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Filed:	3/9/14
180th Day:	9/5/15
Staff:	F. Sy-LB
Staff Report:	7/31/15
Hearing Date:	8/13/15

STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-15-0235**
Applicant:	**Orange County College Marine Program**
Agent:	CAA Planning, Inc; Attn: Shawna Schaffner
Project Location:	1801 West Coast Highway, Newport Beach (Orange County)
Project Description:	Replacement and reconfiguration of the existing 8,833 square foot, 8 slip marina at the Orange Coast College's School of Seamanship with a new 8,267 square foot, 9 slip marina.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the replacement and reconfiguration of the Orange Coast College's School of Seamanship marina located in the City of Newport Beach. The major issues raised by this proposed project concern development that could impact biological resources, marine resources, visual resources, and public access.

The reconfiguration of the existing marina will result in the loss of 1,790 square feet of eelgrass habitat due to new piles shading and the applicant is proposing mitigating the eelgrass loss. The purpose of the reconfiguration of the marina as stated by the applicant is to provide safer operation of the marina. Currently, the berthing of large boats, including 92-foot long Nordic Star, in the center of the marina creates a visual obstruction for boater operation in and out of the marina. The proposed reconfiguration would improve line of site and result in better and safer maneuvering in and out of the marina. A less environmentally damaging alternative would be to

keep the existing marina configuration. However, this alternative would not aid in providing a safer and proper facility for the education of nautical skills for the public. Therefore, while eelgrass will be impacted, the proposed project is the least environmentally damaging alternative that will provide for safer operation and enhance education of nautical skill for the public. To mitigate the eelgrass loss, the applicant has proposed to conduct an eelgrass transplant program onsite at a mitigation ratio of 1.38 to 1, so that a total of 2,470 square feet of eelgrass will be successfully transplanted. The applicant's submitted eelgrass mitigation plan was only conceptual in nature. A final eelgrass mitigation plan that describes the final plan is necessary. Thus, the Commission imposes **Special Condition No.** 1, which requires the applicant to submit a final eelgrass mitigation plan.

To evaluate the potential of any further impacts to eelgrass or the presence of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 2**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction and **Special Condition No. 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxilfolia*.

To ensure that all impacts to water quality are minimized and to reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes the following conditions: **Special Condition No. 4**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; **Special Condition No. 5**, which requires the continued use and maintenance of post construction BMPs and **Special Condition No. 6**, which requires the applicant to submit an operation, maintenance and repair over-water sewer lines plan.

Review of the project by the National Marine Fisheries Service (NMFS) has not been completed. Therefore, the Commission is imposing **Special Condition No. 7**, which requires that the applicant submit a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required.

As conditioned, the proposed project will conform with Coastal Act Policy Sections 30230, 30231, 30233, 30251, 30210, 30213, and 30220 of 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 Coastal Land Use Plan (CLUP) 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 Coastal Land Use Plan may be used for guidance.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-0235 pursuant to the staff recommendation.*

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:

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 will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following 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

This permit is granted subject to the following special conditions:

1. Final 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 final eelgrass mitigation plan for transplanting and replacement of eelgrass adversely impacted by the project shall that shall be in substantial conformance with the Marine Biological Resources Impact Assessment and Conceptual Mitigation Plan prepared by Coastal Resources Management, Inc. dated March 1, 2015, 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 *California Eelgrass Mitigation Policy (CEMP)*, 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 1.38:1 (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.

2. Pre-and Post-Construction Eelgrass Survey(s)

A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre- construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. 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 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, 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 "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) (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 Wildlife. 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 (mitigation:impact) ratio on-site, or at

another location, in accordance with the California Eelgrass Mitigation Policy and Implementing Guidelines. Based on past performance of eelgrass mitigation efforts in this area, in order to achieve this minimum, an initial planting ratio of 1.38:1 is recommended. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). Any exceptions to the required 1.2:1 mitigation ratio found within the California Eelgrass Mitigation Policy and Implementing Guidelines 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 Wildlife, and the National Marine Fisheries Service (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/caulerpa_taxifolia.html).

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 to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Wildlife (858-467-4218/William.Paznokas@wildlife.ca.gov) or Bryant Chesney, National Marine Fisheries Service (562-980-4037/Bryant.Chesney@noaa.gov), 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/or 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. Construction Responsibilities and Debris Removal. The permittee shall comply with the following construction related requirements:

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

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

A. Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
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; and
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

6. Operation and Maintenance Plan for Over-Water Sewer Lines. The applicant shall submit, for the review and approval of the Executive Director, an operation and maintenance plan for over-water sewer lines. The over-water sewer lines include all pipes from sewage pump-

out facilities, and any other pipe which leads to a sanitary sewer. The over-water sewer lines shall be visually inspected at least once per month and dye- or pressure-tested at least once every six months. All leaks shall be repaired immediately upon discovery. If the applicant determines that a more stringent procedure is necessary to ensure protection of coastal water quality, then the applicant shall update the operation and maintenance plan.

The permittee shall undertake development and ongoing maintenance and operation in accordance with the approved final plan and other requirements. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. National Marine Fisheries Service (NMFS). PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit issued by the National Marine Fisheries Service (NMFS), 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 National Marine Fisheries Service (NMFS). 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.

IV. FINDINGS AND DECLARATIONS:

A. DESCRIPTION AND PROJECT LOCATION

The proposed project is the replacement and reconfiguration of the existing 8,833 square foot, 8 slip marina at Orange Coast College's School of Seamanship facility with a new 8,267 square foot, 9 slip marina that entails the following (**Exhibit No. 2-3**):

1) Removal 13 of 16 existing steel piles ranging from 8-inches to 14-inches (9.86 square feet);
2) Install 20, 18-inch diameter octagonal concrete piles (38.25 square feet);
3) Removal of an existing 17'-5" wide x 98'-6" long dock and replace it with 2 smaller docks, a 10'-3" wide x 98' long dock and a 6'-3" wide x 95' long dock. The net result is a change from 8 slips to 9 slip sand better utilization of the water area at the east end of the marina which allows for the additional slip for the Nordic Star;
4) Relocation of the small boat basin and floating docks to the west end of the property next to the existing crew docks for improved on-water visibility and safety for boats exiting the small boat basin and crew docks;
5) Replacement of the existing crew docks with ones of identical size and dimensions. No change in location;
6) Replacement of the existing east and west gangways with longer and better functioning wood gangways;
7) Existing gangway platform to remain place. However, existing dock and ramp covering material will be removed and replaced with new wood framed dock structure

incorporating "Steel Dek Eco Series Grated Panels" that allow light penetration to the water surface to promote eelgrass growth. The applicant has proposed to monitor the grated panels for five years to analyze the potential benefit of the use of grated panels to promote the grown of eelgrass;

8) Update all marina infrastructure, including electrical, water, and firefighting systems and a new sanitary sewer connection and pump out facility; and
9) Install dock lighting.

The footprint of the existing dock structure is 8, 833 square feet. The reconfigured dock system will have a footprint of 8,267 square feet, which will result in a net reduction in the dock footprint of 566 square feet. The water surface shading would be even less, given the use of the Steel Dek Eco Series grated panels that allow light penetration resulting in a net reduction of the physical dock footprint and the water surface shading as compared to the existing configuration.

The applicant states that reason for the proposed project it to provide safety and more docking flexibility of vessels used for student training and programs. As a learning institution, the existing configuration of the marina makes it difficult for novices to learn and gain a better understanding of seamanship. The existing configuration presents obstructions to safe operation and inhibits the ability to learn nautical skill. A comprehensive review of vessel use cycles at the facility was conducted to assess the berthing of the vessels and its impacts to adjacent vessels. This review resulted in the new dock design that will provide the public with more access to vessels and the harbor for the purposes of building nautical skills. Additional consideration for the project design was given to the safety of vessel movement in and out of the marina in relation to the location of the 92-foot long Nordic Star, the college's flagship that was donated to the OCC three years. The proposed reconfiguration would enhance line of site and result in better sand safer maneuvering in and out of the marina. The length and height of the Nordic Star requires that the vessel be relocated to the east end of the marina to allow smaller school vessels better cross traffic visibility when maneuvering in and out of the marina and into the channel.

The subject site is located at 1801 W. Pacific Coast Highway in the City of Newport Beach (**Exhibit No. 1**). The subject site is currently developed with the Orange Coast College (OCC) School of Sailing and Seamanship that is operated under a long-term lease with the County of Orange. The school offers courses in basic and advanced sailing, seamanship, navigation and similar activities. Classes and activities offered by the school are available to all members of the general public. It serves more than 2,000 people a year with a community program available to adults, college students, and youth. The facility also provides programs for underserved youth form inland areas of Orange County and group homes. Additionally, there are also programs offered to the public on a fee basis. To accommodate the curriculum, the program uses more than five dozen vessels that have been donated to the school by local residents. The vessels include rowing shells, sailing dinghies, keelboats, and larger sail and power boats.

The project site is located along Pacific Coast Highway (referenced as West Coast Highway in the project vicinity), which is a regional road artery; a wide, high speed boulevard providing a convenient route for regional traffic in an area that is known as "Mariner's Mile" in the City of Newport Beach. Pacific Coast Highway is also the "main street" of Newport Beach providing access to many neighborhoods and business districts. This area along Pacific Coast Highway

provides access to local businesses and the waterfront as well as ingress/egress to adjacent bluff-top neighborhoods. Historically, Mariner's Mile has always been a focus for marine activities. Yacht brokers, shipbuilding, boat services and haul-out facilities, warehouses, slips and sportfishing docks shared the flat, sandy strip facing the Lido Channel at the foot of the Newport Heights, accessing both the water and the Pacific Coast Highway.

To the north of the site, is West Coast Highway, to the east is the Balboa Bay Club, to the south is Lower Newport Bay, and to the west is the Boy Scouts Sea Base.

The facility is located on upland property owned by the County of Orange and on tidelands initially granted to the County of Orange by a State of California Tideland Grant dated May 25, 1919. The subject property was leased in 1953 to the Orange Coast College of Sailing and Seamanship. On May 15, 2007, the County of Orange and Coast Community College District agreed to a new 30-year extension. Tidelands and submerged lands are subject to a public trust that, among other things, limits, their use to navigation, fishing, commerce, public access, water oriented recreation, open space, and environmental protection. Tidelands and submerged lands within the corporate limits of Newport Beach are, with very limited exceptions, owned by the State. The vast majority of tidelands and submerged lands in Newport Beach have been granted to the City or the County of Orange to administer in a manner consistent with the public trust limitations relative to use of the property and revenue derived from that use.

The subject site is designated as Public Facilities (PF) in the CLUP. The PF category is intended to provide public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities. The proposed use continues to adhere to this designation.

B. LOCAL GOVERNMENT AND OTHER APPROVALS

The proposed project has received Approval-in-Concept (No. 129-1801) from the City of Newport Beach Harbor Resources Division dated April 4, 2006). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers (USACOE). The project has received approval from the California Regional Water Quality Control Board (RWQCB). However, a review by the National Marine Fisheries Service (NMFS) has not been completed. Therefore, the Commission is imposing **Special Condition No. 7**, which requires that the applicant submit a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required.

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

Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the *California Eelgrass Mitigation Policy* (CEMP) 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 reconfiguration of the existing marina will result in the loss of 1,790 square feet of eelgrass habitat due to new piles shading and the applicant is proposing mitigating the eelgrass loss. The applicant states that the reconfiguration is necessary in order to provide safer operation of the marina. The berthing of large boats in the center creates a visual obstruction for boater operation in and out of the marina. Consideration was also given to safety of movement in the marina in relation to 92-foot long Nordic Star. The existing configuration of the marina makes it difficult for novices learning nautical skill to operate in the marina. The proposed reconfiguration would enhance line of site and result in better and safer maneuvering in and out of the marina. A less environmentally damaging alternative would be to keep the existing marina configuration; however, it would not aid in providing a safer and proper facility for the education of nautical skills for the public. Thus, while eelgrass will be impacted, the proposed project is the least environmentally damaging alternative that will provide for safer operation and enhance education of nautical skill for the public.

To mitigate the eelgrass loss, the applicant has submitted the following mitigation plan: Marine Biological Resources Impact Assessment and Conceptual Mitigation Plan prepared by Coastal Resources Management, Inc. dated March 1, 2015. This plan states that the loss will be mitigated by conducting an eelgrass transplant program onsite at a mitigation ratio of 1.38 to 1, so that a total of 2,470 square feet of eelgrass will be successfully transplanted. The applicant is proposing the 1.38 to 1 ratio to be adhere to the National Marine Fisheries (NMFS) newly released California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP) which includes an updated mitigation to impact eelgrass planting ratio of 1.38 to 1. The applicant states that post project there will be a total area of 4,110 square feet within the new marina (2,750

square feet in the west basin and 1,360 square foot in the east basin) where the proposed 2,470 square feet of eelgrass can be mitigated. The proposed east bay mitigation area will be adjacent to an existing eelgrass mitigation area in the east basin created as a result of previous onsite eelgrass impacts associated with a previous onsite development (CDP No. 5-04-167-A1).

Although the applicant is not requesting mitigation credit for the area covered by the grated docks, the applicant has proposed to the use of grated panels for the proposed new docks that they state will allow light penetration to the water surface to promote eelgrass growth. There are currently no studies that support the notion that grated panels promote eelgrass growth by allowing more light penetration. In discussions with the applicant, the applicant has proposed to monitor the grated panels for five years in order to analyze the potential benefit of the use of grated panels to promote the growth of eelgrass.

The applicant is proposing mitigation on their own and the proposed mitigation would be consistent with Sections 30230 and 30231 since this activity would result in the enhancement and restoration of marine resources and biological productivity. The applicant's submitted eelgrass mitigation plan was only conceptual in nature. A final eelgrass mitigation plan that describes the final plan is necessary. Thus, the Commission imposes **Special Condition No.** 1, which requires the applicant to submit a final eelgrass mitigation plan.

The eelgrass survey took place was conducted on September 11, 2014. 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 is valid until the resumption of active growth (i.e., March 1). The project is agendized for the August 2015 Coastal Commission Hearing so the existing eelgrass survey may no longer be valid by the time of construction and there may be additional eelgrass at that time not yet identified. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **Special Condition No. 2**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

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

shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on September 11, 2014 and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendized for the August 2015 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to ensure that the proposed project does not cause the dispersal of *Caulerpa Taxilfolia*, the Commission imposes **Special Condition No. 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxilfolia*. If *Caulerpa Taxilfolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxilfolia*, unless the Executive Director determines that no amendment or new permit is legally required.

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement.

To ensure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 4**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes **Special Condition No. 5**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

The proposed project includes the installation of a new sanitary sewer connection and pump out facility for all recreational boats within this marina. The station will be located at the east end of the marina at the end of the new dock for the Nordic Star and will have a sewer line that will run under the dock and connected to the County's main sewer line. The installation of a pump-out station within this marina will provide boats a more convenient pump-out station and encourage boaters to use the facility which will help reduce illegal discharges into coastal waters. Sewer lines exposed to the marine environment, however, have the potential to break or corrode more quickly than those more sheltered from the salty air and sunlight. Because the sewer line will be directly above the water, it could leak raw sewage directly into the water, if there are any ruptures in the pipes. The applicant did not submit any information regarding the operation and maintenance for the sewer line. Thus, these procedures need to be identified. Such procedures should include visually inspecting the entire length of the lines on a monthly basis, which will provide the basic inspection necessary to ensure there is no leakage into coastal waters. In

addition, strict dye or pressure tests will allow inspectors to see less visible leaks in the sewer lines; and because these tests are more expensive and labor-intensive, conducting these tests biannually is sufficient. To ensure proper operation, maintenance, inspections, and repair of over-water sewer lines, the Commission imposes **Special Condition No. 6**, which requires the applicant to submit an operation, maintenance and repair over-water sewer lines plan.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 30231, and 30233 of the Coastal Act.

D. MARINE RESOURCES

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:*
>
> *(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 30233 of the Coastal Act allows the fill of open coastal waters for recreational boating opportunities where there is no less environmentally damaging alternative and where feasible mitigation has been provided.

The reconfigured marina will include the removal of 13 piles ranging from 8-inches to 14-inches and the installation of twenty 18-inch concrete guide piles for a net increase of 3 piles. Placement of the piles will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

1. Allowable Uses

The piles for the boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the total twenty 18-inch concrete guide piles are for a boating recreational facility, this associated fill is for a boating purpose consistent with Section 30233(a)(3) of the Coastal Act.

2. Alternatives

The applicant has stated that the proposed design of the marina, which was done so that safer operation of the marina for boaters would take place; minimizes the size and number of piles and therefore is the least environmentally damaging alternative. The placement of the twenty piles is the minimum amount of construction necessary to safely anchor the boat dock system. Fewer

and/or smaller piles would not adequately secure the boat dock system. By using the least number of piles necessary to accomplish the goal of securing the boat dock system, the twenty piles associated with the boat dock system represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

3. Mitigation

The proposed recreational boat dock system and its associated twenty piles are an allowable and encouraged marine related use. The project design for the boat dock includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The impacts associated with the shading of eelgrass as a result of the project will be mitigated by the requirements of **Special Condition No. 1**. Although the hard substrate of the piles is not equivalent to the displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

This facility is between the first public road and the sea and is a bayfront lot. The site is located along a stretch of West Coast Highway where there are a number restaurants and commercial uses, thus it is an urbanized area. The public views to the bay from West Coast Highway are limited in this area of Newport Beach. The elevation difference between West Coast Highway and the Orange Coast College School of Sailing and Seamanship marina varies between approximately five to six feet, with the street level approximately five to six feet higher than the parking area for the facility and the bulkhead. The sailing center has an existing 9,994 square

foot sailing facility building that provides offices, class rooms and storage that fronts West Coast Highway for approximately 160-feet and currently blocks any view of the bay. Between the sailing center and the adjacent 5-story residential structure, there is an approximate 140-foot long view corridor along West Coast Highway that provides views of the bay including views of the boats in the bay that are an essential part of the coastal view. The proposed redesign will relocate the 92-foot long Nordic Star from the center of the marina to the eastern most section of the marina near the residential structure. The Nordic Star was previously docked parallel to the shore, but now will be oriented perpendicular to the shoreline. This relocation and orientation will open up and enhance views of the bay.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

F. 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 30213 of the Coastal Act states in relevant part:

> *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 30210 of the Coastal Act protect the publics' right to access the shoreline and water and recreational opportunities. Section 30252 of the Coastal Act protects and encourages lower cost visitor and recreational facilities. Section 30220 of the Coastal Act states that coastal areas suited for water-oriented recreational facilities shall be protected.

The college offers courses in basic and advanced sailing, seamanship, navigation and similar activities. Classes and activities offered by the college are available to all members of the general public and this will not change post project. The facility is open to the public and the parking lot is available for use by both those affiliated with the Orange Coast College School of Sailing and Seamanship and the public to enjoy the bay. Public pedestrian access is presently provided from Coast Highway to the bulkhead via two public-stairways and walkways that lead

to a continuous walkway along the length of the bulkhead. Public access of the site will not change with the proposed project. Therefore, public access opportunities will remain.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30213 and 30220 of the Coastal Act.

G. LOCAL COASTAL PROGRAM (LCP)

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 Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 2005 and in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified CLUP 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.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application 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.

The County of Orange (Coast Community College District) is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the County to be Categorically Exempt.

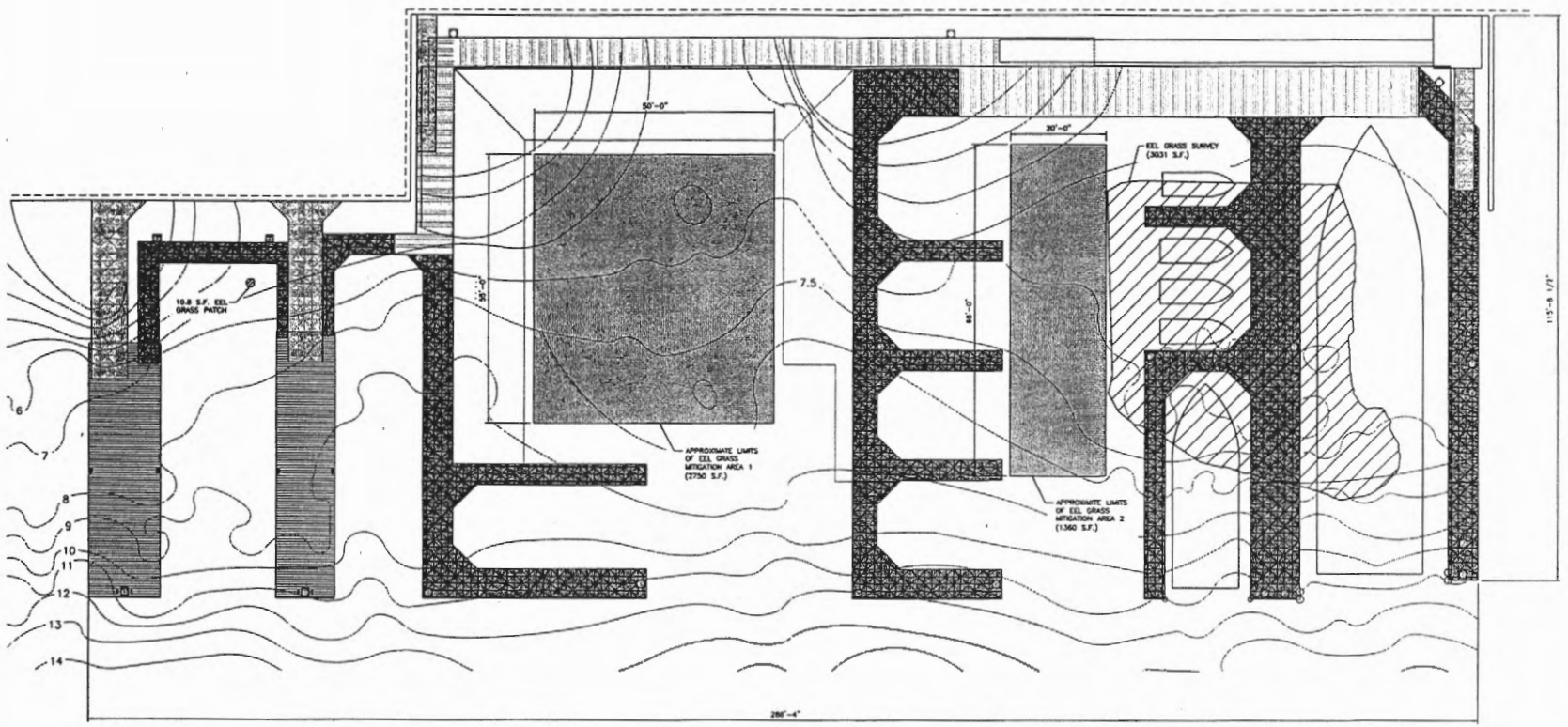
The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the biological resources marine resources, visual resources, and public access policies of the Coastal Act.

Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: CDP No. 5-04-167; CDP No. 5-04-167-A1; CDP No. 5-04-167-A2; CDP No. 5-06-293; City of Newport Beach Harbor Resources Approval-In-Concept dated March 5, 2015; Coast Community College District CEQA Exemption dated November 14,2014; and Marine Biological Resources Impact Assessment and Conceptual Mitigation Plan prepared by Coastal Resources Management, Inc. dated March 1, 2015.

Exhibit No. 1
Page 1 of 1



NOTES:
1. CONTOURS OBTAINED FROM SURVEY PROVIDED BY COASTAL RESOURCES MANAGEMENT, INC. APRIL 3,1014
2. DEPTH IN FEET (MLLW)

LEGEND:

- EXISTING EEL GRASS
- EEL GRASS MITIGATION AREAS
- ECO STEEL DECK COVERING
- ECO STEEL GANGWAY COVERING

PLOT PLAN / POTENTIAL EELGRASS IMPACT AND MITIGATION AREA

SCALE: 3/32"=1'

0' 5' 10' 20

3

PROPRIETARY INFORMATION

nsteo DESIGN, INC
28170 ENTERPRISE WAY SUITE 400
LAKE FOREST, CA 92630
PHONE: (949) 830-9339
FAX: (949) 457-9275

PROJECT: OCC DOCK RENOVATION

LOCATION: 1801 WEST COAST HIGHWAY
NEWPORT BEACH, CA 92663

SHEET TITLE: POTENTIAL EELGRASS IMPACT AND MITIGATION AREA

REVISION	DATE

DATE: 02/24/15
DRAWN BY: ARC
CHECKED BY: SB
SCALE: AS NOTED
JOB NO.: 01-532

SHEET
EG1

Exhibit No. 2
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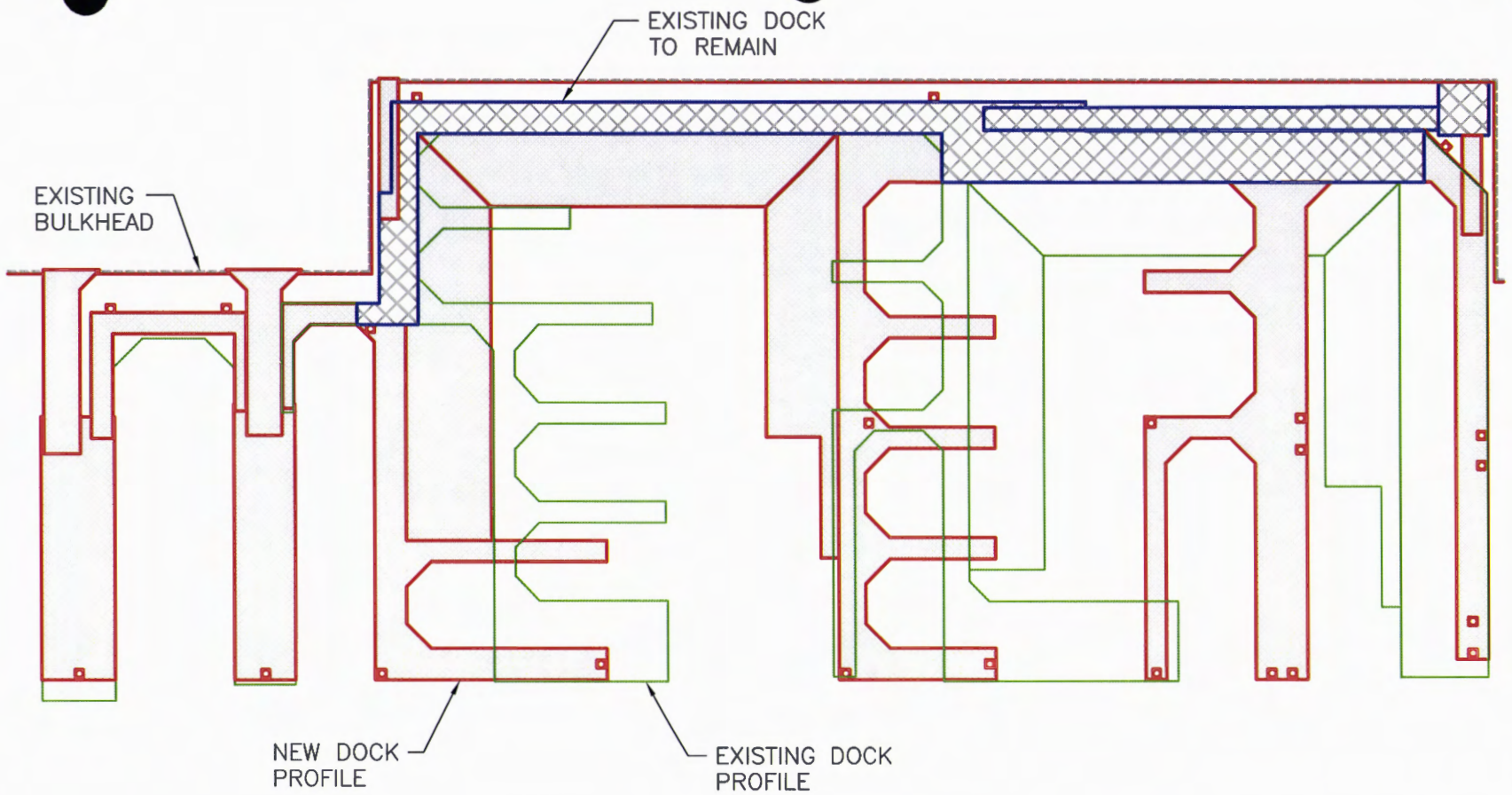

EXISTING DOCK TO BE REMOVED (6775 S.F.)

EXISTING DOCK TO REMAIN (2058 S.F.)

NEW DOCK (6209 S.F.)

next step DESIGN, INC

Project:	OCC DOCK REMODEL
Date:	09/18/2014
Sheet:	1 OF 1

Attachment 8 - Dock Overlay