

CALIFORNIA COASTAL COMMISSION

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W13g

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-1466

Applicant: City of Newport Beach

Agent: Moffat & Nichol, Attention Kim Garvey

Location: 215 15th Street, Newport Beach, Orange County
(APN: 047-222-11)

Project Description: Repair of an existing bulkhead consisting of removal and replacement of the cap and installation of new tiebacks; removal of a gangway and installation of a new pier platform and ADA compliant gangway; and expansion of a dock float.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the repair of an existing bulkhead, removal of a gangway and installation of a new pier platform and ADA compliant gangway, and expansion of a dock float taking place on land and within the waters of Newport Harbor. The subject property is a City of Newport Beach owned parcel that includes filled uplands, sandy beach, and water located within Lower Newport Bay in Newport Harbor on the Balboa Peninsula. The landward portion of the parcel is leased to the American Legion Post 291, a community service organization.¹ The bulkhead is located on a parcel of land

¹ The original building here at 15th Street was built in 1940, with the Great [Legion] Hall being built in 1949. Most of the work was done by volunteer members and friends. The public marina was constructed in 1958-59. The American Legion has leased the site from the City of Newport Beach since March 10,

leased from the City of Newport Beach and the dock is over both city parcel and the State Tidelands managed by the City. The subject project does not include landside development of new structures or redevelopment of existing structures.

Violations of the Coastal Act and LCP exist on the subject property, including, but not necessarily limited to, installation of “members only” signs and placement of an obstruction (i.e. a boat) in a narrow corridor that provides access to a public sandy beach. In addition, a patio in this location has been expanded, further impinging upon the public access corridor. The applicant is not proposing to include the signs, obstruction, or expanded patio in this application and, thus, even if this application is approved, and the permit is exercised, violations will remain on the subject property that will not be addressed by the Commission’s action on this application. The Commission’s enforcement division will consider how to address said violations as a separate matter.

The proposed project is located within both City of Newport Beach’s permitting jurisdiction (land area) and CCC Permit jurisdiction (water area). The City has requested the Commission process a consolidated coastal development permit for development taking place in both jurisdictions. Thus, 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 **nine (9) special conditions**. The major issues raised by this proposed development concern consistency with the hazards, marine resources, water quality, and the public access and recreation policies of the Coastal Act.

Besides repair to the existing (pre-Coastal Act) bulkhead, the project includes the expansion of an existing 7,470 sq. ft. (Pre-Coastal) floating dock that provides 49 slips. The proposed 910 sq. ft. floating dock expansion along with a 42 sq. ft. from the proposed pier platform, results in an increase of water coverage consisting of a total of 952 sq. ft., that is needed to provide ADA accessibility from the proposed elevated bulkhead cap. The proposed dock float is of a similar size to the docks in the adjacent area, is consistent with past Commission actions in the area and is generally consistent with the City’s design guidelines and standards.

The floating dock expansion and pier platform have been designed in a manner that avoids adverse impacts to marine resources while maintaining a usable dock and enabling recreational boating, including an expanded free side tie area for visitors of the American Legion facilities to secure their boats for short periods. Eelgrass is not known to exist in the area and has not been identified in the most recent City surveys.

1975 and the lease was renewed on December 6, 2002 for a period of 25 years with an option to extend the lease for an additional 25 years.

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 applicant to prepare a new eelgrass survey prior to beginning construction. Staff recommends the Commission also impose **Special Condition No. 2**, which requires the applicant, 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.

To avoid potential future impacts to biological resources, Staff recommends the Commission impose **Special Condition No. 3**, which requires the applicant to obtain a permit amendment or a new permit for any future improvements to the proposed dock system, or changes which may be required as the City Harbor Department finalizes its review of the cumulative project. During construction and post construction activities, there is the potential for adverse impacts to water quality and marine resources. Therefore, as a result, staff recommends the Commission impose two special conditions that address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 4** would require construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris, and **Special Condition No. 5** would require the continued use and maintenance of post-construction Best Management Practices to protect water quality.

While the project has been designed to adequately address sea level rise under the low-risk aversion scenario, it has not been designed to address flooding concerns under the medium-high risk aversion scenario for up to 75 years. The applicant states that the reinforced and elevated bulkhead (up to +10.6 feet NAVD88) will protect the existing (pre-Coastal Act) structure and the surrounding public infrastructure from existing hazards including storms and near-term sea level rise, and has been engineered to be adaptable to future sea level rise. The Balboa Peninsula, and the structure and public infrastructure the bulkhead protects, experience regular flooding today and are vulnerable to flooding associated with storms and sea level rise. The bulkhead cap will be designed so that the City can increase its height in the future up to +13.6 feet NAVD88, which would be higher than all existing bulkheads on the peninsula, but may not be high enough to protect the subject property or the surrounding public infrastructure from flooding. The City indicates that it will continue to plan for future sea level rise and consider adaptation strategies for the entire peninsula, which may include new bulkheads or changes to land use planning to accommodate rising sea levels and increased flooding.

In this case, the lessee already has vulnerable infrastructure in place, and the City has acknowledged that its leased parcel is vulnerable to sea level rise. The City's proposal to increase the elevation of the bulkhead and elevate the fixed pier is an intermediate adaptation measure that may not protect the development, or the surrounding streets, in the long term. Therefore, staff recommends the Commission impose **Special Condition No. 6**, requiring the applicant to assume the potential risk of injury and

damage arising from coastal hazards that may threaten the development. No work is proposed bayward of the existing seawall/bulkhead. However, to ensure that no future development (e.g. a new bulkhead with backfill) results in bayward extension of the protective devices, and intrusion into tidelands, staff recommends the Commission impose **Special Condition No. 7**, which requires no future bayward extension of the existing shoreline protective device.

To ensure that the applicant complies with all requirements, requests, and mitigation measures from the City of Newport Beach Harbor Commission, 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, staff recommends the Commission impose **Special Condition No. 8**, which requires that the applicant to obtain final approval from the Harbor Commission prior to issuance of the permit and to comply with all agency requirements, requests, and mitigation measures, and report to the Commission's Executive Director any changes these other resource agencies may apply to the project.

The proposed private boat dock system is located on a city parcel that extends out into the water and public tidelands and submerged lands that are administered by the City of Newport Beach pursuant to a Tidelands Grant. Thus, the public maintains the right to access the sandy beach and the navigable bay waters for recreational and navigation purposes. In order to preserve and maintain access to the Public Trust Tidelands, staff recommends the Commission impose **Special Condition No. 9**, which 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 address development located in hazardous area and 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 Seven. The special conditions begin on Page Eight.

Staff Note: Under the Permit Streamlining Act, the time-frame for Commission action on this coastal development permit application was **August 16, 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 for 60 days. Accordingly, the Commission must act on this CDP application on or before **October 15, 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

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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.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-1466 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 applicant shall submit the pre-construction eelgrass surveys for review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event, no later than fifteen (15) business days prior to commencement of any development. If eelgrass surveys identify any eelgrass within the project area, which may be potentially impacted by the proposed project, the Permittees are required to complete post-project eelgrass surveys consistent with the section below.

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

eelgrass habitat will occur or if the success of the proposed mitigation site is uncertain. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio 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 applicant agrees to, not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this CDP, undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

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

- A. For the review and approval by the Executive Director; and
- B. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through Loni Adams, California Department of Fish & Wildlife (858/627-3985) or Bryant Chesney, National Marine Fisheries Service (562/980 4037), or their successors.

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

3. **Future Development.** This permit is only for the development described in CDP No. 5-19-1466. 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. 5-19-1466, including the repaired and reinforced bulkhead and 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. 5-19-1466 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 applicant agrees to comply with the following construction related requirements:
- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
 - E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
 - F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
 - G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
 - H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - I.** The 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 applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
- A. Boat Cleaning and Maintenance Measures:
 - 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - 2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
 - B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

6. Assumption of Risk, Waiver of Liability and Indemnity.

A. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to [modify following list as necessary to address specific case] waves, erosion, storm conditions, liquefaction, and flooding, all of which will may worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the landowner shall execute and

record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the landowner's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit: (1) a copy of a recorded lease agreement, in a form and content acceptable to the Executive Director, between the applicant and the American Legion Post 291 incorporating all of the above terms of subsection A of this condition, and (2) a written agreement by the American Legion Post 291, in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's lease of the property that is the subject of this coastal development permit, the [insert name of public entity lessor] agrees (i) to be bound by the terms of subsection A of this condition if it becomes the owner of the possessory interest in such property, (ii) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and written approval of the Executive Director, incorporating all of the terms of subsection A of this condition, and (iii) to comply with the requirements of subsection B of this condition.

- 7. No Future Expansion of Existing Shoreline Protective Device.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-19-1466, as described and depicted in the plans included as Exhibit No. 2 of this staff report, shall be undertaken if such activity extends the footprint of the subject shoreline protective device seaward in order to protect existing or proposed development, including any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazard in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such seaward encroaching shoreline protective devices that may exist under applicable law.
- 8. Newport Beach Harbor Commission and Requirements of the Resource Agencies.** PRIOR TO ISSUANCE OF THE PERMIT, the permittee shall secure a

final approval letter and stamped plans from the Newport Beach Harbor Commission, for the review and written approval of the Executive Director. Additionally, 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.

9. **Public Rights and Public Trust.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

IV. FINDINGS AND DECLARATIONS

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

Project Location

The subject property is a City of Newport Beach owned parcel that includes filled uplands, sandy beach, and water located within Lower Newport Bay in Newport Harbor on the Balboa Peninsula ([Exhibit 1](#)). The landward portion of the parcel is leased to the American Legion Post 291, a community service organization. The site is developed with a pre-Coastal Act facility consisting of a one-story building/Legion Hall, vehicle parking and dry boat storage lot, and a marina (the American Legion Marina). More specifically, the landward portion of the parcel includes the following uses: an approximately 10,000 square foot Legion Hall and ancillary food/drink service area, a marina consisting of 49 slips and 34 lockers, dry boat storage and lockers consisting of 47 spaces and 43 dingy racks; and a parking lot consisting of 26 spaces. The marina and dry boat storage facilities are currently available only to members of the American Legion. However, the legion hall is available to members of the public for events.

Located west of the subject property is the City of Newport Beach Marina Park Community and Sailing Center, which provides coastal recreational opportunities to the public. Located east and contiguous with the subject site is a bayfront public beach with a public pump-out station facility and public dock facility at the end of 15th Street.

The City of Newport Beach certified Land Use Plan (LUP) designates the subject property for Parks and Recreation (PR). Bayward of the City parcel are public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a State 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 an existing bulkhead located on site that was constructed between 1957-1958. The total length of the existing bulkhead wall is approximately 330 ft. The wall consists of interlocking concrete sheet piles with a concrete bulkhead cap. For the majority of the wall, (approximately 295 linear ft.), tie-backs are embedded in the cap. However, tie-backs do not exist along the eastern-most end (approximately 35 linear ft.). The existing top-of-cap elevation ranges from +7.3 ft to +8.8 ft NAVD88 (+7.5 ft to +9 ft MLLW) along the 295-ft segment and from +1.8 ft to +7.3 ft NAVD88 (+2 ft to +7.5 ft MLLW) along the eastern-end 35-ft segment. Handrails are attached to the top of the concrete bulkhead cap for public safety.

Project Need and Project Description

Due to corrosion cracks and spalling, which is when pieces of the concrete from the bulkhead wall flake off due to moisture in the concrete, along a majority of the length of the existing bulkhead wall, the proposed project includes repair to the existing bulkhead involving epoxy grout patching of cracks and spalls in the existing sheet pile wall. The applicant states that damage to the bulkhead could result in operational use limitations or pose a risk to public safety. If not repaired, the applicant states that the voids identified in the existing wall will likely become larger over time and may lead to more serious issues such as corrosion of the underlying steel reinforcements, and eventually structural failure. No repair to the bulkhead has taken place since it was initially constructed. Maintenance dredging in the American Legion marina area was completed by the City in 2011. No dredging is being proposed as part of this bulkhead repair project.

Additionally, the applicant has indicated that the existing concrete bulkhead cap elevation is not sufficient to protect the existing (pre-Coastal Act) American Legion facility from flooding associated with storms and sea level rise. Thus, the project also includes the removal of the existing concrete cap and handrails and installation of a new concrete bulkhead cap at an increased elevation of +10.6 feet NAVD88 ([Exhibit 2](#)). Furthermore, the applicant states that the increased bulkhead elevation results in the need to replace the existing gangway (and attached pier platform) with a longer gangway and expanded pier platform in order to meet ADA requirements ([Exhibit 2](#)).

More specifically, the project includes the following:

- Epoxy grout patching of cracks and spalls in the existing concrete bulkhead sheet pile wall.

- Demolition of an existing concrete bulkhead cap of a bulkhead approximately 330 ft. in length that is comprised of interlocking sheet piles.

-Installation of a new concrete bulkhead cap and with an elevation of +10.6 ft. NAVD88 (+10.8 ft. MLLW). The applicant states that the repair design will allow for future increases of the bulkhead cap to accommodate future potential sea level rise of elevations of up to +13.6 ft NAVD88 (+13.8 ft MLLW).

-Installation of a new steel wale just below the new concrete bulkhead cap and twenty-three (23) new drill-and-grout tieback anchors. The existing tie-back rods will be abandoned in place. The applicant states that removal of the existing tie-rods would require demolition of the existing patio/parking lot and excavation to unearth the tie-backs and could cause damage to the existing bulkhead.

-Potential temporary relocation and re-installation of security lighting and utilities that supply the marina along the seaward side of concrete bulkhead cap during construction.

-Installation of new handrails on the new concrete bulkhead cap.

-Installation of a new 42 sq. ft. pier platform supported by three (3) new 16 in. diameter concrete piles that facilitates access to a new proposed 5 ft. (wide) x 80 ft. (long) ADA compliant gangway as a result of the increased in height concrete bulkhead cap;

-Removal of the existing gangway, sections of floating dock and two (2) 12 in. diameter concrete guide piles and expansion of the existing pre Coastal-Act, built in 1958-1959, floating dock by 910 sq. ft. supported by two (2) new 16 in. diameter guide piles which accommodate the new ADA compliant gangway and access.

-Installation of a new storm drain inlet and filter in the existing bulkhead.

The applicant states that a majority of the proposed construction work will take place from the waterside using work barges and boats. Furthermore, the applicant states that it may be necessary to temporarily relocate some floats within the American Legion marina in order to provide waterside access to the repair locations. Lastly, the applicant states that the handrail installation will occur from the landside.

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 Newport Beach Harbor Department has approved the project in concept (and is associated with the City which is the applicant), but a final approval of the new dock is pending with the Newport Beach Harbor Commission. The approval must occur prior to issuance of the subject CDP, consistent with **Special Condition No. 8.**

Standard of Review

The subject property is bisected by the coastal permit jurisdiction boundary. A portion of the site is within the City of Newport Beach's permitting jurisdiction (land area) and

another portion is within the CCC Permit jurisdiction (water area). The City of Newport Beach LCP was effectively certified on January 13, 2017. Ordinarily for a coastal development permit application, the standard of review for development within the City's permit jurisdiction is the City's certified LCP, and for development within the Commission's jurisdiction, Chapter 3 of the Coastal Act. The City has requested the Commission process a consolidated coastal development permit for development taking place in both jurisdictions. Thus, the standard of review for development is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance.

Prior Permit History

CDP No. 5-07-169

In October 2007, the Commission approved Coastal Development Permit No. 5-07-169 for the removal and replacement of an existing single-finger dock with a pump-out facility in essentially the same configuration. The applicant had also proposed the removal and replacement of an existing chain link fence located on the beach along the eastern property line. However, the Commission determined that the existing and proposed fence obstructs public access to sandy public beach and public tidelands and therefore required that the fence be removed and not replaced via a special condition. The Commission approved the project subject to six special conditions requiring the following: 1) submittal of revised project plans by the applicant showing the complete project and that the existing fence along the eastern property line and adjacent to the existing and proposed pier and dock removed and not replaced; 2) pre and post-construction eelgrass surveys; 3) pre-construction *Caulerpa taxifolia* surveys; 4) adherence to construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; 5) adherence to Best Management Practices to ensure the continued protection of water quality and marine resources; and 6) submittal of operation and maintenance plan for over-water sewer lines by the applicant.

CDP No. 5-09-141

In October 2007, the Commission approved Coastal Development Permit No. 5-09-141 for the installation of a tsunami warning system at three (3) different locations along the Balboa Peninsula, including the subject site, comprised of a 50-foot tall pole with a 4.25-foot tall siren on top and additional improvements at the base of the pole at each location. The Commission approved the project subject to nine conditions requiring the following: 1) submittal of revised project plans for the pole to be located at 2300 Channel Place to be moved away from the beach; 2) submittal of a visual treatment plans for the pole; 3) submittal of a nesting bird survey; 4) adherence to noise/sound impact minimization; 5) verification of construction and maintenance; 6) prohibition of the removal of any existing trees adjacent to the subject sites; 7) adherence to construction BMPs; 8) adherence to timing of construction and public access; and 9) submittal of revised construction staging plans.

B. Hazards

The proposed project includes expansion of a shoreline protective device to protect existing (pre-Coastal Act) development. The proposed reinforcement and elevation of the bulkhead must be reviewed for consistency with Sections 30235 and 30253 of the Coastal Act, with the hazards policies of the City's certified LCP used as guidance.

Section 30235 of the Coastal Act, Construction altering natural shoreline, states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act, Minimization of adverse impacts, states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8.1-1 states,

Review all applications for new development to determine potential threats from coastal and other hazards.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Policy 2.8.1-2 states,

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Policy 2.8.1-4 states,

Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-5 states,

Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-6 states,

Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts and eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-7 states,

Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-8 states,

Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.

Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-9 states,

Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline or bluff that is subject to wave action, erosion, flooding, landslides or other hazard associated with development on a beach or bluff. Shoreline

protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Implementation Plan, Property Development Standards, Purpose and Applicability, 21.30.010.E(4)(d)(iv) states,

iv. Adaptation options and mitigation measures have been incorporated to address potential risk without having to rely on existing protective structures or the need to install additional protective structures in the future;

Implementation Plan, Property Development Standards, General Site Planning and Development Standards, 21.30.015.E(2)(d) states,

Coastal Hazards Report. On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding area.

Implementation Plan, Property Development Standards, General Site Planning and Development Standards, 21.30.015.E(3) states,

Bulkhead Condition Report. Where a coastal hazards report shows that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures or public facilities, the applicant shall submit a bulkhead condition report that includes the following:

- a. A statement of the preparer's qualifications;
- b. An analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions;
- c. Recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof;
- d. If augmentation or replacement is necessary, recommendations that will avoid seaward encroachment of the bulkhead;
- e. If replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in

alignment with adjacent bulkheads, and as far landward, as possible.

Implementation Plan, Property Development Standards, Natural Landform and Shoreline Protection, 21.30.030.C(3) states,

3. Protective Structures. The following shall apply to the construction of protective structures:

...

(d) Protective Devices Shall be Designed and Sited to:

- i. Be as far landward as possible and within private property, where feasible;
- ii. Eliminate or mitigate adverse impacts to coastal resources;
- iii. Minimize alteration of natural shoreline processes
- iv. Provide for public access to State Tidelands and recreational areas and facilities
- v. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;
- vi. Eliminate or mitigate adverse impacts on local shoreline sand supply
- vii. To have the smallest footprint possible; and
- viii. Cause no reduction in public access, use or enjoyment of the natural shoreline environment and preserve or provide access to public recreational lands and facilities.

Implementation Plan, Property Development Standards, Natural Landform and Shoreline Protection, 21.30.030.C(3)(i) states,

Bulkhead for nonresidential and residential waterfront development (as identified in Sections 21.30.015(C) and (D)). In cases where the coastal hazards report required in Section 21.30.015(E)(2) establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding areas, the following shall apply to new development:

(4) As a condition of approval an agreement shall be required between the landowner, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving rights

to future protection, including repair or maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead;

Due to corrosion cracks and spalling along a majority of the length of the existing bulkhead wall, the proposed project includes repair to the existing bulkhead involving epoxy grout patching of cracks and spalls in the existing sheet pile wall. The applicant has indicated that no repair to the bulkhead has taken place since it was initially constructed and Commission staff has verified that no previous permit for repair to the bulkhead has been applied for or issued. Furthermore, the applicant states that if repair of the wall does not take place, the voids found throughout the existing wall will likely become larger over time, resulting in more serious issues such as corrosion of the underlying reinforcing steel, and eventually the structural failure of the bulkhead.

The applicant has also indicated that the existing concrete bulkhead cap elevation is not sufficient to protect the facility from flooding due to future sea level rise; therefore, the project also includes the removal of the existing concrete cap and handrails and installation of a new concrete bulkhead cap with an elevation of +10.6 ft NAVD88 (+10.8 ft MLLW). In addition, a new steel wale will be installed just below the new cap and 23 new drill-and-grout tieback anchors will be installed. The existing tie-back rods will be abandoned in place. The applicant states that removal of the existing tie-rods would require demolition of the existing patio/parking lot and excavation to unearth the tie-backs and may cause damage to the existing bulkhead and that is why the existing tie-backs rods are being left in place. A majority of the proposed construction work to the bulkhead will take place from the waterside using work barges and boats and all repair work will take place above the waterline. However, the installation of new handrails on the new bulkhead cap will take place from the landside.

The applicant states that the increased bulkhead elevation results in the need to replace the existing gangway with a longer gangway in order to meet ADA requirements, which will be discussed later in the staff report.

Thus, the proposed project is to restore the structural integrity of the bulkhead wall to prevent loss/damage of the American Legion facilities and surrounding public infrastructure from wall failure and/or tidal flooding.

No bayward encroachment of the bulkhead is proposed with the repair work. As stated previously, the proposed work takes place within both the City's permit jurisdiction and CCC permit jurisdiction. However, the City has requested that the Commission process a consolidated CDP for all the proposed work, which includes the bulkhead repair.

Due to its bay front location, the subject site is exposed to the hazard of waves, erosion, storm conditions, sea level rise, and other natural hazards. To analyze the suitability of the site for the proposed development relative to those hazards, the applicant provided a Coastal Hazards Analysis prepared by Moffatt & Nichol received December 19, 2019 and a Bulkhead Wall Inspection and Condition Assessment prepared by Moffatt & Nichol

dated November 14, 2019. The findings of the bulkhead condition analysis indicate that the cast-in-place concrete bulkhead is in “serious” condition mainly due to localized sections of the concrete cap with significant cracking and spalling. The bulkhead repair, according to the report, is necessary to maintain the structural integrity of the existing bulkhead which supports the parking lot, Legion Hall building, the clubhouse patio and retains the soil on the beach adjacent to the clubhouse and thus is necessary to protect the existing principal structures on the lot and surrounding public infrastructure.

The bulkheads that surround the islands and channels of Newport Beach are maintained section by section by both private property owners and the City, but function as a uniform structure to protect more than just the individual properties. For example, if the average height of the bulkheads on the peninsula is +10 NAVD88 and the mean higher high water level is +8 NAVD88, any property with a bulkhead height of less than +10 NAVD88 would be at risk of flooding during a high tide event or storm, and also would expose the neighboring properties and the public infrastructure of the peninsula to flooding.

The neighborhood in this area is a mix of redeveloped and pre-coastal homes and also the recently constructed Marina Park City facility. Along Bay Avenue, which intersects with 15th Street to the east of the site, a row of homes is located between the bay and the public street. The public infrastructure, besides the existing principal structures on the lot, that would be threatened by flooding includes the public streets inland of the homes, as well as the municipal water and sewer lines, storm drain systems, and utility connections that typically occur in the public right-of-way. While Coastal Act Section 30235 prohibits new development from relying on the existing and improved bulkhead, the development being protected is not new. The American Legion facility was constructed prior to the enactment of the Coastal Act, as are the public streets and storm drain systems in the area that would be protected by the improved bulkhead.

Section 21.30.15.E(2)d of the IP states: *On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding area.* (Emphasis added.) Section 30235 of the Coastal Act states that protective devices, i.e. bulkhead) are allowed to protect existing structures. In this case, the improvements to the bulkhead are allowed to protect the existing development that was constructed prior to enactment of the Coastal Act, consistent with the LCP and with Section 30235 of the Coastal Act.

Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of hazard. The work to the bulkhead would minimize risk to the existing development on the site and the public infrastructure in the area and as such the improvements to the bulkhead would be consistent with Section 30253 of the Coastal Act.

Pursuant to Section 30235, improvements to shoreline protective devices may only be constructed when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The facilities being protected on public land are coastal dependent because they primarily supports boating activities and it existed prior to the effective date of the Coastal Act. The protection being proposed is the minimum necessary to protect the facility and will have no new impact to sand supply because a bulkhead already exists in this location. A sandy beach also exists adjacent to the bulkhead and will continue to exist following the construction phase of the development.

Policy 2.8.6-7 of the LUP states: *Discourage shoreline protective devices on public land to protect private property/development.* The bulkhead in this location is located on public property, and the improvements to the bulkhead would allow it to remain in place for an extended period of time to protect the existing structure and adjacent public infrastructure from flooding, until such a time that adaptation plans as required by the LCP via IP Policies 21.30.010.E(4)(d)(iv) and 21.30.060.B(3)(i) for the adjacent existing development are underway, per the LCP policies. Thus, repair work is necessary to repair and maintain the seawall/bulkhead. The bulkhead is proposed to be elevated to +10.6 feet NAVD88, which will protect the structure and adjacent development in the near term, but may not adequately protect the development in the long term if sea level rise is severe.

The Coastal Hazards Analysis identifies the highest high tide in the project area as +7.70 feet NAVD88. The existing top-of-cap elevation ranges from +7.3 ft to +8.8 ft NAVD88 (+7.5 ft to +9 ft MLLW) along the 295-ft segment and from +1.8 ft to +7.3 ft NAVD88 (+2 ft to +7.5 ft MLLW) along the eastern-end 35-ft segment. The new concrete cap will have an elevation of +10.6 ft NAVD88 (+10.8 ft MLLW).

In November 2018, the Commission adopted a science update to its CCC Sea Level Rise Policy Guidance in response to evolving science on sea level rise and specifically to new statewide guidance from the Ocean Protection Council (OPC) based on two reports: *Rising Seas in California: An Update on Sea-Level Rise* released in April 2017 and an update to the OPC's *State Sea-Level Rise Guidance* released in April 2018.

The City's LCP defines the economic life of a structure as 75 years. (Coastal Land Use Plan Policy, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-9). In this case, the only new development proposed is the reinforcement and elevation of the bulkhead, and the overwater development associated with the dock connected to the bulkhead. The landside development has existed since before the Coastal Act was effective or the LCP was certified, and will not be affected by the subject application.

If the landside development were being replaced or substantially remodeled, under the LCP, the Commission would apply a 75-year expected life, from the time of new development or redevelopment. If new development or redevelopment were proposed today, it should be analyzed for hazards risks through approximately 2095. The

updated OPC guidance document states that, using a high greenhouse gas emissions, medium-high risk aversion projection, sea levels may rise 5.3 feet to 6.7 feet in the years 2090-2100.

If there were to be a 5.3-foot rise (the lower range of the currently recommended amount of sea level rise to plan for residential structures, taken from the April 2018 COPC projections for southern California), a highest high water level of +13.0 feet NAVD88 (+7.7 feet NAVD88 + 5.3 feet) could result. This +13.0 NAVD88 would be 2.4 ft. above the proposed new concrete cap height +10.6 ft. NAVD88. If there were to be a 6.7-foot rise (the upper range of the currently recommended amount of sea level rise to plan for residential structures), a highest high tide still water level of +14.4 feet NAVD88 (+7.7 feet NAVD88 + 6.7 could result. This +14.4 NAVD88 would be 3.38 feet above the proposed new concrete cap height +10.6 ft. NAVD88.

The proposed bulkhead cap height is below the high emissions, medium-high risk aversion sea level rise range taken from the April 2018 OPC projections for Southern California and could be overtopped in the future since the project is located in an area where dynamic and unpredictable coastal hazards exist. In order to mitigate future potential seal level rise impacts, the applicant states that the concrete cap could be raised up to an elevation of +13.6 ft. NAVD88, which would be 0.6 ft. above the medium-high risk aversion scenario for 2090 (+7.7 feet NAVD88 + 5.3 feet = +13.0 feet NAVD88). However, it would still be 0.8 ft. below the 2100 high end sea level rise scenario (+7.7 feet NAVD88 + 6.7 = +14.4 feet NAVD88). The applicant has stated that the bulkhead height could not be raised beyond 13.6 feet NAVD88 to deal with this anticipated level of sea level rise since the existing bulkhead could not support this load. The applicant states that if waters do exceed the +13.6 NAVD88, a new bulkhead wall would likely need to be installed in this location and in all other locations along the peninsula.

Although the applicant's coastal hazards analysis indicates that the site is relatively safe for development with the proposed reinforcement and elevation, and can be elevated further in the future, beach areas are dynamic environments. Natural hazards could adversely impact development reliant on the bulkhead if the upper range of sea level rise occurs. The applicant has acknowledged that if this level of sea level rise occurs, development will be threatened, and the surrounding public infrastructure may not be viable. The Balboa Peninsula and the structure and public infrastructure the bulkhead protects experience regular flooding today and are vulnerable to flooding associated with storms and sea level rise. The bulkhead will be designed to accommodate an increase in height in the future up to +13.6 feet NAVD88, which would be higher than all existing bulkheads on the peninsula, but may not be high enough to protect the subject property or the surrounding public infrastructure in the future. This is a sea level rise and hazards adaptation problem that will affect the entire peninsula in the future and cannot be addressed by the subject project alone, which does not include landside development of new structures or full redevelopment of the existing bulkhead. The City indicates that it will continue to plan for future sea level rise and consider adaptation

strategies for the entire peninsula which may include new bulkheads or changes to land use planning to accommodate rising sea levels and increased flooding.

In this case, the lessee already has vulnerable infrastructure in place, and the City has acknowledged that its leased parcel is vulnerable to sea level rise. The City's proposal to increase the elevation of the bulkhead and elevate the fixed pier is an intermediate adaptation measure that may not protect the development, or the surrounding streets, in the long term. Therefore, staff recommends the Commission impose **Special Condition No. 6**, requiring the applicant to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development. No work is proposed bayward of the existing seawall/bulkhead. However, to ensure that no future development (e.g. a new seawall with backfill) results in bayward extension of the protective devices, and intrusion into tidelands, staff recommends the Commission impose **Special Condition No. 7**, which requires no future bayward extension of the existing shoreline protective device.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30235 and 30253 of the Coastal Act and with the portions of the City's certified LCP used as guidance regarding hazards.

C. Marine Resources/Water Quality

The proposed project includes development in the water and expansion of a facility that serves boats, thus it has the potential to adversely impact marine resources and water quality. The project will also result in increased coverage over coastal waters, which could impact marine resources. The project must be analyzed for consistency with the marine resources and water quality policies of the Coastal Act, with the Newport Beach LCP policies used as guidance.

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, Diking, filling or dredging; continued movement of sediment and nutrients, 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, Location, existing developed areas, states:

(a) New ...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 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.

The existing floating dock is a large dock (7,470 square feet) that provides 49 slips. The proposed addition to the dock to accommodate ADA guidelines results in a larger dock float of 8,380 sq. ft. The proposed dock float expansion results in 910 square feet of additional water coverage, as well as 42 sq. ft. of additional water coverage from the proposed pier platform attached to the reinforced bulkhead that the applicant states is needed to support the new gangway ([Exhibit 2](#)). Thus, the proposed project results in total overall increase in water coverage of 952 sq. ft. The applicant states that the proposed increased bulkhead elevation results in a need to replace the existing pier platform and gangway with a longer gangway in order to meet ADA requirements. The boating facilities are a pre-coastal use that have provided access to members of the American Legion and non-members since 1957-1958. Post repair to the bulkhead, the city requires that continued and compliant access to the marina be provided and as such, the city required that a new ADA compliant gangway be included as part of the project.

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. Additionally, it has been designed at the minimum size to ensure structural stability. 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 floating dock addition consists of two segments: (a) 5 ft. (wide) x 34 ft.-3 in. and (b) 15 ft. (wide) x 95 ft.-3 in. segment. Based on the guidelines, segment (a) should be 3 ft. wide and not 5 ft. wide; however, it has been designed this way in order to support the ADA compliant gangway. Segment (b) is consistent with the guidelines since the guidelines do say that fingers over 70 ft. in length may need to be wider than 8 ft. Thus, the proposed project is generally consistent with those guidelines and standards and its deviation is based upon compliance with ADA requirements. Lastly, cumulatively the dock is large, but it has been designed to minimize total water coverage compared to the existing condition and it generally conforms to the local design standards.

More importantly, one of the main reasons the Commission has generally been concerned with the proliferation and expansion of docks over water in Newport Bay is the potential for impacts to eelgrass. Here, there are not expected to be any impacts to eelgrass, as the plant has historically not been located on this site, based on eelgrass surveys dating to 2004. The applicant states that there is currently no eelgrass, although the most recent survey was completed two years ago. The applicant will be required to conduct an additional survey prior to construction of the development.

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 agendaized for the September 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 applicant has indicated that the City's biennial eelgrass surveys from 2004 to 2018 found no *Caulerpa Taxifolia* at the subject site. 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 applicant 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 applicant must obtain a permit amendment or a new permit for any future repair or maintenance of the bulkhead or private dock system.

Construction and Post-Construction Impacts

The proposed work will occur over, on, and in coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in adverse impacts on the marine environment. The applicant is proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as requiring that floating debris will be contained within the subject site and removed as soon as possible but no later than the end of the day. However, there are additional measures that need to be implemented; therefore, 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.

The proposed project provides an opportunity to improve water quality. Many of the pollutants entering the ocean come from land-based development, such as the existing (pre-Coastal-Act) building and parking lot. The Commission finds that it is necessary to minimize, to the extent feasible within its jurisdiction, the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to deal with these post-construction water quality impacts, the applicant has proposed the installation of three storm drain inlet and filters in three (3) different locations in the existing bulkhead that outlet into the bay that minimizes impacts to water quality the proposed project may have after construction.

Post-construction, the floating dock will continue to support boating vessels. 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 Newport Beach Harbor Department has approved the project in concept (and is associated with the City which is the applicant), but a final approval of the new dock is pending with the Newport Beach Harbor Commission. The approval must occur prior to issuance of the subject CDP. The applicant has indicated that the project has a pending Clean Water Act Section 401 Water Quality Standards Certification under review from the RWQCB. The applicant has also applied for a permit from the USACE, which is pending until coastal development permit approval. To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition No. 8** requires the applicant to obtain final approval from the Harbor Commission prior to issuance of the permit and 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, CLUP Policies 4.1.4-5, 4.2.3-1, 4.2.3-2, 4.2.5-1, 4.3.1-8, 4.3.2-1, 4.3.2-6, 4.2.3-7, 4.3.2-22, and IP Policy 21.30.C.050(D&F), that mirror these Coastal Act policies. The overall project results in increased overwater coverage; however, the existing floating dock is already an existing historical pre-coastal large structure and the proposed expansion is minimal and necessary to provide post construction access required by the city as a result of the increased bulkhead elevation. The proposed dock float is of similar size to the docks in the adjacent area and is consistent with past Commission actions in the area, and is generally consistent with City design guidelines and standards. Its deviation is based upon compliance with ADA requirements.

In addition, the expansion will not impact eelgrass, as historically it does not exist here. While eelgrass has not been found near the subject site, the eelgrass survey identifying the location of the eelgrass is, however, outdated. *Caulerpa Taxifolia* has not been identified near the subject site, but the survey conducted for it is outdated as well. The applicant has proposed post construction water quality measures to minimize adverse water quality impacts by installing storm drain inlets and filters in the bulkhead; however, additional measures during construction, as well as, post construction to minimize adverse impacts to water quality are necessary. 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, and estuaries to certain uses only, including "new or expanded boating facilities." However, fill for boating facilities is only allowed where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The City's certified LCP also has a policy that mirrors this Coastal Act policy. The proposed project results in an increase of piles since three new 16 in. diameter concrete guide piles are proposed for the new 42 sq. ft. pier platform to accommodate the larger ADA compliant gangway ([Exhibit 2](#)). The project also proposes the removal of two existing 12 in. diameter concrete guide piles supporting the existing floating dock and replacement with two new 16 in. diameter concrete guide piles to support the floating dock expansion ([Exhibit 2](#)). Thus, overall, the project results in three new piles that will support the new pier platform. The removal of the two existing 12 in. diameter concrete guide piles will reduce fill by 2 sq. ft.; however, fill will increase by 8.9 sq. ft. from the three new 16 in. diameter concrete piles and the two new larger 16 in. diameter concrete guide piles for an overall increase of 6.9 sq. ft. Because the project is an expanded boating facility, it is an allowed use and meets the first test of Section 30233.

The applicant did analyze the alternative of attaching the new 5 ft. (wide) x 80 ft. (long) ADA complaint gangway to the existing bulkhead, but the existing bulkhead wall is not designed to for the additional load that would be added from the gangway, and to meet current building code requirements (California Building Code – 2019) extensive upgrades to the wall would be necessary. Thus, the applicant has proposed the new pier platform to support the new gangway. The applicant has 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. The proposed project is therefore the least environmentally damaging feasible alternative, and it meets the second test of Section 30233.

Finally, fill from the proposed project is not anticipated to result in adverse impacts due to the nature of the soft-bottom of the harbor (polluted and silty), which does not support subtidal habitat. The City has an ongoing dredging program and is under orders from the Regional Water Quality Control Board to remove contaminants and improve the soft bottom of Newport Harbor; however this project will neither improve nor diminish the already poor condition of the soft bottom of the harbor. Thus, although there will be an increase in fill, adverse environmental impacts will not occur, which is consistent with the third test of Section 30233. Therefore, the proposed 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.

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

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

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

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

support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30250 of the Coastal Act, Location, existing developed areas, states:

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

Coastal Land Use Plan Policy, Visitor-Serving and Recreational Development, Policy 2.3.2-1. states,

Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.

Coastal Land Use Plan Policy, Visitor-Serving and Recreational Development, Policy 2.3.3-5 states,

Continue to provide and protect public beaches and parks as a means of providing free and lower-cost recreational opportunities.

Coastal Land Use Plan Policy, Shoreline Access, Policy 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, Policy 3.1.1-2 states,

Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.

Coastal Land Use Plan Policy, Shoreline Access, Policy 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, Policy 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, Policy 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, Policy 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 subject property is a bay front City of Newport Beach owned parcel that extends to the beach and water that includes filled uplands, sandy beach and water. The proposed project area also extends bayward of the City parcel to 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).

This bay front area is a prime access point to the City's bay for fishing, kayaking/small vessel launching from the beach, viewing, and passive uses of the sandy beach. Located east and contiguous with the subject site is a bay front public beach with a public pump-out station facility at the end of 15th Street ([Exhibit 1](#)). Further east of this pump-out facility is another bay front public dock facility located also at the end of 15th Street ([Exhibit 1](#)). Along 15th Street there is a sizeable quantity of metered parking spaces, as well as public parking spaces along Balboa Boulevard and surrounding public streets. This small bay front beach area at the end of 15th Street is popular and heavily used due to available parking, grassy public park area (Veterans Park), fishing and temporary vessel berthing opportunities at the small public pier at 15th Street, proximity to nearby commercial support areas, and proximity to the ocean front beach on the opposite side of the peninsula ([Exhibit 1](#)). In addition, located west of the subject property is the City of Newport Beach Marina Park Community and Sailing Center, which provides coastal recreational opportunities to the public.

During construction of the floating dock extension, the only floats that potentially need to be removed during construction are some of the individual finger floats immediately adjacent to the bulkhead. The applicant has stated that they think they will be able to perform the project without removing any floats. However, the applicant states that if any of the fingers need to be removed, then the vessels would be floated to the slip area on the west side of the American Legion marina for temporary storage.

This west side of the American Legion marina where a section of the floating dock will be removed and expanded to support a new ADA compliant gangway serves as a guest side tie for visitors of the facility, which may be anyone affiliated with the Post, the military, and members of affiliated organizations along the coast. In addition, this area is also used for launching/hauling out trailered vessels from the parking lot to the water via the adjacent crane located in the parking lot. Also, the expansion of the floating dock will not eliminate any slips currently located to the east of the floating dock.

The applicant has stated that the construction staging area will be within the American Legion parking lot and will not take place in the adjacent alleyway, Balboa Blvd., or 15th Street, and therefore the public right-of-way will not be impacted.

The installation of the new pier platform to accommodate the new proposed ADA gangway requires the removal of two parking spaces, which are currently being used for trailer and small-boat storage, within the American Legion parking lot adjacent to the bulkhead. The applicant states that the loss of the two spaces will not impact the

required parking for the site to accommodate the vessels or uses of the building. In addition, the applicant states that there is plenty of additional available area within the remaining parking lot to accommodate the re-located boats for storage.

The City parcel is identified as “*Filled Tidelands*” on the City’s Tidelands Survey of Newport Harbor dated January 11, 2017 and it is not part of the mapped State Tidelands held in trust by the City. Pursuant to Public Resources Code section 7552.5, the submerged land is subject to a navigational easement that, in general, precludes the owner from preventing the public from using the sandy beach and the waters for navigational purposes even if the submerged lands are not public trust lands. No work is proposed to the bulkhead or on or in the submerged lands that would encroach bayward resulting in interference with navigation through the waterway. Thus, the proposed project would not be inconsistent with the navigational easement.

As stated previously, further bayward of the City parcel are 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.). While there is no direct public pedestrian access to the water through the membership-only facility, the proposed project does not adversely impact the numerous coastal access opportunities available fronting the site along the bay on the City parcel nor the tidelands granted to the City and the adjacent and surrounding public access opportunities identified above. Therefore, the proposed project does not result in adverse impacts to public access. Because the project extends onto the City owned parcel that extends into the water and onto Public Trust Tidelands, 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 City tidelands, **Special Condition No. 9** 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, 30221 and 30224 of the Coastal Act require that public access be provided and recreational opportunities to the coast be protected and encouraged. Section 30250 of the Coastal act states that new development shall be located where it will not have significant adverse effects individually or cumulatively on coastal resources. The City’s certified LCP also contains policies, CLUP Policies 2.3.2-1, 2.3.2-1, 2.3.3-5, 3.1.1-1, 3.1.1-2, 3.1.1-9, 3.1.1-11, 3.1.4-3, and IP Policy 21.30C.080(E&G), that mirror these Coastal Act policies. As indicated above, while no public access is available through the site, public access is available at adjacent or nearby locations. 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. The proposed development is also located in an area with similar development and thus will not have significant adverse impacts individually or cumulatively on coastal resources.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30220, 30221, 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.

E. Coastal Act Violations

Violations of the Coastal Act and LCP exist on the subject property, including, but not necessarily limited to, installation of "members only" signs and placement of an obstruction (i.e. a boat) in a narrow corridor that provides access to a public sandy beach. In addition, a patio in this location has been expanded, further impinging upon the public access corridor. All of the development activities described above have been undertaken without the necessary coastal development permit, in violation of the Coastal Act and LCP.

Installation of the "members only" signs, which give the impression that no public access is available in the location of the signs, when there is, obstructs public access to sandy public beach and public tidelands on the property, particularly because of their location within a narrow corridor that provides access to a public sandy beach. Placement of an obstruction in the corridor and expansion of a patio into the corridor further block public access.

All of the development activities described above, in addition to being unpermitted, also violate CDP 5-07-169. CDP-5-07-169 was previously approved by the Commission and issued to the City of Newport Beach, on October 10, 2007, for the removal and replacement of an existing single-finger dock with a pump out facility on the property. Included in the terms of CDP 5-07-169 were provisions for maximizing public access to, and use of, the sandy beach on the property. The development activities described in this section do not maximize public access of the sandy beach on the property; to the contrary, they obstruct public use of the site, in violation of the CDP 5-07-169.

In 2009, Commission enforcement staff became aware of similar "members only" type signs in the same location as the signs at issue and notified the City and American Legion, by letter dated June 2, 2009, that the signs constituted violations of the Coastal Act and must be removed. The signs were subsequently removed, but new, similar signs that present the same obstacle to public access have since been installed.

The applicant is not proposing to include the signs, obstruction, or expanded patio in this application and, thus, even if this application is approved, and the permit is exercised, violations will remain on the subject property that will not be addressed by the Commission's action on this application. The Commission's enforcement division will consider how to address said violations as a separate matter.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development.

F. 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.

G. 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 December 5, 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 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 hazards, 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.

Bulkhead Wall Inspection and Condition Assessment prepared by Moffat & Nichol dated November 14, 2019 (Job No. 10716-05)

Coastal Hazards Analysis prepared by Moffatt & Nichol received December 19, 2019.

Letter from City of Newport Beach Public Works to Commission staff received December 19, 2019.

City of Newport Beach Bi-Annual Eelgrass Surveys 2004-2018.

City of Newport Beach Harbor Resources Division Approval-In-Concept dated December 5, 2019, July 9, 2020 and August 5, 2020.

Letter from Commission staff to the agent dated January 16, 2020.

Letter from the agent to Commission staff dated February 13, 2020.

Information from the agent to Commission staff received July 15, 2020.

Information from the agent to Commission staff received August 5, 2020.

American Legion Newport Harbor Post 291 website. [<https://www.al291.com/alpost291-history>] Accessed August 28, 2020.