

**CALIFORNIA COASTAL COMMISSION**

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Filed: March 1, 2011  
49th Day: April 19, 2011  
180th Day: August 28, 2011  
Staff: Liliana Roman-LB  
Staff Report: July 27, 2011  
Hearing Date: August 10-12, 2011  
Commission Action:



# Item W11e

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NUMBER:** 5-11-050

**APPLICANT:** Stephen Poleshuk

**AGENT:** Swift Slip Dock and Pier Builders

**PROJECT LOCATION:** 319 Grand Canal, Balboa Island, City of Newport Beach  
(Orange County)

**PROJECT DESCRIPTION:** Installation of a new 6' x 4' 6" deck platform and steps per City standards composed of pressure treated Douglas fir and trex composite deck materials along a public bulkhead for access to the Grand Canal public waterway and moored boats on the Canal's shoreline.

**LOCAL APPROVALS:** City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit #801-319 and Plan Check #0031-2011 dated January 12, 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-2011-00292-RJV)

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; City Harbor Permit Policy; WSSI Environmental Consulting Pre-Construction Eelgrass Survey Report dated November 16, 2010; CDP 5-05-252(Hirson); CDP 5-05-283(Tetrault)

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### **SUMMARY OF STAFF RECOMMENDATION:**

The applicant is requesting approval for the installation of a 6' x 4' 6" deck platform along a public bulkhead and stairs down from the platform for access into the Grand Canal public waterway and moored boats on the Canal's shoreline. The entire structure will be constructed on or over public tidelands. The site is subject to tidal action, but not to direct wave exposure because the site is located within a protected canal between Balboa Island and Little Balboa Island in Newport Bay. The primary issue associated with this development relates to private structures encroaching onto public waters.

Balboa Island is largely developed with single family residences, and is encircled by a bulkhead system to protect against erosion. There is a public walkway between the first row of houses and the bulkhead. The bulkhead is owned and maintained by the City. The shoreline and bay waters seaward of the bulkhead are public tidelands (granted to and managed by the City). The proposed deck platform and stairs would provide a connection from the walkway and bulkhead to the shoreline of Grand Canal, where boats can be moored. In effect, the deck platform and stairs provide access to the Canal shoreline during low tide and to the Canal waters during high tide.

There are piers and docks seaward of most of the waterfront homes on Balboa Island. The City has granted harbor permits to those waterfront homeowners to allow them to construct and maintain those piers/docks. The circumstances present along Grand Canal are slightly different from the remainder of the island in that there are no 'typical' piers and docks (the canal is too narrow to support such structures). Instead, the City has permitted those with waterfront homes along the canal to construct these platform/stair systems that allow for easier access to the canal, where these waterfront homeowners moor smaller boats. Forty (40) out of forty-one (41) homes along the west side of the Canal and thirty-five (35) out of thirty-seven (37) homes along the east side of the Canal have these deck platform/stairs structures. While there are many platform/stair systems along the canal, the only two that have received permits from the Commission were for replacement of pre-existing platform/stair systems; no new platform/stair systems, such as the proposed project, have ever been approved by the Commission. The remaining 73 platform/stair structures along this canal were either constructed before the enactment of the Coastal Act or are unpermitted.

Commission staff has concerns about the installation of new structures for private use/purposes on public tidelands. These private structures create new impediments to public access to public tidelands. There are also concerns regarding cumulative adverse impacts on biological resources in the form of bay fill and shading effects on coastal waters. As conditioned, with the requirement that the proposed platform/stair is available for public use, the platform/stair system will, at minimum, offset the public access impediment created by its construction, and perhaps even be an enhancement to public access. Staff recommends that the Commission **APPROVE** the proposed deck platform and stairs, with **nine (9) special conditions** pertaining to: 1) preservation of existing public access rights by requiring the platform/stairs be open and available for use by the public; 2) revised plans requiring signage for public access to Grand Canal; 3) public rights; 4) water quality; 5) eelgrass survey; 6) pre-construction *Caulerpa taxifolia* survey; 7) assumption of risk, waiver of liability and indemnity; 8) future development return to the Commission for review; and 9) deed restriction.

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#### **LIST OF EXHIBITS:**

1. Location Map
2. Public Access Walkway
3. Project Plans
4. Photos of existing deck platforms and City Standards for deck platform and stairs
5. Eelgrass Survey
6. State Grant of Newport Bay Tidelands to the City of Newport Beach

#### **STAFF RECOMMENDATION:**

**MOTION:**        ***I move that the Commission approve Coastal Development Permit No. 5-11-050 pursuant to the staff recommendation.***

#### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

### **II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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. PUBLIC ACCESS UPON PLATFORM/STAIR SYSTEM**

Concurrent with the commencement of use of the proposed platform/stair system by the applicants, the proposed platform/stair system shall be opened for public use so that the public's existing right of access to these public tidelands is maintained. The platform/stairs shall be open to the general public for use 24-hours per day. After the platform/stairs are opened for public use, any 'development', as that term is defined in Section 30106 of the Coastal Act, that diminishes permanent public pedestrian access and passive recreational use of the platform/stairs is prohibited. Temporary restrictions on public access that are necessary due to maintenance activities that have received Coastal Act authorization may be allowed. Upon opening the platform/stairs for use, the applicant shall remove any existing obstructions and signage that prohibits and/or discourages public use of the platform/stairs, and erect signs in accordance with the sign plan required pursuant to Special Condition 2.

If at a future time, the City develops a comprehensive program providing funding for alternate public access platform/stairs structure(s) to the Grand Canal public tidelands through a coastal

development permit, the applicant has the option of substituting the requirements of this Special Condition with participation in such a payment program through an amendment to this coastal development permit or shall require an additional coastal development permit from the Commission.

**2. Revised Plans Condition**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans, which shall be in substantial conformance with the preliminary plans submitted, except they shall show the following changes to the project:

1. **Signage**

- (a) A sign shall be posted on the deck platform indicating public access to the Grand Canal; the language on the sign shall read, "Public Access to Grand Canal Public Tidelands"
- (b) Sign shall be a minimum size of 12" x 18" and shall be constructed of heavy-duty lightweight aluminum or any other rust resistant and weather durable material with a white background and black lettering.
- (c) Sign shall be posted on the platform deck structure at a minimum 4' height, visible and legible to pedestrians along the adjacent Balboa Island public walkway.
- (d) Sign shall remain posted for the life of the structure and maintained in accordance with the approved final plans by the present and future property owner(s) of 319 Grand Canal.

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.

**3. Public Rights**

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

**4. Water Quality**

**A. Construction Responsibilities and Debris Removal**

- (1) 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.
- (2) 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.
- (3) 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.

- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) 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.
- (7) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) 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.
- (15) 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
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

## **B. Best Management Practices Program**

By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) accessed by the approved platform/stair system will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

- (1) Boat Cleaning and Maintenance Measures:
  - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
  - b. 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.

- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

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

(3) Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
- b. 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.
- c. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

**5. Eelgrass Survey**

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 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.

**6. 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 applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
  - (1) for the review and approval of the Executive Director; and
  - (2) 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 applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has 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 applicant has 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.

**7. Assumption of Risk, Waiver of Liability and Indemnity**

- A.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from sea level rise, storm waves and flooding; (ii) to assume the risks to

the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**8. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-11-050. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-11-050. Accordingly, any future improvements to the deck platform and stairs authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-11-050 from the Commission or shall require an additional coastal development permit from the Commission.

**9. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) located at 319 Grand Canal, City of Newport Beach, California, ("the Property"), a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development adjacent to the Property subject to terms and conditions that restrict the use and enjoyment of the Property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels benefitted by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the Property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.



## **II. FINDINGS AND DECLARATIONS:**

### **A. PROJECT LOCATION & DESCRIPTION**

#### **1. Project Location and Description**

The proposed development would be located seaward of and adjacent to a City-owned bulkhead in front of a single-family residence located at 319 Grand Canal on Balboa Island in the City of Newport Beach (Exhibits # 1-2). The Grand Canal is public tidelands granted to and managed by the City. The Canal is approximately 100 feet wide and divides Balboa Island in two. Immediately inland of the City bulkhead is a public walkway/accessway that encircles the entire Island. The walkway abuts single-family and two-family zoned private residential lots. Coastal public access is available along the walkway surrounding the entire Balboa Island (Exhibit #2).

The proposed project is construction of a new 6' x 4'6" deck platform constructed with Trex composite decking materials and wood stairs, both supported by 4"x4" pressure treated Douglas Fir lumber embedded a minimum of 5' into the Grand Canal. The "standard" deck platform/stairs are constructed per City standards in terms of dimensions and construction materials (Exhibits #3). The deck platform will be constructed immediately adjacent to the existing public bulkhead wall along the Grand Canal of Balboa Island in front of the applicant's single family residence located at 319 Grand Canal. The platform will not be anchored to the bulkhead coping. The platform and stairs will be located entirely on public tidelands. The proposed platform will have six steps leading into the canal and will provide the applicant access to a private small boat/dingy moored in the Grand Canal in front of his residence. The deck platform and stairs is similar in design and size to other deck platforms and steps along Grand Canal. These platforms with stairs to the bayside beach are unique in Newport Bay to Grand Canal - it is the only area where City Harbor Permit policies (Exhibit #4) allow such structures for access to Grand Canal where shoreline boat moorings are present. The proposed project, though not technically a dock, is intended for boating related purposes. However, as the deck platform and stairs are located adjacent to a publicly owned bulkhead and on public tidelands for access to those tidelands, the proposed access structure should be available for public use. Though the platform deck and stairs are constructed adjacent to the City owned bulkhead and is sited on City administered public tidelands, the City does not require the applicant to obtain an encroachment permit at this time.

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. 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. The applicant has received a Letter of Permission for the proposed project from the U.S. Army Corps of Engineers.

There are 41 residences on the west side of Balboa Island's Grand Canal and 37 residences on the east side of Grand Canal on Little Balboa Island. The bulkhead area in front of 319 Grand Canal is the only site on the west side of the Grand Canal without a deck platform and stairs. Forty (40) out of forty-one (41) homes along the west side of the Canal and thirty-five (35) out of thirty-seven (37) homes along the east side of the Canal currently have deck platform/stairs structures in front of the public bulkhead and in public tidelands. The Commission has approved approximately 30 projects (i.e., demolition/construction of single-family residences and duplexes, addition to existing single-family residences, conversion of duplex to single family residences) with Grand Canal addresses since the 1980s. However, the Commission has only approved two replacement deck platforms/stairs out of the 75 total along the Grand Canal, CDP 5-05-252 (Hirson) and CDP 5-05-283 (Tetrault). This is the first Coastal Development Permit (CDP) application request for a new deck platform/stairs in the Grand Canal. A survey of aerial photographs of the Grand Canal from November 1986 show approximately 32 deck platforms on the west side of Grand Canal and approximately 32 on the east side of the canal. Aerial photographs of the Grand Canal from 2010

show 40 deck platforms on the west side of Grand Canal and 36 on the east side of the canal. Based on this photographic survey of the area, approximately 12 new deck platforms with stairs have been constructed in the past 25 years without the benefit of a CDP. Staff is conducting further investigations regarding unpermitted development in the Grand Canal.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Furthermore, the proposed development is located on public tidelands, which is an area of retained jurisdiction by the Commission. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

**B. Public Access and Recreation**

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in 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 . . . Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30213 of the Coastal Act states:

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

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30224 of the Coastal Act states:

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

The City's certified Land Use Plan (LUP) also contains the following policies that would apply to the proposed development:

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.2-1. states,  
*Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.*

Land Use and Development/Visitor-Serving and Recreational Development, Policy 2.3.3-5 states,  
*Continue to provide and protect public beaches and parks as a means of providing free and lower-cost recreational opportunities.*

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-1 states,  
*Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-2 states,  
*Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.*

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-4 states,  
*Identify and remove all unauthorized structures, including signs and fences, which inhibit public access.*

Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-11 states,  
*Require new development to minimize impacts to public access to and along the shoreline.*

Coastal Land Use Plan Policy 3.1.5-1 states:

*Prohibit new development that incorporate gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.*

The shorelines along Newport Bay are popular areas for coastal access and recreation as are the waters of Newport Bay, which are very popular recreational boating areas. The proposed project includes the installation of a deck platform and stairs on public tidelands to facilitate access to the shoreline for recreational boating. The applicant is the owner of the adjacent single family home and the primary purpose of the project is to facilitate that homeowner's access to the shoreline and moored boat in front of the residence. This privately constructed facility would be located on public tidelands that are administered by the City of Newport Beach presumably pursuant to the tidelands grant from the State. Although the placement of the proposed structure on public tidelands has been found by the City to be consistent with the tidelands grant, it is unclear specifically which portion of the tidelands grant allows entirely private use of such areas. (See Exhibit 6 for the full text of the tidelands grant to the City of Newport Beach). At this time, the City also does not require an encroachment permit or encroachment permit payment for the construction of this facility on public tidelands. In addition, under the Coastal Act, it is important to assure that such structures would not adversely impact public access and public use of recreational waters. Section 30220 requires that water areas needed for water oriented recreational activities, like public recreational boating, be protected.

One of the main tenets of the Coastal Act is the preservation and enhancement of coastal access. The City's certified Land Use Plan (used as guidance) also strongly supports protection and enhancement of coastal access. The subject proposed private deck platform and stairs would be construction over and on public tidelands administered by the City of Newport Beach. A platform/stair system such as the one proposed could be used for fishing, viewing and passive uses, as well as for access down to the shoreline or for access to Balboa Island by small vessel boaters, kayakers, paddleboarders, etc.

The general public currently has access to and along the bulkheaded bayfront via public streets and a walkway that runs along the landward side of the bulkhead. The proposed project will not interfere with public use of the walkway. There are on-street public parking spaces in the vicinity of the platform/stairs upon surrounding public streets. Public access upon the new platform/stairs would be beneficial. Presently, there is access along the bayfront; access to the platform/stairs would tie in to this existing lateral access along the waterfront. It would provide the public with an opportunity for alternative viewpoints of this scenic waterfront area.

The area upon which the new structure would be located is public tidelands held in trust by the City of Newport Beach. The applicant has no right under the Coastal Act to exclude the public from using this platform/stair system located on public tidelands. Section 30210 of the Coastal Act requires that maximum public access be provided. Section 30212 of the Coastal Act requires that public access to the shoreline and along the coast be provided in new development projects, except where adequate access exists nearby: no access similar to that provided by this proposed platform/stair system exists in the vicinity. Section 30213 of the Coastal Act encourages provision of lower cost visitor and recreational facilities; such facilities would be provided by making the platform/stairs available for public access. The City of Newport Beach's Coastal Land Use Plan includes many similar policies encouraging improvement of public access. Thus, excluding the public from using the platform/stairs located on public tidelands is inconsistent with Sections 30210, 30212 and 30213 of the Coastal Act.

The proposed project would result in the occupation by a private structure of a public shoreline area used for coastal access and public recreational boating, and thus represents an adverse impact on area available for public access and water oriented recreational activities. This adverse impact would result if this new privately constructed facility were reserved entirely for private use. In order to bring the proposed development into conformance with the Coastal Act, the Commission imposes **Special Conditions 1 and 2**. **Special Condition 1** requires the applicant to open the platform/stairs for public use concurrent with the commencement of use of the platform/stairs by the applicant. The special condition also includes other requirements related to the hours of access (24-hours per day). The hours of access are set at 24-hours per day because the public walkway is also open 24-hours per day. This requirement preserves the existing public right of access, and is not an expansion of those public rights. Furthermore, the special condition allows the applicant the opportunity for a permit amendment if in the future an encroachment permit/payment program is devised by the City to create and fund alternative public platform and stairs access structure(s) to the public tidelands of Grand Canal in an effort to address existing unpermitted private encroachment structures in the canal and provision of public access in a comprehensive manner. It is the Commission's intent to work with the City toward such a goal. However, at this time such a program has not yet been developed and due to the Permit Streamlining Act requirements, the Commission must take action on this application at this hearing.

**Special Condition 2** is imposed requiring revised final plans that include signage on the proposed new deck platform advising available public use for access to the Grand Canal. Thus, instead of becoming a new impediment to coastal access and recreation, the structure would facilitate coastal access and recreation by providing easier public access to a shoreline area that is otherwise difficult to access.

The applicant raises concerns about potential liability. Commission staff notes, however, that State law provides extensive immunity. For example, Civil Code section 846 provides that owners of property generally do not owe a duty of care to people who are on the property for recreational purposes (unless the owner expressly invites them or the visitors have paid the owner consideration). Government Code section 831.2 provides immunity for injuries caused by natural conditions of unimproved public property. Pursuant to Government Code section 831.7, public entities are also generally immune from claims for hazardous recreational activities (for example, diving off structures where warning is provided that diving is prohibited).

When sited to be consistent with all Coastal Act policies, development that results in increased recreational boat use of coastal waters is encouraged under Section 30224 of the Coastal Act. However, as noted above, the proposed dock, sponsored by a private entity, is located on public tidelands, and not on privately owned land. Thus, **Special Condition 3** is also imposed stating that the approval of a Coastal Development Permit for the project does not waive any public rights or interest that exist or may exist on the subject property, including the tidelands and submerged lands beneath the development approved by this Coastal Development Permit.

Additionally, the Commission imposes **Special Condition 9** requiring the applicant record a generic deed restriction to ensure that future owners of the property will be informed of the conditions of this permit.

### Conclusion

Thus, as conditioned, the proposed project's impact on existing public access or coastal recreation will be adequately mitigated. As conditioned, the proposed development will not adversely affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, is in conformity with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **B. MARINE RESOURCES**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

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 launch areas.*

*(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 30250 of the Coastal Act states in part:

*(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....*

The City of Newport Beach Coastal Land Use Plan contains the following policies:

- 3.1.4-3      *Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.*
- 3.1.4-5      *Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.*

The proposed project is for a deck platform and stairs over coastal waters in the Grand Canal which divides Balboa Island into two. The construction will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact the marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Thus, it is important to minimize the construction of new structures as well as to minimize the size of any such structures that are approved.

#### 1. Fill of Coastal Waters

The project is the installation of eight (8) 4"x4" lumber beams embedded in the shoreline a minimum of 5-feet deep to support a 6' x 4'5" deck platform and stairs down to the shoreline along the edges of the Grand Canal, a public canal transecting Balboa Island within Newport Bay. The support beams to be embedded into the bay, though not technically "piles", would result in a minimum of 4.44 cubic feet (0.164 cubic yards) of fill.<sup>1</sup>

Section 30233 of the Coastal Act limits the allowable fill of open coastal waters, estuaries, and lakes; allowing for new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities in open coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must be one of the specific allowable uses, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project. The project must also otherwise be found consistent with all other applicable Chapter 3 policies of the Coastal Act.

#### Allowable Use

The proposed deck platform and stairs will be supported by eight (8) 4"x4" lumber beams embedded in the shoreline a minimum of 5-feet deep. The City of Newport Beach Harbor Resources Department issues permits for a "standard" size deck platform and stairs to residences adjacent to the Grand Canal and limits the size of these access structures to no greater than 27 sq. ft. with a width between 3' to 4'6" and a length between 4' – 6' and 4"x4" wood beams for support instead of the larger boat dock piles (usually 12" to 18" in diameter) resulting in a minimum amount of fill. The proposed structure is a hybrid between a pier that, as conditioned, provides public recreational access and a structure that may be considered a boating facility in that its primary

---

<sup>1</sup> Calculations for estimated fill:  $0.333' \times 0.333' \times 5' = .55 \text{ ft}^3 \times 8 \text{ beams} = 4.44 \text{ ft}^3$

purpose is to facilitate access to the water for boating; which are both uses for which fill may be permitted consistent with Section 30233(a)(3) of the Coastal Act. Therefore, the proposed fill resulting from placement of the eight (8) supporting beams for the deck platform and stairs is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

#### Alternatives

The proposed placement of the eight (8) 4"x4" lumber beams will result in fill of coastal waters; though less by far than regular size piles typical for dock construction. As proposed, the amount of fill is the minimum amount of construction necessary to safely support the deck platform and stairs. This alternative represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing access to boats berthed in the canal. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233 that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

#### Mitigation

The project site was surveyed for eelgrass and two small patches of eelgrass were found adjacent to a boat moored on the sand approximately 15 -30 feet from the project area. No eelgrass was found within the project construction area during the survey (further discussed in the eelgrass section below). **Special Condition 5** and **Special Condition 6** respectively, require pre-construction eelgrass and *Caulerpa Taxifolia* surveys, therefore, as conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*. Further, as the project encroaches onto public tidelands, **Special Conditions 1 and 2** requires the applicant make available the new platform deck and stairs to the general public for access to the public tidelands in the Grand Canal. Making this structure available to the public may reduce future demand for and/or replacement of other platforms in the area which will help alleviate cumulative impacts. The proposed recreational boat access structure is an allowable marine related use.

Thus, as conditioned, the proposed project will be consistent with Section 30233 of the Coastal Act regarding fill of open coastal waters.

## 2. Water Quality Impacts

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region. Since the proposed project has the potential to affect water quality, the development requires review by the RWQCB. The RWQCB determined that if standard dock construction methods and materials are utilized, the project should not adversely impact water quality. The RWQCB reviewed the project and issued a Clean Water Act Section 401 Water Quality Standards Certification contingent upon special conditions relating to discharge into coastal waters and turbidity control.

Due to the proposed project's location on the water 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. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. Furthermore, after construction, regular boating activities within the canal may adversely impact water quality. Thus, in order to avoid adverse construction-related and long-term impacts upon marine resources, **Special Condition 4** requires the applicant comply with best management practices during the construction of the deck platform and stairs to avoid water quality impacts during construction and requires the applicant comply with detailed boating best management

practices ensuring that boating activity in the project area will be managed in a manner that protects water quality. As conditioned, the project will sustain the productivity of coastal waters.

### 3. Special Status Marine Species - Eelgrass

Eelgrass and *Caulerpa taxifolia* surveys are typically required when a project proposes disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Eelgrass (*Zostera marina*) is an aquatic plant which grows in dense beds in shallow, subtidal or intertidal sand or mud bottoms. 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 habitat functions as an important structural environment for estuarine and oceanic fish spawning and egg deposition, fish nursery grounds, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. Eelgrass is a major food source in nearshore marine systems contributing to the system at multiple trophic levels.

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). *C. 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. *C. 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, *C. taxifolia*, if present, could displace eelgrass in the channels.

The applicant provided a survey prepared by WSSI Environmental Consulting dated March 24, 2010 to determine whether eelgrass or *C. taxifolia* existed at the project site (Exhibit #5). No *C. taxifolia* was observed onsite. Two small patches of eelgrass were found adjacent to a boat moored on the sand approximately 15 -30 feet from the project area. No eelgrass was found within the project construction area by the survey. As discussed more fully in the following section, submersion of the areas adjacent to the bulkhead, where the proposed project is located, fluctuates depending on the tides. However, toward the center of the canal, submersion is more constant and thus more conducive to eelgrass growth. Past eelgrass surveys of the harbor, sponsored by the City, show that extensive eelgrass beds exist within these more continually submerged areas of Grand Canal. Surveys done in 2004, 2007, and 2010, indicate consistent eelgrass growth in the canal.

Eelgrass is an important resource that provides habitat for a variety of invertebrates, fish, and other wildlife. Coastal Act Section 30230 requires that marine resources, such as eelgrass, be maintained, enhanced, and where feasible, restored. No direct or indirect impact to the eelgrass adjacent to the proposed project site is anticipated from the project or project construction.

**Special Conditions 5 and 6** require pre-project and post-project monitoring would be required to ensure that eelgrass is not impacted and that if impacts occurred, those impacts would be mitigated. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*.

### 4. Marine Resources – Biological Productivity/Shading Impacts

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. Coastal Act Section 30231 requires that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms be maintained. A Coastal Development Permit may be issued if the project can ensure that the uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The biological



productivity of coastal waters is highly dependent on sunlight for photosynthesis by eelgrass and “lower order” green algae, phytoplankton, and diatoms that form the basis of the marine food chain. The proposed deck structure is at least 15 feet from existing eelgrass areas and its construction will not impact eelgrass.

The proposed deck platform and stairs will result in approximately 27 sq. ft. of water coverage resulting in minimal adverse effects on marine resources (e.g., shading and habitat displacement) in an area where no current dock exists. Therefore, the Commission finds the proposed project, as conditioned, to be consistent with Section 30230 and 30231 of the Coastal Act.

**C. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005 and in October 2009. As conditioned, the proposed development being approved 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 an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

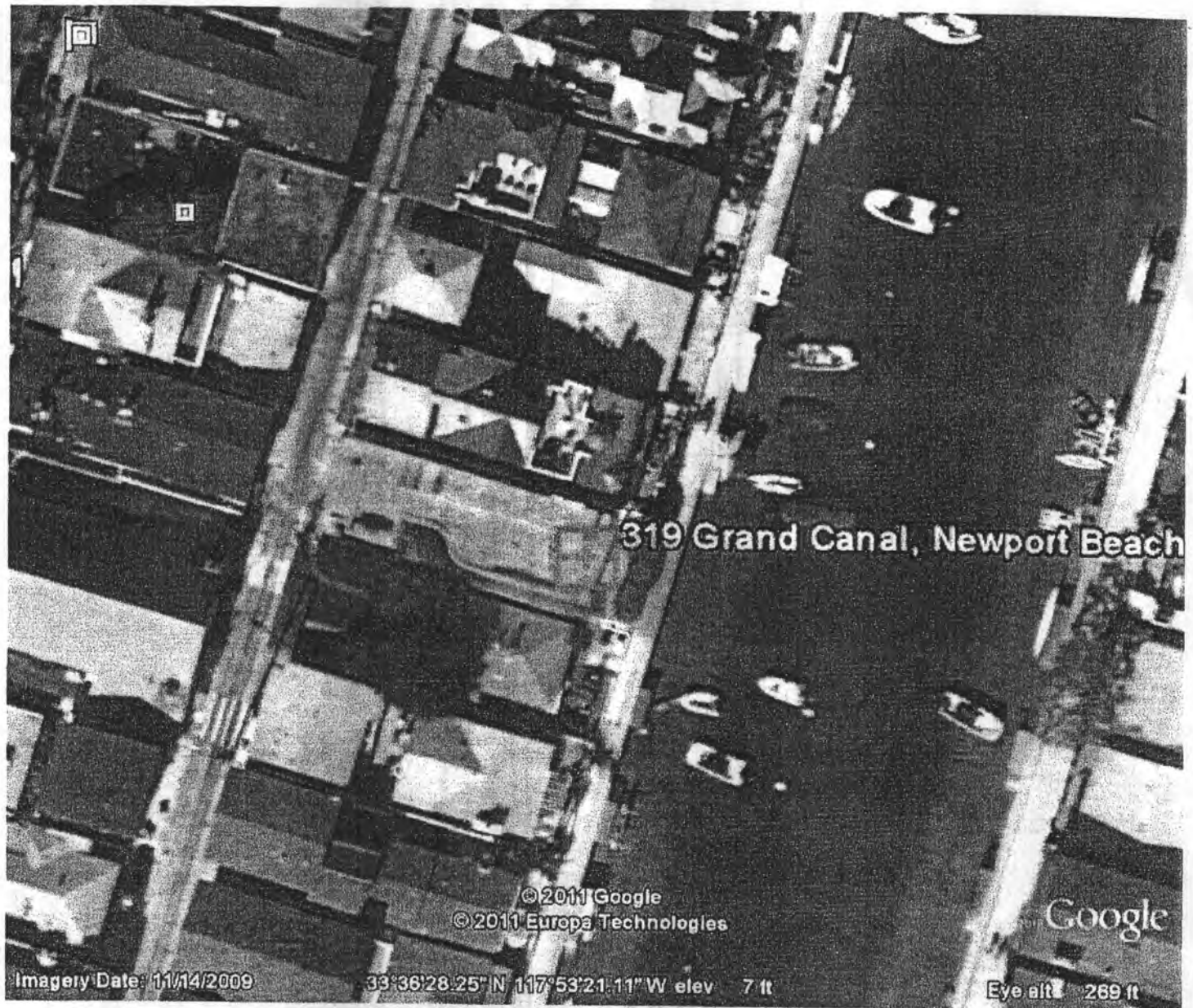
**D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of Newport Beach is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA. As such, the project is exempt for CEQA’s requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding biological resources. These special conditions require: 1) preservation of existing public access rights by requiring the platform/stairs be open and available for use by the public; 2) revised plans requiring signage for public access to Grand Canal; 3) public rights; 4) water quality; 5) eelgrass survey; 6) pre-construction *Caulerpa taxifolia* survey; 7) assumption of risk, waiver of liability and indemnity; 8) future development return to the Commission for review; and 9) generic deed restriction.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with the requirements of the Coastal Act and CEQA.





↑  
public sidewalk/walkway  
surrounding Balboa Island

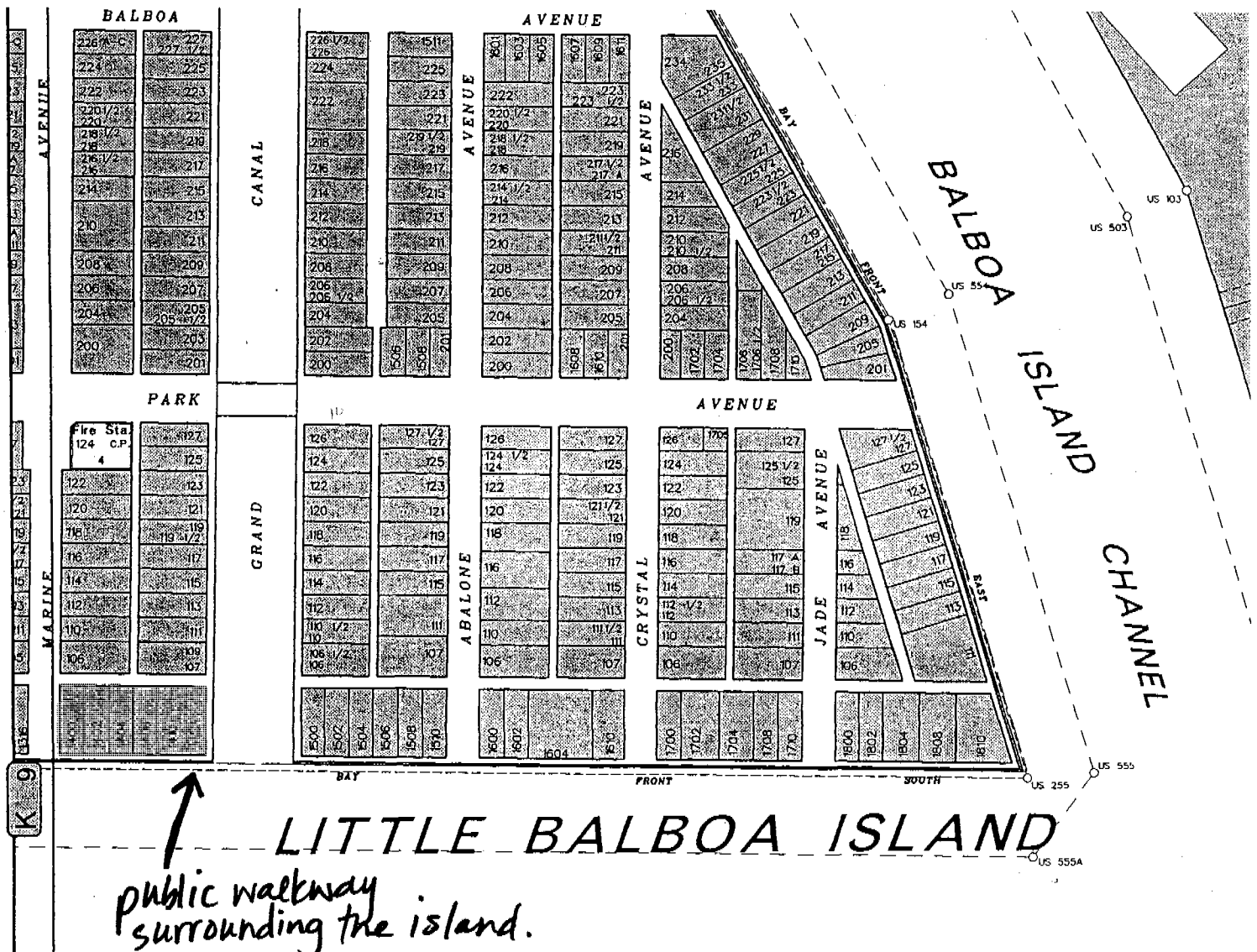
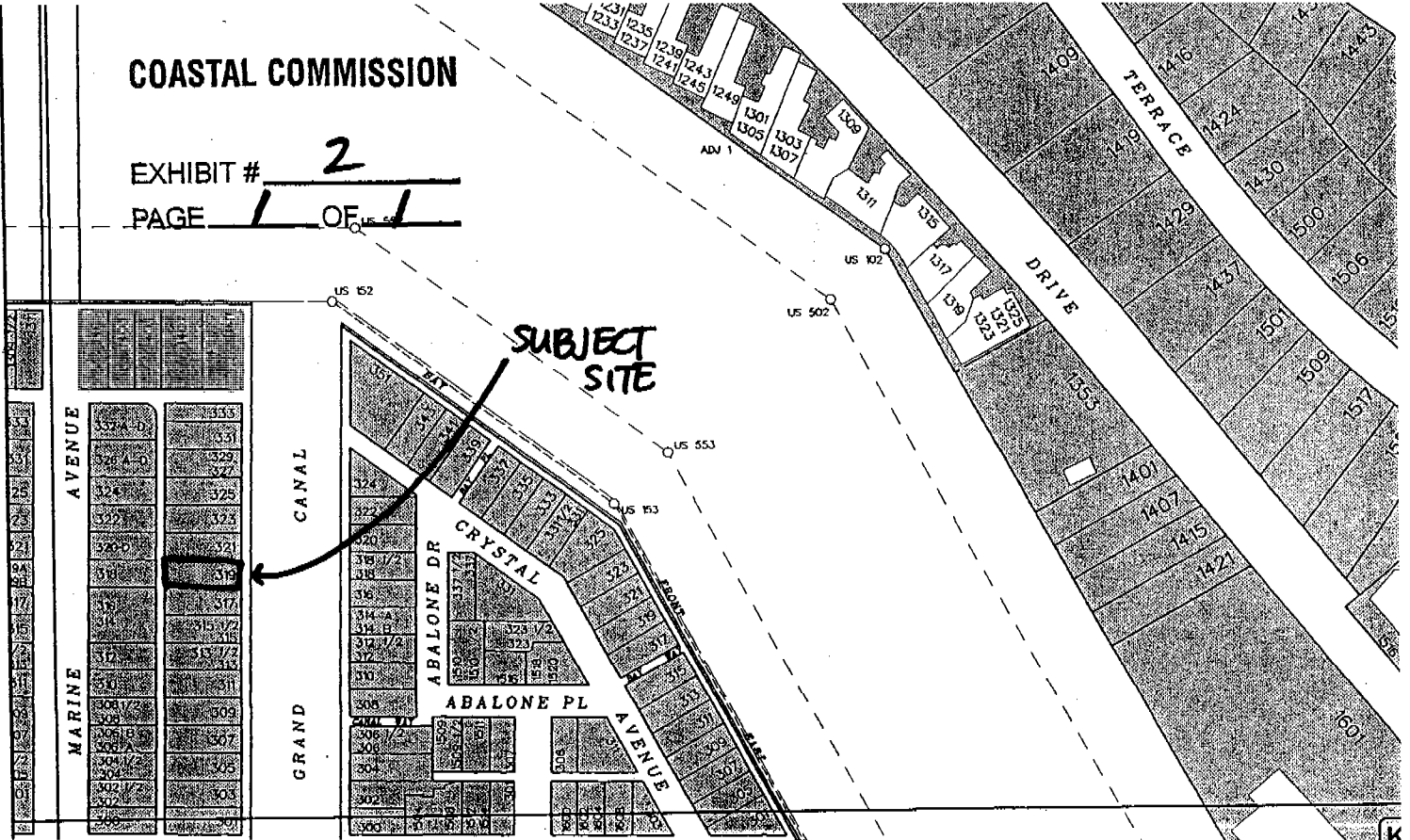
COASTAL COMMISSION

EXHIBIT # 1  
PAGE 2 OF 2



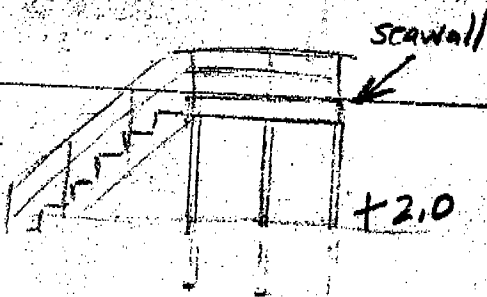
# COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1



LITTLE BALBOA ISLAND  
public walkway  
surrounding the island.

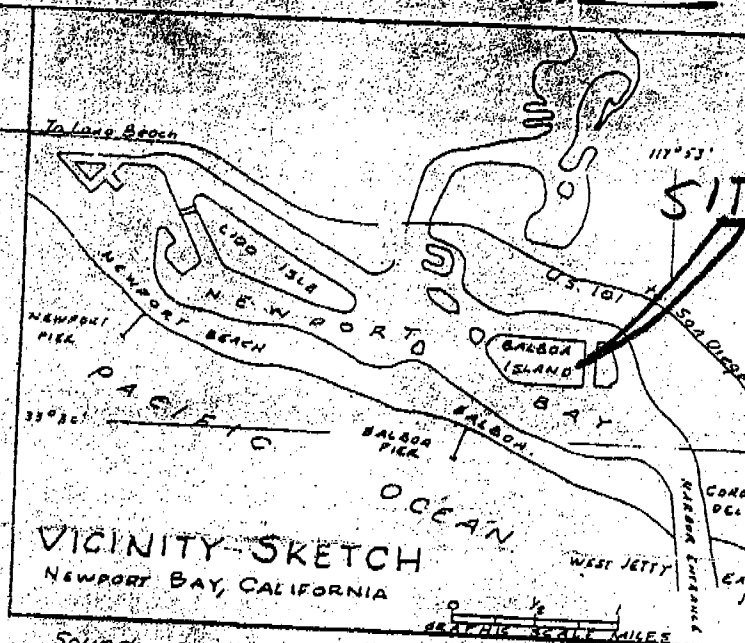
# CITY OF NEWPORT BEACH HARBOR APPLICATION NO. \_\_\_\_\_



HARBOR RESOURCES DIV.  
CITY OF NEWPORT BEACH

1" = 10'

*Signature* 1/18/11



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

Proposed  
SQ. FT.

EXISTING  
DECK

GRAND CANAL

## EEL GRASS INSPECTION

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

*Signature*

Signature

11/1/10 DDD

Inspection Date & Time

Proposed  
New deck

City of Newport  
Std. 603L

Steps

L.K.P.

6' 6"

GRAND CANAL WALK

seawall

EXISTING

L.K.P.

DECK

↑

10'

↓

30.00

321 Grand Canal

Property line

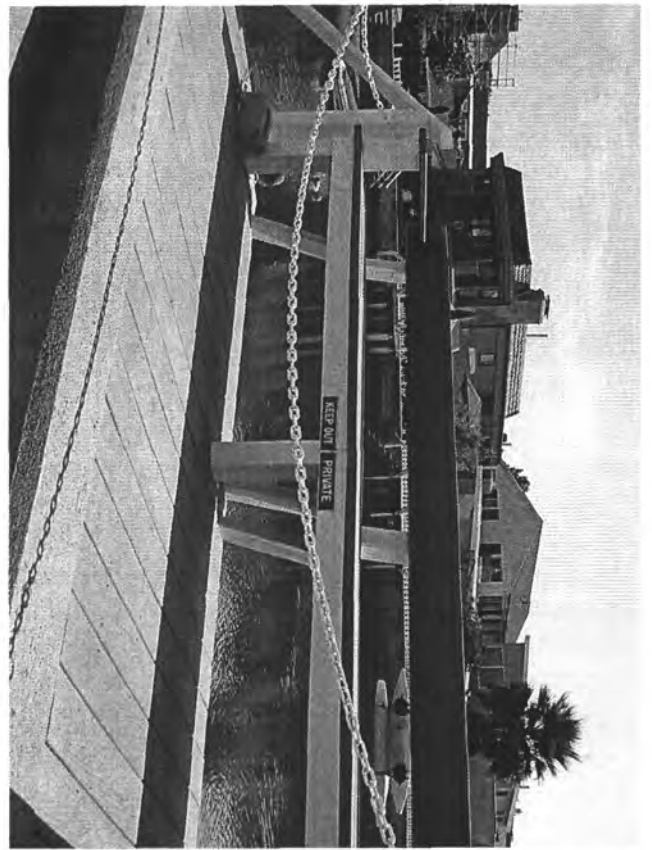
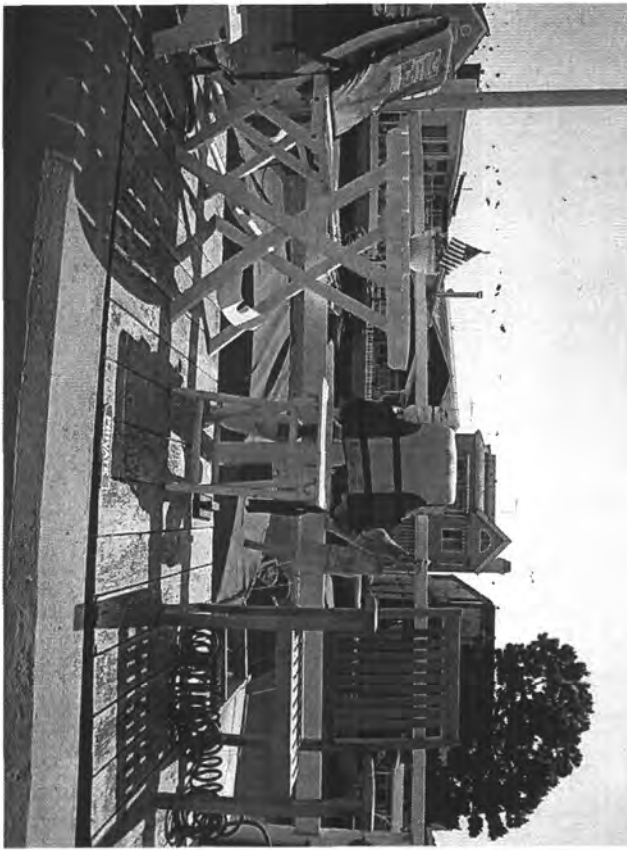
319 GRAND CANAL

Property line

COASTAL COMMISSION

EXHIBIT # 3

PAGE 1 OF 1



COASTAL COMMISSION

EXHIBIT # 4  
PAGE 1 OF 5

# City Newport Beach Harbor Permit Policy

H-1

- B. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor.

## PROMONTORY BAY

The following conditions are to be placed on each harbor permit when approved:

- A. That the permittee shall be responsible and maintain the area delineated on the harbor permit free and clear from floating rubbish, debris or litter at all times.
- B. That the permittee shall be responsible for all maintenance dredging, in accordance with the design profile for Promontory Bay, for the area between the bulkhead line and pierhead line as delineated by the harbor permit.

## GRAND CANAL

- A. The following conditions are to be in effect and placed on each harbor permit for the Grand Canal:

1. That the permittee shall be allowed either one pier platform, or in lieu thereof, two shore mooring type appurtenances per lot. Pier platforms and shore moorings shall be constructed according to "Design Criteria and Standard Drawings for Harbor Construction" adopted by the City of Newport Beach.
2. That all vessels (maximum length 18 feet) moored in the Grand Canal shall be tied off to pier platform structures or shore moorings. Floating platforms or slips will not be allowed. Vessels tied to the bulkhead or by alternate methods not approved by the Fire and Marine Department shall be prohibited.
3. That the permittee shall be allowed no more than one vessel per shore mooring.
4. That any shore mooring approved for the Grand Canal shall display a permit number issued by the Fire and Marine Department.
5. That each vessel tied to any pier platforms in the Grand Canal be anchored from the stern in such a method as to prevent the vessel from

24  
COASTAL COMMISSION

EXHIBIT # 4  
PAGE 2 OF 9

swinging into adjoining vessels or across bayward prolongations of private property lines.

- B. There shall be no permits issued for shore moorings or pier platforms fronting on alleys, avenues or other public easements terminating on the Canal.
- C. There shall be no new permits issued for shore moorings or pier platforms bayward of those lots at the extreme south end and north end of Grand Canal.

#### OCEAN FRONT SAND DUNES

As a result of wind, storm and tidal conditions, sand has built up in specific locations forming sand dunes. These range from a height of a few inches to as much as five feet. This build up can present problems for adjacent property owners in the form of increased pressure on ornamental and retaining walls and interfering with views of the ocean. To resolve these problems, property owners may apply for a Harbor Permit to do excavation of beach sand directly oceanward of their property in the area bounded by the prolongation of their side property lines.

Reaffirmed - January 24, 1994

Amended - June 27, 1994

Amended - June 26, 1995

Amended - March 25, 1996

Amended - June 8, 1998 (effective July 22, 1998)

Amended - December 14, 1998

**COASTAL COMMISSION**

EXHIBIT #

4

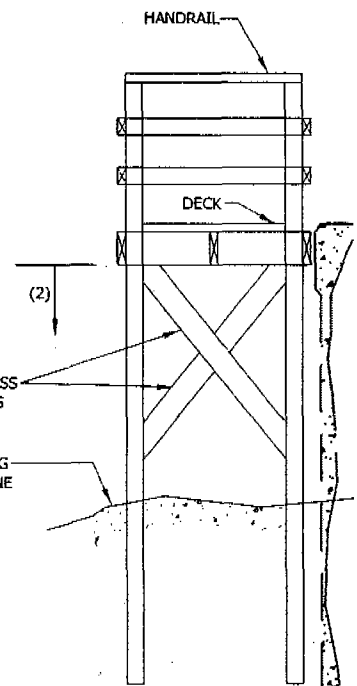
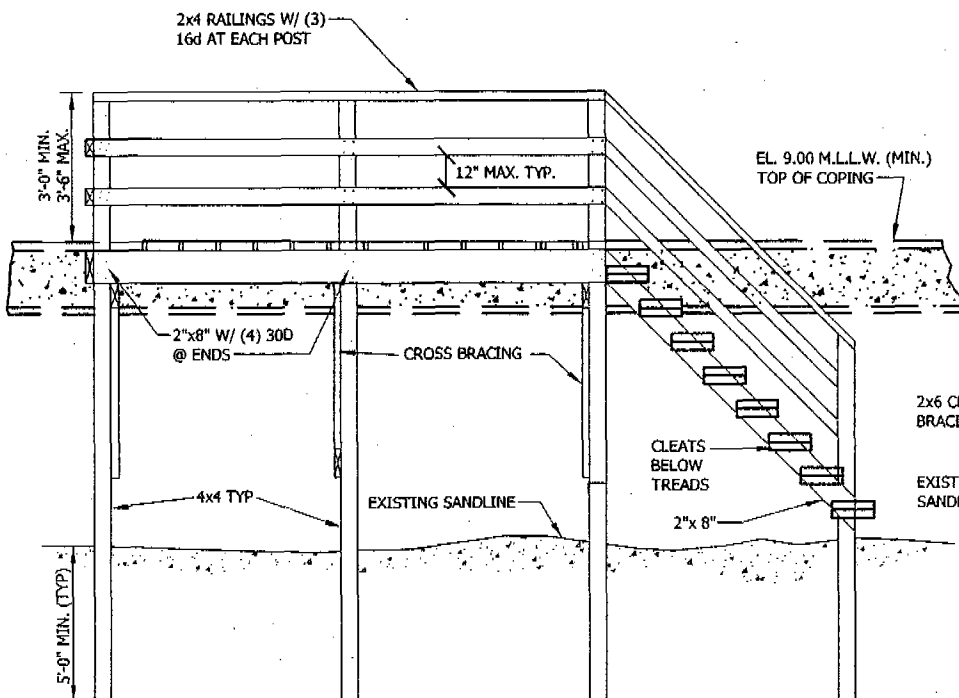
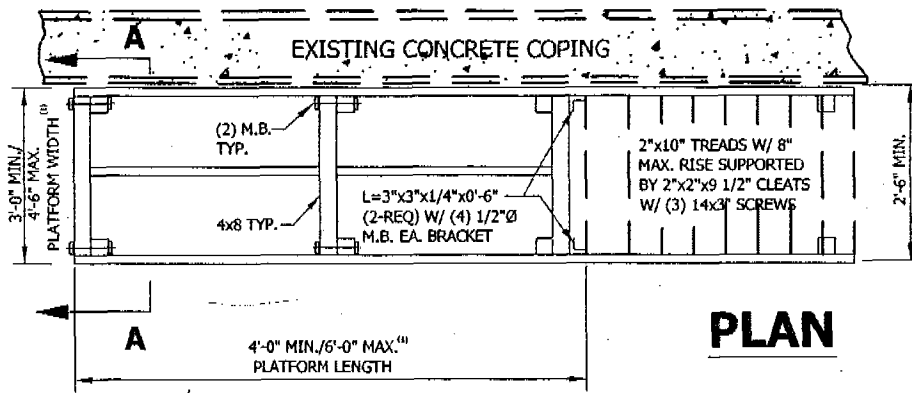
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OF

9





**NOTES**

1. OVERALL PLATFORM SIZE (NOT INCLUDING STEPS) SHALL NOT BE GREATER THAN 27 SQ. FT.
2. ALL STRUCTURAL PLATFORM SUPPORTING MEMBERS BELOW ELEV 7.5 MLLW SHALL BE SUITABLE FOR MARINE ENVIRONMENT SUBMERSION INTO HARBOR WATERS AS WELL AS SUBTERRANEAN EMBEDMENT INTO THE MUDFLATS. TREATED LUMBER IS NOT ALLOWED FOR THIS SERVICE, UNLESS ENCAPSULATED IN AN IMPERVIOUS MEMBRANE. ALTERNATIVE OR COMPOSITE MATERIALS OR CONSTRUCTION CAN BE SUBMITTED FOR CITY APPROVAL.
3. PLATFORM SHALL NOT BE ANCHORED TO COPING.
4. PRESERVATIVE TREATMENT FOR ALL LUMBER USED ABOVE ELEV 7.5 MLLW SHALL MEET STATE OF CALIFORNIA REQUIREMENTS.
5. ALL METAL CONNECTION PLATES SHALL BE GALVANIZED OR STAINLESS STEEL. ALL FASTENERS (LAG BOLTS, SCREWS AND/OR NAILS) SHALL BE GALVANIZED STEEL, STAINLESS STEEL OR A PRODUCT SPECIFICALLY DESIGNED TO RESIST CORROSION IN THE MARINE ENVIRONMENT, AND APPROVED BY THE CITY.
6. NON-STRUCTURAL MEMBERS MAY BE ALTERNATIVE MATERIALS SUCH AS PLASTIC DIMENSIONAL LUMBER. SUBMIT PRODUCT SPECIFICATIONS TO CITY OF NEWPORT BEACH FOR APPROVAL.

REV. 4/06

CITY OF NEWPORT BEACH  
BUILDING DEPARTMENT

GRAND CANAL  
PLATFORM & STEPS

APPROVED

Drawn: R. OKADA

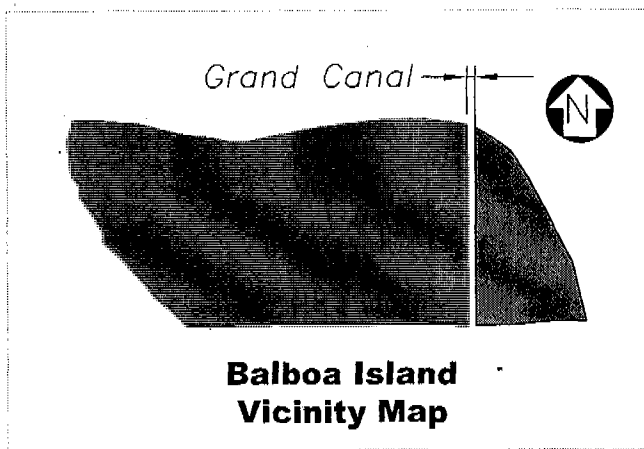
Date: JULY 2004

Scale: N.T.S.

DRAWING NO.

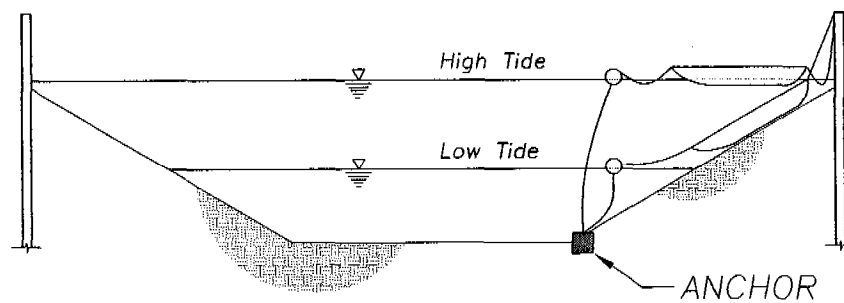
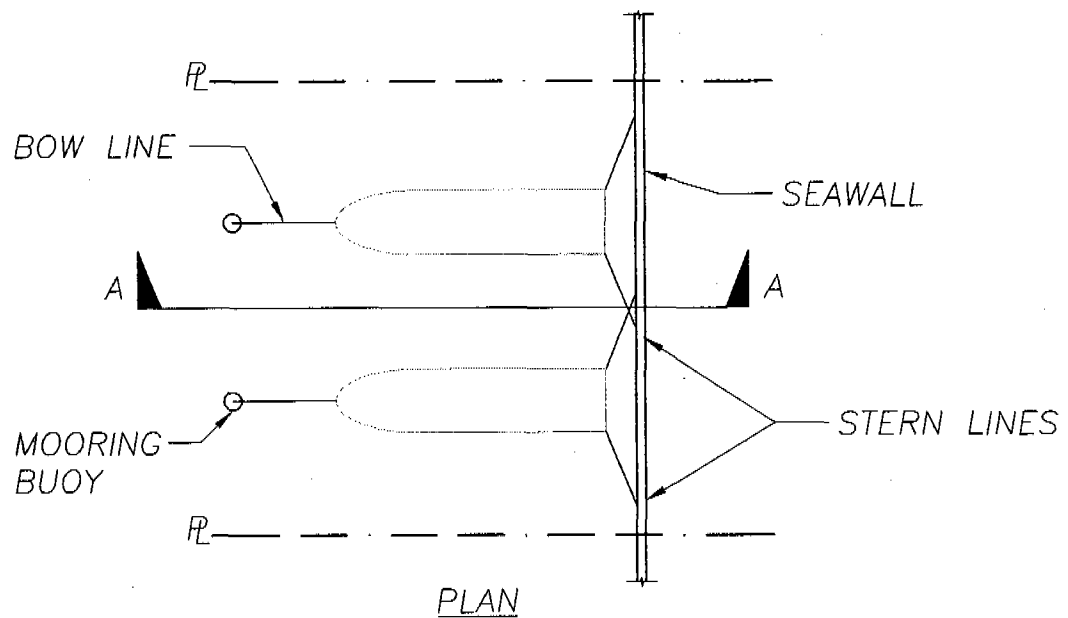
STD-603-L

Fig. No. 12



COASTAL COMMISSION

EXHIBIT # 4  
PAGE 5 OF 5



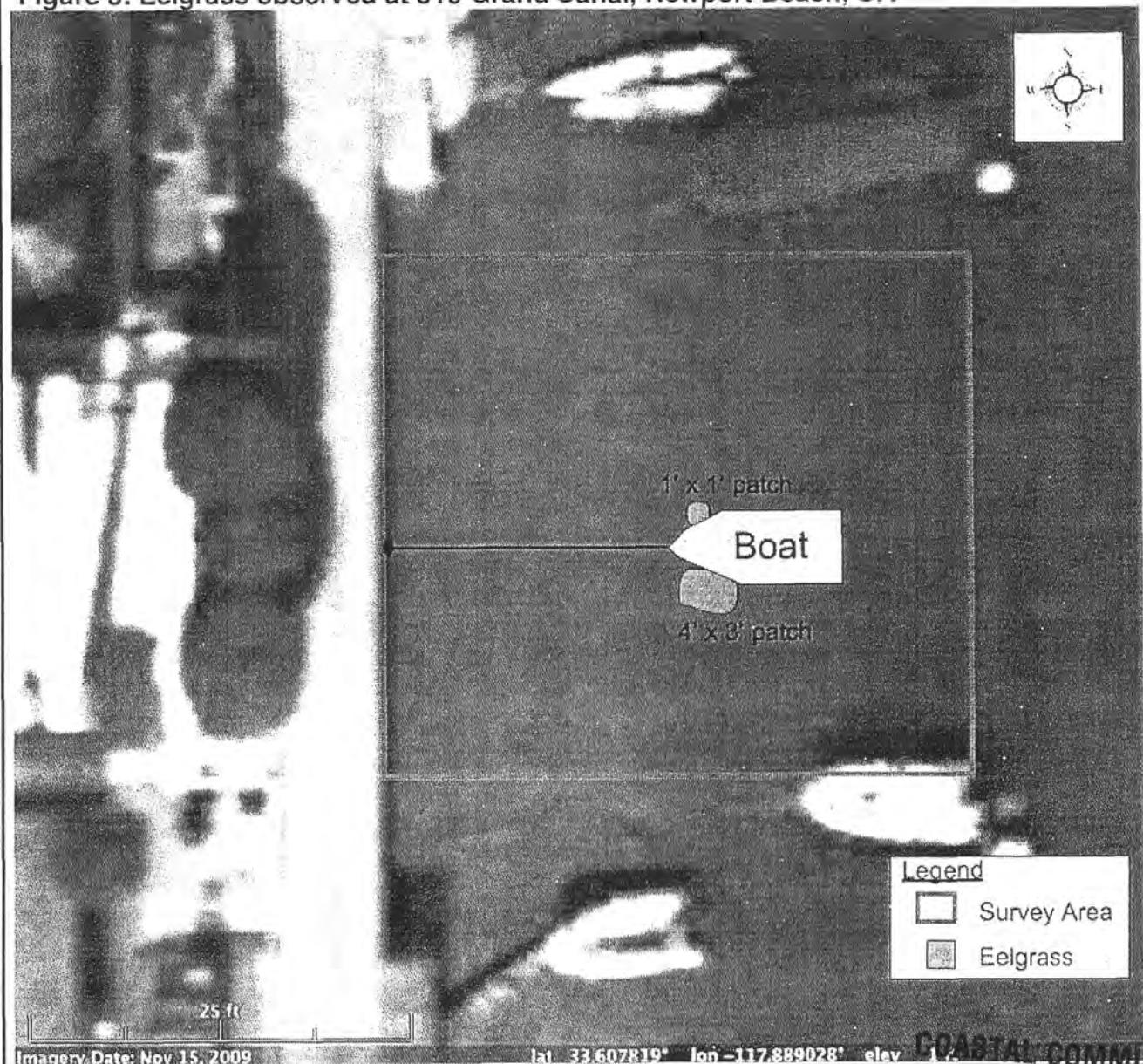
**DOCK ARRANGEMENT  
CASE 13  
(Grand Canal Only)**

## Results

No *Caulerpa* spp. were observed (see attached *Caulerpa* Survey Reporting Form). Eelgrass was observed more than 15 feet from the proposed deck site (Figure 3). This eelgrass was in two patches near the existing moored boat. One patch was 1x1 ft, and the other was 4x3 ft.

The bay floor was silty. Flora included filamentous *Ulva*. Fauna observed included schools of juvenile fish. The water depth ranged from +1 ft near the seawall to 6 ft MLLW near the center of the canal.

Figure 3: Eelgrass observed at 319 Grand Canal, Newport Beach, CA



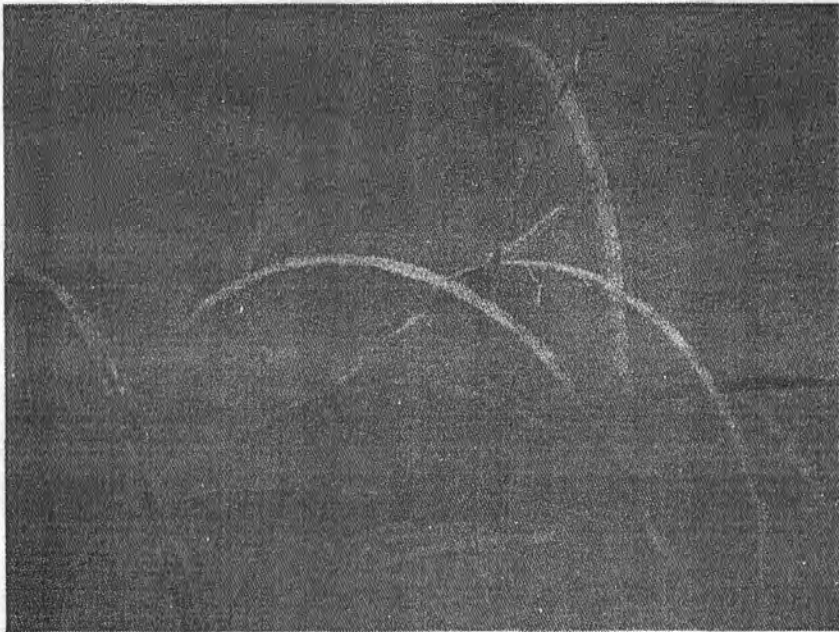
# WSSI

ENVIRONMENTAL CONSULTING

2726 Shelter Island Dr.

San Diego CA 92106

(800) 236-0013 • (800) 225-9730 (fax)



COASTAL COMMISSION

EXHIBIT # 5

PAGE 2 OF 3



# WSSI

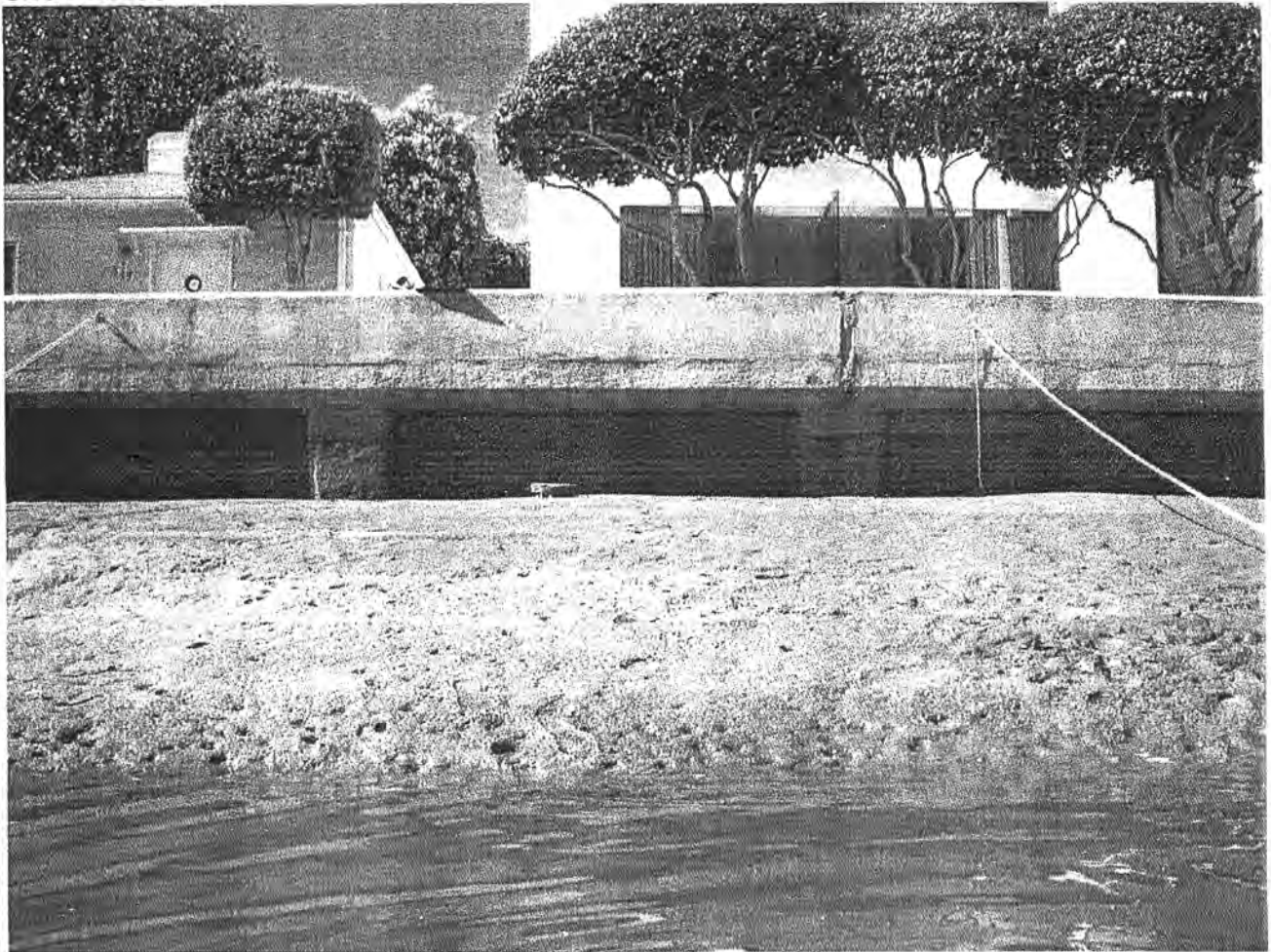
**ENVIRONMENTAL CONSULTING**

**2726 Shelter Island Dr.**

**San Diego CA 92106**

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

Site Photos:



**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 3 OF 3

immediately.

#### CHAPTER 74

An act relating to tide and submerged lands in the City of Newport Beach, and in this connection repealing Chapter 494 of the Statutes of 1919, Chapter 70 of the Statutes of 1927, Chapter 142 of the Statutes of 1929, Chapter 574 of the Statutes of 1929, Chapter 813 of the Statutes of 1929, and Chapter 200 of the Statutes of 1931, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 6, 1978. Filed with  
Secretary of State April 7, 1978.]

*The people of the State of California do enact as follows:*

SECTION 1. There is hereby granted to the City of Newport Beach and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay in the County of Orange, which were within the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) That the lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) For the establishment, improvement, and conduct of a public harbor, and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, lease, or otherwise dispose of any part thereof, to any individual, firm, or corporation for

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any purpose, except, that the city or its successors may grant franchises thereon for a period not exceeding 50 years for harbors and other public uses and purposes and may lease the lands for any purpose for a period not exceeding 50 years for purposes consistent with the uses upon which the lands are held by the state as provided in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a) of this section.

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this section and for a period not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from such existing and future leases of such lots shall be deposited in the city tideland capital fund in accordance with the provisions of this act.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that if at any time the Department of Fish and Game no longer uses such portions of the lands so transferred by the city to the state for such purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions of this act. Upon approving

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such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefit shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

The city shall establish a separate tidelands trust fund or funds in such manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all moneys received directly from, or indirectly attributable to, the granted tidelands in the city.

(j) In accordance with the provisions of this act, the city, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted tidelands for any or all of the purposes set forth in this act. Such revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

(k) As to the accumulation and expenditure of revenues for any single capital improvement on the granted lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the city shall file with the State Lands Commission a detailed description of such capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith. Within 90 days after the time of such filing, the State Lands Commission may determine and notify the city that such capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (j) of this section. The State Lands Commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of such opinion shall be delivered to the city with the notice of its determination. In the event the State Lands Commission notifies the city that such capital improvement is not authorized, the city shall not disburse any revenue for or in connection with such capital improvement unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service of process shall be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in such suit, no costs shall be recovered against it.

(l) On June 30, 1978, and on June 30 of every third fiscal year thereafter, that portion of the city tideland trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after deducting current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust

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activities shall be deemed excess revenues. However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands for purposes authorized by this act, including such improvements on lands transferred to the state pursuant to subdivision (h) of this section and paid for by the city, may be considered as expenditures for the purpose of determining excess revenues; provided, however, that if made after the effective date of this act they may be so considered only if made in accordance with subdivision (k) of this section. The excess revenue, as determined pursuant to this subdivision, shall be allocated as follows: 85 percent shall be transmitted to the State Treasurer for deposit in the General Fund in the State Treasury, and 15 percent shall be retained by the city for deposit in the trust fund for use for any purpose authorized by subdivision (j) of this section.

(m) At the request of the city, the State Lands Commission shall grant an extension of time, not to exceed 30 calendar days, for filing any report or statement required by this act, which was not filed due to mistake or inadvertence.

(n) In the event that the city fails or refuses to file with the State Lands Commission any report, statement, or document required by any provision of this act, or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of this act, the Attorney General shall, upon the request of the State Lands Commission, bring such judicial proceedings for correction and enforcement as are appropriate and shall act to protect any improvements to, or assets situated upon, the granted lands or diverted therefrom. The State Lands Commission shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days of the occurrence of such failure or refusal and of actions taken as a result thereof.

(o) The State Lands Commission shall, from time to time, recommend to the Legislature such amendments as it may deem necessary in the terms and conditions of this act.

(p) The State Lands Commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with in good faith.

(q) On or before December 31 of each year, the State Lands Commission shall report to the Chief Clerk of the Assembly and to the Secretary of the Senate the full details of any transaction or condition reported to the commission pursuant to this act which it deems in probable conflict with the requirements of this act or with any other provision of law. Upon request by resolution of either house of the Legislature, or upon formal request of the State Lands Commission made only after a noticed public hearing at which the city has been given an opportunity to express fully any disagreement with the commission's findings or to describe any extenuating

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circumstances causing the violation, the Attorney General shall bring an action in the Superior Court in the County of Orange to declare that the grant under which the city holds such tidelands and submerged lands is revoked for gross and willful violation of the provisions of this act or any other provision of law or to compel compliance with the requirements of this act and any other provision of law.

(r) The city shall cause to be made and filed annually with the State Lands Division a detailed statement of receipts and expenditures by it of all rents, revenues, issues, and profits in any manner arising after the effective date of this act from the granted lands or any improvements, betterments, or structures thereon.

(s) The Department of Fish and Game shall establish the funds and make the deposits required by subdivision (i) of this section and shall prepare and file statements required by subdivision (r) of this section as to any lands transferred to the state pursuant to subdivision (h) of this section.

(t) The provisions of Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code shall be applicable to this section. The provisions of Section 6359 of the Public Resources Code shall not be applicable to this section.

(u) Notwithstanding any other provision of this act, the city shall pay to the state all revenues received from the production of oil, gas, and other minerals derived from or attributable to the real property described in Section 6 of this act and the real property acquired by the city pursuant to Section 2 of this act. Whenever practicable, the city shall obtain the mineral rights in real property acquired pursuant to Section 2 of this act.

SEC. 2. The City of Newport Beach shall establish a city tideland capital fund as one of the funds required by subdivision (i) of Section 1 of this act. All money received by the city pursuant to the provisions of subdivision (g) of Section 1 of this act shall be deposited in the fund. The city may also deposit such other income from the lands granted to the city in trust by this act as the city deems appropriate. All money in the fund shall be used by the city in conformity with the following terms and conditions:

(a) Expenditures from the fund may be made only for the acquisition of real property that will further the purposes of the trust created by this act and for capital improvements for such purposes, to be constructed on such real property so acquired, and the operation and maintenance thereof.

(b) The city is authorized to make such acquisitions of real property by purchase, gift, or other conveyance, including, but not limited to, the transfer of city-owned property held in a municipal capacity to the trust created by this act. All such real property shall be held by the city in trust pursuant to the provisions of this act.

(c) For purposes of this section, acquisitions of real property by the city for purposes of enhancing the lands administered by the Department of Fish and Game pursuant to Chapter 415 of the

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Statutes of 1975 shall be deemed to be in furtherance of the purposes of the trust created by this act.

(d) No capital expenditure or transfer pursuant to subdivision (e) of this section may be made from the fund without the advance approval of the State Lands Commission.

(e) The city may expend municipal funds to acquire real property for purposes specified in this section. The city may transfer amounts from the city tideland capital fund to reimburse municipal funds for such expenditures, together with an appropriate amount of interest on such funds advanced, if such expenditures of municipal funds are made after the effective date of this act and the State Lands Commission gives advance approval of such a transaction.

SEC. 3. The Legislature makes the following findings and determinations:

(a) By Chapter 70 of the Statutes of 1927, as amended, the Legislature conveyed certain tide and submerged lands in trust to the City of Newport Beach for the purposes therein stated, primarily for the promotion and accommodation of commerce and navigation.

(b) Certain portions of such tide and submerged lands have been filled and reclaimed as a result of a plan of improvement of the granted tide and submerged lands, including the development of a harbor facility. Such portions are as described in Section 6 of this act and hereinafter are referred to as Parcels A, B, and C.

(c) Those portions of Parcels A, B, and C, as described in Section 6 of this act, which are shown as numbered lots on the Record of Survey recorded in Book 13, Page 42, and the Record of Survey recorded in Book 9, Pages 42 and 43, both in the office of the County Recorder of the County of Orange, together with those portions of Parcel A, as described in Section 6 of this act, which are shown as numbered lots on the City Map of East Side Addition to Beacon Bay on file in the office of the City Engineer of the City of Newport Beach, being a relatively small portion of such granted tide and submerged lands, have been divided into lots and leased and are producing income to support the statutory trusts under which such tide and submerged lands are held by the city, and, except for the production of income to support such trusts, are no longer required or needed for the promotion of such trusts.

(d) The lots located within Parcels A, B, and C, inclusive, having been filled and reclaimed, are no longer submerged or below the mean high tide line and are no longer needed or required for purposes of navigation, commerce, and fisheries and are freed of the public trust for navigation, commerce, and fisheries, and may continue to be used for those purposes set forth in the existing leases and subleases of such lots, but shall continue to be held in trust by the City of Newport Beach subject to the other terms and provisions of this act and other laws applicable to the tide and submerged lands included in the grant to the city. Further, such lots shall be so held subject to the condition that the revenues derived from the leasing or administration of such lots shall be used as provided in this act.

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Nothing in this subdivision shall operate to terminate the public trust for navigation, commerce, and fisheries over those portions of Parcels A, B, and C which are streets and beaches of Newport Bay. The determination and finding set forth in this subdivision shall become effective as provided in Section 4 of this act.

(e) The release of the lots within Parcels A, B, and C, inclusive, from the public trust for commerce, navigation, and fisheries to the extent expressed in subdivision (d) of this section is in the best interests of the people of the state.

SEC. 4. The findings and determinations in Section 3 of this act terminating the public trust for navigation, commerce, and fisheries over the lots located within Parcels A, B, and C shall become effective upon the city's acquiring or transferring such parcels of real property, pursuant to Section 2 of this act, as the State Lands Commission shall determine to be appropriate, taking into consideration the size of the area affected by the termination, the trust purposes that can be accomplished by such acquisition or transfer, and the value of the real property acquired or transferred and upon the recording of an appropriate document in the Office of the County Recorder of the County of Orange reflecting the State Lands Commission's determination.

SEC. 5. The lands granted pursuant to Section 1 of this act shall be held by the city subject to the express reservation and condition that the state may at any time in the future use the lands, or any portion thereof, for highway purposes without compensation to the city, its successors or assigns, or any person, firm, or public or private corporation claiming under it; except that, in the event improvements have been placed upon the property taken by the state for such purposes, compensation shall be made to the person entitled thereto for the value of such person's interest in the improvements taken or the damages to such interest. The provisions of this section shall not be applicable to the lots located within Parcels A, B, and C.

SEC. 6. The parcels of real property referred to in this act are prescribed as follows:

PARCEL A

Beginning at Station No. 8 in the Line of Mean High Tide per judgment rendered in Case No. 20436, Superior Court of California, County of Orange, recorded in Book 651, page 72 of Deeds, records of said Orange County, said Station No. 8 being at the easterly terminus of that certain course in said Line of Mean High Tide shown as "North 71° 54' 00" West, 1573.34 Feet" on a map of Tract No. 4003 recorded in Book 188, pages 13 through 19 of Miscellaneous Maps, records of said Orange County, said beginning being a 1½" iron pipe as shown on said map of Tract No. 4003; thence along said Line of Mean High Tide, South 85° 40' 37" East, 606.01 feet to a point in a line parallel with and 100.00 feet easterly from the easterly line of Lot G as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along said parallel

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line South 160.46 feet to a point in the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said point being the True Point of Beginning of this description; thence along said Ordinary High Tide Line the following courses: North 82° 30' 00" West, 297.66 feet to an angle point therein; thence South 84° 00' 00" West, 160.00 feet; thence South 57° 00' 00" West, 100.00 feet; thence South 32° 52' 00" East, 243.24 feet to a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line, as shown on U.S. Engineer's Map of Harbor Lines of Newport Bay, dated March 20, 1936, and approved April 28, 1936; thence leaving said Ordinary High Tide Line and along said parallel line East, 148.00 feet to the southeasterly corner of Lot 19 as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along the easterly line of said Lot 19 North 100.00 feet; thence East 40.00 feet; thence South 100.00 feet; thence East 198.10 feet to a line parallel with and distant 20.00 feet westerly, measured at right angles from that certain course and southerly prolongation thereof, recited as, "South, 160.46 feet"; thence along said parallel line North 132.00 feet; thence East 20.00 feet; thence North 104.64 feet to the True Point of Beginning of this description.

Containing 2.694 acres, more or less.

PARCEL B

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of 2 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line as described in said Book 199, page 275 of Official Records, North 39° 48' 00" West, 36.44 feet to a point in a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line as shown on said U.S. Engineer's Map, said point also being the True Point of Beginning of this description; thence continuing along said Ordinary High Tide Line, North 39° 48' 00" West, 432.17 feet; thence leaving said Ordinary High Tide Line, South 56° 56' 29" West, 32.24 feet to a point in a nontangent curve, concave northwesterly and having a radius of 171.63 feet, a radial line of said curve from said point bears North 67° 48' 00" West; thence southerly and southwesterly along said curve 76.60 feet through a central angle of 25° 34' 20" to a point of nontangency with a line that is parallel with and distant 105.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 432.17 feet"; thence along

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said parallel line, South 30° 48' 00" East, 328.27 feet to said line described above as being parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead line as shown on said U.S. Engineer's Map; thence along said parallel line, East, 137.09 feet to the True Point of Beginning of this description.

Containing 0.925 acre, more or less.

#### PARCEL C

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of 2 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered on Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract No. 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line as described in said Book 199, page 275 of Official Records, North 39° 48' 00" West, 539.22 feet to the True Point of Beginning of this description; thence continuing North 39° 48' 00" West, 146.59 feet; thence South 23° 57' 30" West along the southwesterly prolongation of that certain course described in said Case No. 24026 as "North 23° 57' 30" East, 138.90 feet" a distance of 126.34 feet to a line that is parallel with and distant 113.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 146.59 feet"; thence along said parallel line, South 39° 48' 00" East, 137.64 feet to a point in a nontangent curve, concave northwesterly and having a radius of 131.63 feet, said curve being concentric with and 40.00 feet northwesterly, measured radially, from that certain curve described in Parcel B above as having a radius of 171.63 feet, a radial line of said curve from said point bears North 39° 28' 52" West; thence northeasterly and northerly along said curve 74.56 feet through a central angle of 32° 27' 23"; thence tangent to said curve, North 18° 03' 45" East, 50.27 feet to the True Point of Beginning of this description.

Containing 0.387 acre, more or less.

SEC. 7. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 8. Chapter 494 of the Statutes of 1919 is repealed.

SEC. 9. Chapter 70 of the Statutes of 1927 is repealed.

ASTAL COMMISSION SEC. 10. Chapter 142 of the Statutes of 1929 is repealed.

SEC. 11. Chapter 574 of the Statutes of 1929 is repealed.

SEC. 12. Chapter 813 of the Statutes of 1929 is repealed.

SEC. 13. Chapter 200 of the Statutes of 1931 is repealed.

SEC. 14. No appropriation is made by this act, nor is any

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obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimbursement of the City of Newport Beach for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

SEC. 15. The Legislature reserves the right to amend, modify, or revoke, in whole or in part, the tidelands and submerged lands granted and conveyed in trust pursuant to this act; provided, that the state shall thereupon assume and be bound by all lawful transactions and obligations related to such lands entered into or created by the city during its holding of such lands.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that certain restrictions pertaining to certain parcels subject to this act may be removed as soon as possible, thereby providing for a more equitable return to the City of Newport Beach from its tidelands and assuring the proper use of such revenue by the city, it is necessary that this act take effect immediately.

#### CHAPTER 75

An act to amend Section 6157 of, and to add Section 6158 to, the Government Code, relating to payments to public agencies.

[Approved by Governor April 6, 1978. Filed with  
Secretary of State April 7, 1978.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 6157 of the Government Code is amended to read:

6157. The state, and each city, whether general law or chartered, county, city and county, and district, each subdivision, department, board, commission, body, or agency of the foregoing, shall accept personal checks drawn in its favor or in favor of a designated official thereof, in payment for any license, permit, fee or fine, or in payment of any obligation owing to the public agency or trust deposit, if the person issuing the check furnishes to the person authorized to receive payment satisfactory proof of residence in this state and if the personal check is drawn on a banking institution located in this state. This section shall not be applicable with respect to payment of any bail deposit.

If any personal check offered in payment pursuant to this section is returned without payment, for any reason, a reasonable charge for the returned check not to exceed ten dollars (\$10) may be imposed, which charge may be added to and become part of any underlying

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