

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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(562) 590-5071

**W22a**

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original staff report

**ADDENDUM**

March 3, 2017

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W22a, CDP NO. 5-16-0113 FOR THE  
COMMISSION MEETING OF WEDNESDAY, MARCH 8, 2017.**

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**CHANGES TO STAFF REPORT**

Commission staff recommends modifications to the staff report dated 2/17/17. Language to be added to the findings and conditions is shown in **underlined italicized bold text**, and language to be deleted is identified by ~~strike-out~~.

**Page 8- Modify Special Condition No. 5. Revised Plans, as follows:****5. Revised 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) full size sets of the following revised plans that substantially conform with the plans submitted on February 5, 2016, modified as required below:
  1. The revised plans shall identify dock float decking construction material that does not need a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water (**e.g., treated wood deck material on which a recognized wood sealant is applied at an approved inland facility prior to arrival at the construction site, and kiln-dried, in order to significantly reduce potential leaching of preservative treatments into the water body**).
- B. All revised 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 revised plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

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# W22a

Filed:	10/3/16
180th Day:	4/1/17
Staff:	F. Sy-LB
Staff Report:	2/17/17
Hearing Date:	3/8/17

## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	<b>5-16-0113</b>
<b>Applicant:</b>	<b>Lido Peninsula Company, LLC</b>
<b>Agent:</b>	<b>Anchor QEA, LLC, Attention: Adam Gale</b>
<b>Location:</b>	Channel Road Marina (Lido Peninsula), City of Newport Beach, (Orange County)
<b>Project Description:</b>	The demolition of an 81 slip marina and construction of a 46 slip marina in the same location.
<b>Staff Recommendation:</b>	Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the demolition and construction of a new marina in the same location. The major issues raised by this proposed development concern impacts to marine resources, water quality, and public access. All of the proposed development is located in submerged areas subject to the Commission's original jurisdiction.

An eelgrass survey took place on August 12, 2015. However, the project is agendized for the March 2017 Commission Hearing so the 2015 eelgrass survey, which is valid for 60 days from the date the survey was taken, is no longer valid. Thus, the Commission imposes **Special Condition No. 1**, which requires updated eelgrass surveys to be conducted prior to commencement of the project.

A *Caulerpa Taxifolia* survey was completed for the project site and none was discovered. However, to verify that no *Caulerpa Taxifolia* is impacted, a pre-construction *Caulerpa Taxifolia* survey should be conducted. Therefore, the Commission imposes **Special Condition No. 2**,

which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*.

The proposed project, because of its location in the water, has potential for adverse impacts to water quality and marine resources during construction and post construction. Therefore, special conditions have been imposed in order to minimize any impacts to water quality and marine resources the proposed project may result in: **Special Condition No. 3** requires the applicant to implement construction Best Management Practices (BMPs);; and **Special Condition No. 4** requires the continued use and maintenance of post construction BMPs for the long-term berthing of boats.

The applicant has identified that the decks of the dock floats are proposed to be constructed using Douglas Fir lumber treated with a chemical preservative treatment known as Ammoniacal Copper Zinc Arsenate (ACZA) to reduce the rate of rot and corrosion of the wood within the water. However, this chemical preservative raises coastal resource concerns because there is potential for measurable amounts of preservatives to be released into the water and thus adversely impacting marine resources and water quality. Thus, the Commission imposes **Special Condition No. 5**, which requires the applicant to submit revised plans identifying the revised dock float decking construction material that does not use a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water.

In order to ensure that future development on the site does not occur which could potentially result in adverse impacts to public access, the Commission imposes **Special Condition No. 6**, which informs the applicant that future development at the site requires an amendment or a new coastal development permit.

The proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development.

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**APPENDICES**

Appendix A – Substantive File Documents

**EXHIBITS**

Exhibit No. 1 – Location Maps

Exhibit No. 2 – Site Plan

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-16-0113 pursuant to the staff recommendation.*

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

### Resolution:

*The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned is in conformity with the Chapter 3 policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

#### 1. Eelgrass Survey(s).

- A. Pre-Construction Eelgrass Survey. 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" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, 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 (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 by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP 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 legally required.

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

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

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
  - (1) for the review and approval of the Executive Director; and
  - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- 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, subject to concurrence by 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.

**3. Construction Best Management Practices (BMPs).** The permittee shall comply with the following construction related requirements:

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

- amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
  - L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
  - M. The discharge of any hazardous materials into any receiving waters is prohibited;
  - N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
  - O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHP<sup>2</sup>s) 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
  - P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**4. Best Management Practices (BMPs) for the Long-Term Berthing of Boats.** By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved marina 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 shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

3. Petroleum Control Management Measures:

- (a) Boaters shall practice preventive engine maintenance and shall use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- (b) If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters shall 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 shall not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

**5. Revised 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) full size sets of the following revised plans that substantially conform with the plans submitted on February 5, 2016, modified as required below:
  - 1. The revised plans shall identify dock float decking construction material that does not need a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water.
- B. All revised 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 revised plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 6. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0113. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-16-0113. Accordingly, any future improvements to the marina, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-16-0113 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The proposed project will demolish an existing marina, Channel Road Marina, located on Lido Peninsula and construct a new marina in the same location, including new wet boat slips, piles, utilities and a gangway. No dredging is proposed. The applicant states that the marina slips are 50 years old and have exceeded their useful life and that the new marina would comply with current Americans with Disabilities Act (ADA) access standards and Department of Boating and Waterways (DBAW) design criteria requirements, while being optimized in terms of demand. Conforming to ADA and DBAW standards, results in a marina design that includes wider walkways and structurally robust construction which results in slightly more surface coverage than the former marina. The reconfigured new marina would reduce the existing 81 slips to 46 wet boat slips, a reduction of 35 wet boat slips (**Exhibit No. 2**). Of these new slips, 50% would remain accessible for boats 35-feet in length or shorter. The breakdown of the slips sizes from the existing and proposed project is found below:

**Existing and Proposed Dock Components**

COMPONENT	EXISTING	PROPOSED
Total Surface Area	10,968 square feet	12,762 square feet
Piles	30	52
Slip Length (Feet)		
20 or less	6	13
21 to 25	19	9
26 to 30	19	0
31 to 35	34	1
36 to 40	2	0
41 to 50	0	15
51 to 60	0	0
61 to 70	0	0
71 to 80-	0	7
81 to 90	0	0
91 to 100	1	1
Greater than 100	0	0
<b>TOTAL</b>	<b>81</b>	<b>46</b>

To support the new dock floats, the new marina will include fifty-two concrete pilings (compared to use of 30 existing pilings) consisting of twenty-two, 18-inch diameter square piles; eleven, 16-inch diameter square piles; and nineteen, 14-inch diameter square piles. Conforming to ADA and DBAW standards results in the use of stronger and more piles than those used for the former marina. The applicant has identified that the decking for the dock floats would be constructed out of treated Douglas Fir lumber treated with a chemical preservative treatment known as Ammoniacal Copper Zinc Arsenate (ACZA) to reduce the rate of rot and corrosion of the wood components.

The project site, Channel Road Marina, is located at the southern corner of Lido Peninsula, in the City of Newport Beach, Orange County (**Exhibit No. 1, page 1**). The Channel Road Marina is a

privately owned and managed marina that is a component of the overall Lido Yacht Anchorage Marina located on Lido Peninsula (**Exhibit No. 1, page 2**). Lido Peninsula Company owns and operates all of the private marina space, including anchorage and dry docks storage area on the peninsula (**Exhibit No. 1, page 2**). The Lido Yacht Anchorage Marina has a total of 230 wet boat slip spaces (including the existing configured Channel Road Marina) and the dry docks storage area has space for 221 boats up to 40-feet in length for a total of 451 wet and dry boat slip spaces. Post project, the Lido Yacht Anchorage Marina will have a total of 195 wet boat slips spaces (including the new Channel Road Marina) and the dry dock storage area will continue to have 221 boat spaces for a total of 416 dry and wet boat slip spaces, resulting in a reduction of 7% of total available dry and wet boat slip spaces.

Lido Peninsula is also commonly known as Little Lido Island. The public can lease these slips for private use, the slips are not restricted, and are available for anyone to lease and this will not change with the proposed project. Inland of the marina on the inland side of Channel Road are manufactured homes; north of the marina on the landward side is the Newport Harbor Shipyard; and further north of that is a boat dry dock storage area. Lido Peninsula is located in the western area of Lower Newport Bay. The area is heavily urbanized and is comprised of marinas, housing and commercial properties.

## **B. MARINE RESOURCES/WATER QUALITY**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Section 30233 of the Coastal Act states (in relevant 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:*

*(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*

*(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

*(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.*

*(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

*(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

*(6) Restoration purposes.*

*(7) Nature study, aquaculture, or similar resource dependent activities.*

## **1. Fill**

The new marina will include fifty-two concrete pilings consisting of twenty-two, 18-inch diameter square piles; eleven, 16-inch diameter square piles; and nineteen, 14-inch diameter square piles displacing soft bottom habitat to support the dock systems. Placement of the piles will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233(a) of the Coastal Act. In order to be consistent with Section 30233(a), a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

The piles for the proposed marina will be located in the open coastal waters of Newport Harbor. Since the total fifty-two piles will support the boat dock floats, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, thereby meeting the allowable use requirement, since the proposed fill is for a boating-related use that provides public access and recreational facilities.

The placement of the fifty-two piles is the minimum amount necessary to safely anchor the dock floats, which are proposed to be reduced from 81 to 46 boat slips. This conclusion is based on the applicant's engineer's evaluation of the minimum number of piles needed based on their engineering and design. Fewer and/or smaller piles would not adequately secure the boat dock floats. By using the least number of piles necessary to accomplish the goal of securing the boat dock floats, the fifty-two piles associated with the marina represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing recreational boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of

Section 30233(a) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

The proposed recreational boat dock systems and its associated piles are allowable and encouraged marine related uses. The project design for the marina includes the minimum-sized pilings and the minimum number of pilings necessary for structural stability of the dock floats. Although the hard surface of the concrete 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 surface presents an opportunity for biological resources to prosper in the area by providing habitat where organisms, such as algae, barnacles, mussels, and limpets can attach. Many of these organisms are food for fish, whereby increasing the species diversity in the area. Given the size and scale of the proposed project, the minimal scale of the soft bottom impact, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. Therefore, the Commission finds the proposed project meets the requirements of Section 30233(a) that the project provides adequate mitigation to offset any impacts created by the project.

## 2. Eelgrass (*Zostera marina*)

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 important to protect because it functions as important habitat for a variety of fish and other wildlife, according to the California Eelgrass Mitigation Policy (CEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW). 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.

An eelgrass survey, which did not identify any presence of eelgrass, took place on August 12, 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 is considered valid until the resumption of active growth (i.e., March 1). The 2015 eelgrass survey, which is nearly 1.5 years old, is no longer valid. Therefore, a new eelgrass survey shall be required prior to beginning any construction to identify and prevent potential eelgrass impacts. Thus, the Commission imposes **Special Condition No. 1**, which identifies the eelgrass survey that must be conducted prior to commencement of the project.

## 3. *Caulerpa Taxifolia*

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced

by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A *Caulerpa Taxifolia* survey was completed on August 12, 2015 and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The 2015 *Caulerpa Taxifolia* survey is not valid since 1.5 years have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to ensure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 2**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

#### **4. Construction Impacts to 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. The proposed project includes measures to help assure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement.

To assure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 3**, 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.

The applicant has stated that construction materials, including docks and floats, would be loaded onto barges from the public dock at the head of the Rhine Channel and then transported to the construction site. Piles would be trucked to the Rhine Channel staging site on an as-needed basis and directly placed on tender barges and staged alongside the pile-driving barge and then driven. Construction debris would be removed and loaded directly onto trucks from the project site and then trucked to an approved upland landfill, outside the coastal zone. The applicant has provided a construction staging area site plan showing that a portion of an adjacent marina parking area will be used as the staging area and that there is a potential second area nearby at another marina parking that could also be used if more area is needed.

#### **5. Post-Construction Impacts to Water Quality**

Post project, a new marina will be located on site. The berthing of boats by the boat dock users and associated boating activities in these new docks have the potential to adversely impact coastal water quality and marine environment through the introduction of pollutants associated with boating activities. To reduce the potential for post-construction impacts to water quality

from these boats, the Commission imposes **Special Condition No. 4**, which requires the continued use and maintenance of post construction BMPs for the long-term berthing of boats.

The applicant has identified that the decks of the dock floats would be constructed out of Douglas Fir lumber treated with a chemical preservative treatment known as Ammoniacal Copper Zinc Arsenate (ACZA) to reduce the rate of rot and corrosion of the wood within the water. Use of this chemical preservative treatment raises concern as there is potential for measurable amounts of preservatives to be released into the water and thus adversely impacting marine resources and water quality. An alternative material that does not need a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water must to be used. Thus, the Commission imposes **Special Condition No. 5**, which requires the applicant to submit revised plans identifying the revised dock float decking construction material that does not use a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water.

## **6. Other Resource Agency Approvals**

The applicant has received an approved Clean Water Act Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB) dated September 15, 2016. Additionally, the U.S. Army Corps of Engineers (USACOE) Rivers and Harbors Act Section 10 Permit is pending.

## **Conclusion**

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232 and 30233(a) of the Coastal Act.

## **C. PUBLIC ACCESS**

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

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 Channel Road Marina, which is part of the larger Lido Yacht Anchorage Marina located on Lido Peninsula, offers boat slips and dry dock storage spaces that the public can lease for recreational use. These spaces are not restricted, and are available for anyone to lease and this will not change with the proposed project. Thus, the marina will continue to provide an opportunity for the public to access Newport Harbor and engage in recreational opportunities.

## **1. Parking**

Per Table 3-10 of Chapter 20.40.040 of the City of Newport Beach (City) Municipal Code, marinas are required to provide 0.75 parking spaces per boat slip and 0.33 parking spaces per dry boat storage space. Post project, the entire Lido Yacht Anchorage Marina, including Channel Road Marina, will comprise of 221 dry boat storage spaces and 195 wet boat slip spaces. Based on the City code, 74 parking stalls are required for the dry boat storage and 146 parking stalls for the slips or a combined total of 220 parking stalls. Currently, 234 existing parking stalls are available at the marina (**Exhibit No. 1, page 2**). Of those 234 spaces, 75 spaces are designated for the dry boat storage area and the remainder is available to slip customers. The combined available parking stalls exceed the minimum requirements per the City code. Thus, there will be no adverse impacts to public access with respect to parking.

## **2. Slip 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 a balance between the size of slips which facilitates increased public access 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 requirements. The existing Lido Yacht Anchorage Marina has a total of 230 wet boat slip spaces (including the existing configured Channel Road Marina) and the dry docks storage area has space for 221 boats up to 40-feet in length for a total of 451 wet and dry boat slip spaces. The project specifically focusses on the demolition and construction of the new Channel Road Marina that would result in the reduction from an existing 81 wet boat slip marina to 46, a reduction of 35 slips (**Exhibit No. 2**). Post project, the Lido Yacht Anchorage Marina will have a total of 195 wet boat slips spaces (including the new Channel Road Marina) and the dry dock storage area will continue to have 221 boat spaces for a total of 416 dry and wet boat slip spaces. The new reconstructed marina that will be located in

the same location will comply with current DBAW, ADA and City Harbor Permit Policies, as approved by the City of Newport Beach Harbor Commission, but result in a total loss of up to 35 slips (i.e.,  $81-46=35$ ). The loss of slips with the proposed marina reconstruction and reconfiguration due to compliance with new standards is as follows: sixteen slips lost due to ADA and DBAW standards, and nineteen based on reconfiguring the marina to include larger slips to accommodate the larger vessels that the applicant states are in greater demand than the smaller slip sizes.

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

- 23/46 or 50% of slips for smaller vessels 20'-35' long,
- 15/46 or 32% of slips for large vessels 36'-50' long and
- 8/46 or 17% of slips accommodating larger vessels at 51'-100' 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. As part of the overall anchorage that Channel Road Marina is a part of, a 221-space dry boat storage area is available nearby on Lido Peninsula as well that can store boats up to 40 feet in length. Of those 221 spaces, 188 of those spaces are for vessels that are less than 30 feet in length.

The post project slip mix for the proposed Channel Road Marina will provide a reasonable amount of smaller wet boat slip spaces in that marina, but also the overall availability of small wet boat slips post project will continue to be provided in the Lido Yacht Anchorage Marina. Post project, the Lido Yacht Anchorage Marina will have a total of 195 wet boat slips spaces (including the new Channel Road Marina). The breakdown of the total available wet boat slip spaces post project in the Lido Yacht Anchorage Marina is available below:

- 79/195 or 41% of slips for smaller vessels 20'-35' long,
- 69/195 or 35% of slips for large vessels 36'-50' long and
- 46/195 or 24% of slips accommodating larger vessels at 51'-100' long.

Thus, when balanced against the overall demand for larger boat slips, the need to meet new and standards 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 conditioned, there is no significant potential for adverse impacts to public access. However, future development may potentially result in adverse impacts to public access. To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 6**, which requires a coastal development permit for future development.

## **2. Harbor Commission**

On appeal, the Harbor Commission approved the southeast end configuration of the proposed new marina to extend to the same outside limit line (City's Tidelands Limit Pay Line) as the existing marina dock fingers. The Tidelands Pay Line associated with the existing southeast end of the marina extends beyond the Harbor Permit Policy Line by a distance of 13 feet. The Harbor Permit Line is defined by the City as a line 20 feet beyond the Federal Pierhead Line. From the standpoint of navigation and safety, the applicant has stated that the marina has operated safely for more than 50 years with no known issues regarding channel width or navigational safety and thus the Harbor Commission approved this proposed configuration. In order to additionally make sure that navigation is not impeded the applicant self-imposed a 12-foot limit on the side ties for boats in this on this southerly of the marina. Therefore, the reconfigured slips are not expected to pose a risk to navigation.

## **Conclusion**

As conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

## **D. LOCAL COASTAL PROGRAM (LCP)**

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act.

## **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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 Commission's regulatory program for granting CDPs has been certified by the Resources Secretary to be functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach Planning Department and Harbor Resources Division are the lead agency and the Commission is a responsible agency for the purposes of CEQA. On March 25, 2016, the City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt from CEQA requirements under Class 1 for existing facilities (14 CCR § 15301). As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would

substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.






## APPENDIX 1

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit Exemption No. 5-06-184; City of Newport Beach Harbor Commission approval dated February 2016; City of Newport Beach Harbor Resources Division Approval-In-Concept dated March 25, 2016; Letter from Ecomarine Consulting LLC regarding eelgrass (*Zoostera marina*) and *Caluierpa taxifolia* survey dated August 15, 2015; Letter from Commission staff to Anchor QEA, LLC dated March 4, 2016; Letter from Anchor QEA, LLC to Commission staff dated May 12, 2016; Letter from Commission staff to Anchor QEA, LLC dated June 15, 2016; Letter from Anchor QEA, LLC to Commission staff dated July 21, 2016; Letter from Commission staff to Anchor QEA, LLC dated August 16, 2016; Letter from Anchor QEA, LLC to Commission staff dated October 12, 2016; and Clean Water Act Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB) dated September 15, 2016.

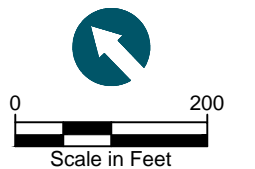


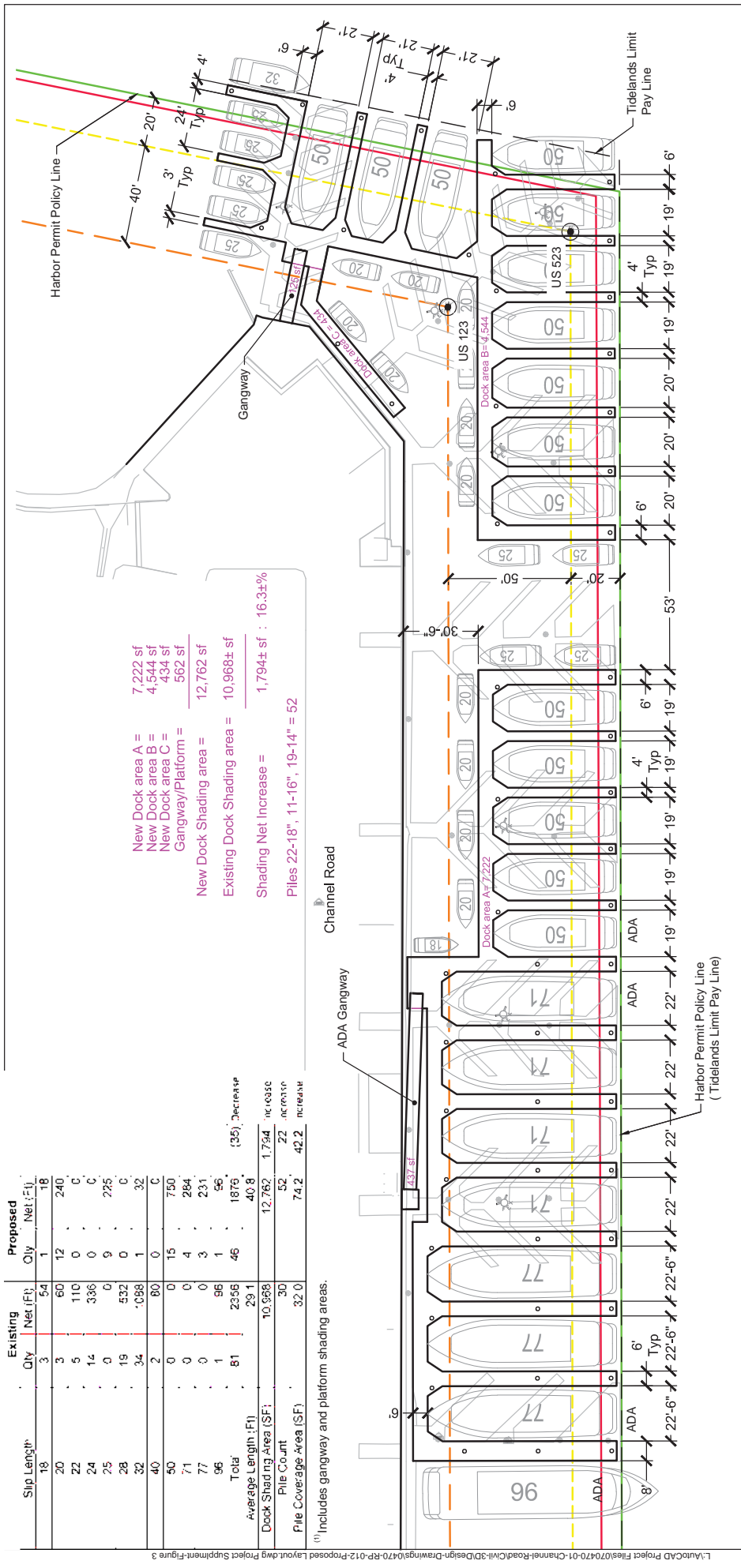


**LEGEND:**

- |   |  |
|---|--|
|  Boat Dry Stack Area         |  Boat Dry Stack Parking |
|  Lido Yacht Anchorage Marina |  Marina Parking         |
|  End of Lido Permit Area     |  |

Available Marina Parking	
Parking Area	Spaces
Boat Dry Stack	75
A	15
B	56
C	43
D	45
<b>Total</b>	<b>234</b>





New Dock area A = 7,222 sf  
 New Dock area B = 4,544 sf  
 New Dock area C = 434 sf  
 Gangway/Platform = 562 sf  
 New Dock Shading area = 12,762 sf  
 Existing Dock Shading area = 10,968± sf  
 Shading Net Increase = 1,794± sf : 16.3±%  
 Piles 22'-18", 11'-16", 19'-14" = 52

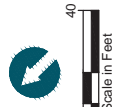
Slip Length	Existing		Proposed	
	Qty	Net (Ft)	Qty	Net (Ft)
18	3	54	18	18
20	3	60	12	240
22	5	110	0	0
24	14	336	0	0
25	0	0	9	225
26	19	532	0	0
32	34	-1,098	1	32
40	2	80	0	0
50	0	0	15	750
71	0	0	4	284
77	0	0	3	231
96	1	96	1	96
Total	81	2356	46	1876
Average Length (Ft)		29.1		40.8
Dock Shading Area (SF)		10,968		12,762
Pile Count		30		52
Pile Coverage Area (SF)		32.0		74.2

<sup>(1)</sup> Includes gangway and platform shading areas.

**SOURCE:** Basemap prepared from existing topographic survey provided by Terra Tech, Inc. dated October 2006. Bathymetry provided by Gahagan & Bryant Associates' multi-beam survey dated June 16, 2010 and pole sounding survey dated June 23, 2010. Bulkhead, Pierhead, and Project Lines obtained from City of Newport Beach GIS Department.  
**HORIZONTAL DATUM:** California State Plane, Zone VI, NAD83.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**LEGEND:**

- Bulkhead Line
- Pierhead Line
- Project Line
- Harbor Permit Policy Line (Harbor Permit Line)
- Existing Dock Footprint
- ADA
- Americans with Disabilities Act
- Tidelands Limit Pay Line



**Figure 3**  
 Proposed Layout  
 Channel Road Marina Renovation Project Supplement