

CALIFORNIA COASTAL COMMISSION

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**W10b****ADDENDUM**

Date: June 13, 2011

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: SOUTH COAST DISTRICT STAFF

SUBJECT: Commission Hearing of June 15, 2011, **item 10b** of agenda, Coastal Development Permit 5-10-293 (Cook Family Trust), Newport Beach, Orange County

Upon further consideration, staff has determined that it is incorrect to refer to the portion of the project area as wetlands. For other similar dock projects in similar areas in Newport Beach, the Commission has typically considered the waters of Newport Bay adjacent to single family residences as open coastal waters, not wetlands.

Revise the staff report to reflect the following thirteen corrections, which remove references to the intertidal zone of Newport Beach in this area qualifying as wetlands. Additions are noted in **bold, underlined text**. Deletions are marked in *italicized, strikethrough text*

1. On page 1 and 2 of the staff report, modify the following portions of the Summary of Staff Recommendation section:

~~The proposed project would require fill for an expanded boating use in a wetland, which is not one of the uses allowed under Coastal Act Section 30233.~~

...

Therefore, staff is recommending the Commission approve the proposed project subject to six special conditions regarding 1) revised project plans to minimize fill, **and** water coverage, ~~and eliminate fill of wetlands...~~

2. On page 4 of the staff report, Delete part (b) (4) of Special Condition 1, Revised Plans, as follows:.

4. ~~Eliminate wetland fill in the intertidal zone of Newport Bay;~~
5. In the area of the pier platform, the pier and pier platform shall be integrated into a single structure (not side by side) with a maximum platform dimension of 10' by 14'.

3. On page 9 of the staff report, delete part c of Section 30233 in part B. Fill of Coastal Waters.

~~(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.~~

4. On page 10 of the staff report, modify the following portion of the first paragraph of Section B. Fill of Coastal Waters, as follows:

The four piles which support the pier, gangway, and float are proposed to be located in coastal waters, ~~and the proposed platform would be located in the intertidal zone of Newport Bay, which qualifies as a wetland.~~ Placement of the piles will result in fill of coastal waters ~~and wetlands.~~ 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 ~~and wetlands~~ must meet the three-prong test.

5. On page 10 of the staff report, modify the second and third paragraphs of Section B. part 1) Allowable Use, as follows:

The piles for the float, pier, **platform**, and gangway are proposed to be located in the open coastal waters of Newport Bay. The float, gangway, **platform** and pier would not be safe or effective without the anchoring piles. Thus, the piles are an integral part of the boat dock system. The float, gangway, **platform**, pier, and their supporting piles constitute a boating facility, which is an allowable use for which fill may be permitted in open coastal waters, other than wetlands, consistent with Section 30233(a)(3) of the Coastal Act. Therefore, the proposed fill resulting from placement of the ~~four~~ **six** piles supporting the pier, **platform**, float, and gangway is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

~~However, the project would also result in fill of wetlands due to placement of two new 16" piles located in the intertidal zone of Newport Bay to support the proposed 10-foot by 13-foot platform. The intertidal zone qualifies as a wetland under California Code of Administrative Regulations Section 13577, and Coastal Act Section 30121. Fill in wetlands for the purposes of new or expanded boating~~

~~facilities is not an allowable use under Coastal Act Section 30233. Therefore the proposed platform is not consistent with Coastal Act Section 30233.~~

6. On page 10 of the staff report, modify the first sentence of the first paragraph of Section B, part 2) Alternatives, as follows:

The placement of the ~~four~~ **six** proposed piles for the pier, gangway, **platform**, and boat dock will result in fill of coastal waters.

7. On page 11 of the staff report, delete the second sentence of paragraph 2 of Section B, part 2) Alternatives:

~~The installation of the two 16-inch piles to support the platform does not constitute an allowable use under Section 30233 of the Coastal Act. The piles will result in wetland fill and impacts to the intertidal zone.~~

8. On page 12 of the staff report, modify the second paragraph of Section B, part 3) Mitigation, as follows:

However, the proposed pier, gangway, and platform arrangement does not represent the least environmentally damaging feasible alternative. ~~The proposed platform would result in wetland fill, which is not an allowable use under Coastal Act Section 30233.~~

...

Therefore, special Condition 1 is imposed, which requires that, prior to permit issuance, the applicant will submit revised project plans which minimize water coverage, ~~do not result in wetland fill~~, and minimize fill of open coastal waters. As conditioned, the proposed project would avoid impacts resulting from additional water coverage, **and** fill of open coastal waters, ~~or fill of wetlands~~....

9. On page 12 of the staff report, modify the second sentence of the first paragraph of the Conclusion section of Part B as follows:

However, ~~the two 16-inch diameter piles associated with the platform are not an allowable use under Coastal Act Section 30233, and~~ the proposed configuration of the pier, gangway, and platform would result in additional, unnecessary fill and coverage of coastal waters, and does not represent the least environmentally damaging feasible alternative.

10. On page 12 of the staff report, modify the first sentence of the second paragraph of the Conclusion section of Part B as follows:

Therefore, Special Condition 1 is imposed which requires the applicant to, prior to permit issuance, submit revised plans for the review and approval of the

Executive Director which either a) remove the proposed pier platform, or b) revise the dock configuration to ~~eliminate fill of wetlands, and~~ minimize fill of coastal waters by making the platform an integral part of the dock system.

11. On page 13 of the staff report, modify the second sentence of the first paragraph of part C, Marine Resources, as follows:

In addition, Sections 30230 and 30231 require that the quality of coastal waters ~~and wetlands~~ be maintained and protected from adverse impacts.

12. On page 14 of the staff report, modify the third sentence of the second paragraph of part C, Marine Resources, as follows:

Coverage of coastal waters ~~and wetlands~~ also impedes wildlife foraging activities.

13. On page 14 of the staff report, modify the fourth paragraph of part C, Marine Resources as follows:

Therefore, Special Condition 1 is imposed which requires the applicant to, prior to permit issuance, submit revised plans for the review and approval of the Executive Director which minimize the square footage of water coverage by either: a) removing the proposed platform, or b) revising the proposed dock configuration to minimize coverage of coastal waters ~~and wetlands~~ by making the platform an integral part of the dock system, and limiting the platform dimensions to 10' x 14'

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Filed: Dec. 10, 2010
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270th Day: September 6, 2011
Staff: John Del Arroz-LB
Staff Report: May 25, 2011
Hearing Date: June 15-17, 2011
Commission Action:

W10b

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-293

APPLICANT: Edward W. Cook III Family Trust

AGENT: Lisa Miller, Shellmaker Inc.

PROJECT LOCATION: 527 Via Lido Soud, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove 3 existing 12-inch square concrete piles supporting the existing concrete float, and install 3 new 14-inch square concrete piles in the same location. Remove existing 4' x 14' wood pier, 10' x 12' wood pier platform, 3' x 22' wood gangway, and three 12-inch concrete t-piles. Install new 4' x 20' concrete pier, 3' x 26' wood gangway, 10' x 13' concrete pier platform, and three new 16-inch concrete piles.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of a boat dock reconfiguration if it is modified to either eliminate the pier platform, or relocate the pier platform to where it will be an integral part of the boat dock system. Staff is recommending modification of the project because the proposed configuration is inconsistent with Coastal Act Sections 30233, regarding fill of coastal waters, and 30230, regarding preservation of marine resources. The proposed dock configuration, with a platform located adjacent to the pier and gangway, results in additional, unnecessary water coverage and fill and therefore the proposed project does not represent the least environmentally damaging feasible alternative. The proposed project would require fill for an expanded boating use in a wetland, which is not one of the uses allowed under Coastal Act Section 30233. The fill for the proposed configuration of the platform, pier, and gangway is also inconsistent with Section 30250 which requires that new development be located where it will not have cumulative adverse effects on coastal resources. The piles proposed to support the platform, pier, and gangway would add to the cumulative adverse effects of unallowable fill of coastal waters.

Therefore, staff is recommending the Commission **approve** the proposed project subject to **six** special conditions regarding 1) revised project plans to minimize fill, water coverage, and eliminate fill of wetlands; 2) pre- and post-construction eelgrass surveys; 3) Caulerpa taxifolia survey; 4) construction practices and debris removal responsibilities; 5) water quality Best Management Practices ; 6) acknowledgement that approval of the project does not affect public rights that may exist at the site.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Newport Beach Harbor Permit/Approval in Concept No. 172-527 dated October 10, 2010.

LIST OF EXHIBITS:

1. Vicinity Map
2. Site Plan
3. Typical Dock Template for Single Family Residence

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-10-293 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. 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. 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

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, plans in substantial conformance with those submitted except they shall be modified to indicate that either:

- a. The platform has been eliminated from the proposed project, or
- b. The platform, pier, and gangway configuration has been modified to achieve the following:
 1. Alter the configuration of the pier, platform, and gangway so that the platform constitutes an integral part of the dock system. The configuration should substantially conform to the City of Newport Beach's typical single family residential dock template , as shown on Exhibit 3 of the staff report;
 2. Reduce the amount of water coverage to the minimum amount necessary to support a boating related use;
 3. Reduce the amount of fill of open coastal waters to the minimum amount necessary to support a boating related use;

4. Eliminate wetland fill in the intertidal zone of Newport Bay;
5. In the area of the pier platform, the pier and pier platform shall be integrated into a single structure (not side by side) with a maximum platform dimension of 10' by 14'.

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. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active eelgrass growth (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.

3. Pre-construction *Caulerpa taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicants 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 applicants shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. 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 applicants shall not proceed with the development approved under this coastal development permit until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project area and all *C. taxifolia* discovered within the buffer area have 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 applicants have revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Construction Responsibilities and Debris Removal

The permittee shall comply with the following construction related requirements:

- A. 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.
- B. 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.
- C. 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.
- D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F. 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.
- G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J. 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.
- K. 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.

- L. 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.
- M. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N. 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.
- O. 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.
- P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. **Best Management Practices Program**

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

(a) Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.
3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(b) Solid and Liquid Waste Management Measures:

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.
- (c) Petroleum Control Management Measures:
1. 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 shall 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.
 2. 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.
 3. 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.

6. 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 subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this coastal development permit. 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 applicant proposes to remove the existing pier, platform, gangway, and six piles, and install a new pier, platform, gangway, and six piles. One 16-inch diameter pile would support the pier and gangway. Two 16-inch diameter piles would support the new platform, which would be installed as a separate 10'x13' structure. The three existing 12-inch diameter piles supporting the existing U-shaped dock float would be removed and replaced with three 14-inch diameter piles, and the existing dock float would be reused.

The following chart shows the dimensions of the elements of the existing and proposed dock systems:

	Existing	Proposed
Pier	4' x 14'	4' x 20'
Platform	10' x 12'	10' x 13'
Gangway	3' x 22'	3' x 26'
Piles	(3) 12"	(3) 14"
	(3) 12" T- piles	(3) 16"
Total Water Coverage	224 sq. ft.	270 sq. ft.

The subject site is located at 527 Via Lido Soud in Newport Beach, on the south side of Lido Isle. The proposed dock is associated with the adjacent single family residential use. In this area of Newport Bay, most of the water frontage is developed with single family homes, many of which also have private boat docks. The nearest public access is available at the public park located on Via Koron, approximately 400 feet to the west of the subject property.

B. Fill of Coastal Waters

Section 30233 of the Coastal Act states, in pertinent 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:

...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities ...

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

The proposed project includes demolition of the existing piles, pier, gangway, and platform, and installation of new piles, pier, gangway, and platform. The proposed platform is to be

supported by two new 16" piles. The proposed pier and gangway are to be supported by one new 16" pile. The existing boat dock float will be supported by three new, 14-inch diameter, concrete piles. The four piles which support the pier, gangway, and float are proposed to be located in coastal waters, and the proposed platform would be located in the intertidal zone of Newport Bay, which qualifies as a wetland. Placement of the piles will result in fill of coastal waters and wetlands. 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 and wetlands 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. As proposed, the project fails to qualify for approval under Section 30233; but, as modified by the conditions, the project can be found allowable under Section 30233 of the Coastal Act.

1) Allowable Use

The proposed project includes the replacement of piles used to support the boat dock float, the removal of the three existing 12" piles supporting the pier, gangway, and platform, and the installation of one 16" pile supporting a new pier and gangway and two 16" piles supporting the proposed platform.

The piles for the float, pier, and gangway are proposed to be located in the open coastal waters of Newport Bay. The float, gangway, and pier would not be safe or effective without the anchoring piles. Thus, the piles are an integral part of the boat dock system. The float, gangway, pier, and their supporting piles constitute a boating facility, which is an allowable use for which fill may be permitted in open coastal waters, other than wetlands, consistent with Section 30233(a)(3) of the Coastal Act. Therefore, the proposed fill resulting from placement of the four piles supporting the pier, float, and gangway is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

However, the project would also result in fill of wetlands due to placement of two new 16" piles located in the intertidal zone of Newport Bay to support the proposed 10-foot by 13-foot platform. The intertidal zone qualifies as a wetland under California Code of Administrative Regulations Section 13577, and Coastal Act Section 30121. Fill in wetlands for the purposes of new or expanded boating facilities is not an allowable use under Coastal Act Section 30233. Therefore the proposed platform is not consistent with Coastal Act Section 30233.

2) Alternatives

The placement of the four proposed piles for the pier, gangway, and boat dock float will result in fill of coastal waters. The placement of the three, 14-inch diameter piles to secure the boat dock float is the minimum amount of construction necessary to safely anchor the float. Fewer and/or smaller piles would not adequately secure the dock and the boat berthed therein. By using the least number of piles necessary, coupled with the smallest

footprint, to accomplish the goal of securing the dock, the three piles associated with the boat dock float represent the least environmentally damaging feasible alternative. This alternative (with regard to the three float piles) represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing continued boat berthing at the site. Therefore, with regard to the three piles proposed to anchor the boat dock float, 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.

However, as described above, the applicant also proposes the installation of three 16-inch diameter piles to support the pier, gangway, and platform. The installation of the two 16-inch piles to support the platform does not constitute an allowable use under Section 30233 of the Coastal Act. The piles will result in wetland fill and impacts to the intertidal zone. Furthermore, the proposed configuration of three 16-inch diameter piles to support the platform, pier, and gangway does not represent the least environmentally damaging feasible alternative. The Commission has typically allowed platforms in association with boat docks only when a pier is an integral part of the overall boat dock project and then only when the platform (a widened area on the pier) does not create the need for additional piles (fill) beyond those which are already necessary to support the pier. The proposed platform would be located adjacent to the pier/gangway, and would not be an integral part of the boat dock project.

The separate configuration of the pier/gangway and platform would require more fill than would be required if the platform was an integral part of the pier/gangway. The existing dock incorporates a platform into the pier/gangway, and includes three 12-inch diameter piles, whereas the proposed configuration requires the use of three 16-inch diameter piles. An increase from 12-inch to 16-inch diameter piles doubles the amount of fill for each pile, and represents a significant increase in fill of coastal waters. The fill required for the proposed dock system would decrease if either the pier platform were eliminated, or if the dock configuration were revised to make the pier platform an integral part of the dock project. Therefore there are other dock configurations which would reduce the amount of fill of coastal waters.

Although an increase in fill from the placement of three, 16-inch diameter piles may not seem to create significant adverse impacts, the cumulative effect of allowing additional and larger piles will add up over time, especially when the piles do not represent the least environmentally damaging feasible alternative. 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.

3) Mitigation

The proposed recreational boat dock float and its associated three 14-inch diameter piles are an allowable and encouraged marine related use. The project design for the boat dock float includes the minimum sized pilings and the minimum number of pilings necessary for

structural stability of the boat dock. The three 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 three piles for the boat dock float, there are no feasible less environmentally damaging alternatives available.

However, the proposed pier, gangway, and platform arrangement does not represent the least environmentally damaging feasible alternative. The proposed platform would result in wetland fill, which is not an allowable use under Coastal Act Section 30233. Furthermore, the proposed arrangement of the platform located adjacent to a separate pier and gangway would result in a greater number and/or size of pilings. The placement of piles in open coastal waters for the construction of a new boating facility is an allowable use under Section 30233(a)(3) of the Coastal Act "*where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.*" The Coastal Act aims to primarily avoid impact before considering possible mitigation of fill of coastal waters. Therefore, special Condition 1 is imposed, which requires that, prior to permit issuance, the applicant will submit revised project plans which minimize water coverage, do not result in wetland fill, and minimize fill of open coastal waters. As conditioned, the proposed project would avoid impacts resulting from additional water coverage, fill of open coastal waters, or fill of wetlands. As conditioned, the proposed project will include the minimum size and number of pilings for structural stability of the boat dock. The piles will provide hard substrate that can be used by some marine life, although, this isn't equivalent to the habitat being impacted.

The project site was surveyed for eelgrass and none was found to exist at the site. Section 30224 of the Coastal Act requires that recreational boating use of coastal waters be encouraged by, among other things, providing berthing space in existing harbors. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

Conclusion

For the reasons described above, the Commission finds that the proposed replacement of three piles for the boat dock float is consistent with the requirements of Section 30233 of the Coastal Act which limits fill of coastal waters. However, the two 16-inch diameter piles associated with the platform are not an allowable use under Coastal Act Section 30233, and the proposed configuration of the pier, gangway, and platform would result in additional, unnecessary fill and coverage of coastal waters, and does not represent the least environmentally damaging feasible alternative.

Therefore, Special Condition 1 is imposed which requires the applicant to, prior to permit issuance, submit revised plans for the review and approval of the Executive Director which either a) remove the proposed pier platform, or b) revise the dock configuration to eliminate fill of wetlands, and minimize fill of coastal waters by making the platform an

integral part of the dock system. The Commission finds that only as conditioned can the proposed development be found to be consistent with Section 30233 of the Coastal Act regarding fill of coastal water.

C. Marine Resources & Water Quality

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 30250 of the Coastal Act states (in relevant part):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

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 and wetlands be maintained and protected from adverse impacts.

Until recently, the City's Harbor Permit Policy limited pier platforms to a maximum size of 10' x 14' (140 square feet). The Commission also required pier platforms to be similarly limited as a means of limiting fill of coastal waters and of limiting water coverage that

reduces light and decreases the biological productivity of coastal waters. Coverage of coastal waters and wetlands also impedes wildlife foraging activities. The proposed 10' x 13' pier platform would be separate from the pier/gangway, and located adjacent to a 4' x 20' long pier. As described above, the Commission has typically allowed pier platforms where they were an integral part of the boat dock system, and the footprint of the platform has typically been considered to overlap with the footprint of the pier/gangway. The proposed 13' wide platform would be located adjacent to a 4' wide pier, effectively forming a 10'x17' platform. As a result of this platform configuration, the new pier platform would exceed the 140 square foot limit by 30 square feet resulting in 170 square feet of water coverage.

The proposed dock configuration increases total water coverage from 224 to 270 sq. ft. Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. The proposed dock reconfiguration would add to the cumulative adverse effects of additional water coverage that in turn adversely impacts biological productivity. Although a 46 sq. ft. addition to water coverage may not seem to create significant adverse impacts, the cumulative effect of allowing piers, platforms, and gangways which are larger than necessary will add up over time, especially when such an increase in water coverage is unnecessary. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the adverse impacts upon biological productivity the overall effect would be a significant impact to coastal waters, which is inconsistent with the Sections 30230 and 30233 of the Coastal Act.

Therefore, Special Condition 1 is imposed which requires the applicant to, prior to permit issuance, submit revised plans for the review and approval of the Executive Director which minimize the square footage of water coverage by either: a) removing the proposed platform, or b) revising the proposed dock configuration to minimize coverage of coastal waters and wetlands by making the platform an integral part of the dock system, and limiting the platform dimensions to 10' x 14'.

The proposed project includes measures to help assure protection of coastal waters and marine resources. Measures proposed include: all parts of the proposed dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, in order to assure that all impacts to water quality are minimized, special conditions are imposed that specify and impose construction phase and post construction measures to avoid adverse impacts on marine resources.

Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also

function as a nursery for many juvenile fish – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that pursue fish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

The site was surveyed for eelgrass on September 29, 2010 and no eelgrass was found at the subject site. Thus, no eelgrass impacts are anticipated. However, eelgrass surveys are valid for a limited period of time (until the next growing season – typically March-October). Because of the time elapsed since the survey, construction will not occur within the period that the survey is valid. Thus, a subsequent survey is required. In order to ensure that the proposed project does not result in impacts to eelgrass, the Commission imposes Special Condition 2 which requires the applicant, prior to commencement of development, to survey the project area for the presence of eelgrass. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa taxifolia*, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *C. taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *C. taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *C. taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *C. taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *C. taxifolia*, if present, could displace eelgrass in the channels.

The site was surveyed for *C. taxifolia* on September 29, 2010 and none was found. The survey is valid for a limited period of time (90 days for *C. taxifolia*). If discovered in the project area, *C. taxifolia* could possibly be dispersed through construction of the proposed project. Because of the time elapsed since the survey, construction will not occur within the period that the survey is valid. Thus, a subsequent survey is required. In order to ensure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes Special Condition 2 which requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicant shall

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

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes Special Conditions 4 requiring, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission imposes Special Condition 5, requiring the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

Conclusion

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 the biological productivity and the water quality.

D. Public Access and Recreation

The proposed project includes the replacement of a private boat dock associated with residential development. The nearest public access in the area is at the public park located on Via Koron, approximately 400 feet to the west of the subject property. The proposed project will have no impact on existing public access in the area.

Berthing of boats is an encouraged recreational use under Section 30224 of the Coastal Act. Special Condition 6 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. Furthermore, as conditioned, the proposed project, replacement of an existing boat dock, will have no impact on existing public access. 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.

E. Local Coastal Program (LCP)

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the

local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

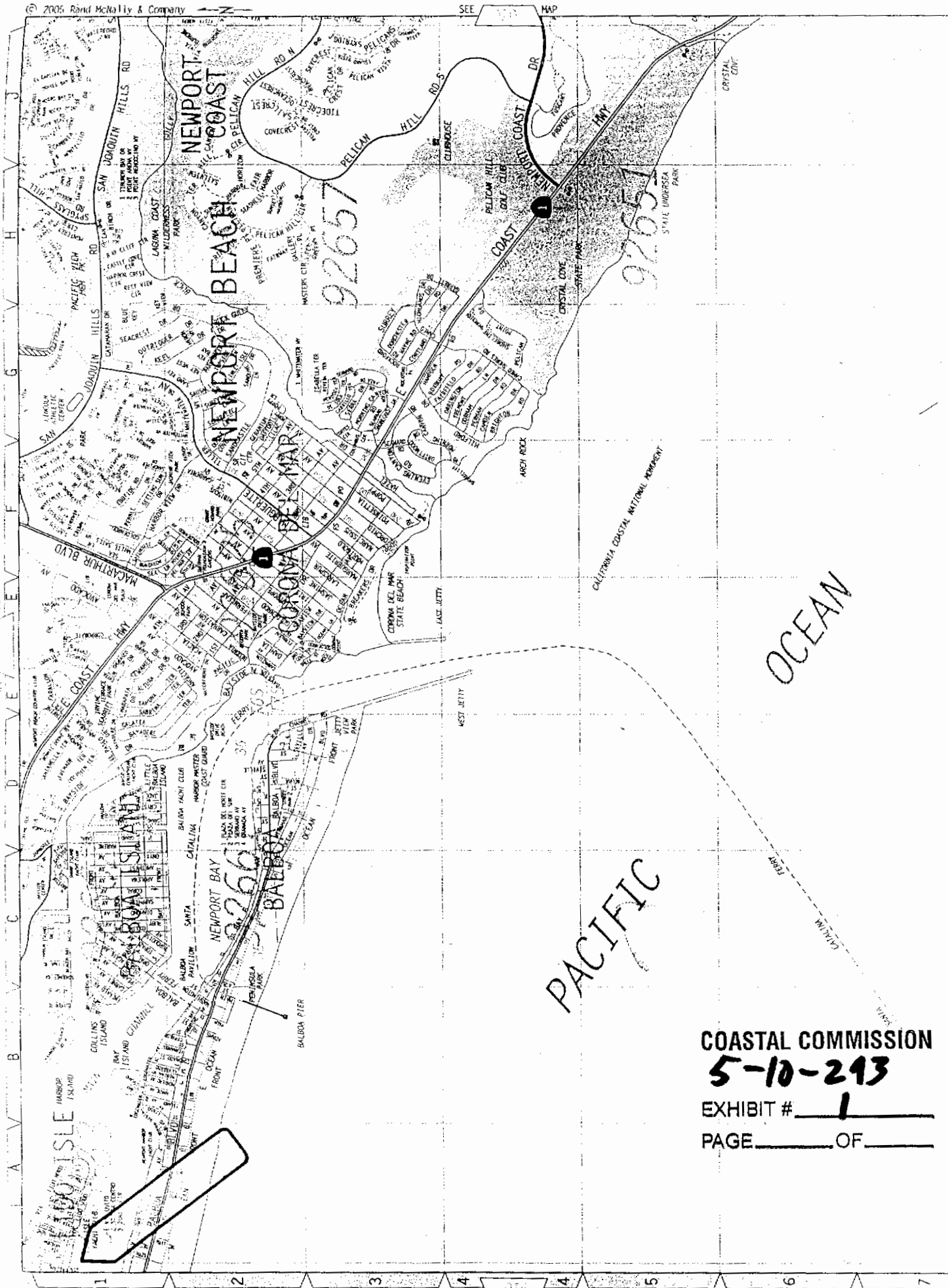
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project will conform with Coastal Act Section 30220 regarding protecting the recreational value of coastal waters and Sections 30230 and 30231 regarding protection of marine resources and water quality, and 30250 regarding avoidance of cumulative impacts.

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

F. California Environmental Quality Act

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

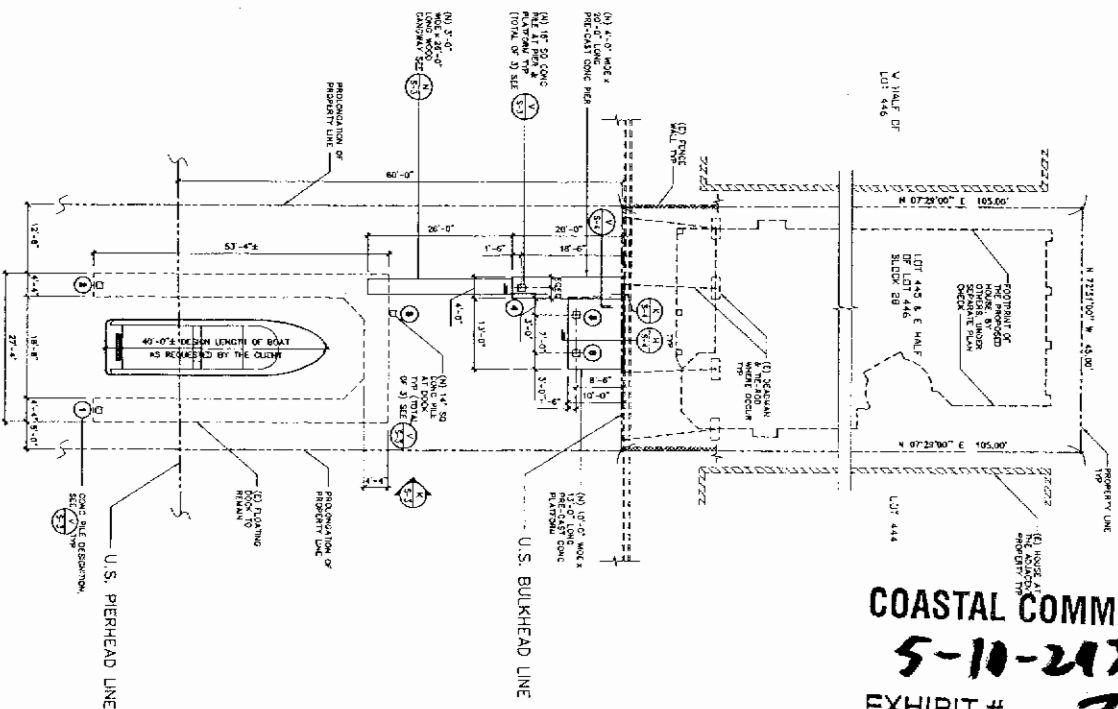
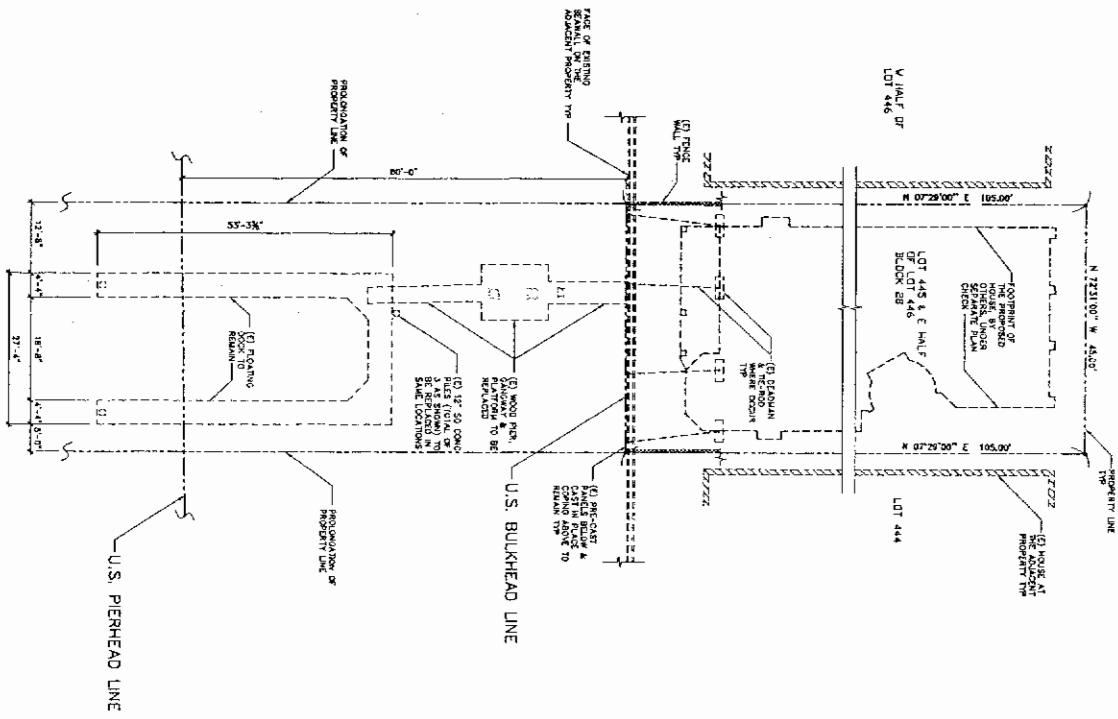
In this case, the City of Newport Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt on October 22, 2010. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



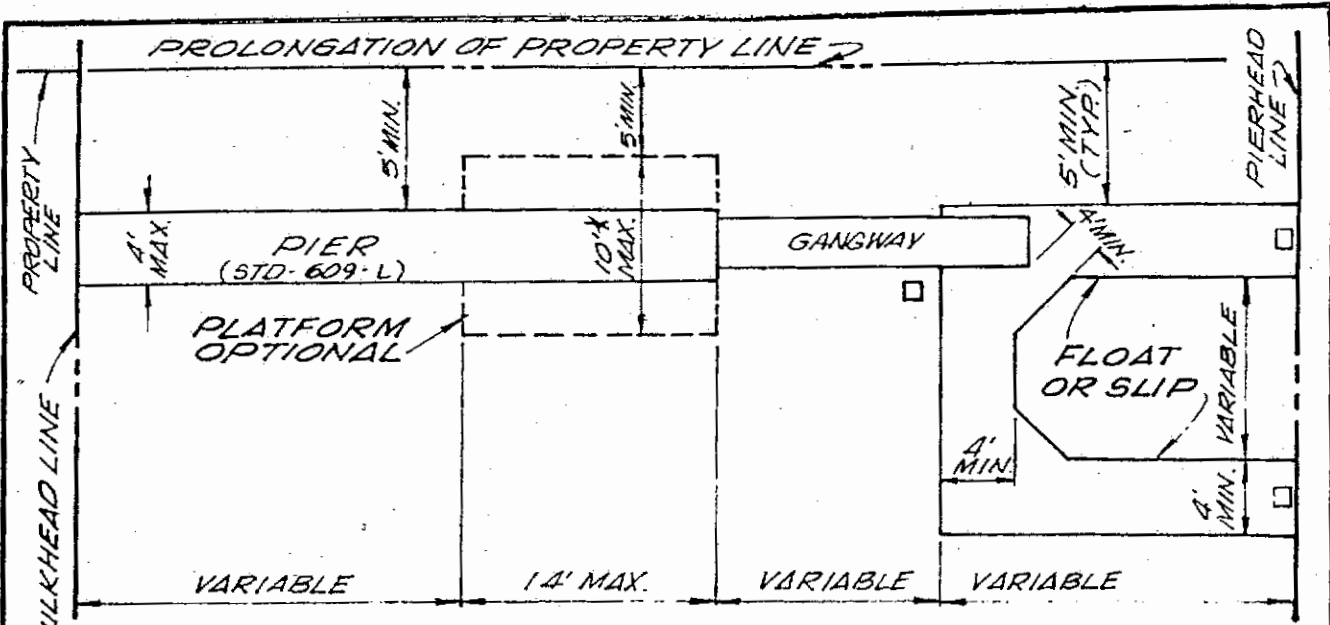
COASTAL COMMISSION
 5-10-213
 EXHIBIT # 1
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NEWPORT BAY

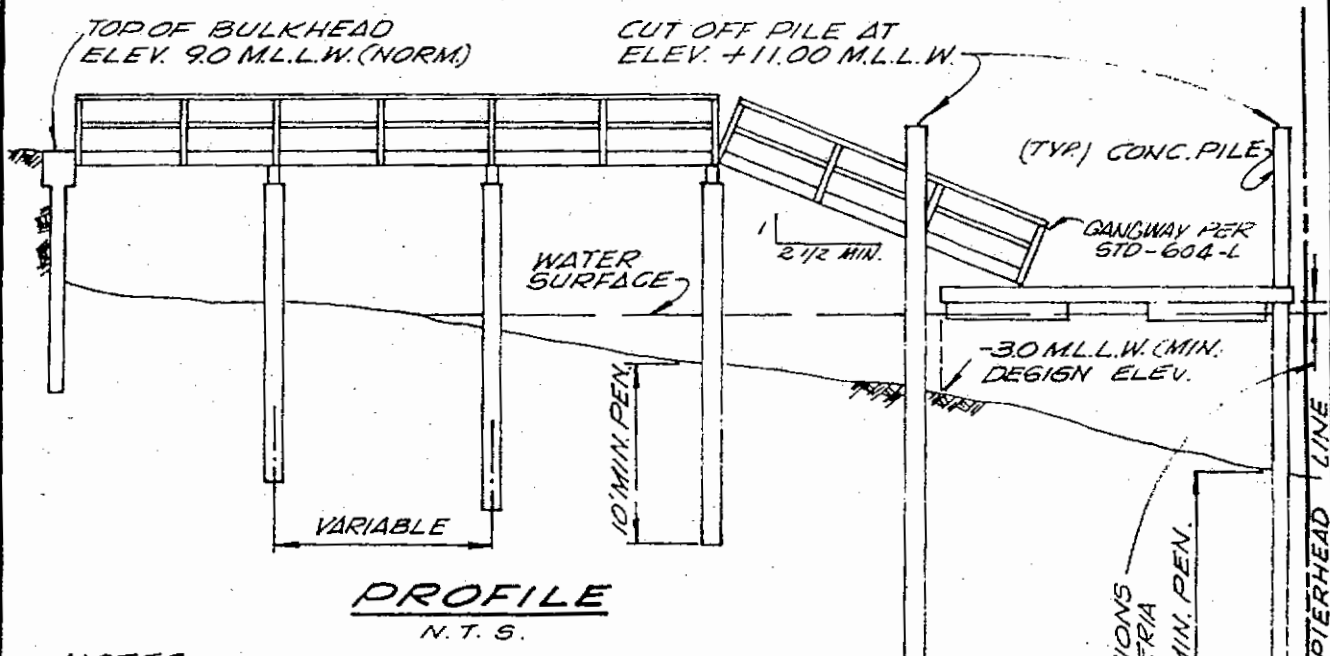
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 EXHIBIT # 2
 PAGE _____ OF _____



PLAN
N.T.S.



PROFILE
N.T.S.

NOTES:

1. TIMBER SHALL BE SEL. STRUCT. D.F. TREATED WITH ACA OR ACZA.
 2. FIELD CUTS AND BORED HOLES SHALL RECEIVE A BRUSH COAT OF CONCENTRATED ACA OR ACZA.
 3. BRACKETS AND FASTENERS SHALL BE HOT DIP GALVANIZED, EPOXY COATED OR STAINLESS STEEL.
 4. WALKING SURFACES SHALL HAVE A SKID RESISTANT FINISH, SUCH AS UNPAINTED TIMBER OR GRIT ON TIMBER.
 5. LOCATION OF PIER, PLATFORM, GANGWAY, SLIP & FLOATS IS OPTIONAL PROVIDING PROPER SETBACKS ARE MAINTAINED.
 6. SEE STD.-604-L, 609-L & 612-L FOR GANGWAY, PIER, AND HANGER BRACKET DETAILS.
- * WHERE PIER IS JOINTLY OWNED BY ADJACENT PROPERTIES, PLATFORM WIDTH = 12' MIN.

COASTAL COMMISSION
5-10-293
EXHIBIT # **3**
REV. 2/22/91
REV. 4-15-85
REV. 4-9-85

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

SINGLE RESIDENTIAL USE
FLOAT WITH PIER

DRAWN A.L. DATE 3-1-73
APPROVED J.T. Decker
PUBLIC WORKS DIRECTOR
R.E. NO. 9537
DRAWING NO. STD-608-L