

**CALIFORNIA COASTAL COMMISSION**

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# F10f

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Staff: M. Vaughn-LB  
Staff Report: 2/21/2019  
Hearing Date: 3/8/2019

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-1014

**Applicant:** Kip Cyprus

**Agent:** Jorge Tomas, Associated Pacific Constructors

**Project Location:** 221 Via Lido Soud, Newport Beach, Orange County (APN 423-141-01).

**Project Description:** Remove 706 square foot, U-shaped dock float and replace it with a new 56 feet long, 8 feet wide, single finger dock float with a 14-foot by 12-foot landing at the landward end of the float. The landing will accommodate the existing, to-remain 3-foot by 19-foot gangway. Four 12-inch diameter concrete piles will be removed and replaced with four 14-inch diameter concrete piles.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to remove and replace a boat dock float and four supporting piles. The total over water coverage of the proposed single finger boat dock float will be reduced by 152 square feet compared to the over water coverage of the existing U-shaped boat dock float. There is an existing pier platform at the subject site that appears to be unpermitted. However, this project will only remove and replace the existing boat dock float and supporting piles. The applicant is not proposing any work to the unpermitted pier platform, and the applicant is not proposing to change the gangway; therefore, the proposed project, consisting of replacement of the boat dock float with a smaller boat dock float and replacement of four piles, can be approved consistent with Chapter 3. The applicant has not applied for after the fact approval of the

5-18-1014 (Cyprus)

unpermitted development at this time. The Commission's enforcement division will evaluate further actions to address the unpermitted development not resolved by this permit.

Staff is recommending APPROVAL of the proposed project with five special conditions regarding: 1) submittal of revised plans depicting the proposed development and the unpermitted pier platform and containing a statement that the pier platform is not permitted; 2) water quality protection measures; 3) eelgrass surveys; and 4) caulerpa surveys; and, 5) protection of any public rights that may exist at the subject site.

The City of Newport Beach has a certified Local Coastal Program (LCP), but because the project is located seaward of the mean high tide line, it is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act.

The motion and resolution to carry out the staff recommendation is found on page 4.

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**EXHIBITS**

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Project Plans
- Exhibit 3 – Aerial Photos Past and Present

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-1014 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

#### 1. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of revised plans, drawn to scale and prepared by an appropriately licensed professional, depicting the proposed development and the unpermitted pier platform, and containing a statement that the pier platform has not been permitted by the Coastal Commission and is not approved by the Coastal Commission as part of this permit action.

#### 2. Water Quality

##### A. Construction Responsibilities and Debris Removal

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

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

**B. Best Management Practices Program**

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

- (1) Boat Cleaning and Maintenance Measures:
  - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
  - b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
  - c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
- (2) Solid and Liquid Waste Management Measures:
  - a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.
- (3) Petroleum Control Management Measures:
  - a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year

and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;

- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

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

- A. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within than 60 days prior to the start of construction. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy and Implementing Guidelines” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit, as provided in Subsection B of this Special Condition.
- B. **Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive

Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site (mitigation:impact), or at another location, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

**4. Pre-construction *Caulerpa Taxifolia* Survey**

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
  - (1) for the review and approval of the Executive Director; and
  - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Public Rights**

The 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 applicant proposes removing a 706 square foot, U-shaped dock float and replacing it with a new, 56 foot long, 8 foot wide, single finger dock float with a 9 foot by 12 foot landing at the landward end of the float. In addition, four 12-inch diameter concrete piles will be removed and replaced with four, 14-inch diameter concrete piles. Only the float and four piles of the dock system will be replaced. The proposed dock float is 554 square feet in area. The 12 by 9 foot landing area of the dock float will accommodate the existing, to-remain 3 foot by 19 foot long gangway. The total over-water coverage of the new single finger boat dock float will be reduced by 152 square feet compared to the over-water coverage of the existing U-shaped boat dock float. There is an existing pier platform at the subject site that appears to be unpermitted. The applicant has not applied for after the fact approval of the pier platform at this time.

The subject site at 221 Via Lido Soud on Lido Isle in Newport Harbor is developed with a single-family residence and associated private residential boat dock, in the City of Newport Beach (Exhibit 1). The land fronting on Newport Harbor on Lido Isle is generally developed with single-family residences and associated private boat docks.

The City of Newport Beach has a certified Local Coastal Program (LCP). However, due to the project location over public tidelands/submerged lands, the project is within an area of the Commission's retained permit jurisdiction. Nonetheless, the City's certified LCP may be used as guidance. The public tidelands in this area have been granted by the State to the City of Newport Beach. The certified Coastal Zoning Map zoning designation at the project site is TS – Submerged Lands and Tidelands. LCP Implementation Plan (IP) Section 21.48.085 limits uses in this zone to public trust uses: navigation, fishing, commerce, public access, water-oriented recreation, open space and environmental protection. The proposed boat dock will be used solely for water-oriented recreation, and is thus consistent with the zoning designation and with the City's tidelands grant. The City of Newport Beach Harbor Resources Division reviewed the proposed dock replacement plans and issued a Harbor Permit/Approval-in-Concept dated 5/22/18. The City of Newport Beach Harbor Resources Division reviewed the proposed dock replacement plans and issued a Harbor Permit/Approval-in-Concept dated 5/22/18.

### B. PUBLIC ACCESS & RECREATION

Section 30210 of the Coastal Act states:

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

Section 30224 of the Coastal Act 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.*

The proposed replacement boat dock float and piles will be used for boating related purposes only. The boat dock is associated with the adjacent single-family residence. The proposed boat dock float and piles will be constructed on public tidelands, within an area subject to the public trust. The proposed development, consisting of replacement of a private boat dock float and replacement of the supporting piles, will occur in the water area adjacent to and channel-ward of the existing residential development on a bulkheaded lot, and will not have any new adverse impact on public access to the coast or to nearby recreational facilities. There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. There is no sandy beach area in front of the subject site, therefore, in this case, the continued placement of a dock system beyond the bulkhead would not create an impediment to public access as there is no opportunity for the public to walk upon the land in front of the bulkhead at this site now.

Marina Park is located across the channel, approximately 1000 feet southwest of the subject site. From this coastal access point, members of the public have access to a sandy beach and the public tidelands of Newport Harbor, where there are opportunities for recreation, to sunbathe, or to launch small watercraft such as a kayak. There is also a small public park with benches overlooking the harbor approximately 800 feet northwest of the subject site at the western end of the Via Lido Bridge. In addition, the ocean fronting, sandy public beach along the Balboa Peninsula is located approximately 2000 feet southwest of the subject site.

There is an existing significant pattern of development of private residential docks beyond the bulkhead associated with single family homes within the project vicinity (Exhibit 1). Thus, the proposed dock replacement at this site and in this location would not establish a new pattern of development (nor create a new adverse public access condition, as previously mentioned). Finally, **Special Condition No. 4** 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 or on adjacent public waters. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Section 30210 of the Coastal Act.

The proposed recreational boat dock project is an allowable and encouraged marine-related recreational use. The proposed project will allow the applicant the continued use of the recreational boat dock. The Commission finds that the development conforms with Section 30224 of the Coastal Act regarding the promotion of recreational boating use.

### **C. MARINE RESOURCES**

Section 30233(a) of the Coastal Act states (in pertinent part):

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible*

*mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

...

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

...

The proposed project will result in fill of coastal waters pursuant to Section 30233(a) of the Coastal Act due to the replacement of four, 12” piles with four 14” piles. Pursuant to Section 30233(a)(3), fill may be allowed for new or expanded boating facilities, such as the proposed project. In addition to being an allowable use, the proposed development must also be the least environmentally damaging, feasible alternative, and feasible mitigation measures must be provided to minimize adverse environmental effects.

The proposed recreational dock project is an allowable and encouraged marine-related use. Regarding the least environmentally damaging feasible alternative and adequate mitigation: the 152 square foot reduction in size of the proposed dock float from the existing size and shape is beneficial to the marine environment, such as for example allowing for additional light penetration and potential growth of eelgrass; the applicant is proposing to install a turbidity boom to minimize impacts during the removal and installation of the piles. In addition, no debris will be allowed to fall and remain in the water during construction of the proposed project; if any debris does fall into the water it will be immediately retrieved from the water.

Moreover, the net amount of fill resulting from the proposed project (removal of four 12-inch piles and replacement with four 14-inch piles), amounts to only 0.28 square feet of fill, for an allowable and encouraged use. The proposed pile diameter is the minimum necessary to support the boat dock. The Commission has routinely approved similar boat dock projects in Newport Harbor and other similar areas. In those cases the piles have ranged in diameter from 12” up to 16”. The fill difference is minimal and impacts between the sizes have not been considered significant and the project will not result in any adverse environmental effects, and therefore mitigation measures are not required. The proposed private recreational boat dock development and its associated structures will result in fill of coastal waters; however, the boat dock is an allowable and encouraged marine-related use. The proposed dock work will not have any significant adverse effect on sensitive marine resources, such as eelgrass. Therefore, the Commission finds that the proposed development, which is to be used solely for recreational boating purposes, conforms with Section 30233(a) of the Coastal Act. In addition, Special Condition No. 2 imposes water quality protection measures to be implemented both during construction and post construction (clean boating measures).

The site was surveyed by Pi Environmental for both eelgrass and *Caulerpa taxifolia* and no eelgrass or *Caulerpa taxifolia* was found at the subject site. The surveys took place on May 22, 2018 during the active growth phase of eelgrass (typically March through October). An eelgrass survey is valid for a 60-day period and a *Caulerpa taxifolia* survey is valid for a 90-day period 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). As this item is scheduled

to be heard by the Coastal Commission at its March 2019 meeting, the surveys may no longer be valid once construction commences. Therefore, subsequent eelgrass and *Caulerpa taxifolia* surveys may be required prior to commencement of construction in the water should the coastal development permit application be approved.

To further protect marine resources while allowing for the maintenance of recreational boating facilities onsite, **Special Conditions 3 and 4** require pre and post eelgrass surveys and a pre *Caulerpa* survey to be conducted if the May 22, 2018 surveys are no longer valid. If eelgrass or *Caulerpa taxifolia* are determined to be present prior to construction, then the applicant must apply for a permit amendment unless all eelgrass and/or *Caulerpa* onsite is avoided or removed consistent with Commission authorization. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational purposes, conforms with Sections 30224 and 30233 of the Coastal Act.

#### **D. WATER QUALITY**

The proposed work will be occurring in a location where there is a potential for discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris 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. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers. To ensure that all impacts (pre- and post- construction) to water quality are minimized, however, and to reduce the potential for construction-related impacts on water quality, **Special Condition No. 1** is imposed, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post construction BMPs.

#### **E. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without benefit of the required coastal development permit, including a 22' x 16' pier platform with an 11' x 4' lobe. The development is considered "unpermitted development" as it appears that it was constructed without a coastal

development permit. The applicant has not requested approval of the unpermitted development as part of this CDP, and the unpermitted development would not be authorized by this CDP.

The pier platform appears to be unpermitted based upon historic aerial photos which do not show the existing pier platform in its current configuration. In 1981, the Commission approved Coastal Development Permit 5-81- 42 which allowed construction of a boat dock and 10' by 14' pier platform. However, aerial photos from March 2004 do not show a pier platform at the site at all. Other than the 1981 CDP, there are no records for a Coastal Development Permit for the existing pier platform. In addition, the City's LCP limits the size of pier platform to 170 square feet. The dimensions of the pier platform depicted on the project plans indicate the platform is 22 feet by 17 feet. Current aerial photos depict a pier platform much larger than the neighboring pier platforms.

Therefore, **Special Condition 1** requires that the applicant submit revised project plans, drawn to scale, showing the existing pier platform clearly marked "this element not permitted by any coastal development permit," as it has not received Commission approval.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified City of Newport Beach Local Coastal Program was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission's enforcement division will evaluate further actions to address the unpermitted development not resolved by this permit.

#### **F. LOCAL COASTAL PROGRAM**

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. Development proposed bayward of the property line 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 development within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act.

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

As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.