

provide public access to the water, with the exception of the guest dock, from the bulkhead adjacent to the Marina Pacifica Shopping Center. The project will provide new publicly available boat slips for smaller vessels, such as privately-owned electric Duffy boats, under 21 feet in length. There is currently high demand and low supply for boat slips under 21 feet in the Long Beach area, so the development will increase public access and recreation opportunities for such use. Public slips will be leased on a monthly basis for approximately \$285 a month (approximately \$10 per day), which is inclusive of all water, electricity, dock box, and taxes. The marina operator will not rent slips to commercial operations.

As proposed, the development would also include the removal of one 14-inch diameter pile (approximately one square foot of fill), and the installation of 21 2-inch diameter pipe piles installed into the sea floor, which is a minimal amount of fill of coastal waters (approximately one-half square foot of fill in total). There will be an overall decrease in fill, in an area which is not known to support eelgrass; thus, no mitigation is required.

In order to ensure that biological productivity is maintained and enhanced, staff recommends the Commission impose **Special Conditions 1 and 2** requiring construction to adhere to best management practices including appropriate storage, removal, and disposal of demolition or construction debris, daily inspection of construction equipment, installation of barriers between work areas and the water, and use of silt curtains. **Special Condition 3** requires the applicant to conduct pre- and post- Eelgrass surveys, **Special Condition 4** requires the applicant to conduct a Caulerpa species pre-construction survey; **Special Condition 5** requires the project comply with requirements imposed by other agencies including the Los Angeles Regional Water Quality Control Board (RWQCB) and California Department of Fish & Wildlife. **Special Condition 6** requires the applicant to install signage indicating where pumpout facilities are located. **Special Condition 7** states that any future improvements would require a permit amendment or a new coastal development permit to allow for careful review of development at this site. Furthermore, **Special Condition 8** states that the Commission's approval of this permit shall not constitute a waiver of any public rights that exist on the property, including but not limited to rights pursuant to the Public Trust Doctrine and the Alamitos Bay Boundary Settlement and Exchange Agreements. **Special Condition 9** requires the applicant to assume the risks of injury and damage from coastal hazards such as the storm that damaged the existing boat landing facilities. Lastly, **Special Condition 10** requires the applicant to reimburse the California Coastal Commission in full for all Coastal Commission costs and attorneys' fees that the Coastal Commission may be required by a court to pay in connection with the defense of any challenging the approval or issuance of this CDP.

Staff is recommending **approval** of the proposed coastal development permit with the **ten (10)** aforementioned special conditions.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS	10
A. PROJECT LOCAITON AND DESCRIPTION	10
B. STANDARD OF REVIEW.....	ERROR! BOOKMARK NOT DEFINED.
C. PUBLIC ACCESS AND RECREATION	13
D. BIOLOGICAL RESOURCES AND WATER QUALITY	16
E. DEVELOPMENT	20
F. LOCAL COASTAL PROGRAM	20
G. CEQA.....	20

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plan

Exhibit 3 – Project Plans

Exhibit 4 – Pipe Pile Mooring Details

Exhibit 5-- Letter from City of Long Beach re: the Proposed Project’s Consistency with the Public Trust Easement

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-16-1195 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 a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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

This permit is granted subject to the following 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 permittee 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 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Water Quality - Construction Responsibilities and Debris Removal**

- 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.

2. Best Management Practices (BMP) Program. By acceptance of this permit, the permittee agrees that the docking of boat(s) at the public marina shall be managed in a manner that protects water quality pursuant to the implementation of the following Best Management Practices (BMPs):

A. Boat Cleaning and Maintenance Measures:

- i. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
- ii. 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.

B. Solid and Liquid Waste Management Measures:

- i. 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:

- i. 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;
- ii. 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 pumpout facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
 - iii. 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.

3. Eelgrass Surveys and Mitigation.

- A. 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 permittee 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 Permittee is required to complete post-project eelgrass surveys consistent with the section below. Also, if eelgrass surveys identify any eelgrass within the project area, which may be potentially impacted by the proposed project, the Permittee is required to develop and implement an eelgrass mitigation plan consistent with Special Condition 4.
- B. 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 permittee 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 permittee shall submit the postconstruction 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 permittee 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.

4. **Caulerpa Pre-Construction Survey.** By acceptance of this permit, the permittee 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 *Caulerpa* species. 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* survey expires, a new survey is required prior to commencement of work in that area.

Within five (5) business days of completion of the survey, the permittee 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 includes other resource agencies: the California Department of Fish & Wildlife, U.S. Fish and Wildlife Service, Army Corps of Engineers, and NOAA Fisheries.

If *Caulerpa* species are found within the project or buffer areas, the permittee shall not proceed with the project until (1) the permittee provides evidence to the Executive Director that all *Caulerpa* 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 permittee has revised the project to avoid any contact with *Caulerpa*. 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.

5. **Conformance with the Requirements of Resource Agencies.** The City shall, through the acceptance of this permit, agree to comply with all permit requirements and mitigation measures of the California Department of Fish and Wildlife, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment.
6. **Public Access and Pump Out Facilities Signage.** PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit, for the review and approval of the Executive

Director, written evidence from the City of Long Beach that the City approves a signage plan that shows:

- A. The designs, dimensions, and location of signs indicating the public guest side-tie dock and the public guest slip are designated for public use. A minimum of one sign shall be posted in a visible location at the site of the guest dock and a minimum of one sign shall be posted in a visible location of the guest slip; and
- B. The designs, dimensions, and location of a minimum of one sign indicating where the public marine vessel pump out station is located.

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE DEVELOPMENT SUBJECT TO THIS PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence from the City of Long Beach that the signage plan has been installed.

- 7. Future Uses and Improvements.** This approval is limited to the uses and development specifically described in the project description, exhibits, and related findings contained in Coastal Development Permit 5-19-1195. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by CDP 5-19-1195. Accordingly, any future improvements to the structure authorized by this permit, change of use, or intensification of use (such as new leases of dock areas or new commercial use of docks by party boats or cruise ships), shall require an amendment to CDP 5-19-1195 from the Commission or shall require an additional CDP from the Commission.
- 8. Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist on the property, including but not limited to rights pursuant to the Public Trust Doctrine and the Alamitos Bay Boundary Settlement and Exchange Agreements No. 8 (recorded June 2, 1980 as instrument No. 80-537485 in the Official Records of the Los Angeles County Recorder) and No. 9 (recorded March 19, 1974 as instrument No. 2998 in Book D-6204, Page 686, in the Official Records of the Los Angeles County Recorder).
- 9. Assumption of Risk, Waiver of Liability, and Indemnity.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant acknowledges and agrees: (i) that the site may be subject to hazards, including but not limited to storms, flooding, landslide, erosion, and earth movement, many of which will 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.

10. Liability for Costs and Attorneys' Fees. By acceptance of this coastal development permit (CDP), the Applicant/Permittee agrees to reimburse the California Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

Location and Site History

Beginning in the late 1960s, the region of Long Beach surrounding Alamitos Bay was subject to extensive development of the natural wetlands, channels, estuaries, and adjacent dry lands. This growth was motivated by and accessory to boating activities in nearby basins of the Long Beach Marina, the increased traffic along Pacific Coast Highway, and the City's proposed infrastructure improvements to roadways, flood control, and public utilities. Most land adjacent to the pre-existing bay remained under private ownership, except for a few parcel swaps with the City of Long Beach along both banks of the Los Cerritos Channel as established in 1970 by the McGrath-Macco Boundary Settlement and Exchange and subsequent amendments (BLA 101), and private developers delivered master-planned projects supportive of residential, commercial, and recreational uses.

On March 26, 1973, the South Coast Regional Commission authorized the master plan for a large project known as Marina Pacifica under vested rights exemption E-3-26-73-8. A coastal development permit was not required pursuant to the California Coastal Zone Conservation Act of 1972 (i.e. "Proposition 20") because the development was authorized by the local government and commenced prior to the effective date of the Act. The master plan consisted of 1,700 condominium units, 450 boat slips, 200 spaces for dry storage of boats, and 250,000 square feet of commercial space. In order to provide marinas and aquatic facilities for the residents of the development, the Marina Pacifica project sought to construct inner channels perpendicular to the existing Los Cerritos Channel and parallel to Marine Stadium, slated to occur in phases. Phase 1A would dredge a channel south of Los Cerritos Channel, and Phase 1B would dredge a similar channel to the north. The dredging of the southern channel under Phase 1A was completed by 1974, with private lands flooded with water from Alamitos Bay to create new marine access. The subject development is wholly located within the private marina of the Phase 1A channel ([Exhibit 1](#)).

Amid construction of the Phase 1A Channel in 1974, Marina Pacifica, as estate leaseholder of the property owned in fee title by the San Gabriel River Improvement Company, entered into an agreement, known as the Alamitos Bay Boundary Settlement and Exchange No. 9 (BLA 143), with the City of Long Beach, State Lands Commission, and other private parties of interest (**Appendix A**). Condition 19 of Agreement No. 9 maintained that *“said public easement of commerce, navigation and fisheries shall reattach to any lands within Parcels 10A and 10B which in the future are dredged, submerged and connected to or joined with navigable waters.”* Parcels 10A and 10B correspond to the current project site. These and other parties entered into another agreement in 1980, Alamitos Bay Boundary Settlement and Exchange No. 8 (BLA 173). Agreement No. 8 affirmed the efficacy of Agreement No. 9 and reaffirmed the common law public use and easement for commerce, navigation and fishery over the submerged portions of Parcels 10A and 10B, said easement being held in trust by the City of Long Beach, while also resolving title disputes elsewhere along the channel and in Alamitos Bay. In 1981, the San Gabriel River Improvement Co. grant deeded these parcels to Alamitos Bay Partnership with specific disclaimers as to *“any representations, covenants or warranties, whether express or implied[...] on the subject property,”* which, by definition, would include the public trust easement. In 2017, Alamitos Bay Partnership then grant deeded the parcels to ABP Parcel 8, LLC, the current owner, thereby closing the chain of title but preserving the public trust easement. In addressing the existence of the common law public trust easement for navigation, commerce, and fisheries onsite, **Special Condition 8** provides that the approval of the proposed project does not in any way waive the public’s rights under the Public Trust Doctrine or the discussed Agreements.

In 1978, the South Coast Regional Commission issued Coastal Development Permit No. P-2-16-78-2785 to Marina Pacifica, Inc. to “construct 979 feet of six-foot wide floating boat dock on 14-inch piles and install two, 20-foot gangways and two, 7-foot landings to service transient boaters visiting Marina Pacifica Village,” which was mostly located on the northern end of the channel. The 110-foot public side-tie dock that is proposed to be relocated as a part of Coastal Development Permit No. 5-19-1195 is the southern portion of the approved 979-foot floating boat dock.

Currently, the City has found that the proposed development is consistent with the public trust easement it holds. Under existing conditions, water access at the project site is limited to the access point for the public guest dock. As designed, the project will create 31 new public boat slips in a portion of the channel that does not currently provide public access to the water, with the exception of the guest dock, from the Marina Pacifica Shopping Center. The proposed project will alleviate some public access concerns since the southwestern side of the marina channel consists of approximately 178 private slips that surround the Marina Pacifica condominiums and have been entirely purposed for the sole benefit of the residents ([Exhibit 2](#)). The project will also provide new boat slips for smaller vessels, such as electric boats under 21 feet in length.

Project Description

The applicant, M.P. Boat Slips, Inc., lessee of the project site, is requesting a permit for the installation of 3 new 18-foot-long public floating docks providing a total of 31 public-use slips; 30 allocated as public for-rent slips, and one available for free public transient use ([Exhibit 3](#)). The slips are proposed to be distributed among the three new docks as follows: Dock A will provide 10 slips, Dock B will provide 10 slips, and Dock C will provide 11 slips ([Exhibit 3](#)). The marina operator will not rent slips to commercial operations.

The new marina will be located on the southeast side of the Marina Pacifica Channel for use by the public, including nearby residents and visitors to the adjacent shopping area. Public slips will be leased on a monthly basis for approximately \$285 a month (approximately \$10 per day) which is all inclusive of water, electricity, dock box, and taxes. On August 27, 2018, the City of Long Beach issued a local CDP for the portions of the project in the City's jurisdiction, including the landside infrastructure improvements related to the relocation of the guest dock and installation of a new "guest dock" sign, installation of the new dock floats, and associated utilities. The local CDP was not appealed.

The existing approximately 110-foot-long public guest side-tie dock that is currently located parallel to the seawall where Dock B is proposed to be installed, will be replaced with an approximately 60-foot long public guest side-tie dock, which will be relocated approximately 100 feet southeasterly to be installed parallel with the existing seawall between Dock B and C ([Exhibit 2](#)). The existing 14-inch marina guide pile that currently supports the guest dock is also proposed to be removed. The reduction in length of the public guest dock will result in the potential loss of approximately one or two public side-tie spaces¹, of Dock C adjacent to the existing Kamal Palace restaurant for free public use to mitigate for the potential loss of public side-tie space. Furthermore, there is currently approximately 1,000 linear feet of side-tie float space available for public boat access on the north end of the shopping center immediately adjacent to the subject site where there are more popular restaurants and bars, of which the entire length is rarely used at any one time. Therefore, the modification of the relocated float will not restrict public access to or along the water. The local CDP required a guest dock sign to be placed at the guest dock to provide clarity that the guest dock is for public use. The applicant has proposed additional signage to notify members of the public and customers of the boat slips of the availability of a free sewage and graywater pumpout station nearby the subject development (within the same marina). Therefore, the signage will ensure that the visual and physical access to the coast will be consistent with the existing conditions and will help to preserve and enhance water quality. To ensure there is a sufficient amount of signage to effectively notify the public of these amenities, **Special Condition 6** requires at least one sign indicating the public guest side-tie dock and the public guest slip are designated for public use, and a minimum of one sign posted in a visible location at the site of the guest dock and guest slip indicating where the public marine vessel pump out stations are located.

¹ According to the applicant, the average size boat that utilizes the public side-tie float is approximately 25 feet or less, so a reduction in 50 feet could result in the potential loss of two public boat spaces.

The docks will be connected to the existing seawall with a pipe davit system that consists of a 2-inch metal pipe frame that is anchored with a 12-inch square footing on the land side of the seawall and anchored into the silt of the sea floor on the water side. A metal pipe sleeve connects the float to the 2-inch galvanized pipes that hold the floats in position and allows the float to rise and lower with the tide. The pipe moorings are installed with a water jet, which is a pressurized water pump with the hose placed inside of the pipe that jets a 2-inch diameter hole into the silt to insert the pipe moorings. The project includes approximately 21 pipe piles to be installed into the sea floor.

Section 30253 of the Coastal Act requires that new development minimizes the adverse impacts of development by, in part, ensuring that such development minimize risks to life and property in areas of flood hazard. With respect to Section 30253(a) & (b) and potential coastal flooding at this location, the development is not expected to be at risk from damage due to sea level rise during the 30-year anticipated life of the development given its flexibility in infrastructure as the pipe moorings will allow the docks to potentially rise to the top of the seawall, which is approximately 20 feet high.

C. Standard of Review

The City of Long Beach LCP was effectively certified on July 22, 1980. The proposed project is beyond the bulkhead located seaward of the mean high tide line and is thus within the Commission's retained permit jurisdiction. The standard of review for development within the Commission's retained permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance.

D. Coastal Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development not to interfere with access, states: Development shall not interfere with the public's right of access to the sea where acquired through use of legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states:

5-19-1195 (M.P. Boat Slips, LLC)

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

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 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 of the Coastal Act states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30252 of the Coastal Act states:

Maintenance and enhancement of public areas, states, in part: The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

Recreational boating facilities are an allowable and encouraged use in State waters, tidelands and submerged lands that are navigable waterways held in trust by the State for the benefit of the people for commerce, navigation and fishing. Such uses include the right to fish, swim, boat and engage in other forms of water-oriented recreation. Public use of recreational boating facilities within ports, harbors and marinas throughout the State is supported and encouraged by the public access and recreational policies of the Coastal Act as well as by the Public Trust Doctrine.

Most marinas within ports and harbors along the coast of California include recreational boat docks which are open to the general public to rent for their personal recreational use; however, such docks and associated marina facilities are often only open and available for use by those members of the public who pay to rent the boat docks. The gangways and piers leading to the docks are often gated for renters and guests only and not open for general public use. Depending on the ability of the public to access the waters within and around the marina for navigation and recreation, such private marinas can serve to exclude the public from access to areas protected by the Public Trust Doctrine for public use. In addition, unless facilities including boat slips and berthing areas are provided in a range of sizes that accommodate not only large expensive yachts, but also smaller motorized and non-motorized vessels, a large segment of the general public could be excluded from recreational boating facilities that were authorized in order to encourage general public use of State waters.

The proposed marina is a public dock facility that will provide approximately 31 new publicly available boat slips for smaller vessels, such as electric Duffy boats, under 21 feet in length. There is currently high demand and low supply for boat slips under 21 feet in the Long Beach area, so the development will increase public access and recreation opportunities for such use. Public slips will be leased on a monthly basis for approximately \$285 a month (approximately \$10 per day), which is inclusive of all water, electricity, dock box, and taxes.

The existing guest dock is proposed to be relocated approximately 110 feet to the southeast and will be reduced from 110 feet long to 60 feet long. To mitigate for the 40-foot reduction of guest dock space, the applicant is proposing to dedicate one slip located adjacent to the restaurant to free public use and is also proposing to update signage directing the public to guest docks and sewage and graywater pumpout stations near the development.

The City of Long Beach Planning Department requested a parking study from the applicant as part of the local coastal development permit application to construct and operate an additional 33 slips at the Marina Pacifica Shopping Center.² The results of the parking study revealed that of the available parking spaces within the adjacent garage closest to the slips (209 spaces), average occupancy over the three months of the study was 77 automobiles, or 37%. The applicant estimates that of the 31 slips, only two boaters will ever be out at any one time. Given the fact that an average of only 77 spaces of 209

² Although the local CDP approved 33 guest slips, the applicant revised the application for 31 guest slips to accommodate the newer model Duffy boats which are wider.

available spaces are occupied, an average of 132 spaces will be available for the 2 or 3 boaters, or even all 31 boaters at any time. This is more than adequate vehicle parking for the additional slips.

The proposed development will not adversely affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities; on the contrary, the project will help maintain or increase recreational boating use of coastal waters. Therefore, as proposed the development conforms with Sections 30210 through 30214, 30220 through 30224, and 30252 of the Coastal Act, as well as the Public Trust Doctrine principles regarding public access to waterways that these provisions help implement. Commission staff also received a letter of acknowledgment dated August 10, 2021 from the City confirming that the proposed public floating dock is consistent with the City's public trust easement over the water as established in Alamitos Bay Boundary Settlement and Exchange Agreements No. 8 and 9 (**Attachment A**). **Special Conditions 7 and 8** ensure that any future developments would maximize public access and recreation that would conform with both the Coastal Act and the attached public trust easement.

E. Biological Resources and 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 water flow, 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 containments and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 of the Coastal Act states, in part:

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

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines

Sections 30230 and 30231 of the Coastal Act require that marine resources and biological productivity be maintained or restored. The installation of a new marina has the potential to impact soft bottom habitat and may potentially shade soft bottom habitat available for eelgrass growth. Eelgrass species, *Zostera marina* and *Zostera pacifica*, are highly productive, provide habitat, and serve numerous ecosystem functions.

The applicant submitted an Eelgrass survey conducted by Scuba Duba Corporation on June 21, 2018, which determined no eelgrass was present in the location of the proposed new docks. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60 days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the September 2021 Coastal Commission hearing, so the eelgrass survey is no longer valid. Therefore, a new eelgrass survey will be required prior to beginning any construction, as addressed in **Special Condition 3**.

No pre-construction *Caulerpa* survey was conducted. 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.³ Given the proximity of Alamitos Bay and the project site to the Newport Bay and the potential for the *Caulerpa prolifera* species to take over eelgrass and other marine habitat in the project vicinity, Commission staff recommends an up-to-date *Caulerpa* survey to be conducted prior to commencement of the project, as addressed by **Special Condition 4**. Also, if any *Caulerpa* is found on the project site, Special Condition 4 also identifies the procedures necessary to be completed prior to beginning any construction.

Fill

Coastal Act Section 30233 allows for the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes only in certain circumstances, including when necessary to maintain existing boat launching ramps, develop new or expanded boating facilities, and place structural pilings for public recreational piers. The 21 pipe piles proposed to be

³ Sources: Aquatic Invasive Species on the West Coast: *Caulerpa Taxifolia* | NOAA Fisheries; *Caulerpa*, Aquatic Invasive Species, Lodi Fish & Wildlife Office (fws.gov)

installed into the sea floor is a minimal amount of fill of coastal waters (approximately one-half square foot in total) as a result of the proposed installation of pipe moorings. Section 30233(a)(3) permits fill of coastal waters if new or expanded boating facilities or public recreational piers provide public access and recreational opportunities and where there is no feasible, less environmentally damaging alternative. As proposed, the project would make available approximately one square foot of soft-bottom marine habitat following the removal of the existing 14-inch diameter pile. Thus, there will be an overall reduction in fill (~one sq ft removed and ~one-half sq ft new fill), so no mitigation in the form of habitat enhancement is required. However, the project still must avoid adverse impacts to biological productivity, so mitigation measures in the form of special conditions are required. Temporary disturbance of the bottom during the pipe pile installation requires work within coastal waters. Thus, **Special Conditions 1 and 2** require construction to adhere to best management practices (BMPs) including appropriate storage, removal, and disposal of demolition or construction debris, daily inspection of construction equipment, installation of barriers between work areas and the water and use of silt curtains if turbid waters are expected or produced to protect water quality and the marine environment. The applicant proposes to implement BMPs including construction of the float offsite and minimization pollution with immediate removal of any debris that enters the water. **Special Condition 5** requires the applicant to comply with requirements imposed by other agencies including RWQCB and California Fish & Wildlife.

As discussed above, while the project involves some fill of open coastal waters, under Section 30233(a)(3) of the Coastal Act, fill is permitted for boating facilities if the least environmentally damaging feasible alternative is selected. Public recreation, including recreational boating, use of the pier, and visitation of coastal areas in Long Beach, is provided through the proposed marina that include transient tie offs and a free guest slip. The proposed use of pipe pile moorings is the least environmentally damaging alternative for the attachment of the dock float to the sea floor and will allow for removal of a 14-inch diameter pile and recovery of soft-bottom habitat. Furthermore, **Special Condition 7** states that any future improvements or change in use would require a permit amendment or a new coastal development permit to allow for careful review of proposed development at this site.

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

The proposed work will be occurring on, within, or adjacent to 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 an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of

pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. Together, these conditions address the identified potential impacts to marine resources and water quality, individual and cumulative, that the proposed development may have. Therefore, the proposed development, as conditioned, conforms with Sections 30230, 30231, and 30233 of the Coastal Act regarding the protection of marine resources and water quality to promote the biological productivity of coastal waters and to protect human health.

F. Development

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (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.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) (Minimize energy consumption and vehicle miles traveled. (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses

Section 30253 of the Coastal Act requires that new development minimizes the adverse impacts of development by, in part, ensuring that such development minimize risks to life and property in the areas of flood hazard, energy consumption, and vehicle miles traveled. With respect to Section 30253(a & b) and potential coastal flooding at this location, the development is not expected to be at risk from damage due to sea level rise during the 20-year anticipated life of the development given its capacity to rise with the increase in sea water levels, storm surge, etc. Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development (**Special Condition 9**). **Special Condition 10** requires the applicant to reimburse the California Coastal Commission in full for all Coastal Commission costs and

attorneys' fees that the Coastal Commission may be required by a court to pay in connection with the defense of any challenging the approval or issuance of this CDP. As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

G. Local Coastal Program

A coastal development permit is required from the Commission for the proposed development because it is located within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Long Beach LCP, certified by the Commission on July 22, 1980, is advisory in nature and may provide guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

H. California Environmental Quality Act (CEQA)

The City of Long Beach is the lead agency responsible for CEQA review. The City determined that the project qualifies for a CEQA exemption, Class 3 on September 18, 2018. Typically, projects are exempt from CEQA pursuant to section 15303 of the CEQA Guidelines when they consist of construction of limited numbers of new, small facilities or structures.

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).

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect, individual or cumulative, that the activity may have on the environment. Therefore, the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive file documents

- Coastal Development Permit P-2-16-78-2785
- Alamitos Bay Boundary Settlement and Exchange Agreements No. 8 and 9
- CDP Application No. -19-1195