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STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-19-0378**
Applicant:	**Steven Eckenhausen**
Agent:	South Shore Marine, Inc.
Location:	173 Rivo Alto Canal, Long Beach, Los Angeles County (APN: 7243-022-004)
Project Description:	Construct a new 25.5-foot by 6-foot dock float, access platform, and gangway.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves the construction of a new dock system, including a 25.5 foot by 6 foot dock float, a gangway, and an access platform totaling 153 sq. ft. in overwater coverage. The dock system would be associated with a single-family residence located adjacent to Alamitos Bay in Long Beach. No seawall work or landside work is proposed for the project. The proposed project is located within the Commission's original permit jurisdiction because it is proposed to be located on and over the waters of Alamitos Bay in Long Beach. 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 Plan (LCP) is advisory in nature and may provide guidance for development.

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. The applicant submitted an eelgrass and invasive algae (Caluerpa taxifolia) survey dated October 14, 2019, which did not identify any eelgrass within the proposed dock footprint, although there one reported eelgrass patch within 15 feet of the project site. No Caulerpa taxifolia were observed at the project site. Although the City of Long Beach has developed eelgrass mitigation plans for the Phase One and Phase Two areas of the Naples Seawall Repair Project under Coastal Development Permits 5-11-085 and 5-11-085-A1, the City has not started the procedures for the Phase Five area. The Commission therefore requires the applicant to undergo pre-construction eelgrass and caulerpa surveys for the project site and within a 10 meter buffer area (see **Special Conditions 2 and 3)**. In addition, **Special Condition 4** and **Special Condition 5** require the applicant to implement best management practices during construction and post-construction in order to avoid any significant adverse effects to marine resources.

The proposed work will be occurring on 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 Conditions 5 and 6**, which requires appropriate storage and handling of construction equipment and materials and continued adherence to best management practices. In addition, the Commission imposes **Special Condition No. 8**, which requires the permittee to 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.

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only, including “new or expanded boating facilities,” provided that there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The proposed dock system would be supported with two galvanized pipe piles that measure two inches in diameter, and would result in approximately 3.1 sq. ft. of fill. The City has indicated that it will not permit any new docks to be attached to the seawalls because the aggregated weight of the dock systems would compromise the structural integrity of the seawalls and may create future maintenance issues. The proposed design would site the two pipe piles immediately adjacent to the seawall, would limit fill to the minimum amount required to secure the dock system, and can be removed with minimal ground disturbance. The pipe piles will support the proposed dock system; therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, as it is for a boating-related use, is the least environmentally damaging alternative, and has been designed to minimize the total amount of fill.

Commission staff therefore recommends that the Commission **APPROVE** coastal development permit application 5-19-0378, as conditioned. The motion is on page 4.

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APPENDICES

EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-0378 subject to conditions set forth in the staff recommendation specified below.

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

II. STANDARD CONDITIONS

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 of 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

1. **Permit Compliance.** Boating related uses are the only uses permitted by the approved development. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit or a new coastal development permit is required.

2. **Pre-Construction Eelgrass Survey.** 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. 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.

    A. **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 final 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.

3. Pre-Construction Caulerpa taxifolia Survey

a) Not more than 90 days nor less than 30 days prior to commencement or recommencement 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 green 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 (see http://www.westcoast.fisheries.noaa.gov/habitat/aquatic_invasives/caulerpa_taxifolia.html).

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

(i) for the review and written approval of the Executive Director; and

(ii) to the Surveillance Subcommittee to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance

Subcommittee may be contacted through William Paznokas, California Department of Fish & Wildlife (858-467-4218/William.Paznokas@wildlife.ca.gov) or Bryant Chesney, National Marine Fisheries Service (562-980-4037/Bryant.Chesney@noaa.gov).

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

4. Construction Responsibilities and Debris Removal. By acceptance of this permit, the permittee agrees that the approved development shall be carried out in compliance with the following BMPs:

a. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
b. Any and all construction material shall be removed from the site within ten days of completion of construction and disposed of at an appropriate location.
c. Machinery or construction materials not essential for project improvements are prohibited at all times in the subtidal or intertidal zones.
d. 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.
e. Divers will recover non-buoyant debris discharged into coastal waters as soon as possible after loss.
f. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash or construction material has been left on the shore or in the water, and that the project has not created any hazard to navigation.

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

a. Boat Cleaning and Maintenance Measures:

- In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints and debris.

- In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls is prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and only minimal amounts shall be used.

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

b. Solid and Liquid Waste Management Measures:

- 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.

c. Petroleum Control Management Measures:

- Oil absorbent materials should be examined at least once a year and replaced as necessary. The applicant shall recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters are encouraged to regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters are also encouraged to use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services to clean oily bilge areas. Clean and maintain bilges. Do not use detergents while cleaning. The use of soaps that can be discharged by bilge pumps is discouraged.

6. **Public Access along the Public Right-of-Way.** The proposed project shall not interfere with public access and use of the public right-of-way that runs between the permittee's property and Rivo Alto Canal. The only permitted improvements to the public right-of-way are the gangway platform to the seawall associated with the proposed dock system, seating available to the public, and drought tolerant non-invasive landscaping.

7. **Dock Float and Pier Leases.** By acceptance of Coastal Development Permit 5-19-0378, the permittee agrees, on behalf of itself and all successors and assigns, that the development subject to this permit shall be subject to the terms of the dock float

and pier lease program for Rivo Alto Canal, implemented by the City of Long Beach for the limited-term private use and occupation of State Tidelands for development associated with recreational boating activities (i.e., private docks and piers). Prior to construction of the proposed project, the permittee shall enter into and pay the required fees for a dock and pier lease with the City of Long Beach Marine Bureau, and shall continue to pay any lease fees required for the private use of State Tidelands as long as the development remains on State Tidelands. Such fees shall be used for public access improvements to the public right-of-way, consistent with the requirements of Coastal Development Permit 5-11-085.

8. **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 Background

The applicant proposes to install a 25.5-foot by 6-foot (153 sq. ft.) rectangular dock float, one 16 ft. x 2.5 ft. gangway, and an access staircase in the Rivo Alto Canal located in southeast Long Beach (**Exhibit 1** and **Exhibit 2**). The proposed 6 ft. x 28 ft. dock float complies with the maximum six-ft. width of new or reconstructed dock systems within Naples Canal as set forth in Special Condition 8 of Coastal Development Permit 5-11-085 [Naples Seawall Repair Project (Phase 1), City of Long Beach]. No bottom disturbance or dredging is proposed or permitted by the subject application. The proposed project has received the approval of the City of Long Beach Marine Bureau (07/03/2018) and the City of Long Beach Department of Development Services (09/28/2019).

Naples Island (which consists of three islands) and the Naples Canals (Rivo Alto Canal and Naples Canal) were constructed (dredged and filled) in the early 1900s in the delta of the San Gabriel River, the area that is now Alamitos Bay. Naples Canal is currently 65 to 70 feet wide and 7 to 14 feet deep, depending on the tide. A 20-foot wide portion of public land exists on the upland portions along each side of the Rivo Alto Canal right-of-way, between the seawalls and the property lines of the residents whose homes line the canal and is open to the public.

In 2013, the Commission approved Coastal Development Permit 5-11-085, which authorized repair activities for the existing seawall that surrounds Naples Island. Subject to the conditions of Coastal Development Permit 5-11-085, the City of Long Beach is in the process of installing new steel sheet-pile seawalls on the water side of the existing vertical concrete seawalls along both sides of Naples Canal (1,915 linear feet), and new guardrails, landscape beds, sidewalks, improved drainage, and relocated street lighting in the public right-of-way along the canal. Due to the scale of work required for the project, the seawall repair project was broken up into phases. CDP 5-11-085 permitted Phase One of the project, which includes the Rivo Alto Canal properties located between Ravenna Drive Bridge and the Toledo east bridge, where the project site is not located. During Phase One, the City removed the dock floats and associated structures in order to access and repair the seawall. Upon completion of the repair activities, the City replaced the private dock float systems. Phase One has been completed, and the City is now in the process of Phase Two, further described in CDP Amendment 5-11-085-A1. The subject project site is located in the Southwest quadrant of the Naples Canal system, which has been categorized as Phase Five of the Naples Seawall Repair Project (**Exhibit 3**). At this time, the City has not prepared an amendment to Coastal Development Permit 5-11-085 to authorize Phase Five repair activities.

B. Marine Resources and 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 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams

Section 30233 of the Coastal Act states in part:

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

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

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

(6) Restoration purposes

Marine Resources

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 Harbor could be significant. It should be noted that there are hundreds of private residential 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.

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 piscivouous 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.

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.

The proposed dock system is associated with the adjacent single-family residence at 173 Rivo Alto Canal and would be used for recreational boating purposes. The applicant submitted an eelgrass survey dated October 14, 2019, which indicated that an eelgrass patch is present within 15 feet of the project site. However, there is no eelgrass within the actual project site, including within the proposed dock footprint. Invasive algae (Caulerpa taxifolia) were not observed at the project site. The City of Long Beach has developed eelgrass mitigation plans for the Phase One and Phase Two areas of the Naples Seawall Repair Project under Coastal Development Permits 5-11-085 and 5-11-085-A1, respectively. However, because the City has not started the procedures for the Phase Five area, it is unclear whether or if the City will undertake a similar eelgrass mitigation plan for the area. The Commission therefore imposes **Special Condition 2** and **Special Condition 3**, which require the applicant to undergo pre-construction eelgrass and caulerpa surveys for the project site and within a 10 meter buffer area. In addition, **Special Condition 4** and **Special Condition 5** require the applicant to implement best management practices during construction and post-construction in order to avoid any significant adverse effects to marine resources. Therefore, as proposed and conditioned herein, the development will not have any significant adverse effects on marine resources.

Water Quality

The proposed work will be occurring on 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 5**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter

coastal waters. To reduce the potential for post-construction impacts to water quality, **Special Condition 6** requires the continued use and maintenance of post construction BMPs. The Regional Water Quality Control Board has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers and the permit is pending coastal development permit approval. To ensure that the proposed project adheres to the requirements from other resource agencies, the Commission imposes **Special Condition No. 8**, which requires the permittee to 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.

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only, including "new or expanded boating facilities." However, fill for boating facilities is only allowed where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The proposed dock system would be supported with two galvanized pipe piles that measure two inches in diameter. The pipe piles would be attached at one end to the existing deck, would loop over the existing seawall, and would be embedded approximately five feet into the soil at the other end, resulting in approximately 2.1 square feet of fill. The dock system could be designed to be attached to the seawall, which would eliminate the need for piles for support. However, The City does not permit any new docks to be attached to the seawalls because the aggregated weight of the dock systems would compromise the structural integrity of the seawalls and may create future maintenance issues **(Exhibit 4)**. the applicant has worked with the City to ensure that the proposed dock system design with the two pipe piles would limit fill to the minimum amount necessary (with regard to both fill area and number of piles) to secure the dock system. The amount of fill proposed for the project is very minimal, and the Commission has typically not required mitigation measures for such small amounts of fill. The proposed design would site the two pipe piles immediately adjacent to the seawall. In addition, the pipe pile system could be removed with minimal ground disturbance if removal is required at some point in the future. The pipe piles will support the proposed dock system, which is a new boating use; therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, as it is for a boating-related use. Overall, the proposed dock system is consistent with Section 30233(a) of the Coastal Act because the proposed fill would be associated with a new boating facility, there is not a feasible less damaging alternative, and mitigation measures would not be necessary for such a minimal amount of fill.

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 and the City's

certified LCP regarding maintaining and enhancing the biological productivity and the water quality.

C. 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 30211 of the Coastal Act 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 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.

The proposed project (a new dock float) requires an access point (gangway and gangway platform), which may partially obstruct the approximately 20-foot wide public right-of-way that runs between the applicant's property and the Naples Canal. The public right-of-way features a concrete walkway and may be partially landscaped in the area adjacent to the seawall by the applicant, but is subject to improvement by the City of Long Beach, consistent with the requirements of Coastal Development Permit 5-11-085. The applicant is not proposing any landscaping or improvements in the public right-of-way at this time. However, should the applicant decide to place improvements within the designated portion of the public right-of-way, the improvements would need to be consistent with the requirements found in Coastal Development Permit 5-11-085. Therefore, the Commission imposes **Special Condition 6**, which states that the only permitted improvements to the public right-of-way are the gangway platform adjacent to the seawall associated with the proposed dock system, seating available to the public, and drought tolerant non-invasive landscaping. Additionally, **Special Condition 6** requires that a minimum of six feet of the reconstructed sidewalk shall remain open and accessible to the general public 24 hours a day, consistent with the other Naples Island public walkways and Special Condition 12 of Coastal Development Permit 5-11-085.

In addition to the Coastal Act policies requiring maximum public access to the coast, the Commission has the responsibility to protect the public trust and public trust uses.[1] Coastal Act regulations define public trust lands as "all lands subject" to the common law public trust and associated with trust purposes, including recreation.[2] In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260), and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake (*Nat'l Audubon Soc. v. Super. Ct.* (1983) 33 Cal. 419, 436-437).

The proposed development would occur on tidelands and submerged lands managed by the City of Long Beach. The City of Long Beach is in the process of implementing a dock float and pier lease program for the limited-term private use and occupation of State tidelands for development associated with recreational boating activities (i.e., private docks and piers) within Rivo Alto Canal. The program will establish fees in relation to the lease area and temporal length of each lease and all revenue will be deposited into the City's Tidelands Fund to be utilized for public access improvements in the City of Long Beach. Because the development associated with this permit is private use of State tidelands which impacts public access through the narrow canal popular with public kayakers and gondola passengers (60 to 80 feet wide), **Special Condition 7** requires the applicant to provide mitigation in the form of a lease fee to the City which will be used to enhance public access in other areas. Only as conditioned is the project consistent with the Chapter 3 policies of the Coastal Act.

D. Local Coastal Program (LCP)

A coastal development permit is required from the Commission for the proposed development because it is located within the Commission's area of original jurisdiction and on state tidelands. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Long Beach local coastal program, certified by the Commission on July 22, 1980, is advisory in nature and may provide guidance. As conditioned, the proposed temporary development is consistent with Chapter 3 of the Coastal Act.

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[1] The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine ("public trust"). Here, under the granted lands statutes, the Legislature granted the tide and submerged lands in Long Beach, including Alamitos Bay and its associated canals, to the City, dictating that such lands shall be used for public trust purposes

[2] Cal. Code of Regs., title 14, § 13577(f).

E. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 City of Long Beach, the lead agency for CEQA, determined that the proposed event is categorically exempt from CEQA under Class 1, Section 15301. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which 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, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A – Substantive File Documents

1. CDP Application No. 5-19-0378

2. “Pre Construction Eelgrass (Zostera marina) and Caluerpa Taxifolia Survey, South Shore Marine, Inc., October 14, 2019