

## **CALIFORNIA COASTAL COMMISSION**

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



# **W14b**

**5-19-0907**

**(Palmo Investments)**

**July 8, 2020**

**CORRESPONDENCE**

**LAWVERDICT®**  
**Law Offices of Michael C. Hewitt, Inc.**  
**Attorney at Law**  
**2082 Michelson Drive, Ste. 300**  
**Irvine, California 92612**  
**Phone: 949 825-5260 Fax 949 825-5261**

July 6, 2020

Zach Rehm  
California Coastal Commission  
301 Oceangate Boulevard, Suite 300  
Long Beach, CA 90802

Via United States Postal Service and email:

Re: CDP Application No. 5-19-0907, Item No W 14b, July 8, 2020 for Newport Marina, located at 2888 Bayshore Drive, Newport Beach

Dear Mr. Rehm:

Responding to certain issues raised in Ms. Shawna Schaffner's correspondence to you dated July 2, 2020, I offer the following.

Ms. Schaffner asserts:

"As you know, my clients were successful appellants at the City, and their efforts resulted in the City Council rescinding approval of the 2018 Plan, and granting approval of the 2019 Compromise Plan."

The record does not support, and in fact, is contrary to Ms. Schaffner's statement. On January 9, 2019, the Harbor Commission upheld the City's AIC of the 2018 plan. Ms. Schaffner's clients ("Appellants") appealed the Harbor Commissions ruling to the City Council. (Resolution, Exhibit 1 hereto, page 2.)

On February 12, 2019 and March 12, 2019, public hearings were noticed before the City Council. In each case, the hearings were continued to March 12, 2019 and March 26, 2019 respectively. During that time, the applicant and Appellants worked on, and came to agreement on the "Compromised Plan" presently before the Coastal Commission.

Appellants' agreement to the Compromised Plan is evidenced by the City Council Minutes, Exhibit 2 hereto, Volume 64,-page 71 (numbers at bottom of page):

"Shawna Schaffner, representing the appellants, provided a brief history, indicated all appellants have agreed to the compromised plan..."

Additionally, the Resolution, Exhibit 1, page 5, states in relevant part:  
“... the Modified project is agreeable to both the Applicant and Appellant, the Modified Project includes a camel barrier safety system at the south end of the Property,....”

In fact, emails and phone logs will show that the Applicant and Appellants worked diligently to arrive at an agreed upon plan. Applicant is surprised and dismayed that the Appellants have decided to drop their support for the Modified Plan as agreed and have decided to pursue an alternate plan that the City has not approved and has previously disapproved pursuant to an appeal by Appellant Kevin Moriarty.

Contrary to Ms. Schaffner’s assertion that the City “rescinded” the 2018 Plan, I again turn the record, specifically the City Council Minutes, Exhibit 1 hereto, Volume 64-Page 71:

“He (Mr. Hewitt) then further stated that Applicant will make every effort to have #7.3 (Compromise Plan) passed by the regulatory agencies but in the event that #7.3 is not passed, and under section 2 of the resolution, that the applicant would be resubmitting the 2018 plan or any other plan, in that event.”

The Resolution, Exhibit 2 hereto, passed by City Council states at page 4, Section 2:

“The adoption of Resolution No. 2019-30 shall not be interpreted as prohibiting the Applicant from requesting a revision to the AIC as authorized in Section 17.50.040 or from submitting a new AIC application consistent with Section 17.50.020 provided the revision or new application conforms to the design criteria and all applicable standards and policies.”

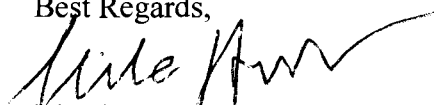
The record unequivocally demonstrates that the 2018 Plan was never rescinded by the City Counsel, that the Compromised Plan with the harbor pile was agreed to by Appellants and Applicant, and that the Applicant can resubmit plans for a new or modified AIC.

Further, Ms. Schaffner provides commentary to the area of eelgrass that would be directly impacted – or shaded – by both the 2018 and Compromised Plans. Mr. Adam Gale provided updated plans sets to Mr. Fernie Sy on May 13, 2020. The plan sheets were overlaid with the eelgrass survey data collected in July 2018. The impact areas identify approximately 663 square feet of direct impacts that would result from implementation of the 2018 plan, and approximately 785 square feet that would be impacted with implementation of the compromised plan. As eelgrass distribution varies year to year, the amount of mitigation would be dependent on the difference observed between the pre- and post-construction eelgrass surveys and pursuant to the California Eelgrass Mitigation Policy and the mitigation plan submitted to the California Coastal Commission in September 2019.

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Finally, Ms. Schaffner asserts that with the 2018 plan "All small boat slips will become increasingly inaccessible and eventually there will be no ingress/egress for the small boat slips even at low tide (GeoSoils Sea Level Rise analysis)". The pier platform has been designed to not preclude modifications to the elevation in the future to address sea level rise.

If you have any questions regarding the foregoing, please contact me or Adam Gale.

Best Regards,  
  
Michael C. Hewitt

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Dock\Correspondence\Zach Rehm 07062020\_AMGMCH.doc

Exhibit 1

**RESOLUTION NO. 2019-30**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWPORT BEACH, CALIFORNIA, MODIFYING THE  
HARBOR COMMISSION'S APPROVAL OF AN  
"APPROVAL IN CONCEPT" (PROJECT FILE NO. 1502-  
2018) FOR THE REMOVAL AND REPLACEMENT OF A  
DOCK SYSTEM AT THE PROPERTY LOCATED AT 2888  
BAYSHORE DRIVE**

**WHEREAS**, an application for an Approval in Concept ("AIC") was filed by **Palmo Investments, G.P. (Ron and Allyson Presta)**, for the removal and replacement of the dock system ("Project" or "AIC") at the property located at 2888 Bayshore Drive, City of Newport Beach, County of Orange, State of California ("Property");

**WHEREAS**, Newport Beach Municipal Code ("NBMC") Section 17.50.030(B)(4) requires City of Newport Beach Public Works Director (formerly "Harbor Resources Manager") to issue an AIC for all development areas where the Coastal Commission retains coastal development permit authority;

**WHEREAS**, the Property is located within the coastal zone;

**WHEREAS**, on or about September 27, 2018, the Harbor Resources Manager issued an AIC, including special conditions, determining that the Project is in compliance with all applicable provisions of NBMC Title 17 entitled "Harbor Code" and the "City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities" ("Harbor Design Guidelines");

**WHEREAS**, NBMC Section 17.65.010(A) authorizes appeal of the Public Works Director's decision to the City of Newport Beach Harbor Commission by any interested person;

**WHEREAS**, on or about November 28, 2018, CAA Planning on behalf of Kevin Moriarty, Glenn Walcott, Zach Fischer and Terry Morrison ("Appellant") filed a timely appeal of the decision with the basis of the appeal, in pertinent part, being the following: lack of due process/inadequate notice of the Public Works Director's decision and inadequate setbacks as required by a prior approval for the Project;

**WHEREAS**, on or about January 9, 2019, the Newport Beach Harbor Commission held a public hearing in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. Notice of the time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et. seq.* ("Ralph M. Brown Act") and NBMC Chapter 20.62. Evidence, both written and oral, was presented to, and considered by, the Harbor Commission at the public hearing. At the conclusion of the public hearing, the Harbor Commission voted to uphold the Harbor Resources Manager's decision to approve the AIC;

**WHEREAS**, on or about January 22, 2019, the Appellant filed a timely appeal of the AIC with the basis of the appeal, in pertinent part, being the following: approval is inconsistent with prior 2016 approval; approved plan is incompatible with surrounding residences; approval sets an unfavorable precedent; and the approval was in violation of CEQA;

**WHEREAS**, on or about February 12, 2019 and March 12, 2019, a public hearing before the City Council was noticed to take place in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, however, in each instance, the public hearing was continued to March 12, 2019 and March 26, 2019, respectively. Notice of the time, place and purpose of each public hearing was given in accordance with the Ralph M. Brown Act and NBMC Chapter 20.62;

**WHEREAS**, on or about March 26, 2019, the City Council held a public hearing in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. Notice of the time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and NBMC Chapter 20.62. Evidence, both written and oral, was presented to, and considered by, the City Council at the public hearing;

**WHEREAS**, Section 17.50.040(A) authorizes the City to issue Harbor Development Permits upon the determination that a new permit and/or a revision to an existing permit conforms to the design criteria and all applicable standards and policies in conjunction with plan reviews by the Public Works Department;

**WHEREAS**, Newport Beach Council Policy H-1 provides that a pier or float may extend beyond the pierhead line if the Harbor Commission makes a determination that such extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses;

**WHEREAS**, after consideration of an appeal, Section 17.65.040(F) authorizes the reviewing body to affirm, modify or reverse the original decision; and

**WHEREAS**, the Applicant has submitted Alternate Layout Option #7.1 attached hereto as Exhibit "A" which revises the Project to address the concerns raised by Appellant with additional minor revisions set forth in Alternate Layout Option #7.2 attached hereto as Exhibit "B" ("Modified Project").

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council finds that the Modified Project is exempt from the requirements of CEQA for the following reasons:

A. Title 14 of the California Code of Regulations ("CEQA Guidelines") Section 15301 (Class 1) applies to the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." The marina is an existing facility that has been in operation for several decades. The overwater coverage of the new marina will increase from 12,787 square feet to 13,722 square feet. The number of slips will decrease from 53 to 50 with the slip mix remaining balanced. The Modified Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301.

B. CEQA Guidelines Section 15302 (Class 2) applies to the "replacement or reconstruction of existing structures and facilities where the new structures will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced[.]" (CEQA Guidelines Section 15302.) The proposed replacement marina is in the same location and is substantially the same size, purpose and capacity as the marina it replaces. The overwater coverage of the new marina will increase from 12,787 square feet to 13,772 square feet. The number of slips will decrease from 53 to 50 with the slip mix remaining balanced. The Modified Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15302.

C. No substantial evidence exists demonstrating that any exception to the applicable categorical CEQA exemptions listed in CEQA Guidelines Section 15300.2 applies.

- i. There are no circumstances triggering the unusual circumstances exception set forth in CEQA Guidelines Section 15300.2, subd. (c), and there is no substantial evidence that the Modified Project would have a significant impact on the environment due to those unusual circumstances. Newport Harbor includes a mix of public slips and moorings, residential docks and commercial marinas. Newport Marina is being rebuilt in a manner consistent with the current configuration. The Modified Project is in conformity with the City's Harbor Design Guidelines and the Local Coastal Plan.



- ii. The exception under Section 15300.2, subds. (d) and (e) are inapplicable because the Modified Project is not on a "highway officially designated as a state scenic highway" or on a hazardous materials-related site "which is included on any list compiled pursuant to section 65962.5 of the Government Code" because there is no "successive projects of the same type in the same place" occurring as this Project.
- iii. The exception in Section 15300.2, subd. (f) is also inapplicable since the Modified Project does not affect any historical resources.

D. Based on the whole of the administrative record the Modified Project is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 and 15302 and there is no substantial evidence demonstrating that any exception to the categorical exemptions listed in CEQA Guidelines Section 15300.2 applies.

**Section 2:** The adoption of Resolution No. 2019-30 shall not be interpreted as prohibiting the Applicant from requesting a revision to the AIC as authorized in Section 17.50.040 or from submitting a new AIC application consistent with Section 17.50.020 provided the revision or new application conforms to the design criteria and all applicable standards and policies.

**Section 3:** The City Council does hereby modify the Harbor Commission's decision and directs the Public Works Director to process for approval the Modified Project set forth in Exhibit "B" but revised to reflect the appropriate pierhead line, project line, and subject to any special conditions required by the Public Works Director. Public Works Director shall provide a copy of the revised plan to the Appellant. The City Council's decision is made in accordance with NBMC Section 17.50.040 and is supported by the following findings and facts:

A. Section 17.50.040(A) and (B)(1). The Modified Project conforms to the design criteria and all applicable standards and policies in conjunction with plan reviews by the City.

Facts in Support of Finding. The Modified Project conforms to the City's Harbor Design Guidelines, including, but not limited to, the following: 1) the finger widths are within the lengths required in Section I.A.2.c. Table No. 1 of the Harbor Design Guidelines, 2) an accessible ramp is incorporated in the Modified Project as required by Section I.A.5.b. of the Harbor Design Guidelines and the Federal Americans with Disabilities Act, 3) the existing dock was permitted to extend beyond the pierhead line prior to July 12, 2018 and the Modified Project does not extend or enlarge the protrusion any further than the existing dock, and 4) no variances are requested or required.

B. Section 17.50.040(B)(2). The Modified Project is not likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor, or other oceanfront property owners.

Facts in Support of Finding. The Modified Project will not increase navigational congestion in the adjacent channel. Additionally, the Modified Project will not interfere with rights of others in that the Modified Project is agreeable to both the Applicant and Appellant, the Modified Project includes a camel barrier safety system at the south end of the Property, and the Project is conditioned so that cleats are not permitted on the southern end of the main headwalk adjacent to 2782 Bayshore Drive.

C. Section 17.50.040(B)(3). The Modified Project conforms to the policies and regulations of the certified Local Coastal Program.

Facts in Support of Finding.

- i. The Modified Project is designed and sited so as not to obstruct public access and to minimize impacts to public coastal views and coastal resources. There is currently no public access or a public coastal view within or adjacent to the Property, therefore no public access or views will be impacted. The Modified Project is in the same location and is substantially the same size, purpose and capacity as the marina it replaces.
- ii. The Modified Project is designed and sited to be harmonious with the natural appearance of the surrounding area. The Modified Project is a replacement of the existing marina, but in a marginally different configuration. The Modified Project will not be out of character with the surrounding area, and is substantially the same size, purpose and capacity as the marina it replaces.
- iii. The Modified Project is designed and sited and makes use of materials that will minimize and, where feasible, avoid impacts to eelgrass and marine habitat. The Modified Project is sited to minimally impact eelgrass where it was surveyed in 2018.
- iv. The Modified Project will increase the overall water coverage from 12,787 square feet to 13,722 square feet, in part, to comply with the current dock design standards.
- v. The Modified Project is designed and sited to the water's depth and accessibility.

D. Section 17.65.040(F). When a decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for modification or reversal.

Facts in Support of Finding. The Modified Project is acceptable to the Applicant and Appellant and address the concerns raised by Appellant while also conforming to all applicable standards as identified in Sections 3.A-C above.

**Section 4:** The Modified Project will not negatively impact: (1) navigation; (2) adjacent property owners; and/or (3) existing harbor uses.

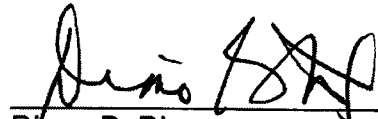
Facts in Support of Finding. The existing dock was permitted to extend beyond the pierhead line prior to July 12, 2018 and the Modified Project does not extend or enlarge the protrusion any further than the existing dock. The Modified Project will not increase navigational congestion in the adjacent channel. The Modified Project will not be out of character with the surrounding area, and is substantially the same size, purpose and capacity as the marina it replaces. Finally, the Modified Project is acceptable to the Appellants, all of whom reside adjacent to the Modified Project site.

**Section 5:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

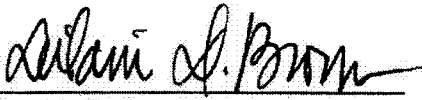
**Section 6:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases by declared invalid or unconstitutional.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

**ADOPTED** this 26<sup>th</sup> day of March, 2019.

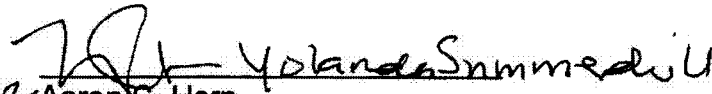
  
Diane B. Dixon  
Mayor

**ATTEST:**

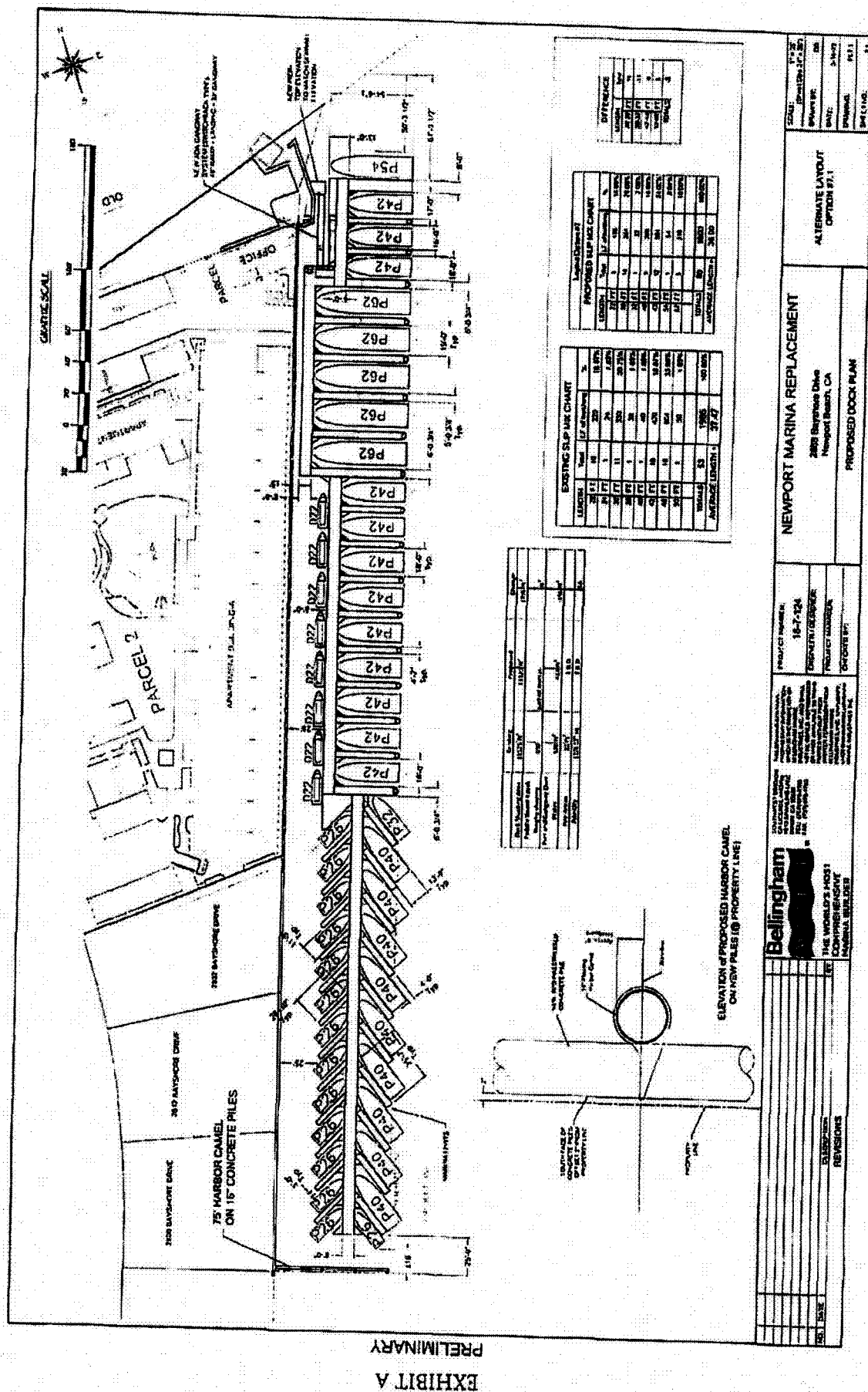
  
Leilani I. Brown  
City Clerk



**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
for Aaron C. Harp  
City Attorney

Attachment: Exhibit A - Project No. 1502-2018 Modified Site Plan  
Exhibit B - Project No. 1502-2018 Modified Site Plan identified as  
Alternate Layout Option #7.2



75' HARBOR CAMEL ON 16' CONCRETE PILES

Scale: 0 20 40 60 80 100

North Arrow

STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF NEWPORT BEACH

}  
}  
} ss.  
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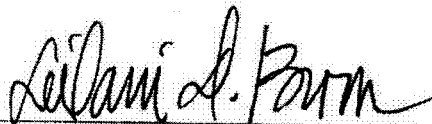
I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2019-30 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 26<sup>th</sup> day of March, 2019; and the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Brad Avery, Council Member Joy Brenner, Council Member Jeff Herdman, Council Member Kevin Muldoon, Mayor Pro Tem Will O'Neill, Mayor Diane Dixon

NAYS: None

RECUSED: Council Member Duffy Duffield

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27<sup>th</sup> day of March, 2019.



Leilani I. Brown  
City Clerk  
Newport Beach, California



Exhibit 2



# CITY OF NEWPORT BEACH

## City Council Minutes Study Session and Regular Meeting March 26, 2019

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### **I. ROLL CALL - 4:00 p.m.**

Present: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon (arrived at 5:09 p.m.), Mayor Pro Tem Will O'Neill, Mayor Diane Dixon

### **II. CURRENT BUSINESS**

#### **SS1. Clarification of Items on the Consent Calendar**

Discussion ensued relative to the formation and purpose of the Homeless Task Force (Item 4).

#### **SS2. Public Advisory and Informational Presentation on the Asian Citrus Psyllid (ACP) and Huanlongbing (HLB) Disease**

Public Works Director Webb and Deputy Public Works Director Martin gave a brief overview of the item and introduced Victoria Hornbaker, Interim Citrus Program Director with the California Department of Food and Agriculture, Jeff Croy, Orange County Agricultural Commissioner, and Michael Kulis, Director of Public Affairs and Government Relations with Nuffer, Smith, Tucker Public Relations.

Ms. Hornbaker, Mr. Croy and Mr. Kulis utilized a PowerPoint presentation to discuss the damage ACP and HLB causes to citrus trees, the economic impacts, areas of quarantine, detection, testing, the prevention program, public outreach, and noted more information can be found at [CDFA.CA.gov/plant/acp](http://CDFA.CA.gov/plant/acp) and [CaliforniaCitrusThreat.org](http://CaliforniaCitrusThreat.org).

In response to Council questions, Ms. Hornbaker and Mr. Croy indicated there is currently no cure for HLB, the Orange County Mosquito and Vector Control District is not involved in the program, people can call 800-491-1899 if they see signs of the disease, cities and countries with large citrus production are being impacted, California is doing everything it can to prevent HLB, and that a video could be provided to the City to display on NBTv.

Vanessa Armstrong questioned using the same methods used in Florida, requested the City cease using synthetic fertilizers and pesticides, suggested improving microbial life in the soil, listed health impacts, and expressed concern with mass spraying of antibiotics over residences.

Kathleen Hallal provided studies that discussed concerns relative to what is being done to prevent HLB and the use of antibiotics and pesticide spraying.

Public Works Director Webb indicated that all concerns regarding aerial spraying should be directed to the State of California.

#### **SS3. Review of City's Integrated Pest Management (IPM) Policy**

Public Works Director Webb, Deputy Public Works Director Martin, and Park and Tree Superintendent Sereno utilized a PowerPoint presentation to provide examples of the City's science-based IPM program and discuss various weeds found in the City, why weeds are abated, the City's prevention measures and action plan, warning labels, Proposition 65, toxicity levels of synthetic chemicals, synthetic versus organic weed control, the pilot program at Lincoln Elementary School, the current landscape maintenance budget, and staff recommendations.

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Discussion ensued between staff and Council regarding County pest control standards, different toxicity levels and those used by the City, the dangers of using organic products, the pros and cons of utilizing artificial turf throughout the City, test programs, and the landscape maintenance budget.

Nancy Gardner believed the City is the signatory for the Nature Reserve of Orange County, noted there are thousands of acres to manage, and indicated there will be times when synthetic pesticides might need to be utilized as some organic sprays do not work.

Jennifer Irani indicated she has not seen posted signs during spraying nor were there labels on the trucks to indicate what was being sprayed, and took issue that the spraying occurred during high winds with adults, children and dogs in the area.

Adam Swerdlow displayed a photo of his deceased pet, believed his death was due to the spraying of RoundUp, expressed concerns that no signs are being posted, and requested the City stop using pesticides.

Mila Zou, Portola High School, described the effects of synthetic pesticides on humans and animals and requested the City create a healthier environment by adopting an organic-only pest control management plan.

Alice Li, Portola High School, explained the dangers of pesticides on people and animals, listed surrounding cities that have adopted an organic pesticide program, and requested that the City do the same.

Eric Lin, Northwood High School, commented on a possible lack of research behind the chemicals and synthetic pesticides the City uses, asked if anyone is checking the chemicals being used, and questioned the reliability of the toxicity graph.

Angela discussed the health issues connected to exposure to pesticides containing Glyphosate, believed there is a worldwide movement to limit the use of Glyphosate, and asked the City to refrain from using the product until more information is released.

Eric Gao, Northwood High School, expressed concerns with using pesticides with Glyphosate, discussed the health impacts it has on humans, and requested the City have a zero tolerance policy on anything that would negatively impact young people.

Sherry Bloom indicated she started a petition to eliminate Glyphosate and toxic pesticides in the City, both her dogs and her father have Lymphoma which she believes was caused by pesticides, and she has never seen a sign posted where spraying has occurred.

Steve Fang, St. Joseph School, discussed his concerns with the chemicals being sprayed on golf courses in Newport Beach and requested they be banned.

Tammy Belcher noted that Glyphosate is a national concern and believed the City should not prioritize aesthetics over safety.

David Hallal, Orange Lutheran High School, believed the field at his former elementary school improved after pesticides stopped being used and asked if Council would rather spend a little more money on alternative methods or on lawsuits.

Trevor Conte requested the City stop spraying pesticides where families and pets play.

Ethan indicated Irvine and Carlsbad focus on using non-toxic pesticides and, although more costly, residents are satisfied. He believed Newport Beach residents already accept the idea of spending more for safety.

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Kim Conte, Co-Founder of Non-Toxic Neighborhoods, urged Council to prioritize the health of children over weed control, indicated Carlsbad uses the same company for pest management as Newport Beach but are successfully only using organic sprays, relayed her organization's goals for a safe and fiscally sound City, and stated Glyphosate is prohibited on golf courses.

An unidentified speaker stated he walks on trails to and from school and enjoys knowing there are no chemicals used in Irvine. He added that, since demand for organic foods and products is high, property values might increase if the City only used organic pesticides.

Jessica Liang, Northwood High School, expressed health concerns due to the use of synthetic pesticides, especially on game fields, and requested Council take action that would allow people to enjoy nature without having to worry about their health.

Coco Liang, Sierra Vista Middle School, addressed the issue of pets coming into contact with pesticides in parks and then potentially spreading the chemicals by bringing them home.

Vanessa Armstrong urged Council to immediately eliminate the use of 2-4D and Glyphosate to avoid future lawsuits, believed residents would not mind paying more for health and safety, suggested using organic input as opposed to organic pesticides, and asked Council to consider using a steam machine, like the school district.

Kathleen Hallal provided a government issued handout about Glyphosate which she feels is incomplete since it does not show the whole science behind it, and recommended Council look at Vista Verde School fields in Irvine as an example for using non-toxic pesticides.

Kalen Han, Orchard Hills Middle School, requested Council consider the effects of pesticides on humans and pets, not the money or science.

Bob Johnson noted the duty of city government is to protect the health and safety of its citizens, explained what Irvine went through to improve its soil, and requested the City consider other alternatives, such as organics.

Katherine Young voiced concerns for the health of animals and how much more concentrated Glyphosate is in their system as opposed to humans, and questioned the reliability of the toxicity chart since it was produced by a pesticide company.

Dr. Cheryl Wilen, University of California Agriculture and Natural Resources, indicated she is participating in the statewide pest management program, cautioned against implementing a blanket removal of pesticides, and suggested looking at this with a fiscal and health perspective before making a decision.

Damara Trombauer, County of Orange Deputy Agricultural Commissioner, explained the organization's duties and responsibilities and indicated that, after numerous inspections, the City has always been found to be in compliance.

Jeff Croy, County of Orange Agricultural Commissioner, discussed his job duties, indicated his department has an IPM program and confirmed that, after reviewing the City's IPM program and the contractors the City hires, no violations were found.

Will Harrison indicated he is a licensed pest control advisor and commercial applicator, provided his expertise related to IPM programs, indicated he works with several municipalities, including Newport Beach, complimented the City on its program, and believed no pesticide material is safe and science is not a factor in jury trials.

Dr. John Kabashima noted he has developed IPM programs, believed there is a misunderstanding about synthetic and organic pesticides, expressed concern with fast-tracking solutions, and expressed the opinion that the chart was fairly accurate.

Council Member Muldoon thanked all the students who spoke during public comments. He believed the results were still inconclusive, decreasing pesticide usage is a good goal, residents would support integrating organic pesticides at selected locations, and indicated he would prefer to take his son to an organic park over one where pesticides are sprayed.

In response to Council Member Brenner's comments and questions, Public Works Director Webb and Park and Tree Superintendent Sereno confirmed the City does its best to post signs when spraying occurs, even though it is not a requirement, explained that the City does not have control over spraying done by commercial building owners, private landowners and homeowner associations, and believed the City has the best trained landscape crew in the County.

Discussion ensued regarding limiting the spraying of Glyphosate in areas where dogs are present, the positive effects that could occur if a bee population was cultivated in the City, staff's hard work on providing a balanced presentation, and ways the City could inform and educate the public and receive citizen feedback.

### III. PUBLIC COMMENTS

Bruce Ibbetson voiced his concerns regarding the Newport Aquatic Center (NAC) allegations and requested the City get involved to enforce best practices at the NAC.

Donna Warwick provided a handout to discuss her beliefs of violations occurring at NAC, asked the City to get involved, and thanked Council for passing City Council Policy F-7.

Jim Mosher believed more information should be provided regarding Item IV.C. Noting that the City Manager, City Attorney and City Clerk recuse themselves from Item IV.D, he expressed hope that Council speaks with them about their performance and believed their goals should be made public.

*City Attorney Harp reported the City Council would adjourn to Closed Session to discuss the items listed in the Closed Session agenda, read the titles, noted the City Council will not be meeting regarding the Part Time Employees Association of Newport Beach (Item IV.A) and announced City Manager Leung, City Attorney Harp and City Clerk Brown will be recusing themselves on Item IV.E due to personal financial interest.*

### IV. CLOSED SESSION

#### A. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6): 1 matter

**Agency Designated Representatives:** Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, and Barbara Salvini, Human Resources Director; Labor Negotiators.

**Employee Organizations:** Newport Beach Fire Management Association (NBFMA) and Part Time Employees Association of Newport Beach (PTEANB).

#### B. CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION (Government Code § 54956.9(d)(2) (e)(2)): 2 matters

The Newport Beach Firefighters Association (NBFA), as well as Robert Salerno, in his individual capacity, are aware of the United States Court of Appeals for the Ninth Circuit's decision in the case of *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890 which may result in litigation against the City of Newport Beach related to the calculation and payment of overtime compensation.

#### C. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8: 1 matter

**City of Newport Beach  
Study Session and Regular Meeting  
March 26, 2019**

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**Property Address:** 406, 408, 410 South Bay Front, Balboa Island

**Agency Negotiators:** Grace K. Leung, City Manager, Seimone Jurjis, Community Development Department Director and Lauren Whitlinger, Real Property Administrator

**Negotiating Party:** Seymour Beek

**Under Negotiation:** Price and terms of payment

**D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Government Code § 54957(b)(1)): 2 matters**

**Title:** Aaron C. Harp, City Attorney

**Title:** Leilani I. Brown, City Clerk

**E. CONFERENCE WITH LABOR NEGOTIATORS  
(Government Code § 54957.6): 3 matters**

**Agency Designated Representative:** Diane B. Dixon, Mayor and Will O'Neill, Mayor Pro Tem

**Unrepresented Employees:**

**Title:** Aaron C. Harp, City Attorney

**Title:** Leilani I. Brown, City Clerk

**Title:** Grace K. Leung, City Manager

**V. RECESSED - 6:33 p.m.**

**VI. RECONVENED AT 7:03 P.M. FOR REGULAR MEETING**

**VII. ROLL CALL**

Present: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon, Mayor Pro Tem Will O'Neill, Mayor Diane Dixon

**VIII. CLOSED SESSION REPORT - None**

City Attorney Harp announced that Council was unable to discuss Items IV.D and IV.E, and would recess back into Closed Session prior to adjourning tonight's meeting.

**IX. INVOCATION - Pat McLaughlin, Second Church of Christ Scientist**

**X. PLEDGE OF ALLEGIANCE - Council Member Brenner**

**XI. NOTICE TO THE PUBLIC**

**XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Duffield:

- Attended the Watershed Executive Committee meeting and the Harbor Commission Visioning Forum, and thanked Harbor Commissioners Blank and Cunningham for facilitating the forum
- Introduced his sister from Oregon who was in the audience.



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**Council Member Brenner:**

- Attended the solid waste and recycling council working group meeting, Speak Up Newport, the Corona del Mar Chamber of Commerce meeting, the Orange Coast College planetarium opening, a public policy meeting at the University of Irvine, the 1<sup>st</sup> Battalion 1<sup>st</sup> Marines annual reception, along with City Manager Leung, the 36<sup>th</sup> Annual Spirit Run, and a Newport Beach Public Library Foundation reception
- Utilized slides to announce the Corona del Mar Town Meeting on April 17 and discussed Public Works' wastewater project at the Santa Ana Delhi Channel
- Met with Deb Johnson of Second Chance Orange County, toured City Hall with Boy Scout Connor Stevens, and visited the Municipal Operations Department and toured various City sites.

**Council Member Herdman:**

- Attended the Orange County Mosquito and Vector Control District meeting, Newport Beach Chamber of Commerce Government Affairs meeting, aviation/airport messaging strategy meetings, the Koll Center project meeting, and visited ACI Jet
- Requested a future agenda item to consider reinstating the public art and cultural arts fund that is derived from development agreement funds

**Mayor Pro Tem O'Neill:**

- Attended the the Nowruz Festival in Irvine with his daughter and the San Joaquin Hills Transportation Corridor Joint Powers Agency Board of Directors meeting, clarifying that Newport Beach does not have a representative on the Foothill/Eastern Transportation Corridor Agency

**Mayor Dixon:**

- Attended the ACC-OC trip to Sacramento where meetings took place with various legislative members to discuss homelessness, affordable housing, tax increases, public pensions, and water quality/safety/reliability, and the Environmental Nature Center's Preschool construction project
- Participated in the National Mayor's Drive for Meals to Seniors event
- Announced the details for the upcoming Mayor's Water Challenge that runs from April 1 to April 30 (mywaterpledge.com), the Joint Town Hall meeting on April 6 with Supervisor Steel to discuss JWA changes, the Organic Compost Giveaway event on April 6, and the Shred Event scheduled for May 11

**XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA**

- **Consideration Request for Review and Potential Revision of Marine Avenue Tree Trimming Cycle (O'Neill)**

*Council Member Herdman recused himself from this item due to real property interests.*

With Council Member Herdman recusing himself, the City Council unanimously concurred to place the matter on a future agenda.

**XIV. PUBLIC COMMENTS ON CONSENT CALENDAR - None**

**XV. CONSENT CALENDAR**

**READING OF MINUTES AND ORDINANCES**

1. **Minutes for the March 12, 2019 City Council Meeting [100-2019]**  
Waive reading of subject minutes, approve as written, and order filed.
2. **Reading of Ordinances**  
Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

**RESOLUTIONS FOR ADOPTION**

3. **Resolution No. 2019-24: Amendments to the Records Retention Schedule [100-2019]**
  - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2019-24, *A Resolution of the City Council of the City of Newport Beach, California, Adopting a Memorandum of Understanding between the City of Newport Beach and the Newport Beach City Employees Association.*
4. **Pulled from the Consent Calendar.**
5. **Resolution No. 2019-26: Amending the Structure, Membership, Roles and Responsibilities of the Aviation Committee [24/100-2019]**
  - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2019-26, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Structure, Membership, Roles and Responsibilities of the Aviation Committee.*
6. **Resolution No. 2019-27: Amending Resolution No. 2001-100, Adopting a Revised Discrimination and Harassment Prevention Policy [100-2019]**
  - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
  - b) Adopt amended Resolution No. 2019-27, *A Resolution of the City Council of the City of Newport Beach, California, Amending Resolution No. 2001-100, Adopting a Revised Discrimination and Harassment Prevention Policy;* and
  - c) Approve the revised *City of Newport Beach Discrimination and Harassment Prevention Policy.*
7. **Resolution No. 2019-28: Approval the December 31, 2011 Salary Schedule and Revisions Through June 11, 2018 [100-2019]**
  - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2019-28, *A Resolution of the City Council of the City of Newport Beach, California, Adopting the Citywide Salary Schedule Effective December 31, 2011, with Revisions Through June 11, 2018.*
8. **Resolution No. 2019-29: Emergency Management Performance Grant Authorization (C-8075-6) [38/100-2019]**
  - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2019-29, *A Resolution of the City Council of the City of Newport Beach, California, Providing Written Authorization to the State of California Governor's Office of Emergency Services of the Standard Assurances Required to Apply for Grants from the Federal Department of Homeland Security, Federal Emergency Management Agency.*

**CONTRACTS AND AGREEMENTS**

9. **City Facilities Painting Project – FMMP 2018-2019 – Award of Contract No. 7499-1 (18F02) [38/100-2019]**
  - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (maintenance of existing facilities involving no expansion of an existing use) of the CEQA Guidelines because this project has no potential to have a significant effect on the environment;

- b) Approve the project drawings and specifications;
- c) Award Contract No. 7499-1 to Tony Painting for the total bid price of \$398,700.00, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a \$60,000.00 (approximately 15 percent) contingency amount to cover the cost of unforeseen work not included in the original contract.

***Council Members Brenner and Herdman recused themselves from Item 9 due to property interest conflicts.***

**10. Spyglass Hill Reservoir Mixing System – Award of Contract No. 7428-1 (19W15) [38/100-2019]**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2, (reconstruction of existing facility involving negligible or no expansion of capacity) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 7428-1 to Humphrey Constructors, for the total bid amount of \$165,400.00, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a contingency of \$24,810.00 (approximately 15% of total bid) to cover the cost of unforeseen work not included in the original contract; and
- e) Approve Budget Amendment No. 19BA-032 transferring \$92,000.00 from savings in Utilities Yard Spill Control/Tipping Floor project (Account No. 70201932-980000-18W14) to the Spyglass Hill Reservoir Mixing System project (Account No. 70201932-980000-19W15).

**11. Amendment No. 1 to Professional Services Agreement with Parkmobile, LLC for Pay-By-Cell and Parking Reservation Services (C-7079-1) [38/100-2019]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Approve Amendment No. 1 to the current Agreement, increasing the contract amount to \$419,000; and
- c) Authorize the Mayor and City Clerk to execute Amendment No. 1 of the Agreement.

**12. Draft Revisions to the Newport Beach Key and Management Compensation Plan (K&M) [100-2019]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and consider the revised Key and Management Compensation Plan.

**MISCELLANEOUS**

**13. Planning Commission Agenda for the March 21, 2019 Meeting [100-2019]**

Receive and file.

**14. Pulled from the Consent Calendar.**

**Motion by Mayor Pro Tem O'Neill, seconded by Council Member Muldoon,** to approve the Consent Calendar, except for the items removed (Items 4 and 14); and noting the recusals by Council Members Brenner and Herdman on Item 9.

The motion unanimously carried.

**XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR**

**4. Resolution No. 2019-25: Formation of a Homeless Task Force [24/100-2019]**



Following discussion, Council Member Herdman requested adding a requirement in its purpose and responsibilities that the task force report back to Council on a periodic basis. Mayor Dixon indicated the task force could look for additional funding at the County and State level.

**Motion by Council Member Herdman, seconded by Council Member Muldoon,** to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) adopt amended Resolution No. 2019-25, A Resolution of the City Council of the City of Newport Beach, California, Establishing a City Council/Citizen's Committee Known as the Newport Beach Homeless Task Force; c) confirm the Mayor's appointment of Mayor Pro Tem Will O'Neill and Council Member Brad Avery to serve as the City Council's representatives to the Task Force; and d) direct the City Clerk to advertise for the citizen members of the Committee.

Ruth Sanchez Kobayashi expressed her concerns on how the growing homeless problem is impacting the community and noted a few locations in the City where she believes it has become a big problem.

The motion unanimously carried.

**14. 2018 General Plan Status Report and Housing Element Annual Progress Report (PA2007-195) [100-2019]**

In response to Council Member Herdman's request, City Manager agreed to provide Council with more time to review large staff reports prior to having to approve them.

**Motion by Council Member Herdman, seconded by Mayor Pro Tem O'Neill,** to a) determine this action is exempt from the California Environmental Quality Act (CEQA) as the actions are not a project as defined by Section 15378(b)(2) of the Public Resources Code; and b) authorize the submittal of the 2018 General Plan Status Report to the California Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD).

Mayor Dixon pointed out that part of the staff report was taken from the current General Plan and believed information was easy to digest.

Jim Mosher noted the report was detailed, but believed the public should ignore the staff report and focus on the Implementation Program, even though it needs updating. He took issue that the Planning Commission has never reviewed adjacent agencies' capital improvement programs and discussed State requirements regarding General Plan compliance. He noted the amount of money that will be spent for the General Plan Update, but believed the public should be more interested in the status of the current General Plan.

Council Member Herdman noted a great deal of time went into the staff report and it would be difficult to know if something was implemented if the staff report was not reviewed.

The motion unanimously carried.

**XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Andy Corley expressed concerns with speeding traffic on Cliff Drive.

Denys Oberman discussed an ongoing encroachment issue on her property, involving City staff and her neighbor, and requested Council direct staff to have the encroaching wall removed.

Peggy Palmer thanked Council for considering implementing a time limit on construction projects, suggested using condition surveys prior to issuing permits, provided a handout regarding a 1960 landslide, and requested an extensive geological study be conducted along the bluffs.

**XVIII. PUBLIC HEARING**

**15. 2888 Bayshore Drive (Newport Marina) – Appeal of the Harbor Commission’s Decision  
(continued from the February 12, 2019 and March 12, 2019 City Council meetings) [100-2019]**

*Council Member Duffield recused himself since he is a tenant of the marina.*

Administrative Manager Miller utilized a PowerPoint presentation to provide details regarding the appeal, including staff recommendations, background information, aerials of the project site, the modified plan with minor changes that all parties have agreed to, and City Council Policy H-1. He also noted the need to update the drawings to include piles.

In response to Council questions, Administrative Manager Miller and City Attorney Harp discussed new and unpermitted projects, explained pierhead and project lines, reviewed the amendments to the resolution, and confirmed a copy of the final resolution and project plans will be provided to the appellants.

*Mayor Dixon opened the public hearing.*

Shawna Schaffner, representing the appellants, provided a brief history, indicated all appellants have agreed to the compromised plan, requested copies of the modification be provided to the appellants, thanked Council for their consideration, and urged them to approve the new plan.

Mike Hewitt, agreed that engineering needed to be completed, and that it would be submitted for AIC as #7.3. He then further stated that Applicant will make every effort to have #7.3 passed by the regulatory agencies but in the event that #7.3 is not passed, and under section 2 of the resolution, that the applicant would be resubmitting the 2018 plan or any other plan, in that event.

Jim Mosher further explained project and pierhead lines, indicated that, because the project is on public water, it will need approval from the California Coastal Commission following Council approval, and questioned if the City has the authority to approve the project since it is on County-owned water. Administrative Manager Miller indicated the County has historically deferred dock construction regulations and configuration issues to the City, and the applicant will still need to receive a permit from the County, pending City approval.

Mayor Pro Tem O'Neill thanked both parties for working together to come to a compromise and pointed out the importance of the City being able to regulate these types of issues since they impact many of its residents.

**Motion by Mayor Pro Tem O'Neill, seconded by Council Member Avery,** to a) find the project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, Code of Regulations, Title 14, Chapter 3; c) modify the Harbor Commission's decision on the proposed marina reconfiguration at 2888 Bayshore Drive to include the project revisions as proposed by the applicant. This action authorizes staff to issue an Approval in Concept for the project as revised; and d) adopt amended Resolution No. 2019-30, *A Resolution of the City Council of the City of Newport Beach, California, Modifying the Harbor Commission's Approval of an "Approval In Concept" (Project File No. 1502-2018) for the Removal and Replacement of a Dock System at the Property Located at 2888 Bayshore Drive.*

Council Member Muldoon thanked the Harbor Commission for working to find a compromise and noted that sometimes Council has to overturn decisions made by boards and commissions.

*Hearing no further testimony, Mayor Dixon closed the public hearing.*

With Council Member Duffield recusing himself, the motion unanimously carried.

**XIX. CURRENT BUSINESS**

**16. Initiation of Zoning Code and Local Coastal Program Amendments Due to VE Special Flood Hazard Area as Mapped by FEMA (PA2018-075) [100-2019]**

*City Clerk Brown recused herself due to real property interest conflicts and Council Member Muldoon recused himself due to potential business interest conflicts.*

Community Development Director Jurjis provided a brief overview of the item and Planning Manager Alford utilized a PowerPoint presentation to discuss design and construction in the flood zone, the need for staff to rewrite the zoning code, the location of the VE flood zone, the new FEMA design requirements for elevated buildings, the requirement for an open foundation that is free of obstructions, and the zoning code conflicts related to height, parking, accessory structures, and access to the dwelling.

In response to Council questions, Community Development Director Jurjis indicated the first outreach meeting to discuss new FEMA requirements and building codes will be held on April 8 at Marina Park, residents currently would need to apply for a variance to just have carports, the recent change in the FEMA map reduced the number of properties in the flood zone on Balboa Island but increased the number of properties on the Peninsula, there may be future changes to the flood zone map that will need to be worked out with FEMA, complying with the flood zone map allows residents access to affordable flood insurance offered by the Federal government, some mortgage companies only accept FEMA insurance, the current zoning code is not flexible, and staff is requesting to initiate a change to allow for the VE Special Flood Hazard Area.

In response to Denys Oberman's concerns, Community Development Director Jurjis assured everyone that changing the zoning code will require noticing and several public meetings.

**Motion by Mayor Pro Tem O'Neill, seconded by Mayor Dixon,** to a) determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and b) adopt Resolution No. 2019-31, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Height Measurement, Accessory Structures and Residential Off-Street Parking Requirements for Properties Located in the VE Special Flood Hazard Area (PA2018-075).*

Jim Mosher believed the requirement of building houses on stilts has been in the building code, but it is the VE zone that is new, questioned who is required to comply with the Federal insurance program, noted there was disagreement at the Zoning Administrator meeting if these homes are actually at risk, and asked if the groins were installed when erosion occurred in the 1930s and 1960s.

Community Development Director Jurjis discussed flood insurance requirements and ordinance compliance relative to the flood line, and indicated the City plans to conduct its own study, while working with FEMA, relative to whether the water would reach the properties. Planning Manager Alford confirmed that the City's major flooding occurred before the groins were installed and discussed the benefits of the groins. Regarding the map change, he indicated the City provided FEMA with site specific studies that showed which properties would not be subject to coastal hazards.

Council Member Duffield reported on the U.S. Army Corps of Engineers, former Congressman Rohrabacher, and Supervisor Steel's implementation of a program that involves dredging and placing the dredged material on beaches to, among other things, lengthen and heighten the beach.

*Without objection, Council Member Duffield requested the motion be amended to include language to work with FEMA to reduce the height requirement if the dredging/sand replenishment project is implemented.*

**City of Newport Beach  
Study Session and Regular Meeting  
March 26, 2019**

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With the inclusion of Council Member Duffield's amendment to the motion as Item c, the motion unanimously carried.

*City Attorney Harp announced the City Council would be recessing to Closed Session and read the titles of the items to be discussed.*

*Mayor Dixon recessed the meeting at 8:48 p.m.*

**IV. CLOSED SESSION**

**D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Government Code § 54957(b)(1)): 2 matters**

Title: Aaron C. Harp, City Attorney

Title: Leilani I. Brown, City Clerk

**E. CONFERENCE WITH LABOR NEGOTIATORS  
(Government Code § 54957.6): 3 matters**

**Agency Designated Representative:** Diane B. Dixon, Mayor and Will O'Neill, Mayor Pro Tem

**Unrepresented Employees:**

Title: Aaron C. Harp, City Attorney

Title: Leilani I. Brown, City Clerk

Title: Grace K. Leung, City Manager

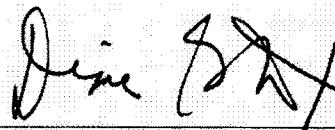
*Mayor Dixon reconvened the meeting at 9:29 p.m. with all members of the City Council present.*

*City Attorney Harp announced no reportable actions were taken.*

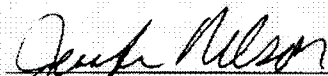
**XX. MOTION FOR RECONSIDERATION - None**

**XXI. ADJOURNMENT - 9:30 p.m.**

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on March 21, 2019, at 4:00 p.m.



Diane B. Dixon  
Mayor

  
Leilani I. Brown  
City Clerk

## Newport Marina

MIKE HEWITT <mhewitt@lawverdict.com>

Thu 7/2/2020 1:40 PM

To: Rehm, Zach@Coastal <Zach.Rehm@coastal.ca.gov>

Cc: 'Adam Gale' <agale@anchorqea.com>

 2 attachments (2 MB)

Cor. to Mr. Si from Ron E. Presta 9-4-14.pdf; 16-10-12 Approved Minutes.pdf;

Hello Zach,

We would like to leave this matter on the agenda. This project does have a long history and involvement with many parties, so we really appreciate staff support in coming up with a plan.

We would like to submit a comment based on information that was provided to Fernie in our September 2019 response letter. In 2014/15 the applicant submitted a proposal to the Coastal Commission (CDP No. 5-15-1521) that included replacement of the marina generally following the footprint and configuration of the existing layout. Following issuance of the CDP, the City of Newport Beach's Approval-in-Concept (AIC) was appealed by the adjacent property owner (Mr. Moriarty) to the Harbor Commission based on the potential for property damage and bodily injury that could occur as a result of the reduced distance between the end of the dock located at 2888 Bayshore Drive and Mr. Moriarty's motor yacht side-tied adjacent to the marina property line. At the Harbor Commission hearing, Mr. Moriarty and his yacht captain discussed at length the property damage and bodily injury that did occur as a result of the existing configuration of the marina and Mr. Moriarty's new dock. (Attached are the Harbor Commission minutes evidencing the foregoing.) Subsequently, the Harbor Commission upheld the appeal and reversed the Harbor Resources Manager's decision and placed conditions upon the 2016 proposed project.

Concurrent with the CDP No-15-1521 review process in 2014 and 2015, Mr. Moriarty was issued CDP 5-14-0522 to replace the existing dock at 2782 Bayshore Drive with a new larger dock. The new dock would also accommodate a larger vessel to be side-tied to the north side of the dock. Once the new dock was installed, the path of travel for smaller boats entering the back side of the marina was limited as compared to the pre-construction conditions. According to Mr. Moriarty and his boat captain, on multiple occasions smaller vessels accessing the back side of the marina struck the larger vessel side-tied to the dock, causing property damage and personal injury. Notwithstanding the fact that Mr. Moriarty also owns the property immediately adjacent to 2782 Bayshore Drive to the south, Mr. Moriarty designed and built his dock on the northern portion of his property to allow his yacht to side tie and extend to the marina property line. The marina and numerous marina tenants filed written objections to Mr. Moriarty's proposed dock and requested a navigation easement. Ultimately, the CCC approved Mr. Moriarty's dock over the objections of the marina tenants and owner. Attached is a letter from Ron Presta to the Coastal Commission objecting to Mr. Moriarty's proposed dock.

Prior to construction of Mr. Moriarty's new dock at 2782 Bayshore Drive, there was never an incident with smaller boats striking vessels while accessing the back side of the marina.

In response to the Harbor Commission reversal to the CDP No-15-1521 AIC, the applicant filed the subject application for a new marina design. The proposed design generally follows the same plan submitted in 2014/15 (and similar to the existing configuration) but with the inclusion of the harbor

camel. So with staff recommendation to approve the project that does not include the harbor camel is again approving nearly the identical design from 2016 that was appealed and upheld by the City's Harbor Commission.

We are therefore requesting the design as proposed be approved with inclusion of the harbor camel. This design was "Approved in Concept" by the City of Newport Beach and in collaboration with the adjacent property owners. If the Coastal Commission agrees with staff recommendation we are concerned that the project would be non-permittable by the City of Newport Beach for the reasons stated in the attached Harbor Commission minutes and would result in a prolonged condition of continued deterioration of the existing marina without a viable replacement option.

We will have several speakers at the hearing and I would appreciate your forwarding me information on how to participate in the hearing.

Thank you for your consideration,  
Mike Hewitt

Michael C. Hewi  
Aorney at Law  
Law Offices of Michael C. Hewi  
2082 Michelson Drive, Suite 300  
Irvine , CA 92612

(949) 825-5260 Voice  
(949) 825-5261 Fax

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July 2, 2020

**W14b**

Mr. Zach Rehm  
California Coastal Commission  
301 Ocean Boulevard, Suite 300  
Long Beach, CA 90802

Subject: CDP Application No. 5-19-0907 – Item No. W14b, July 8, 2020 for Newport Marina, Located at 2888 Bayshore Drive, Newport Beach

Dear Mr. Rehm:

On behalf of my clients, Glenn Walcott, Theresa Morrison, Zachary Fischer, and Kevin Moriarty, I am writing to voice our strong support for the Staff Recommendation related to the Newport Marina project. We urge the Coastal Commission to adopt the Staff Recommendation, and we appreciate the diligent work of Coastal Commission Staff in carefully evaluating the environmental impacts of this project.

Following lengthy appeal proceedings at the City of Newport Beach (“City”), we are pleased to be able to support the project as recommended by Staff. However, we continue to have objections to the way the 2018 Plan project alternative is characterized, and we offer the following comments. These comments do not affect the conclusions of the Staff Report as it relates to the Staff Recommendation for the proposed project.

As you know, my clients were successful appellants at the City, and their efforts resulted in the City Council rescinding approval of the 2018 Plan, and granting approval of the 2019 “Compromise Plan.” My clients appealed the City’s prior administrative approval of the 2018 Plan based on several procedural, technical, and environmental complaints. We were alarmed upon reviewing the March 2020 Staff Report to find that the recommendation was for approval of the 2018 Plan, in spite of the successful appeal and substantial environmental concerns.

Since March, we have been working diligently with Staff to understand how the conclusions in the March Staff Report were reached. We have submitted three separate technical studies in the areas of engineering, biology, and coastal hazards in order to better understand the impacts of the 2018 Plan compared to the 2019 Plan. Those studies all confirmed that the 2018 Plan would result in substantially greater environmental impacts compared to the 2019 Plan.

Our biggest concern relates to the continued characterization of the 2018 Plan as a potentially viable project alternative. The 2018 Plan will result in substantially greater environmental impacts





Mr. Zach Rehm  
July 2, 2020  
Page 2 of 3

based on the technical studies submitted by the project applicant, and technical studies that were submitted to the Commission Staff this spring. The analysis and project findings in the Staff Report should be updated to reflect the following four issues. Compared to the 2019 Plan, the 2018 Plan will:

1. Result in greater eelgrass coverage (PMA Consulting analysis)
2. Result in impacts to Coastal Hazards. All small boat slips will become increasingly inaccessible and eventually there will be no ingress/egress for the small boat slips even at low tide (GeoSoils Sea Level Rise analysis)
3. Result in increased biological impacts including impacts to the open-water foraging habitat of the endangered California least tern (Coastal Resources Management analysis)
4. Result in increased need for maintenance dredging, further impacting eelgrass both directly and indirectly (Coastal Resources Management analysis)

We have carefully reviewed all Substantive File Documents listed in Appendix A, and there is nothing supporting the statement that the 2018 Plan would result in 663 square feet of eelgrass impacts, as identified on page 26. However, the PMA Consulting analysis, dated March 27, 2020 clearly shows that the 2018 Plan will result in 1,024 square feet of eelgrass impacts. A response to the PMA Consulting analysis was prepared by Bellingham Marine, dated April 17, 2020. The Bellingham response is silent on eelgrass coverage.

Given the lack of source documentation supporting the statement that the 2018 Plan would result in 663 square feet of eelgrass impacts, the Staff Report should be revised based on the 1,024 square feet clearly depicted in the PMA Consulting analysis, on file. That engineering analysis, which is based on the applicant's Marine Taxonomic Services eelgrass survey, dated July 25, 2018, demonstrates that the 2018 Plan will result in 1,024 square feet of eelgrass coverage.

In addition to eelgrass, the 2018 Plan suffers from significant impacts related to sea level rise (SLR). While the 2018 Plan is presented as a viable alternative in the staff report, there is no discussion pertaining to the inherent conflict of a low, fixed pier at the entrance to the small slip portion of the marina. A SLR analysis prepared by GeoSoils, Inc, dated April 10, 2020, was submitted to Coastal Staff showing that the proposed fixed pier, as presented by the 2018 Plan, would not be consistent with future predicted SLR for Newport Harbor. The Staff Report should further acknowledge that the 2018 Plan is not a viable alternative plan due to its incompatibility with SLR. This information is vital and should not be omitted from the Staff Report or substantive file documents.

In conclusion, the comments provided above are intended to further clarify and perfect the record as it relates to the 2018 Plan. These comments do not change the conclusion that the 2019 Plan is the least environmentally damaging feasible project alternative. We commend Staff for revisiting the original conclusions, and for basing the new Staff Report on more complete information. The





Mr. Zach Rehm  
July 2, 2020  
Page 3 of 3

2019 Plan is supported widely in the community and by Orange County Coastkeeper. My clients are in full support of the Staff Recommendation, and we urge the Commission to approve the project.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner  
Chief Executive Officer



July 3, 2020

**W14b**

Mr. Zach Rehm  
California Coastal Commission  
301 Ocean Boulevard, Suite 300  
Long Beach, CA 90802

Subject: CDP Application No. 5-19-0907 – Item No. W14b, July 8, 2020 for Newport Marina, Located at 2888 Bayshore Drive, Newport Beach – Response to Email Correspondence from Michael Hewitt dated 7-2-20

Dear Mr. Rehm:

On behalf of my clients, Glenn Walcott, Theresa Morrison, Zachary Fischer, and Kevin Moriarty, I am writing in response to email correspondence from Michael Hewitt, attorney for the project applicants. I have reviewed his email related to the history of the project and the need to retain the harbor camel pile that is included in the project application and offer the following brief response.

The email claims that the harbor camel pile is needed because of the location of my client's dock and side-tie. The City Harbor Code section 17.35.020 B.2 does not allow for reliance on water space past the prolongation of the property lines. The location of my client's boat has no relationship to the marina access based on the City Harbor Code.

The email also expresses concern that the City will not approve the plan that is recommended by Staff. That concern is unfounded. There is no evidence presented by Mr. Hewitt to support this claim. During the past week I have had several telephone conversations with City of Newport Beach Staff, including Chris Miller, the party responsible for updating the Approval in Concept. Mr. Miller confirmed to me on Thursday, July 2 that the City procedures allowed for administrative approval of the plan recommended by Coastal Staff.

My clients are neutral on the topic of the harbor camel pile. They understand that it is viewed as an important project feature for the project applicant. At the same time, they question the utility of the harbor camel pile, and during the City appeal process, frequently expressed concern with whether the Coastal Commission would approve such a feature. We urge the project applicant to agree with the Staff Recommendation and to move forward with a new marina.

My clients are in full support of the Staff Recommendation, and again request that the Commission approve the project.



Mr. Zach Rehm  
July 3, 2020  
Page 2 of 2

Sincerely,

CAA PLANNING, INC.

A handwritten signature in blue ink that reads "Shawna L. Schaffner". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Shawna L. Schaffner  
Chief Executive Officer



## BAYSHORES COMMUNITY ASSOCIATION

A California nonprofit mutual benefit corporation

July 2, 2020

Mr. Steve Padilla, Chair  
CALIFORNIA COASTAL COMMISSION  
301 E. Ocean Blvd., Suite 300  
Long Beach, CA 90802

Subject: Item No. W14b, July 8, 2020 – Palmo Investments Application No. 5-19-0907 for  
Newport Marina, Located at 2888 Bayshore Drive, Newport Beach

Dear Mr. Padilla,

The Bayshores Community Association ("Association") is a private, gate-guarded community association comprised of 249 residences and is the immediate neighbor to the Newport Marina and Bayshore Apartments, which are not a part of the Association. We are very close together. People who live in the apartments or visit them, or use the marina, make a turn off Pacific Coast Highway and then make a quick left turn into the Bayshore Apartments or Newport Marina just before the gated entrance to the Bayshores Community.

Previously the Association participated in the appeal of the Newport Marina project at the City of Newport Beach ("City") by writing a letter in support of the Bayshores residents who would be directly impacted by the proposed reconfiguration of the Newport Marina. The Association was pleased with the outcome of the City process, which culminated in City Council approval of the 2019 "compromise" plan.

As a participant in the above-mentioned appeal proceedings before the City Council, and a known interested party, the Association was surprised when this project was presented on the March 2020 Coastal Commission agenda, with a staff recommendation for the 2018 marina plan. The Association was not provided notice of the March 2020 Coastal Commission hearing, and the Association was pleased that the item was postponed due to lack of proper notice, among other issues.

The Association supports the Staff Recommendation for the City-approved 2019 compromise plan. The 2019 compromise plan retains a similar configuration compared with the existing marina, meaning that larger boats would not be placed directly in front of Bayshores homes adjacent to the marina. The marina is a money-making, commercial enterprise and it would be unjust to negatively impact Bayshores homeowners who receive no benefit from a reconfiguration which impairs the enjoyment of their homes.

Sincerely,

BAYSHORES COMMUNITY ASSOCIATION

John C. Teal, Jr., President



**CITY OF NEWPORT BEACH**

100 Civic Center Drive  
Newport Beach, California 92660  
949-644-3311  
[newportbeachca.gov/PublicWorks](http://newportbeachca.gov/PublicWorks)

July 6, 2020

Honorable Chair Steve Padilla  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105- 2219

Re: Item 14b - Application No. 5-19-0907 (Palmo Investments)

Dear Chair Padilla:

I have reviewed the staff report and I can represent that the City of Newport Beach supports the recommendation to approve the application with the revised marina design. As a result, Special Condition 2E is unnecessary and can be eliminated because the staff recommended change to the marina design is fully consistent with the City of Newport Beach Municipal Code, Waterfront Project Guidelines and Standards Harbor Design Criteria Commercial and Residential Facilities and other applicable regulations and guidelines. Please use this letter as documentation of the City's approval of the revised design.

If you have any questions, please do not hesitate to contact me at 949-644-3043 or by email at [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov).

Sincerely,

Chris Miller  
Public Works Manager



3151 Airway Avenue, Suite F-110  
Costa Mesa, CA 92626  
Phone 714-850-1965  
Fax 714-850-1592  
[www.Coastkeeper.org](http://www.Coastkeeper.org)

June 18, 2020

Mr. Fernie Sy  
California Coastal Commission 301 E.  
Ocean Boulevard, Suite 300  
Long Beach, CA 90802

Subject: CDP Application No. 5-19-0907 for Redevelopment of an Existing 53-Slip Marina  
Located at 2888 Bayshore Drive, Newport Beach

Dear Mr. Sy:

Orange County Coastkeeper ("Coastkeeper") is a nonprofit clean water organization with the mission to protect and promote water resources that are swimmable, drinkable, fishable, and sustainable. We have been working to improve all aspects of water quality in Newport Bay since our inception in 1999. We are proud of our important contributions to improve projects through direct work with project applicants, and through working cooperatively with agencies such as the California Coastal Commission (CCC).

The above-referenced CDP application has come to our attention as it relates to our mission to protect and promote water resources. This specific CDP application is for the redevelopment of Newport Marina, within Newport Harbor in close proximity to the Back Bay where many important marine resources are located. In spite of the City of Newport Beach (City) approving the 2019 marina plan, a second marina plan (2018 plan), the approval for which was rescinded by the City, was advanced to the CCC for consideration. This CDP application was originally scheduled for hearing in March 2020 but was subsequently postponed. We have reviewed the original Staff Report dated February 28, 2020 and offer the following comments in an effort to allow for an expanded analysis of environmental issues, when the project is brought to hearing in the coming months.

The original Staff Report identified the 2018 Plan as the least environmentally damaging feasible alternative. It appears that that this conclusion was reached without adequate investigation and analysis of pertinent environmental issues, including those pertaining to water resources. Independent analyses were conducted by PMA Consulting and Coastal Resource Management to provide a comparison between the 2018 Plan and the 2019 Plan with respect to overwater coverage, eelgrass impacts, and dredging frequency and related environmental impacts. We have reviewed these technical analyses and agree with their conclusions, which is that the 2019 Marina Plan would be the least environmentally damaging feasible alternative compared to the 2018 Marina Plan.

The environmental impacts, and specifically water quality impacts, are greater with the 2018 Marina Plan. The CCC should be careful to consider accurate water surface coverage and eelgrass impacts, and also other important water quality considerations evaluated in the Coastal Resource Management analysis. Even if the 2018 Marina Plan were modified for the purpose of decreasing overwater coverage and eelgrass impacts to be commensurate or less than the 2019 Marina Plan, the 2018 Marina Plan would still remain environmentally inferior due to the consideration of frequent dredging needs and the inherent impacts that presents. Because the marina orientations are different, the 2018 Marina Plan will necessitate more voluminous, and more frequent, maintenance dredging. This proposed path of navigation is near the Pacific Coast Highway (PCH) bridge, an area known for experiencing frequent shoaling, and at low tide exposes large sections of sand. Maintenance dredging can negatively impact water quality by increasing water turbidity and increasing disturbance of contaminants which are well documented in this area of Newport Harbor.

The increased dredging necessary to accommodate access into the marina for the 2018 Marina Plan would have harmful secondary impacts on marine resources, such as eelgrass and other biota. These impacts are a result of temporary increased turbidity resulting in a decrease in underwater light levels, but also a permanent reduction in light levels resultant from greater dredge depths. Additionally, the birds such as the endangered California least tern are known to frequent the shoal located at the opening to the marina under the 2018 Marina Plan. Unduly eliminating this important shoaling area would be detrimental to critical open water feeding habitat for the endangered California least tern.

Orange County Coastkeeper encourages the CCC to revisit the conclusions contained within the February 2020 Staff Report. Based on information provided to the CCC following preparation of that Staff Report, it appears clear that the 2019 Marina Plan is the least environmentally damaging feasible alternative. We support the 2019 Marina Plan because it is a more sustainable development plan for our precious marine resources. We appreciate the opportunity to provide input on this project and appreciate the hard work of CCC Staff in the on-going effort to protect the California coast, and to protect water resources throughout the coast.

Sincerely,

A handwritten signature in black ink that reads "Garry Brown". The signature is fluid and cursive, with the first name "Garry" and last name "Brown" clearly distinguishable.

Garry Brown  
Founder & President  
Orange County Coastkeeper

c. Zach Rehm, Senior Planner, CCC

July 2, 2020

Mr. Steve Padilla  
California Coastal Commission  
301 Ocean Boulevard, Suite 300  
Long Beach, CA 90802

Subject: CDP Application No. 5-19-0907 – Item No. W14b, July 8, 2020 for Newport Marina,  
Located at 2888 Bayshore Drive, Newport Beach

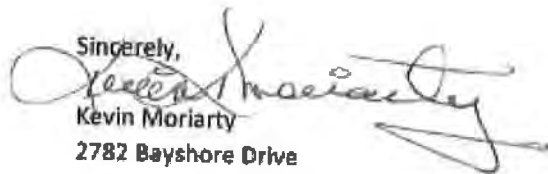
Dear Mr. Padilla:

I live immediately adjacent to the Newport Marina project, and I am writing in support of the Staff Recommendation for approval of the 2019 marina reconstruction plan for CDP Application No. 5-19-0907. I was relieved when the project was postponed from the March 2020 Commission Agenda. The March Staff Recommendation was based on incorrect information. The July 2020 Staff Report has been substantially revised, and now recommends the 2019 Plan based on technical evidence now in the record. I commend Staff for diligently reviewing the project information and reaching a new conclusion.

However, I would be remiss if I did not point out one area of the Staff Report that is troubling. I am deeply concerned that three of four camel pile alternatives presented on page 25 the current staff report call for action on my part including, redesign of my dock, relocation of my boat to an offsite location, or for me to rent a slip from Newport Marina. I am not a party to this application and the suggestion of action on my part as a solution to the marina's design flaw is outrageous.

I urge Coastal Commission to approve CDP 5-19-0907 based on the staff recommendation.

Sincerely,



Kevin Moriarty  
2782 Bayshore Drive

cc: Zach Rehm, California Coastal Commission



Date of comment: July 3, 2020

Date of hearing: July 8, 2020

Agenda Item: **W14b-7-2020**

My position: support staff recommendation

To: Fernie Sy, Coastal Program Analyst  
301 E. Ocean Blvd, Suite 300  
Long Beach, CA, 90802-4830

Re: **Application No. 5-19-0907 (Palmo Investments, Newport Beach)**

Dear Mr. Sy,

I support the staff recommendation, however I would suggest consideration of the following technical revisions to the staff report:

**Page 1**, first sentence of Summary: *"The proposed project is the demolition of an existing marina and construction of a new marina located at 2888 ~~Bay Shores~~ Bayshore Drive, Newport Beach, Orange County, including docks, piles, utilities, pier platform and gangway."*

**Page 2**, paragraph 4: *"The existing dock system on this site consists of 12,534 square feet of overwater material (dock floats) and the proposed dock system would cover 13,805 square feet."* [There may be some uncertainty as to the size of the current and proposed docks. The Resolution No. 2019- 30 by which the Newport Beach City Council granted local approval, seemingly approving the same plan, says (Fact C.iv on page 5): *"The Modified Project will increase the overall water coverage from 12, 787 square feet to 13, 722 square feet."*

**Page 7**, first sentence of proposed CCC **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.~~"* [There may be some reason for it, but the clause suggested for deletion seems both unnecessary and confusing for this post-certification approval: first because the CCC, not the local government, has jurisdiction over the subject area, and second because the local government (Newport Beach) has already prepared its LCP.]

**Page 8, Special Condition 2 (Revised Project Plans)**: Per Section 3 on page 4 of the Newport Beach City Council's Resolution No. 2019- 30, the Council approved *"the Modified Project set forth in Exhibit "B" **but revised to reflect the appropriate pierhead line, project line, and subject to any special conditions required by the Public Works Director.**"* The Exhibit "B" referred to there (an "Alternate Layout Option #7.2 dated 3-20-2019) appears to be very similar to the "Layout #7.2 Modified" in the present CCC Exhibit 2, which is likely the "#7.3" promised by the applicant on page 71 of the City Council minutes from March 26, 2019.

The Council's direction to correct the depictions of the pierhead and project lines (which, to the best of my knowledge, are 55' and 75' bayward of the bulkhead line) appears to have been heeded in the top diagram (of "Existing Docks") on page 3 of the CCC exhibits, but *not* on any of the depictions of the proposed docks, such as CCC Exhibit 3 (page 6), where what appears to be the true project line has been labeled "Marina Limits" and an incorrect "Project Line" is shown bayward of that. Likewise, the project line is labeled "Marina Limits" on page 4 of the present CCC exhibits, and the pierhead line is shown, but not labeled, on the same diagram.

**I would suggest that the Revised Plans called for by Special Condition 2 be required to correctly show and label the pierhead and project lines in relation to the proposed dock configuration.**

In this connection, it seems important to note that the applicant's "Marina Limit" is *not* the federally-designated pierhead line. Indeed, as observed in the staff report (bottom of page 15 and top of 16), "*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.*" I leave it to the Coastal Commission to decide if approval of piers extending beyond the federal pierhead line is consistent with California's Coastal Act.

**Page 9, Special Condition 2** (continued), subpart E: "*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 Public Works Department.~~*" [Newport Beach recently disbanded the Harbor Resources Division within its Public Works Department, so it no longer exists. The former Harbor Resources Manager (Chris Miller) continues to review plans for construction in the harbor, but he is now a "Public Works Administrative Manager" and plans are technically regarded as approved by the Public Works Director. There is now a separate Harbor Department, but it deals with day-to-day operation of the harbor, not construction requests.]

**Page 9, Special Condition 3** (Pre-Construction Eelgrass Survey):. I am not familiar enough with eelgrass to understand the significance of saying "*(whether for *Zostera marina* or *Z. pacifica*)*" – which seems to leave it to the discretion of the applicant to search for one species or the other, but not both. Is that truly the intent? Or was this intended to say "*(for **both** *Zostera marina* **and** *Z. pacifica*)*"?

**Page 15, Project Location**, paragraph 1, sentence 2: "*It is located adjacent to ~~the a non~~-gated residential community of ~~Bayshore Bayshores~~ and is a privately-owned commercial marina with 53 total boat slips which are available for lease to the public.*" [Entry to the marina and associated apartments does not require going through the gate, but the main Bayshores residential community (to which remainder of the marina, including the proposed harbor camel, is adjacent) is gated, with access to residents and guests, only.]

**Page 35, E. California Environmental Quality Act (CEQA)**, paragraph 2: "*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.*" [see first note on page 9, above]

As a final general comment, one has to wonder if the concern about harbor bottom shading could be reduced by using translucent construction materials in some areas, rather the presumably opaque wood-topped synthetic product described in the staff report.

Yours sincerely,



James M. Mosher, Ph.D.  
2210 Private Road  
Newport Beach, CA. 92660

**Dobson, Amber@Coastal**

---

**From:** Jack Langson <JLangson@ibg-usa.com>  
**Sent:** Wednesday, July 1, 2020 1:57 PM  
**To:** SouthCoast@Coastal  
**Subject:** 7/8/20 hearing - Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach) - Request disapproval as proposed

Dear Commission Members,

I am requesting that the Coastal Commission disapprove Application No. 5-19-0907 as proposed. I am a resident of the Bayshores neighborhood which adjoins the proposed marina redevelopment project at 2888 Bayshore Drive, Newport Beach. I request your consideration of the following:

1. Applicant has not pursued the best alternative as noted on page 3 of the Staff Report dated 6/25/20 as follows: "Commission staff asked the applicant to analyze a project alternative that would reduce the adverse impact of the proposed project, but the applicant is intent on going forth with the proposed design." The preferred alternative is the "2019 Marina Plan" which has been thoroughly vetted, was approved by the Newport City Council, is supported by the project appellants, and by the Bayshores Home Owners Association. The 2019 Marina Plan retains a similar layout and boat slip mix and will be a positive redevelopment.
2. Proposed Condition #2: This seems to be a favor to the applicant by Commission Staff. As you may know, the adjoining homeowner has concern due to prior damage to his boat by boaters using the existing marina. Of course, removal of this portion of the project would save the applicant the cost of the harbor camel, but it also subjects the neighbor to greater risk of damage to his boat. If the Commission determines that the harbor camel is to be deleted, then Condition #2 should be revised to require an increase in the width of the waterway between the south end of the marina and the neighbor's boat dock.

In summary, I oppose the 2018 plan that is considered as an alternative because it was already appealed and denied at the local level, has greater environmental impacts, and is not consistent with various requirements contained within the Harbor Code, the Harbor Design Guidelines, and the Local Coastal Program.

Respectfully submitted,

Jack M. Langson  
Investment Building Group  
5100 Campus Drive, Suite 300  
Newport Beach, California 92660  
Tel: (949) 263-1111  
Email: JLangson@ibg-usa.com

## **Dobson, Amber@Coastal**

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**From:** Glenn Walcott <glenn.walcott@gmail.com>  
**Sent:** Thursday, July 2, 2020 5:13 PM  
**To:** SouthCoast@Coastal  
**Subject:** Public Comment on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach) SUPPORT STAFF RECOMMENDATION

Commissioners and Staff -

Good evening!

We are a homeowner directly in front of/adjacent to the new marina being built in Newport Beach by Ron & Allyson Presta, owners of Palmo Investments. Note they own the apartment complex and the marina and that the marina lies in front of their apartment complex as well as three privately owned homes, of which we are one homeowner.

**We request that the Coastal Commission approve the project consistent with the Staff Recommendation.** This is in SUPPORT of Staff Recommendation on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach).

The alternative plan considered was referred to as the 2018 Plan. This plan was the subject of a lengthy review and appeal process at the City of Newport Beach level. This plan was ultimately rescinded and the new 2019 Plan, which is before you at the July 8th meeting, was approved. The 2018 Plan had more dock coverage over the water than the 2019 Plan, had more eelgrass coverage than the 2019 Plan and was in violation of numerous requirements of the Newport Beach Harbor Code, the Harbor Design Guidelines, the Local Coastal Program and the California DBW 2005 Marina Berthing Guidelines.

Note that the Staff report does have a few errors, none of which would alter the recommendation. One that is important to point out is in the second paragraph of page 26 - it states the 2018 Plan (Bad Plan) has less eelgrass coverage than the Good 2019 Plan. This is false and the Staff has engineering reports showing the 2019 Plan is superior with respect to having both less overwater coverage/shading AND less coverage over eelgrass.

If history repeats itself, there will be some last minute declarations made by the applicants through their attorney, Mike Hewitt, which will contain factual inaccuracies. Why they would fight an approval of the plan they submitted is beyond logic. They have had over a year to bring any points to the Coastal Commission Staff and I beg you to not allow "new" evidence from a team that has a history of disrespecting truthful statements.

We thank you for your time on this matter!

Glenn Walcott

2832 Bayshore Drive, Newport Beach, CA 92663

**Dobson, Amber@Coastal**

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**From:** Diego Carreras <carrerasd8@gmail.com>  
**Sent:** Thursday, July 2, 2020 1:30 PM  
**To:** SouthCoast@Coastal  
**Subject:** Agenda Item W14b and Application number is 5-19-0907

Hello,

I support the staff recommendation as written for the 2019 Plan.

Thank you

**Dobson, Amber@Coastal**

---

**From:** Patricia Gilhooly <pmgilhooly@gmail.com>  
**Sent:** Thursday, July 2, 2020 1:22 PM  
**To:** SouthCoast@Coastal  
**Subject:** Agenda Item number W14b and Application number is 5-19-0907

Dear Coastal Commission,

As a Newport Beach resident, I support the 2019 Marina Plan as recommended by the Coastal Commission Staff. This plan retains a similar layout and boat slip mix and will be a positive redevelopment."

The 2019 plan has been thoroughly vetted and is approved by the Newport Beach City council and is supported by the Bay Shores Home Owner Association and OC Coastkeeper.

I'm opposed to the 2018 plan. Its been appealed and denied at the local level and has a greater impact on the environment, which is most important to the residents of Newport Beach.

Please vote for the 2019 plan and keep the Newport Beach water ways safe for everyone!

Regards,

Patricia Gilhooly  
714-813-0608

Sent from Mail for Windows 10

**Dobson, Amber@Coastal**

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**From:** Slangson@ibg-USA.com  
**Sent:** Thursday, July 2, 2020 1:21 PM  
**To:** SouthCoast@Coastal  
**Subject:** Request for denial of Permit # 5-19-0907; July 8, 2020 hearing Agenda Item W14b

Dear Sirs,

I request that the Commission disapprove Permit #5-19-0907 (Palmo Investments, Newport Beach). Instead, I support the "2019 Marina Plan." The 2019 Marina Plan has been thoroughly vetted, was approved by the Newport City Council, is supported by the project appellants, and by the Bayshores Home Owners Association. The 2019 Marina Plan retains a similar layout and boat slip mix and will be a positive redevelopment.

I oppose the 2018 plan that is considered as an alternative because it was already appealed and denied at the local level, has greater environmental impacts, and is not consistent with various requirements contained within the Harbor Code, the Harbor Design Guidelines, and the Local Coastal Program.

Thank you for your consideration.

Sincerely,

Shanaz S. Langson

2616 Bayhsore Drive

Newport Beach, CA 92660



THERESA C MORRISON  
2800 Bayshore Drive  
Newport Beach, CA 92663

JULY 2, 2020

**CALIFORNIA COASTAL COMMISSION**

**South Coast Office**

301 E Ocean Blvd, Suite 300

Long Beach , CA 90802

RE: Public Comment on Agenda Item 14b Application No. 5-19-0907 (Palmo Investments, Newport Beach)

Dear Coastal Commissioners,

I am writing in support of the Staff Recommendation to approve the 2019 Marina Plan.

The 2019 Marina Plan was approved by the City of Newport Beach, supported by the project appellants (myself included), the Bayshore Homeowners Association, and many residents in the surrounding area. The 2019 Marina Project is also supported by the OC COASTKEEPERS (see letter).

I strongly oppose the 2018 plan that is considered as an alternative as it was denied at the local level, has greater environmental impacts and is not consistent with various requirements contained within the Harbor Code, the Harbor Design Guidelines and the Local Coastal Program.

Most importantly the 2019 Plan which I support is the least environmentally impactful project and it retains a similar layout and boat-slip mix. It will be a positive redevelopment for the whole community.

I encourage you to approve the Staff recommendation for the project as written.

Thank you for the opportunity to share my opinions with you. I appreciate the work you do to retain and preserve our beautiful California Coastal areas.

Sincerely yours,



**Theresa Morrison**

**Dobson, Amber@Coastal**

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**From:** Susan Gaunt <smgaunt1@gmail.com>  
**Sent:** Thursday, July 2, 2020 12:16 PM  
**To:** SouthCoast@Coastal  
**Subject:** Public Comment on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach)

Dear Sirs, I am in favor of the 2019 Marina Agreement as approved by the Newport City Council, and is supported by project appellants and the Bayshores Home Owners Association. I am opposed to the 2018 plan. Thank you for your attention in this matter.

Susan Gaunt  
414 Villa Point Drive  
Newport Beach, CA 92660

**MARY ANN SODEN**

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P.O. Box 8973, Newport Beach, CA 92658

July 1, 2020

California Coastal Commission  
South Coast Office  
301 E. Ocean Blvd, Suite 300  
Long Beach, CA, 90802

By Email

Re: Public Comment on Agenda Item 14b - **Application No. 5-19-0907** (Palmo Investments, Newport Beach)

Dear Chairman Padilla and Gentle Commissioners,

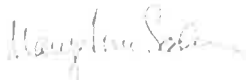
I am writing in support of the Staff Recommendation to approve, subject to conditions, the 2019 Marina Plan for the replacement of the marina operated by Palmo Investments at 2888 Bayshores Dr.. The 2019 Marina Plan has been thoroughly vetted and was approved by the Newport Beach City Council following substantial community comment, including mine. The 2019 Marina Plan is a positive redevelopment for the community by preserving the marine environment and eelgrass, updating the safety and design features to meet current Harbor Codes and providing a suitable boat slip mix for this location and community. It is the right plan for this location, which is why the project appellants, the Bayshores Home Owners Association and many community members are in support of this recommendation.

Interestingly, like a bad rash, the "2018 plan" keeps coming back. This plan is not a viable alternative and has been appealed and denied at the local level. The 2018 plan is more damaging environmentally and it undermines the interplay between the water and land. The City of Newport Beach (a Local Control Program of the CCC), the surrounding community and the Staff of the Coastal Commission all recommend the 2019 Marina Plan. It is time to move forward with this consensus.

The 2019 Marina Plan, as recommended by Coastal Commission staff, preserves the marine environment and the unique nature of Newport Harbor where visitors and residents on land and sea create a single organic community. I encourage you to approve the staff recommendation as written.

I thank you for your consideration of my comments and your work to preserve the unique environment of our coastal communities.

Sincerely,



Mary Ann Soden

**Dobson, Amber@Coastal**

---

**From:** Peter Guest <pag62250@yahoo.com>  
**Sent:** Thursday, July 2, 2020 10:02 AM  
**To:** SouthCoast@Coastal  
**Subject:** Item 14b. Application No. 5-19-0907

Dear Commission Members;

I have been following the events associated with the redevelopment plans for the Newport Marina in all their complexities for over a year now. I am saddened to discover how difficult it is to protect the natural attributes of our beautiful harbor.

The 2019 plan has the support of Coastal Staff, OC coastkeepers, Bayshores Homeowners Association, Et al. Please approve this plan and protect our beautiful harbor.

Sincerely, Peter A. Guest

**Dobson, Amber@Coastal**

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**From:** karen <karen@btrue.co>  
**Sent:** Monday, June 29, 2020 9:38 PM  
**To:** SouthCoast@Coastal  
**Subject:** Public Comment on July 2020 Agenda Item Wednesday 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach)

Dear Coastal Commission,

Please note that I SUPPORT THE 2019 PLAN!

Thank you,  
Karen Walker

**Dobson, Amber@Coastal**

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**From:** Terry Masci <terrypmasci@gmail.com>  
**Sent:** Saturday, July 4, 2020 7:29 PM  
**To:** SouthCoast@Coastal  
**Subject:** Newport Harbor Marina Plan

Agenda #W14b  
Application #5/19/0907

Hi,

I support the 2019 Marina Plan as recommended by the Coastal Commission Staff. This plan retains a similar layout and boat slip mix and will be a positive redevelopment.

Thank you,  
Terry Masci

Resident Newport Beach, CA

Best Regards,

Terry Masci

EM: [terrypmasci@gmail.com](mailto:terrypmasci@gmail.com)  
P.O. Box 5580, Newport Beach, CA 92662

1V1M Travel Light

*"pupukahi i holomua" ... Hawaiian For ... "unite in order to progress"*  
*"Ex Unitate Vires" ... Latin For ... "unity is strength"*  
*"Nothing and everything cannot coexist" ... ACIM ... T.Ch.2.VII.5.1*

9 identical letters.

**Dobson, Amber@Coastal**

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**From:** Marla Hemmel <marlah@bhemanagement.com>  
**Sent:** Monday, July 6, 2020 8:53 AM  
**To:** SouthCoast@Coastal  
**Subject:** SUPPORT of Staff Recommendation on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach)

I am writing to express my SUPPORT for the Staff Recommendation of the "2019 Marina Plan", aka "Layout #7.2 Modified" on the plans shown in the Exhibit to this agenda item scheduled to be heard July 8, 2020.

I am also specifically and strongly opposing the alternate plan considered, known as the 2018 Plan. This "BAD" Plan was denied by the Newport Beach City Council in favor of the GOOD 2019 Marina Plan in their March 2019 meeting. Additionally, this BAD Plan has greater negative environmental impacts as noted by the Staff and is inconsistent with various requirements of the Newport Beach Harbor Code, the Harbor Design Guidelines, the Local Coastal Program and the California DBW 2005 Marina Berthing Guidelines.

I appreciate your time and consideration!

Marla Brower Hemmel, President  
BHE Management Corporation  
P.O. Box 7736.  
Laguna Niguel, CA 92607-7736  
[MarlaH@BHEManagement.com](mailto:MarlaH@BHEManagement.com)  
(949) 363-1963

61 identical letters.

## **Dobson, Amber@Coastal**

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**From:** Michael Mulroy <mkmul2002@yahoo.com>  
**Sent:** Thursday, July 2, 2020 10:13 AM  
**To:** SouthCoast@Coastal  
**Subject:** SUPPORT of Staff Recommendation on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach)

July 2, 2020

Via Email

To: SouthCoast@coastal.ca.gov

Subject: SUPPORT of Staff Recommendation on Agenda Item 14b - Application No. 5-19-0907 (Palmo Investments, Newport Beach)

I am writing to express my SUPPORT for the Staff Recommendation of the "2019 Marina Plan", aka "Layout #7.2 Modified" on the plans shown in the Exhibit to this agenda item scheduled to be heard July 8, 2020.

I am also specifically and strongly opposing the alternate plan considered, known as the 2018 Plan. This "BAD" Plan was denied by the Newport Beach City Council in favor of the GOOD 2019 Marina Plan in their March 2019 meeting. Additionally, this BAD Plan has greater negative environmental impacts as noted by the Staff and is inconsistent with various requirements of the Newport Beach Harbor Code, the Harbor Design Guidelines, the Local Coastal Program and the California DBW 2005 Marina Berthing Guidelines.

I think it is also important to consider the specific location of the property at issue, not from a jurisdictional perspective but rather to consider how much deference to afford the local decision makers – here the Newport Beach City Council. In this case, the location is not on what a lay person would consider the coast but is instead deep inside the city of Newport Beach. Again, I am not questioning the Commission's jurisdiction but am merely suggesting that in instances where the subject property is far from the beach and is instead more inside a city, that city's local authority should be provided more deference in cases brought before the Commission. As I am sure you understand, judicial and administrative discretion and deference are key components of our regulatory system, ranging from prosecutorial discretion at the district attorney level, to judicial deference afforded administrative agencies under the U.S. Supreme Court's landmark Chevron decision (Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)). While I believe the Newport Beach City Council's decision in favor of the GOOD 2019 Marina Plan makes great sense on its own merits, I ask the Commission to consider what level of deference to afford the Newport Beach City Council in this matter given the "inside the city" location of the subject property, and suggest that considerable deference should be afforded to the Council and its decision.

Apologies if that comes across as a sort of lecture, but this matter is important to me and my family. We are long-time residents of Newport Beach and own a home on the Balboa Peninsula. Just yesterday morning, my wife and I had a wonderful stand-up paddle in the harbor and enjoyed everything about it.

Thank you for your consideration.

Michael Mulroy



**Dobson, Amber@Coastal**

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**From:** E. Daniel Arey <e.daniel.arey@gmail.com>  
**Sent:** Thursday, July 2, 2020 10:56 AM  
**To:** SouthCoast@Coastal  
**Subject:** SUPPORT of Staff Recommendation on Agenda Item 14b - Application No. 5-19-0907  
re: Palmo Investments, Newport Beach

To whom it may concern:

I am sending this letter to express my highest **SUPPORT** for the Staff Recommendation of the "2019 Marina Plan", aka "Layout #7.2 Modified" vis-a-vis the plans shown in the Exhibit to this agenda item scheduled to be heard July 8, 2020. This plan is by far the more proper course of action for all concerned.

To be clear, I am also **STRONGLY OPPOSED** to the alternate plan considered, known as the 2018 Plan. This "BAD" Plan was previously rejected by the City Council of Newport Beach in favor of the far superior 2019 Marina Plan in their March 2019 meeting. Additionally, this BAD Plan clearly has greater negative environmental impacts as noted by the Staff. Furthermore, it is inconsistent with various requirements of the Newport Beach Harbor Code, the Harbor Design Guidelines, the Local Coastal Program and the California DBW 2005 Marina Berthing Guidelines as has been noted previously and brought to your attention. These issues, as well as the detrimental impact the BAD marina plan will have on residents, the environment, and safety, are of the highest concern.

Thank you for your time and consideration in this important matter.

Sincerely,

E. Daniel Arey and Britton Arey, MD, MBA