

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

W 16.5a



Filed:	November 22, 1995
49th Day:	January 10, 1996
180th Day:	May 20, 1996
Staff:	Robert Merrill
Staff Report:	December 1, 1995
Hearing Date:	December 13, 1995
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 1-94-71-A2

APPLICANT: CITY OF EUREKA

PROJECT LOCATION: Along the shoreline of Humboldt Bay, near the Adorni Center, at 1011 Waterfront Drive, Eureka, Humboldt County.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED AS AMENDED: Install a berthing facility for visiting vessels and local recreation craft, consisting of a 200-foot-long by 8-foot-wide floating dock oriented parallel to and positioned approximately 90 feet out from the shoreline and connected to shore by an L-shaped gangway system.

DESCRIPTION OF AMENDMENT: Modify the seasonal limits on when construction may occur imposed by Special Condition No. 3 to allow work to continue through January 15.

SUBSTANTIVE FILE DOCUMENTS: City of Eureka Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the amendment request to modify the seasonal construction limits imposed by Special Condition No. 3 by deleting the special condition altogether. The condition had been imposed to prevent construction during herring spawning season in the project vicinity. Based on new information provided by a knowledgeable local herring fisherman, the Department of Fish and Game has advised staff that the special condition is not needed as the herring the condition was designed to protect do not actually spawn in the project area as had been previously believed.

STAFF NOTES:

1. Acceptance of Amendment Request for Filing.

Section 13166 of the Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information which he or she could not with reasonable diligence, have discovered and produced before the permit was granted.

The Commission granted permit 1-94-71 on August 9, 1994 for the installation of a docking facility for visiting vessels and local recreational craft. The primary condition imposed in the permit, Special Condition No. 1, addressed the protection of a band of eelgrass that grows parallel to the shoreline and would be spanned by the gangway to the new dock. Eelgrass is a particularly sensitive intertidal plant species that provides important habitat values. Another special condition, Special Condition No. 3, imposed a seasonal time limit on construction to avoid disturbance to spawning herring, which often spawn in eelgrass beds in Humboldt Bay such as those found at the project site. The condition limits construction to periods other than December through March. The amendment, as proposed by the applicant, would modify the condition to only limit construction to the period between mid-January through March. The City has experienced project delays associated with the need to redesign the berthing facility to comply with the requirements of the Americans with Disabilities Act and would like to be able to complete the project as soon as possible without having to wait for the end of the herring spawning season.

The applicant has presented newly discovered material information suggesting that the time limits imposed by Special Condition No. 3 are not needed. The new information is in the form of a letter from Mr. Ken Bates, a member of the Board of Directors of the Humboldt Fishermen's Marketing Association and one of the most experienced and knowledgeable local herring fishermen in the Humboldt Bay area who opines that continuing construction into the winter will have absolutely no adverse impact on herring or herring fishing activities (see Exhibit No. 5). Mr. Bates states that since he began fishing herring in Humboldt Bay in 1972, he has never observed any spawning activity in the project location due to generally poor water conditions for spawning at that site during the winter months. Staff of the Department of Fish and Game has advised Commission staff that it accepts Mr. Bates' opinion and supports removal of the seasonal time limit. Therefore, the Executive Director has determined that the applicant has presented new material information that may warrant changing the requirements of the approved permit and has accepted the amendment request for processing.

2. Commission Jurisdiction.

The project site is within the Commission's retained coastal development permit jurisdiction. Thus, the standard of review for the proposed amendment is the consistency of the project, as amended, with the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, is consistent with the provisions of the Eureka Local Coastal Program, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached.

III. Special Conditions:

The following special condition of the original permit is deleted:

3. Limits of Work Season. All construction activities shall be limited to the period of the year between April 1 and November 30 to minimize adverse impacts to spawning herring.

All other special conditions of the original permit remain in effect. No additional special conditions are imposed.

IV. Findings and Declarations:

The Commission hereby finds and declares:

1. Project History

The Commission granted permit 1-94-71 on August 9, 1994 for the installation of a docking facility for visiting vessels and local recreational craft (See Exhibits 1-4 and Attachment 1). The new dock is intended to provide mooring space for visiting vessels and local recreational craft. The City envisions that the dock will be used as a place to moor visiting historic "tall ships," visiting yachts, and local recreational craft on a temporary basis. The facility will accommodate four to six twenty-foot-long vessels.

As originally approved, the dock was to consist of an 8-foot-wide by 40-foot-long fixed pier extending out perpendicular from the shoreline, a 4-foot-wide by 30-foot-long gangway, a 6-foot-wide by 24-foot-long floating dock section which will tee into an 8-foot-wide by 200-foot-long floating dock

section oriented parallel to the shoreline (see Exhibit 4). The fixed pier section was to be supported by a small concrete bulkhead to be constructed at the top of the shoreline embankment and two piles at the pier's bayward end. The floating dock sections were to be supported by 6-8 additional piles. All piles will be 12-inch square concrete piles. Light standards designed to illuminate the berthing facility and vessels moored at the dock will be installed.

The primary condition imposed in the original permit, Special Condition No. 1, addresses the protection of a band of eelgrass that grows parallel to the shoreline and would be spanned by the gangway to the new dock. The special condition requires monitoring of the eelgrass to ensure that it is not adversely affected by the project and requires mitigation if such damage occurs. Other conditions imposed in the original permit require the submittal of evidence that the City has obtained the necessary U.S. Army Corps of Engineers permit for the project, that construction activities be limited to the period of the year between April 1 and November 30 to avoid the herring spawning seasons, and that all surplus material, spoils, and debris be removed from the site upon project completion and lawfully disposed of.

In May of 1995, the City submitted an amendment request (Amendment Request No. 1-94-71-A) to alter the configuration and size of the gangway system to better accommodate the physically challenged. The City discovered that the original design of the project would not meet the requirements of the Americans with Disabilities Act. The original gangway ramps exceeded the 1 in 12 slope requirement of the Act. The new gangway system will accommodate this requirement. The gangway will be L-shaped with two separate gangway sections totaling 690 square feet in area and connected by a new 160-square-foot float (see Exhibit 4). The Commission approved the amendment request on August 11, 1995.

2. Current Amendment Request

The amendment request currently proposed would modify Special Condition No. 3 of the original permit, which imposed a seasonal time limit on construction to avoid disturbance to spawning herring, which often spawn in eelgrass beds such as those found at the project site. The condition limits construction to periods other than December through March. The amendment, as proposed by the applicant, would modify the condition to only limit construction to the period between mid-January through March. The City has experienced project delays associated with the need to redesign the berthing facility to comply with the requirements of the Americans with Disabilities Act and would like to be able to complete the project as soon as possible without having to wait for the end of the herring spawning season.

3. Site Description

The recreational berthing facility authorized by the permit will be constructed on Humboldt Bay, adjacent to the Adorni Recreation Center along

Waterfront Drive in Eureka (see Exhibits 1-3). The site is near the historic Old Town area.

The dock will be constructed at Waterfront Park, which extends from the Adorni Public Recreation Center 300 feet west of the project site, to the Samoa Bridge, one-quarter mile east of the site. The dock will be directly opposite the Gazebo amphitheater and will be just to the west of a vacant site designated for hotel and convention center development (see Exhibits 2 and 3). An existing concrete walkway that extends through Waterfront Park will link the dock to parking available at the public boat launching facility and existing parking areas at the Adorni Center. The upland area of the project site is landscaped with lawn and shrubbery. The shoreline embankment is armored with rock rip-rap and descends to a tidal mud flat.

The mud flat supports a variety of benthic organisms and contains a long narrow band of eelgrass several feet wide that extends along the shoreline from the Adorni Center through the project site, approximately 50-55 feet bayward of the shoreline. Eelgrass beds are considered to have high habitat value. No rare or endangered plant species have been identified anywhere at the site.

4. Fill in Coastal Waters and Protection of Marine Resources.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The dock project involves placing fill materials in coastal waters, as the proposed piles and dock floats will be installed within intertidal and submerged areas of Humboldt Bay. The total area of fill in coastal waters authorized by the permit, as amended, is approximately 2,134 square feet, consisting of approximately 130 square feet of pile fill and 1,934 square feet of floating dock fill. The proposed amendment would modify a special condition imposed in the original permit that was designed to mitigate for impacts on fisheries by limiting the construction season to non-winter months when herring do not spawn.

Several sections of the Coastal Act address the placement of fill within coastal waters and the protection of marine resources. Section 30231 of the Coastal Act provides as follows, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

In addition, Section 30233(a) of the Coastal Act provides as follows, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation

measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

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

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters and environmentally sensitive habitat areas. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- a. that the purpose of the project is limited to one of eight uses.
- b. that the project has no feasible less environmentally damaging alternative;
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.
- d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

In approving the permit as amended through Amendment No. 1, the Commission found that the dock project met these criteria in that (a) the proposed purpose of the fill is for a "new boating facility," an allowable purpose for fill pursuant to Section 30233(a)(4); (b) any other alternative to the proposed project would result in the need for dredging or greater amounts of solid fill and so would not be less environmentally damaging; (c) conditioning the permit to require monitoring and possible mitigation of any damage to sensitive eelgrass resources and to require avoidance of construction during the herring spawning seasons would provide adequate mitigation to minimize the adverse environmental effects of the project; and (d) the avoidance of impacts to eelgrass and fisheries resources together with enhancement of habitat values created by the introduction of pile surface area that is expected to provide habitat for various species will maintain and enhance the biological productivity and functional capacity of the habitat.

Thus, the Commission's previous finding of consistency of the project with the later two criteria was based in part on the permit being conditioned to

require avoidance of construction during the herring spawning season, as called for in Special Condition No. 3 of the original permit.

The Commission's decision to include the condition was based on (1) the fact that Humboldt Bay is a major herring nursery, (2) the understanding that the project location along the Eureka Inner Channel is a part of the Bay where such herring spawning occurs, and (3) the understanding that pile driving and other construction associated with the proposed project in the intertidal area during the spawning period would adversely affect the herring. The findings of the original permit reference the fact that the Commission staff had consulted with the Department of Fish & Game on this matter and was advised by the Department staff that herring could be spawning in the area during the months of December through March.

The applicant has presented new information that was not in the Commission's record on Permit Application No. 1-91-71 at the time the original permit was considered, suggesting that the time limits imposed by Special Condition No. 3 are not needed. The new information is a letter from Mr. Ken Bates, a member of the Board of Directors of the Humboldt Fishermen's Marketing Association and one of the most experienced and knowledgeable local herring fishermen who fishes in Humboldt Bay (see Exhibit No. 5). Mr. Bates indicates that continuing construction into the winter will have absolutely no adverse impact on herring or herring fishing activities. Mr. Bates states that since he began fishing herring in Humboldt Bay in 1972, he has never observed any spawning activity in the project location. He surmises that the lack of spawning in this area may be due to generally poor water conditions for spawning at that site during the winter months, which include low salinity and high turbidity. Staff of the Department of Fish and Game has advised Commission staff that it accepts Mr. Bates' assessment and now supports removal of the seasonal time limits from the permit.

Therefore, the Commission finds that modifying the seasonal limits on construction specified in Special Condition No. 3 to allow work to continue until mid-January as requested by the City will not adversely affect the herring fishery. Furthermore, given the new information indicating that herring do not spawn at any time during the herring spawning season in the project location, the Commission finds that maintaining any seasonal limit on construction to protect herring spawning at all is unwarranted. Therefore, the Commission finds that it is appropriate to delete Special Condition No. 3 in its entirety.

Given (1) the Commission's determination that the proposed project will not have an impact on herring spawning even if construction proceeds through the herring spawning season, and (2) that all other special conditions of the original permit that are designed to mitigate or avoid the other adverse environmental effects of the project remain in effect, the Commission finds that the permit, as amended, will continue to ensure that feasible mitigation measures have been provided to minimize adverse environmental effects as required by Section 30233(a) of the Coastal Act. Furthermore, as deleting the

seasonal construction limits imposed by Special Condition No. 3 will have no affect on herring spawning, the Commission finds that the permit, as amended, will continue to ensure that the biological productivity and functional capacity of the habitat will be maintained as required by Section 30231 of the Coastal Act, even with construction of the project during the herring spawning season. Therefore, the Commission finds that the permit, as amended is consistent with Sections 30233 and 30231 of the Coastal Act.

5. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. As discussed above, the proposed amendment will not have any significant adverse impact on coastal resources or on the environment in general, within the meaning of CEQA.

RSM/ltc
8478p

ATTACHMENT A

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

EUREKA INNER REACH CHANNEL

PROPOSED DOCK

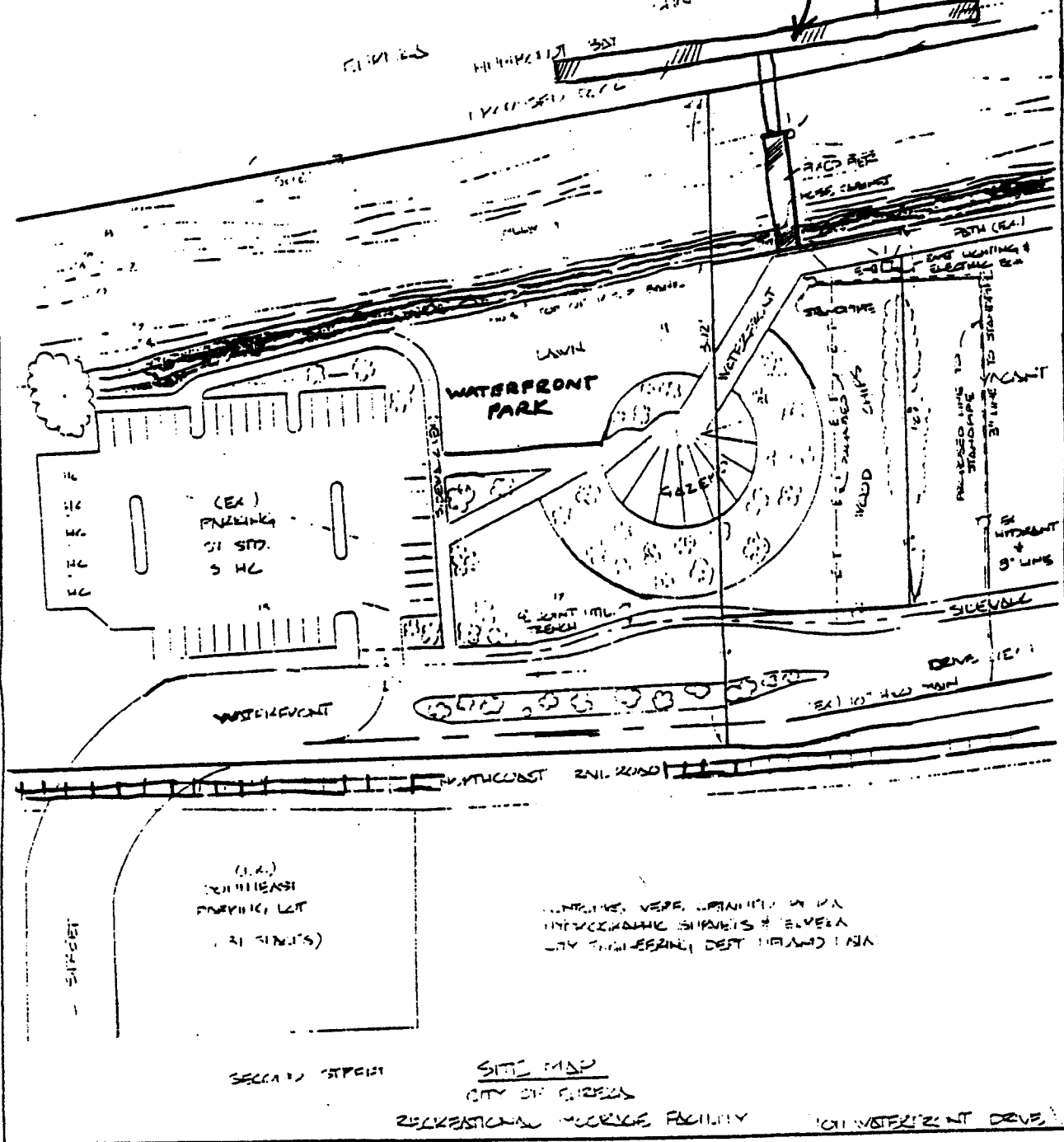


EXHIBIT NO. 3

APPLICATION NO.
1-94-71-A2

CITY OF EUREKA

SITE MAP

California Coastal Commission

HUMBOLDT BAY



16

EBB ←

→ FLOOD

-14

200'

CHANNEL LINE EUREKA INNER REACH

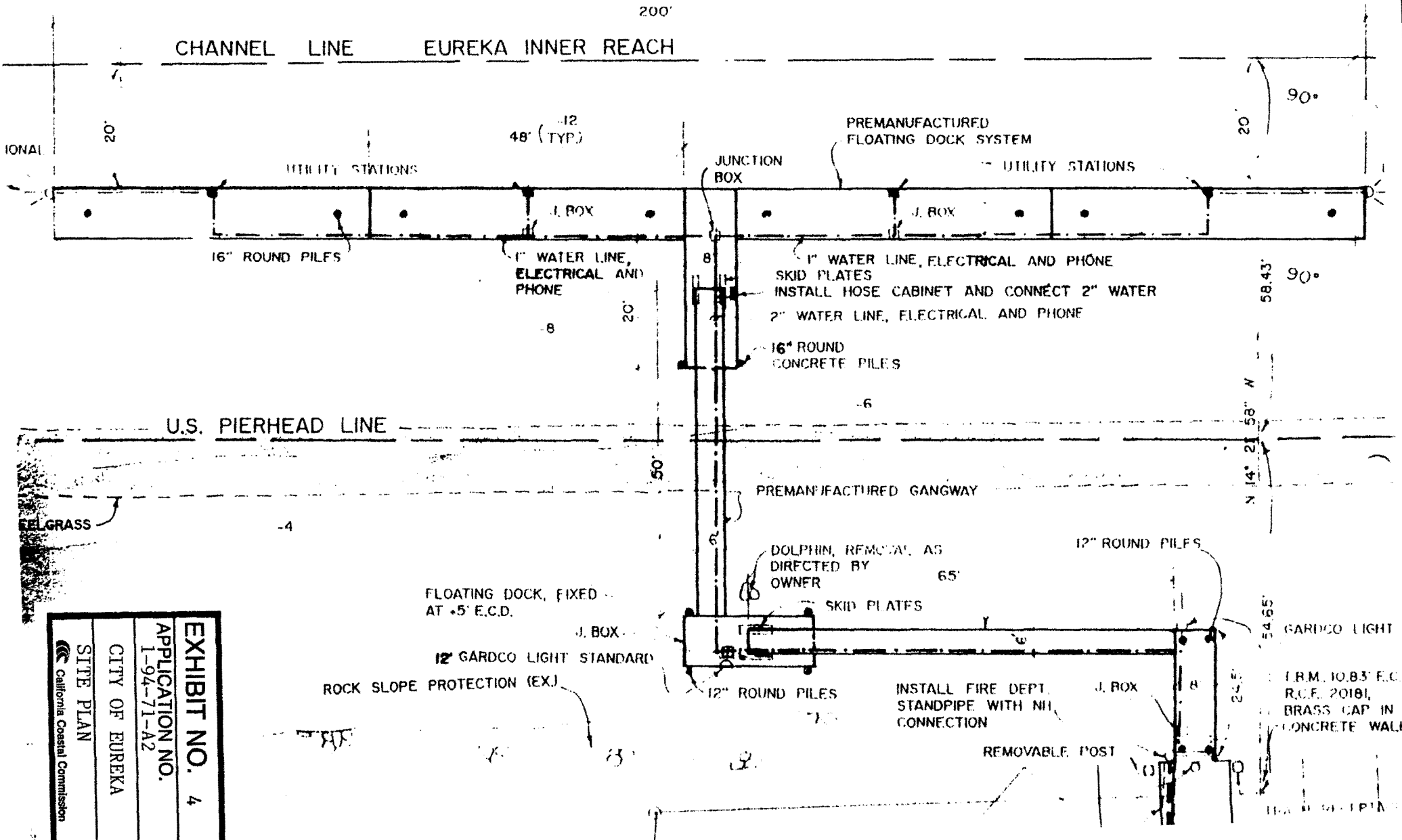


EXHIBIT NO. 4

APPLICATION NO.
1-94-71-A2

CITY OF EUREKA

SITE PLAN

California Coastal Commission

FLOATING DOCK, FIXED AT +5' E.C.D.
12" GARDCO LIGHT STANDARD
ROCK SLOPE PROTECTION (EX.)

DOLPHIN, REMOVAL AS DIRECTED BY OWNER
SKID PLATES

INSTALL FIRE DEPT. STANDPIPE WITH NH CONNECTION

REMOVABLE POST

GARDCO LIGHT

18M, 10.83' E.C.I
R.C.F. 20181,
BRASS CAP IN
CONCRETE WALK

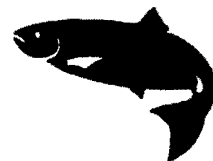
HUMBOLDT FISHERMEN'S MARKETING ASSOCIATION, INC.



(707) 443-0537

216 H Street
Eureka, California 95501

FAX (707) 443-1724



November 17, 1995

Tom Herzberger
City of Eureka
511 K Street
Eureka CA 95501

RECEIVED
NOV 21 1995

ENGINEERING DEPARTMENT

Dear Mr. Herzberger,

Some question has arisen concerning possible impacts to spawning herring by continued construction or activity at the Eureka public berthing facility on the inner reach. I have been contacted by both David McGinty (City of Eureka) and Paul Kraus (Pacific Affiliates) for my opinion as to any impacts.

I have been fishing herring in Humboldt Bay since 1972. During this time, I have never observed any spawning activity in the portion of the inner reach subject to this construction. In fact, herring rarely even hold in this area due to generally poor water conditions during the winter months, i.e., low salinity and high turbidity.

It is my opinion that continuing construction into December will have absolutely no adverse impact on herring or herring fishing activities. I would also mention that CalTrans presently has seismic retrofit construction on all three spans of the Samoa bridge. These bridge spans are receiving daily doses of jack hammering, ect., and two of the spans are directly over herring holding areas, and I believe CalTrans will work through the winter.

Please call if I can be of further assistance.

Yours truly,

Ken Bates
Board of Directors
Humboldt Fishermen's Marketing Association

KB/jl btsherr

EXHIBIT NO. 5
APPLICATION NO. 1-94-71-A2
CITY OF EUREKA
KEN BATES LETTER California Coastal Commission

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

Ju 17e



Filed:	July 1, 1994
49th Day:	August 19, 1994
180th Day:	December 28, 1994
Staff:	Robert Merrill
Staff Report:	July 29, 1994
Hearing Date:	August 9, 1994
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-94-71

APPLICANT: CITY OF EUREKA

PROJECT LOCATION: Along the shoreline of Humboldt Bay, near the Adorni Center, at 1011 Waterfront Drive, Eureka, Humboldt County.

PROJECT DESCRIPTION: Install a berthing facility for visiting vessels and local recreation craft, consisting of a 320-square-foot modular pier, a 120-square-foot gangway, and 1,744 square feet of floating docks, all supported by up to 10 concrete piles.

LOCAL APPROVALS RECEIVED: City of Eureka: Conditional Use Permit No. C-6-93, Negative Declaration, Design Review, and Site Plan Review; and Humboldt Bay Harbor, Recreation, and Conservation District Permit.

OTHER APPROVALS REQUIRED: U.S. Army Corps of Engineers Permit

SUBSTANTIVE FILE DOCUMENTS: City of Eureka LCP.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will be in conformity with the City of Eureka Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

1-94-71

CITY OF EUREKA

Page 2

II. Standard Conditions: See attached

III. SPECIAL CONDITIONS:

1. Eelgrass Monitoring and Mitigation.

A. Existing Conditions Survey and Monitoring Plan. PRIOR TO ISSUANCE of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director a survey of the existing condition of the eelgrass growing at the project site and a monitoring plan to assess the impact of the proposed project on the eelgrass growing at the project site over a three year period after project construction. The survey shall be performed by a qualified biologist near the peak of the eelgrass growth period during a low summertime tide, shall record the areal extent and density of eelgrass coverage in the immediate vicinity of the proposed project and shall include documentary photographs. The monitoring plan to be submitted shall include a narrative description and map of the eelgrass based on the results of the existing conditions survey, documentary photographs of the affected eelgrass, and propose a monitoring program in accordance with section (b), below, that provides for annual monitoring of the affected eelgrass for a period of three years after completion of project construction. The plan shall detail the proposed monitoring techniques and propose a schedule for performing the monitoring and submitting annual reports that takes into account the anticipated date for completion of the project and the optimal time each year for assessing the conditions of the eelgrass based on its natural life cycle.

B. Annual Reports. The applicant shall submit for the review and approval of the Executive Director for a period of three years after completion of the project by the date established in the monitoring plan to be approved pursuant to section (a) above, an annual report prepared by a qualified biologist assessing the condition, areal extent, and density of the eelgrass beds relative to the baseline and prior year's condition of the eelgrass as detailed in the existing conditions survey and any previously submitted annual monitoring report. The report shall discuss likely reasons for any decline in eelgrass conditions. The report shall include a map of the extent of eelgrass coverage existing that year and documentary photographs of the affected eelgrass.

C. Remedial Action. If the Executive Director determines based on the annual monitoring reports, that after the third year of monitoring, the areal extent and density of the eelgrass in the immediate vicinity of the proposed project is not as great as baseline conditions, the applicants shall prepare a program of replanting Eel Grass rhizomes in an adjacent or nearby area where eelgrass growing conditions are expected to be favorable. The program shall be designed to establish a new or expanded eelgrass population at a ratio of 2:1. If the applicant can conclusively demonstrate that all or a portion of any observed decline in the eelgrass is attributable to another cause such as an accidental pollution discharge in the vicinity, the restoration program to

be prepared pursuant to this condition need not provide for restoration of that portion of the decline attributable to the other cause. The applicant shall apply to the Commission for an amendment to this permit to authorize the program and allow the Commission to evaluate the appropriateness of the proposal in reaching the desired 2:1 result. The replanting program and a complete amendment request shall be submitted within 60 days of the Executive Director's review of the third monitoring report and determination that such a replanting program and amendment are needed.

2. U.S. Army Corps of Engineers Review.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director a copy of a U.S. Army Corps of Engineers permit or letter of permission for the project authorized herein.

3. Limits of Work Season.

All construction activities shall be limited to the period of the year between April 1 and November 30 to minimize adverse impacts to spawning herring.

4. Disposal of Excess Materials.

All surplus material, spoils, and debris shall be removed from the site upon completion of the project. Placement of any surplus material or debris in the coastal zone at a location other than in a licensed landfill will require a coastal development permit.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Site Description.

The applicant proposes to construct a recreational berthing facility on Humboldt Bay, adjacent to the Adorni Recreation Center along Waterfront Drive in Eureka (see Exhibits 1-3). The site is near the historic Old Town area.

The dock will be constructed at Waterfront Park, which extends from the Adorni Public Recreation Center 300 feet west of the project site, to the Samoa Bridge, one-quarter mile east of the site. The dock will be directly opposite the Gazebo amphitheater and will be just to the west of a vacant site designated for hotel and convention center development (see Exhibits 2 and 3). An existing concrete walkway that extends through Waterfront Park will link the dock to parking available at the public boat launching facility and existing parking areas at the Adorni Center. The upland area of the project site is landscaped with lawn and shrubbery. The shoreline embankment is armored with rock rip-rap and descends to a tidal mud flat.

The mud flat supports a variety of benthic organisms and contains a long narrow band of eelgrass several feet wide that extends along the shoreline from the Adorni Center through the project site, approximately 50-55 feet bayward of the shoreline. Eelgrass beds are considered to have high habitat value. No rare or endangered plant species have been identified anywhere at the site.

The subject property contains no known archaeological or paleontological sites or resources.

2. Project Description.

The new dock is intended to provide mooring space for visiting vessels and local recreational craft. The City envisions that the dock will be used as a place to moor visiting historic "tall ships," visiting yachts, and local recreational craft on a temporary basis. The facility will accommodate four to six twenty-foot-long vessels.

The new dock will extend approximately 80-90 feet into the Bay to a point approximately 20 feet south of the south channel line of the Eureka Inner Reach Channel (see Exhibit 2). The projection of the dock 80 to 90 feet out from the shoreline eliminates the need for dredging within the tidal zone and its associated environmental impacts.

The dock will consist of an 8-foot-wide by 40-foot-long fixed pier extending out perpendicular from the shoreline, a 4-foot-wide by 30-foot-long gangway, a 6-foot-wide by 24-foot-long floating dock section which will tee into an 8-foot-wide by 200-foot-long floating dock section oriented parallel to the shoreline (see Exhibits 2 and 4). The fixed pier section will be supported by a small concrete bulkhead to be constructed at the top of the shoreline embankment and two piles at the pier's bayward end. The floating dock sections will be supported by 6-8 additional piles. All piles will be 12-inch square concrete piles. Light standards designed to illuminate the berthing facility and vessels moored at the dock will be installed.

3. Fill in Coastal Waters and Environmentally Sensitive Habitat Areas.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project involves placing fill materials in coastal waters, as the proposed piles and dock floats will be installed within intertidal and submerged areas of Humboldt Bay. The total area of fill proposed in coastal waters is approximately 1,964 square feet, consisting of up to approximately 120 square feet of pile fill and 1,744 square feet of floating dock fill.

The proposed project could have several potential adverse impacts on estuarine habitat. The piles will be installed within mud flat habitat that supports a variety of benthic organisms. The piles will displace 120 square feet of this habitat. In addition, the gangway of the new dock will cross over a portion

of the intertidal zone containing a narrow band of eelgrass. Although no piles will be driven in the eelgrass area, the floats will shade a portion of the eelgrass and could potentially disturb its growth and development. A total of approximately 20 square feet of eelgrass would be shaded. Furthermore, dock construction in the river during the period when certain fish species are spawning in the area could adversely affect fisheries.

Several sections of the Coastal Act address the placement of fill within coastal waters and the protection of environmentally sensitive habitat. Section 30231 of the Coastal Act provides as follows, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

Section 30233(a) of the Coastal Act provides as follows, in applicable 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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

...

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

...

(8) Nature study, aquaculture, or similar resource dependent activities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters and environmentally sensitive habitat areas. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- a. that the purpose of the project is limited to one of eight uses.
- b. that the project has no feasible less environmentally damaging alternative;
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.
- d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

A. Permissible Use for Fill

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill can only be allowed for certain limited purposes. Under Section 30233(a), fill in coastal waters may only be performed for any of eight different uses, including under subsection (4), "in open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities..."

The proposed project consists of the installation of a fixed pier and floats as part of a public berthing facility for the temporary mooring of visiting vessels and recreational craft. As such, the project is a "new boating facility," and involves "the placement of structural pilings for public recreational piers that provide public access and recreational opportunities." Therefore, the Commission finds that the purpose of the fill is consistent with subsection (4) of Section 30233(a).

B. No Feasible Less Environmentally Damaging Alternatives.

A second general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative.

There are no apparent alternatives that would be less environmentally damaging. The dock is relatively large in comparison with other typical dock structures in that it extends 80 to 90 feet out from the shoreline. However, the dock extends out as far as it does to eliminate the need for dredging; the water depth in areas close to shore is too shallow to accommodate boat drafts of even relatively small boats. The impacts of dredging the area would far exceed the relatively minor impacts to be caused by the proposed project. Otherwise, the 4-8 foot widths of the gangway, pier, and floats, the 200-foot length of the main berthing float, and the number of new piles to be driven do not appear to be excessive in comparison with typical boat docks. In addition, by using pile supported fill as opposed to placing earthen fill to create a solid wharf structure, the project has minimized the amount of fill required and resulting adverse environmental impacts. The no project

alternative would not accomplish the project objective of providing mooring space for visiting vessels and local recreational boats, a priority use under the Coastal Act.

Therefore, the Commission finds that the proposed berthing facility involves the least environmentally damaging alternative as required by Section 30233(a).

C. Mitigation for Adverse Impacts.

A third general limitation set forth by Sections 30231 and 30233(a) is that adequate mitigation to minimize the adverse impacts of the proposed project on habitat values must be provided.

Feasible mitigation measures are available to mitigate the potential adverse impacts of the project of disturbing Eel Grass populations and disturbing fisheries. No mitigation is necessary for the impacts of the project on the mud flat habitat at the project site.

Eelgrass Vegetation. The proposed dock may cause a small amount of shading of eelgrass vegetation. Such shading may inhibit growth and lead to a reduction of the eelgrass growing at the site. Eelgrass beds provide valuable habitat for numerous species of wildlife including bottom dwelling organisms that hide within the foliage, numerous small organisms that live on eelgrass blades, and fish that use the beds for rearing, resting, and feeding. The four-foot-wide gangway will cross over a long narrow band of eelgrass several feet wide that extends along the shoreline from the Adorni Center through the project site, approximately 50-55 feet bayward of the shoreline. The biological survey conducted of the site did not determine the full width of the eelgrass band because of a lack of accessibility to the lower limit of the eelgrass. However, the survey report concludes that given the bathymetry of the site and the relatively swift currents in the Inner Reach of Humboldt Bay, the eelgrass probably does not extend a significant distance toward the Bay, likely only several feet. Thus, the amount of eelgrass which would be directly shaded by the proposed pier is a patch four feet wide (corresponding with the width of the gangway that will cross over it) and several feet long (bayward).

The biological survey indicates that because of the north-south orientation of the gangway and pier, the structure will completely shade a portion of the eelgrass band during the spring and fall equinox; the underlying area will be exposed to partial to complete insolation during the remainder of the year, which may allow for normal eelgrass development and growth. However, the full impact of the structure on the eel grass bed cannot be predicted with certainty. Therefore, the biological survey recommends that the shaded eelgrass be monitored over several years to determine the effects of shading. To establish baseline information against which to compare monitoring results, the survey recommends that the existing density of the eelgrass be recorded, preferably during a low summertime tide, at the height of the growth period.

Given the opinions of the biologist that there is a good chance that the eelgrass will be unaffected by shading from the proposed gangway, the Commission finds in general that the biologists' recommendation to monitor the site for several years to see whether or not the eelgrass is degraded is reasonable, if the proposal is coupled with a commitment to restore any eelgrass that is adversely affected by the project. Therefore, the Commission attaches Special Condition No. 1, which requires that the applicant submit prior to issuance of the permit a monitoring plan that includes a survey of the existing density and condition of the eelgrass and a program for monitoring the growth or decline of the eelgrass for a three year period after completion of construction of the dock. If after the three year monitoring program the areal extent and density of the eelgrass in the immediate vicinity of the proposed project are not as great as baseline conditions, the condition requires the applicant to develop a replanting proposal that would establish a new or expanded eelgrass population in the immediate vicinity at a ratio of at least 2:1, and apply to the Commission for an amendment to incorporate the program into the permit.

The eelgrass transplanting program would involve transplanting eelgrass rhizomes from scattered locations within existing eelgrass beds to establish a new or expanded eelgrass population. Eelgrass restoration must be conducted in this manner because eelgrass cannot be grown from seed. The goal is to transplant a sufficient number of rhizomes to the restoration area to establish a foundation for the new population. Multiple leaves of eelgrass can be expected to grow from a single rhizome and eventually new rhizomes will grow within the newly created eelgrass population. Significant damage to the source eelgrass population for the transplanting operation can be avoided by taking individual rhizomes from scattered locations within the bed rather than denuding an entire portion of the bed, and by carefully avoiding crushing or trampling the source bed during removal of the rhizomes. Eelgrass can be expected to sprout from surrounding rhizomes to fill in the areas from which rhizomes were taken for transplanting. Although eelgrass restoration can be problematic and involves a somewhat unproven process, some success has been obtained in other restoration efforts.

The Commission finds that the eelgrass replanting program must be carried out at a ratio of at least 2:1 to (1) account for the problematic nature of eelgrass transplantation and ensure a greater chance of success of the program in at least establishing a new population of the same size and density as the eelgrass adversely affected by the dock, (2) compensate for the time lag involved between habitat destruction and full habitat restoration, and (3) to be consistent with the range of mitigation ratios that the Commission has required in other similar projects. Review of the program through a permit amendment request would allow the Commission to evaluate the appropriateness of the program and make any adjustments to the conditions of the permit if feels are necessary to ensure that the proposed eelgrass transplanting program adequately mitigates for the impacts of the project in a manner consistent with the Coastal Act.

Therefore, the Commission finds that as conditioned to require that an eelgrass transplanting program be carried out to insure a 2:1 ratio of eelgrass mitigation in the event that monitoring of the site for three years demonstrates that the eelgrass has declined relative to existing conditions, the proposed project will provide adequate mitigation measures to minimize the adverse impacts of the proposed project on eelgrass resources.

Fisheries. Construction within the intertidal area during the period when herring are likely to be spawning in the eelgrass beds at the site could adversely affect fisheries. According to the Department of Fish and Game, herring are likely to be spawning in the area during the months of December through March. Therefore, to minimize the disturbance to spawning herring, the Commission attaches Special Condition No. 3, which limits construction to periods other than December through March.

Mud Flat Habitat. The dock piles will be driven into unvegetated portions of tidal and submerged mud flat. Such mud flats support a variety of worms, mollusks, and other benthic organisms. The minor loss of mud flat area to be displaced by the piles required for the new dock is not proposed to be offset by the removal of other material.

A 1989 biological study of the site that was conducted for the construction of the Adorni Recreation Center, 100 feet south of the site, includes a discussion of a dock proposed as part of the Adorni project. The study concludes that dock piling has both adverse and beneficial effects on habitat values that offset each other. The primary adverse effect is the displacement of the soft bottom substrate, with the attendant loss of habitat area for invertebrates that dwell in or on the substrate within the intertidal area. The study states that it has previously been determined (Roberts and Bott 1986) that the area of soft bottom habitat in Humboldt Bay is enormous, that the area of hard intertidal substrate is relatively limited, and that substitution of the latter for the former is an acceptable effect within Humboldt Bay. An additional benefit from the structures poised over the Bay waters is their function in providing hiding cover for fish within the water column.

In previous permit actions, the Commission has determined that piles often enhance habitat values in this manner, and the Commission has often not required mitigation for loss of mud flat habitat due to the installation of piles. In this case, the Commission similarly finds that the adverse impact of the piles on benthic organisms will be offset by the new habitat that the surface area of the piles is expected to provide for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae, and that no mitigation is necessary for the loss of mud flat habitat.

D. Maintenance and Enhancement of Estuarine Habitat Values.

The fourth general limitation set by Sections 30231 and 30233(a) on fill project is that any proposed fill project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

1-94-71

CITY OF EUREKA

Page 10

The proposed dock will avoid significant disruption to the eelgrass habitat in Humboldt Bay and will maintain the biological productivity and capacity of the habitat.

The population of eelgrass that would be shaded by the proposed dock covers an area of only approximately 20 square feet. The affected area represents only a very small portion of a strip of eelgrass that extends several hundred feet along the shoreline. Thus, even if the eelgrass growing in the affected area were to diminish and the mitigation program set forth under Special Condition No. 1 were to fail in restoring the eelgrass to its former extent, it appears that the biological productivity and functional capacity of the eelgrass habitat in Humboldt Bay would be maintained. In addition, by requiring that any damage dock shading may cause to eelgrass resources be mitigated through a transplanting program, the Commission ensures that the full habitat value of the eelgrass populations will be maintained over time.

With regard to fisheries habitat, the proposed project, as conditioned, will ensure the continued biological productivity and functional capacity of the estuary to support fisheries by limiting construction to only the period of the year when herring are not spawning in the area.

With regard to mud flat habitat, the proposed dock piles will displace a small amount of mud flat habitat. However, the adverse impact of the piles on benthic organisms will be offset by the new habitat that the surface area of the piles is expected to provide for such invertebrates as barnacles and mussels, and for isopods, algae, soft bodied worms and insect larvae. Therefore, the project will not jeopardize the biological productivity and functional capacity of the Humboldt Bay mud flat habitat.

Therefore, the Commission finds that the project, as conditioned, will maintain the biological productivity and quality of Humboldt Bay, consistent with Section 30231 of the Coastal Act. Similarly, as conditioned, the proposed project will maintain the functional capacity of the wetlands as required by Section 30233(c).

4. Navigation Hazard.

Section 30234 of the Coastal Act states in applicable part that proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

During review of the project at the local level, the City of Eureka received a comment letter on the draft negative declaration stating that the proposed location of the dock along the Inner Reach of Humboldt Bay could result in water traffic conflicts. If the dock were to interfere with the navigation of commercial fishing vessels on the bay, the project could be found to be inconsistent with Section 30234 as it would interfere with the needs of the commercial fishing industry.

The dock is proposed in a location where it is less likely to interfere with the navigation of commercial fishing boats than other potential sites along the Eureka waterfront. A major berthing area for commercial fishing vessels is located across the channel at the Woodley Island Marina (see Exhibit 2 - vicinity map). However, the marina stretches for several hundred yards along the Woodley Island waterfront, and the proposed docking facility is located opposite the east end of the Woodley Island Marina, not the west end of the marina where the commercial fishing vessel berthing area is located. The commercial fishing vessels mainly sail between their berthing area at the west end of the marina and the mouth of Humboldt Bay, further to the west, on their way out to the open ocean. Thus, the portions of the Eureka Channel Inner Reach that are mainly used by the commercial fishing fleet are located well to the west of the proposed new berthing facility. In addition, according to the City's response to comments on the draft negative declaration, commercial deep draft vessels rarely use the portion of the channel adjacent to the proposed berthing facility as depths decrease and water dependent commerce does not exist in the area.

To the extent that commercial fishing vessels and other boats actually do use the portion of the Eureka Inner Reach Channel opposite the project site, the proposed berthing facility will not significantly impair vessel navigation. As proposed by the applicant, the berthing float of the proposed dock will extend out from the shoreline to a point 20 feet south of the south line of the easternmost reach of the Eureka Inner Reach Channel of Humboldt Bay (see Exhibit 2 - Plan View). The bayward-most portion of the dock is the berthing float, which will be oriented parallel to the shoreline and the channel. Boats moored alongside the proposed float would occupy much, if not all, of the 20-foot space between the float and the channel, but would not extend out into the channel to any appreciable extent. The channel itself is over 200 feet wide, providing ample room for vessels to pass.

Therefore, the Commission finds that the proposed recreational berthing facility will not interfere with the needs of the commercial fishing industry and is consistent with Section 30234 of the Coastal Act.

5. Public Access.

Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Section 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed public dock will provide significant public access and recreational opportunities for the public. The dock is proposed to be located at an existing public access area, Waterfront Park. The park is landscaped and has an existing shoreline promenade that extends for several hundred feet along the waterfront and will link the proposed dock to other parts of the shoreline and existing parking areas at the Adorni Center. A main purpose of the dock is to provide a place along the Eureka waterfront to moor visiting historic "tall ships." The mooring of tall ships in that location would be a major attraction and would greatly enhance the enjoyment of Waterfront Park. In addition, the dock will provide a place for local recreational boaters to temporarily moor their boats as they visit Waterfront Park and adjoining areas. Conversely, the proposed dock will not adversely affect public access. Although the dock may attract many more visitors to the waterfront, Waterfront Park is already developed for public access use and is equipped to handle the additional demand for public access use that might be generated by the project. In addition, the dock will not displace any existing upland public access facilities, as the dock will simply extend bayward from the existing shoreline promenade over a rip-rap covered embankment and over tidal and submerged areas.

Therefore, the Commission finds that the proposed project would be a public access and recreational asset to the coastal zone within the City of Eureka and would not adversely affect public access in any way. Thus, the Commission further finds that the project is fully consistent with the public access and recreation policies of the Coastal Act.

6. State Waters.

The project site is located in areas that were formerly State-owned waters or were otherwise subject to the public trust. However, these State-owned waters were transferred to the City of Eureka through a legislative grant. Therefore, the applicant has the necessary property rights to carry out the project on former State-owned waters.

7. U.S. Army Corps of Engineers Review.

The project requires review and approval by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. To ensure that the project ultimately approved by the Corps is the same as the project authorized herein, the Commission attaches Special Condition No. 2 which requires the permittee to submit to the Executive Director evidence of U.S. Army Corps of Engineers approval of the project prior to the commencement of work.

8. City of Eureka LCP.

The City of Eureka LCP designates and zones the upland portions of the property as Waterfront Commercial (CW) and the tidal and sub-tidal portions of the property as Water Development (WD). The zoning ordinance allows docks in CW districts as a principally permitted use and in WD Districts by use permit. The City granted Conditional Use Permit No. C-60-93 for the project on June 13, 1994.

As the proposed dock involves the placement of fill within Humboldt Bay, which is a coastal waterway and an area recognized as an environmentally sensitive habitat area under Policy 5.5 of the City's LUP, the project is subject to the coastal resources and development policies of Chapter 5 of the LUP. The project, as conditioned is consistent with these policies as (1) the biological productivity and the quality of coastal waters will be maintained (Policy 5.2); (2) the proposed dock will serve a coastal dependent use (Policy 5.4); (3) the conditions of this permit that will limit the construction season to avoid adverse impacts on fisheries and will require eelgrass monitoring and eelgrass restoration if necessary, will protect the environmentally sensitive habitat areas of Humboldt Bay against significant disruption (Policy 5.6); (4) the development to be allowed within Humboldt Bay is for uses dependent on the resource (Policy 5.6); and (5) the filling of coastal waters authorized herein is for a permitted use, there is no feasible less environmentally damaging alternative, feasible mitigation measures have been provided to minimize adverse effects, and the functional capacity of the resource area will be maintained, all as discussed in Finding 3 above (Policies 5.8, 5.10, 5.12, and 5.14).

Approval of the project, as conditioned to fully mitigate for the project's fill impacts on coastal waters, is consistent with the City's certified LCP.

Section 30604 of the Coastal Act authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned to fully mitigate for the project's fill impacts on coastal waters is consistent with Chapter 3 of the Coastal Act as discussed above.

9. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. As discussed above, alternatives have been considered and the project has been mitigated to avoid or minimize impacts to coastal resources, specifically to prevent impacts on fisheries and to protect the environmentally sensitive eel

1-94-71

CITY OF EUREKA

Page 14

grass habitat. The project, as conditioned, will not have a significant adverse effect on the environment, within the meaning of CEQA.

For purposes of CEQA, the lead agency for the project is the City of Eureka. The City adopted a mitigated negative declaration for the project on June 13, 1994.

RSM/ltc
7212p

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

F 9a

R5M



Filed: May 10, 1995
180th Day: November 6, 1995
Staff: Robert Merrill
Staff Report: July 28, 1995
Hearing Date: August 11, 1995
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 1-94-71-A
APPLICANT: CITY OF EUREKA
PROJECT LOCATION: Along the shoreline of Humboldt Bay, near the Adorni Center, at 1011 Waterfront Drive, Eureka, Humboldt County.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Install a berthing facility for visiting vessels and local recreation craft, consisting of a 320-square-foot modular pier, a 120-square-foot gangway, and 1,744 square feet of floating docks, all supported by up to 10 concrete piles.

DESCRIPTION OF AMENDMENT: Alter the configuration and size of the gangway system to better accommodate the physically challenged. The new gangway system will be L-shaped with two separate gangway sections totaling 690 square feet in area and connected by a new 160-square-foot float.

OTHER APPROVALS RECEIVED: Humboldt Bay Harbor, Recreation, and Conservation District: Amendment of Permit No. 1993-1

U.S. Army Corps of Engineers: Letter of Modification of Permit No. 20411N21

SUBSTANTIVE FILE DOCUMENTS: City of Eureka Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the amendment request without any additional special conditions. The proposed change to the gangway system to the previously approved dock will result in only minimal additional fill that will have no additional impacts on the sensitive eelgrass and fisheries resources in the area. The revised gangway system is required to comply with the federal Americans with Disabilities Act.

STAFF NOTES:

1. Acceptance of Amendment Request for Filing.

Section 13166 of the Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information which he or she could not with reasonable diligence, have discovered and produced before the permit was granted. The Commission granted permit 1-94-71 on August 9, 1994 for the installation of a docking facility for visiting vessels and local recreational craft. The primary condition imposed in the permit, Special Condition No. 1, addressed the protection of a band of eelgrass that grows parallel to the shoreline and would be spanned by the gangway to the new dock. Eelgrass is a particularly sensitive intertidal plant species that provides important habitat values. The special condition requires monitoring of the eelgrass to ensure that it is not adversely affected by the project and requires mitigation if such damage occurs. The proposed permit amendment involves reconfiguring the gangway to make it more accessible to the physically challenged. The reconfiguration of the gangway, however, will not result in any greater impact on the eelgrass bed as no additional piles will be driven within the eelgrass bed and the gangway will only minimally shade additional areas of eelgrass at certain times of the day. In addition, the amendment would not change any of the special conditions, so all of the eelgrass monitoring and mitigation requirements of Special Condition No. One will remain in place. Therefore, the Executive Director determined that the amendment would not result in a lessening or avoidance of the intent of the approved permit and accepted the amendment request for processing.

2. Need for Public Hearing.

Pursuant to Section 13166 of the Regulations, the Executive Director initially determined that the proposed amendment was immaterial. A notice of the Executive Director's intention to grant the amendment was included in the North Coast Area District Director's Report for the July 13, 1995 Commission meeting. Copies of the notice were also mailed to interested parties. The Commission's Regulations provide that if any Commissioner or member of the public objects to the Executive Director's determination of the immateriality of an amendment request, the amendment request shall be scheduled for a public hearing before the Commission. In this case, the Commission received an objection from Francis B. Matthews on July 17, 1995 (see Exhibit 6). Therefore, a public hearing on the matter has been scheduled for Commission consideration at the August 11, 1995 Commission meeting.

3. Commission Jurisdiction.

The project site is within the Commission's retained coastal development permit jurisdiction. Thus, the standard of review for the proposed amendment is the consistency of the project, as amended, with the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, is consistent with the provisions of the Eureka Local Coastal Program, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached.

III. Special Conditions: No additional special conditions beyond those included in the original permit are imposed.

IV. Findings and Declarations:

The Commission hereby finds and declares:

1. Project History

The Commission granted permit 1-94-71 on August 9, 1994 for the installation of a docking facility for visiting vessels and local recreational craft. (See Exhibits 1-4 and Attachment 1). The new dock is intended to provide mooring space for visiting vessels and local recreational craft. The City envisions that the dock will be used as a place to moor visiting historic "tall ships," visiting yachts, and local recreational craft on a temporary basis. The facility will accommodate four to six twenty-foot-long vessels.

As originally approved, the dock was to consist of an 8-foot-wide by 40-foot-long fixed pier extending out perpendicular from the shoreline, a 4-foot-wide by 30-foot-long gangway, a 6-foot-wide by 24-foot-long floating dock section which will tee into an 8-foot-wide by 200-foot-long floating dock section oriented parallel to the shoreline (see Exhibit 4). The fixed pier section was to be supported by a small concrete bulkhead to be constructed at the top of the shoreline embankment and two piles at the pier's bayward end. The floating dock sections were to be supported by 6-8 additional piles. All piles will be 12-inch square concrete piles. Light standards designed to illuminate the berthing facility and vessels moored at the dock will be installed.

1-94-71-A
CITY OF EUREKA
Page 4

The primary condition imposed in the permit, Special Condition No. 1, addresses the protection of a band of eelgrass that grows parallel to the shoreline and would be spanned by the gangway to the new dock. The special condition requires monitoring of the eelgrass to ensure that it is not adversely affected by the project and requires mitigation if such damage occurs. Other conditions of the permit require the submittal of evidence that the City has obtained the necessary U.S. Army Corps of Engineers permit for the project, that construction activities be limited to the period of the year between April 1 and November 30 to avoid the herring spawning seasons, and that all surplus material, spoils, and debris be removed from the site upon project completion and lawfully disposed of.

2. Amendment Request

The proposed amendment alters the configuration and size of the gangway system to better accommodate the physically challenged. The City discovered that the original design of the project would not meet the requirements of the Americans with Disabilities Act. The original gangway ramps exceed the 1 in 12 slope requirement of the Act. The new gangway system will accommodate this requirement. The gangway will be L-shaped with two separate gangway sections totaling 690 square feet in area and connected by a new 160-square-foot float (see Exhibit 5).

3. Site Description

The recreational berthing facility authorized by the permit will be constructed on Humboldt Bay, adjacent to the Adorni Recreation Center along Waterfront Drive in Eureka (see Exhibits 1-3). The site is near the historic Old Town area.

The dock will be constructed at Waterfront Park, which extends from the Adorni Public Recreation Center 300 feet west of the project site, to the Samoa Bridge, one-quarter mile east of the site. The dock will be directly opposite the Gazebo amphitheater and will be just to the west of a vacant site designated for hotel and convention center development (see Exhibits 2 and 3). An existing concrete walkway that extends through Waterfront Park will link the dock to parking available at the public boat launching facility and existing parking areas at the Adorni Center. The upland area of the project site is landscaped with lawn and shrubbery. The shoreline embankment is armored with rock rip-rap and descends to a tidal mud flat.

The mud flat supports a variety of benthic organisms and contains a long narrow band of eelgrass several feet wide that extends along the shoreline from the Adorni Center through the project site, approximately 50-55 feet bayward of the shoreline. Eelgrass beds are considered to have high habitat value. No rare or endangered plant species have been identified anywhere at the site.

The subject property contains no known archaeological or paleontological sites or resources.

4. Fill in Coastal Waters and Protection of Marine Resources.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The original dock project and the revised gangway system proposed by the amendment request involve placing fill materials in coastal waters, as the proposed piles and dock floats will be installed within intertidal and submerged areas of Humboldt Bay. The total area of fill proposed in coastal waters by the original project was approximately 1,964 square feet, consisting of up to approximately 120 square feet of pile fill and 1,744 square feet of floating dock fill. The proposed amendment will result in the placement of an additional 10 square feet of additional pile fill and approximately 160 square feet of additional floating dock fill.

Several sections of the Coastal Act address the placement of fill within coastal waters and the protection of marine resources. Section 30231 of the Coastal Act provides as follows, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes...shall be maintained and, where feasible, restored...

In addition, Section 30233(a) of the Coastal Act provides as follows, in applicable 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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

...

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

...

(8) Nature study, aquaculture, or similar resource dependent activities.

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....

The above policies set forth a number of different limitations on what fill projects may be allowed in coastal waters and environmentally sensitive habitat areas. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

- a. that the purpose of the project is limited to one of eight uses.
- b. that the project has no feasible less environmentally damaging alternative;
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.
- d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

In approving the original permit, the Commission found that the dock project met these criteria in that (a) the proposed purpose of the fill is for a "new boating facility," an allowable purpose for fill pursuant to Section 30233(a)(4); (b) any other alternative to the proposed project would result in the need for dredging or greater amounts of solid fill and so would not be less environmentally damaging; (c) conditioning the permit to require monitoring and possible mitigation of any damage to sensitive eelgrass resources and to require avoidance of construction during the herring spawning seasons would provide adequate mitigation to minimize the adverse environmental effects of the project; and (d) the avoidance of impacts to eelgrass and fisheries resources together with enhancement of habitat values created by the introduction of pile surface area that is expected to provide habitat for various species will maintain and enhance the biological productivity and functional capacity of the habitat.

The Commission finds that the proposed changes to the project that would result from the proposed amendment also meet the criteria of Sections 30231 and 30233 of the Coastal Act. The purpose of the project is still to provide a "new boating facility," an allowable purpose for fill pursuant to Section 30233(a)(4).

No feasible alternatives to the proposed new gangway system have been identified that would be less environmentally damaging and still meet the objective of complying with the requirements of the Americans with Disabilities Act. The original gangway ramps exceed the 1 in 12 slope requirement of the Americans with Disabilities Act. The new system will

accommodate this requirement and the four foot widths of the ramps and amount of ramp and float coverage proposed is not excessive. In his letter objecting to the proposed amendment, Francis B. Mathews states that there are alternative docking facilities already existing at nearby Woodley Island which are more than adequate (see Exhibit 6). However, this alternative does would not meet the overall project objective of providing mooring space for visiting vessels and local recreational boats on the mainland adjacent to Old Town and the rest of the downtown area of Eureka. The Woodley Island marina is approximately one mile away by car and would not provide the easy pedestrian access to visitor serving facilities of Old Town and downtown Eureka that the project is intended to provide. Furthermore, the Commission notes that approval of the dock itself is not currently before the Commission. The Commission is only considering an amendment that would alter the gangway system. If the amendment were denied, the City would retain authorization under the original permit to construct the dock.

No additional mitigation measures are needed for the revised project as the new design will have no greater adverse impact. The gangway will still bridge over the band of eelgrass and will not require the installation of piles within the eelgrass. The dock construction will still be subject to the requirements of Special Condition No. 3 to limit construction to periods other than the herring spawning season.

Finally, the 10 square feet of additional pile fill within the mudflat will actually further enhance habitat values as it will provide additional area of hard intertidal substrate which is relatively limited within Humboldt Bay. This habitat will benefit such invertebrates as barnacles and mussels, and isopods, algae, soft bodied worms and insect larvae.

Therefore, the Commission finds that the proposed amendment is consistent with Sections 30233 and 30231 of the Coastal Act.

5. Access Improvements for the Physically Challenged.

In his letter objecting to the proposed amendment, Francis B. Mathews states:

"First: There is no present gangway system which accommodates the non-physically challenged. This would be the creation of a gangway system solely for the physically challenged without any gangway system presently in existence at all."

Mr. Matthew is incorrect in stating that there is no gangway system for the non-physically challenged. Both the originally approved project and the proposed amendment were intended to provide one gangway system to serve all users. The reason for the amendment is because the City discovered that the original design would not meet the requirements of the Americans with Disabilities Act and needed to change it. Both the non-physically challenged and the physically challenged will use the gangway system.

Apart from being factually incorrect, Mr. Matthews seems to suggest it is not necessary to provide accommodation for the physically challenged. As stated, the Americans with Disabilities Act does require such accommodation. Furthermore, the Commission's practice has been to take into consideration the needs of the physically challenged in acting on matters related to public access and recreational use of the coast.

6. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. As discussed above, the proposed amendment will not have any significant adverse impact on coastal resources or on the environment in general, within the meaning of CEQA.

RSM/ltc
8172p