

CALIFORNIA COASTAL COMMISSION

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

**F 9c****ADDENDUM**

February 4, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM F 9c**, COASTAL COMMISSION PERMIT APPLICATION **#5-07-350-(City of Newport Beach)** FOR THE COMMISSION MEETING OF **February 8, 2008**.

Changes to Staff Report

Commission staff recommends modifications and additions to Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

1] Pages 3-4 – Modify Special Condition No. 2, as follows:

2. DOCK MANGEMENT PLAN

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a dock management plan. At a minimum, this plan shall provide for the following: i) the dock shall be used solely for the short term/transient docking of boats by the general public; ii) operating hours for the dock which shall allow boaters to dock for ~~at least~~ 3 hours; iii) operating hours for the dock shall prohibit overnight docking; iv) the dock shall not be used for commercial purposes, such as boarding and docking area for commercial vessels or charter boats or as a loading and unloading facility for the various commercial uses in the area. The dock will only be used to accommodate both the local and visiting boating public so they may disembark and enjoy the surrounding shops, restaurants, and public spaces.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2] Page 8 – Modify Section IV.A.2, as follows:

...No intervening changes...

2. Project Description

The proposed project consists of the following: installation of a new public dock for short-term/transient docking consisting of an 8' x 100' float; an 8' x 20' landing (gangway landing); a 4' x 80' ADA compliant gangway; a 6' x 10' landing off the wharf, approximately five (5) 14" diameter; and one (1) or two (2) "T" piles (Exhibit #2). The landing will be attached to the existing Rhine Wharf, which is supported by existing concrete piles. The new dock can accommodate various sizes of boats (i.e. four (4) 25-foot long boats) and is designed to provide greater public access from both the water and the Rhine Wharf promenade. **There is no cost to use this proposed public dock facility.**

...No intervening changes...

3] Pages 10– Modify Section IV.B., as follows:

...No intervening changes...

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The City's certified Land Use Plan (used as guidance) also strongly supports protection and enhancement of coastal access. The purpose of this project is to accommodate both the local and visiting boating public so they may disembark and enjoy the surrounding shops and restaurants; therefore, enhancing public's access to the coast. This new dock will satisfy the needs of both the visiting and local boating community as it will provide access to the nearby restaurants and shops. The proposed dock can accommodate various sizes of boats. **Also, there is no cost to use this proposed public dock facility.** One concern about the proposed new dock is the amount of time that boats will be allowed to dock. If the time allowed to use the dock were to be left open ended, there may be a possibility that some users would dock their boats all day at this new dock and would thus prevent other boat owners from using this dock and having an opportunity to visit the surrounding area. Other concerns relate to use of the dock for commercial purposes such as a boarding and docking area for commercial vessels or charter boats or as a loading and unloading facility for various commercial uses found in the area. The dock should only be used solely for the short term/transient docking of boats by the general public. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit a Dock Management Plan that would state who can use the docks and the available hours that boat owners would be able to use the dock. ~~At minimum, the~~ **The** boaters should be able to dock their boat for 3 hours.

...No intervening changes...

F9c

*A TOTAL OF THREE(3)
SIMILAR LETTERS
HAVE BEEN SUBMITTED.

AGENDA NUMBER F 9c

APPLICATION NUMBER 5-07-35 0

OPPOSED
EDWARD Fedishew

As a resident of Newport Beach, located directly across from the proposed docks, I strongly oppose.

To add this dock consisting of an 8' x 100' float; an 8' x 20' landing (gangway landing); a 4' x 80' ADA compliant gangway; a 6' x 10" landing off the wharf, approximately five(5) 14" diameter; and one (1) or two (2) "T" piles would create utter chaos.

First of all the construction would be an ongoing process for several months, obstructing the area. Currently there is construction and demolition going on. We have cranes and construction vehicles outside our home on a continuous basis. These crews are demolishing docks and removing debris. Our street is already being used as a construction area with trash left behind. Parts of the street are being used for vehicles making it impossible to get by and at times, difficult to get out of our garages. Photos are attached.

Once the docks are completed, we will have an increased amount of short-term boaters vying for the spots.

In addition, this neighborhood already has issues with parking. If you are not aware, many boaters stop at the docks to pick up additional passengers who have driven down to the area. This area is already congested. There are not enough parking places to accommodate the vehicles currently, much less all of the additional motorists. Not only that, people are constantly making illegal "U" turns over the double yellow lines which poses a hazard on Via Lido Drive. I have had to put cones in my drive as people are constantly pulling in my personal driveway to turn around, leaving tire marks. This deters some motorists; however with more traffic, it will be more difficult to stop them. After reading the report, it is apparent that this has not been taken in to consideration and needs to be addressed.

In the report it does not indicate who will be in charge of the maintenance and supervision of the docks once they are complete. This is a concern. Will this be another job for the Harbor Patrol or will there be a company in place making sure the docks are maintained and people are not abusing the privilege.

Lastly, as you are aware, the Rhine Canal is one of the dirtiest, most polluted bays in all of California. The city has conducted numerous tests over the years and has found that it would cost millions of dollars to clean the bay (health hazard). The money spent on the docks should be spent cleaning the channel. This is partly due to people disposing of waste in the canal. Do you have special forces policing this as well? This needs to be addressed as it is a health hazard

and will be compounded with the additional boats. Local residents cannot even swim in the bay without exposing themselves to infection and illness.

The houses on Via Lido are very expensive houses and condos and we pay high taxes. Due to the aforementioned information, it would be best for the community not to proceed with this project. If you need further information, you may contact me at 949-673-6132.

A handwritten signature in dark ink, appearing to read "Edward Fedishon", written over a horizontal line.

Edward Fedishon
617 Lido Park Drive
Newport Beach, CA 92663

Enc

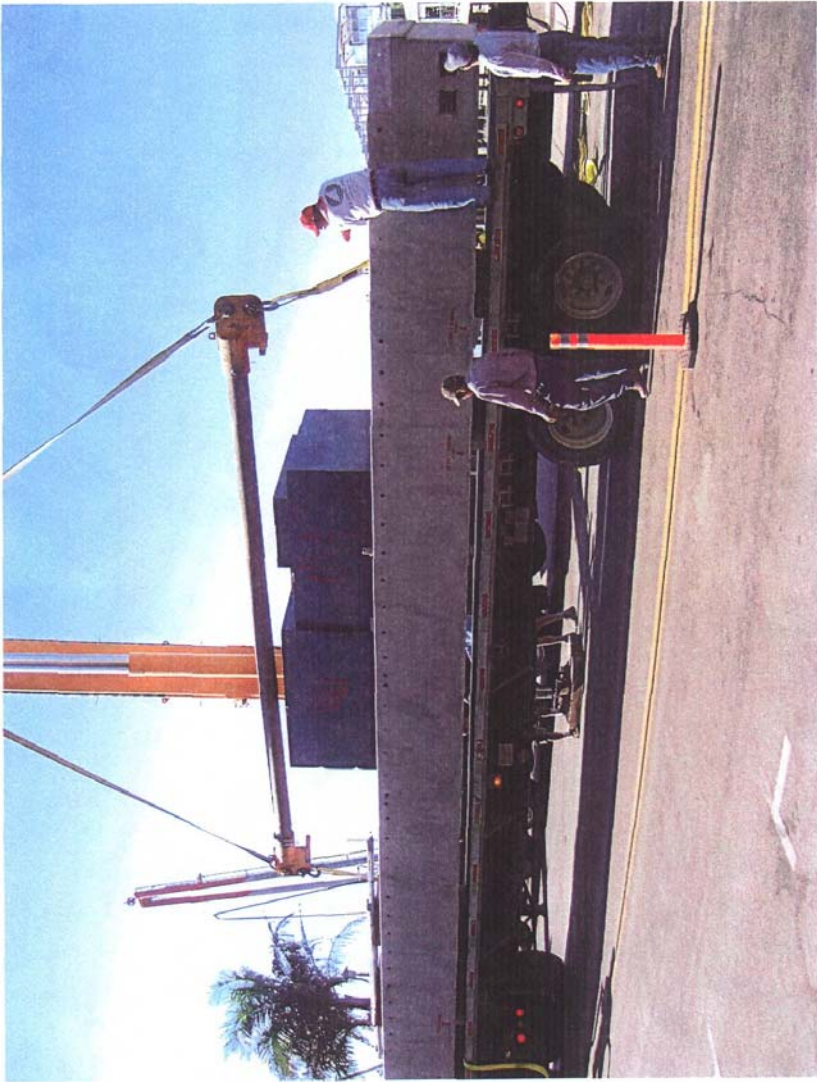


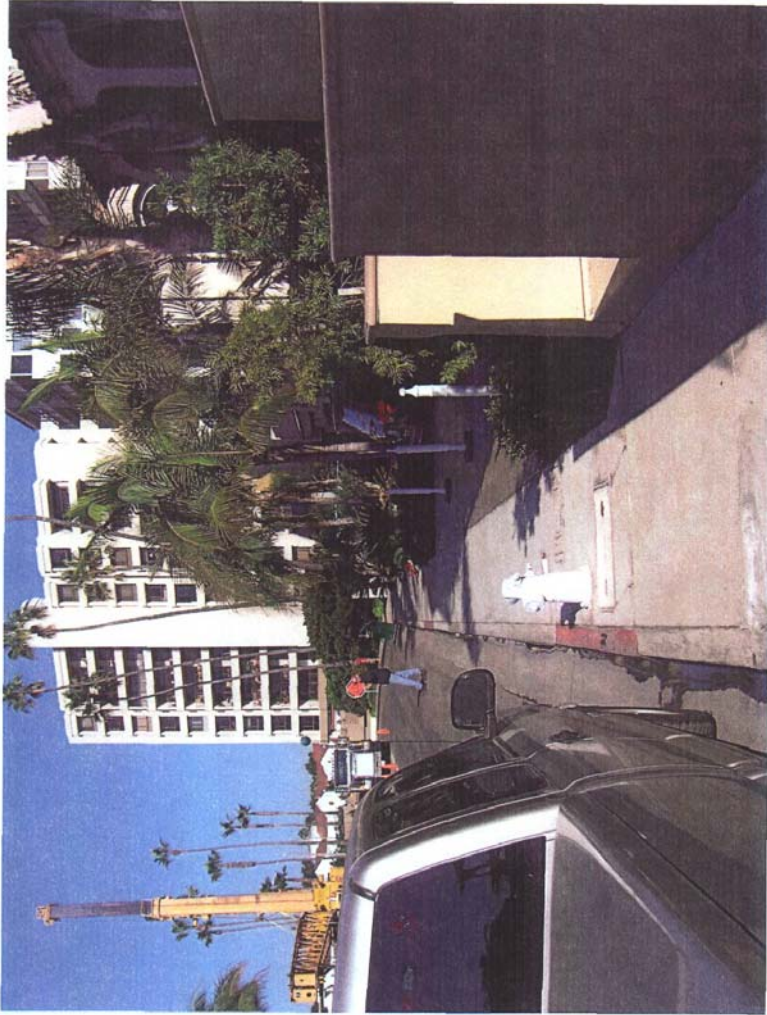
Blocking Drive 617 -
Fedishon

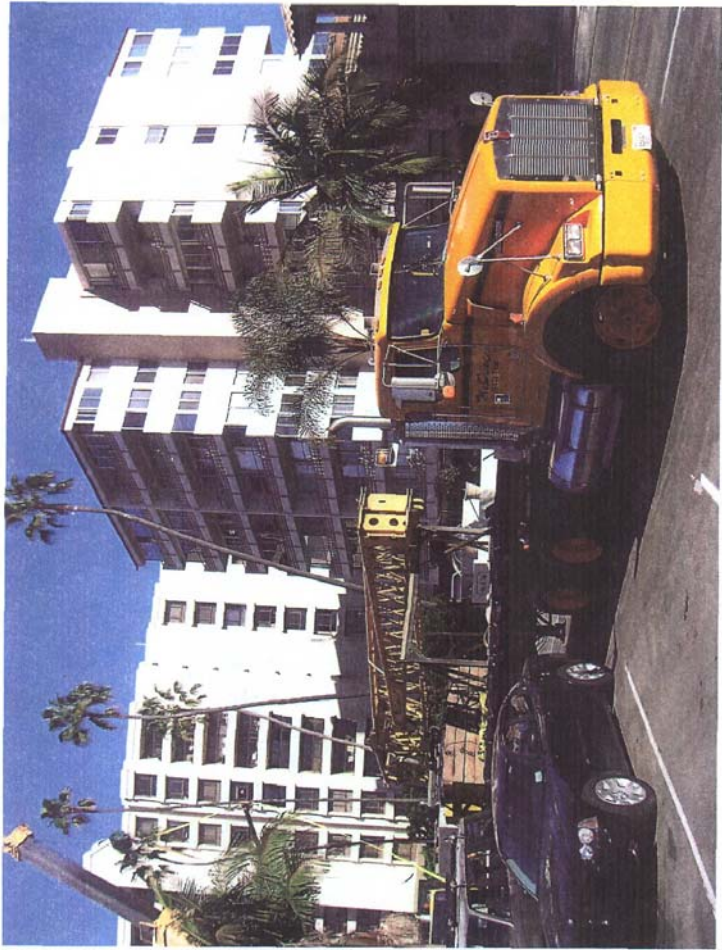




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CONES IN Drive
617- Fedishon







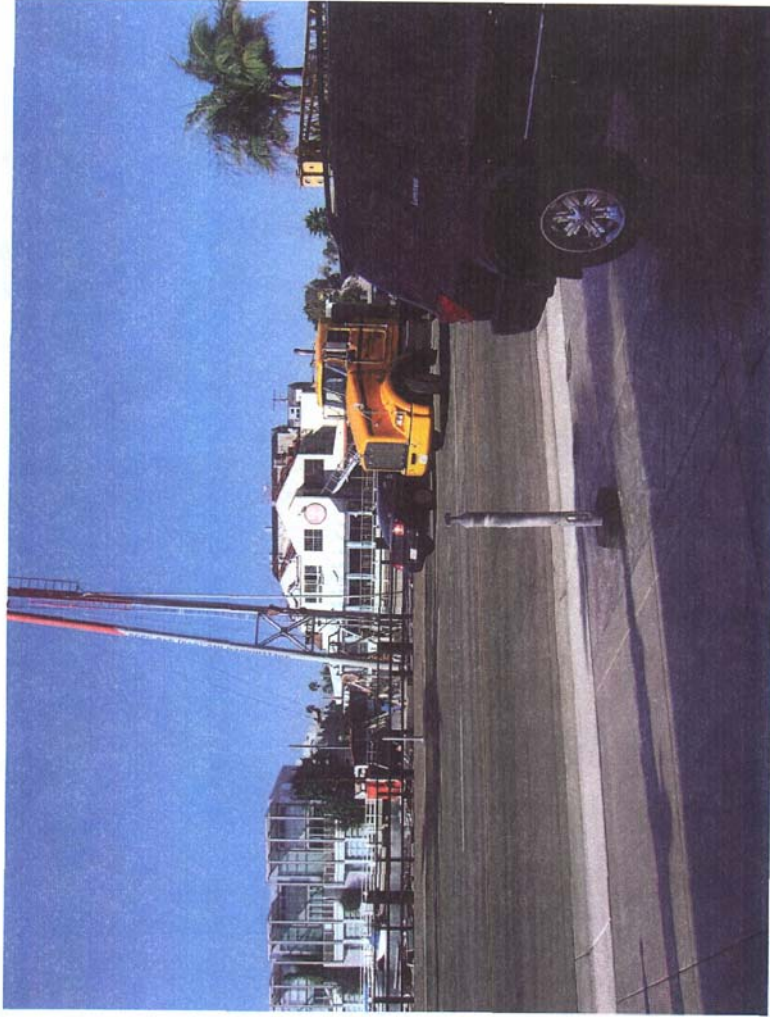




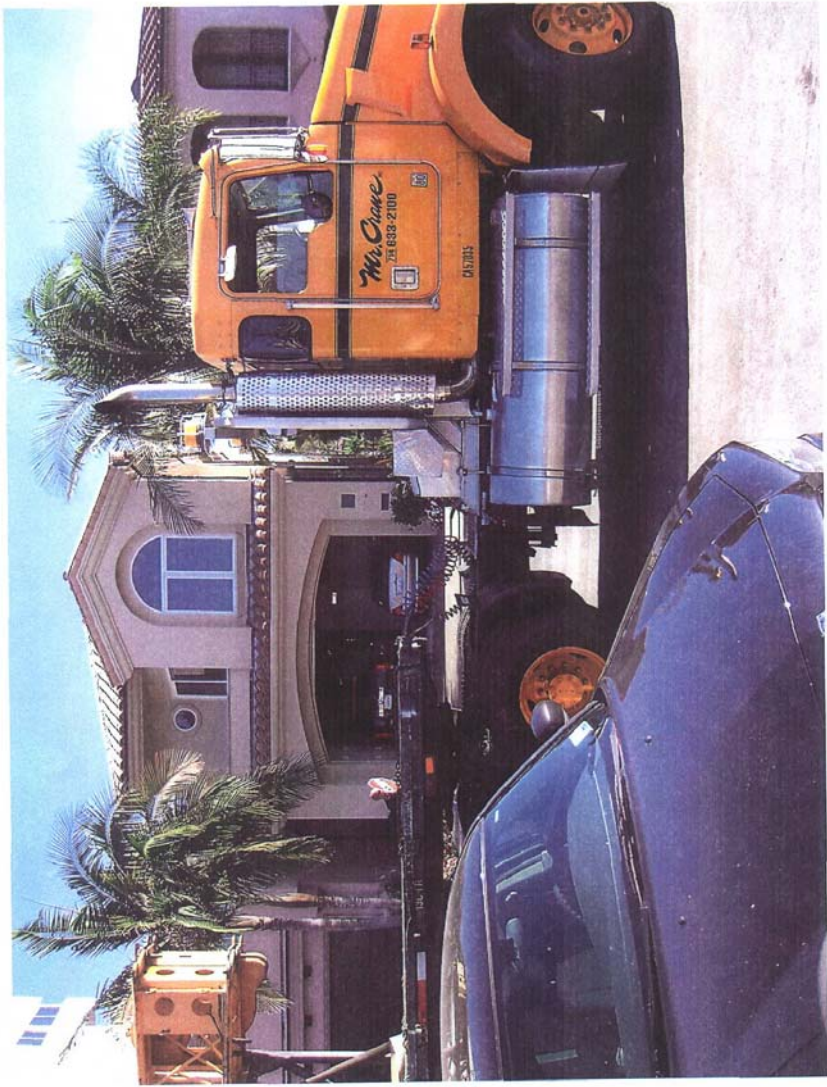


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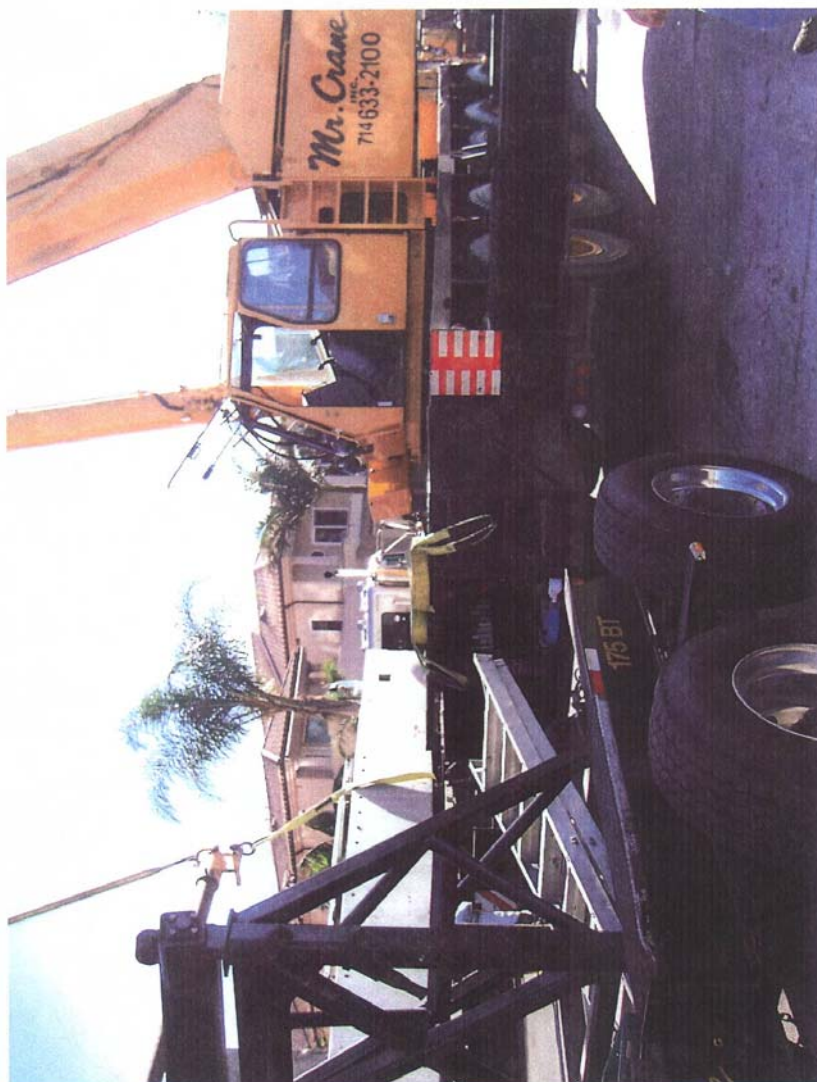
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615 - Buccola



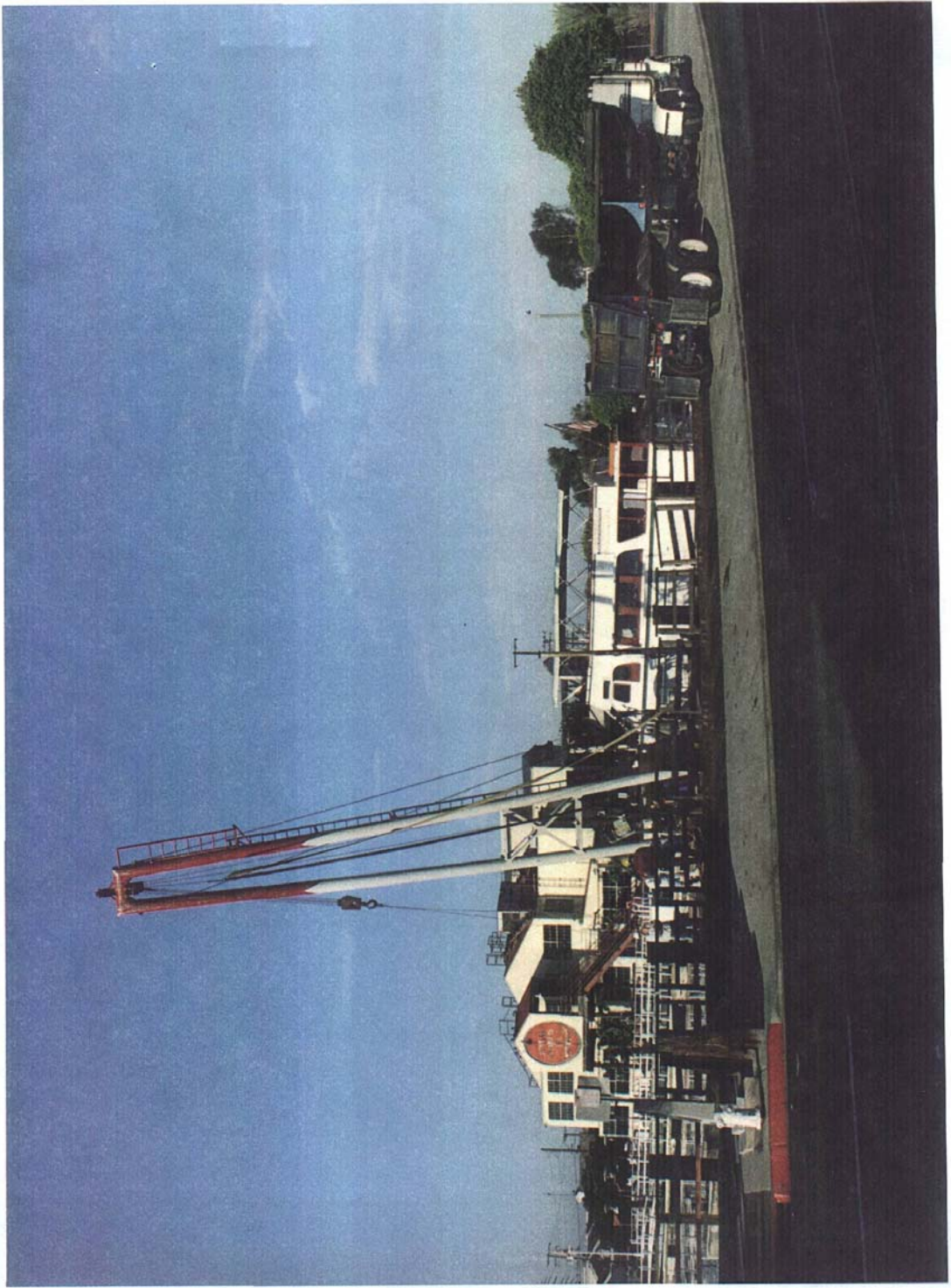


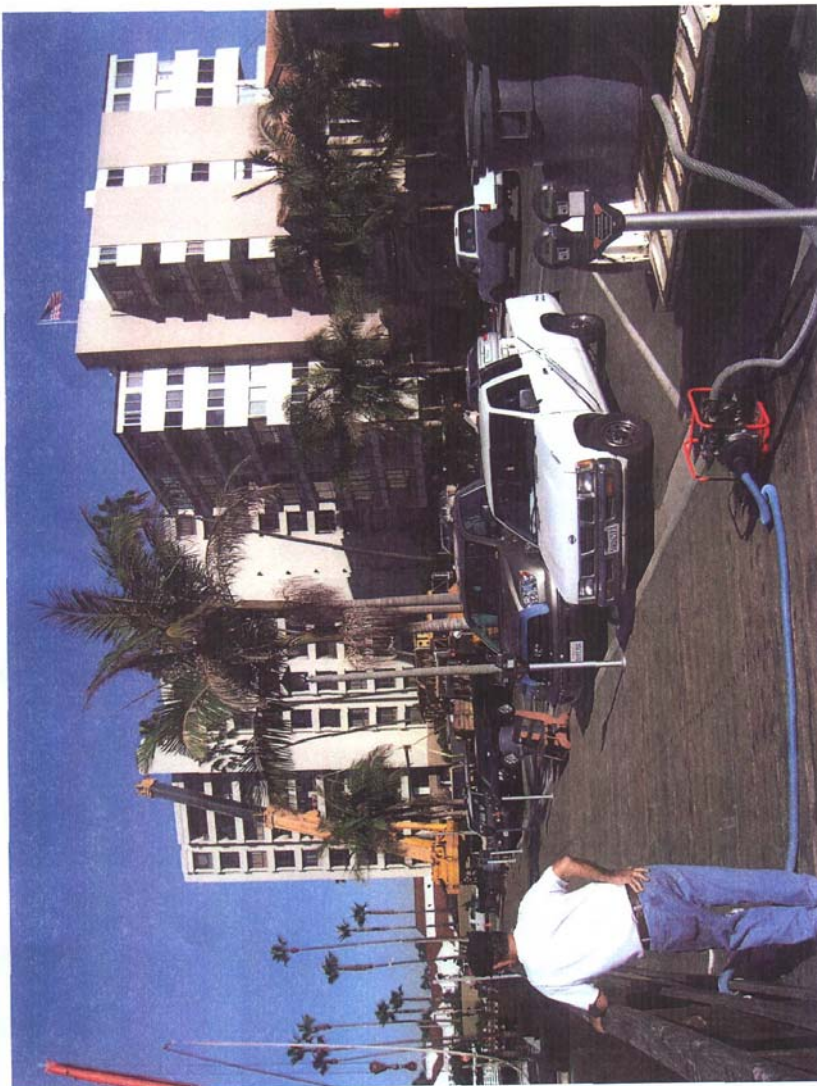


Pump?
What?





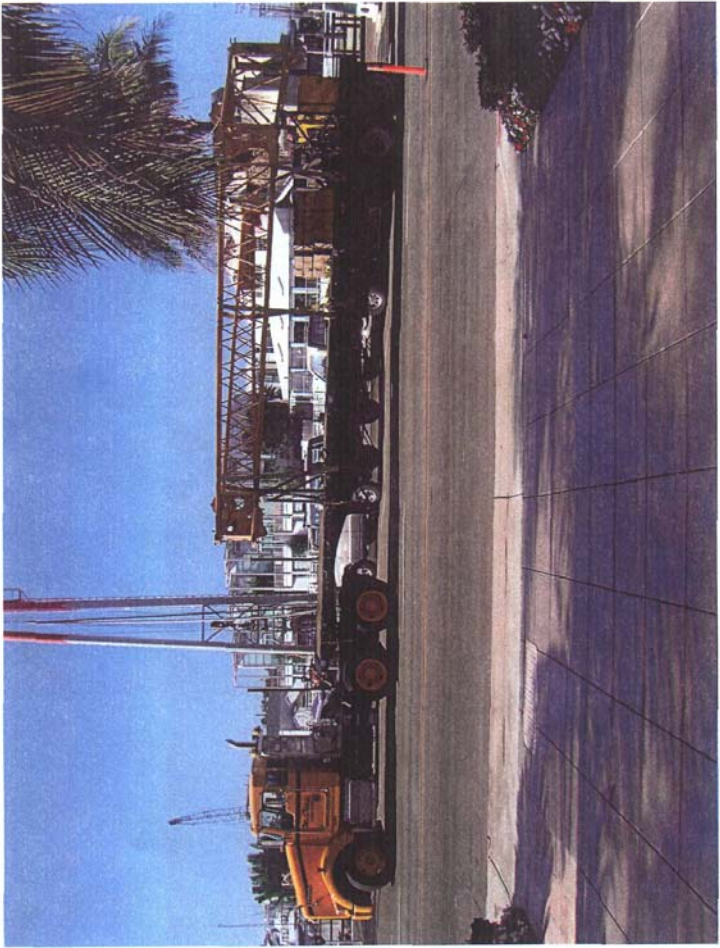




What is being pumped in bag











CALIFORNIA COASTAL COMMISSION

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F 9c

Filed: October 2, 2007
49th Day: November 20, 2007
180th Day: March 30, 2008
Staff: Fernie Sy-LB
Staff Report: January 17, 2008
Hearing Date: February 6-8, 2008
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-07-350

APPLICANT: City of Newport Beach Harbor Resources Division, Attn: Chris Miller

PROJECT LOCATION: End of Rhine Channel in Newport Bay adjacent to Lido Park Drive; City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Install a new public dock for short-term/transient docking consisting of: an 8' x 100' float; an 8' x 20' landing (gangway landing); a 4' x 80' ADA compliant gangway; a 6' x 10' landing off the wharf, approximately five (5) 14" diameter; and one (1) or two (2) "T" piles.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves the installation of a new public dock at the end of the Rhine Channel. The subject dock would be installed using mitigation funds obtained to offset the loss of public berthing areas that would occur in connection to a development proposal at 919 Bayside Drive (Coastal Development Permit No. 5-06-145). The major issues before the Commission relate to public access and water quality. Staff is recommending **APPROVAL** of the proposed project subject to **SIX (6) SPECIAL CONDITIONS** requiring: **1)** submittal of final project plans showing the final location of the proposed piles as well as the final type of materials to be used for the piles and dock; **2)** submittal of a Dock Management Plan; **3)** pre and post-construction eelgrass surveys and if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*; **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 buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*; **5)** the disposal of all demolition and construction debris at an appropriate location; and **6)** adherence to Best Management Practices to ensure the continued protection of water quality and marine resources.

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. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval-in-Concept dated August 30, 2007 from the City of Newport Beach Harbor Resources Division.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan.

LIST OF EXHIBITS

1. Vicinity Maps
 2. Site Plan
-

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-07-350 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 CONDCTIONS

1. **FINAL PROJECT PLANS**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) sets of final project plans (i.e. site plan, elevations, etc.). These revised final project plans shall be in substantial conformance with the project plans signed by the City of Newport Beach Harbor Resources Division dated August 30, 2007. The final location of the proposed piles will be identified as well as the final type of materials to be used for the piles and dock. Materials that will adversely impact water quality are prohibited. Preferred materials would consist of concrete piles and wood and Trex material for the dock.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **DOCK MANGEMENT PLAN**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a dock management plan. At a minimum, this plan shall provide for the following: i) the dock shall be used solely for the short term/transient docking of boats by the general public; ii) operating hours for the dock which shall allow boaters to dock for at least 3 hours; iii) operating hours for the dock shall prohibit overnight docking; iv) the dock shall not be used for commercial purposes, such as boarding and docking area for commercial vessels or charter boats or as a loading and unloading facility for the various commercial uses in the area. The dock will only be used to accommodate both the local and visiting boating public so they may disembark and enjoy the surrounding shops, restaurants, and public spaces.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **EELGRASS SURVEY(S)**

- 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 the 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 (mitigation:impact) on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. 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 legally required.

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 (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:
- 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), or their successors.
- 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 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 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.

5. **CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

The permittee shall comply with the following construction-related requirements:

- A. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to tidal and wave erosion and dispersion.
- B. Any and all debris resulting from construction activities shall be removed from the site within 24 hours 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. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.
- E. If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
- F. Measures shall be taken to ensure that barges do not ground and impact eelgrass sites.
- G. 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.
- H. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.

- I. Reasonable and prudent measures shall be taken to prevent any discharge of fuel or oily waste from heavy machinery, pile drivers, or construction equipment or power tools into coastal waters. The applicant and applicant's contractors shall have adequate equipment available to contain any such spill immediately.
- J. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- K. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- L. The applicant shall use the least damaging method for the construction of pilings and any other activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

6. BEST MANAGEMENT PRACTICES PROGRAM

By acceptance of this permit the applicant agrees that the water-borne docking 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 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:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed 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. The use of soaps that can be discharged by bilge pumps is prohibited.
2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

1. Project Location

The project site is located at the end of the Rhine Channel in the Rhine Wharf area in Newport Bay adjacent to Lido Park Drive in the Cannery Village area of the City of Newport Beach, County of Orange (Exhibit #1). This specific area is commonly referred to as the Rhine Wharf promenade, which serves as a public walkway along the Channel's end. This promenade is also adjacent to parking spaces located along Lido Park Drive. Currently, no access into or from the bay is available along this stretch where the proposed dock will be located; however, further to the west and east of this site there are docks which provide access to and from the Rhine Channel. The Cannery Village is a mixed-use area on the bay side of Newport Boulevard between 32nd Street and 26th Street on the Balboa Peninsula. It is a mixed-use area with commercial, industrial, and residential uses, including many of the marine industrial businesses serving the Newport Harbor area. The Cannery Village area is intended to serve as an active pedestrian oriented specialty retail area with a wide range of visitor serving, neighborhood commercial, and marine related uses permitted. The City of Newport Beach Land Use Plan (LUP) does not designate the specific location for a use; however, the adjacent areas are designated for Recreational and Marine Commercial use and the proposed project would adhere to these adjacent designated uses.

To the north of the project site is Lido Park Drive. To the east of the project site is the Bluewater Grill Restaurant. To the south of the project site is The Rhine Channel. To the west of the project site is The Cannery Restaurant (Exhibit #1).

The purpose of this project is to accommodate both the local and visiting boating public so they may disembark and enjoy the surrounding shops, restaurants and public spaces. This new dock will satisfy the needs of both the visiting and local boating community as it will provide access to the nearby restaurants and shops. The proposed dock can accommodate various sizes of boats.

2. Project Description

The proposed project consists of the following: installation of a new public dock for short-term/transient docking consisting of an 8' x 100' float; an 8' x 20' landing (gangway landing); a 4' x 80' ADA compliant gangway; a 6' x 10' landing off the wharf, approximately five (5) 14" diameter; and one (1) or two (2) "T" piles (Exhibit #2). The landing will be attached to the existing Rhine Wharf, which is supported by existing concrete piles. The new dock can accommodate various sizes of boats (i.e. four (4) 25-foot long boats) and is designed to provide greater public access from both the water and the Rhine Wharf promenade.

While the applicant has submitted plans that depict the footprint of the proposed dock, the final locations of the proposed piles and the exact type of construction materials is not known as the City intends to ask for design/build bids from various marine contractors. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit final project plans, which identify the final location of the piles as well as the final type of materials to be used for the piles and dock..

The funds necessary to construct this new public dock were made available through Coastal Development Permit No. 5-06-145-(UGS Development) that was approved at the February 2007 Coastal Commission Hearing. CDP No. 5-06-145 was for the demolition of an existing 64-unit apartment complex and creation of a parcel map for 17 single-family residential lots. A component of this project was to limit the 34-existing docks on site to the new 17-residential leaseholders, which made the project inconsistent with policies of the City of Newport Beach's certified Land Use Plan as well as Section 30224 of the Coastal Act. In order to mitigate this impact to public access, the project was conditioned (Special Condition No. 8) to provide an in-lieu fee in the amount of \$240,000.00 to design, permit, and construct a public dock, with not less than 100-feet of wharfage are, for the short term/transient docking of boats in Newport Harbor at the Rhine Channel Wharf. Thus, the funding for the proposed new public dock was made available by CDP No. 5-06-145.

B. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall

be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The City's recently updated certified Land Use Plan (LUP) also contains the following policies that would apply to the proposed development:

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Public Access and Recreation/Berthing and Storage, Policy 3.3.2-7 states,

Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dingy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The City's certified Land Use Plan (used as guidance) also strongly supports protection and

enhancement of coastal access. The purpose of this project is to accommodate both the local and visiting boating public so they may disembark and enjoy the surrounding shops and restaurants; therefore, enhancing public's access to the coast. This new dock will satisfy the needs of both the visiting and local boating community as it will provide access to the nearby restaurants and shops. The proposed dock can accommodate various sizes of boats. One concern about the proposed new dock is the amount of time that boats will be allowed to dock. If the time allowed to use the dock were to be left open ended, there may be a possibility that some users would dock their boats all day at this new dock and would thus prevent other boat owners from using this dock and having an opportunity to visit the surrounding area. Other concerns relate to use of the dock for commercial purposes such as a boarding and docking area for commercial vessels or charter boats or as a loading and unloading facility for various commercial uses found in the area. The dock should only be used solely for the short term/transient docking of boats by the general public. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit a Dock Management Plan that would state who can use the docks and the available hours that boat owners would be able to use the dock. At minimum, the boaters should be able to dock their boat for 3 hours.

CONCLUSION

To minimize the adverse impacts upon public access, **ONE (1) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Dock Management Plan. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30210, 30212, 30213, 30224, and 30240 (b) of the Coastal Act.

C. WATER QUALITY AND THE MARINE ENVIRONMENT

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).

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. An eelgrass survey took place on September 17, 2007 by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the February 2008 Coastal Commission Hearing and construction may not take place until March and by that time the eelgrass survey would not continue to be valid since it will be past the period of active growth. Thus, an up-to-date eelgrass survey must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of eelgrass.

2. Caulerpa taxifolia

Around 1999/2000, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). Huntington Harbor provides similar habitat to that found in Newport Harbor.

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 fishing¹.

¹ References

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

Chisholm, J.R.M., M. Marchioretta, 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.

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.

On September 17, 2007, the site was also surveyed for *Caulerpa taxifolia* and none was found. This survey was completed on September 17, 2007, and is only valid for 90 days. The project is agendaized for the February 2008 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* surveys would not continue to be valid since it had passed 90 days from when the surveys were completed. Thus, an up-to-date pre-construction *Caulerpa taxifolia* survey must be conducted.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 4**, which 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 legally required.

3. Water Quality

The proposed project consists of the following: installation of a new dock consisting of an 8' x 100' float; an 8' x 20' landing (gangway landing); a 4' x 80' ADA compliant gangway; a 6' x

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.

10" landing off the wharf, approximately five (5) 14" diameter; and one (1) or two (2) "T" piles.

The proposed project is located in and over the coastal waters of Newport Harbor (Lower Newport Bay). Newport Bay is on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the harbor does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal established for this waterbody. 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. Further, 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 Sections 30230 and 30231 of the Coastal Act, which require the protection of biological productivity, public recreation, and marine resources.

a. Construction Impacts

The proposed development will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The Bay provides an opportunity for water oriented recreational activities and also serves as habitat for marine life. Because of the coastal recreational activities and the sensitivity of the Bay habitat, potential water quality issues must be examined as part of the review of this project.

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, the Commission imposes **SPECIAL CONDITION NO. 5**, which outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

SPECIAL CONDITION NO. 5 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.

As states previously, the applicant has submitted plans that depict the footprint of the proposed dock, but the final locations of the proposed piles and the exact type of construction materials is not known as the City intends to ask for design/build

bids from various marine contractors. An issue with approving a dock project without knowing what the proposed materials will be, is that a certain material might be used to would have an adverse impact on water quality. For example, if steel piles were to be used, they may at times be treated and coated with a material that would have an adverse impact to water quality. Another example, is that some piles are coated with plastic. The Commission is concerned about the use of plastic in the marine environment due to the possible deterioration of the pile coating and subsequent increase in marine debris. Since plastic is an inorganic material, it does not biodegrade, but rather continually breaks down into ever-smaller pieces. The presence of plastics in the coastal and ocean environment is both widespread and harmful to human and marine life. Consequently, if used, it is necessary for the Commission to impose a special condition requiring maintenance of the polyethylene or polypropylene coating that encases the steel pilings. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit final project plans, which identify the final location of the piles as well as the final type of materials to be used for the piles and dock..

b. Maintenance

The proposed dock project will allow for the docking of boat(s) by the public. Some maintenance activities if not properly regulated could cause adverse impacts to the marine environment. In general, the proposed dock shouldn't be used as an area for boat owners to perform maintenance. However, in the event such maintenance does occur, the following requirements must be adhered to. Certain maintenance activities like cleaning and scraping of boats, improper discharges of contaminated bilge water and sewage waste, and improper management of petroleum or other liquid or solid waste, are major contributors to the degradation of water quality within boating facilities. As mentioned above, Lower Newport Bay (Newport Harbor) provides a home for marine habitat and also provides opportunities for recreational activities.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes **SPECIAL CONDITION NO. 6**, which 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 are associated with the docking of the boat(s) (more thoroughly explained in **SPECIAL CONDITION NO. 6** of this permit).

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 applicant has applied for a permit from the U.S. Army Corps of Engineers.

CONCLUSION

To minimize the adverse impacts upon water quality, **FOUR (4) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** requires the applicant, prior to commencement of development, to survey the project area for the presence of eelgrass. **SPECIAL CONDITION NO.**

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 applicants 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 legally required. **SPECIAL CONDITION NO. 5** requires that the applicant dispose of all demolition and construction debris at an appropriate location. **SPECIAL CONDITION NO. 6** requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

D. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. In addition to the policies listed elsewhere in these findings, the Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Biological Resource Protection/Marine Habitats, Policy 4.1.2-1 states,

Maintain, enhance, and where feasible, restore marine resources.

Biological Resource Protection/Marine Habitats, Policy 4.1.2-2 states,

Provide special protection to marine resource areas and species of special biological or economic significance.

Biological Resource Protection/Marine Habitats, Policy 4.1.2-5 states,

*Continue to require *Caulerpa* protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.*

Biological Resource Protection/Eelgrass Protection and Restoration, Policy 4.1.5-1 states,

*Avoid impacts to eelgrass (*Zoostera marina*) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2. to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.*

Coastal Resource Protection/Water Quality, Policy 4.3.2-22 states,

Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

The proposed development, as conditioned, 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)

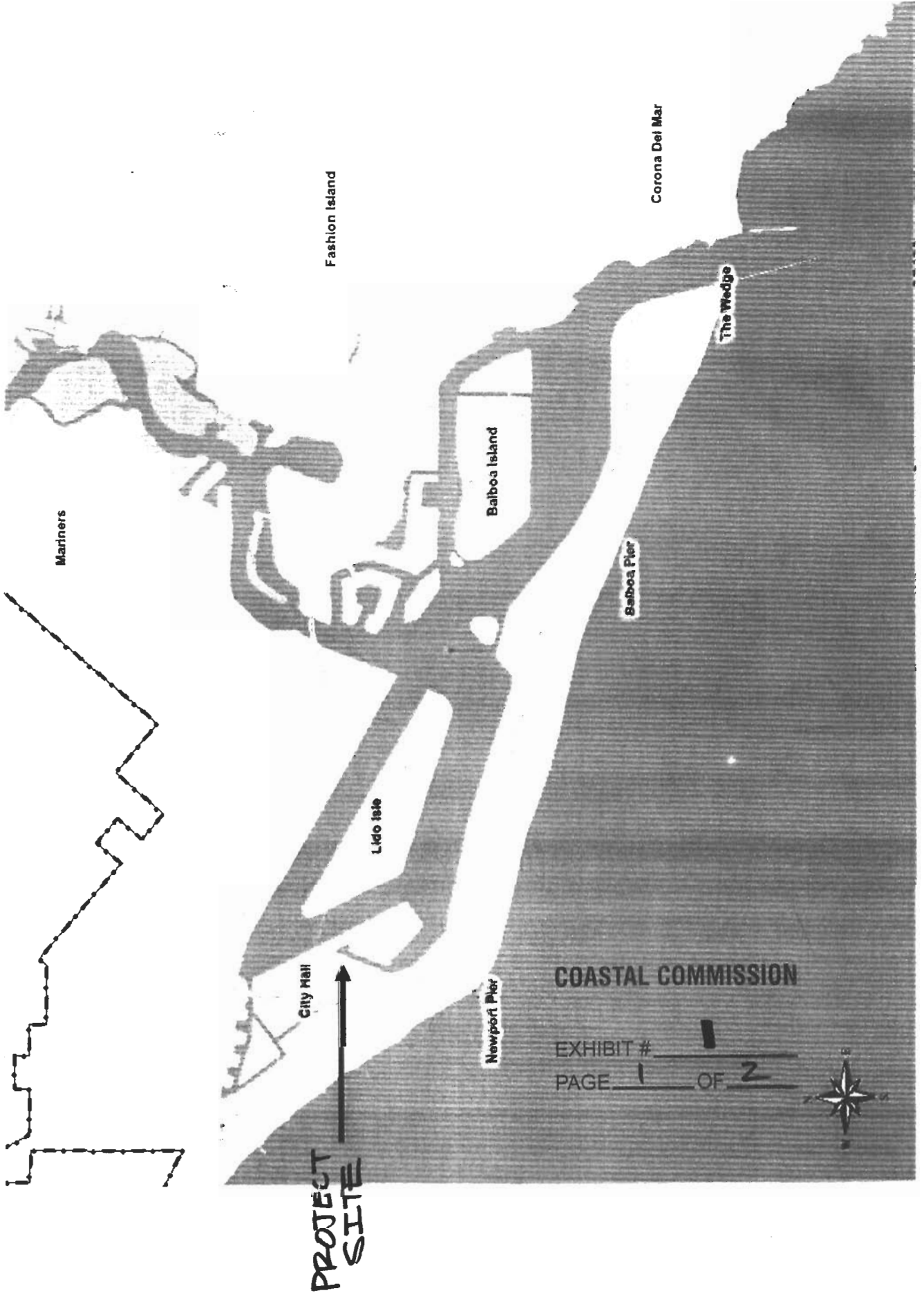
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 City of Newport Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to be Categorical Exempt (Class 3, Item a).

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. The Commission is imposing **SIX (6) SPECIAL CONDITIONS** requiring: **1)** submittal of final project plans showing the final location of the proposed piles as well as the final type of materials to be used for the piles and dock; **2)** submittal of a Dock Management Plan; **3)** pre and post-construction eelgrass surveys and if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*; **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 buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*; **5)** the disposal of all demolition and construction debris at an appropriate location; and **6)** adherence to Best Management Practices to ensure the continued protection of water quality and marine resources.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which 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.

Rhine Wharf Project Location



ISLE

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

CHANNEL

LIDO

WEST
PROJECT
SITE

PARK DRIVE

28 TH STREET

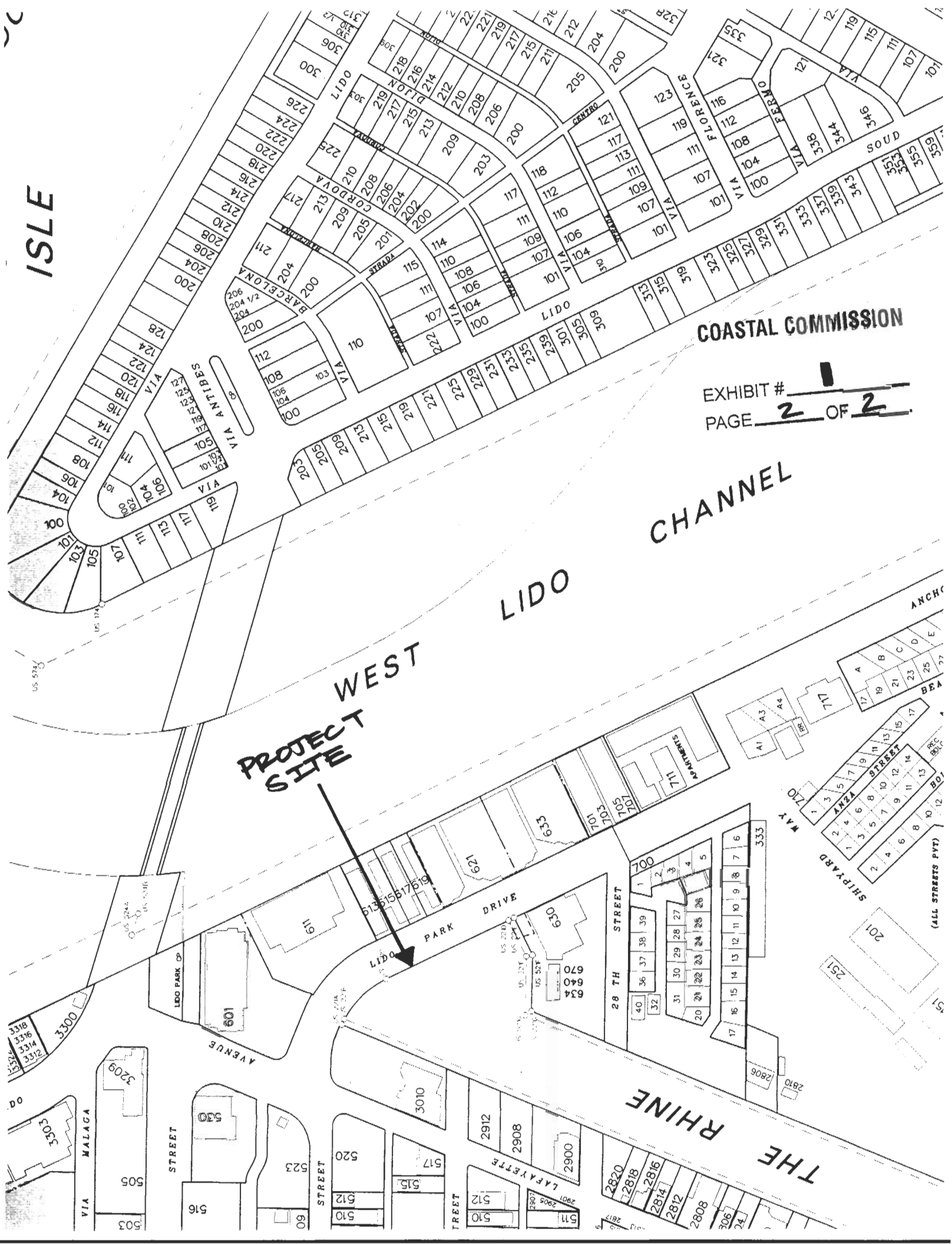
THE RHINE

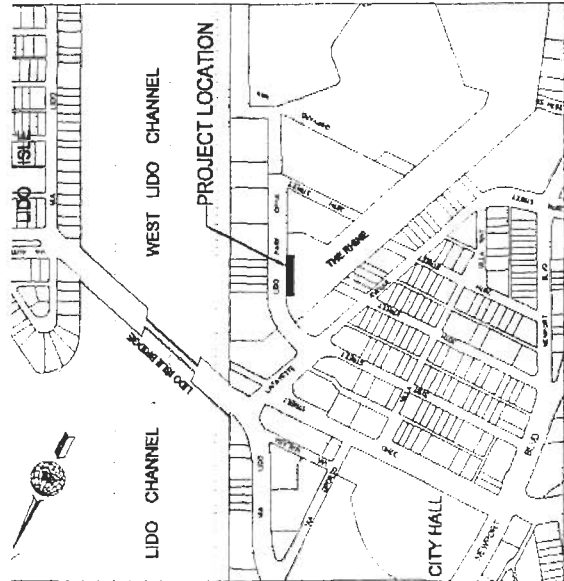
STREET

SHIPYARD MAY

(ALL STREETS PVT)

ANCHOR





- EEL GRASS INSPECTION**
- ☐ Eelgrass within 15' of project
 - ☐ Eelgrass within 15 - 30' of project
 - ☒ No Eelgrass in project area

Chris Miller 8/30/07

Signature

9/17/07 10:00 AM Attached Survey

Inspection Date & Time



HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT

RHINE WHARF ACCESSIBLE RAMP & DOCK

