

CALIFORNIA COASTAL COMMISSION

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Filed: 1/21/04
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Staff: MV-LB ✓
Staff Report: 5/20/04
Hearing Date: 6/9-11/04
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION: 5-03-447
NUMBER

APPLICANT: ROBERT FRANCESCON TR

AGENT: Swift Slip Dock & Pier Builders

PROJECT LOCATION: 2226 Channel Road, Newport Beach, Orange County

PROJECT DESCRIPTION: Add a 10 foot by 15 foot segment to an existing boat dock float resulting in a 45 foot by 15 foot float attached to an existing 4 foot by 24 foot gangway, and an existing 4 foot by 19 foot pier. Only the float addition is proposed. No bottom disturbing activities are proposed. An Eelgrass Protection Plan is proposed.

LOCAL APPROVALS RECEIVED: City of Newport Beach Harbor Resources Division Approval in Concept, Harbor Permit No. 107-2226, dated 10/8/03.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with three special conditions that require: 1) appropriate construction methods be employed; 2) incorporation of Best Management Practices with regard to long term berthing of a boat at the subject dock; and, 3) the proposed eelgrass protection plan be carried out as proposed.

The special conditions are necessary to protect water quality and eelgrass.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Marine Biological Resources Impact Assessment, prepared by Coastal Resources Management, dated 1/12/04.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-03-447 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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 TO APPROVE THE PERMIT:

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 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.

III. SPECIAL CONDITIONS

1. Construction Responsibilities and Debris Removal

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

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

(b) Solid and Liquid Waste Management Measures:

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

(c) Petroleum Control Management Measures:

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

3. **Eelgrass Protection Plan**

The applicant shall carry out the Eelgrass Protection Plan included in the Marine Biological Resources Impact Assessment prepared by Coastal Resources Management, dated 1/12/04 as proposed.

IV. **FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

A. **PROJECT LOCATION AND DESCRIPTION**

The applicant proposes to add a 10 foot by 15 foot segment to an existing boat dock float, resulting in a 45 foot by 15 foot float attached to an existing 4 foot by 24 foot gangway, and an existing 4 foot by 19 foot pier. Only the float addition is proposed. No replacement or new pilings, or other development involving bottom disturbing activities are proposed. The subject site was surveyed for eelgrass and eelgrass was found. Thus, an Eelgrass Protection Plan is also proposed. The site was also surveyed for Caulerpa, and none was found. The float addition is proposed to be constructed off site at the builder's construction yard and then floated into place and attached to the existing float.

The subject site is located on Channel Road, near the Newport Harbor entrance. The majority of Newport Harbor is surrounded by private boat docks associated with private, residential development. The subject boat dock is similar in function to other docks associated with residential development in the immediate vicinity. The boat dock will be used solely for boating recreation purposes.

There is no public access at the subject site. The nearest public access exists at a small harbor-fronting public beach less than one block to the north. Additional public access exists approximately two blocks to the south at Jetty View Park and at the wide sandy ocean beach. The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 107-2226).

B. Marine Resources

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.

1. Eelgrass and other Sensitive Species Impacts

Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG).

A Marine Biological Resources Impact Assessment (Assessment) was prepared for the proposed project by Coastal Resources Management, and is dated January 12, 2004. The Assessment found eelgrass at the subject site (see exhibit C). Because no bottom disturbing activities are proposed, no immediate, permanent eelgrass displacement is anticipated. The Assessment states:

Eelgrass was located on the north, east, and south sides of the dock, extending 82 feet into the Harbor Entrance Channel. One small patch was located on the north side of the dock gangway, between the dock and the bulkhead. Eelgrass extended to the edge of the south side of the dock, and to within 6 feet on the north side of the dock where the proposed dock extension is proposed.

According to the Assessment, approximately sixty square feet of eelgrass will be shaded by a portion of the proposed float addition (see exhibit C). The applicant has included the

Eelgrass Protection Plan (EPP) described in Section 5.0 of the Assessment as part of the proposed project. The EPP includes a number of measures to protect the eelgrass at the subject site. These measures include construction methods such as disposing of debris appropriately, marking the location of the eelgrass beds in the project vicinity prior to initiation of construction, limiting work vessel draft to a maximum of 4 feet and precluding the presence of work vessels over the eelgrass if the tide is less than 2 feet. The EPP also recommends a post-project, National Marine Fisheries Service and Department of Fish & Game approved eelgrass survey be conducted within 120 days of completion of the project to determine whether any eelgrass at the subject site has been lost. If eelgrass losses are identified, the loss is proposed to be mitigated consistent with the Southern California Eelgrass Mitigation Policy (National Marine Fisheries Service 1991, as amended). The mitigation plan is proposed to be submitted for review and approval of the National Marine Fisheries Service and the Coastal Commission within 30 days of completion of the post-project survey.

The proposed recreational boat dock development and its associated structures do not result in the fill of coastal waters and are an allowable and encouraged marine related use. The proposed project includes an Eelgrass Protection Plan to minimize potential adverse impacts to the marine environment. Therefore, the Commission finds that the proposed development is consistent with Section 30230 of the Coastal Act regarding protection of marine resources.

2. Water Quality

The proposed dock work will be occurring on or within 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 and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

In addition, 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. Lower Newport Bay (Newport Harbor) provides a home for marine habitat and also provides opportunities for recreational activities. The Bay is contiguous to the Pacific Ocean.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes a special condition requiring the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine

resources. Such practices include proper boat cleaning and maintenance, management of solid and liquid waste, and management of petroleum products, all of which are associated with the long term berthing of the boat(s).

Therefore, only as conditioned to minimize construction related impacts, to follow the Best Management Practices, and to carry out the Eelgrass Protection Plan as proposed does the Commission find the proposed project consistent with Section 30230 and 30231 of the California Coastal Act with regard to protection of marine resources and water quality.

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 include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The subject site is in Newport Harbor and is seaward of the first public road. The nearest public access in the project vicinity is located less than one block north of the subject site at a small public sandy beach. Public access is also available approximately 2 blocks south of the subject site at the wide sandy public beach that runs the length of the Balboa Peninsula, and at Jetty View Park. The proposed development, as conditioned, will not result in any significant adverse impacts to existing public access or recreation in the area. Therefore the Commission finds that the project is consistent with the public access and recreations policies of the Coastal Act.

D. Local Coastal Program

Section 30600(c) 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. Pursuant to Section 30604(a) the permit may only be issued 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.

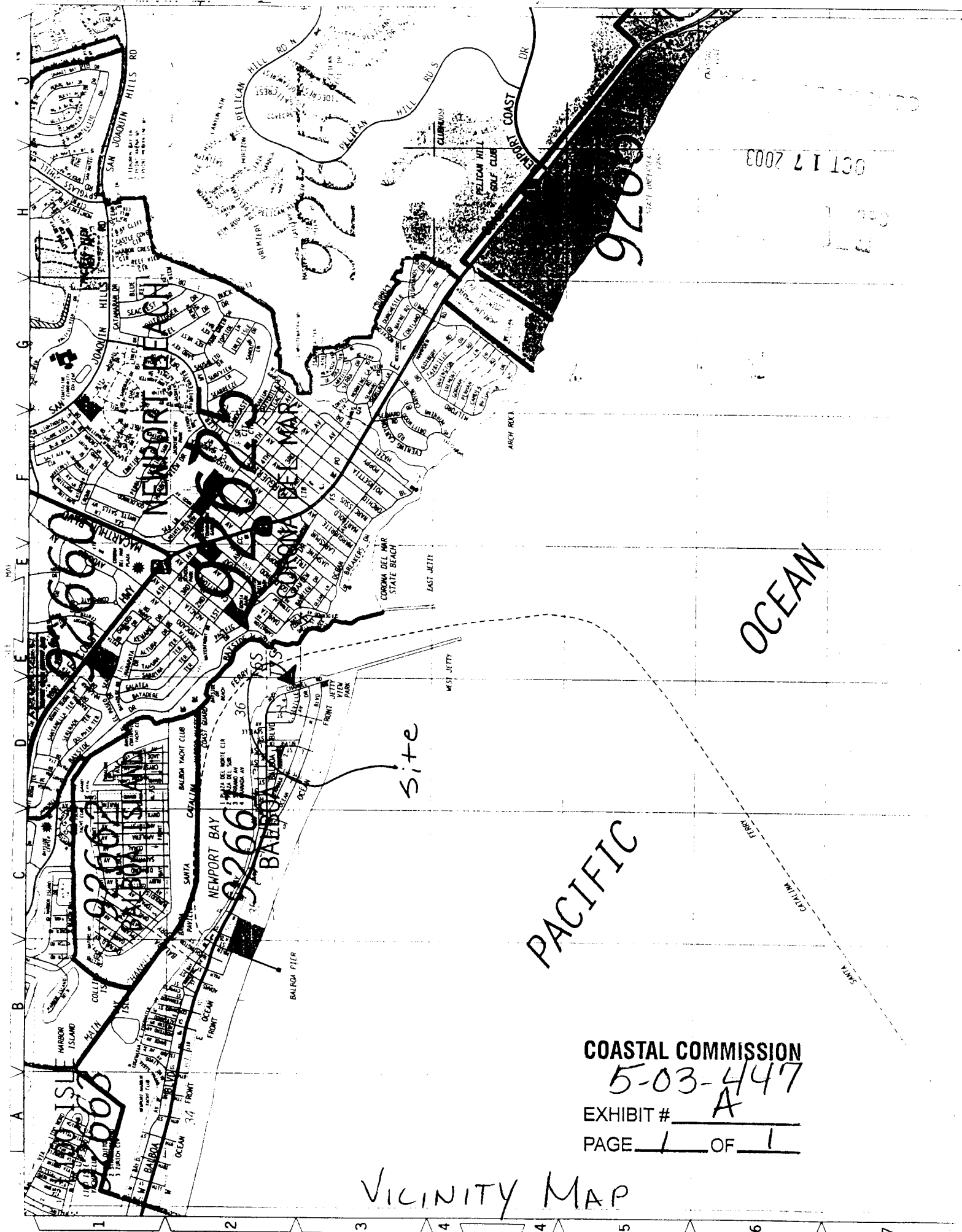
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation program. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be 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. In addition, the certified LUP contains policies for the protection of marine resources and habitat. As conditioned, the proposed project is not expected to create additional adverse impacts to marine resources, marine habitat, water quality and the marine environment and therefore attempts to insure the highest quality of water as well as protection of marine habitat in the Bay and along the beaches.

As conditioned 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 Program) 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 (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment. Potential impacts on marine habitat, eelgrass, and water quality have been identified and mitigated.

The proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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EXHIBIT # A

PAGE 1 OF 1

VICINITY MAP

ORANGE CO.

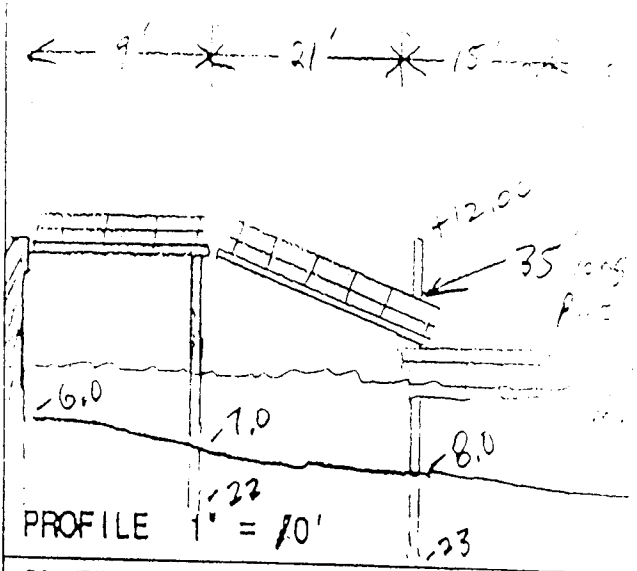
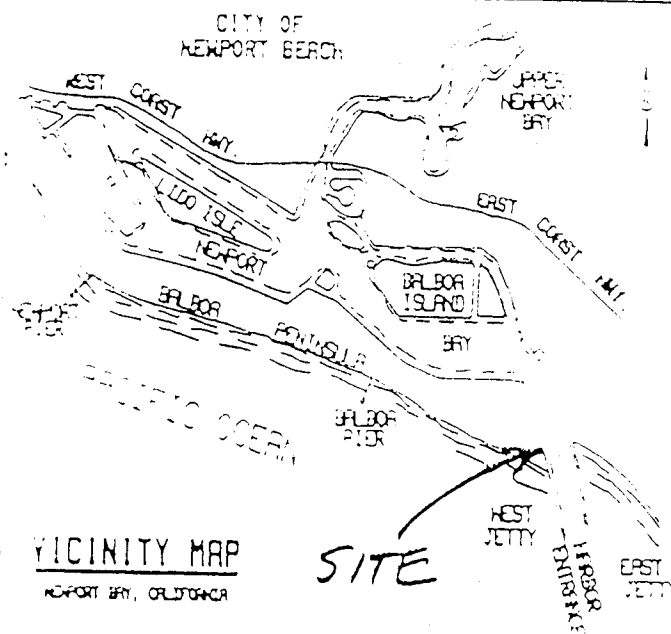
MAP

MAP

10/15/2007

#107-2226 1 of 2

CITY OF NEWPORT BEACH



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

Scope of work:

Install 10' x 15'
dock addition

EEL GRASS INSPECTION

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

See Attached
Chris Miller - eelgrass survey

SIGNATURE

107-2226

PERMIT #

10/8/03

DATE

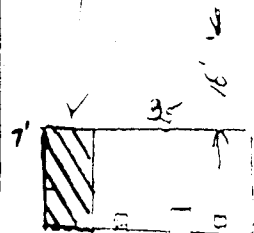
eelgrass negotiations between Swift Slip
& Agencies are currently underway

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

10/8/03 Chris Miller

Newport Bay

10'x15' Dock Addition



Existing
4'x24' GANTRY
EXISTING
4'x18' Pier

OCT 17 2003

California Coastal Commission
South Coast District Office
APPROVED
Permit No. _____

By: _____

EFFECTIVE
Date: _____

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

Chris Miller

8/16/01

5-03-447
EXHIBIT B

PLAN VIEW

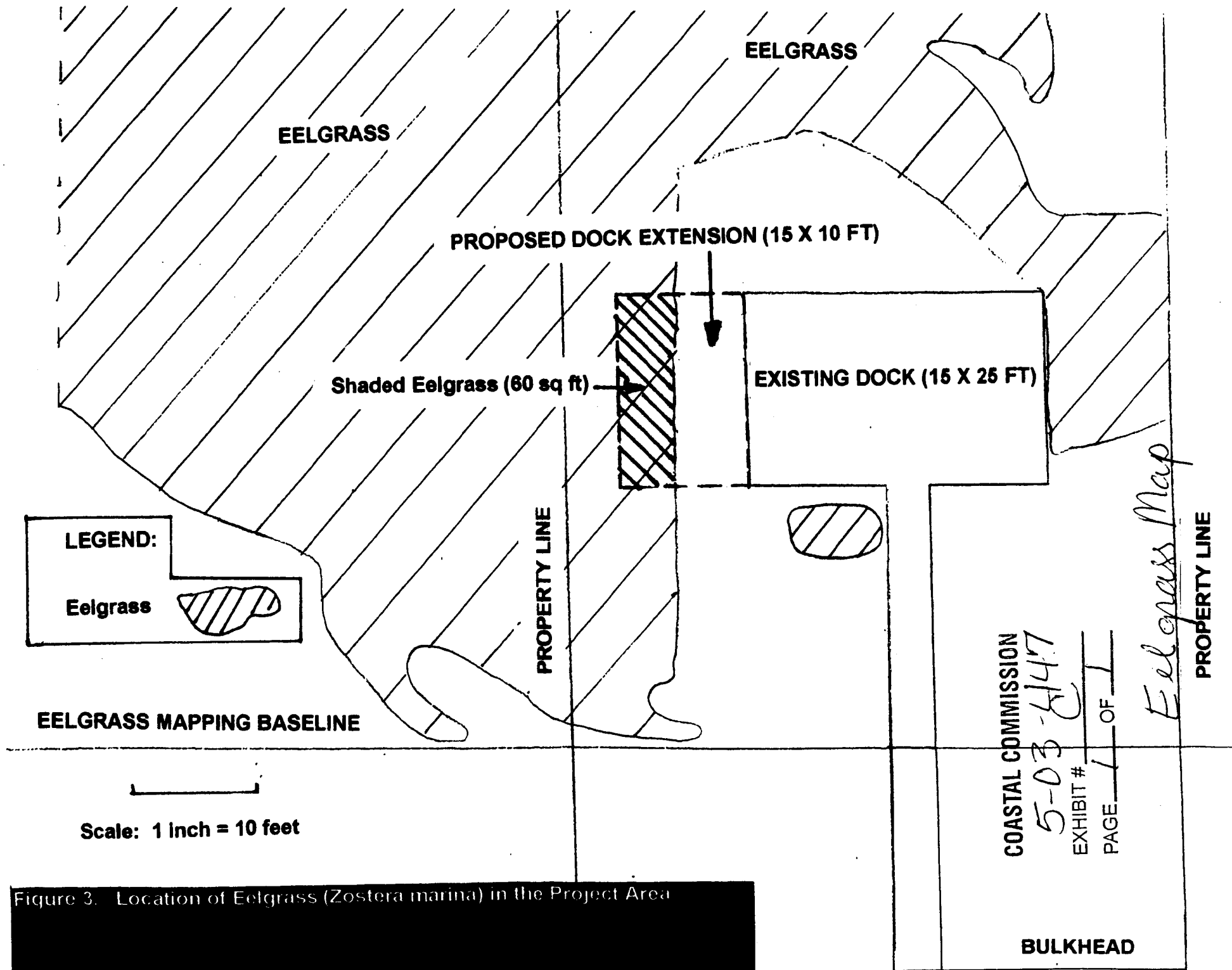


Figure 3. Location of Eelgrass (*Zostera marina*) in the Project Area

SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY

(Adopted July 31, 1991)

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

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

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

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

Protocol for mapping shall consist of the following format:

1) Coordinates

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

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

2) Units

Transects and grids in meters.

Area measurements in square meters/hectares.

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

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

3. Mitigation Site. The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

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

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

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

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

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

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

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

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

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

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

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

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

within the control or transplant bed. Specific criteria are as follows:

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

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

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

MTA = mitigation transplant area.

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

D_t = transplant deficiency in density criterion (%).

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

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

Four conditions apply:

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

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

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11. Exclusions.

1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than $\frac{1}{2}$ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed $\frac{1}{2}$ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the $\frac{1}{2}$ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.

2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

(last revised 2/2/99)