

CALIFORNIA COASTAL COMMISSION

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W14c

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-1177
Applicant: Kip Cyprus
Agents: Shanna Schaffner, CPA Planning
Location: 221 Via Lido Soud, Newport Beach
Orange County
APN: 423-141-01

Project Description: Modify existing boat dock by removing unpermitted 17 feet wide by 6 feet, 8-inch long overwater stairs, removing an unpermitted 10 feet by 17 feet platform with an unpermitted, attached 8 feet, 6-inch by 4 feet platform lobe, and removing the three, 12-inch square "T" piles supporting the unpermitted platform and lobe. Also proposed is construction of new 4 feet wide by 6 feet, 8-inch long overwater stairs and a new 10 feet by 14 feet pier platform, in a new location. The proposed pier platform will be supported by two, 12-inch square "T" piles. The permitted 3 feet by 20 feet gangway will be retained and re-used. The permitted 706 square feet "U" shaped boat dock float will be removed and replaced with a 499 square feet "L" shaped boat dock float. The four permitted guide piles will be replaced with four, 14 square inch guide piles. The proposed project also includes a donation of \$3,747 to Orange County Coastkeeper to mitigate for the amount of time that the unpermitted development was installed without benefit of the necessary coastal development permit.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed boat dock project is located at 221 Via Lido Soud, on a bulkheaded property fronting the West Lido Channel on Lido Isle in Newport Harbor in the City of Newport Beach. Unpermitted boat dock development is present on the site. The applicant proposes to remove all unpermitted development at the site. The unpermitted development to be removed includes 17 feet wide by 6 feet, 8-inch long overwater stairs, an unpermitted 10 feet by 17 feet platform with an attached 8 feet, 6-inch by 4 feet platform lobe, and three, 12-inch square "T" piles that support the unpermitted platform and lobe.

The unpermitted development was constructed by a previous property owner in 2009 without a coastal development permit. The current applicant purchased the site in 2017. In addition to removing all unpermitted development at the site, the applicant is also proposing to donate \$3,747 to Orange County Coastkeeper¹. Orange County Coastkeeper (OCCCK) is 501(c)(3) nonprofit organization whose mission includes protection of the region's water resources and coastal habitats. The OCCCK has partnered with the Coastal Commission in the past to, among other things, manage public, waterfront boardwalks in Huntington Harbour. The payment is intended to mitigate for the amount of time that the unpermitted development was installed without benefit of the necessary coastal development permit. Eelgrass is not known to exist in the West Lido Channel where the unpermitted development persisted, so mitigation in the form of eelgrass planting/transmittal is not proposed.

The applicant also proposes to construct a new boat dock including new, narrower, four foot wide overwater stairs, a new smaller, 10 feet by 14 feet pier platform supported by two, "T" piles in a new location that, unlike the unpermitted development, is consistent with the Coastal Act sections that limit fill of coastal waters and require protection of marine resources. The design of the proposed boat dock is consistent with other boat docks in the area that have been approved by the Coastal Commission.

The proposed overwater stairs are required due to the elevation change between the rear of the applicant's property and the adjacent water level. The elevation shift from the level of the back yard to the lowest water level requires stairs from the bulkhead to a pier platform, otherwise the angle of the gangway would be too steep to safely navigate, and would not meet the requirements of the City's Harbor Permit Policies. The stairs and pier platform together allow enough distance and elevation change to safely access the float and such that the boat dock float is located within an area of adequate depth to dock a boat. The proposed pier platform will be the minimum size necessary to provide a landing for the required stairs at one side and the gangway at the other and is supported by the minimum number of piles necessary for stability. The size of the platform does not require any additional piles beyond the two piles that would be necessary for any pier to provide the transition in grade from bulkhead to dock float.

¹ <https://www.coastkeeper.org/>

Coastal Development Permit 5-81-42 approved the boat dock float and gangway which exist at the site. The proposed boat dock is similar to the boat dock approved earlier, but will result in less fill of coastal waters and less overwater coverage.

The subject site was surveyed for eelgrass and *Caulerpa taxifolia* approximately two years ago, and neither were found to be present on site. Because time has elapsed since the most recent survey, **Special Conditions 2 and 3** require pre- and post-construction eelgrass surveys and a pre-construction *Caulerpa taxifolia* survey. If any of the surveys reveal the presence of either eelgrass or *Caulerpa taxifolia*, the special conditions provide the steps that must be implemented to protect eelgrass and prevent the spread of *Caulerpa taxifolia*.

The City of Newport Beach has a certified Local Coastal Program, but the proposed development is located over tidelands and so in the Coastal Commission's permit jurisdiction. The standard of review is the Chapter 3 policies of the Coastal Act.

Staff is recommending approval the proposed development with seven special conditions which require: 1) evidence that the applicant has submitted the payment to Orange County Coastkeeper; 2) submittal of a current eelgrass survey prior to commencement of construction and procedures to be implemented in the event that the survey identifies eelgrass in the project vicinity; 3) submittal of a current *Caulerpa Taxifolia* survey prior to commencement of construction, and procedures to be implemented in the event the survey identifies *Caulerpa Taxifolia* in the project vicinity; 4) Best Management Practices to be implemented related to long term berthing of boats; 5) Best Management Practices to be implemented during construction; 6) preservation of any public rights that exist or may exist at the subject site; and 7) applicant shall comply with other Resource Agency requirements.

The motion to approve the project consistent with the staff recommendation is on page 4.

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Exhibits:

1. Vicinity Map
2. Approved CDP 5-81-42 Boat Dock Plan
3. As-Built Boat Dock Plan
4. Proposed Boat Dock Plan
5. Graphic Depicting the Elevation Change from the Back Yard to the Water Level
6. Historic Aerial Photos

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-1177 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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 would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 applicant 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 applicant 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. Orange County Coastkeeper

As proposed by the applicant, the applicant shall carry out the payment of \$3,747 to Orange County Coastkeeper in support of Orange County Coastkeeper's marine resource protection and public access programs. Within sixty days of Coastal Commission action on this permit, the applicant shall submit to the Executive Director written evidence that the payment has been received and accepted by Orange County Coastkeeper.

2. Eelgrass Surveys.

A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the California Eelgrass Mitigation Policy dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions for less than the required 1.38:1 mitigation ratio found within California Eelgrass Mitigation Policy shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

3. Caulerpa Survey.

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all *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.

4. Best Management Practices (BMPs): Long Term Berthing of Boats.

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

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and

biodegradable shall be used, and the amounts used minimized;
and

- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

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

(3) Petroleum Control Management Measures:

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

5. Construction Responsibilities and Debris Removal.

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;

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- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements are prohibited at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (6) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;

- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Public Rights.

The approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

7. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The proposed project site is located at 221 Via Lido Soud, in the City of Newport Beach, Orange County. The subject site is a bulkheaded property fronting on West Lido Channel on Lido Isle in Newport Harbor ([Exhibit 1](#)). Unpermitted development is present at the subject site.

The applicant proposes to remove all unpermitted development at the site, including removal of unpermitted 17 feet wide by 6 feet, 8-inch long overwater stairs, removal of an unpermitted 10 feet by 17 feet platform with an unpermitted, attached 8 feet, 6-inch by 4 feet platform lobe, and removal of three, 12-inch square "T" piles that support the unpermitted platform and lobe. ([Exhibit 3](#)).

The applicant also proposes to construct new 4 feet wide by 6 feet, 8-inch long overwater stairs and a new 10 feet by 14 feet pier platform, in a new location. The proposed pier platform will be supported by two, 12-inch square "T" piles. The permitted 3 feet by 20 feet gangway will be retained and re-used. The permitted 706 square foot "U" shaped boat dock float will be replaced with a 499 square foot "L" shaped boat dock float. The permitted four, 12 square inch guide piles will be replaced with four, 14 square inch guide piles. No work is proposed to the existing bulkhead at the site. ([Exhibit 4](#)).

Single-family residences and associated private dock systems are the typical pattern of development for harbor-fronting properties in Newport Beach ([Exhibit 1](#)). The subject site is developed with a single-family residence. The proposed boat dock is associated with the single-family residential development at the site. The lot is land use designated Single Unit Residential Detached (RSD-C) and zoned Single Unit Residential (R-1). The water area is land use designated Tidelands and Submerged Lands (TS) and zoned Submerged Lands and Tidelands (TS). LCP Implementation Plan (IP) Section 21.48.085 limits uses in this zone to public trust uses: navigation, fishing, commerce, public access, water-oriented recreation, open space and environmental protection. Private boat docks are an allowable use under the LCP zoning in this water area (although the LCP provides guidance only here). The public tidelands in this area have been granted by the State to the City of Newport Beach². The proposed boat dock will be used solely for water-oriented recreation, and is thus consistent with the zoning designation and with the City's tidelands grant.

The project received a Harbor Permit/Approval in Concept from the City of Newport Beach (Plan Check No. 1293-2019), dated 7/18/2019. The existing and proposed dock systems do not/will not extend bayward of the U.S. Project line, consistent with City of Newport Beach Harbor Permit Policies. This project is similar to the docks in the adjacent area and is consistent with past Commission actions in the area.

Coastal Development Permit 5-81-42 was approved in 1981 for a boat dock at the site. The approved boat dock included 4 feet wide stairs leading to a 10 feet by 14 feet pier platform, a 3 feet by 20 feet gangway, and a "U" shaped boat dock float. The approved pier platform was supported by four pier piles and the approved boat dock float was supported by four guide piles. The approved stairs were located approximately five feet from the extension of the northern property line.

Standard of Review

The City of Newport Beach Local Coastal Program (LCP) was certified on January 13, 2017. However, due to the project location over public tidelands/submerged lands, the project is within an area of the Commission's retained/original permit jurisdiction. The standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP may be used as guidance. (Pub. Res. Code § 30519(b).)

B. Biological Resources

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

- (a)The diking, filling, or dredging of open coastal waters, wetlands,

² City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 1919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125.

estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

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

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Relevant City of Newport Beach LCP Land Use Plan Policies

4.1.2-1. Maintain, enhance, and, where feasible, restore marine resources.

4.1.2-3. Require that uses of the marine environment 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.

4.1.2-5. Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.

4.1.4-1. Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.

4.1.4-2. Implement eelgrass restoration and enhancement programs in Newport Harbor.

4.1.4-3. Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.

4.1.4-4. Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.

4.1.4-5. 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.

4.2.3-1. 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. 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.

4.2.3-2. Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.

Fill of Coastal Waters & Overwater Coverage

Section 30233(a) of the Coastal Act limits fill of coastal waters to certain allowable uses, requires the least environmentally damaging alternative, and allows diking, filling, or dredging only when feasible mitigation measures to minimize adverse environmental effects are included. The City's certified LCP also includes policies with these same requirements, and affirmatively allows recreational docks and piers in Newport Harbor. Coastal Act Section 30230 requires that marine resources be maintained, enhanced and where feasible, restored. Coastal Act Section 30231 requires that the biological productivity and quality of coastal waters appropriate to maintain optimum populations of marine organisms be maintained and, where feasible, restored. Limiting the amount of fill and the area of overwater coverage lessens potential impacts to marine resources, biological productivity, and coastal waters, as required by these Coastal Act Sections. The City's certified LCP policies cited above, also impose these requirements while also recognizing recreational boating as allowable within the harbor.

One benefit of limiting fill and overwater coverage is the beneficial impacts to eelgrass and other habitat communities of coastal waters that can result. Where eelgrass and other habitat communities are present, or the conditions to support such communities are present, limiting fill increases the harbor bottom area available for eelgrass or other habitat communities to develop and/or persist. Eelgrass requires sunlight to grow. Where eelgrass is present, it can be detrimentally impacted due to shading caused by overwater coverage because it reduces the amount of sunlight that can penetrate to the harbor floor. These issues can also apply to other habitat communities found in coastal waters. For these reasons, even when fill and overwater coverage are permissible under the Coastal Act and LCP, these impacts must be minimized, to the extent feasible, in order to be consistent with Coastal Act Sections 30230 and 30231, which require protection of marine resources (such as eelgrass) and the biological productivity of these resources. In addition, Section 30233 of the Coastal Act requires that fill be limited to the least environmentally damaging alternative. One way to achieve this is to limit the amount of fill to the minimum necessary to achieve the allowable use (such as a boating related use, as is proposed).

The area of overwater coverage and the number of piles resulting from the proposed project will be reduced as compared to the area of the boat dock approved under CDP 5-81-042 ([Exhibit 2](#)). The proposed development includes fill of coastal waters (Newport Harbor) in the form pier piles (supporting the pier platform) and guide piles (associated with the boat dock float). As proposed, the number of piles would be decreased. The approved boat dock system includes four piles to support a 10 feet by 14 feet platform. The proposed development includes two 12-inch square "T" piles to support the proposed pier platform. The number of boat dock float guide piles will remain the same, with the previously approved and proposed floats both having four piles. Thus, as proposed, compared to existing conditions the new boat dock system will result in a reduction of both fill of coastal waters (six piles rather than eight), and in overwater coverage. The overwater coverage due to the boat dock float will be reduced by 203 square feet (702 sq. ft. existing float – 499 sq. ft. proposed float = 203 sq. ft.). The four guide piles are necessary to anchor the new "L" shaped float.

Coastal Act Section 30233(a) requires that any fill of coastal waters be limited to one of the specifically enumerated uses. One of the allowable uses under Section 30233(a) is boating facilities. These allowable uses are also reflected in LCP Policy 4.2.3-1. The proposed boat dock will allow the applicant to continue to dock a boat at the site. Thus, the proposed replacement boat dock constitutes a boating facility, an allowable use.

In this case, stairs between the bulkhead and pier platform are proposed. The proposed four feet wide stairs extend 8 feet, six inches from the bulkhead. The stairs are required due to the elevation change between the rear yard and the adjacent water level. At the subject site, the elevation at the rear yard is approximately 12 feet above Mean Low Low Water (MLLW). The water elevation ranges from approximately 2.5 feet below MLLW to approximately 7.5 feet above MLLW ([Exhibit 5](#)). The elevation shift from the level of the back yard to the low water level requires stairs from the bulkhead to a pier

platform, otherwise the angle of the gangway would be too steep to safely navigate, and would not meet the requirements of the City's Harbor Permit Policies. Such stairs were approved in the 1981 CDP for a boat dock at the site (5-81-42). Neither the approved nor the proposed stairs include piles beneath them. Rather the stairs are supported by the existing bulkhead and the pier platform. No fill results directly from the stairs. The stairs and pier platform landing together allow a safe elevation change and enough distance such that the boat dock float will be located within an area of adequate depth to dock a boat.

Like the stairs, some form of pier platform is needed at the site in order to provide a transition from the stairs to the gangway. A minimum of two "T" piles are required to support the necessary pier platform. The Commission has generally approved piers (and, more specifically, the related fill resulting from the pier piles) when they are necessary to allow the boat dock to function. The stairs and pier platform together accommodate the elevation change between the rear yard and the water and allow adequate distance to reach water depth needed to dock a boat.

The Commission has typically allowed pier platforms where two "T" piles can support the necessary pier, and widening that area supported by those two "T" piles does not generate the need for any additional piles solely to support the widened platform. In this case the pier platform is proposed to be 10 feet by 14 feet, with no additional piles required. The proposed pier platform will be supported by two "T" piles, the minimum necessary to provide a landing for the required stairs at one side and the gangway at the other. The increased area of the platform does not require any additional piles beyond that necessary to support the required landing/pier. Thus, as proposed, the fill resulting from the pier platform/landing is the least necessary to support the boating related use. Pursuant to Section 30233(a)(3), fill may be allowed for new or expanded boating facilities. The proposed stairs and pier platform are necessary components of a boat dock at the site, and as such, constitute a boating related facility. Thus, the proposed piles (fill) to support the pier platform can be found to be consistent with Coastal Act section 30233 and the related LCP policies because they are necessary for the boat dock to function.

In sum, the proposed private recreational boat dock replacement and its associated supporting pile replacement will result in a minimal amount of fill and overwater coverage of coastal waters. As a boating facility, the proposed boat dock represents one of the allowable uses enumerated in Section 30233. The proposed boat dock replacement will not have significant adverse effect on sensitive marine resources, such as eelgrass. Therefore, the Commission finds that, as conditioned, the proposed boat dock replacement conforms with Sections 30230, 30231, and 30233(a) of the Coastal Act.

Eelgrass & Caulerpa Taxifolia

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) lives 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* and *Z. pacifica*) are seagrasses which serve as critical habitat for many common and protected threatened marine species.

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. In addition, a number of certified Land Use Plan Policies specifically require the protection of eelgrass.

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbour and in 2000 in Agua Hedionda lagoon in Carlsbad. *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, including native seaweeds, seagrasses, and kelp forests. This displacement of native aquatic plant species can adversely impact marine resources and biodiversity.

The subject site fronts on West Lido Channel in Newport Harbor. The City of Newport Beach surveys the harbor at least every three years beginning in 2004³. None of the City's six past surveys revealed the presence of eelgrass anywhere in West Lido Channel. The two surveys conducted by the City (2004 and 2007) prior to construction of the unpermitted development at the site found no eelgrass in the project area prior to construction of the unpermitted development. In addition, the site was surveyed by Pi Environmental for both eelgrass and *Caulerpa taxifolia* and no eelgrass or *Caulerpa taxifolia* were found at the subject site. Based upon all of these past eelgrass surveys, it appears that the project vicinity has not historically supported eelgrass. Thus, the unpermitted development did not impact eelgrass. Consequently, no mitigation is required for eelgrass impacts due to the unpermitted development.

The applicant's site specific survey took place on June 14, 2018 during the active growth phase of eelgrass (typically March through October). In addition, the City of Newport Beach Harbor Resources Division project approval (5/22/18) also found no eelgrass present at the site. An eelgrass survey is valid for a 60-day period and a

³ <https://nbgis.newportbeachca.gov/NewportHTML5Viewer/?viewer=publicsite>

Caulerpa taxifolia survey is valid for a 90-day period with the exception of surveys completed in August-October. A survey completed between August and October is valid until the resumption of active growth (i.e., March 1). As this item is scheduled to be heard by the Coastal Commission at its December 2020 meeting, the surveys will no longer be valid once construction commences.

To protect marine resources while allowing for the continuance of recreational boating facilities on site, **Special Conditions 2 and 3** require pre- and post-construction eelgrass surveys and a pre-construction Caulerpa survey. If eelgrass or Caulerpa taxifolia are determined to be present prior to construction, the special conditions outline steps that must be implemented as necessary to protect eelgrass and to eliminate Caulerpa taxifolia. As conditioned, the project will not significantly adversely impact eelgrass and will not contribute to the dispersal of the invasive aquatic algae, Caulerpa taxifolia. Therefore, the project, as conditioned, conforms with Sections 30230 and 30231, of the Coastal Act which require protection of marine resources and the biological productivity of coastal waters.

C. Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and 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.

The City of Newport Beach certified LCP Land Use Plan contains the following policy:

- 4.3.2-22:** Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

The proposed work will be occurring on, over and within coastal waters. The proposed development has the potential for construction and post-construction discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters could result in an adverse effect on the marine environment. The applicant is proposing measures to address water quality concerns, including the use of a silt curtain and installation of a floating boom encompassing the work site during construction; not allowing trash and construction debris to fall into the harbor waters (and if it does, immediate retrieval); and collection and proper disposal of all trash and construction debris on land.

To further protect water quality, the Commission imposes **Special Condition No. 5**, which identifies construction related measures to be incorporated into the project during construction including, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. In addition, to reduce the potential for post-construction impacts to water quality, the Commission imposes **Special Condition No. 4**, which requires the continued use and maintenance of post construction BMPs related to the long-term berthing of boats. By incorporating these water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction and post-construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230, 30231, and 30232 of the Coastal Act, and related LCP policies regarding the protection of water quality to promote the biological productivity of coastal waters and to protect marine resources and human health.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30220 of the Coastal Act 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 states:

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

Section 30224 of the Coastal Act states:

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

The City of Newport Beach certified LCP Land Use Plan contains the following policy:

- 3.1.1-1** Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

- 3.1.4-3** 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 Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the coast. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses, such as boating. The City's certified LCP also includes a number of similar policies that protect public access.

Newport Harbor is well known as a popular spot for recreational boating. Numerous private boat docks and public marinas line the shores of the harbor. Sandy shoreline areas along the bay are also used for access/recreation, including swimming and hand launching of small watercraft such as kayaks and stand up paddleboards.

The proposed project includes the removal and replacement of an existing private boat dock system associated with residential development. The proposed project extends out into public tidelands and submerged lands in Newport Harbor that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 1919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, vertical public pedestrian access to public tidelands is available approximately 270-feet southeast of the project site at the Via San Remo street end. From this access point, members of the public may access bay waters and, among

other recreational activities, launch a kayak or standup paddle board. In addition, typically at this site, even during low tides, the water extends up to the bulkhead, so there is rarely if ever dry sand area available for walking. Thus, the proposed project does not create adverse impacts to public access or recreation. In order to preserve and maintain access to the public tidelands, **Special Condition No. 6** makes clear 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.

F. Coastal Act Violations

Violations of the Coastal Act have occurred on the property, including, but not necessarily limited to, construction of 17 foot wide by 6 foot, 8-inch long, overwater stairs, construction of a 10 feet by 17 feet pier platform with an attached 8 foot, 6-inch by 4 foot platform lobe, and placement of three, 12-inch square "T" piles, within and over coastal waters. The development is considered "unpermitted development" as it was constructed without a valid coastal development permit.

Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

The presence of the unpermitted overwater stairs, pier platform with lobe, and three supporting piles were discovered when the applicant submitted an application to remove and replace the boat dock float at the subject site. At that time no changes to the unpermitted stairs, pier platform with lobe, and piles were proposed. That application (5-18-1014) was subsequently withdrawn prior to Commission action to provide additional time to resolve the violation.

The pier platform appears to be unpermitted based upon historic aerial photographs which do not depict the existing pier platform in its current configuration and location ([Exhibit 6](#)). In 1981, the Commission approved Coastal Development Permit 5-81-42, which allowed construction of 4 feet wide overwater stairs, a 10 feet by 14 feet pier platform, gangway, and boat dock float. Historic aerial photos from March 2004 through October 2007 (earlier Google earth historic aerial photos of the site are not legible) show a pier platform at the site in a different location and configuration than the current pier platform's location and configuration. The earlier pier platform is located north of the current location, and is much smaller, with no lobe.

Moreover, the approved 1981 plan shows the pier platform two feet from the bulkhead and five feet from the prolongation of the northern property line, whereas the plans submitted with the 2018 CDP application show the lobe at 6 feet, 8 inches from the bulkhead and the northernmost extent of the lobe at five feet from the prolongation of the northern property line. The as-built plan shows the platform at six feet, eight inches from the bulkhead (with the stairs in between) and 15 feet from the prolongation of the northern property line. Thus, the two sets of plans (1981 and 2018 as-built, [Exhibits 2 and 3](#)), as well as historic photos, show the two sets of stairs and platforms in significantly different locations, size, and configurations. The earlier configuration, size, and location depicted in the historic aerial photos appear to conform to the plan

approved under CDP 5-81-42. The current pier platform's location, size, and configuration do not begin to show up on the aerial photos until 2009. Thus, the available evidence supports that the pier platform approved in 1981 was removed and new larger stairs, pier platform with lobe and the supporting piles were built (without a valid coastal development permit) in the location, size, and configuration that exists today. It is noted that, according to Landvision property records, the current applicant did not purchase the property until 2017.

To address the unpermitted construction of the stairs, pier platform with lobe, and three supporting piles, the applicant is proposing to remove all of the unpermitted development. The application includes a proposal to construct new, narrower stairs, smaller pier platform with no lobe, and placement of two, 12-inch square supporting "T" piles. As described earlier in this staff report, the proposed new stairs, pier platform and two, 12-inch supporting piles are consistent with the Chapter 3 policies of the Coastal Act in that fill of coastal waters and overwater coverage are limited to the least amount necessary to support the allowable boating related use.

In addition, to address the presence of the unpermitted development at the site for over ten years, the applicant has proposed a donation of \$3,747 to Orange County Coastkeeper⁴. The applicant calculated their proposed donation amount based on the 2019 permit application fee. Orange County Coastkeeper (OCCK) is a 501(c)(3) nonprofit organization whose mission includes protection of the region's water resources "so they are swimmable, drinkable and fishable for present and future generations." According to its website, the OCCK works collaboratively with diverse groups in the public and private sectors to achieve healthy, sustainable water resources for the region. OCCK provides programs in education, advocacy, restoration, research, enforcement, and conservation. Among OCCK's many programs is an eelgrass restoration program in Upper Newport Bay. OC Coastkeeper's eelgrass restoration program monitors and replants eelgrass in four restoration sites in Upper Newport Bay originally installed in 2015 -2016. In addition, OCCK has partnered with the California Coastal Conservancy and Coastal Commission to renovate and manage two coastal access sites for public use and enjoyment, both located in Huntington Harbour: a harbor front public boardwalk at the Huntington Harbor Bay Club and one at the Portofino Cove Boardwalk.

Although unpermitted development has taken place, consideration of this permit application by the Commission has been based solely on the consistency of the proposed development with the Chapter 3 policies of the Coastal Act. The certified City of Newport Beach Local Coastal Program was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to any unpermitted development or permit non-compliance that has been undertaken or has occurred on the subject site, except with regard to the alleged Coastal Act violations described herein, nor does it constitute admission as to the

⁴ <https://www.coastkeeper.org/>

legality of any development undertaken on the subject site without a valid coastal development permit, except with regard to the alleged Coastal Act violations described herein. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations.

G. Local Coastal Program

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. Development proposed bayward of the property line is located within the Commission's jurisdiction and consequently, the standard of review is the Chapter 3 of the Coastal Act and the certified LCP serves as guidance. As conditioned, the proposed development within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act.

F. 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 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 7/18/ 2019.

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 and public access policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the marine resources, water quality, and public access and recreation policies of the Coastal Act. 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 is consistent with the requirements of the Coastal Act and CEQA.

IV. APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. City of Newport Beach Harbor Permit/Approval in Concept, 7/18/2018
2. CCC Coastal Development Permit 5-81-42 (Guity-Mehr)
3. Eelgrass and Caulerpa Survey, Pi Environmental, LLC, 6/14/2018
4. City of Newport Beach certified Local Coastal Program