

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-18-0094-A1

Applicant: Todd Pickup

Agent: CAA Planning; Attention: Shawna Schaffner

Location: 23 Harbor Island, Newport Beach, Orange County
(APN: 050-230-07)

Description of Original Project Approved Pursuant to Permit No. 5-18-0094:
Reinforcement of an existing seawall involving new earth anchors, deadmen and a seawall cap; and removal of a 10-foot by 12-foot pier platform and 1,152 square foot boat dock system with a 3-foot by 18-foot gangway, and replacement with a 1,105 square foot boat dock system and a 3-foot by 24-foot gangway, all associated within a bayfronting existing single-family residence lot.

Description of Pending Permit Amendment No. 5-18-0094-A1: Implementation of an eelgrass mitigation plan consistent with a previously imposed special condition. There are no proposed changes to the project components originally approved under CDP 5-18-0094.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed permit amendment is the implementation of an eelgrass mitigation plan consistent with a previously imposed special condition, due to recent eelgrass surveys which indicate that the proposed project would have a shading impact to eelgrass.

The underlying coastal development permit and amendment include 12 special conditions to protect coastal resources and maximize public access. Commission staff is recommending approval of the coastal development permit amendment application if two existing special conditions are amended and one new special condition is added. All special conditions the Commission imposed through its approval of the underlying permit would continue to apply.

Staff recommends the Commission amend **Special Condition No. 8** to include current language identifying that any eelgrass impacts be mitigated at a ratio of 1.38:1, based on a current survey. In addition, since the existing eelgrass surveys are no longer valid, a new survey is required for project approval, pursuant to **Special Condition No. 8**.

Due to the uncertain amount of eelgrass area impacted by shading and the unclear eelgrass mitigation area, and to clarify that the overall eelgrass mitigation ratio will not be less than 1.38:1, staff recommends the Commission impose **Special Condition No. 13**, which requires the applicant to submit a Final Revised Eelgrass Mitigation Plan based on eelgrass conditions identified at the time of construction, consistent with the California Eelgrass Mitigation Policy (CEMP).

Staff recommends the Commission impose **Special Condition No. 9**, as amended to update the protocols for Caulerpa surveys, that requires that an additional Caulerpa survey must be conducted prior to commencement of the project.

Development on filled tidelands is within the Commission's jurisdiction and consequently, the standard of review is the Chapter 3 of the Coastal Act. Newport Beach's certified LCP serves as guidance.

The motion to approve the CDP application is on Page Four. The special conditions begin on Page Four.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Eelgrass Survey dated March 2, 2021, and March 1, 2022

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment 5-18-0094-A1 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 amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit Amendment No. 5-18-0094-A1 on the grounds that the development, as amended and subject to conditions, will be in conformity with the Chapter Three policies of the Coastal Act. Approval of the permit amendment 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. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that will apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A1 once this amendment is issued by the Executive Director. All of the Commission's previously adopted special conditions continue to apply in the most recently approved form unless explicitly changed in this action, and the approved project includes any changes in the project description proposed by the applicant and approved by the Commission in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-18-0094-A1, and reflected in Appendix B, remain in effect. This permit amendment is granted subject to the following new special conditions shown in **bold, double underlined**.

This permit is granted subject to the following special conditions:

Existing Special Conditions

8. 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. ~~If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area.~~ The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” dated October 2014 ~~Revision 8~~ (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 ~~Game~~ **Wildlife**. The applicant shall submit the eelgrass survey for the 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 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.

~~**Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required by this special condition, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (SCEMP) (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 Game. The applicant shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.~~

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.

9. Pre-construction Caulerpa Sp. Survey

~~Pre-Construction *Caulerpa Taxifolia* Survey.~~ Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the "*project*"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- ~~(1) for the review and approval by the Executive Director; and~~
- ~~(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of~~

Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

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

- 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.

New Special Condition

13. Final Revised Eelgrass Mitigation Plan. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Preliminary Eelgrass Mitigation Plan – 23 Harbor Island, Newport Beach, CA (prepared by Ecomarine Consulting LLC dated June 26, 2022), except as required to be modified as described below. The plan shall be prepared in consultation with the CDFW (California Department of Fish and Wildlife) and NMFS (National Marine Fisheries Service). The plan shall be prepared consistent with the requirements identified below and the requirements of the California Eelgrass Mitigation Policy (CEMP), including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

A. The plan shall provide that:

1. All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.38:1 (mitigation to impact) ratio. A greater ratio may be applied based on the performance of the

mitigation site based on the success criteria and guidance from the other resource agencies;

2. Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;
3. The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;
4. Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).
5. A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;
6. A comprehensive report describing the results of the plan shall be submitted at the end of the proposed five-year period;
7. A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;
8. A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;
9. An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and
10. Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

III. FINDINGS AND DECLARATIONS

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

Project Location and Description

The project site is an approximately 7,050 square foot bayfront lot with seawall and a single-family residence located at 23 Harbor Island, a private gated island community within Newport Harbor, in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The onsite seawall was approved by the Coastal Commission on December 8, 1975, on a 30-foot x 50-foot leased area of State Tidelands by Coastal Development Permit A-11-21-75-6647 (Nabers). The City of Newport Beach LCP Coastal Zoning Map designates the site as R-1 (Single Unit Residential) and the proposed project adheres to this designation. Harbor Island is a small private gated island in Lower Newport Harbor with approximately 30 single family residences.

The proposed permit amendment is the implementation of an eelgrass mitigation plan consistent with a previously imposed special condition, due to recent eelgrass surveys which indicate that the proposed project would have a shading impact to eelgrass. No direct (fill) impacts to eelgrass are proposed. Specifically, Special Condition No. 8 of the previously approved Coastal Development Permit (CDP) included language that stated: "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." The applicant has not yet carried out the development of the dock authorized by the underlying permit, which has been extended two times since it was approved in December 2018.

In addition to other approved project components, the project was conditioned to remove an existing 10-foot x 12-foot pier platform and relocate the proposed 3-foot x 24-foot gangway to the west dock float finger. The project was also conditioned to shift the proposed dock to the east by 1-foot to avoid any direct or indirect impacts to eelgrass. At the time of the project approval in December 2018, the agreed upon conditions resulted in 2 square feet of shading of eelgrass, which the Commission considered minimal taking into consideration that 167 square feet of open water would be available post project (to be discussed below) for potential eelgrass growth, and so mitigation for impacts to eelgrass was not required. Since the project approval in December 2018, eelgrass in the area and specifically the project site has flourished as identified in subsequent pre-construction eelgrass surveys (i.e., Eelgrass surveys dated March 2, 2021, and March 1, 2022) pursuant to Special Condition No. 8, so much so that the approved dock project, which had resulted in 167 square feet of less water coverage than the existing dock, now results in eelgrass shading impacts ([Exhibit No. 2](#)). The 167 square foot reduction in water coverage of the approved dock compared to the existing dock on the site will enable eelgrass spread and growth once the project is implemented, but impacts still must be minimized and mitigated. Pursuant to the

language in Special Condition No. 8, any eelgrass impacts identified in the pre-construction surveys will require submittal of an amendment or new coastal development permit. As such, the applicant is submitting an eelgrass mitigation plan to mitigate the shading impacts to eelgrass as a result of the original approved dock project.

Prior Permit History

On December 18, 2018, the Commission approved CDP No. 5-18-0094-(Pickup) for the reinforcement of an existing seawall involving new earth anchors, deadmen and a seawall cap; and removal of a 10-foot by 12-foot pier platform and 1,152 square foot boat dock system with a 3-foot by 18-foot gangway, and replacement with a 1,105 square foot boat dock system and a 3-foot by 24-foot gangway, all associated with an existing single-family residence on a bayfronting lot. Twelve special conditions were imposed regarding: 1) Submittal of revised project plans; 2) Submittal of a Newport Tidelands Encroachment Permit” by the County of Orange regarding the proposed project; 3) Limiting authorization of the improvements to the existing shoreline protective device (i.e., new coping and tiebacks/deadmen) on public tidelands to the 49-year term until March 22, 2037 of the existing Lease for the private use of filled public tidelands by this and all other Harbor Island property owners; 4) No future expansion of the seawall extending the footprint seaward; 5) Assumption of risk; 6) Submittal of an engineering report for the Executive Director’s review analyzing the removal of the groin walls; 7) Future development; 8) Pre-Construction Eelgrass Survey; 9) Pre-Construction Eelgrass Survey; 10) Construction Best Management Practices (BMPs); 11) Post Construction Best Management Practices (BMPs); and 12) Public rights. The Notice of Intent was issued on December 18, 2018. Two coastal development permit time extensions have been issued since the approval of the project.

Standard of Review

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

B. Marine Resources and Water Quality

Section 30230 of the Coastal Act, Marine Resources; maintenance, states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will

maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act, Biological productivity, water quality, states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states in part:

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

...

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

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

...

(6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

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

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-4 states,

Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-5 states,

Where applicable require eelgrass and *Caulerpa taxifolia* surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and *Caulerpa taxifolia* Survey protocols.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states,

Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

...

- B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.
- C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- D. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-2 states,

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

Coastal Land Use Plan, Dredging, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

Avoid impacts to eelgrass (*Zostera marina*) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 states,

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

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states,

Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states,

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

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states,

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

Treatment Control BMPs.

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states,

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

Implementation Plan, Site Planning and Development Standards, Harbor and Bay Regulations, Harbor Development Regulations, 21.30C.050(D & F) states,

D. Eelgrass and Marine Habitat.

Pier, pier platform, gangway and dock design shall be designed and sited and make use of materials that will minimize and, where feasible, avoid impacts to eelgrass and marine habitat. Where possible, design structures to avoid any net increase in overall water coverage, and wherever possible reduce the overall water coverage.

F. Pollution Control.

The permittee shall maintain the area delineated on the harbor development permit free and clear from beached or floating rubbish, debris or litter at all times. Adequate safeguards shall be maintained by the permittee to avert any other type of pollution of Newport Harbor from recreational and/or commercial use of the tidelands.

Marine Resources/Biological Productivity

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

Eelgrass (*Zostera marina*) can be adversely affected by increased water coverage. Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g., clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

Shading Impacts and Eelgrass (*Zostera Marina*)

As conditioned, the originally approved project results in 167 square feet reduction in water coverage compared to the existing dock and shifts the dock 1-foot to the east to further reduce shading to an anticipated impact of 2 square feet of eelgrass from shading. The project was determined to be the least environmentally damaging alternative as it resulted in less water coverage and minimal shading impacts to

eelgrass. In the original approval, the Commission determined that the 2 square feet of eelgrass shading impact was minimal and did not require any mitigation, especially since 167 additional square feet of open water area would be available post project for potential eelgrass growth. However, when pre-construction eelgrass surveys were conducted, pursuant to Special Condition No. 8 of the original approved coastal development permit, it was determined shading impacts to eelgrass would occur due to the proliferation of eelgrass onsite since the original approval of the project in December 2018. For example, a March 2, 2021, pre-construction eelgrass survey indicated that there was now 1,222 square feet of eelgrass at the project site now (2.5 times as much eelgrass at the site as observed in 2017) and that 284 square feet of eelgrass would be shaded by the approved dock project ([Exhibit No. 2](#)). Pursuant to Special Condition No. 8, any impact to eelgrass would require submittal of an amendment or new coastal development permit if any eelgrass was discovered and potentially impacted by the proposed project. As such, the applicant has submitted an amendment application proposing an eelgrass mitigation plan that does not include any changes to the originally approved project. The proposed project is consistent with Section 30231 of the Coastal Act as marine resources shall be maintained, enhanced and where feasible restored as water coverage has been reduced, which otherwise would have impacted biological productivity, and any impacts to eelgrass, from shading, are being mitigated.

In order to mitigate the adverse impacts to eelgrass, the applicant has submitted an Eelgrass Mitigation Plan: Preliminary Eelgrass Mitigation Plan – 23 Harbor Island, Newport Beach, CA (Prepared by Ecomarine Consulting LLC dated June 26, 2021), which is based upon an Eelgrass Survey Prepared by Ecomarine Consulting LLC dated March 2, 2021. The mitigation plan details mitigation for 284 square feet of eelgrass shading, as a result of the previously approved dock project. The plan proposes an initial mitigation replacement ratio of 1.38:1 resulting in 392 square feet of eelgrass with a final mitigation replacement ratio of 1.2:1 resulting in 341 square feet of eelgrass. However, a more recent Eelgrass Survey conducted by Ecomarine Consulting LLC dated March 13, 2022, identified a larger area of eelgrass impact from shading, 409 square feet ([Exhibit No. 2](#)). Thus, the mitigation area identified in the Eelgrass Mitigation Plan would have to be adjusted accordingly.

Mitigation was originally proposed to take place onsite; however, based upon an October 5, 2021, discussion the applicant had with Ecomarine Consulting LLC, responsible for the Preliminary Eelgrass Mitigation Plan, the project site would be too small to accommodate the required 1.38:1 ratio (either the previously identified 284 square feet or 409 square feet of eelgrass impact) of transplant area. As such, an alternative location has been identified adjacent to Bay Island, which is located approximately 1,000 square feet south from the project site. Typically, where feasible, the Commission has required eelgrass mitigation to be conducted onsite; however, in this case the project site does not provide an adequate amount of area for mitigation to take place. Thus, a nearby location has been discussed which would provide an acceptable area for the mitigation to take place. Nevertheless, an up to date Eelgrass Mitigation Plan has not yet been submitted that considers the larger shading impact

area to eelgrass based upon the most recent eelgrass survey and does not clearly identify that the mitigation area will be located at Bay Island.

As originally conditioned pursuant to Special Condition No. 8, if future impacts to eelgrass occurred, the applicant is required to replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP (Southern California Eelgrass Mitigation Policy), which is no longer the mitigation standard utilized by the Commission or the other resource agencies. The current standard is the CEMP (California Eelgrass Mitigation Policy), which requires a ratio for eelgrass mitigation of 1.38:1. The applicant's application states that initially the mitigation ratio would be 1.38:1 but the final mitigation ratio would be 1.2:1; however, this does not appear to be consistent with the CEMP and thus a final mitigation plan showing the correct ratio and proposed location is required.

As shown above, eelgrass at the project site has been increasing and in order to ensure that the actual impact is mitigated, the Commission amends **Special Condition No. 8** to include current language identifying that any eelgrass impacts be mitigated at a ratio of 1.38:1, based on a current survey. The surveys that determined that eelgrass was located at the project site took place on March 2, 2021, and March 13, 2022; however, eelgrass surveys completed during the active growth phase of eelgrass (March through October) are valid for only 60 days. Surveys completed between August and October are only valid until the resumption of active growth (i.e., March 1). The existing eelgrass surveys are no longer valid and thus a new survey is required for project approval, pursuant to **Special Condition No. 8**. Because the anticipated eelgrass impacts are based on an eelgrass survey which has expired, the total eelgrass impacts which must be mitigated is uncertain.

Due to the uncertain amount of eelgrass area impacted by shading and the unclear eelgrass mitigation area and to clarify that the overall eelgrass mitigation ratio will not be less than 1.38:1, the Commission imposes **Special Condition No. 13**, which requires the applicant to submit a Final Revised Eelgrass Mitigation Plan based on eelgrass conditions identified at the time of construction, consistent with the California Eelgrass Mitigation Policy (CEMP). The plan shall be prepared in consultation with the CDFW (California Department of Wildlife) and NMFS (National Marine Fisheries Service), which may require a ratio in excess of 1.38:1 to account for the uncertainty of the successful implementation of the plan.

Caulerpa Sp.

In 1999, a non-native and invasive aquatic plant species, *Caulerpa*, was discovered in parts of Huntington Harbor. *Caulerpa* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats, including eelgrass. *Caulerpa* is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that *Caulerpa* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Native seaweeds,

seagrasses, and kelp forests can be displaced, which can adversely impact marine biodiversity, causing attendant impacts upon fishing, recreational diving, and tourism.

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.

The applicant has indicated that a pre-construction *Caulerpa* survey was completed in conjunction with the Eelgrass Survey Prepared by Ecomarine Consulting LLC dated March 1, 2022, as required by the City of Newport Beach Harbor Resources Division. None was found in the proposed project area. However, *Caulerpa* surveys are only valid for 90 days and therefore the submitted *Caulerpa* survey is outdated. In addition, the protocols for the *Caulerpa* surveys have changed since what was identified in Special Condition No. 9, approved by the Commission in 2018. Thus, pursuant to **Special Condition No. 9**, as amended to update the protocols for *Caulerpa* surveys, an additional *Caulerpa* survey must be conducted prior to commencement of the project. If *Caulerpa* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa*, unless the Executive Director determines that no amendment or new permit is legally required.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act and with the marine resources and water quality policies of the City's certified LCP, as discussed above.

C. 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 (Planning Department and 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 that the proposed development is ministerial or categorically exempt from CEQA (Class 1, CEQA Guidelines Sections 15301) on January 5, 2018.

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 and water quality 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. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

CDP Application File No. 5-18-0094-A1 and associated file documents

APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-18-0094 THROUGH CDP AMENDMENT NO. 5-18-0094-A1

Note: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-18-0094, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-18-0094-A1. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

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. **Compliance.** Any development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and project during its development, subject to 24-hour advance notice.
6. **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.
7. **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.

SPECIAL CONDITIONS:

- 1. Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final revised project plans. The intent behind the required revised project plans is to minimize eelgrass shading impacts of the proposed new dock float (with no direct eelgrass impacts), and identification of the materials to be used for the proposed guardrail on top of the seawall. The revised plans shall indicate: 1) the removal of the existing 10-foot x 12-foot pier platform and 3-foot x 18-foot gangway; 2) placement of the proposed new 3-foot x 24-foot gangway on the revised west dock float finger; 3) removal of the groin walls from the bay, consistent with Special Condition No. 6 below, and 4) the entire proposed dock float will be shifted to the east by approximately one foot. If glass plating is used for the guardrail, it will be frosted or etched to avoid bird strikes. The revised project plans shall be in substantial conformance with the plans submitted on February 7, 2018, March 23, 2018, and November 26, 2018. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

- 2. Newport Tidelands Encroachment Permit from the County of Orange.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a copy of the Newport Tidelands Encroachment Permit from the County of Orange regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.
- 3. Future Removal of Appurtenances and Improvements to Shoreline Protective Device.** Authorization of the repair and maintenance to the existing protective device (i.e., new coping and tiebacks) within State Tidelands which is the subject of this permit shall be limited to the term of the existing Lease agreement between the applicant and the County of Orange commencing in March 22, 1988 for a period of forty-nine (49) years until March 22, 2037 for the exclusive, private use of filled public State Tidelands lying between the extension of the property side lines from the adjudicated mean high tide line to the U. S. bulkhead line. Authorization of improvements to the existing protective device beyond the term of the existing Lease agreement (March 22, 2037) shall require proof of a Lease extension or

renewal that expressly authorizes or allows for continued placement of the existing protective device upon the State Tidelands. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that, in the event no valid Lease extension or renewal exists, the landowner(s) of 23 Harbor Island shall submit a CDP request to i) remove all improvements within State Tidelands approved under this Permit in accordance with any applicable Lease agreement conditions, and ii) restore the State Tidelands in accordance with any applicable Lease agreement conditions.

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, a written agreement between the applicant and the Commission for removal of the improvements to the existing shoreline protective structure on State tidelands as required by this special condition. The agreement shall be consistent with this action and the findings upon which it is based.

4. No Future Expansion of Existing Shoreline Protective Device and Future Removal of Development.

- A.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permits No. 5-18-0094 and A-11-21-75-6647 shall be undertaken if such activity extends the footprint of the subject shoreline protective device bayward in order to protect the existing landside development including, but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices that may exist under applicable law.
- B.** By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowners shall remove and/or relocate, in whole or in part, the development authorized by this permit, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above, in subsection A. of this condition. In the event that portions of the development fall to the bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the bay and lawfully dispose of the material in an approved disposal site. Removal of any development from the subject property and from areas bayward of the subject property, shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no coastal development permit is legally required.

5. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant 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.

6. **Removal of Groin Walls.** Existing groin walls located perpendicular to the existing seawall along the easterly and westerly portions of the property shall be evaluated for removal in connection with the authorized seawall repairs. The groin walls shall be removed if doing so would not result in impacts related to the structural integrity of the existing seawall and property, or adjacent seawalls and properties including dock structures. The project applicant shall submit an engineering report for the Executive Director's review analyzing the removal of the groin walls. If removal of the groin walls would impair the integrity of existing improvements, their removal shall not be required.

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, an engineering report analyzing the removal of the groin walls as required by this condition. If removal of the groin walls does not impair the integrity of existing improvements, their removal shall be required.

7. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0094. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-18-0094. Accordingly, any future improvements to the seawall authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-18-0094 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. **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" (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 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 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.

9. 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.

10. Construction Responsibilities and Debris Removal. The permittee shall comply with the following construction related requirements:

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

- L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - M. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
 - P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 11. Best Management Practices (BMPs) Program.** By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved boat dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
- A. Boat Cleaning and Maintenance Measures:
 - 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - 2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
 - 3. 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:

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

C. Petroleum Control Management Measures:

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

12. Public Rights. 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.

13. Final Revised Eelgrass Mitigation Plan. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Preliminary Eelgrass Mitigation Plan – 23 Harbor Island, Newport Beach, CA (prepared by Ecomarine Consulting LLC dated June 26, 2022), except as required to be modified as described below. The plan shall be prepared in consultation with the CDFW (California Department of Fish and Wildlife) and NMFS (National Marine Fisheries Service). The plan shall be prepared consistent with the requirements identified below and the requirements of the California Eelgrass Mitigation Policy (CEMP), including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques,

monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

A. The plan shall provide that:

1. All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.38:1 (mitigation to impact) ratio. A greater ratio may be applied based on the performance of the mitigation site based on the success criteria and guidance from the other resource agencies;
2. Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;
3. The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;
4. Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).
5. A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director;
6. A comprehensive report describing the results of the plan shall be submitted at the end of the proposed five-year period;
7. A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;
8. A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;
9. An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and
10. Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

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Pickup

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.