

CALIFORNIA COASTAL COMMISSION

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**W10b****ADDENDUM**

December 5, 2011

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to the original staff report.

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W10b**, COASTAL COMMISSION PERMIT APPLICATION **#5-11-045(Van Schoonenberg)** FOR THE COMMISSION MEETING OF **December 7, 2011**.

Correspondence

On November 16, 2011, Swift Slip the agent to the applicant for CDP Application 5-11-045(van Schoonenber) submitted the attached "Revised Eelgrass Mitigation Plan" prepared by WSSI Environmental Consulting dated November 15, 2011. The Revised Eelgrass Mitigation Plan includes a revised dock configuration that only partially addresses staff's Special Condition #1 calling for final revised plans that avoid direct and indirect eelgrass impacts. The dock configuration as depicted in the attached Revised Eelgrass Mitigation Plan avoids direct impact to the large eelgrass beds which initially appear would have be impacted by the "U-shaped" float and float support piles, however, the re-design does not avoid possible indirect impact (due to shading) to approximately 32 sq. ft. of eelgrass (two small eelgrass patches, one that is 3' x 1' and one that is 1' x 1') that would be shaded by the proposed new 10' x 14' pier platform at the bulkhead. Instead, the Revised Eelgrass Mitigation Plan proposed to mitigate for the potential loss of eelgrass at a 1.2:1 eelgrass mitigation ratio. Mitigation is typically only approved if the impact is an unavoidable impact, in this case, although the impact is small, it is completely avoidable. Staff recommendation remains the same, approval with special condition for final revised dock plan to avoid all eelgrass impacts on the site.

On November 16, 2011, the applicant also submitted additional information for the Coastal Development Permit Application file.

Revision to Staff Report

Commission staff recommends additional language clarifying Exhibit #6 of the staff report. Deleted language is in ~~strike-through~~ and new language is in **bold, underlined italic**, as shown below:

Third paragraph on Page 10 of the staff report, as follows:

Section 30233 of the Coastal Act permits fill of open coastal waters only where there is no feasible less environmentally damaging alternative. In this case, there is a less environmentally damaging alternative: the proposed 28' long fingers of the U-shaped dock could also be shortened by a couple of feet or could possibly be rotated/angled a

couple of degrees counterclockwise so that the slip opening is angled more to the east, therefore avoiding intrusion of the two floating dock supporting piles into the existing eelgrass beds. The applicant has an approximately 60' x 25' water area 'building envelope' (the area currently covered by the existing dock and vessel and in which no eelgrass was mapped in the submitted November 1, 2010 eelgrass survey) in which to design and site a dock. A U-shaped dock or otherwise, could be designed within this building envelope and completely avoid direct and potential indirect eelgrass losses.

Special Condition #1 requires the applicant submit revised project plans modifying the proposed U-shaped configuration to completely avoid direct eelgrass losses due to pile driving and to completely avoid indirect potential eelgrass habitat losses due to shading impacts caused by the placement of structures over existing eelgrass habitat. Exhibit #6 depicts an alternative dock layout **created by Commission staff** that would avoid eelgrass impacts at this site. **Exhibit #6 is a Commission staff depiction of the intent of Special Condition #1, showing that a dock may be accommodated at the subject site with no direct or indirect impacts to existing eelgrass.**



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**Revised Eelgrass Mitigation Plan
Robert Van Schoonenberg Residence
2234 Channel Rd., Newport Beach, CA
Dock Replacement Project #3857**

Prepared
By

Kira Withy-Allen & Kelly Tait

Original: 20 June 2011
Map Revised: 4 November 2011
Mitigation Plan Revised: 15 November 2011

Introduction

The homeowner at 2234 Channel Rd, Newport Beach, CA (see Figure 1) and Pete Swift from Swift Slip Dock and Pier Builders, have proposed to change the configuration and location of the existing dock and gangway within Newport Bay. A Preliminary Eelgrass Survey conducted by WSSI Environmental Consulting on 01 November 2010 determined that eelgrass, *Zostera marina*, had the potential to be negatively impacted depending on the location and configuration of the new dock. However, the current dock proposal was created to avoid as much eelgrass impact as possible. It is proposed that the pier platform be moved from the center of the site to the shallow area adjacent to the seawall, where eelgrass presence is already naturally limited. Therefore, only two small patches of existing eelgrass have the potential to be shaded by the pier platform, but the 11' elevation of the platform will allow for some sunlight exposure so this eelgrass may persist. The impact from pile removal and driving should be minimal since all eelgrass is at least 5' from the piles. The proposed configuration also reduces the overall area of the structure as compared to the existing structure, allowing more exposed area for eelgrass growth. Since this site is near the mouth of the bay, this is a productive area for eelgrass and new growth is anticipated once the previously shaded area becomes exposed.

In this report, we propose mitigation as required by the Southern California Eelgrass Mitigation Policy (SCEMP; revision 11) in order to limit negative impacts on eelgrass and to obtain the appropriate permits for a dock replacement project at 2234 Channel Rd., Newport Beach, CA.

Figure 1. Project site, 2234 Channel Rd., Newport Beach, CA.

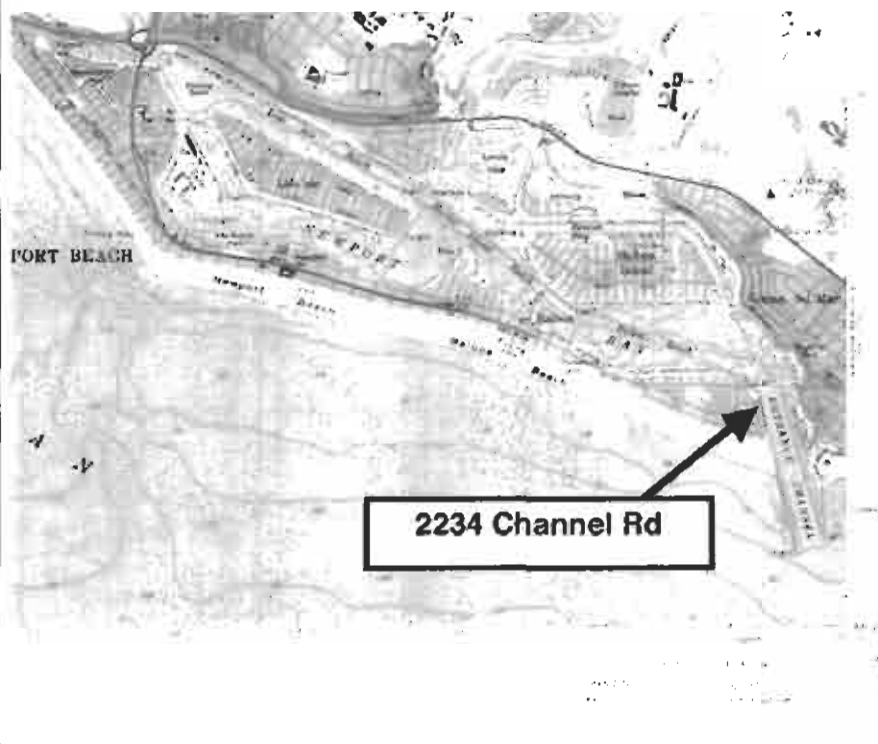
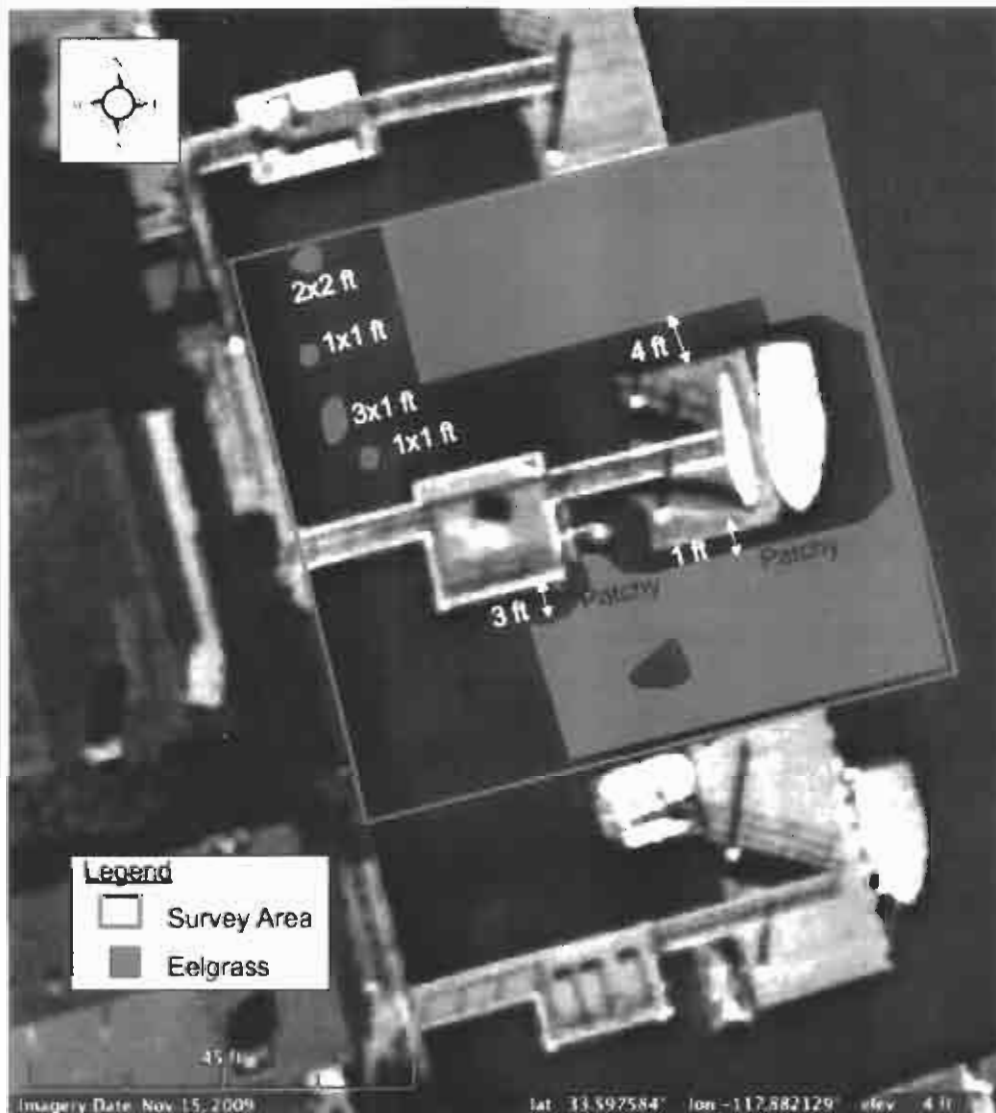


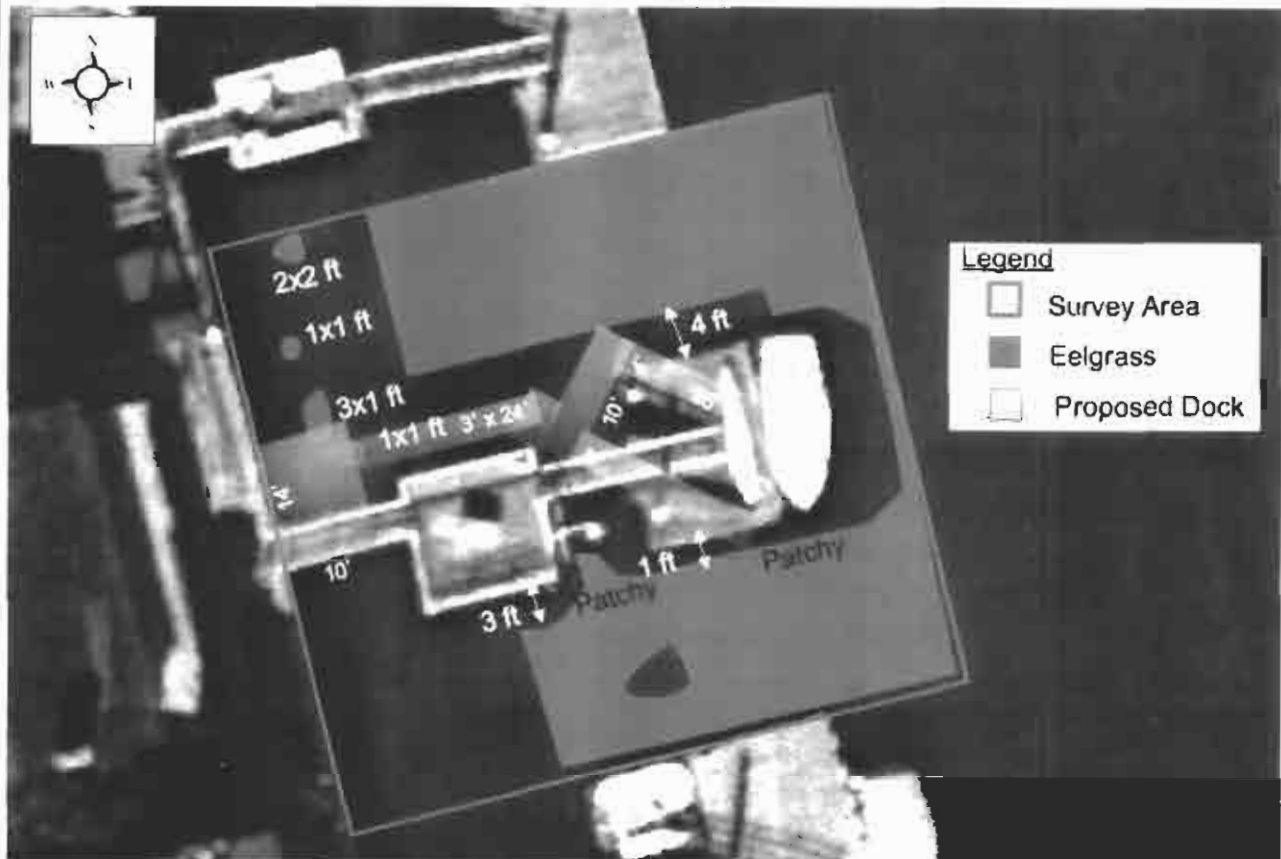
Figure 2. Preliminary Eelgrass Survey Results at 2234 Channel Rd from November 1, 2010.



Eelgrass Impacts

Minimal impact to eelgrass, if any, would result from the reconfiguration of the dock at this site. There is some risk of impact with removing and driving piles, but since the eelgrass is at least 5 feet from the piles, and BMPs will be utilized, then impact may be avoided. The pier is the only portion of the new structure that may have the potential to shade the two small eelgrass patches below it (see Figure 3 for proposed dock layout in relation to eelgrass presence). However, this pier will be elevated 11' off the water, which would allow for a good amount of sunlight exposure, and therefore the eelgrass might not be impacted. If these two patches do become shaded, it would be a very minimal loss at about 4 ft² (~0.37 m²).

Figure 3. The revised dock location and reconfiguration measurements and placement in relation to eelgrass presence.



Proposed Mitigation/Monitoring

Per discussions with the Coastal Commission, the contractor and homeowner have agreed to mitigate the two small patches of eelgrass below the proposed pier. However, since the dock is reported to be rapidly deteriorating, it has the potential to become both a navigational and environmental hazard during the winter season of storms, which could begin as early as this month (November 2011). Therefore, the contractor is proposing to install the dock as soon as possible to avoid navigational and environmental hazards and the need for an emergency permit.

A detailed Pre-Construction Eelgrass Survey will be conducted prior to any work. This Pre-Construction Eelgrass Survey will map the current location and densities of eelgrass, with an emphasis on the eelgrass patches below the proposed pier and near the proposed dock. This survey will also include depth profiles to discern suitable habitat for eelgrass within the project area. Once the construction is completed, a Post-Construction Eelgrass Survey will determine whether any direct impacts occurred during construction and whether there is potential for future shading of eelgrass from the new dock location.



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Harvesting/Replanting of Eelgrass Patches

Harvesting and replanting during the active growth phase of March – October is recommended per SCEMP requirements since it increases the likelihood of eelgrass survival. Since November – February is considered to be the non-growth phase for eelgrass, the harvesting and replanting of the 3'x1' patch and the 1'x1' patch will be conducted in March, following the construction of the new dock, pier, and gangway. The eelgrass patches below the pier should be able to survive during the winter months since the elevation of the pier is 11'. In Florida, eelgrass was able to grow below elevated structures that were 4' or greater (Shafer 2002). The proposed pier at this site is more than twice that height, so the small patches of eelgrass should be able to persist below the pier at least until the eelgrass is ready to be transferred, especially since the eelgrass is already established in the area.

Proposed Planting Site

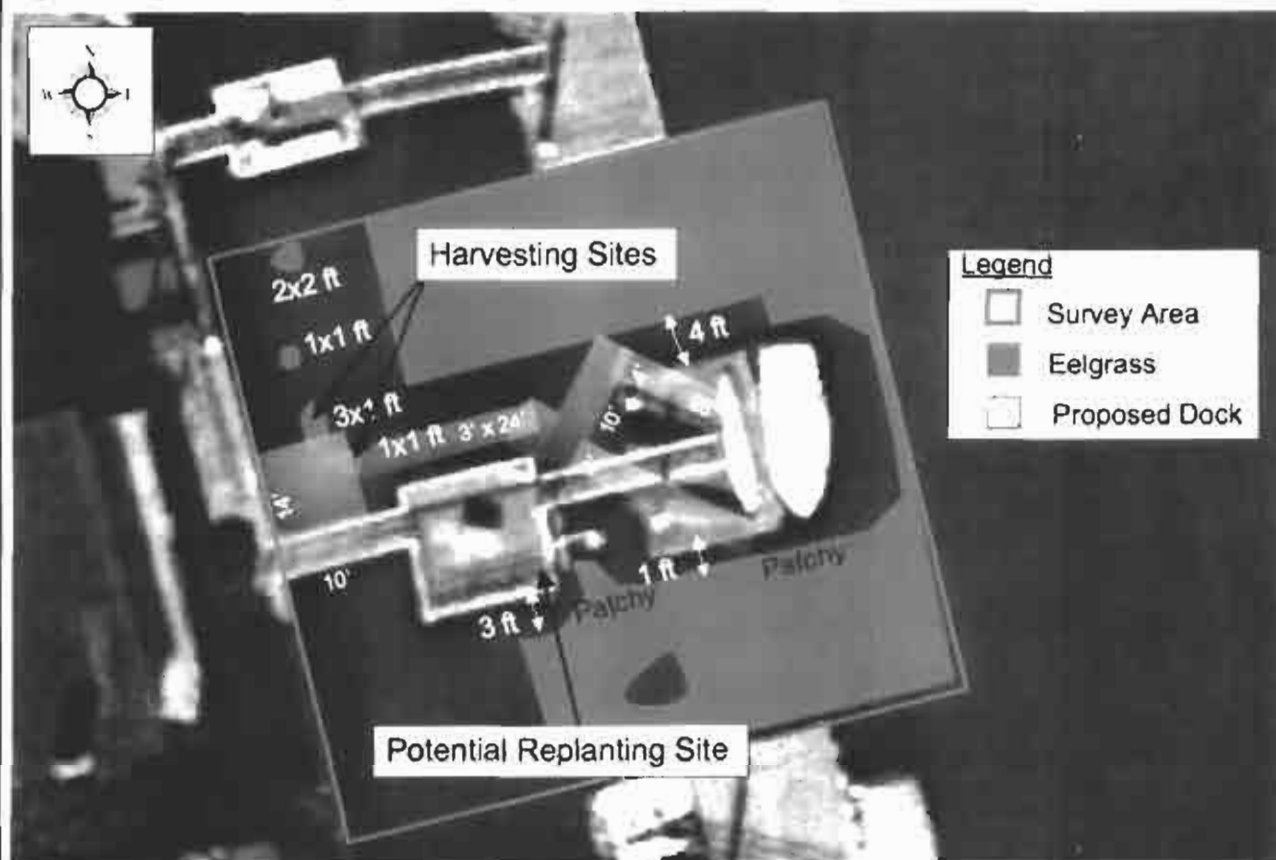
Eelgrass growth in Newport Bay is generally limited to below +1 ft MLLW, and above -8 ft MLLW. The Coastal Commission has requested that the two patches that would be below the proposed pier be harvested and replanted, which would equal a total of 4 ft² (~0.37 m²). Since SCEMP requires that a 1.2:1 ratio of eelgrass be harvested and replanted, the total amount of eelgrass harvested and replanted would be 4.8 ft² (0.44 m²). The extra 0.8 ft² (0.07 m²) of eelgrass will be harvested from the area of the site that has the densest eelgrass, which will be determined during the Pre-Construction Eelgrass Survey. The exact planting site will also be determined during the Pre-Construction and Post-Construction Eelgrass Surveys, but we are proposing to replant in an area that will be newly exposed to sunlight, where eelgrass currently cannot grow since it is shaded by the existing dock (Figure 4). This will allow the eelgrass to establish in a new area, and this eelgrass will hopefully be able to expand to become contiguous with the other eelgrass beds through both sexual and asexual reproductive processes.

EELGRASS PLANTING PROGRAM

Eelgrass Planting Methods

The harvesting and replanting is estimated to take one day. The project team will perform harvesting and preparing of bundles for replanting and then will perform the replanting. A grid will be established throughout the planting area to assist in ensuring appropriate planting density. Planting density will be approximately 1 bundle (Planting Unit or P.U.) centered per square meter, with 6-8 turions per bundle (see Table 1 below). Each bundle will contain as much rhizome as possible to maintain viability of the transplant units for optimal success. At the conclusion of planting, a density and area survey of the entire replanting site will be conducted to ensure the full mitigation amount has been planted, and results will be written into the "0-Month" Report, per the SCEMP guidelines.

Figure 4. Proposed Harvesting and Replanting Sites for the 2234 Channel Rd Dock Replacement Project.



Eelgrass Planting Area

Eelgrass planting will only occur in an area that is suitable to support eelgrass. When replanting is completed, the entire project area will be mapped for aerial extent and density of eelgrass. The survey will be performed in accordance with the SCEMP. The survey results will be provided to the Coastal Commission and the Army Corps of Engineers within 30 days of the completion of the survey. The survey report will contain, at a minimum, a description of the survey methodology, survey dates, map of area surveyed, habitat map, and a description of how the aerial extent of eelgrass replanted was calculated. We will complete a *Monitoring and Compliance Reporting Summary* form once this mitigation plan is approved.

Eelgrass Monitoring Surveys

The investigation of impacts on the eelgrass bed will be either diver-based or SONAR-based. An initial survey will be conducted, which will map the density and location of eelgrass at the site. If the subsequent surveys are also diver-based, all methods will be similar to those used for the Pre-Construction Eelgrass Survey. Transects will be established at two-meter intervals,



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stretching along the shoreline. Turion density per m^2 will be measured every two meters along each transect line from the shore into the eelgrass bed. Three randomly selected control transects will be established to monitor the health of the planted areas and to account for any natural changes or fluctuations in bed width or density in accordance with the SCEMP.

If SONAR-based mapping is performed for mitigation monitoring, methods will follow those used on numerous other projects in southern California. Any methods employed other than the diver-based methods outlined above shall ensure that mapping error and resolution are equal to or better than methods previously employed. Regardless of the mapping technique, all monitoring intervals will include a diver-based qualitative and quantitative assessment by a qualified biologist.

Subsequent monitoring surveys will be conducted during the active vegetative growth period at 6 months, 12 months, 24 months, 36 months, 48 and 60-month post planting. Each monitoring report will delineate current conditions within the eelgrass bed and compare this to the Post-Construction Eelgrass Survey conditions as well as the designated control areas. Each monitoring episode will be conducted during the active vegetative growth period, avoiding the winter months (November – February).

Success Criteria

According to the SCEMP, interim goals of 70 percent coverage and 30 percent density after one year and 85 percent coverage and 70 percent density after two years should be used to gauge transplanting success. The mitigation site should achieve a sustained 100 percent area of eelgrass bed and at least 85 percent density as compared to the adjusted project impact area for the third, fourth and fifth years. If success criteria are not achieved, additional mitigation may be necessary as determined by the Coastal Commission and the Army Corps of Engineers.

Reference

Shafer, D.J. 2002. Recommendations to Minimize Potential Impacts to Seagrasses from Single-Family Residential Dock Structures in the Pacific Northwest. Vicksburg, MS, Engineering Research and Development Center, pp 15-20.

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Filed: June 24, 2011
49th Day: August 1, 2011
180th Day: December 21, 2011
Staff: Liliana Roman-LB
Staff Report: November 17, 2011
Hearing Date: December 7-9, 2011
Commission Action:



Item W10b

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-11-045

APPLICANT: Robert Van Schoonenberg

AGENT: Swift Slip Dock & Pier Builders

PROJECT LOCATION: 2234 Channel Road, Newport Beach (County of Orange)

PROJECT DESCRIPTION: Demolition of an existing 709 sq. ft. floating dock, gangway, pier and four existing piles and installation of a new 10'x14' platform supported by two 14" diameter anchor piles, new 3'x24' gangway and "U-shaped" floating dock with grating material sections at the end of the dock fingers and supported by three 14" diameter guide piles, totaling 523 sq. ft. in water coverage

LOCAL APPROVALS: City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 107-2234 and Plan Check No. 0084-2011 dated January 26, 2011

OTHER AGENCY CONTACT RECEIVED: US Army Corps of Engineers (USACOE) Interagency Notification, Request For Agency Comments On Applications For Letter of Permission (Application No. SPL-2011-00291-RJV)

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; City Harbor Permit Policy; *Preliminary Eelgrass and Caulerpa Survey, Bob Van Schoonenberg Residence, 2234 Channel Rd, Newport Beach, CA #3821* by WSSI Environmental Consulting, dated November 20, 2010; *Preliminary Eelgrass Mitigation Plan, Robert Van Schoonenberg Residence, 2234 Channel Road, Newport Beach, CA, Dock Replacement Project #3857* prepared by WSSI Environmental Consulting dated June 20, 2011.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed new dock system with the following Special Conditions related to: 1) final revised dock configuration plans depicting shorter fingers of the U-shaped floating dock and relocation, reduction, or complete removal of the proposed 10' x 14' pier platform to avoid eelgrass impacts; 2) water quality best management practices; 3) pre-construction eelgrass survey; 4) pre-construction caulerpa taxifolia survey; 5) assumption of risk, waiver of liability and indemnity; 6) future development return to the Commission for review; and 7) approval of this Coastal Development Permit does not waive any

public rights that may exist at the site. The primary issues associated with this project are avoidance of negative impacts to eelgrass habitat and water quality associated with the long-term water-borne berthing of boat(s) in the proposed dock.

The applicant proposes demolition of an existing dock and reconstruction of a new dock in a new configuration to accommodate a larger boat at the site. The site is located near the mouth of Newport Bay, close to the jetty leading to the open ocean. The conditions at this location allow for optimum eelgrass growth. The reconfiguration from a rectangular float to a "U-shaped" floating dock would result in a reduction of 186 sq. ft. of overwater coverage area than the existing dock, opening up more water areas suitable for eelgrass growth. However, as proposed, small portions of the floating dock fingers would shade existing eelgrass beds and a small portion of the pier platform would shade existing small patches of eelgrass (closer to the bulkhead). Two of the pilings also appear to be sited in the eelgrass bed. The applicant submitted a Preliminary Eelgrass Mitigation Plan. The plan however, does not propose typically accepted forms of eelgrass mitigation (i.e., replanting of eelgrass) and instead proposes pre and post construction eelgrass surveys to monitor direct impacts caused by construction (this is a standard CDP condition for all dock projects and is not technically mitigation) and use of 2' x 4' sections of "grating material" on the dock fingers over some sections (though not all areas) that would cover/shade existing eelgrass beds. The grating material is purported to allow 75% of light penetration, which the applicant asserts should illuminate suitable habitat for new eelgrass growth below the dock. Opening up water areas currently shaded by the existing dock proposed to be demolished that may potentially support new eelgrass growth on its own over time as noted in the Preliminary Eelgrass Mitigation Plan is also not acceptable mitigation for direct eelgrass impacts (i.e., direct shading). Thus, as adequate mitigation is not proposed, Commission staff is recommending approval of demolition of the existing dock and reconstruction with revised final dock plans making minor revisions to the proposed U-shaped dock configuration to avoid adverse eelgrass shading impacts by the proposed pier platform and floating dock.

LIST OF EXHIBITS

1. Location Map
2. Aerial Picture of Project Area
3. Existing Dock System
4. Project Plans
5. Figure of proposed dock reconfiguration in relation to eelgrass presence
6. Figure of possible dock alternative option to avoid eelgrass impacts

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-11-045 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and Conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. Revised Final Project Plans

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised final project plans with the City of Newport Beach Harbor Resources Department approval. The revised project plans shall be in substantial conformance with the plans submitted on February 25, 2011, except they shall be modified to avoid eelgrass impacts by 1) shortening the fingers of the U-shaped floating dock, and/or re-positioning of floating dock; and 2) relocation, reduction, or complete removal of the proposed 10' x 14' pier platform, as generally depicted on Exhibit #6. The proposed water coverage shall not exceed 523 square feet; in addition, the

resultant dock shall not protrude farther seaward than the plans submitted on 2/25/11.

- 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.

2. **Eelgrass Survey**

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.
- B. **Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

3. **Pre-construction *Caulerpa Taxifolia* Survey**

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the "project"), the applicants shall undertake a survey of the

project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate.

- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicants 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 development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *C. Taxifolia* discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

4. Construction Responsibilities and Debris Removal

The permittee shall comply with the following construction related requirements:

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- K.** 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.
- L.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- O.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Best Management Practices Program

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

A. Boat Cleaning and Maintenance Measures:

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

B. Solid and Liquid Waste Management Measures:

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

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 shall 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.

6. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Location and Description

The subject site is located at the entrance to Newport Harbor at 2234 Channel Road on Balboa Peninsula in the City of Newport Beach (Exhibits #-1-2). Waterfront single family residences on Balboa Peninsula facing Newport Harbor, like the majority of harbor front homes in Newport Harbor, include private recreational boat docks similar to that at the project site. There is not a public walkway along the bulkhead in this area of the Balboa Peninsula, the private property line extends to the bulkhead. The nearest public access to Newport Harbor is located approximately 200 feet north of the site at a small public beach and public dock where Channel Road transitions into E. Balboa Blvd. Access to the Pacific Ocean at the City's public beach is available approximately 400 feet south of the site at the Channel Road street end.

The proposed project is the demolition of an existing 709 sq. ft. floating dock, gangway, pier and four existing piles (Exhibit #3) and installation of a new 10'x14' platform supported by two 14" diameter anchor piles, new 3'x24' gangway and "U-shaped" floating dock supported by three 14" diameter guide piles, totaling 523 sq. ft. in water coverage (Exhibits #4). The proposed dock system will be composed of pressure treated Douglas fir, Trex composite decking and galvanized steel hardware. The applicant is also proposing grating material sections at the end of the floating dock fingers to provide greater light penetration for eelgrass beds located directly underneath the proposed floating dock location. The proposed project would increase the number of piles in the water from four to five; the increase is required to meet current engineering standards for the anticipated loads against the boat dock float and pier platform.

The proposed dock meets the City of Newport Beach Harbor Permit Policy as the structures would be placed over public tidelands from the site's waterfront bulkhead up to the U.S. Pierhead Line. The adjacent docks in the vicinity are all built out to the U.S. Pierhead Line as can be seen on the aerial photograph of the site provided as Exhibit #2.

The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. Specific 401 certification is not required. The U.S. Army Corps of Engineers (ACOE) has issued a Letter of Permission dated April 8, 2011 requesting an Abbreviated Formal Consultation with National Marine Fishery Service as ACOE has determined that the project may adversely affect Essential Fish Habitat and/or federally managed fisheries in California waters.

B. Marine Resources & Water Quality

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.

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:

...

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(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.

Section 30240(b) of the Coastal Act states:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Fill of Coastal Waters

Under Section 30233, the proposed project must be one of the allowable uses for fill of open coastal waters, it must be the least environmentally damaging alternative, and it must provide mitigation measures to minimize adverse environmental effects related to fill of open coastal waters.

The proposed demolition and replacement of an existing boat dock constitutes a boating facility, which is an allowable use for which fill may be permitted consistent with Section 30233(a)(3) of the

Coastal Act. The existing dock configuration utilizes four piles, the proposed configuration requires placement of five piles resulting in an increase in the fill of coastal waters. The placement of the three (3), 14" diameter concrete piles is the minimum amount of construction necessary to safely anchor the boat dock float and the two 14" diameter piles for the proposed 10'x14' pier platform, which the applicant asserts will be used for boating related purposes, is the minimum amount of construction necessary to safely anchor the pier platform. Fewer and/or smaller piles would not adequately secure the boat dock float or pier platform. The proposed project design for the boat dock float and pier platform results in the addition of one extra pile, however, is the minimum sized pilings and the minimum number of pilings necessary for structural stability for a boat dock and pier platform of the proposed size.

The proposed recreational boat dock system and its associated five 14" diameter concrete piles are an allowable and encouraged marine related use. Nevertheless, it appears that the resulting fill for two of the proposed 14" diameter concrete piles would directly impact eelgrass habitat. Therefore, as proposed, the project is not the least environmentally damaging alternative. The Preliminary Eelgrass Mitigation Plan by WSSI Environmental Consulting revised November 4, 2011 submitted by the applicant states, *"There is some risk of impact with removing and driving piles, but since the eelgrass is at least 5 feet from all piles, and BMPs will be utilized, then impact may be avoided. The pier portion of the dock is the only portion of the new structure that may have the potential to shade the two small eelgrass patches below it (see Figure 3 for proposed dock layout in relation to eelgrass presence)."* However, this analysis appears to be incorrect, as from the figure from the Preliminary Eelgrass Mitigation Plan (included in this staff report as Exhibit 5) it appears that two of the pilings supporting the U-shaped floating dock fingers would be sited directly over existing eelgrass beds and would not be at least 5 feet from eelgrass as indicated in the analysis by WSSI. As proposed, the project appears to result in direct loss of eelgrass resulting from the proposed fill (two 14" diameter piles).

Section 30233 of the Coastal Act permits fill of open coastal waters only where there is no feasible less environmentally damaging alternative. In this case, there is a less environmentally damaging alternative: the proposed 28' long fingers of the U-shaped dock could also be shortened by a couple of feet or could possibly be rotated/angled a couple of degrees counterclockwise so that the slip opening is angled more to the east, therefore avoiding intrusion of the two floating dock supporting piles into the existing eelgrass beds. The applicant has an approximately 60' x 25' water area 'building envelope' (the area currently covered by the existing dock and vessel and in which no eelgrass was mapped in the submitted November 1, 2010 eelgrass survey) in which to design and site a dock. A U-shaped dock or otherwise, could be designed within this building envelope and completely avoid direct and potential indirect eelgrass losses. **Special Condition #1** requires the applicant submit revised project plans modifying the proposed U-shaped configuration to completely avoid direct eelgrass losses due to pile driving and to completely avoid indirect potential eelgrass habitat losses due to shading impacts caused by the placement of structures over existing eelgrass habitat. Exhibit #6 depicts an alternative dock layout that would avoid eelgrass impacts at this site.

By using the least number of piles necessary, relocating piles to avoid direct impacts to eelgrass and an overall smaller dock system footprint, the Commission finds the proposed project only as conditioned, meets the requirements of Section 30233 for fill of coastal waters be the least environmentally damaging feasible alternative.

Eelgrass (*Zostera marina*)

Newport Bay is a shallow, soft-bottom habitat, which extends from the shoreline to a central dredged channel about 15-18 feet below MLLW. Subtidal areas are mostly non-vegetated, with patches of eelgrass along a portion of the bay perimeter. Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds/meadows also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

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). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

An eelgrass survey conducted on November 1, 2010 by WSSI, Environmental Consulting found eelgrass within 15' of the project. Thick eelgrass beds are present as close as 3' south of the existing pier platform and as close as 1' south of the floating dock; and two small patches (i.e., 1'x1' and 3'x1' patches) northwest of the dock structure closer to the bulkhead. An actual figure of the total square footage of eelgrass mapped was not included in the eelgrass survey provided, only a visual depiction (Exhibit #5). The water depth at the site ranges from -2' near the bulkhead to -8' MLLW by the channel. The WSSI eelgrass survey states "Possible sources of impact to eelgrass from the proposed work include direct contact and increased shading." According to standards for eelgrass mitigation as outlined in the Southern California Eelgrass Mitigation Policy (NMFS 1991, revised 2005), "direct eelgrass" losses require a minimum mitigation ratio of 1.2 to 1 and "potential eelgrass habitat" losses require mitigation at a 1 to 1 ratio. The applicant submitted a Preliminary Eelgrass Mitigation Plan by WSSI dated June 20, 2011 and revised November 4, 2011.

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). Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, **Special Condition #2** is imposed requiring a valid pre-construction eelgrass. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should direct impacts to eelgrass occur caused by construction, the impacts will be identified and appropriate mitigation would be required.

The submitted Preliminary Eelgrass Mitigation Plan identified the pier/pier platform portion of the proposed dock as the only portion of the new structure that may have the potential to shade the two small eelgrass patches below it (Exhibit #5), totaling a 4 sq. ft. area. However, Exhibit #5 also

depicts the end portions of the U-shaped dock fingers directly over existing thick eelgrass beds. And it can also be deduced that the two proposed 14" diameter concrete piles at the ends of the two 28' long floating dock fingers would be driven directly in the eelgrass bed. This area (approximately 32 sq. ft.) is not quantified by the Preliminary Eelgrass Mitigation Plan as an area of potential eelgrass habitat loss due to pile driving and shading by the proposed placement of the new structure. The Preliminary Eelgrass Mitigation Plan states:

"We propose that a detailed pre-construction eelgrass survey be conducted with emphasis on the eelgrass patches near the piles and below the proposed structure. Then we will conduct a post-construction eelgrass survey to determine if any direct impacts occurred during construction and whether there is potential for future shading of eelgrass from the new dock location. Further monitoring should not be necessary because we are proposing that any eelgrass impact be offset by the homeowner's willingness to incorporate grating material into the floating dock. Grating material allows for 75% of light penetration, which creates an area directly below the dock for eelgrass to grow that was previously shaded. Two grating material sections (2'x4' each) would be added to each finger, which results in a total of 32 sq. ft. of area below the dock exposed to sunlight which should be suitable habitat for new eelgrass growth below the dock. This is eight times the amount of area that has the potential to be impacted. We propose that the grating material will offer a suitable habitat for new eelgrass growth, and therefore will be an appropriate out-of-kind form of mitigation since the estimated potential eelgrass impact at this site is such a small area (<0.5 meters squared), if any impact occurs at all."

The proposed "out-of-kind" form of mitigation proposed for the approximately 32 sq.ft. of area of thick eelgrass beds that would be shaded by the float fingers is the use of two grating material sections (2'x4' each) added to end of each float finger. The impact caused to the two small patches of eelgrass closer to the bulkhead by the proposed placement of a 10' x 14' pier platform is proposed to be simply monitored and noted; this impact would also be "offset by the homeowner's willingness to incorporate grating material into the floating dock." The Preliminary Eelgrass Mitigation Plan does not actually propose typically accepted forms of mitigation for potential eelgrass habitat losses. The use of grating material should be encouraged to allow for *new eelgrass* growth in areas suitable for eelgrass growth but where eelgrass currently does not grow due to shading from the previous dock structure on the site. Grating material is not "mitigation" against the potential loss of eelgrass habitat from adverse shading impacts due to the placement of a new structure over *existing eelgrass*.

Section 30240(b) requires development in areas adjacent to environmentally sensitive habitat areas (which can include eelgrass beds) and recreation areas (such as open coastal waters) to be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. Furthermore, Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored with special protection given to areas and species of special biological 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.

The shading impacts to the existing thick eelgrass beds in deeper waters and two small eelgrass patches closer to the bulkhead, though small (approximately 36 sq. ft.), could be entirely avoided through minor dock redesign. The 10'x14' pier platform proposed at the bulkhead could be shifted a couple of feet south of the currently proposed location or could be shortened to 10'x10', thereby completely avoiding any shading of the eelgrass patches on the northwest end of the bulkhead. The proposed 28' long fingers of the U-shaped dock could also be shortened by a couple of feet or

could possibly be rotated/angled a couple of degrees counterclockwise so that the slip opening is angled more to the east, therefore avoiding shading intrusion into the existing eelgrass beds. Exhibit #6 depicts an alternative dock layout that would avoid eelgrass impacts at this site.

Special Condition #1 requires the applicant submit revised project plans modifying the proposed U-shaped configuration to completely avoid direct eelgrass losses due to pile driving and to completely avoid indirect potential eelgrass habitat losses due to shading impacts caused by the placement of structures over existing eelgrass habitat.

Therefore, only as conditioned does the Commission find that the proposed project conforms with the provisions of Sections 30230 and 30240(b) of the Coastal Act to sustain the biological productivity of coastal waters and siting and designing development to prevent adverse impacts.

Caulerpa Taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on June 4, 2010 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition #3** which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

Water Quality and Construction Impacts

Due to the proposed project's location in the waters of Newport Bay, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion 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.

The proposed project includes measures to help assure protection of coastal waters and marine resources such as all parts of the proposed dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place

and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, the Commission imposes **Special Condition #4** requiring the applicant utilize construction best management practices to minimize impacts upon water quality. Such practices include: all construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; floating booms shall be used to contain debris discharged into coastal waters; non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; no machinery not essential to project construction may be placed in the inter-tidal zone at any time, and that any and all construction equipment, materials and debris are removed from upland areas at the conclusion of construction.

The Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

Water Quality and Boating Activity Impacts

These Coastal Act policies are intended to protect the water quality and biological productivity of coastal water resources. Aside from potential construction impacts on water quality, the berthing of boats by the boat dock user and associated boating activities also has the potential to adversely impact coastal water quality and marine environment through the introduction of pollutants associated with boating activities. 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, adversely impact water quality in coastal waters. The discharge of chemicals, petroleum, cleaning agents, sewage and other pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, reduce optimum populations of marine organisms, and have adverse impacts on human health. Such cumulative impacts on water quality can be minimized through the implementation of certain BMPs. Therefore, the Commission imposes **Special Condition #5** that requires the applicant to agree to the implementation of the water quality BMPs related to long-term water-borne berthing of boat(s) in the approved residential dock. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

C. 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*

The subject site is located in a residential area where the majority of the lots are protected from coastal waters by a bulkhead. 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. There is no a public walkway along the bulkhead in this area of the Balboa Peninsula, the private property line extends to the bulkhead. Adequate public access exists nearby. The nearest public access to Newport Harbor is located approximately 200 feet north of the site at a small public beach and public dock/boat launch, where Channel Road transitions into E. Balboa Blvd. Access to the Pacific Ocean at the City's public beach is available approximately 400 feet south of the site at the Channel Road street end. The proposed development, as proposed, 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.

D. Local Coastal Program (LCP)

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.

Section 30604(a) 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 permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The following LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3:

LUP Policy 4.1.4-1 Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

LUP Policy 4.1.4-3 Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.

As conditioned, the proposed project will conform with Coastal Act Sections 30233, 30230, 30231, 30210, and 30212 and with the marine resource protection policies in the Certified LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a

Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications 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 which the activity may have on the environment.

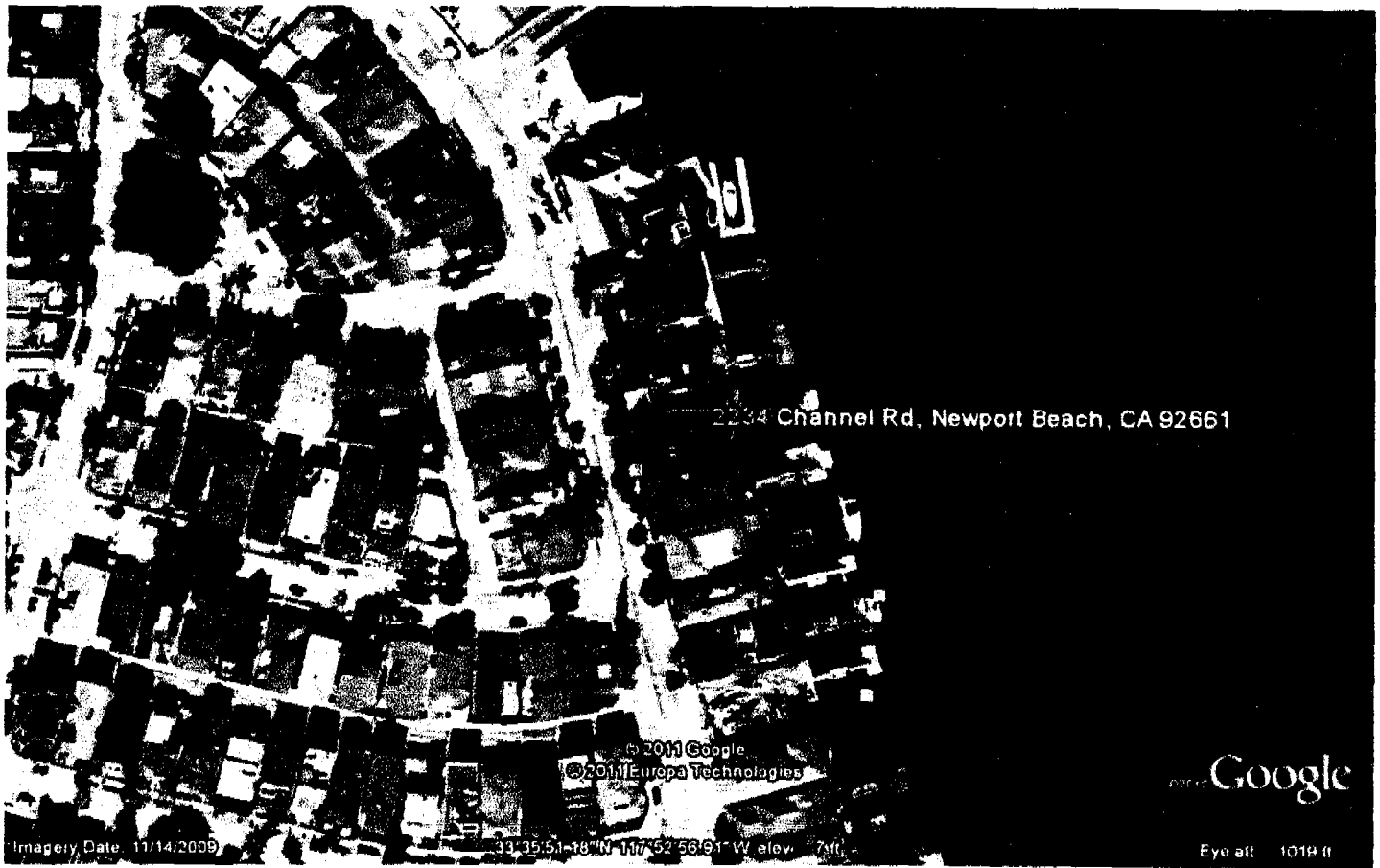
In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt on January 26, 2011. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SEE 920 MAP

COASTAL COMMISSION

EXHIBIT #

PAGE 1 OF 1



COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

CITY OF NEWPORT BEACH

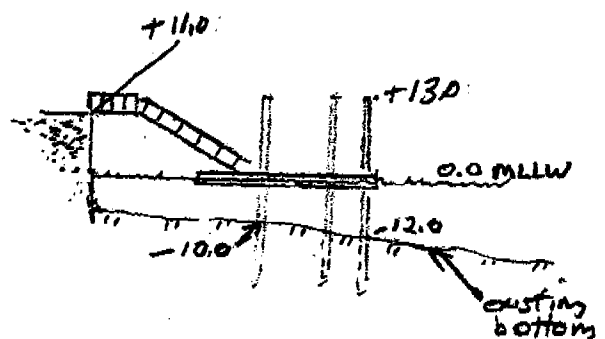
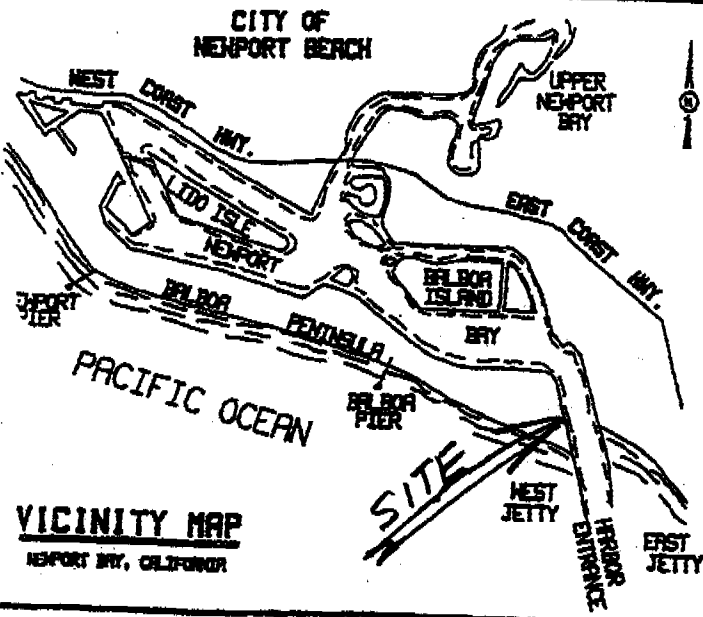
EXHIBIT #

3

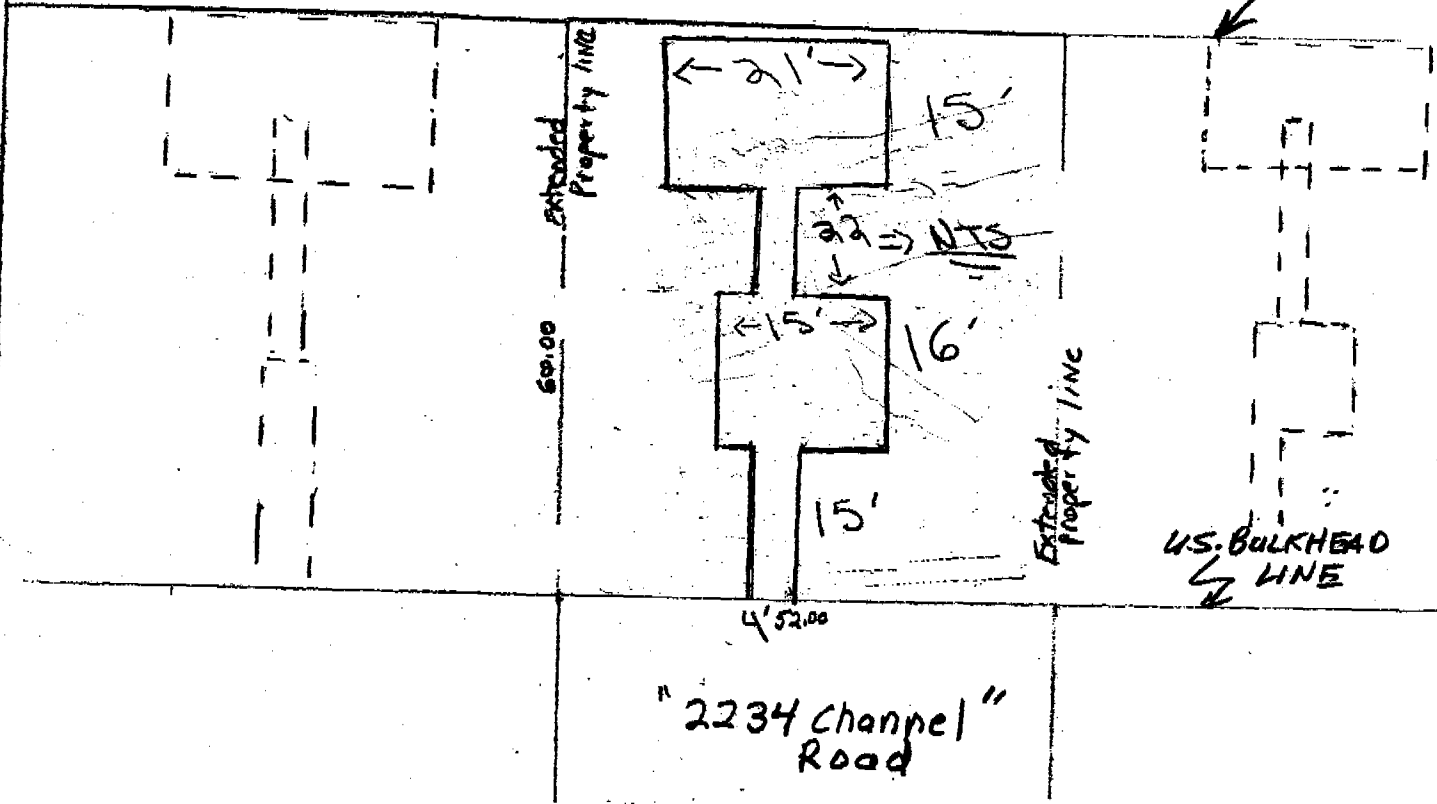
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OF 1



NEWPORT BAY Existing: ~~NOX~~ SAT



APPLICANT'S NAME ROBERT van Schootenberg

JOB ADDRESS 2234 Channel Road

DATE 12-15-10

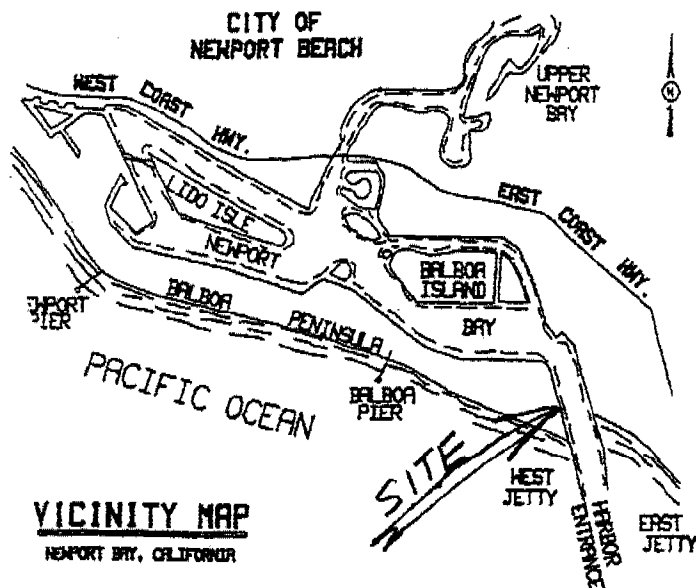
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4

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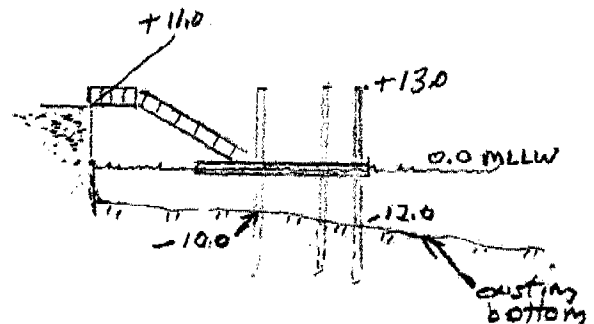
OF

CITY OF NEWPORT BEACH



PROFILE 1" = 40'

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



EEL GRASS INSPECTION

- ☒ Eelgrass within 15' of project
☐ Eelgrass within 15 - 30' of project
☐ No Eelgrass in project area

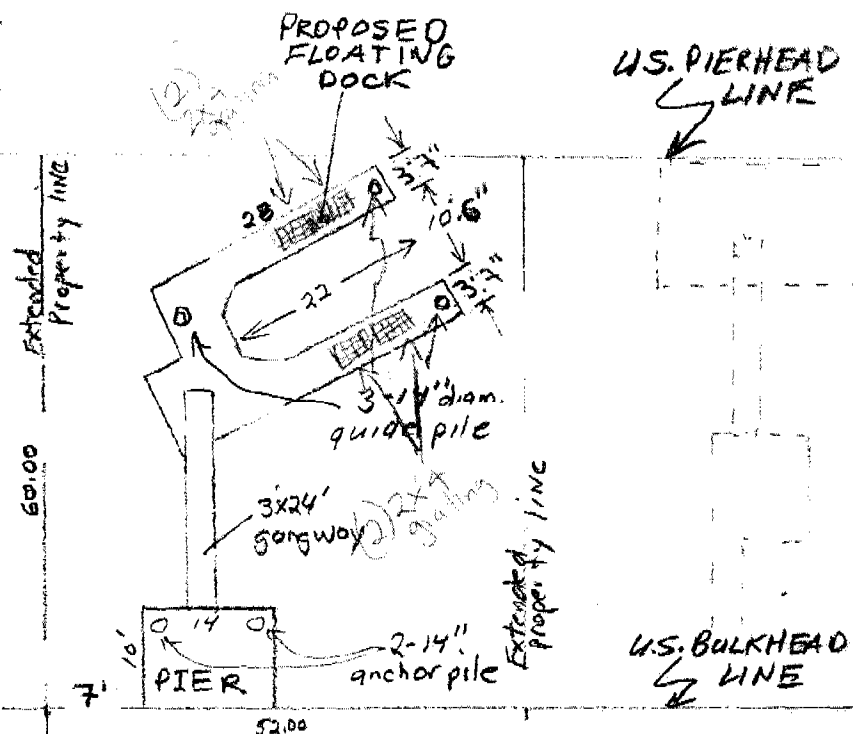
Signature

11/1/10 1045

Inspection Date & Time

NEWPORT BAY

Proposed: 522' 8" x 11'

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

1/25/11

"2234 Channel"
Road

PLAN VIEW 1" = 20'

APPLICANT'S NAME ROBERT van Schoonenberg

JOB ADDRESS 2234 Channel Road

DATE 12-15-10

WSSI

ENVIRONMENTAL CONSULTING

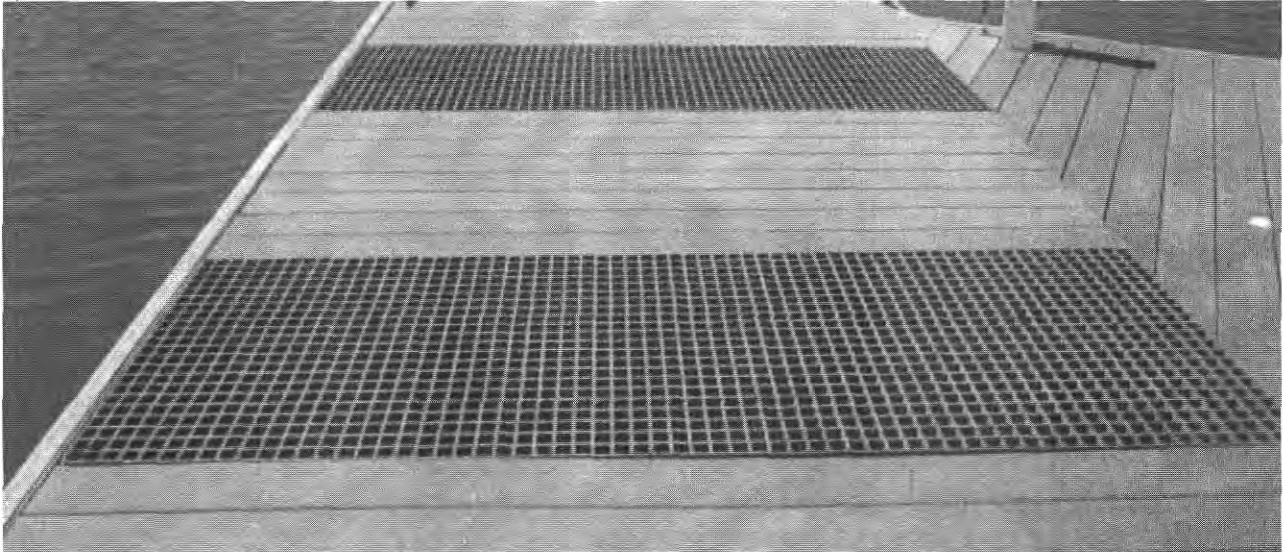
2726 Shelter Island Dr.

San Diego CA 92106

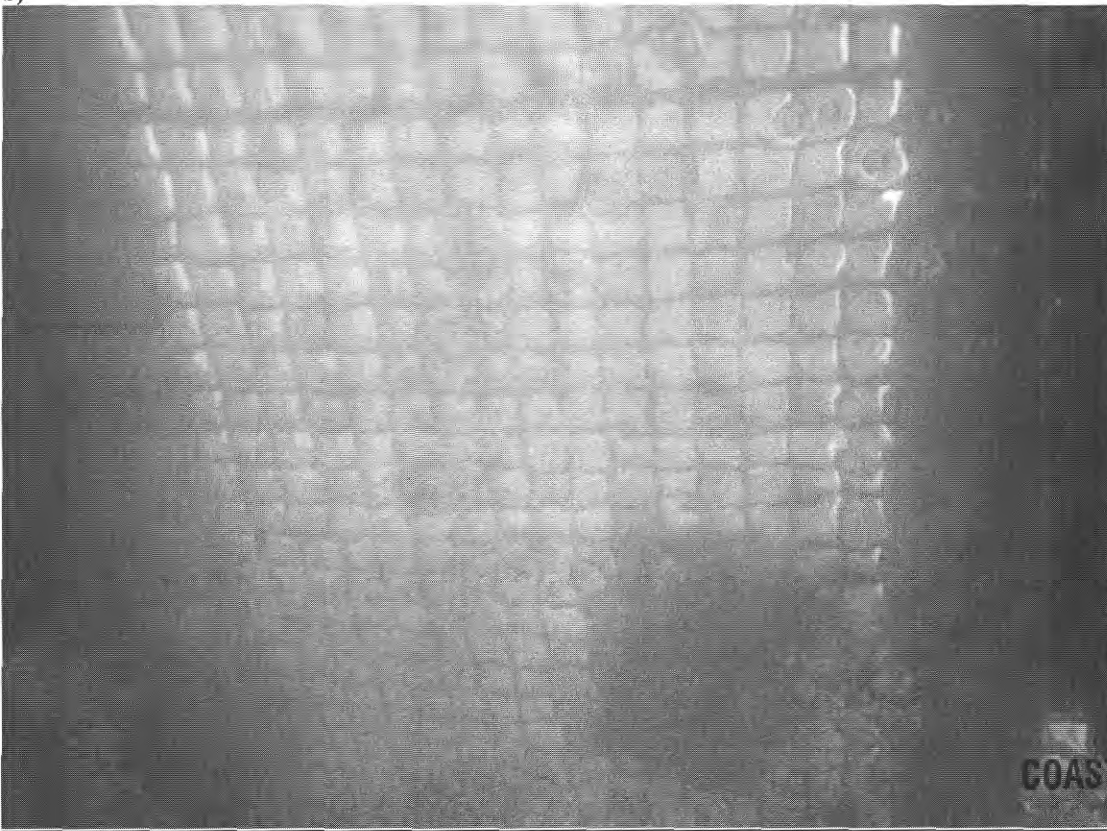
(800) 236-0013 • (800) 225-9730 (fax)

Figure 4. An example of the grating material that allows for 75% of sunlight penetration below the dock, a) above water and b, c & d) below water.

a)



b)



COASTAL COMMISSION

EXHIBIT #

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WSSI

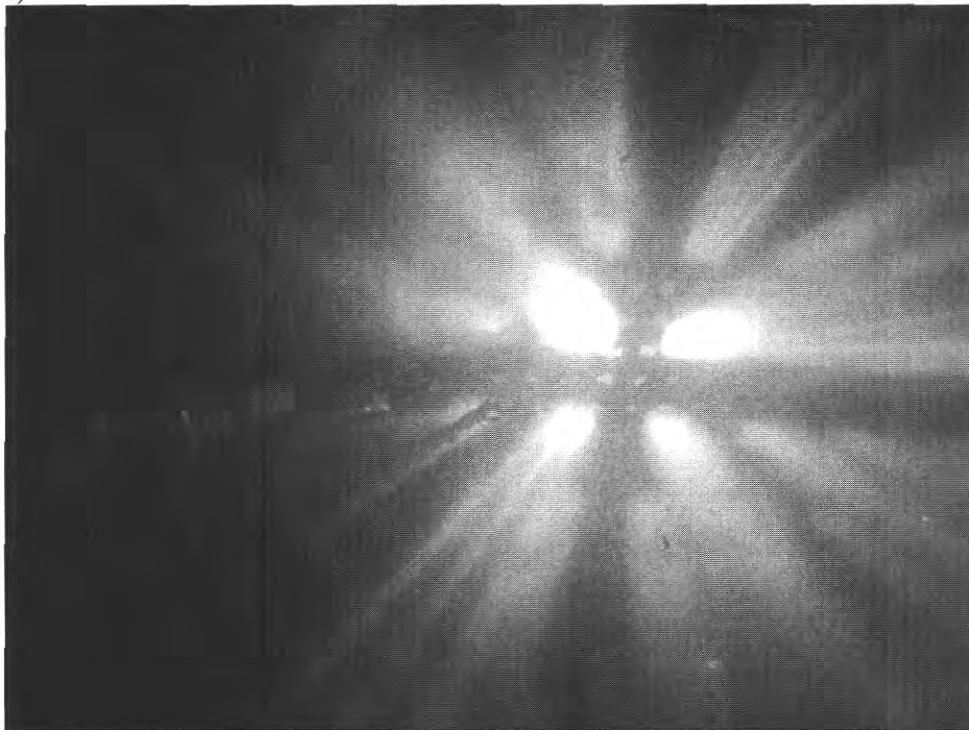
ENVIRONMENTAL CONSULTING

2726 Shelter Island Dr.

San Diego CA 92106

(800) 236-0013 • (800) 225-9730 (fax)

c)



d)



COASTAL COMMISSION

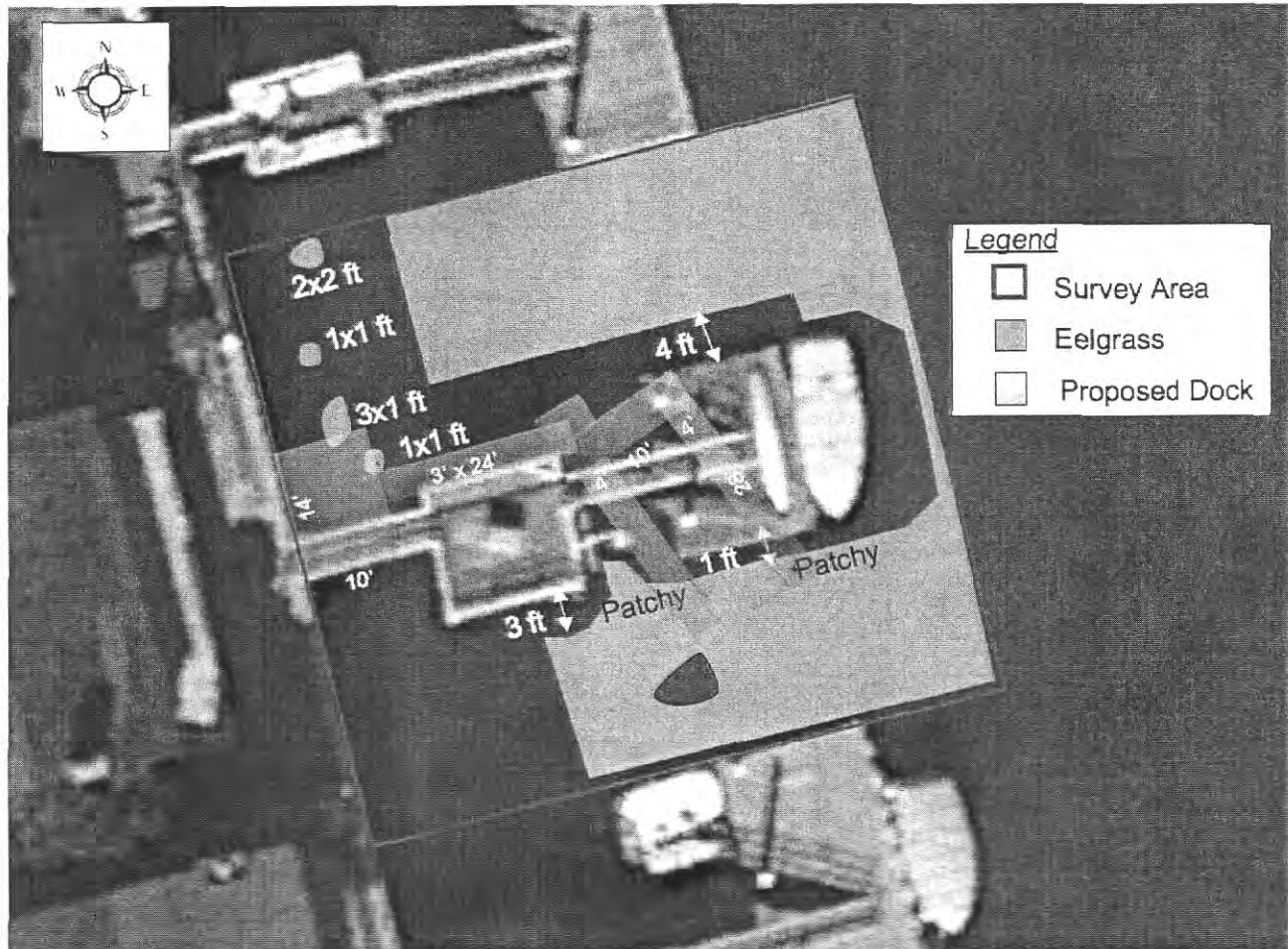
EXHIBIT # 4
PAGE 3 OF 3

WSSI

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 San Diego CA 92106
 (800) 236-0013 • (800) 225-9730 (fax)

EXHIBIT # 5
 PAGE 1 OF 1

Figure 3. The proposed dock reconfiguration measurements and placement in relation to eelgrass presence.



Proposed Mitigation/Monitoring

Option 1 (preferred): We propose that a detailed Pre-Construction Eelgrass Survey be conducted with emphasis on the eelgrass patches near the piles and below the proposed structure. Then we will conduct a Post-Construction Eelgrass Survey to determine if any direct impacts occurred during construction and whether there is potential for future shading of eelgrass from the new dock location. Further monitoring should not be necessary because we are proposing that any eelgrass impact be offset by the homeowner's willingness to incorporate grating material (see Figure 4) into the floating dock. Grating material allows for 75% of light penetration, which creates an area directly below the dock for eelgrass to grow that was previously shaded. Two grating material sections (2' x 4' each) would be added to each finger, which results in a total of 32 ft² of area below the dock exposed to sunlight which should be suitable habitat for new eelgrass growth below the dock. This is eight times the amount of area that has the potential to be impacted.

WSSI

ENVIRONMENTAL CONSULTING

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San Diego CA 92106

(800) 236-0013 • (800) 225-9730 (fax)

EXHIBIT # **6**PAGE **1** OF **1****Results**

No *Caulerpa* spp. were observed (see attached *Caulerpa* Survey Reporting Form). Eelgrass was observed at the site, and within 1 foot of the floating dock (Figure 3).

The bay floor was silty. Fauna observed included lots of sea hares, kelp fish, and mussels. The water depth ranged from -2 ft near the bulkhead, to -8 ft MLLW by the channel.

Figure 3: Eelgrass observed at 2234 Channel Rd, Newport Beach, CA

