

CALIFORNIA COASTAL COMMISSION

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W26b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-18-0094

Applicant: Todd Pickup

Agent: Shawna L. Schaffner, CAA Planning, Inc.

Location: 23 Harbor Island, City of Newport Beach, (Orange County)

Project Description: Reinforcement of an existing seawall involving new earth anchors, deadmen and a seawall cap; and removal of a 10-foot by 12-foot pier platform and 1,152 square foot boat dock system with a 3-foot by 18-foot gangway, and replacement with a 1,105 square foot boat dock system and a 3-foot by 24-foot gangway, all associated with an existing single-family residence on a bayfronting lot.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located within the Commission's retained, original jurisdiction; Thus, the standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act and the City's certified LCP may be used as guidance.

Commission staff is recommending **APPROVAL** of the coastal development permit application with special conditions. The major issues raised by this proposed development concern consistency with the hazards, marine resources, water quality and public access and recreation policies of the Coastal Act.

The project as originally submitted would result in 13 square feet of eelgrass shading impacts. Since the submittal, the applicant has revised the project so that eelgrass shading impacts have been significantly reduced to less than 2 square feet. With the revised project resulting in a total of 167 square feet of less water coverage than the existing development, there will be a significant amount of area that can foster new eelgrass growth as it is shown to grow here. Therefore, the applicant's anticipated eelgrass shading impact of less than 2 square feet is appropriately mitigated by the reduction in area of existing over-water development. Final revised plans must be submitted for the revised proposed project. Additionally, the applicant has not provided details about the type of guardrail that is to be installed on top of the proposed seawall cap extension (one foot elevation added). While the applicant has provided a narrative and tentative plan indicating these changes to the dock system, no final revised plans have been submitted and also additional information regarding the guardrail to be located on top of the seawall has not yet been provided. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

The proposed dock component of the project extends out into public tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a "*Tidelands Survey for Newport Harbor for the City of Newport Beach*". Thus, the applicant would need to obtain from the County of Orange a "Newport Tidelands Encroachment Permits". However, the applicant has not yet applied for a "Newport Tidelands Encroachment Permit" for the proposed project from the county. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicant to submit a copy of the "Newport Tidelands Encroachment Permit" issued by the County of Orange regarding the proposed project.

The seawall is currently located seaward of the applicant's property, on public trust tidelands, which generally speaking is not a preferred alignment for private development. Also seawalls can contribute to the destruction of sites through impacts to marine habitats and regional sediment dynamics. Further, seawalls also generally adversely impact public access and recreation. In the near-term, the State Lands Commission, through its tidelands grantee the County of Orange, which thereby acts as the trustee of the granted tidelands, has entered into a 49-year lease (1988-2037) giving the applicant exclusive use of an approximate 30-foot wide area of filled and reclaimed former tidelands seaward of the private property for landscaping and non-permanent recreational improvements, such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade, as well as "any and all improvements existing as of August 1, 1990." It is on this basis that the seawall appears to be allowed upon the filled and reclaimed former tidelands. Furthermore, prior to any lease of filled public tidelands (the current lease is a continuation of a 1983 interim lease for the filled and reclaimed former tidelands), on December 8, 1975, the Commission approved Coastal Development Permit A-11-21-75-6647 (Nabers) for construction of a seawall and return walls and dock work – the repair and maintenance of which is proposed as part of this permit – on public tidelands in front of 23 Harbor Island. Therefore, the subject seawall was an existing Commission-approved development on State Tidelands prior to the Lease agreement and existing as of August 1, 1990. The County represents that it will evaluate ongoing placement of the seawall on public trust tidelands when it considers extension or renewal of the Lease agreement. However, it is unclear whether the County has authority to extend or renew the current Lease agreement (which is authorized per Chapter 715 of Statutes 1984). In light of this uncertainty, it is imperative that over the long-term, these tidelands must be protected for public

trust allowed uses, such as public recreational piers, visitor-serving facilities and boating facilities.

To ensure that the proposed new development does not contribute to the destruction of the site or the surrounding area and is consistent with Section 30253 and the public access and recreation and marine resource protection policies of the Coastal Act, the Commission imposes **Special Condition No. 3**, which imposes limiting authorization of the improvements to the existing shoreline protective device (i.e., new coping and tiebacks/deadmen) on public tidelands to the 49-year term until March 22, 2037 of the existing Lease for the private use of filled public tidelands by this and all other Harbor Island property owners. Continued authorization of the reinforcements/repairs to the existing seawall beyond March 22, 2037 shall require a showing of a valid Lease, Lease extension or renewal, that expressly allows for ongoing placement of the seawall. In addition, the Commission imposes **Special Condition No. 4**, which requires the applicant to agree that no future expansion of the seawall extending the footprint seaward shall be undertaken to protect the existing landside development including but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards in the future.

Since the proposed development is located in an area where coastal hazards exist and can adversely impact the development, the Commission imposes **Special Condition No. 5**, which requires the applicant to assume the risk of development.

The Commission approved Coastal Development Permit A-11-21-75-6647 (Nabers) for the subject site that was approved on December 8, 1975 approved two return walls (groin walls), located on the easterly and westerly portions of the property fronting the bay. The applicant has proposed to remove these groin walls; as long as it was determined that this activity would not impact the structural integrity of the existing seawall and property, or adjacent seawalls and properties including dock structures. Currently, that information to make that determination is not available. Therefore, the Commission imposes **Special Condition No. 6**, which requires the applicant to submit an engineering report for the Executive Director's review analyzing the removal of the groin walls. If removal of the groin walls does not impair the integrity of existing improvements, their removal shall be required consistent with the applicant's proposal to do so.

To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 7** informing the applicant and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-18-0094 or a new coastal development permit.

An eelgrass survey took place on April 30, 2017 as required by the City of Newport Beach Harbor Resources Division. The project is agendaized for the December 2018 Coastal Commission Hearing so the existing eelgrass survey is no longer valid. Therefore, the Commission imposes **Special Condition No. 8**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction.

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A *Caulerpa Taxifolia* survey was completed for the project site and none was discovered. However, to verify that no *Caulerpa Taxifolia* is on the site that could result in further dispersal of this invasive species from construction activities, a pre-construction *Caulerpa Taxifolia* survey should be conducted. Therefore, the Commission imposes **Special Condition No. 10**, 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 on, within, or adjacent to coastal waters, has potential for adverse impacts to water quality and biological resources during construction and post construction. Therefore, special conditions have been imposed in order to minimize any impacts to water quality and biological resources the proposed project may result in: **Special Condition No. 10** requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction; and **Special Condition No. 11** which requires the continued use and maintenance of post construction BMPs.

In order to preserve and maintain access to the public tidelands, **Special Condition No. 12** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

The applicant agrees with the staff recommendation. The motion to approve the coastal development permit application is on **Page Six**. The special conditions begin on Page Seven.

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APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan, Dock System Plan and Seawall Plan](#)

[Exhibit No. 3 – Revised Site Plan and Dock System Plan](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0094 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 will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that 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 permittees 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 permittees 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. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final revised project plans. The intent behind the required revised project plans is to minimize eelgrass shading impacts of the proposed new dock float (with no direct eelgrass impacts), and identification of the materials to be used for the proposed guardrail on top of the seawall. The revised plans shall indicate: 1) the removal of the existing 10-foot x 12-foot pier platform and 3-foot x 18-foot gangway; 2) placement of the proposed new 3-foot x 24-foot gangway on the revised west dock float finger; 3) removal of the groin walls from the bay, consistent with Special Condition No. 6 below, and 4) the entire proposed dock float will be shifted to the east by approximately one foot. If glass plating is used for the guardrail, it will be frosted or etched to avoid bird strikes. The revised project plans shall be in substantial conformance with the plans submitted on February 7, 2018, March 23, 2018 and November 26, 2018. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. **Newport Tidelands Encroachment Permit from the County of Orange.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a copy of the Newport Tidelands Encroachment Permit from the County of Orange regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.
3. **Future Removal of Appurtenances and Improvements to Shoreline Protective Device.** Authorization of the repair and maintenance to the existing protective device (i.e., new coping and tiebacks) within State Tidelands which is the subject of this permit shall be limited to the term of the existing Lease agreement between the applicant and the County of Orange commencing in March 22, 1988 for a period of forty-nine (49) years until March 22, 2037 for the exclusive, private use of filled public State Tidelands lying between the extension of the property side lines from the adjudicated mean high tide line to the U. S. bulkhead line. Authorization of improvements to the existing protective device beyond the term of the existing Lease agreement (March 22, 2037) shall require proof of a Lease extension or renewal that expressly authorizes or allows for continued placement of the

existing protective device upon the State Tidelands. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that, in the event no valid Lease extension or renewal exists, the landowner(s) of 23 Harbor Island shall submit a CDP request to i) remove all improvements within State Tidelands approved under this Permit in accordance with any applicable Lease agreement conditions, and ii) restore the State Tidelands in accordance with any applicable Lease agreement conditions.

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, a written agreement between the applicant and the Commission for removal of the improvements to the existing shoreline protective structure on State tidelands as required by this special condition. The agreement shall be consistent with this action and the findings upon which it is based.

4. No Future Expansion of Existing Shoreline Protective Device and Future Removal of Development.

A. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permits No. 5-18-0094 and A-11-21-75-6647 shall be undertaken if such activity extends the footprint of the subject shoreline protective device bayward in order to protect the existing landside development including, but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices that may exist under applicable law.

B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowners shall remove and/or relocate, in whole or in part, the development authorized by this permit, including the residence and garage, foundations, patio and any future improvements, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above, in subsection A. of this condition. In the event that portions of the development fall to the bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the bay and lawfully dispose of the material in an approved disposal site. Removal of any development from the subject property and from areas bayward of the subject property, shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no coastal development permit is legally required.

5. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the

Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- 6. Removal of Groin Walls.** Existing groin walls located perpendicular to the existing seawall along the easterly and westerly portions of the property shall be evaluated for removal in connection with the authorized seawall repairs. The groin walls shall be removed if doing so would not result in impacts related to the structural integrity of the existing seawall and property, or adjacent seawalls and properties including dock structures. The project applicant shall submit an engineering report for the Executive Director's review analyzing the removal of the groin walls. If removal of the groin walls would impair the integrity of existing improvements, their removal shall not be required.

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, an engineering report analyzing the removal of the groin walls as required by this condition. If removal of the groin walls does not impair the integrity of existing improvements, their removal shall be required.

- 7. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0094. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-18-0094. Accordingly, any future improvements to the seawall authorized by this permit, 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 Permit No. 5-18-0094 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 8. 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 prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval by 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.

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

- 9. Pre-Construction *Caulerpa Taxifolia* Survey.** 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. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

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. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- (1) for the review and approval by 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.

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 *Caulerpa 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 *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

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

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

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

A. Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

B. Solid and Liquid Waste Management Measures:

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

C. Petroleum Control Management Measures:

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

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is the reinforcement of an existing seawall associated with an existing single-family residence on a bayfronting lot. The project also include the removal of a 10 foot by 12 foot pier platform and the existing 1,152 square foot boat dock system and gangway, and replacement with a 1,105 square foot boat dock system and new 3 foot by 24 foot gangway.

The project site is an approximate 7,050 square foot bayfront lot with seawall and a single-family residence located at 23 Harbor Island, a private gated island community within Newport Harbor, in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The onsite seawall was approved by the Coastal Commission on December 8, 1975 on a 30-foot x 50-foot leased area of State Tidelands by Coastal Development Permit A-11-21-75-6647 (Nabers). The City of Newport Beach LCP Coastal Zoning Map designates the site as R-1 (Single Unit Residential) and the proposed project adheres to this designation. The project is located in an urbanized area of the bay. Harbor Island is a small private gated island in Lower Newport Harbor with approximately 30 single family residences. To the north of the project site at 23 Harbor Island is a private residential street, single family homes to the east and west and on the south facing side of the lot is an area of filled tidelands followed by the waters of Lower Newport Bay Harbor.

The bayside boundary line of this parcel separates private property from public tidelands ([Exhibit No. 2, page 1](#)). This is an adjudicated line established through a judgment rendered in Orange County Superior Court Case No. 23690 which was recorded 7/12/28 in book 181 page 162 of the County's official records. Harbor Island is surrounded by a strip of filled reclaimed public tidelands approximately 30 feet wide ([Exhibit No. 1](#)). Beyond the upland filled public tidelands are the submerged tidelands of Newport Bay ([Exhibit No. 2, page 1](#)). These filled public tidelands are part of a legislative trust grant to the County of Orange (Chapter 526, Statutes of 1919, later amended by Chapter 415, Statutes of 1975) which presently continues to manage these tidelands on behalf of the State of California. As a result of special legislation (Chapter 715, Statutes of 1984), the County of Orange entered into 49-year leases (beginning in 1988 through 2037) with the landowners on Harbor Island providing each landowner with the exclusive private use of the 30-foot wide area of filled public tidelands bayward of their private property lines for *“landscaping and non-permanent recreational purposes as an adjunct to the residence...” such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade, as well as “any and all improvements existing as of August 1, 1990.”* It is on this basis that the seawall appears to be allowed upon the filled and reclaimed former tidelands.

Furthermore, prior to any lease of filled public tidelands (the current lease is a continuation of a 1983 interim lease for the filled and reclaimed former tidelands), on December 8, 1975, the Commission approved Coastal Development Permit A-11-21-75-6647 (Nabers) for construction of a seawall and return walls and dock work – the repair and maintenance of which is proposed as part of this permit – on public tidelands in front of 23 Harbor Island. Specifically, Coastal Development Permit A-11-21-75-6647 authorized construction of a 50-foot long seawall with a 13-foot return wall on each end; alteration of the size of the existing pier platform to 10 feet x 12

feet; relocation of the existing dock and extending it to the Pierhead Line; installation of two new 14-inch piles; and re-use of 5 existing piles and a gangway.

Therefore, the subject seawall was an existing Commission-approved development on State Tidelands prior to the Lease agreement and existing as of August 1, 1990. The continued placement of the seawall on the public trust tidelands (including the proposed seawall improvements) appears to comport with the March 22, 1988 Tidelands Lease. As indicated in a previous project also located on Harbor Island, the County represents that it will evaluate ongoing placement of the seawall on public trust tidelands when it considers extension or renewal of the Lease agreement. However, it is unclear whether the County has authority to extend or renew the current Lease agreement (which is authorized per Chapter 715 of Statutes 1984).

The seawall, in which reinforcement activities are being proposed and described more thoroughly below, is within the public tidelands leasehold. In the submerged tidelands beyond the seawall is a private dock associated with the single-family residence on the site located on private property. Work on the private dock is proposed as part of the project, as described below.

The proposed seawall repair and maintenance activities portion of the project consists of reinforcement of an existing seawall involving earth anchors, deadmen and a seawall cap. More specifically, the project consists of the following: installation of five earth anchors with tieback connection to deadmen, and installation of concrete coping to increase the top of the seawall cap from +9 MLLW to elevation +10 MLLW, consistent with the City of Newport Beach's current design flood elevation requirement ([Exhibit No. 2, page 2](#)). The applicant has identified that a guardrail will also be installed on top of the new coping; however, at this time, the material has not been identified. The applicant did state that if glass plating is used for the guardrail, it should be frosted or etched to avoid bird strikes. These repair and maintenance activities will occur from both the landside and from a barge on the water.

The applicant originally submitted a project that would result in 13 square feet of eelgrass shading impacts, but after discussion with staff the applicant has revised the project that results in a minimal eelgrass shading impact of approximately less than 2 square feet. The applicant states that the proposed dock system work is needed to accommodate his boat, which requires a wider slip.

In order to minimize impacts to eelgrass, the project has been revised to include the removal of the existing 10-foot x 12-foot pier platform and the shifting of the dock float to minimize any potential shading impacts to eelgrass beds. The revised proposed project includes the following: reinforcement of an existing seawall involving new earth anchors, deadmen and a seawall cap; and removal of a 10-foot by 12-foot pier platform and 1,152 square foot boat dock system with a 3-foot by 18-foot gangway, and replacement with a 1,105 square foot boat dock system and a 3-foot by 24-foot gangway ([Exhibit No. 3](#)). With these changes, shading impacts to eelgrass will be avoided and also additional water area previously shaded by the 10-foot x 12-foot pier platform (120 square feet) will be opened up and unimpeded. While the applicant has provided a narrative and tentative plan indicating these changes, no final revised plans have been submitted,

including the identification of the guardrail material. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

The proposed dock is consistent with the size of docks in the adjacent area and is consistent with past Commission-issued permits and as revised there are no proposed impacts to eelgrass. In addition, the proposed dock float also meets the City of Newport Beach Harbor Permit Policy in that it will not extend past the U.S. Pierhead Line and has been designed to the minimum required standards.

The proposed dock component of the project extends out into public tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a “*Tidelands Survey for Newport Harbor for the City of Newport Beach*”. Thus, the County of Orange would be the permit issuing authority for development (i.e. dock system) within the public tidelands area and the permits they issue for such development are entitled “Newport Tidelands Encroachment Permits”. The applicant has not yet applied for a “Newport Tidelands Encroachment Permit” for the proposed project from the county. Thus, the Commission imposes **Special Condition No. 2**, which requires the applicant to submit a copy of the “Newport Tidelands Encroachment Permit” issued by the County of Orange regarding the proposed project.

B. HAZARDS

Section 30253 of the Coastal Act, Minimization of adverse impacts, states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30235 of the Coastal Act, Construction altering natural shoreline, states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.1-1 states

Review all applications for new development to determine potential threats from coastal and other hazards.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.1-2 states

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.1-4 states

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

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.6-5 states

Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.6-6 states

Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts and eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.6-8 states

Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.6-9 states

Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline or bluff that is subject to wave action, erosion, flooding, landslides or other hazard associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

IP Section 21.30.015.E.2(d) – Coastal Hazards Report.

On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect

existing principal structures and adjacent development or public facilities on the site or in the surrounding area.

IP Section 21.30.015.E.2(e) – Coastal Hazards Report.

Identification of necessary mitigation measures to address current hazardous conditions such as siting development away from hazardous areas and elevating the finished floor of structures to be at or above the base flood elevation including measures that may be required in the future to address increased erosion and flooding due to sea level rise such as waterproofing, flood shields, watertight doors, moveable floodwalls, partitions, water-resistant sealant devices, sandbagging and other similar flood-proofing techniques.

IP Section 21.30.030.C.3 – Protective Structures.

The following shall apply to the construction of protective structures:

(a) The construction of protective structures shall be prohibited, except to protect coastal-dependent uses, or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and existing structures that are:

- (1) Not subject to recorded waivers of future protection*
- (2) Threatened by natural hazards, provided that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State tidelands.*

(b) Enlargement and Expansion of Land Areas. The construction of protective structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any adjacent protective device(s). Under no circumstances shall the backfill be used to create new usable land areas.

(d) Protective Devices Shall be Designed and Sited to:

- 1. Be as far landward as possible and within private property, where feasible;*
- 2. Eliminate or mitigate adverse impacts to coastal resources;*
- 3. Minimize alteration of natural shoreline processes*
- 4. Provide for public access to State Tidelands and recreational areas and facilities*
- 5. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;*
- 6. Eliminate or mitigate adverse impacts on local shoreline sand supply*
- 7. To have the smallest footprint possible; and*
- 8. Cause no reduction in public access, use or enjoyment of the natural shoreline environment and preserve or provide access to public recreational lands and facilities.*

(g) Limits on Authorization. Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be

conditioned to require the removal of shoreline protective devices when they are no longer needed.

(h) Removal from State Tidelands Required. Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal.

The existing seawall and return walls are bayward outside the applicant's property line on filled public tidelands. Tidelands, submerged lands, lands subject to the Public Trust, or lands that were subject to the Public Trust at any time are within the Commission's retained, original jurisdiction. (Pub. Res. Code § 30519(b).) Therefore, the Chapter 3 policies of the Coastal Act are the standard of review and the City's certified LCP serves as guidance in the review of the seawall repairs and maintenance.

The proposed seawall repair and maintenance activities consist of reinforcement of an existing seawall involving earth anchors, deadmen and installation of concrete coping to increase the top of the seawall cap from +9 MLLW to elevation +10 MLLW, consistent with the City of Newport Beach's current design flood elevation requirement. The current design flood elevation in Newport Bay is +9.0 feet MLLW and the proposed seawall cap will raise it one foot above that elevation. The applicant also proposes to install a guardrail on top of the improved seawall for safety considerations. The proposed work on the seawall does not extend the footprint of the subject shoreline protective device bayward.

To identify the condition of the bulkhead, the applicant provided two letters from William Simpson & Associates, Inc. dated June 30, 2018 and November 20, 2018. These letters identified that the pre-cast concrete panels and cast-in-place concrete coping were generally in good condition, without noticeable evidence of distress; however, the existing tiebacks and deadman will need to be replaced because their structural integrity does not meet the current California Building Codes and City of Newport Beach requirements. Additionally, the reports state that the only change to the existing coping is to add concrete atop of it to bring it up to the current LCP-mandated elevation. Also, the reports conclude that the existing seawall is necessary to protect the single-family residence on the property.

As previously stated, in 1975 the Commission permitted the construction of a new seawall and return walls at the subject site. The seawall and return walls are now located within an area of public tidelands leased to the property owner/applicant for its exclusive, private enjoyment. It appears to the Commission (and appears to be the County's position) that the existing seawall is authorized pursuant to the 1988 lease agreement which specifies as allowable uses "any and all improvements existing as of August 1, 1990." Furthermore, the current lease agreement was authorized by special legislation (Chapter 715 of Statutes 1984) which effectively declared the Legislature's position that the status of the filled and reclaimed tidelands rendered them unnecessary for public trust uses for the duration of the lease. Although only guidance for the seawall repairs and maintenance component of this project located on State Tidelands, the 2017 certified City of Newport Beach LCP contains a requirement to limit authorization of shoreline protective devices such as seawalls and require their removal once the existing structures requiring protection is redeveloped, is no longer present, or no longer require a protective device. The LCP also requires removal agreements for protective structures located on State tidelands and/or subject to potential future removal. The seawall at this subject site and all other seawalls

on State tidelands surrounding Harbor Island are subject to potential future removal at the time when the County's tidelands Leases expire in 2037. It is unclear that the County has the authority to extend the current Lease or to enter into a new lease for private use of the public trust tidelands beyond the current Lease term, but the County represents that it may re-negotiate and re-enter into a new lease at the expiration of the current Lease. Therefore, the Commission imposes **Special Condition No. 3** which limits authorization of the repair and maintenance to the existing protective device (i.e., new coping and tiebacks) within State tidelands to the term of the existing Lease agreement between the applicant and the County. Beyond the term of the lease, the applicant shall either remove the improvements or provide proof of a Lease extension or renewal that authorizes or allows for continued placement of the seawall and other improvements upon the State tidelands.

Commission records indicate that the existing single-family residence on the landward side of the subject site on private property was on the site in 1975 when the Commission approved Coastal Development Permit A-11-21-75-6647 (Nabers) for construction of the existing seawall, return walls and dock work. Thus, under Section 30235 of the Coastal Act, the existing residence is entitled to a shoreline protective device since it is an existing structure¹. The improvements to the seawall that the applicant is proposing does not involve the actual concrete panels that make up the seawall and does not increase the footprint of the seawall, or move the seawall further bayward. The method of repair and maintenance does not result in adverse environmental impacts, is not inconsistent with Coastal Act requirements, and is the feasible alternative that avoids adverse impacts to the existing development. Therefore, to ensure that proposed new development does not result in adverse impacts to the existing development or the surrounding area by extending the footprint of the subject shoreline protective device, the Commission imposes **Special Condition No. 4** requiring the applicant agree that no future expansion of the existing shoreline protective device shall be undertaken to protect the existing landside development, including but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards in the future. **Special Condition No. 4** also requires that the applicant remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to the hazards identified above. The landowner must also remove any recoverable debris associated with the development that should fall into bay waters before they are removed. Additionally, since the proposed development is located in an area where coastal hazards exist and can adversely impact the development, the Commission imposes **Special Condition No. 5**, which requires the applicant to assume the risk of development.

As stated, the Commission approved Coastal Development Permit A-11-21-75-6647 (Nabers) approved on December 8, 1975 for construction onsite including two return walls (groin walls), located on the easterly and westerly portions of the property fronting the bay. The applicant has proposed to remove these groin walls in order to provide additional soft bottom habitat to offset any potential shading impacts to eelgrass beds that may result from the proposed dock. The removal of the groin walls will be feasible if it is determined that doing so would not impact the

¹ Likewise, under Section 30235 of the Coastal Act, seawalls may only be permitted if necessary to protect "existing structures" or public beaches in danger from erosion. The Commission's Sea-Level Rise Guidance, adopted in 2015 and updated in November 2018, interprets "existing structures" in Section 30235 to mean that the structure is in existence when the Coastal Act was adopted (January 1, 1977).

structural integrity of the existing seawall and property, or adjacent seawalls and properties including dock structures. Currently, that information is not available. Thus, the Commission imposes **Special Condition No. 6**, which requires the applicant to submit an engineering report for the Executive Director's review analyzing the removal of the groin walls. If removal of the groin walls does not impair the integrity of existing improvements, their removal shall be required.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the site on public tidelands could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 7** informing the applicant and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-18-0094 or a new coastal development permit.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30253 and 30235 of the Coastal Act and with the hazards policies of the City's certified LCP, as discussed above.

C. MARINE RESOURCES/WATER QUALITY

Section 30230 of the Coastal Act, Marine Resources; maintenance, 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, Biological productivity, water quality, 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, Oil and hazardous substance spills, 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.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-4 states,

Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-5 states,

*Where applicable require eelgrass and *Caulerpa taxifolia* surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and *Caulerpa taxifolia* Survey protocols.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states,

Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

- A. *Construction or expansion of port/marine facilities.*
- B. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*
- C. *In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- D. *Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- E. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- F. *Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- G. *Restoration purposes.*
- H. *Nature study, aquaculture, or similar resource-dependent activities.*
- I. *In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-2 states,

Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.

Coastal Land Use Plan, Dredging, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

Avoid impacts to eelgrass (Zostera marina) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 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.

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states,

Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states,

Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states,

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-19 states,

Require parking lots and vehicle traffic areas to incorporate BMPs designed to prevent or minimize runoff of oils and grease, car battery acid, coolant, gasoline, sediments, trash, and other pollutants to receiving waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states,

Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

1. Marine Resources/Biological Productivity

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The

existing boat dock system consists of 1,152 square feet of water coverage and the proposed dock system consists of 1,105 square feet. As proposed, the proposed boat dock system results in approximately 47 square foot of decreased water coverage.

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

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

While the proposed project does result in 47 square feet of less water coverage, the project does result in 13 square feet of shading impacts to eelgrass from the proposed 3-foot x 24-foot gangway and the east dock float finger. After discussing these concerns with the applicant, the applicant opted to revise his project to minimize shading impacts to eelgrass with his proposed project. To accomplish this, the applicant has proposed to eliminate the proposed east side 3-foot x 24-foot gangway and instead eliminate the existing 10-foot x 12-foot pier platform and 3-foot x 18-foot gangway and install a new 3-foot x 24-foot gangway at this location; and shifting the dock float to the west. As a result of these changes, shading impacts to eelgrass will be minimized to less than 2 square feet and also additional water area previously shaded by the 10-foot x 12-foot pier platform (120 square feet) will be opened up and unimpeded. With the project resulting in a total of 167 square feet of less water coverage that can possibly foster eelgrass growth in this area as it is shown to grow here, the applicant’s anticipated eelgrass shading impact of less than 2 square feet is appropriately mitigated. While the applicant has provided a narrative and tentative plan indicating these changes, no final revised plans have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Increased water coverage resulting from larger boat dock systems would add to cumulative adverse effects on biological resources of multiple large docks in Newport Harbor. Although a single larger boat dock system may not

seem to create significant adverse impacts, the cumulative adverse effect of allowing such increased water coverage will add up over time. It should be noted that there are hundreds of private residential boat dock systems in Newport Harbor and each one has the potential to be replaced by a newer boat dock system. As conditioned, the proposed revised boat dock system minimizes impacts to marine resources and preserves open water area and therefore would not have cumulative adverse impacts upon coastal resources and would be consistent with Sections 30230 and 30231 of the Coastal Act.

2. Eelgrass

An eelgrass survey took place on April 30, 2017 as required by the City of Newport Beach Harbor Resources Division. Eelgrass was found in the project area and as originally proposed, the project would result in eelgrass shading impacts as discussed previously. However, the applicant has now revised the project to avoid eelgrass shading impacts and the Commission has imposed **Special Condition No. 8** requiring the applicant to submit revised plans showing the revised project that would avoid eelgrass shading impacts. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). The project is agendaized for the December 2018 Coastal Commission Hearing so the existing eelgrass survey is no longer valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **Special Condition No. 8**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

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 pre-construction *Caulerpa Taxifolia* survey was completed on April 30, 2017 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized for the December 2018 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa*

Taxifolia survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 9**, 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 and Post-Construction Impacts

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

To assure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 10**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes **Special Condition No. 11**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, and 30232 of the Coastal Act and with the marine resources and water quality policies of the City's certified LCP, as discussed above.

D. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act, Access; recreational opportunities; 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, Development not to interfere with access, 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, New development projects (in part), states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30220 of the Coastal Act, Protection of certain water-oriented activities, states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act, Oceanfront land; protection for recreational use and development, states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act, Private lands; priority of development purposes, states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30224, Recreational boating use; encouragement; facilities, states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30250 of the Coastal Act, Location, existing developed areas, states:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

Coastal Land Use Plan Policy, Tidelands and Submerged Lands, 2.5.2.1 states,

Administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust and all applicable laws including...and the Coastal Act.

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Coastal Land Use Plan Policy, Tidelands and Submerged Lands, 2.5.2.2 states,

Promote the public's right of access to the ocean, beach, and bay and to the provision of coastal-dependent uses adjacent to the water in the leasing or re-leasing of publicly owned land.

Coastal Land Use Plan Policy, Tidelands and Submerged Lands, 2.5.2.3 states,

Evaluate and ensure the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-6 states,

Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, the State Coastal Conservancy, Orange County, and private organizations to protect, expand and enhance public access to and along the shoreline and to beaches, coastal parks and trails.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-9 states,

Protect, expand, and enhance a system of public coastal access that achieves the following:

Maximizes public access to and along the shoreline;

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-11 states,

Require new development to minimize impacts to public access to and along the shoreline.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-12 states,

Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.

Coastal Land Use Plan Policy, Bay/Harbor Encroachments, 3.1.4-3 states,

Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

Coastal Land Use Plan Policy, Bay/Harbor Encroachments, 3.1.4-7 states,

Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.

Coastal Land Use Plan Policy, Bay/Harbor Encroachments, 3.1.4-8 states,

Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.

Coastal Land Use Plan Policy, Recreation and Support Facilities, 3.1.2-1 states,

Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.

IP Section 21.48.085.D – Public Trust Lands - Leases

2. Land Use. Land uses shall be consistent with the Public Trust land use restrictions. Priority shall be given to the provision of coastal-dependent uses.

3. Public Access. Public access shall be provided in a manner consistent with Chapter 21.30A (Public Access and Recreation) and the public access and recreation policies of Chapter 3 of the Coastal Act.

IP Section 21.30.030.C.3 – *Protective Structures. The following shall apply to the construction of protective structures:*

(g) Limits on Authorization. Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be conditioned to require the removal of shoreline protective devices when they are no longer needed.

(h) Removal from State Tidelands Required. Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal.

Seawalls are known to interrupt normal processes of erosion and sediment transport, which can lead to regional sediment starvation in beaches, inconsistent with Coastal Act policies protecting access and recreation. In addition, shoreline protection is placed on waterfront areas that are protected for public access and recreational uses. In this case, part of the site is public trust tidelands (though as stated above, per Chapter 715 of Statutes 1984, for the duration of the existing lease, the filled and reclaimed tidelands were deemed unnecessary for public trust uses) and the existing seawall is located on public trust land. Generally speaking (and in the long-term for the current project site given the uncertainty of whether the County has legal authority to extend the current lease which allows for ongoing placement of the seawall), public trust lands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. The tidelands in Newport Harbor were granted by legislation to the County of Orange and City of Newport Beach. Public Trust doctrine traditionally describe navigation, commerce and fisheries as the acceptable uses within public tidelands, but these uses have been broadened to include the right of the public to fish, hunt, bathe, swim; boating and

general recreation; preservation; scientific study; use as open space; and the right of the public to use the bottom of the navigable waters for anchoring, walking, or standing. The grant to the County specifically delineates the allowable uses of the filled tidelands on this project site, stipulating that the tidelands at the project site can only be used for purposes of general statewide interest, including the operation of docks and similar structures, recreational facilities, preservation of nature for scientific study, open space, and wildlife habitat. However, it appears that the Tidelands Grant does not constrain the subject site because of the California Legislature's subsequent adoption of Chapter 715 of Statutes 1984 and execution of the existing lease agreement, which explicitly allows occupation of the public trust tidelands for private use by the abutting landowner for the term of the lease. Thus, although seawalls to protect private development typically would not be an allowable use on public trust property, such as the tidelands at issue here, it appears such development is permissible at least for the term of the current lease.

When seawalls/bulkheads are constructed along the shores of Newport Bay they have a generally consistent design that involves placing a vertical sheetpile, embedded in bedrock, parallel to the shoreline. To provide lateral support, tie backs are affixed to the seawall coping, extending landward, that are embedded in soil or a large block of concrete known as a 'deadman' behind the wall. Such walls lead to erosion of the soils and beach in front of the seawall.

Where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the bay and the upland. On an eroding shoreline, a beach will exist between the shoreline or waterline as long as sand is available to form a beach. As erosion proceeds, the profile of the beach also retreats and the beach area migrates inland. This process stops, however, when the backshore is fronted by a hard protective structure such as a seawall/bulkhead. While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. The beach area will narrow, being squeezed between the moving shoreline and the fixed backshore. Eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armor.

Additionally, rising sea levels must be taken into consideration. The best available science supports that there has been an increase in average global temperatures and that an increase in sea level can be expected to accompany this increase in temperature (the best available science, consisting of the Ocean Protection Council's *Sea-Level Rise Guidance, 2018 Update*, indicates that near Los Angeles, sea level could rise by as much as 6.7 feet by the year 2100, and even more if extreme risk scenarios are assumed. Mean sea level and projected sea level rise affects shoreline erosion in several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean/bay with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore.

To ensure that future impacts to public access resources identified above are avoided throughout the life of the development that is approved under this permit, thereby enabling the Commission to find the development consistent with the certified LCP and public access and recreation policies of the Coastal Act, noted above, the Commission imposes **Special Condition No. 4** requiring the applicant agree that no future expansion of the existing shoreline protective device

shall be undertaken to protect the landside development approved pursuant to this CDP, including but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards in the future.

Special Condition No. 4 also requires that the landowner remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to the hazards identified above. The landowner must also remove any recoverable debris associated with the development that should fall into bay waters before they are removed, work that would require a CDP or amendment to this permit.

In the short term, the State Lands Commission, through its tidelands grantee the County of Orange, which thereby acts as the trustee of the granted tidelands, has entered into a 49-year lease (through 2037) giving the applicant exclusive use of an approximate 30-foot wide area of filled and reclaimed former tidelands bayward of their property for landscaping and non-permanent recreational improvements, such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade, as well as “any and all improvements existing as of 1990.” All other property owners on Harbor Island have the same lease with the County of Orange. In this particular case for 23 Harbor Island, the seawall was an existing improvement on the public tidelands.

Over the long-term, these tidelands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities and boating facilities. The tidelands lease ends in 2037 and it is unclear that the County has legal authority to extend or renew the current leases per Chapter 715 of Statutes 1984 or some other authority. At that time the County can return the lands back to the public domain and require all private improvements to be removed, or if legally authorized it may be possible for the County to re-enter into a new re-negotiated lease agreement. At that time, the County would need to address the question of whether or not seawalls in the leasehold area are considered an allowable use under the Public Trust Doctrine and in context of Chapter 715 of Statutes of 1984.

Coastal Act Sections 30220, 30221, 30222 and 30224 respectively require that coastal areas suited for water-oriented recreational activities be protected for such uses; that oceanfront land suitable for recreational use be protected for such uses; that visitor-serving commercial recreational facilities shall have priority over private residential uses on private lands; and that recreational boating be encouraged by limiting non-water dependent land uses that congest access corridors and preclude boat support facilities. Further Coastal Act Sections 30210 through 30212 require maximum public access and recreational opportunities to be provided. The portions of the project site which include filled and submerged public trust lands are coastal areas suitable for boating and other water-oriented recreation activities.

The repairs and maintenance to the seawall do not involve the actual concrete panels that make up the seawall and thus do not change the footprint of the existing seawall. The method of repair and maintenance does not result in adverse environmental impacts, was not inconsistent with Coastal Act requirements, and as such, staff concludes is the feasible alternative that avoids adverse impacts to public access.

Additionally, in order for the seawall repairs and maintenance to be in compliance with Coastal Act public access policies, the Commission imposes **Special Condition No. 3** limiting the authorization of proposed improvements to the existing protective device (i.e., new coping and tiebacks) within State tidelands to the term of the existing Lease agreement between the applicant and the County of Orange commencing in March 22, 1988 for a period of forty-nine (49) years until March 22, 2037 for the exclusive, private use of filled public State tidelands lying between the extension of the property side lines from the adjudicated mean high tide line to the U.S. bulkhead line. And although just guidance, the City of Newport Beach certified LCP also has a requirement for an agreement to remove protective structures that are located on State tidelands and/or subject to potential future removal. Therefore, **Special Condition No. 3** also requires the applicant enter into an agreement with the Coastal Commission outlining the future removal of appurtenances and improvements to the existing shoreline protective device. In 2037, when the lease expires for all the landowners on Harbor Island, the State Lands Commission/County of Orange may return these leased filled tidelands to the public domain, or if legally authorized pursuant to Chapter 715 of Statutes 1984 or some other authority, it is possible the SLC/County may decide to re-enter into another lease period with the Harbor Island landowner(s), or may re-negotiate the terms of the lease and clarify the question of whether seawalls/bulkheads on public State tidelands is consistent with the Public Trust land use restrictions. Per **Special Condition No. 3**, beyond the term of the current Lease, the applicant shall either remove the improvements (per the lease conditions) or provide proof of a Lease extension or renewal that authorizes or allows for continued placement of the seawall and other improvements upon the State tidelands. Should there be no Lease extension, the removal and/or relocation of all private development within State Tidelands on Harbor Island at the expiration of the Lease Agreement would be most efficiently undertaken in the context of a comprehensive and coordinated approach. This would require cooperation by all Harbor Island property owners.

Harbor Island is a private community within Newport Bay. No general public pedestrian or vehicle access presently exists onto Harbor Island. The nearest public access is located along a beach in the Beacon Bay community located on the landward side of the bridge leading to the island. There is also a public walkway that surrounds Balboa Island, approximately ¼ mile southeast of the project site and public beaches approximately ½ mile south along the Balboa Peninsula. Because there is no existing public pedestrian or vehicle access to the island, the project will not impact such public access. Furthermore, as noted above, per Chapter 715 of Statutes 1984 the State Legislature has deemed the filled and reclaimed tidelands occupied by the private landowners of Harbor Island to be unnecessary for public trust uses for the duration of the existing leases. However, the public is able to access the beach/public tidelands area bayward of the subject site by watercraft or by swimming to the site. Therefore, except as described above with regard to future potential opening of public access to the filled tideland areas currently under lease to Harbor Island property owners, the proposed development will not have a direct impact to the current public access resources to or along the public tidelands. In order to preserve and maintain access to the public tidelands, **Special Condition No. 12** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212, 30220, 30221, 30222, 30224 and 30250 of the Coastal Act and with the public access policies of the City's certified LCP, as discussed above.

E. LOCAL COASTAL PROGRAM (LCP)

On January 13, 2017, the City of Newport Beach LCP was effectively certified. Development proposed bayward of the property line including development on filled tidelands is located within the Commission's jurisdiction and consequently, the standard of review is the Chapter 3 of the Coastal Act and the certified LCP serves as guidance. As conditioned, the proposed landside development is consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act; and only as conditioned, is proposed development within the Commission's original jurisdiction consistent with Chapter 3 of the Coastal Act.

F. 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 reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach (Planning Department and Harbor Resources Division) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt from CEQA (Class 1, CEQA Guidelines Sections 15301) on January 5, 2018.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the hazards, marine resources, water quality and public access and recreation policies of the Coastal Act.

Therefore, as conditioned, the Commission finds that 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 consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A: Substantive File Documents

Coastal Development Permit A-11-21-75-6647-(Nabers); City of Newport Beach Harbor Resources Division Approval-In-Concept (Dock) dated September 1, 2017; City of Newport Beach Harbor Resources Division Approval-In-Concept (Dock) dated January 5, 2018; Letter from OC Parks to CAA Planning, Inc. dated January 30, 2018; Eelgrass Impact Assessment prepared by EcoMarine Consulting LLC dated February 3, 2018; Letter from CAA Planning, Inc. to Commission staff dated February 5, 2018; Letter from Commission staff to CAA Planning, Inc. dated March 9, 2018; Letter from CAA Planning, Inc. to Commission staff dated March 23, 2018; Letter from Commission staff to CAA Planning, Inc. dated April 25, 2018; Email from CAA Planning, Inc. to Commission staff dated April 30, 2018; Letter from Commission staff to CAA Planning, Inc. dated June 5, 2018; Email from CAA Planning, Inc. to Commission staff dated June 8, 2018; Letter from CAA Planning, Inc. to Commission staff dated July 2, 2018; Letter from William Simpson & Associates, Inc. dated June 30, 2018; and Email from CAA Planning, Inc. to Commission staff dated November 26, 2018.