

CALIFORNIA COASTAL COMMISSION

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Hearing Date: June 7-10, 2005
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-04-264 **RECORD PACKET COPY**

APPLICANT: Norman C. Goodin

AGENT: Shellmaker Inc., Attn: Lisa Miller

PROJECT LOCATION: 2527 West Coast Highway, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove an existing wooden dock system consisting of 10 slips and replace it with a new concrete dock system in a different configuration consisting of 3 slips (one main slip and two side ties), twelve (12) 16" diameter concrete plies and an 80-foot long gangway. In addition, use of one of the three slips for a charter boat operation with capacity of up to 150 passengers, with parking at off-site locations.

SUMMARY OF STAFF RECOMMENDATION:

The major issues of this staff report include unavoidable shading impacts to eelgrass and concerns relative to the availability of adequate parking to support the charter boat and yacht club operation. Staff is recommending **APPROVAL** of the proposed project subject to **Nine (9) Special Conditions**, which are necessary to assure that the unavoidable impacts are minimized, that appropriate mitigation occurs, that marine resources and water quality are protected, and that public access is not impeded. The special conditions are necessary in order to find the proposed project consistent with Sections 30230, 30231, 30233, 30212, 30213 and 30252 of the Coastal Act.

Special Condition No. 1 requires conformance with the 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 the disposal of all demolition and construction debris at an appropriate location. **Special Condition No. 5** requires adherence to Best Management Practices to ensure the continued protection of water quality and marine resources. **Special Condition No. 6** requires submittal of a parking management plan. **Special Condition No. 7** requires the applicant to secure a long-term (5-year) lease for the off-site parking location(s). **Special Condition No. 8** requires acknowledgement of a future improvements condition. **Special Condition No. 9** requires recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit #129-2527/Plan Check #2531-2002) from the City of Newport Beach Planning Department dated May 7, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Land Use Plan; Parking agreement between Bayport Yachts Inc. and Charter Yachts of Newport Beach; Parking agreement between CAL KM LLC and Charter Yachts of Newport Beach; Letter from Charter Yachts of Newport Beach dated June 23, 2004; Letter Holiday Inn Express Newport Beach dated April 14, 2004; *Marine Biological Resources Impact Assessment, Dock Renovation Project, Southshore Yacht Club, Newport Beach, California* prepared by Coastal Resources Management dated June 1, 2004; Regional Water Quality Control Board (RWQCB) letter dated July 1, 2004; Letter from Commission staff to Shellmaker, Inc dated July 29, 2004; Letter from City of Newport Beach, Harbor Resources Division to Commission staff dated September 23, 2004; Email from Bob Hoffman (NMFS) to Coastal Resources Management dated September 29, 2004; Letter from Shellmaker, Inc. to Commission staff dated October 8, 2004; Letter from California Department of Fish and Game to Commission staff dated October 20, 2004; Letter from Commission staff to Shellmaker, Inc dated November 12, 2004; Email from California Department of Fish and Game to Commission staff dated October 20, 2004; Letter from Coastal Resources management to Shellmaker, Inc. dated December 15, 2004; Letter from Shellmaker, Inc. to Commission staff dated December 16, 2004; and Review from the U.S. Army Corps. Of Engineers dated December 29, 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 and Eelgrass Location
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. 5-04-264 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. CONFORMANCE WITH EELGRASS MITIGATION PLAN

The applicant shall conform with the *Marine Biological Resources Impact Assessment, Dock Renovation Project, Southshore Yacht Club, Newport Beach, California* prepared by Coastal Resources Management dated June 1, 2004. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. EELGRASS SURVEY

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed 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 special 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 eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in Subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and 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, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the 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
 - 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 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 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 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 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 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 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 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.

6. PARKING MANAGEMENT PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a parking management plan for the development approved by Coastal Development Permit No. 5-04-264.
1. The parking plan shall indicate that parking is designated on-site in the following manner: 25 parking spaces available on-site for the administrative operation of the charter service and yacht club and remaining on-site commercial/business uses during normal business hours (9am to 5pm) Monday through Friday. Except for their administrative operations, the charter operation and yacht club will only operate after 5pm, Monday through Friday and on the weekends.
 2. The parking plan shall indicate that parking is designated on-site and off-site in the following manner: 43 tandem parking spaces will be available on-site and at least 50 parking spaces will be available at off-site lots located near the project site, on the north side of West Coast Highway between 2540 West Coast Highway and 2300 West Coast Highway after normal business hours (after 5pm) Monday through Friday and on weekends. Where there is any overlap of parking demand between the charter/yacht club operations and the other on-site commercial/business uses, the charter/yacht club operation shall secure additional off-site parking to off-set the on-site parking demands.
 3. The parking plan shall include, at a minimum, the following components:
 - a. A signage plan, depicting the design (e.g., dimensions, wording, etc.) of the posted parking signs. Signs shall be placed along West Coast Highway and at both the front and rear of the buildings. Signs be sized and sited such that they are clearly visible and legible to occupants of vehicles seeking parking to patronize the on-site uses. These signs shall clearly explain the availability of on-site and off-site parking and also locate the off-site parking locations;
 - b. A site plan depicting the locations where employee and customer parking signs will be installed;
 - c. The directions and maps to the off-site parking locations to be given to the charter boat and yacht club patrons;
 - d. When the charter/yacht club operation is serving patrons, the on-site and off-site parking lots shall have parking attendants to direct patrons to the designated parking areas (on and off-site).
- B.** The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a

Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. OFF-SITE PARKING

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit written evidence, acceptable to the Executive Director, which shows that at least 50 off-site parking spaces have been provided at private operations at location(s) on the north side of West Coast Highway between 2540 West Coast Highway and 2300 West Coast Highway to meet the demands of the on-site uses (Charter Yachts of Newport Beach and Pacific Coast Yacht Club). No public parking spaces (e.g., on public streets or within public parking lots) shall be used to satisfy the parking requirements. The applicant shall submit a plan that identifies the specific location(s) of the 50 required off-site parking spaces and shall submit a long-term (minimum 5-years) lease or rental agreement(s), for the review and approval of the Executive Director, that secures the applicant's (and the stated uses' employees and customers) legal ability to access and utilize the proposed off-site parking supply during the hours when these respective business operations are active. In addition, the applicant shall submit an inventory of all other parking spaces in the parking lot(s) which are to be leased or rented off-site, and shall demonstrate that the parking spaces to be leased or rented off-site to support the development approved by this permit are not encumbered by a prior Commission action, or leased or rented by any other person or party in a manner that would conflict with the use of parking spaces necessary to support the development approved by this permit.
- B.** The 50 required off-site parking spaces must be provided for the life of the charter and yacht club operation permitted in this action. The authorization to operate the approved charter and yacht club operation granted by this permit is contingent upon the continuing availability of the 50 required parking spaces to meet parking demands during all hours when the charter boat and yacht club is operating. Any expiration of or changes to any agreements required pursuant to part A of this condition shall be reported to the Executive Director. Any new agreement or changed agreement shall be subject to the review and approval of the Executive Director in accordance with the terms and conditions of this permit and may require a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-04-264. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-04-264. Accordingly, any future improvements to the boat docks authorized by this permit and the project site that currently has uses on site consisting of a charter boat, a yacht club, a radar company, a mortgage company and a flooring company, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. 5-04-264 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Prior Commission Action

The proposed project site (boat docks) is located bayward of two bayfront lots fronting Newport Bay at 2527 West Coast Highway in Newport Beach, County of Orange (Exhibits #1-2). The bayfront lots associated with the boat docks total 20,000 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for recreational and marine commercial and the proposed project adheres to this designation. The project site is located along Pacific Coast Highway (referenced as West Pacific Coast Highway in the project vicinity), which is a regional artery; a wide, high speed boulevard providing a convenient route for regional traffic in an area that is known as "Mariner's Mile" in the City of Newport Beach. Pacific Coast Highway is also the "main street" of Newport Beach providing access to many neighborhoods and business districts. This area along Pacific Coast Highway provides access to local businesses and the waterfront as well as ingress/egress to adjacent bluff-top neighborhoods. Historically, Mariner's Mile has always been a focus for marine activities. Yacht brokers, shipbuilding, boat services and haul-out facilities, warehouses, slips and sportfishing docks shared the flat, sandy strip facing the Lido Channel at the foot of the Newport Heights, accessing both the water and the Pacific Coast Highway. The recently City approved Mariner's Mile Strategic Vision and Design Framework plan goes on to say that in the past decade negative changes have occurred along Mariner's Mile, such as: 1) public access to and views of the waterfront have been limited, 2) automobile activity, and auto oriented businesses have predominated and 3) the district has become pedestrian unfriendly, walking is unpleasant and crossing West Pacific Coast Highway is difficult. Not all the recent changes have been negative however. For example, traditional marine oriented businesses have maintained a visible presence and the Orange Coast College Sailing Center has expanded and added a new Nautical Library. In addition, a significant remodel and addition of the Boy Scouts Sea Base facility has taken place recently. Much has changed since Pacific Coast Highway was completed through the City in 1928, but certain basic influences still hold true; then, as now, Mariner's Mile depends on its access to both the waterfront and the highway.

The bayfront lots associated with the project site consist of five (5) different business/commercial uses in three (3) different buildings. 1) the 2,086 square foot building located near the bulkhead houses a Charter boat company (440 square foot) and a yacht club (Pacific Coast Yacht Club); 2) the 2,804 square foot building fronting West Coast Highway houses a marine radar company; and 3) the 1,936 square foot building also fronting West Pacific Coast Highway houses a mortgage company (650 square feet) and a flooring company (1,286 square feet). The proposed dock project (discussed further below) is associated with the charter boat company and yacht club. North of the project site is West Coast Highway; South of the project site is Newport Bay, to the East and West are bulkheaded commercial properties.

The applicant stated that he purchased the property about a year ago to move his charter boat business in great part to fully comply with the new City of Newport Beach fire code standards which was instituted to provide safer docking of vessels throughout Newport Harbor. The new standards are intended to make it easier for the fireboats to get into marinas and for the boats to get out of their slips in case of emergency. The applicant felt it would be easiest to comply by developing a location that he owned rather than try to modify the docks at a location he was leasing.

The applicant proposes to remove an existing wooden dock system consisting of 10 slips (two (2) 20' (w) x 23' (l); one (1) 21.5' (w) x 23' (l); one (1) 11.5' (w) x 23' (l); two (2) 20' (w) x 17' (l); one (1) 21.5' (w) x 17' (l); one (1) 11.5' (w) x 17' (l); one (1) 10' (w) x 30' (l); and one (1) 20' (w) x 30' (l)), six (6)-12" pilings (Exhibit #3) and replace it with a new concrete dock system in a different configuration consisting of 3 slips with one main slip and two side ties (one (1) 24' (w) x 105' (l); one (1) 34' (w) x 105' (l); and one (1) 30' (w) x 105' (l)), twelve (12)-16" diameter concrete piles and an 80-foot long gangway (Exhibits #4-5). The purpose of this project is to provide docking facilities and access for the owner's charter boat business. An approval-in-concept from the City of Newport Beach Harbor Resources Division consisting of an eelgrass survey conducted on the project site on January 16, 2004 indicates that eelgrass will be adversely impacted by the proposed project (shading impacts only). A mitigation plan has also been submitted, which also conducted a survey on March 6 2004, which also identified eelgrass that would be impacted by shading.

A charter boat company (Charter Yachts of Newport Beach) will use one of the three new large boat slips. The charter yacht (named the ICON) can accommodate 150 passengers plus 14 crewmembers. The applicant has stated that a second boat slip may be utilized for another charter boat in the future, but is not proposing such use at this time. The second and third slips would be leased for non-charter purposes.

The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (Harbor Permit No. 129-2527). 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 had no comments.

B. Fill of Coastal Waters

The proposed project will involve the placement of twelve (12)-16" diameter concrete piles 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. 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 would remove an existing wooden dock system consisting of 10 slips with six (6)-12" pilings and replace it with a new concrete dock system in a different configuration consisting of 3 slips (one main slip and two side ties), an 80-foot long gangway; and twelve (12)-16" diameter concrete 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 applicant does not anticipate any direct impacts to eelgrass due to the piles with the proposed project, though there will be shading 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, Dock Renovation Project, Southshore Yacht Club, Newport Beach, California* prepared by Coastal Resources Management dated June 1, 2004. A single patch of eelgrass was located in the northeast section of the yacht club in the vicinity of the boat hoist approximately 6-feet from the headwall. The single patch of eelgrass totals 1.8 square meters (19.6 square feet). The

vegetation will be eliminated due to shading effects from the proposed gangway and the existing headwall and/or the presence of a large charter vessel tied to the docks.

This mitigation plan proposes to offset the 19.6 square feet of eelgrass shading impact at a 1.2:1 (mitigation to impact) off-site. On-site mitigation was not chosen due to a possible less successful growth rate. The proposed mitigation plan identified Bay Isle as the mitigation site. In addition, the California Department of Fish and Game also stated that the Deanza/Bayside Drive site could also be a potential mitigation site. Therefore, the mitigation plan, as submitted, is acceptable. **Special Condition No. 1** requires the applicant to comply with the mitigation plan, as submitted.

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. The proposed project is the least environmentally damaging feasible alternative and thus 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)* (Exhibit #6) 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 19.6 square feet of eelgrass due to shading effects from the proposed gangway and the existing headwall and/or the presence of a large charter vessel tied to the docks.

On January 16, 2004 and March 6, 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 agendaized for the June Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60 days would have passed. 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.

¹ References

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

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.

On March 6 2004, the site was also surveyed for *Caulerpa taxifolia* and none was found. This survey was completed on March 6, 2004, and is only valid for 90 days. The project is agendaized for the June 2005 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* 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 taxifolia* 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,

Chisholm, J.R.M., M. Marchionetti, 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.

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.

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.

3. Water Quality

The proposed project will remove an existing wooden dock system consisting of 10 slips with six (6)-12" pilings and replace it with a new concrete dock system in a different configuration consisting of 3 slips (one main slip and two side ties), twelve (12)-16" diameter concrete plies and an 80-foot long gangway.

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).

Conclusion

Therefore, only as conditioned to conform with the proposed mitigation plan, 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. 1, 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 30212 of the Coastal Act states, in relevant part:

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

Section 30213 of the Coastal Act states in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

1. Access On-Site

Section 30212 of the Coastal Act requires that new development provide public access from the nearest public roadway to the shoreline and along the coast except under certain circumstances. The project site is located along West Coast Highway in an area that is known as "Mariner's Mile" in the City of Newport Beach. Pacific Coast Highway is also the "main street" of Newport Beach providing access to many neighborhoods and business districts. This area along Pacific Coast Highway provides access to local businesses and the waterfront as well as ingress/egress to adjacent bluff-top neighborhoods. Concurrent with the uses located in the area, the project site provides public access, as one of the uses on site is a charter boat facility, which offers public access to the bay. In addition, the project site is located within the "Mariner's Mile Waterfront Feasibility Study" area that is analyzing the possibility of placing a waterfront walkway along Mariner's Mile that would enhance public access. The project site is located within this feasibility study area and a public walkway located on the bulkhead is currently being analyzed. The proposed project would not have any impact to this proposal.

2. Lower Cost Visitor Serving Uses

Section 30213 of the Coastal Act requires that lower cost and recreational facilities be protected, encouraged and where feasible provided. The proposed reconstruction of the boat docks will result in the removal of 10 medium/small boat slips (two (2) 20' (w) x 23' (l); one (1) 21.5' (w) x 23' (l); one (1) 11.5' (w) x 23' (l); two (2) 20' (w) x 17' (l); one (1) 21.5' (w) x 17' (l); one (1) 11.5' (w) x 17' (l); one (1) 10' (w) x 30' (l); and one (1) 20' (w) x 30' (l)) and the replacement with 3 large boat slips (one (1) 24' (w) x 105' (l); one (1) 34' (w) x 105' (l); and one (1) 30' (w) x 105' (l)). The medium/small boats that once occupied these slips have been gone over a year now since the purchase of the property by the current owner. In other recent actions (e.g. at Sunset Aquatic Park in Seal Beach/5-99-244 and Marina del Rey) the Commission has sought to preserve the availability of medium/small boat slips as a means of assuring lower cost access to coastal waters via boating. While the removal of the 10 medium/small boat slips would change the quantity of these smaller size slips on the project site, the surrounding area will continue to provide other locations, such as the Boy Scouts Sea Base and boat docks located along Mariner's Mile, where slips for such sized boats can be found. Commission staff discussed the relocation of these medium/small boats with the City of Newport Beach Harbor Resources Division staff and City staff stated that while they do not know the exact location where these boats are now docked, it is most likely that these boat owners were able to find slips in the area near the project site. In addition, the proposed use of one of the three boat slips (to be discussed further in the report) will be for charter boat use. This use will provide public access to the bay and would also provide such access to a larger number of the public as opposed to the smaller population that would have had use of the 10 boat slips.

3. Parking

Section 30252 of the Coastal Act requires the protection of public access to the bay. An adequate quantity of public parking spaces maintains this access. However, public access can be adversely affected if commercial/business uses in the coastal zone do not provide adequate on-site or dedicated parking to serve the proposed development. In cases of inadequate parking, patrons of the uses such as the commercial/business uses, charter passengers and yacht club members available on-site would displace other public users from public parking spaces.

a. Uses On-Site and Parking Evaluation

The bayfront lots associated with the project site consist of five (5) different business/commercial uses in three (3) different buildings. 1) the 2,086 square foot building located near the bulkhead houses a Charter boat company (440 square foot) and a yacht club, Pacific Coast Yacht Club (1,646 square feet); 2) the 2,804 square foot building fronting West Coast Highway houses a radar company and previously an architectural company; and 3) the 1,936 square foot building also fronting West Pacific Coast Highway houses a mortgage company (650 square feet) and a flooring company (1,286 square feet). During normal business hours (9am to 5pm) Monday through Friday, 25 parking spaces will be available on-site for the administrative operations of the charter boat company (not for any actual cruises, but for business operation), administrative operations of the yacht club (again, no patron use), radar company, mortgage company, and flooring company. After normal business hours (after 5pm) Monday through Friday and on weekends, 43 tandem parking spaces will be available on-site for charter boat operations and the yacht club. According to the applicant, during the evening and on the weekends, the other on-site uses would be closed and thus wouldn't be using any of the on-site parking spaces. Additional parking has also been proposed at off-site lots of other businesses, located on the north side of West Coast Highway, totaling 85 parking spaces near the project site to serve the evening and weekend charter boat operations and the yacht club. Also, an additional 40 off-site parking spaces is available for a total of 125, off-site parking spaces. The following is an evaluation of the Commission's regularly used parking requirements for each proposed land use.

i Charter Boat Company (actual boating operations)

The applicant is subject to City of Newport Beach Municipal Code Chapter 5.18 for operation of marine charters. According to the City Code, each charter must apply for a Marine Charter Permit from the Revenue Division of the City. Section 5.18.040 specifies that

"an application shall be denied if there is substantial evidence that:....

3. The proposed charter does not provide facilities to ensure adequate off-street parking, or the safe loading and unloading of passengers and supplies. For the purpose of this section, parking shall be considered adequate only if one parking space is provided

*for each **three** passengers or the applicant can demonstrate, to the satisfaction of the Revenue Manager or Harbor Inspector, that fewer spaces are required because of written passenger commitments to carpool or use different forms of transportation."*

The applicant has stated that currently there is one charter boat located on-site (the ICON) that can accommodate 150 passengers plus 14 crewmembers. This boat would occupy one of the 3 slips proposed with this project. Based upon the City's requirement of 1 parking space per 3 passengers (the Commission has no comparable guideline), 55 parking spaces is required for this charter boat use. The applicant has indicated that a charter boat may occupy a second boat slip in the future, but they are not proposing a second charter boat at this time. When this does occur, an amendment to add more charter capacity would be required. If the boat were to be a similar ship, an additional 55 parking spaces would be required. However, currently no parking is required for this second slip, aside from those already available on-site. The third slip would be leased to a yacht company in exchange for off-site parking, therefore parking for this slip is not required. Thus, a total of 55 parking spaces are required for this use. The operating hours of this use would be after normal business hours (after 5pm) Monday to Friday and on weekends.

ii Charter Boat Company (business operation)

During normal business hours no actual operation of charter boats would occur, only administrative operations. This use would require the office to be open during normal business hours Monday to Friday (after 5pm) as well as after normal business hours (after 5pm) and on weekends.

The Commission typically requires 1 space per each 500 square feet of gross floor area for boat rental uses. The use occupies 440 square feet portion of a building. Based on the guideline of 1 space per 500 square feet of gross floor area for boat rental uses, the parking demand totals 1 parking space.

iii Yacht Club

The Commission typically requires 1 space per each 4 persons, based on maximum capacity of all facilities capable of use as determined by the staff, plus 1 space per each 2 employees. The total number of people the facility is capable of holding is 148. In regards to employees needed to operate the facility, the applicant has stated that no additional employees besides employees of the charter company would be necessary. Thus, based on the guideline of 1 space per 4 persons, the parking demand totals 37 parking spaces. The operating hours of this use would be after normal business hours (after 5pm) Monday to Friday and on weekends and the club would be available for member-only events.

iv Radar Company, Mortgage company, and Flooring company

1) Radar Company and Office Space

The Commission typically would require 1 space per each 250 square feet of gross floor area for general office uses. This parking ratio would apply to a vacant office space (that presumably will be occupied in the future) and the existing radar company. The uses occupy 2,804 square feet of a building. Based on the guideline of 1 space per 250 square feet of gross floor area for general office uses, the parking demand totals 12 parking spaces. The operating hours of these uses would be normal business hours (9am to 5pm) Monday through Friday and would be closed on weekends.

2) Mortgage Company

The Commission typically would require 1 space per each 225 square feet of gross floor area for financial institution uses. The use occupies 650 square feet portion of a building. Based on the guideline of 1 space per 225 square feet of gross floor area for financial institution uses, the parking demand totals 3 parking spaces. The operating hours of these uses would be normal business hours (9am to 5pm) Monday through Friday and would be closed on weekends.

3) Flooring Store

The Commission typically would require 1 space per each 500 square feet of gross floor area for furniture or similar uses. The use occupies 1,286 square feet portion of a building. Based on the standard of 1 space per 500 square feet of gross floor area for furniture or similar uses, the parking demand totals 3 parking spaces. The operating hours of these uses would be normal business hours (9am to 5pm) Monday through Friday and would be closed on weekends.

The applicant has proposed that during normal business hours (9am to 5pm) Monday through Friday, 25 parking spaces will be available on-site for the administrative operation of the Charter boat company (not for any actual cruises, but for business operation) and yacht club, radar company, mortgage company, and flooring company. For the business operations that operate during normal business hours, 19 parking spaces are required resulting in an excess of 6 parking spaces. Therefore, the parking available for uses during normal business hours is consistent with the Commission's regularly used parking guidelines.

The applicant has proposed that after normal business hours (after 5pm) Monday through Friday and on weekends, 43 tandem parking spaces will be available on-site and a total of 125 parking spaces found at off-site parking lots near the project site, on the north side of West Coast Highway. These off-site parking spaces would be provided on other business properties where their operations are not

utilizing all of the available parking located on their sites. A total of 168 parking spaces (43 on-site, 125 off-site) are available for uses taking place after normal business hours. These evening and weekend operations have a demand of 93 parking spaces, thus there is an excess of 75 parking spaces using the Commission's parking guidelines and certain City standards where the Commission has no guideline. In order to verify that 50 required-off-site parking spaces (93 parking spaces - 43 parking spaces located on site = 50 off-site parking spaces required) are available for these uses, the applicant will need to submit a lease agreement with the off-site location(s) where parking will be made available. In addition, the location(s) of these parking spaces should be located near the project site, so that accessibility to the use is not an issue. Therefore, the Commission imposes **Special Condition No. 7**, which requires the applicant to shall submit evidence that 50 off-site parking spaces have been provided at a location(s) near the project site.

The applicant is currently providing an adequate number of spaces based on existing uses. However, a change in type or intensity of use in the future may result in additional parking requirements. As such, any such changes will require an amendment or new permit. Therefore, the Commission imposes **Special Condition No. 8**, which requires Commission review on any proposed future development on the project site.

2. Parking Management

Though the parking proposed by the applicant is numerically adequate, there is a concern regarding the feasibility of the parking arrangement. Especially since the parking availability on-site changes from 25 parking spaces during normal business hours to 43 tandem parking spaces during after business hours and also since off-site parking locations for the after normal business hour uses is proposed. During normal business hours, 25 parking spaces would be available on-site. The applicant has stated that the on-site parking lot consisting of 43 tandem parking spaces would not be transferred into this configuration until all business vehicles have cleared the lot after normal business hours. After the lot has been cleared, a parking attendant for the charter service will staff this lot. The charter boat guests and yacht club members will be instructed and given maps showing the location of off-site lots. Parking attendants will also instruct the charter guests to park at the off-site lots first and then the on-site lot. To assure that the parking arrangement is rational and that customers of the uses will have adequate, usable parking available, the applicant must submit a Parking Management Plan that clearly identifies how parking will be managed for the uses that will take place during and after normal business hours. To minimize adverse impacts to public access resulting from a lack of public parking, the Commission imposes **Special Condition No. 6**, which requires the submittal of a parking management plan. This Plan shall include, but not limited to, 1) signage to be placed on the exterior walls of the building (frontage street and alley) to inform customers where to park and at what times the parking restrictions are in place; 2) a site plan depicting the locations where employee and customer parking signs will be installed; 3) directions and maps to be given to the charter boat patrons as well as the yacht club members; and 4) the off-site parking lots shall have parking attendants. The applicant may also propose to designate parking spaces for employees and customers by stenciling labels on the pavement.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 8** requiring that the property owners record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land.

Conclusion

Therefore, only as conditioned to notify the Commission of any future development on site, to submit a parking management plan, to require a long-term (5 year) rental or lease for the off-site parking location(s) and to require a deed restriction as stated in **Special Condition No. 6, 7, 8 and 9** does the Commission find the proposed project consistent with Section 30252 of the California 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.

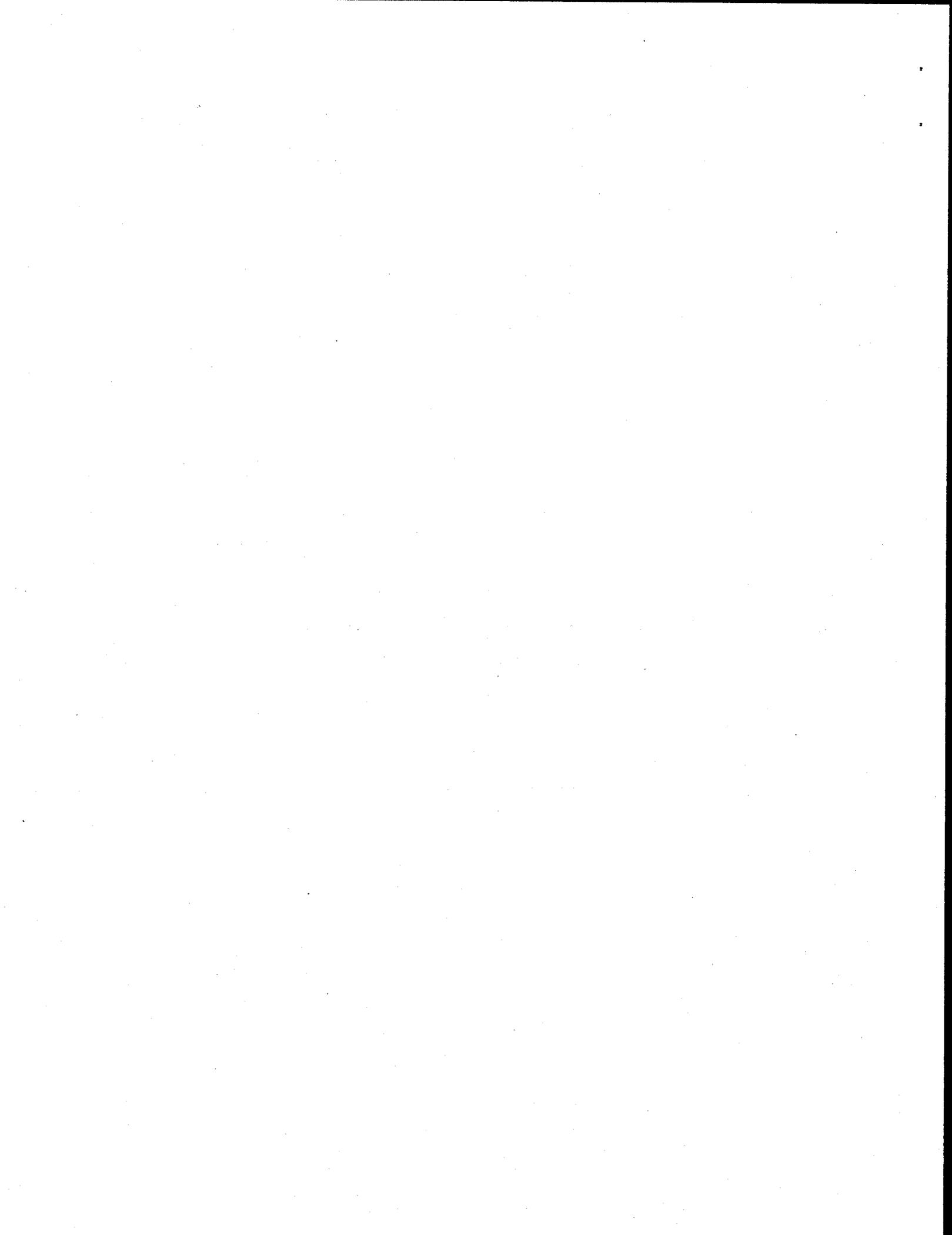
F. California Environmental Quality Act (CEQA)

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 conformance with the eelgrass mitigation plan, 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, submittal of a parking management plan, a long term (5-year) rental or lease for the off-site parking location(s), future improvements acknowledgement and a deed restriction.

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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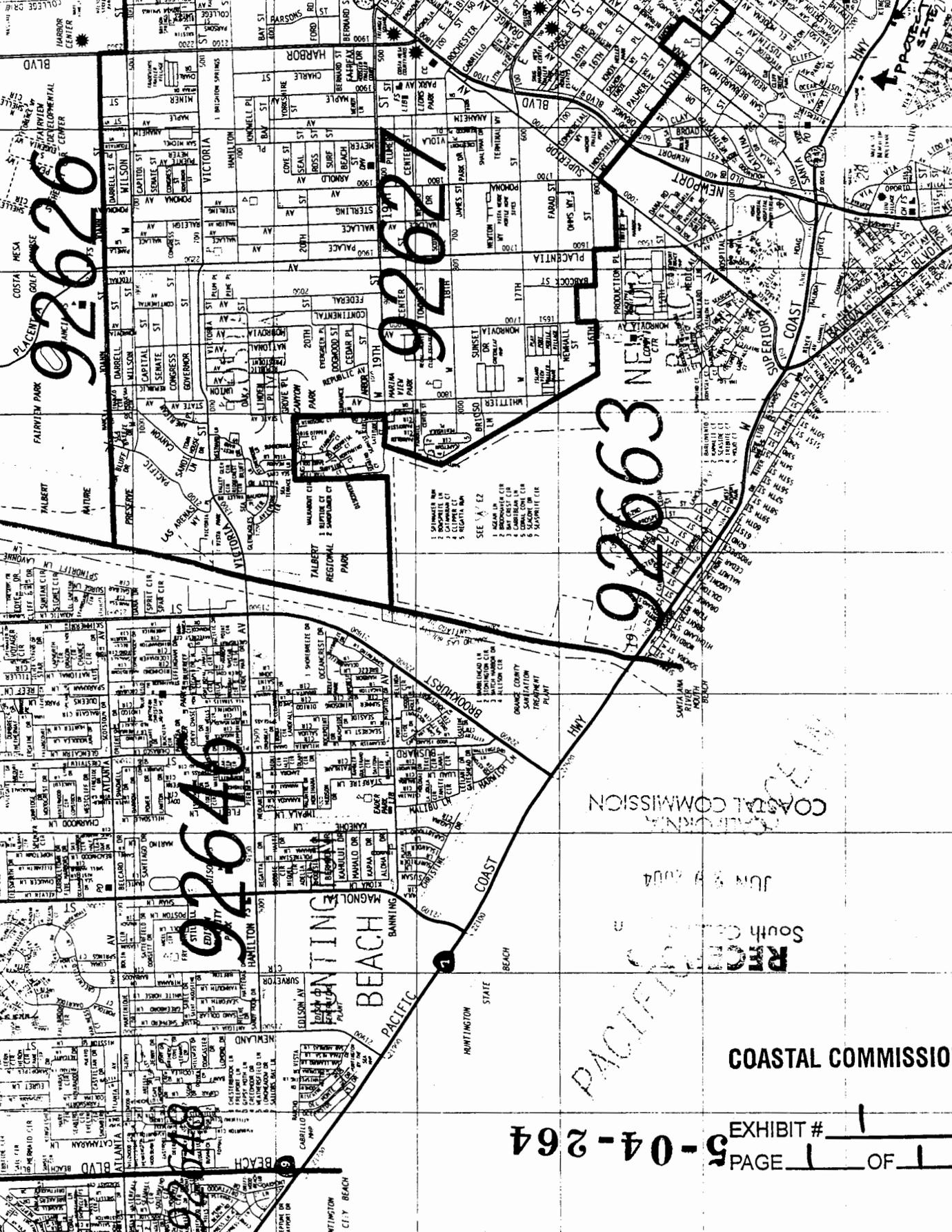
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COASTAL COMMISSION

EXHIBIT # 1 OF 1 PAGE

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EXHIBIT # 2
PAGE 1 OF 1

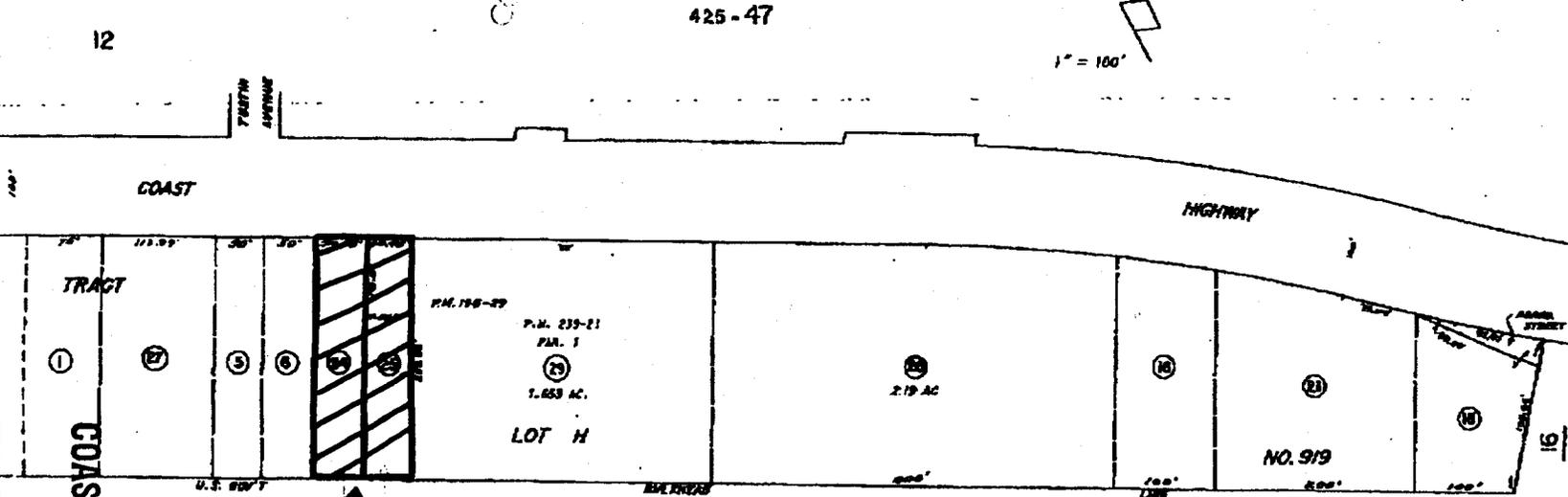
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MARCH 1949

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ASSESSOR'S MAP
BOOK 049 PAGE 15
COUNTY OF ORANGE



Description: Orange, CA Assessor Map 49-15 Page: 1 of 1
Order: B23 Comment:

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South Coast Region

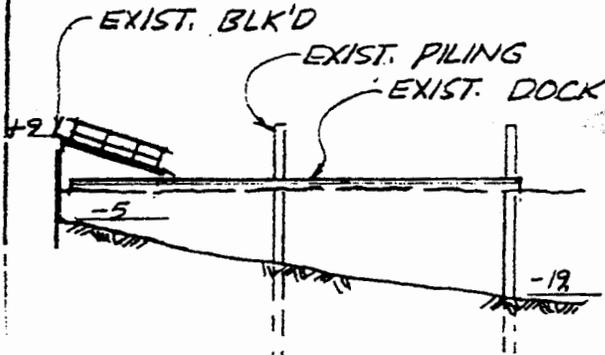
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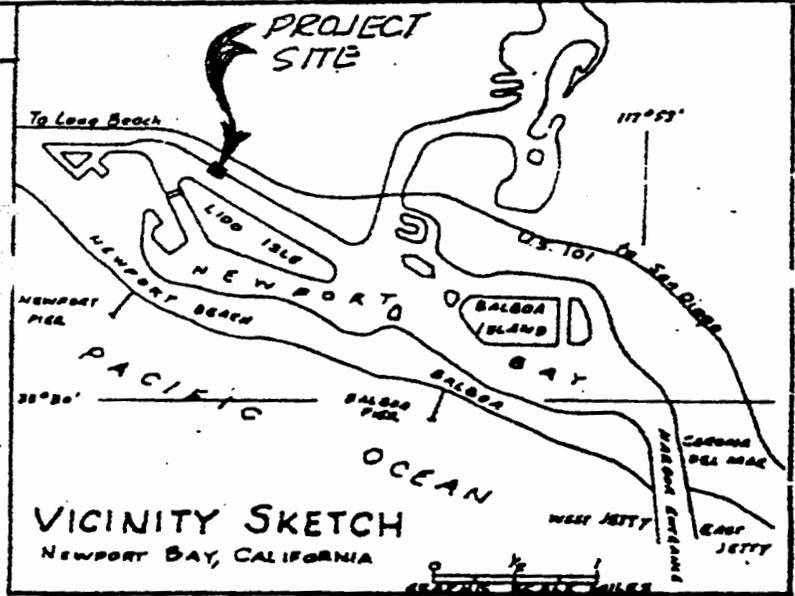
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CITY OF NEWPORT BEACH



SECTION - A

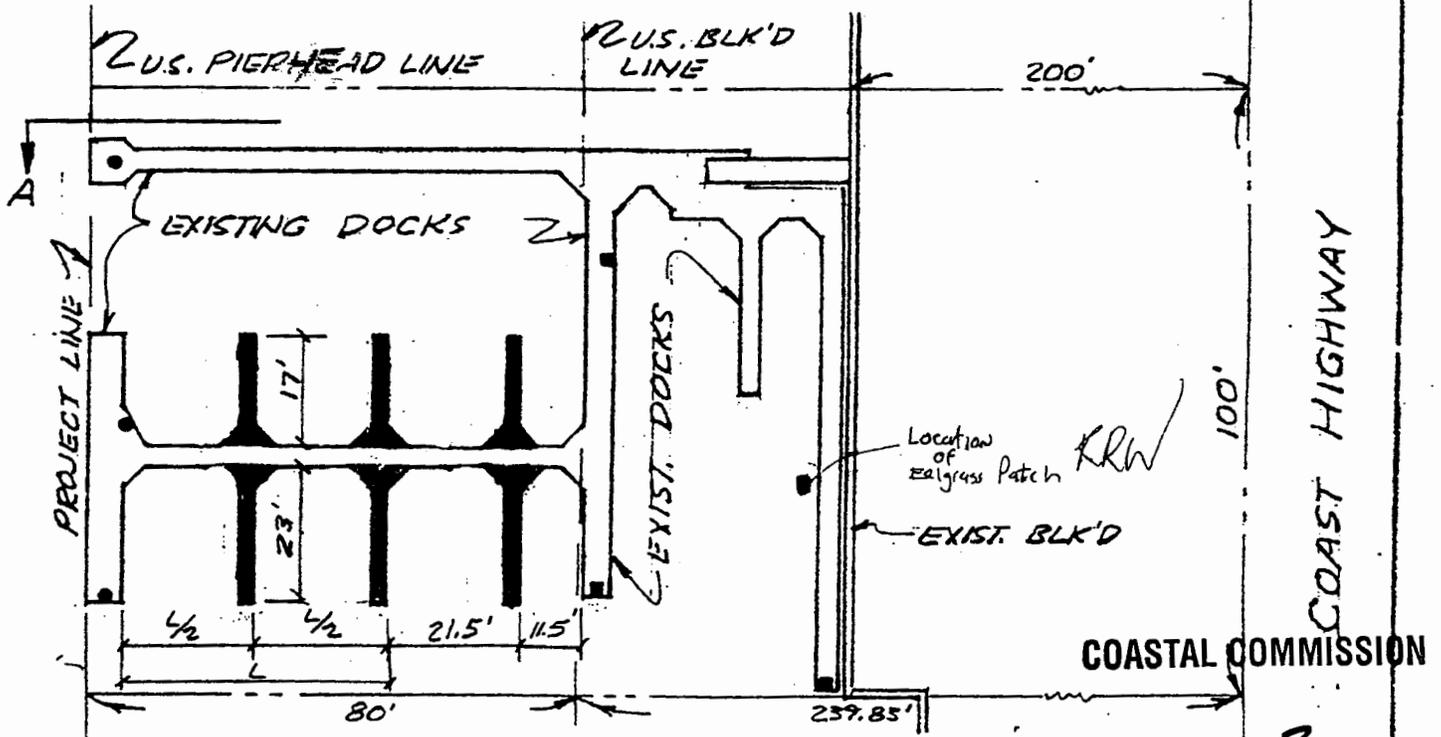
HORIZ. 1" = 50'
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VICINITY SKETCH
NEWPORT BAY, CALIFORNIA

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.

VIKINGS PORT

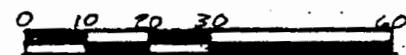


COASTAL COMMISSION

MARINERS MILE SHIP YARD

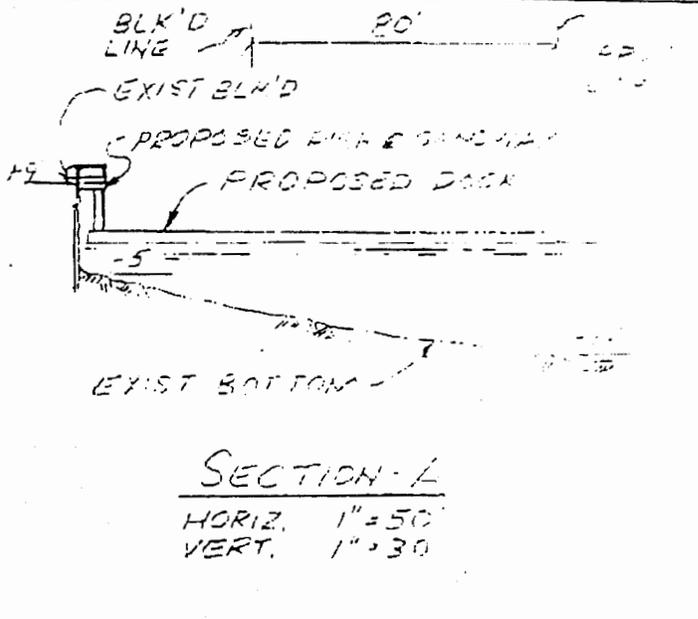
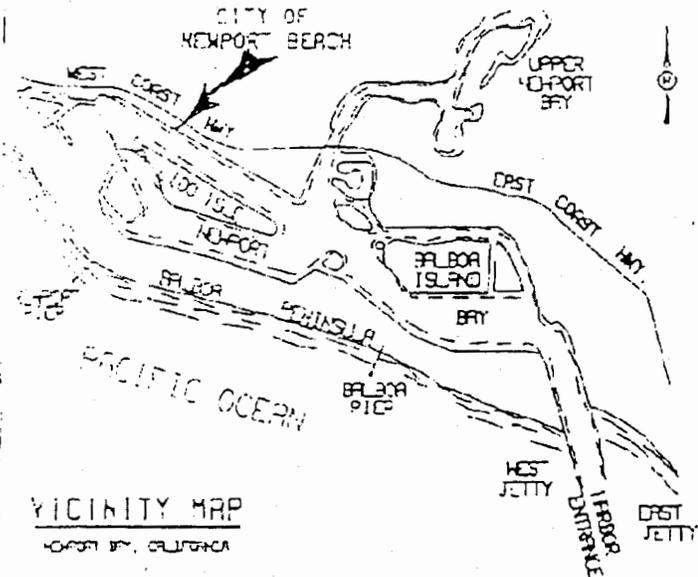
EXHIBIT # 3

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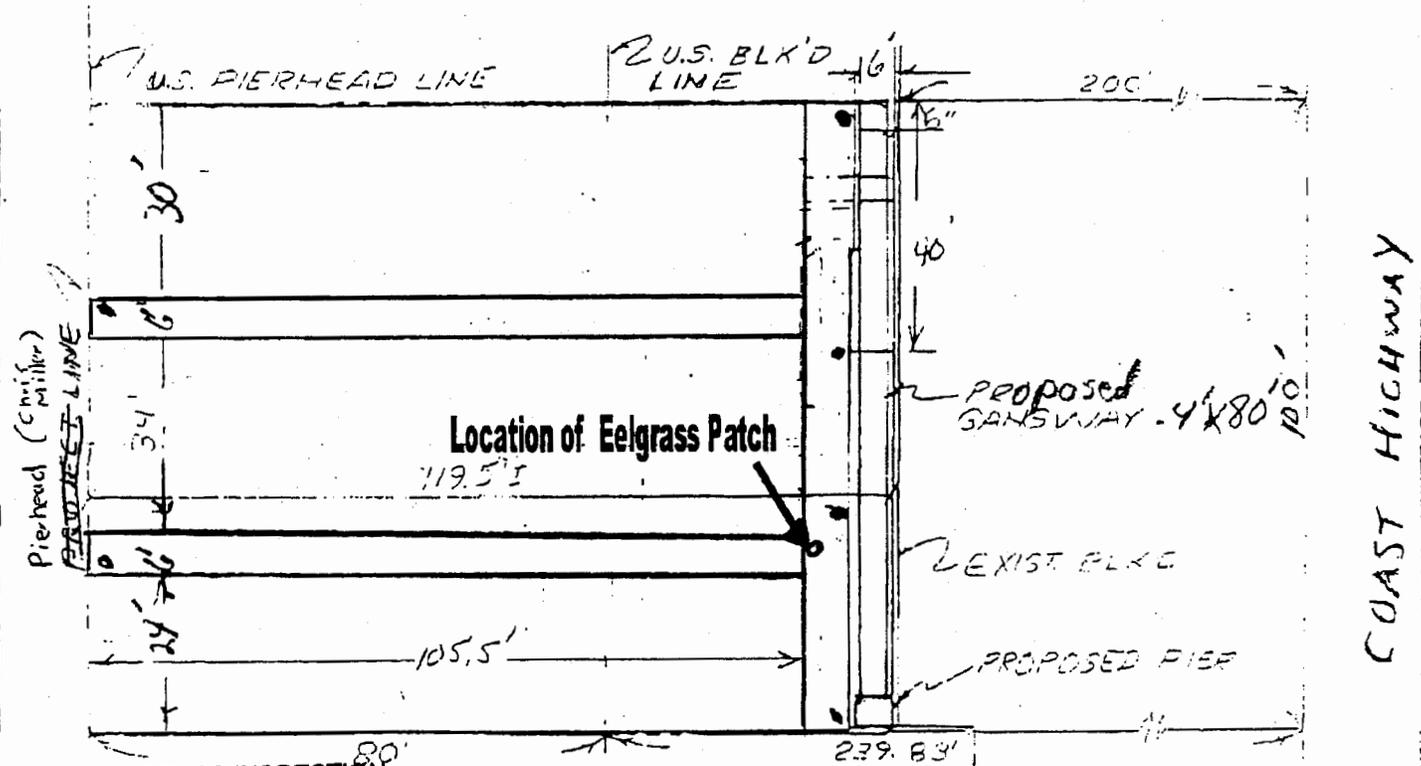


PLICANTS NAME

CITY OF NEWPORT BEACH



SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER



EEL GRASS INSPECTION

- NO EEL GRASS WITHIN 15' OF PROJECT
- EEL GRASS IN THE PROJECT AREA

Chris Miller - Per: Rick Ware dive on 11/6/04

SIGNATURE
129-2529
PERMIT #

5/7/04
DATE

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH
CHRIS MILLER 5/7/04

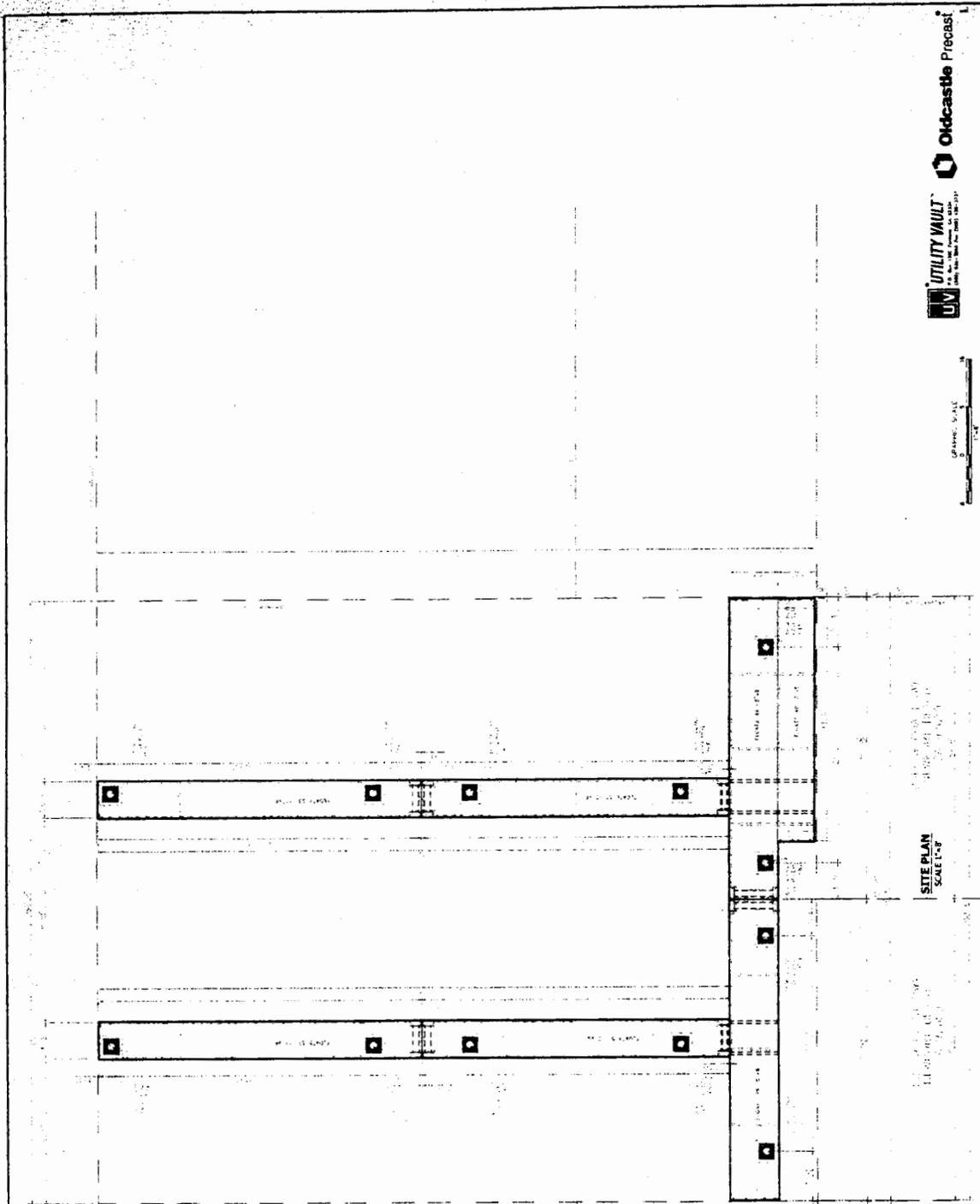
COASTAL COMMISSION

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PLAN VIEW 1"=30'

APPLICANT'S NAME NORM GOODIN

JOB ADDRESS 2537 W. COAST HWY DATE



UTILITY VAULT
 Oldcastle Precast

Sheet No. 07-30-04
 Date 2/19/11
 Scale L-1
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SITE PLAN

15551 Via Colwell, Newport, Suite 200
 Newport, CA 92663
 Tel: 310 548 1332
 Fax: 310 548 1924

BICUWATION
 Planning and Engineering Services
 for Public and Private Agencies



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	2/19/11
2	REVISED PER COMMENTS	2/19/11
3	REVISED PER COMMENTS	2/19/11
4	REVISED PER COMMENTS	2/19/11

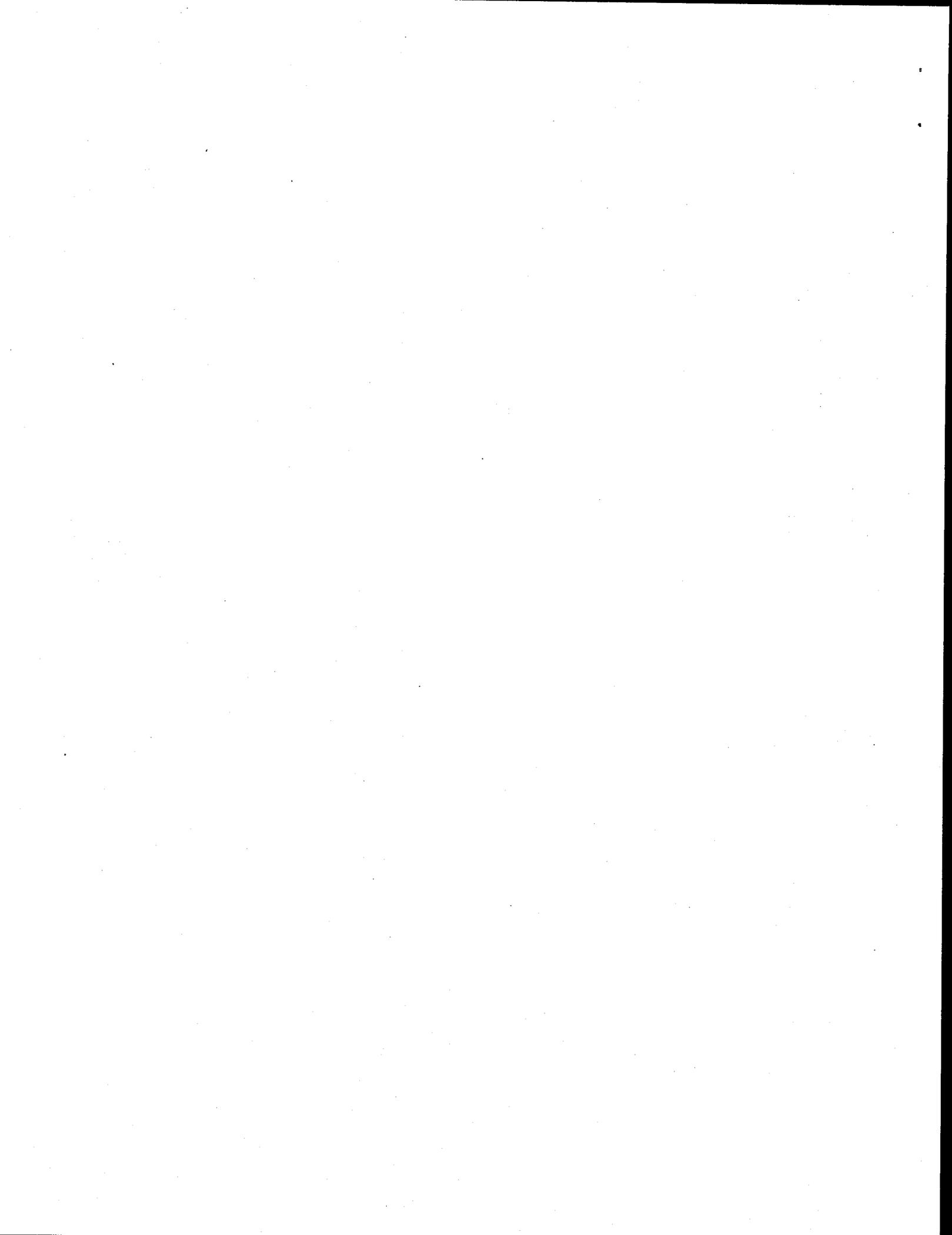
SITE PLAN
 SCALE: 1" = 10'

COASTAL COMMISSION

EXHIBIT # S
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NORM GOODIN
 2527 W. COAST HWY
 NEWPORT BEACH, CA 92663

STATUS



SOUTHERN CALIFORNIA EELGRASS MITIGATION POLICY
(Adopted July 31, 1991)

Eelgrass (*Zostera marina*) vegetated areas are recognized as important ecological communities in shallow bays and estuaries because of their multiple biological and physical values. Eelgrass habitat functions as an important structural environment for resident bay and estuarine species, offering both predation refuge and a food source. Eelgrass functions as a nursery area for many commercially and recreational important finfish and shellfish species, including those that are resident within bays and estuaries, as well as oceanic species that enter estuaries to breed or spawn. Eelgrass also provides a unique habitat that supports a high diversity of non-commercially important species whose ecological roles are less well understood.

Eelgrass is a major food source in nearshore marine systems, contributing to the system at multiple trophic levels. Eelgrass provides the greatest amount of primary production of any nearshore marine ecosystem, forming the base of detrital-based food webs and as well as providing a food source for organisms that feed directly on eelgrass leaves, such as migrating waterfowl. Eelgrass is also a source of secondary production, supporting epiphytic plants, animals, and microbial organisms that in turn are grazed upon by other invertebrates, larval and juvenile fish, and birds.

In addition to habitat and resource attributes, eelgrass serves beneficial physical roles in bays and estuaries. Eelgrass beds dampen wave and current action, trap suspended particulates, and reduce erosion by stabilizing the sediment. They also improve water clarity, cycle nutrients, and generate oxygen during daylight hours.

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). While the intent of this Policy is to provide a basis for consistent recommendations for projects that may impact existing eelgrass resources, there may be circumstances (e.g., climatic events) where flexibility in the application of this Policy is warranted. As a consequence, deviations from the stated Policy may be allowed on a case-by-case basis. This policy should be cited as the Southern California Eelgrass Mitigation Policy (revision 10).

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 (NMFS), U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG).

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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. Mitigation will be required for the loss of existing vegetated areas, loss of potential eelgrass habitat, and/or degradation of existing/potential eelgrass habitat. Mitigation for boat docks and/or related work is addressed in section 2.

2. **Boat Docks and Related Structures.** Boat docks, ramps, gangways and similar structures should avoid eelgrass vegetated or potential eelgrass vegetated areas to the maximum extent feasible. If avoidance of eelgrass or potential eelgrass areas is infeasible, impacts should be minimized by utilizing, to the maximum extent feasible, construction materials that allow for greater light penetration (i.e., grating, translucent panels, etc.). For projects where the impact cannot be determined until after project completion (i.e., vessel shading, vessel traffic) a determination regarding the amount of mitigation shall be made based upon two annual monitoring surveys conducted during the time period of August to October which document the changes in the bed (areal extent and density) in the vicinity of the footprint of the boat dock and/or related structures. Any impacts determined by these monitoring surveys shall be mitigated per sections 3-12 of this policy. Projects subject to this section must include a statement from the applicant indicating their understanding of the potential mitigation obligation which may follow the initial two-year monitoring.

3. **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 potential eelgrass habitat areas. Potential habitat is defined as areas where eelgrass would normally be expected to occur but where no vegetation currently exists. Factors to be considered in delineating potential habitat areas include appropriate circulation, light, sediment, slope, salinity, temperature, dissolved oxygen, depth, proximity to eelgrass, history of eelgrass coverage, etc.

Protocol for mapping shall consist of the following format:

1) Bounding Coordinates

Horizontal datum - Universal Transverse Mercator (UTM), NAD 83, Zone 11 is the preferred projection and datum. If another projection or datum is used, the map and spatial data must include metadata that accurately defines the projection and datum.

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

2) Units

Transects and grids in meters.

Area measurements in square meters/hectares.

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3) File format

A spatial data layer compatible with readily available geographic information system software must be sent to NMFS and any other interested resource agency when the area mapped has greater than 10 square meters of eelgrass. For those areas with less than 10 square meters, a table must be provided giving the bounding x,y coordinates of the eelgrass areas. In addition to a spatial layer or table, a hard-copy map should be included within the survey report. The projection and datum should be clearly defined in the metadata and/or an associated text file.

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 60 days with the exception of surveys completed in August - October. Surveys completed after unusual climatic events (i.e., high rainfall) may have modified requirements and surveyors should contact NMFS, CDFG, and USFWS to determine if any modifications to the standard survey procedures will be required. A survey completed in August - October shall be valid until the resumption of active growth (i.e., in most instances, 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.

4. **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.

5. **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 percent 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 percent to provide greater assurance that the success criteria, as specified in Section 10, 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 10) are not likely to be met.

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For potential eelgrass habitat, a ratio of 1 to 1 of equivalent habitat shall be created.

Degradation of existing eelgrass vegetated habitat that results in a reduction of density greater than 25 percent shall be mitigated on a one-for-one basis. For example, a 25 percent reduction in density of a 100 square meter (100 turions/meter) eelgrass bed to 75 turions/meter would require the establishment of 25 square meters of new eelgrass with a density at or greater than the pre-impact density. All other provisions of the Policy would apply.

6. 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 percent 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.

7. 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 8. For on-site mitigation, transplanting should be postponed when construction work is likely to impact the mitigation. However, transplanting of on-site mitigation should be started no later than 135 days after initiation of in-water construction activities. A construction schedule which includes specific starting and ending dates for all work including mitigation activities shall be provided to the resource agencies for approval at least 30 days prior to initiating in-water construction.

8. 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.

9. 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 initial planting, 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 avoid the winter months of November through February. Sufficient flexibility in the scheduling of the 6 month surveys shall be allowed in order to ensure the work is

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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 and shall include the summary sheet included at the end of this policy.

10. 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 impact area and mitigation site(s)**. 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 original impact area, control or transplant bed. Specific criteria are as follows:

- a. the mitigation site shall achieve a minimum of 70 percent area of eelgrass and 30 percent density as compared to the original project impact area after the first year.
- b. the mitigation site shall achieve a minimum of 85 percent area of eelgrass and 70 percent density as compared to the original project impact area after the second year.
- c. the mitigation site shall achieve a sustained 100 percent area of eelgrass bed and at least 85 percent density as compared to the original project impact area for the third, fourth and fifth years.

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

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

MTA = mitigation transplant area.

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

D_t = transplant deficiency in density criterion (%).

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

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

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The STA formula shall be applied to actions that result in the degradation of habitat (i.e., either loss of areal extent or reduction in density).

Five 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 8.
- 5) Annual monitoring will be required of the STA for five years following the implementation and all performance standards apply to the STA.

11. **Mitigation Bank.** Any mitigation transplant success that, after five years, exceeds the mitigation requirements, as defined in section 10, 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.

12. 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 1 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 1 meter corridor width. Should the post-project or 12 month survey demonstrate a loss of eelgrass greater than the 1 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 01/18/05)

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Southern California Eelgrass Mitigation Policy Monitoring and Compliance Reporting Summary

PERMIT DATA:

Permit (Type, Number)	Issuance Date	Expiration Date	Agency Contact
ACOE:			
CDP:			
Other:			

EELGRASS IMPACT AND MITIGATION REQUIREMENTS SUMMARY:

Permitted Eelgrass Impact Estimate	(m ²)	
Actual Eelgrass Impact	(m ²)	(post-const. survey date)
Eelgrass Mitigation Requirement	(m ²)	(mitigation plan ref.)
Impact Site Location		(location)
Impact Site Center Coordinates		(define projection and datum)
Mitigation Site Location		(location)
Mitigation Site Center Coordinates		(define projection and datum)

PERMITTEE CONTACT INFORMATION:

Project Name	(same as permit ref.)
Permittee Information	(permittee name)
	(mailing address)
	(city, state, zip)
	(permittee contact)
Mitigation Consultant	(phone, fax., e-mail)
	(consultant contact)
	(phone, fax., e-mail)

PROJECT ACTIVITY DATA:

Activity	Start Date	End Date	Reference Info.
<i>Eelgrass Impact</i>			
Installation of Eelgrass Mitigation			
<i>Initiation of Mitigation Monitoring</i>			

MITIGATION STATUS DATA:

Mitigation Milestone	Scheduled Survey	Survey Date	Area (m ²)	Density (turions/m ²)	Reference Info.
<i>Requirement</i>					
<i>0-month</i>					
<i>6-month</i>					
<i>12-month</i>					
<i>24-month</i>					
<i>36-month</i>					
<i>48-month</i>					
<i>60-month</i>					

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FINAL ASSESSMENT:

Was mitigation met?	
Were mitigation and monitoring performed timely?	
Was delay penalty required or were supplemental mitigation programs necessary?	

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