

CALIFORNIA COASTAL COMMISSION

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Filed: August 31, 2006
49th Day: October 19, 2006
180th Day: February 27, 2007
Staff: Fernie Sy-LB
Staff Report: December 21, 2006
Hearing Date: January 10-12, 2007
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-06-193

APPLICANT: Michael and Joan Ruffatto & John and Marcia McDonald

AGENT: Swift Slip Dock & Pier Builders

PROJECT LOCATION: 105 & 107 Bayside Place, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove an existing dock system and install a new shared dock system consisting of: a 6' x 116' pier approach and a 12' x 16' pier platform with fourteen (14) 10" diameter steel piles coated with NSP-120, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' lobe on the left finger, a 4' x 26' finger with a 4' x 13.5' backwalk on the right side of the center finger, and six (6) 12" diameter steel pile coated with NSP-120. The docks will be composed of Douglas fir and Trex decking. The project will directly impact 2.4 square feet of eelgrass that will be transplanted on-site at a 1.2:1 ratio.

SUMMARY OF STAFF RECOMMENDATION:

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

SPECIAL CONDITION NO. 1 requires a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required. **SPECIAL CONDITION NO. 2** requires conformance with the proposed eelgrass mitigation plan. **SPECIAL CONDITION NO. 3** 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. 4** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and buffer areas have been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. **SPECIAL CONDITION NO. 5** requires adherence to construction responsibilities and that the applicant dispose of all demolition and construction debris at an appropriate location. **SPECIAL CONDITION NO. 6** requires the applicant to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use

Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval-in-Concept (Harbor Permit #105-105/Plan Check #2472/2005) from the City of Newport Beach Harbor Resources Division dated October 4, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Land Use Plan; *Eelgrass (Zostera Marina) Filed Survey, Impact Assessment, and Conceptual Mitigation Plan For Dock Renovation Project Located at: 105 and 107 Bayside Place, Corona Del Mar, CA 92625* prepared by Coastal Resources Management, Inc. dated August 28, 2006.

LIST OF EXHIBITS

1. Location Maps
 2. Approval-in-Concept Plan
 3. Eelgrass Impacts Site Plan
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I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-193 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** 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. **NATIONAL MARINE FISHERIES SERVICE (NMFS)**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicants shall provide to the Executive Director a copy of a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required. The applicants shall inform the Executive Director of any changes to the project required by the National Marine Fisheries Service (NMFS). Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. **EELGRASS MITIGATION PLAN**

The applicants shall conform with the *Eelgrass (Zostera Marina) Filed Survey, Impact Assessment, and Conceptual Mitigation Plan For Dock Renovation Project Located at: 105 and 107 Bayside Place, Corona Del Mar, CA 92625* prepared by Coastal Resources Management, Inc. dated August 28, 2006. The quantity of eelgrass mitigation to occur shall be as described in the approved mitigation plan, along with any additional eelgrass mitigation required pursuant to Special Condition No. 3 below. 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 legally required.

3. **EELGRASS SURVEY(S)**

- A. Pre-construction Eelgrass Survey. A valid pre-construction eelgrass survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the new eelgrass survey for the review and approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than fifteen (15) working days prior to commencement of construction. If the new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in the eelgrass mitigation plan approved by the Executive Director pursuant to Special Condition No. 2, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 (mitigation to impact) ratio at the same transplantation location(s) identified in the eelgrass mitigation plan described in Special Condition No. 2 above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition No. 2.
- B. **Post Construction Eelgrass Survey.** After completion of project construction, the applicants shall survey the project site to determine the quantity of eelgrass that was adversely impacted. This post-construction survey shall be completed in the same month as the pre-construction survey during the next growing season immediately following the completion of construction within coastal waters. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30)-days after completion of the survey. If any eelgrass has been impacted in excess of those disclosed pursuant to Special Condition No. 2, the applicant shall replace the additionally impacted eelgrass at a 1.2:1 (mitigation to impact) ratio at the transplantation site(s) and in accordance with the mitigation plan described in Special Condition No. 2 above. The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply.

4. **PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY**

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

5. 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.

6. **BEST MANAGEMENT PRACTICES PROGRAM**

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

A. Boat Cleaning and Maintenance Measures:

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

B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND PREVIOUS COMMISSION ACTION

1. Project Location and Description

The proposed project is located on two bayfront lots fronting Newport Bay at 105 and 107 Bayside Place in Corona Del Mar (City of Newport Beach), County of Orange (Exhibit #1). North and South of the project site are other existing docks associated with single-family residences; West of the project site is Newport Bay; and East of the project site are existing single-family residences and Bayside Place. The project site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The proposed project will not have an adverse effect on public access.

The applicant proposes to remove an existing double "U" shaped dock system and install a new shared dock system consisting of: a 6' x 116' pier approach and a 12' x 16' pier platform with fourteen (14) 10" diameter steel piles coated with NSP-120, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' lobe on the left finger, a 4' x 26' finger with a 4' x 13.5' backwalk on the right side of the center finger, and six (6) 12" diameter steel pile coated with NSP-120 (Exhibit #2). The docks will be composed of Douglas fir and Trex decking. The proposed dock conforms to the established City of Newport Beach pierhead line for this area. The proposed coating material (NSP 120) has been determined by the Commission's water quality unit to have a low impact on the environment. City review of the site (an Approval-in-Concept from the City of Newport Beach Harbor Resources Division dated October 4, 2005 consisting of an eelgrass survey conducted on the project site on May 11, 2004) indicates that eelgrass will be adversely impacted by the proposed project. A mitigation plan (*Eelgrass (Zostera Marina) Filed Survey, Impact Assessment,*

and Conceptual Mitigation Plan For Dock Renovation Project Located at: 105 and 107 Bayside Place, Corona Del Mar, CA 92625 prepared by Coastal Resources Management, Inc. dated August 28, 2006) has also been submitted, which also conducted a survey on July 18, 2006 that identified eelgrass would be impacted. The mitigation plan states that the project will directly impact 2.4 square feet of eelgrass that will be transplanted on-site at a 1.2:1 ratio.

The proposed project has received Approval-in-Concept from the City of Newport Beach Harbor Resources Division (Harbor Permit #105-105/Plan Check #2472/2005). 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. However, a review by the National Marine Fisheries Service (NMFS) has not been completed. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 1**, which requires that the applicant submit a permit issued by the National Marine Fisheries Service (NMFS), or letter of permission, or evidence that no permit or permission is required.

2. Prior Commission Action at Project Site

At the June 1988 Coastal Commission Hearing, the Commission approved De-Minimus Waiver 5-88-306-(Maple) for the addition of a unit over a three-car garage of a single-family residence by enclosing the 2nd floor deck, and adding a kitchen and living room and one on-site parking space. The project resulted in a duplex with four on-site parking spaces in an R-2 Zone (Two-Family Residential).

At the September 2002 Coastal Commission Hearing, the Commission approved Coastal Development Permit No. 5-02-083-[Brigandi] consisting of: demolition and construction of an approximately 27 foot high, two story, 6,134 square foot single-family residence with an attached 726 square foot, three-car garage. The project also proposed construction of a 225 square foot second floor deck, a 402 square foot roof deck, portions (6-foot and 3-foot high) of northern and southern rear property line walls, side yard gates and a rear patio barbeque. Also, an existing gangway was proposed to be reconfigured and comprised of 78 square feet and a new 206 square foot cantilevered deck at a maximum 5-feet beyond the existing bulkhead with a 3-foot,-6-inch high clear view screens and a gate was proposed to be constructed. Grading was to consist of 113 cubic yards of cut and the debris was to be disposed of outside of the coastal zone. The permit was approved with FOUR (4) SPECIAL CONDITIONS: SPECIAL CONDITION NO. 1 required use of construction best management practices (BMPs); SPECIAL CONDITION NO. 2 required debris disposal site to be located outside of the coastal zone; SPECIAL CONDITION NO. 3 required submittal of Drainage and Run-Off Control Plan; and SPECIAL CONDITION NO. 4 required submittal of a revised Landscaping Plan. The permit was issued on September 26, 2002.

B. FILL OF COASTAL WATERS

The proposed project will involve the placement of fourteen (14) 10" diameter steel piles and six (6) 12" diameter steel piles coated with NSP-120 in open coastal waters. These piles constitute fill of open coastal waters. Under Section 30233 of the Coastal Act, fill of open coastal waters shall be allowed only when specific criteria are met, including (a) the project must fall within one

of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided.

Section 30233 of the Coastal Act states, in part:

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

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

1. Allowable Use

Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters, such as Newport Bay, 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 dock system and install a new shared dock system consisting of: a 6' x 116' pier approach and a 12' x 16' pier platform with fourteen (14) 10" diameter steel piles coated with NSP-120, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' lobe on the left finger, a 4' x 26' finger with a 4' x 13.5' backwalk on the right side of the center finger, and six (6) 12" diameter steel pile coated with NSP-120. In order to anchor the new pier and floating dock, fourteen (14) 10" diameter steel piles and six (6) 12" diameter steel piles are necessary to withstand the load and adequately support the boating use. Thus the proposed project employs the minimum number and size of piles necessary to adequately support and secure the proposed boat dock project. Thereby minimizing the amount of fill needed to support the proposed allowable use.

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

The proposed project includes the demolition and re-construction of a 12' x 16' = 192 square foot pier platform. Typically, the City has limited pier platforms to a maximum of 170 square feet. However, in this case, the City allowed the re-construction of a 192 square foot pier platform at this site because there is presently a pier platform of the same size at the site. The City typically does not allow pier platforms to exceed the City's adopted standard size, unless there is already such a pier platform at the site. As with a 170 square foot pier platform, the proposed pier platform will only require the minimum

number and size of piles necessary; thus there is no difference in the quantity of fill for the pilings associated with this larger pier platform.

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 *Eelgrass (Zostera Marina) Filed Survey, Impact Assessment, and Conceptual Mitigation Plan For Dock Renovation Project Located at: 105 and 107 Bayside Place, Corona Del Mar, CA 92625* prepared by Coastal Resources Management, Inc. dated August 28, 2006. There is approximately 8,432 square feet (0.19 acres) of eelgrass habitat within the project area. No eelgrass was located beneath the pier leading to the dock, but it was found beneath the narrow gangway connecting the pier and the dock. The new proposed single shared use dock would result in 355 square feet of new dock area shading over the bay floor (Exhibit #3). In addition, 2.4 square feet of eelgrass habitat will be directly impacted by installation of the three (3) new 12" diameter pier piles (Exhibit #3).

The mitigation plan proposes to mitigate the direct loss of 2.4 square feet of eelgrass at a ratio of 1.2 to 1, such that a total of 2.9 square feet of eelgrass will be successfully transplanted at the project site. The proposed ratio, 1.2:1, is consistent with the requirements found in the *Southern California Eelgrass Mitigation Policy* (SCEMP). The transplant for direct impacts to eelgrass will be conducted prior to installation of the new dock and will be conducted on the project site where the South finger of the original dock was removed. The mitigation plan proposed for impacts due to shading (355 square feet) will be mitigated by conducting an eelgrass transplant program, should they occur, in accordance with the *Southern California Eelgrass Mitigation Policy* (SCEMP) following loss determination at the end of a two-year monitoring program. To verify that the proposed mitigation will take place, **SPECIAL CONDITION NO. 2** has been imposed, which requires conformance with the proposed eelgrass mitigation plan.

Conclusion

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. As conditioned herein, the proposed project is the least environmentally damaging feasible alternative. **SPECIAL CONDITION NO. 2**, which requires conformance with the proposed eelgrass mitigation plan. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30233 of the California Coastal Act.

C. MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

1. Eelgrass and other Sensitive Species Impacts

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

According to the applicant, the proposed project would impact eelgrass through: 1) the installation of piles (2.4 square feet), and 2) dock footprint shading effects (355 square feet).

On May 11, 2004, the City of Newport Beach Harbor Resources Department conducted an eelgrass inspection at the project site and found eelgrass in the project vicinity. The mitigation plan (*Eelgrass (Zostera Marina) Filed Survey, Impact Assessment, and Conceptual Mitigation Plan For Dock Renovation Project Located at: 105 and 107 Bayside Place, Corona Del Mar, CA 92625* prepared by Coastal Resources Management, Inc. dated August 28, 2006) also conducted an eelgrass survey on July 18, 2006 and also indicated that eelgrass would be impacted. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the January 2007 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60-days have passed since the survey was completed. Thus, up-to-date eelgrass surveys must be conducted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, which identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction.

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.

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

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

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

The site has not been surveyed for *C. taxifolia*, therefore, a *C. taxifolia* survey needs to be done. 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

¹ References

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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.

not cause the dispersal of *C. taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 4. SPECIAL CONDITION NO. 4** requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicants shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

3. Water Quality

The proposed project is the removal of an existing dock system and install a new shared dock system consisting of: a 6' x 116' pier approach and a 12' x 16' pier platform with fourteen (14) 10" diameter steel piles coated with NSP-120, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' lobe on the left finger, a 4' x 26' finger with a 4' x 13.5' backwalk on the right side of the center finger, and six (6) 12" diameter steel pile coated with NSP-120.

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

(a) Construction Impacts

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

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

as well as the safe storage of construction materials and the safe disposal of construction debris.

SPECIAL CONDITION NO. 5 requires that the applicant dispose of all demolition and construction debris at an appropriate location. This condition requires the applicant to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

(b) Maintenance

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

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

Conclusion

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

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

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

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

The subject site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The proposed project will not have an adverse effect on public access. Neither vertical nor lateral public access exists on the subject property. In addition, there is no established lateral public access in the vicinity. However, there are several opportunities for public access to the coast near the proposed development. Bayside Drive County Beach is accessible via the Orange County Sheriff/Harbor Patrol Bureau located North of the project site (Exhibit #1, Page 1). This area allows the launching of small boats by the public. Also, public access is available at China Cove Beach located South of the project site (Exhibit #1, Page 1). The proposed development, as conditioned, will not result in any new significant adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30210 and 30212 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 that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Water Quality, Policy 4.1.2-1 states,

Maintain, enhance, and, where feasible, restore marine resources.

Water Quality, Policy 4.1.2-5 states,

Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.

Eelgrass Meadows, Policy 4.1.4-1 states,

Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

Eelgrass Meadows, Policy 4.1.4-1 states,

Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative

protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.

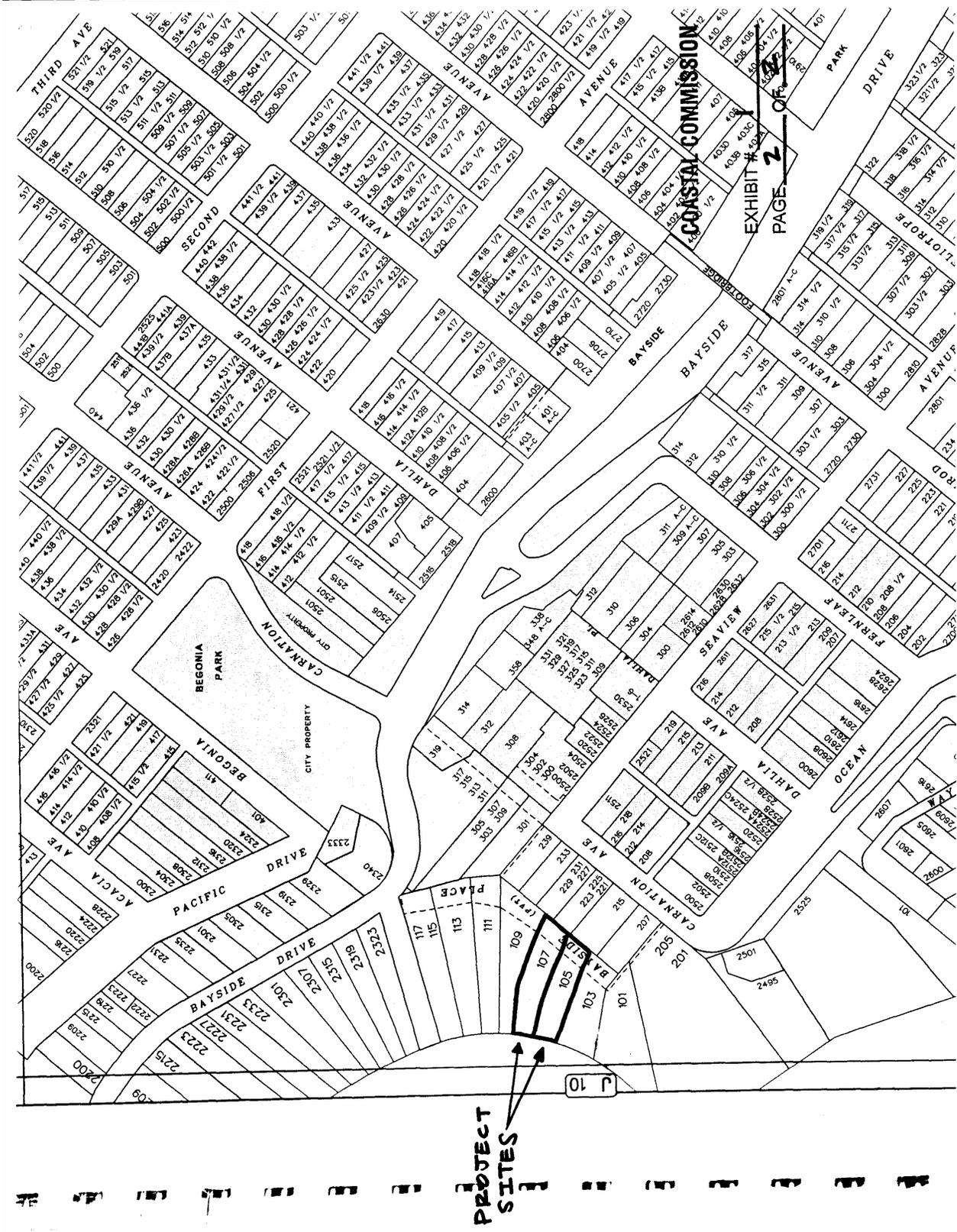
The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the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

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

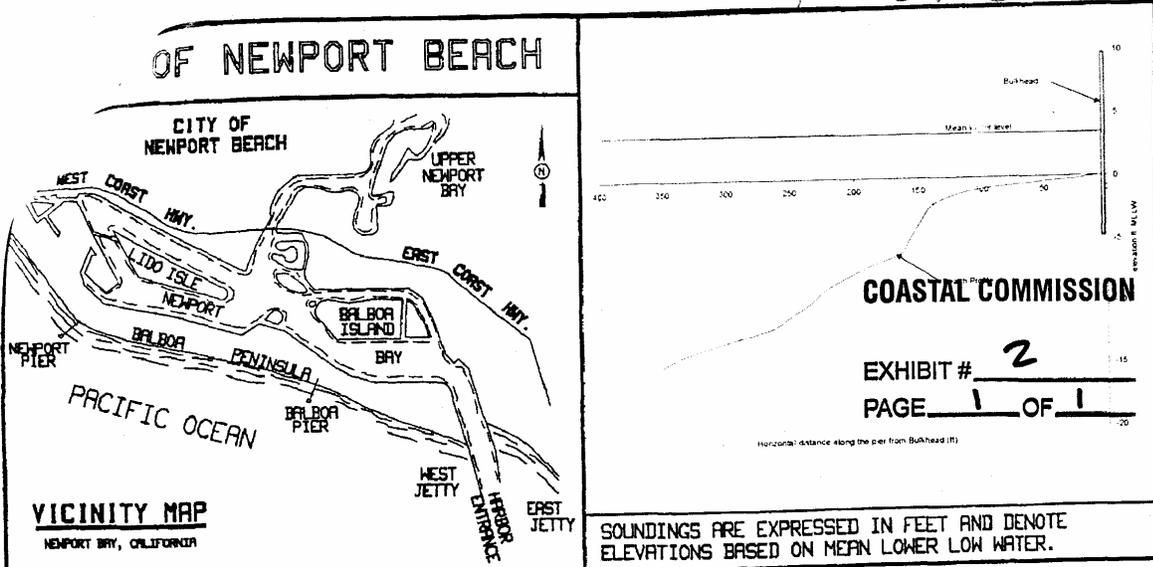
Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental 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 submitted eelgrass mitigation plan, disposal of all demolition and construction debris at an appropriate location and to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

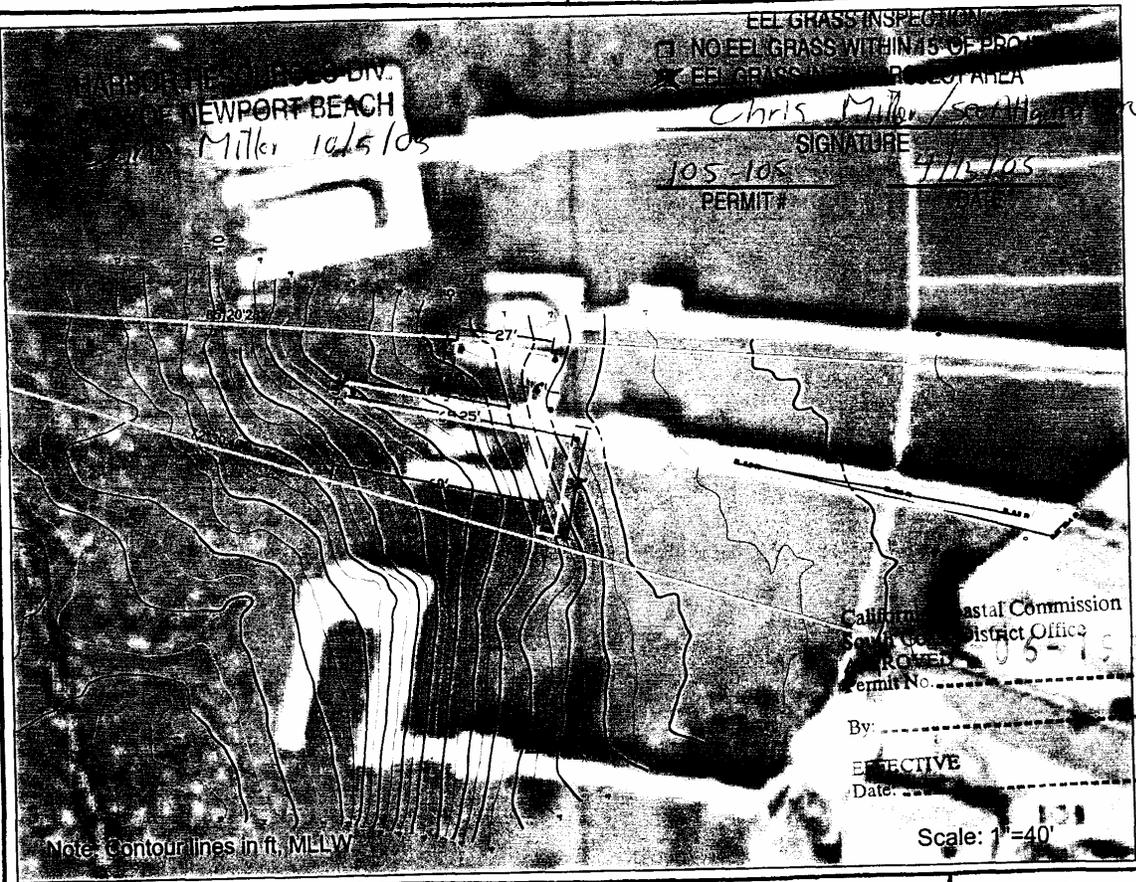
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



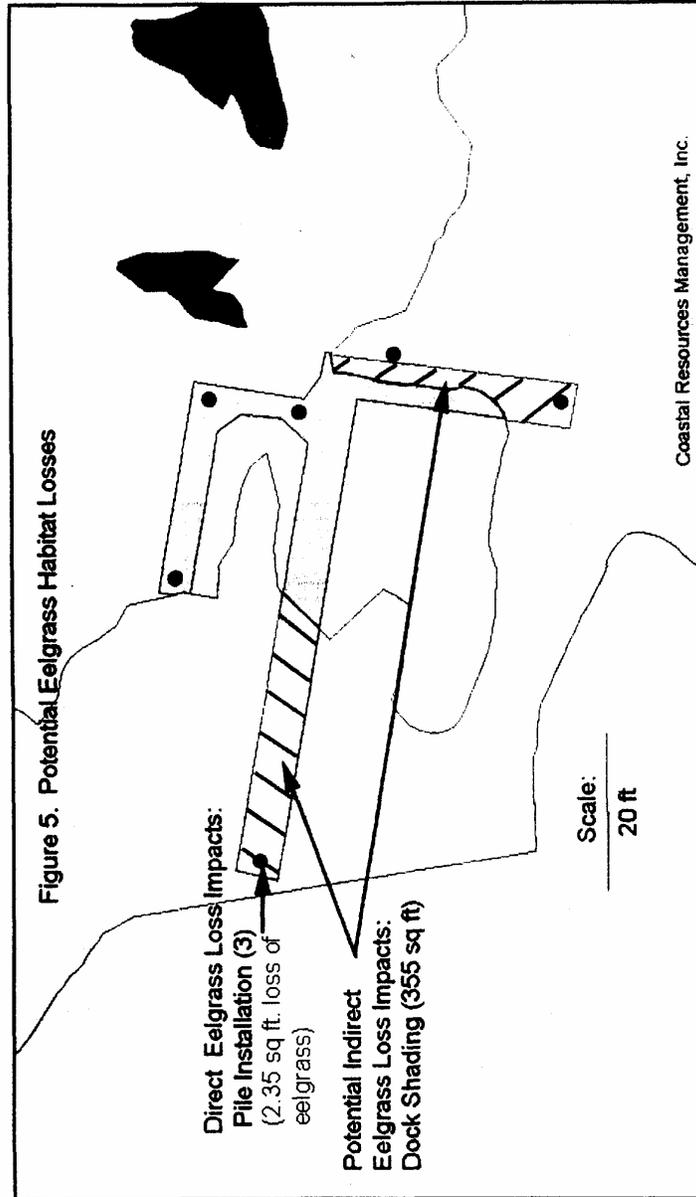
1 of 2



VICINITY MAP
 NEWPORT BAY, CALIFORNIA



Applicant's Name: Mike Ruffatto & John McDonald Job Address: 105 & 107 Bayside Place September 23, 2005



COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 1

2 of 2