

CALIFORNIA COASTAL COMMISSION

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W14a

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-0979

Applicant: San Jacinto LLC (Raymond DeAngelo)

Agents: Usmita Pokhrel
Bellingham Marine

Location: 626 Via Lido Nord, Newport Beach
Orange County
APN: 423-23-106

Project Description: Remove existing "U" shaped boat dock float, gangway, pier, and pier platform and replace with new "L" shaped boat dock float, gangway, and pier platform

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located on Lido Isle in Newport Harbor. The proposed project includes replacing the existing boat dock and related structures with a new boat dock and related structures. Single-family residences and associated private dock systems are the typical pattern of development for harbor-fronting properties in Newport Beach. The Commission typically approves routine boat dock replacements in this area as long as the new boat dock and related structures are consistent with the relevant Coastal Act

and LCP policies. In this case, the proposed boat dock replacement includes a new 10' by 17' pier platform adjacent to the existing bulkhead at the subject site.

The Commission has generally approved piers (and, more specifically, the related fill resulting from the pier piles) when they are necessary to allow the boat dock to function. In this case a pier is required to bridge the shallow water nearest the bulkhead in order to reach adequate water depth to berth a boat. The piles (fill) required to support such a pier can be found to be consistent with Coastal Act section 30233 and the related LCP policies because they are necessary for the allowable boat dock.

The Commission typically allows widened areas of these piers (pier platforms) when they do not require any additional fill (piles) of coastal waters. However, as proposed, the 10' by 17' pier platform would require two additional piles solely to support the widened pier platform, while only two piles are needed to support a pier only. A pier platform is not necessary for a boat dock to function, and thus fill solely for this purpose would be inconsistent with Section 30233 of the Coastal Act and related LCP policies.

In addition, the proposed 17'-wide pier platform would extend 10' from the existing bulkhead at the site. The Commission typically discourages pier platforms directly adjacent to the bulkhead because this alignment is more likely to become a de facto rear yard area. Fill of coastal waters to provide additional rear yard area is not a use allowed under Coastal Act Section 30233(a). Thus, the proposed platform's location immediately adjacent to the bulkhead also raises issues regarding allowable use.

To address the issue of impermissible fill, **Special Condition No. 1** requires revised plans eliminating the pier platform and depicting a pier only (at a maximum width of six feet), supported by no more than two piles. **Special Condition No. 1** will require reduction of the pier platform.

Staff is recommending **approval as conditioned** of the proposed development to assure consistency with the Coastal Act and LUP policies regarding fill of coastal waters, protection of marine habitat, and protection of public rights. Staff is recommending **six special conditions**: 1) revised project plans eliminating the pier platform and depicting a pier supported by no more than two piles; 2) submittal of a current eelgrass survey prior to commencement of construction and procedures to be implemented in the event that the survey identifies eelgrass in the project vicinity; 3) submittal of a current *Caulerpa Taxifolia* survey prior to commencement of construction, and procedures to be implemented in the event the survey identifies *Caulerpa Taxifolia* in the project vicinity; 4) Best Management Practices to be implemented related to long term berthing of boats; 5) Best Management Practices to be implemented during construction; and, 6) preservation of any public rights that exist or may exist at the subject site.

The motion to approve the project consistent with the staff recommendation is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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Exhibits:

1. Vicinity Map
2. Proposed Boat Dock Plan
3. Existing Boat Dock Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-0979 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Project Plans.

- A.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised project plans, drawn to scale, indicating the project has been revised as described below. The revised plans shall include evidence of review and approval by an appropriately licensed engineer with expertise in pier and dock construction.
- B.** The revised plans shall demonstrate that the proposed project has been modified such that the pier is no wider than six feet, measured laterally along the bulkhead, and the minimum number of piles (as necessary to support that pier, and in any case no more than two piles,) will be used to support the pier needed to connect the land to the gangway and boat dock float beyond. The pier pile(s) shall be aligned such that a line extending through them would run perpendicular to the existing bulkhead.
- C.** The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Eelgrass Surveys.

- A.** Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B.** Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, or within the first 30 days of the next active growth period following completion of

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

3. Caulerpa Survey.

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all *Caulerpa taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this

coastal development permit unless the Executive Director determines that no amendment is legally required.

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

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

(1) Boat Cleaning and Maintenance Measures:

- a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
- b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

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

(3) Petroleum Control Management Measures:

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

use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and

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

5. Construction Responsibilities and Debris Removal.

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements are prohibited at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (6) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;

- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Public Rights.

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

7. Resource Agencies

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

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The proposed project site is located at 626 Via Lido Nord, in the City of Newport Beach, Orange County. The subject site is a bulkheaded property on Lido Isle, fronting on Lido Channel in Newport Harbor ([Exhibit 1](#)).

The applicant proposes to remove an existing “U” shaped boat dock float, 3’ by 20’ gangway, 4’ by 14’ pier, 10’ by 13’ pier platform ([Exhibit 3](#)). The applicant proposes to construct a new, 684 square foot, “L” shaped boat dock float, a 24-foot by 4-foot gangway, and a 10-foot by 17-foot pier platform ([Exhibit 2](#)). No work is proposed to the existing bulkhead at the site.

Overall overwater coverage will be reduced from 1,002 square feet to 950 square feet. The reduction in overwater coverage is due to replacing the existing three sides of the “U” shaped float with the two sides of the “L” shaped float, and replacing the pier platform and pier with a pier platform only ([Exhibits 2 and 3](#)). The existing dock system is supported by 6 piles (three float guide piles, one pile supporting the pier, and two piles supporting the pier platform). The existing piles are all 12” square concrete. All of the existing piles will be removed and replaced with new piles. The proposed dock system would also be supported by six piles: two, 18-inch square concrete guide piles to support the “L” shaped float; and, four, 12-inch square piles to support the proposed 10-foot by 17-foot pier platform. The pier platform would attach directly to the bulkhead at the subject site. However, **Special Condition 1** would require the applicant to eliminate two of the piles as necessary to support only the boating related pier.

Single-family residences and associated private dock systems are the typical pattern of development for harbor-fronting properties in Newport Beach ([Exhibit 1](#)). The subject site is developed with a single-family residence. The proposed boat dock is associated with the single-family residential development at the site. The lot is land use designated Single Unit Residential Detached (RSD-C) and zoned Single Unit Residential (R-1). The water area is land use designated Tidelands and Submerged Lands (TS) and zoned Submerged Lands and Tidelands (TS). Private boat docks are an allowable use under the LCP zoning in this water area (although the LCP provides guidance only here). The proposed project received a Harbor Permit/Approval in Concept from the City of Newport Beach (Plan Check No. 1293-2019), dated 7/18/2019. The existing and proposed dock systems do not/will not extend bayward of the U.S. Pierhead line, consistent with the City of Newport Beach Harbor Permit Policies. This project is similar to the docks in the adjacent area and is consistent, with the exceptions noted below, with past Commission actions in the area.

Standard of Review

The City of Newport Beach Local Coastal Plan (LCP) was certified on January 13, 2017. The proposed project consists of development located entirely within the original permit jurisdiction of the Coastal Commission. The standard of review for development within

the Commission's jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP may be used as guidance. (Pub. Res. Code § 30519(b).)

B. Biological Resources

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

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

...

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

Relevant City of Newport Beach LCP Land Use Plan Policies

4.2.3-1. Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

...

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

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

Fill of Coastal Waters

Section 30233(a) of the Coastal Act limits fill of coastal waters to certain allowable uses, requires the least environmentally damaging alternative, and allows diking, filling, or dredging only when feasible mitigation measures to minimize adverse environmental effects are included. The City's certified LCP also includes policies with these same requirements, and affirmatively allows recreational docks and piers in Newport Harbor. Limiting the amount of fill lessens potential environmental impacts.

The proposed development includes fill of coastal waters (Newport Harbor) in the form pier piles (supporting the pier platform) and guide piles (supporting the boat dock float). As proposed, the number of piles would remain the same, but two of the six piles would be increased in size from 12" square to 18" square. The two 18" guide piles are necessary to anchor the new "L" shaped float, and represent a reduction of one pile to support the float (the existing "U" shaped float requires 3 guide piles). Although increasing the pile width from 12" to 18" represents an increase in fill area for each pile, the increase is relatively minimal, the number of guide piles has been reduced, and the size of the two proposed float guide piles are the minimum size necessary to adequately anchor the boat dock float. In addition, the proposed "L" shaped float represents a reduction in square feet of overwater coverage compared to the existing "U" shaped float. Overall, the proposed boat dock system represents a reduction of 52 square feet of overwater coverage, from 1,002 square feet to 950 square feet.

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

However, four new piles are proposed solely to support the proposed 10' by 17' pier platform. The applicant's engineering consultant states:

"The pier platform is also required to allow entrance to the floating dock. This area of Newport Harbor is very shallow near the bulkhead; the bay floor gradually descends. The dock has been positioned as near to the bulkhead as possible without dredging being required. The pier platform is required to fill the 31-foot span between the bulkhead and the floating dock (10 foot pier platform + 24-foot gangway – 3-foot tidal roll = 31-feet). Please find the proposed project drawing on page . [sic] The alternative idea to remove the pier platform and extend the 24-foot gangway is not a viable option. A 34-foot aluminum gangway would require additional bracing to meet the load requirement. This length would result in a landing area at the floating dock to accommodate this additional weight. This landing area would create a direct adverse impact to the marine environment."

And further states:

"The suggestion to connect the gangway directly to the bulkhead rather than to the pier platform results in a longer gangway that is approximately 350 pounds heavier than the proposed 24' long gangway. This longer gangway needs additional floating dock area to support the extra weight, offsetting gains made by reducing the platform area. We believe platform along with the shorter gangway is an appropriate solution for the site."

Although the engineering consultant does not describe what the “direct adverse impact to the marine environment” resulting from a longer gangway would be, it is assumed to be expanded overwater coverage that would be needed to accommodate the landing area that a longer, heavier gangway would require. In any case, based on the engineer’s description, a pier is required to bridge the shallow water nearest the bulkhead in order to reach adequate water depth to berth a boat. The proposed 24’ by 4’ gangway would connect the pier platform and boat dock float. Connecting the gangway directly to the bulkhead, avoiding the need for a pier at this site, is not a feasible option. Thus, some type of pier is required for the boat dock to function.

The Commission has generally approved piers (and, more specifically, the related fill resulting from the pier piles) when they are necessary, as described above, to allow the boat dock to function. These piles (fill) can be found to be consistent with Coastal Act section 30233 and the related LCP policies because they are necessary for the boating related boat dock use. The Commission has typically allowed widened areas of these piers (pier platforms) when they do not require any additional fill (piles) of coastal waters. Pier platforms have typically been allowed where two “T” piles can support the necessary pier, and widening that area supported by those two “T” piles does not generate the need for any additional piles solely to support the widened pier/pier platform. A pier platform is not necessary for a boat dock to function, and fill solely for that purpose would not be consistent with Section 30233 of the Coastal Act and related LCP policies.

However, as currently proposed, the 17’ by 10’ pier platform would be supported by four individual piles (one at each corner, not two). The two additional piles are needed solely to support the pier platform, and thus do not constitute an allowable use under 30233(a). As proposed, the platform pile support would not minimize fill of coastal waters. However, if the project were modified to reduce the number of piles such that no additional piles are used to support a non-boating related use, fill would be minimized.

The applicant has indicated that the 10’ by 17’ pier platform is necessary, as they are avid sport fishers, and assert the platform is required to serve this purpose. They have requested the platform to be constructed of concrete rather than wood to allow cleaning of fish on the platform. It is the use of concrete, which is heavier than wood, that requires the use of four rather than two piles, the applicant’s engineering consultant states. Use of concrete rather than wood, the applicant continues, would prevent “internal fluids of fish” from embedding in the porous wood, causing decay that would adversely impact birds. Reflecting this position, the applicant’s agent provided the following statement:

“The request to manufacture the pier platform in concrete was at the request of the client in his efforts to remove sources of potential toxins to animal life. Sport fishing involves internal fluids of fish. The pier platform would be utilized for storing and cleaning this water-dependent equipment. Wood is porous. Wood decays. As a result, porous pockets form. As the internal fluids seep into these pockets and decay further it results in decomposing toxins that are harmful to the birds. In

manufacturing the pier platform of reinforced non-porous concrete this ensures these internal fluids are not allowed to sit, decay, and become poisonous.”

However, if the applicant wishes to fish from the site, that can readily be accomplished from the boat dock float (10’ wide) or from a boat docked at the site. In addition, fishing can be accommodated by taking the boat out of its slip and fishing from other locations. As far as cleaning fish, there are a number of ways to contain the untidiness related to fish cleaning, such as use of portable fish cleaning tables¹ that could be set up in the back yard when in use and stowed when not needed; or, cleaning the fish on a large rimmed pan or cutting board, and carrying the remnants to an appropriate trash receptacle, and disposing of the entrails appropriately. The various methods for containing the remnants of fish cleaning could readily be accomplished on the boat and/or in the applicant’s yard, kitchen, or garage. Likewise, storage of fishing supplies could be accommodated on the boat docked at the site, or on the patio or in the garage of the residence.

In addition, the Commission typically discourages pier platforms directly adjacent to the bulkhead as this alignment is more likely to be used as an extension of the rear yard area than as a boating related facility. The proposed pier platform is 17’ wide and would extend 10’ out directly from the bulkhead. Positioning the proposed pier platform immediately adjacent to the bulkhead increases the likelihood that the platform would actually function more as an extension of the rear yard area than as a necessary boating facility. The likelihood that the pier platform would become a de facto rear yard area is underscored by the plan to match the pier platform’s surface with the landside hardscape, as noted on the project plans. The proposed concrete rather than a wooden platform (which, according to the project engineer, is the driver for the additional piles) may also be related to the desire to match the surface of the new pier platform to the landside hardscape. Fill of coastal waters to provide additional rear yard area is not a use allowed under Coastal Act Section 30233(a). Thus, the proposed platform’s location immediately adjacent to the bulkhead also raises issues regarding allowable use.

As proposed, the pier platform would require more fill (piles) than would a narrower, pier-only access to the boat dock float. A wider pier platform is not necessary to access the boat dock float. A reduced-width pier would address that need. Also, its proposed location, immediately adjacent to the private rear yard area, creates the likelihood that it would function as a de facto rear yard. Thus, the pier platform cannot be considered a boating-related facility. As such, the 10’ by 17’ platform, and more specifically the additional piles required to support it, would not constitute one of the specifically enumerated uses for which fill of coastal waters may be allowed.

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[https://www.kotulas.com/deals/ProductDisplay?catalogId=10602&storeId=10152&productId=29856&langId=-1&utm_source=google_pla&utm_medium=\\$50---\\$149.99&utm_content=24546&gclid=Cj0KCQjwrlf3BRD1ARIsAMuugNs59E9fq_ONyNGYiIRcT5CrK3RrRIhXruTh-10mtnHg6tKWZ2Z64ocaAku1EALw_wcB](https://www.kotulas.com/deals/ProductDisplay?catalogId=10602&storeId=10152&productId=29856&langId=-1&utm_source=google_pla&utm_medium=$50---$149.99&utm_content=24546&gclid=Cj0KCQjwrlf3BRD1ARIsAMuugNs59E9fq_ONyNGYiIRcT5CrK3RrRIhXruTh-10mtnHg6tKWZ2Z64ocaAku1EALw_wcB)

The applicant also suggests that the proposed pier platform would make the proposed boat dock visually compatible with the surrounding community character, since many of the boat docks in the immediate vicinity include pier platforms. Thus, the applicant asserts, the pier platform is necessary for consistency with Coastal Act Section 30251 which requires permitted development “to be visually compatible with the character of surrounding areas,” among other things. Finally, the applicant notes that Coastal Act Sections 30234 and 30234.5 recognize the importance of maintaining fishing opportunities. While the Commission recognizes that a number of pier platforms do exist within the vicinity of the proposed project, and indeed throughout Newport Harbor, it cannot be said that such development is required to maintain community character. With or without the pier platform, the proposed development would be consistent with the surrounding community character. Moreover, Section 30251 does not provide a basis to allow impermissible fill of coastal waters, such as would result from the proposed pier platform. Finally, regardless of whether or not a pier platform is present at the site, abundant fishing opportunities will remain.

If the project were modified, it could be found to be consistent with the Section 30233 of the Coastal Act regarding fill of coastal waters. Revising the project to eliminate the additional piles required to support the platform would still allow a pier (supported by no more than two piles). The pier represents an allowable use because it is necessary for the boat dock to function. The proposed gangway is four feet wide. A six foot wide pier would allow one foot on either side of the gangway connection. Other piers in the harbor function with a six foot wide pier. In addition, other docks in Newport Harbor use three foot wide gangways. In any case, the project could feasibly be modified such that no additional piles are required to support the pier, a boating related use.

Special Condition No. 1 requires revised plans demonstrating that the pier is supported by no more than two piles, as necessary to assure that any project fill is a permissible use consistent with Section 30233. As conditioned, the proposed replacement boat dock and its associated structures represent an allowable and encouraged marine-related use. As conditioned, the project will include the minimum size and the minimum number of piles (fill) necessary for structural stability to support the allowable boating use. Thus, only as conditioned, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act regarding fill of coastal waters.

Eelgrass

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, 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.

Relevant City of Newport Beach LCP Land Use Plan Policies:

- 4.1.4-1.** Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.
- 4.1.4-2.** Implement eelgrass restoration and enhancement programs in Newport Harbor.
- 4.1.4-3.** Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.
- 4.1.4-4.** Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.
- 4.1.4-5.** Where applicable require eelgrass and *Caulerpa taxifolia* surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and *Caulerpa taxifolia* Survey protocols.

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) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to

primary nutrients by bacteria. Eelgrass (*Zostera marina* and *Z. pacifica*) are seagrasses which serve as critical habitat for many common and protected threatened marine species.

Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such as the Pacific herring. Eelgrass also provides a significant source of carbon to the detrital pool which provides important organic matter in sometimes food-limited environments (e.g., submarine canyons). In addition, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrass, Costanza *et al.* (2007) determined seagrass ecosystems to be one of Earth's most valuable.

Marine Taxonomic Services, Ltd. conducted an eelgrass survey of the subject site on 10/24/2019 and found no eelgrass present. Prior to that survey, the site was surveyed by the City of Newport Beach Harbor Resources Division on 7/18/2019 and no eelgrass was discovered within the project area.

No impacts are expected to occur to eelgrass with the proposed project because no eelgrass was observed in the project vicinity. The latest eelgrass survey took place on 10/24/2019. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). The eelgrass survey is no longer valid because more than 60 days have elapsed. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. **Special Condition No. 2** identifies the eelgrass survey procedures to be completed prior to commencement of construction. If the pre-construction survey reveals the presence of eelgrass within the project area, **Special Condition 2** outlines the additional steps will be required.

Caulerpa Taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor and in 2000 in Agua Hedionda lagoon in Carlsbad. *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats.

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. *Caulerpa Taxifolia*, if present, could displace eelgrass in Newport Harbor. Vigilance against return of this menace is important in assuring protection of eelgrass and other native aquatic plant species and habitats.

A pre-construction *Caulerpa taxifolia* survey was not prepared. However, *Caulerpa taxifolia* surveys in the project vicinity have not found *Caulerpa* to be present (e.g. 5-19-1159 at 630 Via Lido Nord on 7/12/2019). An up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of construction. **Special Condition No. 3** identifies the *Caulerpa* survey procedures to be completed prior to commencement of construction, as well as procedures to be implemented in the event any *Caulerpa taxifolia* is found on the project site.

C. Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

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

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

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

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

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

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

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

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

- 3.1.1-1** Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.
- 3.1.4-3** Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

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

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

The proposed project includes the removal and replacement of an existing private boat dock system associated with residential development. The proposed project extends out into public tidelands and submerged lands in Newport Bay 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). There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, vertical public pedestrian access to public tidelands is available approximately 270-feet southeast of the project site at the Via San Remo street end. From this access point,

members of the public may access bay waters and, among other recreational activities, launch a kayak or standup paddle board. In addition, typically at this site, even during low tides, the water extends up to the bulkhead, so there is rarely if ever dry sand area available for walking. Thus, the proposed project does not create adverse impacts to public access or recreation. In order to preserve and maintain access to the public tidelands, **Special Condition No. 6** makes clear that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

E. Local Coastal Program (LCP)

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

F. CEQA

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

In this case, the City of Newport Beach (Planning Department and Harbor Resources Division) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt from CEQA (Class 1, CEQA Guidelines Sections 15301) on 7/18/ 2019.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the marine resources, water quality, and public access and recreation policies of the Coastal Act. As conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified

impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

5-19-0979 (San Jacinto LLC)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 5-19-0979 and associated file documents.

City of Newport Beach Certified Local Coastal Program.

Eelgrass Survey, prepared by Marine Taxonomic Services, Ltd., 10/24/2019