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Staff Report:	April 1, 2010
Hearing Date:	April 15, 2010
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 2-07-020

APPLICANT: Timothy and Melissa Draper

PROJECT LOCATION: 560 Pierce Point Road, Inverness, Marin County (APN 109-300-10)

PROJECT DESCRIPTION: Expansion and repair of an existing dock, including replacement of the decking, replacement of existing and installation of new pilings, and installation of a floating dock.

1.0 EXECUTIVE SUMMARY

This permit application is for expansion and repair of an existing private boat dock adjacent to a residential parcel, north of Inverness, on the Tomales Bay. The dock was built prior to the enactment of the Coastal Act. The existing structure consists of a covered boathouse, pier and ramp leading to the site of a former 215 square foot floating dock.

The proposed project includes installation of a new 215 square foot floating dock and two new pilings, replacement of existing pilings and decking, and other miscellaneous repairs. The project does not qualify as repair and maintenance pursuant to Coastal Act section 30610(d) and the section 13252(e) of the Commission's regulations because it includes a small expansion, and because it includes replacement of more than 50% of the existing decking.

Staff recommends approval of this expansion and repair project because it is an allowed use in coastal waters pursuant to Coastal Act section 30233 and because the project incorporates measures to minimize and avoid impacts to biological resources and water quality. These proposed measures include semi-transparent decking to reduce shading of eelgrass habitat, eelgrass monitoring and mitigation, and construction best management practices. The project is conditioned to ensure the proposed mitigation and minimization measures are carried out

effectively and to ensure the applicant obtains necessary authorizations from other permitting agencies, including the Army Corps of Engineers and the National Marine Fisheries Service.

EXHIBITS:
1. Regional map
2. Project location map
3. Eelgrass map
4. Project plans
5. Construction Management Plan

2.0 STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution to approve Coastal Development Permit No. 2-07-020 subject to the conditions in Sections 2.1 and 2.2 below.

Motion:
I move that the Commission approve the coastal development permit no. 2-07-020 subject to conditions pursuant to the staff recommendations.

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 of the Coastal Act. 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.

2.1. 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.

2.2 Special Conditions

1. Approved Development; Conformance to plans.

The permittee shall undertake development in accordance with the approved final plans dated 4/3/2007 and revised 1/12/2009, and 6/11/2009. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Construction Responsibilities.

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

A. Heavy equipment shall not operate in the bay or intertidal wetlands. All removal of storm-damaged debris and pilings shall be done either from the upland shore or from the floating barge;

B. All debris, including, but not limited to, timber deck planks, pilings, piling caps, and stockpiled material, shall be removed from the site and disposed of in an upland location at an approved disposal facility within 10 days of project completion;

C. No construction materials, debris, or waste shall be placed or stored where it may be subject to entering waters of Tomales Bay or intertidal wetlands;

D. A floating boom shall be installed around the project area within the bay/intertidal wetlands to contain any debris within the project area that may become inadvertently dislodged during construction work. Any debris discharged into coastal waters shall be recovered immediately and disposed of properly;

E. Any barge used to support piling removal and pile driving equipment shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the intertidal mudflat bottom;

F. Any pilings that break upon removal shall be cut off at least one foot below the mud line;

G. During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during restoration activities. Following construction, all trash and construction debris shall be removed from work areas and disposed of properly;

H. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas;

I. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/ remediation service shall be locally available on call;

J. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff; and

K. The stockpiling area shall be limited to the location and size specified in the permit application.

L. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;

M. Piling installation shall be performed in accordance with Department of Fish & Game recommendations. Generally, the new pilings shall be installed according to the method that results in the least disturbance of bottom sediments. Disturbed sediments shall be contained with a flexible skirt surrounding the driven pile(s).

N. If pile installation or any other portion of the proposed project requires the pouring of concrete in, adjacent to, or over the water, one of the following methods shall be employed to prevent uncured concrete from entering harbor or other state waters:

(1) Complete dewatering of the pour site, within a caisson or other barrier; the site is to remain dewatered until the concrete is sufficiently cured to prevent any significant increase in the pH of adjacent waters; or

(2) The tremie method, which involves placement of the form in water, inserting a plastic pipe down to the bottom of the form and pumping concrete into the form so that the water is displaced towards the top of the form. If this method is selected, the displaced waters shall be pumped off and collected in a holding tank. The collected waters shall then be tested for pH, in accordance with Fish & Game regulations. If the pH is greater than 8.5, the water will be neutralized with sulfuric acid until the pH is between 8.5 and 6.5. This pH-balanced water can then be returned to the sea. However, any solids that settle out during the pH balancing process shall not be discharged to the marine environment.

3. Decking Material.

As proposed, all new decking shall consist of material that allows 60% light penetration.

4. Eelgrass Monitoring and Mitigation.

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 2-07-020**, the applicant shall submit, for review and written approval of the Executive Director, an eelgrass mitigation and monitoring plan that includes the following provisions:

(1) A pre-construction survey shall be completed during the months of May through September, the period of active growth of eelgrass. The pre-construction survey shall be completed prior to the beginning of construction and shall be valid for 60 days;

(2) Two post-construction surveys shall be completed as follows:

a. The first post-construction survey shall be completed within 30 days following the completion of construction;

b. The second 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.

(3) Adverse impacts to eelgrass shall be measured as the difference between the pre-construction and post-construction estimates of the size of the eelgrass area and the density of eelgrass. The area 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 is defined as the average number of turions per unit area.

(4) If the results of the post-construction surveys demonstrate to the satisfaction of the Executive Director that there has been no loss in the extent of vegetated cover and

that the eelgrass densities have not decreased, then no further monitoring or mitigation is required;

(5) If post-construction surveys indicate any decrease in eelgrass density or cover, then the site shall be monitored and remediated consistent with the approved final mitigation and monitoring plan for three years or until the performance criteria in sections (6) and (9) have been met;

(6) Within three years of completion of the project, the entire project site shall have an extent of vegetated cover equal to the pre-construction extent of vegetated cover and have an average density equal to the pre-construction average density. Relative to pre-construction conditions, specific success and monitoring criteria are as follows:

a. a minimum of 70 percent areal coverage and 30 percent density after the first year;

b. a minimum of 85 percent areal coverage and 70 percent density after the second year;

c. a sustained 100 percent areal coverage and at least 85 percent density for the third year.

(7) Monitoring methods shall include photographs and random sampling of the project site with a sample size adequate to obtain representative quantitative data for the entire project site to determine percent cover and shoot density as defined in subsection (3) above;

(8) A detailed monitoring schedule shall be provided that indicates when each of the required monitoring events will be completed. Monitoring reports shall be provided to the Coastal Commission within 30 days after the completion of each required monitoring period.

(9) If the performance criteria have not been met at the end of three years following the completion of construction of the project, the applicant shall submit, within 90 days of a determination by the permittee or the Executive Director that monitoring results indicate that the site does not meet the performance standards identified in section (6) and in the approved final monitoring and mitigation program, an amendment to the coastal development permit shall be submitted proposing additional mitigation at a ratio of 4:1 to ensure all performance criteria are satisfied consistent with all terms and conditions of this permit.

B. The permittee shall undertake development in accordance with the approved eelgrass mitigation and monitoring 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 approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. National Marine Fisheries Service Approval

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of any incidental take permit or other approval issued by the National Marine Fisheries Service, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the National Marine Fisheries Service. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

7. Final Debris Disposal Plan

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 2-07-020**, the permittee shall submit, for the review and approval of the Executive Director, a final plan for the disposal of excess construction and demolition related debris, including, but not limited to, timber deck planks and wooden pilings (both treated and untreated).

(1) The debris disposal plan shall demonstrate that:

a. Pier pilings removed from the pier shall not be mixed with decking and other debris until it is determined whether the pilings were previously treated with creosote or other wood preservatives;

b. All temporary stockpiles of demolition and construction debris shall be located where they can feasibly be contained with appropriate BMPs to prevent any discharge of contaminants to the bay;

c. Each proposed disposal site shall be located in an upland area where materials may be lawfully disposed;

d. All demolition and construction debris shall be removed from the site and taken to the approved disposal sites within 60 days of removal from the bay; and

e. The disposal plan shall be consistent with all other requirements of the coastal development permit and shall be consistent with the approved erosion and runoff control plan required by Special Condition No. 10.

(2) The plan shall include, at a minimum, the following components:

a. A narrative report describing all debris disposal methods including, but not limited, to how it will be determined whether the pier pilings to be removed have been treated with creosote or other wood preservatives, how treated pilings and salvageable materials will be separated from other debris, and how debris will be removed from the construction site;

b. Information about each proposed disposal site including the specific name and location, as well as evidence that the disposal site is located in an upland location and that it may lawfully accept the debris (*e.g.*, provide the relevant permit number for the disposal facility from the local jurisdiction, if applicable);

c. A site plan of the project site depicting where all stockpiling and sorting of debris will occur; and

d. A schedule for when demolition and construction debris will be removed from the project site and taken to the approved disposal sites.

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 an amendment to Coastal Development Permit No. 2-07-020, unless the Executive Director determines that no amendment is legally required.

8. <u>Piling Limitations</u>

The applicant shall use either steel pilings or wood pilings that have been coated in an impact-resistant, biologically inert substance.

9. <u>Timing of Construction</u>

All development to be performed in the waters of Tomales Bay or below the top of bank shall be limited to the period between July 15 and October 15.

10. <u>Erosion and Runoff Control Plan</u>

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 2-07-020**, the permittee shall submit, for review and approval of the Executive Director, a plan for erosion and runoff control demonstrating the following:

(1) The erosion control plan shall demonstrate that:

a. Runoff from the project site shall not result in pollutants entering coastal waters or wetlands;

b. Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters or wetlands during construction work;

c. Erosion controls shall be used to protect and stabilize stockpiles and exposed soils to prevent movement of materials (*e.g.*, silt fences, berms of hay bales, plastic sheeting held down with rocks or sandbags over stockpiles, etc.);

d. After project completion, all exposed soils present in and around the project site which may deliver sediment to the bay or intertidal wetlands shall be stabilized with mulch, seeding, and/or placement of erosion control blankets. Erosion control seeding shall include only native, regionally appropriate species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the governments of the State of California or the United States shall be utilized within the property; and

e. The erosion and runoff control plan shall be consistent with all other requirements of the coastal development permit and shall be consistent with the approved debris disposal plan required by Special Condition No. 7.

(2) The plan shall include, at a minimum, the following components:

a. A narrative report describing all erosion control measures to be used;

b. A site plan showing the location of all erosion control measures;

c. A schedule for installation and removal of the erosion control measures; and

d. A listing of any plant species to be used to stabilize exposed soils and information indicating whether the species are native or regionally appropriate.

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

11. Archaeological Resources

A. If an area of cultural deposits is discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (C) hereof. A qualified cultural resource specialist shall analyze the significance of the find.

B. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.

(1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director.

(2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. The applicant shall undertake development in accordance with the approved supplemental Archaeological Plan. No changes to the approved supplementary archaeological plan shall occur without a Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3.0 Findings and Declarations

The Commission hereby finds and declares:

3.1 Project Location and Description

The project site is located on the shore of Tomales Bay approximately three miles north of the town of Inverness in Marin County. The property is heavily vegetated with a mixed evergreen woodland, except for a cleared area where the residence and boathouse are located (Exhibits 1 and 2). The substrate adjacent to the property is sand and mudflats and there is a large eelgrass bed below the existing pier (Exhibit 3).[1]

The current dock consists of: (1) a 540 square foot boathouse; (2) a 595 square foot pier; and (3) a 76 square foot hinged ramp leading to the site of a previous 215 square foot floating dock. The pier, dock and boathouse were constructed prior to the enactment of the Coastal Act, and have not been authorized through any coastal development permits.

The proposed project includes:

1) Repairing an existing boathouse, including replacing damaged portions of the roof, windows and siding and installing a sprinkler system;

2) Installing a new boat hoist and two new steel pilings to support the hoist;

3) Replacing four creosote pilings with steel pilings to support the ramp; removing one creosote piling south of the dock; encasing 17 existing wood pilings under the dock in concrete; and encasing 12 pilings under the boathouse in new concrete;

4) Installing a floating dock to replace a former 215 square foot floating dock. The decking material would be 60% transparent to reduce biological impacts caused by shading eelgrass;

5) Replacing pier decking with the 60% transparent material.

The project does not qualify as repair and maintenance pursuant to Coastal Act section 30610(d) and the section 13252(e) of the Commission's regulations because it includes a small expansion, consisting of two new pilings and new concrete to encase 17 existing pilings, and because it includes replacement of more than 50% of the existing decking.

3.2 Other Agency Approvals

California State Lands Commission

[1] Marin County Community Development Agency, Planning Division, *Draper Tidelands Permit and Design Review Initial Study*, July 2009, page 5.

The portion of the revetment that is seaward of the Mean High Tide Line is located on state tidelands. The State Lands Commission (SLC) has issued a Recreational Pier Lease authorizing the boathouse, pier, ramp and float for a ten year period, beginning August 1, 2005 and ending July 31, 2015.

3.3 Protection of Marine Biological Resources and Water Quality

Section 30107.5 of the Coastal Act defines "environmentally sensitive area" as:

> *Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 30108.2 of the Coastal Act defined "fill" as follows:

> *'Fill' means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*

Section 30230 of the Coastal Act states, in applicable part:

> *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 addresses the protection of coastal water quality in conjunction with development and other land use activities. Section 30231 reads:

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

Section 30233 of the Coastal Act provides as follows, in applicable 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 feasible1 less environmentally damaging alternative, and where feasible*

mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

…

(3) 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.

…

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary…

The proposed project is expansion and repair of an existing boat dock, including installation of a floating dock and replacement of pier pilings. The proposed project also includes placement of two new pilings to support a new boat hoist, and new concrete to encase 17 existing wood pilings. The new pilings and new concrete would result in 3.4 square feet of new fill.

Coastal Act Sections 30230, 30231, and 30233 cited above set forth a number of limitations on new development in coastal waters, wetlands, and estuaries. For analysis, the limitations can be grouped into four general categories or tests. These tests are:

a. that the purpose of the filling, diking, or dredging is for one of the seven uses allowed under Section 30233;

b. that the project has no feasible less environmentally damaging alternative;

c. that feasible mitigation measures have been provided to minimize adverse environmental effects; and

d. that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

3.3.1. Allowable Use for Fill in Coastal Waters

The first test for a proposed project involving filling or dredging in coastal waters, wetlands, or estuaries is whether the fill or dredging is for one of the seven allowable uses under Section 30233(a). Subsection (a)(3) lists "…*new or expanded boating facilities,*" among the allowable uses for fill and dredging in wetlands.

The fill associated with the proposed project is for expanding and repairing an existing boat dock. Structural fill associated with the project would be limited to the installation of two new pilings, and concrete to encase 17 existing pilings, in the Tomales Bay, comprising a total of approximately 3.4 square feet of new fill. The remainder of the project, including replacement of the floating dock and repairs to the pier and boathouse would not result in direct structural fill.

Therefore, the Commission finds that the filling associated with the proposed project is an allowed use, as the fill is for the expansion and repair of a boat dock, consistent with subsection (a)(3) of Coastal Act Section 30233.

3.3.2. Feasible Mitigation Measures

The second test set forth by Sections 30230 and 30233 of the Coastal Act is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. Depending on the manner in which the proposed improvements are conducted, the proposed project could have adverse effects on the Tomales Bay. The project has the potential for causing adverse impacts because it includes: (1) displacing intertidal habitat with new pilings and new concrete, and (2) impairing water quality due to construction activities in the water and on the shore. The potential impacts and their mitigations are discussed in the following sections:

Displacement of Tidal Habitat

As noted above, the development involves placement of two new pilings and new concrete to encase 17 existing wood pilings, resulting in 3.4 square feet of new fill. This is a minimal amount of new fill. The new steel pilings would allow the applicant to install a new boat hoist to place and remove boats from the water, and the new concrete would extend the life of the existing pilings without requiring removal and replacement. The impacts of this minimal amount of fill on tidal habitat would be offset by the project's use of 60% transparent decking, which would decrease existing shading on eelgrass habitat.

The mudflat of the project area supports a large eelgrass bed (Exhibit 3). Eelgrass (Zostera marina) is considered to be an environmentally sensitive habitat area worthy of protection because it functions as important shelter and foraging habitat. For example, eelgrass provides cover for juvenile fish and in some locations, serves as a spawning ground for herring. Eelgrass is a flowering plant that extends long rhizomes (roots) an average of 1.5 – 8 inches below the substrate from which the turions (stems) sprout with long, green blades (leaves) and it thrives in protected coastal waters with sandy or muddy bottoms. Eelgrass can be adversely impacted by direct contact, or indirectly by shading from over-water structures.

The boat dock, which was constructed prior to the Coastal Act, consists of a 505 square foot boathouse, a 595 square foot pier, a 79 square foot hinged ramp, and the former 215 square foot floating dock. The floating dock and pier decking would be replaced with material that allows

60% light penetration. The existing dock currently shades 1179 square feet[2] of intertidal habitat, and after the proposed project is completed, the dock would shade the equivalent of 912 square feet[3] resulting in the decrease of shaded area by 267 square feet. This reduction in shading would promote the growth of eelgrass and offset the impacts of the new fill associated with the project. To ensure this benefit occurs, the applicant has proposed, and Special Conditions 3 and 4 require, the 60% transparent decking material and an eelgrass monitoring plan.

Therefore, because the proposed project would promote the growth of eelgrass by reducing the existing amount of shade, the Commission finds that no additional mitigation is necessary for the displacement of tidal habitat associated with the fill to be placed in the Bay as part of the development.

Disturbance to Eelgrass Habitat. Eelgrass is now located at the site of the former 215 square foot floating dock. This eelgrass could potentially be disturbed by both the temporary construction activities, and by the shading that the floating dock would cause.

The applicant proposes various measures to mitigate potential impacts to eelgrass beds. First, as described above, the project would include replacing the entire existing 595 square foot dock and the 215 square foot floating dock with decking material that allows 60% light penetration. This would result in a net reduction in the current amount of shading on eelgrass beds.

Second, the applicant is proposing various construction BMPs. These BMPs are attached in Exhibit 5 and include: the construction barge would be monitored to ensure it is in water no less than 1 foot deep; pilings would be installed using a vibratory hammer; spill prevention and containment equipment would be on-site; and encasement of existing pilings would avoid contact between the wet concrete and water column.

Finally, the applicant is proposing to monitor the health of the eelgrass beds over time with annual eelgrass surveys. To ensure that the applicant obtains an accurate inventory of eelgrass present at the site prior to construction and to minimize any adverse impacts to eelgrass, the Commission attaches Special Condition No. 4, which requires the applicant to submit the proposed eelgrass monitoring plan for the review and approval of the Executive Director and ensures that it includes the provisions described below. These provisions are similar to what the Commission has previously required for North Coast District projects with potential impacts to eelgrass.

Special Condition No. 4.A(1) requires the applicant to conduct a pre-construction survey to be completed during the active eelgrass growing season (May-September) prior to the beginning of construction. The pre-construction survey is valid for 60 days. Therefore, if the project does not

[2] 505 square foot boathouse + 595 square foot pier + 79 square foot ramp = 1179 square feet
[3] 40% of the surface area of the floating dock would be made up of floats that do not allow any light penetration. Therefore, only 129 square feet of the floating dock would allow 60% light penetration. The area shaded after the project would be: 505 square foot boathouse + (595 square foot pier x 40%) + (79 square foot ramp x 40%) + (129 square feet for the open portion of the floating dock x 40%) + 86 square feet for the floats = 912 square feet

commence within 60 days, a new survey must be completed during the active growing season. The pre-construction survey is required to be conducted during peak growing season conditions rather than during more dormant periods of the eelgrass lifecycle to ensure that project conditions, including monitoring and mitigation requirements, would be based on an accurate inventory of eelgrass present at the site in the peak eelgrass growing season immediately prior to project construction. Special Condition No. 4.A(2) requires two post-construction surveys. The first is required to be completed within 30 days following the completion of construction to assess any impacts to eelgrass that occur due to construction. The second survey is required to be completed in the same month as the pre-construction survey during the next growing season immediately following project completion to assess any impacts to eelgrass that occur as a result of shading from the proposed floating dock.

The Commission finds that to ensure that eelgrass habitat values are not diminished to any extent as a result of the project, the project site must achieve density and an extent of vegetated cover equal to pre-construction levels within three years. This performance standard is required by sections (4), (6) and (9) of Special Condition No. 4.A. Special Condition No. 4.A(9) also requires that if the performance criteria have not been met at the end of three years following the completion of the project, the applicant shall submit an amendment to the coastal development permit for additional mitigation necessary at a ratio of 4:1 to satisfy the performance criteria consistent with all terms and conditions of this permit.

Therefore, the Commission finds that as conditioned, the project would not result in significant adverse impacts to eelgrass habitat and is adequate to minimize significant adverse impacts to eelgrass consistent with Section 30233 of the Coastal Act.

Impairment of Water Quality.

The proposed project involves expanding and repairing a boat dock on the shore of Tomales Bay. Potential adverse impacts to the water quality of the Bay could occur during the construction process if hazardous materials, construction debris, or other pollutants were to enter coastal waters. To ensure that adverse water quality impacts associated with project debris and construction equipment, Special Condition No. 2 imposes certain construction-related responsibilities. Most notably, these responsibilities require that (1) all construction materials and debris originating from the project shall be stored and/or contained in a manner to preclude their uncontrolled entry and dispersion to the waters of the Bay; (2) any fueling of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas; (3) hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call; and (4) stockpiles shall be covered and contained at all times to prevent polluted water runoff.

Additionally, the Commission attaches Special Condition No. 10, which requires submittal of a final erosion and run-off control plan prior to permit issuance. The plan must demonstrate that (a) run-off from the project site must not increase sedimentation in coastal waters, (b) run-off

from the project site must not result in pollutants entering coastal waters, and (c) best management practices (BMPs) must be used to prevent the entry into coastal waters of polluted stormwater runoff during construction activities as well as from the completed development.

Finally, the Commission attaches Special Condition No. 7 requiring the applicant to submit, for the review and approval of the Executive Director prior to issuance of the CDP, a final plan for the disposal of excess construction-related debris, including, but not limited to, timber deck planks and wooden pilings (both treated and untreated). The final plan must demonstrate that no materials to be removed will be temporarily placed or stored where they may enter coastal waters and that appropriate best management practices will be used to prevent any discharge to the Bay.

In conclusion, the special conditions discussed above minimize adverse impacts to water quality and do not conflict with any determination by the State Water Resources Control Board or any California Regional Water Quality Control Board determination in matters relating to water quality as required by Section 30412 of the Coastal Act. As conditioned to require (a) submittal and implementation of final plans for erosion and run-off control, and debris disposal, and (b) adherence to various construction responsibilities, the Commission finds that the project provides feasible mitigation measures to minimize the project's potential water quality impacts, as required by Sections 30230 and 30233 of the Coastal Act.

3.3.3. Least Environmentally Damaging Feasible Alternative

The third test of Section 30233(a) is whether there are feasible less environmentally damaging alternatives to the proposed project. In this case, the Commission has considered project options and determines that there are no feasible less environmentally damaging alternatives to the project as conditioned. The proposed project is an expansion and repair of an existing boat dock. Reinforcement of the existing wood pilings with concrete would reduce the duration and extent of construction, as compared to removing and installing new pilings. In addition, the applicant has stated that the replacement floating dock is located in the closest near shore location possible to allow safe vessel berthing given the existing site conditions, and the gangway is the shortest possible length to allow safe access to the floating dock, given tidal amplitude at the site. Finally, as discussed above, the proposed decking material would result in a decrease of the shading of eelgrass at the project site, promoting eelgrass growth and benefiting the habitat.

3.3.4. Maintenance and Enhancement of Marine Habitat Values

The fourth general limitation set by Sections 30231 and 30233 is that any proposed dredging or filling in coastal wetlands must maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed above in the section of this finding on mitigation, the conditions of the permit would ensure that the project will not have significant adverse impacts on wetland habitats,

sensitive fish species, or water quality and thus, would not adversely affect the biological productivity and functional capacity of coastal waters, wetlands, or estuarine habitat. The Commission finds that the project, as conditioned, would maintain the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30231 and 30233 of the Coastal Act.

3.4. Army Corps of Engineers and National Marine Fisheries Service Approvals

Portions of the project require review and approval by the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Federal Clean Water Act (PL 95-217). Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the USACE, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit.

As part of the Corps' permit process, applicants often are required to undergo formal Federal Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS). Certain types of projects qualify for issuance of one of the Corps' established "nationwide permits" for minor classes of development determined to have minimal impacts to water quality and navigable waters. It is not clear what type of permit the Corps is issuing for the proposed project. Nevertheless, to ensure that the project ultimately approved by the Corps, in consultation with the NMFS is the same as the project authorized herein, the Commission attaches Special Condition Nos. 5 and 6. These special conditions require the applicant to submit to the Executive Director, prior to commencement of any development, evidence of the Corps' and National Marine Fisheries Service's approvals of the project. The conditions also require that any project changes resulting from agency approval(s) not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

3.5 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing that 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 effects which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The proposed project has been conditioned to mitigate or eliminate any significant impacts to biological resources and water quality. As discussed above, as conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts which the development may have on

the environment. Therefore, the Commission finds that the proposed project has been conditioned to mitigate the identified impacts and can be found consistent with Coastal Act requirements to conform to CEQA.

Figure 1. Project Area Location Map

Draper Dock Replacement
560 Pierce Point Road
Inverness, California

N
W E
S

0 0.25 0.5 Miles

wra
ENVIRONMENTAL CONSULTANTS

Date: October 2008
Image Source: USGS Topo Quad
Map By: Justin Semion
Filepath: I:\ACAD2000\1B059\GIS\ArcMap\Fig1_LocMap.mxd

Exhibit 1
2-07-020

Figure 2. Jurisdictional Tidal Waters in the Project Area

Draper Dock Replacement
560 Pierce Point Road
Inverness, California

N
W E
S

0 50 100 200 Feet

wra
ENVIRONMENTAL CONSULTANTS

Date: October 2008
Image Source: Marin County
Map By: Derek Chan
Filepath: L:\Acad 2000Files\18000\18059\GIS\ArcMap\FigX_Delin_10_06_08.mxd

Exhibit 2
2-07-020

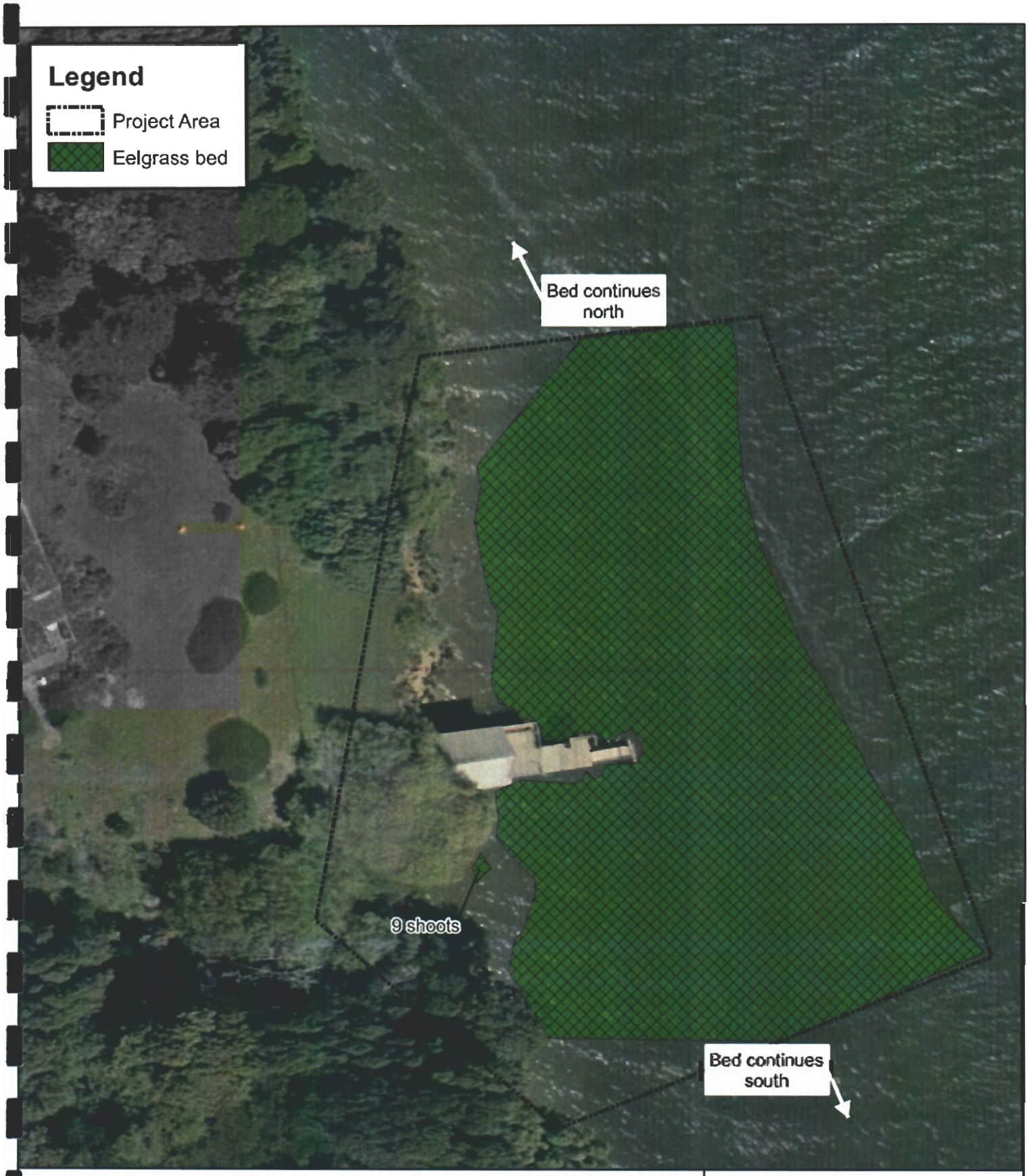

Figure 3. Eelgrass observed in the Project Area (May 27, 2008).

Draper Dock Replacement
560 Pierce Point Road
Inverness, California

N
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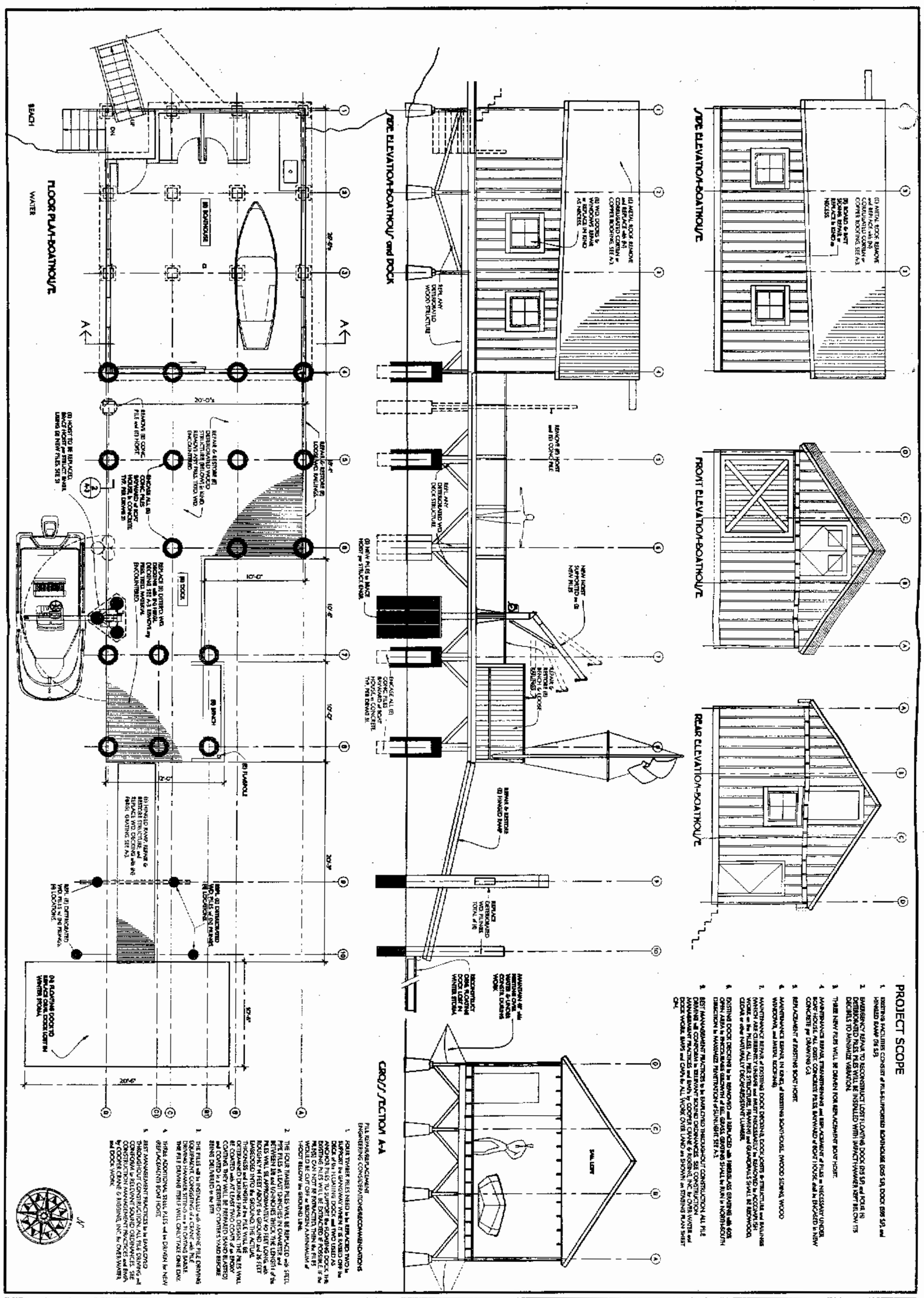
0 50 100 Feet

wra
ENVIRONMENTAL CONSULTANTS

Date: May 2007
Image Source: Marin County
Map By: Derek Chan
Filepath: L:\Acad 2000Files\18000\18059\GIS\ArcMap\Eelgrass_05_02_08.mxd

Exhibit 3
2-07-020



Sheet A-2 Job 0605 Drawn TRH Scale 1/4" = 1'-0" Date 3 APR 07	FLOOR PLAN EXTERIOR ELEVATIONS	BOATHOUSE REPAIRS & WATER SYSTEM FOR TIM & MELISSA DRAPER 560 Pierce Point Road Inverness, California		DRAWINGS PREPARED BY: THOMAS REX HARDY, AIA Registered Architect, LEED AP 510 Stockton Street No. 101 San Francisco, CA 94108 (415) 837-0480	REVISIONS / No. 1/12/08 — 1 6/11/09 — 2

Exhibit 4
2-07-020

C. Construction Management Plan:

The proposed project includes a four-part Construction Management Plan: (1) On-site Staging Plan (*refer to Figure 6*); (2) Removal and Disposal Methods; (3) Spill Prevention, Control and Reporting for Over-Water Work Plan; and (4) Best Management Practices (BMPs). Construction of the proposed project would take place at low tide in the summer months and is anticipated to take approximately two months. In general, the project is anticipated to entail a small amount of excavation associated with the hand trenching of new water lines from the residence to the boat house, restoration work around the existing boat foundation, and new fill associated with the installation of the new piles and concrete encasement of existing piles. The construction staging and vehicle area will be located northwest of the primary residence. All new material delivery and debris removal associated with the construction on the boathouse will be hand carried over land to and from the construction staging area. All new material delivery and debris removal over water will be to and from a barge anchored in deeper water.

From the barge, materials would be lifted to the dock as needed with a crane boom of sufficient length to avoid moving the barge in response to the changing tides. Waste materials would be off-hauled from the project site by land, with the exception of the removed piles and portions of the substructure of the dock, which would be removed by floating barge. Removal of the existing piles and decking and boathouse materials will result in approximately 25 cubic yards of timber debris which would be removed from the site by dump trucks with a 5 cubic yard capacity (10 round-trip truck trips total). An additional two truck trips would be needed to deliver deck timber and boat house construction materials. A total of 14 round-trip truck trips are anticipated over the two-month construction period.

Removal and Disposal Methods

Methodology for removal of deteriorated timbers, debris, and piles includes, but is not necessarily limited to:

1. Primary creosote and/or pressure treated impregnated wood debris containment. The primary containment system for the cutting of the timber members being removed will be tarps positioned to catch the wood chips, sawdust and other debris. Thereafter, the material will be transferred into barrels for shipment along with the creosoted timbers to a registered waste disposal facility.

2. Secondary containment of any wood debris which gets by primary containment system. Containment booms will be set to capture any material which might get by the primary system. Any material which is located between these booms will be scooped up with fine strainer baskets similar to swimming pool scoop devices to get all the fine particles.

3. Transport and disposal of creosote timber and/or pressure treated debris. The creosote and/or pressure treated timber and associated debris will be transported and disposed with chain of custody forms and bills of lading to a certified disposal site per all State and County legal requirements.

4. Handling of piles. Piles must be handled by properly trained workers. Pile will be disposed of at certified disposal sites and in accordance with State and County waste regulations.

5. Record keeping. Contractor will retain records documenting the disposition of removed materials.

Spill Prevention, Control and Reporting for Over-Water Work Plan

Methodology for preventing, reducing and reporting the discharge of pollutants into Tomales Bay includes, but is not necessarily limited to:

1. Spills shall be reported to the appropriate agencies immediately, including the U. S. Coast Guard National Response Center, Marin County Fire Department, Pt. Reyes National Park Service, California Office of Emergency Services.

2. Training and education of personnel in spill prevention and cleanup is required.

3. Regular meetings shall be held to discuss and reinforce appropriate disposal procedures (incorporate into regular safety meetings).

4. Site Superintendent will oversee and enforce proper spill prevention and control measures.

5. To the extent that the work can be accomplished safely, spills of oil, petroleum products such as diesel fuel, grease, and sanitary and septic wastes should be contained and cleaned up immediately.

6. Store hazardous materials and wastes in covered containers and protect from vandalism.

7. Place a stockpile of spill cleanup materials where it will be readily accessible.

8. Spills should be covered and protected from storm water during rainfall to the extent that it doesn't compromise clean up activities.

9. Store and properly dispose of used clean up materials, contaminated materials and recovered spill material that is no longer suitable for the intended purpose.

10. Do not allow water used for spill response to enter storm drains or watercourses. Collect and properly dispose of contaminated water.

11. Place proper storage, and spill reporting instructions for hazardous materials stored or used on the project in an open, conspicuous, and accessible location.

12. Keep temporary waste storage areas clean, well organized, and equipped with ample cleanup supplies as appropriate for the materials being stored. Perimeter controls, containment structures, covers, and liners should be repaired or replaced as needed to maintain proper function.

13. Clean up leaks and spills immediately, when safe to do so.

14. Use a rag for small spills on paved or impervious surfaces, a damp mop for general cleanup, and absorbent material for larger spills. If the spilled material is hazardous, then the used cleanup materials are also hazardous and must be sent to either a certified laundry (rags) or disposed of as hazardous waste.

15. Never hose down or bury dry material spills. Clean up as much of the material as possible and dispose of properly.

16. Absorbent materials should be promptly removed and disposed of properly.

17. If necessary, contain the spill by encircling with absorbent materials and do not let the spill spread widely. If the spill occurs in dirt areas, immediately contain the spill by constructing an earthen dike. Dig up and properly dispose of contaminated soil.

18. If the spill occurs during rain, cover spill with tarps or other material to prevent contaminating runoff.

19. If the size of material spilled makes it unsafe for personnel on site to clean up the spill, contain the spill and contact a haz-mat contractor to clean up the spill.

20. If necessary, contact a haz-mat contractor to contain or clean up the spill.

21. Report all spills (even those below the external reporting quantities) to the Superintendent immediately. The Superintendent will notify the Project Manager, who will in turn notify the General Contractor. If the spill is reportable to external agencies, the Project Manager will make the required external reporting telephone calls.

Best Management Practices

Best Management Practices (BMPs) include, but are not necessarily limited to:

1. To minimize vibration, installation of steel pilings will be done with a vibratory hammer. Installation of any wood piling will be done with a 3,000 pound drop hammer, dropped 5 feet.

2. A spill containment kit will be carried on all equipment in the event of an emergency.

3. Safety rings and a stokes basket will be carried on the barge crane for crew emergencies.

4. A debris boom and/or silt curtain will surround the pile during removal. Any floating debris will be captured and disposed of off-site at a proper waste facility.

5. To minimize vibration, removal of wood pilings will be done with a vibratory hammer. If the existing piles are too debilitated and complete extraction is not feasible, the piling will be broken or cut off below the mud line. Alternatively, another option is to drive a pipe pile over the existing wood piling encasing said pile.

ENVIRONMENTAL CONSULTANTS

June 17, 2009

Melissa Draper
172 Elena Avenue
Atherton, CA 94027

Dear Ms. Draper,

The purpose of this letter is to amend the previously submitted biological assessment reports to reflect updates to the project description for the dock installation project at 560 Pierce Point Road in Inverness, California. Revisions to the proposed project have been made in response to meetings and discussions with the U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (CDFG), National Marine Fisheries Service (NMFS), and Gulf of the Farallones National Marine Sanctuary. The discussions with these regulatory agencies identified the need to update the project description and site plans to be consistent with permitting and consultation requirements. The project description and site plans have been updated to comply with these requirements. Project Best Management Practices (BMPs) to be implemented during construction have also been discussed with the resource agencies to ensure compliance with applicable laws and regulations.

Elements of the project description and site plans that were changed based on these discussions include:

1.) Use of slotted decking material for the dock to allow light penetration to the subtidal area beneath the deck. Reference Drawing Sheet A-2, Project Scope Note 8, and Drawing Sheet A-3. The purpose of the use of the slotted fiberglass decking material is to allow increased light penetration in the area beneath the dock to encourage the growth of eelgrass. This change in the site plans and drawings was required as a condition of the NMFS as part of the consultation initiated by the Corps under Section 7 of the Endangered Species Act.

2.) Encasement of existing concrete piles in concrete. Reference Drawing Sheets A-2 and S-1. Existing concrete piles beneath the dock are deteriorated and may require reinforcement. To comply with Corps permitting requirements, this has now been indicated on the project site plans and project description.

Best Management Practices (BMPs) that will be implemented during construction to comply with regulatory agency requirements include:

A) Prior to the start of construction, applicable permits will be obtained from the Corps, Regional Water Quality Control Board, and California Coastal Commission. Additional approval will need to be obtained from the NMFS in order for the Corps to issue the required permit. CDFG is a responsible agency under the California Environmental Quality Act (CEQA), and will have the opportunity to comment on CEQA documentation prior to issuance. CDFG has also indicated agreement with the measures discussed with NMFS during the site visit and phone conversations.

2169-G East Francisco Blvd., San Rafael, CA 94901 (415) 454-8868 tel (415) 454-0129 fax info@wra-ca.com www.wra-ca.com

B.) All in-water demolition and construction will be completed between June 15 and October 15. This measure complies with the applicable work windows that minimize potential impacts to special status fish species set forth by requirements of the NMFS.

C.) For in-water construction requiring the presence of a barge, the barge will conduct work during a tide elevation that is at least one foot higher than the draft of the barge. The tide elevation will be measured based on a temporary tide gauge installed prior to construction. If the tide elevation drops below one foot of the draft of the barge, the barge will move to deeper water until the tide elevation has risen to at least one foot of the draft. This measure will prevent the barge from coming to rest on the existing eelgrass bed, causing damage to the bed, and is in compliance with NMFS requirements based on site meeting and phone conversations.

D. Existing creosote piles will be removed by breaking off below the mudline or capped by installing hollow pipe piles over existing creosote piles. If it is not possible to remove existing creosote piles, they will be capped by placing hollow pipe piles over existing creosote piles. This measure is consistent with NMFS and CDFG policy that encourages removal of creosote piles. Creosote piles can leach materials into the water column that are harmful to fishery resources. A silt curtain will be placed around existing piles during removal to control and localize the sediment disturbance. Creosote will be disposed of at a registered waste disposal facility, as indicated in the Construction Management Practices and BMPs by Cooper Crane.

E. Installation methods for piles will comply with standards set forth by NMFS to avoid potential impacts to special status fish species. These are referenced on the Construction Management Practices and BMPs by Cooper Crane. Pipe piles will be installed using a vibratory hammer. If unforseen circumstances require the use of wooden piles, they will be installed using a 3,000 pound drop hammer. These measures are based on NMFS and Corps guidance intended to minimize potential impacts to fisheries resources from potential acoustic impacts related to pile driving. A silt curtain will be placed surrounding piles during installation to control and localize sediment disturbance.

F. Spill prevention and containment equipment will be carried on board the barge during pile installation. This measure is detailed in the Construction Management Practices and BMPs by Cooper Crane.

G. Material for new piles will be biologically inert. Any coating placed on steel piles will be applied at a certified coater's yard and allowed to cure completely before being delivered to the site. If it becomes necessary to use wooden piles, they will be coated with a biologically inert substance, consistent with requirements of the Corps and NMFS.

H. Floatation devices (such as used on a floating dock) must be composed of materials that will not disintegrate, such as plastic or closed cell foam encapsulated in sun-resistant polyethylene. This measure complies with requirements of the Corps and NMFS.

I. Encasement of existing concrete piles will avoid contact between wet concrete and the water column. Existing concrete piles will be encased with a steel tube, inserted 12 to 24 inches into the bottom of the bay. Concrete will be poured into the steel tube, using care to avoid spilling of excess material. The concrete will be allowed to dry completely before making contact with the water column. This is consistent with NMFS and CDFG requirements that the concrete surrounding existing piles will be allowed to completely dry prior to contact with the water

column.
J. Cutting and trimming of materials to be installed over water will be done off site, or contained and protected inside the boat house. (Reference Drawing Sheet CP.1). This measure will minimize the potential for incidental dust and debris to fall into the bay.

K. Use of liquid materials will not be permitted inboard of the boat house. This measure will prevent potential spills into the bay, consistent with the spill prevention plan.

L. During removal of existing pier and decking material, a debris barrier and/or netting will be installed to retain any debris that falls into the water. Removal of existing decking material will be performed by barge, as noted in Staging & Construction Management Practices.

M. Netting 48 inches wide will be installed around the dock before work begins and maintained during dock work. Portions of the net may need to be removed temporarily to accommodate pile driving. Reference Staging & Construction Management Practices, Drawing Sheet CP.1.

The above measures have been developed in consultation with the NMFS, CDFG, and Corps to avoid and minimize potential impacts to fishery resources as a result of the project. Many of these measures go beyond that typically required for similar projects due to the presence of eelgrass in the area. With the measures above incorporated into the project, potential impacts to fisheries will be avoided or minimized to a less than significant level.

Please feel free to contact me with any questions or comments.

Sincerely,

Justin Semion
Associate Biologist
WRA, Inc.