ARNOLD SCHWARZENEGGER, Governor

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² **W 20c** RECORD PACKET COPY Filed:December 24, 200449th Day:February 11, 2005180th Day:June 22, 2005Staff:FSY-LBStaff Report:April 21, 2005Hearing Date:May 11-13, 2005Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER:	5-04-449					
APPLICANT:	Tim Byrne (2233 Bayside Drive, LP) & Irvine Burg					
AGENT:	Swift Slip Dock & Pier Builders					
PROJECT LOCATION:	2233 & 2301 Bayside Drive, Newport Beach, Orange County					
PROJECT DESCRIPTION:	Remove two (2) individual dock systems and replace with a new single joint dock system made of trex and Douglas fir consisting of: a 4' x 150' pier with a 12' x 14' platform; a 3' x 24' gangway; an 8' x 58' floating dock with a 6' x 16' backwalk; and eighteen (18) 10" diameter steel piles and three (3) 14" diameter steel piles coated with NSP-120.					

SUMMARY OF STAFF RECOMMENDATION:

The proposed project will result in unavoidable impacts to eelgrass. Staff is recommending approval of the proposed project subject to **Five (5) 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 that the applicant submit a revised final eelgrass mitigation plan. **Special Condition No. 2** requires pre and post-construction eelgrass surveys 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. 3** 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. 4** requires that the applicant dispose of all demolition and construction debris at an appropriate location. **Special Condition No. 5** 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 #105-2301/Plan Check #TBD) from the City of Newport Beach Planning Department dated October 28, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Land Use Plan; *Marine Biological Resources Impact Assessment, Pier Renovation Project, 2233 and 2301 Bayside drive, Corona Del Mar, CA* prepared by Coastal Resources Management dated November 16, 2004; Email from Bob Hoffman (NMFS) to Sift Slip Dock and Pier Builders dated December 6, 2004; Regional

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Water Quality Control Board (RWQCB) letter dated December 6, 2004; and Review from the U.S. Army Corps. Of Engineers dated December 14, 2004.

LIST OF EXHIBITS

- 1. Location Map
- 2. Assessor's Parcel Map
- 3. Existing Project Site Plan and Eelgrass Location
- 4. Approval In Concept Plan
- 5. Pile Placement Plan
- 6. Southern California Eelgrass Mitigation Policy (adopted July 31, 1999)

STAFF RECOMMENDATION:

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

MOTION:

"I move that the Commission approve Coastal Development Permit No. 5-04-449 pursuant to the staff recommendation."

Staff recommends a <u>YES</u> 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. <u>Notice of Receipt and Acknowledgment</u>. 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.
- 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. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment</u>. 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. <u>Terms and Conditions Run with the Land</u>. 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 FINAL EELGRASS MITIGATION PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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) All direct eelgrass impacts shall be mitigated at a minimum 1.2:1 (mitigation to impact) ratio;
 - (b) All shading impacts shall be mitigated as proposed;
 - (c) Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;

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- (d) The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;
- (e) Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).
- A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;
- (g) A comprehensive report describing the results of the plan shall be submitted at the end of the proposed five-year period;
- A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;
- 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;
- An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s);
- (k) 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 permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. PRE-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 10 (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 applicants 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

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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.

Post Construction Eelgrass Survey. After completion of project construction, Β. the applicants 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 Eelorass Mitigation Policy" Revision 10 (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 applicants 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.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 No. 1 above.

3. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicants 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
 - 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 applicants shall not proceed with the project until 1) the applicants provide 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

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

4. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The permittees 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 applicants and applicants' 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 applicants shall use the least damaging method for the construction of pilings and any other activity that will disturb benthic sediments. The applicants shall

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limit, to the greatest extent practicable, the suspension of benthic sediments into the water column.

5. BEST MANAGEMENT PRACTICES PROGRAM

By acceptance of this permit the applicants agree 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 BMP's.

- 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 applicants 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:
 - Oil absorbent materials shall be examined at least once a year and replaced as necessary. The applicants 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.

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IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Prior Commission Action

1. Project Location and Description

The proposed project is located on two bayfront lots fronting Newport Bay at 2233 and 2301 Bayside Drive in Corona Del Mar (City of Newport Beach), County of Orange (Exhibits #1-2). North of the project site is Bayside Drive; South of the project site is a sandy beach area and Newport Bay, to the East and West are bulkheaded residential lots. The project site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The proposed project will not have an adverse effect on public access. Public access is available approximately ½ mile north of the project site at Bayside Drive Beach and also approximately 200 feet south of the project site at a street end (Exhibit #1).

The applicant proposes to remove two (2) individual dock systems including 50 existing piles (20-8" diameter pipe piles and 2-12" diameter pipe piles removed at 2233 Bayside Drive; and 26-4" diameter pipe piles and 2-12" diameter pipe piles at 2301 Bayside Drive). The two dock systems removed would be replaced with a new shared single dock system made of trex and Douglas fir consisting of: a 4' x 150' pier with a 12' x 14' platform; a 3' x 24' gangway; an 8' x 58' floating dock with a 6' x 16' backwalk; and eighteen (18) 10" diameter steel piles and three (3) 14" diameter steel piles coated with NSP-120 (Exhibits #4-5). The proposed new single dock conforms to the established City of Newport Beach pierhead line for this area. The proposed coating material (NSP 120) has been determined by the Commission's water guality unit to have a low impact on the environment. 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 28, 2004) indicates that eelgrass will be adversely impacted by the proposed project. A mitigation plan has also been submitted, which also conducted a survey on January 29, 2004 and March 4, 2004, which also identified eelgrass that would be impacted.

The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 105-2301). The applicant has applied for approval of the proposed project from the U.S. Army Corps of Engineers (USACOE). The project has received approval from the California Regional Water Quality Control Board (RWQCB). 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. In addition, the National Marine Fisheries Service (NMFS) has reviewed the project and determined that a 1:1 eelgrass transplant ratio for the proposed project is acceptable given the applicant's commitment to address both direct and indirect (shading) impacts upon eelgrass.

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2. Prior Commission Action at Project Site and Adjacent Sites

On June 10, 2004, the Commission approved Coastal Development Permit #5-98-021-[Smith, Combs & Ray] for development at 2227, 2231 and 2233 Bayside Drive consisting of: saw cutting the existing 12-inch wide seaward wall footing, reinforcing the existing landward wall footing, and installing a 4-foot high (1-foot 3-inches above bay grade), 7inch wide and 120-foot long sheet pile directly seaward of the existing seawall. No fill of open coastal waters was proposed. The voids created by erosion and undercutting in the rear yards landward of the seawall were to be filled. The permit was approved with two (2) Special Conditions: Special Condition No.1 dealt with assumption of risk and Special Condition No.2 dealt with construction responsibilities and debris removal. The permit was issued on February 10, 1999.

On July 12, 2000, the Commission approved Coastal Development Permit #5-99-466-[Ray] for development at 2233 Bayside Drive consisting of: demolition of an existing twostory single-family residence and construction of a new 4,150 square foot two-story singlefamily residence with a 693 square foot three-car garage, pool and spa on a bayside bulkheaded lot. No work was proposed on the existing bulkhead. Approximately 66 cubic yards of cut and 66 cubic yards of fill were proposed for site preparation. In addition, approximately 50 cubic yards of cut was required for the proposed pool and spa. The permit was approved with Five (5) Special Conditions: Special Condition No.1 dealt with conformance of design and construction plans to the geotechnical report; Special Condition No. 2 dealt with assumption of risk; Special Condition No. 3 dealt with storage of construction materials, mechanized equipment and removal of construction debris; Special Condition No. 4 dealt with location of debris disposal site; and Special Condition No. 5 dealt with submittal of a revised drainage plan. The permit was issued on July 21, 2000.

B. Fill of Coastal Waters

The proposed project will involve the placement of eighteen (18) 10" diameter steel piles and three (3) 14" diameter steel piles coated with NSP-120 in open coastal waters. These 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. <u>Allowable Use</u>

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 would remove two (2) individual dock systems and replace them with a new shared single dock system made of trex and Douglas fir consisting of: a 4' x 150' pier with a 12' x 14' platform; a 3' x 24' gangway; an 8' x 58' floating dock with a 6' x 16' backwalk; and eighteen (18) 10" diameter steel piles and three (3) 14" diameter steel piles coated with NSP-120. In order to anchor the new pier and floating dock, eighteen (18) 10" diameter 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.

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.

3. Adequate Mitigation

The project also must provide feasible mitigation measures to minimize adverse environmental effects. The applicants' proposed eelgrass mitigation plan is described in the Marine Biological Resources Impact Assessment, Pier Renovation Project, 2233 and 2301 Bayside drive, Corona Del Mar, CA prepared by Coastal Resources Management dated November 16, 2004. There is approximately 25,754 square feet (0.59 acres) of eelgrass habitat within the project area (Exhibit #3). Eelgrass grows beneath the existing: piers, around the base of each pier pile, between the two existing piers, and seaward of the two dock structures. The proposed dock and pier would be located between the two existing docks and piers that are proposed to be removed. The new proposed single shared use dock would result in 585 square feet of new dock area shading over the bay floor. In addition, 13 square feet of eelgrass habitat will be directly impacted by installation of the new pier piles. Thus, a total of 597 square feet of eelgrass habitat would be impacted by the proposed single dock structure. The two existing docks consist of approximately 624 square feet. With the proposed project, dock surface area will decrease from 624 square feet to 585 square feet and result in a beneficial, net increase of 40 square feet of unobstructed (i.e. no shading) open bayfloor that would be suitable for eelgrass mitigation and/or natural re-colonization by eelgrass.

This mitigation plan proposes to off-set the 597 square feet of eelgrass impact at a 1:1 (mitigation to impact) ratio within 30 days, on site within the area of the two existing docks

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that are to be removed. The proposed ratio, 1:1, is less than the 1.2:1 typically required under the Southern California Eelgrass Mitigation Policy (SCEMP). However, the National Marine Fisheries Service (NMFS) has determined that a 1:1 eelgrass transplant ratio for the proposed project is acceptable based on their newly updated SCEMP (discussed below). Based on this ratio, and preliminary impact estimates for both direct (piling) and indirect (shading) impacts, the applicant would mitigate 597 square feet of eelgrass. Although NMFS is now requiring mitigation for shading effects, the Commission hasn't typically mandated such mitigation in Newport Bay. The proposed 597 square feet of eelgrass mitigation would fully mitigate the approximately 13 square feet of direct impacts to eelgrass that are proposed.

The NMFS, in conjunction with the California Department of Fish and Game and U.S. Fish and Wildlife Service, has recently updated their SCEMP (see Version 10) (Exhibit #6). The revised policy includes new provisions relative to mitigation for shading effects upon eelgrass as well as specialized monitoring requirements to identify longer-term shading effects. The applicant's proposed plan includes corollary mitigation and monitoring measures. While the proposed mitigation plan does provide an overall acceptable plan. there are deficiencies in the plan. For example, the Commission typically requires that eelgrass be transplanted from areas that would be directly impacted prior to the commencement of the work that would cause the impact (e.g. piling installation). The proposed plan doesn't include clear provisions regarding pre-construction transplantation of eelgrass within direct impact areas. In this case, the applicant has stated such preconstruction transplantation is difficult because of construction disturbances (i.e. dock removal) within the transplant site. However, this issue could be addressed in the plan by changing the sequence of project implementation such that the docks are removed from the transplant site prior to installation of the new docks that will generate the direct impact and/or using an interim nursery site to store the salvaged eelgrass until the transplant/mitigation area is clear for use (i.e. the location of the two existing docks). As submitted, the Eelgrass Mitigation Plan is not complete as it lacks significant information as such the specificity that transplantation of eelgrass must occur prior to commencement of development that would have direct impacts upon eelgrass.

As submitted, the Eelgrass Mitigation Plan is not complete as it lacks significant information such as the specificity that transplantation of eelgrass must occur prior to commencement of development that would have direct impacts upon eelgrass. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit a revised final eelgrass mitigation plan for transplanting eelgrass that would be directly impacted and mitigation 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. <u>Conclusion</u>

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 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 piles (13 square feet), and 2) dock footprint shading effects (585 square feet) totaling 597 square feet.

On January 29, 2004, March 4, 2004 and October 28, 2004, the project site was surveyed for eelgrass. Surveys completed during the active growth phase of eelgrass are valid for 60 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). The project is agendized for the May 2005 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since it is now within the active growth phase of eelgrass. Therefore, Special Condition No. 2 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 directly 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 directly impacted was inadvertently impacted by construction activity. Therefore, the Commission imposes **Special Condition No. 2**. Any eelgrass inadvertently and directly impacted which was not proposed to be directly 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.

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.

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 Mediterranea⁻⁻ Sea. Marine Ecology Progress Series 146:145-153.

Gacia, E. C. Rodriquez-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.

¹ References

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

Chisholm, J.R.M., M. Marchioretti, 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

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.

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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 if 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.

On January 29, 2004 and March 4, 2004, the site was also surveyed for *Caulerpa taxilfolia* and none was found. These surveys were completed on January 29, 2004 and March 4, 2004, and are only valid for 90 days. The project is agendized for the May 2005 Coastal Commission Hearing and by this time the *Caulerpa taxilfolia* surveys would not continue to be valid since it had passed 90 days from when the surveys were completed. Thus, an up-to-date pre-construction *Caulerpa taxilfolia* survey must be conducted.

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. 3**. **Special Condition No. 3** 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 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.

Water Quality

The proposed project is the removal of two (2) individual dock systems and replacement of them with a new shared single dock system made of trex and Douglas fir consisting of: a 4' x 150' pier with a 12' x 14' platform; a 3' x 24' gangway; an 8' x 58' floating dock with a 6' x 16' backwalk; and eighteen (18) 10" diameter steel piles and three (3) 14" diameter steel piles coated with NSP-120 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. 4** 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. 4 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. 5**, 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. 5** 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. 2, 3, 4, and 5** 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 a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The proposed project will not have an adverse effect on public access. Public access is available approximately ½ mile north of the project site at Bayside Drive Beach and also approximately 200 feet south of the project site at a street end (Exhibits #1-2).

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.

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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 revised 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.

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Pier and Dock Replacement Eelgrass Studies 2301 and 2233 Bayside Corona del Mar, CA





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COASTAL COMMISSION



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South Coast Region 104-230. OF NEWPORT BEACH DEC 29 2004 -: T T CALIFORNIA COASTAL COMMISSION Ì 64 20-0 -6 5 oce an VICINITY SKETCH + NOWPOHR BAY, CALIFORNIA . السميد ومع المستحد الم ال 3 ScopE OF WORK: \checkmark M N 222 N n n 1 N Remove Enfire Dack N Structures At 2301 \$ 1 2223 Bryside Dr. ر م م ' N Install New dock system 2 For Joint USE. 150'x4' 11 Aier with 12' K14' Pier AATFORM. 3'X 24' GANGWAY 64'x 8' Float 18-10" pipe pile to support pier 8 3-14" Pipe Pile For Ŝ Eia Hee FIDAT. 107 6 pipepite IeW р У Three 14" pipe 8 pile **COASTAL COMMISSION** 5 EXHIBIT # PAGE_ OF_



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 BIT#6 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 will be subject to additional mitigation requirements as specified in section 7. For on-site mitigation Page 2 of 4 transplanting should be postponed when construction work is likely to impact the mitigation Number: However, transplanting of on-site mitigation should be started no later than 135 days

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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 ½ meter wide may be excluded from the provisions of this policy with concurrence of the resource agencies. After project construction, a postproject 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 ½ meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the ½ 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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