

**CALIFORNIA COASTAL COMMISSION**

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49th Day: March 28, 2002  
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Staff: FSY-LB ~~FSY~~  
Staff Report: April 18, 2002  
Hearing Date: May 7-10, 2002  
Commission Action:

**TU 22c****STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 5-01-443**RECORD PACKET COPY****APPLICANT:** Newport Bay Towers, Attn: John O'Donnell**AGENT:** Peter Swift**PROJECT LOCATION:** Located along Edgewater Avenue between Cypress Street and Fernando Street adjacent to Newport Bay, City of Newport Beach (Orange County).**PROJECT DESCRIPTION:** Convert 11 double slips into 21 single slips; remove thirteen, 12" existing piles; install fifteen, 14" piles and replace an existing 3' x 24' gangway with a new 3' x 28' gangway.**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends the Commission **APPROVE** the proposed development with four (4) special conditions. 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 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 implementation of a Water Quality Management Plan to minimize impacts upon water quality from the operation of a boating facility. Special Condition #4 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*.

**LOCAL APPROVALS RECEIVED:** Approval in Concept (City Harbor Permit Number 112-325) from City of Newport Beach Harbor Resources Division dated October 31, 2001; Clearance from the Regional Water Quality Control Board (Santa Ana Region) dated November 19, 2001; Clearance from the California Department of Fish and Game dated January 9, 2002, and Letter of Permission from the Corps of Engineers dated December 18, 2001.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permits 5-01-468 (Anderson), 5-00-371 (Tennis Estates Homeowners Association), 5-00-157 (Lido Isle Community Association) and 5-98-254 (California Recreation Company).

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**LIST OF EXHIBITS:**

1. Location Map
2. Location Map
3. Approval In Concept/Site Plan
4. Project Plans
5. Piling Placement Plan
6. Letter of Permission from the Army Corps of Engineers (ACOE)
7. Letter of Approval from the California Department of Fish & Game (DF&G)

**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. 5-01-443 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.

(b) 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.

(c) 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. Water Quality 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 Water Quality Management Plan to ensure the control of adverse impacts to water quality related to long term water-borne berthing of boats at the dock. The applicant or successors in interest shall be responsible for complying with the provisions of the Water Quality Management Plan described herein and approved by the Executive Director.

**4. Pre-construction *Caulerpa Taxifolia* Survey**

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit 5-01-443, the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- i. for the review and approval of the Executive Director; and
  - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares as follows:

##### **A. Location and Project Description**

The marina is located along Edgewater Avenue adjacent to the Newport Bay Tower Condominiums between Fernando Street and Cypress Street adjacent to Newport Bay in the City of Newport Beach, County of Orange (Exhibits #1-2). The existing facility is privately operated and used by the homeowners of the Newport Bay Towers Condominiums and is not open to the general public. This facility is between the first public road and the sea and is in Newport Bay.

The existing and proposed facility is located on tidelands, which have been held in title by the City of Newport Beach since 1919. The Newport Bay Towers Homeowners Association has obtained a permit to use the site from the City of Newport Beach since 1965. Permits are obtained on an annual basis on a calendar year and are billed at the beginning of the year.

The applicant is proposing to convert 11 double slips into 21 single slips (Exhibits #3-4). Currently the 11 double slips provided 22 boat spaces (two, 40 foot slip spaces; six, 35 foot slip spaces; six, 25 foot slip spaces and eight, 20 foot slip spaces). Post project, there will be 21 boat spaces (one, 52 foot slip space; one, 43 foot slip space; one, 37 foot slip space; one, 41 foot slip space; one, 46 foot slip space; one, 50 foot slip space; one, 56 foot slip space; six, 25 foot slip spaces and eight, 20 foot slip spaces). Large boat slips will be reduced by one boat slip, while the small boat population will stay intact. The purpose for the reconfiguration is for safety purposes. In addition, construction will consist of removal of thirteen, 12" existing piles; installation of fifteen, 14" piles (Exhibit #5) and replace an existing 3' x 24' gangway with a new 3' x 28' gangway (Exhibits #3-4).

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 Approval In Concept from the City of Newport Beach Harbor Resources

Division. In addition, the project has received a Letter of Permission from the Army Corps of Engineers (ACOE) (Exhibit #6) and an approval from the California Department of Fish and Game (DF&G) (Exhibit #7). Furthermore, the Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used.

**B. Previous Commission Action Adjacent to the Subject Site**

Previously Approved Administrative Permit A-7-9-73-1427 (Environmental Housing, Inc.)

On July 11, 1973, the Coastal Commission approved Administrative Permit A-7-9-73-1427 (Environmental Housing, Inc.) at 310 Fernando for the conversion of an existing 49-unit apartment building to condominiums and also for minor repairs and improvements.

**C. Marine Resources**

The proposed project is located in and 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 are 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.

Section 30233 of the Coastal Act states:

*(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 and also requires that any project which results in fill of open coastal waters provide adequate mitigation. Section 30233 of the Coastal Act allows fill of open coastal waters, such as Lower Newport Bay, for recreational boating purposes. Part of the proposed project requires the removal of thirteen, 12" existing piles and

installation of fifteen, 14" piles (Exhibit #5). The installation of these fifteen (15) new piles will displace habitat bottom. The fill required by the project is for a recreational boating facility, an allowable purpose under 30233 (4) of the Coastal Act. The project can be consistent with Section 30233, however, only if it is the least environmentally damaging feasible alternative and feasible mitigation measures have been provided to minimize environmental effects. One way to minimize environmental damage is to limit fill. In order to anchor the reconfigured slips the installation of fifteen (15) new piles is necessary. This is the minimum number of piles necessary to adequately support and anchor the new dock and pier. The proposed project will use the minimum number of piles thereby minimizing the amount of fill needed to support the allowable use. Thus, the project as proposed is the least environmentally damaging alternative. Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The proposed project meets this requirement because the pilings are self mitigating by providing vertical habitat for marine organisms.

Therefore, for the reasons listed above, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

#### **D. 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 and in 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 residents of Newport Bay Towers. 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. Water Quality Management Plan

The proposed project will allow for 21 boat slips. The berthing of these boats by the boat dock users could cause adverse impacts to the marine environment. 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 a major contributor to the degradation of water quality within boating facilities. It is for this reason that the Commission imposes Special Condition #3 that requires the applicant to establish a Water Quality Management Plan. Implementing this plan will minimize the adverse impacts to the marine environment.

4. *Caulerpa taxifolia*

Recently, a non native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies shallow sandy aquatic environments similar to eelgrass. *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing<sup>1</sup>.

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<sup>1</sup> References

Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchioretti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of *Caulerpa taxifolia* (Chlorophyta). *Marine Ecology Progress Series* 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga *Caulerpa taxifolia* in the Mediterranean. *Marine Ecology Progress Series* 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for *Caulerpa* species: Fates of fragments and implications for management of an invasive weed. *Marine Ecology* 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga *Caulerpa taxifolia* introduced to the Mediterranean Sea. *Marine Ecology Progress Series* 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga *Caulerpa taxifolia* introduced into the Mediterranean Sea. *Marine Ecology Progress Series* 146:145-153.

Gacia, E. C. Rodriguez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of *Caulerpa taxifolia* from the northwestern Mediterranean. *Aquatic Botany* 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga *Caulerpa taxifolia* introduced into the Mediterranean. *Aquatic Botany* 51:163-169.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. For example, the removal and installation of pilings results in bottom disturbance. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes Special Condition #4. Special Condition #4 requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

#### 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 implementation of a Water Quality Management Plan to minimize impacts upon water quality from the operation of a boating facility. Special Condition #4 requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with

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*Caulerpa taxifolia*. As conditioned, the Commission finds that the proposed project is consistent with Section 30230 of the Coastal Act.

#### **E. 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 marina is located seaward of the first public road within coastal waters. The subject site contains an existing residential marina that has obtained a permit from the City of Newport Beach yearly to use the site since 1965. The existing and proposed marina is a private facility, which is and will continue to be permitted to the homeowners of the Newport Bay Towers.

The existing and proposed facility is located on tidelands, which have been held in title by the City of Newport Beach since 1919. The Newport Bay Towers Homeowners Association has obtained a permit to use the site from the City of Newport Beach since 1965. Permits are obtained on an annual basis on a calendar year and are billed at the beginning of the year.

Public access exists along Edgewater Avenue adjacent to the Newport Bay Tower Condominiums and also at the Fernando Street and Cypress Street streetends located adjacent to the site (Exhibits #2). Therefore, public access to the waterfront is available and the proposed project would not impede such access. 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.

#### **F. 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.

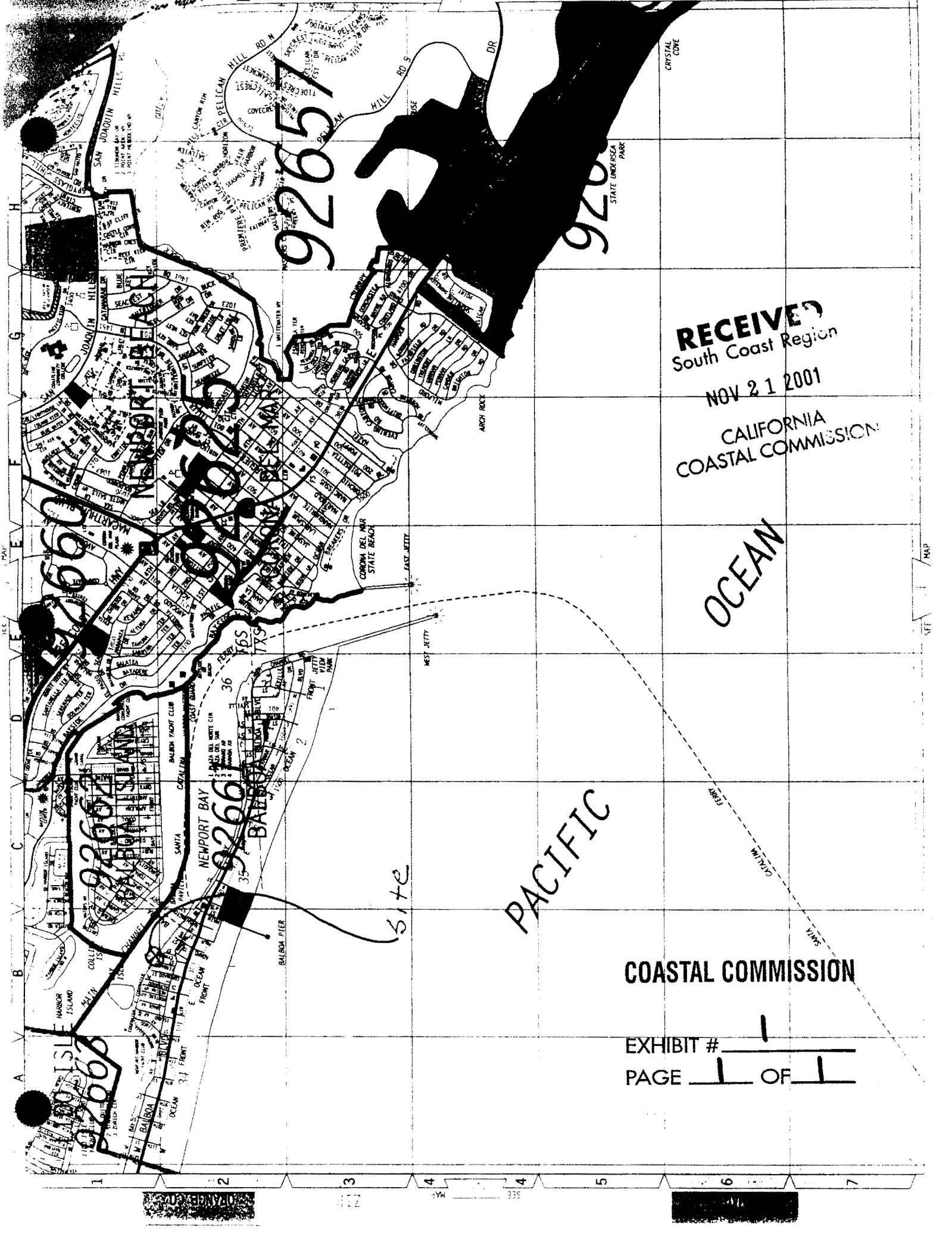
The proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

**G. 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) requires implementation of a Water Quality Management Plan to minimize impacts upon water quality from the operation of a boating facility, 4) that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. As conditioned, the Commission finds that the proposed project is consistent with Section 30230 of the Coastal Act.

As conditioned, no feasible alternatives or 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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COASTAL COMMISSION

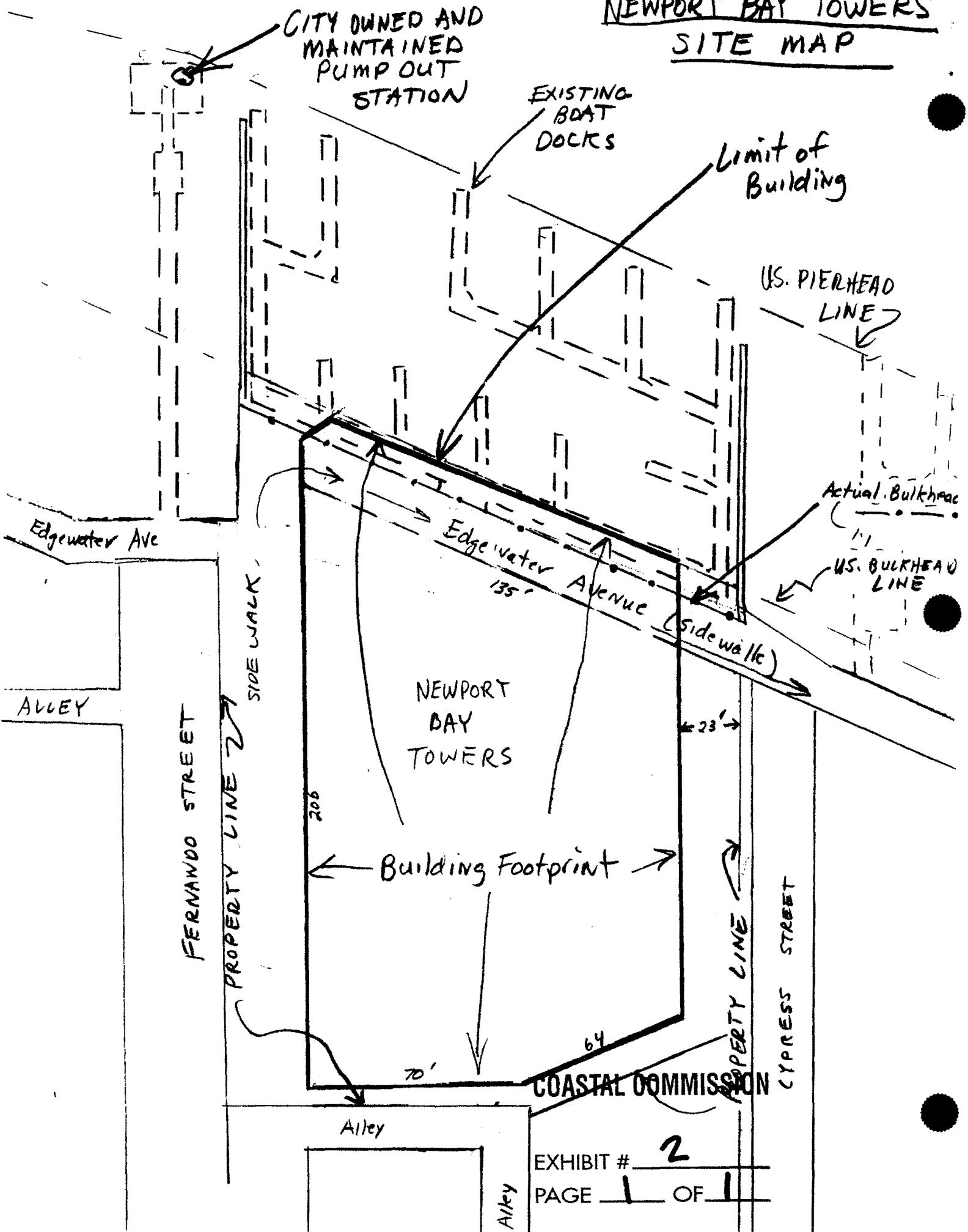
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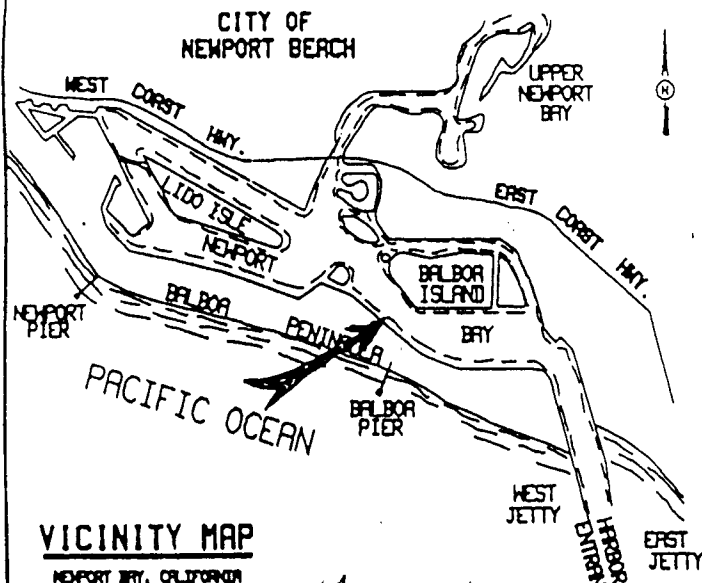
**COASTAL COMMISSION**

EXHIBIT # 1  
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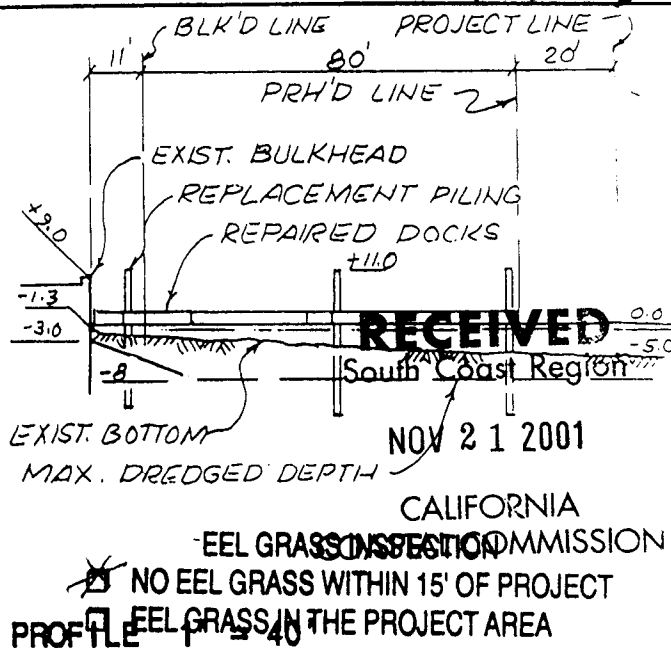
# NEWPORT BAY TOWERS SITE MAP



## CITY OF NEWPORT BEACH



**VICINITY MAP**  
NEWPORT BEACH, CALIFORNIA



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

PERMIT #

DATE \_\_\_\_\_

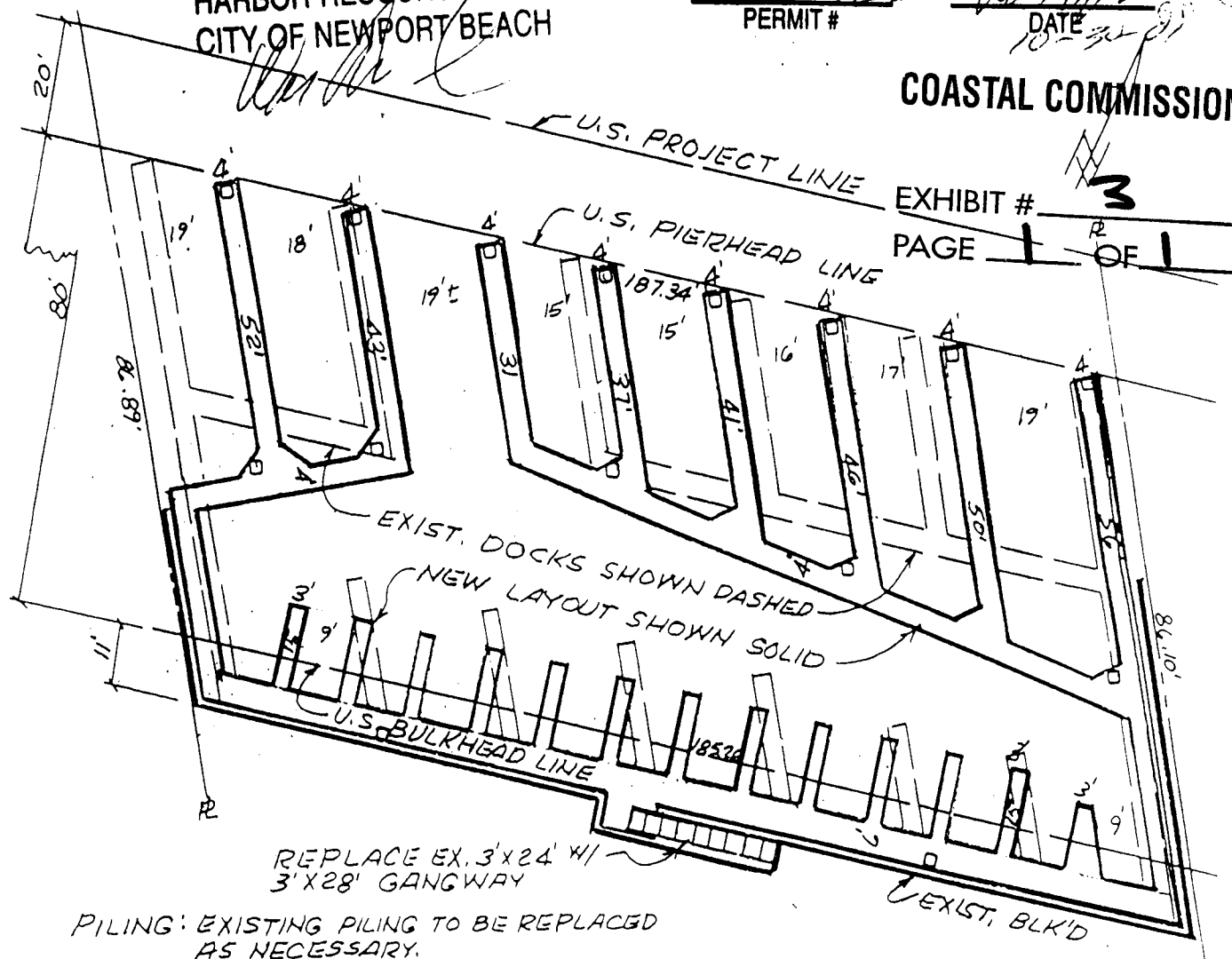
HARBOR RESOURCES DIV.  
CITY OF NEWPORT BEACH

**COASTAL COMMISSION**

EXHIBIT #  
PAGE 1



OF



PLAN VIEW 1" = 30'

APPLICANT'S NAME NEWPORT TOWERS

JOB ADDRESS: 310 Fernando

DATE 10/23/01



# HARBOR CONSTRUCTION STANDARD

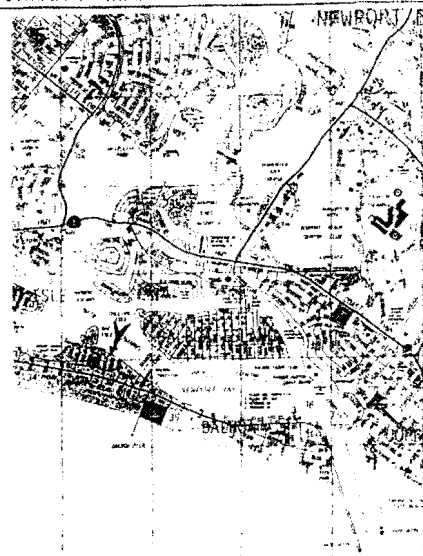
## CITY OF NEWPORT BEACH BUILDING DEPARTMENT

COASTAL COMMISSION

4

EXHIBIT #

PAGE 1 OF 5

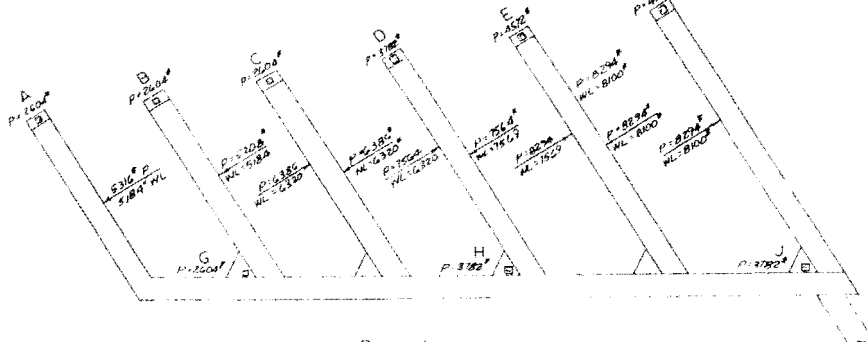
DESIGN CRITERIA		MARINE DEPT APPROVAL	VICINITY MAP
<b>1. General</b> 1.1 The construction of harbor facilities shall accommodate the need for safety and durability as well as convenience and appearance. Structural elements of piers, wharves, docks, piers, etc. shall be adequate to withstand human use, wind and loading equipment. Boat handling facilities shall be designed to adequately handle anticipated loads with a safety factor of safety. 1.2 Materials of construction shall meet the coverage of additional in order to ensure the maintenance requirements and long life of the facility. 1.3 Piers shall be designed to ensure stability and durability throughout the life of the pier. 1.4 Minimum design shall be provided for the convenience and safety of travelers and maintenance workers.		<b>5. Harbor Permits and Drawings</b> 5.1 Harbor permits shall be obtained per Harbor Permit Policy 11.1. Detailed construction plans (1 step) and preliminary calculations (1 set) shall be submitted to the Building Department with the permit application for the following items: 5.1.1 bulkheads and grade 5.1.2 piers and landings 5.1.3 gangways, including hinge connections and finger moorings 5.1.4 anchor piles and guide piles, including other assemblies 5.1.5 cantilevered piers 5.1.6 other harbor structures 5.2 Plans and calculations for the above items shall be prepared by a Civil or Structural Engineer registered in the State of California. 5.3 In addition, detailed construction plans shall include, but not be limited to, indicating the following dimensions and details: 5.3.1 dock, pier gangway and anchor pile layout 5.3.2 position of float layout (with flotation calculations provided separately) 5.3.3 framing details including angles, base plates, ball and nut systems, rollers, rollers, rollers, etc. 5.3.4 hinge connections 5.3.5 guide pile roller assemblies 5.3.6 pier piles and anchor piles 5.3.7 top of bulkhead and pier deck elevations 5.3.8 maximum design currents (detailed as north) 5.3.9 maximum length vessels (with design calculations for each berth, indicated within the berth) 5.4 Harbor permits shall be conditioned to limit the size of vessels berthed in the facility e.g. "The Harbor Permit for this facility shall be conditioned to allow berthing of one 100 foot and three 40 foot maximum length vessels." 5.5 Factors designing in the vicinity of a permitted harbor facility will be restricted e.g. "Loading not permitted below the contours shown herein."	
<b>2. Layout and Design</b> 2.1 Piers for harbor facilities shall be based upon the use of the facility, designed as follows: 2.1.1 Single or dual berthing 2.1.2 Multi residential and small craft mooring 2.1.3 Commercial passenger 2.2 Harbor structures shall conform with 1. General & Design Guidelines for Small Craft Berthing Facilities (latest edition published by the State of California Department of Housing and Community Development, 1929 "S" Series, Sacramento, California 95834, reprinted as modified by the City of Newport Beach, California, 1910, 2004, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 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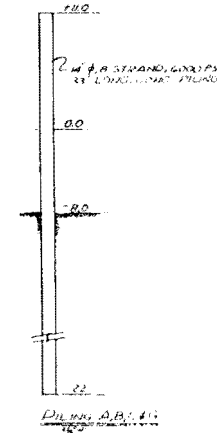
**A-B-C-G**  
15" Ø, 8 STRAND, 6000 PSI  
33' LONG PILING  
P-4467 & 133-1804

**D-H-J**  
15" Ø, 10 STRAND, 6000 PSI  
33' LONG PILING  
P-4468 & 133-1804

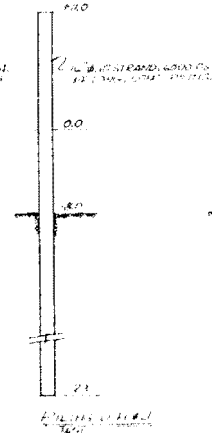
**E-F**  
15" Ø, 12 STRAND, 7000 PSI  
35' LONG PILING  
P-4469 & 133-1804



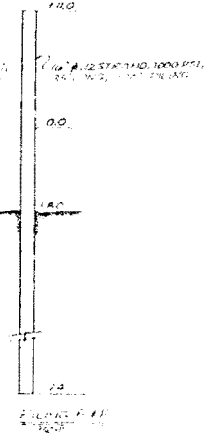
PILING LAYOUT  
N.T.S.



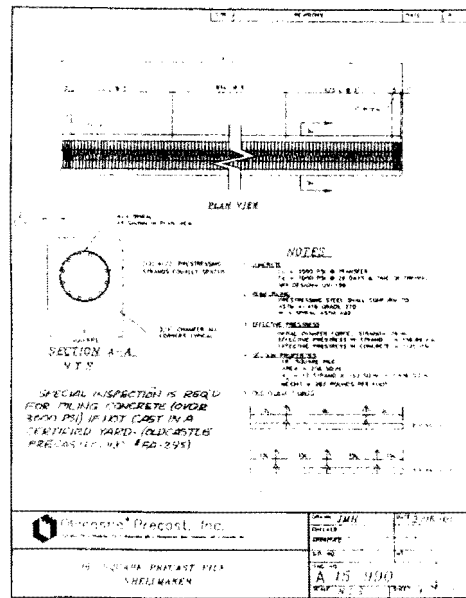
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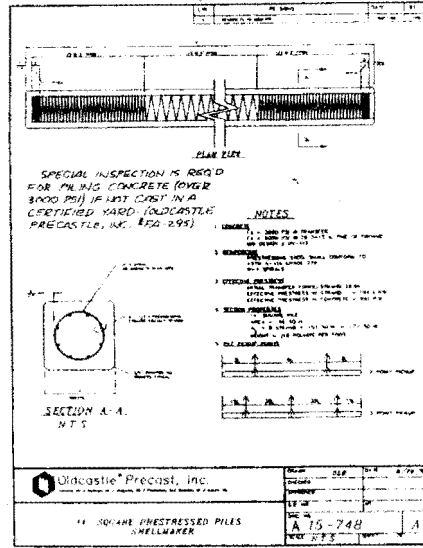
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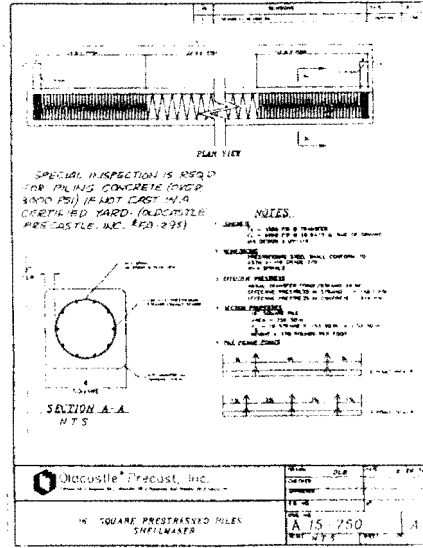
PILING SECTION C-C  
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**Olocastle® Precast, Inc.**  
16 SQUARE PRESTRESSED PILES  
SHELLWATER  
A 15-400  
N.T.S.



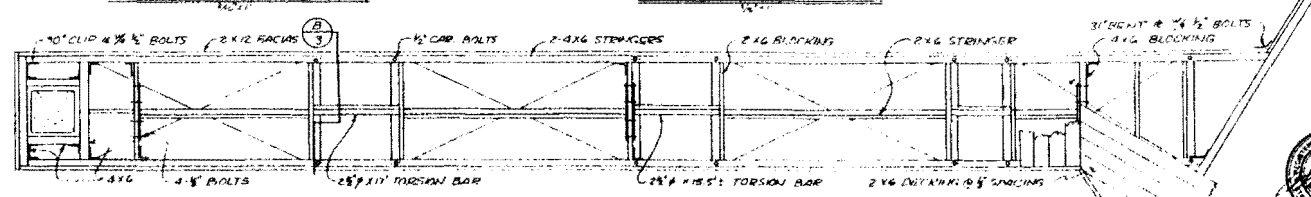
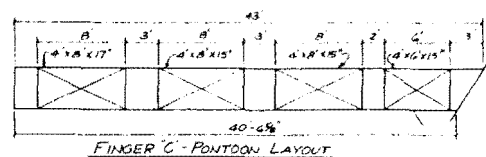
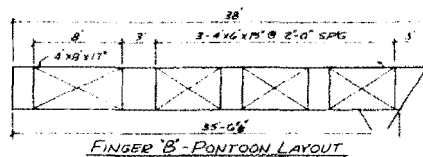
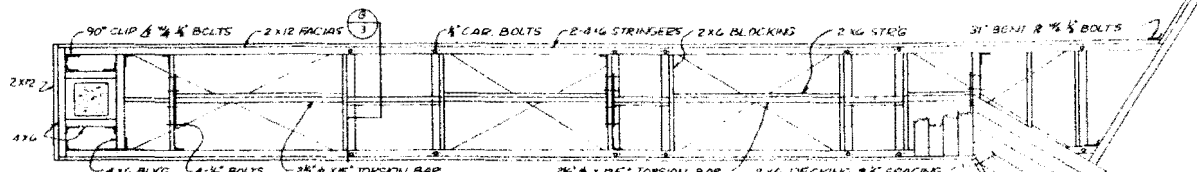
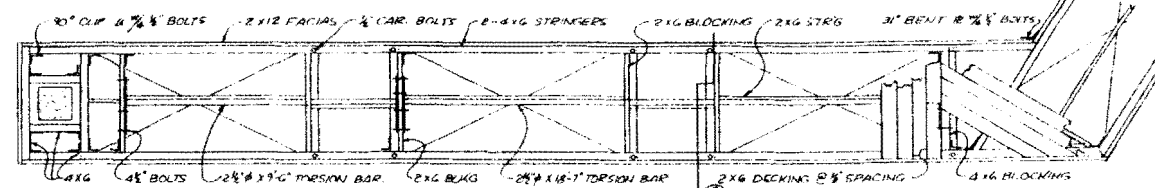
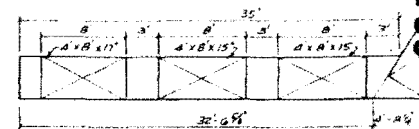
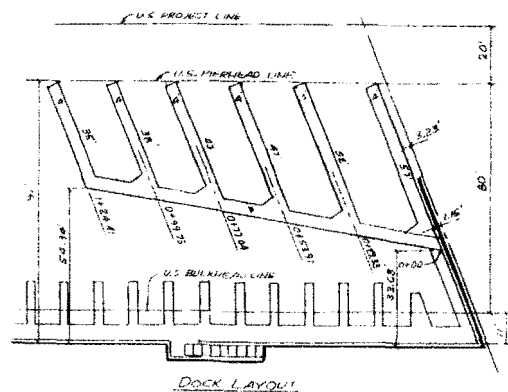
**Olocastle® Precast, Inc.**  
16 SQUARE PRESTRESSED PILES  
SHELLWATER  
A 15-748  
N.T.S.



**Olocastle® Precast, Inc.**  
16 SQUARE PRESTRESSED PILES  
SHELLWATER  
A 15-750  
N.T.S.

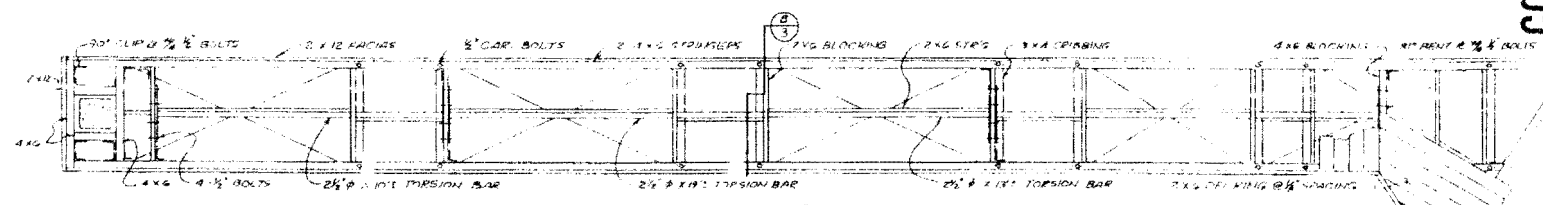


40A N 5871

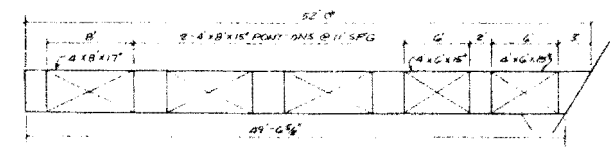


1285 # 5271

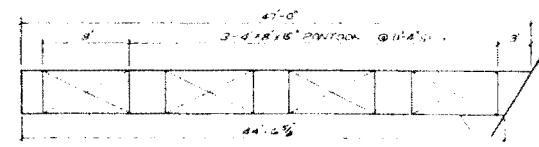
NO.		DATE	REVISION	NEWPORT TOWERS	PHASE I	DRAWN BY <b>RSH</b> CHECKED BY <b>AD 30-01</b> DESIGNED BY <b>AD 30-01</b> DATE <b>11/1/01</b>	<b>MARINE CONSULTING &amp; DESIGN</b> 124 EL MODENA AVENUE NEWPORT BEACH, CA 92663 949 642-7206	SHEET NO. <b>3</b> OF <b>5</b>
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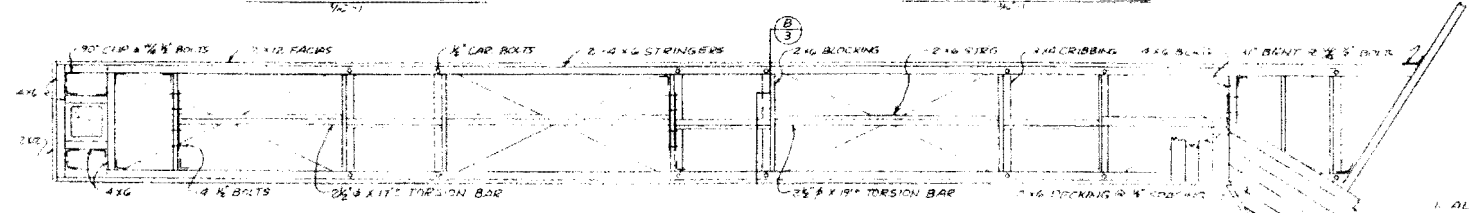
FINGER 'E' FRAMING PLAN



FINGER 'E' PONTON LAYOUT



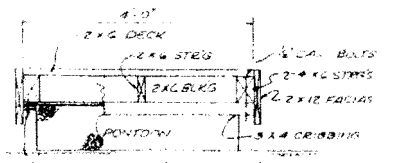
FINGER 'D' FRAMING LAYOUT



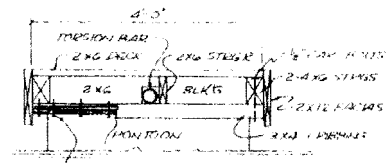
FINGER 'D' FRAMING PLAN

SPECIFICATIONS

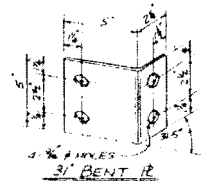
1. ALL LUMBER SHALL BE #1 GRADE DOUGLASS FIR OR BETTER PROVIDED THERE ARE NO KNOTS OR OTHER DEFECTS. ALL LUMBER TO BE S4S & EXPOSED MEMBERS TO BE PICKED FOR APPEARANCE.
2. ALL LUMBER SHALL BE PRESSURE TREATED PER ANNA STANDARD C-2 (AC24) MINIMUM RETENTION 0.60 PER ALL FIELD CUTS & BORED HOLES TO RECEIVE A BRUSH COAT OF COMBUSTION-RESISTANT PRESERVATIVE.
3. ALL HARDWARE INCLUDING BOLTS, NAILS, CLIP ANGLES, ETC., SHALL BE HOT DIP GALVANIZED AFTER FABRICATION. GALVANIZED WASHERS SHALL BE USED WITH ALL NUTS & BOLTS BEARING ON WOOD SURFACES. ALL STEEL ANGLES, PLATES & SHAPES SHALL BE PER ASTM SPECIFICATION A-36.
4. PONTONS SHALL BE AS PER'D BY ATLANTIC MARINE SERVICES OR EQUAL & SHALL HAVE A SOLID INFLATING ROOM COR'D & A 3\"/>



SECTION (A)



SECTION (B)

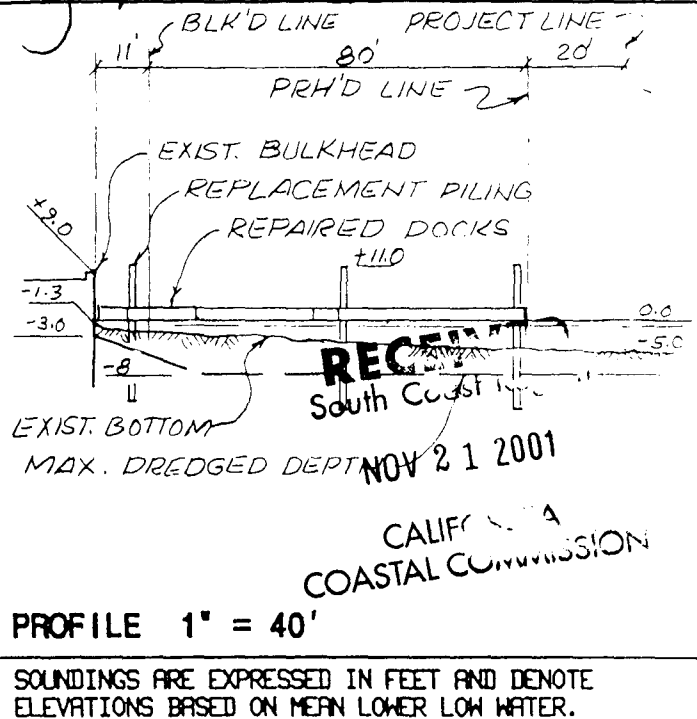
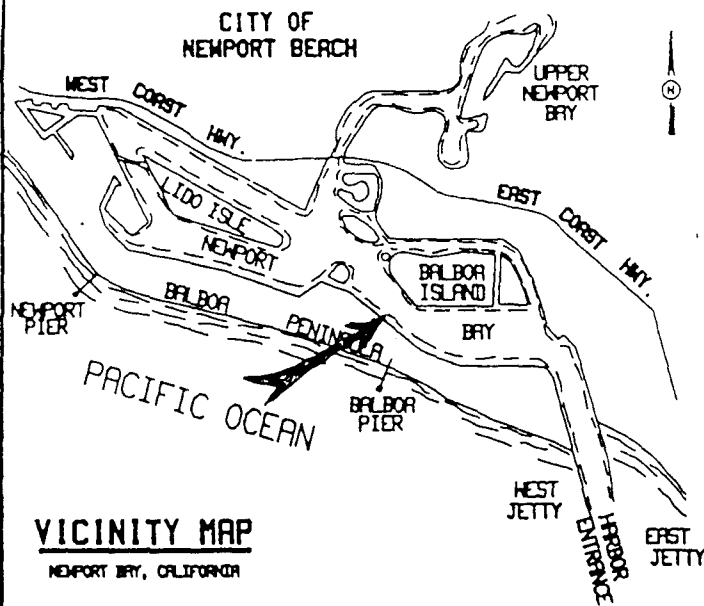


3\"/>

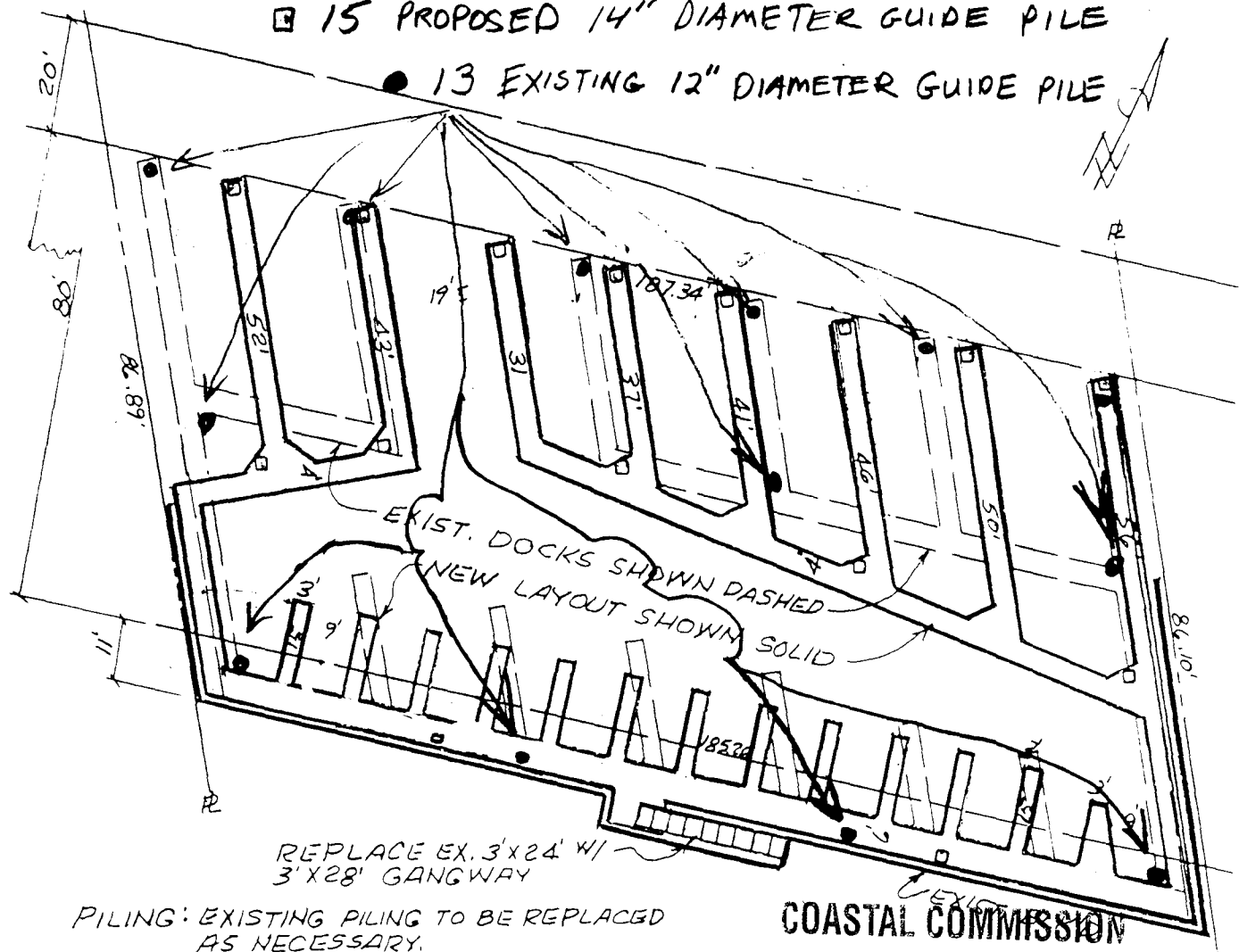


# Piling Placement

## CITY OF NEWPORT BEACH



- 15 PROPOSED 14" DIAMETER GUIDE PILE
- 13 EXISTING 12" DIAMETER GUIDE PILE



PLAN VIEW 1" = 30'



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO  
ATTENTION OF:

December 18, 2001

Office of the Chief  
Regulatory Branch

John O'Donnell  
c/o Swift Slip  
Attention: Beth Swift  
2027 Placentia Avenue  
Costa Mesa, California 92627

Reference No.: 200200172-CJF

Dear Ms. Swift:

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 11-slip dock to accommodate 21 single slips, including the replacement of 13 12-inch diameter pile with 15 14-inch diameter pile, bayward of 310 Fernando, Balboa, as shown on the enclosed drawings. Activities would result in less than 0.01 acre of additional permanent impacts to waters of the U.S. in Newport Bay, Newport Beach, Orange County, California.

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,

COASTAL COMMISSION

EXHIBIT # 6  
PAGE 1 OF 1

Mark Durham  
Chief, South Coast Section  
Regulatory Branch

  
PERMITTEE

1/8/02  
DATE

**DEPARTMENT OF FISH AND GAME**

Marine Region  
4949 Viewridge Avenue  
San Diego, CA 92123



January 9, 2002

Mr. Fernie Sy  
California Coastal Commission  
South Coast Area  
200 Oceangate Ave., 10<sup>th</sup> Floor  
Long Beach, California 90802-4325

**RECEIVED**  
South Coast Region

JAN 15 2002

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Sy:

This letter is in response to a request from Ms. Beth Swift, Swift Slip Dock and Pier Builders, Inc., concerning Coastal Development Permit (CDP) Application 5-01-443. The proposed project will convert 11 double slips into 21 single slips at the Newport Towers, 310 Fernando, City of Newport Beach, Orange County, California. The overall dimensions will remain the same. The City of Newport Beach assessed the area for eelgrass (*Zostera marina*) in October 2001, and found that there was no eelgrass within 15 feet of the project.

Thus, the Department believes the activities associated with the Newport Towers Marina project would not have a significant adverse effect on existing marine resources and habitats within the area, and we would concur with the issuance of a CDP. If you have any further questions please call me at (858) 467-4231 or e-mail at [mfluharty@dfg.ca.gov](mailto:mfluharty@dfg.ca.gov).

Sincerely,

Marilyn J. Fluharty  
Environmental Scientist  
Marine Region

cc: Ms. Beth Swift  
Costa Mesa, CA

**COASTAL COMMISSION**

EXHIBIT # 7  
PAGE 1 OF 1

