

CALIFORNIA COASTAL COMMISSION

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W8b

Filed: 8/07/22
180th Day: 2/03/23
Staff: M.Revell-LB
Staff Report: 10/27/22
Hearing Date: 11/16/22

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-22-0306

Applicant: Lido Peninsula Company, LLC

Agent: Anchor QEA, LLC, Attention: Marine Vie

Location: Anchorage Way Marina, 717 Lido Park Drive, Newport Beach, Orange County (APN No. 047 010 09)

Project Description: Request for after-the-fact removal of 13 boat slips and associated piles within an existing public marina and construction (not after-the-fact) of 10 new boat slips supported by five (5) 12-inch concrete piles; four (4) 16-inch concrete piles and four (4) 12-inch concrete piles immediately adjacent to the original slips including two extensions on the east and west sections of the original docks.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the replacement and upgrade of the original southern portion of the existing 46-slip Anchorage Way Marina, including docks, piles and utilities. In 2005, a car drove through the railing and damaged the first piling located on the south side of the marina. After the car incident, the pilings and docks were removed without the benefit of a coastal development permit. The proposed construction of the new slips is not after-the-fact. The Lido Peninsula Yacht Anchorage located on the Lido Peninsula offers boat slips and dry dock storage spaces that the public can lease for recreational

use. These spaces are not restricted and are available for anyone to lease and this will not change with the proposed project. Thus, the marina will continue to provide an opportunity for the public to access Newport Harbor and engage in recreational opportunities.

The proposed project is located within the Commission's original permit jurisdiction because it is on and over the waters of West Lido Channel. 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 application with **six special conditions**. The major issues raised by this proposed development concern consistency with the marine resources, water quality, public access policies of the Coastal Act.

The dock float system has been designed in a manner that avoids adverse impacts to marine resources (no eelgrass is expected to be impacted based on the applicant's survey) while still maintaining a usable dock float system and enabling recreational boating. However, to minimize potential adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Bay ecosystem, staff recommends the Commission impose **Special Condition No. 1**, which requires the applicant to prepare a new eelgrass survey prior to beginning construction. This condition will also require the applicant to apply for a permit amendment to relocate or redesign the dock float system to avoid direct impacts to existing eelgrass beds if the updated survey indicates eelgrass would be impacted by the proposed dock float footprint. Staff recommends the Commission also impose **Special Condition No. 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.

While conditions have been imposed to minimize impacts to eelgrass and monitor *Caulerpa Taxifolia* with soft-bottom disturbance associated with this project, impacts to biological resources may still occur if future development occurs without first being reviewed by the Commission. Thus, staff recommends the Commission impose **Special Condition No. 3**, which requires the applicant to obtain a permit amendment or a new permit for any future improvements to the proposed dock float system.

During construction and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose **Special Condition No. 4**, which outlines construction responsibilities and debris removal requirements for the applicant and also 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, staff recommends the Commission impose **Special Condition No. 5**, which requires that the applicant comply with all the requirements, requests, and mitigation measures of these agencies.

The proposed project is located on and in submerged land (embayment) that is presently under private ownership but is subject to a navigational easement pursuant to Public Resources Code section 7552.5. The proposed development will not interfere with any existing navigational easement that may exist over the navigational waters of the embayment. However, in case any evidence is presented after approval of this permit that supports a finding that the embayment fronting the applicant's property consists of public tidelands and submerged lands that are subject to the public trust, staff recommends the Commission impose **Special Condition No. 6**, which states that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

The motion to approve the CDP application is on page 5.

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EXHIBITS

Exhibit No. 1 – Location Map

Exhibit No. 2 – Proposed Plan

MOTION AND RESOLUTION

Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit Application No. 5-22-0306 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. 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.

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.

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

Executive Director provides a written determination that no amendment or new permit is required.

2. Pre-construction Caulerpa Sp. Survey

A. Two pre-construction surveys of the project area for Caulerpa species (Caulerpa) shall be conducted by a certified Caulerpa surveyor in accordance with the Caulerpa Control Protocol (version 5) (<https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>). The surveys shall include 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. Within fifteen (15) 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) California Department of Fish & Wildlife Marine Region (Caulerpa@wildlife.ca.gov) and National Marine Fisheries Service (NOAA Fisheries) (nmfs.wcr.caulerpa@noaa.gov).

C. Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.

D. At least one survey shall be conducted within 45 days of initiation of an authorized Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.

E. 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.

- 3. Future Development.** This permit is only for the development described in CDP No. 5-22-0306. 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. 5-22-0306, including the proposed private dock float 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. 5-22-0306 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

4. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) 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;
- (2) 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;
- (3) 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;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- (6) 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;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;

- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) 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;
- (11) 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;
- (12) 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;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) 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;
- (15) 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
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. Best Management Practices 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.

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - b. 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
 - c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - d. Any and all debris/trash found near the dock will be removed.
- (2) Solid and Liquid Waste Management Measures:
 - a. 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 will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.
- (3) Petroleum Control Management Measures:
 - a. 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 will 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;
 - b. 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

- c. 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.
 - (4) Leakage Measures:
 - a. Any leakage or spills must be immediately reported to the management team, Newport Beach Fire Department and/or the City of Newport Beach Hazmat Team.
 - b. In the event of leakage or spill of hazardous materials to the marine environment, the source of the leakage or spill is terminated immediately.
 - c. All tenant vessels should have absorbent pads on board. This product should be an oil-only absorbent product which soaks up hydrocarbons – gasoline, diesel fuel, oil, hydraulic fluids- but not water. Other absorbent products that “eat” hydrocarbons are not allowed. No boater shall pour loose remediation productions or spray any remediation products on the water at anytime.
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.

FINDINGS AND DECLARATIONS

A. Project Description and Location

The applicant, Lido Peninsula Company, LLC, is proposing to replace the southern portion of the Anchorage Way Marina (approved pursuant to CDP 5-82-839) that was damaged in 2005 when a car drove through the railing and damaged the first piling and adjacent docks located on the south side of the pre-existing 46-slip marina. Shortly after the incident, the applicant removed the five 12-inch piles that supported 13 boat

slips without the benefit of a coastal development permit. The applicant is seeking after-the-fact approval of the removal¹ of the pilings and dock slips as a part of this application, which constitutes development as defined in section 30106 of the Coastal Act. The proposed construction of the 10 slips and dock extensions has not yet occurred.

The project site is located at the southeast corner of Lido Peninsula, in the City of Newport Beach, Orange County ([Exhibit 1](#)). The Anchorage Way Marina is a privately owned and managed marina that is a component of the overall Lido Yacht Anchorage Marina located on Lido Peninsula. Lido Peninsula Company, LLC owns and operates all of the private marina space, including anchorage and dry docks storage area on the peninsula. The subject site is a bulkheaded property fronting West Lido Channel located at 717 Lido Park Drive in the City of Newport Beach, Orange County ([Exhibit 1](#)). Single-family residences and associated private dock systems characterize the subject site and the surrounding area.

The proposed project includes replacement of the southern portion of the original marina by extending the east and west sections of the original docks, which includes the construction of 10 boat slips supported by five (5) 12-inch concrete piles with utilities; four (4) 16-inch concrete piles and four (4) 12-inch concrete piles ([Exhibit 2](#)). The proposed replacement will result in a different configuration of boat slips, with a net reduction from 13 to 10. The first extension, located on the east side of the marina, would be a concrete floating dock with six new slips. The second extension, located on the west side of the marina, would be made of timber, with four new slips. The proposed project would result in a reduction in overwater coverage by 821 sq. ft., and a slight increase of 6 sq. ft. of new fill, which is a minimal amount of fill of coastal waters as a result of the proposed installation of piles to support the replacement dock slips.

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 the dock replacement involves installation of an expanded dock to serve public access boating facilities, the project involves an allowable use under Section 30233(a). The applicants have demonstrated that the number of piles and related disturbance of soft-bottom habitat is the least amount necessary to structurally support the dock according to the

¹ Section 30106 of the Coastal Act defines "Development" as follows: "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Harbor Design Criteria Guidelines and Standards developed by the City of Newport Beach Harbor Resources Division 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 City of Newport Beach Harbor Resources Division. The proposed project is generally consistent with those guidelines and standards.

Decking material will consist of composite/HDPE or wood with no chemical preservative treatment. Temporary disturbance of the bottom during the pile installation requires work within coastal waters. Thus, **Special Condition 4** requires 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 of 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.

The applicant submitted baseline Eelgrass and *Caulerpa* surveys conducted by Marine Taxonomic Services, Ltd. on June 28, 2022 which determined no eelgrass or *Caulerpa* were present in the location of the proposed docks and associated piles. 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 November 2022 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 1**.

The applicant has submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on May 21, 2021. The bathymetric surveys did not find evidence of *Caulerpa* onsite—however, *Caulerpa* surveys only remain valid for 90 days. Given the potential for the *Caulerpa* species to take over eelgrass and other marine habitat in the project vicinity, the Commission imposes **Special Condition 2**. This condition requires the applicant to twice survey the project area for the presence of *Caulerpa* (an invasive, nonnative aquatic species), prior to commencement of construction activities, consistent with the requirements for bay bottom-disturbing activities in infected systems specified in the *Caulerpa* Control Protocol developed in consultation with the United States Army Corps of Engineers (USACE), National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and the relevant Water Board offices. If any *Caulerpa* is detected within the project area, Special Condition 2 identifies the procedures necessary to be completed prior to beginning any construction consistent with Sections 30230 and 30231 of the Coastal Act which protect biological resources.

The proposed project is located seaward of the first public road and within coastal waters. The Anchorage Way Marina is located on Lido Peninsula and offers boat slips and dry dock storage spaces that the public can lease for recreational use. These spaces are not restricted, and are available for anyone to lease and this will not change with the proposed project. Thus, the marina will continue to provide an opportunity for the public to access Newport Harbor and engage in recreational opportunities.

With regard to public parking, Table 3-10 of Chapter 20.40.040 of the City of Newport Beach (City) Municipal Code requires marinas to provide 0.75 parking spaces per boat slip and 0.33 parking spaces per dry boat storage space. Parking at the Anchorage Way Marina is provided as part of the entire Lido Yacht Anchorage Marina parking, which comprises 221 dry boat storage spaces and 195 slips. The number of available existing parking stalls is sufficient to accommodate the proposed total number of slips.

The dock reconfiguration would slightly reduce the number of slips in the Anchorage Way Marina from 46 to 43. The average slip length would be slightly lowered from the original 31.41 feet to a proposed average length of 31.28 feet. Of the proposed slips, 58% would remain accessible for boats 25 feet in length or shorter, in comparison with the original 41% for the current design. Furthermore, the proposed design affords more side-tie options for smaller boats in general. While it is difficult to contend that recreational boating is in fact a “low” cost recreational activity, in general, smaller boats are less expensive, and therefore more available to a larger segment of the population than are larger boats. The Commission has not historically regulated the rates at which marinas rent their slips to the public. The Commission has, however, regulated the design of a marina in order to ensure that the redesigned slips conform to the public access and recreation policies of the Coastal Act by providing a balance between the size of slips which facilitates increased public access and the boaters’ demand for slips. Thus the Commission finds the proposed slip mix adequate. This determination is based on this specific facility in this particular location and depends also on the availability of a wide range of other boating facilities in the general area.

As conditioned, there is no significant potential for adverse impacts to public access. However, future development may potentially result in adverse impacts to public access. To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 3**, which requires a coastal development permit for future development.

The subject site is within the Coastal Commission's retained permit jurisdiction. The City is also the local permit issuing authority for development (i.e., a dock float system) located in the waters of Newport Beach and as such, issues Approval-In-Concepts for developments located in these waters. The applicant received an Approval-in-Concept from the City of Newport Beach Public Works on April 4, 2022.

B. 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.

C. Marine Resources

The proposed private recreational boat dock development and its associated structures are an allowable and encouraged marine-related use. The design of the project includes the minimum size and 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 sp.* 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.

As conditioned for eelgrass and *Caulerpa* surveys, impacts to those biological resources will be minimized. In order to protect these resources and additional biological resources from potential future impacts, **Special Condition No. 3** requires the applicant to obtain a permit amendment or a new permit for any repair or maintenance of the proposed dock system.

D. Water Quality

Coastal Act Sections 30230, 30231 and 30232 require protection of marine resources and, where feasible, the restoration of marine resources, as well as the maintenance of the biological productivity of coastal waters. Coastal Act Section 30250 requires that new residential development be located where it will not have significant individual or cumulative adverse effects on coastal resources. The City's certified LCP also includes a number of similar policies that protect marine resources and water quality, such as CLUP Policy 4.3.2-1 that states that pollution prevention and elimination methods will be promoted to minimize the introduction of pollutants into coastal waters; and CLUP Policy 4.3.2-22 that requires waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to coastal waters.

There is potential for the discharge of demolition or construction debris into coastal waters at the project site. This could result in adverse effects on the marine environment. The proposed development includes protective measures to ensure that coastal waters and marine resources will not be adversely affected before, during or after construction. To ensure that all impacts (pre- and post- construction) to water quality are minimized, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 4**, which requires, but is not limited to, the appropriate storage and handling of construction equipment and

materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post-construction BMPs. As conditioned, the proposed project minimizes impacts to biological resources consistent with Sections 30230 and 30231 of the Coastal Act.

The applicant has indicated that the project has a pending Clean Water Act Section 401 Water Quality Standards Certification under review from the Regional Water Quality Control Board (RWQCB). The applicant has also applied for a permit from the United States Army Corps of Engineers (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. 5** requires the applicant to comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the RWQCB, the USACE, and the United States Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment consistent with Section 30231, 30232 and 30233 of the Coastal Act.

E. Public Access

Coastal Act Section 30210 mandates that maximum public access to the coast and recreational opportunities be provided consistent with private property rights. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects, except where adequate access exists nearby. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources. The City's certified LCP also includes a number of similar policies regarding public access and recreation, such as CLUP Policy 3.1.1-1 that states that public access shall be protected and where feasible expanded and enhanced to and along the shoreline and to beaches, coastal waters, tidelands, costal parks and trails; and CLUP Policy 3.1.1-11 that require new development to minimize impacts to public access to and along the shoreline.

There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, public access is available approximately ¼ mile south of the project site at Bayside Drive Beach, a public beach managed by the OC Beaches and Parks Department. This small beach has relatively calm water enjoyed by kayakers, stand-up paddleboarders, and users of other personal watercraft. Public amenities at the beach include a volleyball court, picnic tables, and public restrooms. Therefore, the proposed project does not result in adverse impacts to public access or recreation. In order to preserve and maintain access to the public waters if development patterns change in the future or if there is an effort to expand public access within the canals, **Special Condition No. 6** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

F. Local Coastal Program (LCP)

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

G. California Environmental Quality Act (CEQA)

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined on April 6, 2022, 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, and public access 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.