

CALIFORNIA COASTAL COMMISSION

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Filed: 2/10/05
49th Day: 3/31/05
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Staff: MV-LB
Staff Report: 4/21/05
Hearing Date: 5/11-13/05
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-05-047
APPLICANT: JERRY FULLER TR
AGENT: SWIFT SLIP DOCK & PIER BUILDERS
PROJECT LOCATION: 16572 Somerset Lane
Huntington Beach, Orange County

PROJECT DESCRIPTION: Remove existing boat dock and replace with a new "U" shaped boat dock with two 4' by 49' fingers, a 4' by 26' backwalk, and a 3' by 20' gangway. Three 14" diameter piles are also proposed, one of which is to be relocated from the existing dock. Also, construction of a 47' long concrete deck cantilevered 5' beyond the bulkhead is proposed.

LOCAL APPROVALS RECEIVED: City of Huntington Beach Approval in Concept dated 1/6/05.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with seven special conditions which require: 1) submittal of evidence that the applicant has obtained all permits, leases or other authorizations necessary from the California State Lands Commission; 2) evidence of legal interest (lease) in the project area; 3) notice that approval of this permit does not waive any public rights that may exist on the site; 4) proper construction methods be employed during construction of the cantilevered deck; 5) application of appropriate BMPs; 6) an eelgrass survey; and, 7) a caulerpa taxifolia survey.

SUBSTANTIVE FILE DOCUMENTS: City of Huntington Beach certified Local Coastal Program (used as guidance in this area of original permit jurisdiction).

I. STAFF RECOMMENDATION:

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

MOTION: I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

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 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. California State Lands Commission Approval

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by California State Lands Commission, 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 California State Lands Commission. 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.

2. Legal Interest

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to carry out the proposed project and all conditions of approval of this permit.

3. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. 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.

5. 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.

6. 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.

7. 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 applicants 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 applicants 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 applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project area and all *C. taxifolia* discovered within the buffer area have 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 applicants have 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:

A. PROJECT LOCATION AND DESCRIPTION

The applicant proposes to remove an existing boat dock and replace it with a new "U" shaped boat dock with two 4' by 49' fingers, a 4' by 26' backwalk, and a 3' by 20' gangway. Three 14" diameter piles are also proposed, one of which is to be relocated from the existing dock. Also proposed is construction of a 47' long concrete deck cantilevered 5' beyond the bulkhead. The subject site is located at 16572 Somerset Lane, on Harbour Channel in Huntington Harbour in the City of Huntington Beach. The nearest public access in the area is at Sunset County Beach, located approximately ½ mile south of the subject site.

The proposed deck would cantilever over and the dock would be within, the waters of Huntington Harbor. In this area of Huntington Harbor, the water area is owned by the State of California, administered by the California State Lands Commission (CSLC). The State Lands Commission in a previous letter regarding a similar project in Huntington Harbour, (see exhibit C), states: "However, the CSLC reserves the right to make a final determination as to its interest relative to this project. We would ask that the CCC [California Coastal Commission] require the CSLC jurisdictional determination and, if applicable a lease, as a condition of any Coastal Development Permit that is proposed for this project." Thus special conditions are imposed which require the applicant to obtain all necessary permits and legal interest (lease) that the State Lands Commission may require before issuance of this coastal development permit. If CSLC ultimately determines that no

additional permits or lease is necessary, the Executive Director could accept a letter from CSLC stating this conclusion. Furthermore, a special condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

The site has been surveyed for eelgrass and no eelgrass was discovered within 15 feet of the project area. In addition, Special Condition 7 requires a *Caulerpa taxifolia* survey not more than 90 days prior to commencement of construction. The 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, subsequent surveys will be required. Special conditions 6 and 7 identify the procedures necessary to be completed prior to beginning construction in the case the surveys expire prior to commencement of construction. In addition, special conditions 6 and 7 identify post-construction eelgrass and *Caulerpa taxifolia* procedures.

The subject site is in an area of the Commission's original permit jurisdiction. However, the City's certified Local Coastal Program may be used as guidance. The land use designation at the site is Open Space – Water (OS – W). The site is zoned Open Space Water Recreation. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private cantilevered decks abutting residential uses, and with Chapter 210, which provides standards for cantilevered decks in Huntington Harbor in the Open Space Water Recreation zone.

Most of the existing residences that front along the waters of Huntington Harbor have cantilevered decks and private boat docks. The proposed deck and dock are similar in function to the other cantilevered decks and docks associated with residential development within Huntington Harbor. The proposed development is consistent with past Commission actions in the area. Thus the proposed deck will have no adverse impact on coastal access or resources in the project vicinity, and is consistent with the Chapter 3 policies of the Coastal Act.

B. Recreational 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 with Sections 30224 and 30233 of the Coastal Act.

C. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as

conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. WATER QUALITY

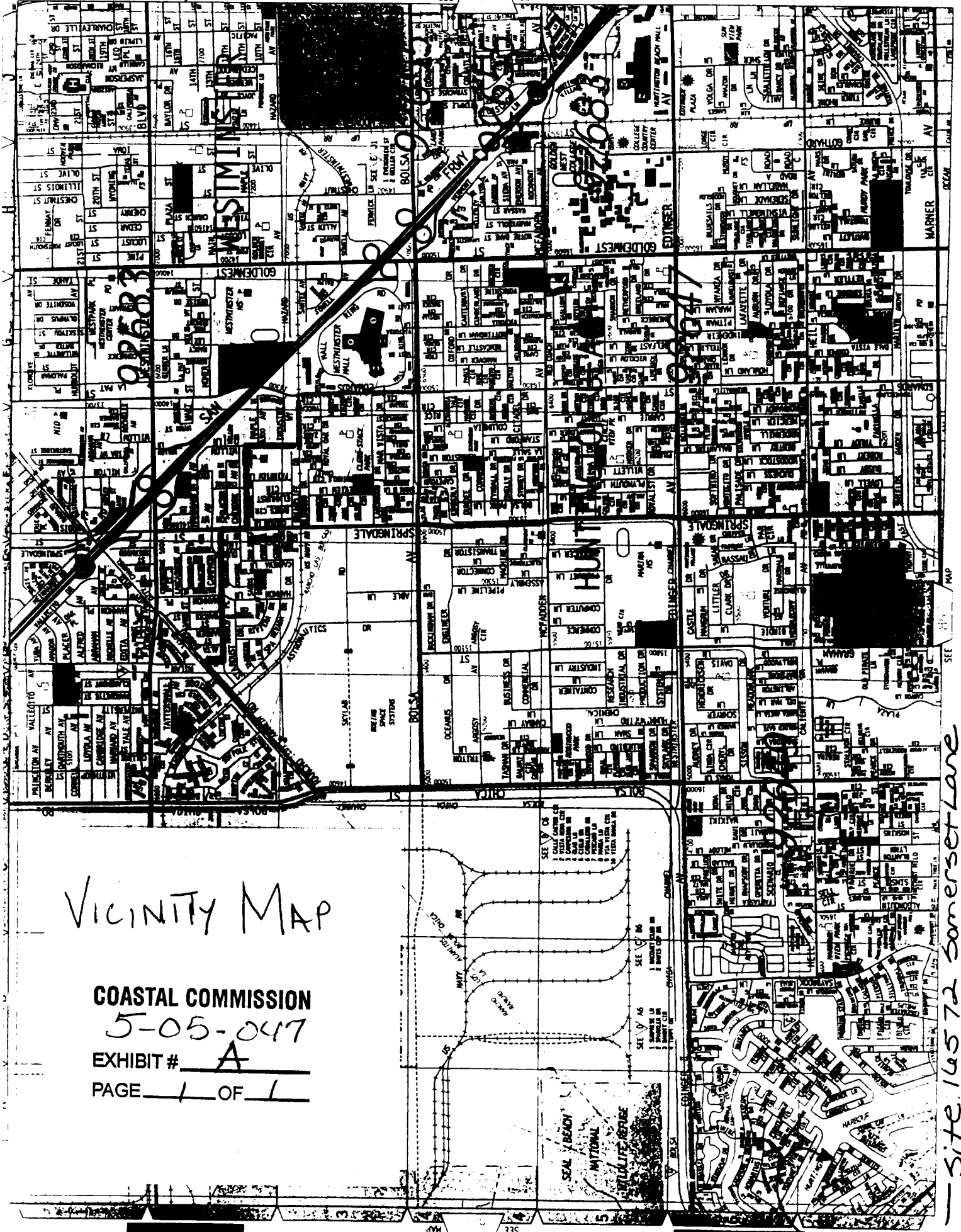
The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive, drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. An LCP for the City of Huntington Beach was effectively certified in March 1985. However, the proposed development is occurring within an area of the Commission's original permit jurisdiction, due to the project location seaward of the mean high tide line. Consequently, the standard of review is the Coastal Act and the City's LCP is used only as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.



VICINITY MAP

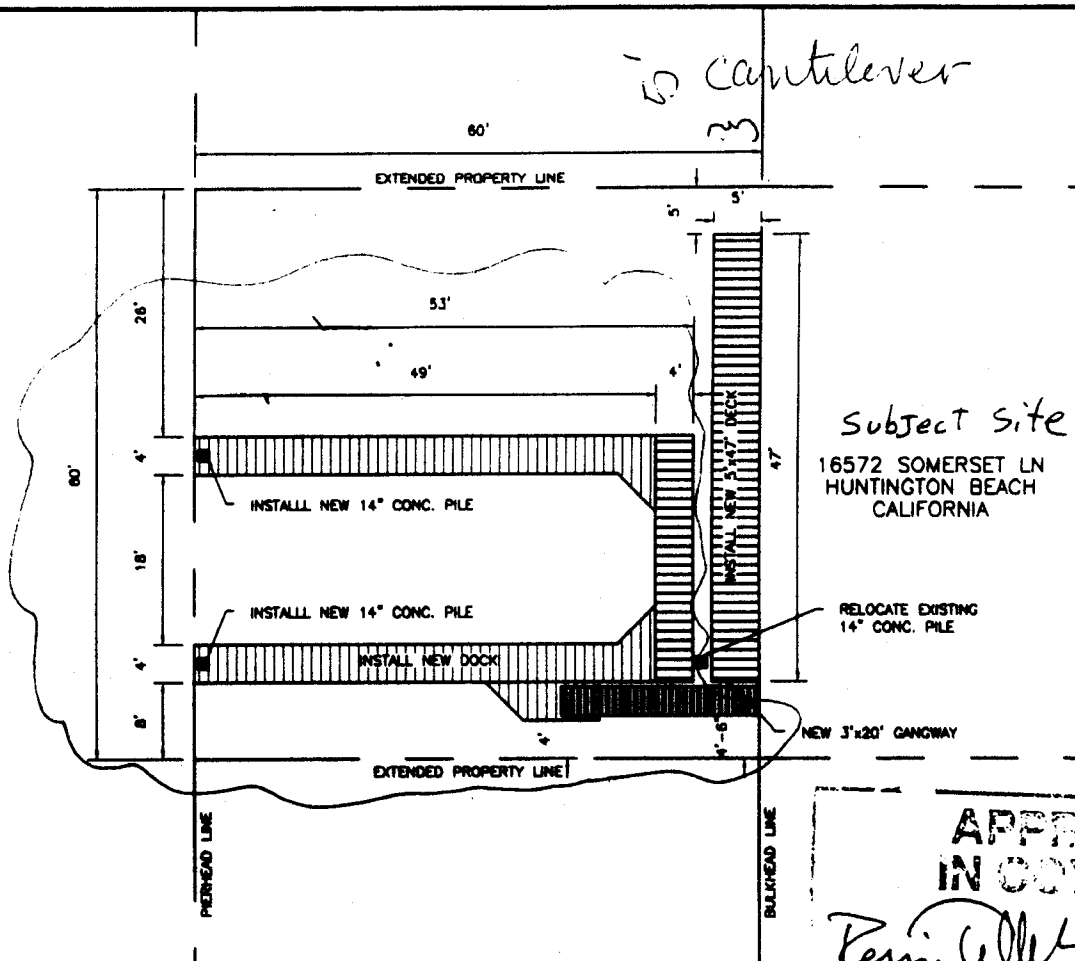
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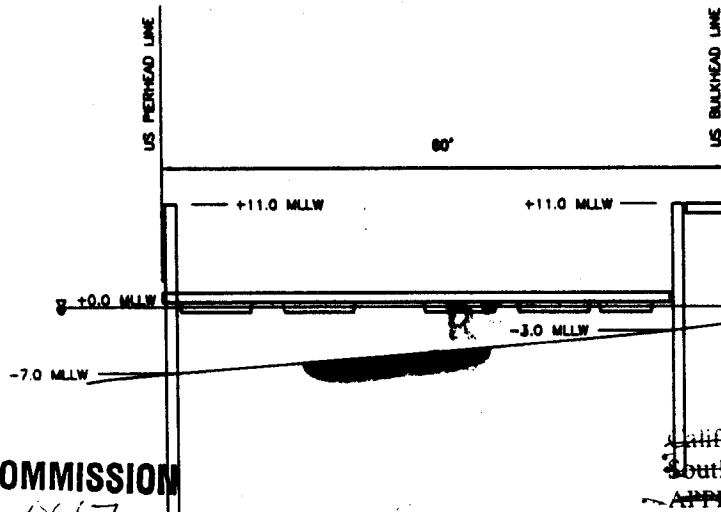
EXHIBIT # A

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Site 16572 Somerset Lane



PROPOSED DOCK LAYOUT
SCALE 1"=20'

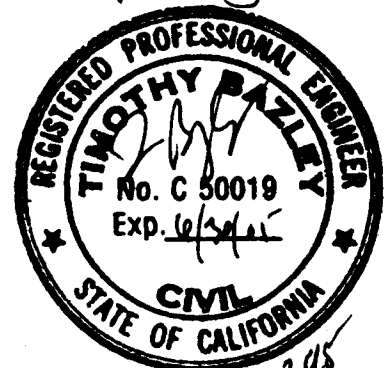


PROPOSED DOCK PROFILE
SCALE 1"=20'

**APPROVED
IN CONCEPT**

Kevin Allen 2/8/09

Projecting Deck Only



COASTAL COMMISSION
5-05-047
EXHIBIT # B
PAGE 1 OF 1

California Coastal Commission
South Coast District Office
APPROVED
Permit No. 5-05-047

By: *[Signature]*
EFFECTIVE Date: 2/8/09
GRAPHIC SCALE
20 0 20
1"=20'



Planning and Engineering Services
For Marine and Volantrest Resorts

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DESIGNED BY PT
CHECKED BY PT
DATE BY TB

SITE LAYOUT

| | | | |
|-------------|--------|------|----------|
| SCALE | 1"=20' | DATE | 01-18-05 |
| PROJECT NO. | 2180-D | | |
| DATE | L-1 | | |
| SHEET # | 1 OF 1 | | |