

**CALIFORNIA COASTAL COMMISSION**

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**W 9a**

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Staff: Fernie Sy-FSY  
Staff Report: April 27, 2011  
Hearing Date: May 11-13, 2011  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-10-012

**APPLICANT:** Patricia Manzo

**AGENT:** Swift Slip Dock and Pier Builders

**PROJECT LOCATION:** 2223 Bayside Drive, City of Newport Beach (Orange County)

**PROJECT DESCRIPTION:** Installation of a new boat dock system where one does not exist that will consist of the following: a "U" shaped floating dock with 2 – 4' x 46' fingers and a 6' x 16' headwalk supported by 3 – 12" diameter steel pipe piles; a 4' x 187' pier approach supported by 18 – 10" diameter steel pipe piles; a 3' x 24' gangway; and a 10' x 14' pier platform supported by 4 – 10" diameter steel pipe piles. The dock system will be composed of Douglas fir.

**LOCAL APPROVALS:** City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 105-2223 and Plan Check No. 2445-06 dated January 25, 2007

**OTHER AGENCY CONTACT RECEIVED:** US Army Corps of Engineers (USACOE) Interagency Notification, Request For Agency Comments On Applications For Letter of Permission (Application No. SPL-2010-00575-CJF) received by Commission staff on June 28, 2010.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; Coastal Development Permit Waiver No. 5-94-188-(O'Brien); Letter from Commission staff to Swift Slip Dock and Pier Builders dated February 18, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated March 29, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated April 5, 2010; Letter from Commission staff to Swift Slip Dock and Pier Builders dated April 29, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated June 8, 2010; Letter from Commission staff to Swift Slip Dock and Pier Builders dated July 8, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated September 3, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated January 21, 2011; and WSSI Environmental Consulting Pre-Construction Eelgrass Survey Report dated March 24, 2010.

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**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission **DENY** the proposed dock system since the development has not been demonstrated to be the least environmentally damaging alternative and would have an adverse impact resulting in the unmitigated fill of coastal waters, results in a significant expansion of water coverage and attendant shading effects on an extensive eelgrass bed present

at the site, and result in the potential for cumulative adverse impacts if similar dock expansions are approved in the area.

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**LIST OF EXHIBITS:**

1. Location Map
2. Assessors Parcel Map
3. Project Plans

**STAFF RECOMMENDATION:**

**I. STAFF RECOMMENDATION OF DENIAL**

Staff recommends that the Commission **DENY** the Coastal Development Permit application by voting **NO** on the following motion and adopting the following resolution.

**A. MOTION**

*I move that the Commission approve Coastal Development Permit No. 5-10-012 for the development proposed by the applicant.*

**B. STAFF RECOMMENDATION OF DENIAL**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**C. RESOLUTION TO DENY THE PERMIT**

The Commission hereby **DENIES** a Coastal Development Permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## II. FINDINGS AND DECLARATIONS:

### A. PROJECT LOCATION & DESCRIPTION

#### 1. Project Location

The proposed project is located on a bayfront lot fronting Newport Bay at 2223 Bayside Drive in Corona Del Mar (City of Newport Beach), County of Orange (Exhibits #1-2). North of the project site is Bayside Drive; South of the project site is a sandy beach area and Newport Bay, to the East and West are bulkheaded residential lots. The project site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The project site is located at the southernmost portion of Newport Bay. The bay entrance is protected by the east and west jetties. The subject residences are located at the northwestern end of the embayment situated along the right outside bend of the Newport Bay Channel. This section of the channel is known as the Corona Del Mar Bend. The area is bounded to the north by the Harbor Patrol facility (at 1901/17/10 Bayside Drive) and to the south by the last residential property at the point (i.e. 101 Bayside Place). There are thirty (30) residential lots with water access between the harbor patrol facility to the north and the end of Bayside Place to the south. There are sixteen (16) pier/dock systems among those properties. At least seven (7) of them are shared with a neighboring property. Six (6) of the lots, including the subject site, have no dock associated with them.

The bay in this area is quite shallow. Thus, eelgrass beds grow well and there is a thick, healthy eelgrass bed at the subject site. However, due to those shallow conditions very long piers extending out into deeper bay water is usually needed to allow enough draft for larger boats to dock. However, smaller boats with shallower draft could make use of a dock that is closer to shore.

#### 2. Project Description

The applicant is proposing the installation of a new boat dock system where one does not exist that will consist of the following: a "U" shaped floating dock with 2 – 4' x 46' fingers and a 6' x 16' headwalk supported by 3 – 12" diameter steel pipe piles; a 4' x 187' pier approach supported by 18 – 10" diameter steel pipe piles; a 3' x 24' gangway; and a 10' x 14' pier platform supported by 4 – 10" diameter steel pipe piles (Exhibit #3). The dock system will be composed of Douglas fir.

The proposed project would result in direct impacts to eelgrass as a result of installing the piles. The impact would be equal to the area of the pile, plus some surrounding area due to construction. The estimated area of impact is 13 square feet. Shading is also expected to cause long term impacts on the eelgrass bed. Eelgrass surveys of the area show that the impacts are roughly equal to the water area covered by the pier, pier platform, dock, gangway and boat. In this case that would be approximately 2,064 square feet.

The applicant has proposed measures she has suggested will minimize impacts to eelgrass. For instance, the applicant has proposed open-grated panels in place of solid wood planks along the proposed pier approach (187' (L) x 44' (W)) to allow sunlight penetration. She has also suggested adding artificial underwater lighting (Deep grow or Green Dock Lights) to assist in eelgrass growth. However, she has not provided plans for these proposals or provided documentation that they would be effective mitigation measures. In addition, the applicant has proposed two-year post-project monitoring to determine if eelgrass has been impacted. No plan to address the known direct impacts to eelgrass has been submitted, nor has a preliminary eelgrass mitigation plan been

submitted for the anticipated long term impact. Finally, the applicant has suggested she would make a contribution to the Coastkeeper's eelgrass project or other California Sea Kelp restoration program in an amount of \$2,500 which would represent \$100 per pile installed. No further information regarding this proposal has been submitted, so there is no assurance the money would be adequate to create a viable mitigation area.

The proposed project extends out into public tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a "Tidelands Survey for Newport Harbor for the City of Newport Beach". Thus, the County of Orange would be the permit issuing authority for development (i.e. dock system) within the public tidelands area. However, approval of the project from the County of Orange has not been submitted.

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 also applied for a permit from the US Army Corps of Engineers (USACOE). On June 28, 2010, Commission staff received a USACOE Engineers (USACOE) Interagency Notification, Request For Agency Comments On Applications For Letter of Permission (Application No. SPL-2010-00575-CJF) for the proposed project. There was a follow-up letter from the USACOE dated July 30, 2010. The notice and follow-up letter acknowledge the eelgrass impact that will be caused by the project, and the applicant's suggestions relative to two-year post-project monitoring, use of grates to let more light pass through the pier and the artificial lighting. But they too haven't received an adequate mitigation plan at this time to address the initial known eelgrass impacts from the project and have indicated they cannot proceed with processing the application until they receive one.

### 3. Prior Commission Action at the Subject Site

#### a. Coastal Development Permit De Minimis Waiver No. 5-94-188-(O'Brien)

On September 1994, the Commission approved Coastal Development Permit Waiver No. 5-94-188-(O'Brien) for this site. CDP No. 5-94-188 was a De Minimis Waiver that allowed construction of a new boat dock consisting of a 4' x 135' pier with a 10' x 14' platform, a 3' x 24' ramp, and a 24' x 40' U shaped dock. The dock subject to the waiver would be within the U.S. bulkhead line. Unlike current conditions, the applicant did not disclose the presence of any biological resources on the project site and the waiver 'rationale' states there would be no adverse impacts to coastal resources.

The applicant has raised the issue that a dock was approved before on site and thus her proposed dock should also be approved. When CDP Waiver No. 5-94-188 was approved seventeen (17) years ago it did not identify any resource impacts, including eelgrass impacts, associated with the development and thus no issue was raised with eelgrass impacts. However, the currently proposed project results in very extensive impacts to eelgrass. Additionally, the Waiver states that: "*If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.*" Due to the identified current strong presence of eelgrass as documented by the applicant, City and other agencies (i.e. USACOE); the impacts of the currently proposed project are very different from the impacts of the previously approved project where none was identified. Therefore, the previous approval of a waiver for a dock

in no way establishes that the applicant is entitled to a CDP for the currently proposed project.

Besides claiming that she should be allowed to have a dock on site because of a previous approval, the applicant states that when she bought the property the realtor stated that the house already had a pier permit from the City of Newport Beach. While she may have a pier permit from the City of Newport Beach, the construction of any dock system requires a Coastal Development Permit from the Coastal Commission. An approval from the City of Newport Beach does not automatically allow the construction of a dock system.

b. Coastal Development Permit No. 5-01-362-(Jenkins & Manzo)

On September 2002, the Commission approved Coastal Development Permit No. 5-01-362-(Jenkins & Manzo). CDP No. 5-01-362 allowed the construction of an approximately 120-foot long bulkhead fronting Newport Bay. The bulkhead and backfill would result in the fill of 562 square feet of high intertidal sandy habitat. In approving this project, **Two (2) Special Conditions** were imposed. **Special Condition No.1** requires the applicant to submit revised bulkhead alignment plans. **Special Condition No. 2** relates to construction responsibilities and debris removal. The permit was issued on May 7, 2003.

**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.*

Section 30233 of the Coastal Act states in part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launch areas.*

*(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

*(6) Restoration purposes.*

Section 30250 of the Coastal Act states in part:

*(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....*

The City of Newport Beach Coastal Land Use Plan contains the following policies:

- 3.1.4-3 *Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.*
- 3.1.4-5 *Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.*
- 4.1.4-1 *Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.*
- 4.1.4-3 *Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.*

#### 1. Fill of Coastal Waters

The proposed private residential dock includes a “U” shaped floating dock with 2 – 4’ x 46’ fingers and a 6’ x 16’ headwalk supported by 3 – 12” diameter steel pipe piles; a 4’ x 187’ pier approach supported by 18 – 10” diameter steel pipe piles; a 3’ x 24’ gangway; and a 10’ x 14’ pier platform supported by 4 – 10” diameter steel pipe piles. There will be a total of 25 piles (3-12” diameter piles and 22-10” diameter piles) in open coastal waters.

As proposed, the project results in the total placement of 25 piles into the bay’s soft bottom with a cumulative bay area displaced of approximately 13 square feet. The applicant provided a fill calculation of less than 10 square feet, but, those calculations are erroneous. In addition, the applicant asserts that the only ‘fill’ that should be calculated is that caused by the thickness of the hollow pipe pile. However, that approach is not consistent with extensive past Commission practice which is to calculate the fill impact based on the entire area of the pile, as that more accurately represents the impacted area. These piles constitute fill of open coastal waters. Under Section 30233, the proposed project must be the least environmentally damaging alternative. Commission staff requested that the applicant provide alternatives to the proposed project. However, the applicant responded by stating that they are not proposing any project alternatives and stated that a shared dock system with the adjacent neighbors that already have docks leads to problems in the long term and is not a viable option. The applicant feels that the proposed project is the least environmentally damaging alternative since according to her she designed the dock

with the shortest possible pier approach and used fewest and smallest pilings required by engineering.

The placement of piles in open coastal waters for the construction of a new boating facility is an allowable use under Section 30233(a)(3) of the Coastal Act “*where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.*” The Coastal Act aims to primarily avoid impact before considering possible mitigation of fill of coastal waters. While the applicant has expressed a number of ideas to mitigate eelgrass impacts (to be discussed later in the staff report), the applicant has only proposed one mitigation measure for the fill of the bay’s soft bottom that would result from the placement of 25 piles into open coastal waters (cumulative surface area of approximately 13 square feet). The applicant states that the pipe piling will create 25 individual coral reef type habitats. The 25 piles will provide hard substrate that can be used by some marine life, although this isn’t equivalent to the habitat being impacted. No other mitigation measures were proposed by the applicant.

As proposed, the new dock is not the least environmentally damaging alternative. Alternatives do exist that would not result in such significant impacts to coastal resources. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

a. No Project

No changes to the existing site conditions would result from the “no project” alternative. As such, the project would be the least environmentally damaging alternative and would not have an adverse impact resulting in the unmitigated fill of coastal waters, not result in a significant expansion of water coverage and attendant shading effects, or not result in the potential for cumulative adverse impacts if similar dock expansions are approved in the area.

b. Shared Pier/Dock Use

The proposed project entails installation of a new boat recreation facility where none currently exist on site. An alternative to the proposed project would be to have a shared pier and dock system with the neighbors either upcoast (2215 Bayside Drive) or downcoast (2227 Bayside Drive) or another location (i.e. a marina) which already have existing dock systems. This alternative would accommodate the applicant’s interest in adding recreational elements and would minimize fill of coastal waters and minimize expansion of water coverage and attendant shading effects. It would also minimize cumulative adverse impacts if similar dock expansions are approved in the area. The presence of at least seven (7) docks in the vicinity of the site that are shared docks shows this is a feasible alternative.

c. Reduced Sized Pier/Dock System Not Within Public Tidelands

The proposed dock system extends out into public tidelands. Thus, an alternative would be to reduce the size of the proposed pier and dock system so that it lies within the confines of the applicant’s property, closer to shore, and is therefore not located within public tidelands. This alternative would accommodate the applicant’s interest in adding recreational elements and would reduce the fill of coastal waters (by having fewer piles for a shorter

pier) and reduce the extent of proposed water coverage (by having a smaller structure spanning the water) and attendant shading effects. It would also reduce cumulative adverse impacts if similar dock expansions are approved like it in the area.

Section 30233 also requires that feasible mitigation measures be provided to minimize the adverse environmental effects of any proposed fill. As explained in greater detail below, the applicant has refused to propose specific mitigation measures prior to approval or construction of the project that would minimize the adverse environmental effects of the project. The applicant has suggested instead that mitigation measures be determined after construction of the project. Analysis of the impacts of a project and how to mitigate those impacts, however, must occur prior to the Commission's approval of a project, not afterwards.

The proposed project is not the least environmentally damaging alternative, as there are other alternatives that would not result in such significant impacts to coastal resources. It also does not include mitigation measures to minimize the adverse environmental impacts of the project. In addition to being inconsistent with Section 30233 of the Coastal Act, the project is also inconsistent with Newport Beach LUP policies 3.1.4-3 and 3.1.4-5. The project does not minimize impacts to coastal resources nor does it encourage the joint ownership of piers as a means of reducing the number of piers along the shoreline. Thus, the proposed development is inconsistent with Coastal Act Section 30233 and Newport Beach LUP policies 3.1.4-3 and 3.1.4-5.

## 2. Special Status Marine Species - Eelgrass

Eelgrass and *Caulerpa Taxifolia* surveys are typically required when a project proposes disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. 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). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

The applicant provided a survey prepared by WSSI Environmental Consulting dated March 24, 2010 for the presence of eelgrass or *Caulerpa Taxifolia* existed at the project site. No *Caulerpa*



*Taxifolia* was observed onsite. However, eelgrass is present within the entire project area (approximately 11,570 square feet of the survey area). The report states that: *Given the impact of the eelgrass is inevitable, and also impossible to fully determine prior to the completion of the project, a two-year monitoring plan is proposed to be initiated once the dock and pier has been constructed. This will allow full impact to be determined, at which point any necessary mitigation can then be planned for accordingly.* Possible sources of impact to eelgrass from the proposed work include increased turbidity, direct contact, and increased shading. Eelgrass was also surveyed on both adjacent properties, east and west of the project location. The report states that eelgrass in the vicinity of these neighboring structures was quite heavy and comparable in both density and blade length with the eelgrass observed in the project area. However, it did state that eelgrass density was greatly decreased in most of the area located directly underneath existing piers, docks and boats. Thus, eelgrass can exist underneath structures that shade it, though in much lower densities than is natural. The report states that impacts to eelgrass are unavoidable so the contractor had proposed using open-grated panels to allow fuller light penetration through the pier. Furthermore, while the report acknowledges that eelgrass will be impacted, it fails to provide the preliminary amount of eelgrass impacts. The report states that a preliminary amount of impact is impossible to fully determine and does not provide additional reasoning why this cannot be identified.

In order to minimize impacts to eelgrass, the applicant has suggested using open-grated panels and underwater lighting, but has not provided plans detailing these proposals, nor any scientific evidence they would work. In addition, the applicant has also proposed two-year post-project monitoring to determine if eelgrass has been impacted. And they've suggested making a contribution to an eelgrass or Sea Kelp restoration program, though no other specifics are provided.

Due to the proposed eelgrass impacts associated with the project, Commission staff requested that a preliminary eelgrass mitigation plan in consultation with the California Department of Fish & Game (CDF&G) and in conformance with the *Southern California Eelgrass Mitigation Policy (SCEMP)* be submitted. The applicant responded by stating that the only way to determine the direct and indirect eelgrass impacts would be to conduct post construction eelgrass monitoring (i.e. two-year post monitoring). Commission staff responded by stating that an approximation of the eelgrass impact can be provided now along with a mitigation plan and that it is unnecessary to wait until after the project has been completed to provide this information. Such a plan could address how to modify mitigation requirements if post-construction monitoring indicates that the impacts are either greater or smaller than initially projected. The applicant responded by stating that her mitigation plan would be the previously proposed two-year post monitoring action and have still not submitted an actual "Mitigation Plan".

With regard to eelgrass impacts associated with the applicant's dock proposal, the applicant claims that she should be given credit for all the years that she has not constructed anything onsite that would adversely impact eelgrass. She feels that her 'stewardship' of the eelgrass should count as "mitigation" for the project she now proposes that would impact that eelgrass. Additionally, since the area has had great eelgrass growth, she feels the eelgrass impacts associated with her development are temporary and will grow back quickly. She states that this would further be a part of her "Mitigation Plan". However, no scientific evidence has been provided to support this assertion that eelgrass will return under the new pier and dock. Furthermore, the return of eelgrass within the footprint of the pilings is impossible. Moreover, the idea that her past avoidance of eelgrass should count as mitigation for future, ongoing, permanent impacts to eelgrass is inconsistent with legal requirements for mitigation under both the Coastal Act and CEQA. The eelgrass at the site has been growing unimpeded not because of the applicant's

efforts, but instead because of natural occurrence since the site is a prime location for eelgrass growth. Giving this applicant "credit" for past natural eelgrass growth is contrary to the premise of mitigation. Had the applicant purposefully prepared an area that was not ideal for eelgrass growth and made it so, and then planted the area with eelgrass (all of which would have required a permit), such efforts might qualify as mitigation. But merely avoiding an impact for a period of time does not qualify as mitigation for the ultimate impact. Instead, this applicant must consider alternatives that would avoid the impact. To date, the applicant has refused to do so.

Eelgrass is an important resource that provides habitat for a variety of fish and other wildlife. Coastal Act Section 30230 requires that marine resources, such as eelgrass, be maintained, enhanced, and where feasible, restored. Coastal Act Section 30231 requires that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms be maintained. The proposed project fails to do that and is thus inconsistent with Sections 30230 and 30231 of the Coastal Act. In addition, the proposed project is inconsistent with Newport Beach LUP policies 4.1.4-1, and 4.1.4-3 since the project does not protect eelgrass meadows for their important ecological function as a nursery and foraging habitat the project fails to avoid impacts to eelgrass meadows. Thus, the Commission finds that this project is not consistent with Sections 30230 of the Coastal Act and with Newport Beach LUP policies 4.1.4-1, and 4.1.4-3.

### 3. Marine Environment Shading Impacts

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. Coastal Act Section 30231 requires that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms be maintained. Moreover, Coastal Act Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. A Coastal Development Permit may be issued if the project can ensure that the uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by eelgrass and "lower order" green algae, phytoplankton, and diatoms that form the basis of the marine food chain. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by filling open coastal waters and will lead to cumulative adverse impacts on coastal waters.

The proposed boat dock facility will result in pile fill and water coverage resulting in adverse effects on marine resources (e.g., shading and habitat displacement) in an area where no current dock exists. The estimated area of impact is approximately 2,064 square feet. As a consequence, there will also be a loss of bay bottom area exposed to adequate sunlight that is suitable for the growth of eelgrass that is abundant in this area and it will block more of the sunlight that marine resources such as phytoplankton, algae, and lower order biological resources need. Furthermore, there would be a loss of foraging habitat for sight foraging marine birds such as the state and federally listed California brown pelican which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may seem small compared with the amount of open water surrounding it, it is a concern because of the impacts of the project itself and for cumulative impacts. It should be remembered that there are residential properties in Newport Harbor that do not have their own private residential boat docks similar to the project site. For example, there are six (6) lots, including the subject site, in the adjacent area that have no dock associated with them. There are many other properties elsewhere in Newport Harbor that also don't have a pier and dock. If each were permitted to have such a dock, and increase the amount of fill, the overall effect baywide would be a significant loss of coastal waters and soft bottom habitat. Alternatives exist, such as shared use pier/dock or accessing their private boats at

another docking facility (i.e. a marina). It is a feasible alternative for example since there are at least seven (7) docks that are shared with a neighboring property in the project area. Another alternative would be a reduced sized pier/dock system not within public tidelands. Within the project vicinity there are a mix of sizes of piers/docks. There are small piers/docks to serve small boats and large piers/docks to serve large boats. This alternative would reduce adverse impacts to resources. Therefore, the water coverage caused by new docks associated with private development should be minimized in order to preserve open water areas in bays thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight and minimizing fill that displaces bay bottom habitat. Additionally, the proposed project is inconsistent with Newport Beach LUP policy 3.1.4-3 and 3.1.4-5 since the project does not minimize impacts to coastal resources nor does it encourage the joint ownership of piers as a means of reducing the number of piers along the shoreline. Since the proposed dock does not minimize impacts, the Commission finds that this project is neither consistent with Sections 30230, 30231, and 30250 of the Coastal Act nor with Newport Beach LUP policies 3.1.4-3 and 3.1.4-5.

### **C. 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. In addition, the certified LUP was updated at the October 2009 Coastal Commission Hearing. Since the City only has an LUP, the policies of the LUP are used only as guidance. The following Newport Beach LUP policies relate to development at the subject site: 3.1.4-3, 3.1.4-5, 4.1.4-1, and 4.1.4-3.

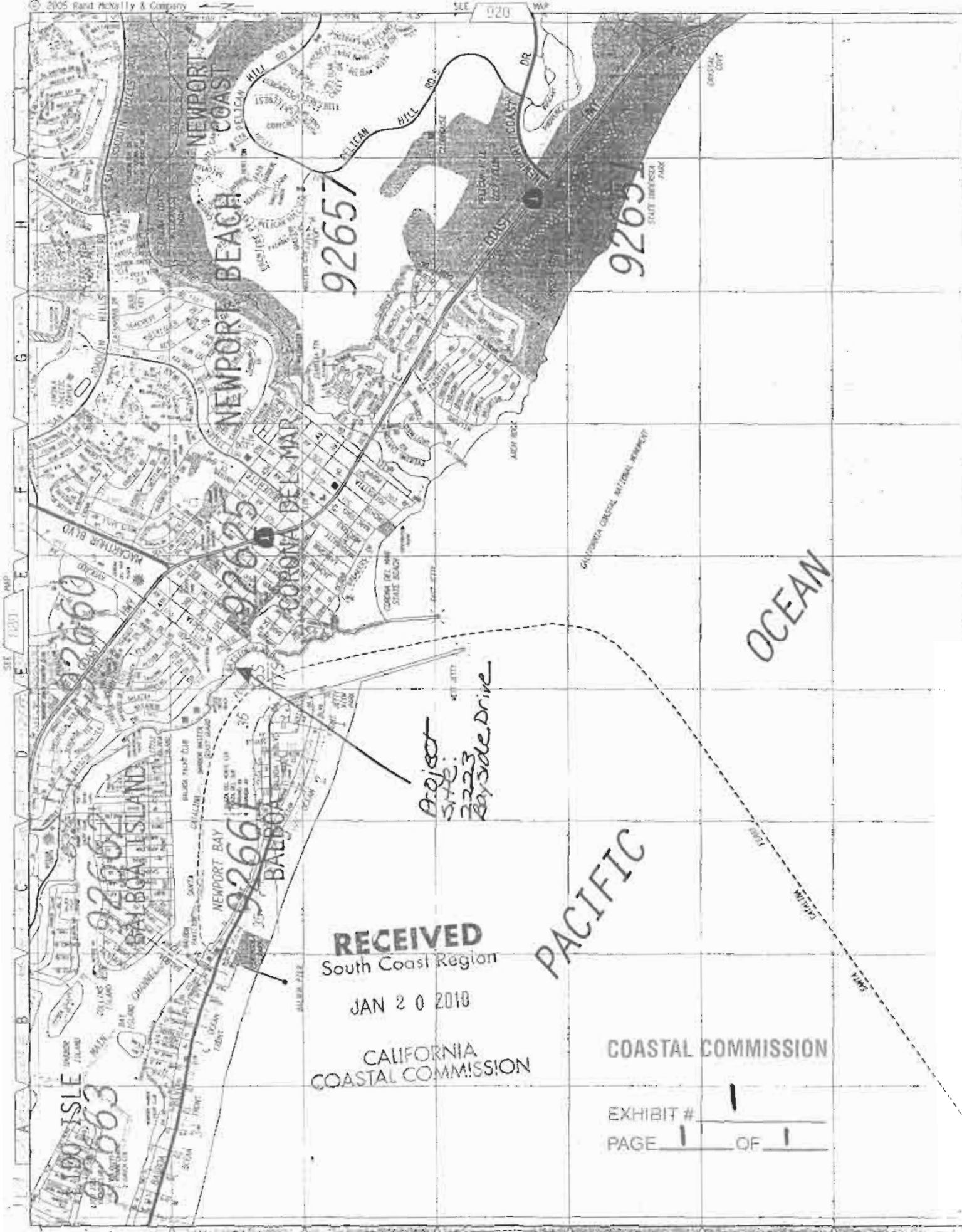
The construction of the proposed project is inconsistent with the policies in the City's certified LUP. The proposed project would result in fill of coastal waters and impacts to marine resources. The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the project must be denied.

### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The City of Newport Beach Harbor Resources Division is the lead agency and has determined that in accordance with CEQA, the project is Categorical Exempt from Provisions of CEQA for the construction. However, Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

While the City of Newport Beach Harbor Resources Division found that the development was Categorical Exempt, the Commission, pursuant to its certified regulatory program under CEQA,

the Coastal Act, the proposed development would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as a shared dock system or a reduced sized dock system not within public tidelands. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.



Project  
SITE:  
2223  
Bay Side Drive

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COASTAL COMMISSION

EXHIBIT # 1  
PAGE 1 OF 1

# COASTAL COMMISSION

EXHIBIT # **2**  
PAGE **1** OF **1**

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MAP.



Project  
Site:  
2223  
Bayside  
Drive

48-03  
CORONA DEL MAR  
PARCEL MAP  
MARCH 1949

48-29  
ASSessor'S BLOCK'S  
PARCEL NUMBERS  
SHOWN IN CIRCLES

48-29  
ASSessor'S MAP  
BOOK 052 PAGE 01  
COUNTY TIDE LANDS

48-03  
CORONA DEL MAR  
PARCEL MAP  
MARCH 1949

**RECEIVED**  
South Coast Region

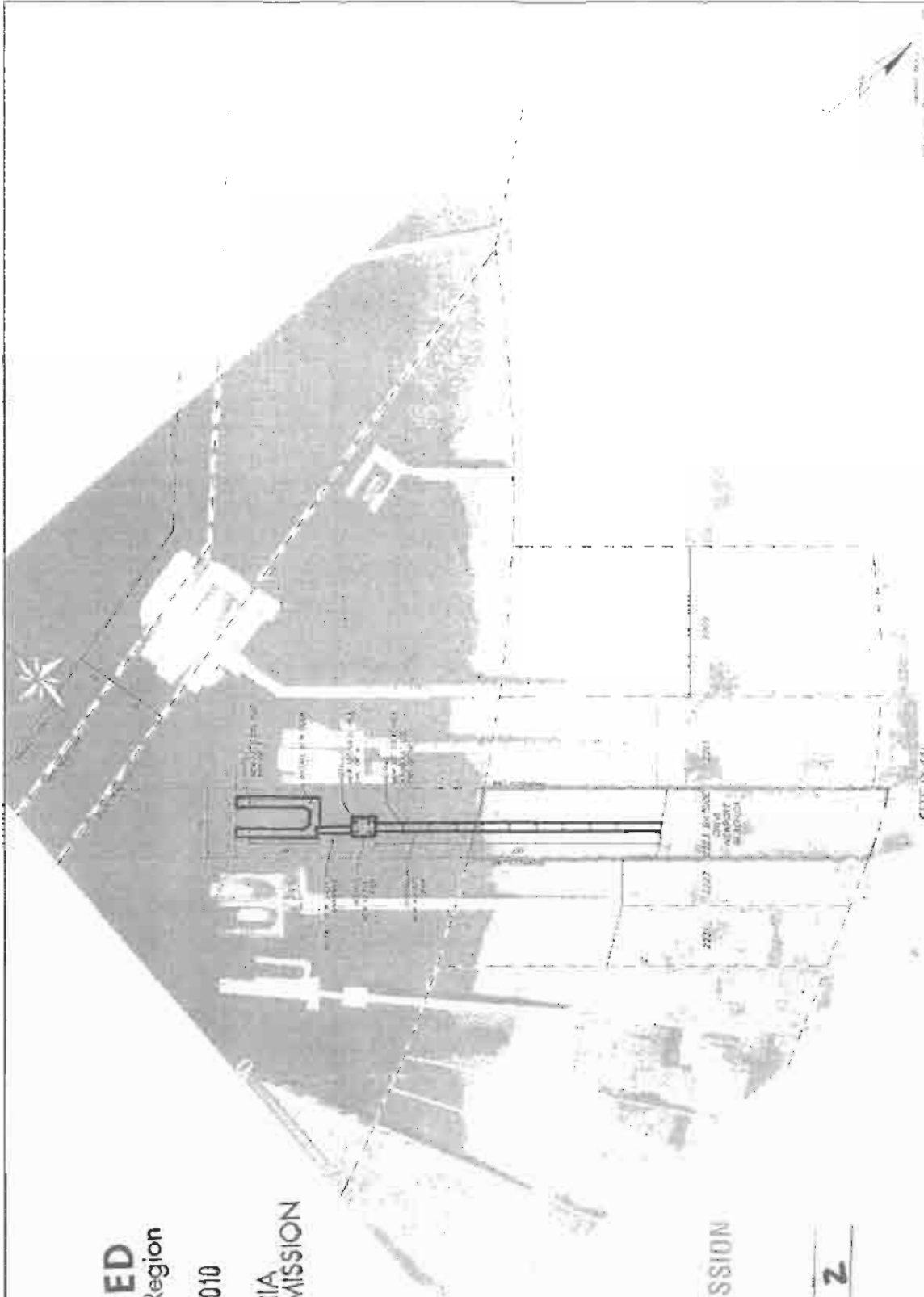
APR 5 2010

CALIFORNIA  
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # **3**

PAGE **1** OF **2**



PATRICIA MANZO  
2223 BAYSIDE DRIVE  
NEWPORT BEACH, CA

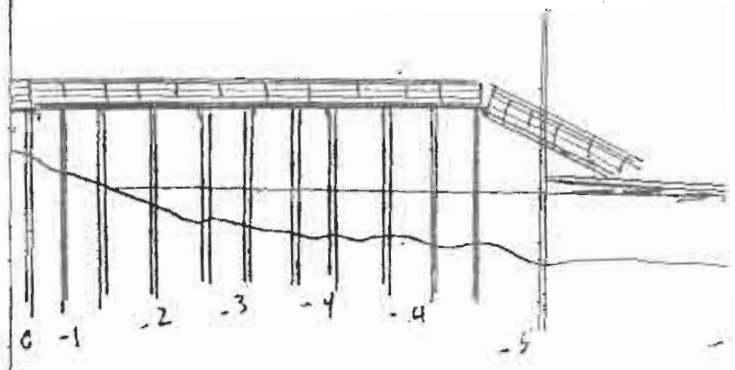
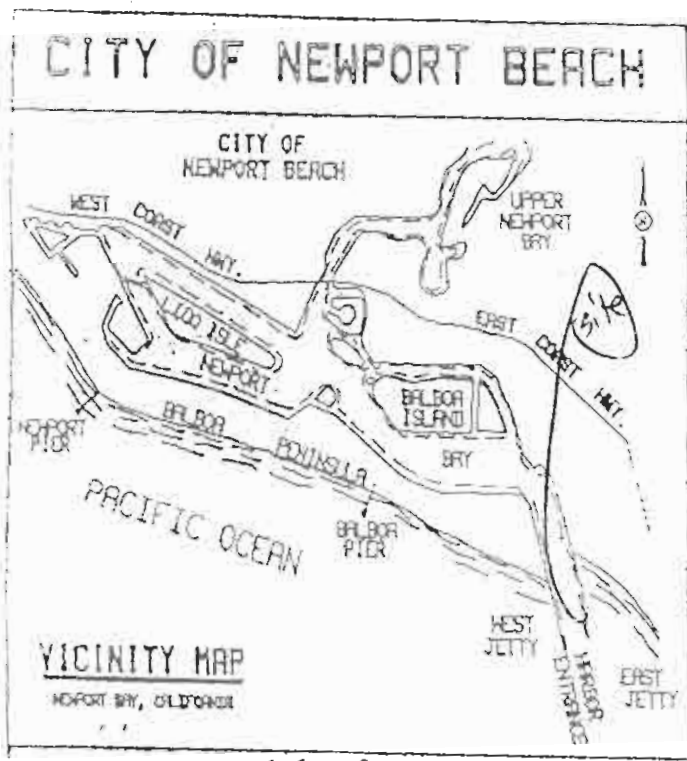
SWIFT SLIP DOCK & PIER  
BUILDERS, INC.  
COSTA MESA, CA



2008 The Coastal Commission, Public Use  
San Diego, CA 92161  
Tel: 619 444 1234

**SITE PLAN**

APR 5 2010  
COSTA MESA, CA

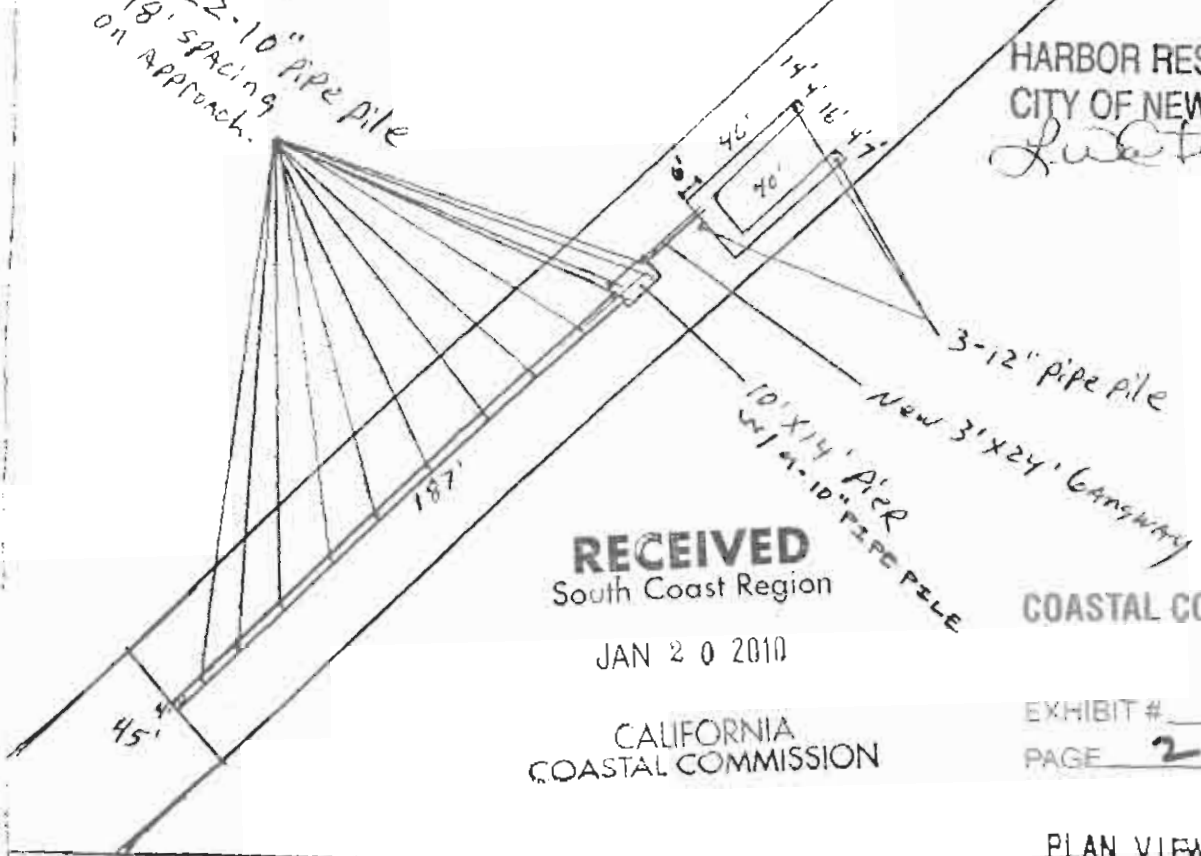


SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

*Scope of Work:*

Install new 187' x 4' pier with 10' x 14' pier platform supported by 22-10" pipe pile  
 new 3' x 24' gangway & new float w/ 3-12" pipe pile

• 22-10" pipe pile  
 • 18' spacing on approach



EEL GRASS INSPECTION

NO EEL GRASS WITHIN 15' OF PROJECT

EEL GRASS IN THE PROJECT AREA

*Chris Miller*

SIGNATURE

105-2223 PERMIT #

12/1/06 DATE

HARBOR RESOURCES DIV.  
 CITY OF NEWPORT BEACH  
*L. Williams 1/25/07*

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 South Coast Region

JAN 20 2010

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EXHIBIT # 3  
 PAGE 2 OF 2

PLAN VIEW 1" = 60'