

CALIFORNIA COASTAL COMMISSION

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Staff: FSY-LB FSY
Staff Report: October 28, 2004
Hearing Date: November 17-19, 2004
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-03-458**RECORD PACKET COPY****APPLICANT:** Sergio Llovio**AGENT:** Swift Slip Dock & Pier Builders**PROJECT LOCATION:** 20 Linda Isle, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove an existing 6' x 25' section of an existing dock and one (1) 14" diameter pile and install an 8' x 50' finger and three (3) 16" diameter piles. The project will impact 987 square feet of eelgrass that would be transplanted elsewhere on-site or otherwise mitigated at a 1.2:1 ratio.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project will result in unavoidable impacts to eelgrass. Staff is recommending approval of the proposed project subject to **Six (6) Special Conditions**, which are necessary to assure that the unavoidable impacts are minimized, that appropriate mitigation occurs, and that marine resources and water quality are protected. The special conditions are necessary in order to find the proposed project consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

Special Condition No. 1 requires the applicant to submit revised plans indicating that the float portion of the proposed boat dock will consist of open grated material, as proposed. **Special Condition No. 2** requires that the applicant submit a Final Eelgrass Mitigation Plan. **Special Condition No. 3** requires an eelgrass survey to be completed within 120 days prior to commencement of construction and, if additional eelgrass is discovered within the project vicinity, that impacts be avoided and, if unavoidable, mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*. **Special Condition No. 4** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. **Special Condition No. 5** requires that the applicant dispose of all demolition and construction debris at an appropriate location. **Special Condition No. 6** requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit #135-20/Plan Check #2769-2003) from the City of Newport Beach Planning Department dated October 16, 2003.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Land Use Plan; Coastal Development Permit #5-02-070-[H.I. Property Trust]; Regional Water Quality Control Board (RWQCB) letter dated October 27, *Caulerpa Taxifolia* by Swift Slip received December 11, 2003;

Letter from Commission staff to Swift Slip dated November 25, 2003; Letter from Swift Slip to Commission staff dated March 16, 2004; *Eelgrass (Zostera Marina) Habitat Mapping Survey, Impact Assessment, and Mitigation Plan for a Dock Renovation Project 20 Linda Isle, Newport Beach, CA* prepared by Coastal Resources Management dated March 3, 2004; Letter from Commission staff to Swift Slip dated April 21, 2004; Letter from Swift Slip to Commission staff dated June 1, 2004; Letter from Commission staff to Swift Slip dated July 14, 2004; Letter from Swift Slip to Commission staff dated July 20, 2004; and Letter from Swift Slip to Commission staff dated August 10, 2004.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Approval In Concept Plan
 4. Existing Project Site Plan with Eelgrass Location
 5. Proposed Project Site Plan with Eelgrass Location
 6. *Southern California Eelgrass Mitigation Policy* (adopted July 31, 1999)
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STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission approve Coastal Development Permit No. 5-03-458 pursuant to the staff recommendation."

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

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. REVISED PROJECT DESIGN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, revised plans indicating that the float portion of the proposed boat dock is constructed of open, grated material, as proposed by the applicant, to maximize penetration of sunlight to the water below.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2 FINAL EELGRASS MITIGATION PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a revised final eelgrass mitigation plan for transplanting and replacement of eelgrass adversely impacted by the project. The plan shall be prepared in consultation with the California Department of Fish and Game and the National Marine Fisheries Service (NMFS). The plan shall be prepared consistent with the requirements identified below and the requirements of the *Southern California Eelgrass Mitigation Policy (SCEMP)*, including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

1. The plan shall provide that:

- (a) As proposed, all eelgrass impacts shall be mitigated at a minimum 1.2:1 (mitigation to impact) ratio;
- (b) adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation within one or more of the (6) six sites previously identified by the applicant. The final location of all on-site and off-site mitigation shall be specifically identified;
- (c) the mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;
- (d) initial planting at the mitigation site(s) shall be completed prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds,
- (e) a report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;
- (f) a comprehensive report describing the results of the plan shall be submitted at the end of the proposed seven-year period;
- (g) a follow-up program shall be implemented if the original program is wholly or partially unsuccessful.
- (h) a final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;
- (i) an inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s);
- (j) performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **PRE-CONSTRUCTION EELGRASS SURVEY**

A. Pre-construction Eelgrass Survey. A valid pre-construction eelgrass survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the new eelgrass survey for the review and approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than fifteen (15) working days prior to commencement of construction. If the new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in the final

eelgrass mitigation plan approved by the Executive Director pursuant to Special Condition No. 1, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 (mitigation to impact) ratio at the same transplantation location(s) identified in the final eelgrass mitigation plan described in Special Condition No. 1 above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition No. 1.

- B. Post Construction Eelgrass Survey.** After completion of project construction, the applicant shall survey the project site to determine the quantity of eelgrass that was adversely impacted. This post-construction survey shall be completed in the same month as the pre-construction survey during the next growing season immediately following the completion of construction within coastal waters. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted in excess of those disclosed pursuant to Special Condition No. 1 and No. 2.a., the applicant shall replace the additionally impacted eelgrass at a 1.2:1 (mitigation to impact) ratio at the transplantation site(s) and in accordance with the mitigation plan described in Special Condition 1 above.

4. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
- i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project area and all *C. taxifolia* discovered within the buffer area have been eliminated in a manner that

complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

The permittee shall comply with the following construction-related requirements:

- A. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to tidal and wave erosion and dispersion.
- B. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction.
- C. Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone.
- D. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.
- E. If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
- F. Measures shall be taken to ensure that barges do not ground and impact eelgrass sites.
- G. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- H. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.
- I. Reasonable and prudent measures shall be taken to prevent any discharge of fuel or oily waste from heavy machinery, pile drivers, or construction equipment or power tools into coastal waters. The applicant and applicant's contractors shall have adequate equipment available to contain any such spill immediately.
- J. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- K. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- L. The applicant shall use the least damaging method for the construction of pilings and any other activity that will disturb benthic sediments. The applicant shall limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

6. **BEST MANAGEMENT PRACTICES PROGRAM**

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

A. Boat Cleaning and Maintenance Measures:

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

B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

1. Oil absorbent materials shall be examined at least once a year and replaced as necessary. The applicant shall recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters shall also use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas and shall not use detergents while cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Prior Commission Action

1. Project Location and Description

The subject site is located in the locked gate community of Linda Isle in Lower Newport Bay in the City of Newport Beach (Exhibits #1-2). No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island (Exhibit #1). The dock project is for boating recreation purposes and is associated with an existing single family home.

The applicant proposes to remove an existing 6' x 25' section of an existing dock and one (1) 14" diameter pile and install an 8' x 50' finger and three (3) 16" diameter piles (Exhibits #3-5). The proposed finger will be constructed of Douglas Fir and the new piles will be made of concrete. City review of the site (an approval in concept from the City of Newport Beach Harbor Resources Division consisting of an eelgrass survey conducted on the project site on October 8, 2003) indicates that eelgrass will be adversely impacted by the proposed project. A mitigation plan has also been submitted, which conducted a survey on December 19, 2003, which also identified eelgrass that would be impacted. The project will impact 987 square feet of eelgrass (Exhibit #4-5) that would be transplanted elsewhere on-site or otherwise mitigated at a 1.2:1 ratio.

The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 135-20). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers. The project has received approval from the California Regional Water Quality Control Board (RWQCB). The RWQCB has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used and if no waste is discharged from the proposed project.

2. Prior Commission Action

On December 20, 2002, the California Coastal Commission approved Administrative Permit #5-01-413-(Horejski) for the installation of a 6' x 34' finger to an existing dock and also adding a 16'-inch diameter guide pile. The project was approved with Two (2) Special Conditions, regarding: 1) construction responsibilities and debris removal; and 2) best management practices program. The permit was issued on January 14, 2002.

B. Fill of Coastal Waters

The proposed project will involve the placement of three (3) 16-inch diameter concrete guide piles in open coastal waters. These dock float guide piles constitute fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters shall be allowed only when specific criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided.

Section 30233 of the Coastal Act states, in part:

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

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

1. Allowable Use

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

2. Least Environmentally Damaging Alternative

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

The proposed project will result in the modification of an existing boat dock. The proposed project would remove an existing 6' x 25' section of an existing dock and one (1) 14" diameter pile and install an 8' x 50' finger and three (3) 16" diameter piles. In order to anchor the new finger securely, three (3) proposed piles are necessary to withstand the load and adequately support the boating use. Thus the proposed project employs the minimum number and size of piles necessary to adequately support and secure the proposed boat dock project. Thereby minimizing the amount of fill needed to support the proposed allowable use.

Two of the proposed pilings will be located in areas that would have a direct impact upon eelgrass beds. However, eelgrass beds occupy most of the project area. Thus, there is no alternative location for the pilings that would avoid the eelgrass impacts. Thus, the proposed location of the pilings is the least environmentally damaging alternative.

Also, the applicant's submittal indicates that the amount of available sunlight is an important factor affecting the survival, growth, and depth distribution of eelgrass. As originally proposed, the float portion of the dock would have been constructed of solid, opaque material, preventing any penetration of sunlight to the waters below. The applicant indicated that, in addition to direct impacts caused by the installation of pilings, shading from the proposed development would cause impacts to eelgrass. In order to address the impact the applicant identified, the applicant has proposed to install grating panels in place of deck boards to increase light penetration and reduce shading where possible for the new proposed 8' x 50' finger. The proposed open, grated material would allow sunlight to penetrate the surface of the float, thus increasing the amount of sunlight on the water beneath the float. Use of the proposed grating for the dock is less environmentally damaging than use of opaque materials. The Commission previously approved a similar proposal, Coastal Development Permit #5-02-070-[H.I. Property Trust), in Newport Bay in which a special condition was imposed that required the use of grated panels as described above. While the applicant has indicated that they would install grating panels in place of deck boards to increase light penetration and reduce shading where possible for the new proposed 8' x 50' finger, no revised project plans stating this have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised plans that show use of grating panels in place of deck boards to increase light penetration and reduce shading where possible for the new proposed 8' x 50' finger.

As conditioned, the Commission finds the project to be the least environmentally damaging feasible alternative.

3. Adequate Mitigation

The project also must provide feasible mitigation measures to minimize adverse environmental effects. As proposed, the eelgrass that would be disturbed by the proposed project is proposed to be mitigated through the eelgrass mitigation plan described in the *Eelgrass (Zostera Marina) Habitat Mapping Survey, Impact Assessment, and Mitigation Plan for a Dock Renovation Project 20 Linda Isle, Newport Beach, CA* prepared by Coastal Resources Management dated March 3, 2004. The mitigation plan identified the presence of 2,998 square feet of eelgrass in the project vicinity. Of this area, the applicant indicates there will be 987 square feet of impact resulting from: 1) the installation of two (2) 14" inch diameter piles (3 square feet); 2) dock footprint shading effects (255 square feet); and 3) vessel shading effects (729 square feet)(Exhibit #4-5). To avoid and offset the impacts, the applicant proposes to conduct an eelgrass transplant program within Newport Bay, at a mitigation ratio of 1.2:1, so that a total of 1,183 square feet will be successfully transplanted according to the *Southern California Eelgrass Mitigation Policy Guidelines* (approved by the National Marine Fisheries Service) (Exhibit #6).

Transplantation will include moving any eelgrass that could be damaged by piling installation to the mitigation site before the impact occurs. The proposed mitigation plan identifies on-site and off-site mitigation areas in Lower Newport Bay. To the extent feasible, the applicant will utilize any unvegetated habitat determined to be suitable for eelgrass habitat at the project site. Such areas may be present when the existing 6' x 25' section of the existing dock is removed. The applicant intends to transplant as much eelgrass on-site as possible. Any portion of the mitigation that can't feasibly occur on-site will occur within Lower Newport Bay at one of six (6) eelgrass mitigation sites, which are currently under consideration as City of Newport Beach/Army Corps of Engineers eelgrass mitigation sites located between Bay Isle and Lido Island. The City of Newport Beach has authorized the use of these off-site restoration sites for this project. The final site selection will be decided after site-specific surveys of each transplant site. Therefore, the specific mitigation site has not yet been determined. In addition, if the revegetation is to occur off site written permission from the landowner must be submitted. Regardless of the mitigation location, on or off site, the applicant will be fully responsible for the mitigation plan. There are also other deficiencies within the Eelgrass Mitigation Plan. A time estimate has not been stated which establishes when the mitigation site(s) would be covered at pre-project densities. It is also not clear if the initial eelgrass mitigation would take place prior to dock construction.

As submitted, the Eelgrass Mitigation Plan is not complete as it lacks significant information such as the final location of the revegetation site has not been identified. In addition, the plan submitted does not specify that transplantation of eelgrass must occur prior to commencement of development that would have direct impacts upon eelgrass. The proposed plan also lacks specificity relative to mitigation success criteria and monitoring. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicant to submit a Revised Final Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project according to the *Southern California Eelgrass Mitigation Policy*. The plan shall be prepared in consultation with the California Department of Fish and Game and the National Marine Fisheries Service (NMFS). Only as conditioned is the proposed project the least environmentally damaging, feasible alternative, as required by Section 30233.

4. Conclusion

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. As conditioned herein, the proposed project is the least environmentally damaging feasible alternative. **Special Condition No. 1** requires the applicant to submit revised plans that state grating panels will be installed in place of deck boards to increase light penetration and reduce shading where possible for the new proposed 8' x 50' finger. **Special Condition No. 2** requires the applicant to submit a Revised Final Eelgrass Mitigation Plan. Therefore, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

C. Marine Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

1. Eelgrass and other Sensitive Species Impacts

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

According to the applicant, the proposed project would impact eelgrass through: 1) the installation of two (2) 14" inch piles (3 square feet); 2) dock footprint shading effects (255 square feet); and 3) vessel shading effects (729 square feet) totaling 987 square feet.

The eelgrass survey in the proposed mitigation plan was conducted on December 19, 2003. Due to the ephemeral nature of eelgrass locations, the *Southern California Eelgrass Mitigation Policy* recommends that eelgrass surveys be conducted not more than one hundred twenty (120) days prior to the start of a project that would impact eelgrass. The 120th day from December 19, 2003 (April 17, 2004) has already passed. Thus,

construction for this project will not occur before the 120-day period expires. Therefore, **Special Condition No. 3** requires the applicant to perform a pre-construction eelgrass survey to be completed by a professionally licensed biologist. The survey shall be prepared in full compliance with the SCEMP adopted by the Marine Fisheries Service. This pre-construction survey will document the presence of any eelgrass in the areas of the dock configuration. This condition is imposed upon the applicant to ensure that the site of the eelgrass bed located within the project site has not changed during the active growth phase of eelgrass. The applicant shall submit the updated eelgrass survey for the review and written approval of the Executive Director within five (5) working days of completion of the updated survey and no later than ten (10) working days prior to commencement of construction. The pre-construction survey will also identify any eelgrass beds not previously identified, which may be impacted and which must be transplanted prior to the commencement of development. Such transplantation shall occur at a 1.2:1 ratio.

Even with the above controls, construction activity could inadvertently impact eelgrass. Therefore, the Commission finds that a post-construction eelgrass survey must be submitted to determine whether any eelgrass not proposed to be impacted was inadvertently impacted. Therefore, the Commission imposes **Special Condition No. 3**. Any eelgrass inadvertently impacted which was not proposed to be impacted must be mitigated under the mitigation plan in the same manner as any planned eelgrass transplantation and mitigation – i.e. the same ratio of 1.2:1, the same transplantation site(s), same procedures, etc. The Commission required similar post-construction eelgrass surveys and mitigation for inadvertently impacted eelgrass in coastal development permit approvals 5-97-230, 5-97-231, 5-97-071, 5-99-244, 5-00-390, 5-00-401, among others.

2. Caulerpa taxifolia

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

C. taxifolia is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing¹.

¹ References

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

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

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

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

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

The applicant has submitted a *Caulerpa Taxifolia* survey dated October 8, 2003. The survey found that no *Caulerpa* was present in the project vicinity. A coastal development permit is valid for two years from the date of Commission action. In addition, the life of the permit may be extended beyond that. There is no guarantee that the project will commence immediately upon receipt of the coastal development permit. *Caulerpa Taxifolia* could establish within the project vicinity between the time of the last survey and commencement of construction. For this reason the Commission requires a survey to be conducted prior to commencement of construction.

If *C. taxifolia* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes **Special Condition No. 4**. **Special Condition No. 4** requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the

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

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

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

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

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

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

project area, no work may commence and the applicants shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

3. Water Quality

The proposed project is the removal of an existing 6' x 25' section of an existing dock and one (1) 14" diameter pile and installation of a 8' x 50' finger and three (3) 16" diameter piles in Newport Harbor.

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

a. Construction Impacts

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

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

Special Condition No. 5 requires that the applicant dispose of all demolition and construction debris at an appropriate location. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to

control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

b. Maintenance

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

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

4. Conclusion

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

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

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

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

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development seaward of the first public road include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The subject site is located in the waters off-shore of the private locked gate community of Linda Isle in Lower Newport Bay (Exhibits #1-2). No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island (Exhibit #1).

Public access through this community does not currently exist. The proposed development, construction of a new boat dock, will not affect the existing public access conditions. It is the private nature of the community, not this project, that impedes public access. The proposed development, as conditioned, will not result in any new significant adverse impacts to existing public access or recreation in the area. Therefore the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development 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 the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. The LUP permits the filing of open coastal waters, other than wetlands, for expanded boating facilities where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. As conditioned herein, the proposed project is consistent with this LUP policy.

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

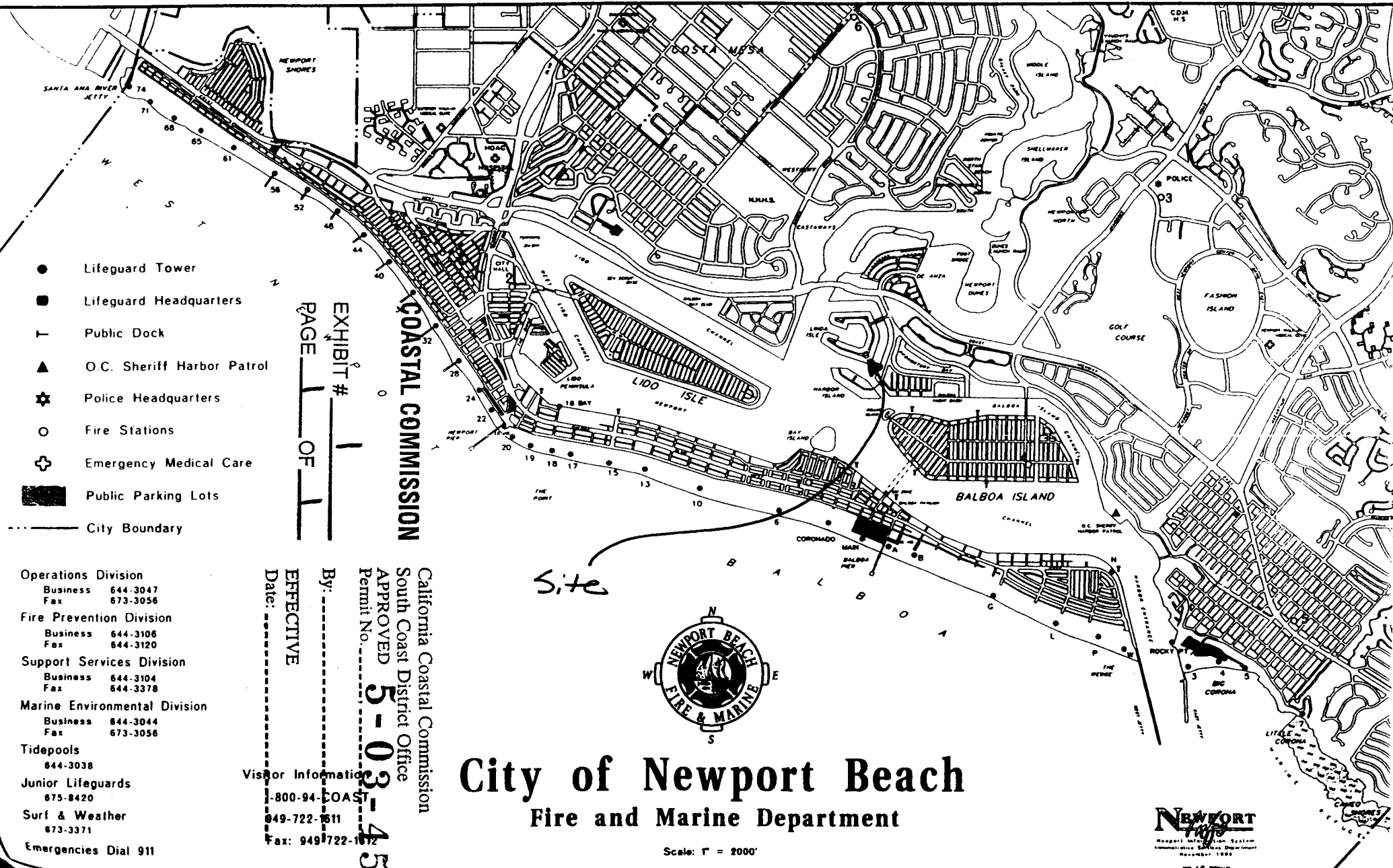
F. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment. Potential impacts on marine habitat, eelgrass, and water quality have been identified and those impacts are avoided or mitigated.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the marine resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring a final eelgrass mitigation plan incorporating pre- and post-construction surveys and appropriate mitigation, disposal of all demolition and construction debris at an appropriate location and to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available 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 impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

H:\FSY\Staff Reports\Nov04\5-03-458-[Llovio]RC(NB)



- Lifeguard Tower
- Lifeguard Headquarters
- ┌ Public Dock
- ▲ O.C. Sheriff Harbor Patrol
- ★ Police Headquarters
- Fire Stations
- ⊕ Emergency Medical Care
- Public Parking Lots
- City Boundary

Operations Division
 Business 644-3047
 Fax 673-3056

Fire Prevention Division
 Business 644-3106
 Fax 644-3120

Support Services Division
 Business 644-3104
 Fax 644-3378

Marine Environmental Division
 Business 644-3044
 Fax 673-3056

Tidepools
 644-3038

Junior Lifeguards
 675-8420

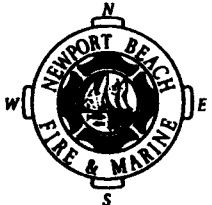
Surf & Weather
 673-3371

Emergencies Dial 911

California Coastal Commission
 South Coast District Office
 APPROVED **5-03-458**
 Permit No. _____

By: _____
 EFFECTIVE _____
 Date: _____

Visitor Information
 800-94-COAST
 949-722-8111
 Fax: 949-722-1672



City of Newport Beach

Fire and Marine Department

Scale: 1" = 2000'



NE_16_NEWX

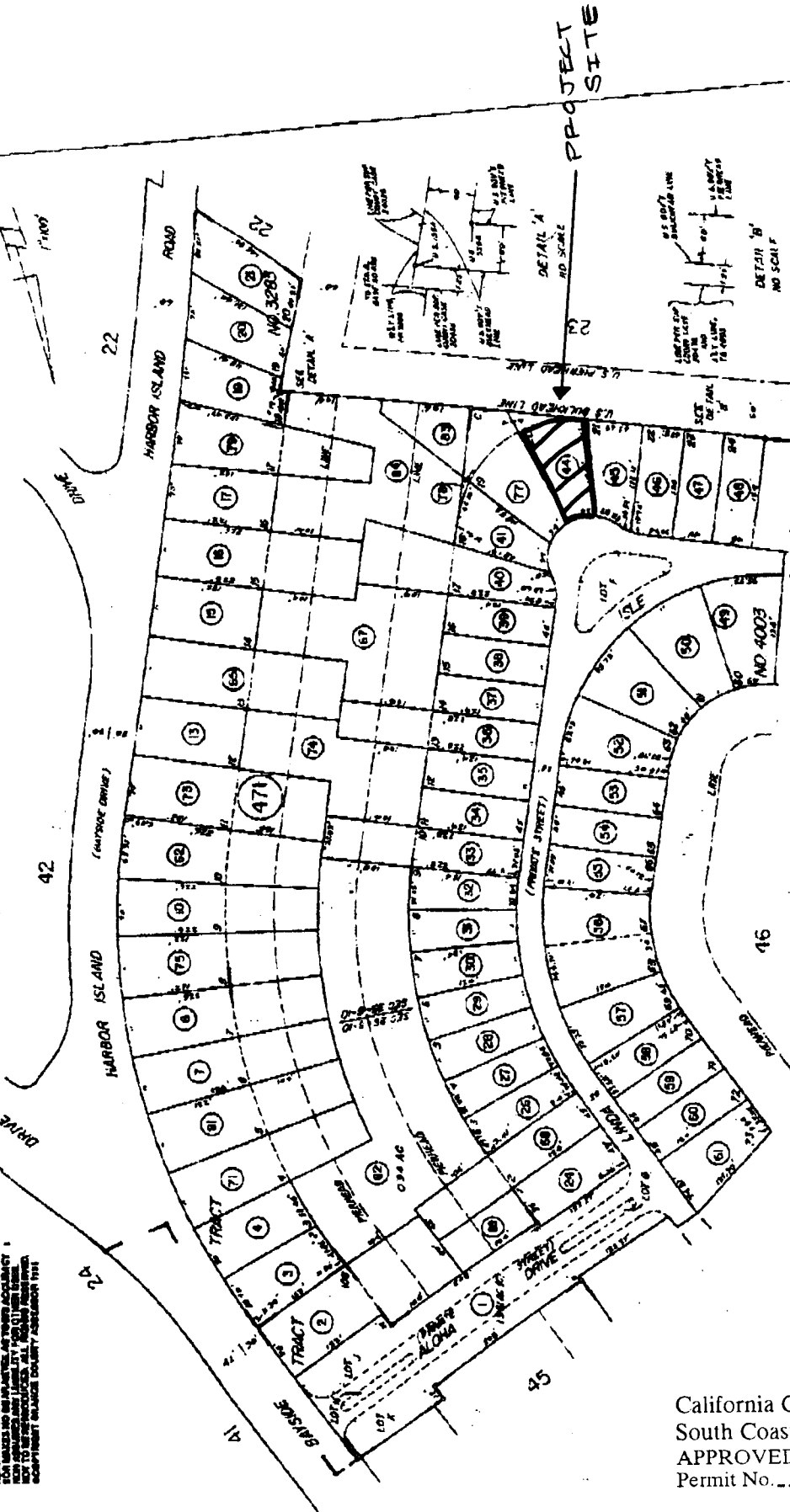
EXHIBIT # 1
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COASTAL COMMISSION

50-47

PDR S 1/2, SW 1/4, S.W. 1/4, SEC. 26, T. 6 S., R. 10 W.
POR. NW 1/4, NW 1/4, SEC. 35, T. 6 S., R. 10 W.

THIS MAP WAS PREPARED FOR ORANGE COUNTY
APPROXIMATELY 1977. IT IS NOT A SURVEY.
FOR RECORDING AND OTHER PURPOSES, THE
OWNER SHOULD CONSULT THE ORIGINAL
RECORDS OF THE COUNTY CLERK'S OFFICE
FOR THE RECORDING OF THIS MAP.
FOR INFORMATION, ALL RECORDS ARE
AVAILABLE TO THE PUBLIC AT THE COUNTY
COURT HOUSE, ORANGE, CALIFORNIA.



ASSESSOR'S MAP
BOOK 50 PAGE 47
COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

TRACT NO. 3283 M.M. 10-35,34
TRACT NO. 4003 M.M. 10-13, 10, 19, INC.

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

California Coastal Commission
South Coast District Office
APPROVED
Permit No. **5-03-458**

By: _____
EFFECTIVE
Date: _____

THIS MAP IS NOT A SURVEY. IT IS MERELY FURNISHED AS A CONVEYANCE OF INFORMATION TO THE PUBLIC. IT IS NOT TO BE USED TO ADJOINING STREETS AND OTHER LOTS AND IS NOT TO BE USED AS A BASIS FOR ANY OTHER PURPOSES. HEARINGS HELD AS REQUIRED.

Figure 2. Eelgrass Habitat and Existing Dock Layout
20 Linda Isle, Newport Bay, Newport Beach, CA

Source: Swift Slip Dock and Pier Builders

Scale:



1 INCH = 20 FT

4
North

Lot 20

COASTAL COMMISSION

EXHIBIT # 4

PAGE 1 OF 1

Existing Dock

Project Boundary

Eelgrass

Handwritten notes:
Pier concrete
Pier concrete

California Coastal Commission
South Coast District Office

APPROVED Permit No. 5-03-45

By: _____

EFFECTIVE Date: _____

Figure 3. Eelgrass Habitat and Proposed Dock Construction Layout
20 Linda Isle, Newport Bay, Newport Beach, CA
Source: Swift Slip Dock and Pier Builders

Scale:

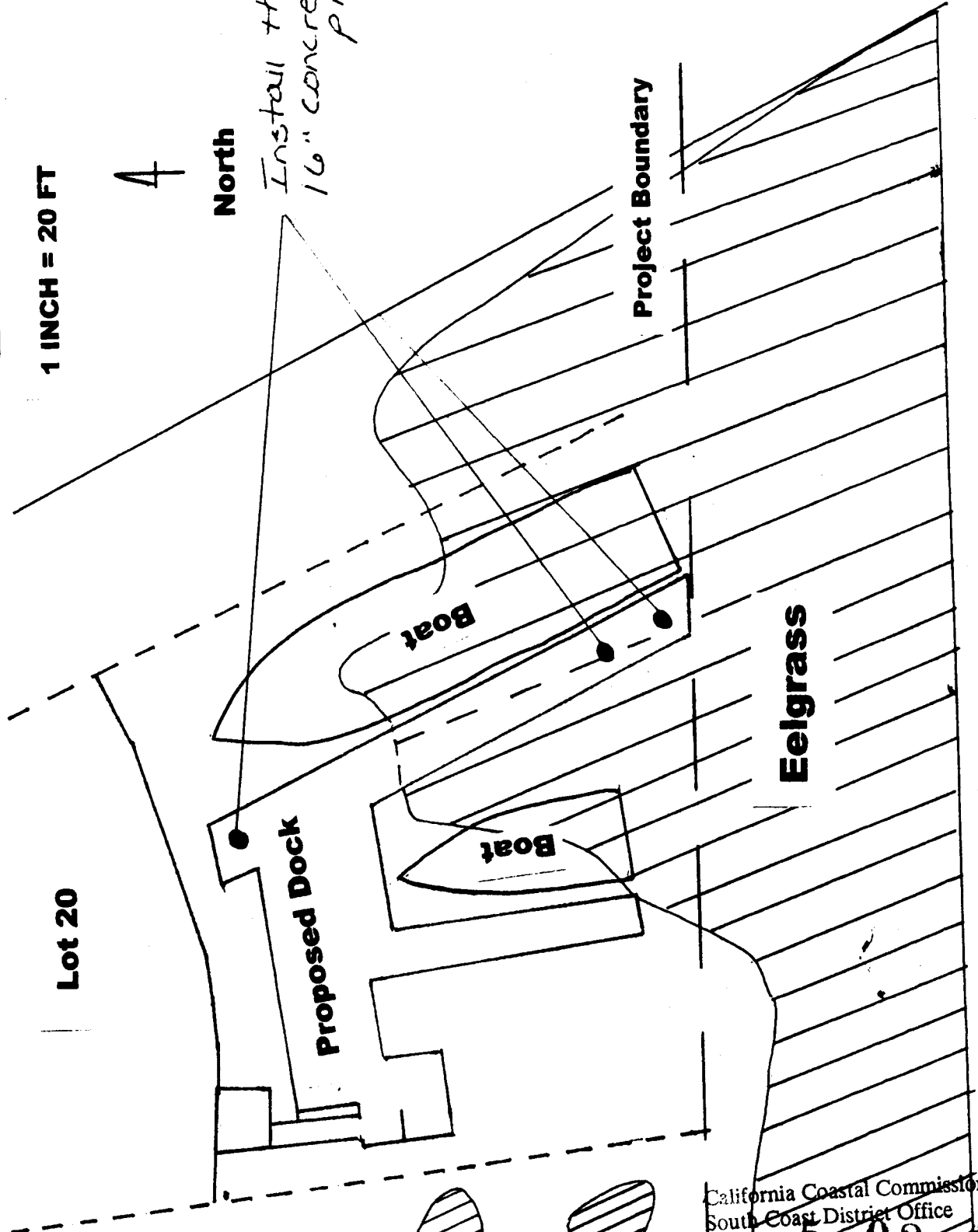


1 INCH = 20 FT

4

North

Install three
16" concrete
pile.



COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 1

California Coastal Commission
South Coast District Office
APPROVED 5-03-458
Permit No. _____
By: _____
EFFECTIVE _____
Date: _____



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). This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 8).

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 applicant 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

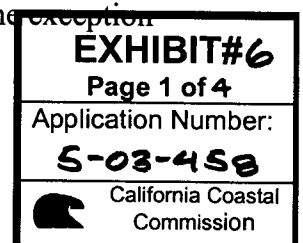
Vertical datum - Mean Lower Low Water (MLLW), depth in feet.

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 August - October.



A survey completed in August - 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. An exception to the 1.2 to 1 requirement shall be allowed when the impact is temporary and the total area of impact is less than 100 square meters. Mitigation on a one-for-one basis shall be acceptable for projects that meet these requirements (see section 11 for projects impacting less than 10 square meters).


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 annual monitoring requirements (see sections 8-9) remain the same irrespective of when the transplant is completed.

Project applicants 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. In addition, alternative contingent mitigation must be specified, and included in any required permits, to address situation where performance standards (see section 9) are not 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 the 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. No more than 10% of an existing bed shall be harvested for transplanting purposes. Plants harvested shall be taken in a manner to thin an existing bed without leaving any noticeable bare areas. 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 applicant. 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 with 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 shall 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 area. However, transplanting of on-site mitigation should be started no later than 135 days after

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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 mitigation obligation shall increase at a rate of seven percent for each month of delay. This increase 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 area of eelgrass 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 or where other factors may influence the long-term success of transplant.

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 the 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 turion 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 area of eelgrass bed and 30 percent density after the first year.
- b. a minimum of 85 percent area of eelgrass bed and 70 percent density after the second year.
- c. a sustained 100 percent area of eelgrass bed 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:

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

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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 (%).

Four 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 project area may be used to offset any deficiencies in the density criterion.
- 2) Only excesses in area criterion equal to or less than the deficiencies in density shall be entered into the STA formula.
- 3) Densities which exceed any of the stated criteria shall not be used to offset any deficiencies in area of coverage.
- 4) 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.

1) Placement of a single pipeline, cable, or other similar utility line across an existing eelgrass bed with an impact corridor of no more than $\frac{1}{2}$ meter 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 $\frac{1}{2}$ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the $\frac{1}{2}$ meter wide corridor, then mitigation pursuant to sections 1-11 of this policy shall be required.

2) Projects impacting less than 10 square meters. For these projects, an exemption may be requested by a project applicant from the mitigation requirements as stated in this policy, provided suitable out-of-kind mitigation is proposed. A case-by-case evaluation and determination regarding the applicability of the requested exemption shall be made by the resource agencies.

(last revised 2/2/99)

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 California Coastal Commission