CALIFORNIA COASTAL COMMISSION

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



W23c & W24a

ADDENDUM

May 5, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM W23c and W24a, COASTAL COMMISSION PERMIT APPLICATION #5-07-241(The Irvine Co.) and Federal Consistency Certification #CC-001-08 (The Irvine Co.) FOR THE COMMISSION MEETING OF May, 2008.

#1 Revisions to Staff Report

Commission staff recommends the following changes to the staff report to reflect a change in the project description related to the proposed creation of an on-site eelgrass mitigation area. Originally the applicant proposed the use of plastic sheet piles for the creation of the eelgrass habitat area. The applicant modified the project description on May 5, 2008 switching the proposed material of the sheet piles from plastic to steel. Staff agrees with the applicant that metal sheet piles would be preferable over plastic to avoid possible impacts related to the use of plastics in the marine environment. No toxic coating is proposed on the steel piles.

Staff also recommends the addition of new language to the report findings in Section C: Public Access and Recreation identifying the existing marina slip configuration to provide a comparison with the proposed marina slip configuration.

Deleted language is shown in strikethrough and new language is in **bold, underlined italic.**

On the bottom of page 9 of the staff report, modify as follows:

The applicant proposed construction of an on-site eelgrass habitat as mitigation for project eelgrass impacts as required by other agencies. However, the construction of the eelgrass habitat restoration requires a coastal development permit and is therefore included in the project description. To achieve required mitigation site conditions, the applicant proposes to install plastic **steel** sheet piles between the bulkhead and marina docks and re-use excavated dredged material as backfill to create a submerged plateau as an eelgrass transplant area. The proposed work in this area is to construct a submerged retaining plastic **steel** sheet pile wall buttress. The buttress would be submerged into the soft bottom and raise to a crest elevation of approximately –2 feet

MLLW. <u>The steel sheet piles will not require any special anti-corrosion coating as</u> <u>the entire sheet piles will be below the tidal zone (i.e., either submerged in the</u> <u>muddy sediments or always covered by water) and therefore is not exposed to</u> <u>the air or subject to other normal corrosion factors.</u> Behind the buttress, dredged materials would be deposited from the marina dredging activities to bring the elevation of a submerged plateau up to approximately -3 MLLW at the bulkhead and ramping out to -3.5 MLLW at the sheet pile where the terrain would slope off at a 2:1 natural slope to the design depths of -10 MLLW on the north side of the marina and -8 MLLW on the east side of the marina (Exhibit 2, page 5 of 5).

On the bottom of page 13 of the staff report, modify as follows:

The use of this area for habitat enhancement is a pilot study in the Newport Beach area. It is unusual to mitigate for habitat impacts by converting one habitat (open water) to another (eelgrass). Additionally, both the Commission staff biologist and NMFS staff expressed concerns over the proposed use of plastic <u>steel</u> sheet piles compared to the use of a rock revetment for the construction of the on-site mitigation area. Concerns expressed related to the reduced water circulation behind the docks, the use of plastic <u>steel</u> sheet piles submerged on soft bottom marine soils not allowing for the exchange of gases and nutrients and that areas located between docks and bulkheads may provide a marginal environment for eelgrass growth.

The applicant provided an eelgrass mitigation alternative analysis, including a hybrid rock revetment/plastic <u>steel</u> sheet pile alternative and a no coastal structure alternative. The Commission's staff Resource Ecologist has reviewed the project and concluded that in this particular case, although the restoration involves habitat conversion, the relatively small area involved will limit significant impacts to the existing mud bottom community and although from an ecological perspective, the use of a rock revetment is the most desirable option, the rocks would take up a larger surface area than the plastic sheet piles thereby minimizing the area available for eelgrass mitigation and would potentially also minimize the area available for boat slips. The proposed use of plastie <u>steel</u> sheet piles for the construction of a plateau for the eelgrass mitigation site is the only feasible alternative with no adverse affects that provides 7,800 sq. ft. of habitat exceeding NMFS required 7,572.6 sq. ft. eelgrass mitigation area. The rock revetment/plastic <u>steel</u> sheet pile hybrid alternative would limit the eelgrass mitigation area to 4,883.

On the top of page 16 of the staff report, modify as follows:

<u>The existing marina has 132 boat slips.</u> The new reconstructed marina will provide a slip count range of 97-105 slips and comply <u>with</u> current with DBAW, ADA and City Harbor Permit Policies but result in a total loss of up to 27 slips (i.e., 132-105= 27). The loss of slips with the proposed marina reconstruction and reconfiguration due to compliance with new standards is as follows: two (2) slips lost due to ADA standards, sixteen (16) lost due to DBAW standards and nine (9) slips lost due to the construction of an on-site eelgrass mitigation requirement.

The existing marina slip configuration is as follows:

- 60/132 or 45.5% of slips for smaller vessels 20'-30' long
- 61/132 or 46% of slips for medium vessels 31'-38' long
- <u>11 slips of 8% of slips for larger vessels 40' 58' long.</u>

In this particular case, the proposed As proposed, the new slip reconfiguration will provide:

- 38/105 or 36.2% of slips for smaller vessels 20'-30' long,
- 53/105 or 50.5% of slips for medium vessels 32'-38' long and
- 14/105 or 13.3% of slips accommodating larger vessels at 40'-58' long.

#2 Correspondence

Attached is a 17-page package of briefing materials provided to the Commissioners from Latham & Watkins LLP, agent on this project and two ex-parte communications. The package includes descriptions of the project, project benefits, marina slip mix, eelgrass mitigation, and least tern impacts mitigation.

Daniel P. Brunton Direct Diai: 619-237-8910 daniel.brunton@tw.com

LATHAM & WATKINS LLP

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File No. 016709-0387

April 28, 2008

<u>SENT VIA FEDEX</u>

Mary K. Shallenberger California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105

Re: Coastal Development Permit Application No. 5-07-241 (May 7, 2008 agenda item 23(c)); Consistency Certification No. CC-001-08 (May 7, 2008 agenda item 24(a))

Dear Commissioner Shallenberger:

I have enclosed briefing materials for the above-referenced Coastal Development Permit application and consistency certification, which are scheduled to be heard at the May 7, 2008 meeting of the California Coastal Commission.

Very truly yours,

Daniel P. Brunton of LATHAM & WATKINS LLP

Enclosures

LATHAM®WATKINS^{up}

April 28, 2008

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VIA FEDERAL EXPRESS

Honorable Commissioners California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, California 94105-2219

> Re: <u>Balboa Marina Dock Replacement, Coastal Development Permit</u> <u>Application No. 5-07-241 and Consistency Certification No. CC-001-08</u>, Agenda Items W23c & W24a

Dear Commissioners:

We are writing on behalf of our client, The Irvine Company, to support the Staff Report recommendation for the above-referenced matter and to respectfully request that Commission approve the Coastal Development Permit ("CDP") and concur with the Consistency Certification. We appreciate Staff's hard work in analyzing the issues raised by the proposed dock replacement project. The Irvine Company has reviewed the Staff Report and agrees to the conditions recommended by Staff. We have one minor clarification discussed in Exhibit A attached hereto.

Respectfully submitted,

Frand Br

Daniel Brunton of LATHAM & WATKINS LLP

Enclosures

cc: Dan Miller Greg Sinks Rick Zbur

These materials have been forwarded to Commission Staff

Honorable Commissioners April 25, 2008 Page 2

EXHIBIT A

CLARIFICATION TO STAFF REPORT

1. As described on page 9 of 18, first paragraph, the dredging depths will be - 8 to -10 feet MLLW "with an allowance for 1 feet over-dredge depth." All references to the dredging depths in the staff report should reflect the 1-foot allowance for over-dredge.

These materials have been forwarded to Commission Staff

Balboa Marina Dock Replacement



CDP Application No. A-3-SLO-06-017 Spring 2008 Briefing Materials

These materials are being supplied to the California Coastal Commission Staff.



Exhibit 1 - Project Vicinity Map

Project Description

- Project location and applicant. The project is located at 201 E.
 Coast Highway in Newport Beach, California. The Irvine Company is the project applicant.
- Replacement of decaying dock at existing Balboa Marina. Balboa Marina is a privately owned marina in Newport Beach, California. The existing dock (see Exhibit 2 – Existing Dock Configuration, Exhibit 3 – Project Site 1 and Exhibit 4 – Project Site 2) is 43 years old and reaching the end of its useful life. The proposed project would replace the existing 132 slip, 27,550 ft² dock with a new 105 slip, 20,931 ft² dock (see Exhibit 5 – Proposed Site Plan). The project will include limited dredging (approximately 34,000 cubic yards) to restore the original channel and allow safe navigation and vessel berthing.
- Parking. The marina's demand for parking will decrease with the project (from 99 to 79 based on the City's criteria), but the number of parking spots is being maintained.
- **Dinghy tie-up.** The project will add a dinghy tie-up to the marina, to allow dinghy owners to tie up their boats while they dine at nearby restaurants.

Project Benefits

- Project improves water quality. Even though no landside structures are proposed, the project includes new 4" trench drains along the oceanside perimeter of the existing parking lot to prevent storm water runoff from discharging directly into the ocean. In addition, the project will include a pump out system that will allow boat owners to empty holding tanks for appropriate disposal of waste water. This will reduce the potential unauthorized emptying of tanks into the waters of the harbor.
- Project makes boating accessible to the disabled. The project will
 provide recreational boating facilities that meet the current California
 Department of Boating and Waterway (CDBW) design criteria and the
 Americans with Disabilities Act (ADA) access requirements.
- Project preserves slips for small-boat owners. The project's slip mix compares very favorably to other Commission-approved marinareconstruction projects. The percentage of slips of 25 feet and below will remain virtually unchanged.
- **Project maximizes eelgrass.** Based on the most recent 2007 survey, the project will only impact 399.4 ft² of eelgrass. But it will be providing 7,800 square feet of onsite potential eelgrass habitat at prime growing depths.
- **Project improves coastal access.** The project includes new dinghy tie-ups, allowing owners of these small craft to tie up their boats while they dine at restaurants adjacent to the marina.

Slip Mix

- New design criteria cause the reduction in slips. The existing marina has 132 slips ranging in length from 25 to 58 feet. The proposed project will accommodate 105 slips ranging in length from 20 to 58 feet. The reduction in the total number of slips is due to the new regulatory design criteria of CDBW (approximately 16 slips lost), access requirements of the ADA (approximately 2 slips lost), and onsite eelgrass mitigation (approximately 9 slips lost).
- Slips for small boats are preserved. The proportion of small slips 25 feet and under will be virtually identical before and after the project (within 1%), and average slip length will be virtually identical (32.11' before project and 32.65' after). Although new design requirements are causing a reduction of 27 slips, 14 of 18 existing slips 25 feet and under will be preserved. This keeps the slip mix at approximately 13% slips 25 feet and under.
- The slip mix compares favorably to Commission precedent. Because of new design criteria, most marina reconstruction projects lose slips. But this project compares very favorably to recent Commission approvals in the amount of small slips it preserves.
 - Balboa Marina: slips 25 feet and smaller remain essentially constant at roughly 13%.
 - Portofino (01/06): slips 25 feet and smaller reduced from 28% of marina to 5%.
 - Marina Two (10/01): slips 25 feet and smaller reduced from 36% of marina to 26%.
 - Marina Pacific (10/01): slips 25 feet and smaller reduced from 55% of marina to 43%.
 - Vintage Marina (05/06): marina went from 249 slips 30 feet and under to 105 slips 32 feet and under.



Exhibit 2 - Existing Dock Configuration



Exhibit 3 – Existing Dock Configuration 1

Low angle aerial view aeross Newport Harbor towards Pacific Ocean with Pacific Coast Highway, Balboa Marina and Linda Isle in foreground



Exhibit 4 – Existing Dock Configuration 2

Low angle acrial view of Linda Isle and Balboa Marina Looking inland towards Upper Newport Bay Ecological Reserve



C restrict

Eelgrass Beds

- Eelgrass impacts are minimal. The most recent 2007 survey identified 399.4 ft² of eelgrass that will be impacted by the project. (See Exhibit 6 – Location of Eelgrass)
- The project fully mitigates impacts onsite. The project will result in 7,800 square feet of potential eelgrass habitat at prime growing depths. Other projects that have attempted offsite eelgrass mitigation in Newport Bay have had limited success. The project avoids the problems with offsite mitigation by providing 100% onsite mitigation.
- National Marine Fisheries endorsed. The design of the mitigation area has been approved by National Marine Fisheries as the preferred design for eelgrass and fish habitat. (See Exhibit 5 – Proposed Site Plan)



Exhibit 6 - Location of Eelgrass (Zostera marina) (May 29-30, 2007)

California Least Tern

- Project does not impact Least Terns. The nearest nesting sites are in the Upper Newport Bay Ecological Reserve, approximately 3 miles away from the project (see Exhibit 7). Least Terns typically forage within two miles of their colony sites. No impact is anticipated on the species at any time of the year, including nesting season, due to the distance from the nesting area.
- Project will implement additional protections. Although the project will not impact Least Terns, it includes measures to protect the species. A qualified biologist will monitor and record the numbers, behavior, and foraging capacity of California Least Terns during key project activities. Monitoring reports shall be submitted to the wildlife agencies at an interval and in detail as the agencies deem appropriate. In the event that the on-site activities are determined by the on-site biologist, USFWS, or CDFG to be detrimental to the California Least Tern, all activities shall cease until the issue is resolved.
- Army Corps determined the project will not effect Least Terns. The Corps determined that the project would have no effect on the California Least Tern. Coordination with USFWS and CDFG relative to a monitoring program will occur prior to and during construction.



Exhibit 7 - Bathoa Marina Project Site/California Least Tern Islands

Water Quality

- The project enhances water quality. The project includes features that should enhance water quality. Even including new 4" trench drains along the oceanside perimeter of the existing parking lot to prevent storm water runoff from discharging directly into the ocean and a vessel pump out system.
- The WQMP will require additional BMPs. The project includes a Water Quality Management Plan (WQMP). The WQMP details Best Management Practices to prevent adverse impacts to the water quality in the marina and is intended to comply with Section 401 Water Quality Certification as well as City standards.

Resource Agency Coordination

- Army Corps of Engineers. Clean Water Act Section 404 Permit Permit application was submitted on October 25, 2007. The ACOE Public Notice comment period was from December 20, 2007 through January 18, 2008. Two comment letters were received – FEMA Floodplain Management and Insurance Branch and Linda Isle Homeowner Association.
- California Regional Water Quality Control Board. Clean Water Act Section 401 Water Quality Certification – Application submitted October 26, 2007. Certification issued January 4, 2008.

MPT. 27. ZUVO D: IOTIN

FROM LATHAM & WATKINS LA 213-891-8763 #2

NO. 3721 (L)

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Chairman Kruer

FORM FOR DISCLOSURE OF **EX PARTE COMMUNICATIONS**

Name or description of project, LPC, etc:

COASTAL COMMISSION Balboa Marina Dock Replacement CDP A-3-SLO-06-017 Agenda Item

Date and time of receipt of communication:

Location of communication:

Type of communication (letter, facsimile, etc.): face-to-face meeting: Commissioner

Person(s) initiating communication:

W23c and W24a

<u>April 29, 2008; 11:30 a.m.</u>

La Jolla, CA

Pat Kruer was present

Dan Miller, The Irvine Co., Applicants Susan McCabe, McCabe & Company Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication: (Attach a copy of the complete text of any written material received.)

Applicant gave me an overview of the project indicating they support the staff recommendation. They covered the information in the briefing materials previously provided to the Coastal Commission staff.

RECEIVED South Coast Region MAY 1 2008

COASTAL COMMISSION

Chairman Pat Kruer

4/24/05 Date

WED. ITEMS 23C & 24A

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project: Irvine Company Balboa Marina Dock Replacement (A-3-SLO-06-017), Newport Beach

Date and time of receipt of communication: Saturday, May 3, 2008 @ 3:00PM

Location of communication: Santa Barbara

Type of communication: Meeting

Person(s) in attendance at time of communication: Rick Zbur, Dan Miller (by phone) Susan McCabe

Person(s) receiving communication: Dan Secord

Detailed substantive description of the content of communication: (Attach a copy of the complete text of any written material received.)

The Irvine Company is in agreement with the staff recommendation of approval with conditions of a permit to reconstruct the boat slips at the Balboa Marina in Newport Beach. The project will retain the same ratio of boat slip sizes as the existing marina. They reviewed the briefing materials that have been sent to the Commission staff.

Date:

Signature of Commissioner:

South Coast Region APR 5 2008

COASTAL COMMISSION

&

CALIFORNIA COASTAL COMMISSION

W23c

W24a

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

Filed:February 29, 200849th Day:April 18, 2008180th Day:August 27, 2008Staff:Liliana Roman-LBStaff Report:April 17, 2008Hearing Date:May 7-9, 2008Commission Action:



STAFF REPORT AND RECOMMENDATION ON COMBINED COASTAL DEVELOPMENT PERMIT APPLICATION AND CONSISTENCY CERTIFICATION

COASTAL DEVELOPMENT PERM APPLICATION NO:	IT 5-07-241
FEDERAL CONSISTENCY NO:	CC-001-08
APPLICANT:	The Irvine Company
AGENTS:	CAA Planning
PROJECT DESCRIPTION:	<u>Consistency Certification CC-001-08:</u> Transport and off-shore disposal of up to 34,000 cubic yards of dredge material from Balboa Marina and adjacent navigational channel dredged to design depths of -8 feet to -10 feet below mean lower low water level (MLLW) with off-shore disposal at LA-3. <u>Coastal Development Permit 5-07-241:</u> Demolition of an existing 132 slip, 27,643 sq .ft. marina and re-construction of a new 105 slip, 20,931 sq. ft. marina including a reduction from 67 to 64 concrete guide piles, new lighting, water supply lines, communication hook ups, pump-out facility and fire fighting facilities. Construction of a 7,800 sq. ft. eelgrass habitat as mitigation for direct and potential eelgrass impacts due to dredging activities associated with the project. Improvements to existing seawall also proposed.
PROJECT LOCATION:	Balboa Marina, 201 E. Coast Hwy, City of Newport Beach, Orange County
	<u>Offshore Disposal</u> : at EPA approved disposal site known as LA-3 located approximately 4 miles southwest of the entrance to Newport Harbor, Orange County

- LOCAL APPROVALS RECEIVED: Harbor Resources Division Approval in Concept dated 10/24/07; Harbor Resources Division Approval in Concept for Seawall Repair, Earth Anchor Installation dated 1/31/08; and City of Newport Beach approved Mitigated Negative Declaration for Balboa Marina Dock Replacement #2171-2004, dated 1/3/07.
- **OTHER AGENCY APPROVALS RECEIVED:** U.S. Army Corps of Engineers; Regional Water Quality Control Board 401 Water Quality Certification and US EPA Suitability Determination for Balboa Marina Sediments dated 11/27/07

SUBSTANTIVE FILE DOCUMENTS: Dredge Material Evaluation for the Balboa Marina Dock Replacement Project prepared by Newfields Northwest, dated 11/07; Water Quality Management Plan for Balboa Marina prepared by Stantec dated 6/5/07; and Eelgrass Mitigation Alternatives received 2/29/08; Eelgrass Field Survey, letter dated 1/14/08 from Coastal Resources Management, Re: Proposed Balboa Marina Eelgrass Mitigation Site Evaluation; Impact Assessment and Mitigation Plan for the Balboa Marina Dock Replacement Project prepared by Coastal Resources Management Inc, dated 6/18/07 and revised 7/20/07, Comments from National Marine Fisheries Service dated 3/18/08. Memorandum: Potential Effects of Maintenance Dredging and Dock Replacement within Newport Bay on the California Least Tern prepared by Glenn Lukos Associates dated 1/15/08; letter dated 9/23/02 from California State Lands Commission (CSLC) determining Balboa Marina not subject to the public easement in navigable waters.

PROCEDURAL STAFF NOTE:

A coastal development permit is required for the project pursuant to Section 13252(a) (2) because it involves development that is not exempt (i.e., marina reconstruction, seawall repair, habitat restoration). A consistency certification is required for disposal of dredge materials at the LA-3 site because it is a federally permitted activity including transportation of material through the coastal zone.

To facilitate Commission review of these items, both the coastal development permit application and the consistency certification will be heard at the same time. Commission staff recommends approval of the coastal development permit application and concurrence with the consistency certification.

SUMMARY OF STAFF RECOMMENDATION:

1. <u>Coastal Development Permit Application:</u> Staff is recommending approval of the proposed project with special conditions regarding; 1) construction responsibilities and debris removal; 2) location of disposal site; 3) revised final plans; 4) final Water Quality Management Plan; 5) Marina Best Management Practices; and 6) Biological Monitoring. The primary issues associated with this development are recreation and water quality.

2. <u>Consistency Certification</u>: The project includes a consistency certification for the disposal of approximately 34,000 cubic yards of sediment at LA-3, an EPA designated ocean disposal site located five miles southwest of Newport Beach, Orange County. This consistency certification is needed to authorize the disposal of the dredged material beyond the three mile limit of state waters.

The Commission has previously authorized other dredge disposal projects at this location. The proposed project is the least environmentally damaging alternative with mitigation and will not have significant impacts to marine resources. The dredge materials proposed for off-shore disposal is not suitable for beach replenishment due to the fine sediment. The proposed project will result in temporary impacts to benthic organisms and a temporary increase in water turbidity. Sediment chemistry data indicate generally low levels of contaminants, solid phase bioassay test results suggest low potential for toxic effects and bioaccumulation test results show low potential for

chronic effects. The dredge material is considered suitable for ocean disposal and will not impact water quality or marine resources in or around LA-3 or in the coastal zone. The EPA has confirmed the materials suitable for disposal at LA-3. The applicant proposes to comply with best management practices fro dredging activities. Therefore, the project is consistent with the dredging, water quality, marine resources and sand supply policies of the Coastal Act (Sections 30230, 30231 and 30233). The project will have no negative effects on commercial or recreational boating or fishing in the area. Therefore, the project is consistent with the recreational and boating policies of the Coastal Act (Sections 30234, 30234.5, 30220 and 30224).

A. <u>STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF COASTAL</u> <u>DEVELOPMENT PERMIT</u>

Staff recommends that the Commission make the following motion and adopt the following resolution to <u>APPROVE</u> the permit application with special conditions.

MOTION

I move that the Commission approve Coastal Development Permit No. 5-07-241 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 OF APPROVAL WITH CONDITIONS

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

B. <u>STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF</u> <u>CONSISTENCY CERTIFICATION</u>

Staff recommends that the Commission make the following motion and adopt the following resolution to <u>CONCUR</u> with the consistency certification.

MOTION

5-07-241(Irvine Company) and CC-001-08 Page 4 of 18

I move that the Commission concur with consistency certification CC-001-08 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff recommends a YES vote on the motion. Passage of this motion will result in a concurrence in the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO CONCUR IN CONSISTENCY CERTIFICATION:

The Commission hereby concurs in the consistency certification by The Irvine Company in CC-001-08, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

II. STANDARD CONDITIONS (Coastal Development Permit Only)

- 1. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> 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. <u>Terms and Conditions Run with the Land.</u> 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** (Coastal Development Permit and Consistency Certification)

1. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

(a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave/wind erosion and dispersion;

- (b) Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- (c) Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone;
- (d) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- (e) If turbid conditions are generated during construction; a silt curtain shall be utilized to control turbidity;
- (f) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (g) Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.

2. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. 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.

3. <u>REVISED FINAL PLANS</u>

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall show the following changes to the project:
 - (a) The site map shall depict the location of the proposed marina pump-out station, and shall include any other updated information.
 - (b) The plans shall depict the location of existing piles to be removed and the location of the proposed new piles.
- B. The revised plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission's approval.
- C. The permittee shall undertake development in accordance with the approval 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.

4. WATER QUALITY MANAGEMENT PLAN (WQMP)

- A. Prior to issuance of the coastal development permit, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall be in substantial conformance with the *Water Quality Management Plan (WQMP)* for *Balboa Marina* prepared by Stantec dated June 5, 2007. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
 - 1. Structural BMPs, Non-Structural BMPs, Treatment Control BMPs and Marina Management Measures shall be included in the final WQMP. These BMPs shall be equivalent to or more protective than those discussed in the WQMP dated June 5, 2007.
 - 2. The site map shall depict the location of the proposed marina pump-out station, and shall include any other updated information, including the location of BMPs.
- B. The permitee 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 required.

5. MARINA WATER QUALITY 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 docks and/or boat slips will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
 - b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.
 - c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
- (2) Solid and Liquid Waste Management Measures:
 - a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene

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and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

- (3) Petroleum Control Management Measures:
 - a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
 - b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
 - c. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

6. BIOLOGICAL MONITORING

An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. During the California Least Tern nesting season April 1-September 30th, daily monitoring shall occur during dredging and other construction activities that could result in disturbances to the California Least Tern. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The biological monitor shall halt all work should dredging and other construction activities result in disturbances to the California Least Tern. However, after consultation with the Department of Fish and Game, the applicant may resume construction during the California Least Tern nesting season upon obtaining a written statement from the Executive Director authorizing construction on specified dates. To obtain such a determination, the permittee must submit a declaration from the Department of Fish and Game stating that construction on the specific dates proposed will not cause adverse impacts to any sensitive or endangered species. The declaration must contain an assessment of the breeding and nesting activities of California Least Tern found in the area and a statement that the construction activity on the specific dates proposed will not interfere with the breeding and nesting activities of the California Least Tern.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

Location

The existing and proposed marina is located in the northern portion of Lower Newport Bay at 201 East Coast Highway, City of Newport Beach, Orange County (Exhibits 1 and 2). The existing facility is privately owned/operated and accessible to slip lessees and not open for general public use. This facility is between the first public road and the sea and is in Newport Bay. The existing and proposed facility is located on privately owned land. The State Lands Commission does not assert any title interest in the property or that the project will intrude into an area that is subject to the public easement in navigable waters. The project site is surrounded by commercial uses and East Coast Highway to the north and to the east, Newport Bay channel to the west, and single-family residential developments to the south at Linda Isle. Commercial areas immediately adjacent to the marina consist of a large surface parking lot to the north and restaurants, small office buildings and surface parking lot to the east.

Project Description - Marina Demolition and Re-construction

The applicant is proposing to demolish an existing 27,643 sq. ft. floating dock built in 1964 with 132 boat slips (including end ties at each existing dock finger) ranging from 25 to 55 feet in length on a 119,405 sq.ft. parcel and replace it with a new 20,931 sq. ft. dock accommodating 105 slips ranging from 22 to 58 feet in length, resulting in a loss of 27 boat slips, the installation of new lighting, water supply lines, communication hook ups, a pump-out facility and fire fighting facilities. Demolition will include the complete removal of all dock floats, gangways, and 67 concrete guide piles. The project includes maintenance improvements to the existing bulkhead by additional anchoring of the bulkhead to the landside with steel rods. Project plans are included as Exhibit 2.

The proposed new dock would be approximately 25% (7,067 sq. ft.) smaller than the existing dock and would result in an increase of 0.16 acre of open water in the marina. The proposed new dock configuration would result in the need for three fewer guide piles than are currently in place. The proposed dock would be constructed of concrete and consist of 5 to 6 foot wide slip fingers and 8 ft wide walkways. The berths will be situated parallel to the shore and existing bulkhead. The 8 foot wide walkway will be parallel to the bulkhead. Landside improvements include upgrades to utilities and new water quality BMPs to the existing parking lot. The new marina complies with the California Dept of Boating and Waterways design criteria, Americans with Disabilities Act access standards and the City of Newport Beach Harbor Permit Policy.

Boats currently docked at Balboa Marina will be displaced during demolition, dredge and construction activities. Prior to construction, lessees will be offered vacant slips in other marinas also owned by the applicant in Newport Harbor or will be offered re-location assistance.

The applicant proposes to stage equipment in an approximately one acre area on the northwest inland portion of the project site across from docks C, D, and E in the marina and adjacent to the dry boat storage area. Pre-fabricated dock sections will be assembled in the staging area of the parking lot and lifted into the marina with a crane. A debris disposal site has not been identified.

Project Description - Dredging & Ocean Disposal

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The proposed routine maintenance dredging of 34,000 cu. yds. of sediment from the marina and adjacent navigational channel is exempt from coastal development permit requirements, as it involves less than 100,000 cu. yds. of sediment. However, the transport of sediment across state waters and disposal of the sediment material at LA-3 ocean disposal site requires federal consistency certification. The proposed offshore disposal would occur at the EPA and Commission approved disposal site known as LA-3 located approximately 4 miles southwest of the Newport Harbor entrance. The total quantity of dredge material is approximately 34,000 cubic yards (with an allowance for 1 feet over-dredge depth) from the navigational channel and marina fairways from existing depths to design depths of -10 Mean Lower Low Water (MLLW) on the north side of the channel and -8 ft MLLW at the east end of the project area (Exhibit 2, page 5 of 5). A clam-shell dredge barge and a hopper barge will be used to remove sediment material. Approximately one barge trip per day, six days a week for 16 weeks is anticipated for the removal of dredge sediments.

Project Description – Construction of Eelgrass Habitat

Newport Bay is a shallow, soft-bottom habitat, which extends from the shoreline to a central dredged channel about 15-18 feet below MLLW. Subtidal areas are mostly non-vegetated, with patches of eelgrass along a portion of the bay perimeter. Eelgrass (Zostera marina) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass 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.

Eelgrass surveys conducted in October 2003, June 2004 and most recently May 29th and May 30th 2007 all found eelgrass present; the majority in the navigational channel and patches between the bulkhead and pierhead line between the docks. A total of 410.7 sq. ft. of eelgrass was located within the site; one small patch in the marina and the rest in the navigational channel. The 410.7 sq. ft. found in the May 2007 survey only represents 5.2% of the 7,906 sq. ft. mapped in October 2003.

The proposed dredging activities (exempt from coastal development permit requirements) would result in direct Class 1 losses of an estimated 399.4 sq. ft. of eelgrass requiring a minimum mitigation ration of 1.2 to 1 and Class 2 "potential eelgrass habitat" losses that require mitigation at a 1 to 1 ratio according to standards for eelgrass mitigation as outlined in the Southern California Eelgrass Mitigation Policy (NMFS 1991, revised 2005). In order to meet the NMFS eelgrass mitigation requirements, a total of 7,572.6 sq. ft. of eelgrass habitat needs to be successfully mitigated. 479.3 sq. ft. is required for the loss of 399.4 sq. ft. of Class 1 eelgrass habitat and 7,173.2 sq. ft. for the loss of 7,173.2 of Class 2 eelgrass habitat. Although this mitigation is required for direct and potential impacts to eelgrass by NMFS policy, the activity which causes the impacts is exempt and therefore no eelgrass mitigation special conditions are required.

The applicant proposed construction of an on-site eelgrass habitat as mitigation for project eelgrass impacts as required by other agencies. However, the construction of the eelgrass habitat restoration requires a coastal development permit and is therefore included in the project description. To achieve required mitigation site conditions, the applicant proposes to install plastic sheet piles between the bulkhead and marina docks and re-use excavated dredged material as backfill to create a submerged plateau as an eelgrass transplant area. The proposed work in this

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area is to construct a submerged retaining plastic sheet pile wall buttress. The buttress would be submerged into the soft bottom and raise to a crest elevation of approximately -2 feet MLLW. Behind the buttress, dredged materials would be deposited from the marina dredging activities to bring the elevation of a submerged plateau up to approximately -3 MLLW at the bulkhead and ramping out to -3.5 MLLW at the sheet pile where the terrain would slope off at a 2:1 natural slope to the design depths of -10 MLLW on the north side of the marina and -8 MLLW on the east side of the marina (Exhibit 2, page 5 of 5).

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:

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

(6) Restoration purposes.

Water Quality and Construction Impacts

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The proposed project is the complete demolition of a 132 slip marina with 67 concrete piles and construction of a 105 slip marina with 64 new concrete piles. All of this development will occur in lower Newport Bay (Exhibit 1).

In order to assess impacts upon water quality, the proposed project was submitted to the California Regional Water Quality Control Board (RWQCB). The RWQCB determined that if standard dock construction methods and materials are utilized, the project should not adversely impact water quality. The applicant has received a Clean Water Act Section 401 Water Quality Certification from the California Regional Water Quality Control Board approving the proposed project. The applicant has also submitted a Water Quality Management Plan (WQMP) that includes a Clean Marina Program. **Special Condition 4** requires the applicant to submit a final WQMP that includes and requirements ensuring that boating activity in the project area will be managed in a manner that protects water quality.

Due to the proposed project's location on the water, 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 Commission finds that, since construction of the proposed project requires the use of best management practices to minimize impacts upon water quality, the Commission imposes Special Condition 1 requiring the applicant utilize best management practices. 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.

Since the applicant has not identified a disposal site and in order to prevent impacts to coastal waters, the Commission imposes **Special Condition 2**, requiring all construction debris disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

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

Water Quality and Marina 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 users 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 can be minimized through the implementation of certain BMPs. Therefore, the Commission imposes **Special Condition 5** that requires the applicant to establish a Water Quality Management/Boat Owner Maintenance Plan.

As proposed, the project includes the addition of a pump-out station to the new marina, allowing boat owners to pump wastewater from boat holding tanks for appropriate disposal. Utilization of the new pump-out station will enhance water quality in the marina and Newport Bay. **Special Condition 3** requires submittal of final plans showing the location of the proposed pump-out facility on the site plan.

Furthermore, there are no proposed changes to the landward portion of the marina (i.e., surface parking lot and landscaping); therefore there will be no increase of impervious surface area or resulting increase in stormwater runoff from the landward portion project site. Under current conditions storm water sheet flows across the existing parking lot emptying over the dock into the bay. There are only two existing locations on site with area drains that filter litter, silt, hydrocarbons, etc. from storm water runoff before it is discharged into the bay at the marina. As proposed, the project will not change the current parking lot sheet flow drainage patterns, however, new filtration measures will be added to the existing system to improve water quality. Five (5) more area drains with filters and construction of a new 4" trench drain along the north (ocean side) perimeter of the surface parking lot to prevent storm water runoff from discharging directly into the ocean are proposed to improve water quality.

Dredging Impacts on Water Quality

As proposed, the project will meet best management practices pertinent to dredging activities including the maintenance of dredge project limits, off-shore disposal of dredge sediments, and use of a floating silt curtain around the dredge and disposal vessels during dredging operations for turbidity control.

In summary, special conditions require the applicant to implement construction and postconstruction BMPs to minimize adverse impacts on water quality from both the construction and operation of the proposed boating facilities. Therefore, the Commission finds that the proposed marina redevelopment project described herein, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act and will assure the protection of water quality.

Fill of Coastal Waters and Loss of Marine Habitat

The proposed marina reconstruction will involve the placement of 64, 16' diameter concrete guide piles in open coastal waters, three fewer than those supporting the existing dock system. These dock float guide piles constitute fill of open coastal waters. The placement of piles in open coastal waters for the construction of a new boating facility is an allowable use under Section 30233(a)(3) of the Coastal Act.

Under Section 30233, the proposed project must be the least environmentally damaging alternative. Alternatives to the proposed project include no project, replacement of the dock in precisely the same configuration, or a change to the existing configuration.

Under the no project alternative, the applicant could only pursue simple maintenance activity. However, simple maintenance could not feasibly repair the docks, nor bring them up to present engineering and safety standards. Simple maintenance would only prolong the condition of the existing docks. While the rate of deterioration would be reduced, further deterioration of the docks would not be fully abated. Furthermore, safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system. Therefore, the dock system must be replaced.

The second alternative, replacement of the project in the same configuration would not reduce the number of pilings required. The proposed project is approximately the same configuration as the existing marina. Therefore, even if the marina were demolished and reconstructed in the exactly the same configuration, the number of proposed pilings required would not change. As proposed, the new marina configuration will result in replacement of the existing dock with a new dock system that is smaller surface area but which is basically in the same configuration as the existing dock but with fewer pilings.

Construction of Eelgrass Mitigation Area

Additionally, the construction/creation of an eelgrass mitigation area to address direct and longterm impacts to eelgrass habitat due to the project's dredging activities as previously described in the project description, also requires the installation of sheet piles and fill utilizing dredge material which is strictly limited by Section 30233 of the Coastal Act.

The applicant has indicated that there are no known eelgrass restoration areas in the vicinity of the project where eelgrass could be restored without creating suitable substrate and light conditions by altering water depths. Additionally, on-site mitigation is the preferable alternative. As such, to achieve required mitigation site conditions, the project proposes to re-use excavated dredged material to create a submerged plateau between the bulkhead and docks of the marina. Once constructed, the mitigation site would be planted with eelgrass harvested from natural donor beds adjacent to the mitigation site. The site would then be monitored for performance over the course of a 5-year establishment period per NMFS guidelines. Areas that do not meet NMFS success criteria must be re-vegetated and again monitored for another 5 year period until the final goal is met.

The use of this area for habitat enhancement is a pilot study in the Newport Beach area. It is unusual to mitigate for habitat impacts by converting one habitat (open water) to another (eelgrass). Additionally, both the Commission staff biologist and NMFS staff expressed concerns over the proposed use of plastic sheet piles compared to the use of a rock revetment for the construction of the on-site mitigation area. Concerns expressed related to the reduced water circulation behind the docks, the use of plastic sheet piles submerged on soft bottom marine soils not allowing for the exchange of gases and nutrients and that areas located between docks and bulkheads may provide a marginal environment for eelgrass growth.

The applicant provided an eelgrass mitigation alternative analysis, including a hybrid rock revetment/plastic sheet pile alternative and a no coastal structure alternative. The Commission's staff Resource Ecologist has reviewed the project and concluded that in this particular case,

although the restoration involves habitat conversion, the relatively small area involved will limit significant impacts to the existing mud bottom community and although from an ecological perspective, the use of a rock revetment is the most desirable option, the rocks would take up a larger surface area than the plastic sheet piles thereby minimizing the area available for eelgrass mitigation and would potentially also minimize the area available for boat slips. The proposed use of plastic sheet piles for the construction of a plateau for the eelgrass mitigation site is the only feasible alternative with no adverse affects that provides 7,800 sq. ft. of habitat exceeding NMFS required 7,572.6 sq. ft. eelgrass mitigation area. The rock revetment/plastic sheet pile hybrid alternative would limit the eelgrass mitigation area to 4,883.

The applicant's biologist has provided information assessing the existing habitat value of the proposed mitigation site. The biological assessment concludes that the proposed eelgrass mitigation area is best suited to restoration of eelgrass habitat, from many aspects. It is well situated geographically to the impact areas, it is geometrically suited to the construction of a submerged plateau that will sustain eelgrass, as the dock floats do not act as a vertical barrier keeping fish from eelgrass beds, it is beneficial to have eelgrass next to hard substrate such as dock structures because fish that congregate around the docks will also be attracted to the eelgrass habitat it is outside of the deeper vessel navigation areas where eelgrass is usually scarred by boat propellers. Thus it is anticipated that a successful eelgrass mitigation at the proposed location will provide higher-quality eelgrass habitat and a greater fishery utilization potential than currently is found in the Balboa Channel and will benefit from a greater level of protection than it might in other areas of the Bay.

In conclusion, the proposed project will result in the fill of open coastal waters for a boating facility and for habitat creation/restoration purposes which are both allowable use under Section 30233 of the Coastal Act. Therefore, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

Sensitive Habitats and Resources

Section 30233(b) of the Coastal Act states:

Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats...

The proposed marina reconstruction will temporarily disturb the waters within the project area and may impact marine resources. Therefore, mitigation measures are necessary to protect the biological productivity of coastal waters. The California Least Tern and the California Brown Pelican are special status species known to exist within the project area. Temporary disturbance to the waters within the project area may potentially disrupt foraging areas of these sensitive species.

The Army Corps and the US Fish & Wildlife Service (USFWS) have determined that the project will not adversely impact least tern nesting. The annual nesting season for the least terns is April 1-September 30. The project is almost a thousand meters from the Upper Newport Bay Ecological Reserve the least tern's main foraging grounds and is approximately 3 miles from least tern breeding grounds. The Upper Newport Bay Ecological Reserve contains habitat for a diverse variety of wildlife with primary habitat of open water and salt marsh, tidal flats, sandy beach, subtidal mud seafloor habitat at various locations throughout the bay.

As approved by the City, the project nonetheless requires mitigation to ensure that least terns are not harmed during breeding season. The Mitigated Negative Declaration requires an onsite

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biologist to monitor least terns during the breeding season, and to make regular reports to the Army Corps and USFWS. If the monitor determines that the project activities are a detriment to the least terns' foraging opportunities, the project activities must stop immediately. To assure avoidance of adverse impacts to nesting birds, the Commission imposes **Special Condition 6** requiring a biological monitor present for dredging and construction activities during the least tern nesting season and restricting construction if adverse impacts to any sensitive or endangered species are identified by the biologist.

C. 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 proposed project is located seaward of the first public road and within coastal waters. The subject site contains and existing privately owned marina on private land owned and operated by The Irvine Company. Public access to the bay is available from Coast Hwy. In addition, vertical access to the bay is available on the bridge leading to Linda Isle immediately east of the of the project site. Public access to the waterfront is available and the proposed project would not impede such access. However, the subject site is a private marina facility which leases boat slips to its members.

Slip Size Mix

In prior permit actions, the Commission has been concerned about the trend towards larger slips in marinas at the expense of the smaller slips. As larger slips occupy more space in a marina, there is less space for the smaller slips and the result is fewer overall slips and fewer slips available for the owners of small vessels. As the trend for larger boats continues and marinas convert their small boat slips to larger slips, berthing opportunities for the small boat owner will be reduced. While it is difficult to contend that recreational boating is in fact a "low" cost recreational activity, in general, smaller boats are less expensive, and therefore more available to a larger segment of the population than are larger boats. The Commission has not historically regulated the rates at which marinas rent their slips to the public. The Commission has, however, regulated the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing the correct balance between the size of slips and the boaters' demand for slips.

Although the trend for new and redeveloped marinas is for larger boats, the demand for small boat slips still exists. In prior permit actions, the Commission has heard testimony contending that a reduction in the availability of slips that accommodate smaller boats reduces the option for those who want to own boats and use the smaller slips. The existing facility does not meet current Americans with Disabilities Act (ADA) access standards or Department of Boating and Waterways (DBAW) design criteria

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requirements. The existing facility provides a slip count range of 123-132, depending on the size of the boat utilizing the end ties, as it is feasible that the end ties could accommodate a single larger boat, instead of two smaller boats. The new reconstructed marina will provide a slip count range of 97-105 slips and comply current with DBAW, ADA and City Harbor Permit Policies but result in a total loss of up to 27 slips (i.e., 132-105= 27). The loss of slips with the proposed marina reconstruction and reconfiguration due to compliance with new standards is as follows: two (2) slips lost due to ADA standards, sixteen (16) lost due to DBAW standards and nine (9) slips lost due to the construction of an on-site eelgrass mitigation requirement.

In this particular case, the proposed slip reconfiguration will provide:

- 38/105 or 36.2% of slips for smaller vessels 20'-30' long,
- 53/105 or 50.5% of slips for medium vessels 32'-38' long and
- 14/105 or 13.3% of slips accommodating larger vessels at 40'-58' long.

This slip mix still provides a reasonable amount of smaller slip space. Because of slip space cost considerations, perhaps of equal importance to the provision of smaller slip space for maintaining some level of affordability for recreational boating, is the availability of dry boat storage facilities and public launch ramps. Dry boat storage is available in Newport Beach. There are numerous public boat-launching ramps throughout Newport Beach.

Thus, when balanced against the overall demand for larger boat slips, the need to meet new and the fact that small boat owners are moving toward trailering their boats and using dry storage, the Commission finds the proposed slip mix adequate. This determination is based on this specific facility in this particular location, and depends also on the availability of a wide range of other boating facilities in the general area.

As proposed, the Commission finds the proposed development consistent with the public access and recreation policies of the Coastal Act.

D. Shoreline Protection

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(I) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

The applicant proposes to improve the condition of the existing seawall by installing earth anchors throughout the north and east seawalls. The proposed work consists of drilling 168, 4-inch diameter holes on the water side of the concrete sheet pile seawall at +4 MLLW elevation (just beneath the bulkhead concrete cap) and installing 168, 43 foot long steel rod anchors sleeved in PVC pipes filled with cement and grouted in place into the earth behind the seawall beneath the existing paved surface parking lot. Steel plates will be installed over the rods and anchor bolted into the seawall. All drilled concrete, process water, excess grout and drilled earthen material will be collected and contained in a spoils barge using a tube to prevent the spill of materials into coastal waters. A tent placed around the drill area will contain dust and other airborne material.

The new steel rod anchor will reinforce the existing tie-back and concrete deadman system connected to the seawall concrete cap. The improvements to the existing seawall will not require fill or cause further seaward encroachment and will provide continued protection of the existing shoreline improvements from erosion or impact public access to the bay. Therefore, as conditioned, the proposed development is consistent with the shoreline protection and public access policies of the Coastal Act.

E. Views

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Public views of Newport Bay exist along the bridge leading to Lido Isle as well as from Pacific Coast Highway, a state-designated scenic highway. The proposed project will be visible from these vantage points available to the public. The subject public views are those of a developed harbor (i.e., boats, boat docks, gangways). The proposed project will slightly decrease the dock coverage area and expose more open water. The marina uses as well as visual characteristics would remain the same as the existing conditions, therefore, the effect upon public views is minimal because such changes are occurring over a large area. No landside buildings are included in the project reconstruction.

Therefore, the Commission finds that the proposed project is consistent with character of surrounding area and would not have any adverse impacts upon public views to and along the shoreline. Therefore, the proposed project is consistent with Section 30251 of the Coastal Act.

F. Land Use Plan

Section 30604 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 issued 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.

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The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative 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.

The project is located in an existing harbor in an urbanized area. Development already exists on the subject site. Mitigation is provided for project impacts to sensitive marine resources; therefore, the impacts arising from the proposed project will be minimal. In addition, the proposed development has been conditioned, as follows: to restrict the placement of construction materials and use of on-site resources as construction material in order to prevent impacts to soft bottom habitat; to require the identification of the proposed debris disposal site to prevent the disposal of materials in a location which would have adverse impacts on the marine environment such as the displacement of soft bottom habitat and turbidity in the water column from siltation and debris; and to implement marina best management practices to avoid adverse impacts upon water quality. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA.

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