

## CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
200 Oceangate, Suite 1000  
Newport Beach, CA 90802-4302  
(62) 590-5071

Permit Application No. **5-02-003**

Date: February 14, 2002

Page 1 of 7

**TU 5b****ADMINISTRATIVE PERMIT****APPLICANT:** David and Jan New

RECORD PACKET COPY

**PROJECT****DESCRIPTION:**

Narrow an existing 10' x 50' dock to 8' x 50', add 18' x 8' and 8' x 8' float sections, replace a 3' x 28' gangway, remove two (2)-12" existing diameter piles and install three (3) new 14" diameter piles. The floating dock will only be used for boating related purposes.

**PROJECT****LOCATION:**

304 Morning Star Lane, Newport Beach (Orange County)

**EXECUTIVE DIRECTOR'S DETERMINATION:** The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

**Tuesday, March 5, 2002**

10:00am

**Hyatt Regency Monterey****One Golf Course Drive****Monterey, CA 93940**

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

**BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

PETER DOUGLAS

Executive Director

By: Fernie J. SyTitle: Coastal Program Analyst

**STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or 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.

**SPECIAL CONDITIONS:** See pages six and seven.

**EXECUTIVE DIRECTOR'S DETERMINATION (continued):**

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

**FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:**

**A. Project Description and Background**

1. **Project Description**

The proposed project involves narrowing an existing 10' x 50' dock to 8' x 50', adding 18' x 8' and 8' x 8' float sections, replacing a 3' x 28' gangway, removing two (2)-12" existing diameter piles and installing three (3) new 14" diameter piles (Exhibit #3). The existing floating dock will be removed from the water and modified on land and then placed back in the water, thus no construction over the water will occur. The floating dock will only be used for boating related purposes.

The subject site is located at 304 Morningstar Lane in Upper Newport Bay in the City of Newport Beach (Exhibits #1-2). The dock project is for boating recreation purposes and is associated with an existing single family home. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and no eelgrass was discovered within 15 feet of the project area. Coastal public access is available approximately ¾ of a mile southwest of the project site at Castaways Park (Exhibit #1). The proposed project has

received an approval in concept from the City of Newport Beach Harbor Resources Division. The applicant has applied for permits from the U.S. Army, Corps of Engineers and the California Regional Water Quality Control Board (RWQCB). The RWQCB has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used.

## **B. Marine Resources**

The proposed project is located in and over the coastal waters of Upper Newport Bay (Exhibits #1-2). Upper Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Upper Newport Bay, the listing cites elevated concentrations of metals, nutrients, pathogens, pesticides and sedimentation/siltation from a variety of sources including urban runoff, agriculture, channel erosion and other unknown non-point sources as the reason for listing Upper Newport Bay as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policy. Section 30233 of the Coastal Act limits the fill of open coastal waters.

Section 30233 of the Coastal Act states:

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

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

The Coastal Act limits the fill of open coastal water and also requires that any project which results in fill of open coastal waters provide adequate mitigation. Section 30233 of the Coastal Act allows fill of open coastal waters, such as Upper Newport Bay, for recreational boating purposes. The proposed project requires removing two piles and replacing them with three new piles, which constitute fill. The installation of these piles will displace habitat bottom. The fill required by the project is for a recreational boating facility, an allowable purpose under Section 30233(4) of the Coastal Act. However, the project can only be determined to be consistent with Section 30233 so long as the project is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize adverse environmental effects. One way to minimize environmental damage is to limit fill. In order to anchor the modified float, the removing of two piles and replacing them with three new piles is necessary. Three new piles are needed based on the maximum length of boat that can be kept there as specified by the City of Newport Beach Building Department. Therefore, this is the minimum number of piles necessary to adequately support and anchor the rebuilt float based on the length of the boat. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the allowable use. Thus, the proposed project is the least environmentally damaging alternative. Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The proposed project meets this requirement

because the pilings are self mitigating by providing vertical habitat for marine organisms to replace the soft bottom habitat lost.

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

**C. Water Quality**

The proposed project is located in and over the coastal waters of Upper Newport Bay (Exhibits #1-2). Upper Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Upper Newport Bay, the listing cites elevated concentrations of metals, nutrients, pathogens, pesticides and sedimentation/siltation from a variety of sources including urban runoff, agriculture, channel erosion and other unknown non-point sources as the reason for listing Upper Newport Bay as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation, and 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.*

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 resources. 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

**Construction Impacts to Water Quality**

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters.

For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition #1 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Special Condition #1 requires that the applicant dispose of all demolition and construction debris at an appropriate location. 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.

#### Best Management Practices

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

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

Therefore, only as conditioned to minimize construction related impacts during the dock repairs and to follow the Best Management Practices listed in Special Condition #1 does the Commission find the proposed project consistent with Section 30230 and 30231 of the California Coastal Act.

#### **D. Local Coastal Program**

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

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

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

**E. California Environmental Quality Act (CEQA)**

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

The proposed project as conditioned has been found consistent with the marine resources policies of the Coastal Act. As conditioned, there are no feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**SPECIAL CONDITIONS:**

1.

**A. Construction Responsibilities and Debris Removal**

- (a) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (b) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (e) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

**B. Best Management Practices Program**

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

(a) Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning

components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.

3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(b) Solid and Liquid Waste Management Measures:

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

(c) Petroleum Control Management Measures:

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

**ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:**

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date of Signing

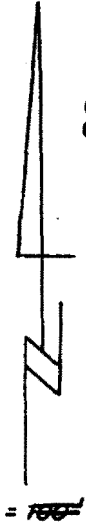
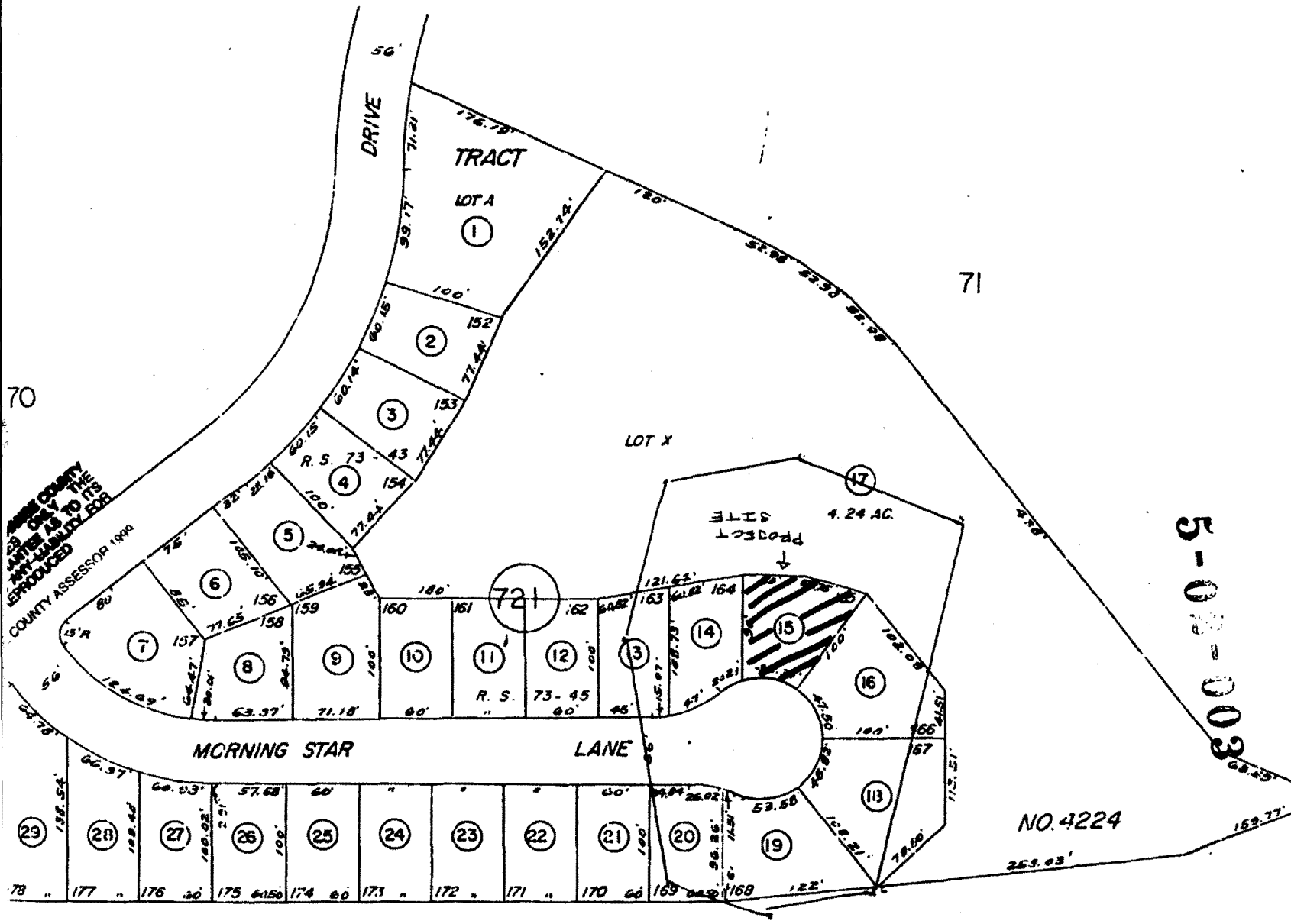




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COASTAL COMMISSION

EXHIBIT # 7 OF 1  
PAGE



5-02-003

CALIFORNIA  
COASTAL COMMISSION

RECEIVED  
South Coast Region  
JAN 3 2002

NO. 4224

44C-13

TR. NO. 4224 M. M. 157-1 TO 14 INC.

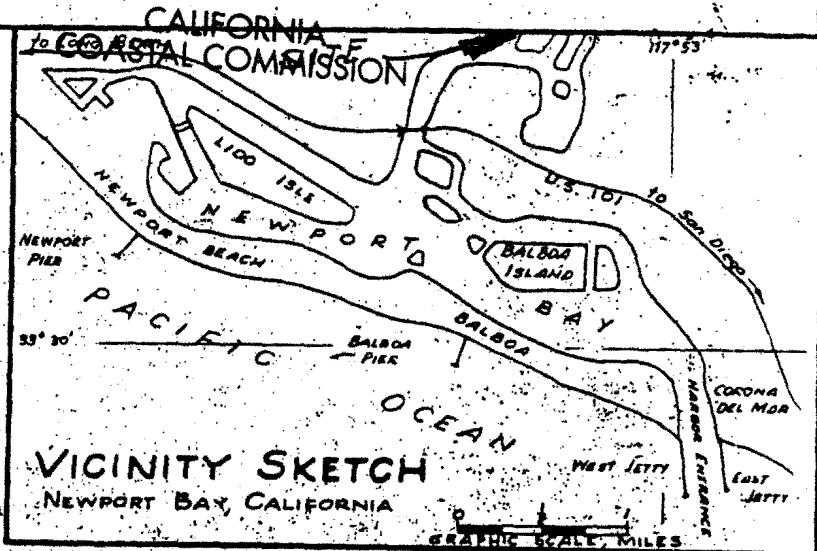
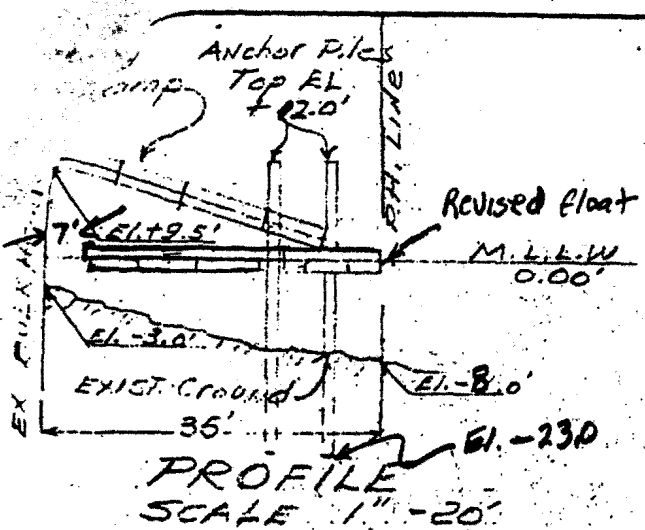
NOTE - ASSESSOR'S BLOCK B  
PARCEL NUMBERS  
OWN IN CIRCLES

ASSESSOR'S MAP  
BOOK 117 PAGE 72  
COUNTY OF ORANGE

1-1-99

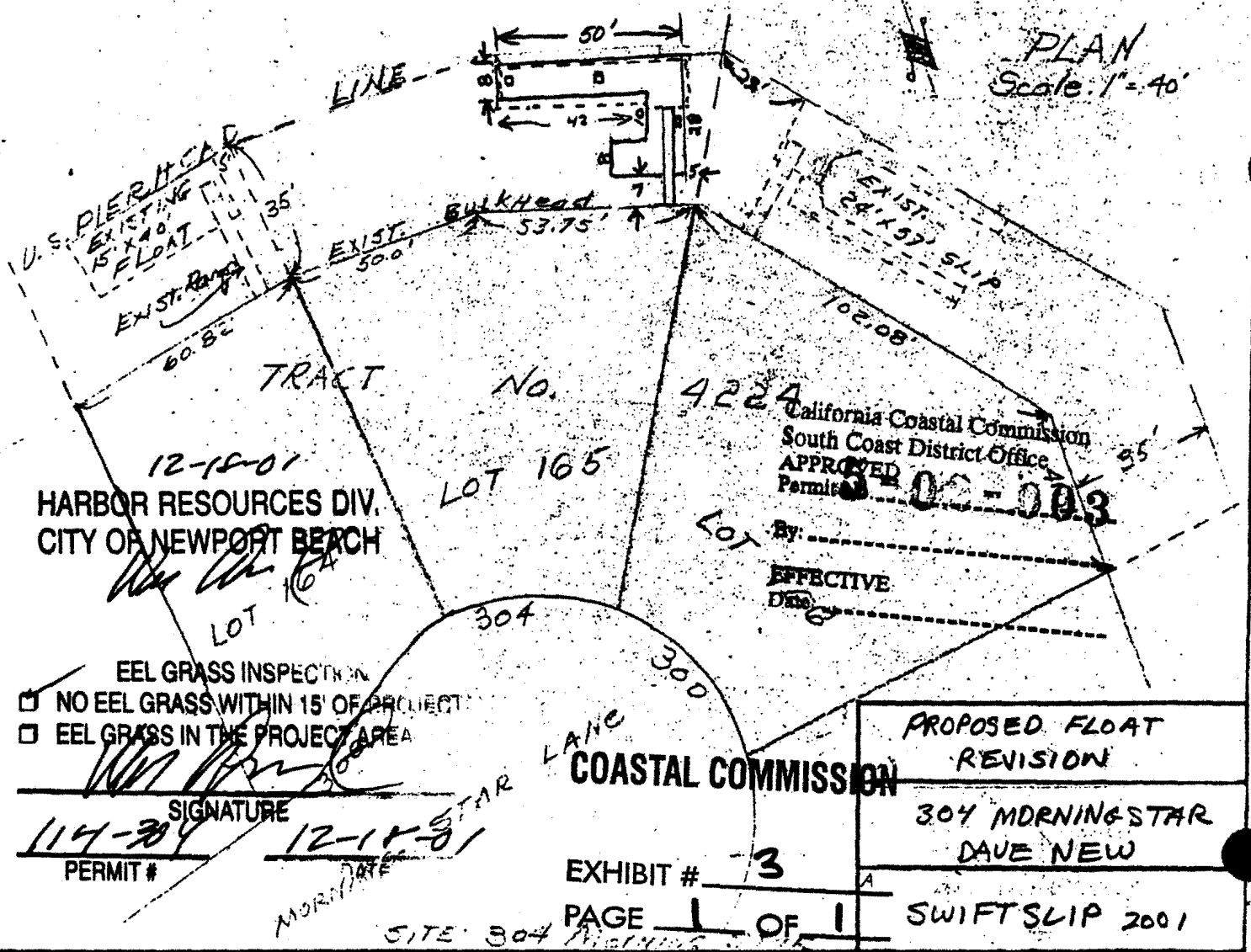
JAN 3 2002

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NOTE: Remove 2-12" diameter guide pile.  
Install 3-14" diameter guide pile.  
Narrow 10'x50' dock to 8'x50'. Add 18'x8' and 8'x8' float additions for kayak storage. Replace 3'x28' gangway.

Soundings are expressed in feet and denote depths below Mean Lower low Water. Maximum range at tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.



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

SIGNATURE [Signature]  
114-304 PERMIT #  
12-18-01 MORNINGSTAR DATE

PROPOSED FLOAT REVISION  
304 MORNINGSTAR DAVE NEW  
SWIFT SLIP 2001  
A-1500  
A-1500