLESS OTHERWISE NOTED.
2. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
3. CLEARING SHALL INCLUDE REMOVAL & DISPOSAL OF ALL OBSTACLES.
4. MATERIAL SHALL BE LOOSE BROKEN CONCRETE, BRICKS, STAMPS, ETC.
5. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
6. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
7. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
8. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
9. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.
10. EXISTING UTILITIES SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.

NOTE: UNDERGROUND STRUCTURES:

LOCATION OF EXISTING UTILITIES AND/OR STRUCTURES SHOWN HAVE BEEN
 DETERMINED BY THE CITY OF OAKLAND, CALIFORNIA. THE CONTRACTOR TO DETERMINE
 THE LOCATION OF ALL EXISTING UTILITIES AND/OR STRUCTURES AND TO
 EXERCISE PROPER PRECAUTION TO AVOID HARM TO EXISTING UTILITY.

EARTH QUANTITIES
 CUT: 185,340 CUBIC YARDS
 FILL: 41,465 CUBIC YARDS



REVISIONS		CITY OF OAKLAND, CALIFORNIA	
NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
2	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
3	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
4	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
5	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
6	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
7	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
8	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
9	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS
10	ISSUED FOR PERMIT	12/15/72	W. J. HARRIS

APPROVED BY: W. J. HARRIS, A REGISTERED
 314 PULLEY STREET, OAKLAND, CALIF.
 12/15/72
 72-88A

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Filed: 11/20/04
49th Day: 1/8/05
180th Day: 5/19/05
Staff: CAREY
Staff Report: 4/21/05
Hearing Date: 5/11/05



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-04-104

APPLICANT: Dan Voss

AGENT: Moffat and Nichol Engineers

PROJECT LOCATION: Adjacent to vacant property at 4490 Eastbourne Bay
(Adjacent to Reliant Energy Canal), City of Oxnard, Ventura County

PROJECT DESCRIPTION: Construction of an 11 foot-long concrete bulkhead wall extension, including temporary cofferdam with steel sheetpiles and earthen dike, excavation of 65 cu. yds. of material, use of 45 cu. yds. of fill to create earthen dike, replacement of 59 cu. yds. of material after construction, and restoration of mudflat and upland habitat area with native vegetation.

SUBSTANTIVE FILE DOCUMENTS: City of Oxnard Local Coastal Program

STAFF NOTE

This application was filed on November 20, 2004. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is May 19, 2005. As such, the Commission must act on Application 4-04-104 at the May 2005 Hearing.

SUMMARY OF STAFF RECOMMENDATION

The standard of review for this proposed project is the Chapter 3 policies of the California Coastal Act. While the proposed project site is located within the City of Oxnard and the city has a certified local coastal program, the proposed development site is in an area subject to the retained permit jurisdiction of the Commission.

Staff recommends approval of the proposed project with special conditions relating to construction phase erosion and sediment runoff control plans, revised plans to delete the placement of excess material on a site north of the project site, and revegetation plans. As conditioned, the proposed development will minimize impacts to wetlands, environmentally sensitive habitat areas, and water quality, consistent with Sections 30230, 30231, 30233, and 30240 of the Coastal Act.

Exhibit 12

CDP Amendment 4-04-104-A1

Staff Report 4-04-104 (Voss)

STAFF RECOMMENDATION:

I. Approval with Conditions

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-04-104 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of 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 on which the Commission voted on the application. 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 Phase Erosion and Sediment Runoff Control Plan.

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an erosion and sediment control plan and a Storm Water Pollution Prevention Plan for the construction phase of the project. The approved plan(s) shall be subject to the following requirements and include the following components, at a minimum:

- a. The project site shall be in compliance with State Water Resources Control Board NPDES Permit Waste Discharge Requirements for Construction Activity and shall not cause or contribute to significant adverse impacts on coastal resources.
- b. No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to erosion and dispersion;
- c. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- d. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- e. Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at an appropriate debris disposal site outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit must be in place for that site before disposal can take place.

2. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit revised plans that delete the proposed placement of excess cut material north of Eastbourne Bay Street. Any excess cut material shall be removed from the site consistent with the provisions of Special Condition No. 3.

3. Removal of Excavated Material

The applicant shall remove all excess excavated/cut material from the subject properties to an appropriate disposal site located outside the Coastal Zone, or an approved site located in the Coastal Zone with a valid Coastal Development Permit to import fill.

4. Revegetation Plan.

The applicant shall implement all revegetation measures necessary to revegetate all tidal and upland habitat areas impacted by the project with native plants appropriate for these habitat areas. Prior to issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, a planting plan, prepared by a qualified biologist or resource specialist, showing details regarding the types, sizes, and location of plants to be placed within the impacted area. The plantings shall be sufficient to establish ninety (90) percent cover within five (5) years.

The applicant shall retain a qualified biologist, or other resource specialist to monitor the mudflat, tidal, and upland revegetation for a period of five (5) years minimum. An annual monitoring report on the revegetation area shall be submitted for the review and approval of the Executive Director for each of the five years. If replacement plantings are required, the applicant shall submit, for the review and approval of the Executive Director, a replacement planting program, prepared by a qualified biologist, or other resource specialist, which specifies replacement plant locations, size, planting specifications, and a monitoring program to ensure that the replacement planting program is successful.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes the construction of an 11 foot-long concrete bulkhead wall extension. This 11 foot long portion of bulkhead will complete the wall that was constructed in the past along the eastern property line of the project site and will allow for the docking of boats along the full 70-foot width of the parcel. In order to carry out the construction, the applicant proposes the excavation of 65 cu. yds. of material from

the adjacent mudflat and upland area to the east of the proposed wall, and the creation of a temporary cofferdam with steel sheetpiles and earthen dike, (45 cu. yds. of the excavated material will be used as fill to create the earthen dike). A turbidity curtain will be maintained around the work area during the construction and removal of the cofferdam and dike in order to ensure that the project does not adversely impact the waterways with sediment. The cofferdam and dike will allow the bulkhead wall area to be dewatered. The dewatering is necessary to allow the concrete wall to be poured in place. The water within the cofferdam will be pumped into a "Baker" tank where sediment will be settled out and the water filtered. The water will be replaced back into the channel. Construction staging and stockpiling of material will be located on the upland area of the project site.

After construction, 59 cu. yds. of material will be replaced to restore the profile of the mudflat and channel areas. The finish elevation of the upland area will result in a more gentle slope than the existing slope. The proposed project will result in 6 cu. yds. of excess cut material and the applicant proposes to place this material on an adjacent parcel on the north side of Eastbourne Bay Street. After construction, the applicant proposes to revegetate the upland habitat area with native vegetation. The applicant's agent estimates that the proposed construction will take two to three months to complete.

The proposed project site is located at the east end of Eastbourne Bay (Street), adjacent to the Reliant Energy Canal. The site is located in an area developed with waterways and narrow peninsulas of streets and residences. These waterways are an extension of Channel Islands Harbor and contain private boat docks for the use of nearby residents. The waterways were created from dry land and connected to the waterways of Channel Islands Harbor. Construction of the development in this area was carried out throughout the 1970's. Aerial photos show that the area was graded and homes were constructed in the southern portion (near Channel Islands Boulevard) by 1972. The waterways and residences were completed throughout the area (including immediately adjacent to the project site) by 1979. Staff would note that additional water-oriented development has been carried out to the east and northeast of the project site. A development called "Harbour Island" was built to the east in the 1980's. More recently, the Commission approved the "Westport" project (CDP 4-OXN-00-172, and 4-00-241) and the "Seabridge" project (CDP A-4-OXN-03-014) for the development of water-oriented residential and commercial projects northeast of the project site. These projects included the extension of waterways across dry land.

The proposed project site is located on the end of the northernmost peninsula, although there is only a waterway on the southern edge. The applicant's agent states that at the time the subdivision and bulkheads were constructed in this area, the developers intended to construct additional phases of waterways and residential development north of the project site. Such additional development would have included extension of the bulkhead on the project site to the north. However, no additional development was ever constructed to the north of the site and so the bulkhead was never extended.

The applicant is proposing the construction of 11 feet of concrete bulkhead in order to extend the bulkhead the entire length of the eastern property boundary. Such bulkhead walls form the boundaries between the waterways and the residential development throughout the area. The bulkheads retain the cut slope at the edge of each channel and allow for the construction of the boat docks. The applicant's agent states that the terms of the subdivision permit that created the subject site require that the bulkhead extend along the entire length of the parcel before the lot can be developed or sold.

B. Wetlands and ESHA.

Section 30233 of the Coastal Act states that:

(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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(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.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The applicant proposes the construction of an 11 foot-long concrete bulkhead wall extension. This 11 foot long portion of bulkhead will complete the wall that was constructed in the past along the eastern property line of the project site and will allow

for the docking of boats along the full 70-foot width of the parcel. In order to carry out the construction, the applicant proposes the excavation of 65 cu. yds. of material from the adjacent mudflat and upland area to the east of the proposed wall, and the creation of a temporary cofferdam with steel sheetpiles and earthen dike, (45 cu. yds. of the excavated material will be used as fill to create the earthen dike). The cofferdam and dike will allow the bulkhead wall area to be dewatered. After construction, 59 cu. yds. of material will be replaced to restore the profile of the mudflat and channel areas. The finish elevation of the upland area will result in a more gentle slope than the existing slope. The proposed project will result in 6 cu. yds. of excess cut material and the applicant proposes to place this material on an adjacent parcel on the north side of Eastbourne Bay Street. After construction, the applicant proposes to revegetate the upland habitat area with native vegetation.

The proposed development includes temporary work in both wetland areas and open water areas to complete the existing bulkhead wall that allows for boating facilities. The proposed grading will result in temporary impacts to approximately 105 square feet of mudflat habitat and approximately 196 square feet of disturbed upland habitat. Additionally, the open water area adjacent to the site will be temporarily subjected to filling and diking through the use of the proposed cofferdam and earthen dike to allow for dewatering of the bulkhead construction area. After construction, the cofferdam and earthen dike will be removed, and the mudflat profile will be restored. Given that the final slope gradient will more gentle than the existing slope, there will be a slight increase in the area of mudflat area. Finally, the upland habitat area will be revegetated with native plant species. Section 30233 provides that new or expanded boating facilities are allowable in open coastal waters. The proposed project is consistent with this allowable use, because it is a completion of the bulkhead system that retains the channels, allowing boating use of the waterways and the construction of boating facilities like docks. At such time as the project site is developed with a residential use, it is likely that a private boat dock will be constructed adjacent to the bulkhead.

Although the waterways in this area were created from dry land, not existing wetlands, the channels are subject to tidal influence and in areas where the channel walls are comprised of soil, there is wetland habitat in many instances. Many areas of the earthen banks of the Reliant Energy Canal contain wetland and upland habitat areas in three general zones. There are mudflats in the lowest elevations of the bank that are tidally influenced. Above the mudflat areas, there is a zone of saltmarsh of varying widths. Vegetation in the saltmarsh areas includes pickleweed, Jaumea and alkali heath. Upland scrub vegetation occurs upslope and consists of both native and non-native vegetation.

The applicant has provided a biological report (Delineation of Waters of the United States and Sensitive Species Survey, dated April 2003, prepared by Impact Sciences) addressing the vegetation and habitat areas that exist on the proposed project site. The project biologist has identified the vegetation on the project site as on-native ruderal vegetation (primarily mowed grass). The report states that:

A dirt road separates the property boundary and a coyote brush scrub community in the north. This scrub is dominated by coyote brush (*Baccharis pilularis*) and mustard (*Hirschfeldia incana*). Tidal plant species include pickleweed (*Salicornia bigelovii*). Along the top of the existing bank is ruderal vegetation with ice plant (*Carpobrotus edulis*) separating the tidal zone.

No rare, threatened, or endangered plant or animal species were identified as existing or having the potential to exist on the proposed project site.

The proposed project will not result in any permanent diking, filling, or dredging of open coastal waters or wetlands. As previously described, the project does include the temporary dredging, and diking of a portion of the existing open water channel adjacent to the project site in order to create a temporary coffer dam around the bulkhead wall construction area. This will allow the area to be dewatered so that the concrete bulkhead can be poured in place. The proposed grading will result in temporary impacts to approximately 105 square feet of mudflat habitat and approximately 196 square feet of disturbed tidal and upland habitat. After construction, the earthen dike and cofferdam will be removed from the channel. Of the 65 cu. yds. of material that will be removed from the bank and mudflat area, 59 cu. yds. will be replaced in this area to restore the profile of the slope, mudflat, and channel areas. The finish elevation of the upland area will result in a more gentle slope than the existing slope. This is because the material cannot hold the same slope angle after the grading. Given that the final slope gradient will be more gentle than the existing slope, there will be a slight increase in the area of mudflat area.

Therefore, the proposed project will not result in any permanent loss of wetland habitat. The applicant has proposed to revegetate the tidal and upland areas impact by the proposed project with native vegetation. If successful, the proposed revegetation will minimize erosion and sedimentation that could result from bare slopes, and actually enhance these habitat areas as they are currently comprised primarily of non-native invasive plants. In order to ensure that the proposed revegetation will be successful, the Commission finds it necessary to require the applicant to submit a revegetation plan that provides details regarding the species, location, and sizes of the plants that will be utilized. Additionally, the revegetation area must be monitored in order to ensure success. The Commission finds it necessary to require the applicant to implement the revegetation plan, and to monitor the site for a period of no less than five years, providing an annual report to staff on the success of the revegetation. This is required in Condition No. 1.

The proposed project also includes the placement of 6 cu. yds. of excess cut material on an adjacent parcel to the north of Eastbourne Bay Street that is also owned by the applicant. This material would be spread to a depth of approximately $\frac{3}{4}$ inch deep over a disposal area of 7,586 sq. ft. adjacent to the existing road. This fill would be placed in this area only as a means to dispose of excess cut material resulting from the proposed bulkhead construction. Typically, the Commission has not permitted the alteration of landforms solely for the purpose of disposing of excess material. In this case, the landform alteration would not be substantial. However, review of the City of Oxnard

Local Coastal Program indicates that the property to the north of Eastbourne Bay Street is zoned "Resource Protection". The stated purpose of the Resource Protection zone is to: "protect, preserve, and restore environmentally sensitive habitat areas within the coastal zone of the City of Oxnard". Within this resource protection area, there is dune habitat. While the proposed disposal area directly adjacent to Eastbourne Bay Street appears to be disturbed and does not contain dune habitat, the "Resource Protection" zone district does not provide for the placement of fill as a permitted use. As such, the Commission finds it necessary to require the applicant to delete this portion of the proposed project and to dispose of the 6 cu. yds. of excess cut material off-site, either on a site where placement of fill has been authorized through a coastal development permit, or on a site or landfill that is outside of the Coastal Zone. Special Condition No. 2 requires the applicant to submit revised plans that delete the fill placement portion of the project. Special Condition No. 3 requires the applicant to dispose of the excess cut material in an appropriate manner.

As conditioned to revegetate the disturbed areas, to submit revised plans and to dispose of the excess cut material, the Commission finds that the proposed project is consistent with Sections 30233 and 30240 of the Coastal Act.

C. Water Quality.

Section 30231 of the Coastal Act states that:

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

The proposed project has the potential to adversely impact water quality during construction. The project includes grading within the waterway, including the removal of bank material and the addition of an earthen dike within the channel. This grading could have temporary adverse impacts to water quality during construction. The proposed excavation and the placement of the dike would result in a substantial increase in turbidity in the main channel and tributary channels.

As part of the project, the applicant has proposed to install a turbidity curtain, consisting of filter fabric, weighted to the bottom of the canal with floats at the water surface. This turbidity curtain will be placed around the entire construction area. This measure will contain the increased turbidity within the construction area. The turbidity curtain will be maintained throughout construction and until the turbidity levels in the construction area have reduced to a level equal or below the surrounding area in the channel. This measure will ensure that turbidity impacts to the Reliant Energy Canal and tributary channels are minimized.

A Storm Water Pollution Prevention Plan (SWPPP) implemented during construction incorporating other best management practices for construction activities, including management of construction materials and debris, will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction. The Commission finds that it is necessary to require the implementation of a SWPPP for the project site during the construction phase to ensure the proposed development will not adversely impact water quality or coastal resources. Special Condition No. 1 specifies the details to be included in this plan in order to minimize water quality impacts resulting from the construction of the proposed development. The Commission finds that, as conditioned, the proposed project is consistent with Section 30231 of the Coastal Act.

D. CEQA

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

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

VICINITY MAP

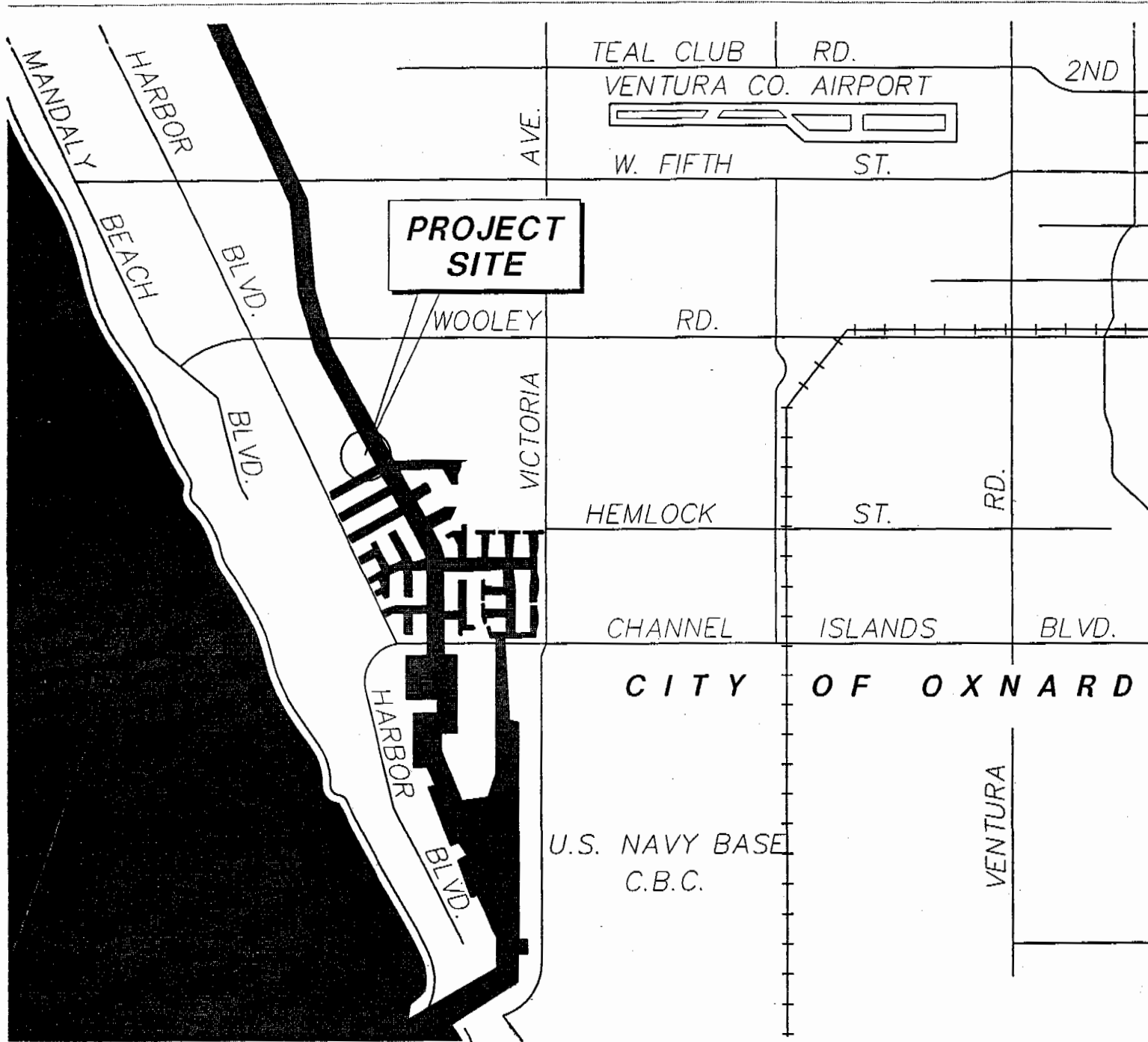
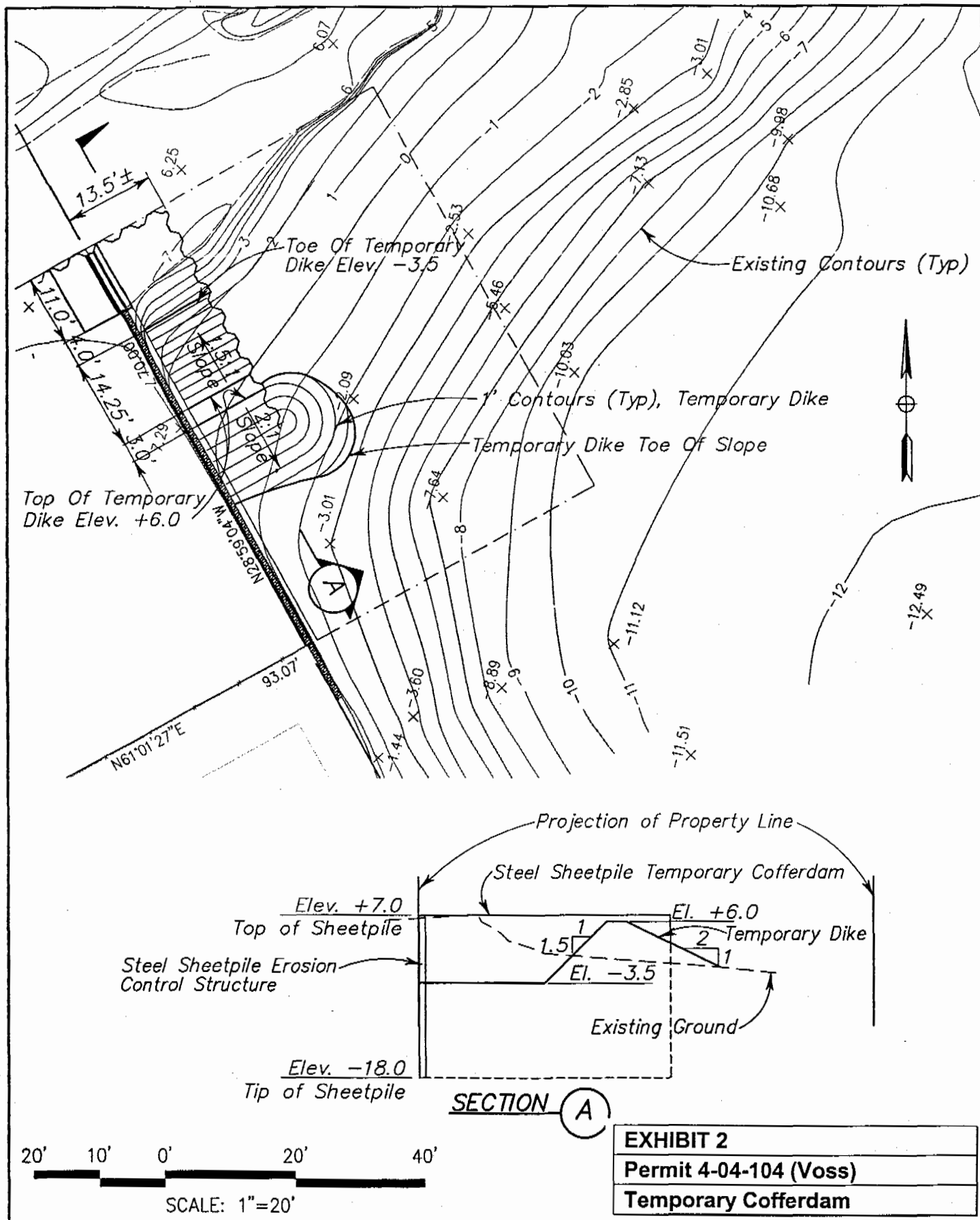


EXHIBIT 1

Permit 4-04-104 (Voss)

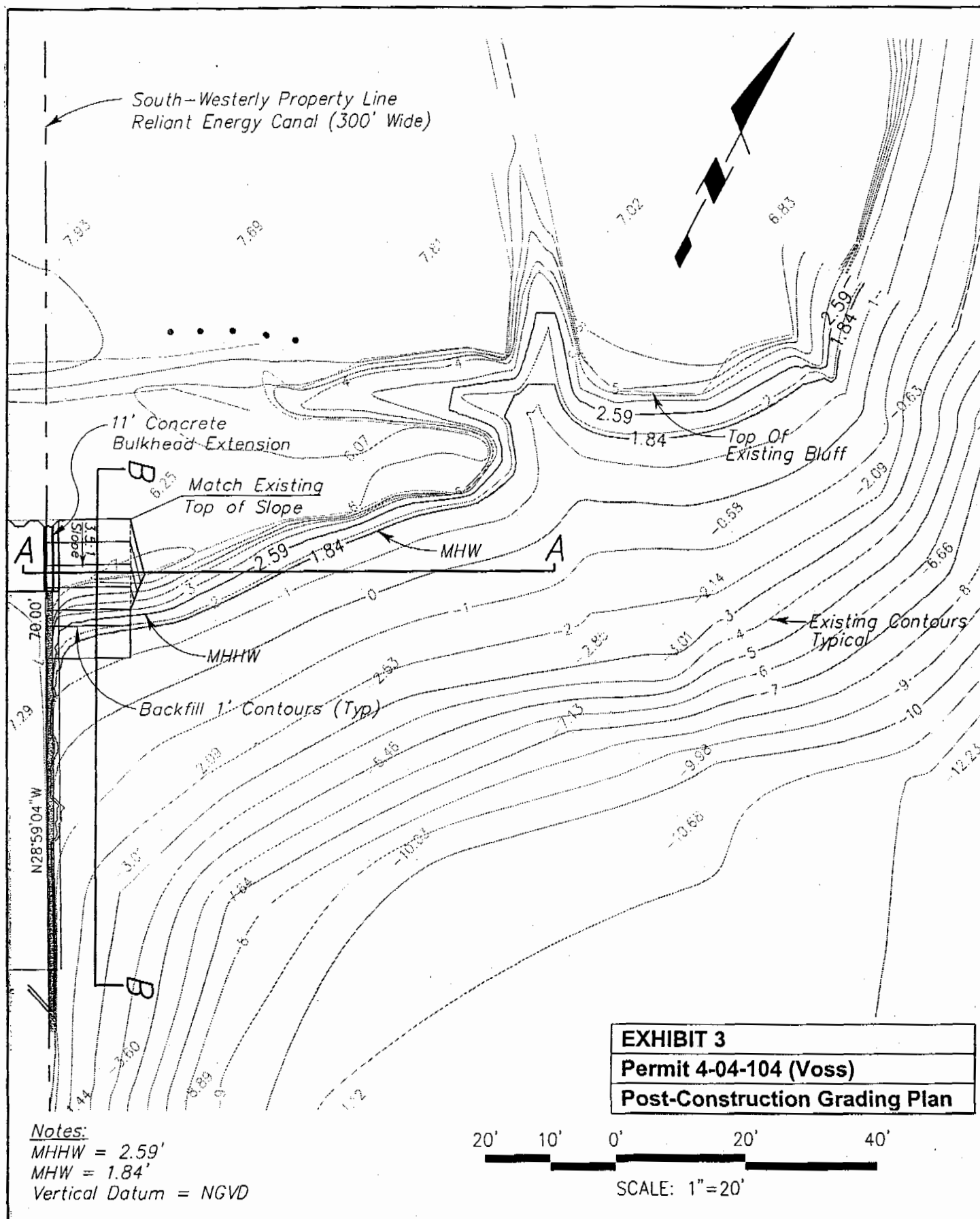
Vicinity Map



DAN VOSS BULKHEAD PROJECT
4490 EASTBOURNE BAY

Temporary Cofferd Dam Detail

Figure
3



DAN VOSS BULKHEAD PROJECT
4490 EASTBOURNE BAY

Plan

Figure
1

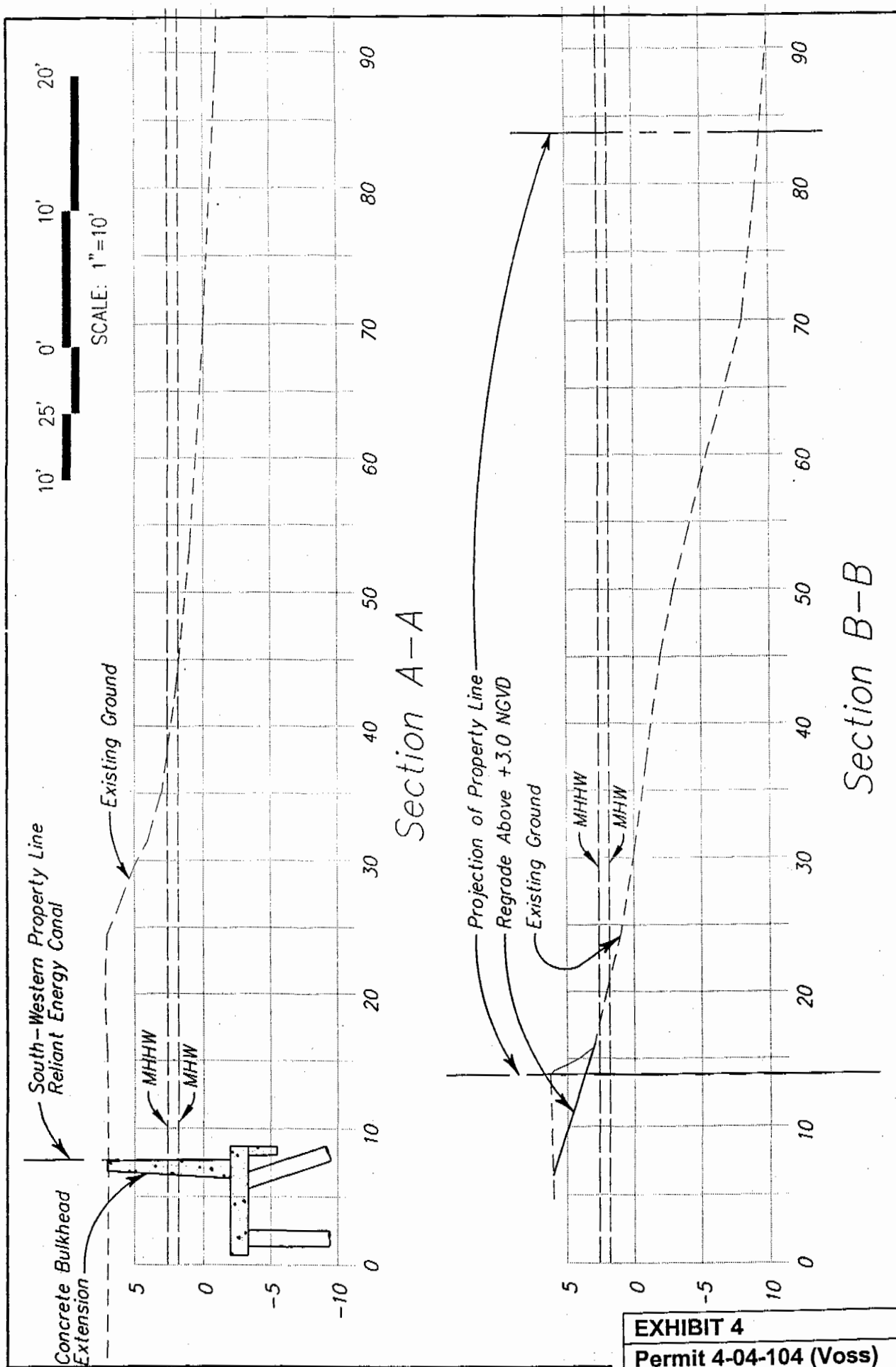


EXHIBIT 4

Permit 4-04-104 (Voss)

Cross Sections

DAN VOSS BULKHEAD PROJECT
4490 EASTBOURNE BAY

Typical Sections

Figure
2

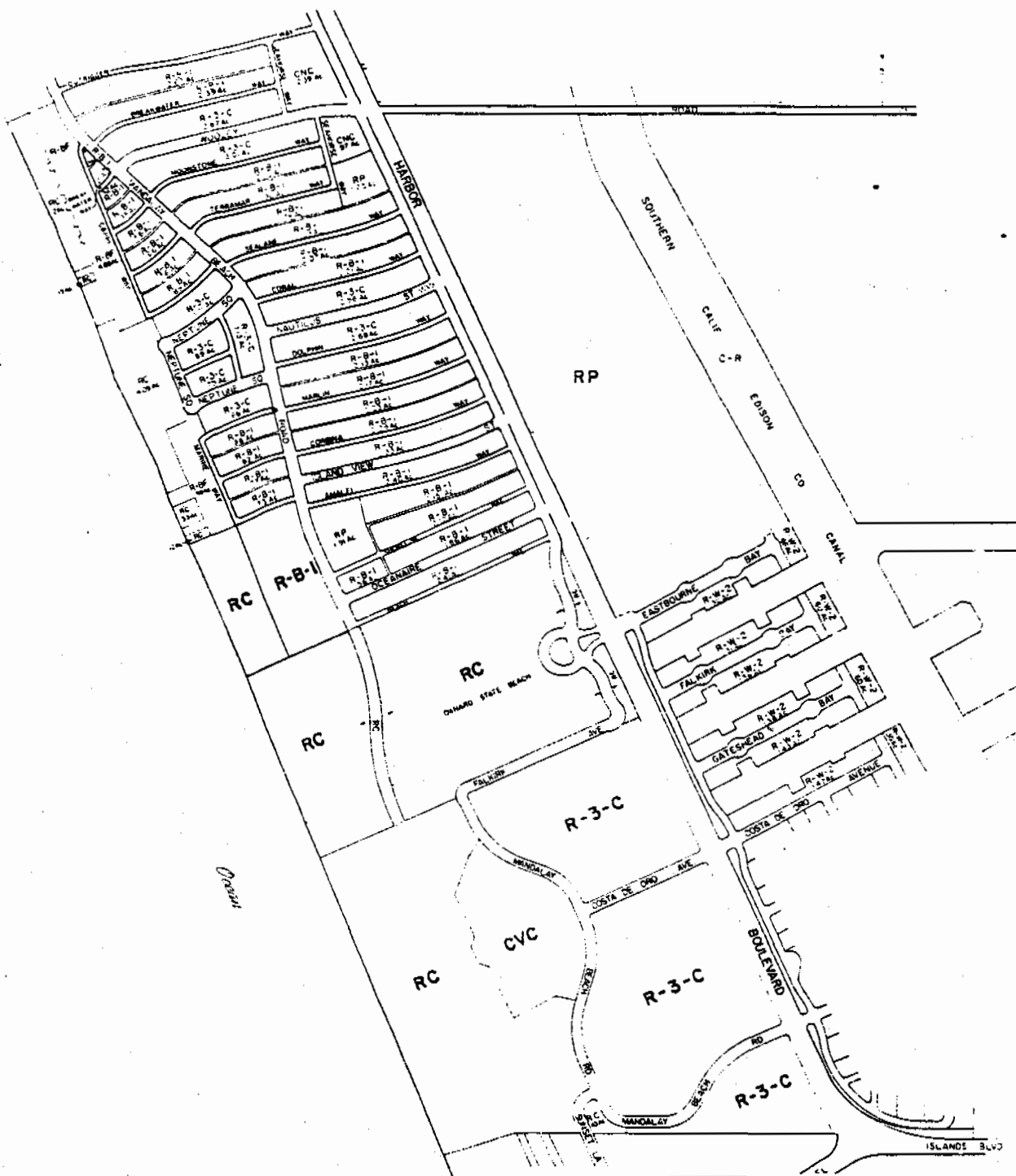


EXHIBIT 5
Permit 4-04-104 (Voss)
City of Oxnard Coastal Zone Map





View of Project Site (at white arrow) from the east. (Photo provided by applicant.)



View of slope, including mudflat area on the project site. (Photo provided by applicant)

Exhibit 13
CDP Amendment 4-04-104-A1
Site Photos