

CALIFORNIA COASTAL COMMISSION

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

Th 12c



Filed: February 15, 2013
180th Day: August 14, 2013
Staff: F. Sy-LB
Staff Report: June 27, 2013
Hearing Date: July 10-11, 2013

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-13-046

Applicant: Larry Van Tuyl

Agent: Anchor QEA, L.P. Attention Jack Malone

Location: 108 Linda Isle, Newport Beach (Orange County)

Project Description: Removal of an existing North-South facing 722 square foot "U" shaped boat dock system with three (3) 14" guide piles and installation of a reoriented East-West facing 1,100 square foot "U" shaped boat dock system with four (4) 14" guide piles and a 5' x 24' gangway and 4' x 24' gangway. The new boat dock system will comprise of Trex composite material. The proposed boat dock system results in 328 square feet of increased water coverage.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

Commission Staff is recommending **APPROVAL** of a boat dock system reconfiguration if it is modified to reduce the amount of proposed additional water coverage resulting in reduced adverse impacts to biological resources. As proposed, the boat dock system would add 328 square feet of water coverage resulting in reduced light and biological productivity of coastal waters. Staff is recommending modification of the project because the proposed configuration is inconsistent with Sections 30230 and 30231 regarding maintaining and enhancing biological productivity and water quality. As proposed, the project is inconsistent with Section 30250 of the Coastal Act since the cumulative effect of increased water coverage creates greater impediments to biological resources that will add up over time.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **FIVE (5) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires that prior to issuance of the Coastal Development Permit the applicant submit revised plans for a re-design of the boat dock system that reduces water coverage to the minimum needed to support boating use and thus reduces impacts to biological resources. **SPECIAL CONDITION NO. 2** requires pre- and post-construction eelgrass surveys. **SPECIAL CONDITION NO. 3** requires a pre-commencement of construction *Caulerpa Taxifolia* survey. **SPECIAL CONDITION NO. 4** notifies the applicant of construction practices and debris removal responsibilities. **SPECIAL CONDITION NO. 5** requires the applicant to incorporate long term water quality Best Management Practices for the operation of the boat dock system.

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 (LCP). The City of Newport Beach only has a Certified Coastal Land Use Plan (CLUP) 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 Coastal Land Use Plan may be used for guidance.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION	4
II.	STANDARD CONDITIONS	4
III.	SPECIAL CONDITIONS	5
IV.	FINDINGS AND DECLARATIONS	
A.	PROJECT LOCATION AND DESCRIPTION, PRIOR COMMISSION ACTION AT THE SUBJECT SITE, STANDARD OF REVIEW	10
B.	MARINE RESOURCES AND WATER QUALITY	12
C.	FILL OF COASTAL WATERS	16
D.	PUBLIC ACCESS AND RECREATION	18
E.	LOCAL COASTAL PROGRAM (LCP)	19
F.	CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	19

APPENDICES

Appendix 1 – Substantive File Documents

EXHIBITS

Exhibit #1 – Location Map

Exhibit #2 – Existing/Proposed Boat Dock System Site Plan

Exhibit #3 – Proposed Boat Dock System Recreational Vehicles Site Plan

Exhibit #4 – Illustration of Boat Dock System Compliance with Special Condition No. 1

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-13-046 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:

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, located between the first public road and the sea, 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 will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is 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

1. Revised Project Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The intent behind the required re-design of the proposed boat dock system is to minimize adverse impacts to biological resources resulting from the excessive water coverage. In general, the boat dock system shall be re-designed so as to reduce water coverage to the minimum needed to support boating use. The revised project plans shall be in substantial conformance with the plans submitted on February 15, 2013, except they shall be modified as follows: the boat dock system shall be re-designed so that the amount of the proposed boat dock system water coverage is less than or equal to the existing amount of water coverage, 772 square feet; all as generally depicted on Exhibit #4 of the June 27, 2013 Staff Report. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. 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 Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

3. Pre-construction *Caulerpa Taxifolia* Survey

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “project”), the 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 Wildlife, 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 development approved under this Coastal Development Permit until 1) the applicant provides evidence to the Executive Director that all *Caulerpa*

Taxifolia discovered within the project area and all *Caulerpa 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 applicant has revised the project to avoid any contact with *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

4. Construction Responsibilities and Debris Removal

The permittee shall comply with the following construction related requirements:

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an

amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

- K.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- L.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- O.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Best Management Practices (BMPs) Program

By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved boat dock system 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; and

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; and
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION, PRIOR COMMISSION ACTION AT THE SUBJECT SITE, AND STANDARD OF REVIEW

Project location and Description

The subject site is located at 103 Linda Isle in the locked gate community of Linda Isle in the City of Newport Beach, Orange County (Exhibit #1). Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area. The proposed project involves the following: removal of an existing North-South facing 722 square foot “U” shaped boat dock system with three (3) 14” guide piles and installation of a reoriented East-West facing 1,100 square foot “U” shaped boat dock system with four (4) 14” guide piles and a 5’ x 24’ gangway and 4’ x 24’ gangway (Exhibit #2). The new dock system will be comprised of Trex composite material. The proposed boat dock system results in 328 square feet of increased water coverage. The applicant also proposes the use of “deck prisms” at various intervals on the new boat dock to allow natural light to penetrate beneath the boat dock to reach the water below. The proposed boat dock system will not encroach bayward into Newport Bay, as it will actually be located more inland.

	<u>Existing</u>	<u>Proposed</u>
Gangway	3'x 21' = 63 square feet	4' x 24' = 96 square feet 5' x 24' = 120 square feet
Boat Dock System	659 square feet	884 square feet
Total Water Coverage	772 square feet	1,100 square feet
Piles	(3) 14"	(4) 14"

The proposed boat dock system meets the City of Newport Beach Harbor Permit Policy in that it will continue to not extend past the U.S. Pierhead Line.

The applicant states that the proposed boat dock system is necessary since the existing boat dock system is highly unstable due to its narrow design and having reached the end of its design life. Additionally, the applicant states that the existing boat dock system cannot safely accommodate elderly people, children, or multiple concurrent users, which is why he has proposed two (2)

gangways. In addition, to facilitate access to the boat dock system, one (1) of the proposed gangways would be wide enough to accommodate a wheelchair

Furthermore, in order to improve access and user safety, the applicant proposes to remove and replace the north-south facing boat dock system with a new larger boat dock system and more stable east-west facing dock. Additionally, the applicant states that the new larger boat dock system would provide storage space for his many recreational vehicles because the two (2) gangways provide access to different parts of the boat dock system without requiring users to traverse as much of the floating portion of the dock. The applicant's recreational vehicles include jet skis, paddleboards, a sailboat, a center-console motorboat, and a sabot sailboat (Exhibit #3). To support these proposed recreational vehicles, the applicant states that the boat dock system layout must provide sufficient room for storage racks, storage boxes, and ladders and must provide sufficient room for users to move along the boat dock system (Exhibit #3).

The Santa Ana 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 applied for a permit from the U.S. Army Corps of Engineers.

Through an email exchange with Coastal Commission staff, the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) has expressed concerns with the proposed project. NMFS staff expressed concerns regarding the project's significant increase in water coverage because the expansion of overwater coverage decreases light penetration, negatively affecting primary productivity from seagrasses, benthic algae and plankton. Additionally, the increased water coverage would change hydrology, alter local ecosystems and serve as a substrate for non-native species. NMFS' concerns are heightened because systems similar to Newport Beach are already highly modified by coastal development and much of this productivity has already been lost. In addition, NMFS' does not agree with the applicant's justification for an increased boat dock footprint to provide increased stability for children and elderly to use the boat dock. If their boat dock is dilapidated, NMFS staff believes that replacement in-kind may provide any needed stability. NMFS staff does not believe that the expansion of the fingers to 6-feet in width and the headwalk to 10-feet is necessary or that two (2) gangways are necessary. NMFS also has concerns with the eelgrass and *Caulerpa Taxifolia* surveys submitted by the applicant since they are currently out of date. These concerns are similar to Commission staff concerns and will be discussed more thoroughly below.

Prior Commission Action at the Subject Site

Coastal Development Permit De Minimis Waiver No. 5-88-008-(Anderson)

On February 1988, the Commission approved Coastal Development Permit De Minimis Waiver No. 5-88-008-(Anderson) for this site. CDP No. 5-88-008 allowed modification to the existing boat slip.

Standard of Review

The City of Newport Beach has a Certified Coastal Land Use Plan (CLUP) but the Commission has not certified a Local Coastal Program (LCP) for the City. As such, the Coastal Act policies are the standard of review with the Certified CLUP providing guidance.

B. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30250 of the Coastal Act states, in pertinent part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30230 of the Coastal Act requires that marine resources, including biological productivity, be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources.

Marine Resources/Biological Productivity

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The existing boat dock system consists of 772 square feet and the proposed boat dock system consists of 1,100 square feet. As proposed, the proposed boat dock system results in 328 square feet of increased water coverage.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. A coastal development permit may be issued if the project can ensure that the uses of the marine environment will 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 “lower order” green algae, phytoplankton, and diatoms that form the basis of the marine food chain. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by covering an unnecessarily large area.

Larger dock structures take up more of the bay’s water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement) than the smaller piers and docks that the Commission found to be consistent with the Coastal Act. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the state and federally listed California brown pelican, which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may seem small, it is a concern because of the cumulative impacts from these kinds of docks. As noted above, NMFS shares these concerns regarding the excessive water coverage. Consistent with those concerns, the Commission has limited the size of shoreline structures to preserve open water area and protect marine resources from adverse impacts. It has found that docks associated with single-family structures should be limited in size to preserve open water areas in bays, thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight.

The applicant states that the proposed design is needed in order to accommodate the elderly and children and the applicant’s many recreational vehicles. However, the Coastal Act does not require approval of an expanded boating facility in order to create additional storage space for a private homeowner’s recreational vehicles. In addition, the boat dock system can be redesigned in order to reduce overall water coverage while still accommodating at least the majority of the applicant’s proposed recreational boating uses.

The Commission (and MNFS) do not agree with the applicant that only the increased boat dock footprint will provide increased stability for children and the elderly to use the boat dock. The project can be redesigned to allow greater accessibility for children and the elderly without increasing the size of the dock. For example, as currently proposed, the headwalk is 10-feet wide and the fingers 6-feet wide. Based on the City of Newport Beach Waterfront Project Guidelines and Standards, the minimum allowable width of a headwalk is 6-feet (not 10) and minimum allowable width of a finger is 4-feet (not 6). Thus, the proposed headwalk could be reduced by 4-feet in width and the fingers by 2-feet in width resulting in much less water coverage while still complying with code requirements. Additionally, the applicant could remove the proposed additional (secondary) gangway that does not provide the wheelchair access he desires. The remaining gangway would be sufficient to provide access to the boat dock system for all users, including those in a wheelchair. Two (2) gangways are excessive and unnecessary. The revised dock system described here would result in less water coverage.

Commission staff raised the issue of increased water coverage with the applicant. However, the project was not voluntarily redesigned to reduce water coverage. The applicant did, however, propose the use of “deck prisms” at various intervals on the new boat dock to allow natural light to

penetrate beneath the boat dock to reach the water below. The applicant states that these are the same type used to provide natural light below deck in wooden sailing vessels. While this would allow some natural light to penetrate to the water below, there is no evidence that the illumination provided would be equivalent to the natural light that which would exist without the added water coverage. Commission staff is not aware of any proposals in Newport Bay similar to this one, and thus the Commission has no experience to draw on that could be used as evidence of their effectiveness. Furthermore, the applicant did not provide any evidence that these deck prisms would actually work and not result in decreased biological productivity of the area below the new boat dock.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Increased water coverage resulting from larger boat dock systems would add to cumulative adverse effects on biological resources of multiple large docks in Newport Harbor. Although a single larger boat dock system may not seem to create significant adverse impacts, the cumulative adverse effect of allowing such increased water coverage will add up over time. It should be remembered that there are hundreds of private residential boat dock systems in Newport Harbor. If each were permitted to install similarly designed pier systems it would significantly increase adverse impacts upon biological resources, which is inconsistent with the Sections 30230 and 30231 of the Coastal Act.

In order to minimize adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Harbor ecosystem, the proposed increased water coverage of the new boat dock system must be reduced. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to, prior to permit issuance, submit revised project plans for the review and approval of the Executive Director that revises the design of the proposed boat dock system to be less than or equal to the existing square footage of the boat dock, which is 772 square feet.

Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fish – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that pursue fish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

An eelgrass survey took place on August 16, 2012 as required by the City of Newport Beach Harbor Resources Division. One small patch of eelgrass was found within 15-feet to 30-feet of the project area. However, the proposed project has been designed to avoid all impacts to eelgrass. As a result, the proposed boat dock would not encroach on or result in shading of the existing eelgrass. 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 is valid until the resumption of active growth (i.e., March 1). The project is agendized for the July 2013 Coastal Commission Hearing so the existing eelgrass survey is no longer valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa Taxifolia

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

A pre-construction *Caulerpa Taxifolia* survey was completed on August 16, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendized for the July 2013 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

Construction and Post-Construction Impacts

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help assure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement.

To assure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30250 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality and avoiding cumulative impacts.

C. FILL OF COASTAL WATERS

Section 30233 of the Coastal Act states, in pertinent 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:

...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities ...

The proposed project includes removal of an existing boat dock system and installation of a new reoriented boat dock system. The proposed new “U” shaped boat dock is to be supported by four (4) new 14” diameter guide piles located in coastal waters. Placement of the piles will result in fill of 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 meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

Allowable Uses

The proposed project includes four (4) new 14” diameter guide piles to support the new “U” shaped boat dock.

The piles for the boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the four (4) 14” diameter guide piles will support the boat dock, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use.

Alternatives

The proposed placement of the four (4) piles will result in fill of coastal waters. The placement of the four (4) 14” diameter guide piles is the minimum amount of construction necessary to safely anchor the boat dock. Fewer and/or smaller piles would not adequately secure the boat dock float or pier lobe. By using the least number of piles necessary to accomplish the goal of securing the boat dock, the four (4) piles associated with the boat dock represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

Mitigation

The proposed recreational boat dock system and its associated four (4) 14” diameter guide piles are an allowable and encouraged marine related use. The project design for the boat dock includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The potential impacts associated with the four (4) guide piles include potential impacts on eelgrass habitat and potential dispersal of *Caulerpa taxifolia* (as described in detail in the findings above) and the displacement of about 4 square feet of soft bottom bay habitat with a hard substrate. The potential effects on eelgrass and adverse effects related to *Caulerpa taxifolia* dispersal will be mitigated by the requirements of Special Condition No.s 2 and 3. With regard to soft bottom habitat, there is no area on site or in the project vicinity that could be feasibly restored in the context of this project. Although the hard substrate of the piles is not equivalent to the displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, and the absence of any potential for on-site or nearby restoration of soft bottom habitat, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. 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*. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30233(a)(3) of the Coastal Act because it is an allowable use, there are no feasible less environmentally damaging alternatives available, and adequate mitigation is provided.

D. 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 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 the locked gate community of Linda Isle in the City of Newport Beach. No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island. The proposed development, as proposed, will not result in any new significant adverse impacts to existing public access in the area.

Based on the information available to the Commission at this time, it appears that the subject property is not subject to the public trust because the mean high tide line (MHTL) was adjudicated in this area in case no. 20436 in Orange County Superior Court in 1926 (Orange County v. The Irvine Company). The court identified the MHTL in this area as well westward of the subject property. Further, the subject property is part of a subdivision tract that dredged a channel eastward and northward from the MHTL established in case no. 20436. This dredging changed portions of the property from upland swamp and overflow property to property subject to tidal flow. Thus, the channel is now navigational and is subject to the navigational easement pursuant to Public Resources Code section 7552.5, which, in general, precludes the owner from interfering with the public's right to navigate the channel. Since the proposed dock will be landward of the designated pierhead line in the channel, the proposed dock is not expected to interfere with the public's ability to navigate through the channel on the north of Linda Isle because pierhead lines are established to ensure that docks and piers do not interfere with navigation. Therefore, the proposed development will not interfere with the existing navigational easement over the channel.

Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30210 and 30212 of the California Coastal Act.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210 and 30212 of the Coastal Act with regard to the public's right of access to the sea.

E. LOCAL COASTAL PROGRAM (LCP)

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 Coastal Land Use Plan (CLUP) was effectively certified on May 19, 1982. The Certified CLUP was updated on November 15, 2012. The City currently has no Certified Implementation Plan (IP). 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 CLUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project will conform with Coastal Act Policy Sections 30230 and 30231 regarding maintaining and enhancing the biological productivity and water quality, Section 30250 regarding avoidance of cumulative impacts, Section 30233 regarding allowable fill of open coastal waters and Sections 30210 and 30211 regarding public access and recreational opportunities. The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the CLUP. 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).

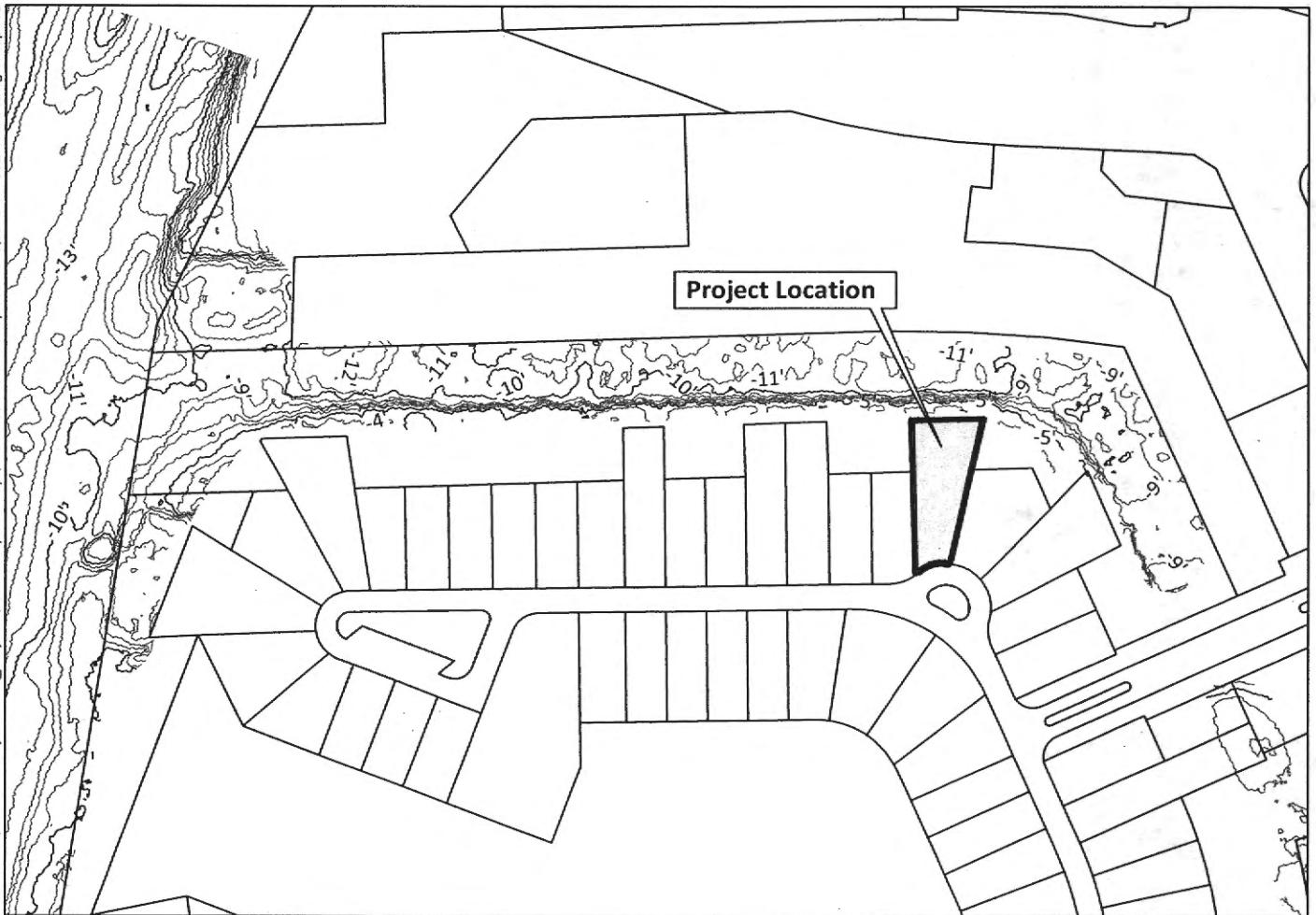
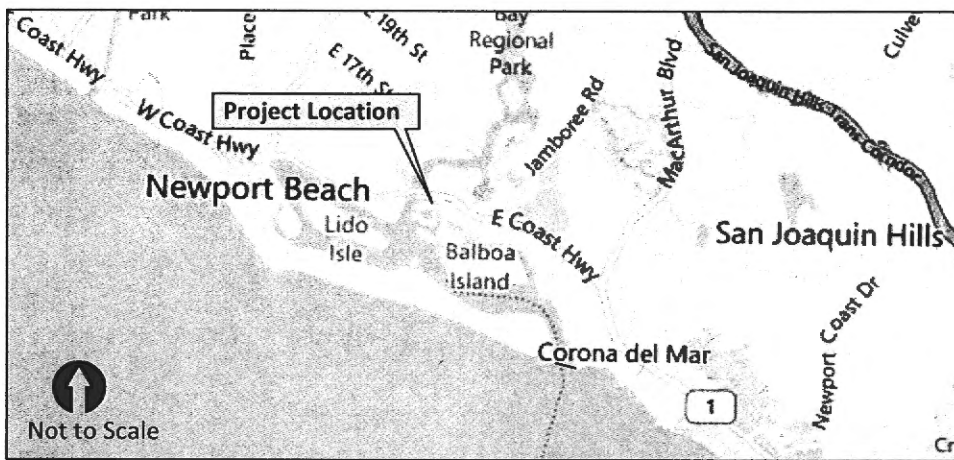
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt from CEQA on August 16, 2012. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the maintenance and enhancement of biological productivity and water quality policies, the avoidance of cumulative impacts policy, the allowable fill of open coastal waters, and the public access and recreational opportunities 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 1

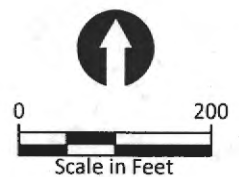
SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Coastal Land Use Plan (CLUP); City of Newport Beach Harbor Permit Policies; City of Newport Beach Waterfront Project Guidelines and Standards; City of Newport Beach Harbor Resources Division Permit/Approval-in-Concept Harbor Permit No. 133-103 and Plan Check No. 0285-2013 dated August 16, 2012; Permit Application Supplement prepared by Anchor QEA, L.P. dated February 2013; Clean Water Act Section 401 Permit from the Santa Ana Regional Water Quality Control Board (RWQCB) dated April 2, 2013; Email from Anchor QEA, L.P. to Commission Staff dated April 25, 2013; and Letter from Anchor QEA, L.P. to Commission Staff dated June 14, 2013.



SOURCE: Bathymetric survey from U.S. Army Corps of Engineers dated 2012.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

RECEIVED
 South Coast Region

FEB 15 2013

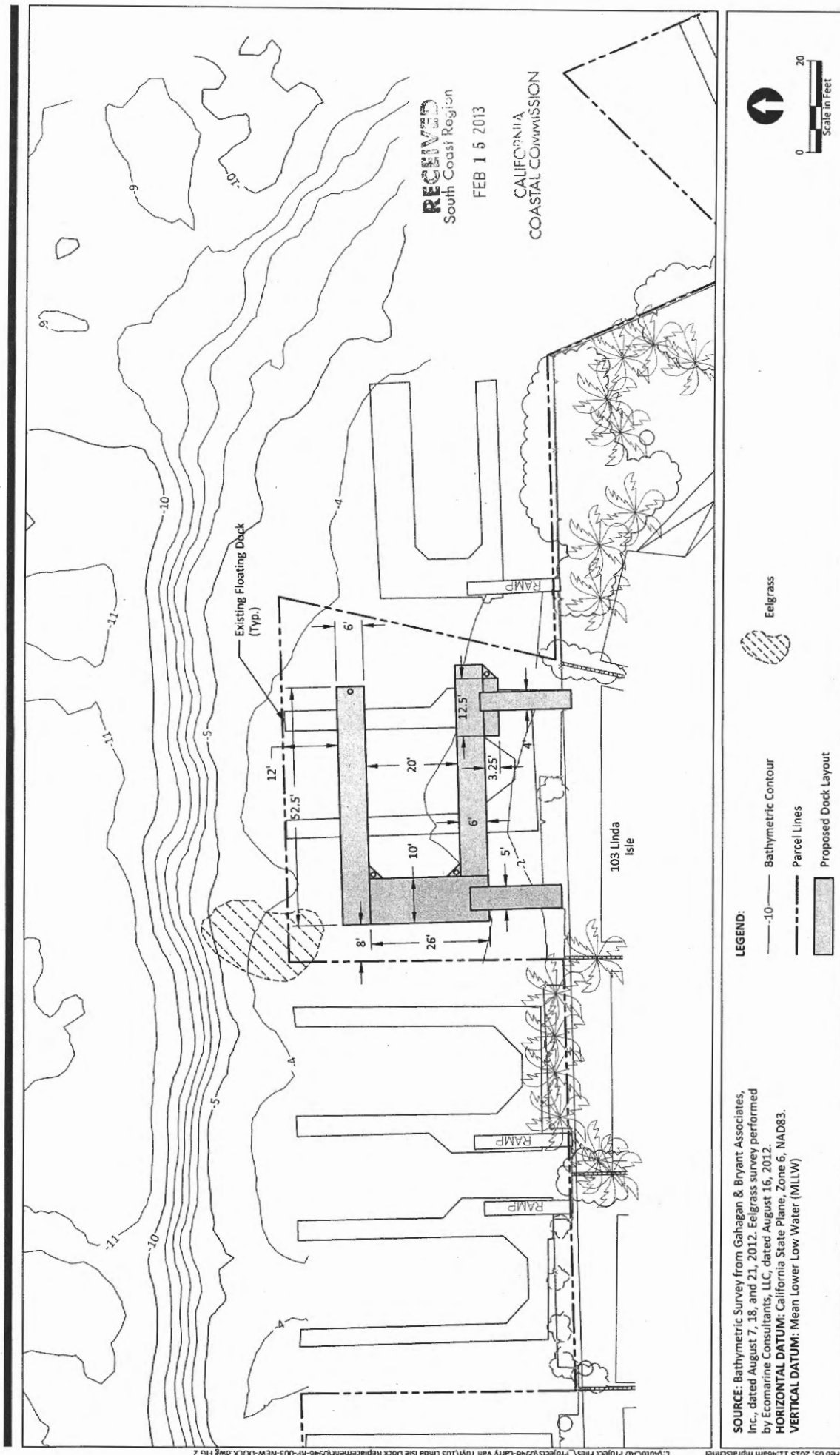


CALIFORNIA
 COASTAL COMMISSION



Exhibit #1
 Page 1 of 1

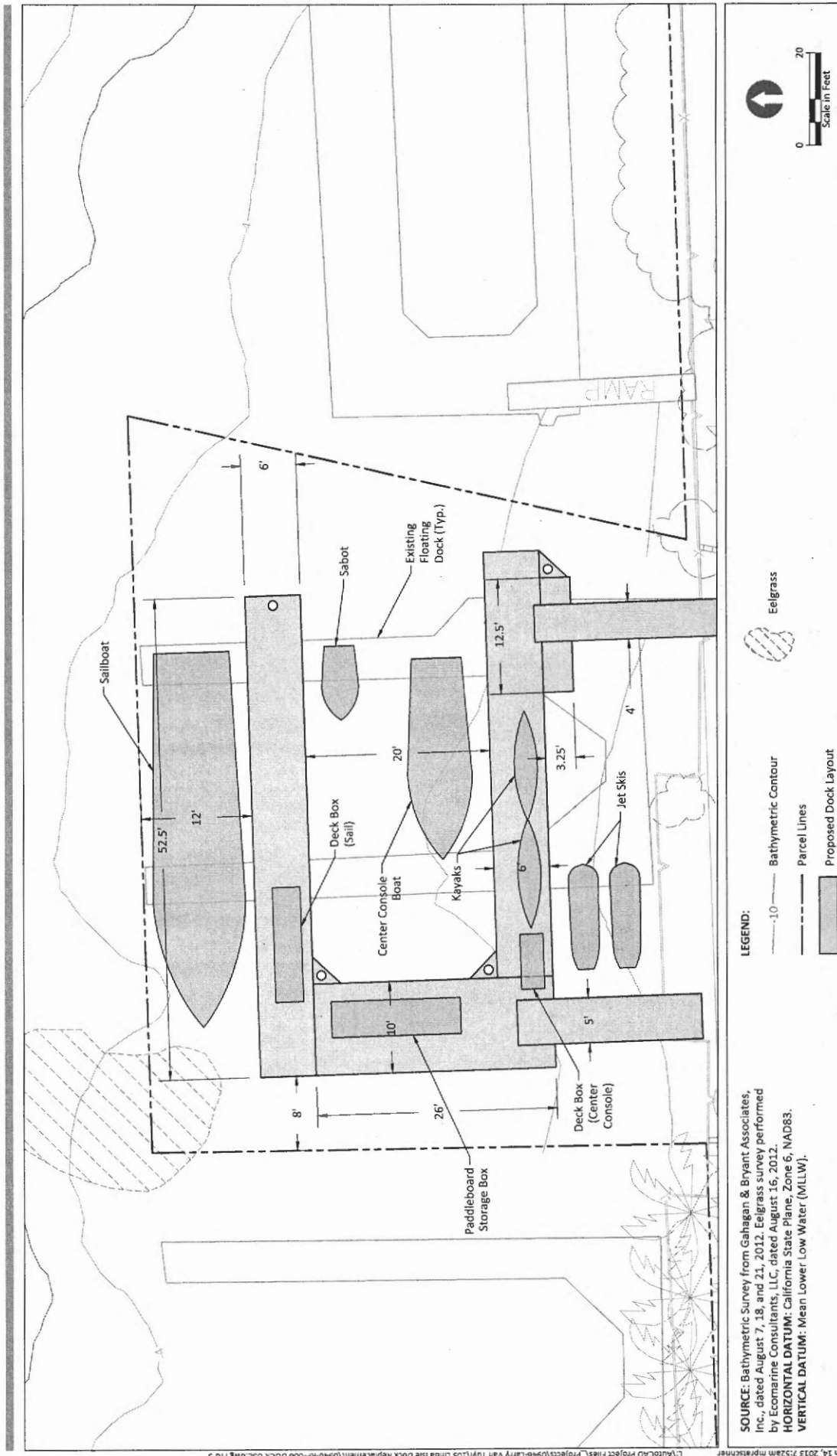
Figure 1
 Vicinity Map and Channel Bathymetry
 103 Linda Isle Maintenance Dredging and Dock Replacement



EXISTING/PROPOSED BOAT DOCK SYSTEM SITE PLAN



Figure 1
Proposed Dock Layout
103 Linda Isle Dock Replacement



PROPOSED BOAT DOCK SYSTEM RECREATIONAL VEHICLES SITE PLAN

Figure 5
Proposed Dock Uses
103 Linda Isle Dock Replacement



ILLUSTRATION OF BOAT DOCK SYSTEM COMPLIANCE WITH SPECIAL CONDITION NO. 1

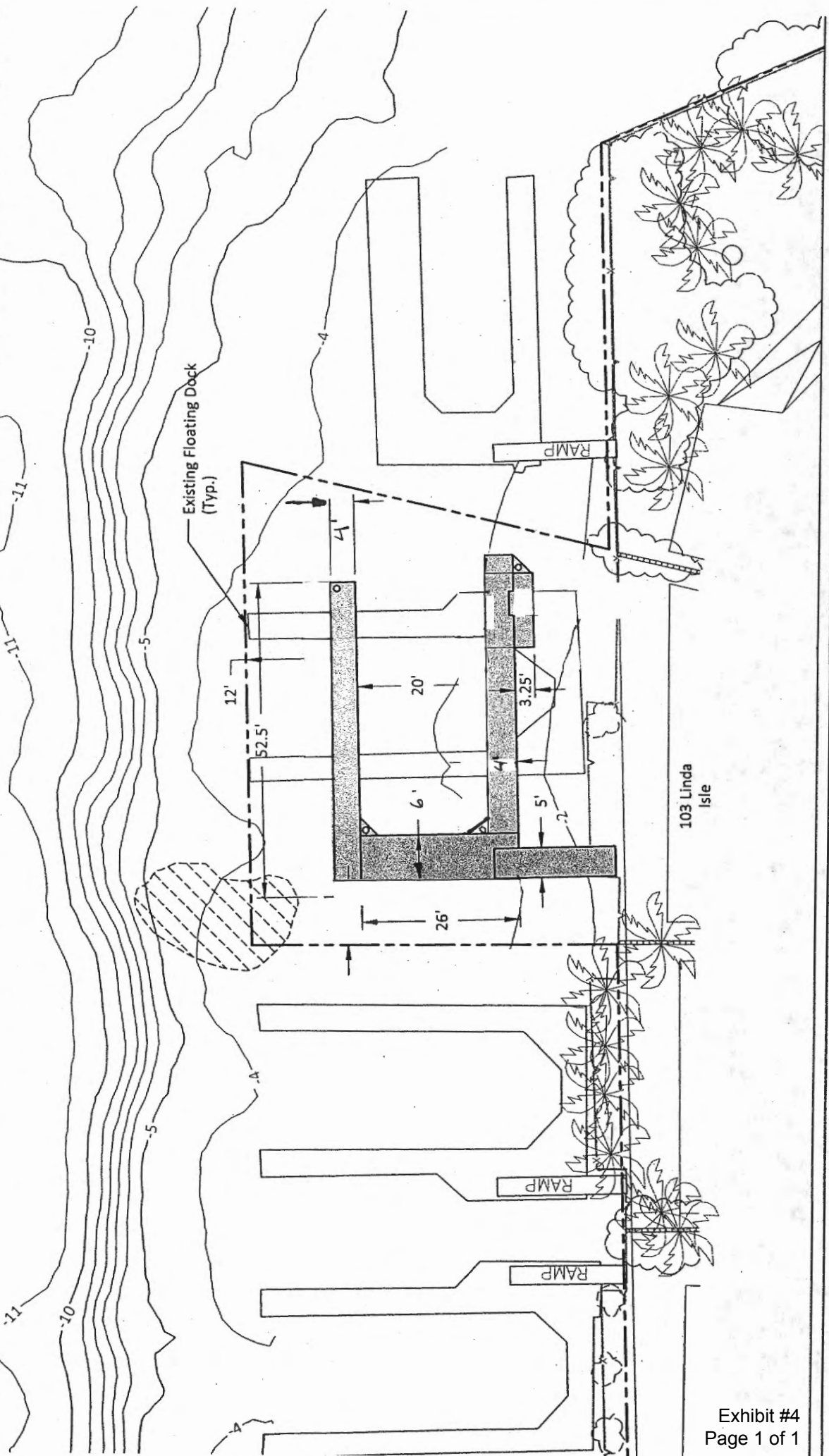


Exhibit #4
Page 1 of 1

LEGEND:

— -10 — Bathymetric Contour

Eelgrass