

**CALIFORNIA COASTAL COMMISSION**  
 South Coast Area Office  
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Filed: March 4, 2002  
 49th Day: April 22, 2002  
 180th Day: August 31, 2002  
 Staff: FSY-LB FSY  
 Staff Report: March 21, 2002  
 Hearing Date: April 9-12, 2002  
 Commission Action:



# W15n

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 5-02-011

**APPLICANT:** Richard Holmgren **RECORD PACKET COPY**

**AGENT:** N/A

**PROJECT LOCATION:** 707 Bayside Drive,  
 City of Newport Beach (Orange County)

**PROJECT DESCRIPTION:** Remove an existing floating dock and install a new floating dock consisting of a 38' west finger, 29' east finger and 24' backwalk. 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 two (2) special conditions. The subject site is located on the bayside of Bayside Drive 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. To assure that marine resources and water quality are protected, staff recommends the imposition of two (2) 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.

**LOCAL APPROVALS RECEIVED:** Approval in Concept (City Harbor Permit Number 200-707) from City of Newport Beach Harbor Resources Division dated October 25, 2001 and Clearance from the Regional Water Quality Control Board (Santa Ana Region) dated February 26, 2002.

**SUBSTANTIVE FILE DOCUMENTS:** Administrative Permit 5-01-468 (Anderson), Coastal Development Permits 5-02-024 (Anderson), 5-01-435 (Parks) and 5-01-117 (Childs)

**LIST OF EXHIBITS:**

1. Location Map
2. Assessor's Parcel Map
3. Approval in Concept/Project Plans

**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. 5-02-011 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.

**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 707 Bayside Drive in the City of Newport Beach, County of Orange (Exhibits #1-2). The site currently contains an existing home and an existing dock. The proposed project consists of removing an existing floating dock and installing a new floating dock consisting of a 38' west finger, 29' east finger and 24' backwalk (Exhibit #3). No new piles are proposed. The floating dock will only be used for boating related purposes.

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

The subject site is located in Lower Newport Bay in the City of Newport Beach (Exhibits #1-2). The dock project is for boating recreation purposes and is associated with an existing single family home. 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. The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The applicant has applied for permits from the U.S. Army, Corps of Engineers and 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. Water Quality and the Marine Environment**

The proposed project is located over the coastal waters of Lower Newport Bay (Exhibits #1-2). 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. Conclusion

To minimize the adverse impacts upon the marine environment, two 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.

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 circumstances. Coastal public access is available near the site. Public coastal access is located approximately 955 feet northwest of the project site at the Aloha Drive Bridge (Exhibit #1).

The proposed development involves removing an existing floating dock and installing a new floating dock consisting of a 38' west finger, 29' east finger and 24' backwalk (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 and 2) the applicant follows Best Management Practices to ensure the continued protection of water quality and marine resources.

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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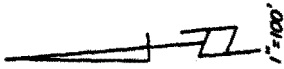
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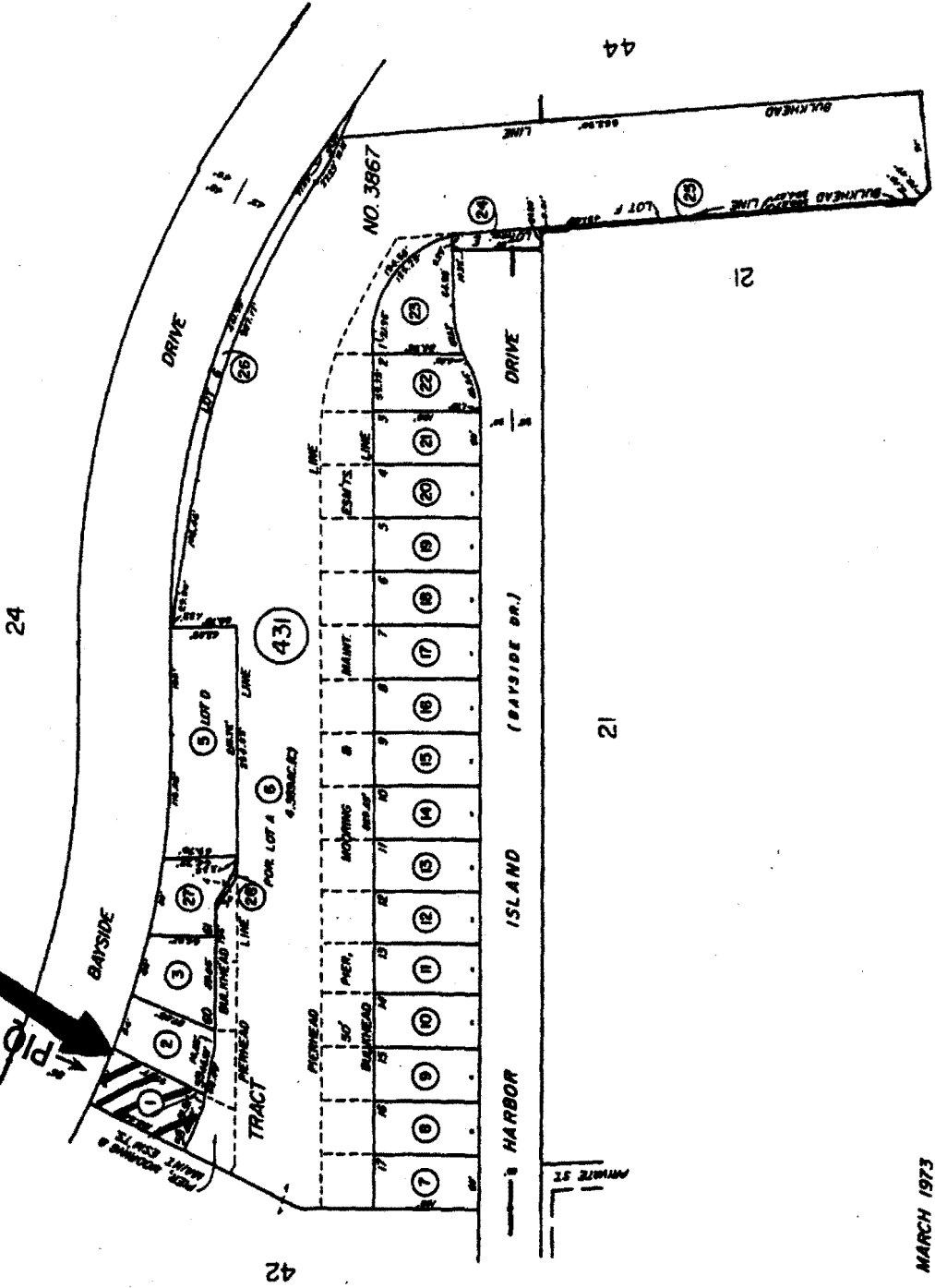
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ASSESSOR'S MAP  
BOOK 50 PAGE 43  
COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

TRACT NO. 3867 M.M. 301-40 TO 46 INC.

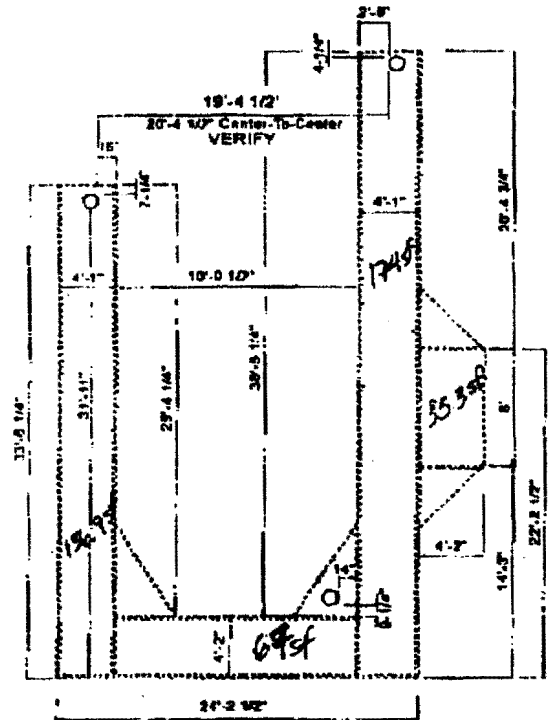
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# COASTAL COMMISSION

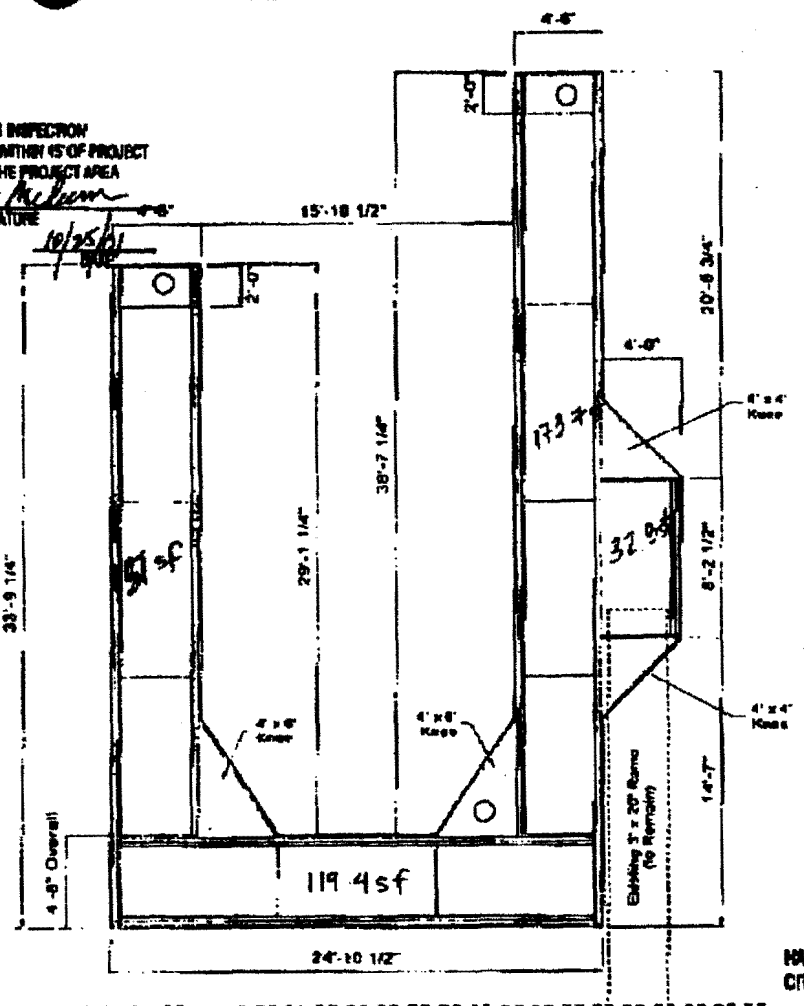
EXHIBIT # 2  
PAGE 1 OF 1

- NOTES
1. NEW FLOORS SHOWN ARE TO BE INSTALLED TO MEET ALL APPLICABLE STANDARDS. PRELIMINARY DESIGN OF NEW FLOORS IS TO BE 1/2" x 1" (CALCULATED ABOVE 1") TO ALLOW FOR A 1" LOSS OF FLOORBOARD OVER ONE YEAR.
  2. ALL FIBER ANCHORS ON THIS LAYOUT ARE EXISTING. 1/2" x 3/8" STEEL PIPE TO BE REMOVED BY OWNER. LEGAL MARK TO BE VERIFIED/CONTINUED BY OWNER.
  3. DOCK IS TO BE SUPPLIED BY BASSI (SEE) ONLY. COMPANY IS TO BE TO SHIP LOCAL. INSTALLATION SUPERVISOR MUST VERIFY RECEIPT OF ALL EQUIPMENT PARTS UPON ARRIVAL AT FINAL DESTINATION.
  4. NO PROVISIONS FOR UTILITIES ARE PROVIDED IN THE NEW FLOAT SYSTEM (SEE CONTRACT).

**EEL GRASS INSPECTION**  
 NO EEL GRASS WITHIN 45' OF PROJECT  
 EEL GRASS IN THE PROJECT AREA  
*Tony McLean*  
 SIGNATURE  
 10/25/01  
 200-707  
 VERSION



Existing Dock Footprint  
 69 sf



Replacement Dock  
 119 4 sf

2411 sf

2478 sf

↑ impact < 0.002 acre

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**NAFIRE**  
 Innovative hulls  
 and mooring solutions.

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**Holmgren**  
**Dock**  
**Supply**  
 Newport Beach, CA

Overall Dock Layout

Form No. 1, General Layout Plan

Revisions

Checked By

Drawn by: D. De Caso  
 Date: 8-7-01  
 Sheet: 1 of 1

Job No.  
 01-3-198

HARBOR RESOURCES DIV.  
 CITY OF NEWPORT BEACH

*Tony McLean*  
 10/25/01

PROJECT BY: usace regulatory branch

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COASTAL COMMISSION

EXHIBIT # 3  
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