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

Th18b

Filed:	9/2/2009
49th Day:	10/21/2009
180th Day:	3/1/2010
Staff:	Charles Posner - LB
Staff Report:	10/14/2009
Hearing Date:	November 5, 2009
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-09-092

APPLICANT: City of Avalon

AGENT: Ronald M. Noble, Noble Consultants, Inc.

PROJECT LOCATION: Casino Point/Avalon Bay, City of Avalon, Santa Catalina Island, County of Los Angeles.

PROJECT DESCRIPTION: Remove an existing public pier with 74 timber piles, and replace it in the same footprint with a 108'x 36' concrete public pier supported by eight 24-inch diameter polyethylene-coated steel piles. The new pier will support a one-story fueling station, public restrooms, and a café. Also, temporarily locate fuel dispensing activities at the City pump-a-head dock while the new pier is being constructed.

LOCAL APPROVAL: City of Avalon Site Plan Review, Case No. 2379, 4/29/2009.

SUMMARY OF STAFF RECOMMENDATION

A coastal development permit is required from the Commission because the proposed pier replacement project is located within the Commission's area of original jurisdiction on submerged lands and filled tidelands. Staff is recommending **APPROVAL** of the coastal development permit with special conditions relating to the protection of water quality, public access, and the marine resources of Avalon Bay. The recommended conditions require the permittee to: a) complete a pre-construction site survey for the presence of toxic algae (Caulerpa), b) implement best management practices during demolition and construction in order to minimize adverse impacts to marine habitat, c) implement post-construction best management practices in order to minimize the potential for accidental discharges during fueling and boating activities, d) comply with the requirements of the resource agencies, and e) assume the risks of the development. The applicant agrees with the recommendation. **See Page Two for the motion necessary to carry out the staff recommendation.**

SUBSTANTIVE FILE DOCUMENTS:

1. City of Avalon certified Local Coastal Program (LCP), May 21, 1981
2. Coastal Development Permit 5-00-101 (Catalina Is. Yacht Club Pier, Avalon, SCI).
3. Coastal Development Permit 5-00-093 (Howlands Landing Pier, SCI).
4. Coastal Development Permit 5-04-019 (Isthmus Cove Pier, SCI).
5. U.S. Army Corps of Engineers Permit Application, Project No. SPL-2009-00324-MAS.
6. City of Avalon certified Mitigated Negative Declaration for the Avalon Fuel Dock Replacement Project, 4/30/2009.
7. Preliminary Geotechnical Evaluation for the Casino Fuel Pier Replacement, Avalon Harbor, California, by Geotechnical Professionals, Inc., 3/14/2008.
8. Marine Biological Survey Report and Essential Fish Habitat Analysis for the Casino Fuel Pier Replacement Project, Avalon Harbor, California, by Coastal Resources Management, Inc., 2/4/2009.
9. Best Management Practices (BMPs) for Diesel/Gasoline Fuel Dispensing Procedure, by Catalina Freight Line Co. (Revised June 19, 2009).
10. Best Management Practices (BMPs) for Avalon Marine Dock Spill Response Procedure, by Catalina Freight Line Co. (Revised June 17, 2009).

STAFF NOTE:

Pursuant to Section 30519 of the Coastal Act, development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission. The Commission's area of original jurisdiction includes tidelands, submerged lands, and public trust lands, whether filled or unfilled. The proposed project is situated on submerged lands and on filled tidelands within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development in its area of original jurisdiction is the Chapter 3 policies of the Coastal Act. The City of Avalon certified LCP is advisory in nature and may provide guidance. The proposed project does not conflict with the City of Avalon certified LCP.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve with special conditions Coastal Development Permit 5-09-092 per the staff recommendation."*

The staff recommends a **YES** vote. Passage of the motion will result in **APPROVAL** of the coastal development permit application with special conditions, and adoption of the following resolution and findings, as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by an affirmative vote of a majority of Commissioners present.

I. Resolution: Approval with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. 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. Permit Compliance

The permitted use of the approved development is for boating-related and visitor-serving recreation uses only. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

2. Protection of Marine Resources

In order to minimize adverse environmental impacts and the unpermitted deposition, spill or discharge of any liquid or solid into Avalon Bay, the permittee shall implement the following demolition, staging, and construction best management practices:

A. No pile driving equipment (e.g., impact hammers, vibratory hammers or any other pile driving hammers) shall be utilized.

B. Where permitted, disturbance to the ocean bottom and intertidal areas shall be minimized.

C. Prior to demolition, and during site preparation molluscs (clams, snails, etc.), echinoderms (sea stars, urchins, sea cucumbers), arthropods (crabs, etc.) and other native marine animals found at the project site shall be relocated to another part of the bay when possible.

D. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

E. Netting, sandbags, tarps and/or other forms of barriers shall be installed between the water and work areas and equipment storage areas to prevent any unpermitted material from entering Avalon Bay or the sea.

F. Floating booms shall be maintained around the project site in order to capture floating debris during all demolition and construction phases.

G. Staging and storage of construction machinery and storage of debris shall not take place on any beach.

H. Machinery or construction materials not essential for project improvements are prohibited at all times in the subtidal or intertidal zones.

I. If turbid conditions are generated during demolition and construction, silt curtains shall be utilized to control turbidity.

J. The storage or stockpiling of soil, silt, other organic or earthen materials, or any materials and chemicals related to the construction shall not occur where such materials/chemicals could pass into the waters of Avalon Bay or the sea. Stockpiled fill shall be stabilized with geofabric covers or other appropriate cover.

K. Spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible. Disposal within the coastal zone shall require a coastal development permit.

L. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction vehicles shall be serviced immediately. Equipment and machinery shall be serviced, maintained and washed only in confined areas specifically designed to control runoff and prevent discharges into Avalon Bay or the sea. Thinners, oils or solvents shall not be discharged into sanitary or storm sewer systems.

M. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all storm drains, open ditches and surface waters.

N. All floatable debris and trash generated by construction activities within the project area shall be disposed of as soon as possible or at the end of each day.

O. All grading and excavation areas shall be properly covered and sandbags and/or ditches shall be used to prevent runoff from leaving the site, and measures to control erosion must be implemented at the end of each day's work.

P. In the event that lead-contaminated soils or other toxins or contaminated material are discovered on the site, such matter shall be stockpiled and transported off-site only in accordance with Department of Toxic Substances Control (DTSC) rules and/or Regional Water Quality Control Board (RWQCB) regulations.

Q. The permittee shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

R. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash or construction material has been left on the shore or in the water, and that the project has not created any hazard to navigation.

The permittee shall include the requirements of this condition on all plans and contracts issued for the project. The permittee shall implement and carry out the project staging and construction plan during all demolition, staging, and construction activities.

3. Public Access To and Along the Shoreline

The applicant and the development shall not interfere with public access along the shoreline in the project area, except for the temporary disruptions that may occur during the completion of the permitted development.

4. *Caulerpa taxifolia* (Toxic Algae) Pre-Construction Survey

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any disturbance of the intertidal or subtidal areas authorized under this coastal development permit, the permittee shall undertake a survey of the project area and a buffer area at least ten 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 permittee shall submit the survey for the review and approval of the Executive Director; and 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 permittee shall not proceed with the project until 1) the permittee provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or 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 permittee 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.

5. Conformance with the Requirements of the Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

6. Best Management Practices (BMP) Program

By acceptance of this permit, the applicant agrees that the 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 is prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and only minimal amounts shall be used.
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:

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 shall be disposed of in a proper manner and shall not at any time be disposed of in the water or gutter.

C. Petroleum Control Management Measures:

BMPs shall be implemented to minimize the potential for accidental discharges during fueling activities. Oil absorbent materials should be examined at least once a year and replaced as necessary. The applicant shall recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters shall to 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. The use of detergents or soaps that can be discharged by bilge pumps is prohibited.

7. Assumption of Risk

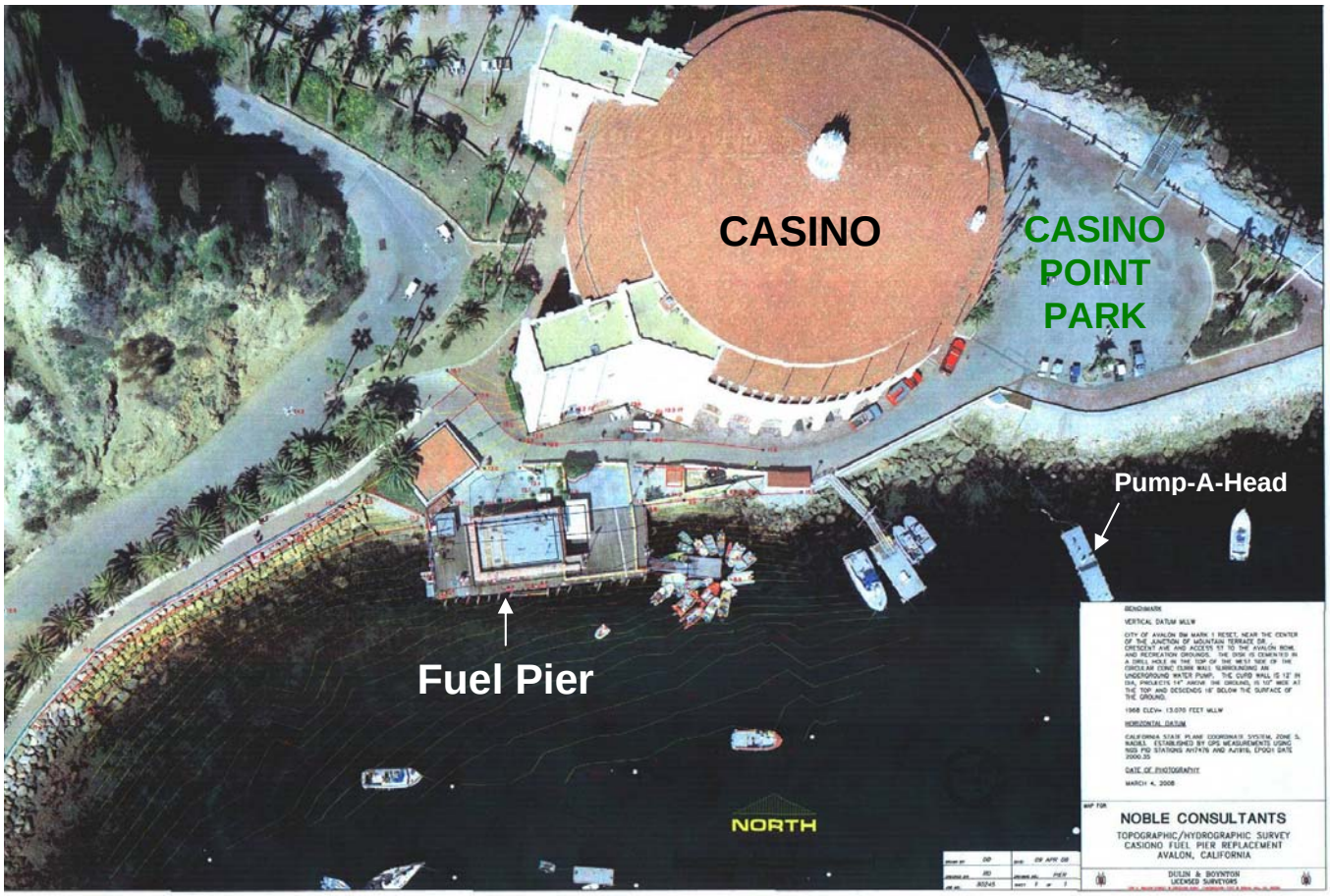
By acceptance of this permit, the applicant, on behalf of (1) itself; (2) its successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant 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; (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; and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (v).

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project involves the replacement of the Avalon Bay Fuel Pier on Catalina Island (See Exhibits). The existing 108'x 36' public pier supports a one-story structure that contains a fueling station, public restrooms, a convenience store and a small café (Exhibit #3). The pier serves tour boats, private yachts and visiting boaters as the only on-water fueling facility in Avalon. The existing timber pier and its 74 decaying timber piles will be removed. The pier will be replaced in the same footprint with a new 108'x 36' concrete pier supported by eight 24-inch diameter steel piles (Exhibit #5). The eight new steel piles will be protected with a three-layer polyethylene covering. The new pier, like the old one being replaced, will support a fueling station (with new fuel dispensers), public restrooms, a convenience store and a small café inside a one-story structure (Exhibit #6). An existing dinghy dock and a seasonal fuel float (deployed in summer only) will be re-attached to the new pier upon its completion (Exhibit #4). The four existing underground fuel storage tanks, located on the land next to the pier, will not be altered as part of the proposed project, although they will be temporarily out of service.



Casino Point Fuel Pier, Avalon Bay, March 2008.

The proposed demolition and construction is expected to commence in late 2009 and take about six months to complete. The project staging area will be situated on the land area adjacent to the pier. A land-based crane will be used during demolition and construction.

The bedrock under the pier, which is very hard, is covered by a layer of rock rubble (Exhibit #5). After the old pier structure is removed from the site and barged to the mainland for disposal, workers using hand-held tools will move (side cast) the loose rocks away from the eight pile locations in order to prepare the bay bottom for the placement of the new steel piles onto bedrock (Exhibit #7). At low tide, the water will be 0-to-3 feet deep at the eight pile locations; zero feet at the four locations closest to the existing engineered rock shoreline. Four temporary 48-inch diameter caissons will be used during the placement of the four piles located closest to the engineered rock shoreline in order to prevent damage to the seawall (Exhibit #5). All eight 24-inch diameter steel piles will be secured to bedrock with high strength rock anchors (drill-in-place cast concrete technology). Each pile will be secured in place with a 1.75-inch diameter steel rod placed inside a hole drilled to a depth of about fifteen feet into the bedrock. The eight steel piles will be filled with concrete and protected with a three-layer polyethylene coat. The surface of the new pier deck will be about eight feet higher than the mean high tide line (+12' MLLW - Exhibit #5).

The applicant had originally proposed to hammer the eight steel piles a few inches into the underlying bedrock. Based on concerns raised by Commission staff, the applicant has revised the project (10/6/2009) to eliminate hammering and pile driving in order to avoid creating loud underwater noises that could have significant adverse effects on fish and marine mammals (Exhibit #7). The tools that will be used to construct the proposed pier will not exceed the noise levels predicted to harm or kill marine fish and marine mammals (a maximum peak of 206 dB, and an accumulated 183 dB SEL at ten meters from the source, are the underwater noise thresholds for juvenile fish; and a maximum peak of 160 dB at three hundred feet from the source is the underwater noise threshold for marine mammals). Drilling for the 1.75- inch diameter high tension rod will be accomplished inside the pile by use of a small size Air-Track drill, after the pile is set. The air compressor drill used to install the rock anchors for the piles will generate 75-87 dBA, but the sound from drilling will be muffled because the drilling will be inside the steel pipes. Therefore the noise, which is minimal, will be mostly contained inside each hollow steel pile.

While Avalon's only in-water fuel facility is out of service during the (six month) construction period, the City proposes to implement an interim plan for providing fuel to boaters. The interim plan involves the use of the City-owned Pump-a-Head waste disposal dock located on Casino Point, about two hundred feet east of the proposed pier (Exhibit #2). Fuel will be provided to the dispensers on the floating dock through a fuel hose attached to land-based fuel storage tanker trucks. Safety equipment and a small office will be contained inside an 8'x 16' portable trailer placed temporarily in the Casino Point parking lot.

The interim fuel dock and the proposed new pier are both located within the protected waters of Avalon Bay (Exhibit #2). The south facing shoreline in the project area is comprised of an engineered rock shoreline which will not be altered as part of the proposed project. The sloping bay bottom at the project site is comprised of loose rocks. On October 31, 2008, marine biologists Rick Ware and Stephen Whitaker surveyed the project area and found no eelgrass (*Zostera marina*) or noxious algae (*Caulerpa taxifolia).* Low underwater lights levels beneath the existing pier contribute to low biological diversity. The proposed project has received the approval of the City of Avalon Planning Commission. The applicant has received a preliminary approval from the U.S. Army Corps of Engineers (Project No. SPL-2009-00324-MAS), and has applied for a Section 401 Certification from the California Regional Water Quality Control Board.

B. Marine Resources – Water Quality

The Coastal Act contains policies that address development in or near coastal waters. The proposed project is located in the coastal waters of Avalon Bay at Catalina Island (See Exhibits). The standard of review development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation and marine resources. Section 30240 of the Coastal Act requires that the proposed project shall be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas. The intertidal and subtidal areas of Avalon Bay contain environmentally sensitive habitat areas, which shall be protected from the adverse impacts of development. The permit is conditioned to protect these 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 30240 of the Coastal Act states:

> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
>
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The proposed project involves the reconstruction of the City's fuel pier. The new pier is the same size and in the same footprint as the pier being replaced. The old pier, with 74 piles, is made of timber and is deteriorating. The new pier will be constructed with reinforced concrete and will be supported by eight 24-inch diameter steel pipe piles coated with polyethylene. The steel piles will be secured onto underlying bedrock with high strength rock anchors. All utilities

and piping for the new fuel pumps/dispensers, restrooms and concessions will be routed through an enclosed utility trench in the pier deck that is accessed from the top (Exhibit #5).

The materials being used to construct the new pier (concrete, steel and polyethylene) are generally considered to be environmentally superior to chemically-treated timber in the ocean environment. Treated timber can leach chemicals into the water, while concrete and steel have not been found to leach significant amounts of toxins into the environment. Commission staff has consulted the California Department of Fish and Game (DFG) regarding the use of polyethylene to seal and protect pier supports that come into contact with the water. The use of polyethylene in the construction of new piers is routinely approved by the DFG.

Due to the project's location in and over coastal waters, it is necessary to ensure that construction activities will be carried out in a manner that will not adversely affect recreation, water quality or marine resources. The potential adverse impacts to water quality and marine resources include: 1) temporary loss of habitat and increased water turbidity caused by placement of the eight new piles, 2) temporary noise impacts during pile placement, and 3) discharges of contaminated runoff during construction and as a result of accidents during ongoing fueling activities. The proposed project includes the implementation of specific best management practices to mitigate the potential adverse impacts of the project. The proposed best management practices are listed in the following file documents:

- City of Avalon certified Mitigated Negative Declaration for the Avalon Fuel Dock Replacement Project, 4/30/2009.
- Marine Biological Survey Report and Essential Fish Habitat Analysis for the Casino Fuel Pier Replacement Project, Avalon Harbor, California, by Coastal Resources Management, Inc., 2/4/2009.
- Best Management Practices (BMPs) for Diesel/Gasoline Fuel Dispensing Procedure, by Catalina Freight Line Co. (Revised June 19, 2009).
- Best Management Practices (BMPs) for Avalon Marine Dock Spill Response Procedure, by Catalina Freight Line Co. (Revised June 17, 2009).

The proposed best management practices include provisions to prevent discharges into the water during demolition and construction (e.g., sand bagging, runoff diversions, and silt curtains) and also during the ongoing fueling operations that will be conducted at the new pier.

There will be no net loss of intertidal or subtidal habitat area as a result of the proposed project, and the project will not impact any designated Marine Protected areas. The 74 existing timber piles (many with concrete jackets) supporting the existing pier occupy approximately 124 square feet of intertidal and subtidal habitat area. All 74 existing piles will be removed. The eight proposed 24-inch diameter piles will occupy approximately 25 square feet of intertidal and subtidal habitat area (four piles are in the intertidal zone and four piles are in the subtidal zone). Therefore, the proposed project will result in a net increase of about 99 square feet of habitat area.

The proposed project will result in the temporary loss of habitat and increase in water turbidity during the bottom disturbance that will occur with the placement of the eight new piles, but the Marine Biological Survey Report states that the disturbed habitat in the project area (the area beneath the pier) will be completely recolonized within one-to-three years, and the project will result in a long-term beneficial impact to marine resources because of the increase

(approximately 99 square feet) in rocky bottom habitat area created by the removal of the old timber piles. Silt curtains will be used to control turbidity. On October 31, 2008, marine biologists Rick Ware and Stephen Whitaker surveyed the project area and found no eelgrass (*Zostera marina*) or noxious algae (*Caulerpa taxifolia).* Low underwater lights levels beneath the existing pier contribute to low biological diversity. Therefore, no eelgrass will be affected by the proposed project.

Minimal noise will be generated during the removal and installation of pier piles, pier deck construction, and the use of heavy land-based machinery. The project's mitigated negative declaration and the Marine Biological Survey Report (Marine Biological Survey Report and Essential Fish Habitat Analysis for the Casino Fuel Pier Replacement Project, Avalon Harbor, California, by Coastal Resources Management, Inc., 2/4/2009) both address noise impacts, and both state that noise impacts will be less than significant. The proposed project does not include any pile driving that could create loud underwater noises that would adversely affect fish and marine mammals (Exhibit #7). A maximum peak of 206 dB at ten meters from the source and an accumulated 183 dB SEL as measured ten meters from the source is the estimated harmful noise threshold for juvenile fish. A maximum peak of 160 dB at three hundred feet from the source is the noise level predicted to harm marine mammals. The air compressor drill used to install the rock anchors for the piles will generate 75-87 dBA, but the sound from drilling will be muffled because the drilling will be inside the steel pipes. The Marine Biological Survey Report states that noise will have a less than significant effect on seabirds (i.e., gulls, cormorants and pelicans) because there are no seabird breeding sites nearby and the birds have acclimated to noise levels in the harbor area. Also, no bald eagle nests are in the vicinity of the project.

In order to prevent adverse impacts to marine waters from construction and demolition activities, the Commission is imposing **Special Condition Two**, which requires that specific mitigation measures be implemented in order to ensure that water quality, biological productivity and marine resources are protected as required by Sections 30230, 30231 and 30240 of the Coastal Act. Special Condition Two requires the permittee to implement the following best management practices in order to minimize potential adverse environmental impacts:

- No pile driving equipment (e.g., impact hammers, vibratory hammers or any other pile driving hammers) shall be utilized.

- Where permitted, disturbance to the ocean bottom and intertidal areas shall be minimized.

- Prior to demolition, and during site preparation molluscs (clams, snails, etc.), echinoderms (sea stars, urchins, sea cucumbers), arthropods (crabs, etc.) and other native marine animals found at the project site shall be relocated to another part of the bay when possible.

- Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

- Netting, sandbags, tarps and/or other forms of barriers shall be installed between the water and work areas and equipment storage areas to prevent any unpermitted material from entering Avalon Bay.

- Floating booms shall be maintained around the project site in order to capture floating debris during all demolition and construction phases.

- Staging and storage of construction machinery and storage of debris shall not take place on any beach.

- Machinery or construction materials not essential for project improvements are prohibited at all times in the subtidal or intertidal zones.

- If turbid conditions are generated during demolition and construction, silt curtains shall be utilized to control turbidity.

- The storage or stockpiling of soil, silt, other organic or earthen materials, or any materials and chemicals related to the construction shall not occur where such materials/chemicals could pass into the waters of Avalon Bay. Stockpiled fill shall be stabilized with geofabric covers or other appropriate cover.

- Spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible. Disposal within the coastal zone shall require a coastal development permit.

- Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction vehicles shall be serviced immediately. Equipment and machinery shall be serviced, maintained and washed only in confined areas specifically designed to control runoff and prevent discharges into Avalon Bay. Thinners, oils or solvents shall not be discharged into sanitary or storm sewer systems.

- Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all storm drains, open ditches and surface waters.

- All floatable debris and trash generated by construction activities within the project area shall be disposed of as soon as possible or at the end of each day.

- All grading and excavation areas shall be properly covered and sandbags and/or ditches shall be used to prevent runoff from leaving the site, and measures to control erosion must be implemented at the end of each day's work.

- In the event that lead-contaminated soils or other toxins or contaminated material are discovered on the site, such matter shall be stockpiled and transported off-site only in accordance with Department of Toxic Substances Control (DTSC) rules and/or Regional Water Quality Control Board (RWQCB) regulations.

- The permittee shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

- At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash or construction material has been left on the shore or in the water, and that the project has not created any hazard to navigation.

Only as conditioned will the proposed project ensure that marine resources and water quality be protected as required by Sections 30230, 30231 and 30240 of the Coastal Act.

Special Condition Four requires the applicant to verify, prior to commencement of demolition, that the invasive alga *Caulerpa taxifolia* is not present at the project site. *Caulerpa taxifolia* has not been found at Catalina Island. **Special Condition Five** requires the permittee to comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Post-construction BMPs are required pursuant to **Special Condition Six**, so that fueling and boating-related activities at the pier do not result in adverse effects on marine resources. Only as conditioned will the proposed project ensure that marine resources and water quality be protected as required by Sections 30230, 30231 and 30240 of the Coastal Act.

C. Marine Resources – Dredging and Filling

Section 30233 of the Coastal Act regulates the filling and dredging of open coastal waters, wetlands and estuaries. Section 30233 of the Coastal Act allows dredging and filling of coastal waters (or wetlands) only for the seven uses listed in Section 30233(a) of the Coastal Act, and only where feasible mitigation measures have been provided to minimize adverse environmental effects.

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 or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
>
> 2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
>
> 3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

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

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

6) Restoration purposes.

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

The proposed project involves the replacement of a public pier with a new public pier of the same size and in the same location. Section 30233 of the Coastal Act is relevant as the proposed project includes fill (eight piles). No dredging is proposed as part of the project. The proposed pile replacement is consistent with the requirements of Section 30233(a), as follows:

Allowable Use - Section 30233(a)(3) of the Coastal Act allows fill of open coastal waters for the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. The proposed project, as conditioned to be used for boating related and visitor-serving recreation uses only, will provide for increased recreational boating opportunities for island residents and visitors, and constitutes an allowable use under Section 30233(a)(3).

Least Environmentally Damaging Alternative - The proposed project will result in the replacement of a public pier weakened by age and the elements. The proposed piles are the minimum size and the minimum number necessary to withstand the loads created by tides and currents. Thus, the amount of fill needed to support the proposed allowable use is minimized. Also, the proposed best management practices and the conditions of approval mitigate the potential adverse impacts to marine resources. Therefore, the project, as conditioned, is the least environmentally damaging alternative.

Adequate Mitigation - Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The placement of the proposed piles in conjunction with the proposed project will displace about 25 square feet of bottom habitat, although the new piles are replacing 74 old piles that cover approximately 124 square feet of bottom habitat. Therefore, the proposed project will result in a net increase of approximately 99 square feet of bottom habitat. No eelgrass will be impacted as a survey of the project site found no eelgrass (low underwater lights levels beneath the existing pier are not conducive to eelgrass growth). The proposed pilings will provide new vertical habitat for marine organisms such as mussels, barnacles, limpets, littorine snails, red and brown seaweed, surfgrass, anemones, and polychaetes. Thus, adequate mitigation is provided by the proposed project in that the replacement of the 74 existing piles with eight new piles will increase the amount of bottom habitat, and by the fact that the pilings themselves will provide new vertical intertidal habitat for marine organisms.

For the reasons discussed above, the Commission finds that the project, as conditioned, is consistent with Section 30233 of the Coastal Act.

D. Public Access and Recreation

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project is conditioned to conform with the following Coastal Act policies which protect and encourage public access and recreational use of coastal areas.

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 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 proposed project involves the necessary replacement of a public pier with no change in use. The proposed public pier will provide public recreational opportunities and will support increased recreational boating use of coastal waters. A new public restroom will be provided. The pier will continue to be available for public use, and the fuel facility will continue to enhance public access and recreational opportunities at Catalina Island. The proposed pier, which supports recreational boating, is an allowable and encouraged marine related use, and is consistent with Section 30224 of the Coastal Act.

The public currently has access to the Avalon Bay Fuel Pier and along the shoreline at the project site. The proposed project will not interfere with public access along the shoreline, except for the temporary disruptions that may occur during the completion of the permitted development. The proposed project will take place primarily during the winter and early spring season when there are fewer visitors to the pier, which will further reduce any adverse impacts to access.

The designated scuba area is situated on the north side of Casino Point and is outside of the bay and about three hundred feet north of the project site. The proposed project will not adversely affect Casino Point Park or the scuba diving area. **Special Condition Three**

prohibits the applicant and the development from interfering with public access along the shoreline in the project area, except for the temporary disruptions that may occur during the completion of the permitted development. Only as conditioned can the proposed project be found consistent with the public access and recreation policies of the Coastal Act.

E. Visual Resources

Section 30251 of the Coastal Act states:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Section 30251 of the Coastal Act requires that the scenic and visual resources of coastal areas be considered and protected as a resource of public importance. In addition, public views to and along the ocean and scenic coastal areas shall be protected.

The proposed project is the replacement of an existing public pier, with no significant change to its current configuration. The existing one-story building on the pier will be replaced by a new one-story building of similar size (Exhibit #6). The new building is on the same footprint as the existing building. The design of the proposed building is visually compatible with the character of the surrounding area (Casino Point). Therefore, the proposed project will not block any existing public views or result in any significant change to visual resources, and is consistent with Section 30251 of the Coastal Act.

F. Hazards

The Coastal Act states that new development must minimize risks to life and property and not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

Section 30253 of the Coastal Act states, in part:

> New development shall:
>
> (l) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) 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.

The proposed project will not 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. However, no development in the water can be guaranteed to be safe from hazard. All development located in or near the ocean have the potential for damage caused by wave energy, floods, seismic events, storms and erosion.

The proposed project is located in the Pacific Ocean and is susceptible to natural hazards. The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. **Special Condition Seven** ensures that the permittee understands and assumes the potential hazards associated with development in or near the water. Such knowledge is the first step towards the minimization of risks to life and property.

G. 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 which the activity may have on the environment.

On April 30, 2009, the City of Avalon certified a Mitigated Negative Declaration for the Avalon Fuel Dock Replacement Project. Furthermore, the proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require a) implementation of construction and debris removal responsibilities; b) implementation of best management practices to protect water quality and marine sources, c) conformance with post-construction best management practices; d) protection of public access; and e) the permittee's assumption of risk.

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 complies with the applicable requirements of the Coastal Act to conform to CEQA.

H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act. A coastal development permit is required from the Commission for the proposed development because it is located within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Avalon certified LCP is advisory in nature and may provide guidance.

The Commission certified the City of Avalon LCP on May 21, 1981. The City of Avalon certified Land Use Plan (LUP) designates the project area as a Resort Recreational District. The certified LCP states that the Resort Recreational District is established "for the purpose of stimulating and allowing a variety of uses associated with the resort character of Avalon." The principal use of the Resort Recreational District is that of resort hotel uses and associated activities. The proposed project, which supports public recreation and boating activities, is consistent with the Resort Recreational land use designation.

The City of Avalon certified LCP sets forth the following relevant policies:

Access Policy 1: Constantly monitor and improve transportation from the mainland to Avalon to assure affordable and efficient transportation to residents and visitors alike and continue to minimize private automobile use in Avalon.

Access Policy 7: Casino Point shall be set aside as a public park and for scuba and swim areas.

[Staff Note: The LCP's "Existing Coastal Access" map shows the dinghy landing and fuel pier in their current location in Avalon Bay. The designated scuba area is situated on the north side of Casino Point, outside of the bay. The Casino Point Park is shown on Casino Point, in the open space are seaward of the Casino building.]

Recreation Policy 3: Development on City Tidelands shall be restricted to visitor-serving or recreational uses.

Recreation Policy 4: Public facilities shall be constantly upgraded and maintained.

Recreation Policy 6: Casino Point shall be designated as a public park, and for swimming and scuba diving.

Marine Resource Policy 1: Identify and control existing sources of runoff into the harbor and surrounding coves.

Marine Resource Policy 2: Require new developments adjacent to the water to use the best mitigation measure available for controlling runoff.

Shoreline Structures Policy 1: Any diking, dredging, filling and construction of shoreline structures will be planned to avoid disruption to marine and wildlife habitats.

Shoreline Structures Policy 3: Shoreline structures such as piers established for recreational and visitor-serving purposes shall be encouraged where feasible in Hamilton Cove, Descanso Bay, and the Pebbly Beach area.

Shoreline Structures Policy 4: Existing structures will be inventoried to establish their reliability in a storm situation and steps taken to mitigate weaknesses.

Boating Policy 2: Encourage maintenance and upgrading of facilities which provide recreational boats and serve commercial fishermen.

Boating Policy 3: Apply design criteria to ensure gas docks and marine servicing areas are aesthetically pleasing and in harmony with waterfront ambience.

ESHA Policy 3: Existing air and water quality in Avalon shall be a primary concern in any new development or potentially impacting activity.

Hazard Policy 3: Locate new developments to avoid hazards.

New Development Policy 5: Give priority to affordable housing and visitor-serving facilities if infrastructure limitations become restrictive.

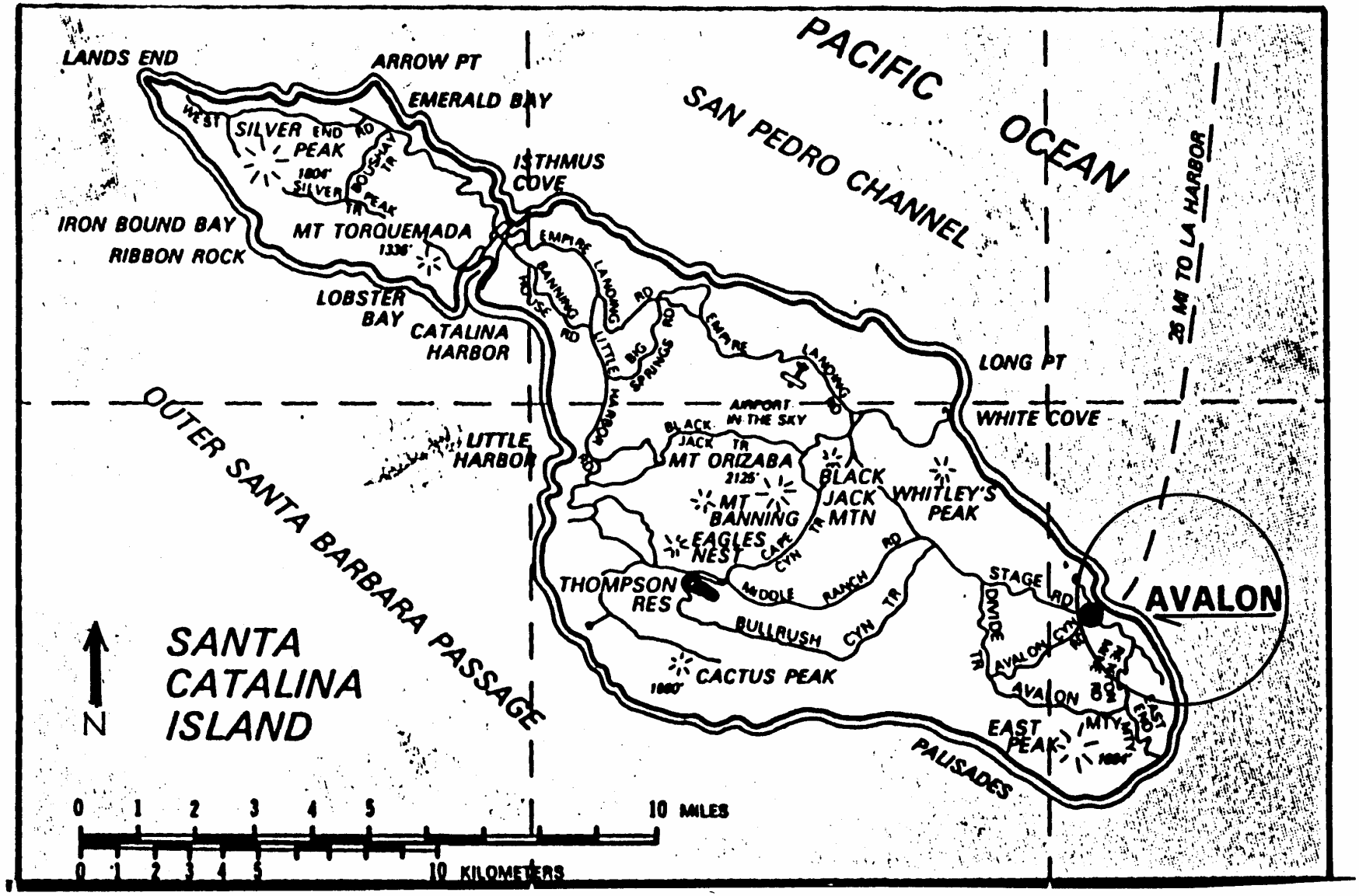
Visual Resource Policy 3: Continue to preserve the scale and charm of existing development through the adoption of design criteria and height and bulk restrictions.

Visual Resource Policy 4: Allow no development along the shoreline which in any way restricts the view of the water from the adjacent pedestrian walk.

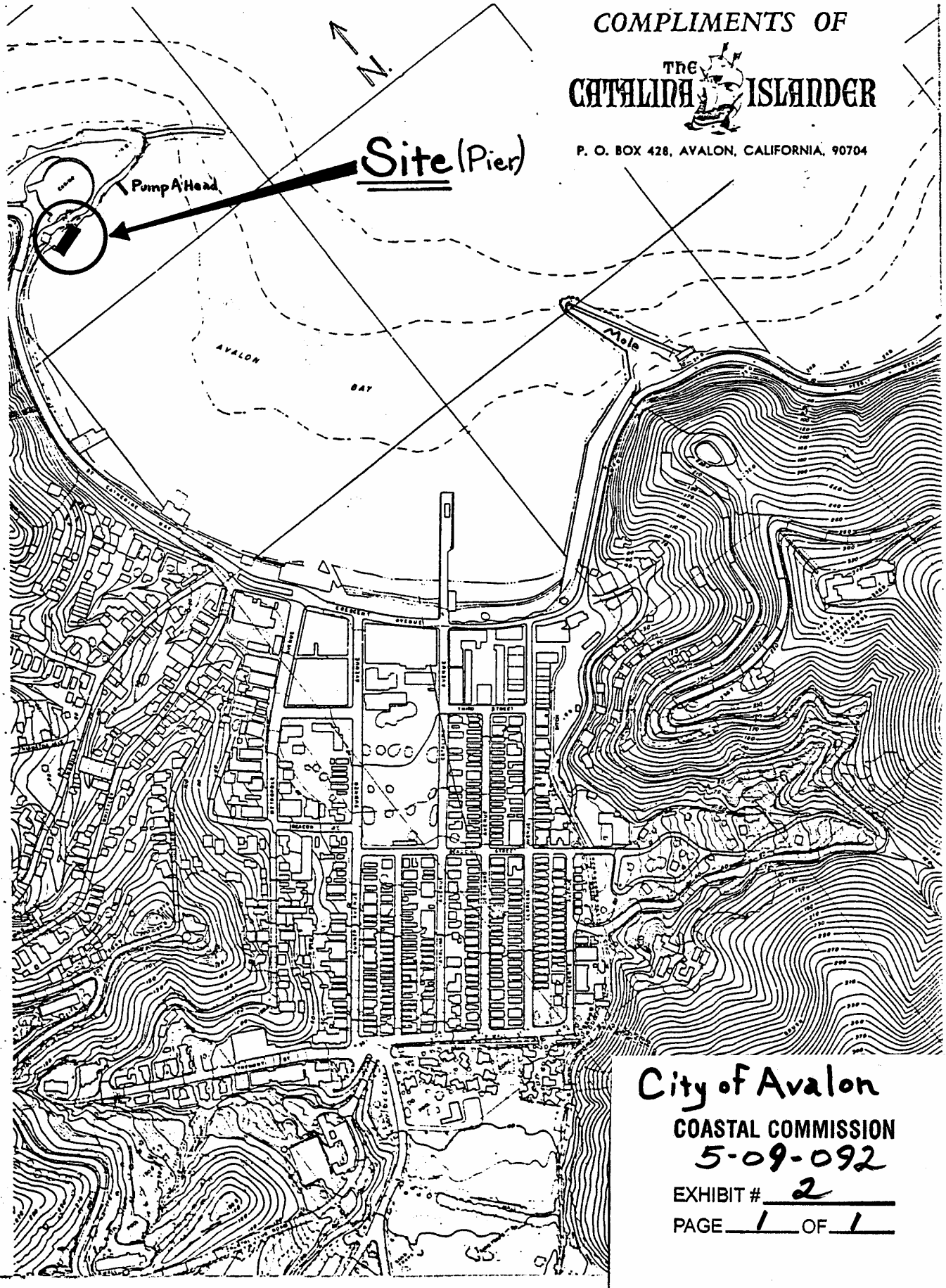
Public Works Policy 4: Monitor new development to make sure they are following flood hazard building standards.

Public Works Policy 5: Require stringent runoff mitigating measures in any new development.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the certified LCP for the area.



COASTAL COMMISSION
5-09-092
EXHIBIT # 1
PAGE 1 OF 1

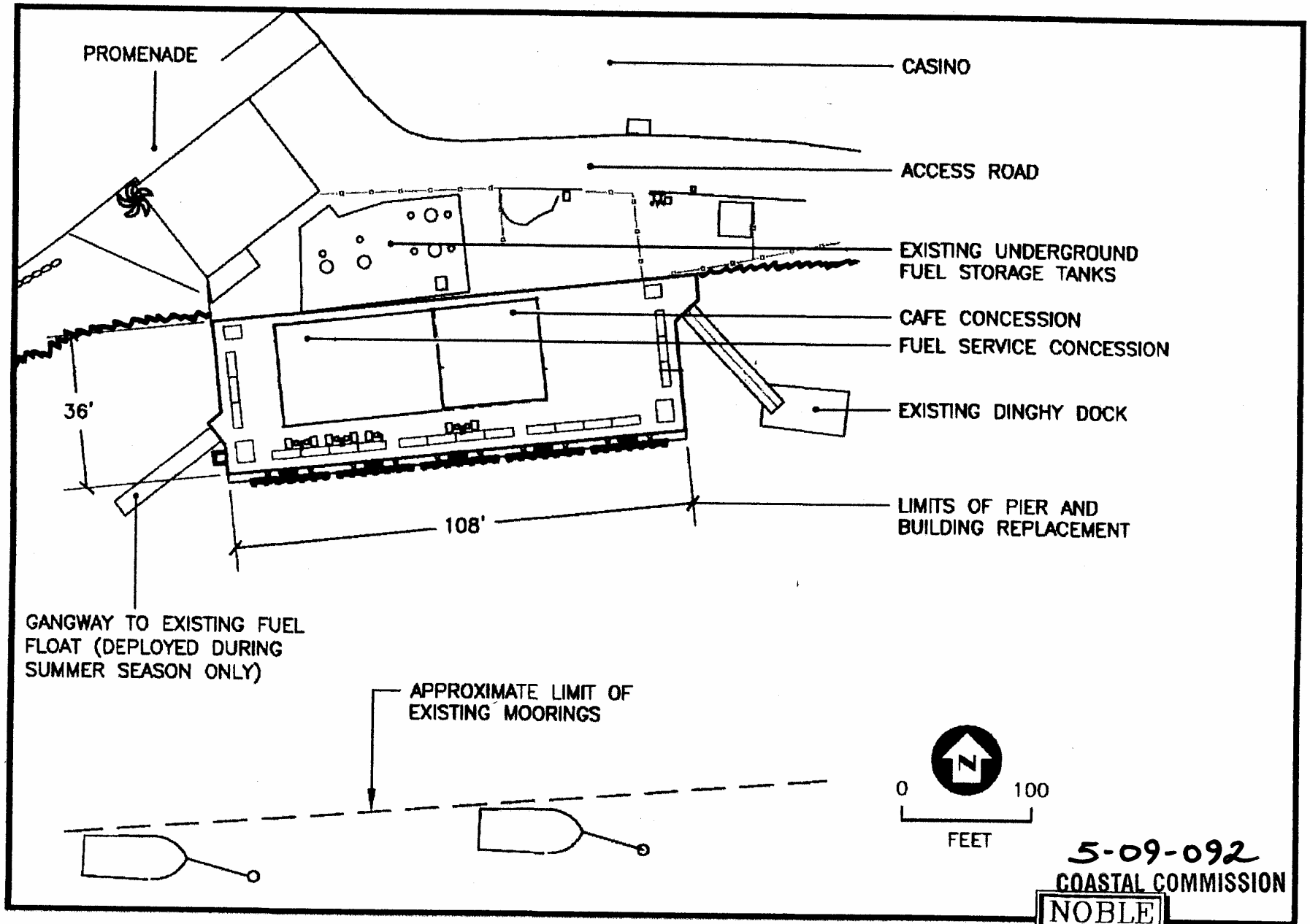


COMPLIMENTS OF

THE CATALINA ISLANDER

P. O. BOX 428, AVALON, CALIFORNIA, 90704

City of Avalon
COASTAL COMMISSION
5-09-092
EXHIBIT # 2
PAGE 1 OF 1



5-09-092

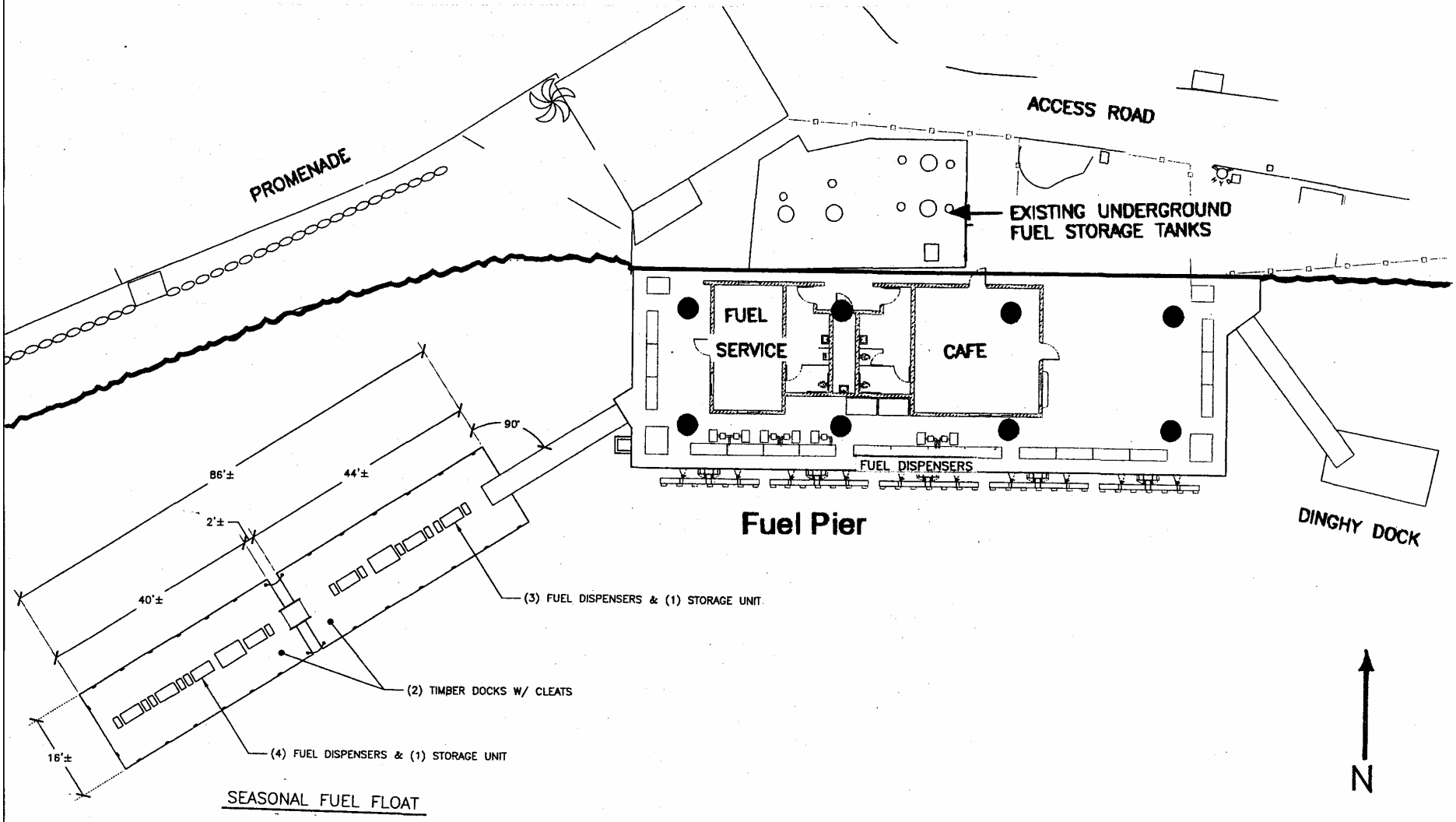
COASTAL COMMISSION

NOBLE

EXHIBIT # 3

PAGE 1 OF 1

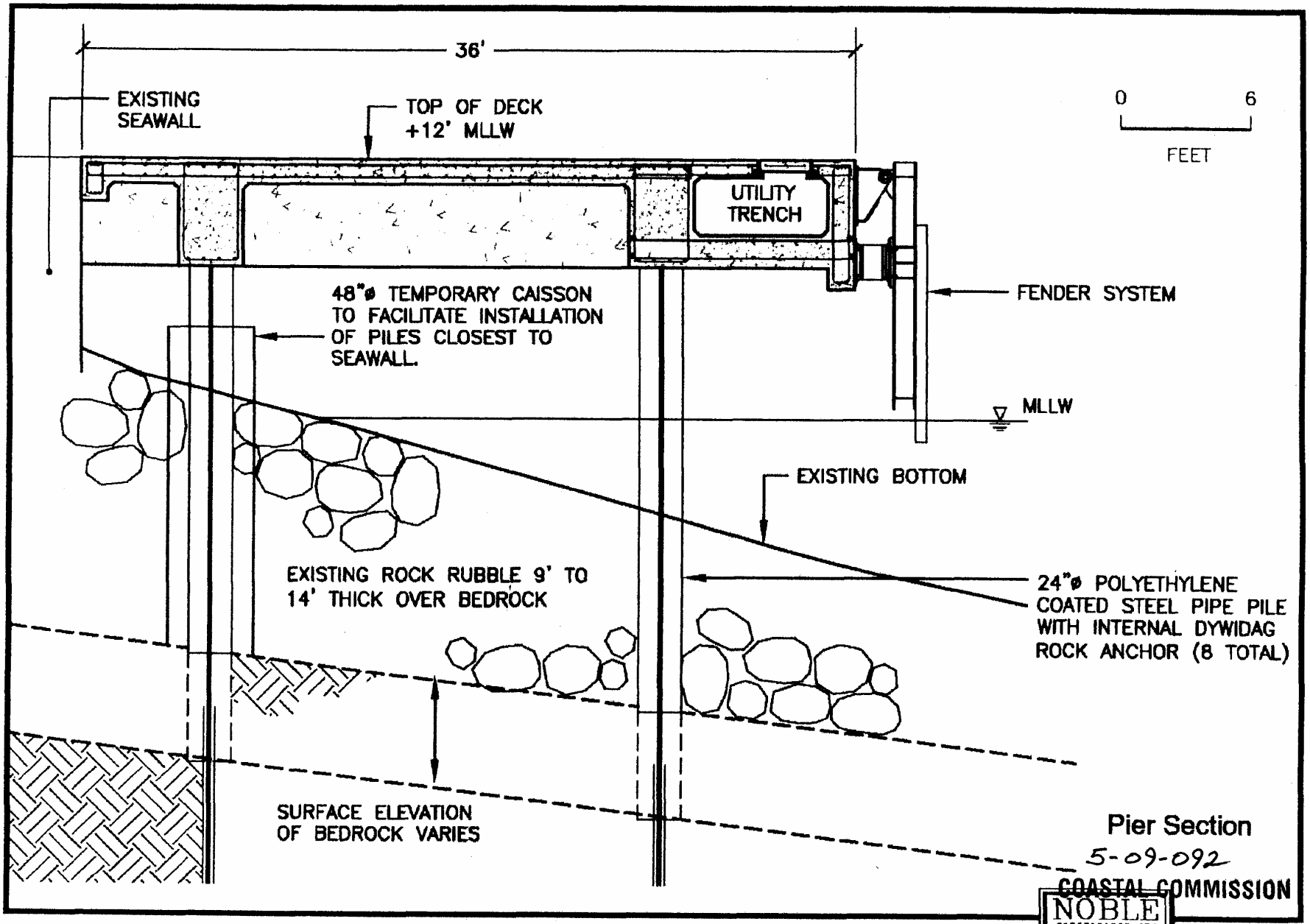
Existing Layout of Casino Fuel Pier and Facilities



Proposed Plan

●-Piles 24"(8)

COASTAL COMMISSION
5-09-092
EXHIBIT # 4
PAGE 1 OF 1



5-09-092

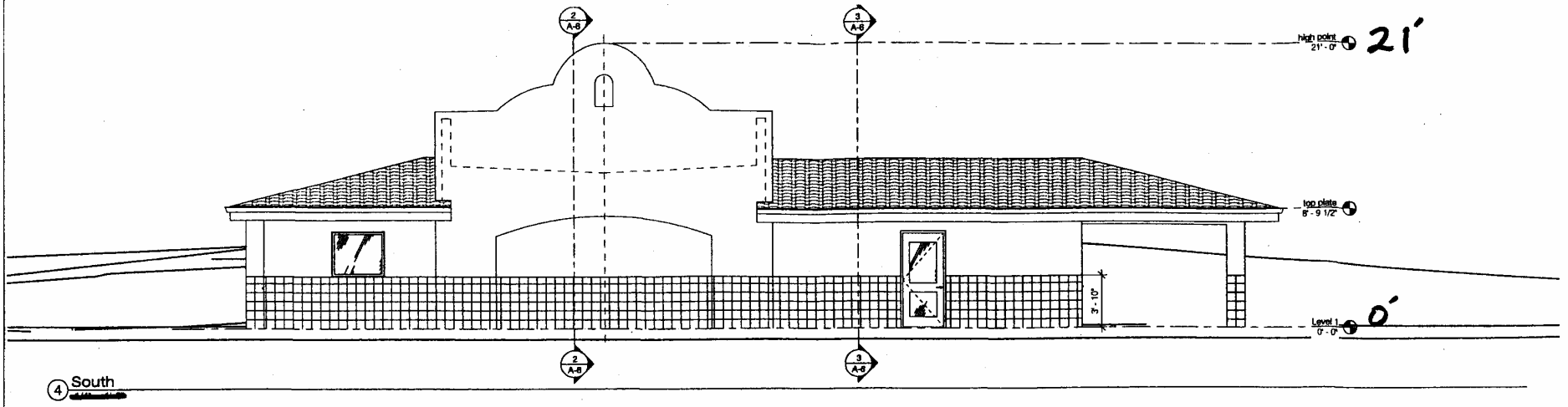
COASTAL COMMISSION

NOBLE CONSULTANTS, INC

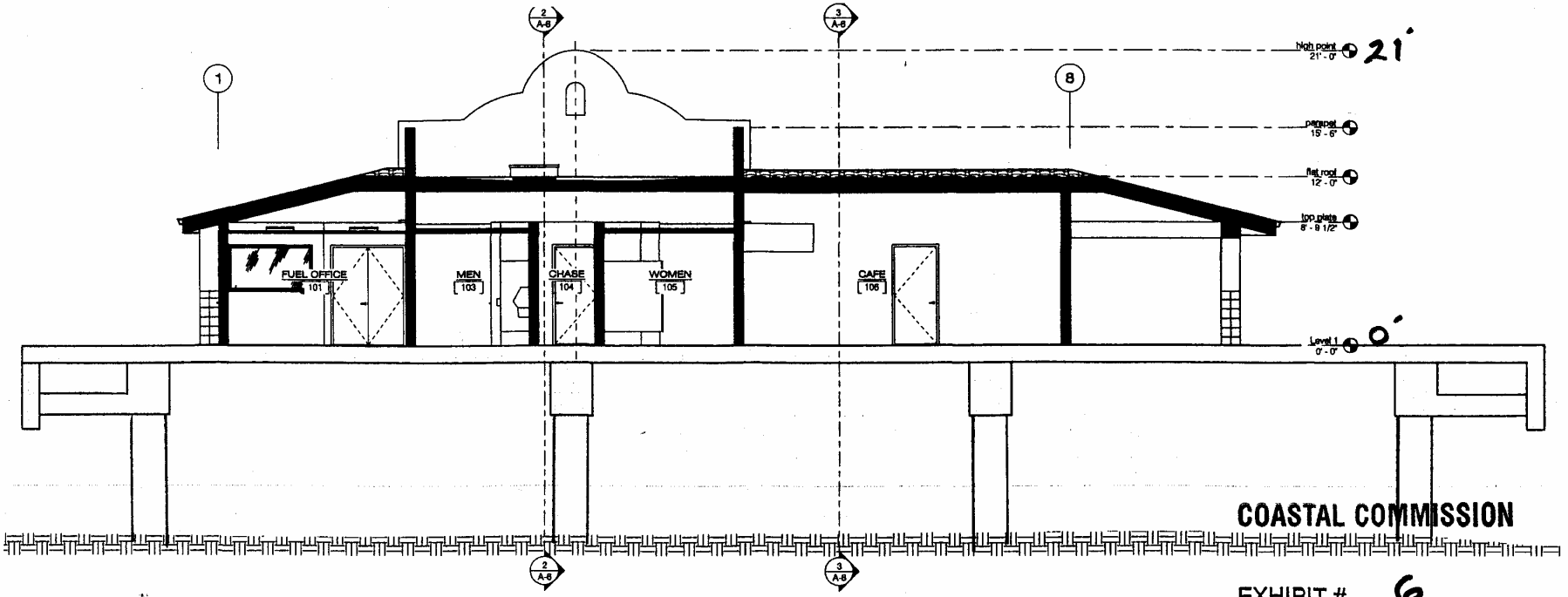
Proposed Pile Layout (Cross Section)

EXHIBIT # 5

PAGE 1 OF 1



4 South



COASTAL COMMISSION

5-09-092

EXHIBIT # 6

PAGE 1 OF 1

NOBLE
CONSULTANTS, INC.

October 6, 2009 997-03

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

Attention: Charles R. Posner, Coastal Program Analyst

RE: Additional Information and/or Materials Necessary to Complete
Coastal Development Permit Application 5-09-092
(Avalon Harbor Fuel Pier, Santa Catalina Island)

Dear Mr. Posner:

This letter is to document that the project description for the construction of the replacement Avalon Harbor Fuel Pier is modified to eliminate the use of pile driving equipment (impact hammers, vibratory hammers or any other pile driving hammers) for the installation of the specified eight 24-inch diameter steel pipe piles. After the loose bottom rock debris material is temporarily side cast in order to provide clear access down to the existing bedrock surface, the bedrock surface will be leveled as required by utilizing divers or other means, excluding pile driving equipment, in order to firmly set the entire pile circumference on the bedrock. Then after each pile is set, an air track drill will drill and install the high strength 1 ¾ -inch diameter tension rods.

Sincerely,

NOBLE CONSULTANTS, INC.

Ronald M. Noble, P.E.
President

RMN/njm

cc: Mr. Keith LeFever, CIP Manager, City of Avalon

COASTAL COMMISSION
5-09-092
EXHIBIT # 7
PAGE 1 OF 1

☐ NOVATO 359 BEL MARIN KEYS BLVD., SUITE 9, NOVATO, CA 94949-5637 (415) 884-0727 FAX (415) 884-0735
☐ IRVINE 2201 DUPONT DR., SUITE 620, IRVINE, CA 92612-7509 (949) 752-1530 FAX (949) 752-8381
http://www.nobleconsultants.com