

CALIFORNIA COASTAL COMMISSION

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

Filed: November 21, 2001
 49th Day: January 9, 2002
 180th Day: May 20, 2002
 Staff: FSY-LB FSY
 Staff Report: March 21, 2002
 Hearing Date: April 9-12, 2002
 Commission Action:

**W15i****STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 5-01-435**APPLICANT:** Jane Parks**RECORD PACKET COPY****AGENT:** Peter Swift**PROJECT LOCATION:** 1607 East Bay Avenue,
City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Replacing an existing floating dock with overall dimensions of 24' x 40' (there are two 4' x 36' fingers and a 4' x 24' backwalk) with a new dock with the same dimensions as the existing. No new piles are proposed. The floating dock will only be used for boating related purposes.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission **APPROVE** the proposed development with four (4) special conditions. The subject site is located on the bayside of East Bay Avenue in the City of Newport Beach. The major issues before the Commission relate to the effect of the proposed development on marine resources, water quality and the marine environment. Concern over these issues was raised due to the discovery of eelgrass located within the project area. To assure that marine resources and water quality are protected, staff recommends the imposition of four (4) special conditions.

Special Condition #1 requires that the applicant dispose of all demolition and construction debris at an appropriate location. Special Condition #2 requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Special Condition #3 requires the applicant to submit an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds. Special Condition #4 assures that impacts to eelgrass are avoided and, if necessary, mitigated.

LOCAL APPROVALS RECEIVED: Approval in Concept (City Harbor Permit Number 109-1607) from City of Newport Beach Harbor Resources Division dated November 11, 2001, Preliminary approval from the U. S. Army Corp of Engineers (Los Angeles District) LOP # 200200171-CJF dated December 18, 2001, Clearance from the Regional Water Quality Control Board (Santa Ana Region) dated November 19, 2001.

SUBSTANTIVE FILE DOCUMENTS: Letter from Tony Melum (City of Newport Beach Division of Harbor Resources) dated January 16, 2002

LIST OF EXHIBITS:

1. Location Map
2. Assessor's Parcel Map
3. Approval in Concept/Project Plans
4. US Army Corps of Engineers Letter
5. Regional Water Quality Control Board Letter
6. Site Plan Showing Location of the Eelgrass
7. Letter from Tony Melum (City of Newport Beach Harbor Resources Division)
8. Southern California Eelgrass Mitigation Policy

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-01-435 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and 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 approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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 of 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 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.

2. **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:

- i. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
- ii. 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.
- iii. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(a) Solid and Liquid Waste Management Measures:

- i. 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.

(b) Petroleum Control Management Measures:

- i. Oil absorbent materials shall 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 will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters will 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. Detergents will not be used for cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

3. Anchor Management Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a plan for the avoidance of adverse impacts upon eelgrass due to the placement of anchors utilized by barges in construction of the proposed project. The plan shall be prepared by a qualified professional and shall include the following:

- i. The plan shall demonstrate that the use of anchors by barges utilized in the proposed project will avoid impacts upon eelgrass beds.
- ii. The plan shall include, at a minimum, the following components: a map showing the proposed location of barges and anchors with respect to existing eelgrass beds.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Pre-Construction Eelgrass Survey

A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified

by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Any off-site mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Location and Project Description

The subject site is located on the bayside of 1607 East Bay Drive in the City of Newport Beach, County of Orange (Exhibits #1-3). The site currently contains an existing home and an existing dock. The proposed project consist of replacing an existing floating dock with overall dimensions of 24' x 40' (there are two 4' x 36' fingers and a 4' x 24' backwalk) with a new dock with the same dimensions as the existing (Exhibit #3). No new piles are proposed. The floating dock will only be used for boating related purposes. A pre-project survey identified the presence of eelgrass within the project area.

To the north is Newport Bay, to the east and west are existing boat docks and to the south is the existing single family residence (Exhibits #2-3).

Preliminary approval from the U. S. Army Corp of Engineers, which indicates that the project is consistent with Federal agency's requirements, has been received (Exhibit #4). The applicant

has also submitted evidence that the Regional Water Quality Control Board has given approval of the project (Exhibit #5).

B. Water Quality and the Marine Environment

The proposed project is located over the coastal waters of Lower Newport Bay (Exhibits #1-3). 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 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. In Newport Harbor, the listing cites elevated concentrations of metals, pathogens, nutrients, pesticides, and toxic organic compounds from a variety of sources including urban runoff, boatyards, contaminated sediments, and other unknown non-point sources as the reason for listing the harbor as an "impaired" water body. 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. 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 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 construction will occur over the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. 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

1. Construction Impacts to Water Quality

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.

2. Best Management Practices

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 #2 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).

3. Eelgrass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying,

juvenile fish rearing, and water fowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

The Approval in Concept from the City of Newport Beach Harbor Resources Division dated November 11, 2001 states that eelgrass is located in the project area (Exhibit #3). In addition, the applicant submitted a site plan showing the location of the eelgrass in relation to the proposed dock (Exhibit #6). The plan shows that a southwestern portion of the dock will shade a portion of existing eelgrass. However, the applicant states that there will be no impacts to eelgrass located in the project area and has obtained a letter from the City of Newport Beach Harbor Resources Division stating that eelgrass will not be impacted by the proposed project: *"As indicated in our Approval in Concept, there is eelgrass within 15 feet of the project. However, because the project is a replacement of an existing structure and no change in configuration or dimensions, the City's position is that the eelgrass, even though it is in proximity to the project, should be unaffected by the project. This has been our position in the past and has received favorable review from National Marine Fisheries."* (Exhibit #7). The existing eelgrass located in the project area grew despite the presence of the existing and surrounding docks, therefore the existing docks have not had an adverse impact on the eelgrass growth. However, the work associated with the removal and replacement of a dock in the project area where eelgrass has been located may have an adverse impact on the eelgrass.

Even though the applicant and the City of Newport Beach Harbor Resources Division state that eelgrass will not be impacted by the proposed project, the proposed development will occur in an area adjacent to existing eelgrass beds that can possibly be adversely impacted. Construction activity, including barge anchoring, vessel propeller wash, and propeller contact with the harbor bottom could cause scarring to eelgrass beds. Therefore, Special Condition #3 requires the applicant to submit, prior to issuance of the permit, an anchor management plan for the review and approval of the Executive Director, which documents the location where anchors will be placed to avoid eelgrass beds.

According to the eelgrass survey conducted by the City of Newport Beach Harbor Resources Division, eelgrass was present at the project site in late 2001. Approximately 4 months have elapsed since the eelgrass survey was conducted. Due to the ephemeral nature of eelgrass, the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game recommends that eelgrass surveys be conducted during the active growth phase of eelgrass (typically March through October in southern California). In addition, the resource agencies state that any eelgrass survey performed is only valid until the beginning of the next growing season. Therefore, based on this criteria, the eelgrass survey provided is outdated and no new eelgrass surveys are proposed. If eelgrass is present in the project area which could be impacted, measures to avoid or minimize such impacts must be utilized in order for the project to be consistent with Section 30230 of the Coastal Act. Therefore, the Commission imposes Special Condition #4 which requires that a valid pre-construction eelgrass survey be conducted within the boundaries of the proposed project be undertaken during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The pre-construction survey will identify any eelgrass beds which could be impacted and

which must be avoided. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit. An amendment or new permit is required in order to address any eelgrass impacts. In addition, if there are any impacts upon eelgrass, you will be required to prepare appropriate surveys and mitigation plans in consultation with the California Department of Fish & Game and in conformance with the *Southern California Eelgrass Mitigation Policy* (Exhibit #8). The Commission previously imposed similar conditions for pre-construction eelgrass surveys on Coastal Development Permits 5-97-230 and 5-97-230-A1 (City of Newport Beach), 5-97-231 (County of Orange), 5-97-071 (County of Orange), 5-99-244 (County of Orange-Goldrich-Kest-Grau), 5-98-179 (Kompaniez), 5-98-201 (Anderson), 5-98-443 (Whyte), 5-98-444 (Barrad), 5-99-005 (Dea), 5-99-006 (Fernbach & Holland), 5-99-007 (Aranda et al.), 5-99-008 (Yacoel et. al.), 5-99-030 (Johnson), 5-99-031 (Lady Jr., et. al.), 5-99-032 (Appel et. al.), 5-99-108 (Pineda), 5-98-471 (Maginot), 5-99-472 (Bjork), 5-99-473 (Gelbard), 5-00-389 (Ashby et. al.), 5-00-390 (Burggraf et. al.), 5-00-401 (Baghdassarian et. al.), 5-00-402 (Buettner et. al.) and 5-01-358 (Rayhanabad).

4. Conclusion

To minimize the adverse impacts upon the marine environment, four Special Conditions have been imposed. Special Condition #1 requires that the applicant dispose of all demolition and construction debris at an appropriate location. Special Condition #2 requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Special Condition #3 requires the applicant to submit an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds. Special Condition #4 assures that impacts to eelgrass are avoided and, if necessary, mitigated.

C. Public Access and Recreation

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

Section 30212 of the Coastal Act, in relevant part:

- (a) *Public access from the nearest roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (2) *adequate access exists nearby.*

The proposed development is located between the first public road and the sea. Section 30212 of the Coastal Act requires that new development provide public access from the nearest public roadway to the shoreline and along the coast except under certain. Public vertical and lateral access exist in the immediate project vicinity. A public street end at "H" Street offers coastal access is located approximately 90 feet west of the project site (Exhibit #2). Public access is also available approximately 180 feet east at the "I" Street street end (Exhibit #2).

The proposed development involves replacing an existing floating dock with overall dimensions of 24' x 40' (there are two 4' x 36' fingers and a 4' x 24' backwalk) with a new dock with the same dimensions as the existing (Exhibit #3). No new piles are proposed. The proposed development will not adversely impact existing navigation. The development will not create adverse impacts on coastal access and recreation. The project site is a single-family residence and the proposed development will not change the intensity of use on site. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

D. 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 used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The 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. As conditioned, the proposed project is not expected to create additional adverse impacts to marine resources, water quality and the marine environment and therefore attempts to insure the highest quality of water in the Bay and along the beaches.

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).

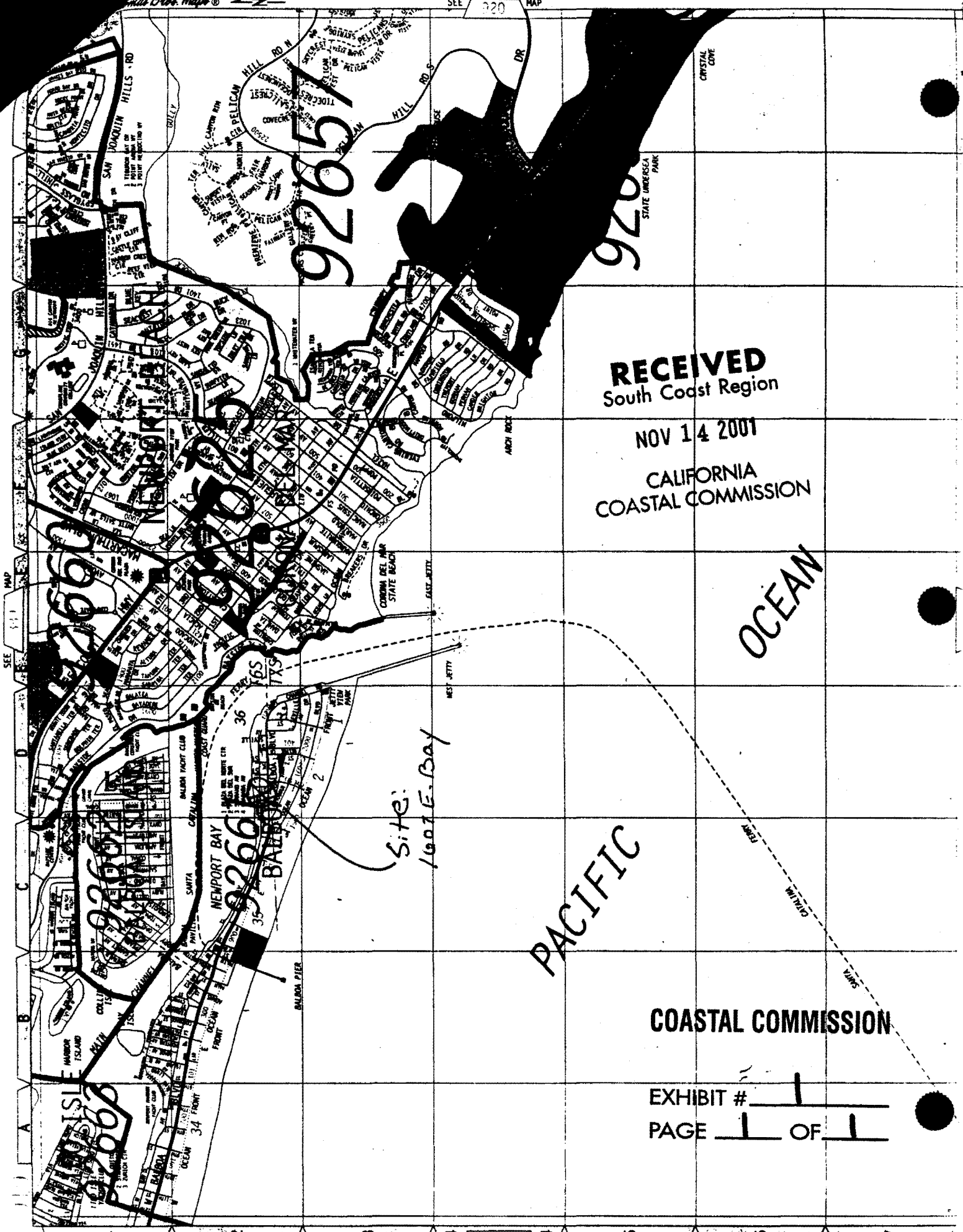
E. California Environmental Quality Act

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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. Conditions imposed are: 1) the applicant disposes of all demolition and construction debris at an appropriate location; 2) the applicant follows Best Management Practices to ensure the continued protection of water quality and marine resources; 3) the applicant submits an anchor management plan which documents the location where anchors will be placed to avoid eelgrass beds and 4) that impacts to eelgrass are avoided and, if necessary, mitigated.

As conditioned, no feasible alternatives of further feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment: Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging alternative and is consistent with CEQA and the policies of the Coastal Act.

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OCEAN

PACIFIC

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EXHIBIT # 1
PAGE 1 OF 1

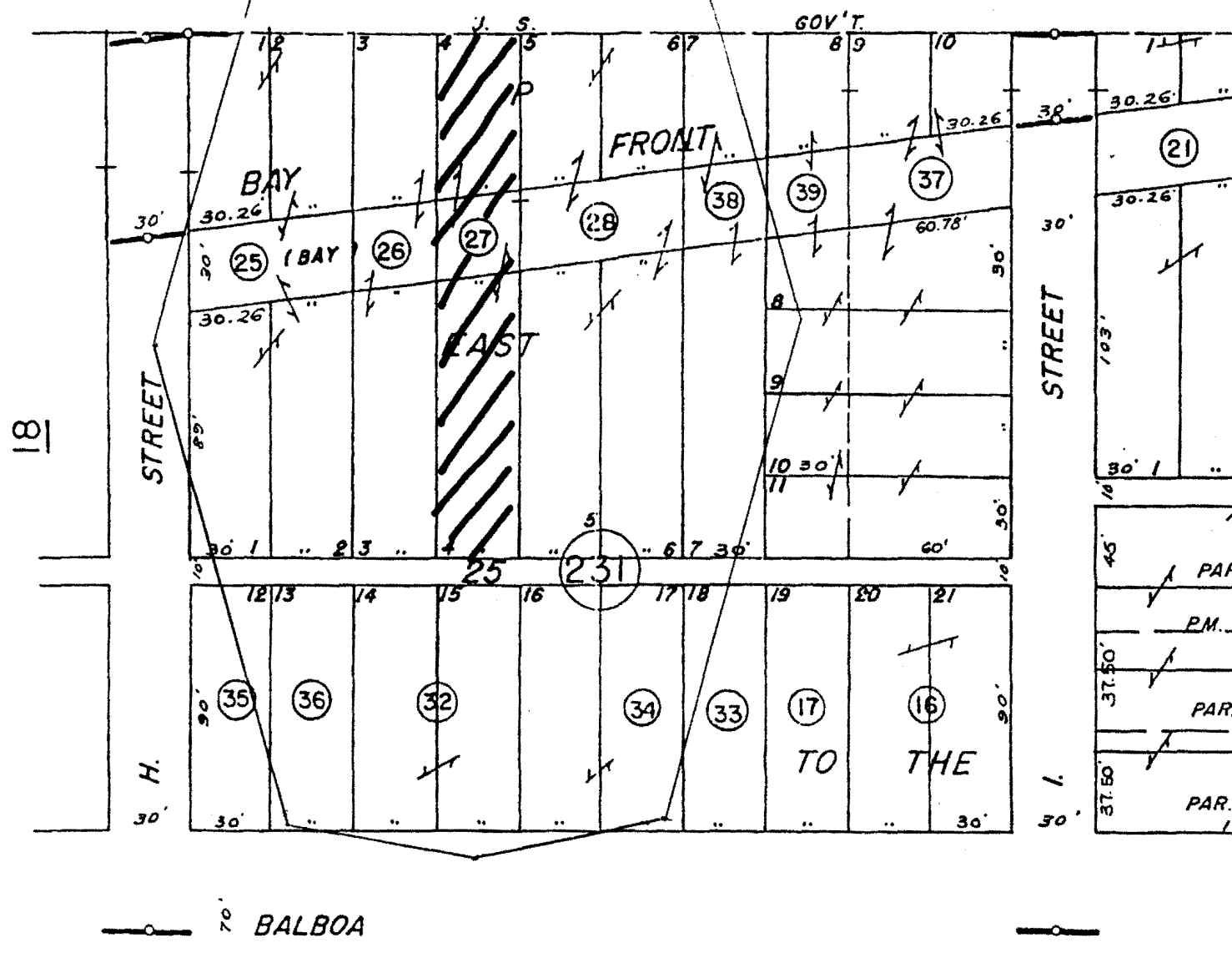
SEE MAP

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† WATER LINE AS PER AERIAL PHOTO, 1947



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COASTAL COMMISSION RECEIVED
 South Coast Region

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EXHIBIT # 2
 PAGE 1 OF 1

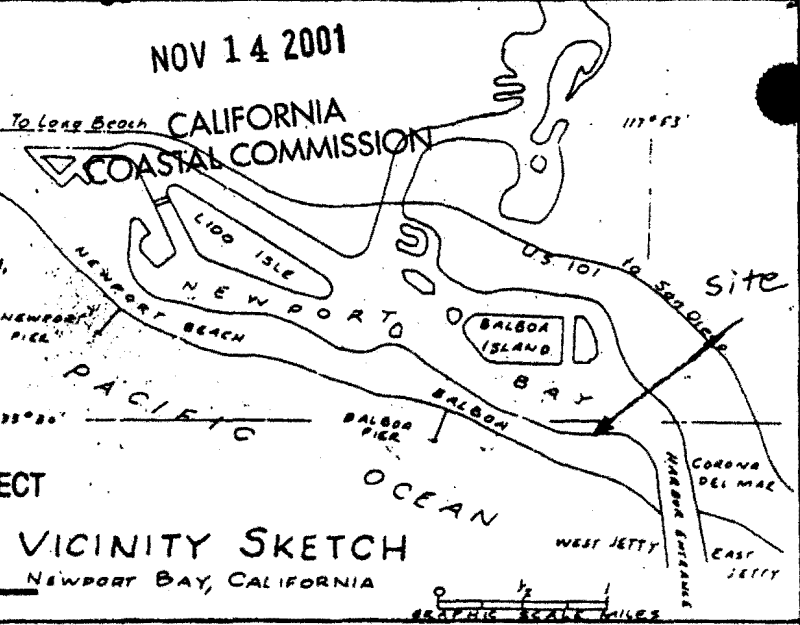
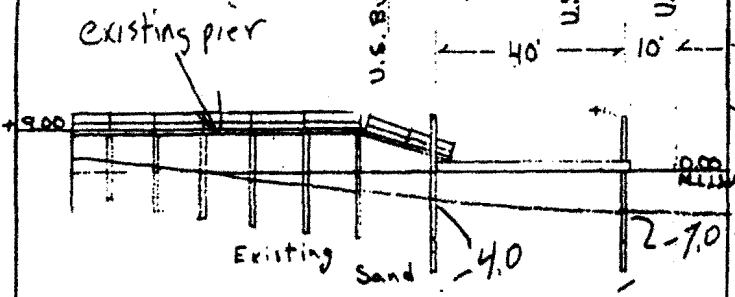
CALIFORNIA
 COASTAL COMMISSION

MARCH 1949

PARCEL MAP
 BAY FRONT SECTION
 THE EAST SIDE ADD. TO THE
 BALBOA TRACT

48-6, 300-24
 M.M. 6-15
 M.M. 4-20

NOV 14 2001

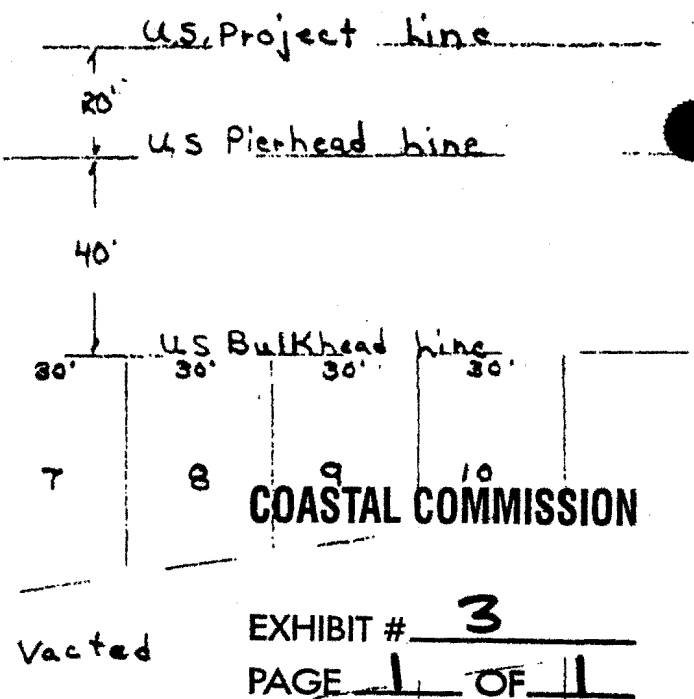
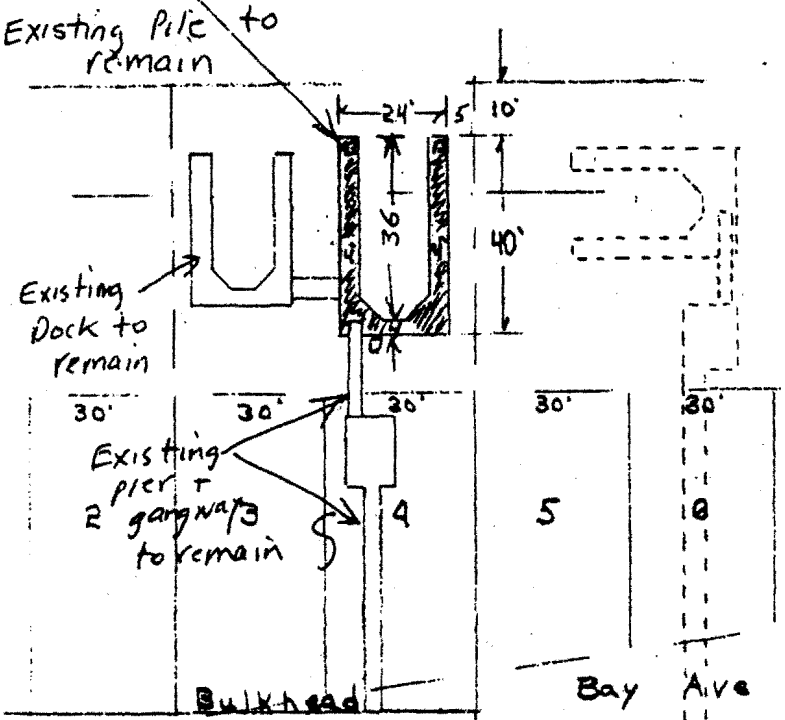


EEL GRASS INSPECTION
 NO EEL GRASS WITHIN 15' OF PROJECT
 EEL GRASS IN THE PROJECT AREA

Wm Arnold
 SIGNATURE

Note
 Shaded Float # 109-1607
 Replace As IS PERMIT # 11-1-01
 DATE

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.



HARBOR RESOURCES DIV.
 CITY OF NEWPORT BEACH

Wm Arnold

EXHIBIT # 3
 PAGE 1 OF 1

California Coastal Commission
 South Coast District Office

APPROVED
 Jane Parks
 Permit No. _____
 APPLICANT'S NAME
 By _____
 1607 E. Bay Ave
 JOB ADDRESS
 Eastside Adj. RS (3+4)
 TRACT BLOCK LOT
 Swift slip 10/25/01



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2326

REPLY TO
ATTENTION OF:

December 18, 2001

Office of the Chief
Regulatory Branch

Jane Parks
c/o Swift Slip
Attention: Beth Swift
2027 Placentia Avenue
Costa Mesa, California 92627

Reference No.: 200200171-CJF

Dear Ms. Parks:

Reference is made to your request of November 14, 2001. Under the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), you are hereby authorized to rebuild an existing floating dock bayward of 1607 E. Bay Avenue, in Newport Bay, City of Newport Beach, Orange County, California, as shown on the enclosed drawings. Activities include the replacement of an existing 24-foot by 40-foot float and 36-foot by 16-foot slip, with no new pile, no dimensional changes, and no new permanent impacts to waters of the U.S.

The owner or authorized responsible official must sign and date all copies of this Letter of Permission (LOP) indicating that he/she agrees to the work as described and will comply with all conditions. One of the signed copies of this Letter of Permission must be returned to the Corps of Engineers (a pre-addressed envelope is enclosed). In addition, please use the two attached postcards to notify this office as to the dates of commencement (within 10 days prior to the start of construction) and completion of the activity (within 10 days following the end of construction).

Thank you for participating in our regulatory program.

Sincerely,

Mark Durham
Chief, South Coast Section
Regulatory Branch


PERMITTEE

12/20/01
DATE

COASTAL COMMISSION

EXHIBIT # 4

PAGE 1 OF 1



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 E FAX (909) 781-6288



Gray Davis
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November 19, 2001

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

PROPOSED REPLACEMENT OF DOCK, RALPH PARKS, 1607 E. BAY AVENUE, 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/blutag134let

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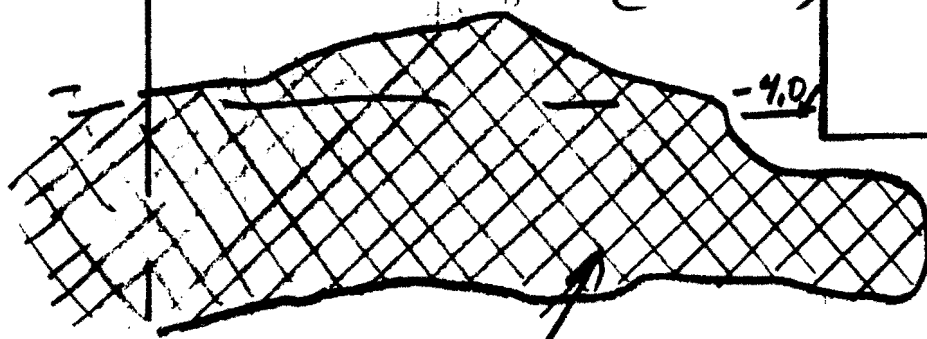
Existing dock to remain

Floating dock to be replaced

No piling work
No dredging
No harm to bay bottom

Bottom contour -6.0

GANGWAY (to remain)



Seagrass beds (shaded)

Gangway to remain

PIER to Remain

Extended Property Line

Extended Property Line

-1.0

-1.0

0.0 mllw

0.0 mllw

+2.0

+2.0

BOTTOM CONTOUR

Scale 1" = 10'

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+4.0

+4.0 916

U.S. BULKHEAD LINE

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60'





CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

January 16, 2002

Swift Slip
Attn: Beth Swift
2027 Placentia Ave.
Costa Mesa, CA 92627

Re: Dock Replacement at 1607 East Bay Ave., Newport Beach

Dear Beth:

As indicated in our Approval in Concept, there is Eelgrass within 15 feet of the project. However, because the project is a replacement of an existing structure and no change in configuration or dimensions, the City's position is that the Eelgrass, even though it is in proximity to the project, should be unaffected by the project. This has been our position in the past and has received favorable review from National Marine Fisheries.

If you have any further questions, please give me a call at 644-3041.

Sincerely,

Tony Melum, Director
Division of Harbor Resources

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3300 Newport Boulevard, Newport Beach

SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY
(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas function as important habitat for a variety of fish and other wildlife. In order to standardize and maintain a consistent policy regarding mitigating adverse impacts to eelgrass resources, the following policy has been developed by the Federal and State resource agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game). This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 8).

For clarity, the following definitions apply. "Project" refers to work performed on-site to accomplish the applicant's purpose. "Mitigation" refers to work performed to compensate for any adverse impacts caused by the "project". "Resource agencies" refers to National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

1. Mitigation Need. Eelgrass transplants shall be considered only after the normal provisions and policies regarding avoidance and minimization, as addressed in the Section 404 Mitigation Memorandum of Agreement between the Corps of Engineers and Environmental Protection Agency, have been pursued to the fullest extent possible prior to the development of any mitigation program.

2. Mitigation Map. The project applicant shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as areas having the proper depth and substrate requirements for eelgrass but which currently lack vegetation.

Protocol for mapping shall consist of the following format:

1) Coordinates

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11

Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

2) Units

Transects and grids in meters.

Area measurements in square meters/hectares.

All mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days with the exception of surveys completed in August - October.

A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). After project construction, a post-project survey shall be completed within 30 days. The actual area of impact shall be determined from this survey.

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3. Mitigation Site. The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from

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ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

4. Mitigation Size. In the case of transplant mitigation activities that occur concurrent to the project that results in damage to the existing eelgrass resource, a ratio of 1.2 to 1 shall apply. That is, for each square meter adversely impacted, 1.2 square meters of new suitable habitat, vegetated with eelgrass, must be created. The rationale for this ratio is based on, 1) the time (i.e., generally three years) necessary for a mitigation site to reach full fishery utilization and 2) the need to offset any productivity losses during this recovery period within five years. An exception to the 1.2 to 1 requirement shall be allowed when the impact is temporary and the total area of impact is less than 100 square meters. Mitigation on a one-for-one basis shall be acceptable for projects that meet these requirements (see section 11 for projects impacting less than 10 square meters).

Transplant mitigation completed three years in advance of the impact (i.e., mitigation banks) will not incur the additional 20% requirement and, therefore, can be constructed on a one-for-one basis. However, all other annual monitoring requirements (see sections 8-9) remain the same irrespective of when the transplant is completed.

Project applicants should consider increasing the size of the required mitigation area by 20-30% to provide greater assurance that the success criteria, as specified in Section 9, will be met. In addition, alternative contingent mitigation must be specified, and included in any required permits, to address situation where performance standards (see section 9) are not met.

5. Mitigation Technique. Techniques for the construction and planting of the eelgrass mitigation site shall be consistent with the best available technology at the time of the project. Donor material shall be taken from the area of direct impact whenever possible, but also should include a minimum of two additional distinct sites to better ensure genetic diversity of the donor plants. No more than 10% of an existing bed shall be harvested for transplanting purposes. Plants harvested shall be taken in a manner to thin an existing bed without leaving any noticeable bare areas. Written permission to harvest donor plants must be obtained from the California Department of Fish and Game.

Plantings should consist of bare-root bundles consisting of 8-12 individual turions. Specific spacing of transplant units shall be at the discretion of the project applicant. However, it is understood that whatever techniques are employed, they must comply with the stated requirements and criteria.

6. Mitigation Timing. For off-site mitigation, transplanting should be started prior to or concurrent with the initiation of in-water construction resulting in the impact to the eelgrass bed. Any off-site mitigation project which fails to initiate transplanting work within 135 days following the initiation of the in-water construction resulting in impact to the eelgrass bed will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

7. Mitigation Delay. If, according to the construction schedule or because of any delays, mitigation cannot be started within 135 days of initiating in-water construction, the eelgrass replacement mitigation obligation shall increase at a rate of seven percent for each month of delay. This increase shall ensure that all productivity losses incurred during this period are sufficiently offset within five years.

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8. Mitigation Monitoring. Monitoring the success of eelgrass mitigation shall be required for a period of five years for most projects. Monitoring activities shall determine the area of eelgrass and density of plants at the transplant site and shall be conducted at 3, 6, 12, 24, 36, 48, and 60 months after completion of the transplant. All monitoring work must be conducted during the active vegetative growth period and shall avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 3 and 6 month surveys shall be allowed in order to ensure the work is completed during this active growth period. Additional monitoring beyond the 60 month period may be required in those instances where stability of the proposed transplant site is questionable or where other factors may influence the long-term success of transplant.

The monitoring of an adjacent or other acceptable control area (subject to the approval of the resource agencies) to account for any natural changes or fluctuations in bed width or density must be included as an element of the overall program.

A monitoring schedule that indicates when each of the required monitoring events will be completed shall be provided to the resource agencies prior to or concurrent with the initiation of the mitigation.

Monitoring reports shall be provided to the resource agencies within 30 days after the completion of each required monitoring period.

9. Mitigation Success. Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project and mitigation sites. Extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than one meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative samples within the control or transplant bed. Specific criteria are as follows:

- a. a minimum of 70 percent area of eelgrass bed and 30 percent density after the first year.
- b. a minimum of 85 percent area of eelgrass bed and 70 percent density after the second year.
- c. a sustained 100 percent area of eelgrass bed and at least 85 percent density for the third, fourth and fifth years.

Should the required eelgrass transplant fail to meet the established criteria, then a Supplementary Transplant Area (STA) shall be constructed, if necessary, and planted. The size of this STA shall be determined by the following formula:

$$STA = MTA \times (|A_t + D_t| - |A_c + D_c|)$$

MTA = mitigation transplant area.

A_t = transplant deficiency or excess in area of coverage criterion (%).

D_t = transplant deficiency in density criterion (%).

A_c = natural decline in area of control (%).

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D_c = natural decline in density of control (%).

Four conditions apply:

- 1) For years 2-5, an excess of only up to 30% in area of coverage over the stated criterion with a density of at least 60% as compared to the project area may be used to offset any deficiencies in the density criterion.
- 2) Only excesses in area criterion equal to or less than the deficiencies in density shall be entered into the STA formula.
- 3) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 4) Any required STA must be initiated within 120 days following the monitoring event that identifies a deficiency in meeting the success criteria. Any delays beyond 120 days in the implementation of the STA shall be subject to the penalties as described in Section 7.

10. Mitigation Bank. Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in section 9, may be considered as credit in a "mitigation bank". Establishment of any "mitigation bank" and use of any credits accrued from such a bank must be with the approval of the resource agencies and be consistent with the provisions stated in this policy. Monitoring of any approved mitigation bank shall be conducted on an annual basis until all credits are exhausted.

11. Exclusions.

- 1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than ½ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed ½ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the ½ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.
- 2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

(last revised 2/2/99)

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