

CALIFORNIA COASTAL COMMISSION

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

W4aPermit Application No. **5-11-029**

Date: April 20, 2011

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**ADMINISTRATIVE PERMIT****APPLICANT:** Bob Kupper**AGENT:** Swift Slip Dock & Pier Builders, Inc.**PROJECT****DESCRIPTION:** Remove 26' x 20' U-shaped float, 3' x 20' wood gangway, and three 12" diameter piles and replace with new float, gangway, and steel piles of same dimensions at same location. The dock system will be composed of Douglas Fir and Timber Tech decking.**PROJECT****LOCATION:** 204 South Bay Front, 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, May 11, 2011**10:00 am****Santa Rosa Board of Supervisors****575 Administration Drive****Santa Rosa, CA 95403**

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: John Del Arroz
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 the Commission voted on the application. 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 five to eight.

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 Location and Description

The subject site is located on Balboa Island at 204 South Bay Front in the City of Newport Beach (Exhibit #1). Single-family residences characterize the subject site and the surrounding area. The proposed project includes the removal of the existing long wood U-shaped float, three 12" diameter piles, and 3' x 20' wood gangway, and replace with new wood float, steel piles, and wood gangway of the same dimensions and at the same location. Both the existing and proposed dock systems have a total water coverage of approximately 608 square feet. The steel piles will be coated with Amerloc 400 Epoxy coating. Amerloc 400 is self-priming and does not require a top coat. The Commission's water quality staff have reviewed the proposed coating, and have found no evidence that the proposed coating would cause impacts to the marine environment, provided the sealant is appropriately cured prior to installation. The applicants propose to cure at least 7 days prior to construction, and will either meet or exceed the manufacturer's recommendations for curing time. The proposed dock will be within the U.S. Pierhead Line and is consistent with the City's Harbor Permit Policy and with past Commission actions and the pattern of other dock development in

the area. These types of replacement dock projects can be reviewed and approved by the Executive Director under Coastal Development Permit No. 5-06-117, as amended, when they are located more than 15 feet away from any eelgrass; in this case, as discussed further below, there is eelgrass within 15 feet of the proposed development and thus the dock replacement cannot be approved under CDP No. 5-06-117.

The subject site is a waterfront lot on Balboa Island in Newport Harbor. The nearest public access is the public walkway which traverses the perimeter of Balboa Island, located between the bulkhead landward of the proposed project and the single family residence at 204 South Bayfront.

The dock project will be used for boating related purposes to serve a single-family residential development. The site has been surveyed by Coastal Resources Management, Inc. for eelgrass and eelgrass was discovered within 15-feet of the project area, in areas immediately surrounding the existing dock. However, the applicant's biologist does not anticipate direct adverse impacts to eelgrass associated with installation of proposed piles or other construction activity. The applicant proposes to use silt curtains and other BMPs to address possible construction phase effects. Since the proposed dock is the same size and shape as the existing one, water coverage and shading effects on eelgrass are expected to remain unchanged. In addition, the applicant proposes a post-construction survey conducted 30 days after construction completion to assess any construction impacts to eelgrass and if this survey identifies eelgrass impacts and/or the new dock casts shadows that may further impact eelgrass, the applicant will conduct two (2) years of annual monitoring post construction, as required by the U.S. Army Corps of Engineers (USACOE), to determine if the project impacts eelgrass. After the second year of monitoring the USACOE will determine if mitigation is necessary to satisfy their requirements. The procedure identified by the applicant is consistent with USACOE requirements. However, the USACOE requirement differs from the Commission's normal procedure regarding post construction impacts to eelgrass. The Commission's typical procedure (Special Condition No. 2) has been to require a post construction survey, similar to what the applicant has proposed, but then if eelgrass impacts are identified at that time, then an eelgrass mitigation plan is required immediately. The Commission's procedure (Special Condition No. 2) has not changed and will be applied to the proposed project. If the two (2) year monitoring required by the USACOE identifies additional eelgrass impacts, then additional mitigation will also be required for those impacts.

The eelgrass survey took place on November 1, 2010 as required 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 agendized for the May 2011 Coastal Commission Hearing so the eelgrass survey would not continue to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. A pre-construction *Caulerpa taxifolia* survey was completed on November 1, 2010 as required by the City of Newport Beach Harbor Resources Division. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the May 2011 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes Special Conditions No. 2 and No. 3, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, Special Condition No. 3 also identifies the procedures necessary to be completed prior to beginning any construction.

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

The proposed dock is being constructed on public tidelands and/or within an area subject to public trust doctrine. A special condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

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 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)

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 demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) 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.
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (11) 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.
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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 which contain 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(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 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. Public Rights

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

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

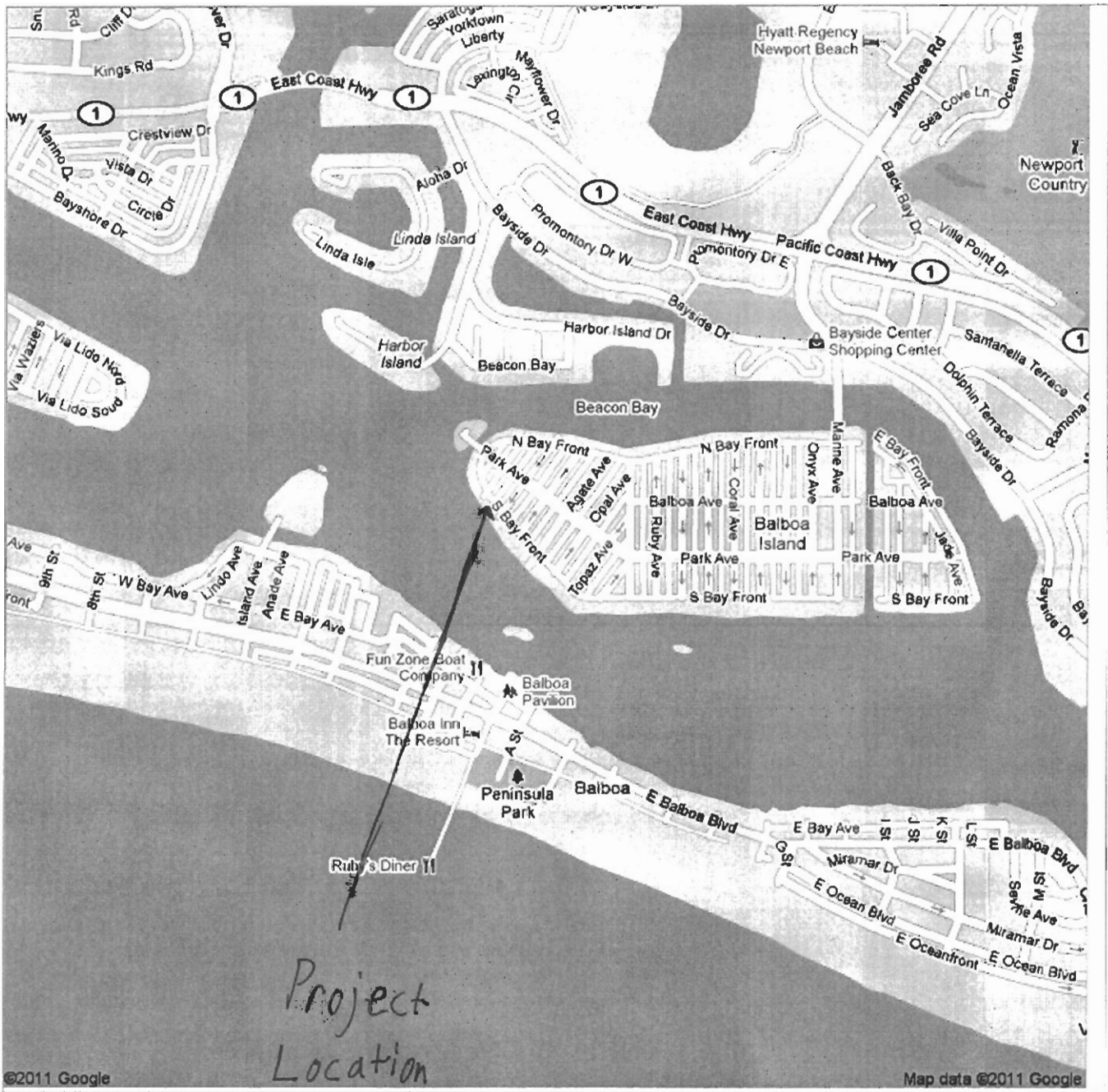
Date of Signing

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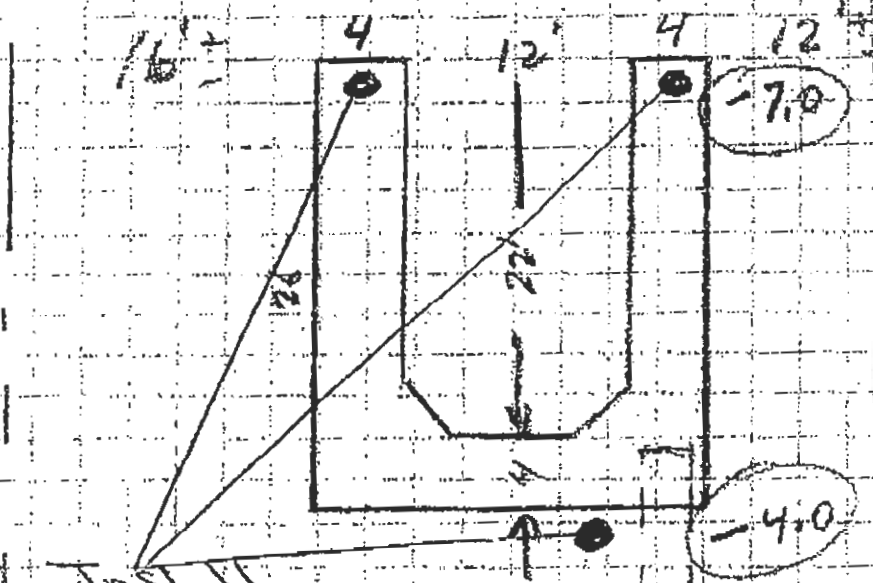
Text the word "GMAPS" to 466453



COASTAL COMMISSION

EXHIBIT # 1
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 5-11-029

2027 Placentia Avenue, Costa Mesa, California 92627
(949) 631-3121 • Fax (949) 631-3122



Scope of
Work:
Remove &
replace
decking of
like kind
like
fashion

Install
3 new
12" piles

3x20 gangway

Kupper
204 S. Bayfront
Balboa Island

COASTAL COMMISSION
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