

CALIFORNIA COASTAL COMMISSION

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

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0353

Applicant: City of Newport Beach

Agent: Moffat & Nichol, Attn: Kim Garvey

Location: Northerly terminus of Central Avenue, City of Newport Beach (County of Orange)

Project Description: Installation of a new public dock consisting of: an 84' x 10' wide float (840 square feet); an approximate 40 square foot gangway platform; a 50' x 4' (200 square foot) gangway, an 8' x 4' (32 square foot) gangway landing platform; three 14" square guide piles and one 14" round pile.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach is proposing the construction of a new public dock at the northerly terminus of Central Avenue in Newport Harbor near Lido Marina Village. The major issues raised by this proposed development concern impacts to marine resources, water quality and public access.

The project will provide an opportunity for new public access to/from the landside/shoreline, but also has the potential to adversely impact marine resources and water quality (pre- and post-construction). However, the project has been designed and conditions have been imposed on the project in order to minimize potential adverse impacts from the development consistent with the Coastal Act, and the project is consistent with previous Commission approvals in the area.

The proposed public dock may utilize funding for its construction as part of a special condition for Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club), which was approved by the Commission on March 10, 2016 for the demolition and construction of a private yacht club and associated work. As per Special Condition No. 3(B) of this coastal development permit, if the City of Newport Beach does receive some or all of identified public access funding, then they may use some or all of the funding if the City obtains a coastal development permit for a public dock at the northerly terminus of Central Avenue that must be ADA compliant and provide public access to, or from, a float designed to serve small powered and hand carried vessels. The City of Newport Beach has submitted a coastal development permit application for a public dock at the northerly terminus of Central Avenue, which is the currently proposed project (Coastal Development Permit Application No. 5-16-0353) and is consistent with the requirements of Special Condition No. 3(B) of CDP No. 5-15-1459 (Newport Harbor Yacht Club).

Staff is recommending **approval** of the proposed project with Five Special Conditions regarding: 1) submittal of final updated plans that include the visitor-serving/coastal access directional sign(s); 2) consistency with Special Condition No. 3(B) of Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club); 3) carrying out pre-construction and post-construction eelgrass surveys and provide eelgrass mitigation consistent with the California Eelgrass Mitigation Policy if the post-construction survey identifies an adverse impact to eelgrass; 4) carrying out a pre-construction *Caulerpa taxifolia* survey; and 5) appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters, and continued use and maintenance of post construction BMPs.

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

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EXHIBITS

Exhibit No. 1 – Location/Site Map

Exhibit No. 2 – Project/Site Plan

Exhibit No. 3 – Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club)

Special Condition No. 3

I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

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

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

II. STANDARD CONDITIONS

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

This permit is granted subject to the following special conditions:

1. Final Updated Plans.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) 11" x 17" sets of the following final updated plans, modified as required below:
 - 1. The final updated plans shall substantially conform with the plans received on July 5, 2016, except they shall be modified as required below:
 - a. The updated project plans shall show the location of the visitor-serving/coastal access directional sign(s) located in a conspicuous location in the adjacent public parking as near as possible to the proposed gangway platform; and
 - b. The proposed sign(s) shall be in compliance with the Coastal Access Sign Program submitted as part of the City of Newport Beach Implementation Plan (IP) that was approved by the Commission on September 7, 2016.
- B. All final updated plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in conformance with the approved final updated plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Consistency with Special Condition No. 3(B) of Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club).

The permittee shall conform with Special Condition No. 3(B) of Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club) (Exhibit No.3 of staff report dated October 14, 2016), which requires that the public dock be located at the northerly terminus of Central Avenue, be ADA compliant and provide public access to, or from, a float designed to serve small powered and hand carried vessels, which is being proposed with Coastal Development Permit No. 5-15-0353. Any future changes to the approved public dock that will temporarily impact its use by the public, will require a temporary public dock be installed near the approved public dock until construction on the approved public dock has been completed. No changes to the approved public dock shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. Pre-and Post-Construction Eelgrass Survey(s).

- A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre- construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy and Implementing Guidelines” dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) adopted by the National Marine Fisheries Service (except as modified by this special condition) 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 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, 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 “California Eelgrass Mitigation Policy” dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) (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 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy 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.

4. Pre-construction *Caulerpa Taxifolia* Survey.

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - 1. for the review and approval of the Executive Director; and
 - 2. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Water Quality.

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

- amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
11. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 12. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 13. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 14. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 15. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 16. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. Best Management Practices Program

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

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; and
 - c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
2. Solid and Liquid Waste Management Measures:
 - a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.
3. Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
- c. 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 DESCRIPTION AND LOCATION

The City of Newport Beach proposes to install a new 24-hour accessible public dock in Newport Harbor adjacent to Lido Marina Village and states that the project objective is to provide a publicly-accessible tie-up facility for visiting boats of various sizes for short term visits in an area that currently lacks public access to/from the landside/shoreline. More specifically, the project consists of the following: installation of a 84' x 10' wide float (840 square feet); an approximate 40 square foot gangway platform; a 50' x 4' (200 square foot) gangway, an 8' x 4' (32 square foot) gangway landing platform; three 14" concrete square guide piles for the float and one 14" steel round pile for the gangway platform (**Exhibit No. 2**). The dock float will have a low freeboard design that will allow the docking of small powered vessels and launching of hand carried vessels, such as kayaks and stand up paddleboards. The boat dock system will be comprised of composite or wood material. The existing guardrail along the top of the adjacent bulkhead where the public dock will be installed will be removed to allow for installation of the gangway platform and replaced with a new guardrail. Pile driving will occur from the waterside or, if possible for the gangway platform pile, from the landside. The dock and gangway will be pre-assembled and floated and installed into place from the waterside or landside. Lastly, the concrete gangway platform will be built in place. The proposed public dock will extend beyond the Pierhead Line, which is contiguous with the Bulkhead Line at this location. According to the City, when this Pierhead Line was created by the United States Army Corps of Engineers (USACOE), the City did not envision any dock development beyond the adjacent Lido Marina Village Marina east of the project site. The Project Line extends out approximately 80-feet harborward of the adjacent Lido Marina Village Marina, angles in to the west and then follows the alignment of the bulkhead line fronting the location of the proposed public dock. However, the proposed dock will not extend further into the harbor than the existing adjacent private dock system and the Lido Marina Village east of the project site and is

consistent with the City of Newport Beach Harbor Permit Policy regarding docks extending into this harbor.

The project site is located in Newport Harbor at the northerly terminus of Central Avenue at an existing public area that is improved with concrete sitting areas bordered by an existing bulkhead with a guardrail. There is also an adjacent existing inland public parking lot immediately south of the project site (**Exhibit No. 1**). The project site is also adjacent to Lido Marina Village located east of the project site, which is a pedestrian-oriented waterfront development that includes a public harborfront promenade, visitor-serving commercial uses, specialty stores, and marine uses, as well as an adjacent private marina, Lido Marina Village Marina (**Exhibit No. 1**). Public access into the harbor is not currently available at the project site, but access to the harborfront is currently available in the adjacent public area bordering the bulkhead that is improved with concrete sitting areas. Once the project is completed, public access into the harbor will be available via the new public dock. Direct access to the public promenade at Lido Marina Village is unavailable at the project location as there is no direct connection currently available; however, it is accessible from the street, Via Oporto, approximately 285 feet south of the project site.

The City states that the public dock will incorporate typical design features that identify it as a public dock, such as blue and white finial(s) mounted on top of the dock piles that signify public docks within Newport Harbor and signage. The City has also stated that they would install a visitor-serving/coastal access directional sign near the gangway platform in the adjacent public parking lot that directs the public to the adjacent visitor-serving amenities/coastal access opportunities at Lido Marina Village. While the applicant has stated that they would install the visitor-serving/coastal access directional sign, no such plans have been submitted. The proposed sign should be located in a conspicuous location in the adjacent public parking as near as possible to the proposed gangway platform, so that those visitors arriving and departing from this public dock are directed to the visitor-serving amenities/coastal access opportunities in Lido Marina Village. Thus, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final updated plans identifying the location of the visitor-serving/coastal access directional sign.

On March 10, 2016, the Commission approved Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club) for the demolition and construction of a private yacht club and associated work. Special Condition No. 3(A) of this coastal development permit requires Newport Harbor Yacht Club to provide \$350,000 to an accepting entity for public access improvements within Newport Harbor. In addition, section 3(B) of this special condition indicates that should the City of Newport Beach receive some or all of identified public access funding, then they may use some or all of the funding if the City obtains a coastal development permit for a public dock at the northerly terminus of Central Avenue that must be ADA compliant and provide public access to, or from, a float designed to serve small powered and hand carried vessels (**Exhibit No. 3**). The City of Newport Beach has submitted coastal development permit application for a public dock at the northerly terminus of Central Avenue, which is the currently proposed project (Coastal Development Permit Application No. 5-16-0353) consistent with the requirements of Special Condition No. 3(B) of CDP No. 5-15-1459 (Newport Harbor Yacht Club). Any future changes to the proposed dock may adversely impact public access and be inconsistent with the requirements of CDP No. 5-15-1459. Thus, the Commission imposes **Special Condition No. 2**, which requires that

the public dock comply with the requirements of Special Condition No. 3(B) of Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club), and any changes will be reported to the Executive Director.

The proposed public boat dock system and its associated four 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. 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 harbor. The hard substrate presents an opportunity for biological resources to prosper in the area.

The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and no eelgrass was discovered in the project area. The eelgrass survey took place on June 26, 2015 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the November 2016 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. A pre-construction *Caulerpa taxifolia* survey was completed on June 26, 2015 as required by the City of Newport Beach Harbor Resources Division and no *Caulerpa taxifolia* was discovered in the project area. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the November 2016 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. Therefore, the Commission imposes **Special Conditions No. 3 and No. 4**, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Conditions No. 4** also identifies the procedures necessary to be completed prior to beginning any construction.

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 ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris will be contained and shall be removed from the water and disposed of properly, measures will be taken to prevent all discharge of fuel or oily wastes from construction equipment, and turbidity curtains shall be used during pile installation. To ensure that all impacts (pre- and post- construction) to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 5**, 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; and the continued use and maintenance of post construction BMPs.

The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers and is pending review.

B. MARINE RESOURCES

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. WATER QUALITY

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. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the 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 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.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. LOCAL COASTAL PROGRAM (LCP)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. On September 8, 2016, the Commission approved an Implementation Plan (IP) for the City of Newport Beach. The certification of the IP is still pending. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act, with the certified Coastal Land Use Plan for the area, and the approved Implementation Plan for the area that is pending certification. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on

the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 5-15-1459 (Newport Harbor Yacht Club); Approval-In-Concept from the City of Newport Beach Planning Department dated April 14, 2016; Eelgrass and (*Zoetstra marina*) and *Caulerpa taxifolia* surveys report dated July 12, 2015; Letter from the Commission staff to agent dated May 13, 2016; and Letter from the agent to Commission staff dated July 5, 2016.







3. **Implementation of Proposed Public Access Improvements.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$350,000 has been paid to an accepting entity as proposed by the Newport Harbor Yacht Club in a letter dated January 29, 2016 and as described further below.
- A. The proposed public access improvement fund payment of \$350,000 (herein ‘fund’) shall be deposited into an interest-bearing account, to be established and managed by one of the following entities which may be approved by the Executive Director: the City of Newport Beach, the California Coastal Conservancy, or a similar Executive Director-approved entity, in support of providing increased public access to Newport Harbor. The proposed recipient-entity must be approved by the Executive Director, in writing, prior to any payment to that entity. The entire fund and accrued interest shall be used for the above stated purpose in consultation with the Executive Director. All development funded by this account will require a coastal development permit. The funds shall be used in their entirety within five years of being deposited into the interest-bearing account established and managed by the accepting entity (or entities). If any portion of the funds remain in the account after five years and the Executive Director determines the funds should be reassigned, those funds shall be donated to an agency or nonprofit entity, to be selected by the Executive Director, providing increased public access opportunities to the Coastal Zone in Newport Beach.
 - B. Subject to review and approval of the Executive Director, the City of Newport Beach (herein ‘City’) may receive some or all of the funds if the City obtains a Coastal Development Permit for a public dock at the northerly terminus of Central Avenue. The public dock shall be ADA compliant and provide public access to or from a float designed to serve small powered and hand carried vessels.
 - C. If the City does not enter into a memorandum of understanding (MOU) with the Coastal Commission as required in subsection D and apply for a coastal development permit for the dock within 24 months of issuance of Coastal Development Permit 5-15-1459, all funds may be assigned to another entity approved by the Executive Director, in order to be used for the purposes stated in subsection A above.
 - D. Prior to expenditure of any funds required pursuant to this condition, the Executive Director shall review and approve in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition the entity accepting the funds required by this condition shall enter into a MOU with the Commission, which shall include, but not be limited to, the following: 1) a description of the public access improvement that provides increased public access to Newport Harbor, which may consist of the Central Avenue pier and float facility, identified in subsection B, above; 2) the terms provided in subsection A, and/or B, if applicable, of this condition; and 3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit; 4) the entity accepting the funds will commence development of the public access improvement that provides increased public access to Newport Harbor, which may consist of the Central Avenue pier and float facility identified in subsection B, above, within 36 months of the MOU date of effectiveness. The Executive Director may extend the above-identified deadlines, in writing, for good cause.