

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

Item W5a

Permit Application No. **5-09-132**
Date: August 19, 2009
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ADMINISTRATIVE PERMIT

APPLICANT: E. Morris Smith Trust

PROJECT

DESCRIPTION: Remove existing u-shaped wood dock and three (3) 14" square concrete piles and replace with a new 8' x 70' long dock and five (5) 18" square concrete piles for support; the existing pier is to remain with the addition of a new 4'x4' gangway lobe/pier supported by one (1) 12" "T" pile connecting to a new 3'x24' gangway approach to the proposed new dock.

PROJECT

LOCATION: 501 Via Lido Soud, Newport Beach (Orange County)

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

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

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

Wednesday, September 9, 2009
9:00 am
Wharfinger Building
1 Marina Way
Eureka, CA 95501

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

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

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

PETER DOUGLAS
Executive Director

By: Liliana Roman
Title: Coastal Program Analyst

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS: See pages four thru seven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

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

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. Project Description

The project site is located at 501 Via Lido Soud in the City of Newport Beach (Exhibits #1-2). Single-family residences characterize the subject site and the surrounding area. The proposed project involves maintaining the existing timber and wood decking pier and removal of an existing "U" shaped dock and concrete piles and replacement with a new 4' x 4' gangway lobe supported by one new 12" "T" pile and connecting to a 3' x 24' gangway leading to a new 8' x 70' wood frame and deck dock with Styrofoam floats contained in sealed polyethylene tubs (Exhibit #3). The new configuration is different to that currently in place and is meant to accommodate a larger 90' sailing vessel. New materials consist of Douglas fir and Trex composite decking. The proposed dock system exceeds the U.S. Pier head Line but conforms to the Project Line allowable by the City in this area of Newport Bay.

The existing wood pier is approximately 24' long by 12' wide and does not meet the City of Newport Beach Harbor Resources Division pier standards for residential use. However, as previously described, the proposed project does not include any work to the existing oversized thereby non-conforming wood pier. However, in the future should the pier require maintenance or replacement, at such time the new structure would be reviewed for conformance with the current Harbor Resources Division pier

standards. As such, the Commission imposes **Special Condition 4** informing the applicant that future development on the site requires an amendment to this permit (5-09-132) or a new coastal development permit. Future development includes, but is not limited to repair and maintenance to the existing pier and proposed new dock system.

The dock project will be used for boating related purposes to serve a single-family residential development. The City of Newport Beach Harbor Resources Division surveyed the site for eelgrass on April 9, 2009 and no eelgrass was discovered within 15 feet of the project area. The site was also surveyed for *Caulerpa taxifolia*, in October, 2008 and April, 2009. 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. Coastal public access is available approximately ½ a mile east from the project site at a small public beach at intersection of Via Lido Soud with Via San Remo. 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 issued a "General Certification for replacement of Sheet and Dock Piles" determining 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. Staff expects the U.S. Army Corps of Engineers' Letter of Permission (LOP) deeming the project qualifies for the General Concurrence for impacts to essential fish habitats.

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.

B. Marine Resources

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

C. Water Quality

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

D. Local Coastal Program

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was comprehensively updated on October 13, 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

E. California Environmental Quality Act (CEQA)

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

SPECIAL CONDITIONS:

1. Water Quality

A. Construction Responsibilities and Debris Removal

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

B. Best Management Practices Program

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

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.

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

(2) Solid and Liquid Waste Management Measures:

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

(3) Petroleum Control Management Measures:

- a. 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.
- b. 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.
- c. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

2. Eelgrass Survey

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- 3. Pre-construction *Caulerpa Taxifolia* Survey**
- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), 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 and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Development

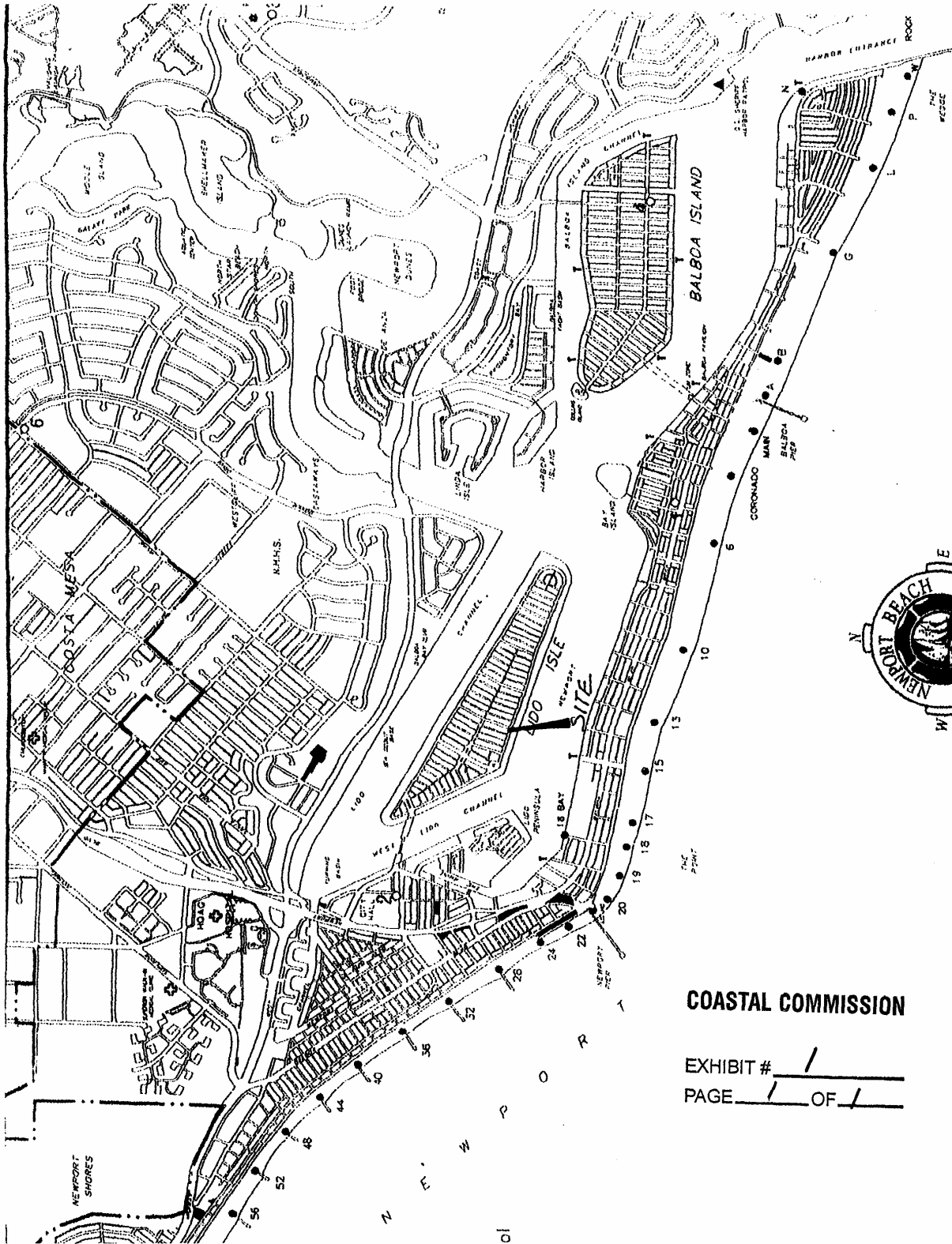
This permit is only for the development described in Coastal Development Permit No. 5-09-132. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the development governed by Coastal Development Permit No. 5-09-132. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a) - (b), shall require an amendment to Permit No. 5-09-132 from the Commission or shall require an additional coastal development permit from the Commission.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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

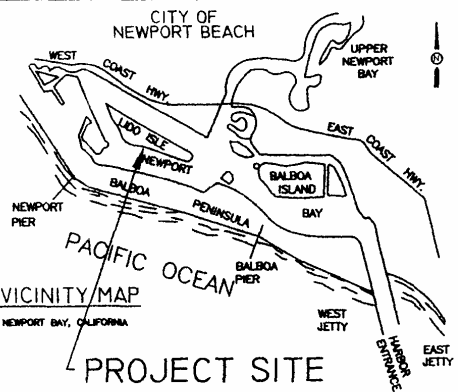
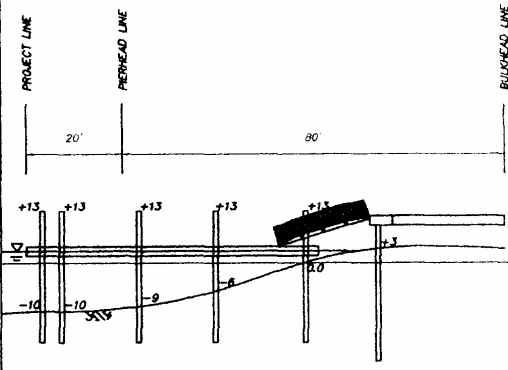
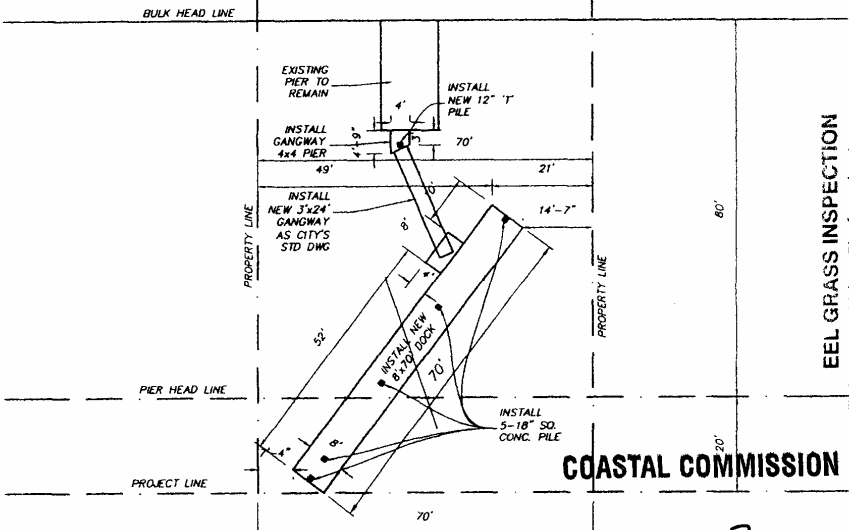
Applicant's Signature

Date of Signing



COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

<p style="text-align: center; font-weight: bold; font-size: 1.2em;">CITY OF NEWPORT BEACH</p>  <p style="text-align: center; font-weight: bold;">VICINITY MAP NEWPORT BAY, CALIFORNIA</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">PROJECT SITE</p>	 <p style="text-align: center; font-weight: bold;">ELEVATION</p> <p>SCALE 1"=30'</p> <p>SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE DEPTHS BELOW MEAN LOWER LOW WATER. MAXIMUM RANGE OF TIDE APPROXIMATELY 10 FEET. HARBOR LINES ARE ESTABLISHED IN THIS SECTION OF NEWPORT BAY.</p>	
<p>SCOPE OF WORK: REMOVE EXISTING FLOATING DOCK, PILES, . INSTALL NEW 8'x70' DOCK W/ 5-18" SQ. PILES. INSTALL NEW 3'x24' STD GANGWAY. INSTALL NEW 4x4 GANGWAY LOBE W/ 12" T' PILE.</p>	<p style="text-align: center; font-weight: bold; font-size: 1.2em;">HARBOR RESOURCES DIV. CITY OF NEWPORT BEACH</p> <p style="text-align: right; font-style: italic;">[Signature] 6/23/09</p>	
<p>501 VIA LIDO SOUD NEWPORT BEACH, CA</p>		
	<p style="text-align: center; font-weight: bold; font-size: 1.2em;">COASTAL COMMISSION</p> <p>EXHIBIT # <u>3</u> PAGE <u>1</u> OF <u>5</u></p> <p style="text-align: center;">SITE PLAN SCALE 1"=30'</p>	
<p>EEL GRASS INSPECTION</p> <ul style="list-style-type: none"> <input type="checkbox"/> Eelgrass within 15' of project <input type="checkbox"/> Eelgrass within 15 - 30' of project <input checked="" type="checkbox"/> No Eelgrass in project area <p style="text-align: right;">Signature [Signature] 4/9/09 Inspection Date & Time</p>	<p style="text-align: center; font-weight: bold; font-size: 1.2em;">COASTAL COMMISSION</p>	
<p>APPLICANT'S NAME: CITA LITT TEL: (949) 675-6777</p>	<p>JOB ADDRESS: 501 VIA LIDO SOUD</p>	<p>DATE: 14 NOV 08</p>

