

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: June 23, 2004
49th Day: August 11, 2004
180th Day: December 20, 2004
Staff: FSY-LB **FSY**
Staff Report: August 19, 2004
Hearing Date: September 8-10, 2004
Commission Action:

**STAFF REPORT: MATERIAL AMENDMENT****APPLICATION NO.:**

5-03-459-A1

RECORD PACKET COPY**APPLICANT:**

CSP Properties, Attn: John Firestone

PROJECT**LOCATION:**

92 Linda Isle, Newport Beach (Orange County)

ORIGINAL PROJECT DESCRIPTION:

Remove and replace the existing floating dock, gangway and pilings. The new dock will be 8.25' x 51' with a 12' x 12' landing. In addition, there will be a new 3' x 24' gangway and three (3) new 14" diameter concrete piles will be installed.

CURRENT DESCRIPTION OF 5-03-459-A1:

Remove the existing gangway, float and piles and install a new "U" shaped float constructed of Douglas Fir and Trex and consisting of two (2) 4' x 30' fingers, a new 10' x 24' backwalk, a new 3' x 24' gangway and three (3) new 14" diameter concrete piles.

SUMMARY OF STAFF RECOMMENDATION:

The subject application is for a change to the original design of a boat dock associated with a single-family residential development. Commission staff recommends that the Commission **APPROVE** the proposed project subject with **Two (2) Special Conditions**. The **Special Conditions** consist of: **1)** notification that all standard and special conditions of the original permit as previously approved remain in effect; and **2)** submittal of Regional Water Quality Control Board Approval.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan and Coastal Development Permit #5-03-459.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of Newport Beach Harbor Resources Division dated June 18, 2004

EXHIBITS:

1. Vicinity Map
2. Assessor Parcel Map
3. Project Plans

PROCEDURAL NOTE:

Coastal Development Permit Amendments

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The amendment request involves a change to the original design of a boat dock associated with a single-family residential development. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to require a permit amendment request if it would lessen the intent of the previously approved permit. The proposed amendment to undertake additional repairs would not lessen the intended affect of 5-03-459, as amended, because the project only changes the design of the proposed dock, consistent with the original permit. Therefore, the Executive Director accepted the amendment request for filing.

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit amendment application with special conditions.

MOTION:

I move that the Commission approve permit amendment CDP #5-03-459-A1 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit amendment 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 amendment for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, 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. SPECIAL CONDITIONS

1. Prior Conditions

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permit 5-03-459, as amended, remain in effect. All standard and special conditions previously imposed under CDP 5-03-459, as amended, apply equally to the amendment.

2. Regional Water Quality Control Board Approval

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by Regional Water Quality Control Board, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project Location, History and Description

The subject site is located at 92 Linda Isle in the City of Newport Beach (Exhibits #1-2). Single-family residences characterize the subject site and the surrounding area.

Previously at the February 2004 Coastal Commission Hearing, the Commission approved Administrative Permit #5-03-459-[CSP] for the removal and replacement of an existing floating dock, gangway and pilings. The new dock was a 8.25' x 51' with a 12' x 12' landing. In addition, there were a new 3' x 24' gangway and three (3) new 14" diameter concrete piles installed. Three (3) Special Conditions were imposed regarding: 1) construction responsibilities and debris removal; 2) a pre-construction eelgrass survey; and 3) a pre-construction *Caulerpa Taxifolia* survey.

The proposed project (Exhibit #3) now involves the following: removing the existing gangway, float and piles and installing a new "U" shaped float consisting of two (2) 4' x 30' fingers, a new 10' x 24' backwalk, a new 3' x 24' gangway and three (3) new 14" diameter concrete piles. The new dock will be constructed of Douglas Fir and TREX Composite.

The dock project will be used for boating related purposes to serve one (1) single-family residential developments. A previous eelgrass survey dated October 16, 2003 completed for the original permit #5-03-459 was submitted for the current project as well. This eelgrass survey stated that there was no eelgrass discovered within 15 feet of the project area. The project is agendized for the September 2004 Coastal Commission Hearing and by this time the eelgrass survey would not continue to be valid since it is now the next period of active growth of eelgrass (typically March through October). Thus, an up-to-date pre-construction eelgrass survey must be conducted. The site has not been surveyed for *Caulerpa taxifolia*, therefore a 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.

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division.

No evidence has been submitted which shows that the Regional Water Quality Control Board's (RWQCB) evaluation and determination regarding the proposed project, or verification that no review is necessary. Therefore, **Special Condition No. 2** has been imposed which requires that the applicant submit evidence that the Regional Water Quality Control Board (RWQCB) has reviewed the proposed project.

In addition, it is not known if the applicant has applied for a permit from the U.S. Army Corps of Engineers. However, before obtaining authorization from the U. S. Army Corps of

Engineers, the applicant must first obtain Coastal Zone Management (CZM) consistency certification from the California Coastal commission.

Coastal public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island (Exhibit #1).

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 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.

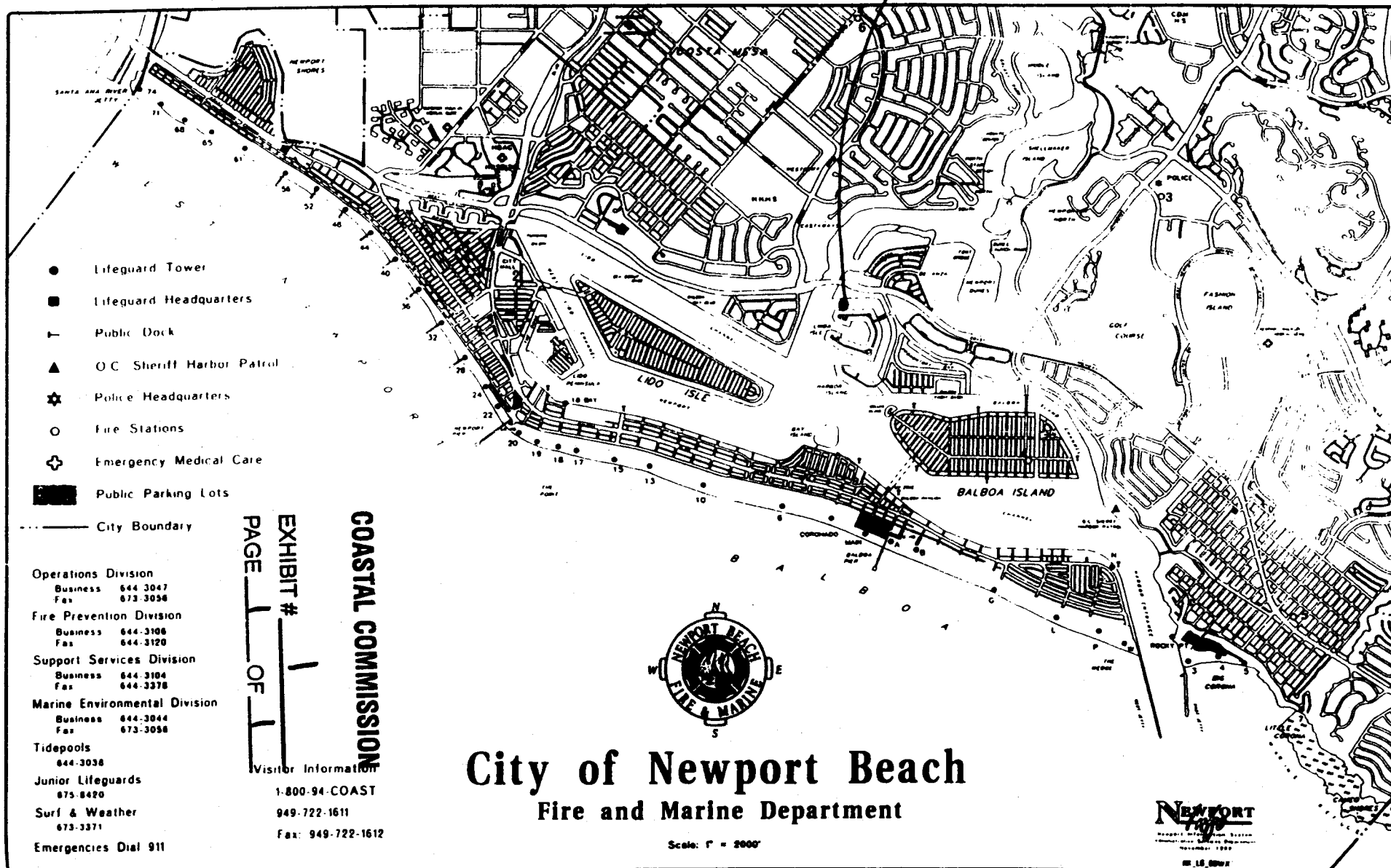
D. Local Coastal Program

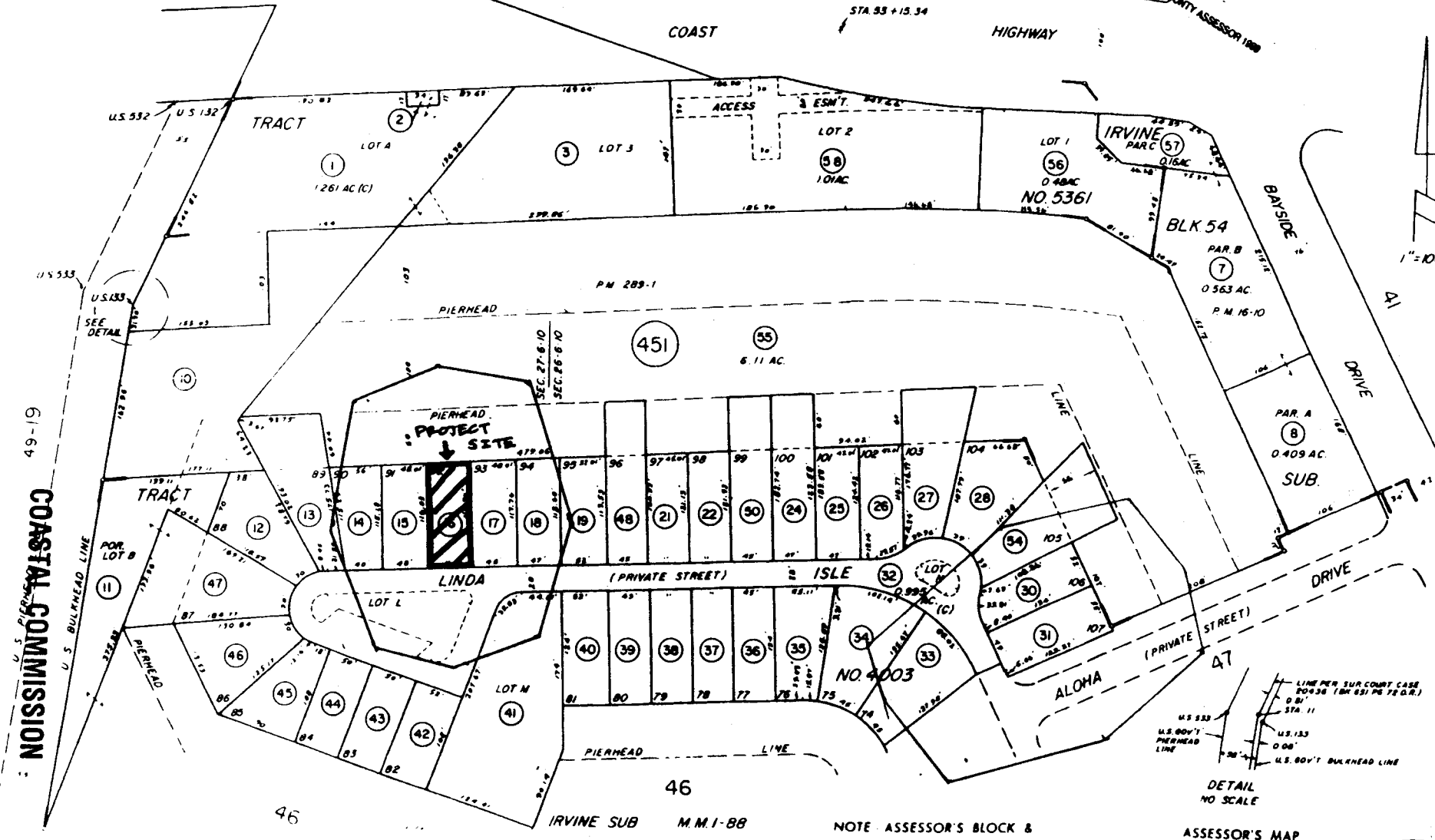
The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, 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)

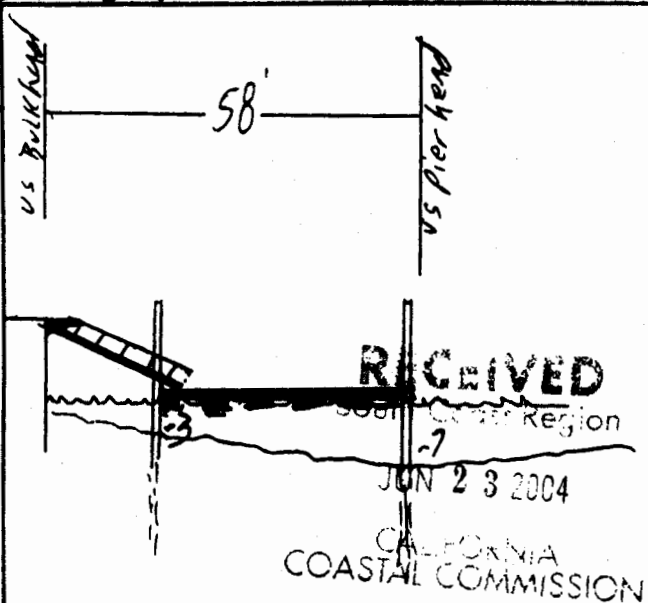
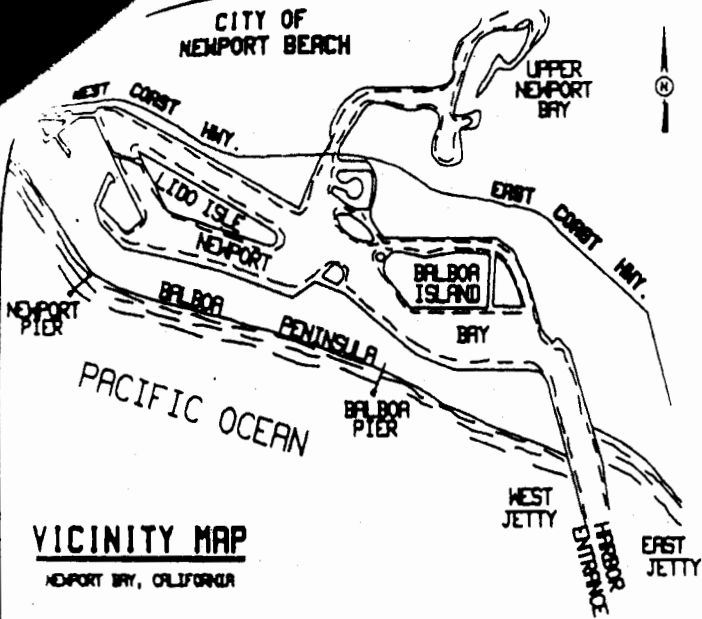
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the 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.

PROTECT
site





OF NEWPORT BEACH



PROFILE 1" = 30'

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

SCOPE OF WORK:
Remove Existing Float & Gangway.
Install New U-Shaped Float with 4'x30' Fingers
& 10'x24' BACKWALK. Install
3-New 14" pile & 3'x24' Gangway.

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

Chris Miller - See Approved eelgrass report

SIGNATURE

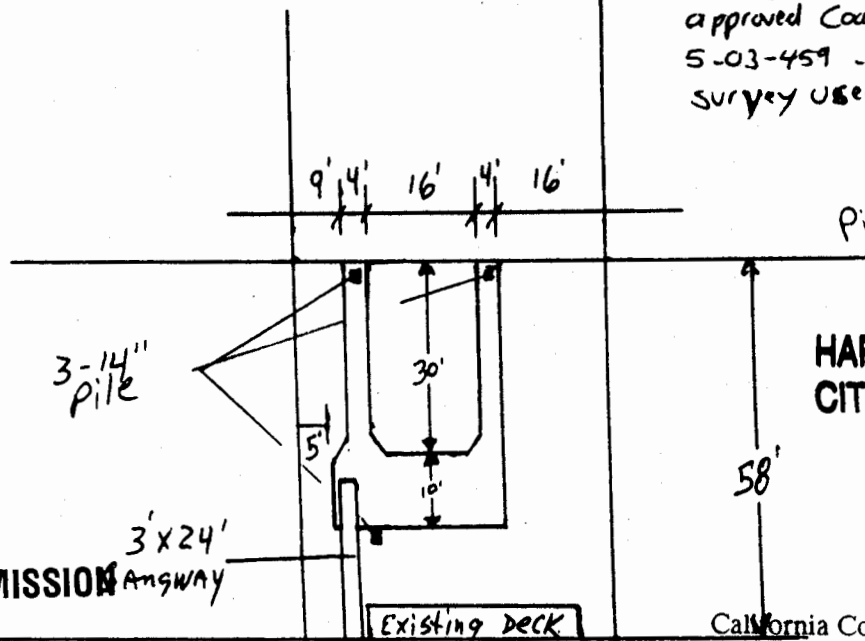
133-92

10/14/03

PERMIT #

DATE

* Configuration change from approved Coastal Permit, 5-03-459. Previous eelgrass survey used.



HARBOR RESOURCES D
CITY OF NEWPORT BEACH

Chris Miller
6/18/04

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 1

California Coastal Commission
South Coast District Office
APPROVED B-03-459-A1
Permit No. _____

By: _____

EFFECTIVE
Date: **PLAN VIEW 1" = 30'**