

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 Oceangate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071



Th 18b, 18c

Filed:	6/25/12
180th Day:	12/22/12
Staff:	J. Del Arroz-LB
Staff Report:	10/25/12
Hearing Date:	11/15/12

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12- 177 and 5-12-178

Applicant: John Abell IV & Carol Helou

Location: CDP Application 5-12-177: 2218 Channel Road
 CDP Application 5-12-178: 2222 Channel Road
 Newport Beach (Orange County)

Project Description: CDP Application 5-12-177: Removal of the existing dock system with 5x21 ft. pier, 4x24 ft. gangway, 12x20 ft. float, and 4 - 12” piles, and installation of a new, 8.5x20 ft. pier, 4 x 25 ft. gangway, 12x20 ft. float and one 16 inch and two 12 inch piles.
 CDP Application 5-12-178: Installation of new dock comprised of a pier and 10’ x 10’8” pier platform, 3.5’ x 24’ gangway, 22’ x 10’ floating dock, and one 16 inch pile and two 12 inch piles.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The two subject CDP applications were submitted by the applicants John Abell IV and Carol Helou. Each applicant is listed on both CDP applications. One single family residence previously existed at the site. The Commission approved De Minimis Waivers No. 5-10-083, 5-11-069-W, and 5-11-070-W for the demolition of the existing single family residence, subdivision of the existing lot into two lots, and construction of two new single family residences on each lot.

CDP Application 5-12-177 proposes the removal of the existing dock system at 2218 Channel Road and the installation of a new dock system. At the adjacent lot, 2222 Channel Road, CDP application 5-12-178 proposes the installation of a new dock system. Taken together, the two projects would result in the removal of the one existing dock which served the previously existing single family residence on the site, and the construction of two new docks, one for each newly created lot. The primary issues raised in the staff report are avoidance of negative impacts to eelgrass habitat and water quality associated with the long-term water-borne berthing of boat(s) in the proposed dock.

Staff is recommending APPROVAL of CDP application 5-12-177 with FIVE (5) SPECIAL CONDITIONS regarding: 1) Eelgrass Surveys; 2) Surveys for Caulerpa Taxifolia; 3) Construction Responsibilities and Debris Removal; 4) Best Management Practices for Long-Term Boat Berthing; and 5) Public Rights to Submerged Lands.

Staff is recommending APPROVAL of CDP application 5-12-178 with SIX (6) SPECIAL CONDITIONS regarding: 1) Eelgrass Surveys; 2) Surveys for Caulerpa Taxifolia; 3) Construction Responsibilities and Debris Removal; 4) Best Management Practices for Long-Term Boat Berthing; 5) Public Rights to Submerged Lands; and 6) Final Revised Plans to avoid eelgrass impacts by modifications to the width or length of the dock float and removal of the proposed 10' x 10'8" pier platform.

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

TABLE OF CONTENTS

I.	MOTIONS AND RESOLUTIONS	4
II.	STANDARD CONDITIONS	5
III.	SPECIAL CONDITIONS	5
IV.	FINDINGS AND DECLARATIONS:	13
A.	PROJECT LOCATION & DESCRIPTION.....	13
B.	MARINE RESOURCES.....	16
D.	PUBLIC ACCESS.....	23
E.	LOCAL COASTAL PROGRAM	23
F.	CALIFORNIA ENVIRONMENTAL QUALITY ACT	24

APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plans

Exhibit 3 – Eelgrass Survey

Exhibit 4 – Alternative Dock Plan

I. MOTIONS AND RESOLUTIONS

Motion #1:

*I move that the Commission **approve** Coastal Development Permit No. 5-12-177 pursuant to the staff recommendation.*

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

Resolution #1:

The Commission hereby approves Coastal Development Permit 5-12-177 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Motion #2:

*I move that the Commission **approve** Coastal Development Permit No. 5-12-178 pursuant to the staff recommendation.*

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

Resolution #2:

The Commission hereby approves Coastal Development Permit 5-12-178 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

Permits 5-12-177 and 5-12-178 are granted subject to the following 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

A. Permit 5-12-177 is granted subject to the following special conditions:

1. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

2. Pre-construction *Caulerpa Taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “project”), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
- i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *C. Taxifolia* discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the

California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

3. **Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:
- A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
 - B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
 - C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
 - E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
 - F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
 - G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
 - H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - J. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - M. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with

appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

- O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
 - P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
4. **Best Management Practices Program.** By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
- A. Boat Cleaning and Maintenance Measures:
 - 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
 - 2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.
 - 3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - B. Solid and Liquid Waste Management Measures:
 - 1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.
 - C. Petroleum Control Management Measures:
 - 1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
 - 2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out

- facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.
5. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tidelands and submerged lands lying beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

B. Permit 5-12-178 is granted subject to the following special conditions:

1. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.
- B. **Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum

ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

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

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “project”), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *C. Taxifolia* discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

3. **Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:

- A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.

- B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

4. **Best Management Practices Program.** By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
 - A. Boat Cleaning and Maintenance Measures:
 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
 2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.
 3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - B. Solid and Liquid Waste Management Measures:
 1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.
 - C. Petroleum Control Management Measures:
 1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
 2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
 3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.
5. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tidelands and submerged lands lying beneath the

development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

6. **Revised Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised final project plans with the City of Newport Beach Harbor Resources Department approval. The revised project plans shall be in substantial conformance with the plans submitted on October 3, 2012, except they shall be modified as generally depicted in Exhibit 4 to the staff report to avoid eelgrass impacts by 1) modifications to the width or length of the dock float; and 2) removal of the proposed 10' x 10'8" pier platform.

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.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION & DESCRIPTION

The subject sites are located at the entrance to Newport Harbor on Balboa Peninsula in the City of Newport Beach (Exhibits 1, 2). The site for CDP Application 5-12-177 is at 2218 Channel Road and the site for CDP Application 5-12-178 is 2222 Channel Road. The subject sites are located in an existing single family residential neighborhood where the majority of harbor front homes include private recreational boat docks. Private property lines extend to the bulkhead in this area of the Balboa Peninsula, and there is no walkway or other formal public access along the bulkhead. The nearest public access to Newport Harbor is located approximately 120 feet north of the site at a small public beach and public dock where Channel Road transitions into East Balboa Blvd. Access to the Pacific Ocean at the City's public beach is available approximately 800 feet south of the site at the Channel Road street end.

Project Description for CDP Application 5-12-177:

The applicants propose to remove the existing dock system at 2218 Channel Road, which consists of a 5 x 21 foot pier, 4 x 24 foot gangway, 12 x 20 foot float, and four 12 inch piles. The applicant proposes to install a proposed new dock system consisting of a new, 8.5 x 20 foot pier, 4 x 25 foot gangway, 12 x 20 foot float and one 16 inch and two 12 inch piles. The proposed pier and gangway would be composed of grated panels and douglas fir, and the proposed dock float would have timbertech decking. The existing dock covers approximately 412 square feet of open water. The proposed new dock would cover approximately 490 square feet of open water, approximately 78 square feet larger than the existing dock. The new dock system would be in generally the same

configuration as the existing dock, but would be located between 5 and 17 feet further to the north (**Exhibit 2**).

Project Description for CDP Application 5-12-178:

The applicants propose the installation of a new dock system at 2222 Channel Road consisting of a pier and 10' x 10'8" pier platform, 3.5 x 24 foot gangway, 22 x 10 foot floating dock, and one 16 inch diameter pile and two 12 inch diameter piles. The proposed new dock would cover approximately 365 sq. ft. of open water. The proposed dock system would be composed of wooden structural components with composite decking. Grated material would be used for the proposed pier to enhance transmission of light to the harbor bottom. The proposed dock system would be located adjacent to the bulkhead (**Exhibit 2**).

Prior Commission Action at the Subject Sites:

On June 11, 2010 the Commission approved De Minimis Waiver 5-10-083, which allowed the demolition of a single family residence and the subdivision of the existing 7,053 sq. ft. lot into two lots. This subdivision created the two subject sites, at 2218 Channel Road and the adjacent lot at 2222 Channel Road. De Minimis Waivers 5-11-069-W and 5-11-070-W were approved by the Commission at the July 2011 meeting and allowed for the construction of two single family residences at 2218 and 2222 Channel Road.

Prior Commission Action in the Subject Area:

Following is a partial list of projects involving revisions or replacements of existing boat docks or the installation of new docks where none previously existed in the vicinity of the subject site.

a. Coastal Development Permit No. 5-98-047 (Tabaz), 2209 Bayside Drive, Newport Beach

On August 13, 1998, the Commission approved Coastal Development Permit No. 5-98-047- (Tabaz). CDP No. 5-98-047 allowed removal of an existing 180' long damaged pier and dock and construction of a new 330' long extended pier supported by 25 piles, a U-shaped floating dock (60' x 80'), a 10' x 14' pier platform and a 30' gangway. Mitigation was proposed at a 1.2:1 ratio for direct impacts to 1,086 square feet of eelgrass.

b. Coastal Development Permit No. 5-06-193 (Ruffato and McDonald), 105/107 Bayside Drive, Newport Beach

On January 10, 2007, the Commission approved Coastal Development Permit No. 5-06-103- (Ruffato and McDonald). CDP No. 5-06-103 allowed removal an existing double u-shaped dock system of approximately 30' x 50' and installation of a new shared dock system consisting of: a 6' x 116' pier approach, a 12' x 16' pier platform, a 3' x 24' gangway, a 5' x 45' center finger, a 5' x 25' left finger, a 13.5' x 27' u-shaped dock, and twenty piles. The project included mitigation at a

1.2:1 ratio for direct impacts to 2.4 square feet of eelgrass and indirect shading impacts to 355 sq. ft. of eelgrass.

c. Coastal Development Permit No. 5-10-012 (Manzo), 2223 Bayside Drive, Newport Beach

On May 13, 2011, Coastal Development Permit No. 5-10-012-(Manzo) was heard before the Commission. CDP No. 5-10-012 proposed installation of a new boat dock system where one did not exist that would have consisted of: a 46'x16' "U" shaped floating dock; a 4' x 187' pier approach; a 3' x 24' gangway; a 10' x 14' pier platform; and 25 piles. Commission staff recommended denial of the proposed project since the development had not demonstrated that it was the least environmentally damaging alternative; would have an adverse impact resulting in the unmitigated fill of coastal waters; would have resulted in significant water coverage and shading effects on an extensive eelgrass bed; and would result in the potential for cumulative adverse impacts if similar expansions were approved in the area. The project had proposed a total placement of twenty-five (25) piles into the bay's soft bottom with a cumulative bay area displaced of approximately 13 square feet. Eelgrass surveys of the area show that expected shading impacts from the water area covered by the proposed pier, pier platform, dock, gangway and boat would be approximately 2,064 square feet. The proposed project was not the least environmentally damaging alternative since there were other alternatives, such as shared pier/dock use and reduced size pier/dock options. No plan to address the known direct and long term eelgrass impacts was submitted. Prior to the Commission vote at the May 2011 Commission hearing, the applicant withdrew the project.

d. Coastal Development Permit 5-10-205 (Tsoong) 2115 Bayside Drive, Newport Beach

On October 5, 2011 the Commission approved CDP 5-10-205. CDP 5-10-205 proposed a 6'x23' addition composed of grated decking and one new pile to an existing U shaped 1,374 sq. ft. boat dock, resulting in a 1,512 sq. ft. dock. Eelgrass impacts included 0.55 sq. ft. of direct impacts and 138 sq. ft. of shading impacts, which were required to be mitigated at a 1.2:1 ratio.

e. Coastal Development Permit 5-11-045 (Van Schoonenberg), 2234 Channel Road, Newport Beach

On December 7, 2011, the Commission approved CDP 5-11-045. CDP 5-11-045 proposed demolition of an existing 709 sq. ft. floating dock, gangway, pier and four existing piles and installation of a new 10'x14' platform supported by two 14" diameter anchor piles, new 3'x24' gangway and "U-shaped" floating dock with grated decking, and five 14" diameter piles. The project totaled 523 sq. ft. in water coverage. After a public hearing, the Commission approved the project with modifications to the proposed dock system to avoid direct and indirect (shading) impacts to eelgrass through modifications to the orientation of the u-shaped floating dock, and the location of the pier platform. One square foot of eelgrass was impacted by the project, and was mitigated at a 1.2:1 ratio.

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:

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

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.*
- 4.1.4-1 *Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.*
- 4.1.4-3 *Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.*

1. Fill of Coastal Waters and Maintenance of Biological Productivity

The applicants are proposing the removal of an existing dock with four 12-inch diameter piles and the installation of two new dock systems with a total of two 16-inch diameter square concrete T-piles and four 12-inch diameter square concrete piles. The proposed installation of the six piles would result in new fill of open coastal waters resulting in the removal of about 7.5 square feet of existing soft bottom habitat. Pursuant to Section 30233 of the Coastal Act, fill of open coastal waters shall be allowed only when specific criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging feasible alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided.

Section 30233(a)(4) of the Coastal Act allows fill of open coastal waters, such as Newport Bay, for recreational boating purposes. Each of the proposed projects would result in a new boat dock, which constitutes a recreational boating facility. The proposed boat docks are proposed to be used solely for boating related purposes. Thus, the projects are an allowable use under Section 30233(a)(4).

Section 30233 of the Coastal Act permits fill of open coastal waters only where there is no feasible less environmentally damaging alternative. Furthermore, Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored with special protection given to areas and species of special biological significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms.

The proposed project would result in the creation of two separate docks on two separate lots in an area where there was previously one lot and one dock. The proposed project, like the majority of boat docks in Newport Bay would be located on public tidelands. There is no inherent right to development of private docks in public trust tidelands and submerged lands regardless of whether the applicant has an adjacent single family residence. Public trust tidelands and submerged lands in this area are administered by the City of Newport Beach. While the project would result in an expansion in private boating related activities, it would also result in an expansion of the area of the bay habitat that is subject to impacts from dock construction, such as shading of the bay bottom, additional fill, additional water turbulence from use of boat engines, and additional pollutants associated with boating uses. These impacts can result in significant adverse impacts to eelgrass

habitat. The Commission's approach has been to seek avoidance of impacts wherever possible and when such avoidance isn't possible, to minimize the impact and to require mitigation for it.

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

The applicant provided a survey, *Eelgrass (Zostera Marina) Impact Assessment and Mitigation Option Report* dated June 21, 2012 by Coastal Resources Management, Inc. that analyzes the presence of eelgrass at the project site. On May 22, 2012, the two subject sites were surveyed for eelgrass and significant areas of eelgrass were found (**Exhibit 3**). The survey shows that the majority of the area of water adjacent to the site at 2222 Channel Road contains eelgrass, with a narrow area of unvegetated water directly adjacent to the bulkhead. The area of water adjacent to 2218 Channel Road also contains a significant area of eelgrass with the eelgrass generally located a few feet outside of the footprint of the existing boat dock.

Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the November 2012 Coastal Commission Hearing and by this time the eelgrass surveys would not continue to be valid since 60-days have passed since the survey was completed. Thus, up-to-date eelgrass surveys must be conducted. Therefore, the Commission imposes **Special Condition 1** for CDP Applications 5-12-177 and 5-12-178, which identifies the procedures regarding eelgrass surveys that are necessary to be completed prior to beginning any construction.

As suggested by Coastal Land Use Plan Policy 3.1.4-5, dock systems can typically reduce their impacts to the environment by sharing common elements of docks, such as piles, piers, and gangways. Shared dock systems reduce the total area of harbor waters which are occupied by dock systems and maximizes existing and potential areas of eelgrass growth. Shared pier systems are also encouraged by the City of Newport Beach Land Use Plan to reduce impacts resulting from new piers along the bayfront. However, on this site, a shared dock system would not represent the least environmentally damaging alternative due to the location of existing eelgrass habitat. Eelgrass is located across the majority of the harbor area adjacent to 2222 Channel Road and also occupies much of the harbor area adjacent to 2218 Channel Road. Construction of a shared dock system along the common property line would result in much more significant adverse impacts to eelgrass than the project which is currently proposed by the applicants.

The proposed new dock and pier for CDP application number 5-12-177 would result in the installation of two 12 inch diameter and one 16 inch diameter concrete piles, and no direct or indirect impacts to eelgrass are anticipated from construction of the dock and pier. The project

proposes the minimum number and size of piles necessary to adequately support and secure the proposed dock. The project would not result in any placement of piles within eelgrass, and would minimize the amount of fill required to support the proposed allowable use.

The proposed new dock and pier for CDP application number 5-12-178 would result in the installation of two 12 inch diameter and one 16 inch diameter concrete piles (**Exhibit 2**). The applicant has submitted a *Draft Eelgrass (Zostera Marina) Mitigation Plan* dated September 20, 2012 by Coastal Resources Management which indicates that approximately 23 square feet of eelgrass will be impacted by the project. One of the two 12 inch diameter piles would be installed within an existing area of eelgrass. Additionally, the proposed pier platform and dock float are located partially above an existing area of eelgrass and would result in additional shading to the eelgrass bed. The applicant is proposing to mitigate the proposed eelgrass impacts at a 1.2:1 ratio through the transplant and installation of 27.6 square feet of eelgrass on-site. However, as proposed, the new dock is not the least environmentally damaging feasible alternative. Alternatives do exist that would reduce significant impacts to coastal resources. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

a. No Project

No changes to the existing site conditions would result from the “no project” alternative. As such, the ‘no project’ would not have an adverse impact resulting in the unmitigated fill of coastal waters, not result in additional water coverage and the attendant shading effects, and would not add to cumulative adverse impacts. Thus, the ‘no project’ alternative would be one of the least environmentally damaging alternatives.

b. Shared Pier/Dock Use

CDP Application 5-12-178 entails installation of a new private boat dock where none currently exists on site. An alternative to the proposed project would be to have a shared pier and dock system with a neighbor in the vicinity of the project, or at another location (i.e. a marina) which already have existing dock systems. This alternative would accommodate the applicant’s interest in adding recreational elements and would minimize fill of coastal waters and minimize expansion of water coverage and attendant shading effects. It would also minimize cumulative adverse impacts if similar dock expansions are approved in the area. There are at least seven (7) docks in the vicinity of the site on Bayside Drive, across the channel, that are shared docks which shows this is a feasible alternative. However, as discussed above, in this case construction of a shared dock system along the common property line would result in much more significant adverse impacts to eelgrass than the construction of two separate docks.

c. Reconfigured dock system

CDP Application 5-12-178 would result in a new pier platform and dock float located above an existing area of eelgrass. However, the proposed impacts to eelgrass could be removed through minor redesign of the dock. Reducing the dock float from 22’ long to

approximately 18', and/or a reduction in width from 5'6" to approximately 4' would eliminate the float's impacts to eelgrass. The proposed pier platform is not required to access the proposed dock float, and could be removed to eliminate eelgrass impacts. Therefore, this too is one of the least environmentally damaging feasible alternatives.

Each of the listed alternatives would prevent new impacts to eelgrass habitat. Of the listed alternatives, only the reconfigured dock system alternative would allow for both the construction of a new dock system at 2222 Channel Road, while also avoiding impacts to existing eelgrass habitat. Thus, that alternative is the environmentally preferred one.

The Commission has typically allowed platforms in association with boat docks only when a pier is an integral part of the overall boat dock project and then only when the platform does not result in additional impacts. These impacts have included fill, extra water coverage, and shading impacts to eelgrass (See: CDP 5-10-293 Cook, CDP 5-10-088 Dunbar, 5-11-045 Van Schoonenberg). In this case, the proposed pier platform would result in impacts to eelgrass, and is not necessary for access to the proposed dock float. Removal of the pier platform would eliminate the impacts to eelgrass that would occur from installation of the proposed pier platform. Removal of the pier platform would allow less space for the applicant's stated purpose of storing kayaks, but such storage could instead be done on the residential lot. Likewise, reduction in width or length of the dock float would allow for a boating use at the site while avoiding direct or indirect impacts to eelgrass habitat.

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. As proposed, the project would result in the coverage of existing eelgrass beds by a proposed floating dock and proposed pier platform. The applicant is proposing grated material for the proposed pier to enhance transmission of light to the sea floor. However, the use of grated material does not eliminate the effects of water coverage. The use of grating material should be encouraged to allow for *new eelgrass* growth in areas suitable for eelgrass growth but where eelgrass currently does not grow due to shading from the previous dock structure on the site. In some cases, the use of grating material can reduce the impacts of water coverage by dock and pier systems; however it still represents a reduction in the amount of light which is transmitted to the sea floor and could therefore result in a loss of fitness of existing eelgrass habitat. Therefore, although use of grating is encouraged in the construction of dock systems, it is not mitigation against the potential loss of eelgrass habitat due to the placement of a new structure over *existing eelgrass*.

Coastal Act Section 30230 requires that marine resources, such as eelgrass, 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. Section 30250 requires that new development avoid impacts individually and cumulatively. Although 23 square feet of impact to eelgrass may appear to be a small amount, it is important to recognize that there are hundreds of residential boat docks in Newport Bay. If each were allowed to cause impacts to eelgrass that are otherwise entirely avoidable, the result would be significant adverse impacts to the amount of eelgrass habitat available in Newport Harbor. In this case, there are feasible less environmentally damaging alternatives that avoid impacts to eelgrass. If modified, the proposed project would ensure that no impacts would occur to existing eelgrass

habitat, and would maximize the area available for future eelgrass growth. Therefore, the Commission imposes **Special Condition 6** to application 5-12-178, which requires the applicant to submit revised project plans modifying the proposed dock configuration to completely avoid direct eelgrass losses due to pile driving and to completely avoid indirect potential eelgrass habitat losses due to shading impacts caused by the placement of structures over existing eelgrass habitat. Only as conditioned does the Commission find that the proposed dock meets the requirements of Section 30230, 30233, and 30250 that fill of coastal waters be the least environmentally damaging feasible alternative, that biological productivity of coastal waters be maintained, and that development is designed to prevent adverse impacts both individually and cumulatively.

3. *Caulerpa taxifolia*

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

A pre-construction *Caulerpa taxifolia* survey was completed on May 22, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa taxifolia* surveys are valid for 90 days. In order to assure that the proposed project does not cause the dispersal of *Caulerpa taxifolia*, the Commission imposes **Special Condition 2** to Coastal Development Permit Applications 5-12-177 and 5-12-178, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*. If *Caulerpa taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

4. Water Quality and Construction Impacts

Due to the proposed project's location in the waters of Newport Bay, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life.

The proposed project includes measures to help assure protection of coastal waters and marine resources such as all parts of the proposed dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, the Commission imposes **Special Condition 3** to CDP applications 5-12-177 and 5-12-178, requiring the applicant utilize construction best management practices to minimize impacts upon water quality. Such practices include: all construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; floating booms shall be used to contain debris discharged into coastal waters; non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; no machinery not essential to project construction may be placed in the inter-tidal zone at any time, and that any and all construction equipment, materials and debris are removed from upland areas at the conclusion of construction.

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

5. Water Quality and Boating Activity Impacts

These Coastal Act policies are intended to protect the water quality and biological productivity of coastal water resources. Aside from potential construction impacts on water quality, the berthing of boats by the boat dock user and associated boating activities also has the potential to adversely impact coastal water quality and marine environment through the introduction of pollutants associated with boating activities. Cleaning and scraping of boats, improper discharges of contaminated bilge water and sewage waste, and the use of caustic detergents and solvents, among other things, adversely impact water quality in coastal waters. The discharge of chemicals, petroleum, cleaning agents, sewage and other pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, reduce optimum populations of marine organisms, and have adverse impacts on human health. Such cumulative impacts on water quality can be minimized through the implementation of certain BMPs. Therefore, the Commission imposes **Special Condition 4** to CDP Applications 5-12-177 and 5-12-178, that requires the applicant to agree to the implementation of the water quality BMPs related to long-term water-borne berthing of boat(s) in the approved residential dock. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

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

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

The subject site is located in a residential area where the majority of the lots are protected from coastal waters by a bulkhead. The proposed project will not have an adverse effect on public access. Neither vertical nor lateral public access exists on the subject property. In addition, there is no established lateral public access in the vicinity. There is no public walkway along the bulkhead in this area of the Balboa Peninsula, and the private property line extends to the bulkhead. The area seaward of the bulkhead (where the proposed piers/docks are to be located) is public tidelands. However, at this site there is generally no sandy beach exposed (even during low tides) where the public could laterally traverse the area in front of the bulkhead. This is unlike other areas in Newport Beach where there is sandy beach in front of the bulkhead during certain periods of time which do allow lateral traversal (e.g. Lido Isle, Balboa Island, among others). Thus, the placement of the pier and dock near to the bulkhead is not expected to impact public access. Adequate public access exists nearby. The nearest public access to Newport Harbor is located approximately 120 feet north of the site at a small public beach and public dock where Channel Road transitions into East Balboa Blvd. Access to the Pacific Ocean at the City's public beach is available approximately 800 feet south of the site at the Channel Road street end.

The proposed development, as proposed, will not result in any new significant adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30210 and 30212 of the California Coastal Act.

E. LOCAL COASTAL PROGRAM

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

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not

have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Furthermore, the proposed development is located on tidelands, which is an area the Commission retains jurisdiction over even once an LCP is certified. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The following LUP policies, and those identified elsewhere in this staff report, may be used for guidance in evaluating a development's consistency with Chapter 3:

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

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

As conditioned, the proposed project will conform with Coastal Act Sections 30233, 30230, 30231, 30210, and 30212 and with the marine resource protection policies in the Certified LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt on June 19, 2012. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Certified Land Use Plan

City of Newport Beach Harbor Permit / Approval in Concept dated June 19, 2012

Caulerpa taxifolia Survey Reporting Form by Coastal Resources Management, Inc. dated June 7, 2012.

Eelgrass (*Zostera Marina*) Impact Assesment and Mitigation Option Report dated June 21, 2012.

Draft Eelgrass (Zostera Marina) Mitigation Plan dated September 20, 2012 by Coastal Resources Management

Coastal Development Permit No. 5-98-047 (Tabaz)

Coastal Development Permit No. 5-06-193 (Ruffato and McDonald)

Coastal Development Permit No. 5-10-012 (Manzo)

Coastal Development Permit 5-10-205 (Tsoong)

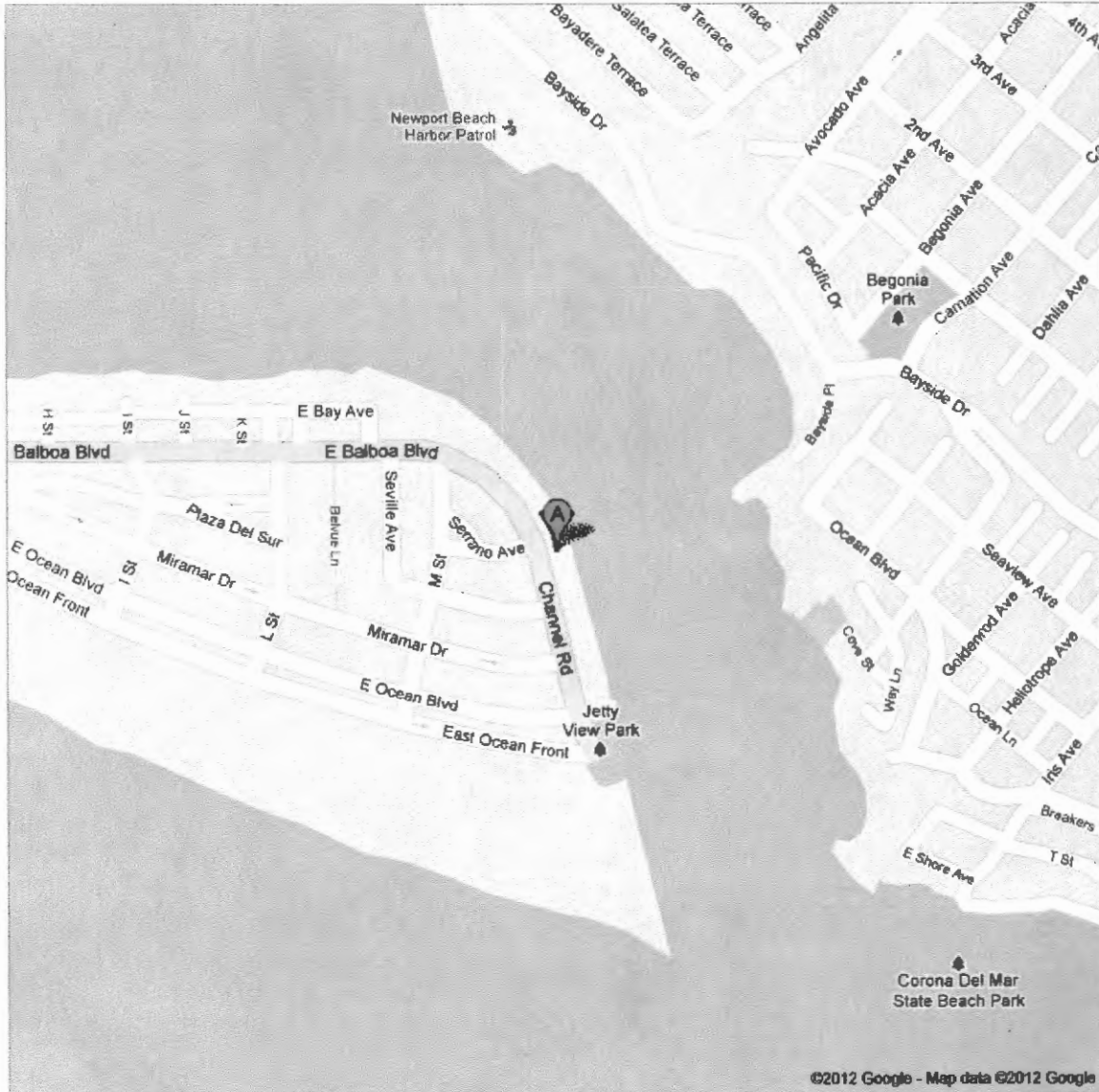
Coastal Development Permit 5-11-045 (Van Schoonenberg)



Address **2222 Channel Rd**
Newport Beach, CA 92661

Get Google Maps on your phone

Text the word "GMAPS" to 466453



COASTAL COMMISSION
Vicinity Map

EXHIBIT # 1
PAGE 1 OF 1

RECEIVED
South Coast Region

RECEIVED
South Coast Region

JUN 25 2012

CALIFORNIA
COASTAL COMMISSION

CALIFORNIA
COASTAL COMMISSION

5-12-177

DATE	
BY	
CHECKED	
APPROVED	

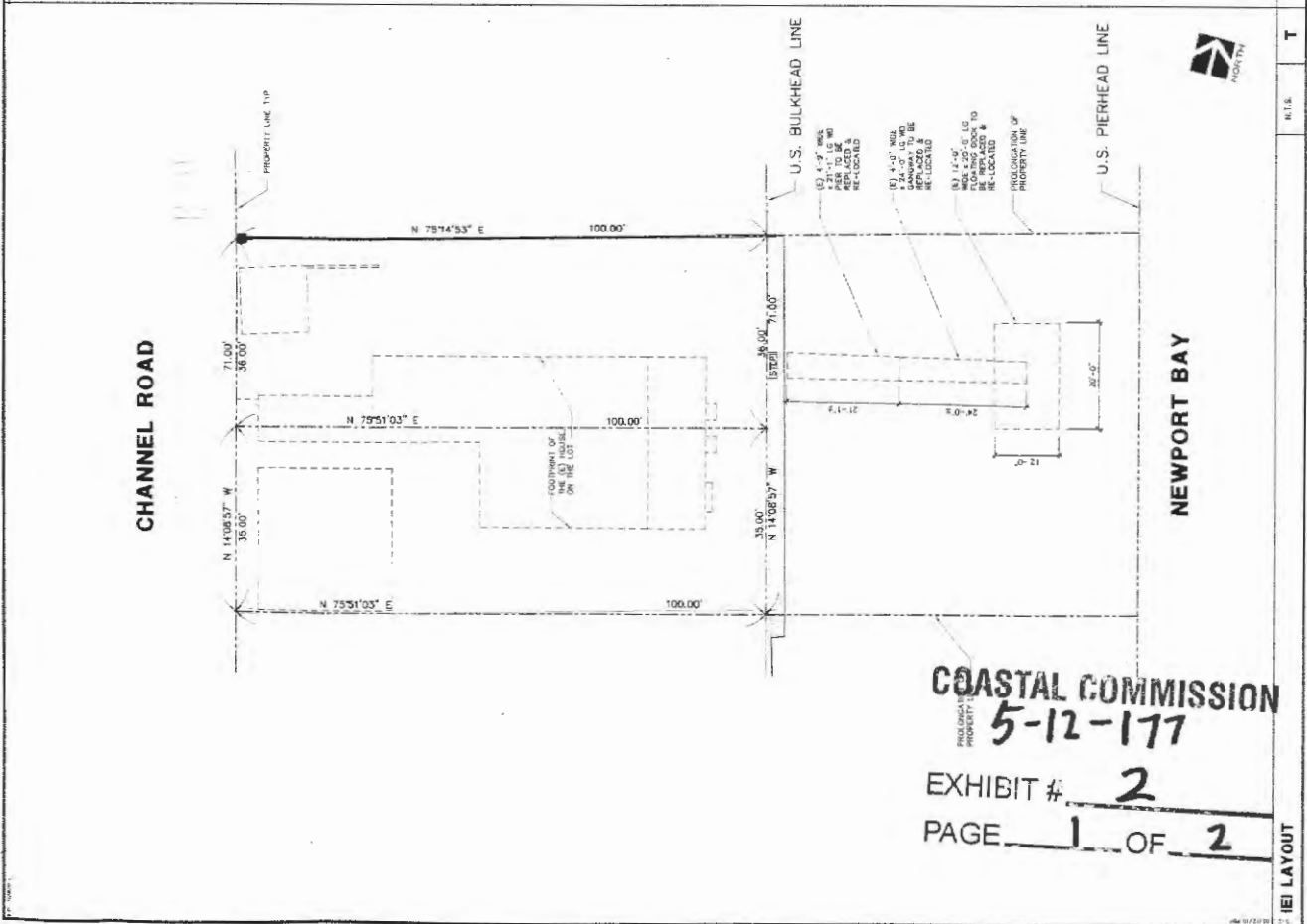
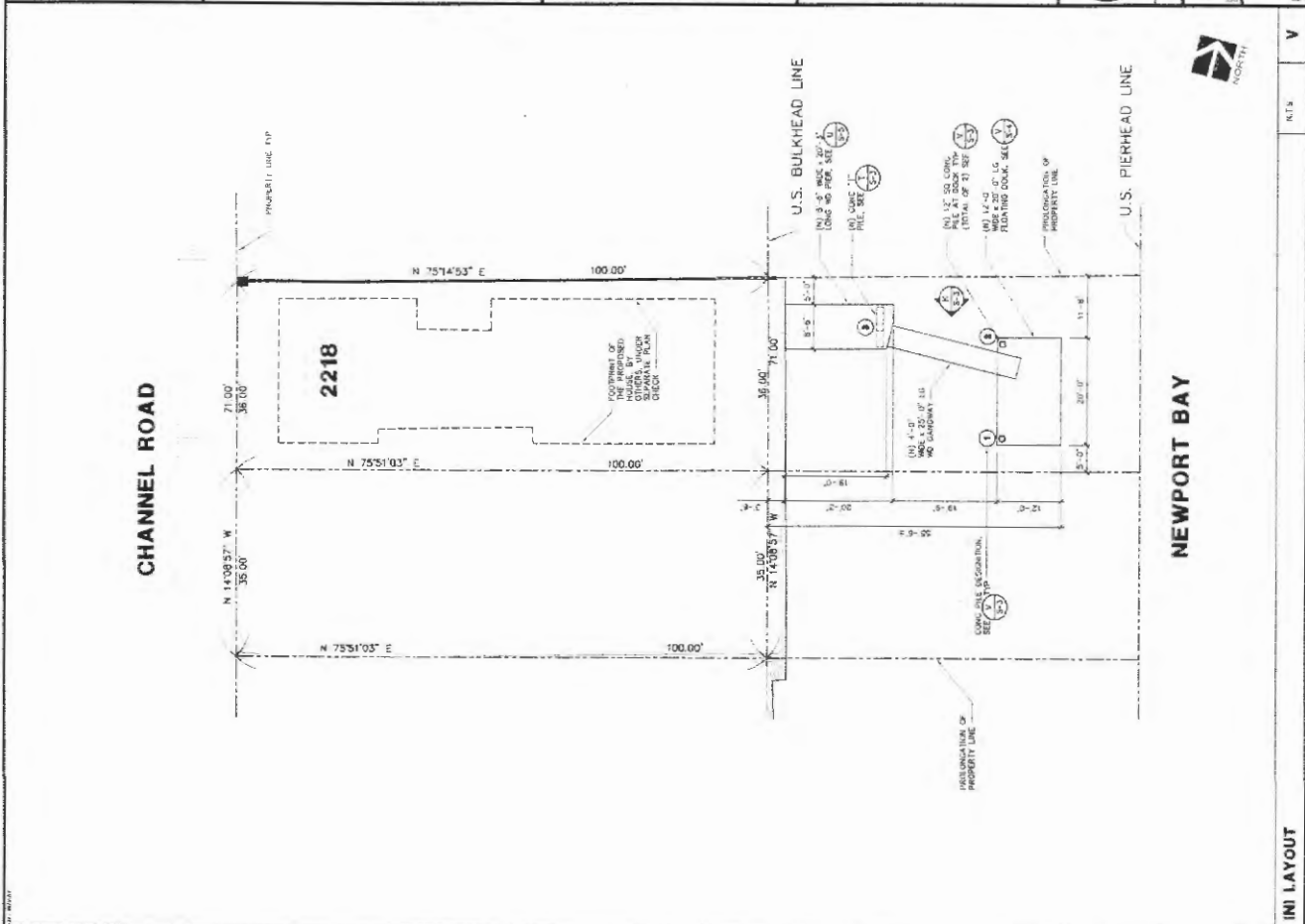
OWNER/APPLICANT
Mr. Carol Helou
 2218 Channel Road
 Newport Beach, CA 92661
 Phone: (626) 332-2033

NEW CONCRETE PILES, NEW WOOD PER.
 WOOD GANGWAY & WOOD FLOATING DOCK.
WILLIAM SIMPSON & ASSOCIATES, INC.
 CONSULTING STRUCTURAL ENGINEERS
 2218 CHANNEL ROAD
 Newport Beach, CA 92661
 ENLARGED DOCK PLAN & ELEVATION

DATE: 06/20/12
 SHEET NO.: S-2
 PROJECT NO.: 11-1177
 DRAWN BY: J. W. SIMPSON
 CHECKED BY: J. W. SIMPSON
 APPROVED BY: J. W. SIMPSON



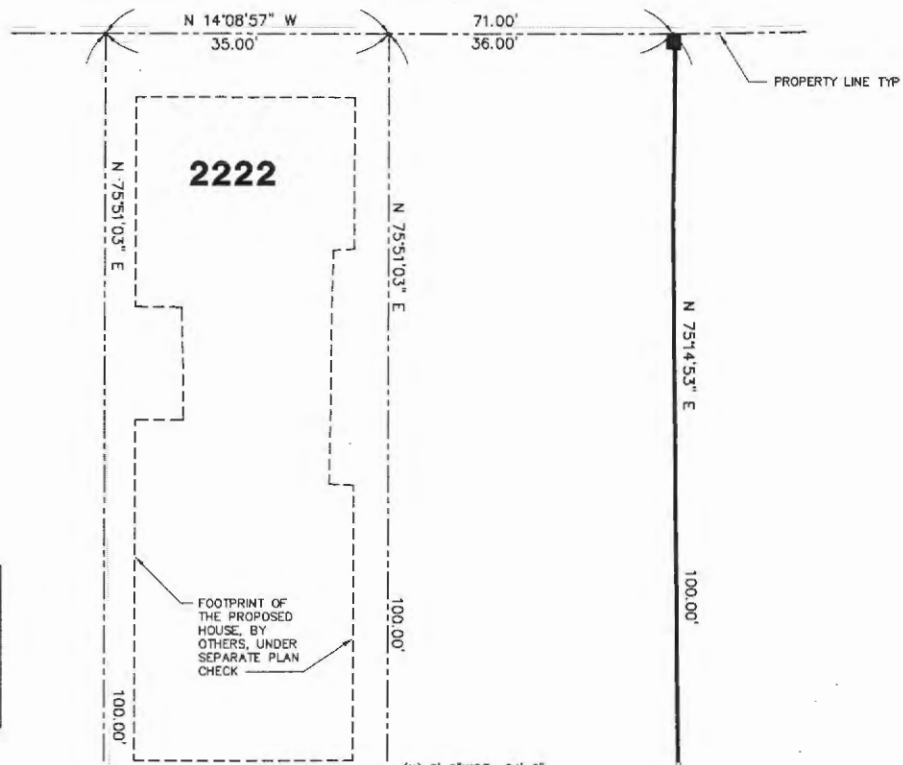
DATE	06/20/12
BY	J. W. SIMPSON
CHECKED	J. W. SIMPSON
APPROVED	J. W. SIMPSON



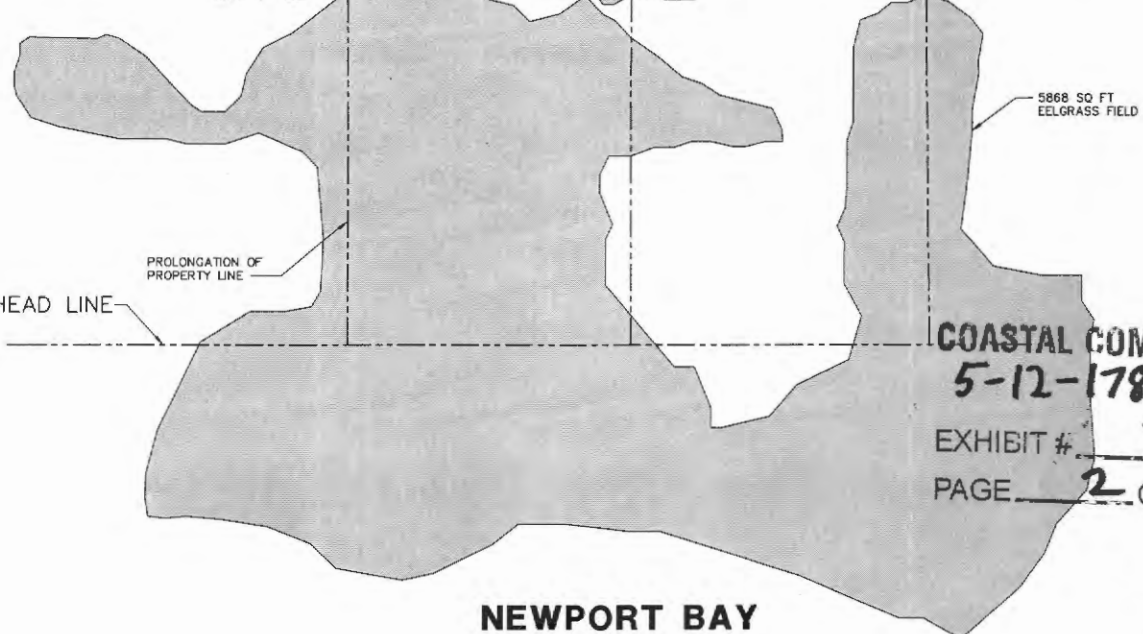
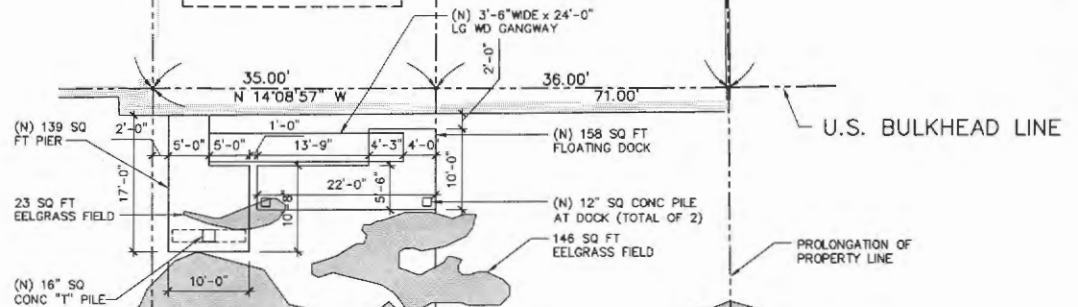
COASTAL COMMISSION
 5-12-177
 EXHIBIT # 2
 PAGE 1 OF 2

DATE: 06/20/12
 SHEET NO.: S-2
 PROJECT NO.: 11-1177
 DRAWN BY: J. W. SIMPSON
 CHECKED BY: J. W. SIMPSON
 APPROVED BY: J. W. SIMPSON

CHANNEL ROAD



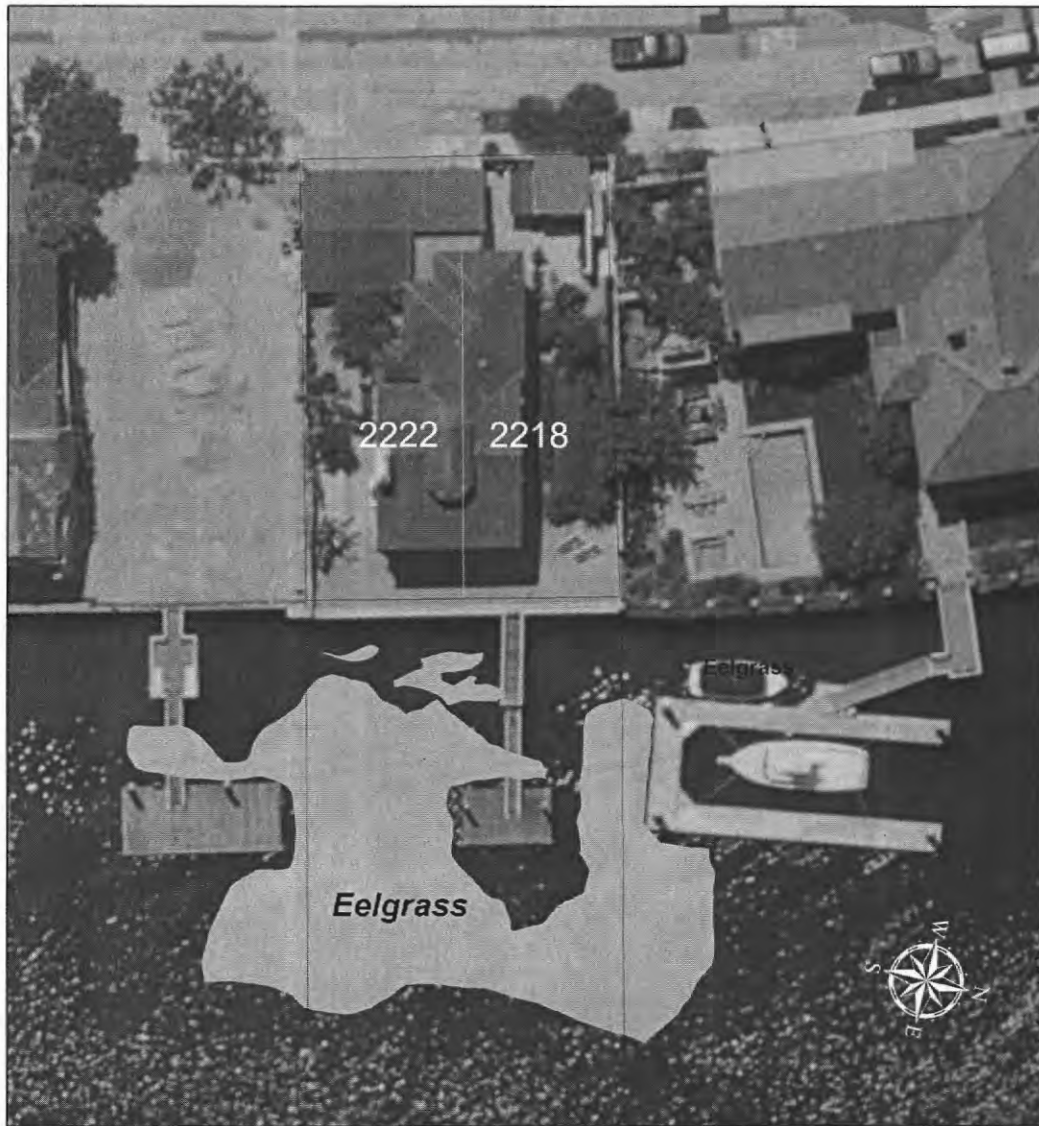
NOTE :
THE AREA OF EELGRASS IMPACTED BY THE PROPOSED DEVELOPMENT IS LESS THAN 20 SQ FT.



COASTAL COMMISSION
5-12-178
EXHIBIT # 2
PAGE 2 OF 2



Figure 2. Location of Eelgrass Relative to Existing Dock Structures
 Survey Date: 22 May, 2012



Reference Scale: 1:392

Coordinate System: NAD 1983 StatePlane California VI FIPS 0406 Feet
 Projection: Lambert Conformal Conic
 Datum: North American 1983
 False Easting: 6,561,666.6667
 False Northing: 1,640,416.6667
 Central Meridian: -116.2500
 Standard Parallel 1: 32.7833
 Standard Parallel 2: 33.8833
 Latitude Of Origin: 32.1667
 Units: Foot US

0 5 10 20 30 40
 Feet



COASTAL COMMISSION
Eelgrass Survey

EXHIBIT # 3

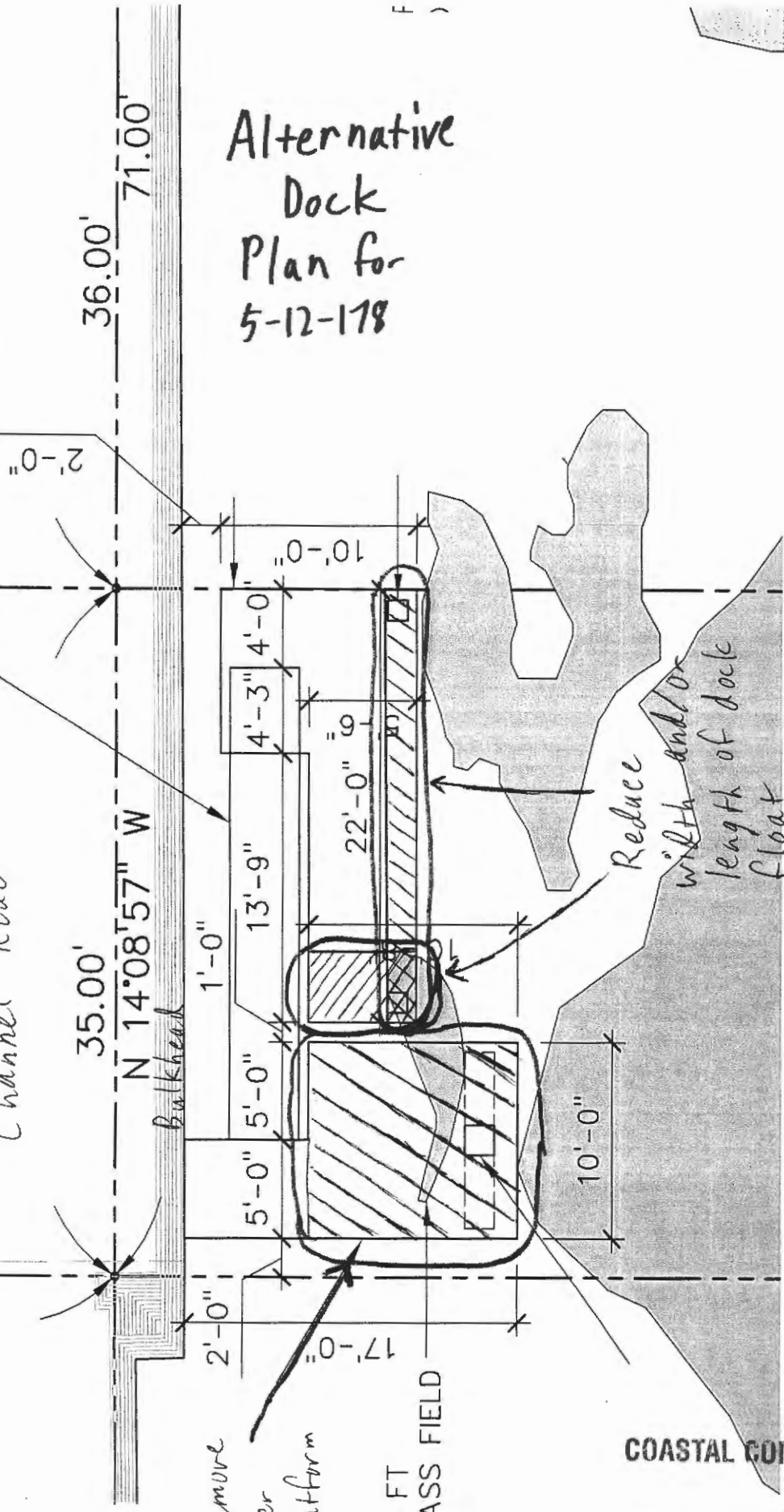
PAGE 1 OF 1

5-12-178

Close-Up View of

Dock at 2222
Channel Road

(N) 3'-6" WIDE x 24'-0"
LG WD GANGWAY



Alternative Dock Plan for 5-12-178

Remove
Pier
Platform

23 SQ FT
EELGRASS FIELD

Reduce
width and/or
length of dock
float

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1