

**CALIFORNIA COASTAL COMMISSION**

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 Staff Report: September 21, 2000  
 Hearing Date: October 10-13, 2000  
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-99-205**APPLICANTS:** Catalina Express  
County of Orange**AGENT:** Moffatt & Nichol Engineers**PROJECT LOCATION:** Dana Point Harbor, City of Dana Point, Orange County

**PROJECT DESCRIPTION:** Demolition of a 48 foot portion of an existing 180 foot long 6 to 12 foot wide 18 inch high dock and removal of one 14 inch diameter piling. Replacement of the 48 foot section with a 40 foot long, 12 foot wide, 4 foot high float. Also, addition of 4 new 18" diameter steel pipe pilings and one 80 foot long, 12 foot wide, 4 foot high float. The new floats are being constructed to accommodate a 95 foot long 150 passenger ferry with service to Catalina Island. One hundred (100) parking spaces have been leased to accommodate the proposed use with access to an additional 50 parking spaces for overflow parking purposes.

**LOCAL APPROVALS RECEIVED:** City of Dana Point approval-in-concept dated February 2, 2000.

**SUBSTANTIVE FILE DOCUMENTS:** Dana Point Specific Plan/Local Coastal Program; marine biological survey dated May 13, 1999, titled *Marine Biological Survey Results, Proposed Catalina Express Landing, Dana Point Harbor, California* prepared by Coastal Resources Management of Corona del Mar, California; Regional Water Quality Control Board, San Diego Basin (9) waiver of waste discharge requirements dated December 6, 1999; Coastal Development Permit 5-92-100 (County of Orange).

**SUMMARY OF STAFF RECOMMENDATION:**

The major issues of this staff report include fill of coastal waters for boating related purposes, potential impacts upon marine resources and public access. Staff recommends approval of the proposed development subject to two special conditions. Special Condition No. 1 requires minimization of construction impacts on harbor bottom and intertidal areas, appropriate storage of construction materials, removal of construction debris, and use of best management practices to reduce turbidity related impacts. Special Condition No. 2 imposes parking requirements to serve the expanded boating use including 100 spaces, plus 8 overflow spaces, as well as location and fee related requirements.

PROCEDURAL NOTE – STANDARD OF REVIEW:

The proposed development is occurring in Dana Point Harbor in the City of Dana Point. The Dana Point Harbor is a certified area under the Dana Point Specific Plan/Local Coastal Program. However, since the proposed development is located seaward of the mean high tide line, it is within the Commission's original permit jurisdiction under Coastal Act Section 30519(b) and must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The policies of the certified Dana Point LCP may be used for guidance.

Also, the proposed development includes use of existing parking spaces located within a portion of Dana Point Harbor that is certified under the Dana Point Specific Plan/Local Coastal Program. Typically, development located within a certified area requires a coastal development permit from the certified local government. However, in this case, the proposed physical development (i.e. dock demolition and construction) is occurring within an area of the Commission's original jurisdiction. This physical development is occurring to support a specific use, a ferry service, that is also located in the Commission's original jurisdiction. The attendant use requires provision of dedicated parking spaces in order to avoid adverse impacts upon public access which could occur if ferry passengers utilized public, as opposed to dedicated, parking spaces. While these dedicated parking spaces are being provided in a certified area, the development generating the need for the parking spaces is occurring in an area of original jurisdiction. Accordingly, no coastal development permit is required from the local government for the proposed parking spaces. Instead, this coastal development permit governs the proposed development and its contemplated mitigation.

STAFF NOTE – DEADLINES AND AREAS OF CONTROVERSY:

The subject application was placed on the April 2000 agenda. Prior to taking the matter up on April 11, 2000, the applicant requested a postponement pursuant to Section 13073 of the California Code of Regulations in order to work with staff on changes to Special Condition 2. The matter was set for the June 2000 hearing, but was again postponed. The 180<sup>th</sup> day on the project is on September 21, 2000. However, an *Agreement for Extension of Time for Decision on Coastal Development Permit* was submitted which extends the date of action to November 19, 2000. The Commission must act on this item at either this hearing (October 2000) or the following hearing in November 2000.

The application has been postponed from hearing several times in order for staff to work with the co-applicant, the County of Orange, regarding their objections to Special Condition 2. The County objects to the following requirements (see also Exhibit 8):

- 1) The requirement that parking spaces be reserved for exclusive use of Catalina Express. The County contends that, due to fluctuations in demand, all of the parking spaces required by Special Condition 2 are not always required to support the service provided by Catalina Express. The County requested that the term "exclusive" be removed from the condition, thereby allowing them to use the spaces for other purposes when they are available. Staff was supportive of making changes to the condition to allow some flexibility, however, staff was not supportive of the proposed

removal of the term "exclusive" without some other mechanism to tie down the amount of parking spaces the applicant would be required to maintain, seasonally, for use by Catalina Express. The parking information submitted by the Catalina Express indicates that parking demand fluctuates seasonally, but the information is not detailed enough to demonstrate, seasonally, the amount of parking spaces that must be maintained and when the changes in demand occur. Therefore, staff requested a parking analysis which demonstrates the various demands over the year and how the parking spaces would be managed under a shared use scenario. This information is necessary to craft the language of the special condition appropriately so that it both allows the applicant some flexibility and guarantee that the appropriate amount of parking is available for the ferry service. As of the date of this staff report, the applicants have declined to provide the information requested. In absence of this information, the condition has been written to guarantee the presence of the quantity of parking spaces the parking information -which is in the record- shows is necessary.

2) The County objects to the requirement that they enter into an agreement with the Commission which stipulates that they continue to conform with the requirements of Special Condition 2 if any of the subleases expire or are broken and the County, as the master lease holder, regains control over the sites presently leased by Catalina Express for their operation and parking. The County's concern has been that if the site where Catalina Express operates is no longer used for a ferry service, that they would continue to be bound to provide 100 dedicated parking spaces. Staff has addressed this concern by including a sunset clause in the special condition which provides that if the site is no longer used for a ferry service for 150 passengers, the coastal development permit approval for the change in intensity of use and the associated parking requirement expire. Staff has also pointed out to the County that if conditions change which were not contemplated under this permit, the applicant could seek an amendment.

3) While not indicated in the letter in Exhibit 8, the County continues to have objections to the recordation of lease and sub-lease restrictions regarding the parking requirement. The applicants have argued that their own leases require that parking for the ferry service be maintained, therefore, the requirement for the recordation of lease restrictions is redundant and unnecessary. Staff argues that there is no mechanism to prevent the applicants from changing their own leases to remove the self-imposed parking requirement. In order to assure, for Coastal Act purposes, that the parking requirement is maintained and that all lease and sublease holders are aware of the requirement, staff continues to recommend that the recorded lease restriction be maintained as part of the special condition. Furthermore, the imposition of a lease restriction requirement is consistent with past Commission action on similar matters such as A5-MDR-95-189 (Fantasea Charters and County of Los Angeles).

## I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL.

Staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the permit application with special conditions.

### MOTION

*I move that the Commission approve CDP #5-99-205 pursuant to the staff recommendation.*

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

### RESOLUTION OF APPROVAL WITH CONDITIONS

The Commission hereby GRANTS a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

## II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. CONSTRUCTION RESPONSIBILITIES**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Disturbance of the harbor bottom and intertidal areas shall be minimized;
- (d) Turbidity shall be minimized through the use of best management practices including, but not limited to, the use of silt curtains;
- (e) No machinery shall be allowed at any time on the beach or intertidal zone;
- (f) Any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible;
- (g) Any construction materials, oils or liquid chemicals or other waste shall not be stored where it is subject to wave erosion and dispersion into the harbor waters.

#### **2. PARKING REQUIREMENT**

##### **A. BY ACCEPTANCE OF THIS PERMIT, THE APPLICANT AND APPLICANT LANDOWNER ACKNOWLEDGES AND AGREES:**

1. To provide 100 dedicated parking spaces for exclusive use by the users of the proposed ferry service, within a private parking facility located within the Dana Point Harbor area east of Island Way, west of Embarcadero Place and south of Dana Point Harbor Drive; and

2. Between and including Memorial Day weekend and Labor Day weekend the permittee shall also provide at least an additional 8 dedicated parking spaces, for exclusive use by the users of the proposed ferry service, within a private parking facility located within the Dana Point Harbor area east of Island Way, west of Embarcadero Place and south of Dana Point Harbor Drive; and
3. The hourly parking fee or maximum daily fee for use of the dedicated parking spaces shall not be greater than the hourly or maximum daily fee charged at the nearest public parking facility which offers at least 7 continuous hours of parking time; and
4. The parking requirements outlined in sub-paragraphs 1 through 3 above as well as approval for use of the subject site for a commercial vessel not to exceed 150 passengers shall expire upon cessation of use of the subject site for operation of a commercial vessel not to exceed 150 passengers. Any change in intensity of use of the site shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

**B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants and sublessor shall execute and record a lease restriction and sublease restriction as applicable, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The lease restriction and sublease restriction shall include a legal description of the leased site and subleased site. The lease restriction and sublease restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The lease restriction and sublease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

**C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the County of Orange, as applicant, landowner and master lease holder, shall submit a written agreement, subject to the review and approval of the Executive Director, stating that in the event of termination of the lease of the property that is the subject of Coastal Development Permit 5-99-205, and for so long as the subject site is used to operate a commercial vessel not to exceed 150 passengers pursuant to Coastal Development Permit 5-99-205, the County will agree (i) to be bound to terms of clause (A) of this condition if it becomes the owners of the possessory interest in such property, and (ii) to include a provision in any subsequent lease of such property requiring the lessee to record a lease restriction, subject to the review and approval of the Executive Director of the Coastal Commission, incorporating all of the terms of clause (A) of this condition; iii) to comply with the requirements of clause (A) of this condition.

## IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

### A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing demolition of a 48 foot portion of an existing 180 foot long 6 to 12 foot wide 18 inch high dock and removal of one 14 inch diameter piling. Replacement of the 48 foot section with a 40 foot long, 12 foot wide, 4 foot high float and addition of 4 new 18" diameter steel pipe pilings and one 80 foot long, 12 foot wide, 4 foot high float (Exhibit 1, pages 4 and 5) is also proposed. The new floats are being constructed to accommodate a 95 foot long 150 passenger ferry with service to Catalina Island. In order to support the use associated with the proposed development (i.e. public ferry service), the applicant is proposing to provide 100 parking spaces (Exhibit 1, page 2 and page 6). In addition, the applicant is proposing to provide an additional 50 parking spaces on an as-needed basis for overflow parking purposes (Exhibit 1, page 2 and page 6). No physical development is proposed landward of the mean high tide line.

The development is proposed to occur at Dana Point Harbor, City of Dana Point, Orange County (Exhibit 1, page 1). The proposed physical development will occur seaward of and below the mean high tide line within the waters of Dana Point Harbor adjacent to Parcels 4 and 5 at the northeast side of the harbor (Exhibit 1, page 3 and 6). Parking will be located within Parcel 6 at the Dana Point Marina Company's parking lot number 2 (Exhibit 1, page 2). Ticketing, check-in and passenger loading will be accommodated within existing facilities on Parcel 5 operated by Dana Wharf Sportfishing.

State sovereign lands within Dana Point Harbor were legislatively granted to the County of Orange in 1961 (Exhibit 4). The County of Orange has leased the subject parcel (Parcel 4) to the Dana Point Marina Corporation. Dana Point Marina Corporation subsequently entered into an operating agreement with Catalina Express for use of the dock facilities on Parcel 4 for the operation of the ferry. The operating agreement between Catalina Express and Dana Point Marina Corporation expires in February 2001. The County of Orange was invited and has joined as co-applicant (Exhibit 3).

As noted above, Catalina Express has leased 100 parking spaces on Parcel 6 to support the ferry service operating from Parcel 4. Parcel 6 was leased from the County of Orange to the Dana Point Marina Company (not the same as Dana Point Marina Corporation), which in turn leased the 100 parking spaces to Catalina Express. This lease between Dana Point Marina Company and Catalina Express expires January 31, 2001.

Also as noted above, ticketing and passenger loading for the ferry service occurs on Parcel 5. Parcel 5 was leased from the County of Orange to Dana Point Marina Corporation. Dana Point Marina Corporation subleased the site to Dana Wharf Sportfishing. Dana Wharf Sportfishing entered into an operating agreement with Catalina Express to use Dana Wharf Sportfishing's facilities for passenger ticketing and boarding. This operating agreement between Dana Wharf Sportfishing and Catalina Express expires June 30, 2001.

**B. MARINE ENVIRONMENT**

**1. Fill of Coastal Waters**

The proposed project involves the placement of four 18 inch diameter steel pilings in open coastal waters (i.e. Dana Point Harbor). These pilings constitute "fill" of open coastal waters as defined in Section 30108.2 of the Coastal Act. More specifically, the proposed pilings will have a total fill of approximately seven (7) square feet. Under Section 30233 of the Coastal Act, fill of open coastal waters is only allowed when several criteria are met: (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided. Section 30233 of the Coastal Act states, in part:

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

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

The proposed project meets the first criteria because the proposed development is for a boating facility. Fill of open coastal waters, such as Dana Point Harbor, for the construction of a boating facility is an allowable use under Section 30233(a)(4) of the Coastal Act. The proposed project requires 4 pilings. The pilings are necessary to secure the proposed dock floats which are necessary to support a boating facility.

The applicant has indicated that the floats will be used solely for boating purposes. Specifically, the applicant proposes to use the floats as a staging area and to facilitate the loading and unloading of passengers and supplies to the boat. The boat will provide ferry service from Dana Point to Catalina Island. This ferry service is for use by the general public. Based on the uses proposed by the applicant, the Commission finds that the proposed dock floats constitute a boating facility. As a boating facility, the proposed pier platform is a use specifically allowed under Section 30233(a)(4) of the Coastal Act.

In addition to the use-related issue, Section 30233 of the Coastal Act also requires that any project involving fill of open coastal waters be the least environmentally damaging feasible alternative. One way to reduce environmental damage to open coastal waters is to minimize the quantity of fill. In this case, the applicant is proposing to remove an existing 14 inch diameter pile and place 4 new 18 inch diameter piles. The removal of one piling will result in the removal of 1 square foot of fill. The four new 18 inch diameter pilings will have a total fill of 7 square feet. In addition, the applicant has indicated that the proposed pilings are the smallest diameter and the minimum quantity necessary to meet current engineering standards



for loads related to the 95 foot length boat. Therefore, since the proposed project minimizes the quantity of fill of coastal waters, the Commission finds that the proposed project is the least environmentally damaging feasible alternative.

Finally, Section 30233 of the Coastal Act also requires that feasible mitigation measures to minimize adverse environmental effects must be provided. The proposed project meets this requirement because the proposed pilings will provide habitat for marine organisms such as mollusks. This replacement hardscape habitat will mitigate for the loss of hard bottom habitat resulting from the placement of the pilings.

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. This boating facility will increase public access to coastal waters and Catalina Island by providing a public ferry service from Dana Point to Catalina Island. In addition, the proposed project is the least environmentally damaging alternative, and does provide feasible mitigation measures. Therefore, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

## 2. Marine Organisms and Water Quality

The proposed development involves construction within coastal waters. The applicant has submitted a marine biological survey dated May 13, 1999, titled *Marine Biological Survey Results, Proposed Catalina Express Landing, Dana Point Harbor, California* prepared by Coastal Resources Management of Corona del Mar, California, which evaluates impacts upon marine resources.

The survey indicates that the primary physical habitat in the project area is rock riprap. This rip rap forms a 35 foot wide slope which extends from the existing bulkhead to a point underneath the proposed dock. Soft bottom habitat occurs beyond the riprap. The riprap area is colonized by variety of invertebrates and fish including barnacles, limpets, mussels, solitary ascidians, encrusting sponges, California lobsters, kelp bass and opaleye perch. Soft bottom areas are colonized by short-spined seastar, tube dwelling and burrowing polychaete worms, mollusks, and crustaceans. No eelgrass was found in or nearby the project area.

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible,*

*restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The placement of pilings has the potential to impact marine organisms and water quality in the project area. Driving pilings can result in direct impacts upon marine organisms inhabiting the location where the piles are being placed. In addition, driving piles can result in the suspension of sediment in the water column resulting in shading and sedimentation impacts upon organisms. Finally, the placement of dock floats can result in shading impacts upon sensitive light-dependent aquatic vegetation (i.e. eelgrass).

Drawings submitted by the applicant indicate that the proposed pilings will be placed in the hardbottom rip rap area. While the proposed pilings will result in impacts upon the hardbottom habitat, the pilings themselves will provide replacement hard-substrate habitat. Since the surface area of the pilings is greater than the area of impact the proposed project will increase the quantity of hard-substrate habitat. In addition, since there is no eelgrass in the project area, shading impacts from the placement of the dock floats is not anticipated to have any adverse impact upon any sensitive aquatic vegetation.

Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and attendant adverse impacts upon biological resources. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Also, the proposed pile driving activities may also result in the temporary suspension of sediment in the water column.

The Regional Water Quality Control Board has reviewed the proposed project and determined that State water quality standards will be protected and has issued a waiver of waste discharge requirements (Exhibit 6). In addition, the biological survey states that sedimentation and shading impacts are not likely due since the installation process is a temporary, short term event. The biological survey also indicates that no mortality of marine organisms is anticipated as a result of construction related sedimentation impacts. However, the biologist recommends that best management practices be used during installation to ensure that sedimentation impacts do not occur. In order to avoid adverse construction related impacts upon marine resources, Special Condition 1 outlines construction related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. In addition, Special Condition 1 requires the applicant to utilize best management practices, such as a silt curtain, during installation of the pilings to avoid any turbidity related impacts upon water quality and marine organisms. Finally, Special Condition 1 prohibits placement of machinery on the beach or intertidal zone and requires that any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible and any construction materials, oils or liquid

chemicals or other waste shall not be stored where it is subject to wave erosion and dispersion into the harbor waters. As conditioned, the Commission finds the proposed development is consistent with Section 30230 and 30231 of the Coastal Act.

**C. PUBLIC ACCESS**

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

Section 30212 of the Coastal Act states, in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(2) adequate access exists nearby.*

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 30252 of the Coastal Act states, in relevant part:

*The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...*

Sections 30210, 30211 and 30212 of the Coastal Act require that new development provide maximum public access and recreation, avoid interference with the public's right of acquired access, and provide public access from the nearest public roadway to the shoreline and along the coast except under certain circumstances.

Dana Point Harbor is a recreation-oriented facility that is open to the public. Public walkways and picnic areas, as well as restaurants, sport fishing, and recreation-oriented boating are available to the public. There is an existing public dock adjacent to the proposed development which provides a convenience docking area for visitors to the Dana Wharf area. In addition, there is a public boat launch ramp within 500 feet of the subject site. These existing facilities provide public access.

The proposed development consists of the addition of pilings and dock floats within Dana Point Harbor to accommodate the berthing of a boat providing ferry service to Catalina Island. The proposed ferry service is open to the public. Also, the applicant states that pursuant to Public Utilities Commission Decision #93291, the ferry service is considered a "public convenience and necessity". This ferry service will provide access to the City of Avalon, a popular tourist and recreation-oriented community located on Catalina Island.

Section 30252 of the Coastal Act requires the protection of public access to the beach. An adequate quantity of public parking spaces maintains this access. However, public access can be adversely affected if commercial uses, such as the proposed ferry service, in the coastal zone do not provide adequate on-site or dedicated parking to serve the proposed development. In cases of inadequate parking, ferry users would displace other public users from public parking spaces.

The applicant is proposing to provide 100 dedicated parking spaces to provide parking for ferry passengers. These 100 parking spaces are being leased from the Dana Point Marina Company, whom leased the site from Orange County, the owner of the harbor. The proposed parking is located in Parking Lot No. 2, one of several parking lots managed by the Dana Point Marina Company for use by tenants of the harbor. These parking spaces are located approximately 2000 feet from the passenger loading area. Ferry service users drop off passengers near the ticketing and docking area and then are directed to park in the dedicated parking lot.

Authorization to use the berthing location at the subject site (Parcel 4) has been secured by an operating agreement between Catalina Express and Dana Point Marina Corporation. Meanwhile, in order to handle any demand for parking exceeding the proposed 100 dedicated spaces, the applicant is proposing to provide an additional 50 parking spaces on an as-needed overflow basis to support the ferry service. These spaces are provided in a parking lot adjacent to the passenger loading area within Parcel 5. These parking spaces are being provided to Catalina Express by Dana Wharf Sportfishing and are available because Dana Wharf Sportfishing has reduced the number of sportfishing vessels within its fleet. In the absence of these vessels, there has been an attendant reduction in demand for parking spaces within the parking lot at Dana Wharf (Exhibit 5).

The applicant has provided a parking study which indicates that the proposed 100 parking spaces plus 50 overflow parking spaces is adequate to support the ferry use. The parking study is based upon actual operation of the 95 foot long, 150 passenger vessel during a peak use season. While the proposed dock improvements have not been undertaken to accommodate continued use of the site for the 150 passenger vessel, the vessel has been operating from the site since the beginning of 1999.

This parking study shows four time periods including a peak week during the summer (August 13 through August 19, 1999), a peak week during the spring including Easter (March 26, thorough April 1, 1999), a peak week at the end of the summer (October 15 through 21, 1999) and during a low use period (December 24 through 30, 1999). This study shows that during only one day in the week, Saturday, during the peak summer season, did parking demand exceed 100 parking spaces. This peak demand was 108 parking spaces. Vessel

capacity on this peak use day was 97% capacity (Exhibit 7). The additional 8 parking spaces not provided in the primary 100 space parking lot were provided in the 50 space Dana Wharf Sportfishing parking lot. No public parking spaces were required to support the ferry service.

The proposed 100 parking spaces and access to at least an additional 8 parking spaces within the 50 space overflow parking lot are required to ensure that the proposed use does not result in any adverse parking related impact upon public access in Dana Point Harbor. Therefore, the Commission imposes Special Condition 2 which requires the permittee to maintain a minimum of 100 dedicated parking spaces for use by the users of the proposed ferry service. In addition, Special Condition 2 requires the permittee to provide at least an additional 8 parking spaces for use during the peak use season between Memorial Day and Labor day.

Ordinarily, a coastal development permit authorizes development activity without a time restriction. In this case the proposed development is the construction of a dock as well as use of the dock for a ferry service. In order to avoid impacts upon public access, use of the dock for ferry service must be accompanied by parking adequate to support the use. The applicant has proposed adequate parking and the Commission is requiring the applicant to maintain access to such parking through Special Condition 2. The County of Orange has expressed concern about any special condition which would require them to provide 108 parking spaces in connection with use of the proposed dock in perpetuity because it is uncertain whether the proposed dock will continue to be utilized by an operation which has a demand for 108 parking spaces. It is possible that the proposed dock could be utilized for less intense uses, such as the previous use of the site for berthing of a historical vessel, than is currently proposed. Therefore, since there is uncertainty about ongoing use of the site for operation of a 150 passenger commercial vessel and in consideration of the County's concern, the Commission specifies that the term of the parking requirement, as well as the term of approval to use the site for operation of a 150 passenger vessel, shall expire upon cessation of use of the subject site for operation of a commercial vessel not to exceed 150 passengers. In addition, the Commission specifies that any change in intensity of use of the site shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required. Accordingly, section A of Special Condition 2 limits the term of the approval accordingly.

In order to assure that the terms of Special Condition 2.A. are complied with and to assure that all lessors and lessees are aware of the requirements of Special Condition 2.A., section B of Special Condition 2 requires the recordation of lease and sublease restrictions, as necessary, incorporating all the terms of condition 2.A. Furthermore, in the event of termination of the lease of the subject site, section C of Special Condition 2 requires the County of Orange to agree to carry out the terms of section 2.A. so long as the subject site is used to operate a commercial vessel not to exceed 150 passengers. Section B also requires the county to include a provision in any subsequent lease of such property requiring the lessee to record a lease restriction, subject to the review and approval of the Executive Director of the Coastal Commission, incorporating all of the terms of clause (A) of this condition; and to comply with the requirements of clause (A) of this condition.

The dedicated 100 space parking and 50 space "overflow" parking areas are more conveniently located to access the ticketing and proposed Catalina Express docking area than any publicly available public parking spaces, the nearest of which occur at Puerto Place within "Parcel 14" as identified on Exhibit 1, page 6). A person using the dedicated parking spaces may do so by parking in Parking Lot #2 and then returning to the loading area by walking along a wide public walkway adjacent to the "East Basin" of the harbor. However, if a person were to instead park at the public parking spaces they would need to walk from Puerto Place, along Dana Point Harbor Drive and then down Street of the Golden Lantern, which is a much longer walk than that required when parking at the Parking Lot #2.

Also, the daily fee for use of the dedicated parking spaces is \$7. The nearest public parking facility charges \$1 per hour, 24-hours a day, with no daily maximum. The typical visit to Catalina Island involves either a morning departure and late afternoon return or an overnight stay. Since under either typical scenario at least 7 hours parking time is required, the charge for use of the dedicated parking spaces is equal to or less than the cumulative fee charged for use of the nearest public parking facility. Since the dedicated parking spaces are more conveniently located and equal to or less expensive than the nearest public parking facility, it is not anticipated that ferry users would choose to use the public parking facility over the dedicated spaces.

However, in order to ensure that these conditions are retained, Special Condition 2 requires that the permittee maintain exclusive access to parking spaces in an area convenient to ferry users and at a price which encourages use of those dedicated spaces rather than use of public parking spaces. Accordingly, the permittee must maintain exclusive access to parking spaces in an area located in Dana Point Harbor area east of Island Way, west of Embarcadero Place and south of Dana Point Harbor Drive. Also, Special Condition 2 requires that the hourly parking fee or maximum daily fee for use of the restricted parking spaces shall not be greater than the hourly or maximum daily fee charged at the nearest public parking facility which offers at least 7 continuous hours of parking time.

The County of Orange has stated they have a coastal development permit (5-92-100) for use of a remote parking lot in conjunction with operation of a ferry service in the harbor. Therefore, the County of Orange has raised a concern that Special Condition 2 does not include an option for use of the remote parking authorized under Coastal Development Permit 5-92-100. The Commission notes that Catalina Express has not proposed use of this parking lot for the subject ferry service and no details regarding use of a remote lot arrangement have been provided. Therefore, in the event the applicant wishes to use a remote lot, the applicant would need to seek approval through a coastal development permit amendment.

As conditioned, the Commission finds the proposed development is consistent with the public access policies of the Coastal Act.

#### **D. LOCAL COASTAL PROGRAM**

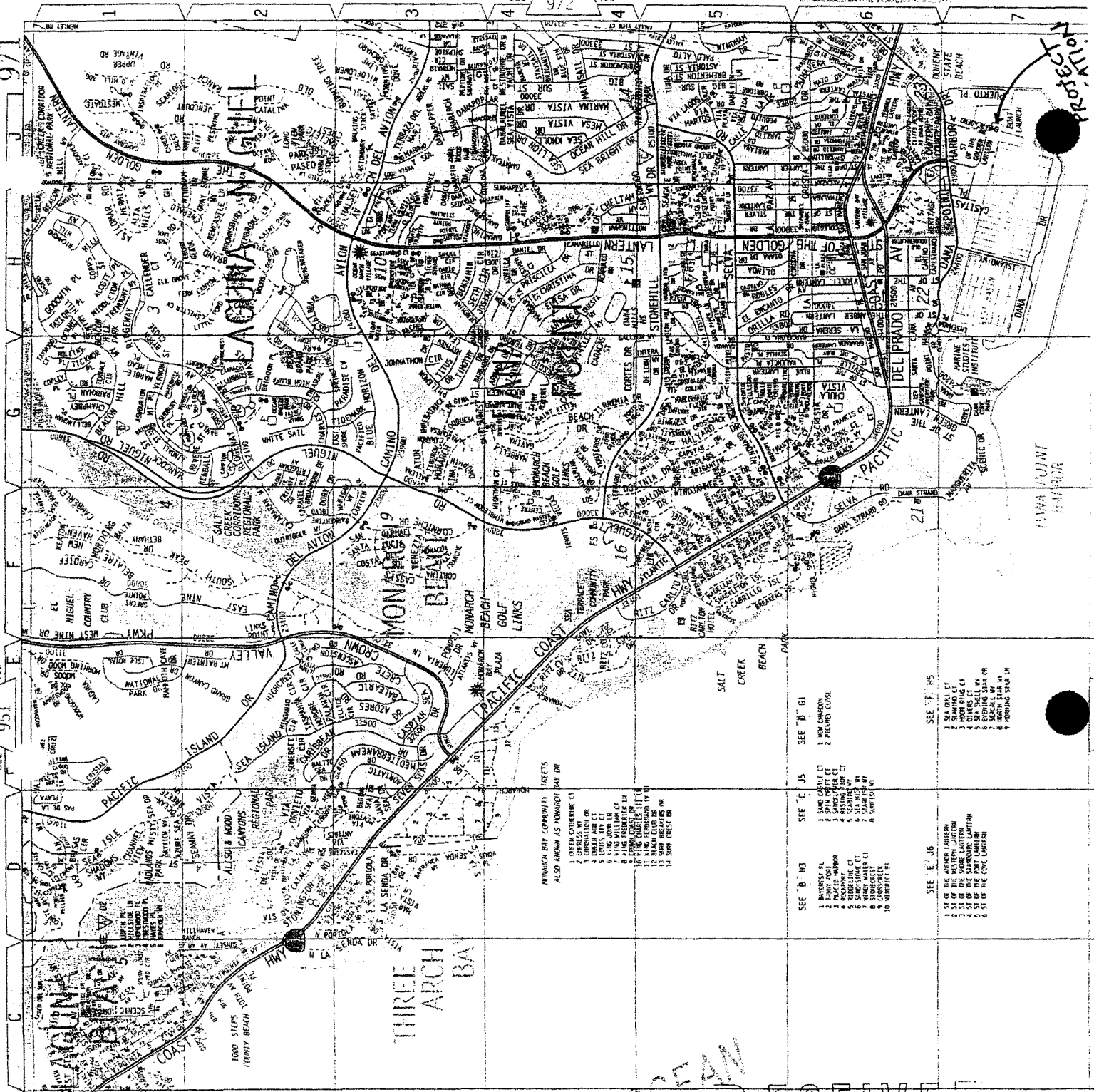
The proposed development is occurring in Dana Point Harbor in the City of Dana Point. The Dana Point Harbor is a certified area under the Dana Point Specific Plan/Local Coastal Program. However, since the proposed development is located seaward of the mean high tide

line, it is within the Commission's original permit jurisdiction under Coastal Act Section 30519(b) and must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The policies of the certified Dana Point LCP may be used for guidance.

**E. 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.

The proposed project has been conditioned for consistency with the marine resource and public access protection policies of the Coastal Act. Mitigation measures, in the form of special conditions require 1) conformance with construction responsibilities, and 2) conformance with parking requirements. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



PACIFIC OCEAN RECEIVED  
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 COASTAL COMMISSION  
 5-99-205

EXHIBIT # 1

PAGE 1 OF 6



117° 42'

ATC GRID  
D 1927  
Zone VI, is  
at 2,000  
last three digits

DANA POINT

# DANA POINT HARBOR

Scale 1:20,000

## SOUNDINGS IN FATHOMS

### AT MEAN LOWER LOW WATER

FIXED BRIDGE  
HCP CL 45 FT  
VERT CL 23 FT

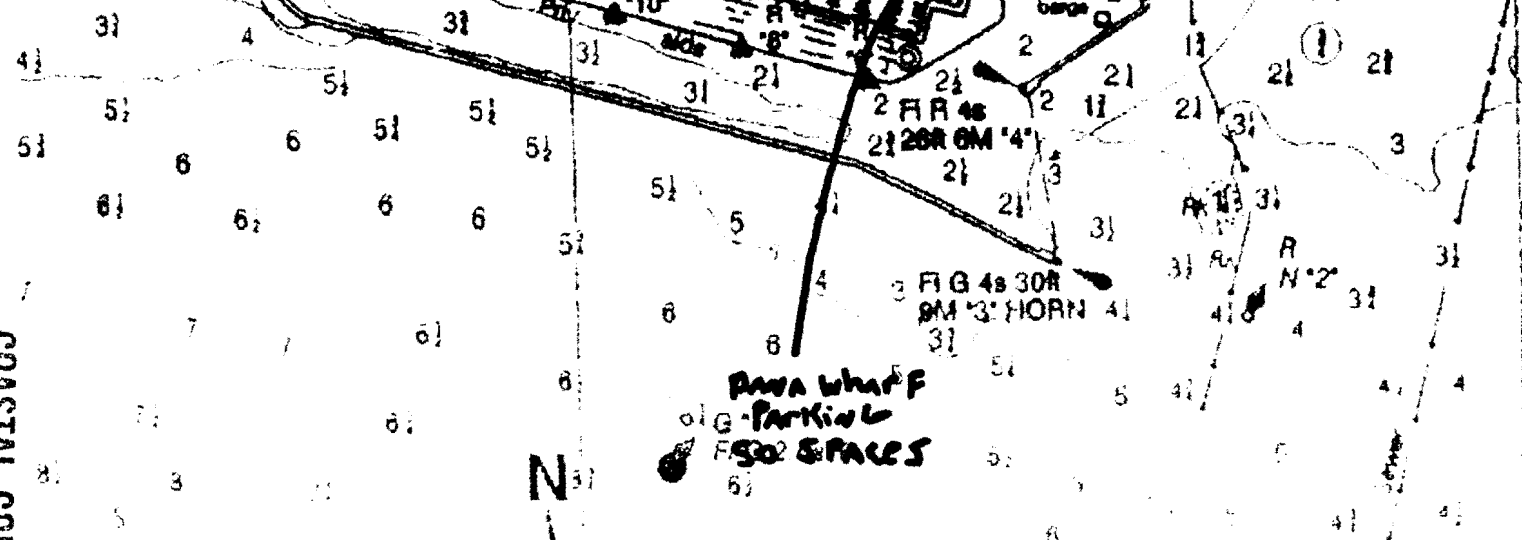
Nearest  
Public  
Parking

Express Parking  
*(see note A)*

Catalina Express  
Dock and Ticket Sales

Foul  
COLREGS DEMARCATION  
LINE 80 1110  
*(see note A)*

ANCHOR AREA  
118 97 *(see note A)*



CALIFORNIA  
COASTAL COMMISSION

DEC 24 1999

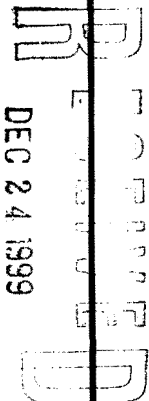


EXHIBIT # 1  
PAGE 2 OF 6

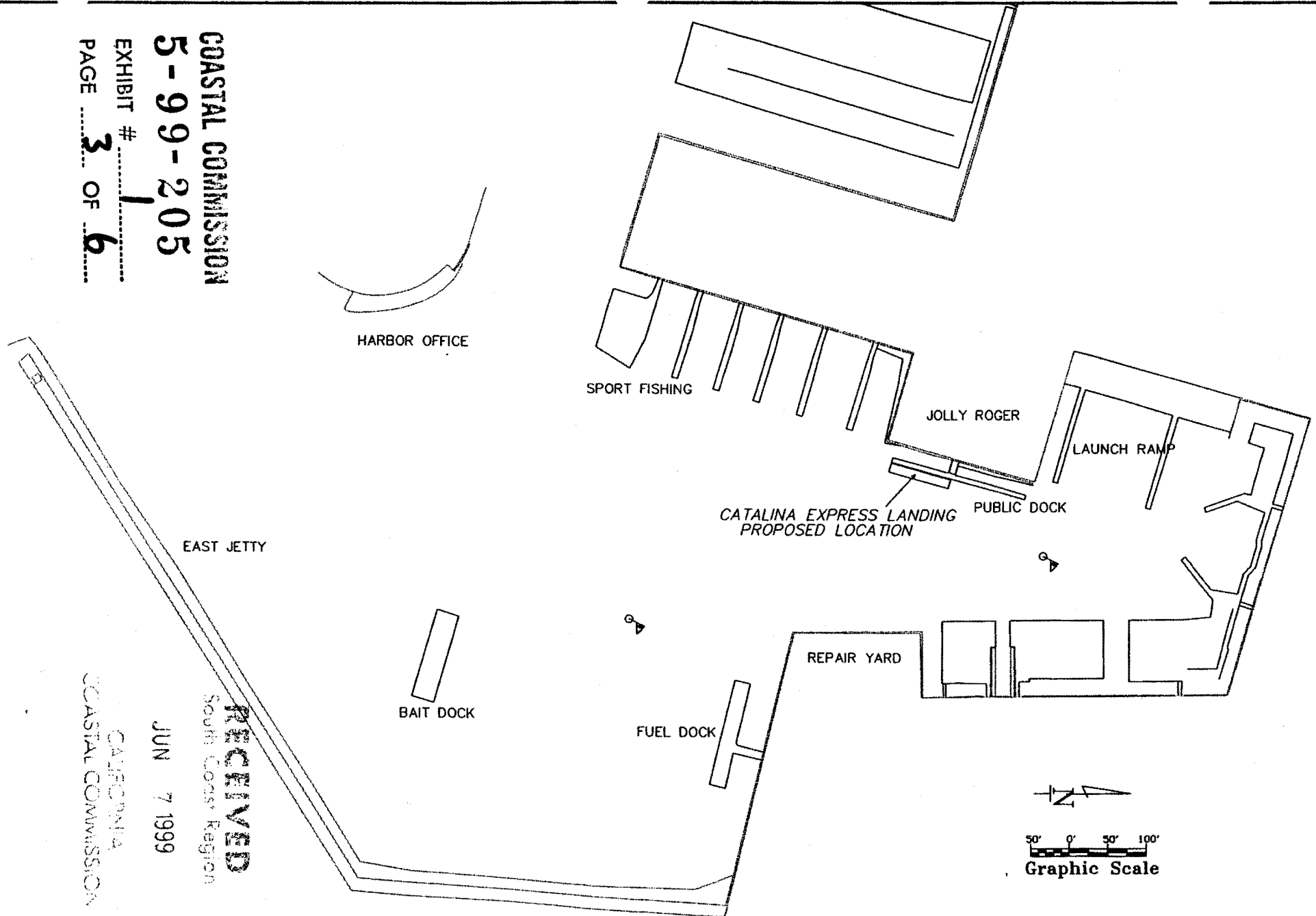
COASTAL COMMISSION  
5-99-205

CATALINA EXPRESS

CATALINA EXPRESS  
OPERATIONAL COMPONENTS

FIGURE  
A

COASTAL COMMISSION  
5-99-205  
EXHIBIT # 1  
PAGE 3 OF 6



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South Coast Region  
COASTAL COMMISSION  
JUN 7 1999

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CATALINA EXPRESS

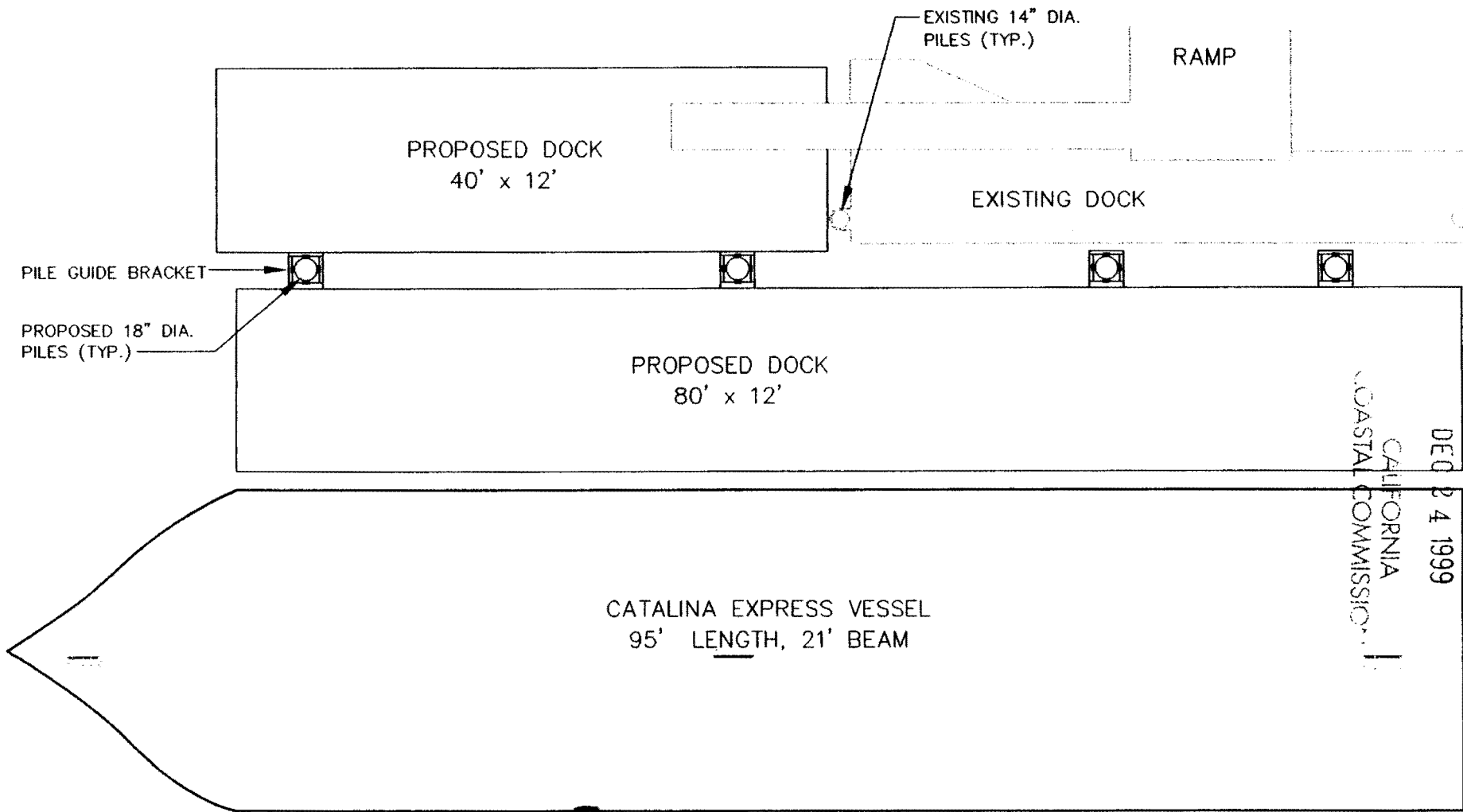
CATALINA EXPRESS LANDING AT DANA PT. HARBOR  
PROPOSED LOCATION

Figure  
1

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South Coast Region

DEC 24 1999

CALIFORNIA  
COASTAL COMMISSION



SCALE  
1" = 10'

Prepared by: Moffatt & Nichol Engineers  
Date: May 1999  
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COASTAL COMMISSION  
EXHIBIT # 5-99-205  
PAGE 4 OF 6

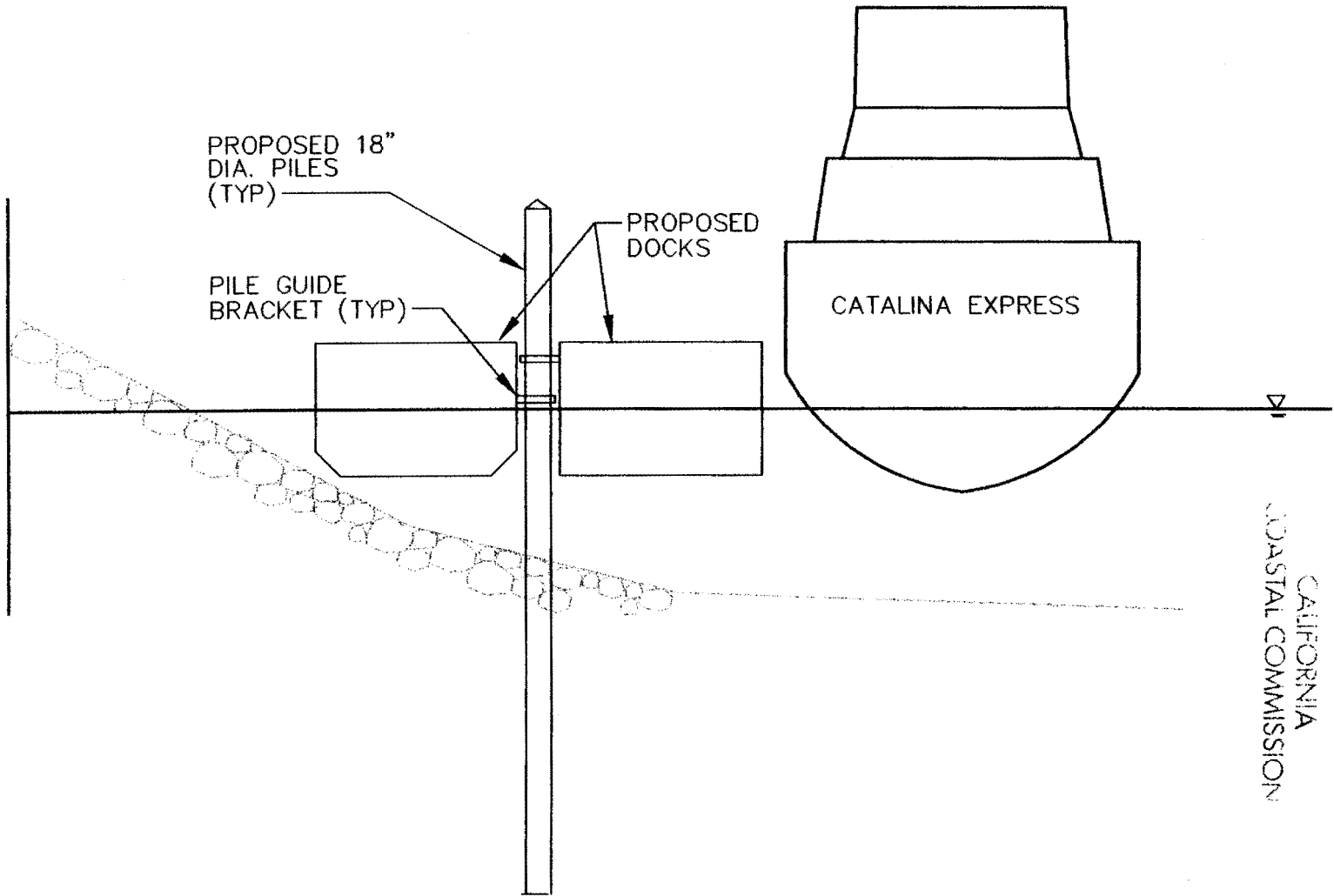
CATALINA EXPRESS

PROPOSED DOCK AT DANA PT. HARBOR  
PLAN VIEW

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South Coast Region

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COASTAL COMMISSION  
5-99-205

EXHIBIT # 1  
PAGE 5 OF 6

SCALE  
1" = 10'

Prepared by: Moffatt & Nichol Engineers  
Date: May 1999  
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CATALINA EXPRESS

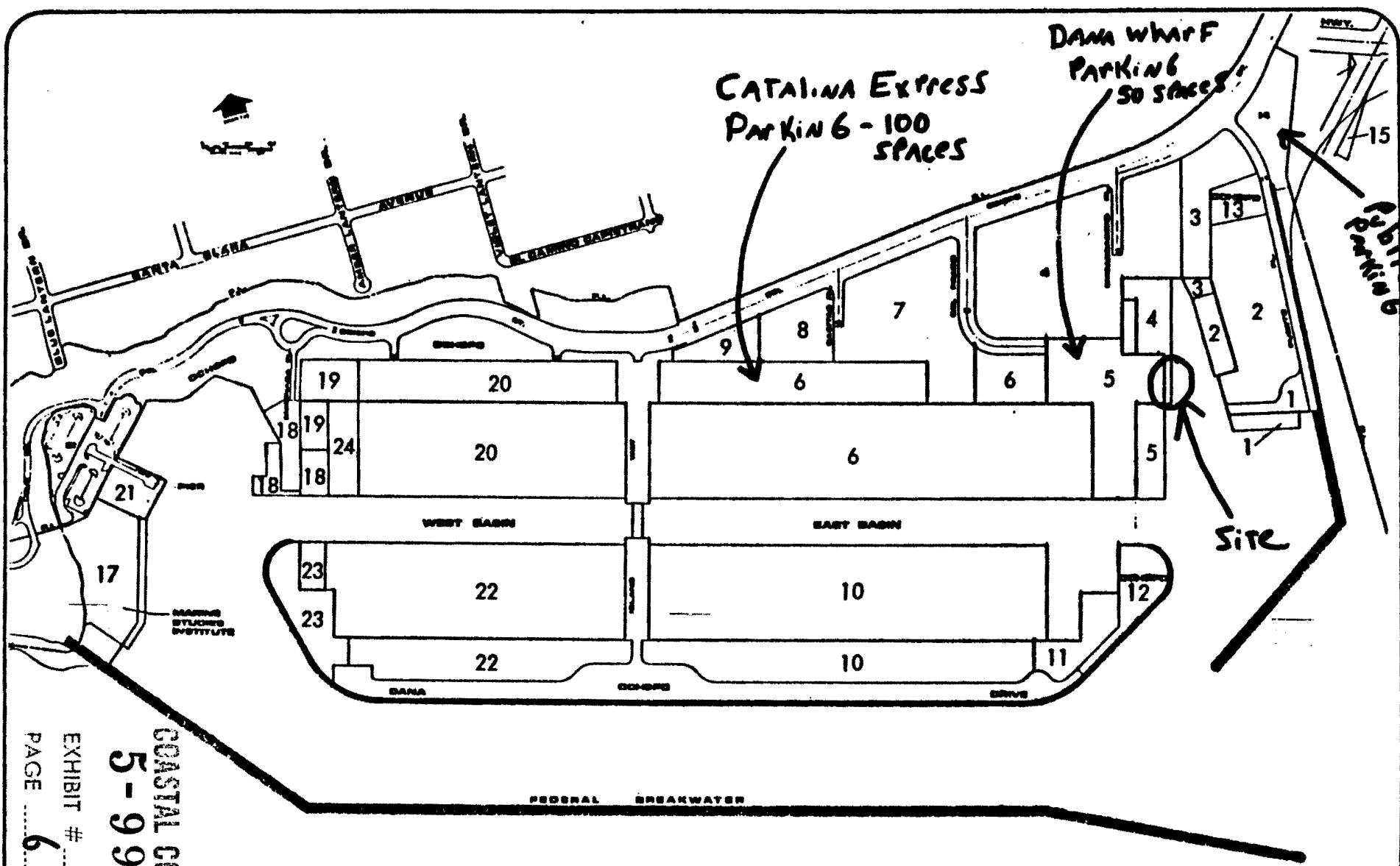
PROPOSED DOCK AT DANA PT. HARBOR  
CROSS SECTION

CATALINA EXPRESS  
PARKING 6 - 100  
SPACES

DANA WHARF  
PARKING  
50 SPACES

Public  
PARKING

Site



PAGE 6 OF 6  
EXHIBIT # 1

COASTAL COMMISSION  
5-99-205

GENERAL PARCEL MAP  
Dana Point Harbor figure 14

SOUTH COAST PLANNING UNIT  
LOCAL COASTAL PROGRAM  
ENVIRONMENTAL MANAGEMENT AGENCY  
COUNTY OF ORANGE



**DANA WHARF SPORTFISHING  
& WHALE WATCHING**  
34675 Golden Lantern  
Dana Point, CA 92629

3/15/00

Catalina Express  
Berth 95  
San Pedro, Ca. 90731  
Att: Greg Bombard

Dear Greg,

In response to Moffat and Nichol Engineers letter dated 3/14, we do not wish to be a co-applicant on Catalina Express's application for a Coastal Development permit.

Please understand that we still support this project 100% and feel it is very important that the dock be modified to better serve the public. If I can assist in any other way please let me know.

Sincerely,

Michael Hansen  
President  
Dana Wharf Sportfishing

**COASTAL COMMISSION**

**5-99-205**

EXHIBIT # 2

PAGE 1 OF 1



**COUNTY OF ORANGE**  
**PUBLIC FACILITIES & RESOURCES DEPARTMENT**

Vicki L. Wilson, Director  
300 N. Flower Street  
Santa Ana, CA  
P.O. Box 4048  
Santa Ana, CA 92702-4048  
Telephone: (714) 834-2300  
Fax: (714) 834-5188

March 16, 2000

Mr. Greg Bombard  
Catalina Express  
Berth 95  
San Pedro, California 90731

Subject: Application For Coastal Development Permit #5-99-205

Dear Mr. Bombard:

A letter from your consultant, Moffatt & Nichol Engineers, has been received inviting the County of Orange to be a coapplicant for subject permit. The permit is requested in order to construct an extension to an existing dock in Dana Point Harbor to better serve the public. The County is the Lessor of the parcel on which the proposed dock will be installed and, in fact, has an unencumbered interest in a portion of the area on which the dock will be constructed.

The County does want to be a coapplicant on this permit application. If there are any additional steps the County must take in order to be a coapplicant, please let us know and we will satisfy the requirements promptly.

We are looking forward to this project being implemented in order to provide enhanced public access to the passenger boat and to accommodate the handicapped. If you have any questions regarding the above or need additional documentation, please contact Grace Dove of PFRD Real Property at (714) 834-8793.

Very truly yours,

Larry Paul, Manager  
Harbors, Beaches and Parks  
Coastal and Historical Facilities

cc: Clare Fletcher

COASTAL COMMISSION  
5-99-205

EXHIBIT # 3  
PAGE 1 OF 1

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**RECEIVED**  
FEB 09 2000



**PAUL D. THAYER, Executive Officer**  
(916) 574-1800 FAX (916) 574-1810  
California Relay Service From TDD Phone 1-800-735-2925  
from Voice Phone 1-800-735-2929

**Contact Phone: (916) 574-1892**  
**Contact FAX: (916) 574-1925**

**CALIFORNIA  
COASTAL COMMISSION**

February 3, 2000

File Ref: G 09-00

Karl Schwing  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Dear Mr. Schwing:

**SUBJECT: Proposed New Dock and Modification of Existing Dock By Catalina Express Landing, East Side of Dana Point Harbor, Orange County, CDP 5-99-205**

Staff of the California State Lands Commission (CSLC) has reviewed information submitted by Moffatt & Nichol Engineers concerning the subject project. The sovereign lands located within Dana Point Harbor have been legislatively granted to the County of Orange, pursuant to Chapter 321, Statutes of 1961, with minerals reserved to the State. Therefore, the County assumes the day-to-day management and permitting authority for projects such as this. The 1961 statute does, however, reserve minerals to the State. Should any dredging be necessary in conjunction with this dock project, that aspect of the project would require formal authorization by the CSLC.

Susie Ming of Moffatt & Nichol Engineers has advised us that the County is fully cognizant of their responsibilities as the trustee of Dana Point Harbor, including the issuance of any permits necessary for this project. Therefore, unless dredging is involved, no further authorization from the CSLC is necessary.

If you have any questions, please call me at (916) 574-1892.

Sincerely,

Jane E. Smith  
Public Land Management Specialist  
Southern California Region

cc: Susie Ming, Moffatt & Nichol

**COASTAL COMMISSION**  
**5-99-205**

EXHIBIT # 4  
PAGE 1 OF 1



0001 8:40PM 1714 CATALINA EXPRESS

DANA WHARF SPORTFISHING



**DANA WHARF SPORTFISHING  
& WHALE WATCHING**  
34675 Golden Lantern  
Dana Point, CA 92629

3/13/2000

Catalina Express  
Berth 95  
San Pedro, Ca. 90731  
Att. Greg Bombard

Dear Mr. Bombard,

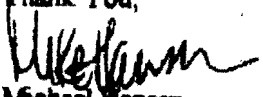
In our original agreement in June of 1998 we allocated 50 of our parking spaces to Catalina Express to use for the 50 passenger Express boat servicing Catalina Island.

We were able to give these parking spaces to you because four of our fishing vessels had left our operation and have not returned.

When the 149 passenger vessel replaced the 50 passenger vessel, those spots remained allocated for Catalina Express. Although all Catalina Express parking is at an off site lot we still have these 50 spots in a back up situation.

We feel that the current parking solution meets all the needs of the operation, and have already experienced maximum capacity on the vessel with no parking problems to date, and we do not for see any problems in the future.

Should you have any questions please do not hesitate to call.

Thank You,  
  
Michael Hansen  
President  
Dana Wharf Sportfishing

COASTAL COMMISSION  
5-99-205  
EXHIBIT # 5  
PAGE 1 OF 1

(949) 496-5794

Fax: (949) 496-8212

www.danawharfsportfishing.com



**Catalina Express**  
**Dana Point-Avalon Passenger Counts from 13Aug99 to 19Aug99**

Date	Time	From	To	Passenger Count	Percent Capacity	Parking Spaces Used
13-Aug-99	7:15	Dana Point	Avalon	147	98%	92
	11:45			149	99%	
	16:45			57	38%	
	9:30	Avalon	Dana Point	13	9%	
	14:00			79	53%	
	19:00			128	85%	
14-Aug-99	7:15	Dana Point	Avalon	125	83%	108
	11:45			148	97%	
	16:45			13	9%	
	9:30	Avalon	Dana Point	18	11%	
	14:00			78	51%	
	19:00			141	94%	
15-Aug-99	7:15	Dana Point	Avalon	138	91%	103
	11:45			145	97%	
	16:45			20	13%	
	9:30	Avalon	Dana Point	77	51%	
	14:00			148	97%	
	19:00			136	91%	
16-Aug-99	9:15	Dana Point	Avalon	149	99%	98
	15:30			35	23%	
	11:30	Avalon	Dana Point	88	58%	
	17:45			139	93%	
17-Aug-99	9:15	Dana Point	Avalon	148	98%	89
	15:30			15	10%	
	11:30	Avalon	Dana Point	35	23%	
	17:45			134	89%	
18-Aug-99	9:15	Dana Point	Avalon	147	98%	96
	15:30			34	23%	
	11:30	Avalon	Dana Point	53	35%	
	17:45			139	93%	
19-Aug-99	9:15	Dana Point	Avalon	149	99%	95
	15:30			24	16%	
	11:30	Avalon	Dana Point	53	35%	
	17:45			134	89%	

Note: 150 Passengers is 100% Capacity.  
 Source: Catalina Express

**COASTAL COMMISSION**  
**5-99-205**

EXHIBIT # 7  
 PAGE 1 OF 1



COUNTY OF ORANGE  
PUBLIC FACILITIES & RESOURCES DEPARTMENT

Vicki L. Wilson, Director  
300 N. Flower Street  
Santa Ana, CA  
P.O. Box 4048  
Santa Ana, CA 92702-4048  
Telephone: (714) 834-2300  
Fax: (714) 834-5188

June 9, 2000

California Coastal Commission  
Ms. Sara Wan, Chair  
c/o Radisson Hotel - Santa Barbara  
Santa Barbara, California 93103

Subject: *Agenda Item Wednesday, June 14, 2000, Number 17i*  
*Permit Number 5-99-205 (Catalina Express and County of Orange)*

*County of Orange Position: Support project with modification of special conditions*

Dear Ms. Wan and Members of the Commission:

We would like to thank Coastal Commission staff for forwarding a copy of their report regarding Application 5-99-205 (Catalina Express), which will be heard by your Commission on Wednesday June 14<sup>th</sup> as Agenda Item 17i. The County of Orange as co-applicant with Catalina Express concurs with the Standard Conditions and with Special Condition 1 but takes exception to portions of Special Condition 2. Our concerns involve the recommended requirement for 100+ exclusive parking spaces and proposed long-term restrictions to provide such exclusive parking.

Specifically, Special Condition 2.A.1. requires "100 dedicated parking spaces for exclusive use by passengers of the ferry service, within a private parking facility...". The County of Orange respectfully requests that the condition be modified to eliminate the requirement that the 100 spaces be reserved for exclusive use. Instead, we recommend that the condition require that 100 parking spaces be available within a dedicated area for ferry passengers.

We are making this request for the following reasons:

1. Catalina Express is already using the dock that is the subject of proposed reconstruction under the CDP application. The County has diligently required the operator to ensure that adequate parking is always available for Catalina passengers. Catalina Express has successfully managed its parking needs through a cooperative agreement with an adjacent lessee. We have carefully monitored the shared parking situation and it appears to be working. The proposed dock improvements will not generate increased dock usage or allow more or larger vessels to use the subject dock.
2. Dana Point Harbor is an extremely popular regional facility that provides a wide variety of visitor-serving uses. We need to retain our ability to maximize all available parking in order to ensure enhanced public access to Dana Point Harbor by having any excess parking capacity available to other harbor users. The requirement for exclusive Catalina parking conflicts with

COASTAL COMMISSION  
5-99-205

EXHIBIT # 8

PAGE 1 OF 2

California Coastal Commission  
June 9, 2000  
Page 2

this objective. The ferry service is seasonal and many of the 100 parking spaces are likely to be unused during portions of the year.

If the Commission is willing to modify the proposed requirement to eliminate the requirement for exclusive Catalina Express parking in favor of a more general requirement for reserved parking in a dedicated area, we would be able to comply with the revised condition in the manner specified under Special Condition 2.B., i.e. by executing lease and sublease restrictions which would stipulate the parking reservation requirement. Please be advised that such lease amendments would be subject to the approval of the Orange County Board of Supervisors.

Additionally, the County of Orange respectfully requests that Special Condition 2.C. be deleted in its entirety. The Special Condition as stated limits the County's flexibility in managing the harbor by defining the area where Catalina parking must be provided and by requiring exclusive parking for a singular harbor use through a long-term agreement between the County and the Coastal Commission. For your information, the County is in the process of preparing a harborwide revitalization plan. It is anticipated that the plan will require an amendment to the City of Dana Point Local Coastal Program and subsequent consideration by your Commission. Under the Dana Point Harbor Concept Revitalization Plan approved by the Board of Supervisors, the County's highest priority is to increase the amount of parking available to the public. We are committed to developing and implementing a parking solution that will effectively double the amount of existing parking spaces. Given the limited overall area of Dana Point Harbor, we anticipate that the new parking facilities will be designed to maintain maximum flexibility while providing ample parking for all types of harbor uses, including Catalina ferry service.

It is essential that the County retain maximum flexibility in the overall revitalization planning and leasing process. Special Condition 2.C. would constrain our ability to renovate and revitalize Dana Point Harbor in a manner which will maximize coastal access for the greatest number and types of visitors.

Thank you very much for the opportunity to express our concerns. We look forward to the dock improvements that will afford passengers improved and safer boarding access to the Catalina Express vessel. We would appreciate your Commission's prompt accommodation of our request to modify the special conditions as outlined above, so that the dock improvements can be constructed at the earliest opportunity. However, if the Commission would like the County and Catalina Express to work further with staff in order to resolve the issues we have described, we are amenable to the postponement of this item to another Commission meeting in the near future.

Very truly yours,



Clara Fletcher  
Real Property Manager

cc: Karl Schwing, Coastal Program Analyst, Coastal Commission  
Greg Bombard, Catalina Express  
Susie Ming, Moffatt & Nichol  
Vicki L. Wilson, Director, Public Facilities and Resources Department

COASTAL COMMISSION

5-99-205

EXHIBIT # 8

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