

CALIFORNIA COASTAL COMMISSION

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Staff Report: January 27, 2005
Hearing Date: February 16-18, 2005
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-04-279**RECORD PACKET COPY****APPLICANT:** Andris Pukke**AGENT:** Swift Slip Dock & Pier Builders**PROJECT LOCATION:** 31 Linda Isle, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove and replace an existing floating dock, gangway and piles with a new dock and associated structures consisting of: an "L" shaped dock with a 12' x 48' finger; a 4' x 20' headwalk; and a 3' x 24' gangway. In addition, the project consists of removal of three (3) 14" piles and installation of three (3) 18" concrete piles.

SUMMARY OF STAFF RECOMMENDATION:

There is potential that the proposed project will result in impacts to eelgrass. Staff is recommending approval of the proposed project subject to **Four (4) Special Conditions**, which are necessary to assure that potential impacts are minimized, and mitigated where impacts are unavoidable; and that marine resources and water quality are protected. The special conditions are necessary in order to find the proposed project consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

Special Condition No. 1 requires the applicant to submit revised plans indicating that the float portion of the proposed boat dock will consist of open grated material, as proposed. **Special Condition No. 2** requires pre and post-construction eelgrass surveys and, if impacts to eelgrass are discovered, these impacts will be mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*. **Special Condition No. 3** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. **Special Condition No. 4** requires that the applicant dispose of all demolition and construction debris at an appropriate location and that the applicant follows Best Management Practices to ensure the continued protection of water quality and marine resources.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit #135-21/Plan Check #1689-2004) from the City of Newport Beach Planning Department dated June 23, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Land Use Plan; Coastal Development Permits #5-02-070-[H.I. Property Trust] and #5-03-458-[Llovio]; Regional Water Quality Control Board (RWQCB) letter dated July 6, 2004; US Army Corp of Engineers (USACOE) letter dated July 7, 2004; Letter from Commission staff to Swift Slip Dock and Pier

Builders dated July 30, 2004; Letter from Swift Slip Dock and Pier Builders to Commission staff dated August 24, 2004; and Letter from Swift Slip Dock and Pier Builders to Commission staff dated October 7, 2004.

LIST OF EXHIBITS

1. Location Map
2. Assessor's Parcel Map
3. Approval In Concept Plan
4. Proposed Project Site Plan with Eelgrass Location

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission approve Coastal Development Permit No. 5-04-279 pursuant to the staff recommendation."

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

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

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

III. SPECIAL CONDITIONS

1. REVISED PROJECT PLANS

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of revised plans indicating that the float portion of the proposed boat dock is constructed of open, grated material, as proposed by the applicant, to maximize penetration of sunlight to the water below.
- 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 required.

2. PRE AND POST-CONSTRUCTION EELGRASS SURVEYS

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" (SCEMP) Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days

prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" (SCEMP) Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- C. Proposed Two Year Post Construction Eelgrass Survey.** As proposed, at one year and two years after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted as a result of post-construction effects. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" (SCEMP) (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 surveys for the review and approval of the Executive Director within thirty (30) days after completion of each survey. As proposed, if any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 (mitigation: impact) ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. A mitigation plan, at minimum prepared consistent with the requirements of SCEMP, shall be submitted to the Executive Director. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant 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.

4. WATER QUALITY

A. Construction Responsibilities and Debris Removal

- (1) 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.
- (2) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (3) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (4) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (5) 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.
- (6) 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.

(1) Boat Cleaning and Maintenance Measures:

- a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
- b. 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.
- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

- a. 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.

(3) Petroleum Control Management Measures:

- a. 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. Bilges shall be cleaned and maintained. Detergents will not be used for cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Prior Commission Action On Site

1. Project Location and Description

The subject site is located in the locked gate community of Linda Isle in Lower Newport Bay in the City of Newport Beach (Exhibits #1-2). No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island (Exhibit #1). The dock project is for boating recreation purposes and is associated with an existing single family home.

The applicant proposes to remove and replace an existing floating dock, gangway and piles with a new dock and associated structures consisting of: an "L" shaped dock with a 12' x 48' finger; a 4' x 20' headwalk; and a 3' x 24' gangway (Exhibit #3). In addition, the project consists of removal of three (3) 14" piles and installation of three (3) 18" concrete piles (Exhibit #3). The proposed dock will be constructed of TREX. City review of the site (an approval in concept from the City of Newport Beach Harbor Resources Division consisting of an eelgrass survey conducted on the project site on June 22, 2004) indicates that eelgrass is located within the project area (Exhibit #4). However, the applicant does not anticipate adverse impacts to eelgrass associated with the proposed project.

The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 135-21). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers. The project has received approval from 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 and if no waste is discharged from the proposed project.

2. Prior Commission Action On Site

On August 7, 2001, the Commission approved De-Minimus Waiver #5-01-208-[Turner] for the demolition of an existing two-story single family residence and construction of a 5,955 square foot (1,120 square foot basement, 2,015 square foot 1st floor and 2,730 square foot 2nd floor) three-story single family residence with an attached 625 square foot two-car garage and four additional on site parking spaces. The project also consisted of planters, gates, a spa and water feature, a patio with a barbecue, hanging planters attached to the bulkhead, skylights and a balcony. The maximum height of the structure was to be 29 feet above finished grade. There was no work on the bulkhead or existing pier. Dewatering and grading for basement construction was to take place. There was 493 cubic yards of grading, which was to be exported to an area outside of the Coastal Zone.

B. Fill of Coastal Waters

The proposed project will involve the placement of three (3) 18-inch diameter concrete guide piles in open coastal waters. These dock float guide piles constitute fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters shall be allowed only when specific criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided.

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:

(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

1. Allowable Use

Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters, such as Newport Harbor, for recreational boating purposes. The proposed project, a boat dock, constitutes a recreational boating facility. The boat dock is proposed to be used solely for boating related purposes. Thus, the project is an allowable use under Section 30233(a)(4).

2. Least Environmentally Damaging Alternative

Under Section 30233, the proposed project must be the least environmentally damaging alternative.

The proposed project will result in the modification of an existing boat dock. The proposed project would remove and replace an existing floating dock, gangway and piles with a new dock and associated structures consisting of: an "L" shaped dock with a 12' x 48' finger; a 4' x 20' headwalk; and a 3' x 24' gangway. In addition, the project consists of removal of three (3) 14" piles and installation of three (3) 18" concrete piles. In order to anchor the new dock securely, three (3) proposed piles are necessary to withstand the load and adequately support the boating use. Thus the proposed project employs the minimum number and size of piles necessary to adequately support and secure the proposed boat dock project. Thereby minimizing the amount of fill needed to support the proposed allowable use.

While the applicant does not anticipate any impacts to eelgrass with the proposed project, the applicant has proposed to install grating panels in place of deck boards for the new dock to increase light penetration and reduce shading of aquatic habitat where possible. The amount of available sunlight is an important factor affecting the survival, growth, and depth distribution of eelgrass. As originally proposed, the float portion of the dock would

have been constructed of solid, opaque material, preventing any penetration of sunlight to the waters below. The proposed open, grated material would allow sunlight to penetrate the surface of the float, thus increasing the amount of sunlight available to aquatic habitat beneath the float. Use of the proposed grating for the dock is less environmentally damaging than use of opaque materials. While the applicant has indicated that they would install grating panels in place of deck boards to increase light penetration and reduce shading where possible for the new dock, no revised project plans that incorporate the proposed grating have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised plans that show the proposed use of grating panels in place of deck boards to increase light penetration and reduce shading where possible for the new dock.

As conditioned, the Commission finds the project to be the least environmentally damaging feasible alternative.

3. Conclusion

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. As conditioned herein, the proposed project is the least environmentally damaging feasible alternative. **Special Condition No. 1** requires the applicant to submit revised plans that incorporate the proposed use of grating panels in place of deck boards to increase light penetration and reduce shading of aquatic habitat where possible for the new proposed dock. Therefore, as proposed and conditioned, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

C. 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.

1. Eelgrass and other Sensitive Species Impacts

Eelgrass is considered worthy of protection because it functions as important habitat 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).

The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and eelgrass was discovered within 15 feet of the project area. However, the applicant does not anticipate adverse impacts to eelgrass associated with the proposed project. Since eelgrass has been identified in the project site, **Special Condition No. 2.a.** identifies the procedures necessary to be completed prior to beginning any construction. If that survey detects eelgrass in an area that would be directly impacted by bottom-disturbing activities (e.g. pile installation, anchor drag, etc.), the applicant must obtain an amendment or new permit to address the anticipated impacts before commencement of development. **Special Condition No. 2.b.** identifies post-construction eelgrass survey requirements to be performed. One month after the conclusion of construction, this survey will detect any direct construction related impacts that confirm the extent of any previously identified impacts as well as any inadvertent impacts that were not anticipated but occurred. The condition requires all impacts to eelgrass to be mitigated at a 1.2:1 (mitigation: impact) ratio.

As an additional measure, the applicant has proposed to also conduct a two-year post-construction survey to determine if any eelgrass was adversely impacted as a result of shading or other effects. The applicant is proposing to off-set any adverse effects to eelgrass that this subsequent survey identifies. However, no specific proposal is provided relative to the location of the mitigation or other details typically included in a mitigation plan. Furthermore, any such mitigation would require a coastal development permit. In order to memorialize the applicant's proposal and clarify their permit requirements, the Commission imposes **Special Condition No. 2.c.**

2. Caulerpa taxifolia

Recently, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). Huntington Harbor provides similar habitat to that found in Newport Harbor.

C. taxifolia is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the

Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. 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.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

The site has not been surveyed for *C. taxifolia*, therefore, a *C. taxifolia* survey needs to be done. If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes **Special Condition No. 3**. **Special Condition No. 3** requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicants shall seek an amendment or a

¹ References

- Meinesz, A. (Translated by D. Simberloff) 1999. *Killer Algae*. University of Chicago Press
- Chisholm, J.R.M., M. Marchioretti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198
- Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303
- Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.
- Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.
- Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.
- Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.
- Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

3. Water Quality

The proposed project takes place in Newport Harbor and consists of removal and replacement of an existing floating dock, gangway and piles with a new dock and associated structures consisting of: an "L" shaped dock with a 12' x 48' finger; a 4' x 20' headwalk; and a 3' x 24' gangway. In addition, the project consists of removal of three (3) 14" piles and installation of three (3) 18" concrete piles.

The proposed project is located in and over the coastal waters of Newport Harbor (Lower Newport Bay). Newport Bay is on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the harbor does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal established for this waterbody. 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 Newport Harbor, 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 Sections 30230 and 30231 of the Coastal Act, which require the protection of biological productivity, public recreation, and marine resources.

a. Construction Impacts

The proposed development 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, potential water quality issues must be examined as part of the review of this project.

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 No. 4.a.** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

Special Condition No. 4.a. 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.

b. Maintenance

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 maintenance 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, Lower Newport Bay (Newport Harbor) provides a home for marine habitat and also provides opportunities for recreational activities.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes **Special Condition No. 4.b.**, which 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 are associated with the long term berthing of the boat(s).

4. Conclusion

Therefore, only as conditioned to perform pre and post-construction eelgrass surveys; submittal of a prior to commencement of development C. taxifolia survey; disposal of all demolition and construction debris at an appropriate location; and adherence to Best Management Practices in accordance with **Special Condition No.s 2, 3, and 4** does the Commission find the proposed project consistent with Section 30230 and 30231 of the California Coastal Act.

D. Public Access and Recreation

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 relevant 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, or,*

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development seaward of the first public road include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The subject site is located in the waters off-shore of the private locked gate community of Linda Isle in Lower Newport Bay (Exhibits #1-2). No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island (Exhibit #1).

Public access through this community does not currently exist. The proposed development, construction of a new boat dock, will not affect the existing public access conditions. It is the private nature of the community, not this project, that impedes public access. The proposed development, as conditioned, will not result in any new significant adverse impacts to existing public access or recreation in the area. Therefore the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

E. Local Coastal Program

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 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 certified LUP was updated on January 9, 1990. 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 LUP permits the filing of open coastal waters, other than wetlands, for expanded boating facilities where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. As conditioned herein, the proposed project is consistent with this LUP policy.

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.

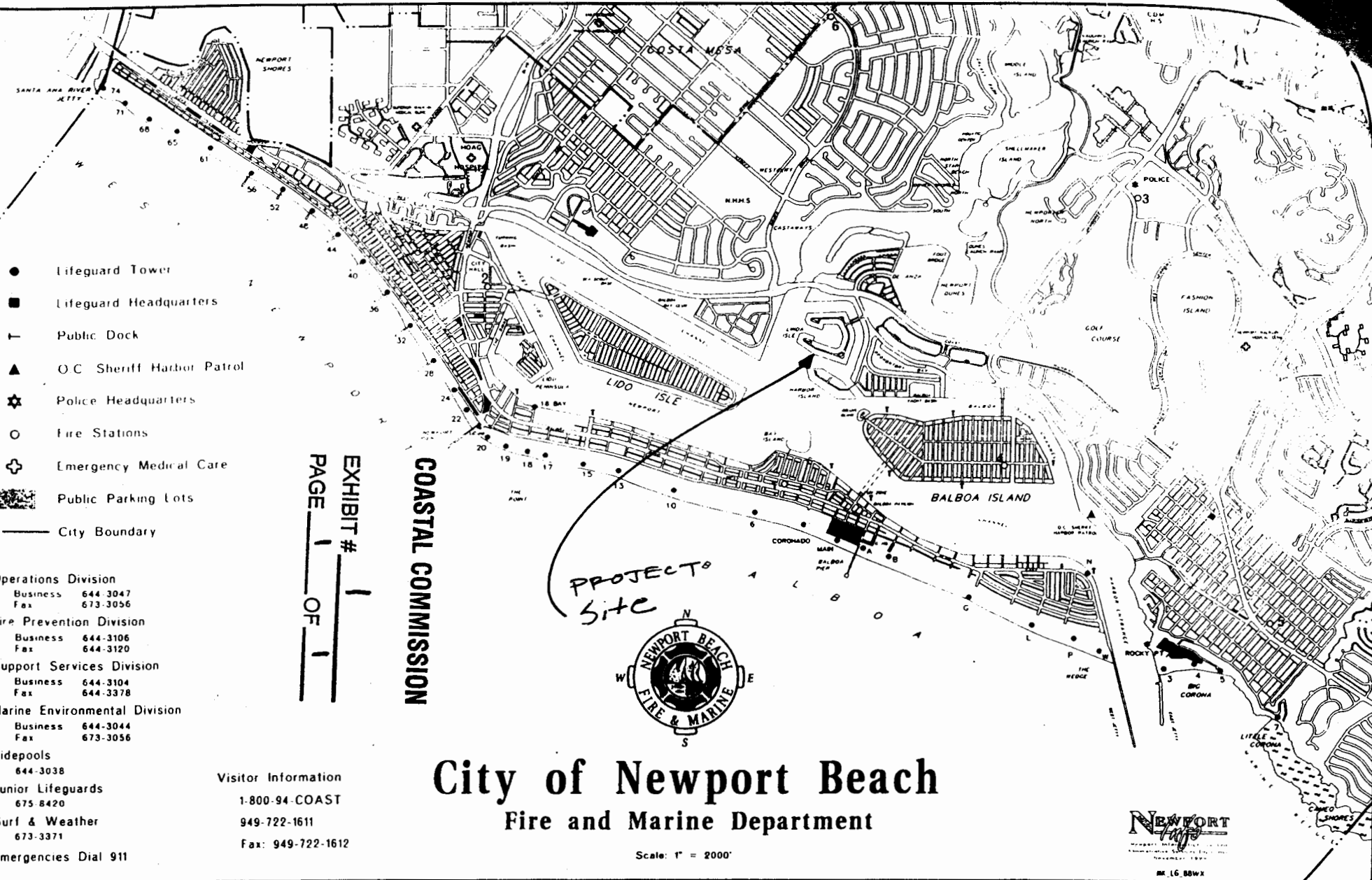
F. California Environmental Quality Act (CEQA)

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

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 marine resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring a final eelgrass mitigation plan incorporating pre- and post-construction surveys and appropriate mitigation, disposal of all demolition and construction debris at an appropriate location and to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

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

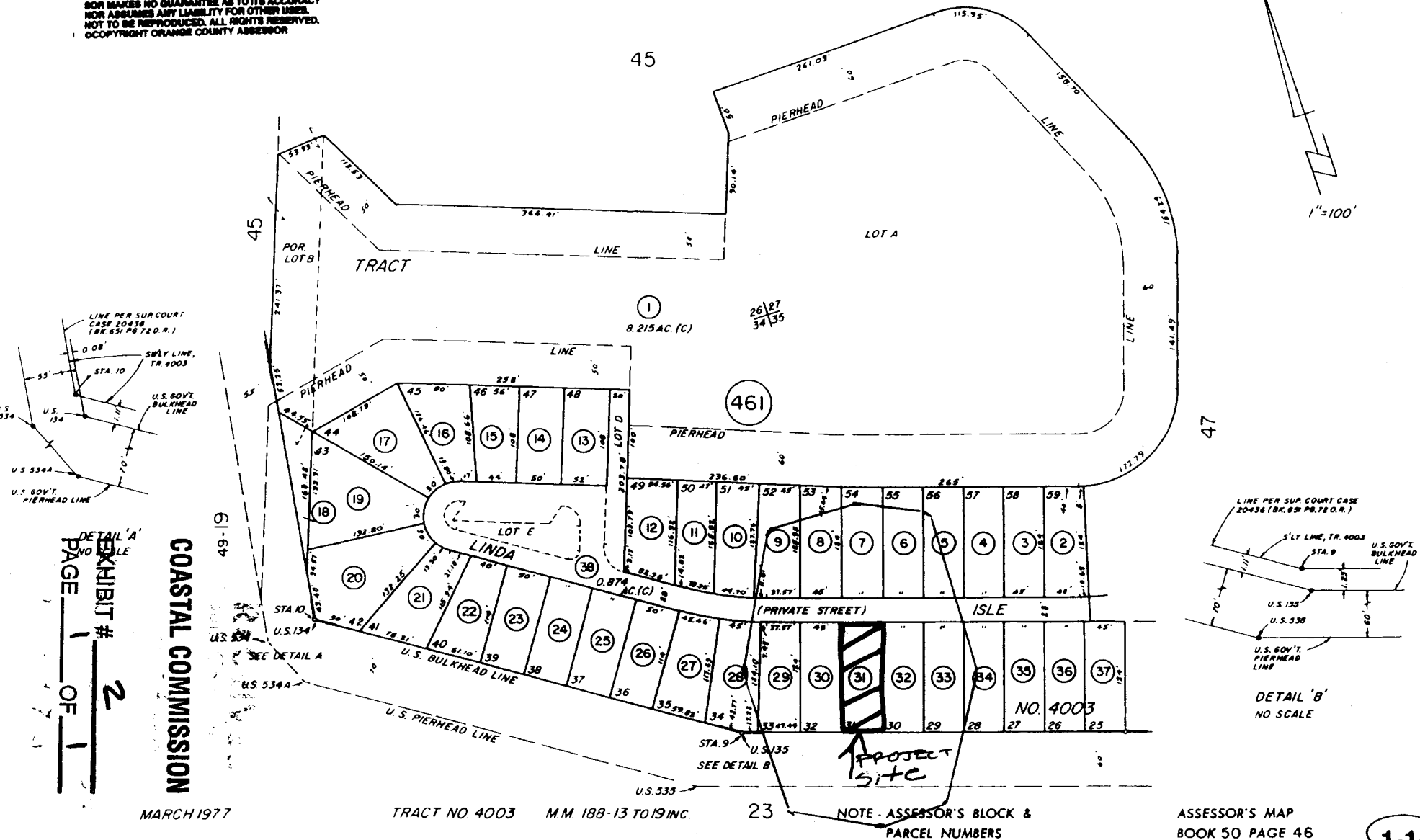
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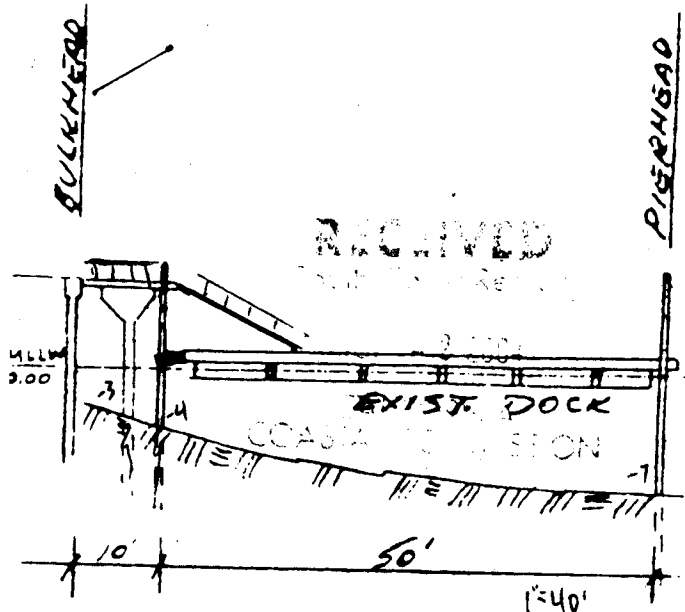
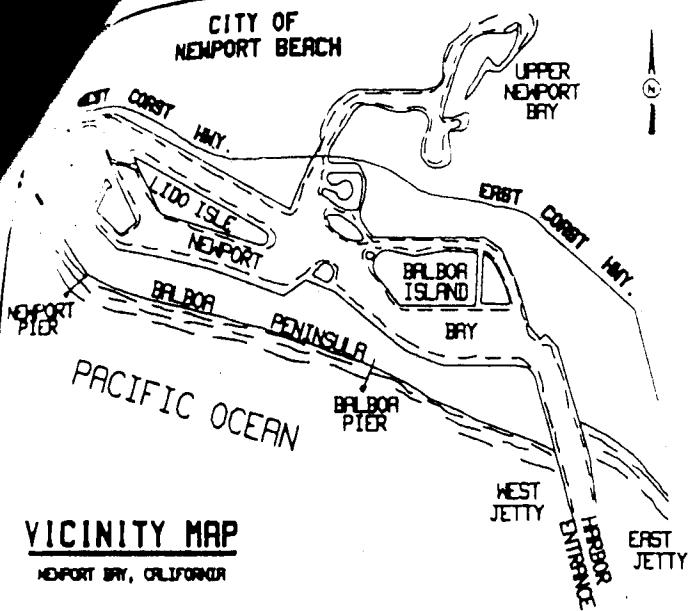
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50-46



OF NEWPORT BEACH



SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

SLOPE OF WORK: Remove Existing U-shaped Float, Pile, Gangway.
Install New L-shaped Float 12'x48' with 20'x4' head walk
3-new 18" pile, 3'x24' Gangway

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

Chris Miller

SIGNATURE

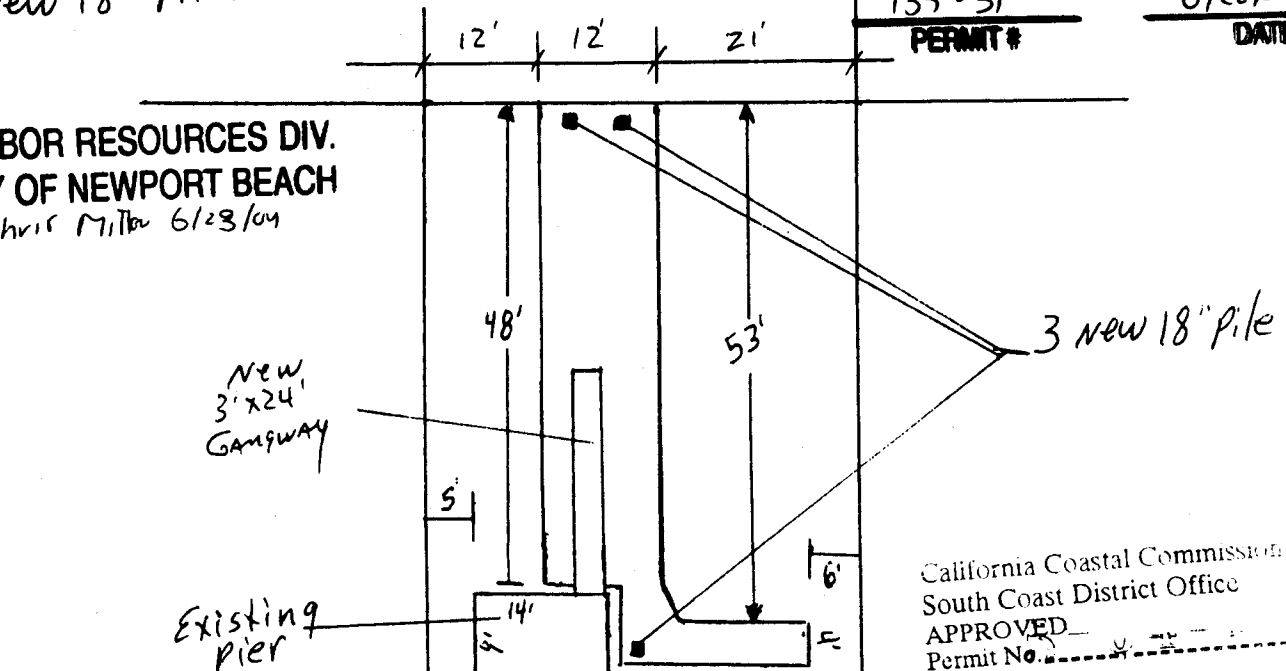
135-31

PERMIT #

6/22/04

DATE

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH
Chris Miller 6/23/04



COASTAL COMMISSION

EXHIBIT #

2

PAGE

1

OF

1

California Coastal Commission
South Coast District Office
APPROVED
Permit No. _____

By:

EFFECTIVE

Date:

PLAN VIEW 1" = 20'

APPLICANT'S NAME

ANDI PUKKE

JOB ADDRESS

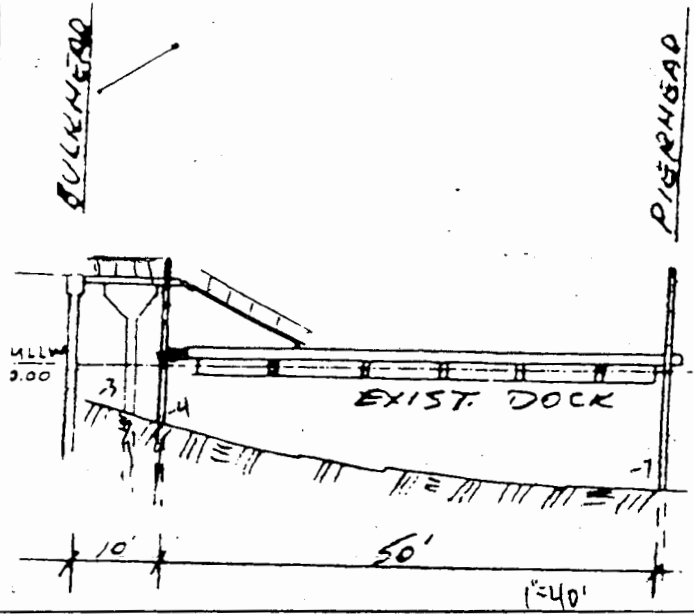
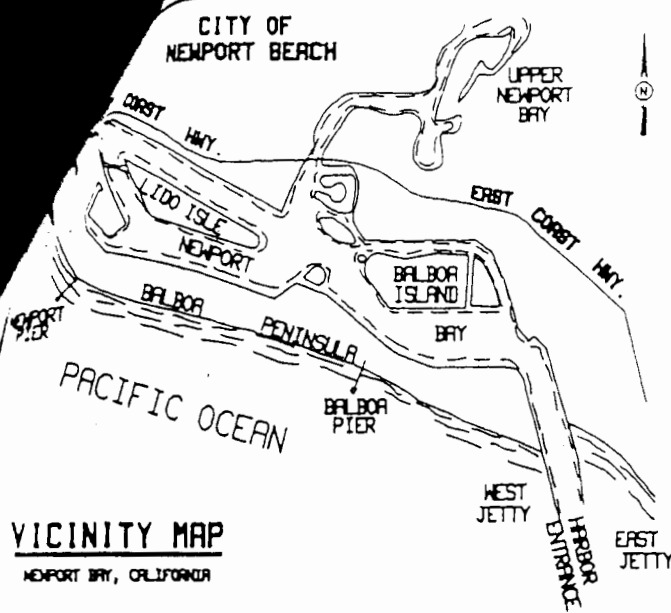
31 Linda Isle

DATE

6-11-04

cont. Swift Slip

OF NEWPORT BEACH



SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

SCOPE OF WORK: Remove Existing U-shaped Float, Pile, Gangway.
Install New L-shaped Float
12' x 48' with 20' x 4' head walk
3-new 18" pile, 3' x 24' Gangway

Eelgrass

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1

