

**CALIFORNIA COASTAL COMMISSION**

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

**F10c**

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**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-20-0472

**Applicant:** Bo Brusco

**Agent:** Swift Slip Dock & Pier Builders, Inc.  
(Attn: Marissa Morales)

**Location:** 18 Linda Isle, Newport Beach, Orange County  
(APN: 050-471-41)

**Project Description:** Removal of an existing 735 sq. ft. floating dock and gangway with three 18-in. wide square piles, and construction of new 680 sq. ft. floating dock and gangway with three 18-in. wide square piles in new locations.

**Staff Recommendation:** Approval with conditions.

**SUMMARY OF STAFF RECOMMENDATION**

The proposed project is the removal of an existing private dock system and replacement with a new private dock system on and over the water (Newport Harbor) associated with a single-family residence on a bayfront lot in Newport Beach. The proposed project is located within the Commission's original permit jurisdiction because it is on and over the waters of Newport Bay. The standard of review for this development is Chapter 3 of the Coastal Act, and the City's certified Local Coastal Plan (LCP) may provide guidance.

Commission staff is recommending **APPROVAL** of the coastal development permit (CDP) application with **eight special conditions**. The major issues raised by this

proposed development concern consistency with the marine resources, water quality, public access, and recreation policies of the Coastal Act.

The dock has been designed in a manner that avoids adverse impacts to marine resources while still maintaining a usable dock and enabling recreational boating. However, to minimize potential adverse impacts to biological resources and avoid negative cumulative impacts to the Newport Bay ecosystem, staff recommends the Commission impose **Special Condition 1**, which requires the applicant to prepare a new eelgrass survey prior to construction. This condition will also require the applicant to apply for a permit amendment to relocate or redesign the dock to avoid direct impacts to existing eelgrass beds if the updated survey indicates eelgrass would be impacted by the proposed dock footprint. Staff also recommends the Commission impose **Special Condition 2**, which requires the applicant to survey the project area for the presence of *Caulerpa* (an invasive, non-native aquatic species), prior to commencement of construction activities.

In order to ensure that future development on the site does not adversely impact biological resources, public access, or any other protected resource, staff recommends the Commission impose **Special Condition 3**, which informs the applicant that future development at the site requires a permit amendment or a new CDP.

During construction and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, **Special Condition 4** outlines construction responsibilities and debris removal requirements for the applicant and **Special Condition 5** requires the applicant to implement post-construction operational Best Management Practices (BMPs) to protect water quality.

To ensure that the applicant complies with all requirements, requests and mitigation measures from 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 the marine environment, **Special Condition 6** requires that the applicant comply with all the requirements, requests, and mitigation measures of these agencies.

Finally, the public tidelands over which the dock is proposed are managed by the City of Newport Beach. Since these are Public Trust Lands, the public maintains a right to access these navigable bay waters for navigation and recreational purposes. To preserve and maintain access to the Public Trust Tidelands, **Special Condition 7** preserves any public rights or interests that exist or may exist on the property.

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[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

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## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 5-20-0472 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. Eelgrass Survey(s).

- A. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. **Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area or the 10 meter buffer area by the pre-construction survey required by Subsection A of this condition, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicants shall survey the project site and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been adversely impacted, the applicants shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP. Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio (1.38:1) shall require an amendment to this permit or a

new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

### 3. Pre-construction Caulerpa Sp. Survey

**A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa* sp. The survey shall include a visual examination of the substrate.

**B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.

**C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval of the Executive Director; and

(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).

**D.** If *Caulerpa* species is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all *Caulerpa* sp. 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* species. 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.

**2. Future Development.** This permit is only for the development described in CDP No. 5-20-0472. 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. 5-20-0472, including the proposed private dock system. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to CDP No. 5-20-0472 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

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

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

**4. 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.
- 5. Resource Agencies.** The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- 6. 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 Description

#### Project Location and Local Approval

The subject site is located in the waters of Newport Bay adjacent to 18 Linda Isle in Newport Beach, Orange County ([Exhibit 1](#)). The privately-owned dock is located on Linda Isle and the proposed replacement is intended to berth a recreational vessel.

The subject dock is located on public tidelands managed by the City of Newport Beach and within the Coastal Commission's retained permit jurisdiction. The City is the local

permit issuing authority for development (i.e. a dock system) within the public tidelands area, and the permits issued for such development are entitled “City of Newport Beach Harbor Permits.” The applicant received an Approval-in-Concept from the City of Newport Beach Public Works on July 23, 2020. The Harbor Permit does not constitute a lease; however it authorizes the development over public tidelands managed by the City of Newport Beach. The City assesses a fee for temporary private use of the public tidelands either bi-monthly or annually through the water bill associated with the adjacent private property and the funds from those fees are deposited in a Tidelands Fund reserved for improvements in Newport Harbor.

The applicant is proposing removal of an existing 675 sq. ft. floating dock, 60 sq. ft. gangway (3-ft. by 20-ft.), and three square marina guide piles (18-in. by 18-in.) for construction of a new 590 sq. ft. floating dock, 90 sq. ft. gangway (3-ft. by 30-ft.), and three square marina guide piles (18-in. by 18-in) installed in new locations below the proposed dock ([Exhibit 2](#)). The new dock system will be comprised of wood, composite material, foam, and concrete. While the gangway water coverage will increase by 30 sq. ft., the overall water coverage will decrease by 55 sq. ft. The existing 6.75 sq. ft. of fill in harbor waters will be maintained. The existing and proposed dock system both are sited within the U.S. Pierhead Line, consistent with the City of Newport Harbor Permit Policy.

The applicant initially proposed a smaller replacement dock, with a 528 sq. ft. dock float and 108 sq. ft. gangway (3-ft. by 36-ft.) for 636 sq. ft. of total coverage. This would have reduced the existing water coverage from 735 sq. ft. to 636 sq. ft. However, this initial design was accompanied by six square piles (18-in. by 18-in.) that would have doubled the amount of existing fill onsite. The applicant indicated this to be the minimum number of marina guide piles necessary to accommodate a 100-ft. long recreational vessel. They subsequently identified an alternative to avoid any increase in fill and minimize fill of coastal waters consistent with marine resource protection policies of the Coastal Act (discussed further in the below sections) and reduced the number of proposed piles to like-for-like replacement. The applicant’s revised plans show a slightly larger new dock system than initially proposed (from 636 sq. ft. to 680 sq. ft.). However, the currently proposed dock still reduces existing water coverage by 55 sq. ft. as indicated above.

The subject landside lot is developed with a single-family residence and a cantilevered deck which extends bayward of the bulkhead over public tidelands. The applicant has provided the City Building Department Permit for the cantilevered deck dated December 16, 1968, prior to certification and adoption of the Coastal Act. As such, the deck is legally nonconforming in regard to certified LCP Policy 3.1.4-4, which limits structures located bayward of the bulkhead to piers and floats. The deck is detached from the existing dock system and outside the scope of the subject permit.

The Commission issued CDP 5-91-625 for demolition and construction of a new single-family residence on the subject landside lot in 1991. No other permit history exists for the project area. The applicant has indicated the existing dock system was constructed in 1968 concurrent with the cantilevered deck and submitted a City inspection letter dated June 15, 1991, which confirms the dock existed prior to 1991. Commission staff are not aware of any violations or unpermitted work at this site.

### **Standard of Review**

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

### **B. Marine Resources/Water Quality**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and 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 states:

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

Section 30233 of the Coastal Act states, in relevant in part:

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

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

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

6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

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

Policy 4.1.4-5 of the certified Newport Beach Land Use Plan (LUP) 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.

Policy 4.2.3-1 of the certified LUP states, in relevant part:

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.

Policy 4.2.3-2 of the certified LUP states:

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

Policy 4.2.5-1 of the certified LUP 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.

Policy 4.3.1-8 of the certified LUP 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.

Policy 4.3.2-1 of the certified LUP 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.

Policy 4.3.2-6 of the certified LUP states:

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

Policy 4.3.2-7 of the certified LUP 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.

Policy 4.3.2-22 of the certified LUP states:

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

Section 21.30C.050 of the Implementation Plan, Site Planning and Development Standards, Harbor and Bay Regulations, Harbor Development Regulations states, in relevant part:

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

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

### **Water Coverage and Eelgrass**

While the proposed gangway (90 sq. ft.) will result in increased water coverage compared to the existing gangway (60 sq. ft.), the proposed dock float (590 sq. ft.) will offset this with reduction in size from the existing dock float (675 sq. ft.) The overall water coverage will thus be reduced by 55 sq. ft. [\(Exhibit 2\)](#).

Regardless, the Commission must analyze new overwater development independently of existing coverage. The proposed dock system is of a similar size to docks in the surrounding area and is consistent with past Commission actions in the area. More importantly, it has been designed at the minimum size to ensure the structural stability necessary for private recreational boating opportunities with commonly-sized

recreational vessels. The City of Newport Beach Harbor Resources Division has developed Harbor Design Criteria Guidelines and Standards which, though not certified by the Coastal Commission, provide criteria for designing dock systems in a way that minimizes water coverage while providing for a usable dock. The proposed project is generally consistent with those guidelines and standards.

The applicant submitted an eelgrass survey for the project site conducted on October 28, 2019, which determined that existing eelgrass beds were located throughout the site ([Exhibit 3](#)). Eelgrass surveys completed between August through October are valid until the resumption of active growth (i.e., March 1). This date has passed and the subject eelgrass survey is no longer valid for project construction. Therefore, the Commission imposes **Special Condition 1**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction.

It is relevant to note that the City's public GIS Data map provides an overlay of eelgrass in Newport Harbor from multiple years of acoustic surveys. The GIS map shows a greater distribution of eelgrass beds in the project area according to the 2020 acoustic survey, as well as portions of eelgrass that may be directly impacted by the proposed dock system. However, the applicant has submitted a letter from a qualified eelgrass mapping unit which describes the City's acoustic mapping technique and the potential for "back scatter," or shadow cast by eelgrass and other marine fauna, which amplifies the amount of detected eelgrass beyond accurate conditions. The eelgrass mapping unit makes a valid point in indicating portions of the GIS map where eelgrass beds are shown on landside portions of lot—eelgrass cannot establish on land and these would seem to be evidence of amplification.

Regardless, the applicant has designed the proposed dock location and coverage to avoid direct impacts to eelgrass based on the October 2019 bathymetric survey. If the pre-construction eelgrass survey required by **Special Condition 1** shows new eelgrass beds that would be impacted by the proposed dock construction, the applicant must apply for a CDP amendment or new CDP to re-design and/or relocate the new dock to avoid eelgrass impacts consistent with sections 30230, 30231, and 30232 of the Coastal Act relating to marine habitat conservation.

Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

### **Caulerpa and Soft-Bottom Habitat**

In 1999, a non-native and invasive aquatic plant species, *Caulerpa*, was first discovered in portions of Huntington Harbor. *Caulerpa* is a type of marine algae identified as a significant threat to California's coastal marine environment due to its ability to displace native aquatic plant species and habitats, including eelgrass. *Caulerpa* is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that *Caulerpa* 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 submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on October 28, 2019. The bathymetric surveys did not find evidence of *Caulerpa* onsite—however, *Caulerpa* surveys only remain valid for 90 days. In April 2021, a specimen of a potentially invasive seaweed (*Caulerpa prolifera*) was collected from within Newport Bay. The genus *Caulerpa* consists of approximately 75 different species of single-celled aquatic organisms that can grow rapidly and have the potential to adversely impact native marine habitat along the West Coast. Given the proximity of Alamitos Bay and the project site to the Newport Bay and the potential for the *Caulerpa* species to take over eelgrass and other marine habitat in the project vicinity, Commission staff recommends an up-to-date *Caulerpa* survey be conducted prior to commencement of the project, as addressed by **Special Condition 2**. Also, if any *Caulerpa* is found on the project site, **Special Condition 2** identifies the procedures necessary to be completed prior to beginning any construction. In order to protect the biological resources on-site from potential future impacts, **Special Condition 3** also requires that the applicant must obtain a permit amendment or a new permit for any future repair or maintenance of the proposed dock system.

### **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 mirrors this Coastal Act regulation.

The applicant initially proposed to increase the existing 6.75 sq. ft. of fill by an additional 6.75 sq. ft. as a result of removing three existing piles and installing six new piles. The Commission’s staff coastal engineer determined that while this may be the minimum fill necessary to support a 100-ft. long recreational vessel (as intended by the applicant), it exceeded the minimum necessary to accommodate a smaller, more commonly-sized recreational vessel. The applicant subsequently reduced the initial proposal and now proposes to maintain the existing amount of fill by removing the three existing piles and installing three new piles of the same size.

This is the minimum number of piles necessary for structural stability of the project; therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act and with corresponding portion of the City’s certified LCP used as guidance, as it is for a boating-related use.

### **Construction and Post-Construction Impacts**

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



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

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

### **Conclusion**

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

## **C. Public Access and Recreation**

Article X, Section 4 of the California Constitution provides:

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

Section 30210 of the Coastal Act states:

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

Section 21.30.015 of the certified Newport Beach Implementation Plan (IP) states, in relevant part:

D. Waterfront Development

1. Applicability. This subsection applies to coastal development permit applications for development on residential and nonresidential properties fronting on the waterfront of Newport Bay...

2. Considerations. In reviewing a coastal development permit application for development along the waterfront, the review authority shall consider the following:...

f. Whether any boating facilities (e.g., piers, pier platforms, gangways and dock floats) associated with waterfront development are so sited and designed to protect, and where feasible, expand and enhance public access to and along shoreline areas;

g. Whether the structure is nonconforming with regard to setbacks from the shoreline, bluff and/or bulkhead; and

h. For improvements to existing structures, whether the proposed improvements increase the degree of nonconformity or result in replacement of more than fifty (50) percent of the existing structure.

Section 21.30.050 of the IP states, in relevant part:

A. Protection of Coastal Access and Resources. All harbor structures, including remodels of, additions to, or replacement of existing structures, and new structures, shall be designed and sited so as not to obstruct public access and to minimize impacts to coastal views and coastal resources...

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...

Section 21.38.040 of the IP states, in relevant part:

A. Maintenance and Repairs. Routine maintenance and repairs may be made to nonconforming principal and accessory structures. The replacement of fifty (50) percent or more of a structure is not repair and maintenance but instead constitutes a replacement structure...

Policy 3.1.1-1 of the certified LUP 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.

Policy 3.1.1-9 of the certified LUP states:

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

Maximizes public access to and along the shoreline;

Policy 3.1.1-11 of the certified LUP states:

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

Policy 3.1.4-3 of the certified LUP 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.

Policy 3.1.4-4 of the certified LUP states:

In residential areas, limit structures bayward of the bulkhead line to piers and floats. Limit appurtenances and storage areas to those related to vessel launching and berthing.

Policy 4.2.3-17 of the certified LUP states, in relevant part:

Continue to limit residential and commercial structures permitted to encroach beyond the bulkhead line to piers and docks used exclusively for berthing of vessels...

Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the coast. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses, such as boating. The City's certified LCP also includes a number of similar policies that protect public access. Newport Harbor is well known as a popular spot for recreational boating. Numerous private boat docks and public marinas line the shores of the harbor. Sandy shoreline areas along the bay are also used for access/recreation, including swimming and hand launching of small watercraft such as kayaks and stand up paddleboards.

The proposed project includes the removal and replacement of an existing private boat dock system associated with residential development. The proposed project extends out into public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, lateral public access is available along an existing public walkway, which occurs bayward of the landside residences and fronts the harbor bulkhead along the perimeter of Linda Isle.

The proposed dock system does not extend beyond the U.S. Pierhead Line and maintains a navigable corridor in the subject channel for recreational boat use. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition 7** states that the approval of a CDP for the project does not waive any public rights or interest that exist or may exist on the property.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30220, 30221, and 30224 of the Coastal Act and the City's certified LCP used as guidance regarding the public's right of access to the sea and does not interfere with recreational opportunities on public tidelands.

## **D. Local Coastal Program**

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

## **E. California Environmental Quality Act (CEQA)**

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

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined on July 23, 2020, that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 1 (Section 15301), Existing Facilities, and Class 2 (Section 15302), Replacement and Reconstruction. The Commission finds that the project, as conditioned, is consistent with Coastal Act requirements and will not cause new adverse impacts to the environment.

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

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

## **APPENDIX A – Substantive File Documents**

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

Eelgrass Survey Prepared by Swift Slip Dock & Pier Builders, Inc. dated October 19, 2019.

City of Newport Beach Harbor Resources Division Approval-In-Concept dated July 23, 2020.