

**CALIFORNIA COASTAL COMMISSION**

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

**W9b****ADDENDUM**

May 9, 2011

**TO:** Coastal Commissioners and Interested Parties

**FROM:** South Coast District Staff

**SUBJECT:** **ADDENDUM TO ITEM W9b, COASTAL COMMISSION PERMIT APPLICATION NO. 5-10-284-(MORALLY) FOR THE COMMISSION MEETING OF WEDNESDAY, MAY 11, 2011.**

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**Letters Received May 3, 2011 & May 4, 2011 (Attached as Exhibits A-B)**

Commission staff received a letter on May 3, 2011 and a letter on May 4, 2011 in opposition of Coastal Commission Staff's recommendation of Approval for Coastal Commission Permit Application No. 5-10-284, which is on the Regular Calendar. These two letters share a common concern regarding the dock's proposed bayward encroachment, which has already been addressed in the staff report. The proposed project include relocating the existing boat dock float approximately 5' to the West and lengthening it to accommodate a larger boat at the site. To lengthen the dock float, the applicant is proposing to add a 4' x 6' area that will extend 10' beyond the Pierhead Line. While the dock float will be lengthened, the existing dock float is also being relocated so as to only extend 10' past the Pierhead Line. As a result, the dock will not extend anymore bayward than the existing dock float onsite and the adjacent dock floats. In order to make sure that the proposed dock float does not extend more bayward than the proposed 10' from the Pierhead Line, Commission staff is requiring submittal of revised project plans indicating that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line. Thus, there will be no encroachment by the proposed dock further bayward and, therefore, no additional impacts to public recreational waters.

**Changes to Staff Report**

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

1] Pages 1-2 – Modify the Project Description and Summary of Staff Recommendations, as follows:

**PROJECT DESCRIPTION:** Addition to pier and addition to and relocation of an existing boat dock float as follows: install new 4' x 8' pier lobe, attached to the existing 10' x 14' pier platform, supported by a new 12" diameter concrete pile; **relocate the existing boat dock float approximately 5' to the West;** attach new 4' x 6' boat dock float extension **to extend 10'** beyond the Pierhead Line that is supported by an existing relocated 14" diameter concrete pile; **remove a 40 square foot triangular section and** attach new 2' x 26' section to the existing boat dock float supported by an existing relocated 14" diameter concrete pile; and relocation of an existing 14" diameter concrete pile. The existing **4' x 21'** pier **approach and pier platform will remain in their current location. The existing 3' x 24'** gangway will be re-used. The dock system will be composed of Douglas fir and Trex decking. Water coverage by the project will be increased from 477 square feet to 585 square feet (a change of +108 square feet) as a result of this project.

**SUMMARY OF STAFF RECOMMENDATION:**

Commission staff is recommending **APPROVAL** of the relocation, revision and addition to an existing private boat dock. However, Commission staff is conditioning the project **to make it clear that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line** for the following: 1) relocating the proposed 4' x 6' boat dock float addition from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and relocating the associated 14" diameter concrete pile to another area within the existing Northern end boat dock float; and 2) a 4' x 10' reduction of the Northern section of the existing 10' x 14' pier platform. The primary issues addressed in this staff report are the excess coverage of coastal waters, adverse impacts on marine resources, and adverse impacts on recreation on coastal waters.

The subject dock is located on public tidelands, but is reserved for use by the adjacent water front single-family residence. The existing dock has been modified several times over the last decade. The latest proposed changes include **relocating the existing boat dock float approximately 5' to the West** moving the dock and lengthening it to accommodate a larger boat at the site. To lengthen the dock float, the applicant is proposing to add a 4' x 6' area **that will extend 10' beyond the Pierhead Line. While the dock float will be lengthened, the existing dock float is also being relocated so as to only extend 10' past the Pierhead Line.** that will have the effect of moving the seaward end of the dock 6' seaward of its current position. As a result, the dock will **not extend anymore bayward than the existing dock float onsite and the adjacent dock floats. In order to make sure that the proposed dock float does not extend more bayward than the proposed 10' from the Pierhead Line. Commission staff is requiring submittal of revised project plans indicating that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line.** be among the most seaward in the area, and will occupy even more coastal waters that are used for recreation than the dock already does. There is room landward of the dock where the dock could be lengthened to accommodate the larger boat, and would not cause the seaward encroachment of

the dock. Thus, Commission staff is recommending relocation of the proposed 4' x 6' boat dock float addition and 14" diameter concrete pile. Moving this boat dock float addition from the Northern to the Southern end of the existing boat dock float and relocating the associated 14" diameter pile to another area within the existing Northern end boat dock float would result in **Thus, there will be no encroachment by the proposed dock further bayward and, therefore, no additional** impacts to **public** recreational waters. Concerns regarding the impact to navigation and recreational waters are also highlighted in the City of Newport Beach Harbor Commission approval which included a condition that stated that the boat could not extend past the Project Line.

Another concern has to do with the proposed 4' x 8' addition to the already maximized 10' x 14' pier platform. Pier platforms are typically sized at 10' x 14' (140 square feet), but this new pier platform addition would exceed that by another 32 square feet. Section 30231 of the Coastal Act states that marine resources including biological productivity shall be maintained. Expanding water coverage by structures reduces the biological productivity of coastal waters. **While the new pier platform itself may result in additional water coverage, overall water coverage actually decreases from 576 square feet to 564 square feet (a change of -12 square feet) as a result of this project. Therefore, additional coastal waters are being opened up with the project.** Thus, staff is recommending that the area added be offset by removing a now unnecessary part of the existing pier platform. Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Allowing the project as proposed would **not add to the result in** cumulative adverse effects upon navigable waters and biological productivity.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **SIX (6) SPECIAL CONDITIONS** which are necessary to assure that the project conforms with Coastal Act Section 30220 regarding protecting the recreational value of coastal waters and Sections 30230 and 30231 regarding protection of marine resources and water quality, and 30250 regarding avoidance of cumulative impacts. **SPECIAL CONDITION NO. 1** requires that prior to issuance of the Coastal Development Permit the applicant submit revised plans indicating that **the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line:** 1) the proposed 4' x 6' boat dock float addition is relocated from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and that the associated 14" diameter concrete pile is relocated to another area within the existing Northern end boat dock float; and 2) a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed. **SPECIAL CONDITION NO. 2** requires pre- and post-construction eelgrass surveys; **SPECIAL CONDITION NO. 3** requires a pre-commencement of construction *Caulerpa Taxifolia* survey; **SPECIAL CONDITION NO. 4** notifies the applicant of construction practices and debris removal responsibilities; **SPECIAL CONDITION NO. 5** requires the applicant to incorporate long term water quality Best Management Practices for the operation of the dock; and, **SPECIAL CONDITION NO. 6** states that approval of this Coastal Development Permit does not waive any public rights that may exist at the site.

2] Page 2 – Modify the List of Exhibits, as follows:

**LIST OF EXHIBITS**

1. Location Map
2. Aerial Picture of Project Area
3. Existing Dock System
4. Project Plans
5. ~~Project Plans as Revised by Special Condition No. 1~~

3] Page 4 – Modify Special Condition No. 1, as follows:

**1. Revised Project Plans**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The revised project plans shall be in substantial conformance with the plans submitted on November 29, 2010, except they shall be modified as follows: **1)** relocate the proposed 4' x 6' boat dock float addition from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and relocate the associated 14" diameter concrete pile to another area within the existing Northern end boat dock float; and **2)** remove a 4' x 10' section of the Northern (seawardmost) section of the existing 10' x 14' pier platform, as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report. **to indicate that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line.**

...No intervening changes...

4] Pages 8-9 – Modify Section IV.A.1., as follows:

**A. Project Description and Previous Commission Action**

1) Project Description

The subject site is located in Newport Harbor at 411 Edgewater Place in the City of Newport Beach (Exhibits #-1-2). Waterfront development in this area, like the majority of harbor front homes in Newport Harbor, includes private recreational boat docks associated with residential development similar to the project site. The proposed project involves the addition to a pier and addition to and relocation of an existing boat dock float as follows: install new 4' x 8' pier lobe, attached to the existing 10' x 14' pier platform, supported by a new 12" diameter concrete pile; relocate the existing boat dock float approximately 5' to the ~~W~~west; attach a new 4' x 6' boat dock float extension **to extend 10'** beyond the Pierhead Line that is supported by an existing relocated 14" diameter concrete pile; **remove a 40 square foot triangular section and** attach a new 2' x 26' section to the existing boat dock float supported by an existing relocated 14" concrete pile; and relocation of an existing 14" diameter concrete pile. The existing **4' x 21' pier approach and the 10' x 14' pier platform will remain in their current location. The existing 3' x 24' gangway** will be re-used. The dock system will be composed of Douglas fir and Trex decking. (Exhibits #3-4). Only one (1) new 12" diameter concrete pile (a pile that is not already located at the project site) is being proposed that will support the new 4' x 8' pier lobe. The piles are required to meet current engineering standards for the anticipated loads against the boat dock float and pier lobe. Water coverage by the project will be ~~decreased~~ increased from

~~576477~~ square feet to ~~564585~~ square feet (a change of ~~-12+108~~ square feet) as a result of this project.

*...No intervening changes...*

Several progressively more seaward reference lines have been established around Newport Bay, consisting of the 'Bulkhead' Line, the 'Pierhead Line' and the 'Project Line', which have been used to guide the location of bulkheads, piers and docks. The City's Harbor Permit Policy is a City guidance document that contains City policy with regard to pier and dock locations throughout the harbor, as well as their dimensions. The City's Harbor Permit Policy allows docks to extend out to the Pierhead Line in this area (in the vicinity of Bulkhead Station 112). However, the existing and proposed docks extend beyond that line (as do others in the area). The existing dock currently extends past the Pierhead Line by 10'4' and the proposed dock will also extend past the Pierhead Line, ~~but~~ by 10'. The applicant was only able to obtain City approval for a variance from the Harbor Permit Policy by seeking special authorization from the City of Newport Beach Harbor Commission (approved by them on August 11, 2010). The Harbor Commission acknowledged that the proposed pier did not meet Harbor Permit Policy but rationalized its approval by finding the proposed pier/dock resembles others in the area (in the vicinity of Bulkhead Station 112) (Exhibit #2). Thus, the Harbor Commission approved the project. However to limit any additional encroachment into the harbor, the Harbor Commission also conditioned their approval to state that no vessel may extend past the Project Line (which is seaward of the Pierhead Line). The applicant has no intentions for his boat to extend past Project Line into the harbor.

5] Page 10 – Modify Section IV.B., as follows:

*...No intervening changes...*

The proposed project would not result in seaward encroachment of the private boat dock system at this site in order to accommodate a larger boat at the site. **While the dock float will be lengthened, the existing dock float is also being relocated so as to only extend 10' past the Pierhead Line similar to the existing dock float onsite and the adjacent dock floats.** The extension of the boat dock will **not encroach any further bayward and will not result in the additional occupation of coastal waters used for public recreational boating, and thus would not have an adverse impact on water oriented recreational activities.** ~~There are alternatives available that would avoid the impact.~~ Thus, the proposal cannot be found consistent with Section 30220 of the Coastal Act.

**However, in order to verify that there is no additional encroachment into coastal waters for public recreation, the Commission is requiring the submittal of revised project plans indicating that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line**

~~There is room landward of the existing dock where the dock could be lengthened to accommodate the larger boat, and would not cause the seaward encroachment of the dock. This area is between the existing pier platform and the landward end of the existing dock. Extending the dock landward to accommodate the added boat length, instead of seaward, would avoid the encroachment into coastal waters used for public recreation. Thus, the Commission is requiring the relocation of the proposed 4' x 6' boat dock float addition and 14" diameter concrete pile. Moving this boat dock float addition from the Northern to the Southern end of the existing boat dock float and relocating the associated 14" diameter pile to another area within the existing~~

Northern end boat dock float would result in no impacts to recreational waters. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**.

...No intervening changes...

6] Page 12 – Modify Section IV.C.1., as follows:

1) Marine Resources/Biological Productivity

Until recently, the City's Harbor Permit Policy limited pier platforms to a maximum size of 10' x 14' (140 square feet). The Commission also required pier platforms to be similarly limited as a means of limiting fill of coastal waters and water coverage that reduces light and decreases the biological productivity of coastal waters. Coastal waters covered by structures also impede wildlife foraging activities. In order to gain access from the existing pier to the proposed relocated and enlarged dock a new 4' x 8' pier lobe is being proposed to be attached to the existing 10' x 14' pier platform. As a result of this extension, new pier platform with lobe addition would exceed the 140 square foot limit by 32 square feet resulting in 172 square feet of water coverage for the pier platform. This results in a larger ~~an excessively~~ sized pier platform that results in additional water coverage that in turn potentially adversely impacts biological productivity and is thus inconsistent with Sections 30230 and 30231 of the Coastal Act. **While the new pier platform itself may result in additional water coverage, overall water coverage actually decreases from 576 square feet to 564 square feet (a change of -12 square feet) as a result of this project. Therefore, additional coastal waters are being opened up with the project. In order to make sure that no additional open coastal waters are being covered,**

In the new proposed pier/dock configuration, the seaward end of the existing pier platform is no longer necessary. The attachment point for the gangway that connects the pier to the dock float will have been moved from the end of the pier platform, to the newly added pier lobe. Thus, the end of the existing pier can be removed without adversely impacting the functionality of the pier and dock system. Removing the end of the pier will open up coastal waters that are currently covered. This would offset the new water coverage that is created by adding the 4' x 8' pier platform lobe that is needed for the new dock float location. Thus, **SPECIAL CONDITION NO. 1** is imposed, requiring the submittal of revised plans showing that a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report.

Moreover, Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. The ~~An~~ excessively sized pier platform would add to the cumulative adverse effects of additional water coverage that in turn adversely impacts biological productivity, **however, in this particular case, overall water coverage actually decreases from 576 square feet to 564 square feet (a change of -12 square feet) as a result of this project. Thus, the proposed dock configuration conforms to the standards the Commission has found acceptable to limit the amount of open water coverage and minimize impacts to biological productivity associated with replacement of existing private boating facilities in Newport Harbor. Therefore, as conditioned, the proposed project will not result in a significant adverse effect to the bay bottom habitat and is consistent with Sections 30230 and 30250.** Although a single addition to a pier platform may not seem to create significant adverse impacts, the cumulative effect of allowing excessively sized pier platforms will add up over time, especially when such an excessive sized platform is unnecessary. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the adverse impacts

~~upon biological productivity, which is consistent with the Sections 30230 and 30233 of the Coastal Act, the overall effect would be a significant impact to coastal waters.~~

7] Page 14 – Modify Section IV.C.Conclusion., as follows:

Conclusion

**Thus, the proposed project is consistent** ~~As described above, the proposed post project size of the pier platform and pier lobe is inconsistent with Sections 30230 and 30231 of the Coastal Act in that it **does not** results in excessive water coverage resulting in impacts to biological productivity. Therefore, **SPECIAL CONDITION NO. 1** is imposed which requires submittal of revised plans **indicating that the proposed dock float shall be relocated as far landward as possible but in no case shall the dock float extend further than 10' bayward of the Pierhead Line, consistent with the existing dock float onsite and the adjacent dock floats** that a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report. Therefore, the development, as conditioned, is in conformity with Sections 30230, 30231 and 30250 of the Coastal Act.~~



W9B

5/1/11

RECEIVED  
South Coast Region

MAY 3 - 2011

CALIFORNIA  
COASTAL COMMISSION

Re: Item # W9B

Permit # 5-10-284

Mr. John Morally

My Name: Robert Schrimmer

Opposed to this expansion

Ladies and Gentlemen,

We believe the expansion of this existing float is not in the best interest of public access to the bay. The expansion, if granted, will restrict paddle boarding, kayaking, swimming and navigation on this segment of Newport Bay. The expansion would extend further into the bay than most existing floats.

Please deny this intrusion.

Sincerely,

Robert Schrimmer

Jean Schrimmer

407 E. Edgewater Ave,

Newport Beach, Ca. 92661



Original letter sent to Santa Rosa

COASTAL COMMISSION

EXHIBIT # A

PAGE 1 OF 1

8



495

RECEIVED  
South Coast Region

MAY 4 - 2011

CALIFORNIA  
COASTAL COMMISSION

05/03/2011

Mary Gay Kelly  
William A. Kelly  
409 E. Edgewater  
Newport Beach, CA 92661

California Coastal Commission  
South Coast District  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

Permit Number 5-10-284  
411 E. Edgewater Pl, Newport Beach (Orange County) 048-111-03

Upon receiving your notice of public hearing I went to the Harbor Resources Division in Newport Beach and spoke with Chris Miller, Manager and Shannon Levin, Supervisor. I wanted to get a look at the layout of the proposed relocated float and float extension beyond the pier head line.

There are several problems with the proposed change.

1. Why are we allowing any protrusion beyond the pier head line? By definition the pier head line should be the end of the pier. Allowing extension beyond the pier head narrows the channel that the boats have to maneuver.
2. The details of the drawing are not correct. The main float measures 6 1/2 feet wide not 4 feet as the drawing shows. This error leaves the owner to believe he can put a 17 foot wide boat in, when he can only put a 14 1/2 foot wide boat.
3. The 4 foot by 8 foot pier loab is not attaching to the existing float as your document says. It is attaching to the standing pier, out of the water.
4. The current code requires the ramp to be 24feet long while the existing ramp is only 22' long. This is for safety. Shorter than 24 becomes too steep at low and high tides.
5. The view of the water front will be blocked from the land walkway changing it dramatically through the whole tract from 10' as it exists to 18' as it is proposed. Our lots on the entire block are only 28- feet wide. Also take into consideration the views from homes along the waterfront being limited as well as the owners access to the water on the beach will only be in two 5 foot areas.

Cc: CCC, PO Box 1450, 200 Oceangate, 10<sup>th</sup> fl, Long Beach, 90802-4325  
Santa Rosa Board of Supervisors, 575 Administration Dr., Santa Rosa, CA 95403-2887

Mary Gay Kelly *Mary Gay Kelly*  
William A. Kelly *William A Kelly*

COASTAL COMMISSION

EXHIBIT # B  
PAGE 1 OF 1

**CALIFORNIA COASTAL COMMISSION**

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

**W 9b**

Filed: November 29, 2010  
49th Day: January 17, 2011  
180th Day: May 27, 2011  
Staff: Fernie Sy-LB  
Staff Report: April 21, 2011  
Hearing Date: May 11-13, 2011  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-10-284

**APPLICANT:** John Morally

**AGENT:** Swift Slip Dock & Pier Builders; Attn: Amanda Spooner

**PROJECT LOCATION:** 411 Edgewater Place, Newport Beach (County of Orange)

**PROJECT DESCRIPTION:** Addition to pier and addition to and relocation of an existing boat dock float as follows: install new 4' x 8' pier lobe, attached to the existing 10' x 14' pier platform, supported by a new 12" diameter concrete pile; attach new 4' x 6' boat dock float extension beyond the Pierhead Line that is supported by an existing relocated 14" diameter concrete pile; attach new 2' x 26' section to the existing boat dock float supported by an existing relocated 14" diameter concrete pile; and relocation of an existing 14" diameter concrete pile. The existing pier and gangway will be re-used. The dock system will be composed of Douglas fir and Trex decking. Water coverage by the project will be increased from 477 square feet to 585 square feet (a change of +108 square feet) as a result of this project.

**SUMMARY OF STAFF RECOMMENDATION:**

Commission staff is recommending **APPROVAL** of the relocation, revision and addition to an existing private boat dock. However, Commission staff is conditioning the project for the following: 1) relocating the proposed 4' x 6' boat dock float addition from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and relocating the associated 14" diameter concrete pile to another area within the existing Northern end boat dock float; and 2) a 4' x 10' reduction of the Northern section of the existing 10' x 14' pier platform. The primary issues addressed in this staff report are the excess coverage of coastal waters, adverse impacts on marine resources, and adverse impacts on recreation on coastal waters.

The subject dock is located on public tidelands, but is reserved for use by the adjacent water front single-family residence. The existing dock has been modified several times over the last decade. The latest proposed changes include moving the dock and lengthening it to accommodate a larger boat at the site. To lengthen the dock float, the applicant is proposing to add a 4' x 6' area that will have the effect of moving the seaward end of the dock 6' seaward of its current position. As a result, the dock will be among the most seaward in the area, and will occupy even more coastal waters that are used for recreation than the dock already does. There is room landward of the dock where the dock could be lengthened to accommodate the larger boat, and would not cause the seaward encroachment of the dock. Thus, Commission staff is recommending relocation of the

proposed 4' x 6' boat dock float addition and 14" diameter concrete pile. Moving this boat dock float addition from the Northern to the Southern end of the existing boat dock float and relocating the associated 14" diameter pile to another area within the existing Northern end boat dock float would result in no impacts to recreational waters. Concerns regarding the impact to navigation and recreational waters are also highlighted in the City of Newport Beach Harbor Commission approval which included a condition that stated that the boat could not extend past the Project Line.

Another concern has to do with the proposed 4' x 8' addition to the already maximized 10' x 14' pier platform. Pier platforms are typically sized at 10' x 14' (140 square feet), but this new pier platform addition would exceed that by another 32 square feet. Section 30231 of the Coastal Act states that marine resources including biological productivity shall be maintained. Expanding water coverage by structures reduces the biological productivity of coastal waters. Thus, staff is recommending that the area added be offset by removing a now-unnecessary part of the existing pier platform. Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Allowing the project as proposed would add to the cumulative adverse effects upon navigable waters and biological productivity.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **SIX (6) SPECIAL CONDITIONS** which are necessary to assure that the project conforms with Coastal Act Section 30220 regarding protecting the recreational value of coastal waters and Sections 30230 and 30231 regarding protection of marine resources and water quality, and 30250 regarding avoidance of cumulative impacts. **SPECIAL CONDITION NO. 1** requires that prior to issuance of the Coastal Development Permit the applicant submit revised plans indicating that: 1) the proposed 4' x 6' boat dock float addition is relocated from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and that the associated 14" diameter concrete pile is relocated to another area within the existing Northern end boat dock float; and 2) a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed. **SPECIAL CONDITION NO. 2** requires pre- and post-construction eelgrass surveys; **SPECIAL CONDITION NO. 3** requires a pre-commencement of construction *Caulerpa Taxifolia* survey; **SPECIAL CONDITION NO. 4** notifies the applicant of construction practices and debris removal responsibilities; **SPECIAL CONDITION NO. 5** requires the applicant to incorporate long term water quality Best Management Practices for the operation of the dock; and, **SPECIAL CONDITION NO. 6** states that approval of this Coastal Development Permit does not waive any public rights that may exist at the site.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan; City of Newport Beach Harbor Permit Policies; City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 112-0411 and Plan Check No. 1159-2010 dated August 16, 2010; City of Newport Beach Harbor Commission approval dated August 11, 2010; Letter from Swift Slip Dock & Pier Builders to Commission staff received March 3, 2011; and *Preliminary Eelgrass Survey, Morally Residence, 411 E. Edgewater Drive, Newport Beach, CA #3782* prepared by WSSI Environmental Consulting & Monitoring dated June 7, 2010.

#### **LIST OF EXHIBITS**

1. Location Map
2. Aerial Picture of Project Area
3. Existing Dock System
4. Project Plans
5. Project Plans as Revised by Special Condition No. 1

**STAFF RECOMMENDATION:**

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

**MOTION:**

***I move that the Commission approve Coastal Development Permit No. 5-10-284 pursuant to the staff recommendation.***

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which 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 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 CONDITIONS:

#### 1. Revised Project Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The revised project plans shall be in substantial conformance with the plans submitted on November 29, 2010, except they shall be modified as follows: **1)** relocate the proposed 4' x 6' boat dock float addition from the proposed Northern end of the existing boat dock float to the Southern end of the existing boat dock float and relocate the associated 14" diameter concrete pile to another area within the existing Northern end boat dock float; and **2)** remove a 4' x 10' section of the Northern (seawardmost) section of the existing 10' x 14' pier platform, as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

#### 2. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera 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 applicants 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 applicants shall submit the survey:
  - i. for the review and approval of the Executive Director; and
  - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D.** If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *C. Taxifolia* discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have 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. Construction Responsibilities and Debris Removal**

The permittee shall comply with the following construction related requirements:

- A.** 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.
- B.** 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.
- C.** 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.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** 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.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** 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.
- K.** 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.
- L.** 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.

- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** 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.
- O.** 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.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**5. 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.

**A. Boat Cleaning and Maintenance Measures:**

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

**B. Solid and Liquid Waste Management Measures:**

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

**C. Petroleum Control Management Measures:**



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

#### **6. 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 subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **A. Project Description and Previous Commission Action**

##### **1) Project Description**

The subject site is located in Newport Harbor at 411 Edgewater Place in the City of Newport Beach (Exhibits #-1-2). Waterfront development in this area, like the majority of harbor front homes in Newport Harbor, includes private recreational boat docks associated with residential development similar to the project site. The proposed project involves the addition to a pier and addition to and relocation of an existing boat dock float as follows: install new 4' x 8' pier lobe, attached to the existing 10' x 14' pier platform, supported by a new 12" diameter concrete pile; relocate the existing boat dock float approximately 5' to the west; attach a new 4' x 6' boat dock float extension beyond the Pierhead Line that is supported by an existing relocated 14" diameter concrete pile; attach a new 2' x 26' section to the existing boat dock float supported by an existing relocated 14" concrete pile; and relocation of an existing 14" diameter concrete pile. The existing pier and gangway will be re-used. The dock system will be composed of Douglas fir and Trex decking. (Exhibits #3-4). Only one (1) new 12" diameter concrete pile (a pile that is not already located at the project site) is being proposed that will support the new 4' x 8' pier lobe. The piles are required to meet current engineering standards for the anticipated loads against the boat dock float and pier lobe. Water coverage by the project will be increased from 477 square feet to 585 square feet (a change of +108 square feet) as a result of this project

The agent states that the dock reconfiguration is necessary to accommodate the homeowner's 60-foot long boat. The current dock configuration is not designed for a boat of that size. The proposed extension to the length and width of the dock float will provide greater support, strength and accommodation for the boat. The float system is being moved West and South because if it did not, the dock and boat would extend past the limit Project Line, which is not allowed. The gangway is being extended to the West of the new pier lobe so that the project will fit within the confines of the Project Line. The typical rule of thumb for the City of Newport Beach is that the boat can extend past the dock, but to the distance equal to the width/beam of the boat. With the proposed project, that criterion is met with this configuration.

Several progressively more seaward reference lines have been established around Newport Bay, consisting of the 'Bulkhead' Line, the 'Pierhead Line' and the 'Project Line', which have been used to guide the location of bulkheads, piers and docks. The City's Harbor Permit Policy is a City guidance document that contains City policy with regard to pier and dock locations throughout the harbor, as well as their dimensions. The City's Harbor Permit Policy allows docks to extend out to the Pierhead Line in this area (in the vicinity of Bulkhead Station 112). However, the existing and proposed docks extend beyond that line (as do others in the area). The existing dock currently extends past the Pierhead Line by 4' and the proposed dock will also extend past the Pierhead Line, but by 10'. The applicant was only able to obtain City approval for a variance from the Harbor Permit Policy by seeking special authorization from the City of Newport Beach Harbor Commission (approved by them on August 11, 2010). The Harbor Commission acknowledged that the proposed pier did not meet Harbor Permit Policy but rationalized its approval by finding the proposed pier/dock resembles others in the area (in the vicinity of Bulkhead Station 112) (Exhibit #2). Thus, the Harbor Commission approved the project. However to limit any additional encroachment into the harbor, the Harbor Commission also conditioned their approval to state that no vessel may extend past the Project Line (which is seaward of the Pierhead Line). The applicant has no intentions for his boat to extend past Project Line into the harbor.

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.

2) Previous Commission Action

Waiver De Minimis No. 5-96-265-W (McCarthy)

On February 6, 1996, the Commission approved Waiver De Minimis No. 5-96-265-W-(McCarthy) for the demolition of an existing dock and gangway and construction of a new dock and gangway. The new development consists of pilings, a 3' x 22' ramp, an 18.9' x 35' slip and a 4' x 15' pier.

Administrative Permit No. 5-03-215-(Treaccar)

On August 7, 2003, the Commission approved Administrative Permit No. 5-03-215-(Treaccar) for the modification of an existing boat dock including: removing and replacing the floating dock with a 40' x 6' float; relocating three (3) 12" diameter guide piles; and reinstallation of a gangway.

**B. Public Access and Recreation**

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30224 of the Coastal Act states:

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

The waters of Newport Bay are a very popular recreational boating area. The proposed project includes the relocation, revision and addition to an existing private boat dock associated with residential development. This private dock is located on public tidelands that are administered by the City of Newport Beach pursuant to a tidelands grant. Although the placement of private docks on public tidelands has been found by the City to be consistent with the tidelands grant, it is important to assure that such docks and additions thereto are not being placed in a location that would adversely impact public use of recreational waters. Section 30220 requires that water areas needed for water oriented recreational activities, like public recreational boating, be protected.

The proposed project would result in seaward encroachment of the private boat dock system at this site in order to accommodate a larger boat at the site. The extension of the boat dock will result in the occupation of coastal waters used for public recreational boating, and thus would have an adverse impact on water oriented recreational activities. There are alternatives available that would avoid the impact. Thus, the proposal cannot be found consistent with Section 30220 of the Coastal Act.

There is room landward of the existing dock where the dock could be lengthened to accommodate the larger boat, and would not cause the seaward encroachment of the dock. This area is between the existing pier platform and the landward end of the existing dock. Extending the dock landward to accommodate the added boat length, instead of seaward, would avoid the encroachment into coastal waters used for public recreation. Thus, the Commission is requiring the relocation of the proposed 4' x 6' boat dock float addition and 14" diameter concrete pile. Moving this boat dock float addition from the Northern to the Southern end of the existing boat dock float and relocating the associated 14" diameter pile to another area within the existing Northern end boat dock float would result in no impacts to recreational waters. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**.

When sited correctly to be consistent with all Coastal Act polities, the berthing of boats is an encouraged recreational use under Section 30224 of the Coastal Act. However, as noted above, the proposed dock is located on public tidelands, and not on privately owned land. Thus, **SPECIAL CONDITION NO. 6** 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

subject property, including the tideland and submerged land beneath the development approved by this Coastal Development Permit.

The nearest public access exists immediately adjacent to the subject site in that there is a public walkway along the bulkhead in this area. The proposed project will not interfere with public use of the walkway.

### Conclusion

Thus, as conditioned, the proposed project, will have no impact on existing public access or coastal recreation. The proposed development will not adversely affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, is in conformity with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

### **C. Marine Resources & Water Quality**

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 30250 of the Coastal Act states, in pertinent part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30250 of the Coastal Act requires that cumulative adverse impacts on coastal resources be avoided.

The proposed project includes measures to help assure protection of coastal waters and marine resources. Measures proposed include: all parts of the proposed dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, in order to assure that all impacts to water quality are minimized, special conditions are imposed that specify and impose construction phase and post construction measures to avoid adverse impacts on marine resources.

1) Marine Resources/Biological Productivity

Until recently, the City's Harbor Permit Policy limited pier platforms to a maximum size of 10' x 14' (140 square feet). The Commission also required pier platforms to be similarly limited as a means of limiting fill of coastal waters and water coverage that reduces light and decreases the biological productivity of coastal waters. Coastal waters covered by structures also impede wildlife foraging activities. In order to gain access from the existing pier to the proposed relocated and enlarged dock a new 4' x 8' pier lobe is being proposed to be attached to the existing 10' x 14' pier platform. As a result of this extension, new pier platform with lobe addition would exceed the 140 square foot limit by 32 square feet resulting in 172 square feet of water coverage for the pier platform. This results in an excessively sized pier platform that results in additional water coverage that in turn adversely impacts biological productivity and is thus inconsistent with Sections 30230 and 30231 of the Coastal Act.

In the new proposed pier/dock configuration, the seaward end of the existing pier platform is no longer necessary. The attachment point for the gangway that connects the pier to the dock float will have been moved from the end of the pier platform, to the newly added pier lobe. Thus, the end of the existing pier can be removed without adversely impacting the functionality of the pier and dock system. Removing the end of the pier will open up coastal waters that are currently covered. This would offset the new water coverage that is created by adding the 4' x 8' pier platform lobe that is needed for the new dock float location. Thus, **SPECIAL CONDITION NO. 1** is imposed, requiring the submittal of revised plans showing that a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report.

Moreover, Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. The excessively sized pier platform would add to the cumulative adverse effects of additional water coverage that in turn adversely impacts biological productivity. Although a single addition to a pier platform may not seem to create significant adverse impacts, the cumulative effect of allowing excessively sized pier platforms will add up over time, especially when such an excessive sized platform is unnecessary. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the adverse impacts upon biological productivity, which is consistent with the Sections 30230 and 30233 of the Coastal Act, the overall effect would be a significant impact to coastal waters.

2) Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

An eelgrass survey took place on June 4, 2010 as required by the City of Newport Beach Harbor Resources Division and none was found. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the May 2011 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, **SPECIAL CONDITION NO. 2** is imposed which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

3) Caulerpa Taxifolia

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.

A pre-construction *Caulerpa Taxifolia* survey was completed on June 4, 2010 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized 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. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **SPECIAL**

**CONDITION NO.3** which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

#### Conclusion

As described above, the proposed post project size of the pier platform and pier lobe is inconsistent with Sections 30230 and 30231 of the Coastal Act in that it results in excessive water coverage resulting in impacts to biological productivity. Therefore, **SPECIAL CONDITION NO. 1** is imposed which requires submittal of revised plans that a 4' x 10' section of the Northern section of the existing 10' x 14' pier platform is removed as generally depicted on Exhibit #5 of the April 21, 2011 Staff Report. Therefore, the development, as conditioned, is in conformity with Sections 30230, 30231 and 30250 of the Coastal Act.

#### **D. Fill of Coastal Waters**

Section 30233 of the Coastal Act states, in pertinent 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 launching ramps.*

*(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities ...*

The proposed project includes the relocation, revision and addition to an existing private boat dock. The proposed boat dock float will be supported by three (3) existing relocated 14" diameter concrete piles. The project also includes the installation of one (1) new 12" diameter concrete pile to support the new 4' x 8' pier lobe (this is a new pile that is not already located at the project site). The four (4) piles are proposed to be located in coastal waters. Placement of the piles for both the boat dock float and the pier lobe will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

#### 1) Allowable Use

The boat dock float is proposed to be supported by three (3) existing relocated 14" diameter concrete piles. The project also includes the installation of one (1) new (a pile that is not already located at the project site) 12" diameter concrete pile to support the new 4' x 8' pier lobe. The boat dock float would not be safe or effective without the three (3) remaining boat dock float anchoring

piles. Thus, the piles are an integral part of the boat dock system. The new 12" diameter pile is essential for support of the pier lobe, which the applicant asserts will be used for boating related purposes. The boat dock, including the boat dock float and supporting piles and pier lobe and supporting pile, constitute a boating facility, which is an allowable use for which fill may be permitted consistent with Section 30233(a)(3) of the Coastal Act. Therefore, the proposed fill resulting from placement of the three (3) supporting piles for the boat dock float and one (1) for the pier lobe is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

2) Alternatives

The proposed placement of the four (4) piles will result in fill of coastal waters. The placement of the three (3), 14" diameter concrete piles is the minimum amount of construction necessary to safely anchor the boat dock float. Additionally, the new 12" diameter pile is for the pier lobe, which the applicant asserts will be used for boating related purposes is the minimum amount of construction necessary to safely anchor the pier lobe. Fewer and/or smaller piles would not adequately secure the boat dock float or pier lobe. By using the least number of piles necessary, coupled with the smallest footprint, to accomplish the goal of securing the boat dock float and pier lobe, the four (4) piles associated with the boat dock float and pier lobe represent the least environmentally damaging feasible alternative. This alternative represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233 that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

3) Mitigation

The proposed recreational boat dock system and its associated three (3) 14" diameter concrete piles and one (1) 12" diameter concrete pile are an allowable and encouraged marine related use. The project design for the boat dock float and pier lobe includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock and pier lobe. The three (3) 14" diameter concrete piles will provide hard substrate that can be used by some marine life, although, this isn't equivalent to the habitat being impacted. There are no feasible less environmentally damaging alternatives available. The project site was surveyed for eelgrass and none was found to exist at the site. Section 30224 of the Coastal Act requires that recreational boating use of coastal waters be encouraged by, among other things, providing berthing space in existing harbors. 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 conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

Conclusion

Thus, as conditioned, the proposed project, will not be in consistent with the Section 30233 of the Coastal Act regarding fill of open coastal waters. Therefore, the development, as conditioned, is in conformity with Section 30233 of the Coastal Act.



**D. Local Coastal Program (LCP)**

Section 30604(a) 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 permit may only be used 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 Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project will conform with Coastal Act Section 30220 regarding protecting the recreational value of coastal waters and Sections 30230 and 30231 regarding protection of marine resources and water quality, and 30250 regarding avoidance of cumulative impacts.

The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not 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).

**E. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt on August 16, 2010. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

California Coastal Commission  
South Coast District Office

APPROVED

Permit No. \_\_\_\_\_

By: \_\_\_\_\_

EFFECTIVE

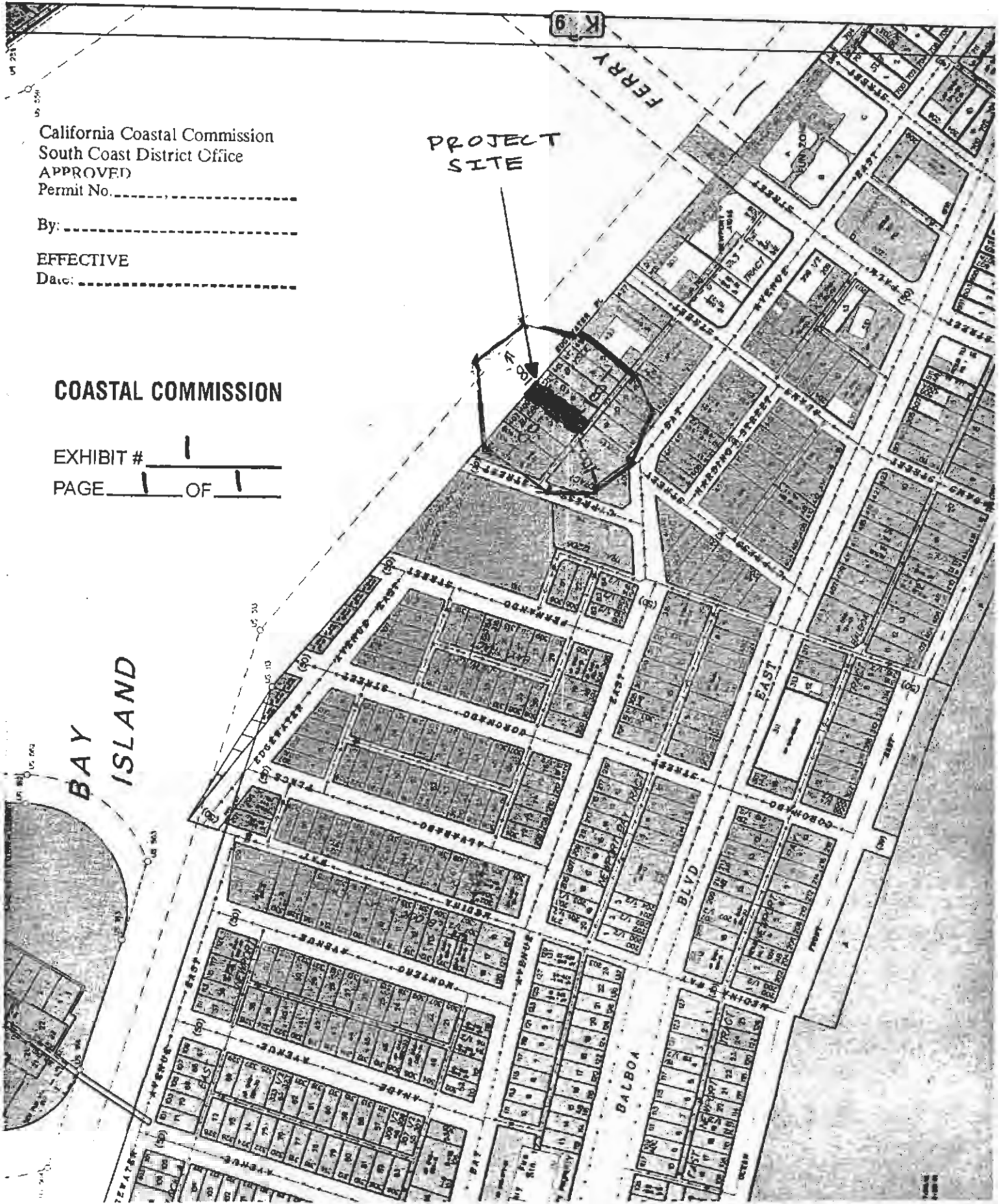
Date: \_\_\_\_\_

**COASTAL COMMISSION**

EXHIBIT # 1

PAGE 1 OF 1

PROJECT  
SITE

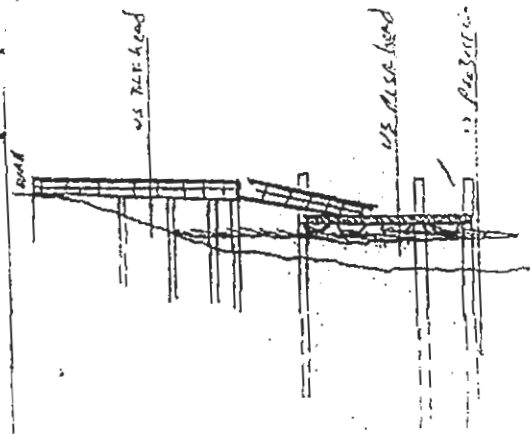
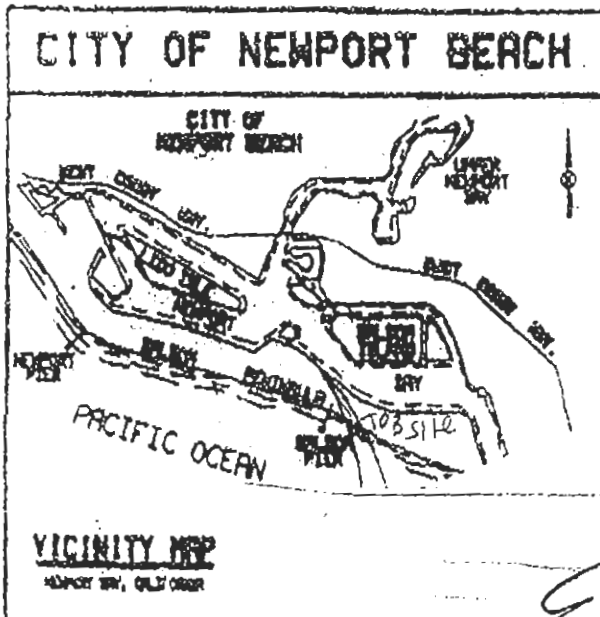


COASTAL COMMISSION

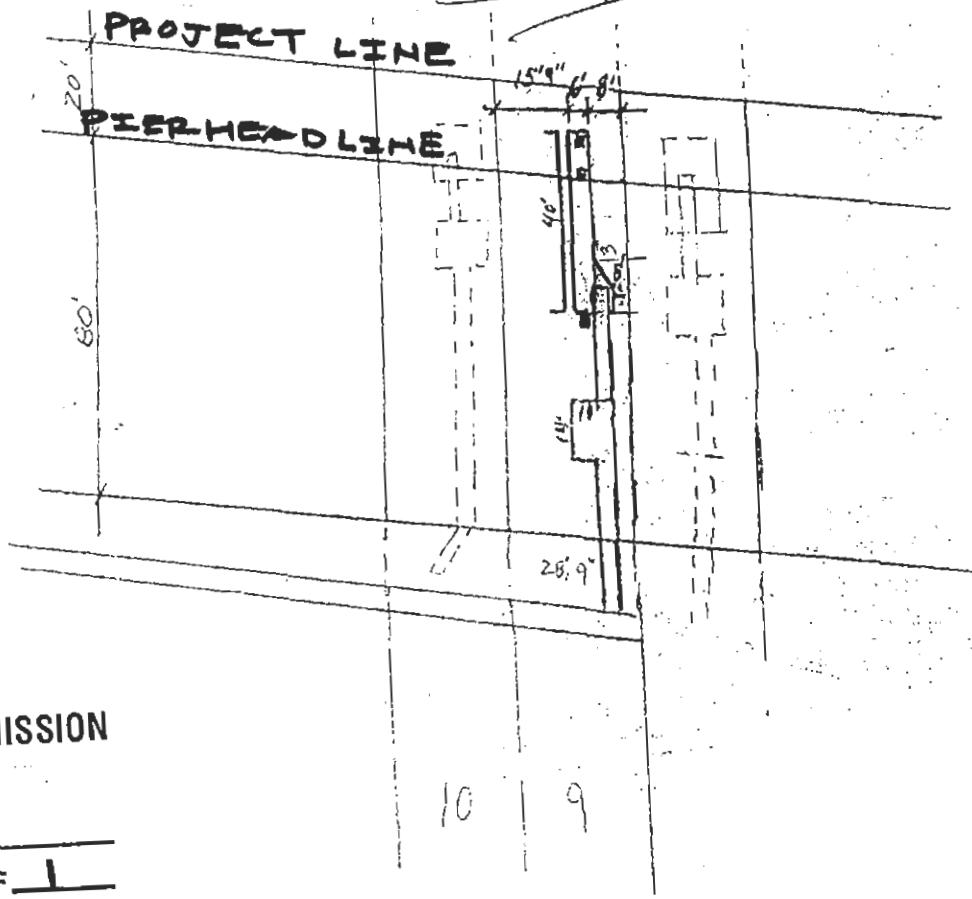
EXHIBIT # 2  
PAGE 1 OF 1

PROTECT SITE





*Existing DOCK LAYOUT*



**COASTAL COMMISSION**

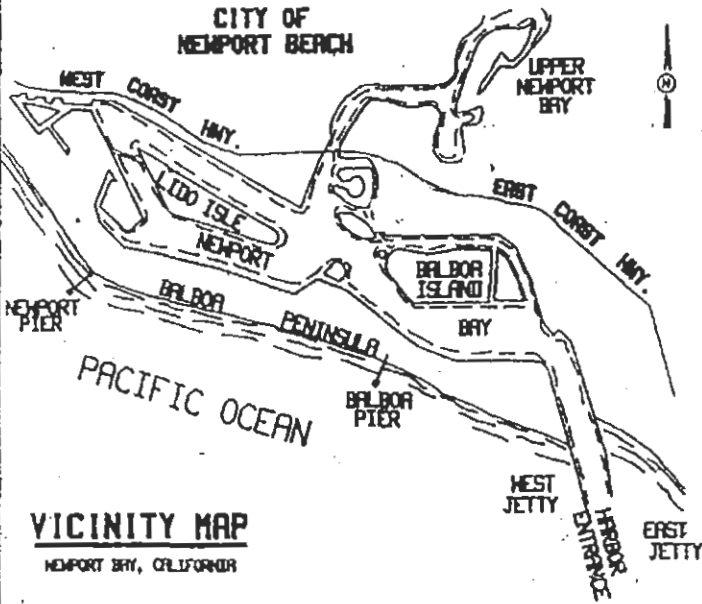
EXHIBIT # 3  
PAGE 1 OF 1

Address: 411 Edgewater PL. NAME: JOHN MORALLY DATE: 5-10-10  
cont. Swift Slip

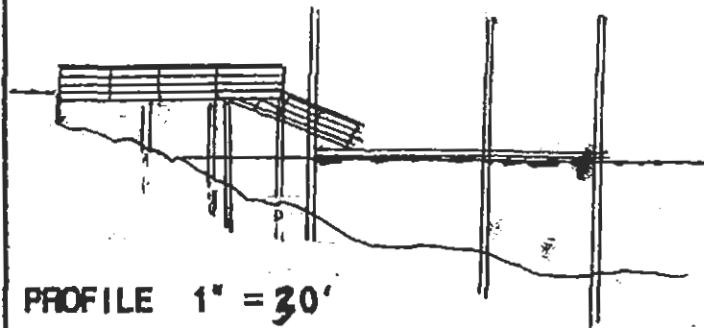
# CITY OF NEWPORT BEACH

HARBOR RESOURCES DIV.  
CITY OF NEWPORT BEACH

*Sm* 8/17/10



**VICINITY MAP**  
NEWPORT BAY, CALIFORNIA



**PROFILE 1" = 30'**

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

California Coastal Commission  
South Coast District Office  
APPROVED  
Permit No. \_\_\_\_\_

By: \_\_\_\_\_  
EFFECTIVE \_\_\_\_\_  
Date: \_\_\_\_\_

**PROJECT LINE**

4'x6' New Section Added to EXISTING DOCK

**PIERHEAD LINE**

Relocated Dock

**RECEIVED**  
South Coast Region

NOV 29 2010

CALIFORNIA  
COASTAL COMMISSION

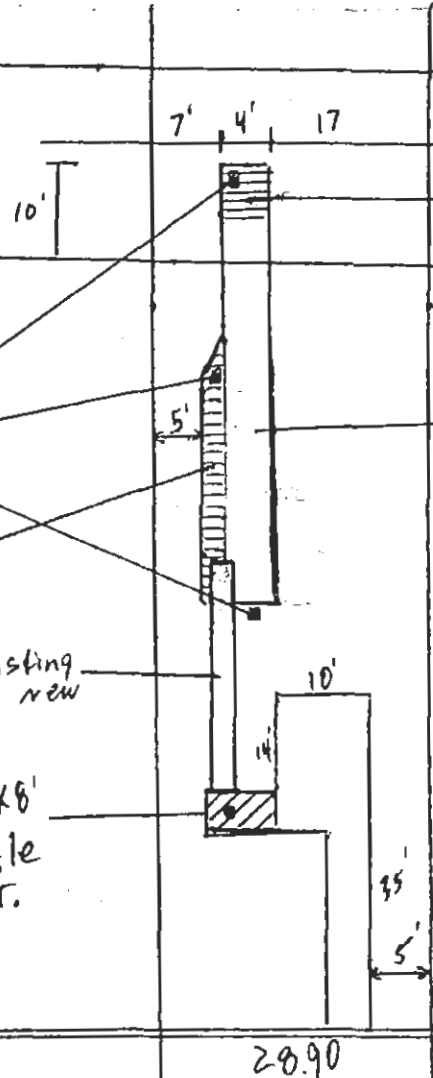
**EEL GRASS INSPECTION**

- Eelgrass within 15' of project
- Eelgrass within 15 - 30' of project
- No Eelgrass in project area

*Sm*  
Signature

6/4/10 1100  
Inspection Date & Time

3-new 14" concrete pile  
2'x26' new Section Added to existing dock.  
Reuse existing Gangway in new location.  
New 4'x8' pier lobe with 12" pile for support.



COASTAL COMMISSION

EXHIBIT # 4  
PAGE 1 OF 1

**PLAN VIEW 1" = 30'**

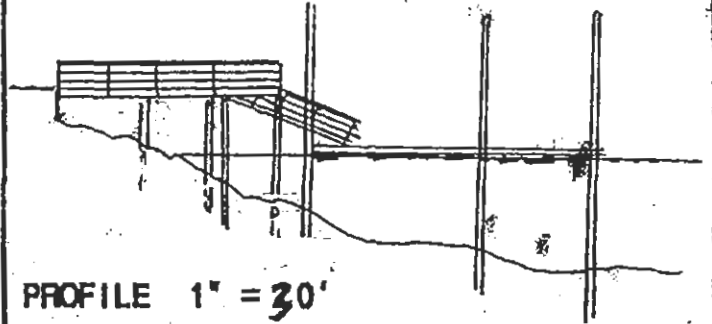
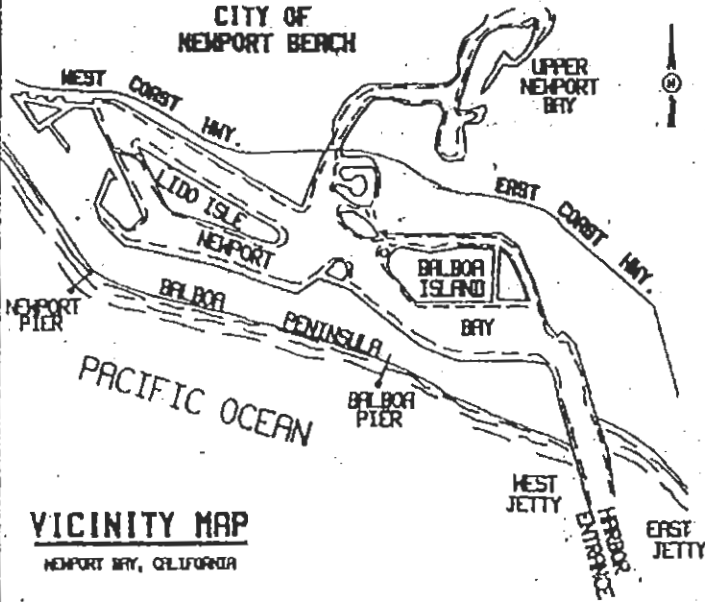
APPLICANT'S NAME John Morally | JOB ADDRESS 411 Edgewater | DATE 6-12-10



# CITY OF NEWPORT BEACH

HARBOR RESOURCES DIV.  
CITY OF NEWPORT BEACH

*Sign* 8/17/10



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

California Coastal Commission  
South Coast District Office  
APPROVED  
Permit No. \_\_\_\_\_

By: \_\_\_\_\_  
EFFECTIVE \_\_\_\_\_  
Date: \_\_\_\_\_

PROJECT LINE

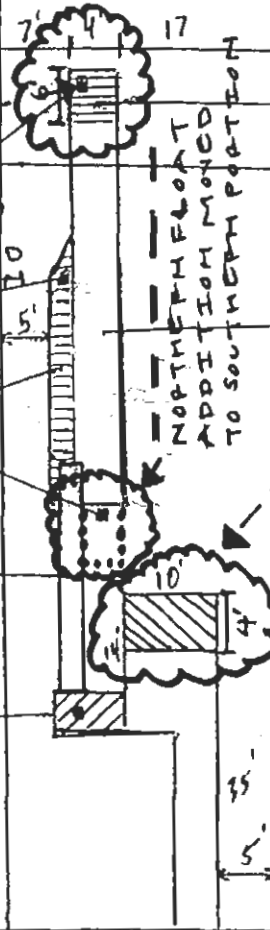
EXISTING 14" DIAMETER CONCRETE PILE TO BE RELOCATED WITHIN EXISTING NORTHERN BOAT DOCK PLAT AREA

3-new 14" concrete pile

2'x26' new section added to existing dock.

Reuse existing Gangway in new location.

new 4'x8' pier lobe with 12" pile for support.



4'x6' new section added to existing dock

PIERHEAD LINE

4'x10' PIER PLAT FORM SECTION TO BE REMOVED

RECEIVED  
South Coast Region

NOV 29 2010

- CALIFORNIA COASTAL COMMISSION
- EEL GRASS INSPECTION
- Eelgrass within 15' of project
  - Eelgrass within 15 - 30' of project
  - No Eelgrass in project area

*Sign*  
Signature  
6/4/10 1100  
Inspection Date & Time

COASTAL COMMISSION

EXHIBIT # 5  
PAGE 1 OF 1

28.90

PLAN VIEW 1" = 30'

APPLICANT'S NAME John Morally JOB ADDRESS 411 Edgewater DATE 6-12-10