

CALIFORNIA COASTAL COMMISSION

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



W14a

ADDENDUM

May 4, 2009

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W14a**, COASTAL COMMISSION PERMIT APPLICATION **#5-09-055 (Bay Island Club)** FOR THE COMMISSION MEETING OF **May 6, 2009**.

Correspondence:

The following letters have been received for the project.

April 27, 2009

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South Coast Region

APR 28 2009

CALIFORNIA
COASTAL COMMISSION

Mr. Karl Schuring

Concerning Coastal Permit Application

Permit # 5-09-055

Applicants: Bay Island Club

Project location: 1-26 Bay Island N.B.B. Orange Co.

My name is Marilyn E. Harries. I am the property owner of 323 Island Ave. Balboa, Ca. 92661. This property has been in my family since 1954 and was my parents permanent residence.

The application of the Bay Island Club to demolish the existing "private" pedestrian bridge and construct a new "private" pedestrian bridge in a different location to the Island brings up several issues.

This bridge has NOT always been "private" or "gated". The gate was put up and has been moved down the length of the bridge one little more at a time until it now closes off the entire bridge to all public access. For many years we have enjoyed the beautiful bay views, sunsets etc. from the bridge and some folks even loved flying kites from that bridge! Lots of fun!

Even though the bridge is over "public water" those things have slowly been taken away from the public. The Island people have a right to the gate but I feel it should be where the bridge meets the Island + not where it crosses the Channel. (1)

As for sandy beach for shore fishermen and family beach lovers the new bridge location will take much of that area from the rest of us +

especially those people in wheelchairs.

On the "larger public beach areas" often referred to at the end of Island Ave. and 3 or 4 beach front properties beyond, people have manicured lawns, plants, flowers, benches etc.; 2 docks where 2 large boats are kept & while the area looks nice there is nothing to indicate it is public property and not private and that in itself eliminates beach access.

In addition to what I've mentioned, the every day activities and comfortable routines of those of us on Island Ave. will be disrupted with construction stuff, noise, trucks, workers vehicles, etc. for many months or even a couple years during the bridge re-location.

I do appreciate being able to share a few of my thoughts with you & I thank you for listening.

Sincerely,

Marilyn E. Harries

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April 27, 2009

APR 28 2009

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

CALIFORNIA
COASTAL COMMISSION

Dear Sirs,

Re: Application # 5-09-055

I live on Island Ave, the street that feeds the bridge to Bay Island.

I'm writing for two reasons:

First, to thank you for preserving public access to fishing and other bayfront activities at the end of Island Ave.

Second, to personally confirm that the gate that prevents public access to the Bay Island bridge was erected after the passage of the Coastal Act.

I moved to the Balboa Peninsula in early 1978, after the Coastal Act was passed.

Many times, being young and curious, I crossed the Bay Island bridge just for the nice view above the water or to see what was on the other side. There were no gates. (When I ventured onto Bay Island itself, I was politely asked to leave.)

It would be nice to have access to that bridge again. If it is rebuilt, I suggest it includes alcoves so pedestrians can stay out of the way of the golf carts that often cross the bridge to Bay Island.

Yours truly,



Andy Sachar
321 Island Ave
Newport Beach, CA 92661
949-673-6928

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South Coast Region

April 28, 2009

APR 29 2009

Mr. Karl Schwing
Orange County Area Supervisor
South Coast District Office
California Coastal Commission
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-5084

CALIFORNIA
COASTAL COMMISSION

BAY ISLAND BRIDGE PROJECT PERMIT NO. 5-09-055

Dear Mr. Schwing:

Thank you for the opportunity to comment on the above project. As I mentioned to you on the phone yesterday, along with many of my neighbors, I found the Commission's Staff report on this project to be thorough and well thought-out. In particular, the Staff is to be commended for its vigilance in protecting the public's right of coastal access.

There is little question that the residents of Bay Island must sooner or later either upgrade or replace the existing pedestrian bridge connecting their private island community to the mainland at the end of Island Avenue. And while the residents of Island Avenue, given our experiences with other (and lesser) projects on Bay Island, are justifiably anxious about the overall impact the bridge project will have on our community, we also appreciate that the City of Newport Beach is the lead agency under CEQA. As such, the City is the rightful recipient of many of our concerns related to this project such as the noise and parking impacts, materials staging and so forth. Thus, my comments here will focus only on the coastal access aspect of the project.

Unfortunately, by moving the terminus of the bridge at the mainland from its present location, as applicants propose, a popular public fishing next to the existing bridge will be sacrificed in order to accommodate the new bridge. As shown in the enclosed photograph, many members of the public enjoy fishing from this spot which, as things stand, they would no longer be able to do. When asked why the bridge could not be replaced in its current position in order to preserve the popular fishing area on the seawall, the bridge proponents have indicated that it would be inconvenient for the Bay Island residents to access their island by means of a temporary pontoon bridge while the new bridge is being constructed (note that they have looked into this and been assured by a vendor that it is feasible), as well as slightly more expensive due to the need to relocate the utility lines to the island twice rather than once. We also believe that, by relocating the entrance of the bridge to the middle of the street's end (as opposed to the current offset), the proposed design will create an undesirable grandiosity or "cathedral" effect that would be completely incompatible with the rustic and unadorned character of the neighborhood generally.

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In any event, while acknowledging some inconvenience and additional expense to the Bay Island homeowners should the new bridge be located in the same location as the old bridge, we believe that preserving the public's access to the fishing area on the seawall is not only a higher priority than those private concerns but also mandated by the Coastal Act which provides that "[d]evelopment shall not interfere with the public's right of access to the sea where acquired by use" (Public Resources Code Section 30211). Because our community is among the oldest in Newport Beach, the historic tradition of public fishing from the now-threatened seawall has contributed to an ambience in our neighborhood that we would like to see preserved, not sacrificed to the convenience of a few.

It is also important to note that the seawall to the west of the fishing area that would be lost is not an effective substitute for purposes of public use. For one thing, as opposed to the fishing area next to the bridge which has the appearance of actually being a public fishing area, the private homeowners in the adjacent area to the west have all landscaped the "public" property in front of their homes up to the seawall to give it the appearance of private ownership. As shown in the accompanying photos, the homeowners have relied on a number of measures to accomplish this, including the use of stone and brick in the walkways through the "public" area that matches the same stone and brick used on their private property. In addition, they have placed potted plants and other decorations on the "public" property that results in an illusion that the property up to and including the seawall is private. The existence of private docks off the seawall also does not promote the notion of public use either, nor does the absence of signs which could otherwise indicate that the area is for public use.

Even more important, however, is the fact that the public prefers the seawall next to the bridge as a prime fishing area because, not only is it shaded by trees, it is much easier to cast from, unlike the seawall to the west where boats and docks interfere with casting and fishing lines.

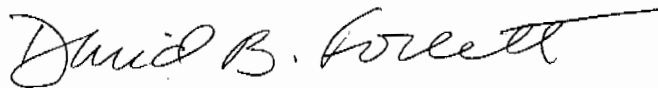
And finally, for whatever reasons, the fish themselves appear to prefer the deeper and more-sheltered waters off the seawall immediately next to the bridge as opposed to the waters to the west.

For all practical purposes, then, to eliminate the existing fishing area for the sake of the bridge will be to eliminate public fishing in the area altogether.

In concluding, though, a word must be said about the desire of the Bay Island Association to prevent public use of the bridge, whether it be the present bridge or some future bridge. It wasn't that long ago, according to many of the residents on the mainland, that there was no gate at all on the bridge. At some point, according to my neighbors, well past the 1976 enactment of the Coastal Act, a gate appeared on the island side of the bridge, later to be moved to the middle of the bridge, and then finally to the mainland side where it is today. No one knows better than the Staff of the Coastal Commission how these encroachments of public lands by private homeowners can take place over time. This is and always has been a case of a bridge over a public waterway. Arguments by the Bay

Island Club to the effect that this usurpation by means of a gate is an enforceable grandfathering of rights perfected before the enactment of the Coastal Act should be summarily disregarded.

Thank you again for allowing me to comment on this important matter.

A handwritten signature in cursive script that reads "David B. Follett". The signature is fluid and includes a long horizontal flourish extending from the end of the name.

David B. Follett

306 Island Avenue
Newport Beach, CA 92661
dfollett@mac.com
949.244.0100





ALLEN & KAREN MAXFIELD

329 ISLAND AVENUE, NEWPORT BEACH, CALIFORNIA 92661
TELEPHONE: (949) 673-7177 • FACSIMILE: (949) 673-2605

April 27, 2009

California Coastal Commission
South Coast District Office
Attn: Mr. Karl Schwing, Orange County Area Supervisor
200 Oceangate – 10th Floor - Suite 1000
Long Beach, CA 90802

RECEIVED
South Coast Region
APR 29 2009
CALIFORNIA
COASTAL COMMISSION

Re: Permit #5-09-055; Item #W14a; Applicant: Bay Island Club (Notice Attached)

To Whom It May Concern:

First, I never received a copy of the attached letter, and only knew about it because a neighbor gave me a copy. It seems like a very short time to give residents a chance to respond, considering the earliest that any resident received the attached notice was Friday, April 24, 2009. There are several other residents that did not receive the notice either. I would also think that it would have been fair to let the public know about the proposed plans by posting a notice where the public that uses the area can see it. All the public I have asked that have been down there had no idea what was proposed, and were outraged at the proposed project.

I am writing to strongly protest the loss of almost 50% of the land (or any loss of land) in the area specified (Item 2) pertaining to the above referenced matter regarding the bridge going to Bay Island, in Newport Beach.

The area in question is one of the best fishing areas around the bay, is used almost daily, and has always been available to the public. As homeowner 100 feet from the area, and whose families have been in the same home for almost 100 years, it is inconceivable that the loss of any land, regardless of size, is even considered. There are almost no areas of public access for anyone to fish on the peninsula. The area in question is also the only one I know of where one can access the area in a wheel chair from the sidewalk. There is one public dock, located approximately seven blocks away, but that is used mostly by boats, and it is hardly conceivable that it would be practical to fish from. All the other land around the area is private (with the exception of the two and one-half blocks of beach for swimming, and the one block with the docks and the boats). The area in question is hardly big enough as it is, because a limited number of people can fish there due to lack of space, and is used almost daily (Exhibit 1).

It has been argued that areas adjoining the proposed bridge site are available for fishing. This is not true because the area to the east (on the east side of the bridge) is unusable from medium to high tide as shown in the picture attached (Exhibit 2). In addition, during the days when the tide is not high, people use the beach with their children for swimming and playing, which makes fishing not only unavailable, but also unsafe.

The area immediately to the west of this area in question, is also not practical because there are docks with boats belonging to the homeowners, and it is impossible to fish between the boats, not to mention the trees and plantings which get in the way (Exhibit 3). There is an additional beach area a block farther west at the end of Lindo Ave., however there are three buoys with shore lines on them for boats, in addition to a storm drain line, which makes this area also impossible to fish (Exhibit 4). That leaves only one other area (Exhibit 5) just west of the beach at the end of Lindo Ave. - an area which has approximately 45 to 50 feet of area along the bay. This area however, is certainly NOT accessible to anyone that may be handicapped.

I have also attached an aerial photo showing the different areas in question (Exhibit 6).

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Another area of great concern is parking. Several older homes (like ours, built in 1908) do not have garages, and rely solely on street parking. With the additional work being done, and any possible loss of parking, not to mention the construction equipment and workers, it will generate an undue hardship on the residents. The residents of Bay Island are fortunate because they have a parking structure that is available, and some (maybe 40% at most) of them use it, but many do not, which makes parking for the street residents extremely difficult.

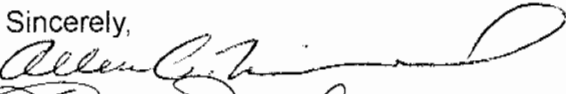
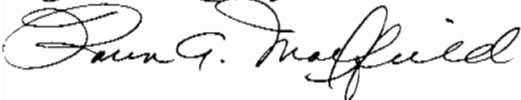
Proponents of this Bay Island bridge project have stated that the bridge construction would not interfere with our limited residence parking. However, one only needs to look at the current Bay Island remodel construction projects. On a daily basis, residents of Island Avenue must call Newport Beach Police Department and request that a parking control officer be dispatched to our street. It is a regular occurrence that construction workers' trucks and vans block our fire hydrant and residents cars. Ongoing complaints are sent to our City Council members. We can only imagine what would happen to our quality of living were this project be allowed to go forward. As a long time resident of Island Avenue I must state, and I believe that all residents of Island Avenue will concur, that our quality of life has long been compromised by the numerous and yearly construction projects that occur on Bay Island.

Perhaps strong consideration should be give to constructing a new bridge to Bay Island at the end of either Anade Ave. or Montero Ave. Both of these streets present a much more direct access to Bay Island with a lesser effect on public and personal property. From either of these locations, direct access to the land on Bay Island could be utilized for the purpose of accommodating parking for the construction trucks, vans, and deliveries necessary for the ongoing construction projects. In addition, it would provide additional parking for the residents of Bay Island without affecting the residents of Island Ave.

Originally, there was a wooden bridge with no gate. When the current concrete bridge was built many years ago, it also had no gate. Somewhere around 10-15 years ago (give or take a year or so), an electronic gate was installed in the middle of the bridge, and sometime in the last approximately four or five years, the gate was moved down to the peninsula side about ten feet from the sidewalk. This gate move prohibited any public access to any part of the bridge, to which the public has always had access. Again, this seems to prevent the public from the enjoyment and access to the water. I have total respect for right of Bay Island to have their privacy, and their right to prevent access to the private island, however, not to block the public access to the water and the bay, and to take public land, of which there is so little.

I would like to thank the Coastal Commission for their constant work in protecting the public access to our beaches and waterways, and their attempts to make more available. I hope that you will seriously consider these concerns in your decision.

Sincerely,

Allen A. Maxfield
Karen A. Maxfield

Enclosures
Exhibits (6)

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT
PO Box 1450
200 OceanGate, 10th Floor
LONG BEACH, CA 90802-4410
(562) 590-5071 FAX (562) 590-5084
www.coastal.ca.gov

Page: 1

Date: April 22, 2009

IMPORTANT PUBLIC HEARING NOTICE

COASTAL PERMIT APPLICATION

PERMIT NUMBER: 5-09-055**APPLICANT(S):** Bay Island Club**PROJECT DESCRIPTION:**

Application of Bay Island Club to 1) reinforce, in part, and replace, in part, the entire 1,200 linear foot long bulkhead system surrounding a private island developed with 24 single family residences; 2) demolish the existing gated private pedestrian bridge linking the island to the mainland and construct a new gated, private pedestrian bridge in a slightly different alignment; and 3) construct a 'sand retention wall' offshore of a small private beach on the western side of the island.

PROJECT LOCATION:

1-26 Bay Island, Newport Beach (Orange County) (APN(s) 048-040-02)

HEARING DATE AND LOCATION:

DATE: Wednesday, May 6, 2009
TIME: Meeting begins at 10:00 AM **ITEM NO:** W14a
PLACE: Hyatt Regency Embarcadero
5 Embarcadero Plaza, San Francisco, CA
PHONE: (415) 788-1234

HEARING PROCEDURES:

This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

AVAILABILITY OF STAFF REPORT

A copy of the staff report on this matter is available on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from Karl Schwing, Orange County Area Supervisor, at the South Coast District office.

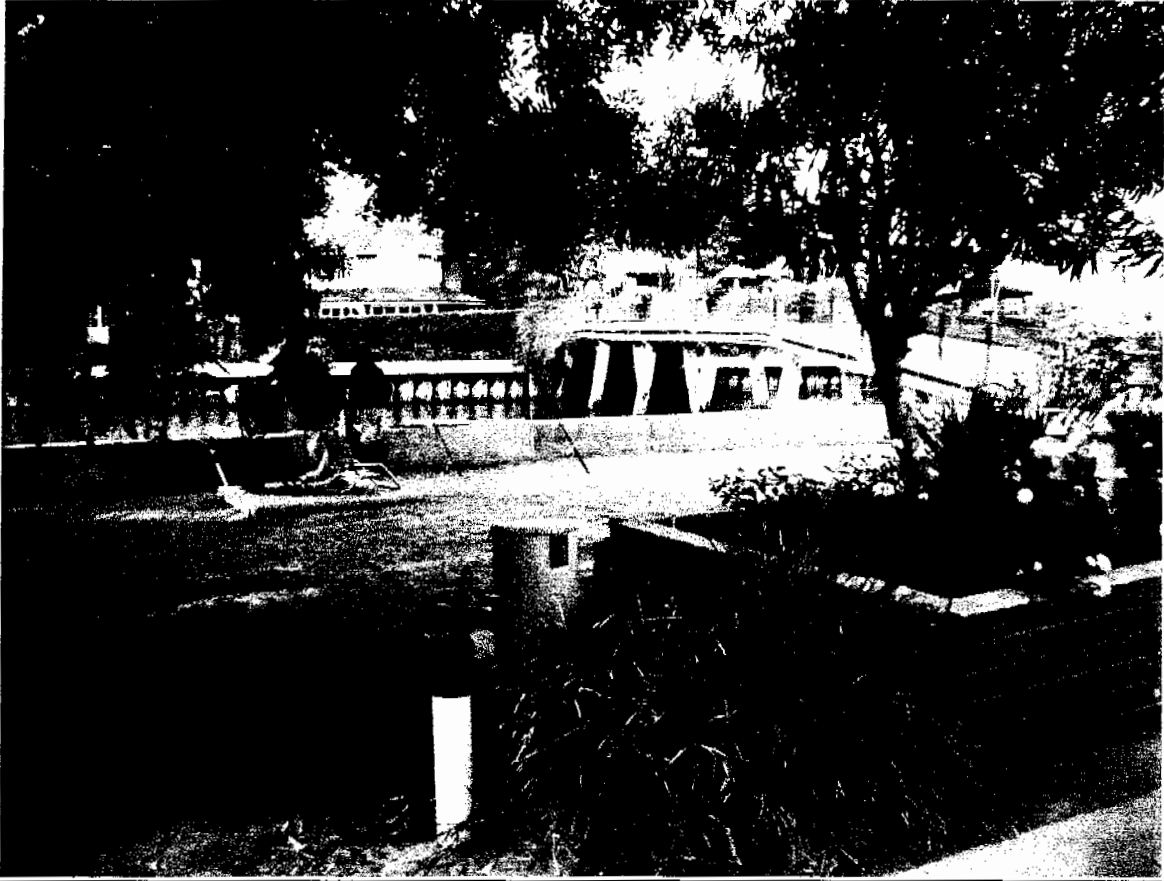
SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

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EXHIBIT 1



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EXHIBIT 2



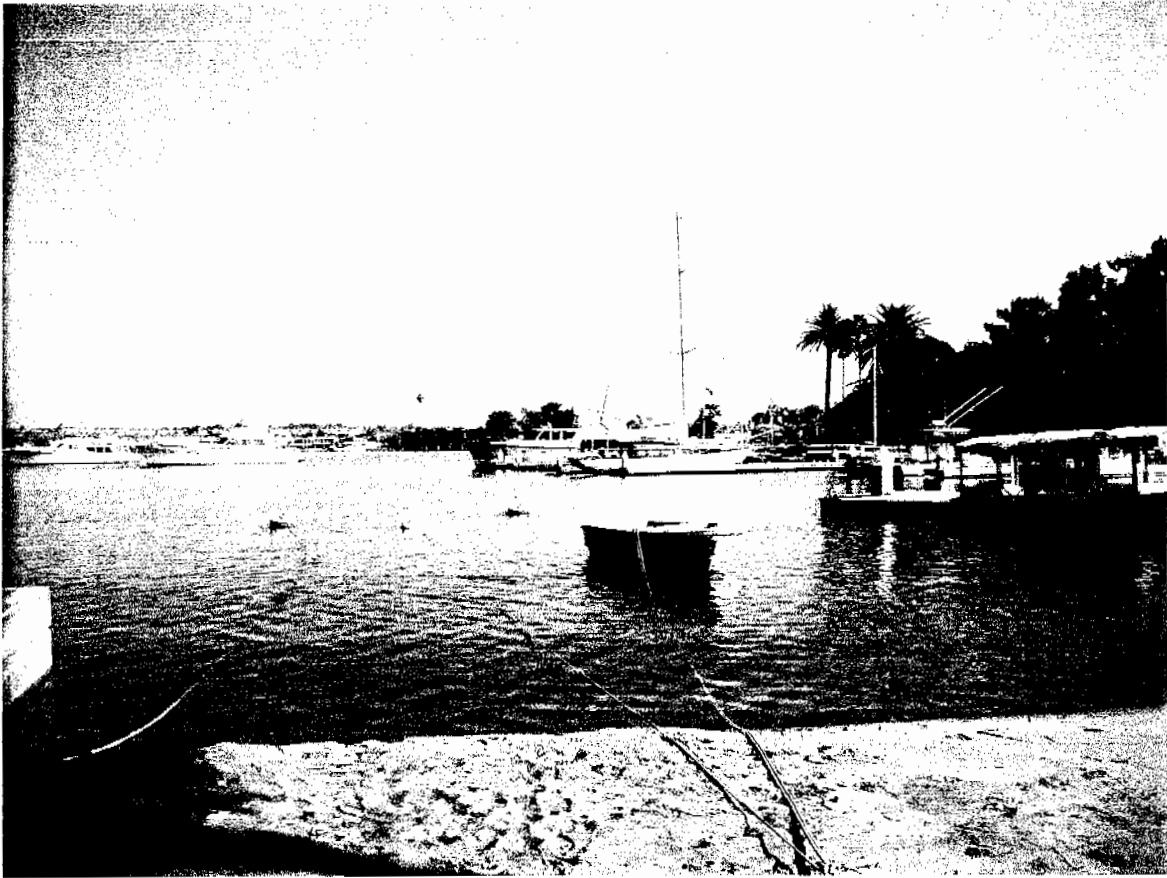
13

EXHIBIT 3



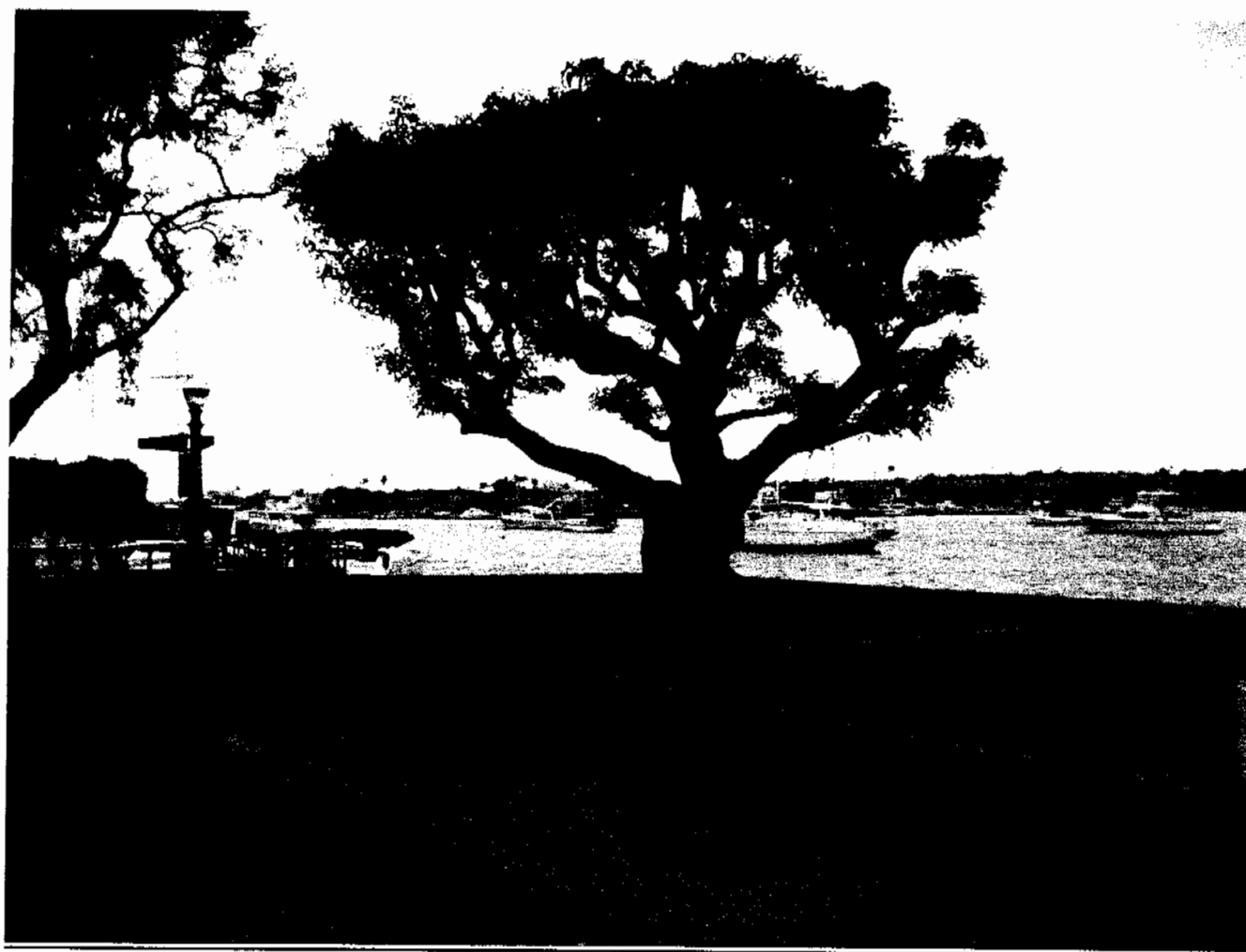
164

EXHIBIT 4



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EXHIBIT 5



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EXHIBIT 6



A= Proposed bridge site (shown on Exhibit 1)

B= Boat area (shown on Exhibit 3)

C= Area at end of Lindo Ave. showing buoys (shown on Exhibit 4)

D= Additional area for fishing with no handicap accessibility (shown on Exhibit 5)

E= Beach area (shown on Exhibit 2)

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APR 29 2009

April 27, 2009

California Coastal Commission
South Coast District
P. O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

CALIFORNIA
COASTAL COMMISSION

Permit Number: 5-09-055
Bay Island Club

Dear Coastal Commission:

I live ½ block from the proposed project and wish to comment.

THE BRIDGE: The proposed bridge construction by The Bay Island Club will eliminate a public beach, bulk head and fishing area that has been in use since the early 1900s. The statement that the bridge will be in a "slightly different alignment" does not address the impact of this proposed alignment. The new bridge will have a major impact by eliminating a public area. The Club has offered that other public areas already exist that can still be used. Those "other" areas are inferior and/or unusable, otherwise they would already be in use. They do not take the place of the existing public beach and fishing area.

The area to the right of the bridge is a very sloping sandy beach with no bulk head and is unusable at high tide. The area to the left is encumbered by boats. No one can fish there. The existing beach and fishing area is used daily by the general public. How can the Coastal Commission allow the taking of a public area for private use?

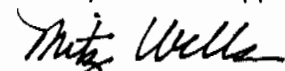
THE GATE: The existing gate which is now located at the sidewalk on the mainland was installed just a few years ago. I was not there in July, 2004 because we had a family picture taken in the middle of the bridge on my husband's 69th birthday. Each new gate has been moved closer to the mainland. Previously, the public had access to the bridge.

STAGING: IMPACT ON PUBLIC ACCESS AND PUBLIC PARKING:

Presently there are three houses already under construction on the Island. Traffic and parking are a nightmare. By approximately 6 a.m. on most mornings, all parking places are taken by workmen. It is true that Bay Island does have a parking garage for its residents which most use. But, all workmen, repairmen, day workers, and Island visitors park on the street. This is a very old neighborhood, and a number of houses were built before garages were required, so they depend upon street parking. In addition, the street end is regularly plugged with delivery trucks parked in the red and blocking public parking.

It is stated that much of the work will be accomplished by barge. But, our parking is already so impacted that the additional strain of workers necessary for construction of the seawall and bridge will severely affect the neighborhood. Workmen could be required to park elsewhere and be brought in.

Thank you for the opportunity to comment.



Mitzi Wells
318 Island Avenue
Balboa, CA 92661-1130

RECEIVED
South Coast Region

April 9, 2009

MAY - 1 2009

CALIFORNIA
COASTAL COMMISSION

Mr. Homer Bludau
City Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663-3884

Re: Parking congestion on Island Avenue
caused by Bay Island Construction

Dear Mr. Bludau:

The congestion and frustration are mounting on Island Avenue. I am convinced the residents have not been vocal enough in expressing the seriousness of the problem. Otherwise, the City certainly would have found a way to restore some peace to the neighborhood. I am writing to impress upon you how this problem significantly affects our quality of life. I recognize that there is construction taking place throughout the City. But, this is a unique location and is unlike any other in the City; twenty-three houses all accessed by one footbridge.

Our street end is plugged daily with construction trucks parked, double and triple parked in the red. This blocks garages and often prohibits neighbors from being able to use their cars. Just this morning, one neighbor's car was parked on the street and she was unable to get her car out to attend a funeral.

Today, even the alley was blocked. I live in the middle of the block and have a two-car garage that we use daily. But, we need the alley to access the street. This neighborhood was founded over a hundred years ago and a number of the houses do not have garages. Island Avenue residents depend upon street parking. Every space on the street is usually taken by 6:30 or 7:00 by the day workers. I recognize that parking is on a first come, first served basis. But, in addition to impacted street parking we are often blocked by construction vehicles. The City is condoning this problem by not taking action. Traffic Control rarely issues tickets for vehicles double or triple parked in the red, but instead goes on the island to look for the owners. If only all citizens could expect the same courtesy when parked in the red.

I ask that you come and see for yourself and talk to the neighbors like Mary Ann and Len Miller, Michele and Jerry Silver or Karen and Allen Maxfield. They are most seriously impacted by this construction traffic. I am convinced the City can alleviate a lot of these problems if they are willing. For example:

- Parking Control should be monitoring the area throughout the day and writing tickets for those trucks that are not occupied, parked in the red, blocking a garage or parked longer than is necessary to make deliveries. The City should patrol the area regularly, not just when called.

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- Contractors and suppliers should be made aware and a notice posted explaining the parking expectations and the resulting consequence; tickets for unattended vehicles, vehicles parked in the red, double parked trucks, etc. This would save the officer time by not having to personally track down all offenders to ask them to move.
- The Building Department could impose some parking restrictions when Bay Island building permits are issued requiring day labor parking in another area and/or perhaps access to the Bay Island parking garage.
- Further, the Building Department could require some coordination between the contractors when more than one project is under way. Perhaps a traffic coordinator to schedule and monitor the traffic and deliveries.
- The city could consider permit parking for the residents.
- And, if the City is unwilling to write tickets for illegally parked vehicles, I suggest that the red curbs be painted white so we can all enjoy the benefit of additional parking without threat of a ticket.

Please help us. Thank you for your time.

Sincerely,

Mitzi Wells
 318 Island Avenue
 Balboa, CA 92661-1130
 949.723.6029
 tizmitz@roadrunner.com

cc: Michael Henn, City Councilman

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RECEIVED
South Coast Region

N

Mail Message

  Reply 

MAY - 1 2009

Mail

From: "Mike Henn"
<mfhenn@verizon.net>

CALIFORNIA
COASTAL COMMISSION

Thursday - April 2, 2009 4:38 PM

To: "A. A. Maxfield" <aamaxfield@roadrunner.com>

Subject: RE: Construction, parking & fumes

Attachments: Header (1385 bytes) [View] [Save As]

I will ask staff to have a look and see what recommendations make sense.

mike

From: A. A. Maxfield [mailto:aamaxfield@roadrunner.com]

Sent: Thursday, April 02, 2009 12:31 PM

To: 'Mike Henn'

Subject: Construction, parking & fumes

Mike,

This construction mess with all the work on Bay Island has gotten to the point where it is driving the all neighbors nuts, and the residents at the north end of the street even more nuts. There is no place to park, the trucks constantly block cars in at the end of the street, they park in front of the fire hydrant, they double park blocking driveways and the alleys, and they sit there with their engines running filling our house with diesel fumes. I normally change the filter on our furnace about two times a year, and lately it has been about every two weeks. This is not healthy and something MUST be done!

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Mail Message

N

 Reply 

Mail

From: "Karen and Allen"

Thursday - April 9, 2009 10:13 AM

<karenandallen@roadrunner.com>

To: "'Mike Henn'" <mfhenn@verizon.net>, "'Bludau, Homer'" <HBludau@city.newport-beach.ca.us>, <Jkaminsky@nbpd.org>**Subject:** BAY ISLAND CONSTRUCTION**Attachments:** Header (522 bytes)[\[View\]](#) [\[Save As\]](#)

The level of frustration experienced by Island Ave residents is mounting daily. Although repeated calls to the police department and emails to the city are made on a regular basis, we see no control being taken by the city to stem the terrible construction congestion that we are experiencing on a daily basis. Our cars in front of our homes are blocked by careless construction workers. The end of Island Avenue is full of trucks, stacked double and triple, parked illegally, and nothing, I repeat nothing, is being done. **THE ONE AND ONLY FIRE HYDRANT ON OUR STREET IS BLOCKED DAILY BY CONSTRUCTION TRUCKS.** Perhaps it is going to take a real emergency situation to occur and a lawsuit to ensue before the city decides to take some action on our behalf. Each and every year, from September to June, the residents of this street are subjected to this same situation. Our quiet neighborhood is at the mercy of Bay Island and their constant construction projects. We are tired of this and want the city to start enforcing some of the codes that are on the books that protect the citizens of Newport Beach from this outrageous behavior.

Your prompt attention in this matter is greatly appreciated.

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Mail Message

N

 Reply 

Mail

From: "Karen and Allen"

Thursday - April 9, 2009 2:06 PM

<karenandallen@roadrunner.com>

To: <tizmitz@adelphia.net>, "Len & Maryanne Miller (maryannemiller@roadrunner.com)"

<maryannmiller@roadrunner.com>

Subject: FW: BAY ISLAND CONSTRUCTION**Attachments:** Header (538 bytes)[\[View\]](#) [\[Save As\]](#)

Mitzi,

Short reply from Mike Henn. I wanted to mention in my first email that it would perhaps be helpful if everyone would start emailing Mike, other city officials and the police dept. Perhaps they will tire of hearing from us and finally take some action.

Thanks.

Karen

From: Mike Henn [mailto:mfhenn@verizon.net]**Sent:** Thursday, April 09, 2009 11:33 AM**To:** 'Karen and Allen'**Subject:** RE: BAY ISLAND CONSTRUCTION

Karen:

In response to Allen's previous email, I asked staff to review this situation again. I will contact them again to see what the status of the current efforts, and ask someone to get back to you quickly.

Mike

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David Groverman

Opposed - unless conditions added

RECEIVED
South Coast Region

4/29/09

APR 30 2009

Re: Bay Island bridge and seawall replacement, Newport Beach, CA

To the Members of the Coastal Commission:

CALIFORNIA
COASTAL COMMISSION

I am writing to express my concerns about the proposed replacement of the bridge that leads to Bay Island in Newport Beach along with the replacement of 1200 feet of existing bulkheads.

I live on Island Avenue, the street that leads to the Bay Island bridge, and to live on that street is akin to living in a construction yard, which is a shame because it is a very nice neighborhood, filled with good people, who are currently at wit's end because of the never-ending construction that takes place on Bay Island.

In the ten years that I have been a resident of Island Avenue there may have been one year in which construction was not taking place. And even though normal house construction on the island stops during the summer months, each homeowner rebuilding his or her home always seems to get extensions to encroach into that no-work time period, so the work goes on at least ten months per year.

It is actually an interesting phenomenon that of the 23 or 24 homes on that island there is always at least one under reconstruction, year after year. And since there is only that walking bridge over to the island, all of the construction materials and workers arrive on Island Avenue, and turn that gentle street into Bay Island's construction yard.

The residents of the street are very tired of living in that circumstance and now, to add insult to injury, there is going to be a very major work project rebuilding the bridge and seawall.

I would like to respectfully request that if you do see fit to approve this project, that you do so with very specific conditions that mitigate as much as possible the effect that the construction will have on the Island Avenue residents.

One of those mitigating elements might be to require that all material for the project be transported by barge to the beach or dock areas on Bay Island itself. The workers could also park their cars in some off-site lot and be ferried over to the island. (These ideas actually come from Newport Beach's Public Works Director, Steve Badum. In a discussion with him, he was quite sensitive to what the Island Avenue residents have been going through).

As a side note, I am a professional engineer, working in structural design, and to my somewhat practiced eye, the replacement of the Bay Island bridge appears to be more of a want than a need. The bridge shows no obvious signs of distress and appears to be in good condition.

Thank you for your consideration of these matters.

Respectfully,



David Groverman, PE
Civil Engineer, License # 043663
315 Island Avenue
Newport Beach, CA 92661

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RECEIVED
South Coast Region

MAY - 1 2009

CALIFORNIA
COASTAL COMMISSION

Bay Island Project
Agenda 14A
Permit #5-09-055
David C. Frazer
Favor w/limited concerns

California Coastal Commission
200 OceanGate, 10th floor
Long Beach, California 90802-5084

Attention: Karl Schwing

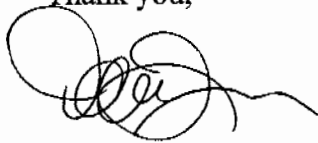
Dear Mr. Schwing:

While I do, indeed, favor the public's access to the bridge, I do not favor moving the current bridge site. To do so will reduce the size of an acceptable public fishing area despite what Bay Island has asserted in their project proposal.

What is of most concern to me is the potential hazard from liquefaction on page 12 #17. My house at 322 Island Avenue was built in the 1920's and sits on wooden piers directly on the sand without a cement foundation. You have provided for the Coastal Commission's waiver of liability from such damage, but there is nothing in the documentation for this report that addresses such damage to others in the neighborhood. Due diligence must be made to protect all of us. There must be a report from a seismic expert as to the possible range of extent of liquefaction and the continuous monitoring of the pile drivers and heavy equipment during the construction of that sea wall and bridge.

Further, the section regarding the landscape plan states, "Landscaping shall be designed and maintained to invite and encourage public use of the publicly owned land on the mainland side of the bridge terminus, including use of the area for viewing and fishing." The water views must be protected for the neighboring homes as well as the general public in whatever landscaping plan is approved.

Thank you,



David Frazer
322 Island Ave.

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RECEIVED
South Coast Region

MAY - 1 2009

CALIFORNIA
COASTAL COMMISSION

Bay Island Project
Agenda # 14a
Application #
Permit 5-09-055
Kathy Frazer
Favor & Oppose

California Coastal Commission
PO Box 1450
200 Oceangate , 10th floor
Long Beach, California 90802-4416
Attention: Karl Schwing

To whom it may concern,

You have represented the people of California fairly and well in the Bay Island project, and for that I sincerely thank you.

There are 3 things I would like to address before a final determination is made: the gate on the bridge and public access to the bridge, the loss of the public fishing area, and the loss of parking access for the public.

I support public access to the bridge. Bay Island has mislead you when it contended that the bridge was "lawfully constructed prior to the passage of the Coastal Act" of 1976 (page 19, footnote). We bought our home at 320 Island Avenue in 1988, and at that time there was no gate on the bridge at all. In the early 1990's, the Association installed a gate at the mid-way point of the bridge, apparently without coastal development permits or city permits, since it has not "provided any evidence to support the assertion". Within the last 5 years, it has installed the current electric gate and coded entrance system at the sidewalk with the large sign announcing Bay Island, and once again, it appears that installation was without permits. The Coastal Commission must direct the City to enforce its Land Use Plan policy 3.1.1-4 that states it shall "Identify and remove all unauthorized structures, including signs and fences which inhibit public access."

I do not support the encroachment of the bridge over the public's current fishing area. On page 21, the applicant asserts that the project will have "no long term adverse impacts on the public's ability to fish from the mainland surrounding the bridge. There is approximately 280 lineal feet of water's edge available for public access/fishing along the length of the bulkhead wall adjacent to the bridge terminus. The bridge will cover only 10 linear feet of this stretch. All of the bulkhead along Edgewater Avenue is on public right-of-way and should be available for fishing."

First, and foremost, it is the Coastal Commission's duty to "protect, and where feasible, expand and enhance public access to and along shoreline, and to beaches, coastal waters, tidelands, coastal parks, and trails."(page 18) Protect and expand, not reduce.

Second, looking at your Exhibit 11, 5-09-055 page 1 of 3, Fishing area of concern From off bulkhead wall, and Exhibit 11 5-05-055 page 3 of 3, and personal pictures 1-4, which I have included herein, this is not a reasonable area for fishing. There are private boats, docks, and moorings every few feet which limit casting out. This area is so close to the open waters of the turning basin that fish do not like it. There is a small retaining wall

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the length of that area which would prevent wheelchairs and person's with other disabilities ADA access to the bulkhead to fish. The current fishing area is the only area that is level with the sidewalk and not an impediment for those who may be impaired.

Further, the City has allowed the homeowners of Edgewater Avenue which front on the public right-of-way to landscape in such a way as to suggest that the area is private. They have brick walkways that match their homes, with grass, shrubs, and sprinklers on timers. There are no signs encouraging and welcoming the public, nor are there any trash cans or anything else with the city logo that says "This is public land." Large trees and shrubs and even a small personal bench further enclose the current fishing area, adding to the impression that it is the separate only public area, and a line they cannot cross. (personal pictures 5-8).

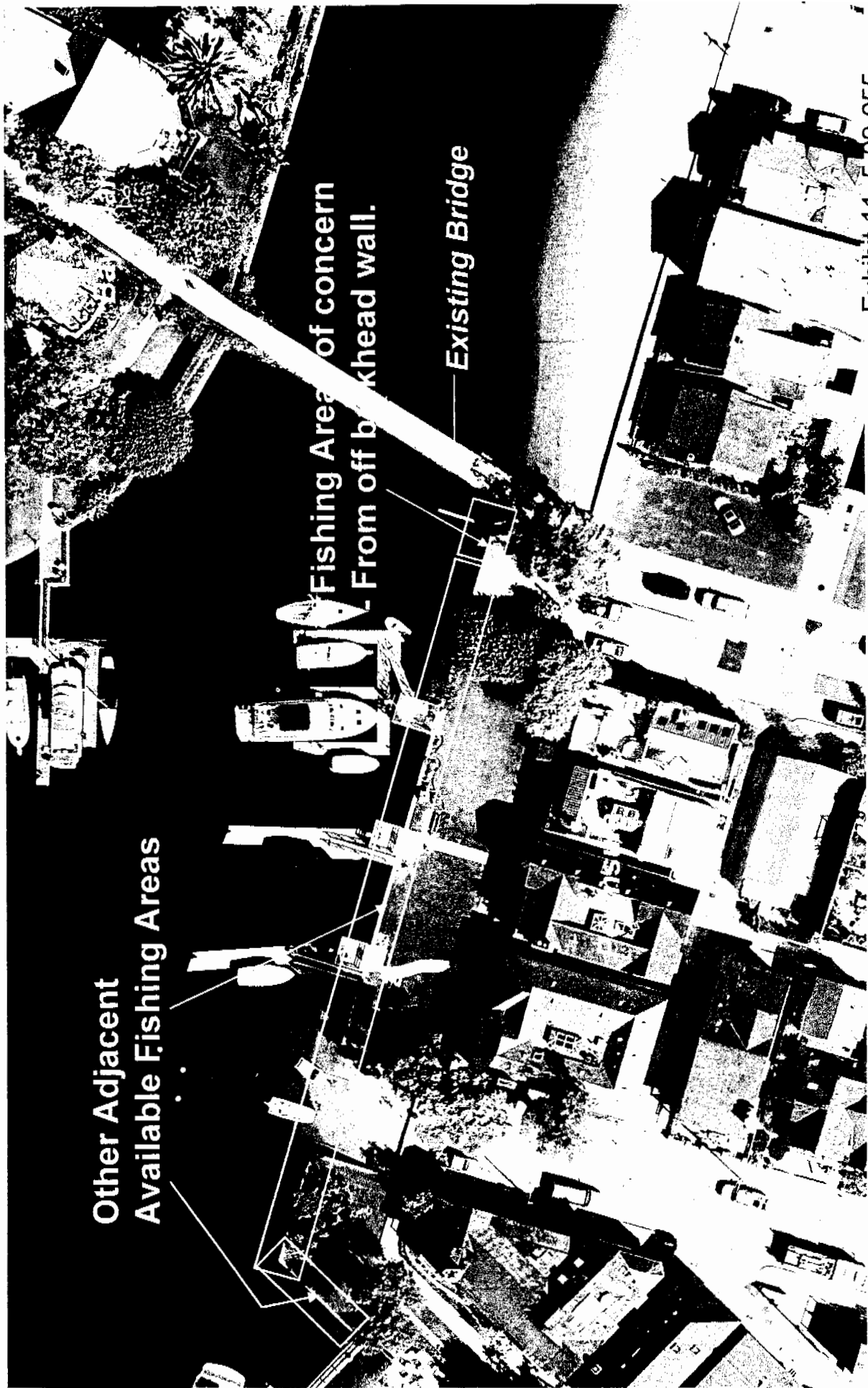
On page 21, it states that it "will create a better new fishing area." Where is that going to be? Although not described in the document or exhibits, it is implied in the next sentence that it is the 100 square feet of beach that will be uncovered when the existing bridge is demolished. The configuration of that needs to be clearly shown. It must include a bulkhead, otherwise at high tides that beach is underwater and unavailable for use, including fishing. (personal picture 9).

To avoid losing the current public beach, which meets the needs of the fishing public, a temporary bridge should be constructed. The existing bridge could, then, be rebuilt or retrofitted. Once completed, the existing bridge would be demolished and the fishing area would remain intact.

Finally, on page 15 it is stated that, "Residents of the island park their vehicles in a garage on the mainland and walk, bicycle, or use other small personal transport (e.g. golf cart) to cross the bridge to the island. To underline the integrity and veracity of this report, I vociferously protest this. For decades the Island Avenues residents have complained to the Bay Island residents individually, the Bay Island Association, and the City of Newport Beach about the continual parking by the Bay Island residents and their employees on the street rather than the parking garage that is 1 block away. As the attached letters indicate, this situation has been exacerbated by the current construction on the island. Section 30212 of the Coastal Act states, in part, that "Public access from the nearest public roadway to the shoreline and along the coast in new developments....". Some enforcement provision for the island residents to use that garage in lieu of street parking is necessary if the public is to have access to the fishing area.

Thank you for your time and consideration on this matter,


Kathy Frazer



Other Available Fishing Areas – Immediately Adjacent to Bay Island Bridge

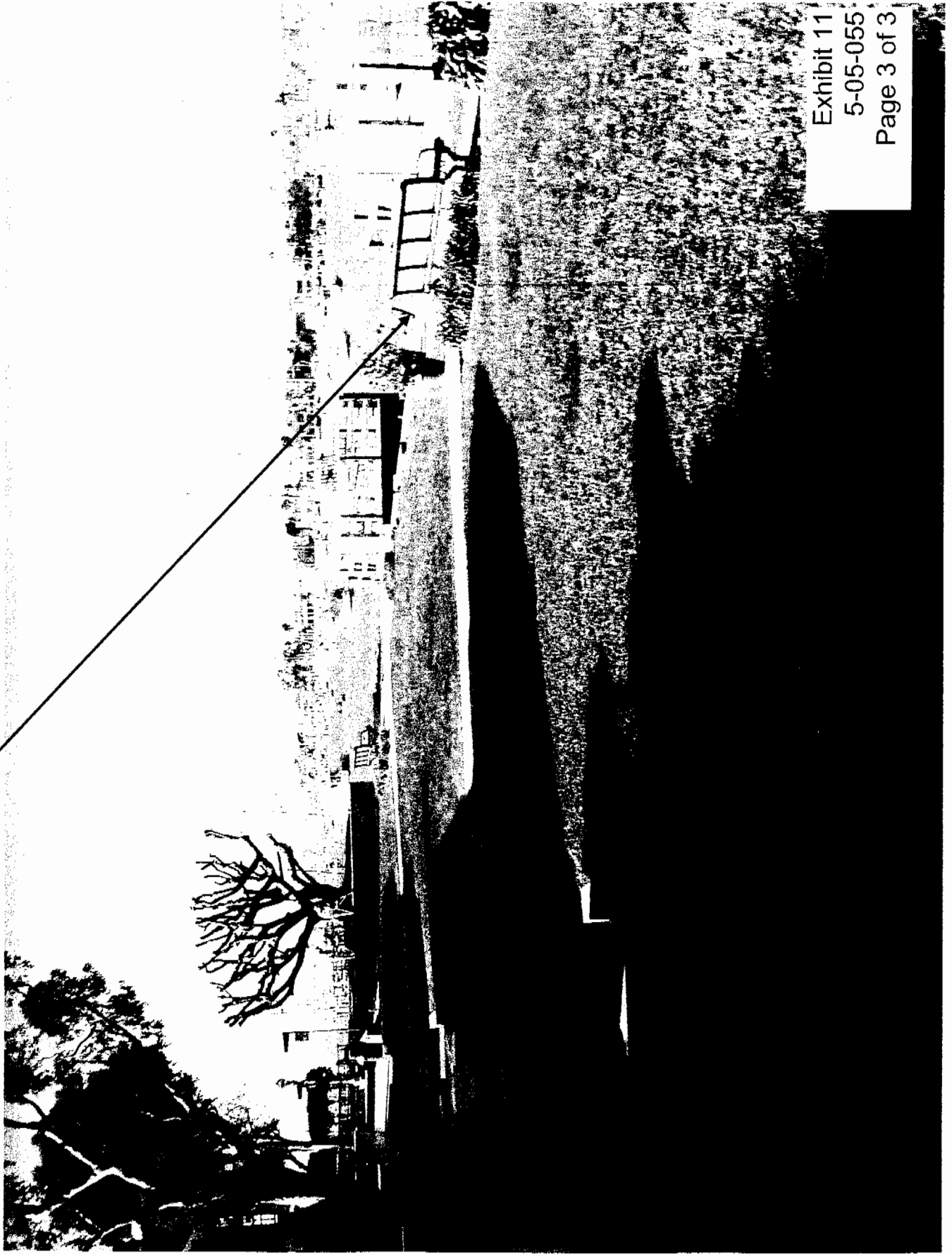
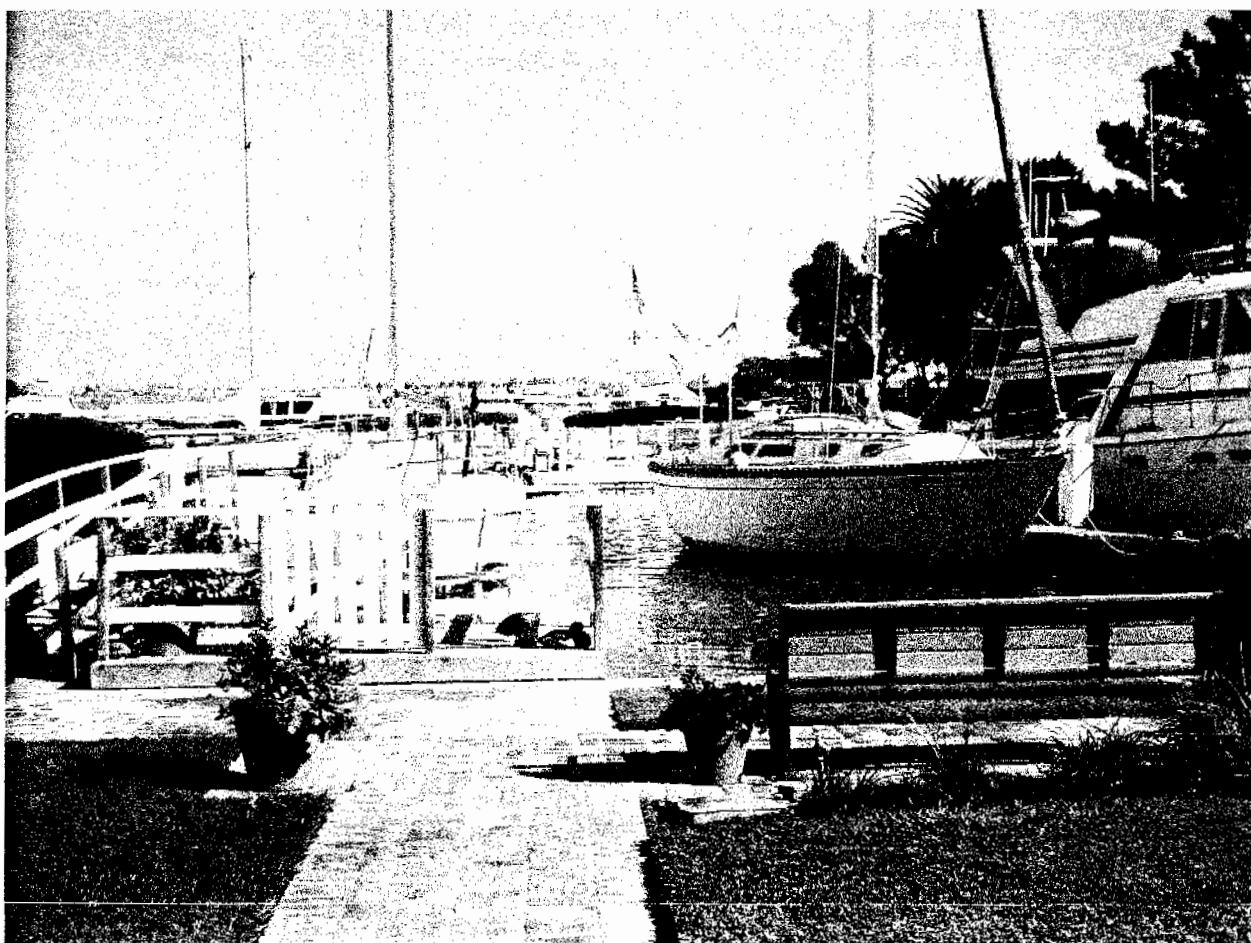
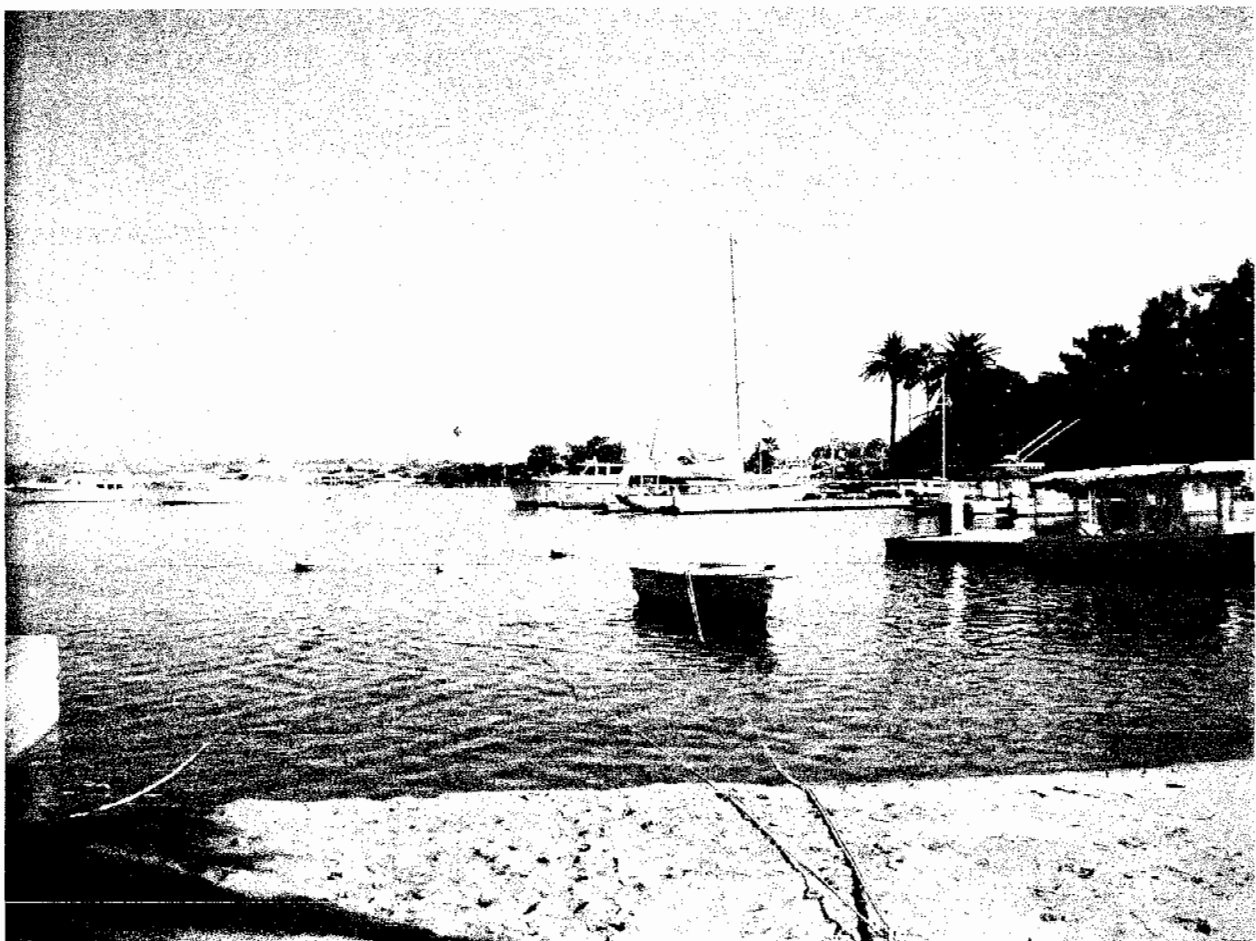


Exhibit 11
5-05-055
Page 3 of 3



personal pictures 1-2



personal pictures 3-4

31



Personal pictures 5-6

72



personal pictures 7-8

73



personal picture 9)

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FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

MAY 04 2009 RECEIVED

CALIFORNIA APR 30 2009

COASTAL COMMISSION

CALIFORNIA
COASTAL COMMISSION

Name or description of project, LCP, etc.:

Bay Island Club (W14a)

Date and time of receipt of communication:

4/30/09 approx. 9:30am

Location of communication:

La Jolla, Ca.

Type of communication (letter, facsimile, etc.)

telephone call

Person(s) initiating communication:

Janet Fricker

Person(s) receiving communication:

PATRICK Kruer

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

MR Fricker said the applicant is agreeing with the staff recommendation except for the placement of the gate and one other condition. The placement recommended by staff on the island side creates issues for the applicant. I suggested that staff's position is correct in regard to the coastal act. It is not a good position to block off people who have used the existing bridge for fishing or blocking coastal access! It would create a Bad Precedent!

Date

4/30/09

Signature of Commissioner

Patrick Kruer

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

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CALIFORNIA COASTAL COMMISSION

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

W14a

Filed: March 20, 2009
49th Day: May 8, 2009
180th Day: September 16, 2009
Staff: Karl Schwing-LB
Staff Report: April 23, 2009
Hearing Date: May 6-7, 2009
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-09-055

APPLICANT: Bay Island Club

AGENT: Jared Ficker, California Strategies, LLC

PROJECT LOCATION: 1-26 Bay Island, Newport Beach
(Orange County)

PROJECT DESCRIPTION: On a private island developed with 24 single family residences, 1) reinforce, in part, and replace, in part, the entire 1,200 linear foot long bulkhead system; 2) demolish the existing gated pedestrian bridge linking the private island to the mainland and construct a new gated, pedestrian bridge in a slightly different alignment; and 3) construct a 'sand retention wall' offshore of a small private beach on the western side of the island.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project involves construction of shoreline protective devices (bulkhead and sand retention wall) and a new private gated bridge to a private island that is developed with 24 single family homes and various group facilities. The bulkhead component of the project includes placement of a new bulkhead seaward of the existing one resulting in the fill of coastal waters. The Commission typically will only authorize seaward expansion of a shoreline protective device when the applicant has demonstrated there is no feasible alternative that would avoid such seaward expansion (e.g. in-alignment replacement or landward replacement). The applicant did consider the in-alignment/landward placement option and has proposed to implement that option for about half of the proposed bulkhead project. However, for the other half, the applicant has demonstrated that seaward placement of the bulkhead is the only feasible option. The Commission's staff coastal engineer has reviewed the applicant's analysis and has concurred. The applicant is proposing on-site mitigation of open coastal water/benthic habitat to offset the fill impacts caused by seaward placement of the bulkhead.

The applicant is also proposing to demolish an existing gated pedestrian bridge that links the privately owned island to the mainland and construct a new gated pedestrian bridge in a slightly different alignment. The existing bridge is pile-supported; the new bridge is a "truss" type clear-span bridge that has no piles. The existing bridge and piles will be removed after construction of the new bridge, however, Commission staff has concerns regarding the construction of a gate on the mainland side of the new bridge that will prevent the public from using the bridge. This would replicate the existing condition¹. However, Commission staff does not believe it is consistent with the Coastal Act to prevent the public from using a bridge that spans a publicly owned waterway.

¹ The applicant asserts the gate was constructed prior to passage of the Coastal Act, but has not provided any evidence to support the assertion.

The applicant has an easement to construct a bridge over the publicly owned waterway to the privately owned island. However, that easement does not grant the applicant any right to exclude the public from using the bridge. In addition to privacy concerns, the applicant makes an argument that the bridge spans a waterway that is not subject to the public trust. Coastal Commission staff is conferring with State Lands Commission staff regarding the public trust status of the channel dividing the island from the mainland. Coastal Act provisions protecting the public's right of access to coastal waters, however, are not limited to public trust lands. Thus, Commission staff is recommending that the Commission require the applicant to place the gate on the island-side of the bridge. This will allow the public use of the bridge (for access, views, fishing, etc.) over the publicly owned waterway, but will still allow the applicant to maintain the privacy of the island. Conditions recommended allow the applicant to place a temporary gate on the mainland side of the bridge until an entity has been identified that will assume liability and maintenance for public use of the bridge or until either the City of Newport Beach or the State Lands Commission determines that the bridge spans land subject to the public trust. Once such an entity is identified or public trust determination made, the gate must be relocated to the island-side of the bridge and the bridge must be opened for public pedestrian use.

Another component of the project is the installation of a 'sand retention wall' offshore of a small private beach on the western side of the island. The 'sand retention wall' is designed to allow placement of sand to expand the private beach seaward of its present location and to slow down erosion of the sand that is placed there. The sand retention wall is comprised of a partially-submerged sheetpile that will alter local sediment transport and act as a shoreline protective device. The sheetpile also constitutes fill of coastal waters. Development of a private beach is not one of the purposes for which fill can be allowed under Section 30233 of the Coastal Act. Also, the Coastal Act only requires the Commission to approve a shoreline protective device that results in fill of coastal waters when there is no feasible alternative and the device is necessary to protect existing development or a public beach in danger of erosion. The sand retention wall is not necessary to protect existing development (a landward bulkhead already protects the homes on the island) and the beach the applicant is proposing to expand and protect is not public; thus it does not have to be approved under Section 30235. Finally, there are feasible alternatives available (beach nourishment) that are already routinely performed without significant adverse impacts and achieve the same result. Thus, staff is recommending **denial** of the sand retention wall component of the project.

In summary, Staff recommends that the Commission take one vote adopting a two-part resolution, which would **APPROVE** the proposed bulkhead and bridge, subject to conditions addressing the gating, revised plans (to address other conditions and restoration of fishing area), public access sign requirements, conformance with geotechnical recommendations, water quality protection (during and after construction), protection of access during construction, protection of eelgrass and bay habitat, submittal of a final revised benthic habitat mitigation plan, future prohibition on seaward extension of the bulkhead, future development, inspection requirements, assumption of risk, City of Newport Beach final approval, preservation of existing public rights, landscaping, and deed restriction; and **DENY** the proposed sand retention wall.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL & OTHER APPROVALS RECEIVED: Revised Approval in Concept by the City of Newport Beach Harbor Resources Division dated November 26, 2008; Clean Water Act Section 401 Water Quality Standards Certification issued by the California Regional Water Quality Control Board, Santa Ana dated April 14, 2008; Letter from U.S. Coast Guard dated June 6, 2006 regarding navigability of proposed bridge.

SUBSTANTIVE FILE DOCUMENTS: Letter from Moffatt & Nichol dated October 7, 2008; Letter from Moffatt & Nichol dated February 27, 2006; Letter from Moffatt & Nichol dated March 17, 2006; Letter from Moffatt & Nichol dated August 23, 2007; Condition Assessment, Bay Island Club prepared by Cash & Associates dated June 10, 2004; Bay Island Subtidal Habitat Compensatory Mitigation Plan for the Bay Island Bulkhead and Bridge Project...prepared by Coastal Resources Management dated November 2006; Beach Stabilization Study-Bay Island, Newport Beach, California prepared by Moffatt & Nichol dated August 2007; Geotechnical Investigation Bay Island Sea Wall and Bridge Newport Beach, CA prepared by Dial, Yourman & Associates dated January 17, 2006; Clean Water Act Section 401 Water Quality Standards Certification for the Bay Island Bulkhead and Bridge Project, City of Newport Beach (ACOE Reference No. 2006-00441 dated April 14, 2008 issued by the California Regional Water Quality Control Board, Santa Ana Region; Mitigated Negative Declaration by the City of Newport Beach published 10/4/2006; City of Newport Beach, Harbor Committee Staff Report dated March 14, 2007 from Tom Rossmiller to the Harbor Commission, concerning Global Warming and Sea Level Rise Effects on Newport Harbor; Undated document titled "The Bay Island Club's Right to Rebuild Its Bridge" (a.k.a. title history/title primer), no author identified, submitted by applicant; Letter from Jared Ficker dated 3/18/2009 with attachments (truss bridge plans) resubmitting the application; undated, untitled photographs and text submitted by applicant addressing existing and proposed fishing area conditions.

EXHIBITS

1. Vicinity Map
2. Bridge Alignment and Profile
3. Visual simulation of proposed bridge
4. Existing and proposed bridge gate
5. Bulkhead/sheetpile alignments and mitigation plan
6. Plan and profile views of sand retention wall
7. Profile view of bulkhead/sheetpile to be placed seaward of existing bulkhead
8. Profile view of bulkhead/sheetpile to be placed in alignment or landward of the existing bulkhead
9. Applicant's summary of the title history of the island and channel between the island and mainland
10. Applicant's easement to construct a bridge over the channel between the island and mainland
11. Fishing Area on Mainland Affected by Bridge Relocation

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present

A. Motion

“I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit No. 5-09-055, by adopting the two part resolution set forth in the staff report.”

B. Resolution

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **APPROVES**, as conditioned, a coastal development permit for the portion of the proposed development regarding the reinforcement, in part, and replacement, in part, of the entire 1,200 linear foot long bulkhead system and demolition of the existing gated private pedestrian bridge linking the island to the mainland and construct a new pedestrian bridge in a slightly different alignment, and adopts the findings set forth below on grounds that the development as amended and subject to conditions 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 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** the portion of the proposed application for coastal development permit for construction of a 'sand retention wall' offshore of a small private beach on the western side of the island, and adopts the findings set forth below, on the grounds that the development would not conform with the policies of Chapter 3 of the Coastal Act and would 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 of the Coastal Act. Approval of this portion of the application 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 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 CONDITONS

1. DELETION OF SAND RETENTION WALL

The proposed sand retention wall and all affiliated components shall be removed from the proposed project. Revised final plans depicting the removal of this component of the project shall be submitted in accordance with Special Condition 5.

2. PUBLIC ACCESS UPON BRIDGE

Upon demonstration to the Executive Director's satisfaction that a public agency or non-profit entity acceptable to the Executive Director has assumed liability (and/or established liability insurance) for public use of the bridge and provided for maintenance of facilities necessary to support public use (e.g. trash removal, sweeping/washing walkway surfaces, maintenance and periodic replacement of public access signs), or upon receipt by the Executive Director of a determination by the City of Newport Beach or the State Lands Commission that the bridge spans land subject to the public trust, the bridge shall be opened for public use (e.g. pedestrian, fishing, bicycle, etc.). Upon opening the bridge for public use in accordance with the terms identified in the preceding sentence, the bridge shall be open to the general public for use 24-hours per day. After the bridge is opened for public use, any 'development', as that term is defined in Section 30106 of the Coastal Act, that diminishes permanent public pedestrian access and passive recreational use of the bridge is prohibited. Temporary restrictions on public access that are necessary due to maintenance activities that have received Coastal Act authorization may be allowed. Upon notification by the Executive Director to the applicant (via letter sent U.S. Mail) that the liability and maintenance requirements or the public trust determination identified above have been satisfied, the applicant shall remove any existing obstructions (e.g. temporary gating) and signage that prohibits and/or discourages public use of the bridge, and erect public access signage in accordance with the sign plan required pursuant to Special Condition 3, within 45 days of the date of the notice. The applicant may establish gating to prevent public access to and upon privately owned Bay Island at the termination of the bridge at Bay Island in accordance with final plans required pursuant to Special Condition 4.

3. PUBLIC ACCESS SIGN PLAN

Final plans submitted for review and approval to the Executive Director shall include a detailed signage plan. Signs shall invite and encourage public use of the bridge and shall identify and direct the public to its location. Signage shall include facility identification/directional monuments (e.g. location of amenities); and informational signage and circulation. Sign plans shall be prepared that address public access conditions prior to opening the bridge for public access and for public access conditions after opening the bridge for public access in accordance with Special Condition 2. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required. The public access signs to be in place prior to opening the bridge for public access shall be erected prior to or concurrent with the completion of construction of the bridge. The public access signs required to be in place upon opening the bridge to public access shall be erected within the timeframe identified in Special Condition 2.

4. BRIDGE GATING PLAN

Final plans submitted for review and approval to the Executive Director shall include final plans for gating the bridge. A temporary gate may be established at the mainland termination of the bridge until the bridge is opened for public use in accordance with Special Condition 2. A permanent gate may be established at the Bay Island termination of the bridge once the bridge is opened for public use. The temporary and permanent gates shall replicate (in dimensions, materials, opacity and design) the existing gate that will be demolished when the existing bridge is demolished.

5. FINAL PROJECT PLANS

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans (i.e. site plan, elevations, cross-sections, grading, foundation, structural, etc.) revised to be consistent with the conditions of this permit. In addition, the final plans shall demonstrate that a bayfront area, on the mainland, immediately adjacent to and equivalent in size to the existing bay front area used for fishing, shall be provided through timely demolition of the old bridge and restoration of the area to be relatively flat, open and unobstructed for public use and fishing therefrom.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. FINAL PLANS CONFORMING TO GEOTECHNICAL RECOMMENDATIONS

- A. All final bulkhead replacement design and construction plans shall be consistent with all recommendations contained in *Geotechnical Investigation Bay Island Sea Wall and Bridge Newport Beach, CA prepared by Dial, Yourman & Associates dated January 17, 2006*. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

7. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

- a. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave/wind erosion and dispersion;
- b. Any and all debris resulting from construction activities shall be removed from the site within 24 hours of completion of construction;
- c. Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone;
- d. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- e. If turbid conditions are generated during construction; a silt curtain shall be utilized to control turbidity;
- f. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- g. Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.

8. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the

disposal site of the construction debris resulting from the proposed project. Disposal of construction debris shall occur at the approved disposal site. If the disposal site for the construction debris is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

9. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

PRIOR to the issuance of the COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan, including supporting calculations. The plan shall be prepared by a licensed civil engineer or qualified licensed professional and shall incorporate Best Management Practices (BMPs) including site design and source control measures designed to control pollutants and minimize the volume and velocity of stormwater and dry weather runoff leaving the developed site. In addition to the specifications above, the consulting civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

1. BMPs should consist of site design elements and/or landscape based features or systems that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas on site, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
2. Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system design based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.
3. All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Erosion and Sediment Control Conditions for this Coastal Development Permit.
4. Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains.
5. For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
6. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
7. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil

engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

10. STAGING AREA DURING CONSTRUCTION

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access, beach areas or to sensitive habitat areas.
- (1) The plan shall demonstrate that:
 - a. Construction equipment or activity shall not occur outside the staging area
 - b. Public parking areas shall not be used for staging or storage of equipment
 - c. Public sandy beach or habitat (vegetated) areas shall not be used for staging or storage of equipment
 - d. The staging area for construction of the project shall not obstruct vertical or lateral public access to the beach, bayfront or other public recreational areas
 - (2) The plan shall include, at a minimum, the limits of the staging area(s) and location of construction fencing and temporary job trailers, if any.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. EELGRASS REQUIREMENTS

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

eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

12. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

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

13. SUBMITTAL OF FINAL REVISED BENTHIC ENHANCEMENT & MONITORING PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall develop, in consultation with the CA Department of Fish and Game and the U.S. Fish and Wildlife Service and National Marine Fisheries Service, as appropriate, and submit for review

and written approval of the Executive Director, a final detailed plan designed by a qualified benthic ecologist for restoration and monitoring 0.071 acres of new subtidal habitat in substantial conformance with the *Bay Island Subtidal Habitat Compensatory Mitigation Plan for the Bay Island Bulkhead and Bridge Project*...prepared by Coastal Resources Management dated November 2006, except that the program shall be revised to, at a minimum, include the following:

1. In addition to the subtidal bathymetry, slope and sediment success criteria that will be based on pre-construction surveys of the reference area, success criteria shall also include epifaunal and infaunal community structure. Epifaunal and infaunal community structure criteria shall be based on pre-construction surveys of the in the reference area. That is, the compensatory site shall meet the success criteria if it is similar (with less than or equal to a 10% difference) to the reference area in terms of subtidal bathymetry, slope, and sediment characteristics and epifaunal and infaunal community structure.
 2. Provisions for monitoring and remediation of the benthic enhancement site in accordance with the approved final benthic enhancement, monitoring and management program for a period of five years or until it has been determined that success criteria have been met, whichever comes first.
 3. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the "as-built" assessment. Each report shall include copies of all previous reports as appendices. Each report shall be a cumulative report that summarizes all previous reports. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the benthic enhancement project in relation to the success criteria.
 4. Provisions for submission of a final monitoring report to the benthic enhancement site conforms to the goals, objectives, and success criteria set forth in the approved final benthic enhancement program. The report must address all of the monitoring data collected over the monitoring period.
 5. The permittee shall implement a long term perpetual management, maintenance and monitoring plan for the benthic enhancement area. The goal of the long term plan shall be to preserve the enhanced benthic area in its enhanced condition. The plan shall include a description of the perpetual management, maintenance and monitoring actions. The landowner(s) shall provide funding adequate to achieve the goal of the plan.
- B. If the final report indicates that the benthic enhancement has been unsuccessful, in part, or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental benthic enhancement program to compensate for those portions of the original program which did not meet the approved success criteria. The revised benthic enhancement program, if necessary, shall be processed as an amendment to this coastal development permit.
- C. The permittee shall enhance, monitor and manage the benthic enhancement area in accordance with the approved program, including any revised program approved by the Commission or its staff. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without a

Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

14. NO FUTURE SEAWARD EXTENSION OF SHORELINE PROTECTIVE DEVICE

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, modifications to address rising sea level, increased risk of flooding or other hazards, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit No. 5-09-055, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- B. Prior to the issuance by the Executive Director of the NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the shoreline protective device approved by this permit, as generally described above and shown on Exhibit 5 attached to this staff report, showing the footprint of the device and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

15. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in coastal development permit No. 5-09-055. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the development governed by the coastal development permit No. 5-09-055. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. 5-09-055 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

16. INSPECTION

The permittee shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the requirements of the permit, subject to twenty-four hours advance notice.

17. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from liquefaction, erosion, tidal action, flooding, and sea level rise; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold

harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

18. CITY OF NEWPORT BEACH APPROVAL

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

19. PUBLIC RIGHTS

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

20. LANDSCAPING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final landscaping plans prepared by an appropriately licensed professional which demonstrates the following:

(1) The plan shall demonstrate that:

- (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) Landscaped areas not occupied by hardscape within the project limits shall be planted and maintained for erosion control, water quality protection, and public use and enjoyment of publicly owned lands. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See:

<http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping within the project limits that doesn't meet the above requirements shall be removed.

(d) Irrigation to allow the establishment and maintenance of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system along with notations regarding all changes necessary thereto to comply with the requirements of this special condition.

(e) Landscaping shall be designed and maintained to invite and encourage public use of the publicly owned land on the mainland side of the bridge terminus, including use of the area for viewing and fishing. All aspects of the plantings (e.g plant type, size, location, density of distribution, etc.) shall be designed in a manner that does not obstruct or interfere with public views or public use and enjoyment of the publicly owned land located around the mainland terminus of the bridge.

(2) The plan shall include, at a minimum, the following components:

(a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and

(b) a schedule for installation of plants.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

21. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) owned by the applicant that are governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. PROJECT LOCATION & DESCRIPTION

1. Project Location

The proposed project is located in Newport Beach, Orange County, at Bay Island in Lower Newport Bay, on the mainland at the intersection of Island Avenue and East Edgewater Avenue (a paper street developed with a public walkway), and the waterway between the island and mainland (Exhibit 1). The island is privately owned and developed with 24 single family residences. A gated pedestrian bridge links the island to the mainland (Balboa Peninsula). No public access across the bridge or on the island is presently available. No motor vehicles (e.g. cars, trucks) are allowed on the island. Residents of the island park their vehicles in a garage on the mainland and walk, bicycle or use other small personal transit (e.g. golf cart) to cross the bridge to the island. The private island is protected on three of its four sides by a bulkhead system. A wide sandy beach is present on the fourth (easterly) side.

2. Project Description

The proposed project consists of three main components: 1) reinforcement, in part, and replacement, in part, of the entire bulkhead system 2) demolition of the existing gated private pedestrian bridge and construction of a new gated, private pedestrian bridge in a slightly different alignment; and 3) construction of a 'sand retention wall' offshore of a small private beach on the western side of the island. The entire project will take approximately 6 to 9 months to construct.

Bulkheads are located on the northern, western and southerly side of the island. According to the applicant, these bulkheads were constructed in the late 1920's. Two types of bulkheads are present. On the southern and north eastern sides of the island the bulkheads consist of steel sheetpiles with a concrete cap and tiebacks to timber pile anchors. On the western side the bulkhead is constructed of concrete soldier piles with tiebacks to timber pile anchors and concrete panels between the soldier piles. There is a concrete cap on top of the entire bulkhead system. These bulkheads are cracking, spalling and weakening due to corrosion; in some locations the bulkheads are beginning to fail.

Two approaches are proposed to fix the bulkhead system (Exhibits 5, 7, 8). On the southern, southwestern and southeastern areas a new approximately 600 linear foot long bulkhead will be installed within or landward of the existing footprint of the existing bulkhead. Once the new bulkhead is installed, the existing bulkhead will be removed creating new subtidal habitat. This new habitat will be used as mitigation to offset fill impacts caused by the second approach to fixing the bulkhead, as well as other fill caused by other components of the project. In the second approach, a new bulkhead will be constructed seaward of the existing bulkhead. This segment is also about 600 linear feet long. The space between the existing and new bulkhead will be filled with gravel or concrete. This approach results in fill of coastal waters and is being used in those areas where there is not sufficient room landward of the bulkhead to use the first approach described above due to the location of the homes along the bulkhead.

In total, approximately 1200 linear feet of bulkhead will be reinforced or replaced. The new bulkhead will be composed of steel. No steel coating is proposed. A new concrete cap will be

constructed on top of the new bulkhead. The top elevation of the cap will be +9 feet Mean Lower Low Water (MLLW) which brings the project into compliance with City bulkhead height requirements. A new drainage system with Tideflex valves will be installed as well to allow for drainage of dry weather and storm runoff.

Most of the construction will occur from a floating barge. However, some on-land storage of materials will be required. Existing docks and gangways will need to be temporarily removed during construction and will be replaced upon completion with minor adjustments to account for the new bulkhead design.

The existing private, gated pedestrian bridge which was constructed in the 1950's will also be replaced with a new bridge. The existing bridge is approximately 140 feet long and 11 feet wide, spanning a 60 foot wide channel. The channel over which the bridge crosses is used by small recreational boats (Duffy boats, kayaks, rowboats); however, larger boats can't navigate under the bridge due to the low bridge deck. An assessment prepared by the applicant's consultant states the existing bridge is in 'fair' condition, but is not compliant with ADA requirements and does not meet seismic requirements. The applicant indicates the existing bridge would likely be severely compromised or would collapse during an earthquake. The existing bridge carries all utilities over to the island (water, sewer, gas, electrical, communications). Loss of the bridge would also result in loss of utilities to the island.

The proposed bridge would be constructed just north of and adjacent to the existing bridge (Exhibit 2a). The bridge would be 130 feet long and about 10 feet wide. Utilities will be relocated from the existing to the replacement bridge. The bridge will be a 'truss' type bridge that spans the waterway without use of pilings (Exhibit 2b, 3). A new drainage system will be constructed to direct runoff to trench drains and the storm drain system on land. The existing bridge will be demolished upon completion of the new bridge.

The bridge to be demolished is gated on the mainland side of the bridge (Exhibit 4). The existing gate is about 5 feet tall and constructed of wrought iron with a sign affixed to it. The existing wrought iron gate is comprised of widely spaced narrow bars and any approaching pedestrian can see through the gate. Another sign spans the gate entrance, mounted on two heavy pilasters flanking the entrance, with the community name, "Bay Island", on it. This existing gate and entry will be demolished and removed. The proposed new gate would be located at the mainland side entry point to the new bridge. The proposed gate with sign mounted on flanking pilasters is designed similar to the existing one. However, the new gate will be taller (estimated 6 feet) than the existing one and appears to be constructed of a solid material that approaching pedestrians cannot see through.

Last, the applicant is proposing a 'sand retention wall' to protect an existing pocket beach located on the western side of the island that exists in between a break in the bulkhead wall (Exhibit 6). The submerged wall to be constructed in the water offshore of the beach is designed to prevent sand from leaving the beach area. The wall will be L-shaped and connect with an existing groin such that the sandy beach will be boxed in on 3 sides. The section of the wall parallel to the shore will be about 80 feet long, and the segment perpendicular to shore would be 23 feet long. The wall is proposed to be constructed of fiberglass. The wall would occupy approximately 100 square feet of subtidal habitat.

B. APPROVAL FINDINGS AND DECLARATIONS

1. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: . . . (2) Adequate access exists nearby . . . Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The City's recently updated certified Land Use Plan (LUP) also contains the following policies that would apply to the proposed development:

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.2-1. states,

Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.3-5 states,

Continue to provide and protect public beaches and parks as a means of providing free and lower-cost recreational opportunities.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-2 states,

Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-4 states,

Identify and remove all unauthorized structures, including signs and fences, which inhibit public access.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-11 states,

Require new development to minimize impacts to public access to and along the shoreline.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-16 states:

Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.

Coastal Land Use Plan Policy 3.1.5-1 states:

Prohibit new development that incorporate gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

Coastal Land Use Plan Policy 3.1.5-2 states:

Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

Coastal Land Use Plan Policy 3.1.5-3 states:

Require public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts.

Gating the Bridge and Public Access to Public Lands

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The City's certified Land Use Plan (used as guidance) also strongly supports protection and enhancement of coastal access. The subject proposed private bridge would span over a publicly owned waterway owned by the City of Newport Beach. Bridges such as the one proposed could be used for fishing, viewing, and passive uses.

The general public currently has access to and along the bulkheaded bayfront on the mainland via public streets and a walkway that runs along the landward side of the bulkhead; however, they don't have access to the bridge at the subject site or to the private island². An existing gate at the mainland side of the bridge prevents public use of the existing bridge. There are public parking spaces on the mainland in the vicinity of the entrance to the bridge upon surrounding public streets.

The bridge to be demolished is gated on the mainland side of the bridge (Exhibit 4). The gate is about 5 feet tall and constructed of wrought iron. A sign affixed to the gate states "Electric Gate, Members, Guests & Deliveries Only, Press Button". Another sign spanning the gate entrance, mounted on two heavy pilasters flanking the entrance, state "Bay Island". This existing gate and entry will be demolished and removed.

A new proposed 'entrance structure' (i.e. gate) will then be constructed at the entry point of the new bridge. The gate would be placed on the mainland side of the bridge and would prevent the public from accessing the bridge. Access would be limited to residents and guests of Bay Island. However, if the proposed gate were located on the Bay Island side of the bridge, the public would have access to and over these publicly owned submerged lands.

Although the public hasn't had access upon the existing bridge, public access upon the new bridge would be beneficial. Presently, there is access along the bayfront on this section of the Balboa Peninsula; access to the bridge would tie in to this existing lateral access along the waterfront. It would provide the public opportunity for alternative viewpoints of this scenic waterfront area. Based upon comment letters submitted to the Commission, this area is known to be a popular place for recreational fishing and the bridge would offer additional opportunity for fishing.

The area over which the new bridge will span is submerged lands presently owned by the City of Newport Beach. Although the lands are submerged and publicly owned, the applicant asserts that these were once 'swamp and overflowed lands' that are not subject to the public trust (Exhibit 9)³. Thus, they assert that they are allowed to gate the bridge and exclude the public from using the bridge. As of the date of this staff report, State Lands Commission staff is still investigating the public trust status of the channel. However, even if the waterway is not subject to the public trust, the applicant still has no right under the Coastal Act to exclude the public from using the bridge spanning this publicly owned waterway. The applicant owns an easement (Exhibit 10) to construct a bridge for pedestrian and vehicular use over these publicly owned submerged lands, but that easement does not contain any provision allowing the applicant to exclude the public

² The applicant asserts the gate was lawfully constructed prior to passage of the Coastal Act, but has not provided any evidence to support the assertion. There are no coastal development permits for any gate to the bridge.

³ The applicant asserts that the island was once attached to the mainland via upland 'swamp and overflowed lands'. Furthermore, they assert that through a patent in 1902 the lands were conveyed to the State of California under authority of the Swamp Lands Act and that via that process the lands were alienated and free of any public trust for navigation. The lands were subsequently conveyed into private ownership. At some point during this period the area between the Balboa Peninsula and the current Bay Island was dredged and the waterway was conveyed back into public ownership to the City of Newport Beach (see Exhibit 9). State Lands Commission staff is currently investigating the public trust status of the waterway.

from using the easement area (including any bridge constructed in the easement area)⁴. Section 30210 of the Coastal Act requires the maximum public access be provided. Section 30212 of the Coastal Act requires that public access to the shoreline and along the coast be provided in new development project, except where adequate access exists nearby: no access similar to that provided by this proposed bridge exists in the vicinity. Section 30213 of the Coastal Act encourages provision of lower cost visitor and recreational facilities; such facilities would be provided by making the bridge available for public access. The City of Newport Beach's Coastal Land Use Plan includes many similar policies encouraging improvement of public access. Thus, excluding the public from using the bridge is inconsistent with Sections 30210, 30212 and 30213 of the Coastal Act.

The existing and proposed bridges span a waterway that is navigable⁵. However, the existing and proposed bridges do not have sufficient clearance under them to allow all classes of watercraft to pass beneath the bridge. The proposed bridge will have an 11.3' above MLLW clearance at the centerpoint of the bridge, with lesser clearance toward the sides of the channel as the bridge slopes downward from its centerpoint. Only small watercraft (e.g. row boats, kayaks, etc.) can navigate under a bridge with this clearance. Thus, the existing and proposed bridges obstruct a significant category of public use of the waterway (e.g. by sail boats). Although this is an existing condition, the proposed project will not resolve the issue and thus will perpetuate an existing limitation on public access and recreational boating use of the waterway. Section 30224 of the Coastal Act encourages increased recreational boating use of coastal waters by, among other means, "...limiting non-water-dependent land uses that congest access corridors...". The existing and proposed bridges provide access to residential development, a non-water dependent land use. The proposed bridge will perpetuate an existing congestion of an access corridor. Opening the proposed bridge to public access will provide a means of alleviating the adverse access impacts of the bridge⁶.

In order to bring the proposed development into conformance with the Coastal Act, the Commission imposes Special Conditions 2, 3, and 4. Special Condition No. 2 requires the applicant to open the bridge for public pedestrian (including fishing) and bicycle access and use upon demonstration to the Executive Director's satisfaction that a public agency or non-profit entity acceptable to the Executive Director has assumed liability (and/or established liability insurance) for public use of the bridge and provided for maintenance of facilities necessary to support public use of the bridge (i.e. trash removal, sweeping/washing walkway surfaces, maintenance and periodic replacement of public access signs) or upon the Executive Director's receipt of a determination by the City of Newport Beach or the State Lands Commission that the waterway is subject to the public trust. The special condition also includes other requirements related to the hours of access (24-hours per day), and establishes procedures and timelines that must be followed to effectuate opening the bridge for access. The hours of access are set at 24-hours per day because the walkways leading to the bridge are also open 24-hours per day. As stated in the condition, there may be a period of time when no entity has accepted liability and maintenance for public use of the bridge and no determination has been made regarding the

⁴ The easement states that Bay Island Club has the "...right and easement to construct, maintain, repair and replace a bridge for pedestrian and/or automobile travel over and across that part of the hereinafter described property included within the Northerly extensions of the side lines of either Island Avenue, Anade Avenue or Montero Avenue." (see Exhibit 10)

⁵ See letter from the U.S. Department of Homeland Security, United States Coast Guard, to Moffatt & Nichol, dated June 6, 2009 (a substantive file document)

⁶ Although, this won't represent an equivalent offset to the adverse impact on recreational boating and access.

public trust status of the waterway. During this period, the applicant may exclude the public from using the bridge. Special Condition No. 4 requires the applicant to submit plans for gating the bridge during the temporary closure period and for the period after the bridge is opened for public use. A temporary gate may be established at the mainland termination of the bridge until the bridge is opened for public use. A permanent gate may be established at the Bay Island termination of the bridge once the bridge is opened for public use. The temporary and permanent gates shall replicate (in dimensions, materials, opacity and design) the existing gate that will be demolished when the existing bridge is demolished. Special Condition No. 3 requires the applicant to prepare and implement a sign plan. Signs shall invite and encourage public use of the bridge and shall identify and direct the public to its location. The sign plans are to be prepared that address public access conditions prior to opening the bridge for public access and for public access conditions after opening the bridge for public access. As conditioned, the Commission finds the project to conform to Sections 30210, 30212 and 30213 of the Coastal Act.

Public Access and Fishing Area Surrounding Mainland Terminus of Bridge

The publicly owned area of land on the mainland side of the existing and proposed bridge terminus is used by the public for viewing, access to the bay, and for fishing. The area is apparently quite popular for fishing. The proposed project will cause temporary disturbance to the area due to construction activity. Since the new bridge is being located in a slightly different alignment than the old one, the new bridge will occupy some land area that is currently used by fisherman.

The applicant asserts that the proposed project will have no long term adverse impacts on the public's ability to fish from the mainland area surrounding the bridge. The applicant states that there is approximately 280 lineal feet of water's edge available for public access / fishing along this length of bulkhead wall adjacent to the bridge terminus. The new bridge will cover only 10 linear feet of this stretch. All of the bulkhead along Edgewater Avenue is on public right-of-way and should be available for fishing. At the western end, there is a 40'x40' waterside area and a large shade tree in the middle. Finally, demolition of the existing bridge (over an approximate 10 feet length footprint) will create a better new fishing area. The channel bottom in front of the existing "fishing area" is shallower than the 100 square feet of beach that will be uncovered when the existing bridge is demolished, so the new fishing area should be more conducive to fishing.

However, the applicant has not submitted final plans that will demonstrate restoration or re-creation of new fishing area around the terminus of the new bridge. In addition, landscaping could interfere with public use of the area. Therefore, final plans must be submitted demonstrating the applicants proposal relative to the fishing area. In addition, landscaping must be designed in a manner that encourages, and does not discourage, interfere with, or obstruct, public use of the area for access and fishing. Therefore, the Commission imposes Special Conditions 5 and 20.

2. SHORELINE PROTECTIVE STRUCTURES

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse

impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in relevant part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (c)*

Site conditions include an existing, deteriorating bulkhead. The applicant submitted an assessment study of the existing bulkhead and replacement recommendations titled: *Condition Assessment* by Cash & Associates dated June 10, 2004. The investigation determined the following: 1) the existing bulkheads do not meet current seismic loading standards; 2) steel sheet piles show severe corrosion, pitting, reduced thickness, and some spalling. The report recommends reinforcement, in part, and replacement, in part of the bulkhead.

The bulkhead at the subject site is required to protect the structural integrity of the site from tidal activity. If the bulkhead were removed and not replaced, tidal activity would erode and destabilize the residential sites and the development landward of the bulkhead. Therefore, the proposed bulkhead is necessary to protect existing structures. The applicant also provided information indicating that if the bulkhead were to fail, approximately 105 cubic feet of soil per linear foot of failed bulkhead would be discharged into the bay causing adverse water quality impacts and impacts to bay bottom habitat.

The existing bulkhead does not meet present engineering standards and poses a risk to life and property because lot stability may be threatened by failure of the aging, corroding existing bulkhead. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior bulkhead system. **SPECIAL CONDITION NO. 6** requires final plans incorporating the recommendations in the bulkhead evaluation. In addition, to minimize risks to life and property, the development has been conditioned to require that the landowner and any successor-in-interest assume the risk of undertaking the development, as specified in **SPECIAL CONDITION NO. 17**.

The bulkhead design will conform to the current minimum elevation requirements set by the City of Newport Beach, that the bulkhead elevation be at least +9 foot MLLW. This elevation has been established as a minimum standard and, according to the City of Newport Beach's Harbor Committee Report on Global Warming and Sea Level Rise Effects on Newport Harbor, many of the existing bulkheads are lower than the 9 foot MLLW standard. Bulkhead standards for Dana Point and Huntington harbor require new bulkheads be built to +10 foot MLLW elevation. The City of Newport Beach recommended minimum elevation does not take into account a significant rise in sea level and it is likely that the proposed bulkhead will need to be elevation in the coming

decades to provide flood protection from rising sea level. **SPECIAL CONDITIONS NO. 14 and 15** require that any future maintenance or work to address changing sea level, increased flooding or other coastal hazards be undertaken on or inland of the proposed development and that there not be any seaward encroachment beyond the identified and recorded line of development.

Therefore, the Commission finds that the proposed development, as conditioned, conforms with Section 30235 and 30253 of the Coastal Act.

3. MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states in part:

(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 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.

Fill of Coastal Waters and Loss of Marine Habitat

The proposed project includes replacement of a portion of the existing bulkhead in the same or further inland alignment and that component of the project will not result in new fill of coastal waters. However, another 600 linear foot section would involve retaining the existing bulkhead and constructing a new bulkhead adjacent to but seaward of the existing one resulting in fill of approximately 0.018 acres (784 sq. ft) of coastal waters (Exhibit 5).

Section 30233(a) limits the diking, filling and dredging of open coastal waters to certain specific allowable uses. In order for fill of open coastal waters to be approved, the proposed project must be found to be an allowable use, the project must also be the least environmentally damaging alternative, and the project must have adequate mitigation measures to minimize adverse impacts. Although fill of open coastal waters for a bulkhead to protect existing development is not listed as an allowable use under section 30233(a), section 30235 requires the Commission to permit certain categories of shoreline protective devices. As explained above, the proposed bulkhead meets the requirements of section 30235.

Alternatives to the proposed project include no project, replacement of the bulkhead in precisely the same alignment, replacement of the bulkhead landward of its existing alignment or replacement of the bulkhead seaward of its existing alignment.

Under the no project alternative, the applicant could only pursue simple maintenance activity. However, simple maintenance could not feasibly repair the bulkhead, nor to bring it up to present engineering, seismic and safety standards. Simple maintenance would only prolong the condition of the existing bulkhead. Ultimately, maintenance efforts would be unable to address the deteriorating bulkhead and the bulkhead would fail causing damage to structures and habitat.

A second alternative would involve replacement of the bulkhead on or behind the existing alignment. The applicant has chosen the in-alignment replacement alternative for a 600 linear foot section of the bulkhead because it is feasible to do so for that segment. However, for the remaining 600 linear feet, the applicant has stated that in-alignment replacement or landward installation would not be feasible due to the location of existing homes within a few feet of the bulkhead. Those homes prevent implementation of the in-alignment or landward installation of the bulkhead.

The third alternative would be to retain a portion of the existing bulkhead in place and install a new bulkhead adjacent to but seaward of the existing wall that results in fill of 0.018 acres (784 sq. ft) of soft bottom bay habitat. Due to the site constraints and with mitigation, this element of the project can be considered to be the least environmentally damaging feasible alternative. The

applicant is proposing mitigation in the form of creation of 0.071 acres (3093 sq.ft.)⁷ of subtidal bay habitat. This will be created by re-aligning a portion of the existing bulkhead elsewhere on the site slightly landward (where there are no structures inland preventing such realignment). Approximately 760 cubic yards of the private sandy beach area used for private recreational purposes would be excavated. Some additional sub-tidal soft bottom habitat (about 31.5 square feet) will be gained by removal of the existing bridge pilings. Once the re-aligned bulkhead is constructed and the sand excavated, tidal action will be present. No vegetation planting is proposed (the impact area is also not vegetated). The restoration area is expected to be voluntarily colonized by marine benthic organisms within 6 to 12 months. **SPECIAL CONDITION NO. 13** requires the applicant to revise the benthic habitat mitigation plan to include success criteria for epifaunal and infaunal community structure and to include provisions for monitoring and remediation of the benthic enhancement site in accordance with the approved final benthic enhancement, monitoring and management program for a period of five years or until it has been determined that success criteria have been met, whichever comes first. Furthermore, **SPECIAL CONDITION NO. 14** requires no future seaward extension of the bulkhead into coastal waters to avoid future fill of coastal waters. The applicant agrees that installing a new bulkhead in front of the existing bulkhead would facilitate the eventual replacement of the new bulkhead in the future in a more landward location.

Water Quality Impacts

The proposed project is located in and over the coastal waters of Lower Newport Bay. Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include the Lower Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water quality should be examined to assure that potential impacts are minimized. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

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

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region. Since the proposed project has the potential to affect water quality, the development requires review by the RWQCB. In order to assess impacts upon water quality, the proposed

⁷ This quantity comes from Figure 4 of the document titled Bay Island Habitat Mitigation Plan prepared by Coastal Resources Management dated November 2006. This figure is larger than the figure referenced in earlier proposals submitted by the applicant.

project was submitted to the California Regional Water Quality Control Board (RWQCB). The RWQCB determined that if certain conditions were adhered to, the project should not adversely impact water quality. The RWQCB reviewed the project and issued a Clean Water Act Section 401 Water Quality Standards Certification contingent upon special conditions relating to discharge into coastal waters and turbidity control.

Due to the proposed project's location on the water, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. The applicant has stated that they intend to implement best management practices (BMPs) to reduce impacts to water quality and biological resources, such as use silt curtains to confine sediments during construction activities. In addition to these BMPs, additional best management practices are necessary. Thus, in order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 7** has been imposed, which outlines additional construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

Since the applicant has not identified a disposal site for the construction debris, in order to prevent impacts to coastal waters from construction debris and dredge sediments re-entering coastal waters, the Commission imposes **SPECIAL CONDITION NO. 8**, requiring all construction debris be disposed of at a legal site approved by the Executive Director. Choice of a site for construction debris disposal within the coastal zone shall require an amendment to this permit or a new coastal development permit.

Post-Construction Impacts to Water Quality

The proposed project involves installation of a steel sheetpile bulkhead. No materials are proposed that would treat and coat any steel sheet piles. Were the applicant to include such materials they would need to be reviewed for water quality impacts because certain substances may have an adverse impact on water quality. In this case, no such coating is proposed.

The applicant is proposing to install one-way Tideflex valves along the bulkhead to allow for discharge of dry weather and storm related runoff from the island. The applicant proposes a 'basket type filtration unit' to prevent debris from being discharged into the bay. In addition, the drainage from the new bridge will be directed to the island-side and mainland-side drainage systems. Although preventing the discharge of debris is appropriate, there would be other pollutants of concern entrained in runoff that need to be addressed. These pollutants include those normally associated with residential development, such as pesticides, herbicides, oil and grease from vehicles, etc. **SPECIAL CONDITION NO. 9** requires the applicant to submit a Water Quality Management Plan (WQMP) that includes appropriate Best Management Practices (BMPs)

such as specific details and requirements ensuring that runoff from the project site is appropriately treated to address pollutants of concern before being discharged into Newport Bay.

Eelgrass

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

An eelgrass habitat surveys were conducted in 2005 and 2006 by a qualified biologist. These surveys determined that eelgrass is present in small patches around the island, but none of the eelgrass occurs within the project footprint. Thus, no adverse impacts to eelgrass are anticipated. However, eelgrass surveys are only valid for a short period of time. Completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The eelgrass surveys are over 2 years old and are no longer valid. Thus, an up-to-date eelgrass survey must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 11**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of eelgrass. If eelgrass is found in the project area that would be impacted, the applicant must seek an amendment to the coastal development permit to address this issue.

Caulerpa Taxifolia – Invasive Algae

As noted above, eelgrass is a sensitive aquatic plant species which provides important habitat for marine life. Eelgrass grows in shallow sandy aquatic environments which provide plenty of sunlight. In 2000, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* was discovered in parts of Huntington Harbor in Orange County and in Agua Hedionda Lagoon in San Diego County, which both occupy similar habitat. *C. taxifolia* is a tropical green marine alga that was popular in the aquarium trade because of its attractive appearance and hardy nature but possession or release of live *C. taxifolia* is now illegal within California pursuant to Fish and Game Code section 2300. Nevertheless, other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. A *C. taxifolia* survey for the site was completed. A NMFS certified *Caulerpa* field biologist did not observe any invasive algae at the project site. However, that survey is now out of date. Thus, **SPECIAL CONDITION NO. 12** requires the applicant conduct a pre-construction *C. taxifolia* survey to protect the shallow marine habitat in the vicinity of the project area from a possible infestation.

4. **DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act with respect to public access, hazards, fill of coastal waters, water quality, and marine life, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

5. **LOCAL APPROVALS AND PUBLIC RIGHTS**

The City of Newport Beach provided an 'approval in concept' for the proposed project, but no evidence of final approval has been submitted. The City of Newport Beach did not address public trust issues in the approval in concept. Accordingly, the Commission imposes **SPECIAL CONDITION NO. 18**, requiring the applicant to submit proof of any necessary approvals by the City of Newport Beach or that no approvals are required. In addition, because the Commission does not have a definitive determination regarding the public trust status of the channel between Bay Island and the mainland, the Commission imposes **SPECIAL CONDITION NO. 19** to establish that approval of this permit does not constitute a waiver of any public rights that may exist with respect to the channel.

6. **LANDSCAPING**

Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation in nearby dunes (on the beach on the seaward side of the peninsula) and in Upper Newport Bay. Invasive plants are generally those identified by the California Invasive Plant Council (www.cal-ipc.org) and California Native Plant Society (www.CNPS.org) in their publications.

All plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Low water use, drought tolerant plants require less water than other types of vegetation, thereby minimizing the amount of water runoff due to irrigation. Therefore, the Commission imposes a special condition which requires that prior to the issuance of this permit, the applicant shall prepare a landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize runoff, a revised landscaping plan consistent with the requirements in the special condition shall be prepared by a licensed landscape architect.

As conditioned, the landscaping will be consistent with the Chapter 3 policies of the Coastal Act.

7. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

8. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since Chapter 3 of the Coastal Act is still the standard of review, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Hazards and Protective Devices, Policy 2.8.1-4 states,

Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Artificial Coastal Protection, Policy 2.8.6-5 states,

Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Water Quality, Policy 4.1.2-1 states,

Maintain, enhance, and, where feasible, restore marine resources.

Water Quality, Policy 4.1.2-5 states,

Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.

Eelgrass Meadows, Policy 4.1.4-1 states,

Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

Eelgrass Meadows, Policy 4.1.4-1 states

Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

9. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. The City of Newport Beach is the lead agency for CEQA purposes. The City determined that a mitigated negative declaration was appropriate. Mitigation measures were required to address glare from lighting, air quality, fill of coastal waters, cultural resources (the existing bridge could be considered a historic resource due to its age), and noise due to pile driving operations.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard and scenic resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions addressing gating the new bridge, revised plans, public access sign requirements, conformance with geotechnical recommendations, water quality protection (during and after construction) protection of access during construction, protection of eelgrass and bay habitat, submittal of a final revised habitat mitigation plan, future prohibition on seaward extension of the bulkhead, future development, inspection requirements, assumption of risk, City of Newport Beach final approval, preservation of existing public rights, and deed restriction.

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

C. DENIAL FINDINGS AND DECLARATIONS

1. SAND RETENTION WALL\PROTECTIVE DEVICES AND FILL OF COASTAL WATERS

Section 30230 of the Coastal Act states:

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

Section 30233 of the Coastal Act states in part:

(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 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.

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.

The applicant is proposing a 'sand retention wall' to protect an existing pocket beach located on the western side of the island that exists in between a break in the bulkhead wall. The partially submerged wall to be constructed in the water offshore of the beach is designed to prevent sand from leaving the beach area. The wall will be L-shaped and connect with an existing groin such that the sandy beach will be boxed in on 3 sides (the 4th open side being the sandy back beach- which, itself, is backed by a bulkhead). The section of the wall parallel to the shore will be about 80 feet long, and the segment perpendicular to shore would be 23 feet long. The wall is proposed to be constructed of fiberglass. The wall would occupy approximately 100 square feet of subtidal habitat. Additional area would be filled by backfilling the walled-in area with sand to form dry beach (estimated to be about 350 cubic yards of sand).

The existing pocket beach is a privately owned beach and is approximately 1000 square feet (115 square yards) in size. According to the applicant, the beach area routinely erodes due to gravity because the slope of the beach is steeper than the natural equilibrium profile for the grain size found on the beach. In effect, the sand slides off the beach into deeper water. The beach would need to be about twice as flat as it is in order to retain sand on it naturally. The applicant states that there is no/very little cross shore sediment transport to move sand naturally onto the beach.

In the past, the erosion issue has been addressed through beach nourishment. There are existing privately used docks flanking the subject beach. Sand shoals within those docks and must be routinely dredged. The sand dredged from the dock areas is placed on the subject beach (usually 100 to 300 cubic yards), and in front of other bulkhead areas flanking the beach. The applicant indicates these activities take place about every five years and that the nourished area usually erodes away within about six months and the sand deposits back within the adjacent dock area.

The applicant's analysis states that the proposed sand retention walls would extend the duration the sandy beach would be present from about 6 months to about 10 years; after which point the area would need to be re-nourished with sand. The applicant does not indicate that the sand retention wall would cause any changes in the need for or timing of dredging of the dock areas.

Section 30235 of the Coastal Act states that shoreline protective devices like the ones proposed in this case can 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...". The proposed protective device is not necessary to protect existing structures. The bulkhead landward of the beach protects the existing single family residences on the island. Nor is the device necessary to protect a public beach in danger of erosion. The beach at this location is not public (above the mean high tide line) and the applicant has not offered to open up this beach area for public use. Finally, the beach is not newly in danger of erosion. The erosion that is occurring at this site has been occurring since Bay Island was constructed and the issue has been handled since that time through routine beach nourishment projects that do not have significant adverse impacts on marine resources. As noted by the applicant, there is an imbalance between the beach width that can be maintained naturally through an equilibrium profile and the width that is desired for the private beach. The proposed sand retention wall would have significant impacts in that bay bottom habitat and open water column would be filled displacing the marine organisms that rely

on that habitat. There may be other attendant impacts (e.g. erosion, changes to water circulation) on shoreline processes elsewhere in the bay.

Also, the proposed sand retention wall will result in the fill of coastal waters. Section 30231 of the Coastal Act states, in part that, "...[m]arine resources shall be maintained, enhanced, and where feasible, restored...." The sand retention walls would displace soft bay bottom habitat that contains benthic organisms and is suitable for eelgrass (eelgrass grows in the area). Thus, the walls would not maintain, enhance, or restore marine resources. Section 30233 of the Coastal Act regulates the fill of coastal waters and states that such fill is only allowed in seven enumerated circumstances. The proposed project does not comply with any of the allowances in Section 30233. There are two provisions in Section 30233 that some could argue apply in this situation: "...*(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas..*" and "...*(6) Restoration purposes...*" Although the sand retention wall project is ostensibly being placed to restore a beach, the walls are not "mineral extraction", nor "sand for restoring beaches". In addition, although the proposed walls are being proposed to 'retain' or some might say 'restore' a beach, the Commission has not interpreted "restoration purposes" this way; rather the Commission has interpreted "restoration purposes" as being for environmental/habitat restoration purposes, which is not the purpose in this case.

The applicant has proposed mitigation elsewhere on the island. However, mitigation only becomes a factor when it can be demonstrated that the shoreline protective device requiring the fill of open coastal waters is either consistent with the limitations on fill of coastal waters established in Section 30233 (which, in this case, it is not) and/or the applicant demonstrates that a shoreline protective device is necessary consistent with the terms of Section 30235 and must be approved (despite the fill)(in this case the sand retention wall isn't necessary) and the applicant demonstrates the device is the least environmentally damaging feasible alternative. In this case, the least environmentally damaging feasible alternative is to continue the dredging (which must occur to maintain the docks) and beach nourishment efforts that have been occurring for decades without significant adverse impact. The construction of a shoreline protective device at this location will not lead to the discontinuation of the dredging of docks and nourishment of beaches with the dredged sand because those activities must continue to maintain the docks and other surrounding beaches. The proposed project would only benefit the private owners of the island and would be of no benefit to marine habitat or members of the public.

The conditions and issues the applicant describes with regard to this beach on Bay Island are common throughout the bay. Many of the bay beaches, including many used by the public (e.g. on Balboa Island), are too steep to naturally retain sand. Thus, sand extracted by routine dredging to maintain shoaled docks is used to maintain the beaches. This is the manner in which this issue has been handled for many decades without significant adverse impacts on marine resources or shoreline processes. However, the proposed project would set an adverse precedent with regard to placement of shoreline protection structures to maintain bay beaches because the conditions at the subject site exist throughout the bay. Others may seek to resolve the issue at those other locations in the same manner proposed here. This would lead to a proliferation of groins, jetties, and breakwaters throughout the bay with the attendant impacts on fill of coastal waters, displacement of soft bottom habitat, and adverse impacts on coastal processes on adjacent beaches.

Thus, the proposed project cannot be found consistent with Sections 30231, 30233 or 30235 of the Coastal Act and must be denied.

2. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

- 2.8.3-3. Develop and implement shoreline management plans for shoreline areas subject to wave hazards and erosion. Shoreline management plans should provide for the protection of existing development, public improvements, coastal access, public opportunities for coastal recreation, and coastal resources. Plans must evaluate the feasibility of hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat.
- 2.8.3-6. Encourage the use of non-structural methods, such as dune restoration and sand nourishment, as alternatives to shoreline protective structures.
- 2.8.6-3. Develop and implement a comprehensive beach replenishment program to assist in maintaining beach width and elevations. Analyze monitoring data to determine nourishment priorities, and try to use nourishment as shore protection, in lieu of more permanent hard shoreline armoring options.
- 2.8.6-5. Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.
- 2.8.6-7. Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.
- 2.8.6-8. Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.
- 3.1.4-1. Continue to regulate the construction of bay and harbor structures within established Bulkhead Lines, Pierhead Lines, and Project Lines.
- 3.1.4-4. In residential areas, limit structures bayward of the bulkhead line to piers and floats. Limit appurtenances and storage areas to those related to vessel launching and berthing.

- 3.1.4-7. Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.
- 3.1.4-8. Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.
- 4.2.3-17. Continue to limit residential and commercial structures permitted to encroach beyond the bulkhead line to piers and docks used exclusively for berthing of vessels. However, this policy shall not be construed to allow development that requires the filling of open coastal waters, wetlands or estuaries that would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.

The construction of the sand retention walls/shoreline protective devices is inconsistent with the policies in the City's certified LUP. The proposed project does not comply with policy requirements that non-structural methods of addressing erosion (e.g. beach nourishment) be used instead of structural methods wherever feasible. The shoreline protective device isn't necessary to protect existing structures or to prevent erosion of a public beach. The device is being constructed on submerged lands and is not constructed as far landward as possible. The proposed project uses protective devices to expand dry land areas contrary to LUP policies. The protective device is located bayward of the bulkhead line, contrary to City policy.

The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the proposed sand retention wall/shoreline protective device must be denied.

3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

As described above, the proposed sand retention wall/shoreline protective device would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as beach nourishment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the sand retention wall/shoreline protective device must be denied.

BAY ISLAND, NEWPORT BEACH, ORANGE COUNTY

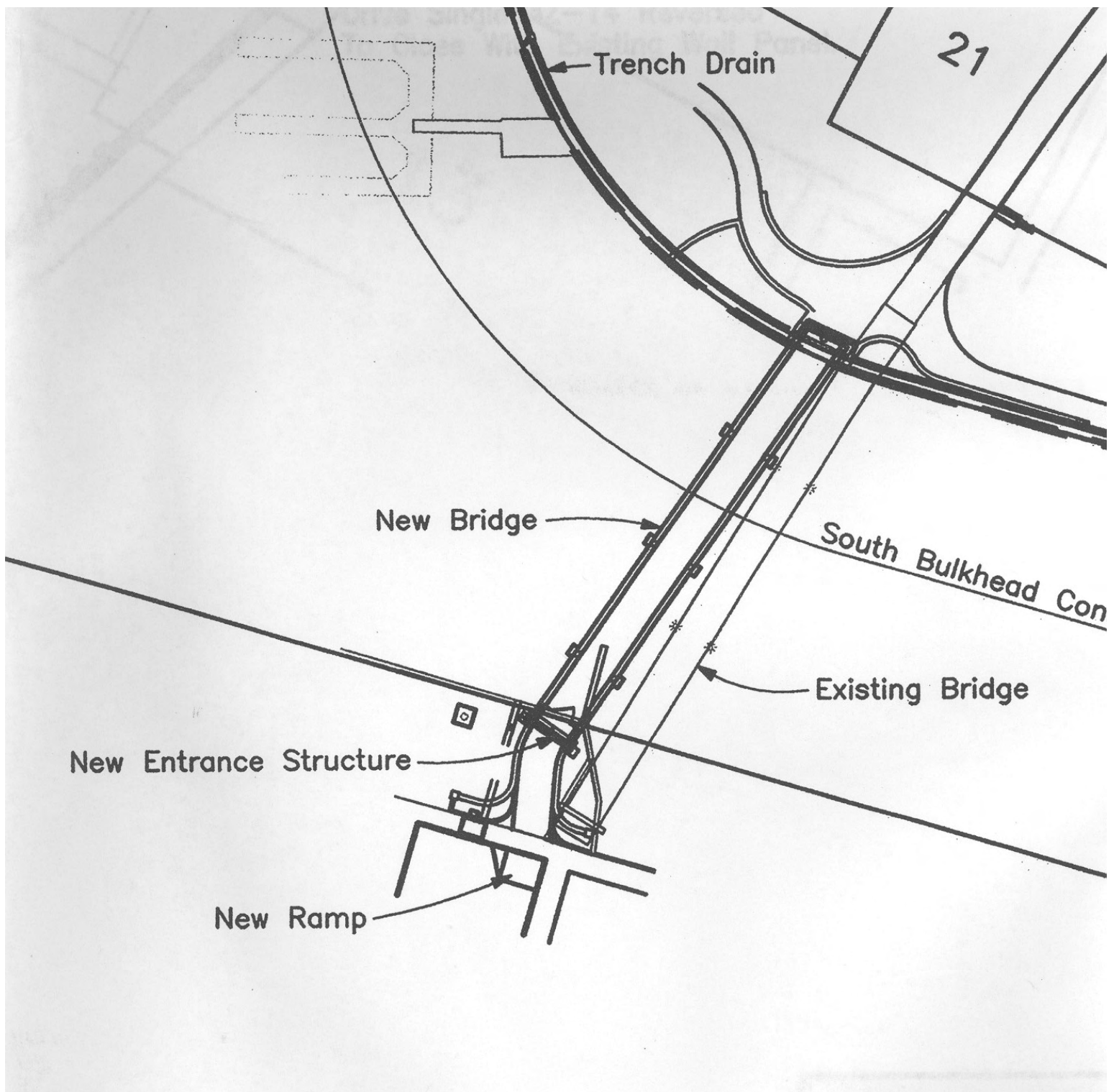


Vicinity Map

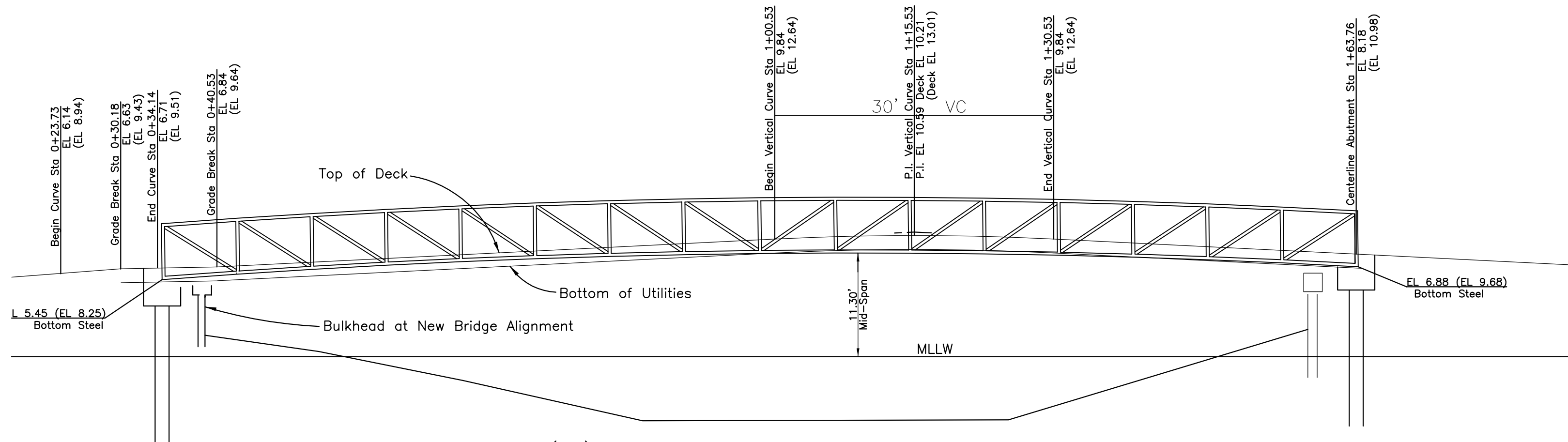
LEGEND

- Bulkhead Line
- Pierhead Line
- Project Line

EXHIBIT#1
Page 1 of 1
Application Number:
5 - 09 - 055
California Coastal
Commission



NEW BRIDGE ALIGNMENT With "Entrance Structure"/Gate



EL x.xx Indicates Elevation in NGVD (MSL)
 (EL x.xx) Indicates Elevation in MLLW

PROPOSED TRUSS BRIDGE PROFILE 1"=10'

This proposed single span bridge would:

- meet Title 24 accessibility requirements.
- meet navigational requirements.
- have the same alignment/location/footprint as the previously proposed pile-supported bridge.
- have a similar gate/entryway design as the previously proposed pile-supported bridge.
- be primarily water-based construction, as was the previously proposed pile-supported bridge.



EXISTING BRIDGE



PROPOSED BRIDGE (VISUAL SIMULATION)

EXHIBIT# 3

Page 1 of 1

Application Number:

5 - 0 7 - 0 5 5



California Coastal
Commission

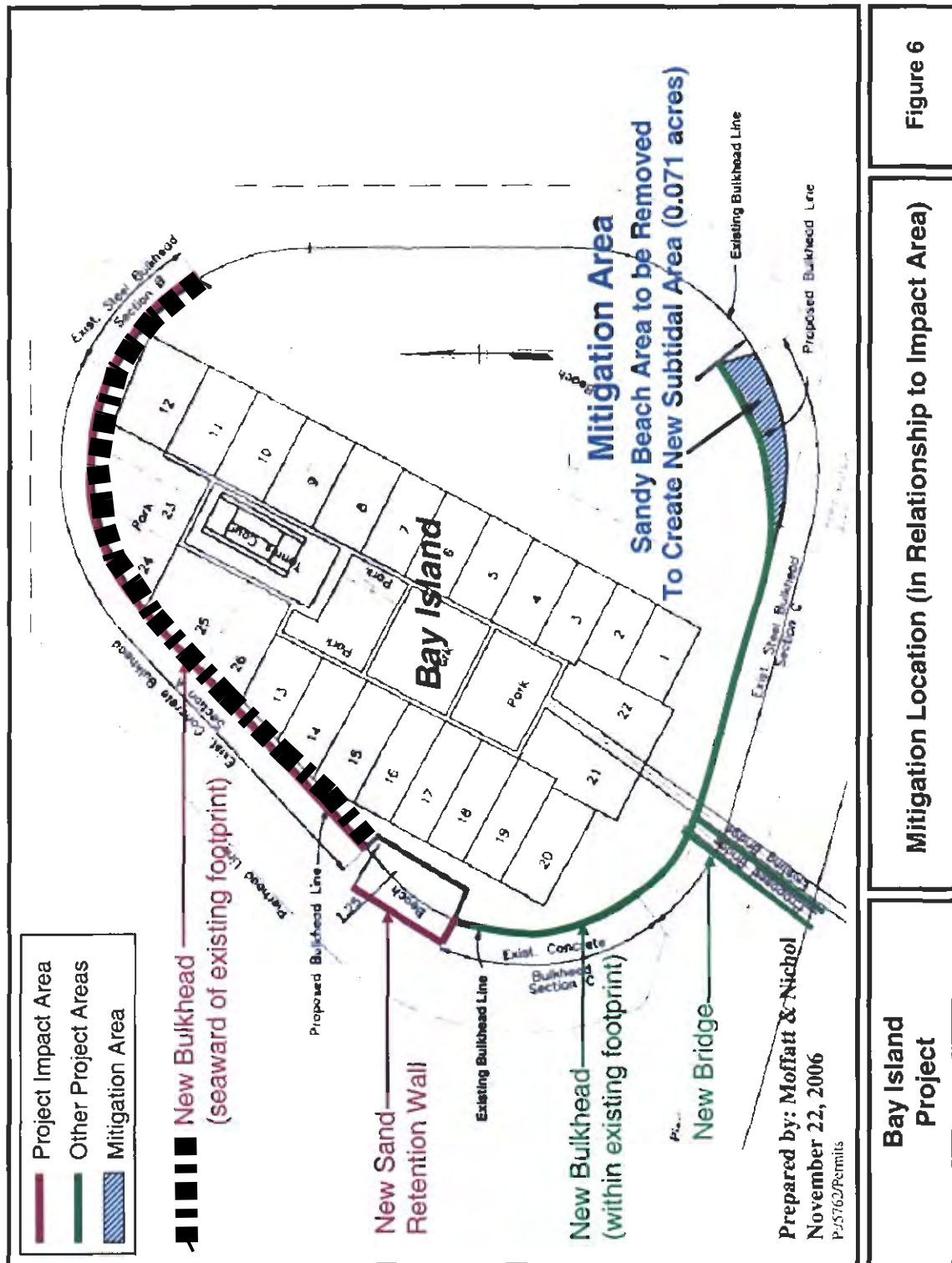
PROPOSED & EXISTING ENTRY



Proposed Gate



Existing Gate



Bulkhead Alignment &
Mitigation Area

EXHIBIT 5
5-09-055

SAND RETENTION WALL

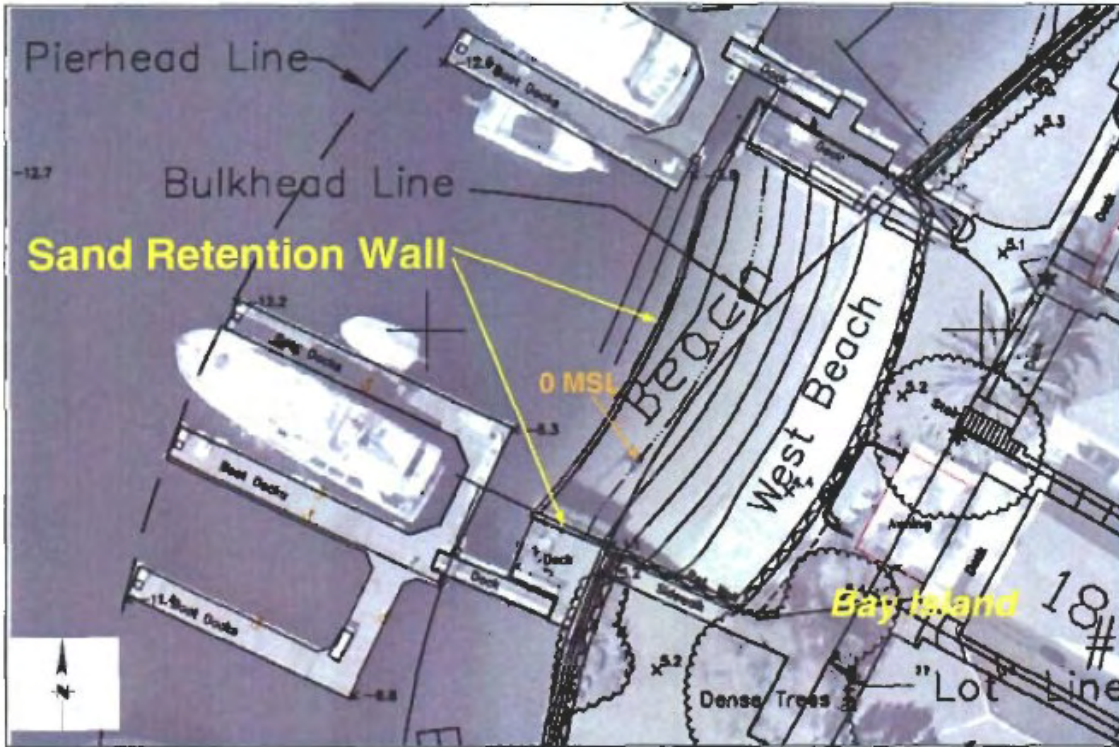


Figure 4. Sand Retention Wall – Plan View

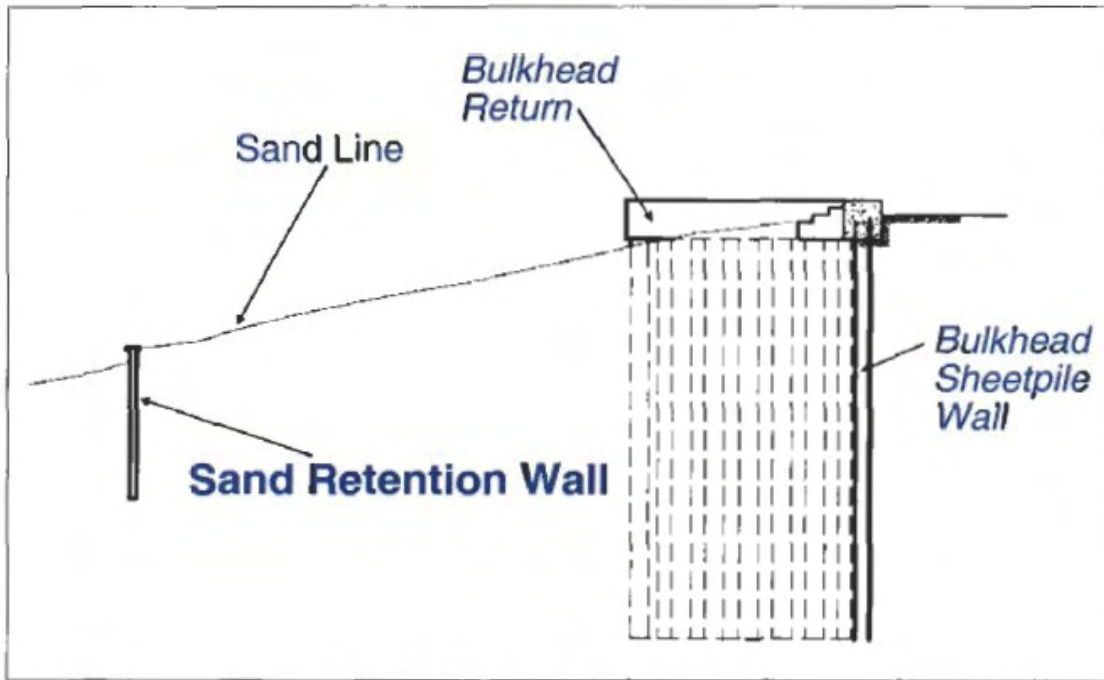


Figure 5. Sand Retention Wall – Representative Cross Section



Photo 9 – Mature Trees and House Immediately Adjacent to Bulkhead Wall Along Western Side (Lot #12 on Map Shown in Figure 5)

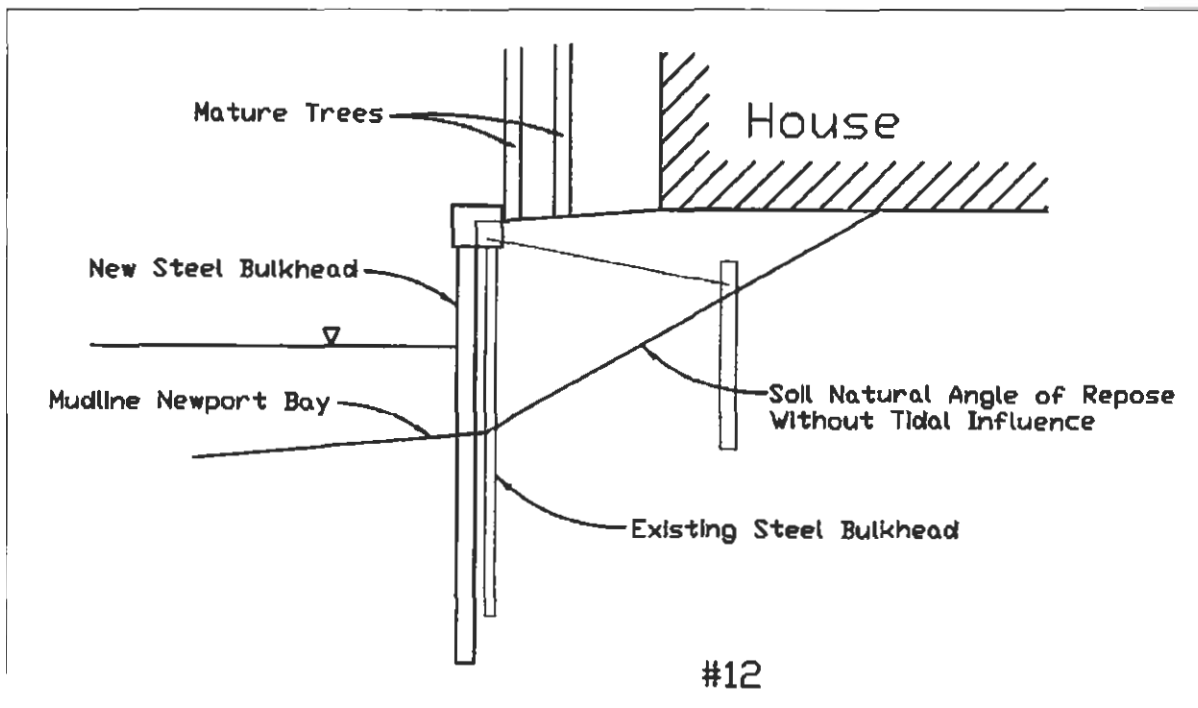
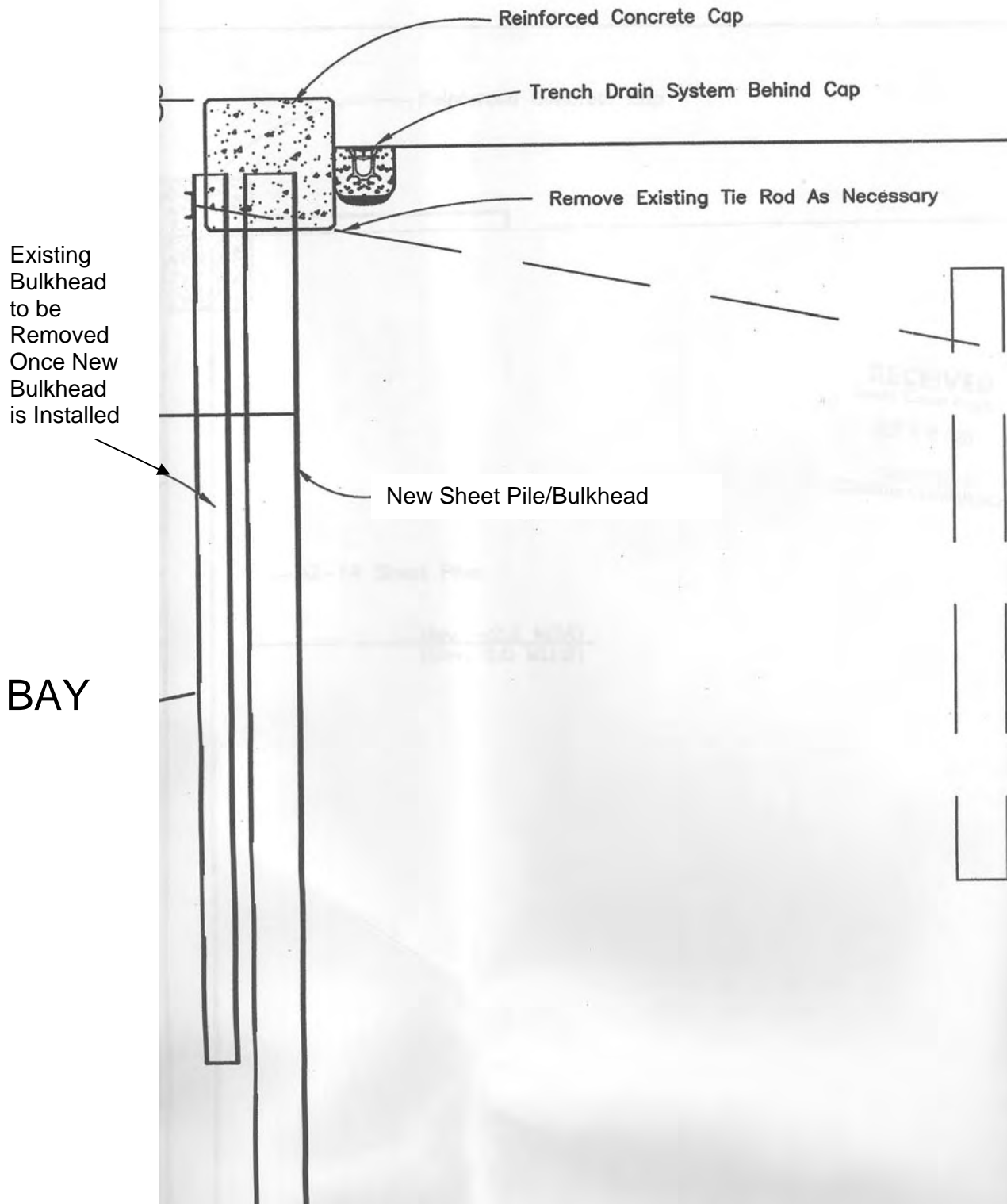


Figure 2 – Proposed New Bulkhead Alignment for Area Depicted in Photo 9

Bulkhead Reinforcement:
Place New Bulkhead In Exhibit 7
Seaward of Existing Bulkhead 5-09-055



Bulkhead Replacement:
 Remove Existing Bulkhead
 Install New Bulkhead In
 Same or Landward Alignment

The Bay Island Club's Right to Rebuild Its Bridge

Summary: As surveyed in 1889, Bay "Island" was originally part of Balboa Peninsula. The United States patented the property that is now the channel, together with what is now Bay Island and Balboa Peninsula, to California as upland "swamp and overflowed land"—not as tidelands subject to the public trust. California then conveyed this contiguous property into common private ownership as "swamp and overflowed land." The property that is now the channel remained in private ownership until it was conveyed to the City of Newport Beach in 1927. That conveyance to the City, however, was specifically made subject to the bridge easement previously granted to the Bay Island Club. The Bay Island Club thus has the right to rebuild the bridge free of any public trust concerns.

- In the Spring of 1889, U.S. Deputy Surveyor Solomon H. Finley of the General Land Office surveyed Newport Bay and depicted what is now Bay Island as a peninsula attached to the mainland Balboa Peninsula.
- Finley designated the entire Balboa Peninsula, including the Bay "Island" peninsula as it then was, as "swamp and overflowed land." In 1902, the "swamp and overflowed land" of Newport Bay was conveyed to the State of California by a patent signed by President Theodore Roosevelt under the authority of the Swamp Land Act of 1850. This patent was effective retroactive to September 28, 1850.
- The designation of lands as being upland "swamp and overflowed" by the General Land Office is, with rare exceptions, deemed conclusive. "The lands which passed to the state by grant under the Swamp Land Act were thereafter subject to absolute alienation by the state, free of any public trust for navigation. The official surveys of swamp and overflowed lands are a conclusive determination as to the lands which passed to the state under the act." (*Newcomb v. City of Newport Beach* (1936) 7 Cal.2d 393, 400.)
- California then patented the "swamp and overflowed land" of Newport Bay into private ownership. On December 5, 1892, California patented to Mr. E.J. Abbott a large tract of land that included the property that is now Bay Island and the contiguous property to the south, including the land that is now the channel and the adjacent Balboa Peninsula, all as "swamp and overflowed" land. Mr. Abbott then conveyed this property to Mr. André.
- Mr. André then created the parcel that now comprises Bay Island. Bay Island Club acquired this land in two separate conveyances in 1903 and 1906. Mr. André conveyed the adjacent property to the south, including what is now the channel, to a Mr. Wilson who, in turn, conveyed that property to the East Newport Town Company in 1904.
- In November 1927 the East Newport Town Company granted a formal bridge easement to Bay Island Club for the bridge over the channel that by then separated Bay Island from Balboa Peninsula, but which remained in the private ownership of the East Newport Town Company. The bridge easement allowed the bridge to be an extension of any of Island Avenue, Anade Avenue, or Montero Avenue. The easement further allowed that, should the bridge ever need to be replaced, the old bridge may be maintained while the new bridge is constructed.
- In December 1927, the East Newport Town Company conveyed the channel property to the City of Newport Beach, but this conveyance to the City was expressly made subject to the bridge easement held by the Bay Island Club.

instrument the undersigned is the owner of said royalty interest hereinbefore described free and clear of incumbrances, and they have not sold, assigned, transferred, pledged, mortgaged, hypothecated or otherwise encumbered the said royalty interest.

This contract shall bind and inure to the benefit of the parties hereto, their successors in interest and assigns respectively.

Executed this 6th day of November, 1927.

T. A. Wilcox

State of California, }
County of Los Angeles, } ss.

On this 6th day of November, 1927 A.D., before me, J. R. Veditz, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared T. A. Wilcox, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

((SEAL))

Jean Robert Veditz Notary Public

in and for the County of Los Angeles, State of California.

My Commission expires March 29, 1931.

Recorded at request of Assignee Nov. 12, 1927 at 5 Min. past 9 A.M. in Book 109, Page 229 Official Records of Orange County. Justine Whitney County Recorder.

Emma Smith COMPARED Ada Robinson

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36546

CORPORATION

GRANT DEED

EAST NEWPORT TOWN COMPANY, a corporation, in consideration of Ten (10.00) Dollars to it in hand paid, the receipt of which is hereby acknowledged, does hereby grant to BAY ISLAND CLUB, a Corporation, all that real property situated in the City of Newport Beach, County of Orange, State of California, described as follows:

The right and easement to construct, maintain, repair and replace a bridge for pedestrian and/or automobile travel over and across that part of the hereinafter described property included within the Northerly extensions of the side lines of either Island Avenue, Anade Avenue or Montero Avenue.

All that portion of the property conveyed by W. W. Wilson and wife to East Newport Town Company by deed dated April 12th, 1904, recorded June 15th, 1904, in Book 104, page 138 of Deeds, records of Orange County, California, lying Northerly of the center line of that portion of Buena Vista Boulevard, 40 feet in width, shown on the Map of Subdivision of Block "A" East Newport, recorded in Book 4, page 51 of Miscellaneous Maps, records of said County, running from the North-east corner of Lot One (1) to the North-west corner of Lot One Hundred Forty-six (146) of said Subdivision.

It is covenanted and agreed that not more than one bridge shall be permanently maintained but that during the course of construction of any new bridge, the old bridge may be maintained.

Easement for Bridge

Exhibit 10
5-09-055

and used.

It is further covenanted and agreed that any new bridge shall not be lower than the present bridge across said property, so that no greater obstruction to the passage of boats than that existing at this time shall be maintained over the waterway and channel now over said property.

The present bridge is built on an arc and it is hereby agreed that the floor of said bridge at the center of the arc is thirteen feet above mean low low water.

To have and to hold to the said grantee its successors and assigns, but without covenant or warranty, express or implied, as to the title to the rights of property herein described.

In Witness Whereof, the East Newport Town Company has hereunto caused its corporate name to be signed and its corporate seal to be affixed by its President and Secretary, thereunto duly authorized by resolution of its Board of Directors, this 13th day of July, 1927.

((CORPORATE SEAL))

EAST NEWPORT TOWN COMPANY,

By W. B. Clancy President.

And C. O. Evans Secretary.

State of California, }
County of Riverside, } ss.

On this 7th day of November, 1927, before me, C. W. Derby, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. B. Clancy, known to me to be the President and C. O. Evans, known to me to be the Secretary of the corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

((SEAL))

C. W. Derby Notary Public

in and for said County and State.

Filed for record at the request of Grantee Nov. 12, 1927 at 15 minutes past 9 o'clock A.M. and recorded in Volume 109 of Official Records, page 230 Orange County Records. Justine Whitney Recorder. By Ruby Cameron Deputy.

Emma Smith COMPARED

Ada Robinson

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36547

IN THE SUPERIOR COURT
OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA.

LOUIS CROWE.

Plaintiff.

vs.

J. E. ALLEN,

Defendant

Easement for Bridge

TRIT OF ATTACHMENT.

Exhibit 10
5-09-055



**Other Adjacent
Available Fishing Areas**

Bay Island

**"Fishing Area" of concern
- From off bulkhead wall.**

Existing Bridge

Peninsula

“Fishing Area” to West of Existing Bay Island Bridge

To Be Covered by New
Bridge Landing



Other Available Fishing Areas – Immediately Adjacent to Bay Island Bridge

