

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

W 6a

Permit Application No. **5-04-301**
Date: November 18, 2004
Page 1 of 7



ADMINISTRATIVE PERMIT
RECORD PACKET COPY

APPLICANT: Penco Investments, LLC, Attn: Daniel Pennington

PROJECT DESCRIPTION: Remove and replace an existing floating dock, pier, gangway and piles with a new dock and associated structures consisting of: a 14' x 10' pier with a 17' approach; a 3' x 24' gangway; a 35' x 6' finger with a 4' x 4' lobe; two (2) 14" "T" piles; and two (2) 12" round steel piles coated with NSP 120.

PROJECT LOCATION: 321 East Bay Front, Newport Beach (Orange County)

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

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

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

Wednesday, December 8, 2004
10:00 am
Marin County Bd. Of Supervisors Chambers
Administrative Bldg., Room 322
Marin County Civic Center
San Rafael, CA 94903

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

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

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

PETER DOUGLAS
Executive Director

By: Fernie Sy
Title: Coastal Program Analyst

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See pages four to seven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

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

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. Project Location, Description and Prior Commission Action at Subject Site

1. **Project Location and Description**

The subject site is located at 321 East Bay Front on Balboa Island in the City of Newport Beach (Exhibits #1-2). Single-family residences characterize the subject site and the surrounding area. The proposed project (Exhibit #3) involves the following: remove and replace an existing floating dock, pier, gangway and piles with a new dock and associated structures consisting of: a 14' x 10' pier with a 17' approach; a 3' x 24' gangway; a 35' x 6' finger with a 4' x 4' lobe; two (2) 14" "T" piles; and two (2) 12" round steel piles coated with NSP 120. The proposed dock and associated structures will be constructed of Douglas Fir and TREX Composite.

The dock project will be used for boating related purposes to serve a single-family residential development. The site has been surveyed by the City of Newport Beach Harbor Resources Division (July 31, 2003) and by Coastal Resources Management (July 8, 2004) for eelgrass and

eelgrass was discovered within 15 feet of the project area. However, the project does not anticipate adverse impacts to eelgrass associated with the proposed project. The site has also been surveyed by Coastal Resources Management (July 8, 2004) for *Caulerpa taxifolia* and none was found. However, this survey was completed on July 8, 2004 and is only valid for 90 days. The project is agendaized for the December 2004 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since it had passed 90 days from when the survey was completed. Thus, an up-to-date pre-construction *Caulerpa taxifolia* survey must be conducted. These eelgrass and *Caulerpa taxifolia* surveys are valid for a limited period of time (until the next growing season for eelgrass and 90 days for *Caulerpa taxifolia*). If construction does not occur within the respective time periods, a subsequent survey will be required. If any eelgrass or *Caulerpa taxifolia* are found on the project site, Special Conditions No. 2 and No. 3 identify the procedures necessary to be completed prior to beginning any construction. Public access exists in the project vicinity along the public boardwalk that surrounds Balboa Island (Exhibit #2). The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. 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. The applicants have applied for a permit from the U.S. Army Corps of Engineers.

2. Prior Commission Action at Subject Site

On August 8, 2000, the Commission approved De Minimis Waiver #5-00-222-(Pennington) for the demolition of an existing single-family residence with an attached garage and construction of a new 2,312 square foot, two-story, 29' high, single-family residence with an attached 400 square foot, two-car garage and a 483 square foot roof deck. No grading was proposed.

On November 13, 2001, the Commission approved De Minimis Waiver #5-01-364-(Pennington) for the demolition of an existing single-family residence and construction of a new 2,330 square foot, two-story, 26 feet above existing grade, single-family residence with an attached 389 square foot, two-car garage. The project also consisted of 98 square feet for the second floor decks and 351 square feet for the roof deck. There was 120 cubic yards of grading, which would balance on site. In addition, there was 90 cubic yards of import for fill.

B. Marine Resources

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. Water Quality

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and

maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

D. Local Coastal Program

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

E. California Environmental Quality Act (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS:

1. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) 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.
- (2) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (3) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (4) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (5) 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.
- (6) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

B. Best Management Practices Program

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

(1) Boat Cleaning and Maintenance Measures:

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

(2) Solid and Liquid Waste Management Measures:

- a. 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.

(3) Petroleum Control Management Measures:

- a. 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. Bilges shall be cleaned and maintained. Detergents will not be used for cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

2. **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. Implementation of 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.

3. 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 (the "project"), 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:
- (1) for the review and approval of the Executive Director; and
 - (2) 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 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.

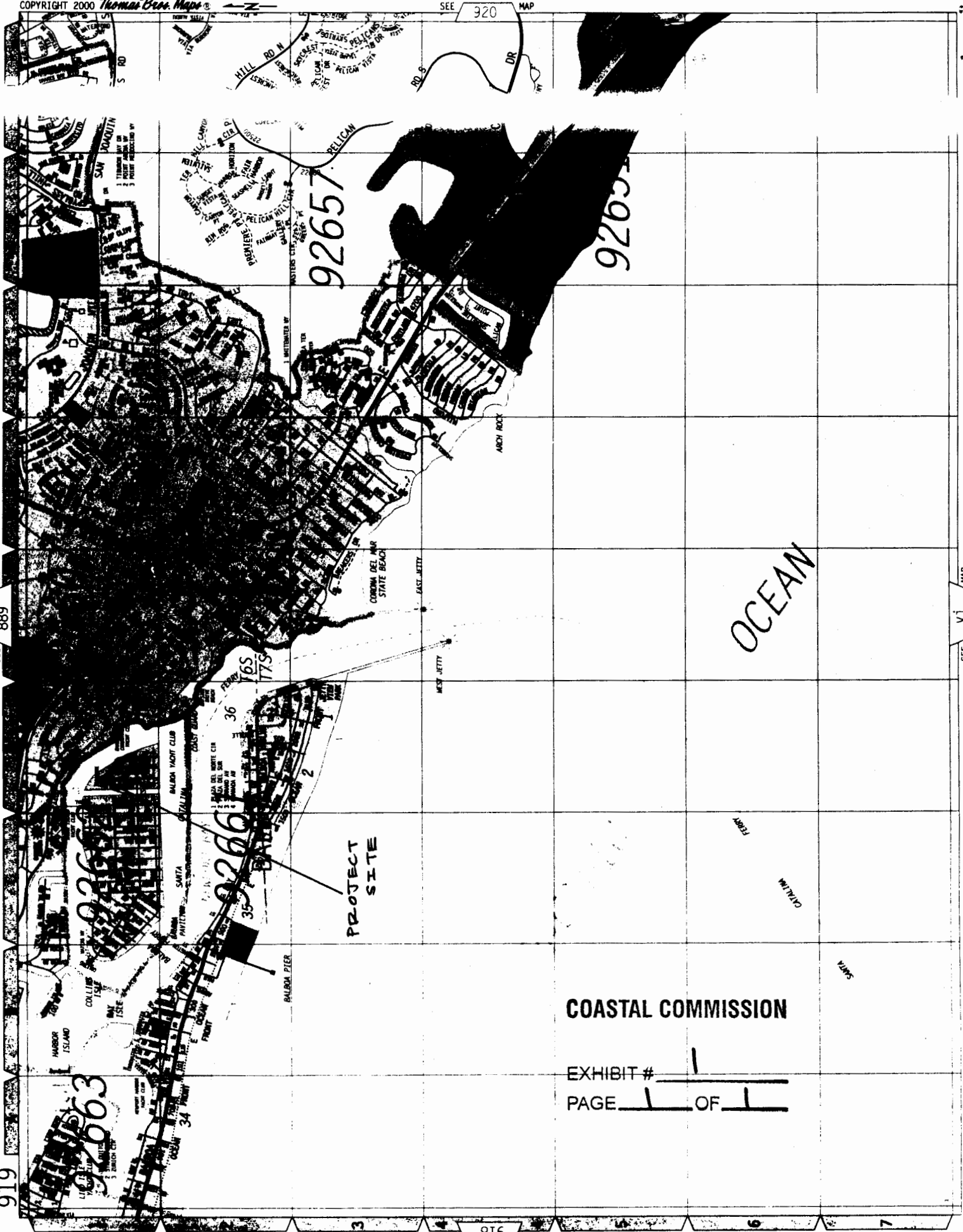
ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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

Applicants' Signature

Date of Signing

H:\FSY\Staff Reports\Dec04\5-04-301-[Penco Investments, LLC]AP(NB)



COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

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2004

EXHIBIT # 2
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COASTAL COMMISSION

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MARCH 1949

TR NO. 742
TR NO. 1049

BALBOA AVE

M.M. 23-42
M.M. 34-7

NOTE

ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 050 PAGE 1 OF 1

1-1 0'



Acacia Aven
(949) 631-3

San Diego, California 92627
631-3122

321 E. Bay Front

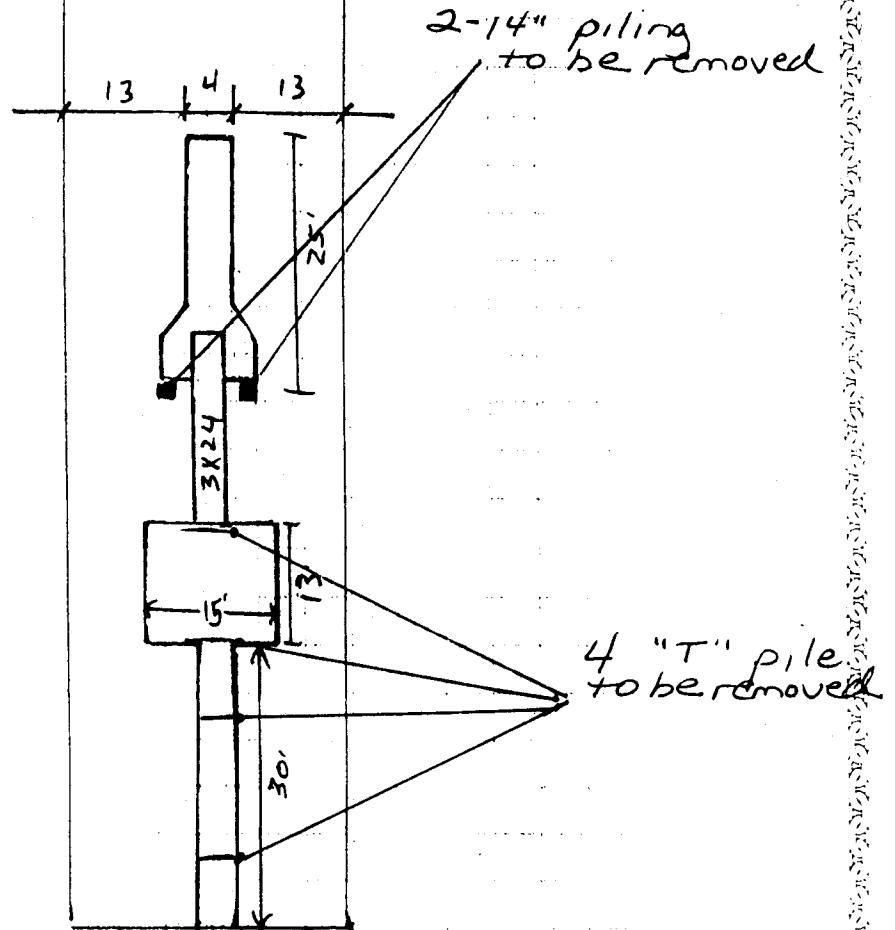
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South Coast Regional

JUL 26 2004

COASTAL COMMISSION

5-04-301



OLD
SQ. 503

COASTAL COMMISSION

EXHIBIT # 3
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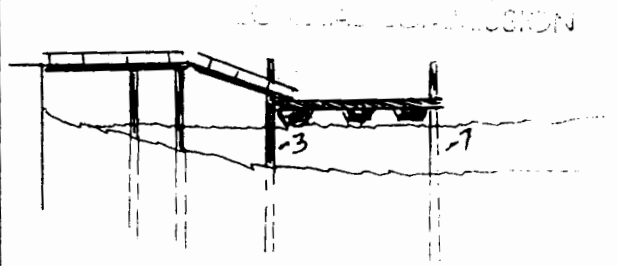
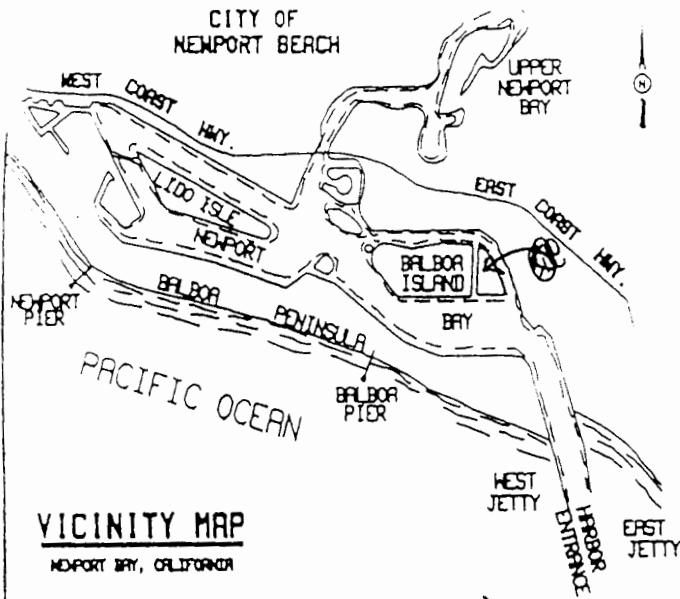


DOCK & PIER
BUILDERS, INC.

CITY OF NEWPORT BEACH

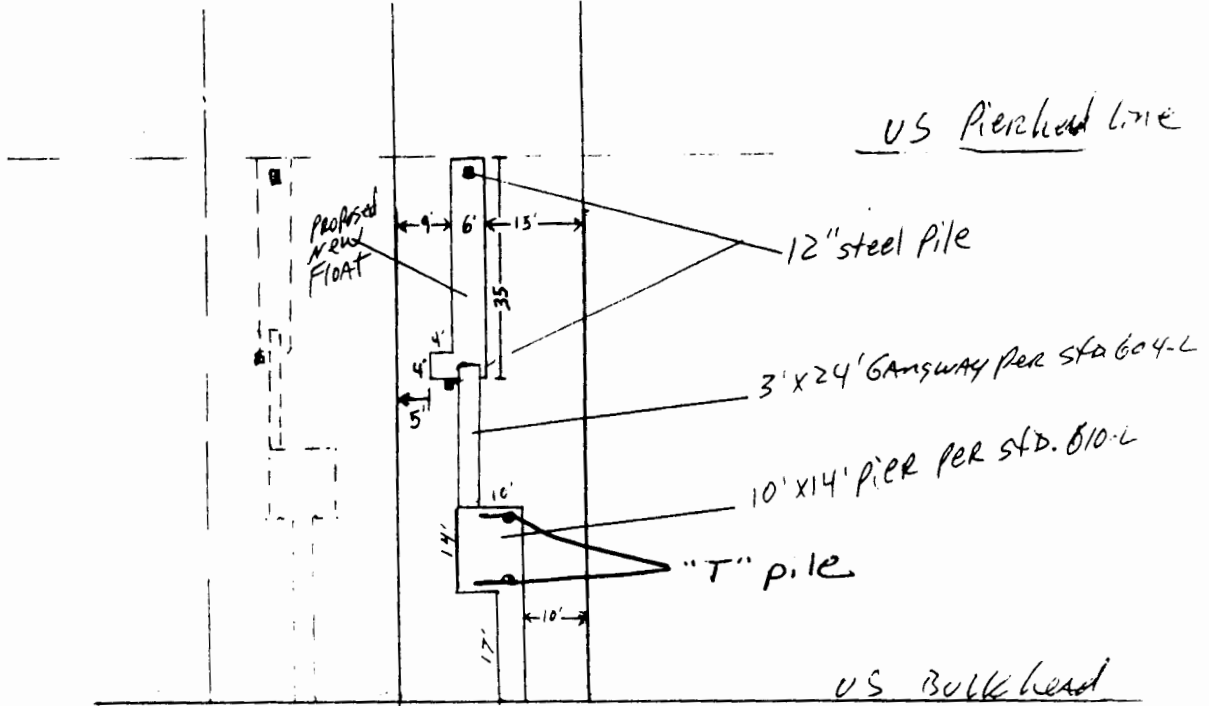
5-04-301

26 2004



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

Scope of work: Remove existing dock, pier, gangway and pile.
Install new dock, pier, gangway, 2-14" T pile and 2 - 12" round steel pile.



COASTAL COMMISSION 30

EXHIBIT # 3
PAGE 2 OF 2

Prepared by
Bridget Hill

New
CONSTRUCTION

PLAN VIEW 1" = 30'

APPLICANT'S NAME David Rannington JOB ADDRESS 321 E. Bayfront DATE 7-14-03
Suff. SLIP DOCK & PIER BUILDERS

