

CALIFORNIA COASTAL COMMISSION

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Th12d

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Hearing Date: 8/13/20

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-1202

Applicants: Steve Eggert and Deanna McIntire

Agent: Swift Slip Dock & Pier Builders, Inc., Attention Marissa Morales

Location: 1708 & 1710 S Bayfront, Newport Beach, Orange County

Project Description: Remove existing 502 sq. ft. floating dock, 60 sq. ft. gangway, 417 sq. ft. pier and 12 square (14-inch x 14-inch) marina guide piles. Construct 546 sq. ft. floating dock, 72 sq. ft. gangway, 340 sq. ft. pier, 3 new square (14-inch x 14-inch) marina guide piles, and 5 new 14-inch T-piles.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the removal of an existing private dock system and replacement with a new private dock system on and over the water (Newport Harbor) associated with two single-family residences on two bayfronting lots in Newport Beach.

The proposed project is located within the Commission's original permit jurisdiction because it is on and over the waters of Newport Bay. The standard of review for this

development is Chapter 3 of the Coastal Act, although the City's certified Local Coastal Plan (LCP) may provide guidance.

Commission staff is recommending **APPROVAL** of the coastal development permit application with **seven special conditions**. The major issues raised by this proposed development concern consistency with the marine resources, water quality, public access, and recreation policies of the Coastal Act.

The dock has been designed in a manner that avoids adverse impacts to marine resources while still maintaining a usable dock and enabling recreational boating. However, to minimize potential adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Bay ecosystem, staff recommends the Commission impose **Special Condition No. 1**, which requires the applicants to prepare a new eelgrass survey prior to beginning construction. Staff recommends the Commission also impose **Special Condition No. 2**, which requires the applicants, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*, an invasive, non-native aquatic species that can be further dispersed in coastal waters as a result of construction activities.

While conditions have been imposed to minimize impacts to eelgrass and *Caulerpa Taxifolia* from the instant project, impacts to biological resources may still occur if future development occurs without first being reviewed by the Commission. Thus, **Special Condition No. 3** requires the applicants to obtain a permit amendment or a new permit for any future improvements to the proposed dock system.

During construction and post construction activities, there is the potential for adverse impacts to water quality and marine resources. Therefore, two other special conditions are recommended in order to minimize any potential impacts: **Special Condition No. 4** outlines requirements for the applicants regarding construction responsibilities and debris removal, and **Special Condition No. 5** requires the continued use and maintenance of post-construction BMPs to protect water quality.

To ensure that the applicants comply with all requirements, requests, and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment, **Special Condition No. 6** requires that the applicants comply with all their requirements, requests, and mitigation measures and report to the Commission's Executive Director any changes the other resource agencies may apply to the project.

The proposed private boat dock system is located on public tidelands and submerged lands that are administered by the City of Newport Beach pursuant to a Tidelands Grant. Since these are Public Trust Lands, the public maintains the right to access the navigable bay waters for navigation and recreational purposes. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 7** states that

the approval of a CDP for the project does not waive any public rights or interests that exist or may exist on the property.

If approved with conditions to preserve marine resources, water quality, public access, and recreation, the proposed project will conform with the Chapter 3 policies of the Coastal Act.

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

Staff Note: Under the Permit Streamlining Act, the time-frame for Commission action on this coastal development permit application is **June 29, 2020**, 180 days after the filing of the CDP application. However, on April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling the time-frames for various actions in the Streamlining Act for 60 days. Accordingly, the Commission must act on this CDP application on or before **August 28, 2020**.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904- 5202.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS	11
A. Project Description and Location, Standard of Review and Prior Permit History ...	11
B. Marine Resources/Water Quality	12
C. Public Access and Recreation	19
D. Local Coastal Program (LCP)	22
E. California Environmental Quality Act (CEQA)	22
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	24

EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Existing Project Plan](#)

[Exhibit 3 – Proposed Project Plan](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-1202 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

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

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

III. SPECIAL CONDITIONS

- 1. Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass survey (whether for *Zostera marina* or *Z. pacifica*) shall be completed for the project site and a 10-meter buffer area. The pre-construction survey shall be completed no more than 60 days prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project is subsequently proposed in a previously unsurveyed area, a new survey is required during the active growth period for eelgrass in that region and no more than 60 days prior to commencement of work in that area. The eelgrass survey and mapping shall be prepared in full compliance with the California Eelgrass Mitigation Policy (CEMP), and in consultation with the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW). If side-scan sonar methods will be used, evidence of a permit issued by the California State Lands Commission (CSLC) for such activities shall also be provided prior to the commencement of survey work. The applicants shall submit the pre-construction eelgrass surveys for review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event, no later than fifteen (15) business days prior to commencement of any development. If eelgrass surveys identify any eelgrass within the project area, which may be potentially impacted by the proposed project, the Permittees are required to complete post-project eelgrass surveys consistent with the section below.

Post-Construction Eelgrass Survey. If any eelgrass is identified in the project site or the 10 meter buffer area by the pre-construction survey, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicants shall survey the project site and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been adversely impacted, the applicants shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP. Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio

(1.38:1) shall require an amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

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

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

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

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

3. **Future Development.** This permit is only for the development described in CDP No. 5-19-1202. Pursuant to Title 14 of the California Code of Regulations, Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by CDP No. 5-19-1202, including the proposed private dock system. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to CDP No. 5-19-1202 from the Commission or shall

require an additional CDP from the Commission or from the applicable certified local government.

- 4. Construction Responsibilities and Debris Removal.** By acceptance of this permit, the applicants agree to comply with the following construction related requirements:
- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
 - E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
 - F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
 - G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
 - H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - I.** The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;

- K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - M. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 - O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 - P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
5. **Best Management Practices (BMPs) Program.** By acceptance of this permit the applicants agree that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
- A. Boat Cleaning and Maintenance Measures:
 - 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - 2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
 - B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
 2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
 3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.
- 6. Resource Agencies.** The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- 7. Public Rights and Public Trust.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location, Standard of Review and Prior Permit History

Project Description and Location

The proposed project is the removal of an existing 502 sq. ft. floating dock, 60 sq. ft. (3 ft. x 20 ft.) gangway, 417 sq. ft. (12 ft. x 11 ft. pier platform and 4 ft. x 57 ft. pier) pier system and 12 square (14-inch x 14-inch) marina guide piles. The proposed project involves replacement with a new 546 sq. ft. floating dock, 72 sq. ft. (3 ft. x 24 ft.) gangway, 340 sq. ft. (10 ft. x 14 ft. pier platform and 4 ft. x 46 ft. pier) pier system, 3 new square (14-inch x 14-inch), and 5 new 14-inch pier T-piles ([Exhibits No. 2-3](#)). The new dock system will be comprised of wood and composite material, foam, and concrete. Water coverage from the proposed dock float will be increased from 502 sq. ft. to 530 sq. ft. (an increase of 28 square feet); however, overall water coverage from the dock system will be reduced from 979 sf. to 958 sf. (a decrease of 21 sq. ft.). In addition, fill will be decreased by 5.4 sq. ft. from the decrease in the number of piles. The existing dock float extends bayward past the U. S. Pierhead Line and the proposed dock float will extend the same distance with no further bayward encroachment, consistent with the City of Newport Beach Harbor Permit Policy. This situation is similar to the docks in the adjacent area and is consistent with past Commission actions in Newport Harbor.

The landside subject lots are developed each with a single-family residence and the private dock is shared between these two residences located at 1708 and 1710 S. Bayfront on Balboa Island in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The dock will be used for boating related purposes to serve two single-family residential developments. Single-family residences and associated private boat dock systems characterize the development pattern of the surrounding area. The existing and proposed project extends out into public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 1919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125).

Standard of Review

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project is beyond the bulkhead located bayward of the mean high tide line and is thus within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance.

Prior Permit History

1708 S. Bayfront

In mid-2008, the Commission's Executive Director approved De Minimis Waiver No. 5-08-167 (McIntire) for the demolition of an existing two-story duplex and garage and construction of a new three-story, 2,680 sq. ft. single-family residence and an attached 2-car garage.

1710 S. Bayfront

In early 2000, the Commission's Executive Director approved De Minimis Waiver No. 5-00-043 (Hurst) for the remodel of an existing dock system.

In mid-2010, the Commission's Executive Director approved De Minimis Waiver No. 5-10-105 (Eggert) for the demolition of an existing two-story single-family residence and garage and construction of a new two-story, 3,078 sq. ft. single-family residence and an attached 2-car garage.

B. Marine Resources/Water Quality

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

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

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

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

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

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

Section 30233 of the Coastal Act states in part:

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

...

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

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

...

(6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

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

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

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

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

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

...

C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the

placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

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

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

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

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

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

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

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

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

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

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

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

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

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

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

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

Implementation Plan, Site Planning and Development Standards, Harbor and Bay Regulations, Harbor Development Regulations, 21.30C.050(D & F) states,

D. Eelgrass and Marine Habitat.

Pier, pier platform, gangway and dock design shall be designed and sited and make use of materials that will minimize and, where feasible, avoid impacts to eelgrass and marine habitat. Where possible, design structures to avoid any net increase in overall water coverage, and wherever possible reduce the overall water coverage.

F. Pollution Control.

The permittee shall maintain the area delineated on the harbor development permit free and clear from beached or floating rubbish, debris or litter at all times. Adequate safeguards shall be maintained by the permittee to avert any other type of pollution of Newport Harbor from recreational and/or commercial use of the tidelands.

Marine Resources/Biological Productivity

The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by lower order green algae, phytoplankton, and diatoms that form the basis of the marine food chain. In addition to causing reduced sunlight and decreases in the biological productivity of coastal waters, increased coverage of coastal waters is a significant concern since it also impedes avian foraging activities. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the State and federally listed California brown pelican found throughout Newport Harbor. Although the coverage of bay surface area habitat associated with any one project may not seem significant, the cumulative effect of allowing unnecessarily large dock structures and resulting increases in water coverage throughout Newport Harbor could be significant. It should be noted that there are hundreds of private residential docks in Newport Harbor. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with the Coastal Act, the cumulative effect would be a significant loss of coastal waters and soft bottom habitat.

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

Water Coverage and Eelgrass (*Zostera Marina*)

The existing dock float consists of 502 square feet and the proposed dock float will consist of 530 square feet. The proposed dock float would result in an increase of 28 square feet of water coverage; however, *overall* water coverage from the proposed dock system will be reduced from 979 sf. to 958 sf. (a decrease of 21 sq. ft.) ([Exhibits No. 2-3](#)). Thus, while there is a minimal increase of water coverage from the proposed dock float, there is an overall reduction in water coverage from the proposed dock system. While the proposed dock is smaller than the existing dock, that is not the Commission's standard of review for new overwater development. The new dock must be analyzed independently of existing development. The proposed dock float is also of a similar size to the docks in the adjacent area and is consistent with past Commission actions in the area. More importantly, it has been designed at the minimum size to ensure structural stability necessary to support two boats. The City of Newport Beach Harbor Resources Division has developed Harbor Design Criteria Guidelines and Standards which, though not certified by the Coastal Commission, provide criteria for designing dock systems in a way that minimizes water coverage while providing for a usable dock. The proposed project is generally consistent with those guidelines and standards. Finally, the shared dock is a good alternative to the potential construction of two individual docks, which the individual property owners could have proposed to construct on their individual properties. Cumulatively, the dock is large, but it has been designed to minimize total water coverage compared to the existing condition and the likely alternative, and it conforms to the local design standards.

Eelgrass (*Zostera marina*) was discovered at the project site, but the project has been designed to avoid impacts to eelgrass. The eelgrass survey that determined that eelgrass was located at the project site took place on April 21, 2019. Eelgrass surveys completed during the active growth phase of eelgrass (March through October) are valid for 60 days, with the exception of surveys completed between August and October. A survey completed between August-October is valid until the resumption of active growth (i.e., March 1). The project is agendized for the August 2020 Coastal Commission Hearing, so the existing eelgrass survey will no longer be valid in time for construction

of the project. Therefore, the Commission imposes **Special Condition No. 1**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected as conditioned), the impacts will be identified, and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa Taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor. *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats, including eelgrass. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Native seaweeds, seagrasses, and kelp forests can be displaced, which can adversely impact marine biodiversity, causing attendant impacts upon fishing, recreational diving, and tourism.

The applicants have indicated that a pre-construction *Caulerpa Taxifolia* survey was completed in conjunction with the Eelgrass Survey dated April 21, 2019, as required by the City of Newport Beach Harbor Resources Division. None was found in the proposed project area. However, *Caulerpa Taxifolia* surveys are only valid for 90 days. Thus, pursuant to **Special Condition No. 2**, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicants shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required. As conditioned for eelgrass and *Caulerpa Taxifolia* surveys, impacts to biological resources will be minimized. In order to protect these resources and additional biological resources from potential future impacts, **Special Condition No. 3** requires that the applicants must obtain a permit amendment or a new permit for any future repair or maintenance of the proposed marina system.

Construction and Post-Construction Impacts

The proposed work will occur on coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in adverse impacts on the marine environment. The applicants are proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as placing a catch bucket and floating boom at the project site to prevent debris from

entering the water and to also capture floating debris. The Commission imposes **Special Condition No. 4**, which requires appropriate storage and handling of construction equipment and materials to minimize the potential for pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, **Special Condition No. 5** requires the continued use and maintenance of post-construction BMPs.

The applicants have indicated that the project has a pending Clean Water Act Section 401 Water Quality Standards Certification under review from the RWQCB. The applicants have also applied for a permit from the USACE, which is pending until coastal development permit approval. To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition No. 6** requires the applicants to comply with all requirements, requests and mitigation measures from the CDFW, the RWQCB, the USACE, and the USFWS with respect to preservation and protection of water quality and marine environment.

Section 30230, 30231 and 30232 of the Coastal Act protect water quality and biological productivity. Section 30250 of the Coastal act requires that new development will be located where it will not have cumulative adverse impacts to coastal resources. The City's certified LCP also contains policies that mirror these Coastal Act policies. The overall project results in reduced overwater coverage which minimizes impacts to biological resources. Eelgrass has been located near the project site, but the project has been designed so not to impact it. The eelgrass survey identifying the location of the eelgrass is, however, outdated. Caulerpa Taxifolia has not been identified near the project site, but the survey conducted for it is outdated as well. During construction, as well as, post construction, adverse impacts to water quality may occur if no protective measures are implemented to catch construction debris and other materials that may enter the water. As conditioned for up to date surveys for both eelgrass and Caulerpa Taxifolia, the implementation of requirements for appropriate storage and handling of construction equipment and materials, the continued use and maintenance of post-construction BMPs; and compliance with the requirements of the CDFW, RWQCB, USACE and USFWS, the project is consistent with Section 30230, 30231, 30232 and 30250 of the Coastal Act and with corresponding portions of the City's certified LCP used as guidance.

Fill of Coastal Waters

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only, including "new or expanded boating facilities." However, fill for boating facilities is only allowed where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The City's certified LCP also has a policy that mirrors this Coastal Act policies. The proposed project results in 5.4 sq. ft. less fill, as a result of a decrease in number of piles from twelve 14-inch square guide piles to eight

14-inch square guide piles. The applicants have indicated and the Commission has reviewed and agreed that the piles are the minimum sized pilings and the minimum number of pilings necessary for structural stability of the project; therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act and with corresponding portion of the City's certified LCP used as guidance, as it is for a boating-related use.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232, 30233 and 30250 of the Coastal Act and with the portions of the City's certified LCP used as guidance that generally require maintaining, protecting, and enhancing the biological productivity and the water quality of coastal waters.

C. Public Access and Recreation

Article X, Section 4 of the California Constitution provides:

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

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

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

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

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

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

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

facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

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

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

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

Protect, expand, and enhance a system of public coastal access that achieves the following:

Maximizes public access to and along the shoreline;

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

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

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

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

Implementation Plan, Site Planning and Development Standards, Harbor and Bay Regulations, 21.30C.050(E & G) states,

E. Docking Facilities.

Docking facilities shall be designed and sited in relationship to the water's depth and accessibility.

G. Piers.

1. Limits on Use. Only piers, floats and patio decks and their appurtenances pursuant to subsection (G)(5) of this section shall be permitted bayward of the bulkhead.

2. Street Ends. No private piers shall be permitted at street ends.

3. Setbacks.

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

- b. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.
- c. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:
 - i. Where property lines are not approximately perpendicular to the bulkhead line;
 - ii. Where curves or angles exist in the bulkhead line;
 - iii. Where bridges, topography, street ends or publicly owned facilities adjoin the property.
- d. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.

The proposed project extends out into public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 1919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). There is no direct public pedestrian access to public tidelands through the private residential lots at the subject site. However, lateral public access is available along an existing public walkway, which occurs bayward of the landside residences and fronts the harbor bulkhead along the perimeter of Balboa Island. Vertical public pedestrian access to public tidelands is available adjacent to the 1708 S. Bayfront property at the Jade Avenue street end. From this access point, members of the public may access bay waters and, among other recreational activities, launch a kayak or standup paddle board. Because the project extends onto Public Trust Lands, the public maintains a right to access the navigable bay waters for navigation and recreational purposes. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 7** is imposed, stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Section 30210, 30220 and 30224 of the Coastal Act require that public access be provided and recreational opportunities to the coast be protected and encouraged. The City's certified LCP also contains policies that mirror these Coastal Act policies. As indicated above, while no public access is available through the site, public access is available directly bayward of the two residences along an existing public walkway that fronts the perimeter of Balboa Island. In addition, vertical access to public tidelands is

available at an adjacent streetend. To ensure that public access to the public tidelands are preserved and maintained, a condition has been imposed stating that approval of the project does not waive any public rights or interest that exist or may exist on the property. Therefore, as conditioned, public access is provided near the project site and the project will also not impact provision of that access consistent with Section 30210, 30220 and 30224 of the Coastal Act and with corresponding portions of the City's certified LCP used as guidance.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30220, and 30224 and 30250 of the Coastal Act and the City's certified LCP used as guidance regarding the public's right of access to the sea and does not interfere with recreational opportunities on public tidelands.

D. Local Coastal Program (LCP)

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

E. California Environmental Quality Act (CEQA)

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined on April 2, 2019, that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 1 (Section 15301), Existing Facilities, and Class 2 (Section 15302), Replacement and Reconstruction. The Commission finds that the project, as conditioned, is consistent with Coastal Act requirements and will not cause new adverse impacts to the environment.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be

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

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

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

De Minimis Waiver No. 5-08-167-(McIntire).

De Minimis Waiver No. 5-00-043-(Hurst).

De Minimis Waiver No. 5-10-105-(Eggert).

Eelgrass Survey Prepared by Swift Slip Dock & Pier Builders, Inc. dated April 21, 2019.

City of Newport Beach Harbor Resources Division Approval-In-Concept dated April 21, 2019.

Letter from Commission staff to the agent dated November 15, 2019.

Letter from the agent to Commission staff dated November 30, 2019.