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Staff Report: September 22, 2011
Hearing Date: October 5-7, 2011
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-205

APPLICANT: David Tsoong

AGENT: Swift Slip Dock and Pier Builders

PROJECT LOCATION: 2115 Bayside Drive, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: An addition of a 6' x 23' (138 square feet) section of float with one (1) 10" diameter steel pipe pile to an existing "U" shaped 1,374 square foot boat dock. Post project, the "U" shaped boat dock will consist of 1,512 square feet. The existing pier, platform and gangway will remain. The dock system will be composed of Douglas fir and Trex decking. The project includes eelgrass impacts and mitigation.

LOCAL APPROVALS: City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 104-2115 and Plan Check No. 0396-2010 dated July 21, 2010

OTHER AGENCY CONTACT RECEIVED: US Army Corps of Engineers (USACOE) LOP (SPL-2010-00951-RJV) received by Commission staff on December 6, 2010.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-98-047-(Tabaz); Administrative Coastal Development Permit No. 5-04-103-(Tsoong); Coastal Development Permit No. 5-06-193-(Ruffato & McDonald); Coastal Development Permit Application No. 5-10-012-(Manzo); Letter from Commission staff to Swift Slip Dock and Pier Builders dated October 12, 2010; Letter from Swift Slip Dock and Pier Builders to Commission staff dated October 28, 2010; Letter from Commission staff to Swift Slip Dock and Pier Builders dated December 3, 2010; Letter from Commission staff to Swift Slip Dock and Pier Builders dated March 25, 2011; *WSSI Environmental Consulting Preliminary Eelgrass Survey* dated June 25, 2010; *Eelgrass and Caulerpa Surveys and Extended Monitoring for David Tsoong 2115 Bayside Drive, Newport Beach, CA* dated July 1, 2010; and *Preliminary Mitigation Plan for 2115 Bayside Drive, Corona Del Mar, CA, Dock Extension Project* dated April 14, 2011.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project involves a relatively modest addition to an existing dock system. However, because eelgrass surrounds the project area, the addition will result in unavoidable impacts to eelgrass. Those impacts are relatively small and the applicant is proposing steps to minimize the effects and to mitigate for the loss of eelgrass. Nevertheless, some changes to the mitigation plan are needed to bring it into alignment with the Commission's usual mitigation requirements. Staff is recommending **APPROVAL** of the proposed project subject to **SIX (6) SPECIAL CONDITIONS**, which are necessary to assure that the unavoidable impacts are minimized, that appropriate mitigation occurs, and that marine resources and water quality are protected.

SPECIAL CONDITION NO. 1 requires a permit/approval by the County of Orange or evidence that no permit or permission is required. **SPECIAL CONDITION NO. 2** requires pre and post-construction eelgrass surveys and if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*. **SPECIAL CONDITION NO. 3** requires submittal of a Revised Eelgrass Mitigation Plan to expand the mitigation from 84 square feet to at least 165 square feet (i.e. 138 x 1.2). **SPECIAL CONDITION NO. 4** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia.* **SPECIAL CONDITION NO. 5** requires adherence to construction responsibilities and that the applicant dispose of all demolition and construction debris at an appropriate location. **SPECIAL CONDITION NO. 6** requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

The proposed project raises concerns regarding the fill of coastal waters and the expansion of water coverage and attendant shading effects on an extensive eelgrass bed present at the site. The proposed project would result in an estimated area of direct impact of 0.55 square feet to eelgrass as a result of installing one (1) pile. 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 finger extension, which would be approximately 138 square feet. The applicant has proposed only mitigating 84 square feet of the total 138 square feet of impacted eelgrass, but the project has been conditioned to mitigate the entire amount and also to mitigate at a ratio of 1.2:1, consistent with the requirements of the Southern California Eelgrass Mitigation Policy (SCEMP). The proposed bay area coverage as a result of the project is relatively small and the proposed project has been determined to be the least environmentally damaging alternative. Additionally, the size of the proposed post project dock would be consistent with the docks found in the surrounding area. However, there still remains a concern for future projects in the area that may result in larger docks and more adverse impacts to the bay. Thus, any future dock projects must continue to be analyzed thoroughly to determine that they are the least environmentally damaging alternative, minimize any adverse impacts and are consistent with the area.

Section 30600(c) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LIST OF EXHIBITS

1. Location Maps
2. Approval-in-Concept Plan
3. Eelgrass Impacts/Mitigation Site Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-10-205 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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. COUNTY OF ORANGE

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit/approval issued by the County of Orange, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

2. EELGRASS SURVEY(S)

A. Pre-construction Eelgrass Survey. A valid pre-construction eelgrass 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 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 new eelgrass survey for the review and approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than fifteen (15) working days prior to commencement of construction. If the new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in the Eelgrass Mitigation Plan approved by the Executive Director pursuant to **SPECIAL CONDITION NO. 3**, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 (mitigation to impact) ratio at the same transplantation location(s) identified in the Eelgrass Mitigation Plan described in **SPECIAL CONDITION NO. 3** above. The transplantation shall occur consistent with all provisions of the mitigation plan described in **SPECIAL CONDITION NO. 3.**

B. Post Construction Eelgrass Survey. After completion of project construction, the applicant shall survey the project site to determine the quantity of eelgrass that was adversely impacted. This post-construction survey shall be completed in the same month as the pre-construction survey during the next growing season immediately following the completion of construction within coastal waters. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this 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 in excess of those disclosed pursuant to **SPECIAL CONDITION NO. 3**, the applicant shall replace the additionally impacted eelgrass at a 1.2:1 (mitigation to impact) ratio at the transplantation site(s) and in accordance with the mitigation

plan described in **SPECIAL CONDITION NO. 2** above. The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply.

3 REVISED EELGRASS MITIGATION PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit two (2) copies, for review and approval of the Executive Director, of a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project shall that shall be in substantial conformance with the *Preliminary Mitigation Plan for 2115 Bayside Drive, Corona Del Mar, CA, Dock Extension Project* dated April 14, 2011, except as required to be modified as described below. The plan shall be prepared in consultation with the California Department of Fish and Game and the National Marine Fisheries Service (NMFS). The plan shall be prepared consistent with the requirements identified below and the requirements of the *Southern California Eelgrass Mitigation Policy (SCEMP)*, including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

1. The plan shall provide that:

(a) All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.2:1 (mitigation to impact) ratio;

(b) Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;

(c) The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;

(d) Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).

(e) A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;

(f) A comprehensive report describing the results of the plan shall be submitted at the end of the proposed five-year period;

(g) A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;

(h) A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;

(i) An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and

(j) Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

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.

4. PRE-CONSTRUCTION *CAULERPA TAXIFOLIA* SURVEY

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

1. for the review and approval of the Executive Director; and

2. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project 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 applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur

without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

5. 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.

6. BEST MANAGEMENT PRACTICES (BMPs) 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. O 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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND PREVIOUS COMMISSION ACTION AT THE SUBJECT SITE AND SUBJECT AREA

1. Project Location

The proposed project is located on a bayfront bulkheaded lot on Newport Bay at 2215 Bayside Drive in Corona Del Mar (City of Newport Beach), County of Orange (Exhibit #1). North of the project site is Bayside Drive; south of the project site is 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 southerly 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 locally as the Corona Del Mar Bend. The area is bounded to the north by the Harbor Patrol facility (at 1901 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, including the existing one at the subject site, among those properties. Six (6) of the lots have no dock associated with them. There are fewer dock systems than properties because some have a shared setup.

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 and in the vicinity (Exhibit #3).

2. Project Description

The applicant is proposing an addition of a 6' x 23' (138 square feet) section of float with one (1) 10" diameter steel pipe pile to an existing "U" shaped 1,374 square foot boat dock. Post project, the "U" shaped boat dock will consist of 1,512 square feet (Exhibit #2). The post project finger would be approximately 78-feet in length (8-foot backwalk length + 47-foot finger length + 23' extension length = 78-feet). The existing pier, platform and gangway will remain. The dock system will be composed of Douglas fir and Trex decking. The existing dock can accommodate at least a 50-foot long boat, whereas, by adding 23-feet to the length of the dock, the proposed dock system would accommodate at least a 70-foot long boat. Most of the dock systems in the area are designed to accommodate 30 to 70-foot long boats. Therefore, the post project dock will be similar to docks in the area (to be discussed later in the staff report).

The proposed project would result in direct impacts to eelgrass as a result of installing the one (1) pile. The impact would be equal to the area of the pile, plus some surrounding area due to construction. The estimated area of impact is 78.5 square inches (0.55 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 finger extension. In this case that would be approximately 138 square feet.

The applicant has proposed a measure he has suggested will minimize impacts to eelgrass. The applicant proposes use of four (4) 4'x 6' open-grated panels for the proposed finger extension in order to allow the eelgrass below the finger extension to be open to receiving sunlight. Since the applicant has proposed to use grated panels to reduce the shading area impact, the applicant states that he only intends to mitigate for the loss of 84 square feet, which is a little more than half the water coverage, and has submitted an Eelgrass Mitigation Plan that details this plan (to be discussed later).

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. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1,** which requires the applicant to submit a permit/approval by the County of Orange or evidence that no permit or permission is required.

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 December 6, 2010, Commission staff received a USACOE Engineers (USACOE) LOP Facsimile Transmittal (SPL-2010-00951-RJV), which requested agency review and site-specific comments. The document states that the existing dock structure is approximately 1,374 square feet and the proposed dock structure is approximately 1,512 square feet. The proposed project would increase overwater coverage of Section 10 waters of the United States by 138 square feet (0.003 acre). No *Caulerpa Taxilfolia* was found on-site. However, an approximate 3,000 square foot eelgrass patch was found within 15-feet of the project site along the east and southeast sides

of the dock. The document further states that the applicant will be required to complete two (2) post construction annual eelgrass surveys to determine if eelgrass habitat was adversely impacted. After the second year on monitoring , the USACOE will determine if mitigation is necessary. Furthermore, the document concludes by stating that due to the nature of the proposed project, the proposed project does not qualify for Programmatic Consultation (PC) or General Concurrence (GC) and therefore the Corps requests "Abbreviated Formal Consultation" from National Marine Fisheries Service (NMFS), pursuant to the requirements of the Magnuson-Stevens Fisheries Conservation and Management Act (MSA).

3. Prior Commission Action at the Subject Site

a. Coastal Development Permit De Minimis Waiver No. 5-00-126-(Chester Lynn Burnett Trustee)

On September 2000, the Commission approved Coastal Development Permit De Minimis Waiver No. 5-00-126-(Chester Lynn Burnett Trustee) for this site. CDP No. 5-00-126 allowed demolition of an existing single-family residence and construction of a two-story, 29' high (above existing grade), approximately 5,573 square foot single-family residence with an attached 827 square foot single-family residence with an attached 827 square foot, three-vehicle garage. There was no proposed work on the existing bulkhead.

b. Administrative Coastal Development Permit No. 5-04-103(Tsoong)

On September 2004, the Commission concurred with the Executive Director's issuance of Administrative Coastal Development Permit No. 5-04-103-(Tsoong) for this site. CDP No. 5-04-103 allowed the removal and replacement of an existing dock system in the same configuration, which included: 4' x 118' pier, 10' x 12' pier platform; with the "U" shaped dock float consisting of an 8' x 30' backwalk; 6' x 47' finger; 4' x 47' finger; and eighteen (18) 12" diameter epoxy coated steel piles. The dock was within the U.S. Pierhead line. No additional water coverage was anticipated since the dock replacement project was a like for like.

c. Coastal Development Permit De Minimis Waiver No. 5-05-347-(Tsoong)

On December 2005, the Commission approved Coastal Development Permit De Minimis Waiver No. 5-05-347-(Tsoong) for this site. CDP No. 5-05-347 allowed demolition of an existing single-family residence and construction of a new 10,240 square foot, two-story single-family residence with a subterranean 2,566 square foot seven-car garage and basement level. The project also involved a new swimming pool, spa, landscaping and hardscape improvements. The maximum height of the structure was 24'-3" above finished grade. Bulkhead work consisted of removal of the existing tiebacks and deadmen and reconnecting the existing bulkhead to the foundation of the house. All bulkhead work took place on the landward side of the existing bulkhead. Grading consisted of 732 cubic yards of cut to be exported to a location outside of the Coastal Zone. Roof drainage and surface runoff were directed to permeable areas before entering the main storm drain system. No work was proposed to the existing dock.

4. Prior Commission Action at in the Subject Area

a. Coastal Development Permit No. 5-98-047-(Tabaz), 2209 Bayside Drive, Newport Beach

On August 13, 1988, the Commission approved Coastal Development Permit No. 5-98-047-(Tabaz). CDP No. 5-98-047 allowed removal of an existing 180' long damaged pier and dock and construction of a new 330' long extended pier supported by 25 piles, a U-shaped floating dock (60' x 80'), a 10' x 14' pier platform and a 30' gangway. Mitigation was proposed at a 1.2:1 ratio for adverse impacts to 1,086 square feet of eelgrass. No dredging was proposed. The dock approved in CDP 5-98-047 (60' x 80') would be similar to the size of the proposed dock (approximately 78-feet in length), upon implementation of that development. In approving this project, **FIVE (5) SPECIAL CONDITIONS** were imposed regarding: 1) construction responsibilities and debris control; 2) mitigation of construction impacts; 3) submittal of a final mitigation and monitoring plan or changes to the submitted plan if required by Resource Agencies; 4) submittal of a monitoring report at the end of six (6) years; and 5) submittal of a CDP Amendment based on success criteria.

b. Coastal Development Permit No. 5-06-193-(Ruffato and McDonald), 105/107 Bayside Drive, Newport Beach

On January 10, 2007, the Commission approved Coastal Development Permit No. 5-06-103-(Ruffato and McDonald). CDP No. 5-06-103 allowed removal an existing dock system and installation of a new shared dock system consisting of: a 6' x 116' pier approach and a 12' x 16' pier platform with fourteen (14) 10" diameter steel piles coated with NSP-120, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' lobe on the left finger, a 4' x 26' finger with a 4' x 13.5' backwalk on the right side of the center finger, and six (6) 12" diameter steel pile coated with NSP-120. The docks were composed of Douglas fir and Trex decking. The project would directly impact 2.4 square feet of eelgrass that was to be transplanted on-site at a 1.2:1 ratio. Eelgrass impacts for shading effects were also addressed. The dock consisted of a finger that was approximately 54-feet long (45-feet [finger] + 4-feet [backwalk] + 5-feet [lobe] = 54-feet). The 54-foot length finger is consistent with the surrounding docks and is similar to the dock size of the proposed project (approximately 78-feet in length). In approving this project, **SIX (6) SPECIAL CONDITIONS** were imposed regarding: 1) review from National Marine Fisheries Service (NMFS); 2) conformance with the Eelgrass Mitigation Plan; 3) pre- and post- construction eelgrass surveys; 4) pre-construction *Caulerpa taxifolia* survey; 5) construction responsibilities and debris removal; and 6) best management practices.

c. Coastal Development Permit No. 5-10-012-(Manzo), 2223 Bayside Drive, Newport Beach

On May 13, 2011, Coastal Development Permit No. 5-10-012-(Manzo) went to Commission Hearing. CDP No. 5-10-012 proposed installation of a new boat dock system where one did not exist that would have consisted 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 would have been composed of Douglas fir. Commission staff had recommended denial of the proposed project since the development had not

demonstrated that it was the least environmentally damaging alternative and would have an adverse impact resulting in the unmitigated fill of coastal waters, would have resulted in significant water coverage and attendant shading effects on an extensive eelgrass bed and would result in the potential for cumulative adverse impacts if similar expansions were approved in the area. The project had proposed a total placement of twenty-five (25) piles (3-12" diameter piles and 22-10" diameter piles) into the bay's soft bottom with a cumulative bay area displaced of approximately 13 square feet. The proposed project was not the least environmentally damaging alternative since there were other alternatives, such as shared pier/dock use and reduced size pier/dock options. Additionally, shading was 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 proposed pier, pier platform, dock, gangway and boat, which would be approximately 2,064 square feet. No plan to address the known direct and long term eelgrass impacts was submitted. Prior to the Commission vote at the May 2011 Commission hearing, the applicant withdrew the project.

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:

(4) 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

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….*

1. Fill of Coastal Waters

The applicant is proposing to add 23-feet to the length of one (1) finger on the existing "U" shaped dock, and to install one (1) additional new 10" diameter steel pipe pile to secure the new addition. The proposed project would result in direct impacts (78.5 square inches (0.55 square feet)) to eelgrass as a result of installing the one (1) pile. The proposed one (1) pile constitutes fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters shall be allowed only when specific criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided.

Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters, such as Newport Bay, for recreational boating purposes. The proposed project, a boat dock, constitutes a recreational boating facility. The boat dock is proposed to be used solely for boating related purposes. Thus, the project is an allowable use under Section 30233(a)(4).

Under Section 30233, the proposed project must be the least environmentally damaging alternative.

The proposed project would be an addition of a 6' x 23' (138 square feet) section of float with one (1) 10" diameter steel pipe pile to an existing "U" shaped 1,374 square foot boat dock. Post project, the "U" shaped boat dock will consist of 1,512 square feet. In order to anchor the new float addition, one (1) 10" diameter steel pile is necessary to withstand the load and adequately support the boating use. Thus, the proposed project employs the minimum number and size of piles necessary to adequately support and secure the proposed boat dock project. Thereby minimizing the amount of fill needed to support the proposed allowable use.

The proposed piling will be located in areas that would have a direct impact upon eelgrass beds. However, eelgrass beds occupy most of the project area. Therefore, there is no alternative location for the pilings that would avoid the eelgrass impacts. The proposed project consists of a minimal direct impact (78.5 square inches (0.55 square feet). Thus, the proposed location of the pilings is the least environmentally damaging alternative.

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."* As stated previously, the proposed project is the least environmentally damaging alternative. Since that has been determined in this case, even though the Coastal Act aims to primarily avoid impact before considering possible mitigation of fill of coastal waters, the applicant has submitted an Eelgrass Mitigation Plan described in the *Preliminary Mitigation Plan for 2115 Bayside Drive, Corona Del Mar, CA, Dock Extension Project* dated April 14, 2011. The direct and indirect (shading) impacts caused by the project would result in an impact to eelgrass totaling 138 square feet (Exhibit #3). However, the applicant only intends to mitigate for the loss of 84 square feet, instead of the total water coverage of 138 square feet

since the he states that the remaining amount would be mitigated by his proposal to use four (4) 4'x 6' open-grated panels for the proposed finger extension (in place of solid float material) in order to allow the eelgrass below the finger extension to be open to receiving sunlight. A further discussion and analysis of this plan and its deficiencies will be found later in the staff report. As conditioned though for a revised Eelgrass Mitigation Plan (**SPECIAL CONDITION NO. 3**) (discussed further in the staff report as well), the project will be consistent with Section 30233 of the Coastal Act.

2. Eelgrass and other Sensitive Species Impacts

Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the *Southern California Eelgrass Mitigation Policy* (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG).

The applicant provided a survey, *WSSI Environmental Consulting Preliminary Eelgrass Survey* dated June 25, 2010 that analyzes the presence of eelgrass at the project site. On June 24, 2010, an eelgrass inspection at the project site and found eelgrass in the project vicinity. The mitigation plan *Preliminary Mitigation Plan for 2115 Bayside Drive, Corona Del Mar, CA, Dock Extension Project* dated April 14, 2011 also referenced the same eelgrass survey. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the October 2011 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60-days have passed since the survey was completed. Thus, up-to-date eelgrass surveys must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction.

According to the applicant, the proposed project would impact eelgrass through: 1) the installation of one (1) pile (78.5 square inches (0.55 square feet) and 2) shading from the dock footprint is also expected to cause long term impacts on the eelgrass bed. The proposal would increase water coverage from 1,374 square feet to 1,512 square feet (addition of 138 square feet).

In order to mitigate both the direct and indirect (shading) impacts of the proposed project, the applicant's proposed Eelgrass Mitigation Plan is described in the *Preliminary Mitigation Plan for 2115 Bayside Drive, Corona Del Mar, CA, Dock Extension Project* dated April 14, 2011. This mitigation plan considered one (1) alternative that would avoid eelgrass impacts by extending the opposite finger (finger toward the channel instead of the inside finger) of the existing U-shaped dock. However, the applicant dismissed this alternative since it would result in the extended dock finger being located seaward of the City's "project" line and into the navigation channel. The "project" line is a line that defines the seawardmost point that docks may extend to. Projections beyond that line are generally considered by the City to have an impact to navigation in the channel. Thus, instead of a different configuration, this plan suggests using four (4) 4'x 6' open-grated panels for the proposed finger extension (in place of solid float material) in order to allow the eelgrass below the finger extension to be open to receiving sunlight. The report initially estimates that direct impacts and shading impacts could result in an adverse impact to a total of 138 square feet of eelgrass (Exhibit #3). However, the report states that since the applicant has agreed to use grated panels to reduce the shading impact that the estimated eelgrass impact would be only 84 square feet, which is a little more than half the water coverage. The applicant's plan is to mitigate for the loss of 84 square feet, instead of the total water coverage of 138 square

feet. The applicant intends to mitigate at just a 1:1 ratio (not the 1.2:1 usually required) and plans to replant in the bare patch areas within the existing eelgrass bed adjacent to the project site (Exhibit #3). Planting is anticipated to occur during the active growth phase for the vegetation (March through October). When the replanting has been completed, the entire project area will be mapped for aerial extent and density of eelgrass and the survey results will be reported to the Commission within 30 days of completion. Subsequent monitoring surveys will be conducted during the vegetative growth period at 6 months, 24 months, 36 months, 48 and 60 month post planting.

While the applicant has proposed an Eelgrass Mitigation Plan, it does have deficiencies. The applicant is only proposing mitigation for 84 square feet and not the entire 138 square feet of water coverage since they believe that use of the grated panels will relieve the shading impacts upon eelgrass. While the grated panels will potentially provide sunlight for the eelgrass, there is still the potential for eelgrass impacts since a structure that was not present before over the eelgrass is being proposed and light intensity will be reduced, resulting in adverse impacts to eelgrass. Furthermore, there is no guarantee that the grates will remain unobstructed throughout the life of the project. Storage of materials on top of the grates, sediment, and organic growth, all may reduce the effectiveness of the grates over time. Thus, while the grates may be helpful, there is no assurance of their effectiveness. Thus, the total of 138 square feet needs to be mitigated. Additionally, the proposed ratio, 1:1, is less than the 1.2:1 typically required under the Southern California Eelgrass Mitigation Policy (SCEMP). The project results in a total of 138 square feet of eelgrass impacts. Based on a ratio of 1.2:1, that amount of mitigation should be 166 square feet of eelgrass instead of the 1:1 ratio of 138 square feet. Another deficiency of the mitigation plan deals with the transplant schedule. The Commission typically requires that eelgrass be mitigated prior to construction of the project. The proposed plan doesn't make it clear if that is the case with this mitigation. As proposed, the mitigation plan cannot be approved. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a revised Eelgrass Mitigation Plan consistent with the *Southern California Eelgrass Mitigation Policy*. The plan shall be prepared in consultation with the California Department of Fish and Game and the National Marine Fisheries Service (NMFS). Only as conditioned is the proposed project the least environmentally damaging, feasible alternative, as required by Section 30233.

3. *Caulerpa taxifolia*

Recently, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). Huntington Harbor provides similar habitat to that found in Newport Harbor.

C. taxifolia is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has

invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing[1].

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various Caulerpa species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50ºF. Although warmer southern California habitats are most vulnerable, until better information if available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California Caulerpa Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

The site has been surveyed for eelgrass and no eelgrass was discovered within the project area. The eelgrass survey took place on June 24, 2010 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the October 2011 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since active growth would have resumed. Thus, an up-to-date eelgrass survey must be conducted prior to commencement of the proposed project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**. **SPECIAL**

[1] References

Meinesz, A. (Translated by D. Simberloff) 1999. Killer Algae. University of Chicago Press

Chisholm, J.R.M., M. Marchioretti, and J.M. Jaubert. Effect of low water temperature on metabolism and growth of a subtropical strain of Caulerpa taxifolia (Chlorophyta). Marine Ecology Progress Series 201:189-198

Ceccherelli, G. and F. Cinelli. 1999. The role of vegetative fragmentation in dispersal of the invasive alga Caulerpa taxifolia in the Mediterranean. Marine Ecology Progress Series 182:299-303

Smith C.M. and L.J. Walters. 1999. Fragmentation as a strategy for Caulerpa species: Fates of fragments and implications for management of an invasive weed. Marine Ecology 20:307-319.

Jousson, O., J. Pawlowski, L. Zaninetti, A. Meinesz, and C.F. Boudouresque. 1998. Molecular evidence for the aquarium origin of the green alga Caulerpa taxifolia introduced to the Mediterranean Sea. Marine Ecology Progress Series 172:275-280.

Komatsu, T. A. Meinesz, and D. Buckles. 1997. Temperature and light responses of the alga Caulerpa taxifolia introduced into the Mediterranean Sea. Marine Ecology Progress Series 146:145-153.

Gacia, E. C. Rodriquez-Prieto, O. Delgado, and E. Ballesteros. 1996. Seasonal light and temperature responses of Caulerpa taxifolia from the northwestern Mediterranean. Aquatic Botany 53:215-225.

Belsher, T. and A. Meinesz. 1995. Deep-water dispersal of the tropical alga Caulerpa taxifolia introduced into the Mediterranean. Aquatic Botany 51:163-169.

CONDITION NO. 4 requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. 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 *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

4. Water Quality

The proposed project is located in and over the coastal waters of Newport Harbor (Lower Newport Harbor). Newport Bay is on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the harbor does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal established for this waterbody. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including Sections 30230 and 30231 of the Coastal Act, which require the protection of biological productivity, public recreation, and marine resources.

a. Construction Impacts

The proposed development will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, potential water quality issues must be examined as part of the review of this project.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 5** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

SPECIAL CONDITION NO. 5 requires that the applicant dispose of all demolition and construction debris at an appropriate location. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

b. Maintenance

The proposed dock project will allow for the long term berthing of boat(s) by the homeowner. Some maintenance activities if not properly regulated could cause adverse impacts to the marine environment. Certain maintenance activities like cleaning and scraping of boats, improper discharges of contaminated bilge water and sewage waste, and the use of caustic detergents and solvents, among other things, are major contributors to the degradation of water quality within boating facilities. As mentioned above, Lower Newport Bay (Newport Harbor) provides a home for marine habitat and also provides opportunities for recreational activities.

To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources. Such practices that the applicant shall follow include proper boat cleaning and maintenance, management of solid and liquid waste, and management of petroleum products, all of which are associated with the long term berthing of the boat(s) (more thoroughly explained in **SPECIAL CONDITION NO. 6** of this permit).

5. Marine Environment Cumulative 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 conditioned, the project assists in sustaining the productivity of coastal waters. The project results in bay area coverage that is relatively small (138 square feet). Additionally, the project design is the least environmentally damaging alternative. Therefore, marine resources and biological productivity are maintained. However, there still remains a concern for future projects in the area that may result in larger docks and more adverse impacts to the bay. An example of such a recent project that went before the Commission in May 2011 is CDP No. 5-10-012-(Manzo), which is located in the vicity of the proposed project. This project proposed installation of a new boat dock system where one did not exist, and which also had significant new fill and effects on eelgrass. Since the development had not demonstrated that it was the least environmentally damaging alternative and would have an adverse impact resulting in the unmitigated fill of coastal waters, would have resulted in significant water coverage and attendant shading effects on an extensive eelgrass bed and would result in the potential for cumulative adverse impacts if similar expansions were approved in the area, Commission staff had recommended denial. Other alternatives were available that would not have been as environmentally damaging, such as shared pier/dock use and reduced size pier/dock options. Additionally, the project would have resulted in 2,064 square feet of shading impacts upon eelgrass. While this project involves an eelgrass impact, that impact is relatively small, and is in conjunction with a relatively minor change to the amount of fill and water coverage associated with the project (which is in keeping with other projects in the area). The allowance for an

eelgrass impact in association with a minor dock expansion here does not mean that all such projects would be acceptable. The impacts and effects are considered on a case by case basis. Therefore, any future dock projects must continue to be analyzed thoroughly to determine that they are the least environmentally damaging alternative and minimize any adverse impacts.

CONCLUSION

Therefore, only as conditioned to perform a pre and post-construction eelgrass survey; submittal of a revised Eelgrass Mitigation Plan, submittal of a prior to commencement of development *C. taxifolia* survey; disposal of all demolition and construction debris at an appropriate location; and adherence to Best Management Practices in **SPECIAL CONDITION NO. 2, 3, 4, 5, and 6** does the Commission find the proposed project consistent with Section 30230, 30231, 30233 and 30250 of the California Coastal Act.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 of the Coastal Act states, in relevant part:

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
> *(2) adequate access exists nearby, or,*

The subject site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The proposed project will not have an adverse effect on public access. Neither vertical nor lateral public access exists on the subject property. In addition, there is no established lateral public access in the vicinity. However, there are several opportunities for public access to the coast near the proposed development. Bayside Drive County Beach is accessible via the Orange County Sheriff/Harbor Patrol Bureau located North of the project site (Exhibit #1). This area allows the launching of small boats by the public. Also, public access is available at China Cove Beach located South of the project site (Exhibit #1). The proposed development, as conditioned, will not result in any new significant adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30210 and 30212 of the California Coastal Act.

E. LOCAL COASTAL PROGRAM (LCP)

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

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.

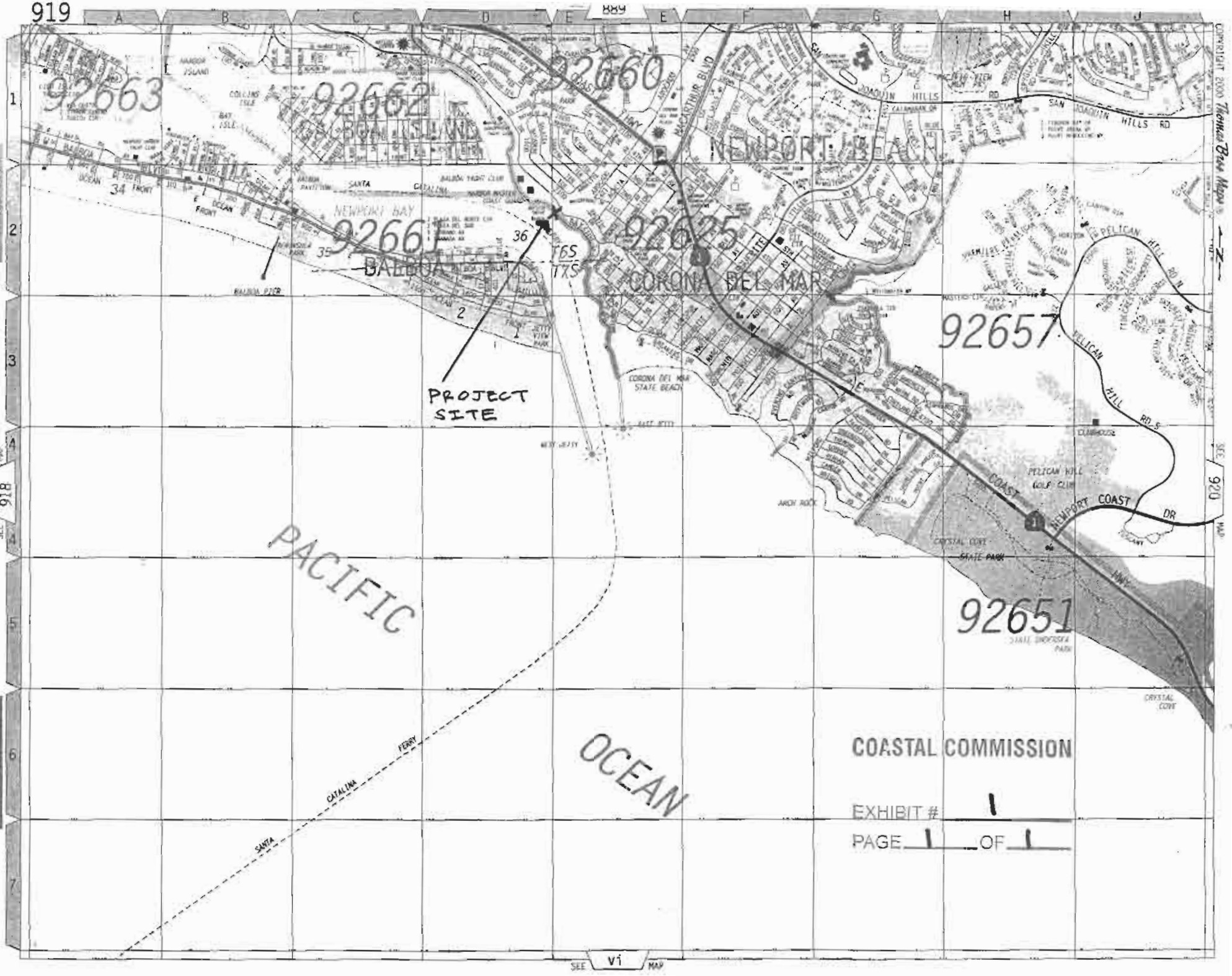
The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with 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 Sections 30233, 30230, 30231, 30210, and 30212.

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).

F. 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 July 21, 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.

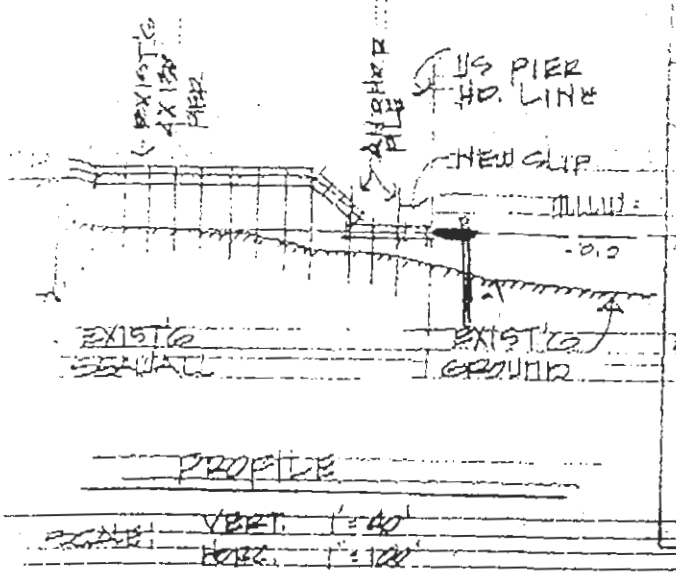


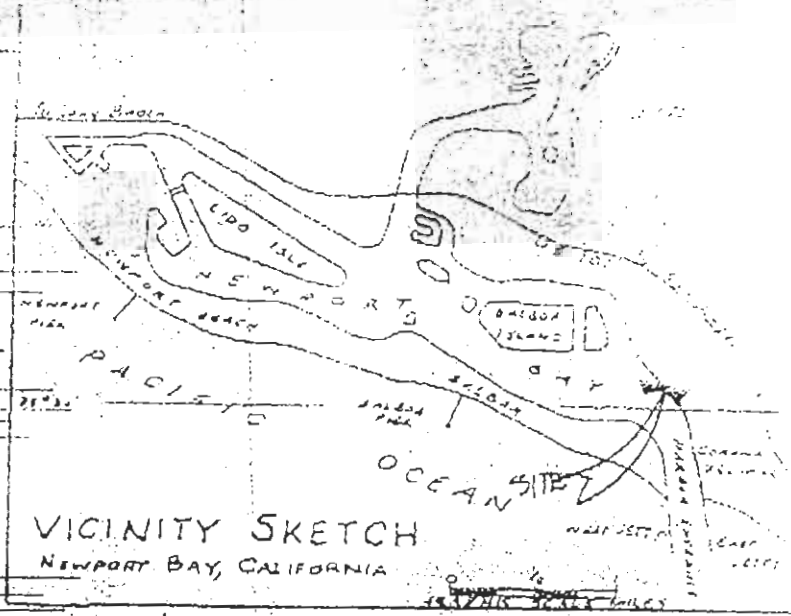
COASTAL COMMISSION

EXHIBIT # 1

PAGE 1 OF 1

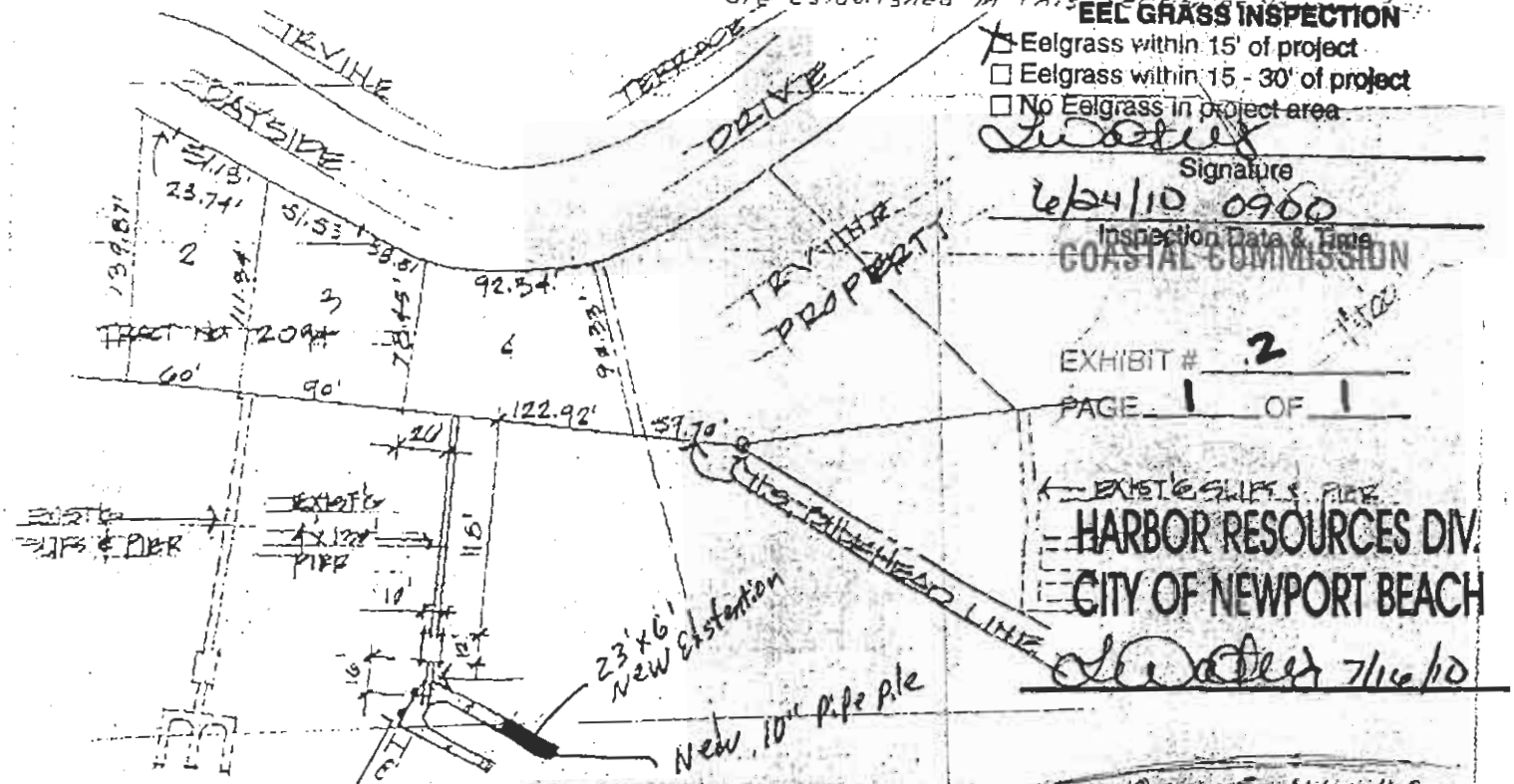
CITY OF NEWPORT BEACH





VICINITY SKETCH
NEWPORT BAY, CALIFORNIA

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Horizontal datum are established in this [illegible]



EEL GRASS INSPECTION

- [x] Eelgrass within 15' of project
- [ ] Eelgrass within 15 - 30' of project
- [ ] No Eelgrass in project area

Signature

6/24/10 0900
Inspection Date & Time

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

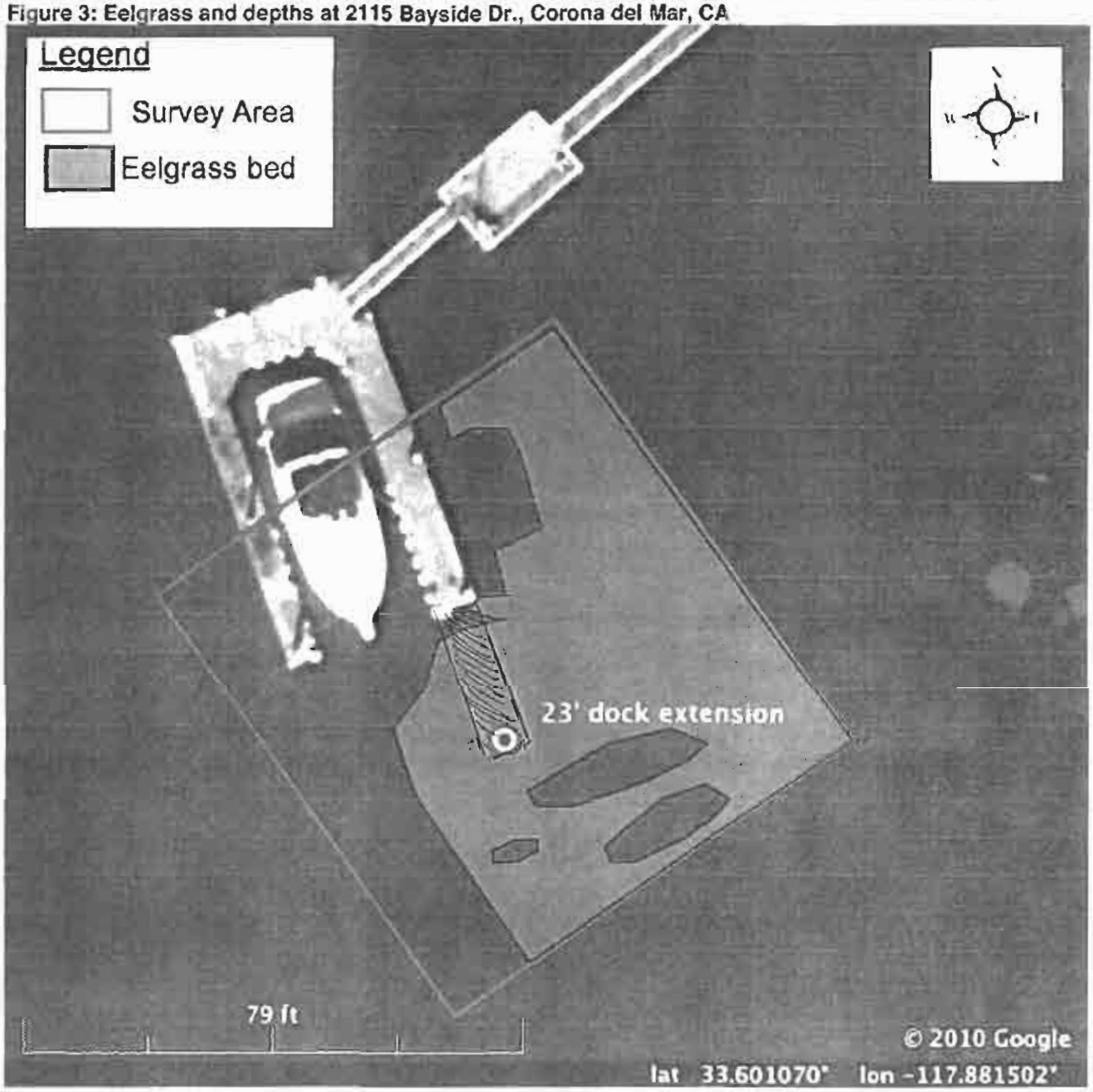
HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH
7/16/10

SCOPE OF WORK:
ADD 23'x6' EXTENTION TO EXISTING FLOAT. & 1-10" steel pile

APPLICANT'S NAME: DAVID TSONG
JOB ADDRESS: 2115 Bayside Dr.
LOT: BLK: TRACT:
CONTRACTOR: SWIFT SLIP
DATE: 3-11-10

WSSI
ENVIRONMENTAL CONSULTING
2726 Shelter Island Dr.
San Diego CA 92106
(800) 236-0013 • (800) 225-9730 (fax)

Figure 3: Eelgrass and depths at 2115 Bayside Dr., Corona del Mar, CA



Discussion

It is not surprising that eelgrass is widely distributed throughout this area, since the home is located near the mouth of Newport Bay, and has the appropriate depth and sunlight availability that promotes eelgrass growth. Possible sources of impact to eelgrass from the proposed work include direct contact and increased shading. Proper best management practices (BMPs) should be taken to minimize impact during construction and to help ensure the preservation of

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San Diego CA 92106
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Eelgrass Impacts

Since both direct contact and increased shading from the dock extension will most likely be the causes of any negative impact, the amount of damage can only be estimated at this time. We usually recommend two years of monitoring so that the actual impact can be determined, but the Coastal Commission has requested that we perform mitigation before construction begins. Since the contractors have agreed to use grating material for the dock extension to limit the impact from shading, this should lessen the estimated impact from the whole area of the dock extension, which is 23' x 6', or 138 ft^2 (~13 m^2) to only 84 ft^2 (~7.8 m^2).

Proposed Planting Site

Eelgrass growth in Newport Bay is generally limited to below +1 ft MLLW, and above -8 ft MLLW. We are proposing that we harvest the amount of eelgrass that is estimated to be impacted (84 ft^2) from below where the dock extension is proposed. Since the impact area is estimated to be less than 100 m^2 an eelgrass ratio of 1:1 will be replanted (SCEMP; revision 11). Bare patches within the existing seagrass bed at 2115 Bayside Drive have been identified as suitable replanting sites (Figure 2).

Figure 2. Proposed Harvesting and Replanting Sites for the 2115 Bayside Drive Dock Extension Project.