

CALIFORNIA COASTAL COMMISSION

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Filed: November 2, 2009
49th Day: December 21, 2009
180th Day: May 1, 2010
Staff: Fernie Sy-LB
Staff Report: March 24, 2010
Hearing Date: April 14-16, 2010
Commission Action:

**STAFF REPORT: MATERIAL AMENDMENT**

APPLICATION NO.: 5-04-167-A1
APPLICANT: Orange Coast College School of Sailing and Seamanship; Attn: Bruce Tice, Brad Avery
PROJECT LOCATION: 1801 W. Pacific Coast Highway, Newport Beach (Orange County)

DESCRIPTION OF PROJECT ORIGINALLY APPROVED:

At the November 2004 Commission Hearing, the Commission approved Coastal Development Permit No. 5-04-167-[Orange Coast College] for: 1) installation of ADA compliant gangway and landing; 2) reinstallation of the existing east gangway; 3) installation of a longer and wider west gangway; 4) reconfiguration of the existing instructional docks; 5) installation of two (2) new 30' x 4' fingers and a new 51' x 4' dock with a 22' x 4' backwalk; 6) installation of eight (8) new steel piles ranging from 8" to 12" in diameter coated with NSP-120; 6) removal of ten (10) existing piles ranging from 8" to 10" in diameter; and 7) installation of a new fire system.

DESCRIPTION OF AMENDMENT:

The proposed amendment is for After-the-Fact (ATF) authorization for the addition of a modular plastic dock system (floating pads) for instructional boats. In addition, the loss of 1,133 square feet of eelgrass from the shading effects will be mitigated at a ratio 1.2 to 1 for a total of 1,360 square feet is proposed.

SUMMARY OF STAFF RECOMMENDATION:

The primary issue addressed in the staff report is marine resources. The applicant proposes After-the-Fact (ATF) authorization for the addition of a modular plastic dock system and mitigation for the loss of 1,133 square feet of eelgrass from shading effects. Commission staff recommends that the Commission **APPROVE** the proposed amendment with **FOUR (4) SPECIAL CONDITIONS** regarding: **1)** conformance to prior conditions; **2)** requiring a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required; **3)** requiring conformance with the proposed eelgrass mitigation plan; and **4)** condition compliance.

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified Land Use Plan; Coastal Development Permits: No. 5-04-167-[Orange Coast College], and 5-06-293-[Orange Coast College]; Letter from Commission staff to Orange Coast College dated May 11, 2006; *Post-Construction Eelgrass (Zostera Marina) Habitat Surveys and Impact Assessment For A Dock Renovation Project Orange Coast College School Of Sailing and Seamanship December 2005 Survey* prepared by Coastal Resources Management

dated January 28, 2006; *Eelgrass Mitigation Plan Orange Coast College School Of Sailing and Seamanship Dock Renovation Project* prepared by Coastal Resources Management dated August 21, 2009; Letter from Coastal Resources Management to Commission staff dated August 26, 2009; and Letter from Commission staff to Orange Coast College dated September 24, 2009.

LOCAL APPROVALS RECEIVED:

Approval-in-Concept (No. 129-1801) from the City of Newport Beach Harbor Resources Division dated April 4, 2006.

LIST OF EXHIBITS

1. Vicinity Map
2. Site Plan

PROCEDURAL NOTE:

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

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

The amendment request involves changes to a previously approved dock system. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-04-167 envisioned in the Commission's November 2004 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

STANDARD OF REVIEW:

Since the City of Newport Beach does not have a certified Local Coastal Program (LCP), the standard of review for this amendment is the Coastal Act. Since the City only has a Land Use Plan (LUP), the policies of the LUP are used only as guidance.

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve permit amendment CDP #5-04-167-A1 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby approves a coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment 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 CONDTIONS

A. PRIOR CONDITIONS

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-04-167 remain in effect, with the following exception: To the extent development specifications in any plans approved by the Executive Director pursuant to this amendment are inconsistent with specifications listed in any plans approved prior to this amendment, compliance with which was required by the existing permit conditions, those requirements for compliance with those prior plans are hereby modified as necessary, but only as necessary, to require compliance with the new plans. In addition, all standard and special conditions imposed under Costal Development Permit No. 5-04-167 that could apply equally to this amendment, are so applied.

B. ADD THE FOLLOWING CONDITIONS

4. NATIONAL MARINE FISHERIES SERVICE (NMFS)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit issued by the National Marine Fisheries Service (NMFS), 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 National Marine Fisheries Service (NMFS). 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.

5. EELGRASS MITIGATION PLAN

The applicant shall conform with the *Eelgrass Mitigation Plan Orange Coast College School of Sailing and Seamanship Dock Renovation Project* prepared by Coastal Resources Management dated August 21, 2009. The quantity of eelgrass mitigation to occur shall be as described in the approved mitigation plan, along with any additional eelgrass mitigation required pursuant to **SPECIAL CONDITION NO. 2** of the original permit (CDP No. 5-04-167). Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. CONDITION COMPLIANCE

Within 120 days of Commission action on this coastal development permit application or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1801 W. Pacific Coast Highway in the City of Newport Beach (Exhibit #1). The subject site is currently developed with the Orange Coast College School of Sailing and Seamanship. The school offers courses in basic and advanced sailing, seamanship, navigation and similar activities. Classes and activities offered by the school are available to all members of the general public. To the north of the site, is West Coast Highway, to the east is the Balboa Bay Club, to the south is Lower Newport Bay, and to the west is the Boy Scouts Sea Base.

On November 18, 2004, the Commission approved Administrative Permit No. 5-04-167-[Orange Coast College] for new docks and associated development. Eelgrass was found within the project site, but no loss was anticipated. One (1) of the Special Conditions imposed on the project was a requirement for a post project eelgrass survey and if post project eelgrass impacts are discovered, mitigation for those impacts must be completed: *"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)."* After the project was completed, an eelgrass survey and report was completed for the site entitled: *Post-Construction Eelgrass (Zostera Marina) Habitat Surveys and Impact Assessment For A Dock Renovation Project Orange Coast College School Of Sailing and Seamanship December 2005 Survey* prepared by Coastal Resources Management dated January 28, 2006. This report stated that a December 15, 2005 survey determined that a total of 1,133 square feet of eelgrass habitat was loss due to shading. However, this loss was not only caused by the approved development that was approved under Administrative Permit No. 5-04-167 (loss of 270 square feet of eelgrass due to shading was caused by the approved project). Additional eelgrass loss was caused by unpermitted development consisting of a modular plastic dock system attached to the dock (loss of 863 square feet of eelgrass due to shading was caused by the unpermitted modular plastic dock system). This modular plastic dock system extends along the perimeter of the existing sailboat lagoon. The report anticipated mitigating the loss by conducting an eelgrass transplant program at a primary eelgrass transplant site at a mitigation ratio of 1.2 to 1, resulting in a total of 1,360 square feet of eelgrass mitigation. Besides the December 15, 2005 survey, two (2) additional surveys were completed and an up to date report was completed for the site entitled: *Eelgrass Mitigation Plan Orange Coast College School Of Sailing and Seamanship Dock Renovation Project* prepared by Coastal Resources Management dated August 21, 2009. These two (2) additional surveys, completed in May 2007 and June 2008, confirmed the eelgrass loss previously identified (1,133 square feet of eelgrass). This report similarly concluded mitigating the loss by conducting an eelgrass transplant program at a primary eelgrass transplant site at a mitigation ratio of 1.2 to 1, resulting in a total of 1,360 square feet of eelgrass mitigation.

The proposed amendment is for After-the-Fact (ATF) authorization for the addition of a modular plastic dock system (floating pads) for instructional boats (Exhibit #2). This modular plastic dock system contains approximately 2,856 square feet and extends approximately maximum 15-feet along the perimeter of the existing sailboat lagoon. This modular dock system is connected to the existing traditional dock by hinges. No piles are used to set these modular docks in place. This floating pad creates a 'Boat Float' for the fleet of instructional sailboats (25 boats).

In addition, the loss of 1,133 square feet of eelgrass from the shading effects will be mitigated at a ratio 1.2 to 1 for a total of 1,360 square feet of eelgrass is proposed.

The proposed project has received Approval-in-Concept (No. 129-1801) from the City of Newport Beach Harbor Resources Division dated April 4, 2006). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers (USACOE). The project has received approval from the California Regional Water Quality Control Board (RWQCB). However, a review by the National Marine Fisheries Service (NMFS) has not been completed. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 4**, which requires that the applicant submit a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required.

B. MARINE RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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 development resulted in the loss of 1,133 square feet of eelgrass habitat due to shading and the applicant is proposing mitigating the eelgrass loss. The applicant has submitted the following mitigation plan: *Eelgrass Mitigation Plan Orange Coast College School Of Sailing and Seamanship Dock Renovation Project* prepared by Coastal Resources Management dated August 21, 2009. This plan states that the loss will be mitigated by conducting an eelgrass transplant program at a primary eelgrass transplant site at a mitigation ratio of 1.2 to 1, so that a total of 1,360 square feet of eelgrass will be successfully transplanted. The applicant is proposing mitigation on their own and the proposed mitigation would be consistent with Sections 30230 and 30231 since this activity would result in the enhancement and restoration of marine resources and biological productivity.

To verify that the proposed mitigation will take place, **SPECIAL CONDITION NO. 5** has been imposed, which requires conformance with the proposed eelgrass mitigation plan.

CONCLUSION

The proposed project will enhance and restore marine resources and biological productivity. **SPECIAL CONDITION NO. 5** requires conformance with the proposed eelgrass mitigation plan. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the California Coastal Act.

C. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred on the subject site with the construction of the modular plastic dock system. The applicant is proposing to retain the modular plastic dock system.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. 6** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action. The Executive Director may grant additional time for good cause. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

D. LOCAL COASTAL PROGRAM (LCP)

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a), the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a local coastal program, which conforms with the Chapter 3 policies of the Coastal Act.

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. 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)

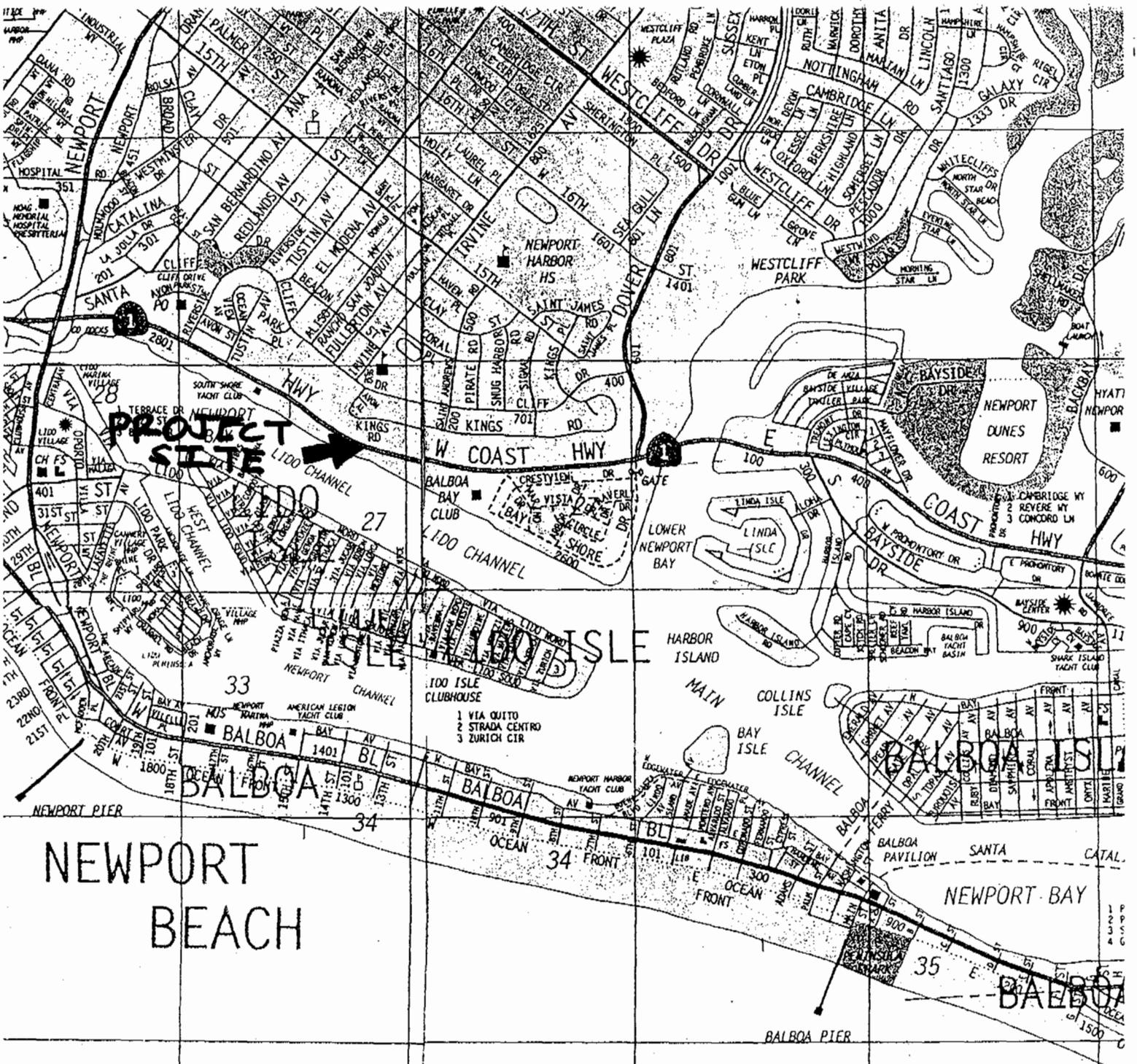
The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt.

Section 13096(a) of the Commission's administrative 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).

Although the proposed development is exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, the proposed project is consistent with the marine resource policies of the Coastal Act. Mitigation measures include: **1)** conformance to prior conditions; **2)** requiring a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required; **3)** requiring conformance with the proposed eelgrass mitigation plan; and **4)** condition compliance.

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 consistent with the requirements of the Coastal Act and CEQA.

VICINITY MAP

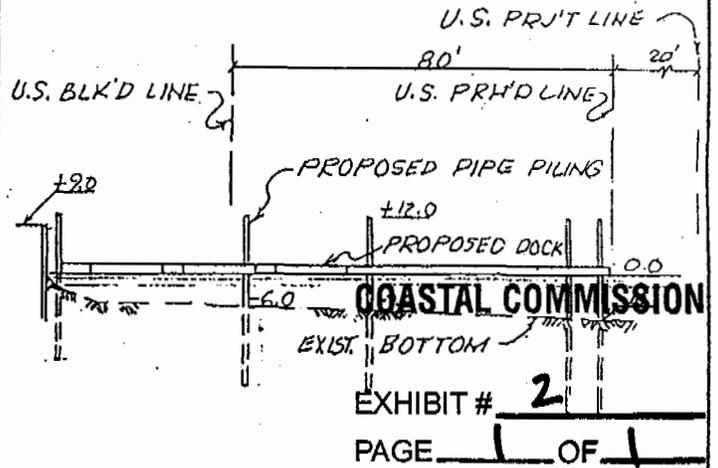
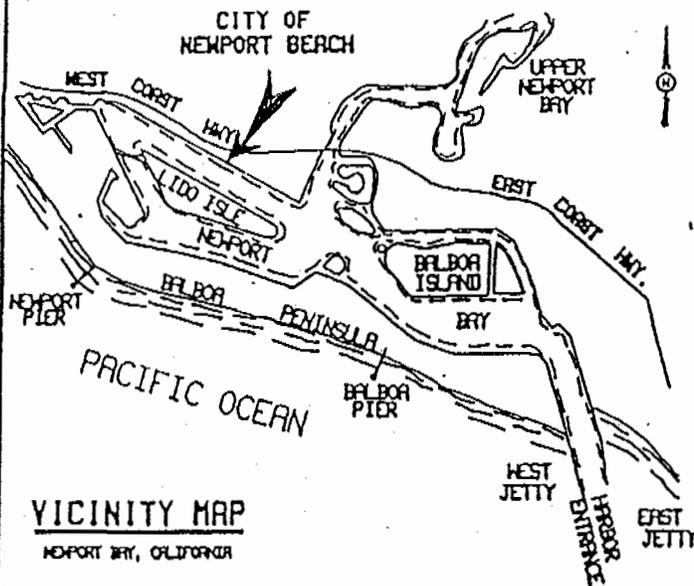


COASTAL COMMISSION

EXHIBIT # 1
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129-1801

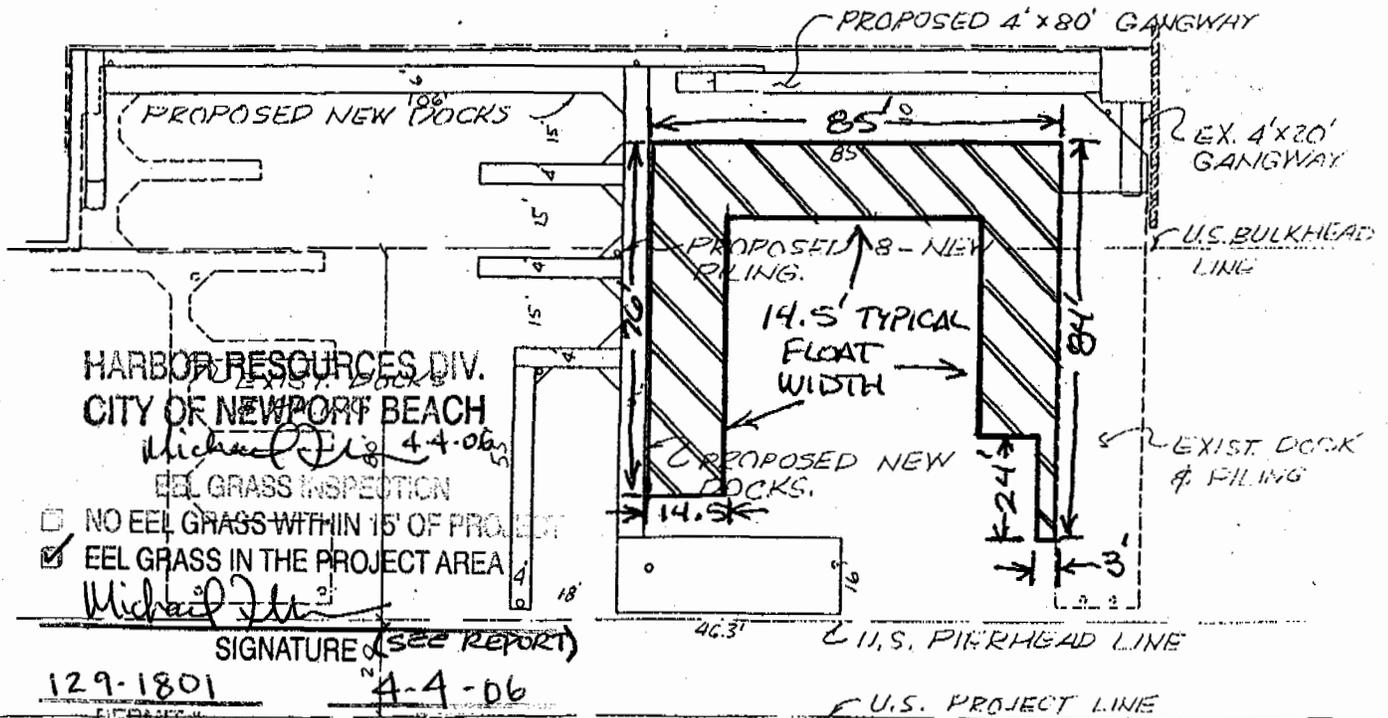
CITY OF NEWPORT BEACH



PROFILE 1" = 40'

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

- o TOTAL "CANDOCK" BOAT FLOAT AREA = 2856 SQUARE FEET
- o TOTAL BUOYANCY = 163,368 POUNDS
- o TOTAL FLEET WEIGHT = 8,000 POUNDS



RED DIAGONALS INDICATE SMALL BOAT
FLOAT MADE W/ "CANDOCK" MODULAR DOCK
SYSTEM