

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
 301 E. Ocean Boulevard, Suite 300  
 Long Beach, CA 90802  
 (562) 590-5071

**W27d**

Filed:	10/25/18
180th Day:	Waived
270 <sup>th</sup> Day:	7/22/19
Staff:	F. Sy-LB
Staff Report:	6/28/19
Hearing Date:	7/10/19

**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-18-0705

**Applicant:** George Gallian

**Agent:** Swift Slip Dock and Pier Builders

**Location:** 2806 Lafayette Avenue, City of Newport Beach (Orange County)

**Project Description:** Remove an existing 30 foot long x 6 foot wide public pier platform on four 14-inch square concrete guide piles over the water and expand an existing private dock system shared by two private properties. The expansion of the existing 30 foot long x 6 foot wide (180 square feet) private dock system would include installing two, 14-inch square concrete marina guide piles; a 38 foot long x 4 foot wide finger; a 14.5 foot long x 4 foot wide headwalk; a 3 foot x 3 foot knee; and an 18 foot x 3 foot knee, totaling 301 square feet. The project would result in a shared private dock with 481 square feet of surface area.

**Staff Recommendation:** Denial

**SUMMARY OF STAFF RECOMMENDATION**

The proposed project is located within the Commission's original permit jurisdiction because it is proposed to be located above the waters of Newport Bay. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, although the City's certified Local Coastal Program (LCP) is advisory in nature and may provide guidance for consideration of the proposed development's consistency with Chapter 3.

The proposed project is the removal of an existing 30 foot long x 6 foot wide public pier platform on piles that is part of a larger public walkway over the water. The removal of the pier platform would allow the adjacent property owner to expand an existing private dock system that is shared by two private properties. On the landside portion of the subject property is a two-story mixed use building and no work is proposed on the building. Commission staff is recommending **DENIAL** of the proposed deck because of its adverse impacts to public access.

In this area of Newport Bay, the LCP and the public access policies of the Coastal Act, require a continuous lateral public accessway between the development (on the inland side) and the public waters. When properties are redeveloped or improved, the Commission has historically required that the lateral public accessway be built, so that eventually each property in this area will be fronted by the public boardwalk and the boardwalk will be continuous.

On this site, the public pier platform was part of the required lateral accessway. The pier platform is what remains of the lateral accessway that used to wrap around the development located on the neighboring property (2808 Lafayette). Because the structure at the neighboring site encroached into the bay a significant amount, this pier platform was constructed to connect to the lateral accessway seaward of the encroaching structure. The public pier platform on the subject site was part of an existing 6 foot wide lateral public walkway over the water on piles, which was approved by the Coastal Commission in 1990. The original construction of the pier platform provided lateral access around the bayward encroaching neighboring structure, and since then that structure collapsed into the bay and has been removed. Thus, the existing pier platform remains on the subject site, as an extension of the previous lateral accessway. It currently functions as a vertical element (encroaching out into the bay by 30 feet) as part of the remaining lateral accessway providing enhanced public access opportunities and enhanced views of the bay. The lateral boardwalk on the subject site remains, but the lateral access on the neighboring site (2808) has been removed (although the Commission required through a separate permit action that it be reconstructed.)

The current public pier platform may not serve as current lateral access in the same way that it used to, but it still provides public access benefits. Its current function as a vertical element into the bay provides an opportunity for the public to access the channel in an area where access is fairly limited. If it were open and available for public use (it is currently gated) it would provide enhanced public views of the bay beyond what can be seen from the existing lateral accessway. Furthermore, depending on the exact location of the yet-to-be constructed neighboring lateral access, it may continue to be part of the existing lateral accessway in the future. Until such a time that lateral access is continued across the neighboring site, there is no reason to remove this remaining portion of the previous lateral accessway. Further, because the LCP encourages new vertical accessways where feasible, the function of the pier platform as a vertical accessway now and in the future is consistent with the LCP and the public access policies of the Coastal Act.

The applicant proposes to demolish the pier platform in order to enlarge the private dock, and has asserted that it is currently unsafe for public access. It is not clear from the submittal if the pier is assumed to be unsafe because it lacks a hand-railing on one side, or because it is structurally unsound. The applicant submitted photographs of the pier that show cracks along the surface, but there is no evidence or engineering reports that indicate that the structure is at risk of failing. It appears that the pier could be repaired and a hand rail could be installed to

make the structure safe for public access. Further, the applicant has the option of exploring alternatives to enlarge the dock system without removing the public pier platform.

The applicant stated that in response to the safety concerns, the City has installed a barrier fence to prohibit access to the pier platform. Staff notes that the City's installation of a barrier fence to prevent public access at this location was undertaken without a CDP, and is currently under investigation by the Commission's Enforcement staff.

The removal of the vertical public access component would be inconsistent with the public access policies of the Coastal Act and of the City's certified LCP and the and also would lessen the intent of the original permit because it would impair vertical access to the Rhine Channel of the Bay and potentially could impair lateral access along the channel in front of the development along Lafayette Avenue. Also, removal of the existing vertical public access component would be inconsistent with past Commission and City actions where public access improvements were required through the approval of a CDP.

Therefore, staff recommends the Commission find that the proposed development is inconsistent with Sections 30210, 30212 30213 and 30214 of the Coastal Act and the policies of the City's certified LCP regarding public access. Commission staff recommends denial of the permit application because the project is inconsistent with the referenced Coastal Act and LCP policies.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>5</b>
<b>II. FINDINGS AND DECLARATIONS.....</b>	<b>5</b>
<b>A. PROJECT DESCRIPTION AND BACKGROUND.....</b>	5
<b>B. STANDARD OF REVIEW .....</b>	9
<b>C. PUBLIC ACCESS AND RECREATION.....</b>	10
<b>D. MARINE RESOURCES.....</b>	16
<b>E. LOCAL COASTAL PROGRAM (LCP).....</b>	20
<b>F. UNPERMITTED DEVELOPMENT .....</b>	20
<b>G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....</b>	21

### APPENDICES

[Appendix A – Substantive File Documents](#)

### EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – CDP No. 5-90-471](#)

[Exhibit No. 3 – Site Plan](#)

[Exhibit No. 4 – City of Newport Beach Letter to Applicant dated October 2, 2018](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0705 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of the motion will result in denial of the permit 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 denies a Coastal Development Permit for the proposed development on the ground that the development will not conform to the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND BACKGROUND

The subject site is a bulkheaded lot located at 2806 Lafayette Road along the Rhine Channel in Lower Newport Bay) in the city of Newport Beach ([Exhibit No. 1](#)). The subject site is bordered by the Rhine Channel on the south, a business/commercial use on the east (2808 Lafayette Avenue), Lafayette Avenue on the north and a commercial/residential use on the west (2804 Lafayette Avenue). On the landside portion of the subject property is a two-story mixed use building and no work is proposed on the building. The subject site is located within the Cannery Village area of Newport Beach, which is the historic center of the City's commercial fishing and boating industry and contains a mix of small shops, art galleries, professional offices, and service establishments. Marine-related commercial (boat sales) and marine-related industrial uses (boat repair) are also found in the area. From the 1930's through the 1950's, shipyard and cannery operations, boat building activities, and metal plating facilities were located along the Rhine Channel, which fronts the site.

The landside property is designated Mixed Use-Water Related (Mu-W) in the City of Newport Beach Land Use Plan (LUP), which "*...is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor...*"

In addition, the LUP discusses the importance of public access opportunities and the intention to expand them in the Cannery Village area and the adjacent areas: "*Waterfront commercial areas also provide vertical and lateral access to Lower Newport Bay. Commercial developments in Lido Village, Cannery Village, McFadden Square, and Balboa Village and on the Lido Peninsula provide public access easements to and along the waterfront. In most cases, these*

*easements have been integrated into the project's design, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels. New development will present additional opportunities to extend and enhance waterfront access in these areas. Particular attention should be given to extending the Lido Marina Village boardwalk across all of the waterfront commercial properties in Lido Village and to provide a continuous waterfront walkway along the Rhine Channel to connect the Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19th Street. A connection from Lido Village to Mariner's Mile should also be provided, if feasible."*

The proposed project includes the removal of an existing 30 foot long x 6 foot wide public pier platform located on four 14-inch square concrete guide piles over the water in order to expand an existing private dock system shared by two private properties (the subject site and the property to the west, 2804 Lafayette Avenue). In this area of Newport Bay, the LCP and the public access policies of the Coastal Act, require a continuous lateral public accessway between the development (on the inland side) and the public waters. When properties are redeveloped or improved, the Commission has historically required that the lateral public accessway be built, so that eventually each property in this area will be fronted by the public boardwalk and the boardwalk will be continuous.

On this site, the public pier platform was part of the required lateral accessway. The pier platform is what remains of the lateral accessway that used to wrap around the development located on the neighboring property (2808 Lafayette). Because the structure at the neighboring site encroached into the bay a significant amount, this pier platform was constructed to connect to the lateral accessway seaward of the encroaching structure. The public pier platform on the subject site was part of an existing 6 foot wide lateral public walkway over the water on piles, which was approved by the Coastal Commission on July 12, 1990 in Coastal Development Permit No. 5-90-471 ([Exhibit No. 2 and Exhibit No. 2, page 4](#)). The original construction of the pier platform to provide lateral access around the bayward encroaching neighboring structure, and since then that structure collapsed into the bay and has been removed. Thus, the existing pier platform remains on the subject site, as an extension of the previous lateral accessway. It currently functions as a vertical element (extending out into the bay) as part of the remaining lateral accessway. The lateral boardwalk on the subject site remains, but the lateral access on the neighboring site (2808) has been removed (although the Commission required through a separate permit action that it be reconstructed.)

Besides approving the lateral public accessway, CDP No. 5-90-471 also authorized the demolition of an existing storage shed and the construction of a mixed use two-story building with office use on the 1<sup>st</sup> floor and a residential use on the 2<sup>nd</sup> floor, a two-car garage for residential use, and two-car carport for the commercial use. While the public pier platform component is proposed to be removed, the applicant has stated that the remaining portion of the lateral public walkway fronting the bayside portion of the subject site will remain. The lateral access across the subject site would not be interrupted by the removal of the pier platform.

The expansion of the existing 30 foot long x 6 foot wide (180 square feet) private dock system specifically consists of the following: installing two 14-inch square concrete marina guide piles; a 38 foot long x 4 foot wide finger; a 14.5 foot long x 4 foot wide headwalk; a 3 foot x 3 foot knee; and an 18 foot x 3 foot knee, totaling 332 square feet. The existing gangway would be re-

used, as well as two 14-inch square concrete marina guide piles. Post-project, the shared private dock would be 512 square feet in size ([Exhibit No. 3](#)).

The applicant asserts that the 30 foot long x 6 foot wide public pier platform needs to be removed since it is unused and unsafe and because the new proposed enlarged dock cannot be constructed without the removal of the pier platform. The applicant further states that the existing public pier platform is cracking in multiple areas; that the safety railings on the westerly side of the public pier platform have been removed; and, in response, the City has installed a barrier fence to prohibit access due to safety concerns. Staff notes that the City's installation of a barrier fence to prevent public access at this location was undertaken without a CDP, and is currently under investigation by the Commission's Enforcement staff. Additionally, the applicant states that the public pier platform is not used for fishing since the water area there is shallow and that it is not recommended at the site due to toxins left from the canning businesses once located in this area of Newport Bay. Furthermore, the applicant states that since the existing public walkway provided at the adjacent eastern property, 2808 Lafayette Avenue, no longer exists due to its collapse into the bay along with a portion of a building in 2000, that the public pier platform that the adjacent public walkway once connected with is no longer necessary. In addition, the applicant states that while the public pier platform component is proposed to be removed, the remaining portion of the public walkway fronting the subject site will remain to provide lateral access to the bay; and the City of Newport Beach has given its approval for the applicant's project. In conclusion, the applicant believes that the public pier platform has become obsolete in use, is deteriorating, and is a danger and liability.

The City is an interested party with respect to the proposed project. On April 5, 1990, the City's Planning Commission approved Site Plan Review No. 57 and Use Permit No. 3377 for development on 2806 Lafayette consisting of the construction of a mixed use residential/commercial development. In its approval of the project, the Planning Commission imposed a prior to issuance of building permit condition requiring dedication of a public access easement on the bayside portion of the property [The public pier platform along with a public walkway it connects to that fronts the bayside portion of the subject site are part of a required 6 foot wide lateral public walkway]: *"That prior to the issuance of building permits, the applicant shall dedicate to the City a 6 foot wide public access easement along the entire water frontage of the subject property and along a portion of the northeasterly side property line sufficient to make the required physical connection with the public access easement on the adjoining property located at 2808 Lafayette Avenue."* In addition, the City imposed a condition requiring construction of a connection between the proposed access easement and the adjoining access easement on 2808 Lafayette: *"The applicant shall construct a physical connection between the proposed access easement on the subject property and the adjoining access easement at 2808 Lafayette Avenue. The design and improvement of the easement area, including the connection, shall be subject to the approval of the Public Works Department and the Marine Department."*

Following approval of this previous project on the subject site by the City of Newport Beach Planning Commission in April 1990, the applicant applied for a coastal development permit (CDP App. No. 5-90-471) for review by the Coastal Commission. The project included a 6 foot wide lateral public walkway over the water supported by pilings on the bayside portion of the subject site, which provides lateral public access to the Rhine Channel, to existing lateral public access to the west of the project site located at 2804 Lafayette Avenue, and to future restored

public access to the east of the site at located at 2808 Lafayette Avenue, to be explained later in the staff report ([Exhibit No. 2](#)). On July 12, 1990, the Coastal Commission approved the proposed development, which consisted of demolition of an existing shed and construction of a mixed use structure (500 square foot office space on the ground floor and a 1,656 square foot apartment on the second floor) with a 402 square foot two car-garage for the residential use and two covered parking spaces for the commercial use, as well as the proposed 6 foot wide public walkway on piers abutting the existing bulkhead. No work on the existing bulkhead was proposed as part of the project. Since the lateral public walkway over the water was included as part of the project description, the Commission did not impose any special conditions, such as requiring an offer to dedicate for the lateral public access.

The applicant states that the City has given its approval for the removal of the public pier platform component and that the City only requires that the remaining portion of the public walkway fronting the bayside portion of the subject site remain. In order to confirm this understanding between the applicant and the City, the applicant has provided a letter from the City of Newport Beach to the applicant dated October 2, 2018 ([Exhibit No. 4](#)). In this letter, the City states that since both the building at 2808 Lafayette Avenue and the lateral public walkway fronting that property, that previously connected with the public pier platform on the subject site that is being proposed to be removed, collapsed into the bay in 2000, there is no reason to maintain the public pier platform that once connected to this lateral public walkway ([Exhibit No. 2, page 4](#)). The bayside property at 2808 Lafayette Avenue where the public access walkway existed prior to it collapsing into the bay in 2000 is located further out into the bay than the property at the subject site. The bayside end of the public pier at 2806 Lafayette Avenue that is proposed to be removed is located further out into the bay and it is at this most bayward point that the pier platform previously connected to the public accessway at 2808 Lafayette Avenue ([Exhibit No. 2, page 4](#)). The City indicated that they will require that the remaining portion of the public walkway fronting the bayside portion of the subject property be maintained to provide continued lateral public access (via an easement that was dedicated to and accepted by the City). Commission staff has had a discussion with the City and has confirmed that the City is only interested in maintaining the public walkway fronting the bayside portion of the subject site and not the public pier platform.

The City's Approval-In-Concept No. AIC2018003 on June 13, 2018 for the proposed project states that the public walkway fronting the bay across the full width of the property would remain as a City dedicated lateral public access component as required by the City's 1990 approval. The City also states that if the applicant's proposal to remove the public pier platform portion as requested in the subject permit application is approved by the Commission, the applicant would then have to request the City to vacate that portion of the easement that was required by the city in their approval and also seek a harbor building permit to physically remove the elevated walkway. In the City's October 2, 2018 letter mentioned above, the City states that the public access easement on the bayside portion of the property was a requirement of the Coastal Commission in its July 1990 approval of CDP No. 5-90-471. However the City is incorrect; as discussed above, the City imposed the public access easement as a condition of its April 5, 1990 use permit. Specifically, as confirmed by the minutes from the City of Newport Beach Planning Commission meeting held on April 5, 1990 for the City's approval of Site Plan Review No. 57 and Use Permit No. 3377, the City imposed Condition No. 2 requiring the applicant to dedicate to the City a 6 foot wide public access easement along the entire water

frontage of the subject property and along a portion of the northeasterly side property line to make a physical connection with the public access easement on the adjoining property at 2808 Lafayette Avenue. In its approval of the project, the City also imposed Condition No. 3, stating that the applicant shall construct a physical connection between the proposed access easement on the subject property and the adjoining access easement imposed by the City as part of its local approval at 2808 Lafayette Avenue. Thus, it was the City that imposed the requirement of a dedicated public access easement on the project.

Following the approval of the project by the Planning Commission, it was submitted to the Coastal Commission for review as CDP App. No. 5-90-471 and was approved on June 11, 1990. The staff report for the Commission's approval of the project, dated June 11, 1990, states that the City had imposed a condition on the project which required an offer to dedicate a public access easement for the access way. The staff report also further discussed the benefit of placing the walkway in its proposed location instead of relocating the existing bulkhead more bayward and placing a walkway on top of the bulkhead to match the more bayward bulkheads located at 2808 and 2800 Lafayette Avenue as it would not result in fill of open coastal waters. The staff report also discussed the adjacent property to the west of the site, 2804 Lafayette Avenue, subject to CDP No. 5-90-075, approved in March 1990 for development including a similar dedication of a public access easement. Thus, the requirement of the dedicated public access easement was a requirement from the City, and once the projects at 2806 Lafayette Avenue and 2804 Lafayette Avenue came before the Commission for review, the lateral public access component was already incorporated into its project description. As such, no special conditions were imposed by the Commission in its approval.

The applicant states that the existing 30 foot long x 6 foot wide privately-shared dock will continue to be shared by the neighboring party at 2804 Lafayette Avenue; however, the proposed dock addition will only be utilized by the homeowner at 2806 Lafayette Avenue (subject site).

The proposed dock system meets the City of Newport Beach Harbor Permit Policy. The existing single finger dock extends bayward past the U.S. Pierhead Line by 7 feet and will continue to do so post-project, and the proposed new finger would also extend past the U.S. Pierhead Line by 7 feet. Thus, post-project there would be two fingers extending 7 feet bayward past the U.S. Pierhead Line. The City's Harbor Permit Policy states that piers in this location in the Rhine must obtain Special Permits approved by the City's Harbor Resource Division. The applicant did obtain an Approval-In-Concept from the City's Harbor Resources Division dated June 6, 2018.

## **B. STANDARD OF REVIEW**

The City of Newport Beach LCP was effectively certified on January 13, 2017. However, the proposed project takes place beyond the bulkhead located bayward of the mean high tide line and is thus 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, although the City's certified LCP is advisory in nature and may provide guidance.

### **C. 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 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 30213 of the Coastal Act, Lower cost visitor and recreational facilities, states in relevant part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30214 of the Coastal Act, Implementation of public access policies; states:

*(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

*(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

*(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative*

*access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

Section 306012 of the Coastal Act, Application for permit to demolish a structure; states:

*An application for a coastal development permit to demolish a structure shall not be denied unless the agency authorized to issue that permit, or the commission, on appeal, where appeal is authorized by this division, finds, based on a preponderance of the evidence, that retention of that structure is feasible.*

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, 3.1.1-3 states,

*Develop and implement a uniform coastal access signing program to assist the public in locating, recognizing, and utilizing public access trails. Where appropriate, include information advising the public of environmentally sensitive habitats, safety hazards, and to respect adjacent private property.*

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, 3.1.1-13 states,

*Require a direct dedication or an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall/bulkhead, dripline of deck, or toe of bluff).*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-14 states,

*Require a direct dedication or an Offer to Dedicate (OTD) an easement for vertical access in all new development projects causing or contributing to adverse public access impacts, unless adequate access is available nearby. Vertical accessways shall be a sufficient size to accommodate two-way pedestrian passage and landscape buffer and*

5-18-0705 (Gallian)

*should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-15 states,

*Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-16 states,

*Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-17 states,

*Require new development in waterfront commercial areas to provide public access easements to and along the waterfront. Where appropriate, integrate public access easements into the project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-21 states,

*Provide a continuous waterfront walkway along the Rhine Channel connecting Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19<sup>th</sup> Street.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-24 states,

*Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-26 states,

*Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.*

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.*

Implementation Plan, Development Standards, 21.30A.020(C)(4) states,

*4. Required Lateral Access. New public accessways for any new development in the segments identified in Section 21.30A.050(A)(7)(b) shall be required unless excepted by*

*subsection (C)(2) of this section or the review authority determines that new public access is not required in pursuant to Section 21.30A.050(J).*

Implementation Plan, Development Standards, 21.30A.050(A)(1)(a-b) states,

- a. Maximize public access to and along the shoreline and coastal bluff tops;*
- b. Provide new vertical accessways in areas of limited public accessibility;*

Implementation Plan, Development Standards, 21.30A.050(A)(7)(b)(i) states,

- b. Required Segments. Lateral accessway segments shall be provided in the following areas:*
  - i. Lido Marina Village. On all bay front nonresidential and mixed-use lots in Lido Marina Village.*
  - ii. Cannery Village and McFadden Square. On all bay front lots in Cannery Village and McFadden Square from 31st Street to 19th Street.*
  - iii. Mariners' Mile. On all bay front lots in Mariners.' Mile from the Coast Highway/Newport Boulevard Bridge to the Balboa Bay Resort.*

Implementation Plan, Development Standards, 21.30A.050(A)(7)(d)(ii) states,

- d. Minimum Width. Lateral accessways shall be the following minimum widths:*
  - ii. Lots with Shoreline Protective Devices. For lots with shoreline protective devices, a lateral accessway shall be a minimum of ten (10) feet in width as measured landward from the shoreline protective device.*

Implementation Plan, Vertical Access Design Features, 21.30A.050(A)(8)(a-c) states,

- a. Location. Where feasible, a minimum of one vertical accessway at every street stub, or where there are no street stubs, at every five hundred (500) feet.*
- b. Linkage. Where feasible, vertical accessways shall link with lateral accessways.*
- c. Minimum Width. A vertical accessway shall be a minimum of six feet in width.*

Coastal Act Section 30210 mandates that maximum public access and recreational opportunities be provided. Section 30212 of the Coastal Act requires public access from the nearest public roadway to the shoreline. Section 30213 of the Coastal Act states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30214 of the Coastal Act states that public access policies shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access depending on the facts and circumstances of the case. Coastal Act Section 30612 states that a coastal development permit for demolition of a structure shall not be denied unless based on the preponderance of evidence that retention of the structure is feasible.

Additionally, the City of Newport Beach's Certified LCP contains policies regarding protecting, encouraging and providing coastal public access, such as Coastal Land Use Plan (CLUP) Policies 3.1.1-1 that states that public access to and along the shoreline will be protected and

where feasible expanded and enhanced, and 3.1.1-9 that states that public access shall be maximized to and along the shoreline. Some of these LCP policies are even specific to the area of the subject site such as Coastal Land Use Plan (CLUP) Policies 3.1.1-21 that states that a continuous waterfront walkway along the Rhine Channel in the Cannery Village area will be provided and 3.1.1-24 that encourages the creation of new public vertical access where feasible in areas of limited accessibility. The policies in the Implementation Plan (IP) include 21.30A.050(A)(7)(b)(i) that states that lateral access along the bayfront lots in the cannery Village area shall be provided, and, 21.30A.050(A)(7)(d)(ii), which requires that lateral access ways on lots with shoreline protective devices “shall be a minimum of ten (10) feet in width.” The existing public lateral accessway at the subject site is 6 feet wide, and therefore is existing non-conforming to the current IP section that requires the walkway to be 10 feet wide. The pier platform is 6 feet wide. The removal of the pier platform would not change the width of the existing lateral accessway fronting the subject site.

While the public pier platform component is proposed to be removed, the applicant has stated that the remaining portion of the public accessway fronting the bayside portion of the subject site that is part of the existing lateral public accessway will remain ([Exhibit No. 2](#)). The applicant is also proposing to enlarge a private dock shared with the adjacent western property at 2804 Lafayette Avenue; however, to enlarge the shared private dock, the public pier platform would need to be demolished ([Exhibit No. 2](#)).

Both the Coastal Act and the City’s LCP include policies to create, as well as protect and enhance existing public access along the shoreline where feasible. In addition, public access along the Rhine Channel in the project area is highlighted in the City’s certified LCP with policies envisioning a continuous waterfront walkway along the Rhine Channel connecting Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19th Street. LCP policies also require public access to and along the Rhine Channel in the Cannery Village project area. Additionally, the Coastal Access and Recreation Map of the Certified Land Use Plan (LUP) shows continuous lateral public access as a goal along this block fronting the Rhine Channel. Lateral public access is currently provided at the subject site and along the properties west of the subject site, 2804 and 2800 Lafayette Avenue, ending at the 28<sup>th</sup> Street/Villa Way street end. Existing impediments to continuous lateral access along the block are east of the subject site at the properties located at 2808, 2812, 2814, 2816 and 2820 Lafayette Avenue, which end at the 29<sup>th</sup> Street end.

While the existing lateral public accessway along the bayfront of the property located at 2808 Lafayette Avenue, to the east of the subject site, does not currently exist since it collapsed in the bay in 2000, CDP No. 5-11-178-(Cervantes-Moreheart) was approved by the Coastal Commission in 2013 requiring an easement for public access to the area on the seaward side of the existing building. This easement was required to restore a link with 2808 Lafayette Avenue to the existing public access walkway fronting the subject site available on the subject property. Continuous public access along all of the properties for the block located between the 28<sup>th</sup> Street/Villa Way and 29<sup>th</sup> Street, street ends is anticipated as these sites redevelop. The applicant is only proposing the removal of the public pier platform and not the public walkway fronting the subject site, which it is connected to both sections together form the existing lateral public walkway. As required by the City’s approval-in-concept for the proposed project, the public walkway fronting the site will be maintained and will continue to connect with the existing

lateral public walkways to the west of the site at 2804 and 2800 Lafayette Avenue. At some point in the future, as required by CDP No. 5-11-178, public access will be restored to the property located to the east of the site at 2808 Lafayette Avenue with a connection to the existing lateral public walkway fronting the subject site along the bulkhead. Lateral public access to those three properties will be maintained, and in the future expanded, along this block fronting the Rhine Channel, as envisioned in the LCP.

The current public pier platform may provide lateral access in the same way that it used to, but it still provides public access benefits. Its current function as a vertical element into the bay provides an opportunity for the public to access the channel in an area where access is fairly limited. If it were open and available for public use (it is currently gated) it would provide enhanced public views of the bay beyond what can be seen from the existing lateral accessway. Furthermore, depending on the exact location of the yet-to-be constructed neighboring lateral access, it may continue to be part of the existing lateral accessway in the future. Until such a time that lateral access is continued across the neighboring site, there is no reason to remove this remaining portion of the previous lateral accessway.

The applicant has indicated that due to cracking in multiple areas on the public pier platform and the absence of a safety railing on the westerly side of the public pier platform, that the public pier platform should be removed. The applicant has submitted photographs of the public pier platform in an attempt to show its deteriorated state. While the photographs do show cracks on the public pier platform, it appears that the pier could be repaired and made safe and usable. The cracks could be filled and a safety railing could be installed. In addition, the applicant has not provided a determination from the City or a licensed professional indicating that the public pier platform is in danger of failing and thus must be demolished instead of being repaired.

The project description proposes to remove the public pier platform in order to expand the private dock and not because the applicant cannot maintain the pier. If the pier was shown to be in danger of failing, per a structural engineering report, and therefore it needed to be demolished, the public access that it currently provides would need to be replaced or mitigated, per the LCP policies that require encouragement of vertical accessways, as well as Chapter 3 policies that require maximization of public access. The LCP encourages the creation of new public vertical accessways where feasible. In order to be consistent with these policies, the demolition of the structure could be approved if the pier platform was proposed to be reconstructed as an improved vertical element to the existing lateral accessway.

In addition, the applicant claims that the presence of toxins in the channel left behind by the historical previous canneries along the Rhine Channel, and the collapse of the lateral accessway at 2808 Lafayette Avenue that the public pier platform once connected to, are additional reasons that the public pier platform should be removed. While fishing at this location may not be the best use of the site that does not mean that it cannot serve as a public use in different capacities such as providing a walking path out over the water of the bay and the enhanced views it offers to enjoy the waterfront. In addition, the property at 2808 Lafayette Avenue obtained CDP No. 5-11-178, which required as part of its approval a public access easement that would restore a connection to the lateral public walkway on the subject site. Thus, the fact that there is no lateral public access currently located at 2808 Lafayette Avenue that the pier platform can currently connect to does not mean that the pier platform should be demolished, especially since a future

restored connection is required by CDP No. 5-11-178, which would only be enhanced by the presence of the pier platform to provide public access opportunities, including public view opportunities.

While approval of the project would not entirely eliminate lateral access along the channel in front of this home and the adjoining homes, the project will reduce the public walkway at this location by approximately 30 feet vertically into the bay in order to facilitate construction of a private dock. Per the LCP, vertical public accessways are required to be 6 feet wide, which the subject pier currently is. However, the Coastal Act requires *maximum* public access (Section 30210) and prohibits private development from interfering with the public's ability to access the sea (Section 30211), and the certified LCP contains similar policies in favor of maximizing public access (See IP Policy 21.30A.050(A)(1)(a)). In fact, IP Policy 21.30A.050(A)(7)(d)(ii) specifies that the width of lateral access ways for lots with shoreline protective devices (like this one with a bulkhead) "shall" be a *minimum* of 10 feet in width. The Act's strong emphasis on maximum public access, and the related LCP policies, at the very least mean that the existing public walkway (including the existing pier platform) should be maintained in its current form unless there is an important Coastal Act basis for changing and/or reducing it in size. Here, the applicant's primary argument for removing the pier platform is that it currently does not connect to a public walkway on the adjacent property at 2808 Lafayette Avenue; as discussed above. However, the public walkway in front of that property will soon be restored; thus, restoring the connection between these two properties and making progress towards uninterrupted lateral access along the Rhine Channel (see IP Policy 3.1.1-21). In addition, while the pier platform may be in need of some improvements (as is expected of a structure this age), maintaining a public walkway in front of this mixed use structure that connects to the walkway on the adjacent property was an important part of the project approved by the Commission in CDP No. 5-90-471, and it is the applicant's responsibility to maintain its property in a safe condition.

As shown by the City's requirements for public access easements and offers to dedicate for public access on the subject site and at 2808 Lafayette Avenue and 2804 Lafayette Avenue, the City has invested time and effort to provide continuous public access along the channel, consistent with its certified LCP. Removal of the pier platform would be inconsistent with the strong public access policies of the Coastal Act and LCP, particularly as they relate to encouraging public access to and along the Rhine Channel. In addition, removal of the pier platform would undermine the Commission's permit, CDP No. 5-90-471, which authorized development at this location based on the project's inclusion of a six foot public walkway along the channel.

Therefore, the Commission finds that the proposed development is inconsistent with Sections 30210, 30212, 30213, and 30214 of the Coastal Act and the City's certified LCP regarding public access and must be denied.

#### **D. MARINE RESOURCES**

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 30233 of the Coastal Act states in part:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

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

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

*(6) Restoration purposes.*

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, 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 Act Sections 30230 and 30231 require protection of marine resources and, where feasible, the restoration of marine resources, as well as the maintenance of the biological productivity of coastal waters. The City's certified LCP also includes a number of similar policies that protect the biological resources in coastal waters, such as CLUP Policy 4.1.1-4 requiring protection of eelgrass and CLUP Policy 4.2.3-1 that identifies allowable fill 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. In addition to reduced sunlight and decreases in biological productivity of coastal waters, increased coverage of coastal waters is a significant concern since it also impedes avian foraging activities. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the State and federally listed California brown pelican found throughout Newport Bay. Although the coverage of bay surface area habitat associated with any one project may not seem significant, the cumulative effect of allowing unnecessarily large dock structures and resulting increases in water coverage throughout Newport Bay could be significant. It should be noted that

there are hundreds of private residential docks in Newport Bay. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with the Coastal Act, the cumulative effect would be a significant loss of coastal waters and soft bottom habitat.

A specific biological resource that can be adversely affected by increased water coverage is eelgrass (*Zostera marina*). Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

The existing dock system on this site consists of 180 square feet and the proposed dock system would consist of a 301 square feet addition for a total new dock with 481 square feet of surface area. The proposed project also includes the removal of an existing 30 foot long x 6 foot wide public pier platform on piles and would thus open up 180 square feet of water area that was previously shaded. Thus, the project would result in a net increase of 121 square feet of water coverage (301 square feet – 180 square feet = 121 square feet). However, an eelgrass survey took place on March 1, 2018 and no eelgrass was identified at the subject site, so no adverse impacts to eelgrass are anticipated. However, the increased surface area could prevent eelgrass from growing in this area in the future.

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only, including “new or expanded boating facilities.” However, fill for boating facilities is only allowed *where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects*. The project includes removal of four (4) piles and installation of two (2) new piles in coastal waters of Newport Bay, which would result in the reduction of fill of open coastal waters. The piles that are to be removed support the public pier platform. The new piles would support the expanded dock float, and, therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, as it is for a boating-related use and the dock utilizes the minimum amount of piles necessary to support the dock. The proposed project would not result in any *additional* fill as the project actually results in 2.74 square feet of less net fill because the project proposes to remove 4 piles (two 14-inch square concrete piles) that results in 5.48 square feet of fill and install only 2 new piles (two 14-inch concrete piles) that results in 2.74 square feet of fill.

While the proposed dock component of the project would reduce the amount of fill and utilize the minimum amount of piles necessary and therefore does not result in adverse impacts to biological resources, the proposed project would still result in adverse impacts to public access by its removal of an existing public access opportunity on the subject site. Therefore, while the dock component of the project is consistent with Sections 30230, 30231 and 30233 of the

Coastal Act and the City's certified LCP regarding marine resources, the remaining component of the project involving the removal of the existing public pier platform is inconsistent with Sections 30210, 30212, 30213, 30214 and 30612 of the Coastal Act and the City's certified LCP regarding public access and therefore must be denied.

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

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 Chapter 3 of the Coastal Act and the certified LCP serves as guidance. The proposed development will eliminate a public access opportunity available on the subject site. Since public access will adversely be impacted by the proposed project and as a result will be inconsistent with Sections 30210, 30212, 30213, 30214 and 30612 of the Coastal Act regarding public access, the project must be denied.

While the City's certified LCP only serves as guidance and the standard of review is the Coastal Act, the project has been reviewed for its consistency with the City's certified LCP and it is also found to be inconsistent with the following LCP policies relating to public access: Coastal Land Use Plan (CLUP) Policies 3.1.1-1-1, -3, -9, -11, -13, -14, -15, -16, -17, -21, -24, -26 and 3.1.4-3 and Implementation Plan (IP) Policies 21.30A.020(C)(4), 21.30A.050(A)(1)(a-b), 21.30A.050(A)(7)(b)(i), 21.30A.050(A)(7)(d)(ii) and 21.30A.050(A)(8)(a-c).

### **F. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act that are associated with the proposed development have occurred on the project site, including installation of an unpermitted fence across the entrance to the pier platform that precludes public access to the pier (a gate also exists nearby blocking access to the lateral accessway on a neighboring site, such that there is no opportunity for the public to access this portion of the lateral walkway, nor the pier platform). On June 26, 2019 Commission staff sent the applicant a Notice of Violation ("NOV") letter that identified the unpermitted development described above and requested the immediate removal of the barrier fence. However, the applicant has indicated that the City closed the public pier for public safety reasons. In the NOV letter, Commission staff requested that the applicant provide evidence (red tag, letters, resolution, etc.) that the City found the pier to be unsafe and that the City closed the pier to public access because of unsafe conditions. If indeed the pier is unsafe, as determined by the City and after review of evidence by Commission staff, the applicant must submit a complete CDP application to repair the public pier and restore the public accessway for public use as required by the permit.

Although unpermitted development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

The placement of the subject fence (and nearby gate) reduces the amount of public pier area available to the public - thereby decreasing areas available for public access and coastal recreation, in direct conflict with public access protection policies of the Coastal Act, including Sections 30210, 30211, 30220 and 30221. Since the applicant is not proposing removal of the

unpermitted development, violations will remain unaddressed, and enforcement staff will consider appropriate action to address the violations of the Coastal Act, including but not necessarily limited to, action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions, with certain exceptions that do not apply here.

### **G. 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 on June 6, 2018 and June 13, 2018.

The Commission has found the project to be inconsistent with the Chapter 3 policies of the Coastal Act. CEQA does not apply to private projects that public agencies deny or disapprove, Pub. Res. Code § 21080(b)(5). Accordingly, because the Commission is denying the proposed project, it is not required to adopt findings regarding mitigation measures or alternatives that would substantially lessen any significant adverse effect the project would have on the environment.

**APPENDIX A: Substantive File Documents**

City of Newport Beach Site Plan Review No. 57 and Use Permit No. 3377; Coastal Development Permit No. P-80-7354-(Tonti); De Minimis Waiver No. 5-85-717-(Zimmerman); Administrative Permit No. 5-90-075-(Flutter); Coastal Development Permit No. P-5-19-76-7903-(Ziemer); Coastal Development Permit No. 5-06-119-(Morehart); Coastal Development Permit No. 5-11-178-(Cervantes-Morehart); Administrative Permit No. 5-84-393-(Barrett); Coastal Development Permit No. 5-90-471-(701 Lido Park Partnership); City of Newport Beach Harbor Resources Division Approval-In-Concept dated June 6, 2018; City of Newport Beach Planning Department Approval-In-Concept dated June 13, 2018; Eelgrass (*Zoestra marina*) Pre Construction Survey and Caulerpa Taxifolia Survey, 2806 Lafayette Av, Newport Beach, CA prepared by Dive Works dated March 1, 2018; Letter from Commission staff to Swift Slip Dock and Pier Builders dated August 9, 2018; Letter from Swift Slip Dock and Pier Builders to Commission staff dated October 2, 2018, Letter from the City of Newport Beach to Swift Slip Dock and Pier Builders to Commission dated October 2, 2018, Email from Swift Slip Dock and Pier Builders to Commission staff dated March 21, 2019; and Email from Swift Slip Dock and Pier Builders to Commission staff dated May 24, 2019.