

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
 200 Oceangate, Suite 1000  
 Newport Beach, CA 90802-4302  
 (949) 590-5071

**RECORD PACKET COPY**

Filed: June 26, 2000  
 49th Day: August 14, 2000  
 180th Day: December 23, 2000  
 Staff: KFS-LB  
 Staff Report: July 20, 2000  
 Hearing Date: August 8-11, 2000  
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-00-200

**APPLICANT:** Gary Shepherd

**AGENT:** Pete Swift, Swift Slip

**PROJECT LOCATION:** 514 38th Street, Newport Beach, Orange County

**PROJECT DESCRIPTION:** Construction of a 8 foot by 13 foot wood pier platform to be supported by one 14 inch diameter concrete "T" piling. The pier platform is proposed to be used as a storage area for boating related equipment and a staging area for donning life jackets.

**LOCAL APPROVALS RECEIVED:** City of Newport Beach Fire and Marine Department Approval in Concept, Harbor Permit Number 537-514; Clearance from the Regional Water Quality Control Board dated May 30, 2000.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan; City of Newport Beach Harbor Permit Policies, Coastal Development Permits 5-99-297 (Fournier); 5-99-223-A1 (Cosgrave & Collins); 5-99-221 (WMC Development); 5-99-220 (WMC Development); 5-99-120 (Sutherland); 5-99-121 (Vance); 5-99-113 (Bradburne); 5-99-043 (Brown); 5-98-523 (Bridges).

**SUMMARY OF STAFF RECOMMENDATION:**

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 no mechanized equipment, except a barge or land-mounted crane, seaward of the bulkhead. Special condition No. 2 limits the use of the 8 by 13 foot platform solely to boating related uses.

## **STAFF RECOMMENDATION:**

The staff recommends that the Commission **APPROVE** the permit with special conditions.

## **MOTION:**

I move that the Commission approve CDP No. 5-00-200 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:**

### **I. 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, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, 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. 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. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS

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) No machinery, with the exception of a barge or land-mounted crane, shall be allowed at any time seaward of the bulkhead;
- (d) Disturbance of the harbor bottom and intertidal areas shall be minimized.

2. USE OF PLATFORM LIMITED TO BOATING RELATED USES

By acceptance of this permit the applicant agrees and acknowledges that the sole use of the 8 by 13 foot platform area is limited to boating related uses and shall not be used for any other uses including but not limited to private residential patio amenities.

### IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing to construct a 8 foot by 13 foot wood pier platform. The pier platform will be supported by one 14 inch diameter concrete "T" piling (Exhibit 2). The proposed piling will result in the fill of approximately 1 square foot of open coastal waters (from the "T" piling). The proposed platform will be flush with the adjacent bulkhead. There are no proposed changes to the existing bulkhead or the existing adjacent dock float and gangway.

The platform is proposed to be used for boating related purposes. These uses include storage of boating equipment such as life preservers, life jackets, boat cushions, boat covers and other miscellaneous boating equipment. In addition, the platform is to be used as a staging area to put on life jackets.

The subject site is located at 514 38th Street, City of Newport Beach, Orange County, in Newport Harbor on Newport Isle on the Rialto Channel (Exhibit 1). The applicant has stated that there are 49 boat docks on the Rialto Channel. Eleven (11) of these 49 boat docks have pier platforms similar to the one being proposed. Therefore, the applicant has stated that the proposed project is consistent with the character of surrounding docks and piers. Also, the subject site was inspected for eelgrass and none was found.

## **B. MARINE ENVIRONMENT**

The proposed project will involve the placement of one concrete T-pile in open coastal waters (i.e. Newport Bay). This pier platform piling constitutes fill of open coastal waters. More specifically, the proposed piling will have a total fill of approximately one square foot of coastal waters. 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 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.*

In addition, the City's certified Land Use Plan states:

*Residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line.*

The proposed project meets the first criteria because the proposed development is for recreational boating purposes. Fill of open coastal waters, such as Newport 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 one T-pile. The pile is necessary to support the proposed pier platform which is necessary to support a recreational boating facility. The project proposes to use a single T-pile to support the pier platform area. In this case, there is no pier area separate from the platform. Rather the pier area is comprised of the 8 by 13 foot platform. Since the platform is coincident with the pier, the same number of T-piles would be required to support the pier area whether it was widened to the 8 foot platform width or not. Therefore, no fill is required for the support of the platform. This pier platform is similar in design to development approved by the Commission under coastal development permits 5-99-297 (Fournier), 5-99-043 (Brown) and 5-99-113 (Bradburne) where the pier and pier platforms were coincident with one another, where the pier platform was proposed for boating related uses, and where there was no difference in the quantity of pilings necessary to support a narrow pier versus a wider pier platform. Nevertheless, the question has arisen

of whether or not the proposed 8 by 13 foot platform constitutes a bona fide boating use or would serve as private residential patio area. The City's certified Land Use Plan (LUP) policy cited above precludes residential and commercial structures (except piers and docks used exclusively for berthing of vessels) from encroaching beyond the bulkhead line.

Existing private, residential boating facilities in Newport Harbor often consist of a pile-supported pier with platform area, a gangway, and a rectangular or "U" shaped float. The City's Harbor Permit Policies limit the size of the platforms to 10 feet by 14 feet. Piers are fixed, pile-supported structures which extend from dry land areas to water areas which connect to a gangway that leads to a float. The length of a pier depends on the size of the boat, the amount of draft the boat needs, and the depth of the water. The overall length of a boat dock is limited by the City's Harbor Permit Policies (HPP). The HPP do not allow docks to extend channelward of the adjudicated U.S. Pierhead Line, except in certain specified areas where, due to the bottom configuration and/or the width of the channel, they are allowed to extend to the adjudicated U.S. Project Line.

Piers and gangways in Newport Harbor are typically 3 to 4 feet wide. The docks or floats vary in size and configuration depending largely upon the type and size of boat to be docked. The majority of boat docks in Newport Harbor have platforms. Based upon a site visit on previous projects, review of aerial photos of the harbor, conversations with the Newport Beach Fire and Marine Safety Department staff, and review of prior waivers and coastal development permits, Commission staff confirmed the approval of several platforms. Commission staff observed that while some of the existing platforms in Newport Harbor contained lockers, small boats, kayaks, and boating equipment or were empty, others had tables and chairs or benches, flower pots, etc. Staff also observed that while some of the platforms were supported by pilings at each corner, other platforms and piers were supported by a single row of "T" shaped piles.

The applicant has indicated that the platform will be used solely for boating purposes. Specifically, the applicant proposes to use the pier platform as a storage area for boating equipment such as life preservers, life jackets, boat cushions, boat covers and other miscellaneous boating equipment as well as a staging area for putting on life jackets. Based on the uses proposed by the applicant, the Commission finds that the proposed pier platform does 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.

Although as proposed the pier platform constitutes a bona fide boating facility, there is the possibility that additional uses may be contemplated in the future. If a future use did not constitute a legitimate boating use, the issue of fill (in the form of piles supporting the pier platform) for a non-allowable use is raised. For example, the pier platform area could be converted to private residential patio use by the placement of chairs or tables. In order to assure that this does not happen, special condition No. 2 is required. Special condition No. 2 limits the use of the pier platform solely for boating related purposes.

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. Some pier platforms in Newport Harbor have been constructed using T-piles centered under the platform area rather than a single pile at each of the four corners.

Although T-piles have a slightly larger diameter than single piles, the use of a T-pile rather than four single piles results in less fill. In this case, the proposed project only requires one T-pile to support the pier platform because one end of the pier platform is connected to the bulkhead. In addition, the project has been designed in conformance with the Department of Boating and Waterways Guidelines, and uses only the piles necessary to support recreational boating facilities. 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 piling will provide habitat for marine organisms such as mollusks.

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. 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.

### 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 between the first public road and the sea.

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.*

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. The subject site is within Newport Harbor on Newport Isle. Public access and recreation opportunities exist nearby at a public park on

Marcus Avenue between 38<sup>th</sup> Street and 39<sup>th</sup> Street and at the nearby street ends on Marcus Avenue, Finley Avenue and Channel Place (Exhibit 1).

The proposed development consists of construction of a new boat dock within the U.S. Pierhead Line. The proposed development will not adversely impact navigation. The development will not create adverse impacts on coastal access and recreation. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on existing public access and recreation and is consistent with Section 30212 of the Coastal Act.

In addition, the proposed development is a recreational boating facility. Recreational boating facilities are an encouraged use under Section 30224 of the Coastal Act. Therefore, the proposed development is consistent with Section 30224 of the Coastal Act.

**D. 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.*

The applicant is proposing to construct a new recreational boating facility on the water in Newport Harbor. The approval from the City of Newport Beach indicates that no eelgrass is present at the subject site.

Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and the marine environment. 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. The applicant has obtained clearance for the proposed project from the Regional Water Quality Control Board dated May 30, 2000, which states that if standard dock construction methods and materials are utilized the project should not adversely impact water quality (Exhibit 3). In order to avoid adverse construction related impacts upon marine resources, and to assure appropriate construction methods and materials are used, special condition 1 outlines construction related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Only as conditioned for appropriate storage of construction materials and equipment does the Commission find that the proposed development is consistent with Section 30230 of the Coastal Act.

**E. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

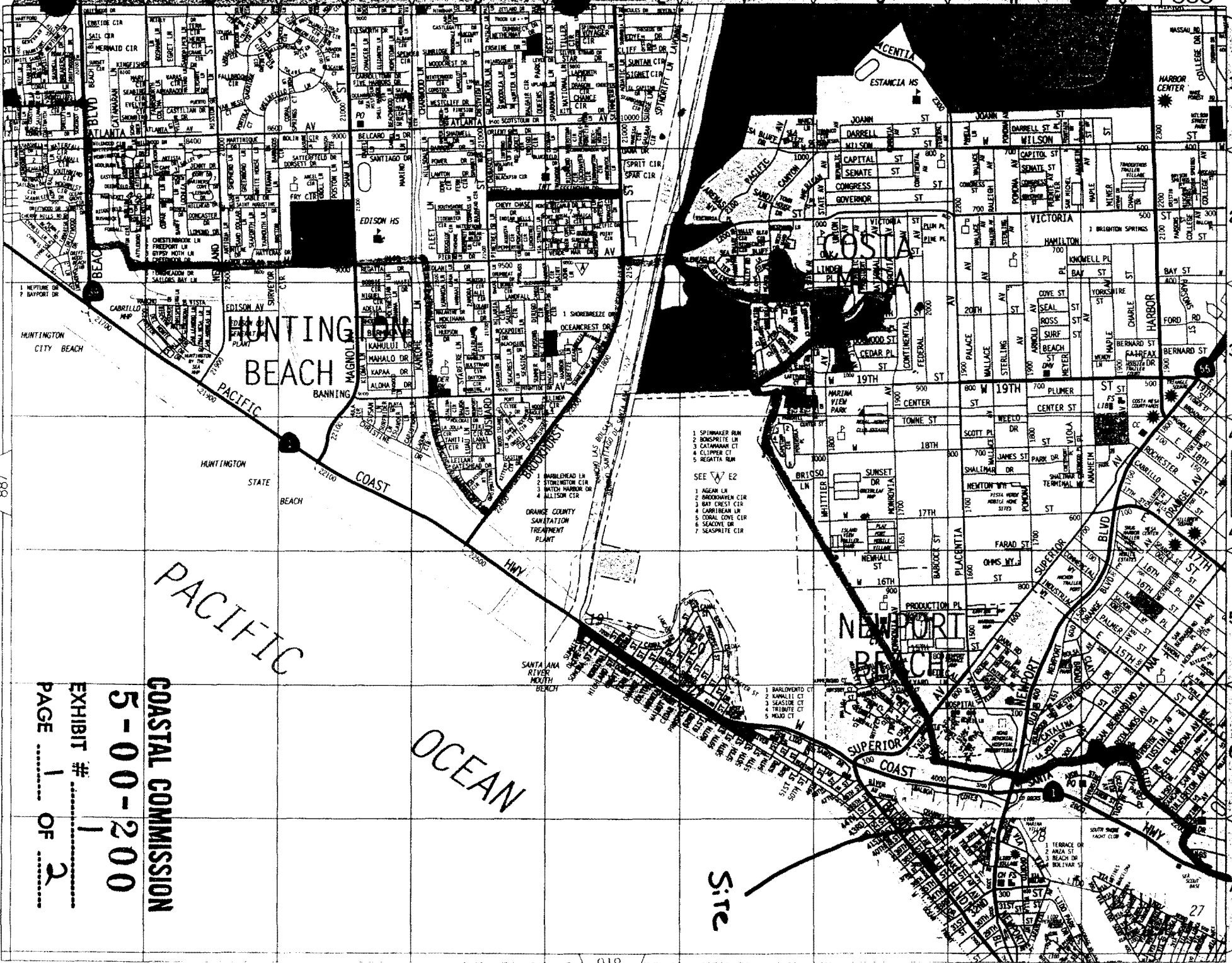
The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan and with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development 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.

The proposed project has been conditioned for consistency with the marine resource protection policies of Sections 30230 and 30233 of the Coastal Act. Mitigation measures, in the form of special conditions require 1) removal of construction debris and minimization of construction impacts, and 2) limiting the use of the 8 by 13 foot platform solely for boating related purposes, will minimize all adverse effects. 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.





- SEE  $\nabla$  E2
- 1 SPINKER RUN
  - 2 BONSPRITE LN
  - 3 CATAMARAN CT
  - 4 CLIPPER CT
  - 5 REGATTA RUN

- 1 AMBLEHEAD LN
- 2 WATSON HARBOR DR
- 3 ALLISON CIR

- 1 BARLOVERO CT
- 2 SANALLI CT
- 3 SEASIDE CT
- 4 TRIBUTE CT
- 5 WILD CT

- 1 TERRACE DR
- 2 ANEA ST
- 3 BEACH DR
- 4 BELIVAR ST

COASTAL COMMISSION

5-00-200

EXHIBIT # 1 OF 2

OCEAN

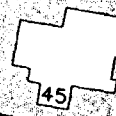
Site

# COASTAL COMMISSION 5-00-200

EXHIBIT # 1

PAGE 2 OF 2

HOAG CANCER CENTER  
CHILD CARE CENTER



HOAG DRIVE (PVT)

HIGHWAY

BALBOA

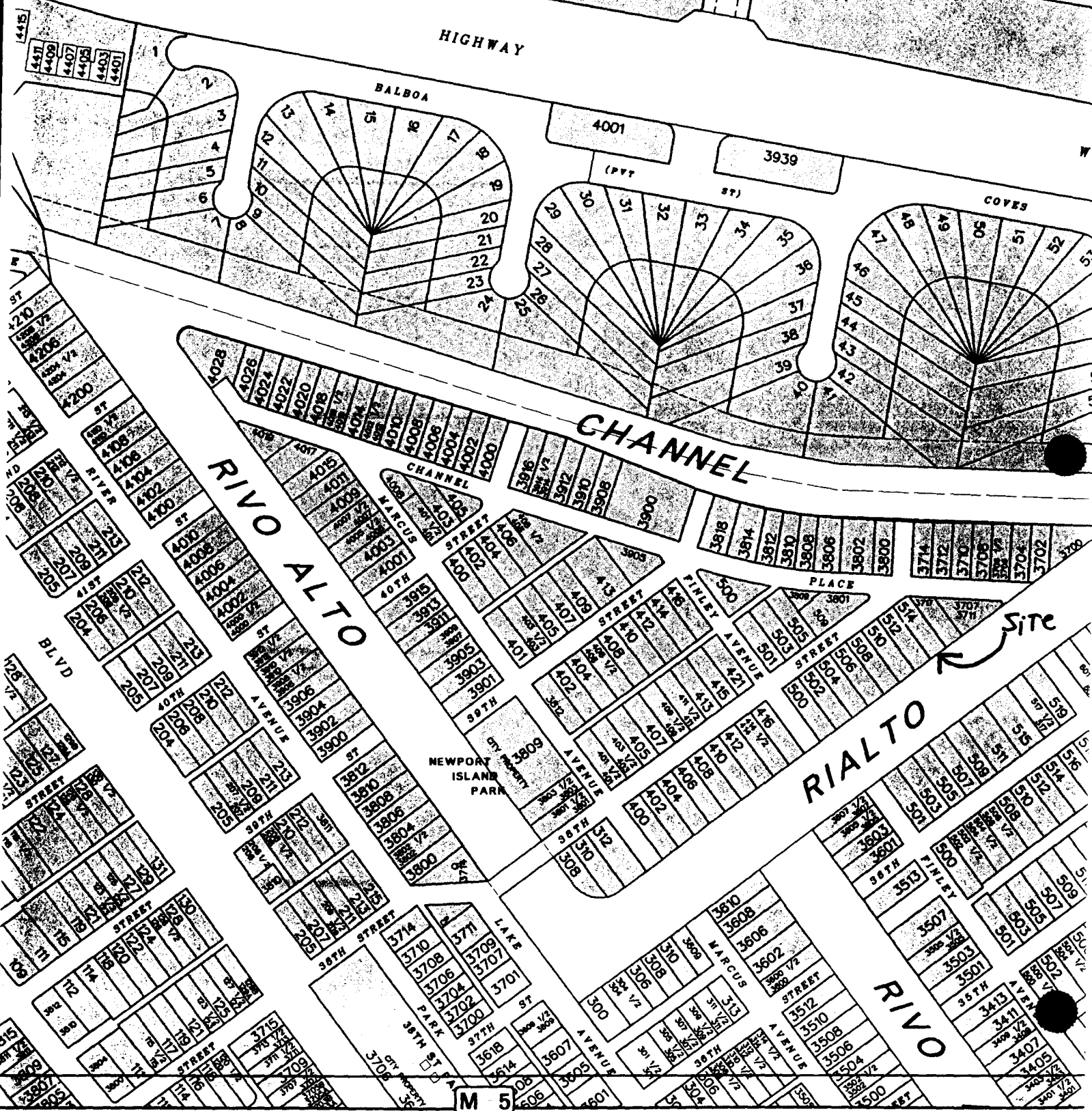
CHANNEL

RIVO ALTO

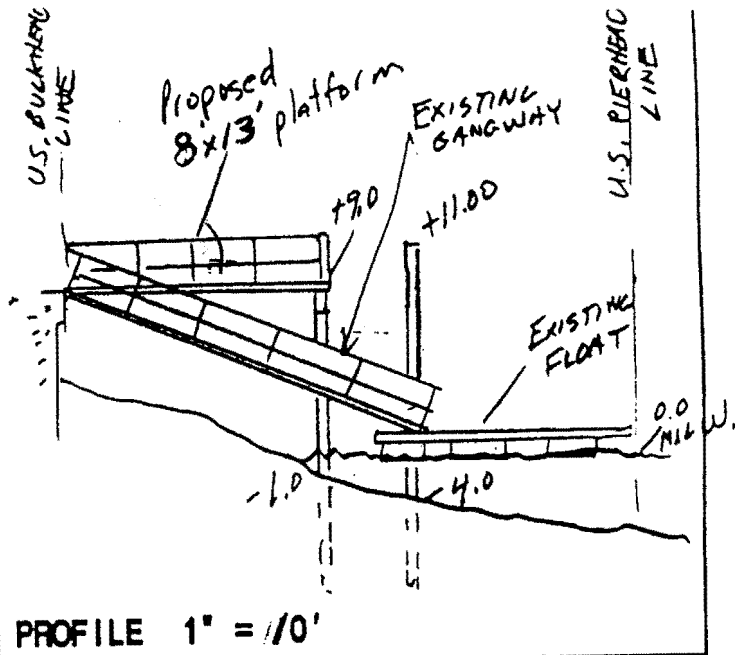
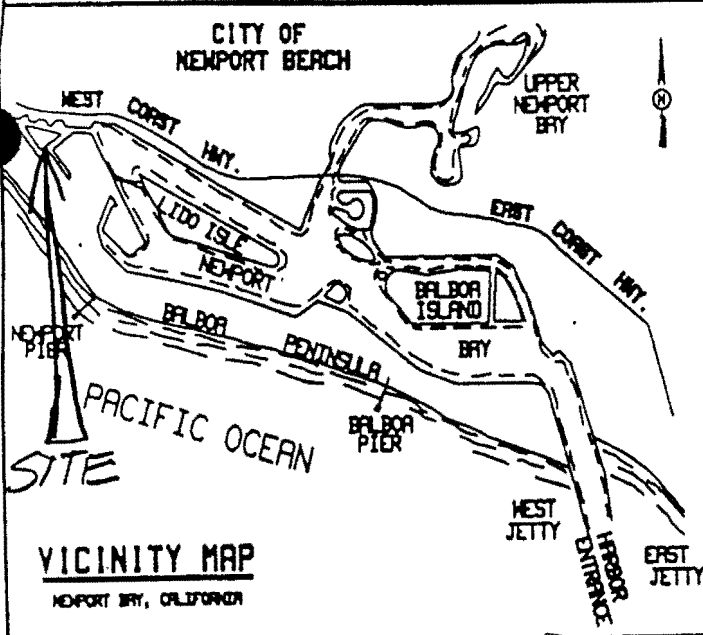
RIALTO

RIVO

Site



# CITY OF NEWPORT BEACH



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

5-21-00  
FIRE & MARINE DEPT.  
CITY OF NEWPORT BEACH

**RECEIVED**  
MAY 25 2000

- EEL GRASS INSPECTION
- NO EEL GRASS
- EEL GRASS IN THE PROJECT AREA
- EEL GRASS IN THE PROJECT AREA

CALIFORNIA COASTAL COMMISSION

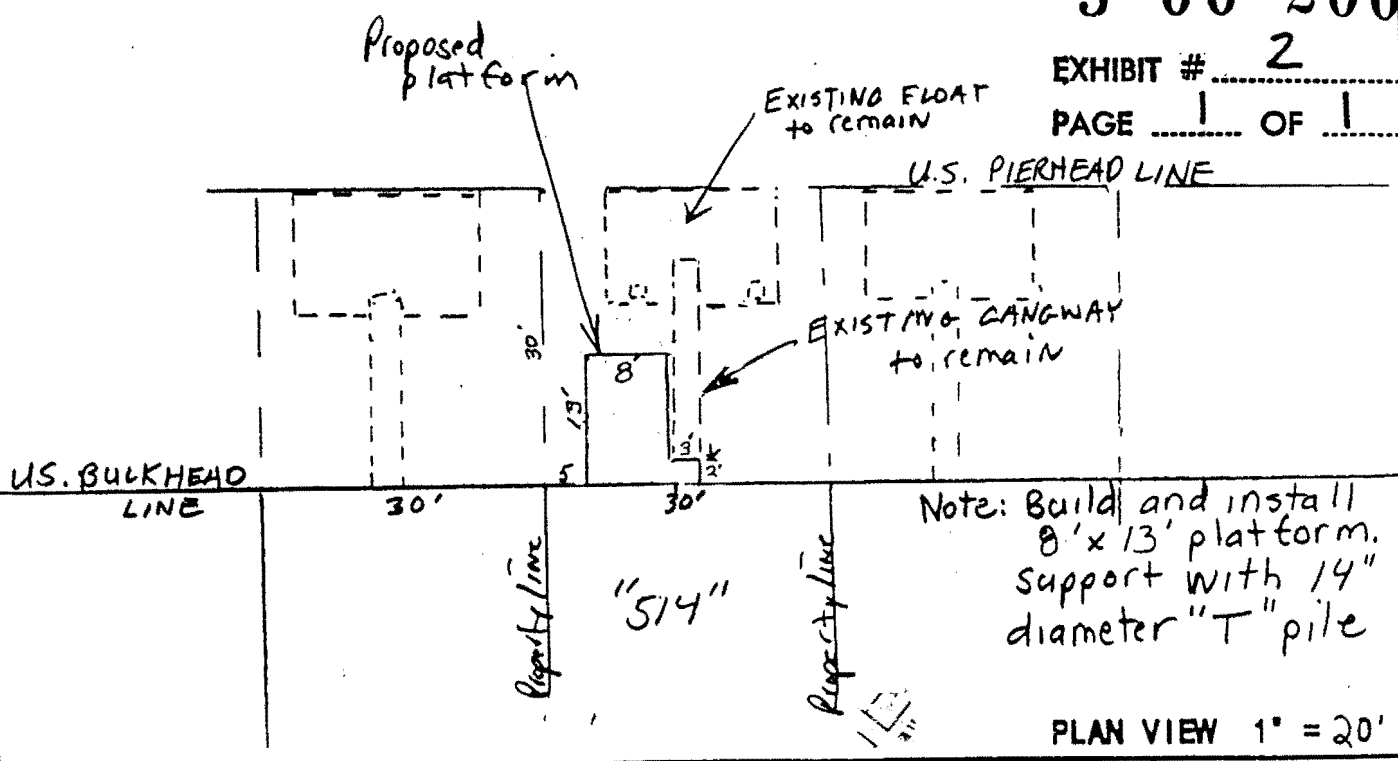
SIGNATURE  
*[Signature]*

NEWPORT BAY

PERMIT# 537514 DATE 5-21-00

**COASTAL COMMISSION**  
5-00-200

EXHIBIT # 2  
PAGE 1 OF 1



Note: Build and install 8' x 13' platform. Support with 14" diameter "T" pile

APPLICANT'S NAME GARY SHEPHERD | JOB ADDRESS 514 38<sup>th</sup> Street | DATE 3-30-00



# California Regional Water Quality Control Board Santa Ana Region



Winston Hleko  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov>  
3737 Main Street, Suite 500, Riverside, Calif. 92501-3339  
Phone (909) 782-4130 • FAX (909) 781-6288

Gray Davis  
Governor

May 30, 2000

RECEIVED  
MAY 31 2000

Beth Swift  
Swift Slip Dock and Pier Builders  
2027 Placentia Avenue  
Costa Mesa, CA 92627

CALIFORNIA  
COASTAL COMMISSION

## PROPOSED INSTALLATION OF A BOAT DOCK, GARY SHEPHERD, 514 38<sup>th</sup> STREET, NEWPORT BEACH, ORANGE COUNTY

Dear Ms. Swift:

If standard dock construction methods and materials are utilized, this project should not adversely impact water quality. A statement has been submitted that there will be no waste discharged from the proposed project. Based on these assurances, clearance is provided.

However, should the Army Corps of Engineers determine that this project requires a Section 404 permit, it will be necessary for the project proponent to obtain from this Board a Water Quality Certification under Section 401 of the Clean Water Act.

Should you have any questions, please contact Jawed Shami at (909) 782-3288.

Sincerely,

Gary D. Stewart, Chief  
Regulations

cc: California Coastal Commission, Long Beach  
Army Corps of Engineers - Erik Larsen  
City of Newport Beach, Marine Department - Tony Mellum  
City of Newport Beach, Building Department - Faysid Jurdi

JIS/blutag84.let

COASTAL COMMISSION  
5-00-200

EXHIBIT # 3

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