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STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-21-0681**
Applicant:	**Costa Del Sol Boat Slip Owners Association**
Agents:	Bellingham Marine Industries. Attn: Usmita Pokhrel Jeffer Mangels Butler & Mitchell LLP. Attn: Sheri L. Bonstelle
Project Location:	Alamitos Bay water adjacent to 7269 Costa Del Sol Way, Long Beach, Los Angeles County (APNs: 7242-029-022, 7242-029-056)
Project Description:	Renovation of 73-slip, 21,360 sq. ft. private marina in the waterway behind the Bay Harbour subdivision, including rehabilitation and like-for-like replacement of dock fingers, replacement of dock walkway, and utility work. All existing piles and gangways will remain in place.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant, Costa Del Sol Boat Slip Owners Association, is requesting a permit for the renovation of a 73-slip, 21,360sq. ft. marina in the channel behind the Bay Harbour subdivision, an artificial waterway within Alamitos Bay in the southeast of Long Beach. The proposed project is the replacement and rehabilitation the entire marina, including (21) 4'x 40' dock fingers, (19) 3'x 35' dock fingers, one 6'x 40' dock finger, and one 6' x 1316' main walkway in Phase I, and the installation of a new dockside potable water and electrical system in Phase II. The total anticipated period of construction will be approximately six months. The proposed project does not include reconfiguring the docks or slip size

redistribution, and because the new dock fingers will be about 5” less wide than existing dock finger width, the overwater coverage will be 209 sq. ft. less than the existing layout. The proposed re-decking does not include any underwater construction, bay bottom disturbance, or fill of coastal waters. No dredging is proposed or permitted as part of the subject application.

All of the proposed development is located within a private marina that was originally authorized by the South Coast Regional Commission in 1973 under vested rights exemption E-3-26-73-8. The existing marina was developed in the 1980s, with potentially fewer slips than were authorized under the vested rights exemption. The existing and proposed development are over water encumbered with a public trust easement for marine recreation; in order to be consistent with the public access policies of the Coastal Act, the Public Trust Doctrine, and public trust easement conveyed to the City of Long Beach at this site, the applicant must offset the impacts of the privately owned marina which restricts access to the water in the area. Therefore, staff recommends that the Commission impose **Special Condition 7** requiring participation in the City’s public trust tidelands fee program (an annualized $0.58 per square foot fee paid by the private marina and dock owners to a City fund which supports public coastal access and recreation), **Special Condition 10** to maintain public rights of navigation, commerce, and fishing on the site, and **Special Condition 6** to ensure that the public walkway along the adjacent bulkhead is not impeded or obstructed during and after construction.

As proposed, the development would decrease overwater coverage by 209 sq. ft. and will not change the existing fill or pilings at the site. While the area is known to support eelgrass, based on the applicant’s most recent survey, it is anticipated that there will be no adverse impacts, and the project is conditioned to require a 1.38:1 mitigation-to-removal ratio if eelgrass is affected by the development.

In order to ensure that biological productivity and water quality 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, careful removal of treated wood to avoid leaching, and use of silt curtains. **Special Condition 3** requires the applicant to conduct pre- and post-construction 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 8** requires the applicant to install signage indicating where potable water and pump-out facilities for marina boat users are located. **Special Condition 9** states that any future improvements would require a permit amendment or a new coastal development permit to allow for Commission review of any new development at this site. Furthermore, **Special Condition 11** 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 12** 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.

Thus, staff is recommending **APPROVAL** of the proposed coastal development permit with the aforementioned special conditions to ensure preservation and enhancement of public access and recreation, and protection of marine resources and water quality in conformity with Chapter 3 policies of the Coastal Act. The motion and resolution are on page 5.

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Exhibit 1 – Vicinity Map
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Exhibit 4 – Eelgrass Survey
Exhibit 5 – Overview of Permitting History (Instrument No. 83-411523)
Exhibit 6 – Letter from City of Long Beach re: Public Tidelands Trust Fee Program for Private Marinas Occupying Public Trust Easement

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-21-0681 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. 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.** BY ACCEPTANCE OF THIS PERMIT, the permittee, on behalf of itself and all successors and assigns, that the approved development shall be carried out in compliance with the following:

   A. **Construction Responsibilities and Debris Removal.** The applicant shall comply with the following construction-related requirements:

      i. 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;

      ii. 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;

      iii. 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;

      iv. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;

      v. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

      vi. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;

      vii. 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;

      viii. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;

      ix. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;

      x. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

      xi. 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;

xii. 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;

xiii. 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;

xiv. The discharge of any hazardous materials into any receiving waters is prohibited;

xv. 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;

xvi. 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

xvii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. **Best Management Practices for Use of Treated Wood in Overwater and In-Water Structures.** BY ACCEPTANCE OF THIS PERMIT, the applicant shall follow the construction-phase and post-construction BMPs to be used for all overwater and in-water structures that are constructed using preservative-treated wood. The applicant shall comply with the following requirements:

i. Employ all appropriate construction-phase BMPs to minimize the discharge of treated wood sawdust and debris to coastal waters. Construction-phase BMPs shall specifically address the use of treated wood in aquatic environments, including materials selection, materials storage, cutting or drilling treated wood, preservative field-treatment, and coating application. BMPs shall include, but are not limited to:

(1) Keep treated wood sawdust and debris out of the water. Because of their large surface to volume area, small treated wood particles (such as sawdust) entering the water contribute a disproportionately large amount to the leaching of preservatives from the structure.

(2) Apply field-treatment of Copper Naphthenate preservative sparingly to cut ends and drilled holes in treated wood, because it does not bond as strongly to wood compared to pressure-treatments. Also avoid drips or spills of Copper Naphthenate into the water.

(3) Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets. The treated wood and treated wood debris shall be stored on impervious pavement or an impervious tarp, and covered during rain events.

(4) If treated wood is sanded or sawcut during demolition, installation, or maintenance, all sawdust and debris generated shall be contained and removed.

ii. Employ all appropriate post-construction BMPs addressing long-term use, repair, monitoring, and maintenance of the structure. Post-construction BMPs shall specifically address the use of treated wood in aquatic environments. BMPs shall include, but are not limited to:

(1) Install design features (such as bumpers or a protective wearing surface) to protect treated wood components, where appropriate, to minimize the release of treated wood particles through abrasion by vessels or vehicle traffic.

(2) Avoid sanding, scraping, or pressure-washing treated wood decking, to the extent feasible, as this may increase the leaching of wood preservatives and the discharge of treated wood particles into the water.

(3) Deck cleaners and brighteners, especially those containing acid-based or highly oxidizing chemicals (such as bleach, sodium hydroxide, sodium percarbonate, oxalic acid, and citric acid) should not be used on treated wood, as they may increase the leaching of wood preservatives, and contain ingredients that may directly harm aquatic life.

(4) Consider applying a coating (such as a semitransparent penetrating stain or a durable epoxy sealer) to treated wood decking used in overwater structures, to reduce leaching and surface dislodgment of the preservative chemicals. Maintenance and reapplication of the coating shall follow BMPs to minimize the release of treated wood particles and leaching of preservatives into coastal waters.

2. Marina Water Quality Management and Boat Owner Maintenance Plan. PRIOR TO THE ISSUANCE OF THIS PERMIT, the permittee agrees that the docking of boats at the 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.

iii. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

B. Solid and Liquid Waste Management Measures:

i. Trash receptacles and containers for recyclables shall be provided near all gangway entrances and convenient for boaters (i.e., close to the dock), but should be sited as not to risk overflow, dispersion of debris into sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion.

ii. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e., close to the dock).

iii. All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities. Pump-out stations will be provided at every dock for boater convenience.

iv. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers' signage shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.

v. 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. The marina shall make available to boaters a service that reduces oily discharges from inboard engines, constituting of either a bilge pump-out facility (with an oil-water separation device) or distribution of oil-absorbing materials in the bilge areas or engine compartments of all boats with inboard engines;

ii. If distributing oil absorbents to boaters, the marina shall provide adequate safety warnings as to the safe use and handling of flammable materials and methods to prevent fouling the bilge pump;

iii. 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;

iv. 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

v. 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 permittee 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 along the Public Walkway.** The proposed project shall not interfere with public access and use of the public walkway at any time that runs along the bulkhead between the permittee's property, John Nichol Park, and Spinnaker Bay. The

only permitted improvements to the public walkway are the gangway platform to the seawall associated with the proposed dock system, seating available to the public, and drought tolerant non-invasive landscaping.

7. **Dock Float and Pier Lease Program.** BY ACCEPTANCE OF THE PERMIT, the permittee agrees, on behalf of itself and all successors and assigns, that development shall be subject to the terms of the City's dock float and pier lease program (public trust tidelands fee program) as described in the letter dated October 25, 2021 (**Exhibit 6**), which shall amount to at least $12,388.80 each year for the life of the development, adjusted for increases in the Consumer Price Index (CPI). Should the City of Long Beach terminate its dock float and pier lease program or charge lower public seawall lease permit fees than currently proposed, then, within 30 days, the applicant shall apply for an amendment to CDP 5-21-0681 from the Commission. To ensure that the limited-term private use and occupation of public water is mitigated by this development associated with recreational boating activities (i.e., private docks and piers), the applicant shall submit to the Executive Director, for the first five years after issuance of this permit, proof of fee payment to the City for the preceding year by January 30 of each year.

8. **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, a signage plan that shows:

   A. The designs, dimensions, and location of signs indicating the continued public use of the public walkway along the adjacent bulkhead during and after construction, as further described in **Special Condition 6**.

   B. The designs, dimensions, and location of a minimum of two signs indicating where the potable water hose bib, trash receptacles, and marine vessel pump out stations are located.

9. **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 5-21-0681. 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 5-21-0681. 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 5-21-0681 from the Commission or shall require an additional CDP from the Commission.

10. **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 Agreement No. 8 (recorded June 2, 1980 as instrument No. 80-537485 in the Official Records of the Los Angeles County Recorder).

11. **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.

12. **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). Private developers delivered master-planned projects supportive of residential, commercial, and recreational uses.

On March 19, 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.[1] Phase 1B was not completed until at least 1984. The subject development is wholly located within the private marina of the Phase 1B channel (**Exhibit 1**).

Around the time that Marina Pacifica was being developed, two other relevant coastal development permit applications were also pending with the South Coast Regional Commission. The first was an application by the City of Long Beach, later appealed under A-37-74, to make use of the additionally acquired public trust lands through the appurtenant dredging of the Los Cerritos Channel, construction of bulkheads, and addition of 211 boat slips and public facilities among four parcels within a newly formed Basin 6 of the Long Beach Marina. The construction of marinas in parcels 1B and 1D, which would later become Jack Dunster Marine Biological Reserve/Fieldstone Park (CDP No. 5-96-197) and Jack Nichol Park (CDP No. 5-94-153/5-97-342), respectively, were initially denied due to issues of water quality, insufficient dredging, parcel ownership, and limited public access. In its final determination, the South Coast Regional Commission called for the

[1] CDP 5-19-1195.

submittal of a separate permit application for the additional dredging of the northern channel in Phase 1B of the Marina Pacifica project, as well as for an in-perpetuity agreement between the City and the private developers. Therefore, later in 1974, the San Gabriel River Improvement Company (titleholder) and Loynes-Pacific Corporation (leaseholder) co-submitted permit application P-2761 for the development of "The Coves" subdivision, which would include 450 associated boat slips and additional dredging of the northern Marina Pacifica Phase 1B channel. "The Coves" was the earliest iteration of the modern-day Costa Del Sol (Bay Harbour) residential subdivision.

After initial public input concerning intensity of use of Alamitos Bay, as well as ongoing water quality and public access studies by the City of Long Beach and its coastline consultants, Sasaki-Walker Associates, the applicant revised their project to reduce the number of private boat slips adjacent to the private residential development from 450 to 205. It would be known as "Las Calas." That proposed development was conditionally approved by the South Coast Regional Commission, but the project was appealed (A-274-74) to the State Commission and was ultimately denied in 1975. The "Las Calas" project was resubmitted (P-7169) in 1976 for a subdivided single-family residential development with slightly less wharfage at 203 boat slips, which once again appealed and revised (A-231-76). The final project plans renamed "Las Calas" to "Costa Del Sol" and was approved *without* any boat slips in 1977. At the time, the Commission was concerned that the addition of private boat slips in Alamitos Bay would cause overcrowding and overuse of the area.

Nonetheless, a marine aspect did remain, which was the prospective construction of a bulkhead along the Marina Pacifica Phase 1B channel upon its completion, just to the south of the Costa Del Sol residential subdivision, in supposed conformance with original vested rights exemption E-3-26-73-8. Commission staff has not found record of the exemption (which, at the time, the Regional Commission was not obligated to keep), and as such, it is now difficult to ascertain the scope of development that the exemption authorized. Still, the construction of the bulkhead was in accordance with prevailing City documents, such as the Environmental Impact Report (EIR) E-55-73 for the Basin 6 project, Environmental Impact Statement (EIS) E-4-72 for Marina Pacifica, conditions of approval for the City's 1974 "The Coves" permit, and the Supplementary Environmental Assessment to EIR E-17-74. These documents also noted that when Phase 1B of the Marina Pacifica project would be completed, future ancillary recreational and community facilities could be permitted within the channel area in the vicinity of the community, pending City approval, and be the "sole benefit" of Costa Del Sol's residents and their guests.

It is unclear, however, whether underlying legal agreements would have allowed for a private marina at this site. In response to the exemption granted by the South Coast Regional Commission on March 19, 1973, Marina Pacifica, as estate leaseholder of the property owned in fee title by the San Gabriel River Improvement Company, entered into an agreement on May 17, 1973, with other private parties of interest (including Loynes-Pacific Corporation), known as the Channel Agreement. While the original agreement was

superseded by the "Grant of Easement for Channel and Water Access,"[2] an amendment to the Channel Agreement was enacted on December 10, 1975, as a way to update plans for the channel and avoid permit requirements of the California Coastal Zone Conservation Act of 1972. Because Marina Pacifica retained vested rights in Phase 1B by virtue of construction of Phase 1A (although this is dubious[3]), Loynes-Pacific Corporation relied on Marina Pacifica to carry out the work under vested rights exemption E-3-26-73-8 in exchange for remuneration and later reconveyance of the leasehold estate. Per the First Amendment to the Channel Agreement, the exemption may have authorized 130 boat slips on the "Coves" side of the Phase 1B channel even though there are only 73 slips at the location today. The document further states that the minimum allocation of homes within the "Coves Leasehold property" (i.e., modern-day Bay Harbour) would be 300 units per the vested rights exemption, but if any residential density reductions are permitted by the City of Long Beach, then a reduction may apply as 6/25th of the amount thereof against the Coves Leasehold property and 19/25th of the amount thereof against the rest of the Marina Pacifica Phase 1B development (i.e., modern-day Spinnaker Cove, Spinnaker Bay, and Le Rochelle). Under such circumstances, the reduction in boat slips would have also been proportional. While it may have been the intention of the participating parties to the Agreement to avoid prejudice against the vested rights exemption, it may still be the case, although it cannot be confirmed, that the final development was not carried out in full accordance with vested rights exemption granted by the South Coast Regional Commission.

In 1980, to resolve title disputes along the channel and elsewhere in Alamitos Bay, Marina Pacifica once again entered into an agreement, known as the Alamitos Bay Boundary Settlement and Exchange Agreement No. 8 (BLA 173), with the City of Long Beach, State Lands Commission, and all private parties of interest (**Appendix A**). Despite the fact that Agreement No. 8 recognized the Channel Agreement and all subsequent amendments, Section 14.2 of Agreement No. 8 maintains that, "[the public trust easement shall] reattach to any portion of the Parcels… which in the future are dredged, submerged and connected to or 'joined' with navigable waters." The Agreement goes on to refer to Section 2(b) of Chapter 1688 of the Statutes of 1965, which would terminate the public trust easement in dry portions of Parcels 1 and 2A (corresponding to the current project site), and, pursuant to the Agreement, the easement would reattach if the dry lands ever become submerged. Thus, the Agreement superseded the Channel Agreement, as well as the Second Amendment to the McGrath-Macco Boundary Settlement and Exchange Agreement (BLA 101), which may have partially covered the area, and it entrusted the City of Long Beach as the trustee and custodian of the public trust easement in perpetuity.

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[2] Recorded on June 5, 1973 in Instrument No. 2130 in Book D 5696 page 536 in the Office of the County Recorder of Los Angeles County.

[3] In condition of approval #13 of the City of Long Beach's Special Permit S-177-72 for the construction of Marina Pacifica Phase 1B, it states that the "*permit and all rights hereunder shall terminate in the event that the construction of the buildings and any other improvements is not commenced within 18 months after the issuance of this permit and such construction is not diligently pursued until completed*…" The permit was issued on October 5, 1972, but it was only on May 11, 1976 that the City Manager and Attorney wrote within the margins of the permit that "*S-177-72 survives by virtue of overall [Marina Pacifica] building permits (Phase I, etc.). Approved and project advancing*." It may indeed be that the permit may have expired in April 1974 and voided but was revived by the City regardless.

Consequently, the vast majority of tideland areas of Long Beach are now subject to the common law public use and easement for commerce, navigation and fishery, even in areas where the submerged lands below the water surface may be privately owned in fee title.

In 1981, Marina Pacifica applied for Building Permit No. C-3446 with the City of Long Beach Department of Planning and Building. On June 25, 1982, Marina Pacifica received a certificate of occupancy for 338 boat slips and related facilities throughout the entire Phase 1B channel (**Exhibit 5**). Consequently, dredging of the channel and construction of the marina and bulkhead commenced. Around that same timeframe, on April 14, 1981, Marina Pacifica entered a termination of its leasehold and partial reconveyance of the channel area and bulkhead near the "Coves" to Costa Del Sol. The document stated that "*the foregoing is subject to the covenants, conditions, and other provisions of Boundary Settlement No. 8 which are incorporated herein by reference as through fully set forth herein, and other matters of record*." Thus, it included the public trust easement held by the City of Long Beach over these waters.

In 1986, Costa Del Sol, as successor-in-interest, incorporated the Costa Del Sol Boat Slip Owners Association and recorded covenants, conditions, and restrictions (CC&Rs) for the management and administration of the marina. The CC&Rs assigned each boat slip a 1/73rd partial ownership of the entire marina complex, and the slips would only be available to select homeowners from the Costa Del Sol (now Bay Harbour) residential subdivision. Upon grant deeding each of the 73 slips to individual private homeowners, the Boat Slip Owners Association successfully closed the chain of title for all portions of the site, but retained responsibility of administering the marina facilities and preserving the public trust easement.

Based on these facts, the City has found that as currently operated, the proposed development is not consistent with the public trust easement it holds (**Exhibit 6**). Under existing conditions, water access at the project site is available to the public but is limited to the access point at Jack Nichol Park only, and the private development around the channel essentially privatizes the waterway for use by the subdivision homeowners only (**Exhibit 1**). **Special Condition 7** will require the applicant to pay a public access mitigation fee into the City's public trust tidelands fund, to offset the privatization of the waterway, which will be used for public access improvements within the tidelands area of Long Beach. In addressing the existence of the common law public trust easement for navigation, commerce, and fisheries onsite, **Special Condition 10** also 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 above-referenced Agreement No. 8.

Project Description

The applicant, Costa Del Sol Boat Slip Owners Association, is requesting a permit for the renovation of a 73-slip, 21,360 sq. ft. marina in the channel behind the Bay Harbour subdivision, an artificial waterway within Alamitos Bay in the southeast of Long Beach (**Exhibit 2**). The proposed project is the replacement and rehabilitation the entire marina, including (21) 4'x 40' dock fingers, (19) 3'x 35' dock fingers, one 6'x 40' dock finger, and

one 6’ x 1316’ main walkway in Phase I, and the installation of a new dockside potable water and electrical system in Phase II (**Exhibit 3**). The proposed project does not include reconfiguring the docks or slip size redistribution, and because the width of the new dock figures will be 3’7” rather than the existing dock finger width of 4’, the overwater coverage will decrease slightly with 209 sq. ft. less coverage than the existing layout. Although the Commission has previously identified slip size and slip number as an issue within public marinas due to the potential impacts to public boater access, slips within this anchorage are privately owned and not available to the general public. Furthermore, the development includes no intensification of use along the waterside or landside, and there will be no increase in demand on the roadway system or surrounding waterways. The five existing 40-foot aluminum gangways are in good shape and are proposed to remain as they are. The proposed re-decking does not include any underwater construction, bottom disturbance, or fill of coastal waters. No dredging is proposed or permitted as part of the subject application.

According to the applicant, the headwalks and fingers are in various stages of disrepair and will be entirely replaced. The applicant states that corrosion-related concrete spalling is apparent on the existing concrete deck, and concrete scaling is occurring on the existing concrete floats. The construction of the new floating dock fingers is proposed to be done off-site. The dock finger modules will be floated into position and attached to the existing docks. Where applicable, existing modules will be rehabilitated with new treated-wood whalers, and in the case of new pontoon floats, installation will be done onsite. The dock system will also be equipped with electrical service, as well as a new potable water system and hose bib for each slip. The applicant has also stated that during the assembly of the fingers to the docks, boating use of the slips will not be disrupted. In the event a boat needs to be removed from the slip during construction, the boat will be moved to a vacant slip and then returned once work is completed. Thus, boater access to this private boating facility will be continuously available.

The docks will be connected to the existing mooring piles using freely sliding collars with restrained lateral movement but will allow for vertical displacement to accommodate water level changes. No pile analysis has been performed on the 57, 16”-diameter existing piles. Section 30253 of the Coastal Act requires that new development minimize 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 50-year anticipated life of the development given its flexibility in infrastructure as the existing piers and mobile collars will allow the docks to potentially rise to the top of the seawall, which is approximately +13 feet MLLW.

B. Standard of Review

The City of Long Beach Local Coastal Program (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 shown on the post-LCP certification map as within the Commission’s retained permit jurisdiction. The standard of review is Chapter 3 of the Coastal Act. The City’s certified LCP is advisory in nature and may provide guidance.

C. 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 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:

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

Section 30214 of the Coastal Act, states in relevant part:

> (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
>
> > (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

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 30222 of the Coastal Act states:

> The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry

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.

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 public's 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.

Title to lands under tide waters may be vested in the Sovereign as a public trust, to subserve and protect the public right to use them as common highways for commerce, trade and intercourse. Each state holds these lands in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein freed from the obstruction or interference of private parties. The State holds its Sovereign Lands in Public Trust for the benefit of the people. Each State defines its own public trust boundary and uses. The Public Trust in California has evolved and expanded over time to encompass changing public needs. California case law has established that in addition to the traditional "triad" of uses (navigation, commerce, fishing), it also includes the right to swim, boat, hunt, bathe, access, and engage in other forms of water recreation, as well as to use the bottom for anchoring or standing. This list of uses is not comprehensive as the Public Trust Doctrine is sufficiently flexible to encompass changing public needs.

Within the City of Long Beach, specifically, many tidally influenced submerged lands are subject to a Public Trust *easement*, granted by the State, which the City has the custodianship to hold and manage. Here, through Agreement No. 8, while the land under the water is privately owned, once dredged and flooded, the public trust easement attached or reattached, requiring such waters to be made available for public use for navigation, commerce, and fishing. In this particular case, the City of Long Beach is required to manage the public trust easement through statute and implementation of the Public Trust Doctrine.

Many 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, some docks and associated marina facilities are only open and available for use by private owners, such as the subject marina which is owned by a private HOA for use by the residents only. Private docks are an allowable use and may be considered consistent with the Public Trust Doctrine; however, review of renovation of older marinas such as this through the coastal development permit process allows for analysis of the current public use and consideration of the design and function of the marina to assure consistency with the requirements of the public access and recreation policies of the Chapter 3 of the Coastal Act. It is often possible for areas to be opened for general public access along the shoreline or within dock areas that have historically been closed and/or create new public boating or recreational opportunities in connection with the project, without precluding the private marina use. Renovation of existing marinas and extension of leases often present the opportunity to assess the way the boating facilities function for both public and private use and strike a balance that will maximize access and recreational opportunities for all users.

In this case, the Costa Del Sol Boat Slip Owners Association owns the marina, and each slip owner has a 1/73rd stake in the ownership of the development over a portion of the water (submerged land). The gangways and piers leading to the docks are gated for owners 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 subject to the public trust easement.

The public trust easement encumbers the private use and title fee ownership of the submerged lands beneath the subject marina. The project, as proposed, seeks to redevelop a private marina within the public trust easement and would be in conflict with the public access and recreation policies of the Coastal Act because it would extend private use of the water and restrict public access for the life of the redeveloped marina (generally marinas are redeveloped every 30-50 years). The private docks in effect privatize the use of this public trust easement as the general public is unable to access the water area beneath the private docks for recreational purposes. In addition, the marina limits public use of the water area of the channel that should be available to the public for navigation pursuant to the public trust easement. The subject project will impact the public's ability to access this area and result in a private development only enjoyed by the applicant, inconsistent with uses allowed within the public trust. Thus, the project, as proposed, would continue to prevent use of the area for public water-oriented recreational

activities that must be preserved in coastal areas (Section 30220) and fails to protect oceanfront land for public recreational use and development (required by Section 30221).

After discussion with City staff, Commission staff received a letter dated October 25, 2021 from the City (**Exhibit 6**) stating that the proposed project, as is, will not be consistent with the City's public trust easement over the water as established in Alamitos Bay Boundary Settlement and Exchange Agreement No. 8 (**Appendix A**). Therefore, the City proposes to assess a fee for private use of structures over public waters, in the form of a "Public Seawall Lease Permit Fee" of $0.58/sq. ft. on an annual basis, subject to increases per the Consumer Price Index (CPI). For the subject 21,360 sq. ft. marina, that totals an annualized $12,388.80 fee to be paid towards the City's public trust tidelands fee program, which will be used to fund public access and recreation improvements within the tidelands area of Long Beach. The water area surrounding the docks will continue to be open and available for public use. It is estimated that approximately one-third of the total public trust easement area over the submerged lands of Marina Pacifica Phase 1B will be committed to private docks at the Costa Del Sol marina.[4] **Special Condition 7** therefore requires the applicant to participate in the City's public trust tidelands fee program to support public coastal access and recreation in the vicinity of the project site, especially in this case where it may not be feasible to provide public access directly onsite. Ideally, the City would use these funds to make necessary improvements to Marine Stadium, Jack Nichol Park, and other publicly dedicated areas in this region of Long Beach, which in turn would help mitigate for the loss of public access at the subject site.

In addition, the Commission finds that the public trust easement over the subject site prevails, and the proposed project shall not be used as a waiver of any public rights that exist on the property, including but not limited to rights pursuant to the public trust easement as set forth in the Alamitos Bay Boundary Settlement and Exchange Agreement No. 8. Therefore, the Commission imposes **Special Condition 10** to maximize public access recreation that would conform with both the Coastal Act and the City's attached public trust easement. Lastly, the Commission requires the applicant to maintain the public walkway along the adjacent bulkhead open at all times during and after construction per **Special Condition 6**, and **Special Condition 8** requires signage directing members of the public along the bulkhead walkway if or when construction methods may impede public access (e.g., use of land-based crane for removal of docks). The Commission finds that maintenance of public access along the bulkhead walkway will promote public use at the project site, and while the proposed project will result in the placement of private development upon the public trust easement, the applicant's payment into the public trust tidelands fee program per **Special Condition 7** will also promote public access and boating recreational use of public benefit, albeit at a different location than this site.

As conditioned, the proposed development will not have new adverse impacts on the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. With the mitigation fee directed towards the City's public trust tidelands fund, the Commission finds that, in the aggregate, the project will help maintain or increase recreational boating use of coastal waters in the general vicinity. Therefore, as proposed

[4] The extent of the vast majority of the Costa Del Sol docks is approximately 40 feet seaward of the bulkhead. The width of the Marina Pacifica 1B channel is approximately 120 feet.

the development conforms with Sections 30210 through 30214, 30220 through 30224, and 30234 of the Coastal Act, as well as the Public Trust Doctrine principles regarding public access to waterways that these provisions help implement.

D. 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.

Sections 30230 and 30231 of the Coastal Act require that marine resources and biological productivity be maintained or restored. The installation of a new dock system 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 Marine Taxonomic Services, Ltd. on April 21, 2020, which determined that eelgrass was present in the location of the proposed new docks (**Exhibit 4**). The project will result in 209 sq. ft. of decreased water coverage, and therefore, the applicant states that there will be no impacts to eelgrass at the site. 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, which is not applicable here. It has been more than 60 days since the survey was conducted, 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**. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected as conditioned), the impacts will be identified, and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

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.[5] 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, the Commission requires a 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.

The project design does not include any work related to the existing pilings and ensures necessary structural stability. No new piles are proposed to be installed into the sea floor, and the project proposal relies on existing piles for mooring of the docks. Therefore, there will be a minimal (near-zero) amount of new fill of coastal waters as a result. Thus, no mitigation in the form of habitat enhancement is required, and there are no feasible less environmentally damaging alternatives available. Furthermore, the proposed project reduces overwater coverage, and reduction may be beneficial for eelgrass. As conditioned, the project is not expected to have an adverse impact on eelgrass beds and is not expected to contribute to the dispersal of the invasive aquatic algae, *Caulerpa*. As proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Section 30224 of the Coastal Act.

Temporary disturbance of the bottom during the dock and walkway installation may still occur given the location of the 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 dock floats offsite and minimization pollution with immediate removal of any debris that enters the water. As such, to prevent copper and arsenate leaching into coastal waters during the removal and installation process, **Special Condition 1** further requires the applicant to follow treated-wood BMPs during and after construction. Given that new amenities are being proposed, such as a potable water hose bib, and existing sewage and graywater pump out stations may be maintained within or nearby the subject development, additional signage required by **Special Condition 8** will ensure effective

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

notification of boatowners of all imposed rules and regulations for the preservation and enhancement of water quality. Finally, **Special Condition 5** requires the applicant to comply with requirements imposed by other agencies including The Army Corps, Regional Water Quality Control Board, and California Fish & Wildlife.

As discussed above, the proposed dock modules supported by mobile collars connected to the existing piles are the least environmentally damaging alternative to anchor the new dock floats and walkways in place without further disturbance to the sea floor and soft-bottom habitat. Furthermore, **Special Condition 9** 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 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. Both in the past and in the present, Alamitos Bay has suffered from poor water quality, in terms of high contaminant loads, low oxygenation and poor circulation, and high bacterial concentrations. The Los Angeles Regional Water Quality Control Board has recently found in its staff report dated December 2021, for example, that there are high levels of *E. coli* and *Enterococcus* within Alamitos Bay, and more specifically, the Los Cerritos Channel, which abuts the subject project site.[6] In fact, the City of Long Beach entered into an agreement with Marina Pacifica back on January 8, 1976 regarding maintenance of water quality to avoid issues of bacterial overloads through the use of a mass water transfer system to increase dissolved oxygen (D.O.). The applicant for the subject project does not have control over the mass water transfer system, which is on the southern flank of the western embayment of the channel and within the Spinnaker Bay/Cove property, but the applicant and the City are aware that adequate water circulation throughout this area is paramount to protecting the biological productivity of marine organisms and human health at the Costa Del Sol marina and beyond. The City of Long Beach continues to monitor the water quality in Alamitos Bay and is working in conjunction with the Regional Water Quality Control Board to investigate potential total maximum daily load (TMDL) and other potential requirements in the future.[7]

To reduce the potential for construction related impacts on water quality, which may exacerbate current conditions, the applicant has proposed a Water Quality Management Plan, and the Commission further imposes **Special Conditions 1 and 2** requiring, among other precautions, 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, including those for treated

[6] https://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/141_new/RevisedStaffReport.pdf

[7] https://longbeach.gov/globalassets/lbds/media-library/documents/planning/environmental/environmental-reports/approvedcertified-part-1/alamitos-bay-marina/4-7-hydrology-water-quality; https://www.longbeach.gov/globalassets/city-manager/media-library/documents/memos-to-the-mayor-tabbed-file-list-folders/2020/october-26--2020---alamitos-bay-water-quality-enhancement-project-update

wood. The applicant is also required by **Special Condition 5** to fulfill all obligations imposed by public agencies, including the Regional Water Quality Control Board, which may have future oversight of water quality improvement work at this site.

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 Commission finds that the proposed development, as conditioned, conforms with Sections 30230, 30231, and 30232 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.

E. 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.

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 hazardous areas. 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 50-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. New development that may, in the future, require a protective device is prohibited due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. The applicant acknowledges that the development approved by this permit is not entitled to shoreline protection and waives rights to future shoreline protection. Given the dynamic nature of coastal waters, as well as the long-term uncertainty of sea level rise models, it is important that the risks of developing on or within coastal waters are borne by the applicant who will benefit from the private development and not the public. Thus, the development has been conditioned to require that the landowner and any successor-in-interest acknowledge and assume the risk of undertaking the development (**Special Condition 11**)**. Special Condition 12** 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.

F. Coastal Act Violations

Violations of the Coastal Act that are associated with the proposed development may have occurred on the subject site, including, as discussed earlier, the development of a bulkhead, the construction of boat slips and appurtenant structures (e.g., gangways, walkways, utilities), and the encroachment of a private marina upon the public trust easement held in trust by the City of Long Beach, without the benefit of a coastal development permit (**Exhibit 5**). Because the Commission has not retained documentation of underlying exemption E-3-26-73-8, it is not possible at this time to ascertain whether the development of Costa Del Sol marina and the Marina Pacifica Phase 1B channel occurred pursuant to its claim of vested rights without prejudice or exceeding its bounds. Therefore, it is unknown whether the proposed project requires after-the-fact authorization or if previous work constitutes a definitive violation of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the potential violations described above, consisting of development of a bulkhead, the construction of boat slips and appurtenant structures (e.g., gangways, walkways, utilities), and the encroachment of a private marina upon the public trust easement.

Notwithstanding, there is an active enforcement case for ongoing alleged violations of the Coastal Act for portions of the site landward of the bulkhead and within the neighboring residential subdivision of Bay Harbour (i.e., Costa Del Sol). These include unpermitted guard shacks and gates obstructing a Commission-required public access easement, installation of unpermitted "No Parking" and "Bay Harbour" signs within and along the public right-of-way, and construction of private amenities (such as tennis courts and pools) within the public access easement. On May 1, 2020, Commission staff sent the Bay Harbour Homeowners Association a Notice of Violation ("NOV") letter that identified the unpermitted development within the public access easement and public right-of-way and requested that the association agree to the removal of the guard shacks and barrier gates and signage, as well as other actions to improve access at the site in order to fully remedy these violations. The case has been elevated to the Statewide Enforcement Unit of the Coastal Commission for further action. Enforcement staff has discussed a resolution of the violations with the association, and staff is considering its options to bring the matter to the Commission at an upcoming meeting.

Although unpermitted development has taken place at this site prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the LCP. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an admission as to the legality of any development

undertaken on the subject site without a coastal permit or in violation of a coastal development permit.

G. Local Coastal Program

A coastal development permit is required from the Commission for the proposed development because it is located over water within the Commission's jurisdiction. The post-LCP certification map shows this area as within the Commission's retained 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, 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 2 on December 15, 2020. Typically, projects are exempt from CEQA pursuant to section 15302 of the CEQA Guidelines when they consist of replacement and reconstruction of existing facilities.

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 CDP findings in this staff report, incorporated herein by reference, have analyzed the relevant coastal resources issues raised by the subject proposal. 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

- Alamitos Bay Boundary Settlement and Exchange Agreement No. 8
- City of Long Beach Local Coastal Program (LCP), certified by the Commission on July 22, 1980
- City Permit S-177-72 and associated file documents