

**CALIFORNIA COASTAL COMMISSION**

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**Th17b**

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**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-18-0824

**Applicant:** Batavia Business Park, LLC

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

**Location:** 3366 Via Lido, City of Newport Beach (Orange County),  
 APN No. 423-123-10

**Project Description:** Remove an existing 6,344 square foot marina, 30-foot x 3-foot (90 square foot) gangway and seventeen 14-inch square concrete guide piles and install a new 5,358 square foot marina, 80-foot x 5-foot (400 square foot) ADA compliant gangway, a 10-foot x 8-foot (80 square foot) ADA compliant gangway platform, seventeen 18-inch square concrete guide piles and one 14-inch square concrete T pile. No changes are proposed to the existing 35-foot x 5-foot (175 square foot) cantilevered public boardwalk and its two supporting 14-inch square concrete T piles.

**Staff Recommendation:** Approval with conditions

**SUMMARY OF STAFF RECOMMENDATION**

The proposed project, consisting of removal and replacement of a marina in Newport Beach, 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) provides guidance for development.

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

Commission staff has determined that the marina has been designed in a manner that largely avoids adverse impacts to marine resources while still maintaining a usable marina and enabling recreational boating. However, to minimize potential adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Bay ecosystem; Commission staff recommends the Commission impose **Special Condition No. 1**, which requires the applicant to prepare a new *Eelgrass (Zostera Marina)* survey prior to beginning construction. Commission staff recommends the Commission also impose **Special Condition No. 2**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*, an invasive, non-native aquatic species that can be further dispersed in coastal waters as a result of construction activities.

The proposed project, because of its location over the water, has potential for adverse impacts to water quality and marine resources during construction and post construction. Therefore, special conditions have been imposed in order to minimize any impacts to water quality and marine resources. **Special Condition No. 3** states requirements for construction responsibilities and debris removal; and **Special Condition No. 4** requires the applicant to submit a Marina Management Plan (Clean Marina Program).

The main point of disagreement between Commission staff and the applicant concerns public access. The proposed project consists of replacement of a private marina over and in Newport Bay, which is public tidelands managed by the City of Newport Beach. The proposed private development would interfere with future development of a public boardwalk along this portion of Lido Marina Village/Lido Marina, which is a priority of the City's certified LCP and would provide valuable public access to and along coastal waters. Thus, **Special Condition No. 5** requires the applicant to submit revised plans acknowledging the potential future expansion of the lateral public accessway in Lido Marina Village located at 3366 Via Lido and to redesign the proposed gangway platform and gangway so that the structures do not interfere with, and can accommodate, potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern property located at 3348 Via Lido. **Special Condition No. 5** is nearly identical to a condition of a permit approved by the Commission in 2017, which expired after transfer of ownership of the marina to the current applicant. Importantly, actual construction of a public walkway is not required as a condition of this permit.

To preserve and maintain access to the public tidelands located bayward of the subject site's property line, **Special Condition No. 6** states that the approval of a coastal development permit for the project does not waive any public rights or interests that exist or may exist on the property.

Finally, in order to ensure that future development on the site does not occur which could potentially result in adverse impacts to coastal access, **Special Condition No. 7**, informs the

applicant that future development at the site requires an amendment or a new coastal development permit.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition No. 8**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

As conditioned, the proposed project will conform with Chapter 3 of the Coastal Act. The motion to approve the coastal development permit application is on **Page Five**.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>12</b>
<b>A. PROJECT DESCRIPTION.....</b>	<b>12</b>
<b>B. MARINE RESOURCES/WATER QUALITY.....</b>	<b>15</b>
<b>C. PUBLIC ACCESS .....</b>	<b>21</b>
<b>D. DEED RESTRICTION .....</b>	<b>29</b>
<b>E. LOCAL COASTAL PROGRAM (LCP).....</b>	<b>30</b>
<b>F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) .....</b>	<b>30</b>

### APPENDICES

[Appendix A – Substantive File Documents](#)

### EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Existing and Proposed Site Plans](#)

[Exhibit No. 3 – Illustration of Project Compliance with Special Condition No. 5](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0824 pursuant to the staff recommendation.*

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

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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. Pre-Construction Eelgrass Survey.

A. A valid pre-construction eelgrass survey (whether for *Zostera marina* or *Z. pacifica*) shall be completed for the project site and a 10m buffer area surrounding the project site. The pre-construction survey shall be completed no more than 60 days prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project is subsequently proposed to occur in a previously unsurveyed area, a new survey is required during the active growth period for eelgrass in that region and no more than 60 days prior to commencement of work in that area. The eelgrass survey and mapping shall be prepared in full compliance with the California Eelgrass Mitigation Policy (CEMP), and in consultation with the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW). If side-scan sonar methods will be used, evidence of a permit issued by the California State Lands Commission (CSLC) for such activities shall also be provided prior to the commencement of survey work. The applicant shall submit the pre-construction eelgrass surveys for review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event, no later than fifteen (15) business days prior to commencement of any development. If eelgrass surveys identify any eelgrass within the project area, which may be potentially impacted by the proposed project, the Permittees are required to complete post-project eelgrass surveys consistent with the section below.

B. **Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project site or the 10m buffer area by surveys required in subsection B 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 and the 10m buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. 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 adversely impacted, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 (mitigation:impact) ratio on-site, or at another location, in accordance with the CEMP. Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio

(1.38:1) shall require an amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

- 2. Pre-Construction *Caulerpa Taxifolia* Survey.** By acceptance of this permit, the applicant agrees to: 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 applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- (1) for the review and approval by the Executive Director; and
- (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until: 1) the applicant provides evidence to the Executive Director that all *Caulerpa Taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

- 3. Construction Responsibilities and Debris Removal.** By acceptance of this permit, the applicant agrees to comply with the following construction related requirements:
- A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
  - B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
  - C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
  - D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

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

**4. Marina Management Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, a detailed Marina Management Plan for controlling adverse impacts to water quality related to long-term water-borne berthing of vessels in the marina. The plan shall be prepared by a qualified professional with expertise in the control of water quality impacts related to marinas.

- A.** The plan shall demonstrate that long-term water-borne berthing of vessels in the marina shall be managed in a manner which protects water quality and that persons using the marina are made aware of the rules related to boat maintenance and use. To the extent to which physical features or objects (trash containers,



recycling bins) are required in the plan, an attached site plan shall show the location where these features or objects will be installed.

- B. The plan shall include, at a minimum, the following components or measures:
1. Boat Cleaning Management Measures:
    - (a) In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
    - (b) The marina shall prohibit in-water boat hull washing which does not occur by hand;
    - (c) The marina shall prohibit in-the-water hull scraping or any process that occurs under water which results in the removal of paint from boat hulls;
    - (d) The marina shall ensure that marina tenants, when washing boats, utilize detergents and cleaning components that are phosphate-free and bio-degradable. Amounts used shall be minimized; and,
    - (e) The marina shall prohibit the use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
  2. Implementation of a solid waste reduction and recycling program including the following Solid Waste Management Measures:
    - (a) Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e. close to the dock);
    - (b) All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e. close to the dock);
    - (c) All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities;
    - (d) All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.
  3. Implementation of a liquid material control program which provides and maintains appropriate storage, transfer, containment and disposal facilities for liquid materials commonly used in boat maintenance including the following Liquid Waste Management Measures:
    - (a) The marina shall provide a secure location to store hazardous wastes, including petroleum products, old gasoline or gasoline with water, absorbent materials, and oily rags;
    - (b) Containers for anti-freeze, lead acid batteries, used oil and used oil filters which will be collected separately for recycling shall be provided by the marina;
    - (c) Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of

hazardous wastes and where to recycle certain recyclable wastes;  
and

4. Petroleum Control Management Measures:

- (a) Boaters shall practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- (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.

5. Public Education Measures:

- (a) The marina shall provide information about all of the measures in the BMP program through a combination of signage, tenant bill inserts and distribution of the BMP program to new tenants and each year to repeat tenants. The program shall be posted at the Harbormaster's Office/Administration Building and at all dock entrances, and be included and attached to all slip lease agreements.

- C. The permittee shall undertake development in conformance with the approved final plan unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**5. Final Updated Plans.**

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of the following final updated plans, modified as required below:
  - 1. Revised Project Plans that substantially conform with the plans dated May 1, 2018, except they shall be modified as required below:
    - (a) The applicant shall acknowledge potential future expansion of the lateral public accessway from Lido Marina Village to 3366 Via Lido and shall redesign the ADA compliant gangway platform and gangway so that the structures do not interfere with and can accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern property located at 3348 Via Lido.

- B. All final updated plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
  - C. The permittee shall undertake development in conformance with the approved final updated plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
- 6. Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
- 7. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0824. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-18-0824. Accordingly, any future improvements to the marina, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-18-0824 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 8. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The subject site is in an area known as Lido Marina Village, which is a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marine uses located within the City of Newport Beach ([Exhibit No. 1](#)). Lido Marina Village includes a parking garage, which provides parking for both land uses and water-related uses in the village. Bayward of Lido Marina Village is the Lido Marina in Newport Bay, which has been continuously operated as a private visitor-serving commercial marina since 1955. The Lido Marina, which the development on the subject site is a part of, is an extension of Lido Marina Village. Lido Marina and Lido Marina Village are connected by the Lido Marina Village Patio/Boardwalk ([Exhibit No. 1](#)). The landside portion of the subject site, where no work is proposed, consists of a multi-floor business building. West of the landside portion of the subject site located at 3388 Via Lido is a multi-floor mixed use development and to the east of the landside portion of the subject site located at 3348 Via Lido is a residential development.

On May 12, 2017, the Coastal Commission approved Coastal Development Permit (CDP) Application No. 5-16-0120 (DJM Capital Partners, Inc.) for the redevelopment of the Lido Marina, which included the subject site, consisting of the demolition of the existing 49-slip marina and construction of a new 48-slip marina in the same location. The project also included the improvement and substantial expansion of an existing public waterfront boardwalk (the Lido Marina Village Patio/Boardwalk) that also included the construction of a 6-foot wide cantilevered public boardwalk above the existing seawall/bulkhead and installation of approximately 155 earthen anchors to strengthen the existing bulkhead. Regarding the subject site (a component of the greater Lido Marina), the prior CDP application approval specifically allowed the removal and replacement of the existing marina fronting the subject site referred to as Dock C, as well as replacement in kind of a cantilevered public boardwalk and gangway platform, and installation of earth anchors on the subject site's existing landside bulkhead.

The Commission's decision approving CDP No. 5-16-0120 included thirteen special conditions, including Special Condition No. 12, which directly affected the subject site. This special condition required that prior to issuance of the CDP, the applicant shall submit revised plans acknowledging the potential future expansion of the lateral public accessway in Lido Marina Village located at 3366 Via Lido by requiring that the design of the replacement cantilevered public boardwalk and gangway platform fronting 3366 Via Lido be designed so that it may accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern residential property located at 3348 Via Lido. Thus, the subject site previously had an already approved coastal development permit. However, on May 12, 2019, the Commission's approval of the development subject to the prior CDP Application expired as the applicant did not submit a request to extend the approval beyond its two-year approval time, as required by section 13169(a) of the Commission's regulations.

Since approval of CDP Application No. 5-16-0120 in May 2017, the subject site, 3366 Via Lido, was sold by the previous owners, DJM Capital Partners, Inc. to Batavia Business Park, LLC, the current owner of the site and the project applicant. The current owner was aware that a previous coastal development permit application had been approved for development on the subject site

and knowingly submitted this application while that permit was still valid because the current owner wanted to make changes to the approved project. While the applicant is proposing dock work that is similar to the previously approved dock work under CDP Application No. 5-16-0120, the applicant is not proposing the installation of any earthen anchors to the existing bulkhead. More importantly, the applicant has stated that they are not proposing the required changes to the cantilevered public boardwalk and gangway platform fronting 3366 Via Lido, which is inconsistent with Special Condition No. 12 of the previously approved CDP No. 5-16-0120 (which has expired) requiring the new structures be designed to accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern residential property located at 3348 Via Lido ([Exhibit No. 1](#)).

The applicant states that the docks are in disrepair and need to be replaced. Thus, the proposed project consists of the removal of an existing 6,344 square foot marina, 30-foot x 3-foot (90 square foot) gangway and seventeen 14-inch square concrete guide piles and installation of a new 5,358 square foot marina, 80-foot x 5-foot (400 square foot) ADA compliant gangway, a 10-foot x 8-foot (80 square foot) ADA compliant gangway platform, seventeen 18-inch square concrete guide piles and one 14-inch square concrete T pile. No changes are proposed to the existing 35-foot x 5-foot (175 square foot) cantilevered public boardwalk supported by two 14-inch square concrete T piles required by the City of Newport Beach. The boardwalk agreement with the City of Newport Beach, dated June 5, 1974, will remain in effect post project.

Only recently has the applicant notified Commission staff that the finger at the west end of the existing marina was removed sometime last year (2018) without a permit. For purposes of Commission review and analysis, this finger will be considered to still be a part of the marina and is proposed to be removed consistent with the project description. Overall water coverage from the proposed marina would decrease from 6,609 square feet (6,344 square feet + 90 square foot gangway + 175 square foot cantilevered public boardwalk) to 6,013 square feet (5,358 square feet + 400 square foot ADA compliant gangway + 80 square foot ADA compliant platform + 175 square foot cantilevered public boardwalk), a decrease of 596 square feet of water coverage. While approval of the project would decrease the overall amount of water coverage, which is beneficial for marine species, there will be an increase of fill from 23 square feet (17 x 1.36 square feet) to 40 square feet (17 x 2.25 square feet + 1.36 square feet), an increase of 17 square feet. The applicant says the additional fill is necessary to meet the current City of Newport Beach building codes and for larger vessels to be berthed at this location.

Lido Marina, made up of several marinas including the subject site, is one of the largest private commercial marinas in Newport Harbor and has been continuously operated as a private visitor-serving commercial marina since 1955. The marina accommodates a variety of uses, from individual recreational users to chartered functions. The portion of the marina proposed to be redeveloped on the subject site is located at the eastern extent of Lido Marina and ends in the area where landside development transitions from commercial development to residential development. The docks located at the subject marina are rented out to the public and will continue to be if the Commission approves the project. No commercial vessels currently or in the future will be berthed in this marina.

Access to the subject site is through a cantilevered public boardwalk fronting the western end of the portion of the subject site that is connected to an existing cantilevered public boardwalk supported by piles that fronts the adjacent western property located at 3388 Via Lido, which is under separate ownership ([Exhibit No. 1](#)). In other words, public access to the existing and proposed marina requires using the existing cantilevered public boardwalk that fronts 3388 Via Lido.

The existing marina has eleven full slips and six side tie slips for a total of seventeen that specifically includes: five 50-foot full slips, three 45-foot full slips, one 62-foot full slip, two 40-foot full slips, three 57-foot side tie slips, one 52-foot side tie slip, one 32-foot side tie slip, and one 139-foot side tie slip. The proposed marina will have five full slips and two side tie slips for a total of seven that specifically includes: one 91-foot side tie slip, three 83-foot full slips, two 91-foot full slips, and one 99-foot side tie slip.

The applicant states that reducing water coverage was one of their goals and that the proposed project design allows for a greater variety of vessels to be berthed at this location; either multiple smaller vessels or a single large vessel may be accommodated in each slip with this design. In one scenario, the new marina can accommodate two 38 foot boats and three 80 foot boats on the east side of the marina and three 90 foot boats on the west side of the marina ([Exhibit No. 2, page 2](#)).

In addition, the applicant states that they have accommodated the American with Disabilities Act (ADA) requirements with an upgraded ADA compliant aluminum gangway, an ADA compliant gangway platform, and in their overall dock design.

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project takes place beyond the bulkhead located bayward of the high tide over Newport Bay, located on public tidelands and submerged lands in Newport Bay that are managed by the City as identified in a “Tidelands Survey for Newport Harbor for the City of Newport Beach”, within the Coastal Commission’s retained permit jurisdiction.

Previous Commission actions on the subject property consist of the following:

On May 12, 2017, the Coastal Commission approved CDP Application No. 5-16-0120 for the redevelopment of the Lido Marina that consisted of the demolition of the existing 49-slip marina and construction of a new 48-slip marina in the same location. The project also included the improvement and substantial expansion of the existing public waterfront boardwalk (the Lido Marina Village Patio/Boardwalk) that included the construction of a 6-foot wide cantilevered public boardwalk above the existing seawall/bulkhead and installation of approximately 155 earthen anchors to strengthen the existing bulkhead. Thirteen Special Conditions were imposed on the project including: 1) Updated prior to commencement eelgrass survey 2) Updated prior to commencement *Caulerpa Taxifolia* survey; 3) Landside Best Management Practices (BMPs); 4) Waterside Best Management Practices (BMPs); 5) Submittal of a construction staging plan; 6) Submittal of a marina management plan; 7) Assumption of risk; 8) No future bayward extension of the shoreline protective device; 9) Future development; 10) Maintenance of the City easement; 11) Public access deed restriction; 12) Submittal of revised plans; and 13) deed restriction. Special Condition No. 12 directly affected the

project site as it required the submittal of revised plans acknowledging the potential future expansion of the lateral public accessway in Lido Marina Village located at 3366 Via Lido. Furthermore, it required that the replacement cantilevered headwalk and Platform C fronting 3366 Via Lido be designed so that it may accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern residential property located at 3348 Via Lido. The approval recently expired prior to the permit being issued because the applicant did not request an extension within two years of the date of the Commission's approval.

On July 1, 1974, the Commission approved P-5-31-74-3417 (Imperial Savings and Loan) for the interior remodel of a two-story Imperial Savings and Loan building and modifications to the landscaping. No special conditions were imposed.

On December 9, 1974, the Commission approved P-7-24-74-3417 (Imperial Savings and Loan) for removal of three signs and construction of a new entry/level sign. One special condition was imposed which prohibited any signs on the east elevation of the building two-story Imperial Savings and Loan building.

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

Section 30230 of the Coastal Act, Marine Resources; maintenance, states:

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

Section 30231 of the Coastal Act, Biological productivity, water quality, states:

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

Section 30232 of the Coastal Act, Oil and hazardous substance spills, states:

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

Section 30233 of the Coastal Act, Diking, filling or dredging; continued movement of sediment and nutrients, states (in relevant part):

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

Section 30250 of the Coastal Act, Location; existing developed area, states in part:

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

Coastal Land Use Plan, Coastal Resource Protection, Biological Resources, 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, Coastal Resource Protection, Biological Resources, 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, Coastal Resource Protection, Wetlands and Deepwater Areas, 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, Coastal Resource Protection, Wetlands and Deepwater Areas, Dredging, Diking and Filling, Policy 4.2.3-2 states,

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

Coastal Land Use Plan, Dredging, Coastal Resource Protection, Wetlands and Deepwater Areas, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

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

Coastal Land Use Plan, Coastal Resource Protection, Water Quality, TMDLs, Policy 4.3.1-8 states,

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

Coastal Land Use Plan, Coastal Resource Protection, Water Quality, NPDES, Policy 4.3.2-1 states,

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

Coastal Land Use Plan, Coastal Resource Protection, Water Quality, NPDES, Policy 4.3.2-6 states,

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

Coastal Land Use Plan, Coastal Resource Protection, Water Quality, NPDES, Policy 4.3.2-7 states,

*Incorporate BMPs into the project design in the following progression:*

*Site Design BMPs.*

*Source Control BMPs.*

*Treatment Control BMPs.*

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

### **Marine Resources/Biological Productivity**

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 Coastal Land Use Plan (CLUP) Policy 4.1.1-4 requiring protection of eelgrass and CLUP Policy 4.3.2-1 requiring the promotion of pollution prevention and elimination methods that minimize the introduction of pollutants into 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 Harbor. 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 docks in Newport Harbor. 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.

### ***Eelgrass (Zostera Marina) and Shading Impacts***

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.

Eelgrass (*Zostera marina*) was not discovered at the project site. The eelgrass survey that determined that no eelgrass was located at the project site took place on June 22, 2018; however, eelgrass surveys completed during the active growth phase of eelgrass (March through October) are valid for 60-days with the exception of surveys completed between August and October. A survey completed between August-October is valid until the resumption of active growth (i.e., March 1). The project is agendaized for the August 2019 Coastal Commission Hearing, so the existing eelgrass survey will no longer be valid in time for construction of the project. Therefore, the Commission imposes **Special Condition No. 1**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected as conditioned), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

The existing marina on this site is 6,609 square feet in size and the proposed dock system is 6,013 square feet. The proposed dock system would result in a decrease of 596 square feet of previous water coverage ([Exhibit No. 2, page 4](#)). While no eelgrass is currently located on site, the opening up of 596 square feet of previously covered water area provides an opportunity for eelgrass to grow as this area would now have direct sunlight upon it. The City of Newport Beach Harbor Resources Division has developed Harbor Design Criteria Guidelines and Standards which, though not certified by the Coastal Commission, provide criteria for designing dock systems in a way that minimizes water coverage while providing for a usable dock. The proposed project is consistent with those guidelines and standards.

### ***Caulerpa Taxifolia***

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor, while none has been discovered in Newport Bay. *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on June 22, 2018, as required by the City of Newport Beach Harbor Resources Division, and none was found. However, *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized for the August 2019 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 2**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

### **Construction and Post-Construction Impacts**

The proposed work will be occurring over coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To assure that all impacts to water quality are minimized and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 3**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters.

Post project, the replaced marina will be located on the same site, with new docks and boat users. The berthing of boats by the boat dock users and associated boating activities in these new docks have the potential to adversely impact coastal water quality and the marine environment through the introduction of pollutants associated with boating activities. In order to maintain water quality and prevent water quality impacts associated with the replaced marina, a "Marina Management Plan" that identifies Best Management Practices (BMPs) to minimize the introduction of potential pollutants into the bay as a result of daily operations should be produced. The purpose of the plan is to encourage marinas in California to use BMPs to protect water quality to minimize the introduction of potential pollutants into the bay as a result of daily operations, such as regarding debris removal and solid waste management and boat sewage discharge. However, no such plan has been completed. Thus, the Commission imposes **Special Condition No. 4**, which requires the applicant to submit a Marina Management Plan in accordance with specified requirements which Commission staff has identified as sufficient to ensure post-construction impacts to water quality are minimized.

### **Fill of Coastal Waters**

The project raises issues under section 30233 of the Coastal Act because it will result in fill of coastal waters. Specifically, the project includes removal of seventeen 14-inch square concrete guide piles and installation of seventeen 18-inch square concrete guide piles and one 14 inch square concrete T pile (total of eighteen piles post project) to support the marina, which would result in an increase of one additional pile more than the existing number of piles, resulting in an overall increase of 17 square feet of fill.

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. With respect to the allowable use part of the test, section 30233(a) provides that “new or expanded boating facilities” are an allowable use, as is proposed here. With respect to feasible, less environmentally damaging alternatives, the applicant has indicated that the proposed design has taken into account water coverage and up to date design standards and ADA compliance and is the least environmentally damaging alternative. Furthermore, the project engineer has stated that the proposed piles are the minimum amount of piles necessary to support the marina. Therefore, the proposed project, which increases the amount of fill at the project site by only 17 square feet, is consistent with Section 30233(a)(3) of the Coastal Act.

### **Conclusion**

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232, 30233 and 30250 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality and with the City’s certified LCP

### **C. PUBLIC ACCESS**

Article X, Section 4 of the California Constitution provides:

*No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof.*

Section 30210 of the Coastal Act, Access; recreational opportunities; states:

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

Section 30211 of the Coastal Act, Development not to interfere with access, states:

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

Section 30212 of the Coastal Act states, New development projects (in part), states:

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

*agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

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

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

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

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

Coastal Land Use Plan Policy, Land Use Development, Transportation, Parking, 2.9.3-2 states,

*Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.*

Coastal Land Use Plan Policy, Land Use Development, Transportation, Parking, 2.9.3-3 states,

*Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.*

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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, Public Access and Recreation, Shoreline and Bluff Top Access, 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.*

5-18-0824 (Batavia Business Park, LLC)

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top Access, Shoreline Access, 3.1.1-20 states,

*Extend the Lido Marina Village boardwalk across all of the waterfront commercial properties in Lido Village.*

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top Access, Shoreline Access, 3.1.1-22 states,

*Provide a walkway connecting the Lido Village area with Mariner's Mile, if feasible.*

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top Access, 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.*

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top Access, Berthing, and Storage, 3.3.2-2 states,

*Protect, and where feasible, enhance and expand marinas and dry boat storage facilities.*

Coastal Land Use Plan Policy, Public Access and Recreation, Shoreline and Bluff Top Access, Berthing, and Storage, 3.3.2-7 states,

*Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.*

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)(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.*

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.*

### **Parking**

A parking structure is located in Lido Maria Village, which provide access for the public using the dock facilities, such as the subject site. The replaced marina will reduce the existing 12 slips to 6 slips, resulting in a reduction 6 slips and as a result, parking demand will be reduced. The project site already provides adequate parking and the proposed project will not impact existing on-street public parking spaces used by visitors to the coast. Therefore, the project does not contribute to cumulative impacts on public access with respect to parking.

### **Slip Mix**

In prior permit actions, the Commission has been concerned about the proliferation of larger slips in marinas at the expense of the smaller slips. As larger slips occupy more space in a marina, there is less space for the smaller slips and the result is fewer overall slips and fewer slips available for the owners of small vessels. As demand and economic pressures for larger boats causes marinas to convert their small boat slips to larger slips, berthing opportunities for the small boat owner will be reduced. While recreational boating may not appear to be a “low” cost recreational activity as compared to other activities, such as kayaking or SUP (standup paddle board), *relatively* speaking, in general, smaller boats are less expensive, and therefore available to a larger segment of the population than are larger boats. The Commission has not historically regulated the rates at which marinas rent their slips to the public. The Commission has, however, regulated the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing a balance between the size of slips which facilitates increased public access and the boaters’ demand for slips.

Although the trend for new and redeveloped marinas is to support larger boats, the demand for small boat slips still exists. In prior permit actions, the Commission has heard testimony contending that a reduction in the availability of slips that accommodate smaller boats reduces the option for those who want to own boats and use the smaller slips. The applicant states that the existing docks are in need of repair and need to be replaced consistent with up to date standards. In their redesign, the applicant states that reducing exiting water coverage was one of their goals. In addition, the applicant’s redesign allows for a greater variety of vessels to be berthed at this location; either multiple smaller vessels or a single large vessel may be accommodated in each slip with this design. In one scenario, the new marina can accommodate two 38 foot boats and three 80 foot boats on the east side of the marina and three 90 foot boats on the west side of the marina ([Exhibit No. 2, page 2](#)). Also, the applicant states that they have accommodated the American with Disabilities Act (ADA) requirements with an upgraded ADA

compliant aluminum gangway, an ADA compliant gangway platform, and in their overall dock design.

The existing marina has eleven full slips: five 50-foot full slips, three 45-foot full slips, one 62-foot full slip, two 40-foot full slips. In addition, the existing marina also has six side tie slips: three 57-foot side tie slips, one 52-foot side tie slip, one 32-foot side tie slip, and one 139-foot side tie slip ([Exhibit No. 2, page 1](#)).

The proposed marina will have five full slips: three 83' x 7' full slips, one 91' x 7' full slip, one 91' x 8' full slip. In addition, the proposed marina will also provide two side tie slips: one 91' x 8' side tie slip, and one 99' x 8' side tie slip ([Exhibit No. 2, page 2](#)).

The proposed new marina configuration will still allow for smaller boats through its design that will provide a better way to accommodate boats of various sizes, including smaller boats. For example, the new marina could accommodate eight 38 foot boats (in the two 91' long slips and the 91- long and 99' long side ties) and three 80 foot boats. In addition, there are other marinas in the Lido Marina that provide a mix of boat slips including slips for smaller boats. Thus, when balanced against the overall demand for larger boat slips and the need to meet new standards, the Commission finds the proposed slip mix adequate. This determination is based on this specific facility in this particular location, and depends also on the availability of a wide range of other boating facilities in the general area.

As conditioned, there is no significant potential for adverse impacts to public access as a result of the proposed slip mix. However, future development which may result in a different mix of slip sizes may potentially result in adverse impacts to public access. To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 5**, which requires a coastal development permit for future improvements to the development. This condition will allow the Commission to evaluate public access impacts associated with any future proposals to change the mix of boat slip sizes at that time.

### **Public Boardwalk**

The proposed project is located seaward of the first public road and within coastal waters, but also at the convergence of the landside and the water. The proposed project is located within the Lido Marina Village and Lido Marina, which provides opportunities for the public to enjoy the coast. Lido Marina Village area is a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marine uses. The Lido Marina is located bayward of Lido Marina Village, which the subject site marina is a part of (the eastern most component of the marina). Lido Marina is an extension of Lido Marina Village and is connected by the Lido Marina Village public patio/boardwalk. Landward of the marina and west of the subject site, there is an existing 11' to 14' wide patio/boardwalk that provides access along the waterfront to the commercial area and to the gangways leading to headwalks and boat slips, dingy basins, and a transient dock and pump out station.

The existing landside public patio/boardwalk does not extend further west of the subject site because the property west of the subject site located at 3388 Via Lido is built directly adjacent to the bulkhead and no public access is provided across the landside of that property. While no

landside public access is available on the 3388 Via Lido site, there is an existing cantilevered, pile supported, public boardwalk that allows pedestrian traffic across the waterside of 3388 Via Lido and serves as a connection to the existing 5-foot wide x 35-foot long (175 square foot) elevated cantilevered public boardwalk fronting the western portion of the subject site (3366 Via Lido). The applicant is not proposing any changes to this City-required cantilevered public boardwalk or the two 14-inch square T piles supporting it, pursuant to a 1974 Boardwalk Agreement between Imperial Savings and Loan Association, Donald M. Kohl, and the City of Newport Beach, and plans to keep it open to the public. While no work is proposed to the cantilevered public boardwalk such as removing it or replacing it, the applicant is proposing to add a 10-foot x 8-foot (80 square foot) ADA compliant gangway platform at the east end of the public cantilevered boardwalk along with a new 80-foot x 5-foot (400 square foot) ADA compliant gangway leading down to the new replaced marina, which would impede the ability in the future to provide a public boardwalk across the bayfront of the subject site.

Sections 21.30A.050(A)(7)(b)(i-iii) and 21.30A.050(A)(7)(d)(ii) of the City's certified LCP identify Lido Marina Village as one of three areas in the city where a 10-foot wide lateral access shall be provided, with the others being Cannery Village and McFadden Square and Mariner's Mile. Furthermore, the LCP states that lateral accessways will be provided on all bayfront nonresidential and mixed use lots in Lido Marina Village. The goal is to have a public waterfront accessway for the entire length of Lido Marina Village. Thus, the proposed project presents an opportunity to expand public access in the area as required in the City's certified LCP.

As discussed previously, the Coastal Commission approved CDP Application No. 5-16-0120 on May 12, 2017 for the redevelopment of the Lido Marina, which included redevelopment of the portion of the marina on the subject site. As part of that permit, development approved at the subject site included the removal and replacement of the existing marina fronting the subject site, as well as replacement in kind of a cantilevered public boardwalk and gangway platform and installation of earth anchors on the subject site's existing landside bulkhead. In that approval, the Commission imposed a special condition that specifically dealt with the subject site in order to maximize public access as required by the City's certified LCP. Special Condition No. 12 required that prior to issuance of the CDP, the applicant submit revised plans acknowledging the potential future expansion of the lateral public accessway (i.e., the cantilevered boardwalk) in Lido Marina Village located at 3366 Via Lido. The condition required the replacement cantilevered public boardwalk and gangway platform fronting 3366 Via Lido to be designed to accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern residential property located at 3348 Via Lido. While the Commission's approval of that CDP Application expired prior to the project being constructed, the findings referencing the same Coastal Act and LCP provisions referenced in this staff report (above) highlight the importance of public access in this area.

The applicant is proposing dock work that is similar to the previously approved dock work, i.e., adding a 10-foot x 8-foot (80 square foot) ADA compliant gangway platform at the east end of the public cantilevered boardwalk along with a new 80-foot x 5-foot (400 square foot) ADA compliant gangway leading down to the new replaced marina; however, the applicant is not proposing the installation of any earthen anchors to the existing bulkhead and is not proposing to replace the cantilevered public accessway/boardwalk in front of the subject site. In addition, and

more importantly, the applicant has stated that they are not proposing the changes to the cantilevered public boardwalk and gangway platform fronting 3366 Via Lido to allow for and accommodate expansion of the public boardwalk. Therefore, the project, as proposed, would interfere with potential future expansion of the public boardwalk across the site, as specifically envisioned by the City's certified LCP, because it would potentially physically block the ability to provide a continuation of the cantilevered public boardwalk. The project, therefore, would not be consistent with the requirements of Special Condition No. 12 of the (now expired) CDP No. 5-16-0120 requiring structures be designed to accommodate potential future expansion of an unobstructed lateral public accessway to the east of 3366 Via Lido.

The applicant asserts that an expansion of the public accessway across the subject site would not be in the public's best interest since the neighboring property at 3348 Via Lido is not required to provide lateral public access along the bulkhead pursuant to Section 21.30A.050(A)(7)(b)(i) of the City's certified LCP because it is a residential property, and thus the public accessway would not continue even if the public accessway fronting this subject site was constructed. While lateral access is not provided along the adjacent residential property, public access is required along the subject site, which is a commercial property that draws the public and provides a great opportunity to enjoy the bayfront. Additionally, the applicant states that providing the future public boardwalk may result in an increase in fill to accommodate the ADA compliant gangway platform. As long as the fill is for a boating facility and there is no feasible less environmentally damaging alternative and feasible mitigation measures have been provided to minimize adverse environmental effects, then the fill would be acceptable under the Coastal Act.

The applicant further states that providing for a future public boardwalk beyond the existing 175 square foot public cantilevered boardwalk would inadvertently decrease the dockage space available for public rental by reducing the amount of dock area by 99 linear feet in the marina. In response to the applicant's contention, the project might be able to be redesigned so that dock area is not reduced. For example, the proposed gangway platform could be extended north or closer to the water, angled in such a way that a gangway could land upon the proposed headwalk, while allowing a future public boardwalk to be extended across the bulkhead, rather than blocking the path of a future public boardwalk with a pier platform as is identified in [Exhibit No. 3](#). Alternatively, the applicant could reduce the size of the private dock, which is located on public tidelands managed by the City, in order to accommodate (and at least not interfere with) the expansion of a public boardwalk across this site that facilitates access to the public tidelands.

While the proposed project supports recreational boating use of coastal waters, which is encouraged by the Coastal Act (section 30224), Coastal Act policies also emphasize maximizing public access (section 30210) and provide that development shall not interfere with the public's right of access to the sea (section 30211). In addition, the proposed marina is located over and in tidelands that are a public trust resource managed by the City pursuant to a tidelands grant for the benefit of the public. The City's LCP, which implements and is guidance as to conformity with the Coastal Act, specifically identifies Lido Marina Village as an area where development of a public boardwalk is a priority.

Here, except for the 5-foot x 35-foot (175 square feet) elevated cantilevered public boardwalk fronting a portion of the subject site, no lateral public access is available at this location. Providing access at this location would further the goal of the City's certified LCP to provide a

continuous public boardwalk along Lido Marina Village. Even if the boardwalk is not connected to and continued in front of the neighboring property at 3348 Via Lido, lateral access at this location would connect to the cantilevered pile supported public boardwalk at 3388 Via Lido and then continue west to connect with the Lido Marina Village public patio/boardwalk. While this expansion of lateral public access at 3366 Via Lido is not currently proposed, the LCP considers 3366 Via Lido a potential, future location for expansion of the public boardwalk. The proposed project would physically interfere with these important public access goals by locating the proposed gangway and gangway platform in such a way as to obstruct a boardwalk along the bulkhead.

Thus, in order to be consistent with the Coastal Act and public access policies of the City's certified LCP that envision lateral public access to and along the Lido Marina Village area, the Commission imposes **Special Condition No. 5**, which requires the applicant to submit revised plans acknowledging the potential future expansion of the lateral public accessway in Lido Marina Village located at 3366 Via Lido. The condition also requires the applicant to redesign the ADA compliant gangway platform and gangway so that the structures do not interfere with and can accommodate potential future expansion of an unobstructed lateral public accessway fronting the bulkhead across the site and ending at the adjacent eastern property located at 3348 Via Lido. Importantly, this permit would not require construction of the boardwalk across the entire site or dedication of any areas of the site for public use that are not already available to the public. The purpose of **Special Condition No. 5** is merely to ensure that the proposed development does not prevent or interfere with potential future development of a public boardwalk consistent with the certified LCP.

Public trust tidelands are located bayward of the subject site's property line. To preserve and maintain access to the public trust tidelands, the Commission imposes **Special Condition No. 6**, which states 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.

As conditioned, there is no significant potential for adverse impacts to public access. However, future development at the site may potentially result in adverse impacts to public access (*e.g.*, buildout of the marina that negatively impacts the lateral public accessways). To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act and the City's certified LCP, the Commission imposes **Special Condition No. 7**, which requires that any future improvements to the marina, including repair and maintenance, requires an amendment to this CDP or an additional CDP.

## Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212, 30220, and 30221 of the Coastal Act with regard to the public's right of access to the sea and does not interfere with recreational opportunities on public tidelands and would avoid cumulative impacts and the City's certified LCP.

## D. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition No. 8** requires the property owner record a

deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

### **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. As conditioned, the proposed development within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act.

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

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach (Planning Department and Harbor Resources Division) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt from CEQA (Class 1, CEQA Guidelines Sections 15301) on July 18, 2018.

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

Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

**APPENDIX A: Substantive File Documents**

Coastal Development Permit No. 5-16-0120; City of Newport Beach Harbor Resources Division Approval-In-Concept dated July 18, 2018; Eelgrass (*Zostera marina*) and *Caulerpa taxifolia* Survey on June 22, 2018 prepared by Dive Works; Letter from Commission staff to Swift Slip Dock and Pier Builders dated September 14, 2018; Letter from Swift Slip Dock and Pier Builders to Commission staff dated October 25, 2018; Email from Swift Slip Dock and Pier Builders to Commission staff dated April 24, 2019; and Email from Swift Slip Dock and Pier Builders to Commission staff dated May 16, 2019.