

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Permit Application No. **5-01-403**

Date: December 19, 2001

Page 1 of 7

**Tu3d****ADMINISTRATIVE PERMIT****RECORD PACKET COPY****APPLICANT:** Anthony Marnell TR**PROJECT**

DESCRIPTION: Modify an existing boat dock by removing the existing 4' by 22' float and one 12" diameter pile and installation of a new "U" shaped dock with 4' wide fingers and backwalk. Overall dimension of "U" shaped dock will be 39' by 22' with a 35' by 14' slip opening. Two new 14" diameter piles will be installed.

PROJECT

LOCATION: 5 Harbor Island, Newport Beach (Orange County)

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Tuesday, January 8, 2002

9:00 am

Westin Hotel-LAX

5400 West Century Blvd.

Los Angeles, CA 90045

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

PETER DOUGLAS

Executive Director

By: Meg Vaughn

Title: Coastal Program Analyst

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 term or 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.

SPECIAL CONDITIONS: See pages six and seven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:**A. Project Description**

The applicant proposes to modify an existing boat dock by removing the existing 4' by 22' float and one 12" diameter pile and installation of a new "U" shaped dock with 4' wide fingers and backwalk. Overall dimension of "U" shaped dock will be 39' by 22' with a 35' by 14' slip opening. Two new 14" diameter piles will be installed. The existing and proposed docks are within the U.S. Pierhead line. The floating dock will only be used for boating related purposes.

The subject site is located on Harbor Island in Newport Harbor. Harbor Island, like the majority of islands in Newport Harbor, is surrounded by private recreational boat docks associated with residential development. The proposed dock revision is similar in function to other residential docks in the immediate vicinity. The boat dock will be used solely for boating recreation purposes. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and no eelgrass was discovered within 15 feet of the project area. Coastal access is available along the public walkway that surrounds Balboa Island, approximately a quarter mile to the southeast. Public access also exists along the ocean fronting sandy beach, approximately one mile south of the subject site (Exhibits #1-2). The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 139-5). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers. The

project has received approval from the California Regional Water Quality Control Board (RWQCB). The RWQCB has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used.

B. Marine Resources

Newport Harbor (Lower Newport Bay) is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support beneficial recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which includes Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative.

The proposed project, modifications to an existing boat dock, will take place in and over the coastal waters and marine environment of Newport Harbor. The Coastal Act requires that adverse effects of this project on coastal waters and the marine environment be minimized. In order to assure that adverse effects are minimized, best management practices (BMPs) must be incorporated into the project. BMPs are used, among other things, to reduce the amount of pollutants introduced into the adjacent water by the proposed project. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policy. Section 30233 of the Coastal Act limits the fill of open coastal waters.

1. 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 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 proposed project is located in and over the coastal waters of Newport Harbor (Lower Newport Bay). Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation, and marine resources.

The proposed development will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind 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. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. 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.

Special Condition #1 requires that the applicant dispose of all demolition and construction debris at an appropriate location. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

The proposed dock project will allow for the long term berthing of boat(s) by the homeowner. Some maintenance activities if not properly regulated could cause adverse impacts to the marine environment. Certain maintenance activities like cleaning and scraping of boats, improper discharges of contaminated bilge water and sewage waste, and the use of caustic detergents and solvents, among other things, are major contributors to the degradation of water quality within boating facilities. As mentioned above, Lower Newport Bay provides a home for marine habitat and also provides opportunity for recreational activities. The Bay eventually drains into the Pacific Ocean through tidal flushing.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes Special Condition #1 that requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Such practices that the applicant shall follow include proper boat cleaning and maintenance, management of solid and liquid waste, and management of petroleum products, all of which associated with the long term berthing of the boat(s) (more thoroughly explained in Special condition #1 of this permit).

Therefore, only as conditioned to minimize construction related impacts during the dock repairs and to follow the Best Management Practices listed in Special Condition #1 does the Commission find the proposed project consistent with Section 30230 and 30231 of the California Coastal Act.

2. Fill of Coastal Waters

Section 30233 of the Coastal Act addresses fill of open coastal waters:

(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 Coastal Act limits the fill of open coastal water to specific, enumerated uses and also requires that any project which results in fill of open coastal waters provide adequate mitigation and that the project be the least environmentally damaging alternative. The proposed project includes installation of two new 14" diameter piles. The piles required by the proposed project constitute fill of coastal waters.

a. Allowable Use

Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters, such as Newport Harbor, for recreational boating purposes. The proposed project, a boat dock, constitutes a recreational boating facility. Thus, the project is an allowable use under Section 30233(a)(4).

b. Least Environmentally Damaging Alternative

The proposed project will result in the reconfiguration of an existing boat dock. Rather than a rectangular float at the end of the gangway (ramp), the gangway will lead to a "U" shaped float. In conjunction with the proposed project, one 12" diameter pile is proposed to be removed and two new 14" diameter piles are proposed to be installed. The proposed dock configuration is wider than the existing configuration (see exhibit). In order to anchor the reconfigured float securely, one additional pile is necessary. The proposed project will place one pile at the backwalk and one at the end of each finger. This is the minimum number of piles necessary to adequately support and anchor the dock. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the proposed allowable use. Thus the project as proposed is the least environmentally damaging alternative.

c. Adequate Mitigation

Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. Placement of the proposed piles in conjunction with the proposed project will displace bottom habitat. However, the pilings will provide new hardscape habitat for marine organisms such as mussels, barnacles, limpets, littorine snails, red and brown seaweed, surfgrass, anemones, and polychaetes. Thus, adequate mitigation is provided by the proposed project in that the loss of bottom habitat is offset by the fact that the pilings themselves will provide new vertical intertidal habitat for marine organisms.

For the reasons discussed above, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be approved if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. The City's LUP states that the City seeks to insure the highest quality of water in the bay and along their beaches. The proposed project is conditioned to adhere to construction responsibilities, debris removal and Best Management Practices. Thus, the proposed project is not expected to create additional adverse impacts to water quality and the marine environment and therefore attempts to insure the highest quality of water in the Bay and along the beaches.

As explained above, the proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare

a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

D. California Environmental Quality Act (CEQA)

Section 13096(a) of title 14 of the California Code of 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 as conditioned has been found consistent with the marine resources policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS:

1.

A. Construction Responsibilities and Debris Removal

- (a) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (b) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (e) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

B. Best Management Practices Program

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

(a) Boat Cleaning and Maintenance Measures:

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

(b) Solid and Liquid Waste Management Measures:

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(c) Petroleum Control Management Measures:

1. Oil absorbent materials should be examined at least once a year and replaced as necessary. The applicant will recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters are encouraged to regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters are also encouraged to use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. Clean and maintain bilges. Do not use detergents while cleaning. The use of soaps that can be discharged by bilge pumps is discouraged.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing

31

SEE MAP

31



subject
site

EXHIBIT NO. A
APPLICATION NO.

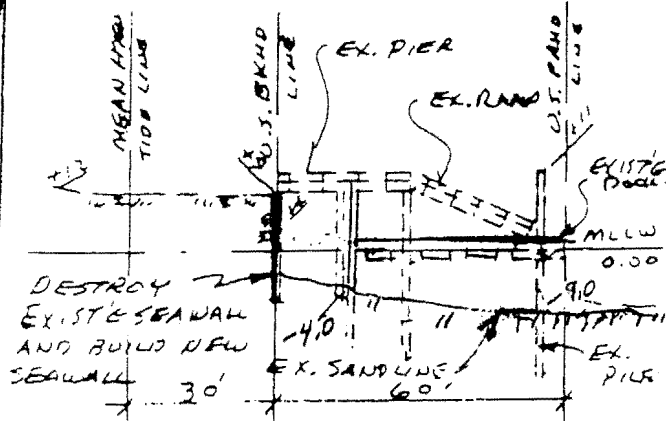
5-01-403

California Coastal Commission

VICINITY MAP

139-5

CITY OF NEWPORT BEACH



PROFILE

SCALE 1" = 30'

Scope of Work:

Cut and remove 22'x4' section of floating dock; remove one 12" diameter guide pile. Install "U" shape slip with 4' wide fingers and backwalk. Overall dimension of addition will be 39'x22' with a 35'x14' slip.

NEWPORT BAY

Additional pile will be two 14" diameter. One will be 35' long and one will be 30' long.

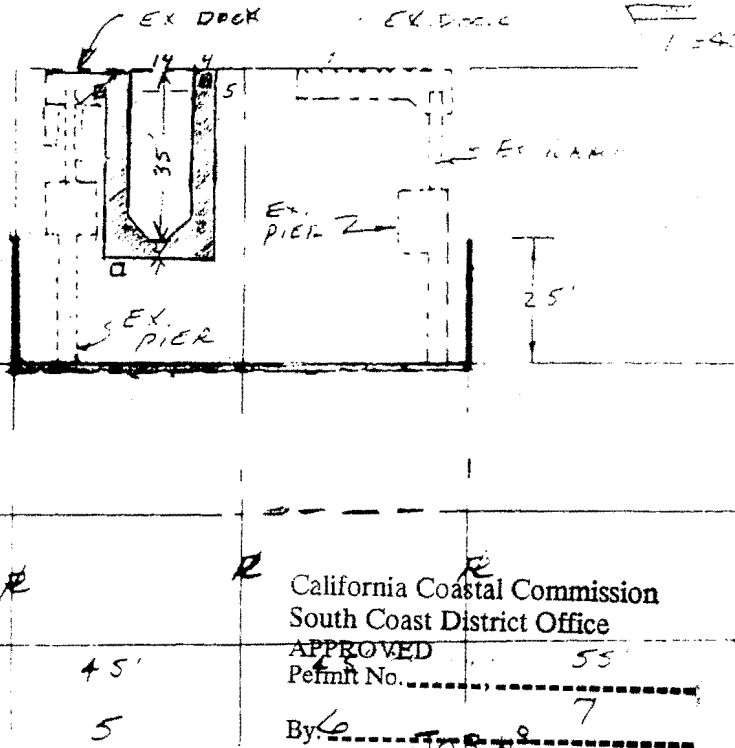
HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

U.S. PIERHEAD LINE

U.S. PIERHEAD LINE

MEAN HIGH TIDE LINE

PROPERTY LINE



California Coastal Commission
South Coast District Office

APPROVED
Permit No. 55

By

10-4-01

APPLICANTS NAME: Anthony Marnell

JOB ADDRESS: N^o 5 HARBOR ISLAND

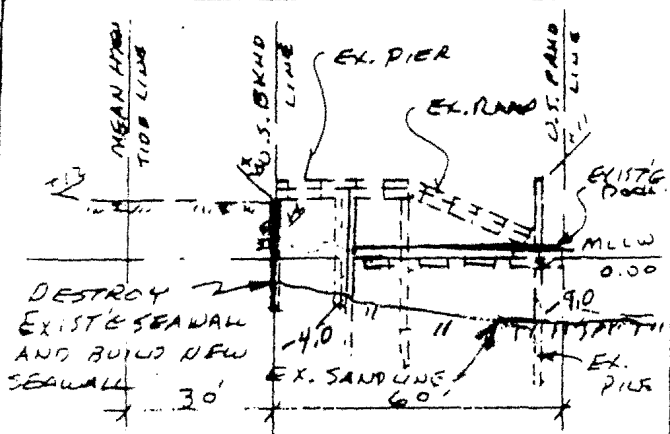
LOT: EFFECTIVE Date: 10-4-01 TRACT 802

CONTRACTOR: SWIFT DATE: 9-20-01

Project Plans 5-01-403 Exhibit B

139-5

CITY OF NEWPORT BEACH



PROFILE

SCALE 1" = 30'

Scope of Work:

Cut and remove 22'x4' section of floating dock; remove one 12" diameter guide pile. Install "U" shape slip with 4' wide fingers and backwalk. Overall dimension of addition will be 39'x22' with a 35'x14' slip.

Additional pile will be two 14" diameter. One will be 35' long and one will be 30' long.

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

10-4-01
[Signature]

U.S. PIERHEAD LINE

U.S. PIERHEAD LINE

MEAN HIGH TIDE LINE

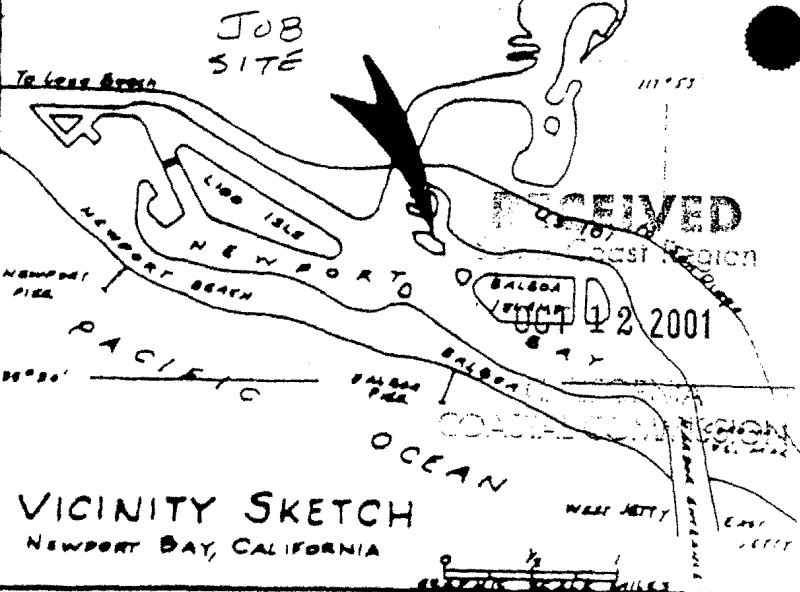
PROPERTY LINE

3

25.12

4

45'
5



VICINITY SKETCH NEWPORT BAY, CALIFORNIA

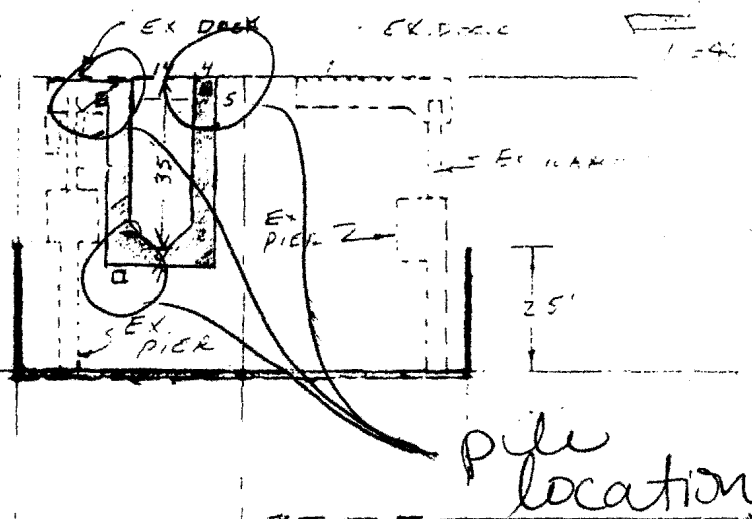
Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide is 10 feet. Harbor lines are established by the Massachusetts and Newport Bay.

- EEL GRASS INSPECTION
- ☒ NO EEL GRASS WITHIN 15' OF PROJECT
 - ☐ EEL GRASS IN THE PROJECT AREA

SIGNATURE

139-5
PERMIT #

10-4-01
DATE



California Coastal Commission
South Coast District Office

APPROVED
Permit No. 55

By: *[Signature]*

Job # 7

APPLICANTS NAME: Anthony Marnell

Job ADDRESS: N° 5 HARBOR ISLAND

EFFECTIVE Date: *[Signature]* TRACT 802

CONTRACTOR: SWIFT DATE: 9-20-01

Exhibit C



Winston Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Santa Ana Region

Internet Address: <http://www.swrcb.ca.gov>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 FAX (909) 781-6288



Gray Davis
Governor

October 25, 2001

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

RECEIVED
OCT 26 2001
CALIFORNIA
COASTAL COMMISSION

PROPOSED REPLACEMENT OF BOAT DOCK, ANTHONY MARNELL, 5 HARBOR ISLAND, NEWPORT BEACH, ORANGE COUNTY

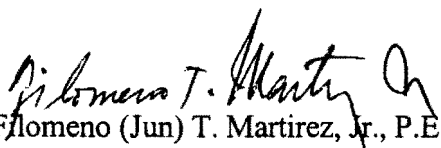
Dear Ms. Swift:

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,


Filomeno (Jun) T. Martinez, Jr., P.E.
Chief, Regulations Section

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

JIS/blutag130let

CRWQCB Letter

COASTAL COMMISSION

5-01-403

EXHIBIT # D

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