

CALIFORNIA COASTAL COMMISSION

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Staff Report: September 15, 2011
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Commission Action:



Item Th9d

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-11-050

APPLICANT: Stephen and Lori Poleshuk

AGENT: Swift Slip Dock and Pier Builders

PROJECT LOCATION: 319 Grand Canal, Balboa Island, City of Newport Beach
(Orange County)

PROJECT DESCRIPTION: Installation of a new 6' x 4' 6" deck platform and steps per City standards composed of pressure treated Douglas fir and trex composite deck materials along a public bulkhead for access into the Grand Canal public waterway and moored boats on the Canal's shoreline.

LOCAL APPROVALS: City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit #801-319 and Plan Check #0031-2011 dated January 12, 2011

OTHER AGENCY CONTACT RECEIVED: US Army Corps of Engineers (USACOE) Interagency Notification, Request For Agency Comments On Applications For Letter of Permission (Application No. SPL-2011-00292-RJV)

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; City Harbor Permit Policy; Letter from City of Newport Beach Harbor Resources dated August 9, 2011; WSSI Environmental Consulting Pre-Construction Eelgrass Survey Report dated November 16, 2010; CDP 5-05-252(Hirson); CDP 5-05-283(Tetrault)

SUMMARY OF STAFF RECOMMENDATION:

The applicant is requesting approval for the installation of a 6' x 4' 6" deck platform along a public bulkhead and stairs down from the platform for access into the Grand Canal public waterway and moored boats on the Canal's shoreline. The site is subject to tidal action, but not to direct wave exposure because the site is located within a protected canal between Balboa Island and Little Balboa Island in Newport Bay. The primary issue associated with this development relates to private structures encroaching onto public waters.

Balboa Island is largely developed with single family residences, and is encircled by a bulkhead system to protect against erosion. There is a public walkway between the first row of houses and

the bulkhead. The bulkhead is owned and maintained by the City. The shoreline and bay waters seaward of the bulkhead are public tidelands (granted to and managed by the City). The proposed deck platform and stairs would provide a connection from the walkway and bulkhead to the shoreline of Grand Canal, where boats can be moored. In effect, the deck platform and stairs provide access to the Canal shoreline during low tide and to the Canal waters during high tide.

There are piers and docks seaward of most of the waterfront homes on Balboa Island. The City has granted harbor permits to those waterfront homeowners to allow them to construct and maintain those piers/docks. The circumstances present along Grand Canal are slightly different from the remainder of the island in that there are no 'typical' piers and docks (the canal is too narrow to support such structures). Instead, the City has permitted those with waterfront homes along the canal to construct these platform/stair systems (through a harbor permit) that allow for easier access to the canal, where these waterfront homeowners moor smaller boats. Forty (40) out of forty-one (41) homes along the west side of the Canal and thirty-five (35) out of thirty-seven (37) homes along the east side of the Canal have these deck platform/stairs structures. While there are many platform/stair systems along the canal, only two have been approved for replacement by the Commission; the remainder are either pre-coastal structures or have since been replaced without benefit of a coastal development permit. The two approvals issued by the Commission were for replacement of existing platform/stair structures. The proposed project is to install a new platform/stair structure where none currently exists.

Commission staff has concerns about the installation of new structures for private use/purposes on public tidelands. The proliferation of these private structures creates impediments to public access to public tidelands, however, a *public* platform/stair would provide public access to kayakers, paddleboarders, etc., from the Grand Canal to Balboa Island. At the July 2011 hearing, the Commission staff sought to enhance public access from/to the Grand Canal by recommending approval of the platform/stair with a special condition requiring the applicant make the structure available for public use by installing the appropriate public access signage. However, at the hearing staff requested a postponement as a letter was received from the City indicating their commitment to install a municipal public platform/stair structure on Grand Canal at a more publicly visible and accessible location along a street-end and thereby negating the need for the special condition to open this proposed structure for public use.

Therefore, staff recommends that the Commission **APPROVE** the proposed deck platform and stairs, with the typical boating related structure special conditions pertaining to: 1) water quality best management practices; 2) pre-construction eelgrass survey; 3) pre-construction caulerpa taxifolia survey; 4) assumption of risk, waiver of liability and indemnity; and 5) future development return to the Commission for review.

LIST OF EXHIBITS:

1. Location Map
2. Public Access Walkway
3. Project Plans
4. Harbor Permit Policies and Standards for Grand Canal deck platform/stairs
5. Eelgrass Survey
6. Letter to CCC from City Newport Beach, Harbor Resources dated August 9, 2011

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-11-050 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. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (7) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related

materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
(16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. Best Management Practices Program

By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

(1) Boat Cleaning and Maintenance Measures:

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

(2) Solid and Liquid Waste Management Measures:

- a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.

- c. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

2. Eelgrass Survey

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. Pre-construction *Caulerpa Taxifolia* Survey

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

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from sea level rise, storm waves and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. **Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-11-050. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-11-050. Accordingly, any future improvements to the deck platform and stairs authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-11-050 or an additional coastal development permit from the Commission..

II. FINDINGS AND DECLARATIONS:

A. Project Location and Description

The proposed development would be located seaward of and adjacent to a City-owned bulkhead in front of a single-family residence located at 319 Grand Canal on Balboa Island in the City of Newport Beach (Exhibits # 1-2). The Grand Canal is public tidelands granted to and managed by the City. The Canal is approximately 100 feet wide and divides Balboa Island in two. Immediately inland of the City bulkhead is a public walkway/bikeway/accessway that encircles the entire Island. The walkway abuts single-family and two-family zoned private residential lots. Coastal public access is available along the walkway surrounding the Island (Exhibit #2).

The proposed project is construction of a new 6' x 4'6" deck platform constructed with Trex composite decking materials and wood stairs, both supported by 4"x4" pressure treated Douglas Fir lumber embedded a minimum of 5' into the Grand Canal. The "standard" deck platform/stairs are constructed per City standards in terms of dimensions and construction materials (Exhibits #3). The deck platform will be constructed immediately adjacent to the existing public bulkhead wall along the Grand Canal of Balboa Island in front of the applicant's single family residence located at 319 Grand Canal. The platform will not be anchored to the bulkhead coping. The proposed platform will have six steps leading into the canal and will provide the applicant access to a private small boat/dingy moored in the Grand Canal in front of his residence. The deck platform and stairs is similar in design and size to other deck platforms and steps along Grand Canal. These platforms with stairs to the bayside beach are unique in Newport Bay to Grand Canal - it is the only area where City Harbor Permit policies (Exhibit #4) allow such structures for access to and from Grand Canal where shoreline boat moorings are present. The proposed project, though not technically a dock, is intended for boating related purposes. The deck platform and stairs are located adjacent to a publicly owned bulkhead and on public tidelands for access to those tidelands. Though the platform deck and stairs are constructed adjacent to the City owned bulkhead and is sited on City administered public tidelands, the City collects dock permit fees, but does not require the applicant to obtain an encroachment permit.

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has received a Letter of Permission for the proposed project from the U.S. Army Corps of Engineers.

There are 41 residences on the west side of Balboa Island's Grand Canal and 37 residences on the east side of Grand Canal on Little Balboa Island. The bulkhead area in front of 319 Grand Canal is the only site on the west side of the Grand Canal without a deck platform and stairs. Forty (40) out of forty-one (41) homes along the west side of the Canal and thirty-five (35) out of thirty-seven (37) homes along the east side of the Canal currently have these "standard" deck platform/stairs structures in front of the public bulkhead and in public tidelands. The Commission has approved approximately 30 projects (i.e., demolition/construction of single-family residences and duplexes, addition to existing single-family residences, conversion of duplex to single family residences) with Grand Canal addresses since the 1980s. However, the Commission has only approved two replacement deck platforms/stairs out of the 75 total along the Grand Canal, CDP 5-05-252 (Hirson) and CDP 5-05-283 (Tetrault).

This is the first Coastal Development Permit (CDP) application request for a new deck platform/stairs in the Grand Canal. A survey of aerial photographs of the Grand Canal over the last

10 years indicates new installations of new deck platform/stairs within the past 10 years done without the benefit of a CDP. Staff is conducting further investigations regarding unpermitted development in the Grand Canal and has discussed the concerns with the City of Newport Beach. In the future, the City can notify the applicants for the annual City dock permit of the need to also obtain a CDP from the Commission, if one has not been obtained, to confirm authorization of the structure pursuant to the Coastal Act.

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. Furthermore, the proposed development is located on public tidelands, which is an area of retained jurisdiction by the Commission. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

B. Public Access and Recreation

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 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 . . . Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

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 City's certified Land Use Plan (LUP) also contains the following policies that would apply to the proposed development:

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.2-1. states,

Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.3-5 states,

Continue to provide and protect public beaches and parks as a means of providing free and lower-cost recreational opportunities.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-2 states,

Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-4 states,

Identify and remove all unauthorized structures, including signs and fences, which inhibit public access.

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-11 states,

Require new development to minimize impacts to public access to and along the shoreline.

The shorelines along Newport Bay are popular areas for coastal access and recreation as are the waters of Newport Bay, which are a very popular recreational boating area. The proposed project includes the installation of a platform/stair system on public tidelands to facilitate access to the shoreline for recreational boating. The applicant is the owner of the adjacent single family home and the primary purpose of the project is to facilitate that homeowner's access to the shoreline and moored boat in front of the residence. This privately constructed facility would be located on public tidelands that are administered by the City of Newport Beach pursuant to a tidelands grant. Although the placement of the proposed structure on public tidelands has been found by the City to be consistent with the tidelands grant, it is important to assure that such structures would not adversely impact public access and public use of recreational waters.

The general public currently has access to and along the bulkheaded bayfront via public streets and a walkway that runs along the landward side of the bulkhead. There are on-street public parking spaces in the vicinity upon surrounding public streets. The proposed project will not interfere with public use of the walkway.

Section 30210 of the Coastal Act requires the maximum public access be provided. Section 30212 of the Coastal Act requires that public access to the shoreline and along the coast be provided in a

new development project, except where adequate access exists nearby. Currently there is no access to the Grand Canal clearly posted as "public access" that would provide access to and from the water for the public, similar to what would be provided by this proposed platform/stair system along Grand Canal for private use only. Furthermore, Section 30213 of the Coastal Act encourages provision of lower cost visitor and recreational facilities; such facilities would be provided by a public access platform/stairs. The City of Newport Beach's Coastal Land Use Plan includes many similar policies encouraging improvement of public access.

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The City's certified Land Use Plan (used as guidance) also strongly supports protection and enhancement of coastal access. A public access platform/stair system, such as the one proposed for only private use, could tie in to the existing public lateral access along the waterfront at a public street-end, such as Balboa Avenue, to provide public access down to the Grand Canal shoreline and for access by small vessel boaters, kayakers, and paddleboarders from Grand Canal to Balboa Island. Furthermore, the structure could also be used for fishing, viewing, and other passive uses. It would provide the public opportunity for alternative viewpoints of this scenic waterfront area and provide access from the water to the visitor-serving commercial area along Marine Ave.

Recognizing the need for a clearly marked, easily visible and accessible public access point to/from Grand Canal, the City of Newport Beach Harbor Resources Department has indicated their commitment to construct adequate public access in the vicinity of the proposed private platform/stairs project in a letter dated August 9, 2011 (Exhibit 6). The City anticipates beginning the permit process for a public platform/stairs structure at the Balboa Avenue street-end in the Fall 2011 with construction commencing this Winter 2011. Construction/installation of these structures typically requires only one to two days. An alternative to construction of a separate public facility at a street-end would be to require the private structures taking access from the Balboa Island side of the Grand Canal to also be available for public use; however, such an alternative is not as desirable as a public stairway/access feature in this location which would serve a greater segment of the public and offset the privatizing effect of the private deck/stairways along the Grand Canal.

Therefore, the Commission finds the anticipated construction by the City of Newport Beach of a public platform/stairs structure at the Balboa Avenue street-end on the Grand Canal will offset the effect of further privatization of the Grand Canal by another private structure providing no public benefit on State tidelands. With the provision of a public accessway in the project vicinity, the project proposed under CDP 5-10-050(Poleshuk 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

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy

populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states in part:

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

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

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

Section 30250 of the Coastal Act states in part:

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

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

- 3.1.4-3 *Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.*
- 3.1.4-5 *Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.*

The proposed project is for a deck platform and stairs over coastal waters in the Grand Canal which divides Balboa Island into two. The construction will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Thus, it is important to minimize the construction of new structures as well as minimize the size of any such structures that are approved.

1. Fill of Coastal Waters

The project is the installation of eight (8) 4"x4" lumber beams embedded in mudflats a minimum of 5-feet deep to support a 6' x 4'5" deck platform and stairs down to the shoreline along the edges of the Grand Canal, a public canal transecting Balboa Island within Newport Bay. The support beams to be embedded into the bay, though not technically "piles", would result in a minimum of 4.44 cubic feet (0.164 cubic yards) of fill.¹

Section 30233 of the Coastal Act limits the allowable fill of open coastal waters, wetlands, estuaries, and lakes; allowing for new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities in open 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 be one of the specific allowable uses, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project. The project must also otherwise be found consistent with all other applicable Chapter 3 policies of the Coastal Act.

Allowable Use

The proposed deck platform and stairs will be supported by eight (8) 4"x4" lumber beams embedded in the shoreline a minimum of 5-feet deep. The City of Newport Beach Harbor Resources Department issues permits for a "standard" size deck platform and stairs to residences adjacent to the Grand Canal and limits the size of these access structures to no greater than 27 sq. ft. with a width between 3' to 4'6" and a length between 4' – 6' and 4"x4" wood beams for support instead of the larger boat dock piles (usually 12" to 18" in diameter) resulting in a minimum amount of fill. The proposed structure may be considered a boating facility in that it's primary purpose is to facilitate access to the water for boating; which is a 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 eight (8) supporting beams for the deck platform and stairs is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

Alternatives

The proposed placement of the eight (8) 4"x4" lumber beams will result in fill of coastal waters; though less by far than regular size piles typical for dock construction. As proposed, the amount of fill is the minimum amount of construction necessary to safely support the deck platform and stairs. This alternative represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing access to boats berthed in the canal. 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.

Mitigation

The project site was surveyed for eelgrass on November 1, 2010 and two small patches of eelgrass were found adjacent to a boat moored on the sand approximately 15 -30 feet from the project area, no eelgrass was found within the proposed project construction area during the survey (further discussed in the eelgrass section below). **Special Condition #2** and **Special Condition #3** respectively, require pre-construction eelgrass and *Caulerpa Taxifolia* surveys to ensure that eelgrass will not be adversely affected at the time of construction. Therefore, as

¹ Calculations for estimated fill: $0.333' \times 0.333' \times 5' = .55 \text{ ft}^3 \times 8 \text{ beams} = 4.44 \text{ ft}^3$

conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*.

Thus, as conditioned, the proposed project will be consistent with the Section 30233 of the Coastal Act regarding fill of open coastal waters.

2. Water Quality Impacts

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region. Since the proposed project has the potential to affect water quality, the development requires review by the RWQCB. The RWQCB determined that if standard dock construction methods and materials are utilized, the project should not adversely impact water quality. The RWQCB reviewed the project and issued a Clean Water Act Section 401 Water Quality Standards Certification contingent upon special conditions relating to discharge into coastal waters and turbidity control.

Due to the proposed project's location on the water, construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion 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. Furthermore, after construction, regular boating activities within the canal may adversely impact water quality. Thus, in order to avoid adverse construction-related and long-term impacts upon marine resources, **Special Condition #1** requires the applicant comply with best management practices during the construction of the deck platform and stairs to avoid water quality impacts during construction and requires the applicant comply with detailed boating best management practices ensuring that boating activity in the project area will be managed in a manner that protects water quality. As conditioned, the project will sustain the productivity of coastal waters.

3. Special Status Marine Species - Eelgrass

Eelgrass (*Zostera marina*) and *Caulerpa Taxifolia* surveys are typically required when a project proposes disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Eelgrass is an aquatic plant which grows in dense beds in shallow, subtidal or intertidal sand or mud bottoms. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass habitat functions as an important structural environment for estuarine and oceanic fish spawning and egg deposition, fish nursery grounds, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. Eelgrass is a major food source in nearshore marine systems contributing to the system at multiple trophic levels.

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). *C. 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. *C. 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, *C. taxifolia*, if present, could displace eelgrass in the channels.

The applicant provided a survey conducted by WSSI Environmental Consulting on November 1, 2010 to determine whether eelgrass or *C. taxifolia* existed at the project site (Exhibit #5). No *C. taxifolia* was observed onsite. Two small patches of eelgrass were found adjacent to a boat moored on the sand approximately 15-30 feet from the project area, no eelgrass was found within the proposed project construction area by the 2010 survey. As discussed more fully in the following section, submersion of the areas adjacent to the bulkhead, where the proposed project is located, fluctuates depending on the tides. However, toward the center of the canal, submersion is more constant and thus more conducive to eelgrass growth. Past eelgrass surveys of the harbor, sponsored by the City, show that extensive eelgrass beds exist within these more continually submerged areas of Grand Canal. Surveys done in 2004, 2007, and 2010, indicate consistent eelgrass growth in the canal.

Eelgrass is an important resource that provides habitat for a variety of invertebrates, fish, and other wildlife. Coastal Act Section 30230 requires that marine resources, such as eelgrass, be maintained, enhanced, and where feasible, restored. No direct or indirect impact to the eelgrass adjacent to the proposed project site is anticipated from the project or project construction.

Special Conditions #2 and #3 require the standard pre-project and post-project monitoring 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). Thus ensuring that eelgrass is not impacted and that if impacts occurred during construction, those impacts would be mitigated. 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*.

4. Marine Resources – Biological Productivity/Shading Impacts

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. Coastal Act Section 30231 requires that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms be maintained. 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. The proposed deck structure is at least 15 feet from existing eelgrass areas and its construction will not impact eelgrass.

The proposed deck platform and stairs will result in approximately 27 sq. ft. of water coverage resulting in minimal adverse effects on marine resources (e.g., shading and habitat displacement) in an area where no current dock exists. Therefore, the Commission finds the proposed project, as conditioned, to be consistent with Section 30230 and 30231 of the Coastal Act.

D. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in

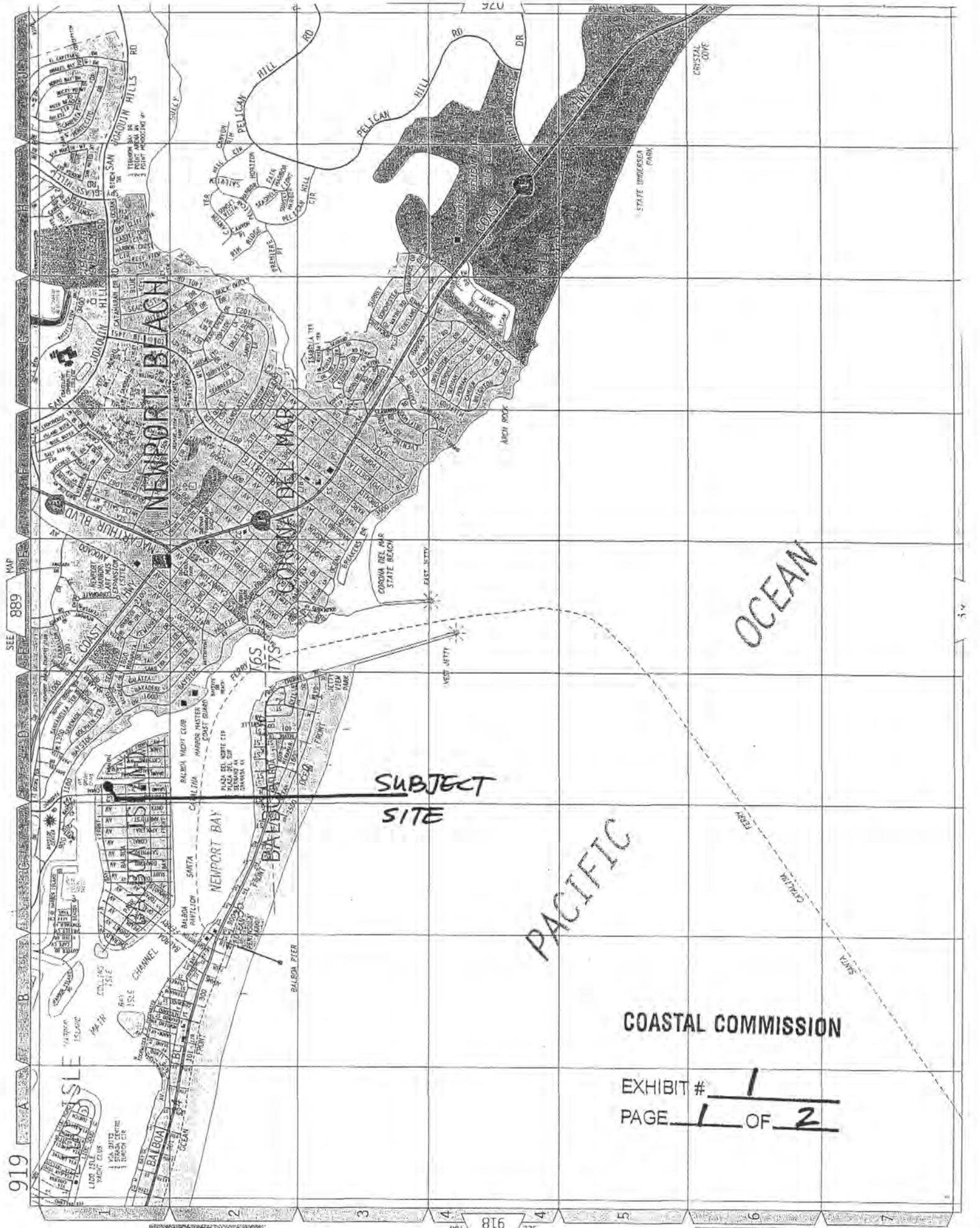
conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005 and in October 2009. As conditioned, the proposed development being approved 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 an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of Newport Beach is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA. As such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding biological resources. These special conditions require: 1) water quality BMPs; 2) eelgrass survey; 3) pre-construction caulerpa taxifolia survey; 4) assumption of risk, waiver of liability and indemnity; and 5) future development return to the Commission for review.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with the requirements of the Coastal Act and CEQA.



SEE 889 MAP

919

ORANGE CO. MAP 918 SEE 918 MAP 918

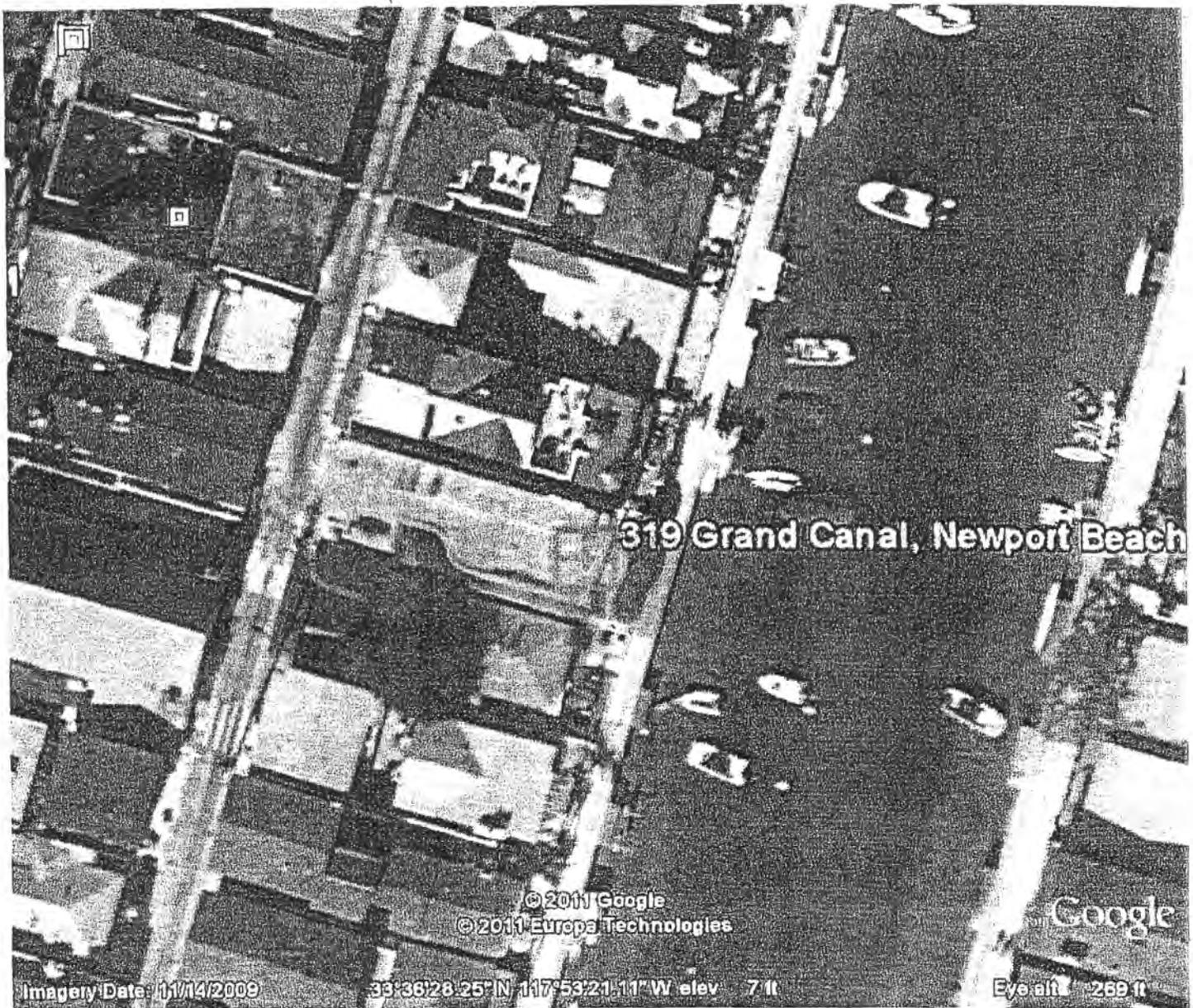
**SUBJECT
SITE**

OCEAN

PACIFIC

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2

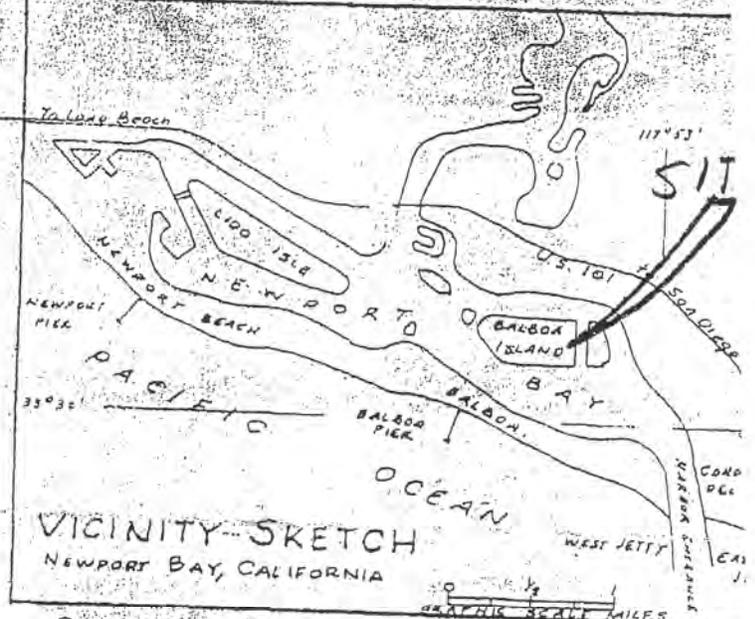
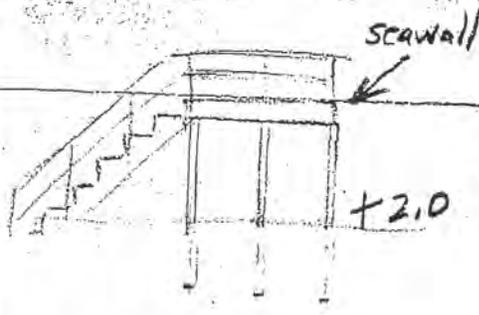


↑
public sidewalk/walkway
surrounding Balboa Island

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

CITY OF NEWPORT BEACH HARBOR APPLICATION NO. _____



HARBOR RESOURCES DIV
CITY OF NEWPORT BEACH
Signature 1/18/11
1" = 10'

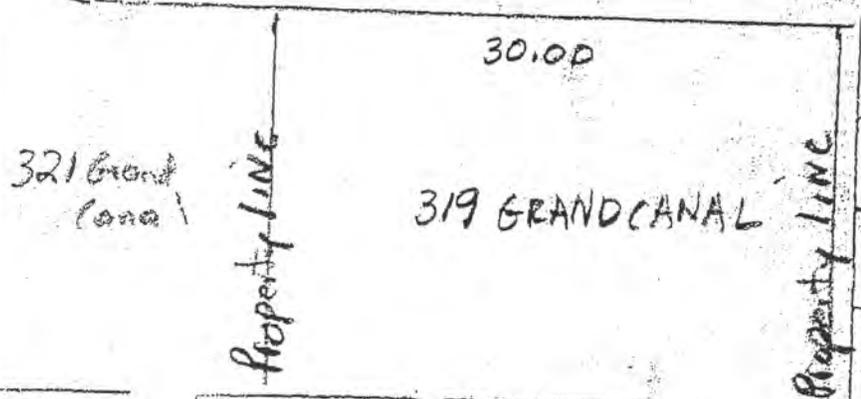
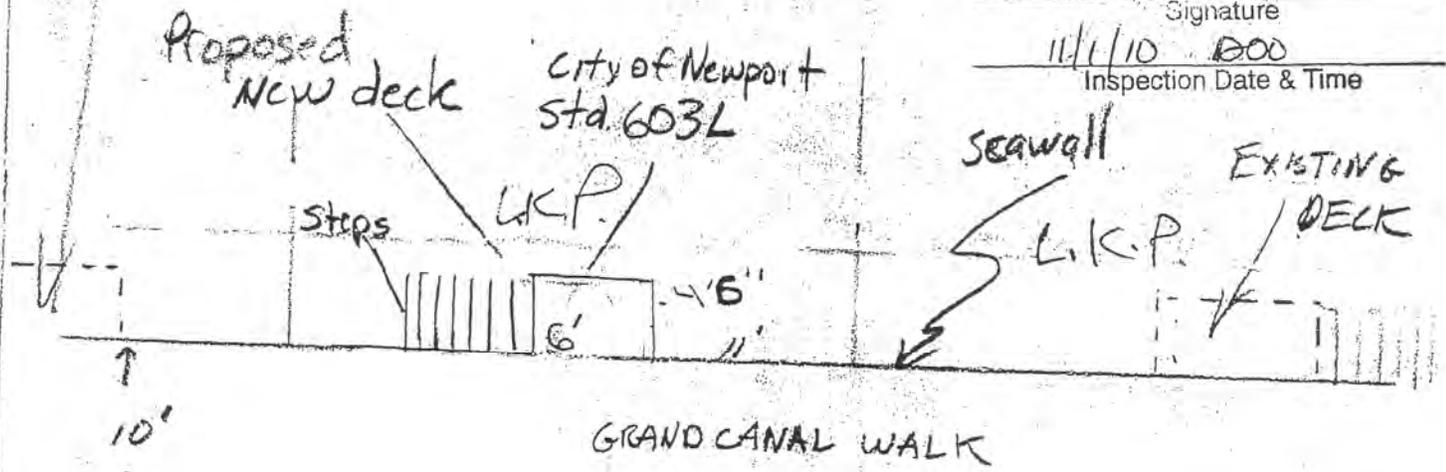
VICINITY SKETCH
NEWPORT BAY, CALIFORNIA
Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay

Proposed
SQ. FT. 37

EXISTING DECK GRAND CANAL

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

Signature
Signature
11/1/10 DOO
Inspection Date & Time



COASTAL COMMISSION
EXHIBIT # 3
PAGE 1 OF 1

City Newport Beach Harbor Permit Policy

H-1

- B. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor.

PROMONTORY BAY

The following conditions are to be placed on each harbor permit when approved:

- A. That the permittee shall be responsible and maintain the area delineated on the harbor permit free and clear from floating rubbish, debris or litter at all times.
- B. That the permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the bulkhead line and pierhead line as delineated by the harbor permit.

GRAND CANAL

- A. The following conditions are to be in effect and placed on each harbor permit for the Grand Canal:

1. That the permittee shall be allowed either one pier platform, or in lieu thereof, two shore mooring type appurtenances per lot. Pier platforms and shore moorings shall be constructed according to "Design Criteria and Standard Drawings for Harbor Construction" adopted by the City of Newport Beach.
2. That all vessels (maximum length 18 feet) moored in the Grand Canal shall be tied off to pier platform structures or shore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Fire and Marine Department shall be prohibited.
3. That the permittee shall be allowed no more than one vessel per shore mooring.
4. That any shore mooring approved for the Grand Canal shall display a permit number issued by the Fire and Marine Department.
5. That each vessel tied to any pier platforms in the Grand Canal be anchored from the stern in such a method as to prevent the vessel from

24
COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 4

swinging into adjoining vessels or across bayward prolongations of private property lines.

- B. There shall be no permits issued for shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the Canal.
- C. There shall be no new permits issued for shore moorings or pier platforms bayward of those lots at the extreme south end and north end of Grand Canal.

OCEAN FRONT SAND DUNES

As a result of wind, storm and tidal conditions, sand has built up in specific locations forming sand dunes. These range from a height of a few inches to as much as five feet. This build up can present problems for adjacent property owners in the form of increased pressure on ornamental and retaining walls and interfering with views of the ocean. To resolve these problems, property owners may apply for a Harbor Permit to do excavation of beach sand directly oceanward of their property in the area bounded by the prolongation of their side property lines.

Reaffirmed - January 24, 1994

Amended - June 27, 1994

Amended - June 26, 1995

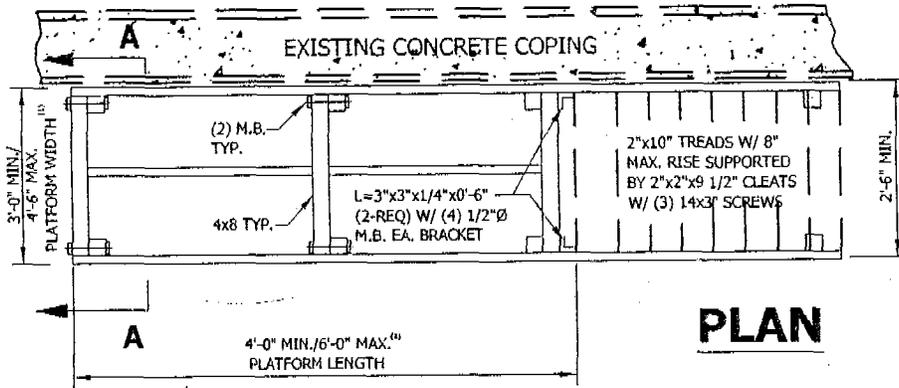
Amended - March 25, 1996

Amended - June 8, 1998 (effective July 22, 1998)

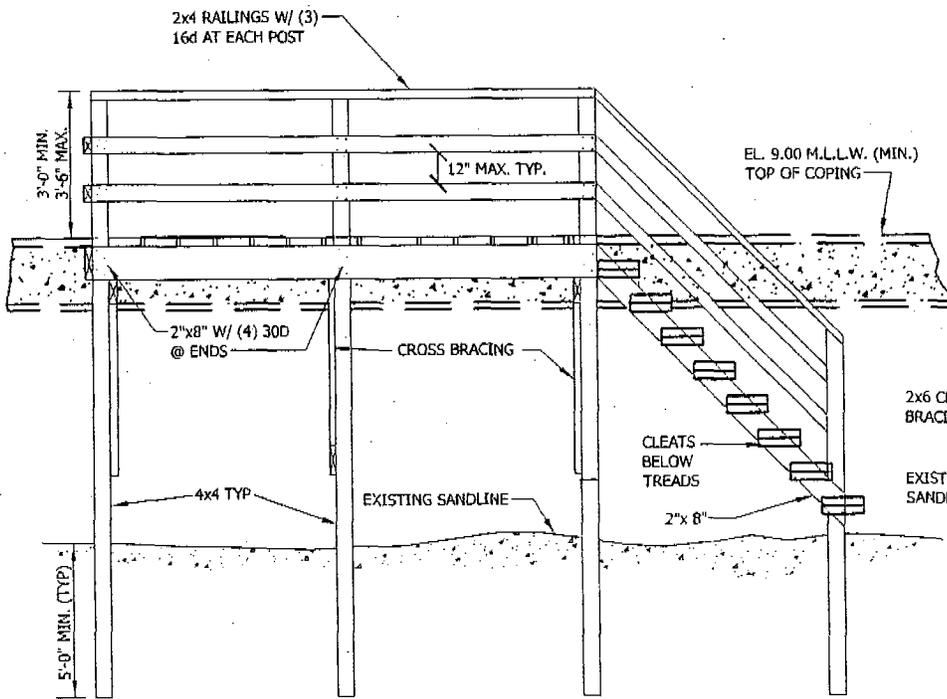
Amended - December 14, 1998

COASTAL COMMISSION

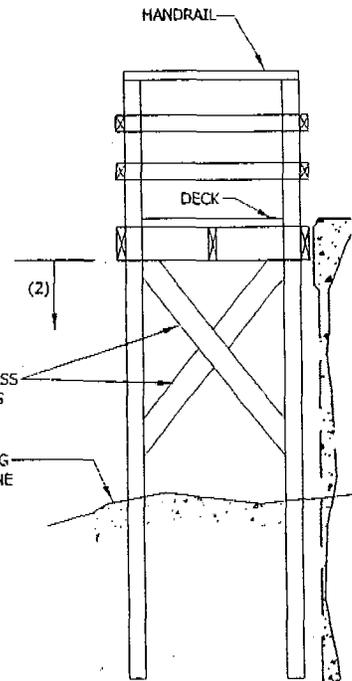
EXHIBIT # 4
PAGE 2 OF 4



PLAN



ELEVATION



SECTION A-A

NOTES

1. OVERALL PLATFORM SIZE (NOT INCLUDING STEPS) SHALL NOT BE GREATER THAN 27 SQ. FT.
2. ALL STRUCTURAL PLATFORM SUPPORTING MEMBERS BELOW ELEV 7.5 MLLW SHALL BE SUITABLE FOR MARINE ENVIRONMENT SUBMERSION INTO HARBOR WATERS AS WELL AS SUBTERRANEAN EMBEDMENT INTO THE MUDFLATS. TREATED LUMBER IS NOT ALLOWED FOR THIS SERVICE, UNLESS ENCAPSULATED IN AN IMPERVIOUS MEMBRANE. ALTERNATIVE OR COMPOSITE MATERIALS OR CONSTRUCTION CAN BE SUBMITTED FOR CITY APPROVAL.
3. PLATFORM SHALL NOT BE ANCHORED TO COPING.
4. PRESERVATIVE TREATMENT FOR ALL LUMBER USED ABOVE ELEV 7.5 MLLW SHALL MEET STATE OF CALIFORNIA REQUIREMENTS.
5. ALL METAL CONNECTION PLATES SHALL BE GALVANIZED OR STAINLESS STEEL. ALL FASTENERS (LAG BOLTS, SCREWS AND/OR NAILS) SHALL BE GALVANIZED STEEL, STAINLESS STEEL OR A PRODUCT SPECIFICALLY DESIGNED TO RESIST CORROSION IN THE MARINE ENVIRONMENT, AND APPROVED BY THE CITY.
6. NON-STRUCTURAL MEMBERS MAY BE ALTERNATIVE MATERIALS SUCH AS PLASTIC DIMENSIONAL LUMBER. SUBMIT PRODUCT SPECIFICATIONS TO CITY OF NEWPORT BEACH FOR APPROVAL.

REV. 4/06

CITY OF NEWPORT BEACH
BUILDING DEPARTMENT

GRAND CANAL
PLATFORM & STEPS

APPROVED

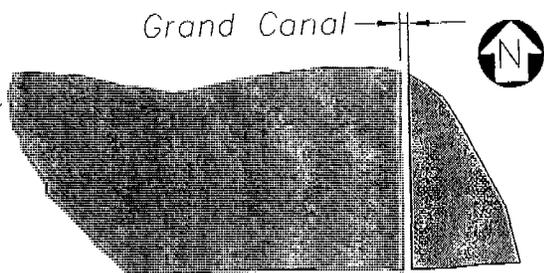
Drawn: R. OKADA

Date: JULY 2004

DRAWING NO.

Scale: N.T.S.

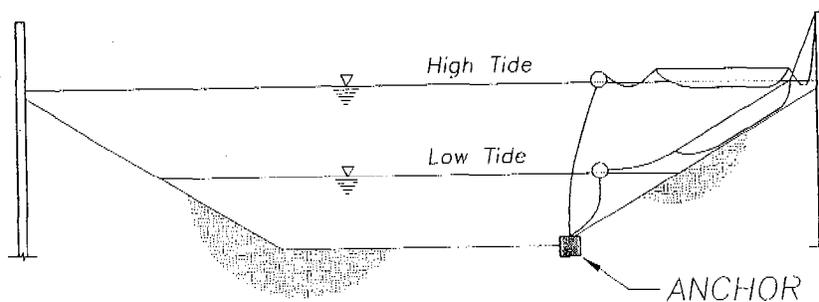
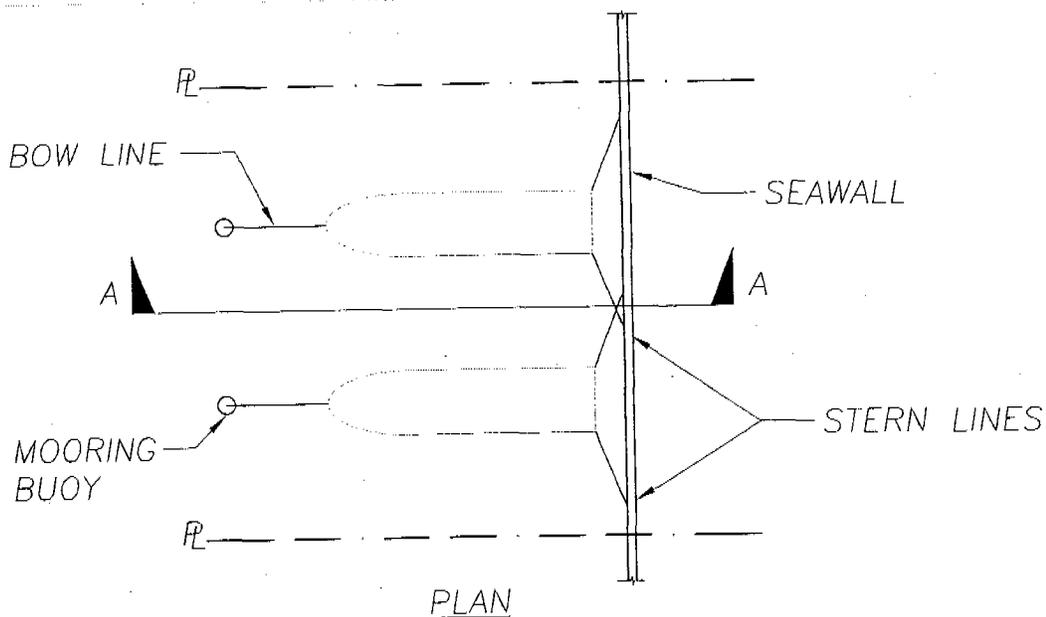
STD-603-L



**Balboa Island
Vicinity Map**

COASTAL COMMISSION

EXHIBIT # 4
PAGE 4 OF 4



SECTION A--A

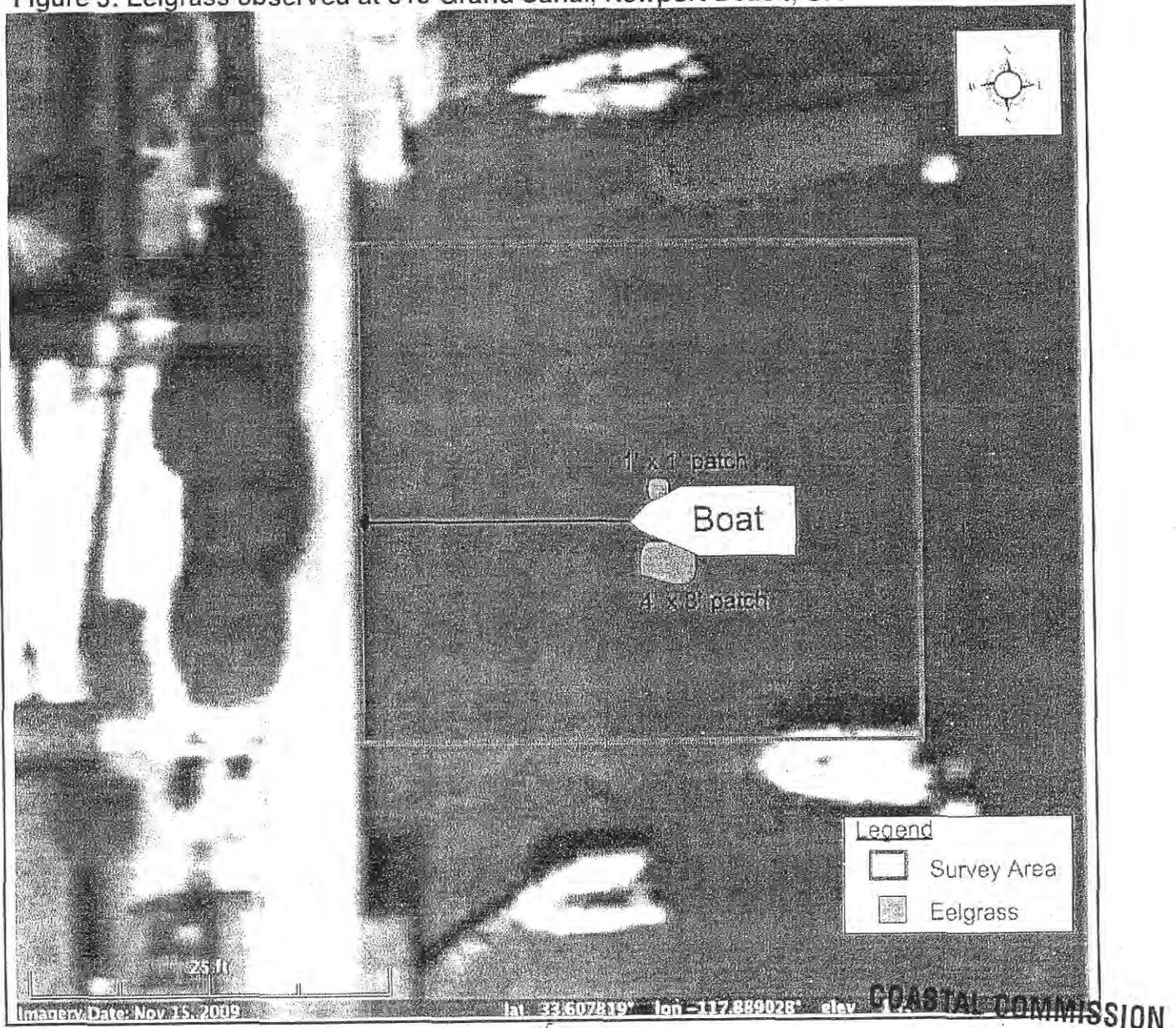
**DOCK ARRANGEMENT
CASE 13
(Grand Canal Only)**

Results

No *Caulerpa* spp. were observed (see attached *Caulerpa* Survey Reporting Form). Eelgrass was observed more than 15 feet from the proposed deck site (Figure 3). This eelgrass was in two patches near the existing moored boat. One patch was 1x1 ft, and the other was 4x3 ft.

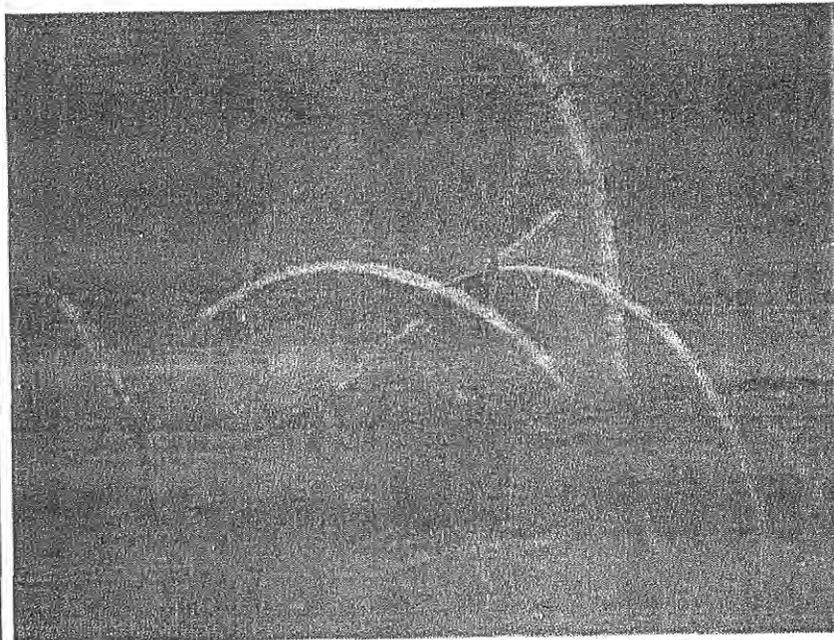
The bay floor was silty. Flora included filamentous *Ulva*. Fauna observed included schools of juvenile fish. The water depth ranged from +1 ft near the seawall to 6 ft MLLW near the center of the canal.

Figure 3: Eelgrass observed at 319 Grand Canal, Newport Beach, CA



WSSI

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



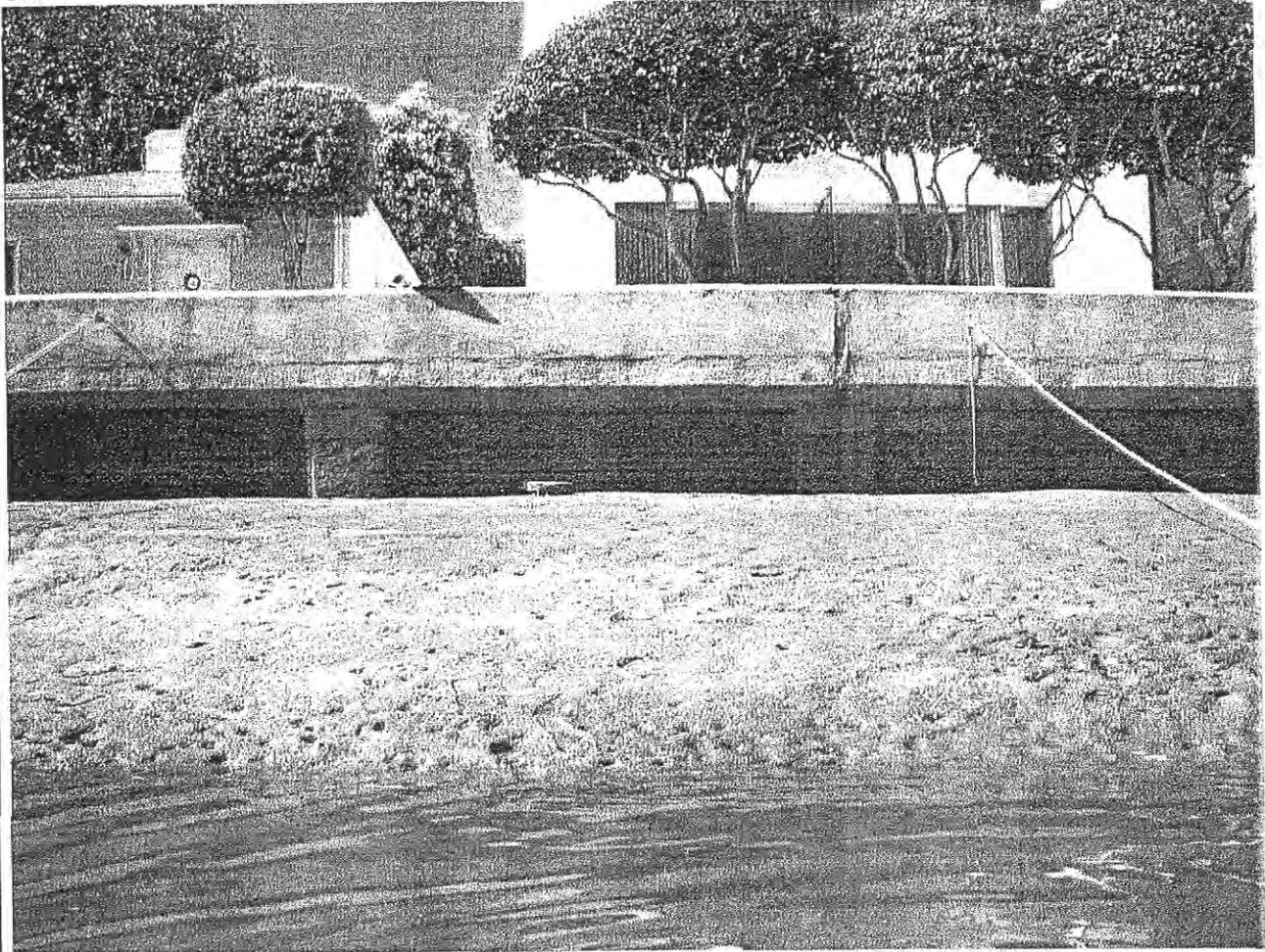
COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 3

WSSI

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

Site Photos:



COASTAL COMMISSION

EXHIBIT # 5
PAGE 3 OF 3



CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT Harbor Resources

August 9, 2011

California Coastal Commission
Attn: Sherilyn Sarb
200 Oceangate, STE 1000
Long Beach, CA 90802-4416

RECEIVED
South Coast Region

AUG 12 2011

CALIFORNIA
COASTAL COMMISSION

RE: Public Pier Platform on the Grand Canal, Balboa Island, Newport Beach

Dear Ms. Sarb:

Pursuant to our discussion last week at City Hall regarding increased public access opportunities along the Grand Canal on Balboa Island, the City completed a preliminary assessment of the feasibility of installing a public pier platform at the Balboa Avenue street end. This public pier platform will provide public access to the Grand Canal for kayakers, paddle boarders, and beach users.

Based upon our preliminary assessment, there is sufficient room on the Balboa Avenue street end to install a public pier platform matching the configuration of similar pier platforms in the area. (See Exhibit "A".) The City anticipates beginning the permit process for the public pier platform this Fall with construction commencing this Winter. Depending on the final costs, the City will explore the feasibility of constructing a second public pier platform on the Little Island side of the Grand Canal as well.

Thank you for meeting with City staff last week and participating in what we hope to be the first of many productive meetings between Coastal Commission staff and City staff. With the submittal of this letter we understand you will now recommend removal of the public access condition from the private pier platform application(s) along the Grand Canal.

Sincerely,

Chris Miller
Harbor Resources Manager
cmiller@newportbeachca.gov
(949) 644-3043

COASTAL COMMISSION

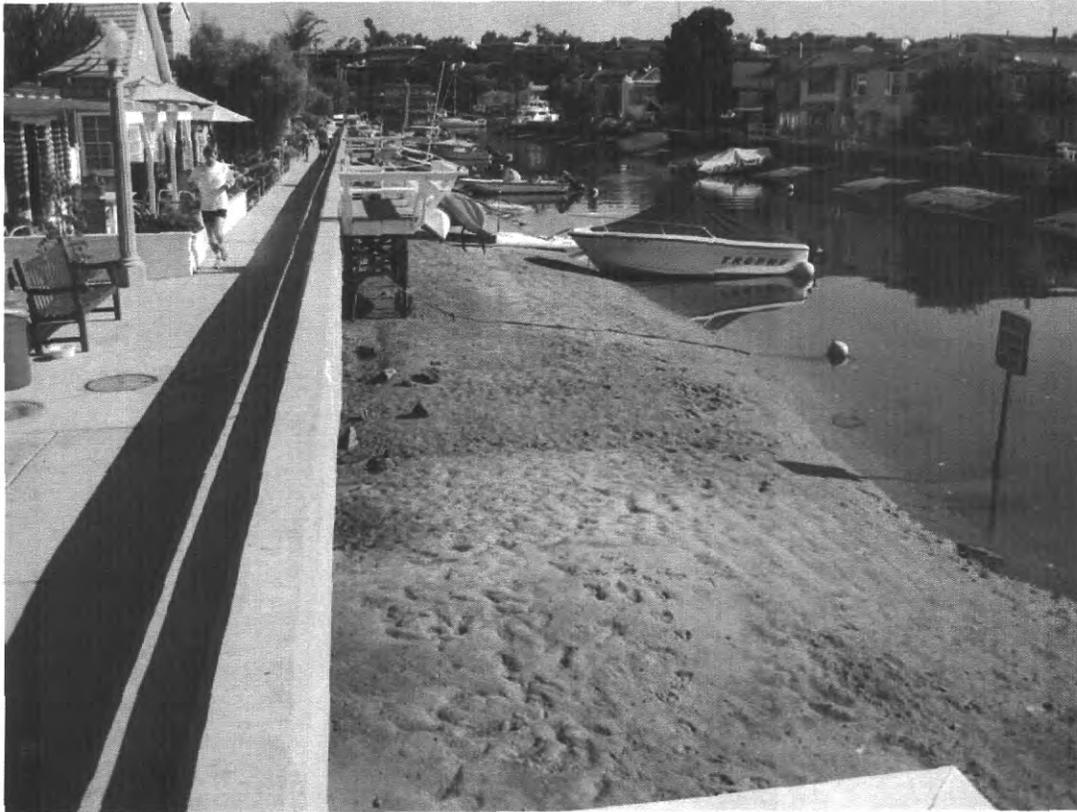
EXHIBIT # 6
PAGE 1 OF 2

CC: Karl Schwing, California Coastal Commission
Liliana Roman, California Coastal Commission

Exhibit: A. Balboa Avenue and Grand Canal, Balboa Island

829 Harbor Island Drive, Newport Beach, CA 92660
PH: (949) 644-3034 FX: (949) 723-0589 • www.newportbeachca.gov/harborresources

Exhibit A
Balboa Avenue and Grand Canal, Balboa Island



COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 2