

CALIFORNIA COASTAL COMMISSION

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**W10c**

Filed: November 29, 2010
49th Day: January 17, 2011
180th Day: May 28, 2011
Staff: John Del Arroz - LB
Staff Report: March 24, 2010
Hearing Date: April 13-15, 2011
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-282

APPLICANT: James Clarke

AGENT: Swift Slip Dock & Pier Builders, Inc.

PROJECT LOCATION: 127 Harbor Island Rd

PROJECT DESCRIPTION: Remove existing U-shaped dock, gangway, and 2 of 4 concrete piles (leaving 2 in the water), and install new 10.5' x 45.66' dock, 24' x 3' wood gangway, four 16" concrete piles, and one 14" concrete pile. The dock system will be composed of Douglas fir.

LOCAL APPROVAL: City of Newport Beach Harbor Resources Approval In Concept dated August 3, 2010

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of a coastal development permit of the boat dock portion of the project, but only in conjunction with elimination of the two existing piles located on the northern portion of the property, which are proposed to be retained. With implementation of the project, these two piles will no longer secure any dock float or pier, and would be freestanding in the water. The applicant states that the existing piles should be retained in order to assist with docking of the boat. However, staff believes the two piles are not necessary for the project, would result in continuing habitat impacts, and would add to the cumulative adverse effects of fill of open coastal waters, inconsistent with Coastal Act Section 30233.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **Five (5) Special Conditions** regarding: **1) Revision of plans to indicate removal of the two piles proposed to be retained; 2) Water Quality; 3) Eelgrass Surveys; 4) *Caulerpa taxifolia* Surveys; and 5) Public Rights.** As conditioned, the proposed development does not adversely affect visual resources or, public access and recreation, or the coastal waters of Newport Bay. **See Page Two for the motion to carry out the staff recommendation.**

Staff recommends that the Commission find that the proposed development, as conditioned, conforms with the Chapter 3 policies of the Coastal Act and previous Commission approvals, and will not prejudice the City's ability to prepare an LCP.

LIST OF EXHIBITS:

1. Vicinity Map
2. Site Plan

STAFF RECOMMENDATION:

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

MOTION: ***"I move that the Commission approve Coastal Development Permit No. 5-10-282 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. 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

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

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Revised Plans

- A. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, plans that are in substantial conformance with the preliminary plans, except they shall be revised to indicate removal of the two existing concrete 14" piles that were proposed "to remain in place" on the Plans received by the Commission on November 29, 2010.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Water Quality

A. **Construction Responsibilities and Debris Removal**

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) 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.
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed 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. The use of soaps that can be discharged by bilge pumps is prohibited.
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

3. Eelgrass Survey(s)

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-

site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

4. Pre-construction *Caulerpa Taxifolia* Survey

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

5. Public Rights

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

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project is located on a bayfront lot, at 127 Harbor Island Road, in the City of Newport Beach, Orange County (Exhibit 1). The proposed dock is associated with the adjacent single family residence. The subject lot is located within an existing developed neighborhood composed of single family residences, many of which have boat docks accessed via shared piers. The nearest public access is located along the beach in Beacon Bay, located a few blocks from the subject site.

The proposed development consists of removal of two of four existing 14-inch diameter concrete piles, a U-shaped 46' x 32' concrete float, and a wood gangway, and installation of one 14-inch diameter concrete pile to support the gangway, four 16-inch diameter concrete piles to support the new float, a 10.5' x 45.66' finger float, and a new 24' x 3' wood gangway. The applicant is proposing to allow two existing 14-inch diameter concrete piles on the Northern portion of the site to remain. The existing dock has 676 square feet of water coverage, and the proposed dock will have 576 square feet of water coverage.

B. 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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30221 states that oceanfront land suitable for recreational use shall be protected. The applicant is proposing to leave in place the two northern concrete pilings. The applicant has stated that he would prefer these two piles to remain to prevent collisions between his boat and the neighbor's dock to the north. Although the current applicant prefers the two piles to remain, they may pose a navigational hazard to future owners of the property,

especially as the piles age. There are hundreds of similarly situated docks in Newport Harbor where boat are safely navigated without piles to serve as navigational aids. There is nothing unusual about this site that could justify the need for these piles. The project as proposed may result in decreased recreational boating use, and potential impacts to the ability of these bay waters to support recreational use. Therefore, the Commission imposes Special Condition 1, which requires revised plans indicating removal of the two existing pilings on the northern portion of the site.

The proposed development, as conditioned, would not result in impacts to public access. No public access to Newport Bay currently exists on the subject residential lot. The nearest public access is located along the beach in Beacon Bay, located a few blocks from the subject site. Recreational boat docks are an allowable and encouraged use under the Coastal Act. The proposed development, as conditioned, would provide for continued recreational boating use of coastal waters, in accordance with Coastal Act Section 30224. **Special Condition 5** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the subject property, including the tideland and submerged land beneath the development approved by this coastal development permit. As conditioned the proposed development will not adversely affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, is in conformity with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. Fill of Open Coastal Waters

Section 30233(a) of the Coastal Act, in relevant part, states:

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

(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.

The proposed project includes replacement of the existing float and gangway. The applicant is proposing to remove the two existing concrete piles on the southern portion of the site, and to leave the two northern concrete piles in the water. The new float will be supported by four new 16" concrete piles, and the new gangway will be supported by one 14" concrete pile. Each of the existing and proposed piles are located in coastal waters. The applicant proposes to allow two of the four existing piles to remain, and to install 5 new piles, resulting in a total of seven piles for the proposed project. With respect to the existing dock, this represents an increase of three piles. Placement of the piles for both the boat dock float and the gangway will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

The proposed project includes replacement of the boat dock float. The boat dock float is proposed to be supported by four, 16-inch diameter, concrete piles, and the gangway is supported by one 14" concrete pile. The float and gangway would not be safe or effective without the anchoring piles. Thus, the piles are an integral part of the boat dock system. The boat dock, including the float, gangway, and the piles supporting those structures constitute a boating facility, which is an allowable use for which fill may be permitted consistent with Section 30233(a)(3) of the Coastal Act.

The placement of the four, 16-inch diameter piles, and one 14" pile is the minimum amount of construction necessary to safely anchor the float and gangway. Fewer and/or smaller piles would not adequately secure the dock and the adjacent berthed boat. Documentation prepared by an engineer has been submitted to justify the quantity of proposed piles. This alternative (with regard to the five piles) represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing boat berthing. Therefore, with regard to the five piles proposed to anchor the boat dock float and gangway, the Commission finds the proposed alternative meets the requirements of Section 30233 that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

The project design for the boat dock float and gangway include the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The five piles will provide hard substrate that can be used by some marine life, although, this isn't equivalent to the habitat being impacted. With respect to the five piles necessary to provide support for the boat dock float and gangway, there are no feasible less environmentally damaging alternatives available. For the reasons described above, the Commission finds that the proposed boat dock float and gangway replacement with the five associated piles is consistent with the requirements of Section 30233 of the Coastal Act which limits fill of coastal waters.

However, the applicant is also proposing to leave the northern two existing 14" concrete piles in place. The applicant asserts that allowing the existing 2 piles to remain in place will assist in guiding docking of the boat and prevent collisions between the boat and the neighbor's property. However, it is unclear why the two existing piles would be necessary for safe and effective use of the new dock. Many other similar sized docks have been approved in the past without the provision of pilings for guidance during docking (5-05-441, 5-06-404, 5-07-041, 5-09-241, 5-10-005). A review of aerial photography in the area has shown that there are similar docks with vessels of similar sizes in close proximity to each other without additional piles. Removal of the two northern piles would still accomplish the project goal of allowing the applicant to berth a boat at the subject site. Thus, it appears that the existing piles proposed to be retained are not necessary to support the boating related use. Additionally, the cumulative effects of allowing existing piles to remain in place would add to the cumulative adverse impacts of fill on coastal waters of Newport Bay. Although two 14 inch diameter piles may not seem to create significant adverse impacts, the cumulative effect of allowing additional piles will add up over time. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the amount of fill beyond that which is consistent with the Section 30233, the overall effect would be a significant loss of coastal waters and soft bottom habitat.

Therefore, the Commission finds the two existing 14-inch diameter piles proposed to remain on site, which are not necessary to support the boating facility, are not consistent with Section 30233 of the Coastal Act in that it is not the least environmentally damaging alternative. Therefore, **Special Condition 1** is imposed which requires that revised plans which show the removal of the

two existing northern piles are submitted for the review and approval of the Executive Director prior to permit issuance. The applicant shall undertake the development in accordance with the final plans approved by the Executive Director. The Commission finds that only as conditioned to eliminate the two existing pilings can the proposed development be found to be consistent with Section 30233 of the Coastal Act regarding fill of coastal waters.

D. 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 groundwater 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.

Section 30230 of the Coastal Act requires that marine resources be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. The proposed project will result in a decrease in water coverage of the dock, from 676 sq. ft. coverage for the existing, to 576 sq. ft. of coverage for the proposed, which may result in the creation of new eelgrass habitat.

The applicants have submitted an eelgrass and *Caulerpa* survey performed by WSSI Environmental Consulting. The survey, performed on June 24, 2010 shows that a 9'x11' patch of eelgrass is located approximately 6 feet west of the proposed dock. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days, with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is

agendized for the April 2011 Coastal Commission Hearing and by this time the eelgrass survey would not continue to be valid since it is now during the period of eelgrass active growth. Thus, an up-to-date eelgrass survey must be conducted. In addition, a preconstruction *Caulerpa taxifolia* survey was completed on June 24, 2010 by WSSI Environmental Consulting. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the April 2011 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **Special Conditions 3 and 4**, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition 4** also identifies the procedures necessary to be completed prior to beginning any construction.

The applicant's biological consultant has concluded that the proposed project will not result in direct (i.e. from piles) or indirect (i.e. from shading) impacts to the eelgrass bed. The applicant proposes to use silt curtains and other BMPs to address possible construction-phase impacts. The new dock is shaped differently than the existing dock, so, there are potentially different shading impacts than currently exist. However, this depends greatly on the shape and size of boat docked, the duration of docking, and other factors such as the angle of the sun relative to the position of the dock and boat. So, it is difficult to assess the precise impacts of shading on the eelgrass, if any, at this time. The applicant proposes a post-construction survey conducted 30 days after construction completion to assess any construction impacts to eelgrass. If this survey identifies eelgrass impacts, the applicant proposes to conduct two (2) years of annual monitoring post construction, as required by the U.S. Army Corps of Engineers (USACOE), to determine if the project impacts eelgrass. After the second year of monitoring, the USACOE will determine if mitigation is necessary to satisfy their requirements. However, the USACOE requirement differs from the Commission's normal procedure regarding post construction impacts to eelgrass. The Commission's typical procedure (Special Condition No. 2) has been to require a post construction survey, similar to what the applicant has proposed, but then if eelgrass impacts are identified, then an eelgrass mitigation plan is required immediately. The Commission's procedure (Special Condition No. 2) has not changed and will be applied to the proposed project. If the two (2) year monitoring required by the USACOE identifies additional eelgrass impacts, then additional mitigation will also be required for those impacts.

As conditioned, the project will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required, and that the project does not result in the spread of the invasive algae *Caulerpa taxifolia*. As conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act with regard to maintaining and enhancing biological productivity and water quality.

H. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land

Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. As conditioned, the proposed development 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 an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

I. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of a 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.

In this case, the City of Newport Beach is the lead agency and the Commission is the responsible agency for the purposes of CEQA. The City of Newport Beach issued a determination that the project was ministerial or categorically exempt on February 2, 2010. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

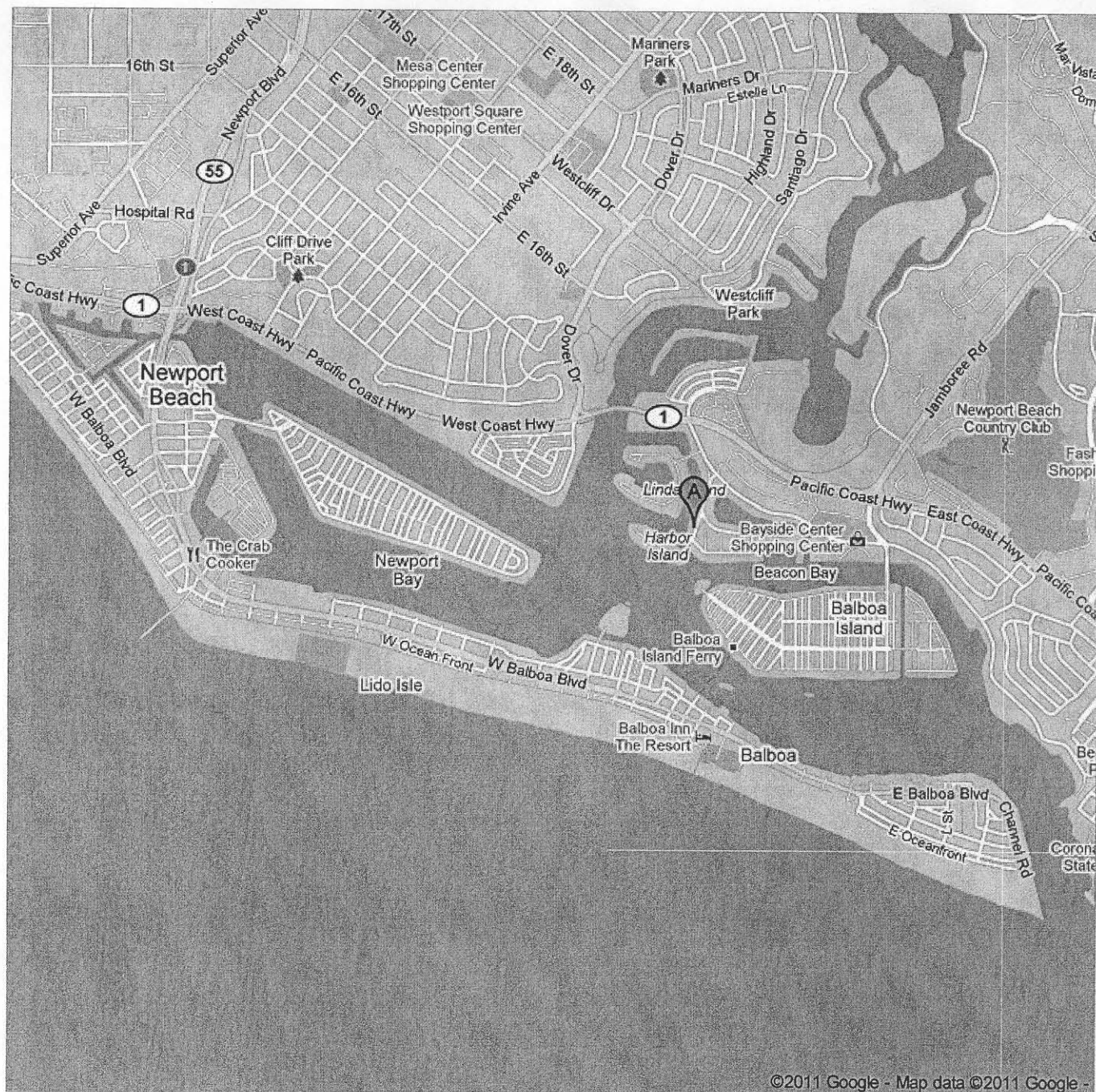
Google maps

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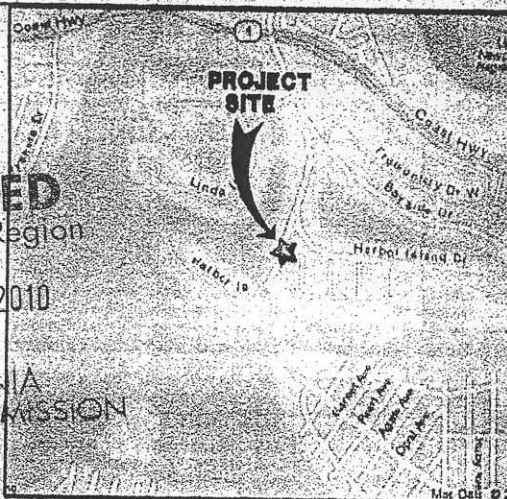
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COASTAL COMMISSION

EXHIBIT # 1
PAGE OF

APPLICANT'S PLAN & PROFILE

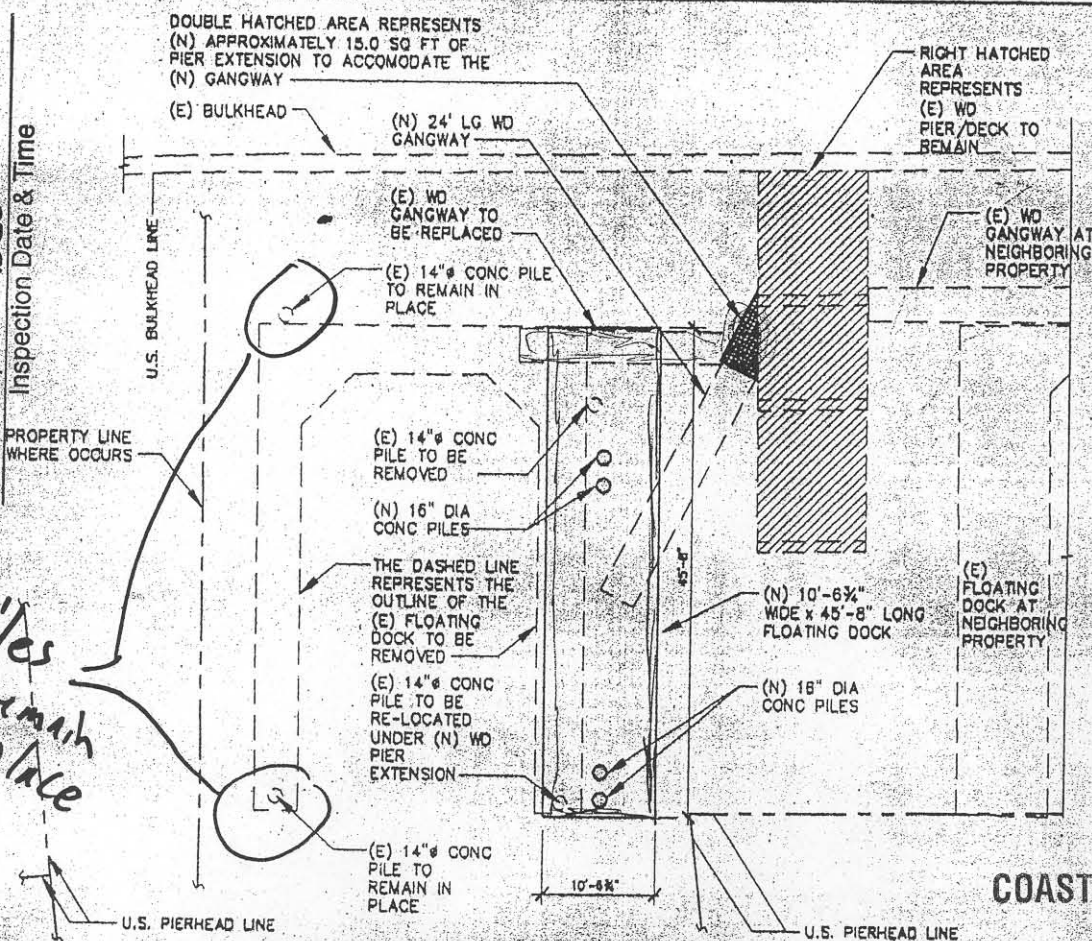
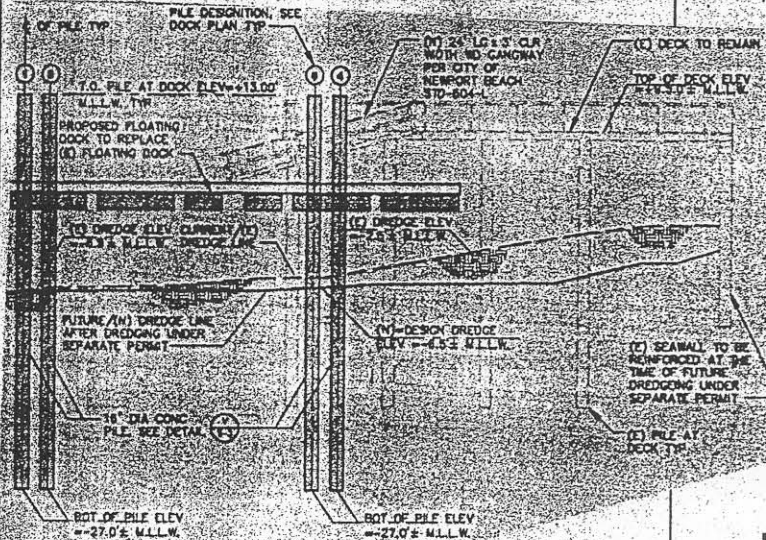
CITY OF NEWPORT BEACH



VICINITY MAP

N.T.S.

NEWPORT BAY, CALIFORNIA



IEI AND INI DOCKS OVERLAY

N.T.S.

COASTAL COMMISSION

EXHIBIT # **2**

OWNER : Mr. JAMES A. CLARKE	LOT	PAGE Block OF
JOB ADDRESS : 127 HARBOR ISLAND ROAD NEWPORT BEACH, CA 92660	CONTRACTOR: SWIFT SLIP 2027 Placentia Ave COSTA MESA, CA 92627	DATE : 06/10/10

HARBOR RESOURCES DIV
CITY OF NEWPORT BEACH

Blue Steel 7/30/10

RECEIVED

South Coast Region

NOV 29 2010

CALIFORNIA
COASTAL COMMISSION

- ☐ Eelgrass within 15 - 30' of project
- ☐ No Eelgrass in project area

Signature

Inspection Date & Time

6/24/10 1230

Piles to remain in place