CALIFORNIA COASTAL COMMISSION
South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071

Th12d

Filed:	10/24/19
180th Day:	4/20/20
Staff:	FSY-LB
Staff Report:	2/28/20
Hearing Date:	3/12/20

STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-19-0907**
Applicant:	**Palmo Investments**
Agent:	Anchor QEA, LLC, Attention Adam Gale
Location:	Newport Bay waters adjacent to 2888 Bayshore Drive, City of Newport Beach, Orange County.
Project Description:	Redevelopment of an existing 53-slip marina to a 50-slip marina, and installation of harbor camel.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the redevelopment of the existing marina at 2888 Bay Shores Drive, Newport Beach, Orange County, involving demolition of the existing marina and replacement with a new marina, including docks, piles, utilities, pier platform and gangway. The project will reduce the number of slips from 53 to 50.

The proposed project is located within the Commission's original permit jurisdiction because it would be located on and over the waters of Newport Harbor. The standard of review for development proposed 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 the review process.

Staff is recommending **APPROVAL** of the redevelopment of the existing marina with **ten (10) special conditions**. The major issues raised by this proposed project are consistency with the marine resources, water quality, public access, and recreation policies of the Coastal Act.

The proposed development is located on public tidelands and submerged lands in Newport Harbor that are managed by Orange County, and a "Newport Tidelands Encroachment Permit" is required from the county. However, the applicant has not obtained that encroachment permit. Staff therefore recommends **Special Condition No. 1**, which requires the applicant to submit a copy of a letter of permission or approval from Orange County, or evidence that no permit or permission is required prior to the issuance of a permit.

The existing dock system on this site consists of 12,787 square feet and the proposed dock system consists of 13,866 square feet. The proposed dock system would result in an increase of 1,079 square feet of increased water coverage. In addition, the proposed project would result in approximately 999 square feet of eelgrass shading. The increased water coverage in this area would likely impact the biological productivity of the area, such as reducing or eliminating photosynthesis in the covered water areas, impacting the growth of eelgrass, and reducing water area for avian foraging opportunities. The proposed plan also includes the installation of a harbor camel at the south end of the marina that the applicant states would allow tenants to safely navigate to the backside of the marina and also eliminate potential property damage and personal injury to the adjacent property and property owner located at 2782 Bayshore Drive. However, this project element raises concerns over the installation of physical barriers in and over the public waters of Newport Bay, resulting in more fill and diminished public access and recreational opportunities.

Staff asked the applicant to provide a project that would reduce the adverse impacts of the proposed project, but the applicant is intent with going forth with the proposed design. The applicant has proposed an eelgrass mitigation plan in order to mitigate the adverse impacts to eelgrass, but even with this plan, the proposed project is not the least environmentally feasible alternative. However, the applicant has acknowledged that there is another plan, the "2018 Plan" that would reduce additional water coverage to 157 square feet, reduce additional eelgrass impacts to 57 square feet, and eliminate the need for the harbor camel. The 2018 Plan would be the least environmentally damaging alternative that satisfied project goals to provide recreational boat docks in the same general footprint and complied with Newport Beach Harbor Design Guidelines. Therefore, Staff recommends **Special Condition 2**, which requires the applicant to submit revised marina plans that that adhere to the 2018 Plan.

Additionally, the surveys stating that eelgrass was located at the project site are outdated and no longer valid. Thus, Staff recommends **Special Condition No. 3**, which requires a new eelgrass survey and identifies the procedures which must be completed prior to beginning construction, in the event that the new survey also expires prior to commencement of construction. With imposition of **Special Condition No. 2**, the

eelgrass mitigation plan would need to be revised to correlate with the reduced amount of eelgrass impacts. Therefore, Staff recommends **Special Condition No. 4**, requiring the applicant to submit a revised Eelgrass Mitigation Plan. In addition, since the submitted Caulerpa Taxilfolia survey is outdated, Staff also recommends **Special Condition No. 5,** requiring the applicant, prior to commencement of development, to survey the project area for the presence of Caulerpa Taxilfolia, an invasive, non-native aquatic species that can be further dispersed in coastal waters as a result of construction activities.

Special Condition No. 2 would also require a balanced slip mix that enhances public access opportunities through the provision of a larger side tie area for smaller boats compared to the proposed design.

In order to ensure that future development on the site does not adversely impact biological resources and public access, Staff recommends **Special Condition No. 6**, which informs the applicant that future development at the site requires an amendment or a new coastal development permit.

During construction and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, several standard special conditions are recommended to minimize any such impacts: **Special Condition No. 7** outlines construction responsibilities and debris removal requirements, and **Special Condition No. 8** requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality.

To ensure that the applicant complies 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 the marine environment, **Special Condition No. 9** requires that the applicant comply with all the requirements, requests, and mitigation measures of these agencies.

In order to protect marine resources and water quality, Staff recommends **Special Condition No. 2**, which requires the applicant to submit revised plans identifying the revised structural dock float decking construction material that does not use a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water.

Finally, the public tidelands and submerged lands upon which the marina is located and bayward of the site are managed by Orange County. Therefore, the public maintains a right to access the navigable bay waters for navigation and recreational purposes. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 10** is recommended, stating that the approval of a coastal development permit for the project does not waive any public rights or interests that exist or may exist on the property.

If approved with the conditions recommended by staff, the proposed project will conform with the Chapter 3 policies of the Coastal Act.

The motion to approve the CDP application is on **Page Six**. The special conditions begin on **Page Seven**.

TABLE OF CONTENTS

EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-0907 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 that the 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. **Orange County Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a copy of a letter of permission or approval from Orange County regarding the proposed project, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the County. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

2. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two (2) full size sets of revised project plans that substantially conform with the plans submitted on January 27, 2020 ("2018 Plan"), modified as required below:

A. The revised plans shall be overlaid upon Eelgrass patches identified in the Eelgrass survey required by **Special Condition No. 3** of this coastal development permit;

B. The revised plans shall identify dock float decking construction material that does not need a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water (e.g., treated wood deck material on which a recognized wood sealant is applied at an approved inland facility prior to arrival at the construction site, and kiln-dried, in order to significantly reduce potential leaching of preservative treatments into the water body);

C. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports; and

D. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the

Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

3. 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 10 meter 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 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.

Post-Construction Eelgrass Survey. If any eelgrass is identified in the project site or the 10 meter buffer area by the pre-construction survey, 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 10 meter 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 ratio on-site (mitigation: impact), 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.

4. Revised Eelgrass Mitigation Plan. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Newport Marina Redevelopment Project Eelgrass Mitigation Plan (prepared by Marine Taxonomic Services, Ltd dated September 9, 2019), except as required to be modified as described below. The plan shall be prepared in consultation with the CDFW and NMFS. The plan shall be prepared consistent with the requirements identified below and the requirements of the California Eelgrass Mitigation Policy (CEMP), including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

A. The plan shall provide that:

1. All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.38:1 (mitigation to impact) ratio;

2. Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;

3. The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;

4. Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).

5. A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;

6. A comprehensive report describing the results of the plan shall be submitted at the end of the proposed five-year period;

7. A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;

8. A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;

9. An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and

10. Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

5. Pre-Construction Caulerpa Taxifolia Survey. By acceptance of this permit, the applicant agrees to, not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this CDP, undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga Caulerpa Taxifolia. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid Caulerpa Taxifolia survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol shall be prepared in consultation with the RWQCB, CDFW, and NMFS. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

A. For the review and approval by the Executive Director; and

B. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467 4218) or Robert Hoffman, National Marine Fisheries Service (562/980 4043), or their successors.

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

6. Future Development. This permit is only for the development described in CDP No. 5-19-0907. Pursuant to Title 14 of the California Code of Regulations Section

13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by CDP No. 5-19-0907, including the proposed marina. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-19-0907 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

7. Construction Responsibilities and Debris Removal. By acceptance of this permit, the applicant agrees to comply with the following construction related requirements:

A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;

B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;

C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;

D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;

E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;

F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;

G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;

H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;

I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

J. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal

Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;

K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;

L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;

M. The discharge of any hazardous materials into any receiving waters shall be prohibited;

N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;

O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and

P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

A. Boat Cleaning and Maintenance Measures:

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

2. 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

B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters 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;

2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and

3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

9. Resource Agencies. The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) 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.

10. Public Rights and Public Trust. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property. If, at a future date, any portion of the development approved by this permit is determined to be located on or over public trust lands, then any development approved by this coastal development permit not

compatible with the public trust shall be removed approved by this coastal development permit not compatible with the public trust shall be removed.

IV. FINDINGS AND DECLARATIONS

A. Project Location, Project Description, Standard of Review and Prior Permits

Project Location

The subject site is located in the waters of Newport Bay adjacent to 2888 Bayshore Drive in the City of Newport Beach, Orange County (**Exhibit 1**). It is located adjacent to a non-gated residential community of Bayshore and is a privately-owned commercial marina with 53 total boat slips which are available for lease to the public.

The marina is located on State Tidelands 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 919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). The proposed development is located on public tidelands and submerged lands in Newport Harbor that are managed by the County as identified in a "Tidelands Survey for Newport Harbor for the City of Newport Beach" and is within the Coastal Commission's retained permit jurisdiction. Thus, the County would be the local permit issuing authority for development (i.e. a dock system) within the public tidelands area and the permits they issue for such development are entitled "Newport Tidelands Encroachment Permits." The applicant has submitted an application to the County but has not yet obtained a "Newport Tidelands Encroachment Permit." Thus, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit a copy of a letter of permission or approval from the County, or evidence that no permit or permission is required prior to the issuance of the coastal development permit.

Project Description

The applicant states that the marina was constructed in 1970 and has reached the end of its useful life. The proposed project includes demolition of the existing marina and replacement with a new marina, including docks, piles, utilities, pier platform and gangway, which would reduce the number of boat slips from 53 to 50 (**Exhibit 2**). The applicant is proposing adjustments to the existing boat slip mix to accommodate current boater demands, design standards, and compliance with the Americans with Disability Act (ADA) and the California Division of Boating and Waterways' (CDBW) current code and design standards. The applicant is also proposing the installation of a harbor camel in the waters of Newport Bay approximately 50 feet south of the south end of the marina. The applicant states that this harbor camel will eliminate potential property damage and personal injury to the adjacent property and property owner located at 2782 Bayshore Drive. No work to the existing bulkhead nor any dredging work is proposed. The proposed dock system would extend past the U.S. Pierhead Line similar to the existing docks system, but not any farther into the bay, consistent with the City of

Newport Beach Harbor Permit Policy and as approved by the City of Newport Beach City Council. The table below provides more specific information about the proposed boat slip mix:

Existing and Proposed Slip Mix

Slip Length (Feet)	Number of Existing Slips	% Existing Design	Total Proposed Slips	% Proposed Design
22	10	18.87%	8	16.00%
24	1	1.89%		
26			14	28.00%
30	11	20.75%		
32			1	2.00%
38	1	1.89%		
40	1	1.89%	9	18.00%
42	10	18.87%	12	24.00%
48	18	33.96%		
50	1	1.89%		
54			1	2.00%
62			5	10.00%
Total	**53**	**100.00%**	**50**	**100.00%**

Of the proposed slips, 44% (16.0% (22-foot) + 28% (26-foot) would remain accessible for boats 26-feet in length or shorter, in comparison with an existing 21% (18.8% (22-foot) + 1.89% (24-foot) under the current design.

The proposed project would include a new 75-foot-long floating harbor camel supported by four 18-inch square concrete piles (**Exhibit 2, page 2**). The applicant states that the intent of the harbor camel is to establish a physical barrier that is an appurtenance to the proposed marina that will limit or prevent vessels from coming into contact with the vessel side-tied at the dock located at 2782 Bayshore Drive, the owner of which supports the marina design including the harbor camel. Furthermore, the applicant states it would allow smaller vessels to safely navigate to the backside of the herringbone marina design.

The existing pier platform would be replaced with a new fixed pier platform and the top elevation of the new pier would be at the same approximate finished grade elevation of the elevation of the adjacent parking lot. In addition, a new aluminum gangway leading from the new pier platform to the dock system will be constructed.

The proposed dock decking material is comprised of wood or synthetic, framed with wood requiring a chemical preservative treatment to reduce the rate of wood rot and corrosion for materials within the water. The timber members will be treated with Ammoniacal Copper Zinc Arsenate (ACZA), Copper Azole Type C (CA-C), or Alkaline Copper Quaternary (ACQ). These treated sections will not be fully submerged in water and will only have contact with water from occasional water splashing, and the water will then run off the decking or wooden framing.

The proposed marina will result in approximately 1,079 square feet of additional water coverage (12,787 square feet (existing) – 13,866 square feet (proposed) compared to the existing design:

Existing and Proposed Dock Components Overwater Coverage

Component	Existing (Square Feet)	Proposed (Square Feet)	Change (Square Feet)
Dock Shading Area	12,217	13,281	+1,064
Pier and Gangway Over Water	570	491	-79
Harbor Camel	0	94	+94
Total Overwater Coverage	**12,787**	**13,866**	**+1,079**

The applicant states that the increased water coverage is largely a result of adhering to the City of Newport Beach Harbor Design Guidelines and Standards regarding dock, slip, and fairway dimensions and the ADA and CDBW current code and design standards. In addition, the applicant states that the proposed marina layout is designed to occupy the minimum surface area necessary to remain consistent with these current standards while also meeting current boater demand.

The applicant states that there are 999 square feet of eelgrass impacts anticipated as a result from direct shading located in the area between the bulkhead and the proposed marina docks. The largest shading would occur where the main walk (“headwalk”) is being reconfigured and is proposed to be 8-feet wide (consistent with the City of Newport Beach design guidelines) and moved toward the bulkhead to accommodate longer slips at the northern end of the marina (**Exhibit 3**). The applicant states that there will be no direct eelgrass impacts from the proposed piles. To offset the proposed shading impacts to eelgrass, the applicant proposes onsite mitigation at two locations within Newport Bay immediately adjacent to the project site at a ratio of 1.38:1 = 1,378

square feet (Newport Marina Redevelopment Project Eelgrass Mitigation Plan Prepared by Marine Taxonomic Services, Ltd dated September 9, 2019) (**Exhibit 3, page 2**).

The proposed project would remove 22 existing piles and install 46 new concrete piles into the waters of Newport Bay. The table below provides more specific information:

Existing and Proposed Pile Quantities and Areas

Component	Existing	Proposed	Change
Pile Quantity	12 inch: 22	18 inch: 2 (pier platform) 16 inch: 4 (harbor camel) 16 inch: 10 14 inch: 30 TOTAL: 46	+24 piles
Pile Area	22 Square Feet	71 Square Feet	+49 Square Feet

The proposed project would result in an increase of 22 new piles, including an increase of 49 square feet of fill as a result. The applicant has stated that the number of piles is the minimum amount necessary to support the dock floats and pier platform to meet current harbor design codes, ensure consistency with the ADA and the CDBW requirements, and to safely anchor the dock floats, which are proposed to be reduced from 53 to 50 boat slips.

The proposed configuration of the marina includes 50 boat slips, which would require 38 vehicle parking spaces (based upon Table 21.40-1 "Off-Street Parking Requirements" of Chapter 21.40 "Off-Street Parking" of the Implementation Plan (IP), a component of the City's Certified LCP that requires 0.75 vehicle parking spaces per boat slip. The Commission may use LCP policies as guidance). Sixty-three (63) vehicle parking spaces (53 unassigned regular parking spaces and five (5) tandem parking spaces) are currently provided on site, which exceeds the number of spaces required per the City's IP for the proposed number of slips.

The applicant anticipates that the construction will take approximately four months. The marina parking lot will be used for staging and equipment storage.

Standard of Review

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project takes place beyond the bulkhead located bayward of the high tide and is thus within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the

Coastal Act, although the City's certified LCP is advisory in nature and may provide guidance.

Prior Permits

On April 14, 2016, the Commission approved CDP No. 5-15-1521-(Presta) for the replacement of the existing marina with a new 11,430 square-foot marina, including 97 square feet of fill associated with new marina guide piles. Four special conditions were imposed regarding: 1) Construction responsibilities and debris removal; 2) Best Management Practices (BMPs) Program; 3) Eelgrass surveys; and 4) Pre-construction *Caulerpa Taxilfolia* Survey. The CDP was issued on May 5, 2016. However, construction never commenced, and the permit expired on April 14, 2018.

The applicant has also acknowledged that the Newport Beach Harbor Commission approved a different marina replacement plan in 2018 that would significantly reduce water coverage and minimize eelgrass shading impacts compared to the current proposed plan. That is referred to as the "2018 Plan" and is discussed in further detail in the following sections.

B. Marine Resources/Water Quality

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

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

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

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

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

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

Section 30233 of the Coastal Act 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.

Section 30250 of the Coastal Act states in part:

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

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-4 states,

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

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-5 states,

> Where applicable require eelgrass and Caulerpa taxifolia surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey protocols.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states,

> Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

A. Construction or expansion of port/marine facilities.

B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.

C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

D. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.

E. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.

F. Sand extraction for restoring beaches, except in environmentally sensitive areas.

G. Restoration purposes.

H. Nature study, aquaculture, or similar resource-dependent activities.

I. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-2 states,

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

Coastal Land Use Plan, Dredging, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

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

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 states,

> Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of

> such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states,

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

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states,

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

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states,

> Incorporate BMPs into the project design in the following progression:
>
> Site Design BMPs.
>
> Source Control BMPs.
>
> Treatment Control BMPs.
>
> Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states,

> Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

Marine Resources/Biological Productivity

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 the 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.

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

Eelgrass (Zostera Marina) and Shading Impacts

The proposed project would result in shading impacts to approximately 999 square feet of eelgrass located underneath the proposed headwalk **(Exhibit 3)**. Increased water coverage in this area would likely impact the biological productivity of the area, such as reducing photosynthesis, impacting the growth of eelgrass by reducing the amount of sunlight, and reducing water area for avian foraging opportunities.

The City of Newport Beach Harbor Resources Division has developed Harbor Design Criteria Guidelines and Standards, though not certified by the Coastal Commission, that provide criteria for designing dock systems in a way that minimizes water coverage while providing for a usable dock. While the proposed project is consistent with Harbor Design Criteria Guidelines and Standards, the project still results in an increase of 1,079 square feet of water coverage, and shading impacts to approximately 999 square feet of eelgrass.

Commission staff has asked the applicant to provide project alternatives, including a revised project design, that would further minimize or avoid impacts to eelgrass, but the applicant is intent on the proposed design. In order to mitigate the adverse impacts to eelgrass, the applicant has submitted an eelgrass mitigation plan: Newport Marina Redevelopment Project Eelgrass Mitigation Plan (Prepared by Marine Taxonomic Services, Ltd dated September 9, 2019). The plan proposes onsite mitigation at two locations immediately adjacent to the proposed project site for the shading impacts of 999 square feet of eelgrass at a ratio of 1.38:1 = 1,378 square feet **(Exhibit 3, page 2)**. There are potential difficulties with this plan though since the northern location of proposed mitigation has an outfall pipe located near it and this area has historically been dredged and thus successful mitigation at this location may be in question. The Coastal Act has policies that require that impacts be avoided if possible (similar priorities are expressed in the City's certified LCP and in the California Eelgrass

Mitigation Policy). Thus, alternative designs that avoid or reduce impacts must be considered.

The applicant considered a revision to the proposed plan that would shift the marina further to the north, and determined it was infeasible due to shallow water depths closer to the Pacific Coast Highway Bridge. Additionally, that alternative would be outside the applicant's leased Tidelands boundary. This option would have increased the ease of access to the back side of the marina at the south, and potentially would avoid the request for a camel pile to divide the south side of the marina from the adjacent property lease area. It would also, however, reduce the overall number of slips available to the public and would not justify the replacement costs of the existing marina.

The applicant has also acknowledged that a 2018 Plan would significantly reduce water coverage and minimize eelgrass shading impacts This plan would shift the marina approximately 50 feet south and introduce a new north entrance for smaller vessels to the docks on the back side of the marina and adjacent to the seawall. The applicant states that this design would also address the concerns arising from damage due to vessel contact to the adjacent property and property owner located at 2782 Bayshore Drive. However, adjacent property owners appealed that plan to the Newport Beach City Council because of the proposed marina's proximity to the adjacent property owner at 2782 Bayshore Drive, and private view impacts to that and other nearby residences. The City Council stayed the Harbor Commission's approval of the 2018 Plan pending the review of the current proposed plan by the Coastal Commission.

The 2018 Plan would add only 157 square feet of water coverage, significantly less than the proposed 1,079 square feet of additional water coverage **(Exhibit 4**). The applicant has provided an updated overlay map which indicates that approximately 59 square feet of eelgrass would be shaded if the marina were constructed consistent with the 2018 Plan, (**Exhibit 5**) as opposed to 999 square feet with the applicant's proposal. In sum, there are four alternatives to the proposed project. First, the "no project" alternative, which is to maintain the existing marina. This alternative is not feasible because it has reached the end of its useful life). Second, replacing the existing marina in exactly the same footprint, which is not feasible because the Harbor Design Guidelines and CDBW current code and design standards require wider walkways and more piles. Third, moving the marina north, but this alternative is not feasible because of water depths and extension outside the applicant's leased boundary and it is economically infeasible because it reduces the number of slips available for lease to the public. Fourth, the 2018 Plan, which provides the same number of slips as the proposed project but involves only 157 square feet of additional water coverage and only 59 square feet of eelgrass would be shaded. Therefore, this alternative is the least environmentally damaging feasible alternative.

If the proposed project were revised to be consistent with the 2018 Plan, the adverse impacts to biological productivity of coastal waters resulting from increased water coverage, increased shading of soft bottom habitat, habitat displacement, decreases in foraging habitat for sight foraging marine birds, and shading impacts to eelgrass would be minimized. While the 2018 Plan will result in water coverage, it is minimal and would

not result in eelgrass impacts and therefore it would not contribute significantly to cumulative adverse impacts from dock shading in Newport Harbor. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicant to submit revised marina plans that adhere to the 2018 Plan.

The Commission also imposes **Special Condition No. 3**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey expires prior to commencement of construction. The surveys that determined that eelgrass was located at the project site took place on July 25, 2018, December 14, 2018 and September 9, 2019; however, eelgrass surveys completed during the active growth phase of eelgrass (March through October) are valid for only 60 days. Surveys completed between August and October are only valid until the resumption of active growth (i.e. March 1). The existing eelgrass surveys are no longer valid and thus a new survey is required for project approval.

As a result of **Special Condition No. 2**, the eelgrass mitigation plan will need to be revised to mitigate 59 square feet of eelgrass shading impacts at a ratio of 1.38:1. Therefore, the Commission imposes **Special Condition No. 4**, which requires the applicant to submit a revised Eelgrass Mitigation Plan based on eelgrass conditions identified at the time of construction, consistent with the California Eelgrass Mitigation Policy. The plan shall be prepared in consultation with the CDFW and NMFS.

Caulerpa Taxifolia

In 1999, a non-native and invasive aquatic plant species, Caulerpa Taxifolia, was discovered in parts of Huntington Harbor. 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 eelgrass. Caulerpa Taxifolia is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that Caulerpa Taxifolia can grow in large monotypic stands within which no native aquatic plant species can co-exist. Native seaweeds, seagrasses, and kelp forests can be displaced, which can adversely impact marine biodiversity, causing attendant impacts upon fishing, recreational diving, and tourism.

The applicant has indicated that a pre-construction Caulerpa Taxifolia survey was completed in conjunction with the Eelgrass Survey Prepared by Marine Taxonomic Services, Ltd dated July 25, 2018, as required by the City of Newport Beach Harbor Resources Division. None was found in the proposed project area. However, Caulerpa Taxifolia surveys are only valid for 90 days. Thus, pursuant to **Special Condition No. 5,** an up-to-date Caulerpa Taxifolia survey must be conducted prior to commencement of the project. If Caulerpa Taxilfolia is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the Caulerpa Taxilfolia, unless the Executive Director determines that no amendment or new permit is legally required. As conditioned for eelgrass and Caulerpa Taxifolia surveys, impacts to biological resources will be minimized. In order to protect these resources and additional biological resources from

potential future impacts, **Special Condition No. 6** requires that the applicant must obtain a permit amendment or a new permit for any future repair or maintenance of the proposed marina system.

Construction and Post-Construction Impacts

The proposed work will occur 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 adverse impacts on the marine environment. The applicant is proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as netting, sandbags, tarps, or other forms of barriers to be placed around staging areas to prevent debris from entering the water, and floating booms to be maintained around the project site to capture floating debris. The Commission imposes **Special Condition No. 7**, which requires appropriate storage and handling of construction equipment and materials to minimize the potential for pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, **Special Condition No. 8** requires the continued use and maintenance of post-construction BMPs.

The applicant has indicated that it has a pending permit (Clean Water Act Section 401 Water Quality Standards Certification) under review from the RWQCB. The applicant has also applied for a permit from the USACE, which is pending until coastal development permit approval. To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition No. 9** requires the applicant to comply with all requirements, requests and mitigation measures from the CDFW, the RWQCB, the USACE, and the USFWS with respect to preservation and protection of water quality and marine environment.

The applicant has stated that the decks of the dock floats will be constructed out of synthetic material. The structural members will be composed of wood and will require a chemical preservative treatment to limit the rate of rot and corrosion. Following treatment and prior to installation, the treated structural timber members will be sealed with commercial grade water repellant. The applicant has indicated that the wood will be treated with Ammoniacal Copper Zinc Arsenate (ACZA), Copper Azole Type C (CA-C), or Alkaline Copper Quaternary (ACQ), but has not specified which treatment would be used to reduce the rate of rot and corrosion of the wood within the water. Use of Ammoniacal Copper Zinc Arsenate (ACZA) chemical preservative treatment raises concern, as there is potential for measurable amounts of preservatives to be released into the water and thus adversely impact marine resources and water quality. Necessary information has not been provided if the other remaining options, Copper Azole Type C (CA-C) or Alkaline Copper Quaternary (ACQ), raise any water quality concerns. An alternative material that does not need a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water must be used. Thus, the Commission imposes **Special Condition No. 2**, which requires the applicant to submit revised plans identifying the

revised structural dock float decking construction material that does not use a chemical preservative treatment or a preservative treatment that does not result in the potential release of adverse materials into the water.

Fill of Coastal Waters

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, and estuaries to certain uses only, including "new or expanded boating facilities." However, fill for boating facilities is only allowed "…where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects." The project alternative required by **Special Condition No. 2** includes removal of 22 piles and installation of 46 new piles in coastal waters of Newport Harbor, which will result in fill of open coastal waters. The piles will support the proposed dock floats and pier platform, and, therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act, as it is for a boating-related use. The proposed project will result in 49 square feet of additional fill.

The 2018 Plan will reduce water coverage and eelgrass shading impacts compared to the proposed project, but the alternative design requires the same amount and type of piles as the proposed project. However, the 2018 Plan will not include the four piles associated with the harbor camel included in the proposed project design. Approval of the applicant's proposed project, which relied on the harbor camel and associated piles, would risk setting a precedent for projects in Newport Bay, and could encourage future applicants to install physical barriers in and over the public waters of Newport Bay, resulting in more fill and diminished public access and recreational opportunities.

While both the proposed project design and the 2018 Plan increase the number of piles compared to the current marina, the applicant has demonstrated that this is the minimum amount necessary to meet current harbor design codes, consistency with the Americans with Disabilities Act, and to safely anchor the dock floats. Fewer and/or smaller piles would not adequately secure the boat dock floats in this area that has historical been a location for boat docks. By using the least number of piles necessary to accomplish the goal of securing the dock floats and pier platforms, the 46 piles represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing a roughly equivalent amount of recreational boat berthing as compared to the existing marina. Also, as required by **Special Condition No. 2**, for conformance with the 2018 Plan which utilizes 46 piles, the project would reduce water coverage and eelgrass impacts and represent the least environmentally damaging feasible alternative. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

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 with the portions of the City's certified LCP used as guidance that generally require maintaining,

protecting, and enhancing the biological productivity and the water quality of coastal waters.

C. Public Access and Recreation

Article X, Section 4 of the California Constitution provides:

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

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

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

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

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

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

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

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

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

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

> Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or

> commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30224 of the Coastal Act, Recreational boating use; encouragement, facilities, 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.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states,

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

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-9 states,

> Protect, expand, and enhance a system of public coastal access that achieves the following:
>
> > Maximizes public access to and along the shoreline;

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-11 states,

> Require new development to minimize impacts to public access to and along the shoreline.

Coastal Land Use Plan Policy, Bay/Harbor Encroachments, 3.1.4-3 states,

> Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

Implementation Plan, Development Standards, Harbor Development Regulations, 21.30C.050(G) states,

> G. Piers.
>
> > 1. Limits on Use. Only piers, floats and patio decks and their appurtenances pursuant to subsection (G)(5) of this section shall be permitted bayward of the bulkhead.
> >
> > 2. Street Ends. No private piers shall be permitted at street ends.

3. Setbacks.

a. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.

b. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.

c. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:

i. Where property lines are not approximately perpendicular to the bulkhead line;

ii. Where curves or angles exist in the bulkhead line;

iii. Where bridges, topography, street ends or publicly owned facilities adjoin the property.

d. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.

4. Joint Ownership. Permits may be granted for joint ownership piers at the prolongation of common lot lines. The permit for joint ownership piers shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the permit.

5. Patio Decks. Patios are not permitted to extend over the waters of Newport Harbor unless the waters are adjacent to the upland property and outside the areas described in the tidelands trust, and provided the patio complies with the following conditions:

a. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.

b. The minimum setbacks from the prolongations of the side property lines shall be five feet.

c. No float shall be permitted within one foot of the decks.

d. No permanent structure shall be permitted on the projecting portion of the patios except:

i. Planters and benches not over sixteen (16) inches in height;

ii. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.

e. A harbor and building permit has been obtained.

6. Storage Lockers. Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:

a. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.

b. The overall height shall not exceed thirty (30) inches when located bayward of commercial and industrial property zones where the piers and floats are used primarily for the mooring of pleasure boats.

c. The overall height shall not exceed sixty (60) inches when located on facilities bayward of commercial and industrial zoned property where the use is not primarily for the mooring of pleasure boats.

d. The overall height shall be measured from the deck of the pier or float to the top of the storage locker and overall height to include the enclosed portion of the locker or box.

Parking

The City's Certified LCP requires 0.75 vehicle parking spaces per boat slip (see Table 21.40-1 "Off-Street Parking Requirements" of Chapter 21.40 "Off-Street Parking" of the Implementation Plan). The proposed marina plan includes 50 boat slips, which will require 38 vehicle parking spaces. The existing marina parking lot provides 63 vehicle parking spaces (53 unassigned parking spaces and 5 tandem parking spaces) on site. Thus, the existing onsite parking exceeds the number of spaces required per the City's IP. Parking would be adequately provided for the proposed project.

Slip Mix

In prior permit actions, the Commission has been concerned about the trend towards larger slips in marinas at the expense of the smaller slips. The Commission has heard testimony that a reduction in the availability of smaller slips reduces the option for those who want to own smaller boats. As larger slips occupy more space in a marina, there is less space for the smaller slips, resulting in fewer overall slips and fewer slips available for the owners of small vessels. Berthing opportunities for small boat owners will be reduced if this trend continues. *Relatively* speaking, smaller boats are less expensive, and therefore available to a larger segment of the population than larger boats. The Commission has not historically regulated the rates at which marinas rent their slips to the public. The Commission has, however, regulated the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of

the Coastal Act by providing a balance between the size of slips, which facilitates increased public access and the boaters' demand for slips.

The proposed marina plan would reduce the existing 53-slips to 50-slips. There would be an increase in the number of small boat slips ranging from 22-feet to 26-feet in length from 11 to 20; an increase in small-medium boat slips ranging from 26-feet to 32-feet in length from 11 to 15 and an increase of large boat slips ranging from 54-feet to 62-feet in length from 0 to 6. There would be a decrease in the medium size boat slips ranging in size between 38-feet and 50-feet in length from 31 to 21.

Special Condition No. 2 requires the applicant to submit revised marina plans consistent with the 2018 Plan. Similar to the proposed project, the 2018 Plan will reduce the existing 53-slips to 50-slips, yet the slip mix is different. There is an increase in the number of small boat slips ranging from 20-feet to 26-feet in length from 11 to 19 and an increase of large boat slips ranging from 54-feet to 62-feet in length from 0 to 6; but a decrease in small-medium boat slips ranging from 26-feet to 32-feet in length from 11 to 0, and a decrease in the medium size boat slips ranging in size from 38-feet to 50-feet in length from 31 to 16.

On the next page is a chart that shows the existing, proposed, and 2018 Plan slip mixes:

Existing, Proposed and 2018 Plan Slip Mix

Slip Length (Feet)	Total Existing	% Existing Design	Total Proposed	% Proposed Design	Total 2018 Plan	% 2018 Plan
20					2	4.00%
22	10	18.87%	8	16.00%	17	34.00%
24	1	1.89%				
26			14	28.00%		
30	11	20.75%				
32			1	2.00%		
37					6	12.00&
38	1	1.89%				
40	1	1.89%	9	18.00%		
42	10	18.87%	12	24.00%	16	32.00%
48	18	33.96%				
50	1	1.89%				
54			1	2.00%		
62			5	10.00%	9	18.00%
Total	**53**	**100.00%**	**50**	**100.00%**	**50**	**100.00%**

While the proposed slip mix results in an increase of small, small-medium, and large slips, and a decrease in medium slips, and the 2018 Plan slip mix results in an increase of small and large boat slips and a decrease of small-medium and medium slips, both proposals provide a good mix of slip sizes with an increase in smaller slips. Thus, when balanced against the overall demand for larger boat slips, the need to meet new standards, and the fact that small boat owners are moving toward trailering their boats and using dry storage, the Commission finds that both slip mixes are adequate.

Both the proposed marina plan and 2018 Plan propose kayak and stand up paddleboard racks. The proposed marina plan includes a side tie area for approximately 8 small boats (i.e., Duffy boats), while the 2018 Plan also provides a side

tie area but for approximately 17 small boats. Slips and side tie areas are offered for lease to the general public at this marina. Thus, public access to Newport Harbor is not only improved by the proposed and 2018 Plan slip mix, but also by the use of a side tie area.

As conditioned, there is no significant potential for adverse impacts to public access as a result of the proposed 2018 Plan slip mix. However, future development which may result in a different mix of slip sizes may potentially result in adverse impacts to public access (e.g., overabundance of large-size boat slips). To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 6,** which requires a coastal development permit for future development. This condition will allow the Commission to evaluate public access impacts associated with any future development proposing a change to the mix of boat slip sizes at that time.

Other than access to the marina for boating purposes, no public access currently exists through the site. The public tidelands and submerged lands where the marina is located and bayward of the site are managed by the County as identified in a "Tidelands Survey for Newport Harbor for the City of Newport Beach" and access to Newport Harbor exists approximately 200 feet north of the site, across Pacific Coast Highway at Castaways Park. Therefore, the public maintains a right to access the navigable bay waters for navigation and recreational purposes. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 10** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212, 30220, 30221 and 30250 of the Coastal Act and the City's certified LCP used as guidance regarding the public's right of access to the sea and does not interfere with recreational opportunities on public tidelands.

D. Local Coastal Program (LCP)

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

E. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements

of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach 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 on April 2, 2019 that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 1 (Section 15301), Existing Facilities, and Class 2 (Section 15302), Replacement and Reconstruction. The Commission finds that the project design must be modified to be consistent with Coastal Act requirements, but the change to the design to revert to the 2018 Plan will not cause new adverse impacts to the environment. In fact, the project has been conditioned to reduce environmental impacts associated with water coverage and to require construction and post-construction best management practices which will avoid impacts to water quality.

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

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards.

CDP No. 5-15-1521-(Presta).

Eelgrass Survey Prepared by Marine Taxonomic Services, Ltd dated July 25, 2018.

Presta Marina Dock Redevelopment Project Baseline Eelgrass Survey Prepared by Marine Taxonomic Services, Ltd dated December 14, 2018.

City of Newport Beach Harbor Resources Division Approval-In-Concept dated May 1, 2019.

City of Newport Beach City Council Resolution No. 2019-30 Modifying the Harbor Commissions Approval of an “Approval In Concept” (Project File No. 1502-2018) dated March 26, 2019.

Letter from Commission staff to Swift Slip Dock and Pier Builders dated June 17, 2019.

Newport Marina Redevelopment Project Eelgrass Mitigation Plan Prepared by Marine Taxonomic Services, Ltd dated September 9, 2019.

Letter from Swift Slip Dock and Pier Builders to Commission staff dated September 23, 2019.

Letter from Michael C. Hewitt to Commission staff dated January 22, 2020.