

Th 8h

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071



Filed: 03-19-98
49th Day: 05-07-98
180th Day: 09-15-98
Staff: RMR-LB **RMR**
Staff Report: July 20, 1998
Hearing Date: August 11-14, 1998
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-047

APPLICANT: Cyrus Tabaz AGENT: Cash & Associates

PROJECT LOCATION: 2209 Bayside Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Removal of an existing 180 foot long damaged pier and dock and construction of a new 330 foot long extended pier supported by 25 piles, a U-shaped floating dock (60 x 80 feet), a 10' x 14' pier platform and a 30 foot gangway. Mitigation is proposed on a 1.2:1 ratio for adverse impacts to 1,086 square feet of eelgrass. No dredging is proposed.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed development with special conditions regarding removal of construction debris, provision of applicable permits, provision of a five-year monitoring report, mitigation of construction impacts and submittal of an amendment if project goals are not met.

STAFF RECOMMENDATION:

The Staff recommends that the Commission adopt the following resolution:

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, 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 effects on the environment within the meaning of the California Environmental Quality Act.

LOCAL APPROVALS RECEIVED:

Approval in concept from the City of Newport Beach Fire and Marine Department

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Regional Water Quality Control Board Waiver of Waste Discharge Requirement, Eelgrass Impact Assessment, Mitigation, and Monitoring Plan for Proposed Renovation of Mooring Facilities at 2209 Bayside Drive by MBC Applies Environmental Sciences, Coastal Development Permits 5-97-067 (Moshayedi), 5-93-127 (Friis), 5-93-090 (Burnett), 5-93-043 (Burnett), 5-91-336 (Furnish), Letter from the Regional Water Quality Control Board, September 23, 1997 Letter from the Newport Beach Fire and Marine Department, June 10, 1998 letter from the Army Corps of Engineers, "Eelgrass (*Zostera marina*) in Southern California Bays and Wetlands with Emphasis on Orange County, California 1993

II. Standard Conditions

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

III. Special Condition

1. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach any and all debris which results from the construction period.

2. Mitigation of Construction Impacts

The applicant shall adhere to the city guidelines for construction of piers in Newport Harbor and shall:

1. Utilize silt curtains to minimize siltation during construction of pilings,
2. Take measures to ensure that barges do not ground and impact eelgrass sites,
3. Ensure that materials from the pier to be demolished are contained and that debris is kept from Harbor waters,
4. Conduct a post-construction survey to determine if any additional adverse impacts occurred as a result of construction and provide mitigation for those impacts,
5. Have a biologist monitor the construction to minimize impacts to eelgrass beds.

3. Provision of Applicable Permits

Prior to commencement of construction the applicant shall submit, for the review and approval of the Executive Director, a final mitigation and monitoring plan or changes to the MBC plan dated December 1997 (if required by resource agencies) and any approvals, notices and/or any permits required from the National Marine Fisheries Service, California Department of Fish and Game, and Army Corps of Engineers.

4. Provision of Monitoring Report

At the end of six years the applicant shall provide the Executive Director with a final monitoring report. The report shall include the following information:

1. the results of previous monitoring periods,
2. conformance of the project with success criteria for coverage, density and health, as specified in MBC's December 1997 Plan,
3. results of any additional transplantations, if required,
4. statement that the project has or has not met the mitigation plan goals (100% success),

5. Provision for CDP Amendment

The plan is considered successful if the plan meets 100% success at the end of six years. In the event that the plan is less than 100% successful but greater than 50% successful, the applicant is required to perform alternative mitigation. If the plan is less than 50% successful the applicant shall renegotiate the mitigation plan with National Marine Fisheries Service or the California Department of Fish and Game. If either alternative mitigation method is proposed the applicant shall apply for a coastal development permit amendment from the Coastal Commission.

IV. Findings and Declarations:

The Commission hereby finds and declares:

A. Project Description

The applicant is proposing to demolish an existing 180 foot long pier and dock and construct a new 330 foot long pier (supported by 25 piles), a 60 x 80 foot U-shaped floating dock, a 10' x 14' platform and a 30 foot gangway. The proposed pier will be located 25 feet southeast of the existing dock (see Exhibit 2). The project involves adverse impacts to 1,086 square feet of eelgrass habitat, which the applicant is proposing to replace on a 1.2:1 ratio, in accordance with National Marine Fisheries Service and California Department of Fish and Game eelgrass mitigation policy guidelines.

The site is located on Newport Harbor in the community of Corona del Mar in the City of Newport Beach (see Exhibit 1). The site is located just north of the southern entrance to Newport Harbor. Harbor waters at the project site contain eelgrass and the applicant has submitted an eelgrass mitigation plan.

The proposed development is located within the jurisdiction of the City of Newport Beach within the U.S. Pierhead Line (see Exhibits 2 and 3). State Lands Commission review is not required. Many of the properties in this area have piers and docks which extend well out into the harbor. This is due in part to the tidal regime and shallow underwater topography. The applicant has indicated that his pier must extend out to the Pierhead Line because he has a 70 foot sailboat which has a draft of nine feet. The City of Newport Beach Fire and Marine Department submitted a letter dated September 23, 1997 stating that the Marine Department and the Coast Guard conducted a site visit and determined that the proposed development would not have an adverse impact on navigation.

Many requests for pier and dock improvements in Newport Harbor are routinely processed by the Executive Director as de minimis waivers. However, because of the size of this project and the fact that the site contains sensitive coastal resources (eelgrass) the permit is agendized as a regular calendar permit. None of the previous permits for dock improvements in the area indicate the presence of eelgrass.

The applicant's proposal includes mitigation for adverse impacts to 1,086 square feet of eelgrass in the proposed alignment of the pier and dock. In addition, the Army Corps of Engineers is requiring the applicant to contribute to the North Shellmaker Island Mitigation Fund for the loss of 0.001 acres of

waters of the United States at a ratio of 6:1 (see Exhibit 6). The Army Corps normally does not require mitigation for pilings because the pilings themselves provide new habitat. However, because of the length of this project the Army Corps is requiring mitigation.

B. Permit History

There have been several coastal development permits and one LUP action approved by the Commission for this site, including a lot subdivision.

CDP 5-93-043 (Burnett, 2211 Bayside Dr.): At the March 16-19, 1993 hearing the Commission approved a de minimis waiver for the construction of a new single finger boat slip consisting of a 4 foot by 135 foot pier, a 10 by 14 foot platform, a 3 by 22 foot gangway, and a 10 by 50 foot float.

CDP 5-93-090 (Burnett & Hillyard): This permit was approved by the Commission on the Consent Calendar in May 1993 for the subdivision of a single lot into two lots. There were no special conditions and the permit was issued on May 13, 1993. A 24,196 square foot lot was subdivided into an 11,906 square foot parcel and a 12,290 square foot parcel.

Land Use Amendment 3-92: At the February 19, 1993 Commission hearing the Commission approved, with suggested modifications, this amendment. Included in the amendment approval was the revision of the dwelling unit allocation for the Corona del Mar South statistical area of the subject site. The LUP amendment made the LUP text consistent with the subdivision proposed in CDP 5-93-090. The LUP amendment allowed for the subdivision of an existing single-family residential parcel at 2209 Bayside Drive into two single-family parcels.

There are also coastal development permits for residential boat docks in the area. Two of these docks extend out 214 and 244 feet into the bay, respectively.

CDP 5-96-067 (Moshayedi, 2121 Bayside Dr.): At the May 1997 hearing the Commission approved the expansion of an existing dock. The expansion consisted of the relocation of one finger dock and the addition of one finger dock seaward of the existing dock configuration. The pier and dock would be extended out to the U.S. Pierhead Line, for a total length of 244 feet.

CDP 5-93-127 (Friis, 2121 Bayside Dr.): At the June 1993 hearing the Commission approved a de minimis waiver for the construction of a 4 X 92 foot pier, 10 x 14 foot platform, 3 x 22 foot ramp, and 10 x 60 foot boat slip.

CDP 5-91-336 (Furnish, 2215 Bayside Dr.): At the June 1991 hearing the Commission approved a de minimis waiver for the revision of an existing dock consisting of the addition of a single-finger dock to create a U-shaped boat dock. The dock addition would not extend seaward of the existing dock. This pier and dock extends out 214 feet in length.

B. Marine Environment

There are several Chapter 3 policies pertaining to protecting and enhancing marine resources.

Section 30230 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 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.

The certified LUP also contains policies regarding water quality and development in the harbor. The certified LUP states:

1. Only the following types of developments and activities may be permitted in the parts of Newport Bay which are not within the State Ecological Reserve where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:

...

- c. In open coastal waters, other than wetlands, including estuaries, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, haul-out boat yards, and pleasure ferries.

1. Discussion of Eelgrass

The harbor in the vicinity of the applicant's property contains eelgrass. The applicant submitted an Eelgrass Impact Assessment, Mitigation and Monitoring Plan for Proposed Renovation of Mooring Facilities at 2209 Bayside Drive report prepared by MBC Applied Environmental Sciences, revised in December 1997.

According to E. Yale Dawson, Seashore Plants of Southern California, eelgrass or *Zostera marina* grows in tidal mud flats and in bays and estuaries from low tide to 20 feet or more. Eelgrass is described in Exploring Pacific Coast Tide Pools (Braun & Brown) as a 3-10" long plant with branch stems rising from

thick root stock with ribbon like leaves common to mud flats and estuaries. The MBC mitigation plan notes that disturbances of coastal bays and wetlands in California have resulted in the substantial reduction of this habitat.

The July 1993 edition of Shore and Beach magazine contains an article by Rich Ware entitled "Eelgrass (*Zostera Marina*) in Southern California Bays and Wetlands with Emphasis on Orange County, California". Ware writes that seagrass provides a vertical component to featureless, soft-bottom habitat, attracts invertebrates and fishes and serves a nursery function for many fishes. Various diatoms, algae, worms, snails and crustaceans live on the shoots and blades of eelgrass. Worms, clams and crustaceans also live in the sediment among the roots and rhizomes. Eelgrass also provides foraging habitat for pipefish, kelpfish, lobster, sand bass, California halibut, topsmelt, anchovy, perch, and sting rays. Also utilizing eelgrass habitat are crabs, sea stars, and urchins. In a review of research, Ware found studies that support the position that "...vegetated bay sediments support a higher diversity of invertebrates compared to unvegetated bay sediments because of the added structure and habitat."

Ware writes that although eelgrass meadows were once common in Newport Bay, it is more commonly found now in Anaheim/Sunset Bay. "Eelgrass meadows occur at depths of 3 m to 6.1 m (10 to 20 ft.) in the Newport Harbor entrance channel and sporadically at shallower depths along bulkheaded shorelines near Balboa and Harbor Islands." Ware states that eelgrass and its associated biota are "sensitive to environment perturbations that result in shading, water motion changes, and habitat alteration..."

2. Project Impacts

Eelgrass mitigation policy was adopted on July 31, 1991 by the National Marine Fisheries Service, U.S. Fish and Wildlife Service and the California Department of Fish and Game. The policy contains several guidelines which include specific requirements for: 1) mapping the area, distribution and density of eelgrass beds; 2) time periods when mapping takes place; 3) requirements for mitigation sites; 4) mitigation ratios of 1.2:1 for impacted habitat replacement; 5) requirements for success and monitoring; and 6) requirements for planting and transplanting eelgrass. A copy of the policy is included as Exhibit 7.

MBC Applied Environmental Sciences prepared their document as a plan to mitigate for the potential loss of shallow eelgrass habitat due to shadowing effects of the proposed dock. MBC states that the plan was drawn up according to the guidelines established in the 1991 policy document as well as the revisions adopted in 1996. MBC used the existing pier as a model for determining the shadowing effect. In addition, MBC took direct measurements and observations of eelgrass along the proposed alignment of the new pier and dock. The potential shadowing effect was measured for two meters to either side of the pier and four meters outside of the proposed dock alignment. The extent of shadowing was determined by measuring the distance of existing patches of eelgrass to the existing pier and dock structures.

MBC concluded that the impacts of the proposed development include the potential loss of 209 sq. ft. of eelgrass below the pier and 877 sq. ft. of eelgrass below the dock, for a total of 1,086 sq. ft. MBC conducted surveys at the height of the growing season in July and again in November of 1997.

The results of the July survey were selected as the standard for eelgrass areal coverage and density, because the numbers were higher in July.

Because of the patchy nature of the eelgrass in the project vicinity, MBC determined that impacts to eelgrass would be similar if the pier and dock were moved to an alternative location or if the current dock alignment was used. However, because of the size of the boat the dock has to be situated at the proposed location for depth considerations. A shorter pier and dock would not be a viable alternative because of the size of the boat and the shallowness of the harbor waters. In addition, deepening the bay to allow a shorter pier and dock would involve more impacts to eelgrass than is proposed. The applicant's consultants and the City have also indicated that dredging is not a viable long-term option because of the existing currents.

Staff talked with an MBC marine biologist concerning the eelgrass mitigation plan. The biologist indicated that the density of eelgrass decreases with the depth of water. In other words, eelgrass density is higher in shallow water and patchier in deeper water. In this case the pier extends some 300 feet. However, the impacts to eelgrass are greatest within the first 200 feet and less so as the development extends seaward. However, because the proposed dock is much larger in area than the proposed pier, the shadow effects are greater.

3. Mitigation and Monitoring Plan

In conformance with the Eelgrass Mitigation Policy, MBC would provide mitigation on a 1.2:1 ratio for a total of 1,303 sq. ft.

MBC notes that eelgrass has begun colonizing formerly shaded areas of the existing dock. The existing dock was partially destroyed in the 1996 winter storms. It is expected that with the removal of the existing dock and pier, eelgrass would continue to colonize that area.

Eelgrass mitigation occurs in the form of transplantation only. There are no commercial nurseries propagating eelgrass. The quantity of eelgrass transplanted will be equal to the quantity required for mitigation, 1,303 sq. ft. Divers select shoots from existing eelgrass patches, bundle them together in bundles of 10 to 15 and then replant them at selected sites. The National Marine Fisheries Service conducted a study of eelgrass transplantation methods. The proposed development will utilize the bundle/anchor method. Exhibit 8 contains a table which shows that in 13 bundle/anchor transplant operations 80% of the projects met permit success criteria and a net increase in cover resulted in 78% of the cases. This is an extremely good success ratio. The process of selecting plants from donor sites is a thinning process, not one of complete elimination. In other words, patches of eelgrass will still remain in the alignment of the proposed pier and dock.

The transplant program should be beneficial to the eelgrass ecosystem in the long run because the biologists will select optimum growing sites in the project vicinity and by physically transplanting bundles of eelgrass will aid dispersal faster than the plant can reproduce by itself.

It should also be noted that the Eelgrass Mitigation Policy generally recommends that eelgrass be selected from several geographically distinct donor sites in order to increase biological diversity. Because the project is

so small the resource agencies waived this requirement and all transplanted eelgrass will be taken from the project vicinity.

The Eelgrass Mitigation Policy contains provisions for success criteria and monitoring. Monitoring is conducted at 3, 6, 12, 24, 36, 48 and 60 months following transplantation for density, areal coverage and overall health of the eelgrass. In addition, MBC will monitor the site for an additional year to ensure that there is no net loss of habitat to Newport Harbor. The success criteria are as follows:

- Year 1: Minimum of 70% areal coverage & 30% density
- Year 2: Minimum of 85% areal coverage & 70% density
- Year 3-5: Sustained 100% areal coverage and 85% density.

MBC will continue to transplant eelgrass in the event that these criteria are not met. MBC's mitigation program provides that if they are unable to show 100% success criteria at the end of six years but success is greater than 50%, they will pay into a mitigation fund. If the success is less than 50% then the plan will be renegotiated with National Marine Fisheries and the California Department of Fish and Game. In both of these scenarios, a coastal development permit would be required.

4. Coastal Act Consistency

Section 30230 of the Coastal Act concerns the maintenance, enhancement and restoration of marine resources, particularly species of special biological significance. Section 30231 of the Coastal Act concerns the biological productivity and quality of coastal waters, bays, etc. Implementation of the proposed development involves impacts to eelgrass, a sensitive coastal resource. The applicant has submitted a mitigation and monitoring plan prepared by MBC Applied Environmental Sciences in 1997.

There are several special conditions of this staff report designed to ensure consistency with Sections 30230 and 30231. Special condition no. 1, construction responsibilities and debris removal, and special condition no. 2, mitigation of construction impacts, are designed to ensure that the biological productivity and water quality is not adversely impacted by construction of the proposed development. Special condition no. 2 includes measures such as placement of silt curtains to minimize siltation during construction of pilings, having a biologist on site to monitor construction, and conducting a post-construction survey of eelgrass to determine if there are additional adverse impacts resulting from construction. Special condition no. 1 also requires that all construction materials be stored away from the harbor and that all debris be contained and removed after project construction is complete.

Special condition no. 3 requires that the applicant provide evidence of all required permits from applicable resource agencies prior to commencement of construction. Special condition no. 5 requires that in the event the project does not meet its goals with respect to eelgrass mitigation, then the applicant must apply for a coastal development permit amendment to get approval from the Commission for any new mitigation measures. Special condition no. 4 requires that the applicant provide a comprehensive report at the conclusion of the five year monitoring plan, and details some of the report components.

Therefore, as conditioned, the Commission finds that the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act.

C. Public Access and Recreation

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the sea and the first public road.

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

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

Section 30224 of the Coastal Act states:

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

The proposed development is located in the community of Corona del Mar in the City of Newport Beach. The development is located on Newport Harbor near the eastern harbor entrance. Public vertical access in the area exists a street easement 500 feet to the south and at a public sandy beach one quarter mile north at the Harbor Master building site.

The proposed development consists of the construction of a 330 foot long pier and dock facility for a private recreational boat. No work is proposed on the residence. The proposed development is a normal improvement for single-family residences in this area. The proposed development will not adversely impact existing navigation. The development will have no adverse impacts on coastal access and recreation.

Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

C. Land Use Plan

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

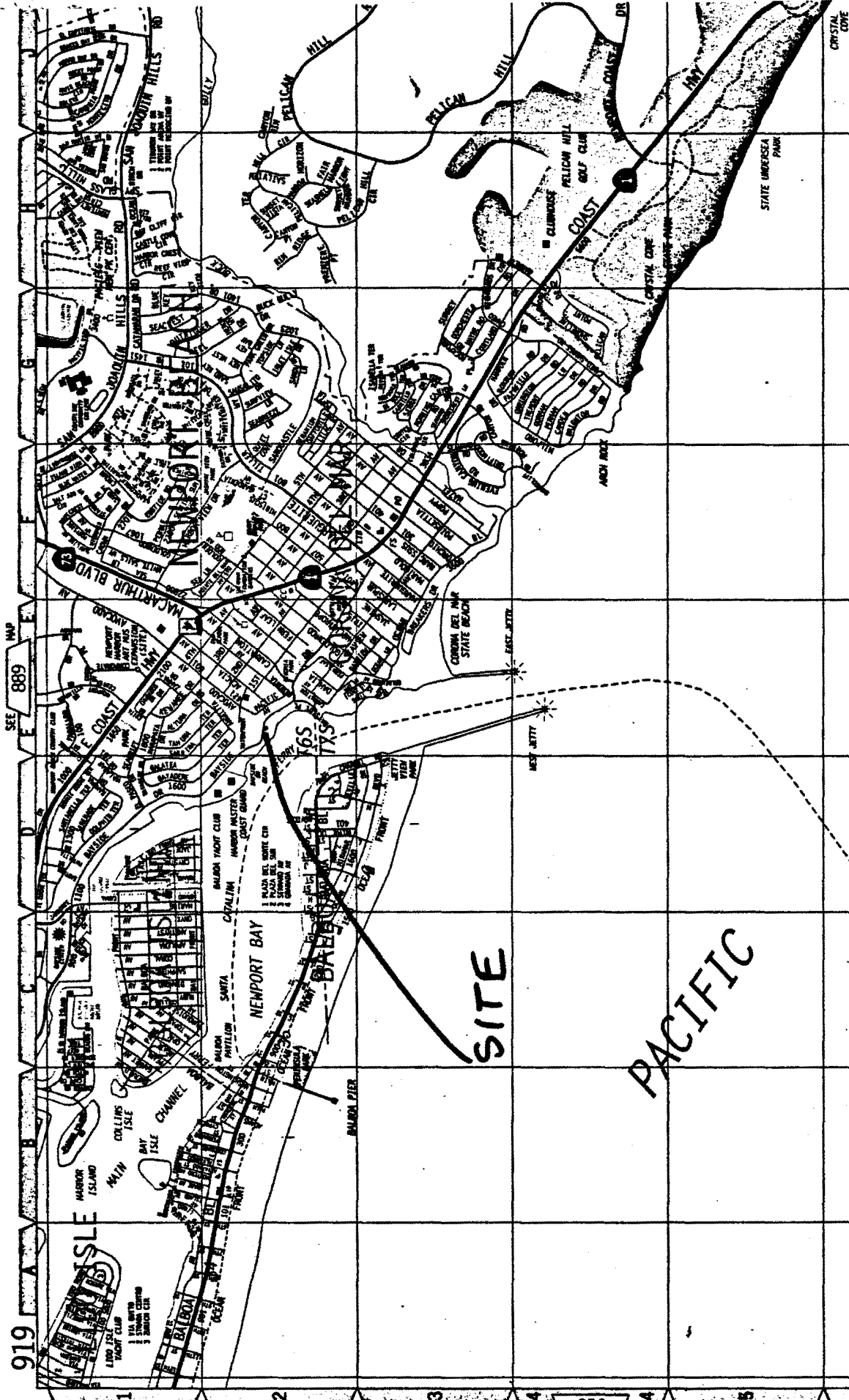
The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding water quality and development in coastal waters. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

D. Consistency with the California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the amendment to the coastal development permit, 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 proposed project has been conditioned in order to be found consistent with the marine resource protection policies of Sections 30230 and 30231 of the Coastal Act. Mitigation measures; special conditions requiring removal of construction debris, provision of applicable permits, provision of final monitoring report, contingency for a CDP amendment, and mitigation of construction impacts, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

0886G

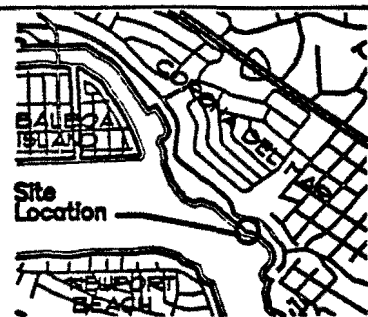
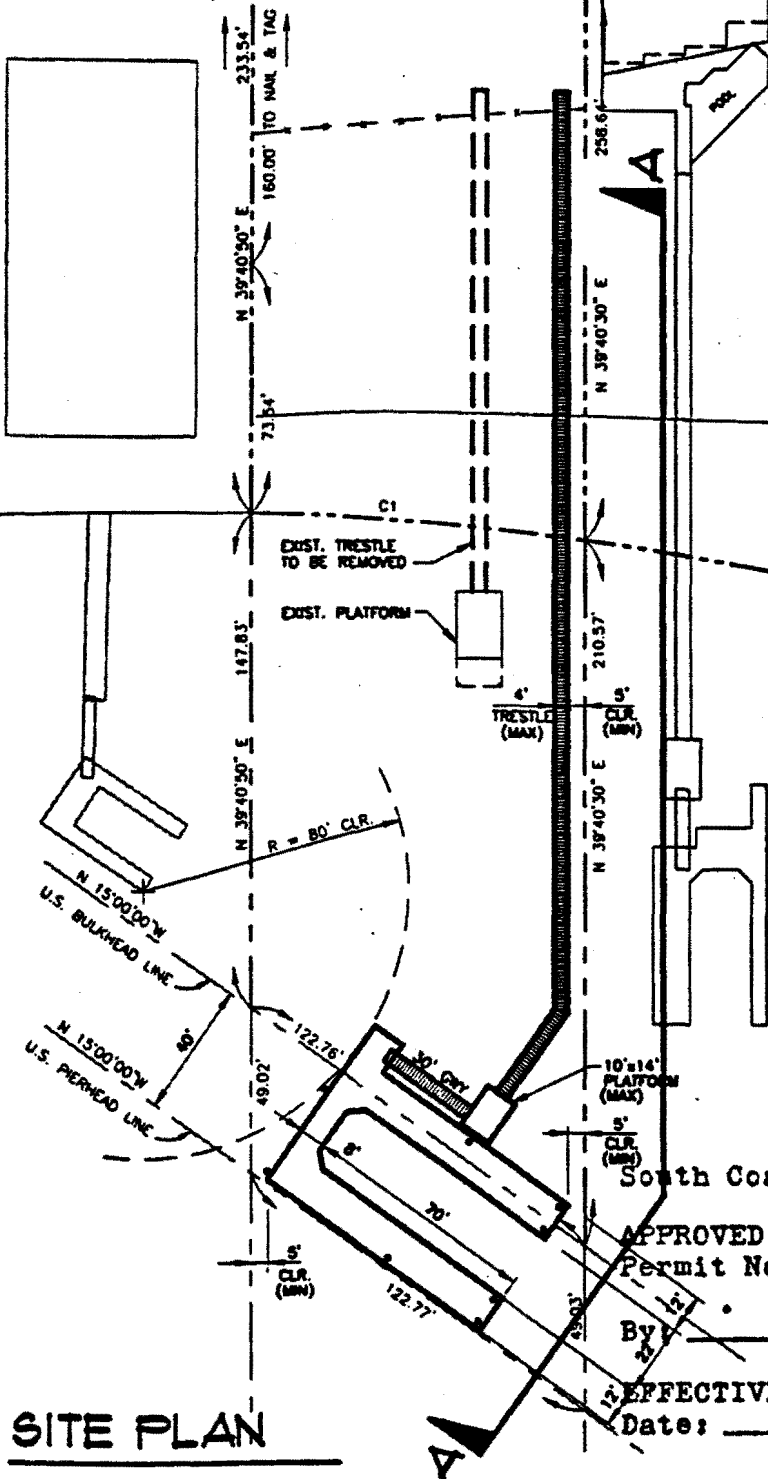


OCEAN

SITE

PACIFIC

EXHIBIT NO. 1
APPLICATION NO. 5-98-047
JICINIM
California Coastal Commission



VICINITY MAP

0 1/4 1/2 3/4 MILES

FROM THOMAS BROTHER'S MAP

RECEIVED
FEB 19 1998

CALIFORNIA
COASTAL COMMISSION

NOTE:

ALL CLEARANCES OR DIMENSIONS NOTED AS "MIN" OR "MAX" MEET CITY OF NEWPORT BEACH REQUIREMENTS. ALL OTHER DIMENSIONS NOTED ARE @ THE DISCRETION OF THE PROPERTY OWNER.

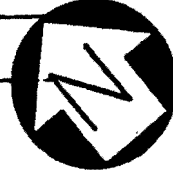
FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

Tony Melton

South Coast District Office 2/27/97

APPROVED
Permit No. 5-98-047

By: _____
EFFECTIVE
Date: _____



SITE PLAN

PURPOSE: New floating dock and pier extension

Datum: MLLW = 0

Adj. Property Owners:

1. Peter O'Brien, 2223 Bayside Dr.
Corona Del Mar, CA. 92825
2. Continental Pacific Hold, 2215 Bayside Dr.
Corona Del Mar, CA. 92825
3. Kathryn Wheeler, 401 Avocado Ave.
Corona Del Mar, CA. 92825

PLAN VIEW

0 30 60 FEET

Cyrus Tabaz
2209 Bayside Dr.
Corona Del Mar, CA. 92825

Proposed new floating dock and pier extension

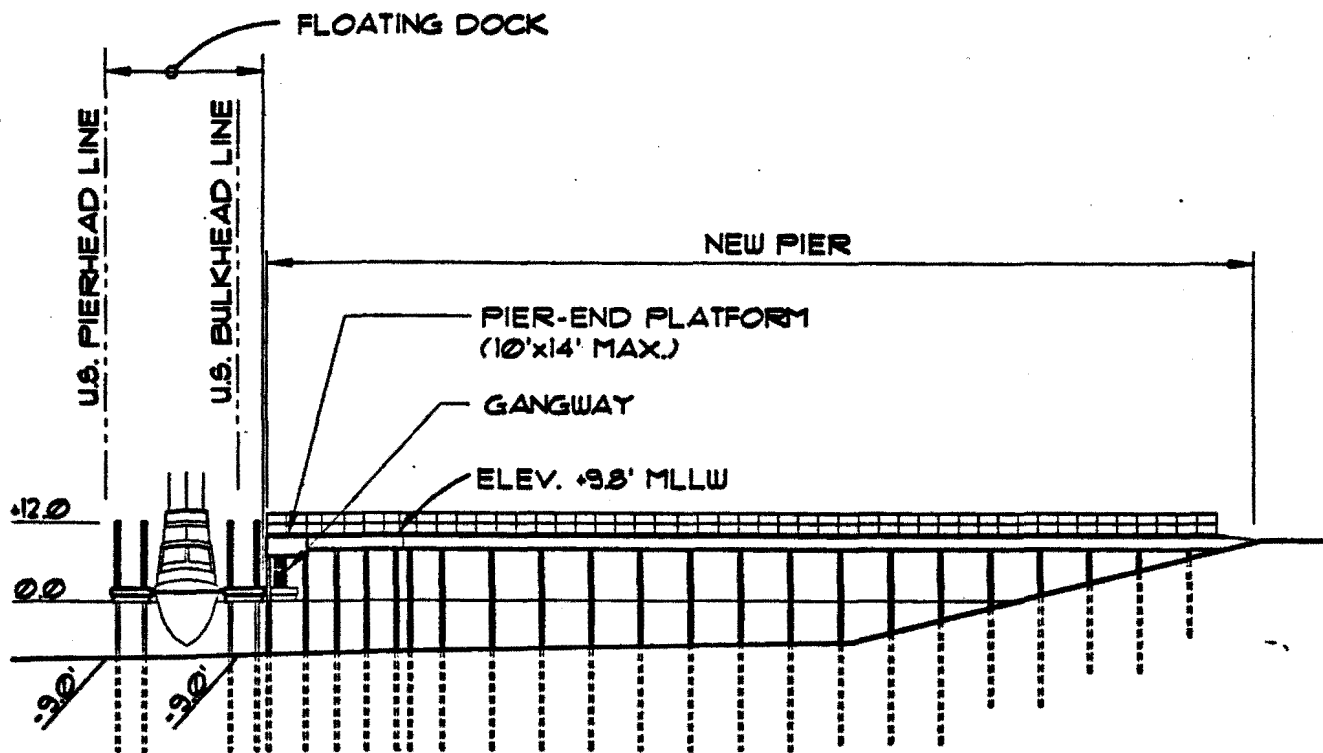
St: Newport Harbor
At: Corona Del Mar
County of O.C.
Application By: Cyn
Sheet 1 of 2

EXHIBIT NO. 2

APPLICATION NO.

5-98-047

PLAN



SECTION A-A

PURPOSE: New floating dock and pier extension

Datum: MLLW = 0

Adj. Property Owners:

1. Peter O'Brien, 2223 Bayside Dr.
Corona Del Mar, CA. 92625
2. Continental Pacific Hold, 2215 Bayside Dr.
Corona Del Mar, CA. 92625
3. Kathryn Wheeler, 401 Avocado Ave.
Corona Del Mar, CA. 92625

ELEVATION

Horizontal Scale 0 30 60 FEET

Vertical Scale 0 15 30 FEET

Cyrus Tabaz
2209 Bayside Dr.
Corona Del Mar, CA. 92625

Proposed new floating dock and pier extension

At: Newport Harbor
AT: Corona Del Mar
County of O.C.
Application By: Cyrus
Sheet 2 of 2

EXHIBIT NO. 3
APPLICATION NO.
5-98-047
SECTION



California Coastal Commission

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3339
PHONE: (909) 782-4130
FAX: (909) 781-6288

March 13, 1998

RECEIVED
MAR 19 1998



CALIFORNIA
COASTAL COMMISSION

Mr. Cyrus Tabaz
13255 Mulholland Drive
Beverly Hills, CA 90210

**WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION
FOR THE PROPOSED CONSTRUCTION OF FIXED PIER EXTENSION AND NEW FLOATING
DOCK, CITY OF NEWPORT BEACH, ORANGE COUNTY (NO ACOE REFERENCE NUMBER)**

Dear Mr. Tabaz:

On February 20, 1998, we received a transmittal dated February 12 from your agent, Cash & Associates, for the above-referenced project. We received all requested materials for a complete application as of February 20, 1998.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project described below will not violate State water quality standards:

1. Project description: You are proposing to remove an existing degraded and unusable walkway and dock, replacing it with a new access walkway and dock in a different location and configuration. The new access walkway will be 100 feet longer and will be located 25 feet west of its present location. You are also proposing to install a new "U"- shaped floating dock and a new ADA-compliant gangway/ access system that meets current federal guidelines. Concrete guide piles will be installed to support the floating dock. Utility systems to support the new dock will be upgraded. No dredging or discharge into the bay is expected to occur.
2. Receiving water: Lower Newport Bay, 0.3 miles southeast of the Newport Bay Coast Guard and Harbor Masters offices located on Bayside Drive. Hydrologic Unit Number 801.11.
3. Fill area: The shadow of the proposed project covers an area of 0.08 acres. The actual permanent impacts to the floor of the harbor will be smaller, consisting of the total area of the piles used along the walkway and dock. Approximately 0.025 acres of eelgrass habitat will be permanently impacted.
4. Dredge volume: None

EXHIBIT NO. 4
APPLICATION NO. 5-98-047
RWQCB
California Coastal Commission

5. Federal permit: Individual
6. Compensatory mitigation: A mitigation plan has been proposed in the "Eelgrass Impact Assessment, Mitigation, and Monitoring Plan" submitted with your application. This plan calls for the creation of 0.03 acres of eelgrass habitat.

There is eelgrass in the project area. Eelgrass is an important habitat for the young of game fish such as halibut. The proposed project is not expected to impact state- or federally-listed endangered or threatened species or their critical habitat. A biologist will monitor the construction process to minimize damage to the eelgrass beds surrounding the construction site.

There is the potential for increased turbidity during pier construction. These impacts will be minimized by careful adherence to existing city guidelines for construction of piers within Newport Harbor. Measures such as the use of silt curtains will be taken to minimize potential impacts while construction is proceeding. No material will be allowed to drift away from the site during the demolition of the existing pier or the construction of the new pier.

You have submitted an application for an individual permit to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act and have filed for a Coastal Development Permit from the California Coastal Commission. The proposed construction activities are exempt from the requirements of CEQA under Section 15302.

Resolution No. 96-9 (copy enclosed) provides that waste discharge requirements for certain types of discharges are waived provided that criteria and conditions specified in the Resolution are met. Provided that the criteria and conditions for Projects Which Impact Wetlands and/or Riparian Habitats specified on page 2 (of Attachment "A" to the Resolution), Minor Stream Channel Alterations specified on page 3, and the general conditions specified on page 4 are met, waste discharge requirements are waived for this project.

Pursuant to California Code of Regulations Section 3857, this action is equivalent to waiver of water quality certification. We anticipate no further action on your application, however, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

Mr. Cyrus Tabaz
March 13, 1998

Page 3

Should there be any questions, please contact Hope Smythe at (909) 782-4493 or Linda Garcia at (909) 782-4469.

Sincerely,


GERARD J. THIBEAULT
Executive Officer

Attachment

cc (with attachment):

Cash & Associates - Randy H. Mason

cc (w/out attachment):

U.S. Environmental Protection Agency, Wetlands and Sediment Management Section - Daniel Meer (W-3-3)

U.S. Army Corps of Engineers - Lisa Morales

U.S. Fish and Wildlife Service - Martin Kenney

State Water Resources Control Board, OCC - Ted Cobb

State Water Resources Control Board, DWQ-Nonpoint Source Certification and Loans Unit - William R. Campbell, Chief

California Department of Fish and Game, Long Beach - Terri Dickerson

California Coastal Commission - Meg Vaughn

LCG:\data\401\tabaz.401



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

September 23, 1997

Attention: Mr. Robert Melum Remo

Timothy Riley

Fire and Marine Chief

3300 Newport Blvd.

P.O. Box 1768

Newport Beach, CA 92658-8915

Mr. Cyrus Tabaz
13255 Mulholland Drive
Beverly Hills, CA 90210

Re: Pier Revision at 2209 Bayside Drive

Dear Mr. Tabaz:

As we discussed at our last meeting, we have had the Orange County Sheriff's Harbor Patrol and the United States Coast Guard conduct a field inspection of the proposed location of your dock revision. They were asked to look at it specifically as it relates to a potential for hazards to navigation. We positioned ourselves on July 16, 1997 in about the same location as the dock would occupy and the Coast Guard and Harbor Patrol felt that there would be no significant navigational problems with the dock located in that spot.

I hope this answers your questions and if I can be of further assistance, please contact me at 644-3041.

Sincerely,

Tony Melum

Tony Melum
Deputy Chief Marine Environmental Division


Cc: Randy Mason
Cash and Associates
P. O. Box 2715
Huntington Beach, CA 92647

EXHIBIT NO. 5
APPLICATION NO. 5-98-047
NAVIGATION
LETTER
California Coastal Commission

-6-

SPECIAL CONDITIONS FOR PERMIT NO. 98-00234-PJF

1. The permittee shall mitigate for impacts to 0.025 acres of eelgrass habitat at a ratio of 1.2 to 1. The mitigation shall be conducted in accordance with *The Southern California Eelgrass Mitigation Policy* and "Eelgrass Impact Assessment, Mitigation, and Monitoring Plan for Proposed Renovation of Mooring Facilities at 2209 Bayside Drive, Newport Beach, California - Revised December 1997," prepared by MBC Applied Environmental Sciences.
2. The permittee shall mitigate for the loss of approximately 0.001 acres of waters of the U.S. at a ratio of 6 : 1. This mitigation requirement may be satisfied by contribution to the North Shellmaker Island Mitigation Fund per the "Draft Fee Schedule for Contributing to the North Shellmaker Island Mitigation Fund, Newport Beach, California - August 26, 1997," at a contribution of \$20/cubic yard as outlined for projects which are designated as Criteria I.
3. The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States.
4. No dredging or earthwork is authorized by this permit.
5. No creosote-treated pilings shall be placed within Newport Bay.
6. The permittee shall notify the Commander (Pow) Eleventh Coast Guard District, Building 50-6 Coast Guard Island, Alameda, California 94501-5100, (510) 437-2976 at least two weeks prior to start of activity and 30 days if buoys are to be placed. The notification shall include the following information:
 - a. the location of the work site;
 - b. the size and type of equipment that will be performing the work, including the size and placement of any floating construction equipment;
 - c. radio telephone frequencies and radio call signs for any marine equipment;
 - d. the name and telephone number of the project manager and the telephone number for on-site contact with project engineers; and
 - e. the schedule for completing the project, including its start date.

EXHIBIT NO. 6
APPLICATION NO. 5-98-047
A.C. CONDITIONS
 California Coastal Commission

SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY

(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas function as important habitat for a variety of fish and other wildlife. In order to standardize and maintain a consistent policy regarding mitigating adverse impacts to eelgrass resources, the following policy has been developed by the Federal and State resource agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game).

For clarity, the following definitions apply. "Project" refers to work performed on-site to accomplish the applicant's purpose. "Mitigation" refers to work performed to compensate for any adverse impacts caused by the "project". "Resource agencies" refers to National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

1. **Mitigation Need.** Eelgrass transplants shall be considered only after the normal provisions and policies regarding avoidance and minimization, as addressed in the Section 404 Mitigation Memorandum of Agreement between the Corps of Engineers and Environmental Protection Agency, have been pursued to the fullest extent possible prior to the development of any mitigation program.

2. **Mitigation Map.** The project sponsor shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as areas having the proper depth and substrate requirements for eelgrass but which currently lack vegetation.

Protocol for mapping shall consist of the following format:

1) **Coordinates**

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11


Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

2) **Units**

Transects and grids in meters.

Area measurements in square meters/hectares.

All mapping efforts must be completed during the active growth phase for the vegetation (typically March through October) and shall be valid for a period of 120 days with the exception of surveys completed in October.

EXHIBIT NO.
APPLICATION NO. S-98-047
Eelgrass
Policy
 California Coastal Commission

A survey completed in October shall be valid until the resumption of active growth (i.e., March 1). After project construction, a post-project survey shall be completed within 30 days. The actual area of impact shall be determined from this survey.

3. Mitigation Site. The location of eelgrass transplant mitigation shall be in areas similar to those where the initial impact occurs. Factors such as, distance from project, depth, sediment type, distance from ocean connection, water quality, and currents are among those that should be considered in evaluating potential sites.

4. Mitigation Size. In the case of transplant mitigation activities that occur concurrent to the project that results in damage to the existing eelgrass resource, a ratio of 1.2 to 1 shall apply. That is, for each square meter adversely impacted, 1.2 square meters of new suitable habitat, vegetated with eelgrass, must be created. The rationale for this ratio is based on, 1) the time (i.e., generally three years) necessary for a mitigation site to reach full fishery utilization and 2) the need to offset any productivity losses during this recovery period within five years.

Transplant mitigation completed three years in advance of the impact (i.e., mitigation banks) will not incur the additional 20% requirement and, therefore, can be constructed on a one-for-one basis. However, all other monitoring requirements (outlined below) remain the same irrespective of when the transplant is completed. Project proponents should consider increasing the size of the required mitigation area by 20-30% to provide greater assurance that the success criteria, as specified in Section 9, will be met.

5. Mitigation Technique. Techniques for the construction and planting of the eelgrass mitigation site shall be consistent with the best available technology at the time of the project. Donor material shall be taken from area of direct impact whenever possible, but also should include a minimum of two additional distinct sites to better ensure genetic diversity of the donor plants. Written permission to harvest donor plants must be obtained from the California Department of Fish and Game. Plantings should consist of bare-root bundles consisting of 8-12 individual turions. Specific spacing of transplant units shall be at the discretion of the project sponsor. However, it is understood that whatever techniques are employed, they must comply with the stated requirements and criteria.

6. Mitigation Timing. For off-site mitigation, transplanting should be started prior to or concurrent to the initiation of in-water construction resulting in the impact to the eelgrass bed. Any off-site mitigation project which fails to initiate transplanting work within 135 days following the initiation of the in-water construction resulting in impact to the eelgrass bed will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

7. Mitigation Delay. If, according to the construction schedule or because of any delays, mitigation cannot be started within 135 days of initiating in-water construction, the eelgrass replacement ratio shall be increased above the 1.2:1 ratio specified in section 4 at a rate of seven percent for each month of delay. This increase in mitigation obligation is necessary to ensure that all productivity losses incurred during this period are sufficiently offset within five years.

8. Mitigation Monitoring. Monitoring the success of eelgrass mitigation shall be required for a period of five years for most projects. Monitoring activities shall determine the percent coverage and density of plants at the transplant site and shall be conducted at 3, 6, 12, 24, 36, 48, and 60 months after completion of the transplant. All monitoring work must be conducted during the active vegetative growth period and shall avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 3 and 6 month surveys shall be allowed in order to ensure the work is completed during this active growth period. Additional monitoring beyond the 60 month period may be required in those instances where stability of the proposed transplant site is questionable.

The monitoring of an adjacent or other acceptable control area (subject to the approval of the resource agencies) to account for any natural changes or fluctuations in bed width or density must be included as an element of the overall program.

A monitoring schedule that indicates when each of required monitoring events will be completed shall be provided to the resource agencies prior to or concurrent with the initiation of the mitigation.

Monitoring reports shall be provided to the resource agencies within 30 days after the completion of each required monitoring period.

9. Mitigation Success. Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project and mitigation sites. Extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than one meter between individual turions clusters. Density of shoots is defined by the number of turions per area present in representative samples within the control or transplant bed. Specific criteria are as follows:

- a. a minimum of 70 percent areal coverage and 30 percent density after the first year.
- b. a minimum of 85 percent areal coverage and 70 percent density after the second year.
- c. a sustained 100 percent areal coverage and at least 85 percent density for the third, fourth and fifth years.

Should the required eelgrass transplant fail to meet the established criteria, then a Supplementary Transplant Area (STA) shall be constructed, if necessary, and planted. The size of this STA shall be determined by the following formula:

$$STA = MTA \times (|A_t + D_t| - |A_c + D_c|)$$

MTA = mitigation transplant area.

A_t = transplant deficiency or excess in area of coverage criterion (%).

D_t = transplant deficiency in density criterion (%).

A_c = natural decline in area of control (%).

D_c = natural decline in density of control (%).

Three conditions apply:

- 1) For years 2-5, an excess of only up to 30% in area of coverage over the stated criterion with a density of at least 60% as compared to the control area may be used to offset any deficiencies in the density criterion.
- 2) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 3) Any required STA must be initiated within 120 days following the monitoring event that identifies a deficiency in meeting the success criteria. Any delays beyond 120 days in the implementation of the STA shall be subject to the penalties as described in Section 7.

10. **Mitigation Bank.** Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in Section 9., may be considered as credit in a "mitigation bank". Establishment of any "mitigation bank" and use of any credits accrued from such a bank must be with the approval of the resource agencies and be consistent with the provisions stated in this policy. Monitoring of any approved mitigation bank shall be conducted on an annual basis until all credits are exhausted.

11. **Exclusions.** Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than 12 inches wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a post-project survey shall be completed within 30 days and the results shall be sent to the resource agencies. The actual area of impact shall be determined from this survey. An additional survey shall be completed after 12 months to insure that the project or impacts attributable to the project have not exceeded the allowed 12 inch corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the 12 inch wide corridor, then mitigation pursuant to provisions 1-10 of this policy shall be required.

(last revised 9/30/97)

Transplant Information	Bare Root Transplant (Bundle/anchor)	Sediment-Laden Plug Transplant
Total Transplant Efforts Per Method	13	6
Range of Acreage Transplanted	<0.1 to 3.8 hectares	<0.1 to 1.8 hectares
Transplants Consistent with Regulatory Permit Conditions	10/13 (77%)	4/6 (67%)
Transplants Met Permit Success Criteria	8/10 (80%) ²	1/6 (17%)
Net Result of Transplant: net increase in cover no change in cover net decrease in cover	7/9 (78%) ³ 2/9 (12%) -	1/6 (17%) 3/6 (50%) 2/6 (33%)

TABLE 3. EELGRASS TRANSPLANT PROJECT SUMMARY
SOUTHERN CALIFORNIA REGION 1976-1992¹

¹ Source: Robert Hoffman, National Marine Fisheries Service, Southwest Region

² Three pending projects

³ Four pending projects

with mixed success; a sediment plug method¹⁰ and a sediment-free turion bundle/anchor method⁹.

With the first method, plugs of eelgrass and associated sediments are collected with coring devices in a donor bed, placed in trays, plastic sleeves, or biodegradable planting pots, and transported to an intertidal or subtidal receiver site. The plugs are then replanted on centers spaced approximately 1 m apart in rows along the shoreline or placed in deeper waters by divers. "Biodegradable" planting pots however, sometimes do not degrade in anaerobic bay muds which has resulted in transplant failure¹⁵. Unless the transplant is within a very small area, this method is extremely labor intensive and involves transporting larger amounts of material.

A more efficient, cost-effective method is a turion bundle/anchor method. Eelgrass is collected from donor site sediments from the shoreline or by divers, placed in mesh dive bags or buckets, and transported to an on-shore assembly station where the vegetation is rinsed in seawater to wash the sediment free from the root/rhizome mass. The sediment-free individual eelgrass turions are then fabricated into planting units, with each unit consisting of 12 to 15 turions. A unit is assembled by securing the turions together in a bundle with a loop of biodegradable twine that is also connected to a biodegradable anchor (popsicle sticks, tongue depressors and "Totsie Pops" work fine). Replanting is accomplished by a team of divers who follow a predetermined planting scheme. The team then replants the bundles at spacings of 0.6 to 1.0 meter apart throughout the planting area by placing the biodegradable anchors and

root/rhizome mass into a 10-to-15 cm deep hand dug hole, carefully repacking the hole with sediment and making sure the root-rhizome mass is not exposed above the surface (Figure 9).

The anchor/bundle method can be accomplished quicker than the eelgrass plug method, the transport involves less weight, and habitat disturbance during the replanting is considerably less. Consequently, it is a more cost efficient and ecologically sound method of transplanting. For a one acre transplant with planting units consisting of 12 turions per bundle and spaced at 1 m intervals, the transplant would require 4049 planting units and a total of 48,588 turions. A team of between 5 and 10 people could accomplish the transplant in a period of two to three weeks.

Transplant monitoring and maintenance. Eelgrass transplant projects are monitored for percent coverage and shoot density at intervals of 3, 6, 12, 24, 36, 48, and 60 months after the completion of the transplant during the active vegetative growth periods of March through October. Data are also collected in a "control" eelgrass meadow to account for natural changes or fluctuations. Reports are submitted the resource agencies following each monitoring survey.

Evaluation of transplant success. Transplant success criteria are based upon yearly objectives for areal cover and planting density. If yearly criteria are not met, then a replant is required. The amount to be replanted is calculated based upon a formula that takes into account area and/or density deficiencies²³. If the transplant results exceed mitigation requirements at the end of five years, then the excess may be accrued in a

EXHIBIT NO.
APPLICATION NO. 5-98-047
TRANSPLANT STUDY
California Coastal Commission

Memorandum

To : Mr. Robin Maloney-Rames
California Coastal Commission
200 Oceangate Ave., Suite 1000
Long Beach, California 90802

Date : July 13, 1998

RECEIVED
JUL 17 1998


From : Department of Fish and Game

CALIFORNIA
COASTAL COMMISSION

Subject : Project Plans to Replace an Existing Residential Dock and Pier

This letter is in response to a request from Mr. Greg Asher of Cash & Associates Engineering and Architecture, representing Mr. Cyrus Tabaz, concerning project plans to replace an existing residential dock and pier at 2209 Bayside Drive, Corona Del Mar, Orange County (Coastal Development Permit Application 5-98-047). The project would involve construction of an extended pier (supported by 25 driven piles spaced at 16-foot intervals) measuring 330 feet, a U-shaped floating dock measuring approximately 60 by 80 feet, and a 30-foot gangway.

Department of Fish and Game (DFG) personnel have examined project plans for the proposed dock and pier which include mitigation measures to compensate for loss of eelgrass and subtidal/intertidal habitat. The applicant proposes to mitigate for impacts to 0.025 acres of eelgrass in accordance with the Southern California Eelgrass Mitigation Policy, adopted July 31, 1991, as amended. In addition, the applicant will mitigate for the loss of 0.001 acres of subtidal/intertidal habitat by contributing funds to the *North Shellmaker Island Mitigation Fund*. The DFG believes that the project, as described with the proposed mitigation measures, would not have a significant adverse effect on existing marine resources and habitats within the area. Therefore, the DFG does not object to the issuance of a Coastal Development Permit from the Commission.

EXHIBIT NO. 9
APPLICATION NO. 5-98-047
F. & G.
 California Coastal Commission

Mr. Robin Maloney-Rames

July 13, 1998

Page 2

As always, DFG personnel are available to discuss our comments and concerns in greater detail. To arrange for a discussion, please contact Ms. Marilyn Fluharty, Environmental Specialist, California Department of Fish and Game, 4949 Viewridge Avenue, San Diego, CA 92123, telephone (619) 467-4231.

Sincerely,



Donald L. Lollock, Chief
Scientific Division
Office of Spill Prevention
and Response

cc: Ms. Marilyn Fluharty
Department of Fish and Game
San Diego, California 92123

Mr. Greg Asher
Cash & Associates
5772 Bolsa Ave., Ste 100
Huntington Beach, CA 92647