

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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RECORD PACKET COPY

Filed: August 22, 2000.
49th Day: October 10, 2000
180th Day: February 18, 2001
Staff: ALK-LB **ALK**
Staff Report: August 24, 2000
Hearing Date: September 12-15, 2000
Commission Action:

Item Wed 29h**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-00-308

APPLICANT: Marvin Engineering Co., Inc.

AGENT: Shellmaker, Inc., Lisa E. Miller

PROJECT LOCATION: 3400 Via Oporto, Newport Beach Orange County

PROJECT DESCRIPTION: Reconfiguration of existing commercial dock to accommodate a new charter vessel for Electra Cruises.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department Approval in Concept, Harbor Permit Number 124-3400; Clearance from the Regional Water Quality Control Board, and Approval from US Army Corps of Engineers.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Newport Beach Municipal Code Chapter 5.18, City of Newport Beach Harbor Permit Policies, and Coastal Development Permit Application 5-99-397 (Marvin Engineering Co., Inc.).

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 requires the applicant to maintain 89 parking spaces in the Lido Marina Village parking structure and comply with the marine charter parking requirements administered by the City of Newport Beach.

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 #5-00-308 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. 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. 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

By acceptance of this permit, the applicant acknowledges and agrees to maintain a total of eighty-nine (89) parking spaces in the Lido Marina Village parking structure for the use approved by Coastal Development Permit 5-00-308. In addition, the applicant shall comply with the parking requirements for Marine Charter Permits set forth in Newport Beach Municipal Code Section 5.18.040 (Exhibit 4).

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing to modify an existing commercial dock to accommodate a new charter vessel in the Lido Marina Village area of Newport Harbor (Exhibits 1 and 2). Specifically, the project involves the demolition of an existing dual "U"-shaped dock with three (3) 45' long by 4' wide fingers and a 10' by 40' backwalk, and the relocation of its three (3) pilings. The project also involves the demolition and removal of a 37' long by 4' wide dock and its associated piling. The applicant proposes to replace and reconfigure the existing boat dock, as described below and shown in Exhibit 3.

The applicant proposes to construct a new 6' wide by 90' long floating dock with six (6) 18" prestressed concrete guide piles, two (2) relocated 12" piles and two (2) 5' by 5' knee braces. The applicant also proposes to construct a 6' wide by 45' long extension to an existing floating dock. The dock extension will be anchored by three (3) new 18" prestressed concrete guide piles. Another 5' by 5' knee brace with relocated 12" pile will be installed on a portion of the remaining dock to the west of the new docks.

The new floats are being constructed to accommodate a new 61.5' long 250-passenger yacht, known as the Newport Princess. This new vessel will replace the Galatea, a 60'/100-passenger yacht. The Newport Princess will be an addition to Electra Cruises fleet of two yachts, the Electra (87.2'/105-passenger) and the Athena (96.9' long /149 passengers).

In order to provide parking for the proposed development (i.e. additional charter boat service), the applicant intends to continue operating under the requirements of the City of Newport Beach Municipal Code Chapter 5.18. The City's Municipal Code requires charter operators to provide proof of adequate off-street parking prior to issuance of a Marine Charter Permit. Parking for each charter is provided in either the Lido Marina Village parking structure, the Newport Beach City Hall, and/or through off-site busses/shuttles. (Parking will be described further in Section C of the current report.)

B. MARINE ENVIRONMENT

1. Fill of Coastal Waters

The proposed project involves the placement of nine (9) new 18" diameter concrete pilings and three (3) relocated 12" diameter pilings in open coastal waters (i.e. Newport Harbor), for a total of twelve (12) pilings. These pilings constitute "fill" of open coastal waters as defined in Section 30108.2 of the Coastal Act. 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 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 twelve (12) 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 charter boat service. This charter 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 dock reconfiguration 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 one (1) existing pile, reuse three (3) 12" diameter piles and place nine (9) new 18" diameter piles. The applicant has indicated that the proposed pilings are the smallest diameter and the minimum quantity necessary to meet current engineering standards for loads needed to serve the new and existing vessels. 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. 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

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).

The proposed development involves construction within coastal waters. An inspection performed by the City determined that no eelgrass exists in the vicinity of proposed project. Therefore, no eelgrass will be affected by the proposed project.

The proposed pilings will be placed in a hardbottom area beyond the existing bulkhead. 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 determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. Nonetheless, 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.

The Lido Marina Village area of Newport Harbor is designated for Recreation and Marine Commercial and/or Retail and Service Commercial uses. The surrounding area is currently developed with similar private commercial boat docks, retail establishments, restaurants and a waterfront walkway. These existing facilities provide public access.

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 charter service, in the coastal zone do not provide adequate on-site or dedicated parking to serve the proposed development. In cases of inadequate parking, charter passengers would displace other public users from public parking spaces.

The applicant is subject to City of Newport Beach Municipal Code Chapter 5.18 for operation of marine charters (Exhibit 4). According to the City Code, each charter must apply for a Marine Charter Permit from the Revenue Division of the City. Section 5.18.040 specifies that

"an application shall be denied if there is substantial evidence that:...

3. The proposed charter does not provide facilities to ensure adequate off-street parking, or the safe loading and unloading of passengers and supplies. For the purpose of this section, parking shall be considered adequate only if one parking space is provided for each three passengers or the applicant can demonstrate, to the satisfaction of the Revenue Manager or Harbor Inspector, that fewer spaces are required because of written passenger commitments to carpool or use different forms of transportation."

The applicant has obtained authorization to use 89 of the 383 (plus 154 valet spots) at the Lido Marina Village parking structure. They have also been granted approval to use all 83 spaces within the City of Newport Beach City Hall to meet their parking needs after 5:30 p.m. Monday—Friday, Saturday all day and Sunday after 1:00 p.m. The applicant states that in the past seven years they have utilized the City parking lot only three times. When parking needs cannot be met at the Lido Marina Village parking structure or City Hall, passengers are bussed/shuttled to the charter yachts.

The applicant has also provided a parking study based upon last year's operation of the Electra, Athena, and Galatea (no longer in use) vessels during peak use season. The Newport Princess will replace the Galatea, which was a 100-passenger vessel. As such, the applicant will have the capacity to charter 150 more passengers than before. The parking study indicates that the existing parking arrangement is adequate to support the additional charter use. No public parking spaces will be required to support the charter service.

To ensure that the applicant continues to provide the necessary parking for each charter, the Commission imposes Special Condition 2. Special Condition 2 requires the applicant to comply with the parking requirements for Marine Charter Permits set forth in Newport Beach Municipal Code Chapter 5.18. With this condition, the applicant must demonstrate to satisfaction of the City's Revenue Division that they will provide adequate off-street parking for each charter. Consequently, the proposed dock reconfiguration and additional charter service will not adversely effect public parking in the subject area.

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

D. 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).

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 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) conformance with the City of Newport Beach Marine Charter Permit requirements, 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.

5-00-308

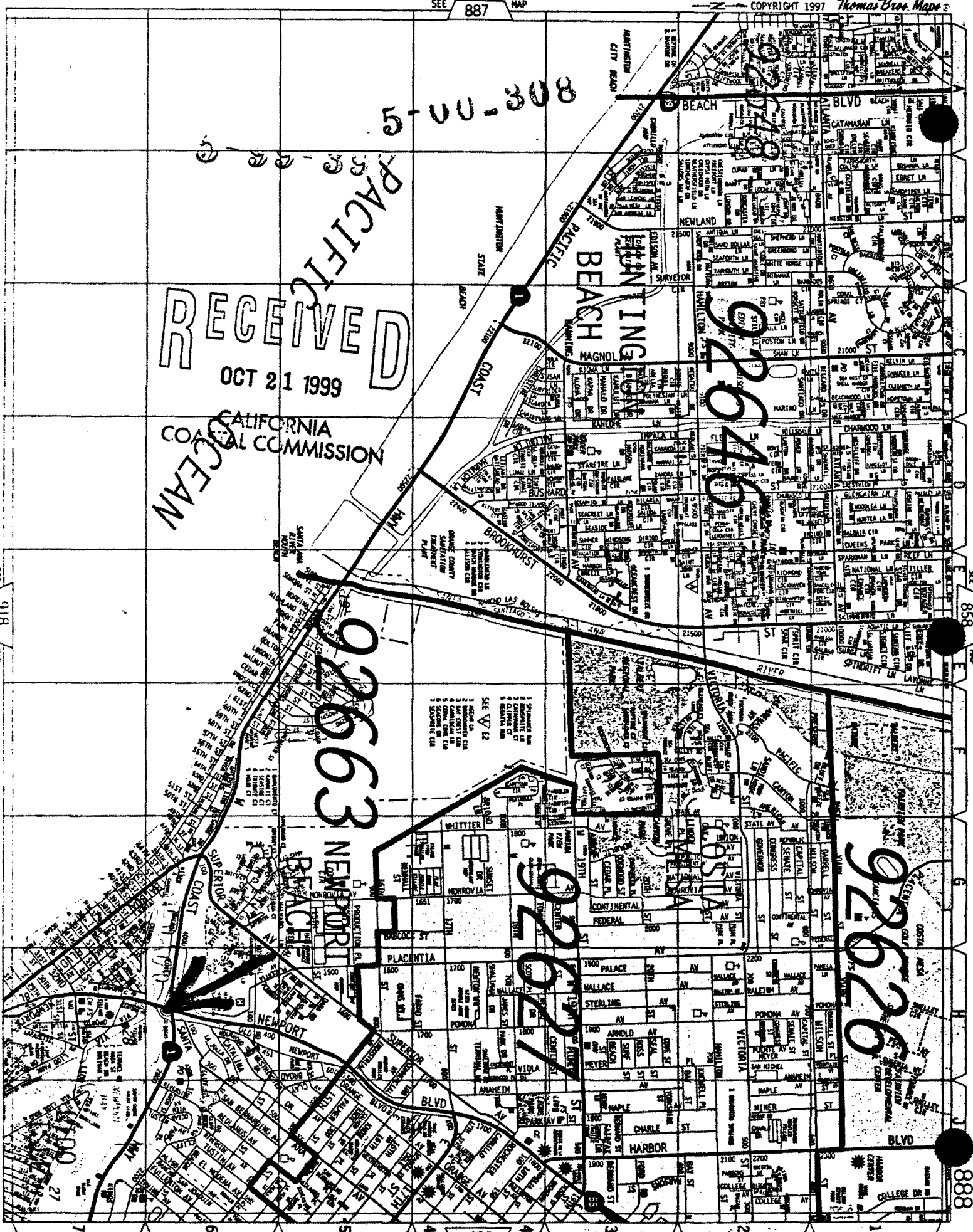
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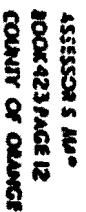


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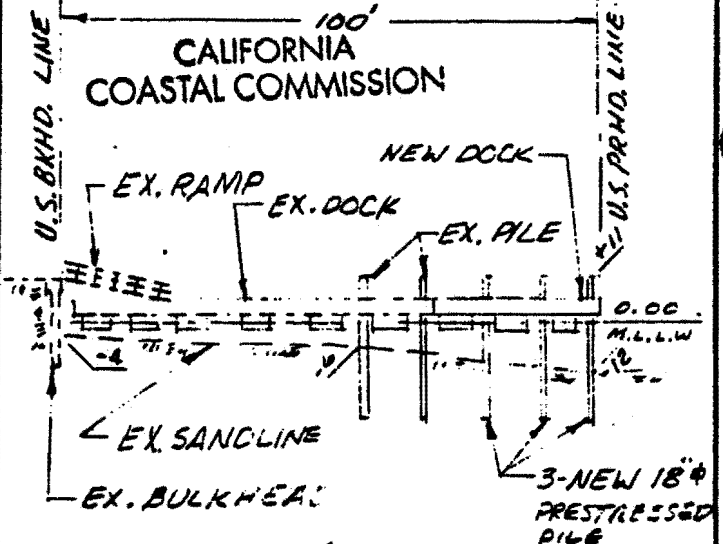
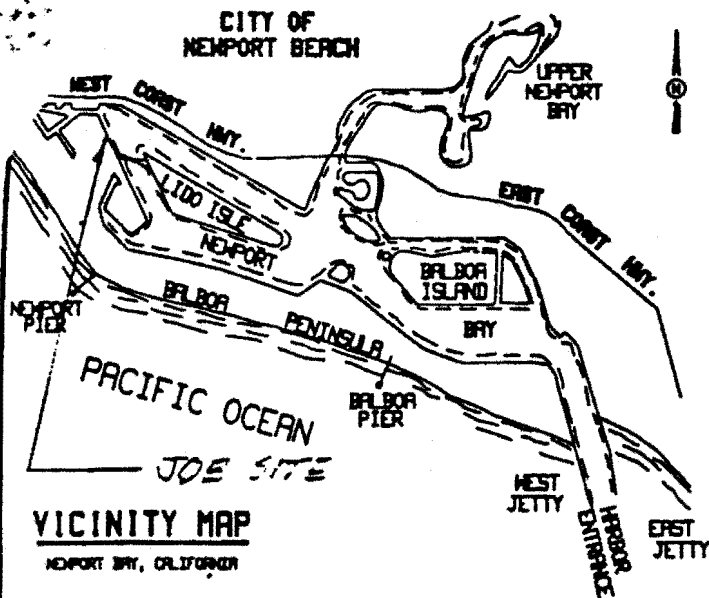


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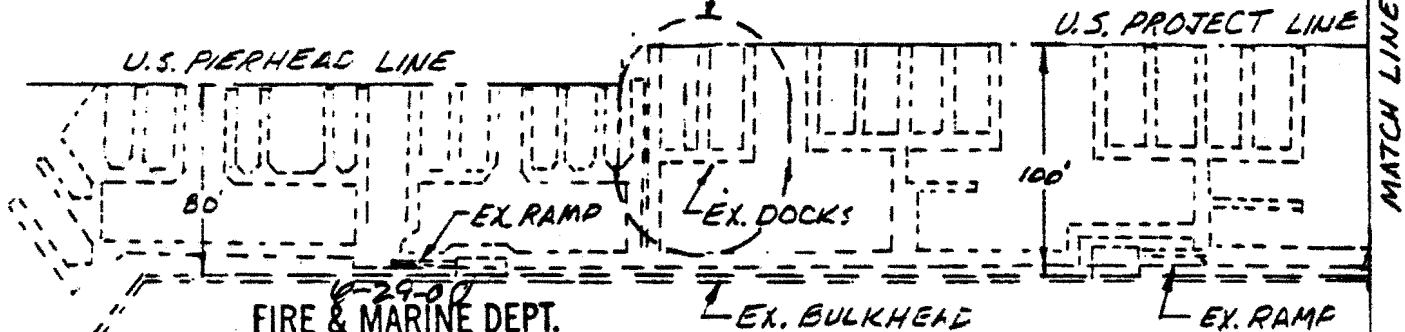
CALIFORNIA
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PROFILE 1" = 50'

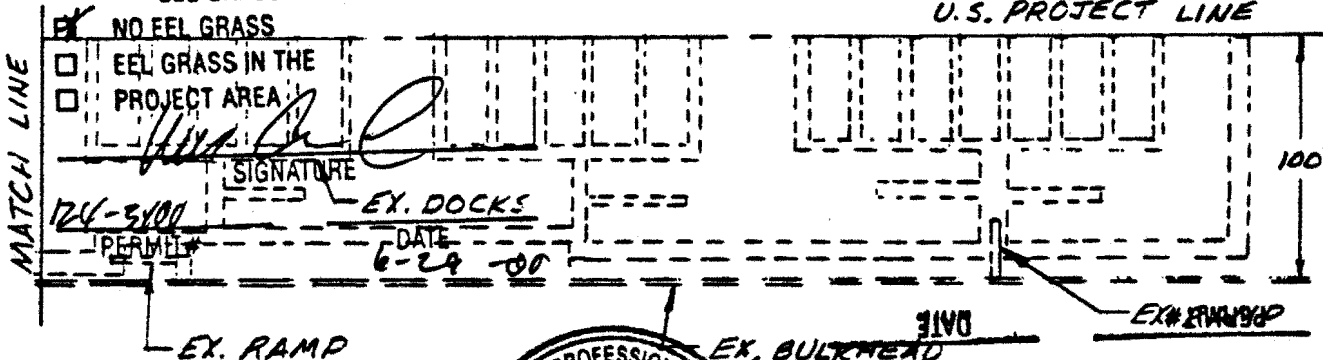
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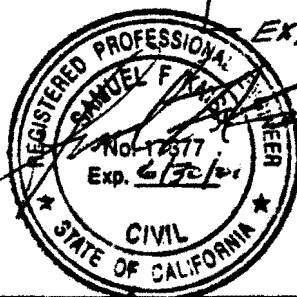


FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

EEL GRASS INSPECTION



SAM F. KNISS
CONSULTING CIVIL ENGR.
C-17377
19 AGATE
IRVINE, CA. 92614
(949) 733-8430



PROJECT AREA ☐
EEL GRASS IN THE ☐
NO EEL GRASS ☐

PLAN VIEW 1" = 100'

APPLICANT'S NAME LIDO MARINA VILLAGE

JOB ADDRESS 3400 VIA OCEAN BLVD. N.S.

DATE 6/5/00

SHEET 1 OF 2

RINA VILLAGE - SLIP N^o 714

RECEIVED

SHEET 2 of 2
6/5/00

U.S. PROJECT

5-00-308

JUL 05 2003

LINE

(3) NEW 18" Φ
PRESTRESSED PILE

REMOVE & DESTROY
EX. DOCK & PILE



EX. DOCK

RELOCATED 12" Φ PILE

NEW 5'x5' KNEE BRACE

SAM F. KNISS
C-17377
19 AGATE
IRVINE, CA. 92614
(949) 733-8430

CALIFORNIA
COASTAL COMMISSION

NEW DOCK

45'

NEW 18" Φ PRESTRESSED PILE (TYP - 6 TOTAL)

NEW DOCK

REMOVE & DESTROY
EX. DOCK & (2) PILE
REUSE (3) PILE

EX. DOCK

EEL GRASS INSPECTION

NO EEL GRASS
EEL GRASS IN THE
PROJECT AREA

SIGNATURE

PERMIT #

DATE

NEW 5'x5' KNEE BRACE

RELOCATED 12" Φ PILE

NEW 5'x5' KNEE BRACE

FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

Chapter 5.18

MARINE CHARTER PERMIT

Sections:

5.18.005	Purpose and Findings.
5.18.010	Definitions.
5.18.020	Permit Required—Violations.
5.18.025	Exceptions.
5.18.030	Application for Permit.
5.18.035	Marine Charter Filing Fee.
5.18.040	Issuance of Permit.
5.18.045	Conditions.
5.18.050	Indemnification.
5.18.055	Transfer Prohibited.
5.18.060	Penalty.

5.18.005 Purpose and Findings.

The City Council of the City of Newport Beach, in adopting the ordinance codified in this chapter, finds and declares as follows:

A. Newport Bay is a limited resource with a large marine and recreational use.

B. In the past few years, there has been a dramatic increase in the number of charter vessels operating in Newport Bay;

1. Many of these vessels are owned or operated by persons who do not have a fixed base of operation on or near the bay that can provide the parking or sanitation facilities necessary to serve their clients and customers.

C. Charter activities will, if unregulated, continue to increase the demand for available waterfront parking that is already in short supply which will increase traffic congestion in the waterfront areas, continue to generate levels of noise which, on occasion, have interfered with the many residents who live on the bay, and continue to present a risk of direct discharge of waste into the bay.

D. The requirements of the chapter are necessary to minimize the traffic congestion, parking shortages, excessive noise, and the discharge of waste that could result from unregulated charter activity.

E. The charter activities not regulated by Chapter 17.41 and this chapter are those which involve

so few people as to have only a minimal impact on the traffic, parking and noise problems associated with other charter activities.

F. Charter activities on Newport Harbor demand additional City services which are not paid by the patrons or passengers of charter vessels operating in a commercial capacity of the harbor. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.010 Definitions.

For the purpose of this chapter, the following definitions shall apply:

A. "Bareboat charter" shall mean any vessel not inspected by the United States Coast Guard under title 46 of the Code of Federal Regulations and which has been chartered for consideration.

B. "Charter" shall mean any vessel inspected by the United States Coast Guard under title 46 of the Code of Federal Regulations and which has been chartered for consideration.

C. "Chartered for consideration" shall mean a vessel which has been hired or leased by the owner, directly or through a representative, to any person for a voyage in exchange for the payment of money, the receipt of something of value, or the forgiveness of a debt.

D. "Commercial fishing vessel" shall mean a vessel registered by the Department of Fish and Game pursuant to Section 7880 of the Fish and Game Code of the State of California, when operating under the authority of the fish and game permit outside Newport Harbor.

E. "Sailing club" shall mean an organization operating from a fixed location and principally engaged in the coordination or facilitation of the use of pleasure boats by its membership.

F. "Applicant" shall mean the owner of the vessel or authorized representative of the owner.

G. "Sportfishing charter" shall mean a vessel chartered solely for sportfishing outside of Newport Harbor.

H. "City Manager" shall mean the City Manager of the City of Newport Beach, or his or her respective assignees.

I. "Revenue Manager" shall mean the Revenue Manager of the City of Newport Beach or his or her designee.

J. "Newport Bay" shall mean all waters within the corporate limits of the City of Newport Beach and within which the tide ebbs and flows, whether or not the ordinary or mean high tide of the Pacific Ocean has been fixed by ordinance, statute, court action or otherwise, and whether or not the lands lying under the tidal water are privately or publicly owned.

K. "Person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee or any other organization or group of persons acting in concert.

L. "Harbor Inspector" shall mean the Harbor Inspector of the City of Newport Beach, or his or her designee.

M. "Operator" shall mean the person who operates or who has charge of the navigation or use of a vessel.

N. "Passenger" shall mean every person, other than the master and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.020 Permit Required—Violations.

A. No person shall operate any bareboat charter or certificated charter on the waters of Newport Bay without first obtaining a marine charter permit pursuant to this chapter.

B. No person shall schedule, arrange, or coordinate the operation of a bareboat charter or certificated charter on the waters of Newport Bay without first obtaining a marine charter permit pursuant to this chapter.

C. No person who owns a certificated vessel (a vessel inspected by the United States Coast Guard pursuant to Title 46 of the Code of Federal Regulations) shall permit or allow the use of the vessel as a certificated charter on the waters of Newport Bay without first obtaining a marine charter permit pursuant to this chapter.

D. No person shall operate a bareboat charter or certificated charter on the waters on Newport Bay without having a valid marine charter permit on board the vessel at all times during the charter.

E. No owner of a vessel shall permit that vessel to be used as a bareboat charter on the waters of Newport Bay unless a marine charter permit has been issued for the bareboat charter. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.025 Exceptions.

The provisions of this chapter shall not apply to the following:

A. Any vessel operating pursuant to, and in compliance with conditions of, a valid permit issued pursuant to Chapter 17.41 of the Newport Beach Municipal Code;

B. Any commercial fishing vessel traversing the waters of Newport Bay to engage in commercial fishing or other operations outside of Newport Bay;

C. Vessels operated by a sailing club while carrying six or fewer passengers, provided at least one of the passengers is a member of the sailing club;

D. Sportfishing charters;

E. Any charter carrying six or fewer passengers;

F. Vessels used solely for the purpose of boat repair, maintenance or marine construction. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.030 Application for Permit.

Application for permit pursuant to this chapter shall be filed with the Revenue Manager upon forms provided by the City and shall contain the following information:

A. The name, business address, and business telephone number of the applicant;

B. The name, address and telephone number of the vessel owner;

C. All pertinent information relative to the vessel including, but not necessarily limited to, the name of the vessel, the registration number of the vessel assigned by the Department of Motor Vehicles or the United States Coast Guard, the make and model

of the vessel, the length of the vessel, and any unique or special features of the vessel;

D. A full description of the proposed charter including:

1. The hours of operation,
2. The route or routes of travel,
3. Maximum number of patrons or passengers,
4. Embarkation and debarkation points,
5. Activities to be conducted on board the charter, including any entertainment,
6. Description of any sound amplification proposed to be used,
7. Description and location of the parking facilities available for the charter, including any written agreement pursuant to which the applicant has obtained the right to the parking facilities, and the method by which the applicant proposes to notify all passengers or patrons of the requirement that they park in the designated area,
8. A description of the manner in which the applicant intends to dispose of all sewage, trash and litter resulting from the charter, and
9. Other information which may be pertinent to vehicular or marine traffic, parking, noise, pollution, litter or any other matter which could adversely affect the health, safety or welfare of those who use, enjoy, or own property near the waters of the Newport Bay;

E. Such other information as the Revenue Manager deems reasonably necessary to determine whether to issue a permit;

F. The application shall be filed no later than five working days before the date the charter is to occur. Applications may be considered if: (1) filed no later than two full working days before the charter is to occur; (2) the applicant demonstrates good cause for the delay in filing; and (3) the proposed charter does not require special investigation or the imposition of special conditions. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.035 Marine Charter Filing Fee.

An application for a marine charter permit shall be accompanied by a fee established by resolution of the City Council; provided, however, the fee shall

be no greater than necessary to defer the costs incurred by the City in administering the provisions of this chapter. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.040 Issuance of Permit.

A. Upon receipt of an application for a marine charter permit, the Revenue Manager or Harbor Inspector shall investigate the information contained in the application and issue the permit upon a determination that approval will not adversely affect the health, safety or welfare of those who use, enjoy, or own, property near the waters of Newport Bay. The application shall be denied if there is substantial evidence that:

1. The proposed charter is likely to create noise which would adversely affect the use or enjoyment of the waters of Newport Bay by members of the public, or interfere with the rights of those who own property on or near the waters of Newport Bay;
2. The proposed charter is likely to contribute to the problem of pollution or litter on and in the waters of Newport Bay;
3. The proposed charter does not provide facilities to ensure adequate off-street parking, or the safe loading and unloading of passengers and supplies. For the purpose of this section, parking shall be considered adequate only if one parking space is provided for each three passengers or the applicant can demonstrate, to the satisfaction of the Revenue Manager or Harbor Inspector, that fewer spaces are required because of written passenger commitments to carpool or use different forms of transportation;
4. The proposed charter, when viewed in conjunction with other anticipated charters and marine operations, is likely to create marine traffic congestion or otherwise interfere with the rights of others to use the waters of Newport Bay;
5. The applicant has misrepresented material facts in the application;
6. The applicant has, within the preceding ninety (90) days, failed to comply with a condition imposed on a previously issued marine charter permit, the applicant received notice of the violation, and

either failed to appeal the notice of violation or the decision on the notice of violation has become final;

7. The proposed charter would not comply with applicable City, County, State or Federal requirements of law;

8. The vessel proposed to be used by the applicant has not been inspected and the sanitation system approved by the City for charter use;

9. The applicant has, within the preceding twelve (12) months, violated this ordinance and/or provisions of Federal or State law because the applicant has discharged, or permitted or allowed any other person on the vessel under his or her control or command to discharge any human or animal excreta from any head, toilet, holding tank or similar facility on a vessel into the waters of Newport Bay, the applicant has received notice of the violation, and a decision on the violation has become final.

B. In the event the Revenue Manager or Harbor Inspector denies the application, the applicant shall have the right to appeal the decision, to the City Manager, by filing a written appeal with the office of the City Manager within five working days from the date on which the applicant has notice of the decision, or at least two working days before the date and time of the proposed charter, whichever provides the most time for consideration of the appeal. The City Manager shall consider the appeal and render a decision within twenty-four (24) hours (exclusive of weekends and holidays) from the date of the appeal. The decision of the City Manager shall be final.

C. The term of the permit shall extend only for the duration of the charter for which the permit was issued. (Ord. 94-33 § 1 (part), 1994; Ord. 88-37 § 1 (part), 1988)

5.18.045 Conditions.

A. The License Supervisor may impose any condition on the permit reasonably necessary to insure the proposed charter provides adequate parking facilities, does not create noise, does not pollute or litter the waters of Newport Bay, does not create marine traffic congestion and does not otherwise

adversely affect the persons using, working in, or living around Newport Bay. Failure to comply with conditions imposed on any marine charter permit shall constitute a violation of this chapter.

B. All permits issued pursuant to this chapter are subject to the following standard conditions:

1. Adequate off-street parking shall be provided for all passengers on the bareboat charter or certificated charter;

2. No passenger loading or unloading is to occur at any gas dock or public dock;

3. Passengers transported to or from the charter shall not be picked up from, or unloaded on, City streets;

4. All passengers shall be loaded and unloaded only from docks or piers in commercially-zoned districts;

5. No amplified sound shall be allowed to emanate from the interior of the vessel;

6. No music or sound shall be audible at a point fifty (50) feet from the hull of the vessel;

7. Music, live entertainment, and all forms of amplified sound are prohibited after ten p.m.;

8. Air horns, whistles, bells, and other noisemaking equipment shall not be used;

9. All trash and litter generated by the charter shall be properly disposed of in private trash receptacle;

10. All charters shall operate in main navigational channels, as far from shore as practical, and the route of travel must be at least one hundred (100) feet from any residence;

11. Each vessel shall be equipped with Coast Guard-approved holding tanks for raw sewage;

12. All Federal, State, County and City statutes, rules, ordinances, laws and regulations shall be obeyed. (Ord. 88-37 § 1 (part), 1988)

5.18.050 Indemnification.

Permittee shall defend, indemnify, and hold City harmless from and against any loss, liability, claim, damage or injury that is in any way related to the bareboat charter or certificated charter for which a permit is granted pursuant to this chapter. (Ord. 88-37 § 1 (part), 1988)

5.18.055 Transfer Prohibited.

No permit issued pursuant to this chapter shall be transferred, sold or assigned. Any attempt to transfer, sell or assign the permit shall render the permit void and of no force and effect. (Ord. 88-37 § 1 (part), 1988)

5.18.060 Penalty.

Any person violating the provisions of this chapter shall be guilty of a misdemeanor. (Ord. 88-37 § 1 (part), 1988)

Chapter 5.20**PAWNBROKERS, SECONDHAND DEALERS
AND JUNK DEALERS****Sections:**

5.20.010	Pawnbroker Defined.
5.20.020	Pawnshop Defined.
5.20.030	Secondhand Dealer Defined.
5.20.040	Junk Dealer and Junk Collector Defined.
5.20.050	Permits.
5.20.060	License Fees.
5.20.070	Reports to Police.
5.20.080	Records Required to be Kept.
5.20.090	Failure to Comply Unlawful.
5.20.100	Disposition of Articles.
5.20.110	Exempt Transactions.
5.20.120	Hours of Operation.
5.20.130	Property Received from Outside State.
5.20.140	Application of Reports and Records Provisions to Other Merchants Selling Secondhand Articles.

5.20.010 Pawnbroker Defined.

The term "pawnbroker" shall mean a person, firm or corporation engaged in conducting, managing or carrying on the business of loaning money, for himself or for any other person, upon personal property, personal security, pawns or pledges, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or their assignees, at prices agreed upon at or before the time of such purchase. (Ord. 1295 § 1 (part), 1969)

5.20.020 Pawnshop Defined.

The term "pawnshop" shall mean any room, store or place in which business or activity described in Section 5.20.010 is engaged in, carried on or conducted. (Ord. 1295 § 1 (part), 1969)