

CALIFORNIA COASTAL COMMISSION

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Th16b

Filed: 5/20/23
180th Day: 11/26/23
Staff: C. Seifert-LB
Staff Report: 9/21/23
Hearing Date: 10/12/23

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-22-0602

Applicant: Andrew Gabriel

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

Location: 941 Via Lido Nord, Newport Beach, Orange County
(APN: 423-281-11)

Project Description: Removal of an existing 1,306 sq. ft. floating dock, gangway, and pier platform with 13 square 14-inch wide piles, and construction of a new 970 sq. ft. floating dock, gangway, and pier platform with six 14-inch wide square piles in new locations.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the removal of an existing private dock system and replacement with a new private dock system on and over the water (Newport Harbor) associated with a single-family residence on a bayfront lot in Newport Beach. The proposed new dock is intended to store at least two recreational vessels associated with the adjacent single-family residence. The subject dock is located on public tidelands managed by the City of Newport Beach within the Coastal Commission's retained permit jurisdiction.

The major issues raised by this proposed development concern consistency with the marine resources, water quality, public access, and public recreation policies of the Coastal Act. The proposed dock system would reduce overwater coverage and fill of

soft-bottom habitat by 281 sq. ft. and 9.6 sq. ft., respectively, compared to current conditions. However, the proposed dock system includes components that would increase overwater coverage and fill beyond the minimum necessary to dock a recreational vessel. The Commission analyzes new development that is proposed as a replacement of existing development based on the merits and impacts of the proposed project, rather than its scope in relation to existing development.

The applicant's submitted alternatives analysis included a layout ("Alternative 3") that would reduce the northern dock finger width from the currently proposed seven feet to six feet. The applicant is not amenable to Alternative 3 and has stated that the seven-foot width is necessary for dock stability, as well as sufficient walking space around the proposed piles centered in the dock finger. But the City's uncertified Harbor Design Guidelines allow a lesser minimum width, and the proposed dock is already significantly larger than most private recreational docks approved by the Commission in recent years. Additionally, a deficit of walking area could be resolved by relocating the proposed piles from their center positions to the adjacent sides.

The Design Guidelines also address piers and pier platforms. Piers function as a transitional structure between land and the dock float. Pier platforms are decks stemming from the pier, which can function as storage space for boating equipment or, in some cases, overwater seating area for residents. The latter use is inconsistent with certified LCP Policy 3.1.4-1, which limits piers bayward of the bulkhead to "storage areas... related to vessel launching and berthing." The proposed platform is located six-foot bayward of the residence patio and may serve storage uses. In this case, because the proposed dock is so large, there are alternative areas where boating equipment may be stored that are less likely to be used as private living extensions, including the proposed 10-foot long, northern, landward-facing dock float projection. The subject projection is not typical of U-shaped docks—the applicant has confirmed its sole use is to add length to the southern dock finger to safely accommodate their approximately 80-ft. long private recreational vessel. The 10-ft. long projection would not be required to accommodate smaller, more commonly-sized private recreational vessels. If it is authorized to enable safe docking of a very large vessel, it may serve a joint use as storage and near-shore vessel launch area without conflicting with passenger loading of the large vessel along the more seaward section of the dock float.

Therefore, staff recommends the Commission approve the project, and that it impose **Special Condition 1**, which requires the applicant to submit revised project plans, in substantial conformance with Alternative 3, with additional revisions eliminating the pier platform, minimizing the number of pier piles to the greatest extent feasible, and reducing the northern dock finger width (as generally depicted in [Exhibit 4](#)). Staff also recommends the Commission impose other conditions typically applied to docks in Newport Bay. The proposed project is located within the Commission's retained permit jurisdiction over the waters of Newport Bay. The standard of review for proposed development within the Commission's retained permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified Local Coastal Plan (LCP) is advisory in nature and may provide guidance.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Alternatives 1-4](#)

[Exhibit 4 – Revision to Alternative 3](#)

I. MOTION AND RESOLUTION

Motion: I move that the Commission approve Coastal Development Permit 5-22-0602 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution: The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided that the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Submittal of Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two (2) full-size sets of revised project plans that substantially conform with the plans titled "Alternative 3" and submitted on May 15, 2023, except as modified as required below and generally depicted in [Exhibit 4](#) of the Staff Report dated September 21, 2023:
 - A. The revised plans shall include a northern dock finger no more than six feet in width, including the northern, landward-facing, 10-ft. long dock float projection.
 - B. The revised plans shall include demolition of the existing pier platform and construction of a maximum four-foot wide pier supported by the minimum number of pier piles allowed by the City of Newport Beach Harbor Design Guidelines. The new pier shall not include a platform.
 - C. The revised plans shall indicate the use of dock float decking material that does not need a chemical preservative treatment. If a preservative treatment is required, the treatment shall be conducted in a manner that does not pose the potential release of adverse materials into the water (including, but not limited to, the use treated wood decking material on which a recognized sealant is applied at an approved inland facility prior to arrival at the construction site and kiln-dried to significantly reduce potential leaching of preservative treatments into the water body);
 - D. The revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Coastal Commission's approval and with the recommendations of any required technical reports; and
 - E. 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 Coastal Commission-approved amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Eelgrass Survey(s).**
 - A. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass

(typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service (NMFS) and shall be prepared in consultation with the California Department of Fish and Wildlife (CDFW). The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the applicant shall undertake mitigation pursuant to the Final Eelgrass Mitigation and Monitoring Plan approved by the Executive Director.

- 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 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 additional eelgrass has been adversely impacted beyond the area of impacted identified in the pre-construction eelgrass survey, 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.

3. Pre-construction Caulerpa Sp. Survey.

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the

- presence of the invasive alga *Caulerpa* sp. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, CDFW, and NMFS.
 - C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California *Caulerpa* Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through CDFW at (858) 467-4218) or NMFS at (562) 980-4043.
 - D. 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 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 NMFS and CDFW.
 - E. 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 NMFS/CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NMFS/CDFW Contacts with project specific information.
 - F. If *Caulerpa* species is found within the project or buffer areas, the applicant shall not proceed with the project until:
 - i. 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
 - ii. 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.

4. **Future Development.** This permit is only for the development described in CDP No. 5-22-0602. Pursuant to Title 14 of the California Code of Regulations, Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by CDP No. 5-22-0602, including the proposed private dock system. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to CDP No. 5-22-0602 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
5. **Construction Responsibilities and Debris Removal.** By acceptance of this permit, the permittee agrees to comply with the following construction related requirements:
 - A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
 - E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
 - F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
 - G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
 - H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;

- I. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - J. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
 - K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - M. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 - O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 - P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 6. Best Management Practices (BMPs) Program.** By acceptance of this permit, the permittee agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.
- A. Boat Cleaning and Maintenance Measures:
 - 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; and

B. Solid and Liquid Waste Management Measures:

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

C. Petroleum Control Management Measures:

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

7. Resource Agencies. The permittee shall comply with all requirements, requests and mitigation measures from CDFW, the Regional Water Quality Control Board; the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. The permittee shall consult with CDFW prior to transplant of eelgrass, shall obtain a Scientific Collecting Permit if the Department deems such permit required, and shall provide evidence of the approved permit to the Executive Director prior to transplant of eelgrass. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

8. Public Rights and Public Trust. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the

property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

IV. FINDINGS AND DECLARATIONS

A. Project Description

The subject site is located in and over the waters of Newport Bay adjacent to 941 Via Lido Nord in Newport Beach, Orange County ([Exhibit 1](#)). The existing privately-owned dock is located on Lido Isle; the proposed new dock is intended to store at least two recreational vessels associated with the adjacent single-family residence.

The subject dock is located on public tidelands managed by the City of Newport Beach within the Coastal Commission's retained permit jurisdiction. The City issues local permits, entitled "City of Newport Beach Harbor Permits," for dock systems and other forms of development in the public tidelands area. While the Harbor Permit does not constitute a lease, it does authorize the development and requires a fee from the applicant for temporary private use of the public tidelands, either bi-monthly or annually, estimated from the water bill associated with the adjacent private property. The City determines and collects the fee for deposit in a Tidelands Fund reserved for public access and water quality improvements to Newport Harbor. The applicant provided an exhibit from the City's website as evidence that their dock is over public waters subject to the City's fee program and they are required to pay the recurring fees.

The existing dock system is 1,306 total sq. ft. and consists of a 762 sq. ft. floating dock (irregular dimensions), 80 sq. ft. gangway (4 by 20-ft.), 464 sq. ft. pier (irregular dimensions) and 13 square/T-shaped marina guide piles (14 by 14-inches).¹ The applicant initially proposed replacement of the existing dock system and piles with a new, 1,025 sq. ft. dock system and six square/T-shaped marina guide piles (14 by 14-inches) ([Exhibit 2](#)). The initial proposal included an eight-foot wide northern dock finger and landward-facing dock float projection.

After discussion with staff, the applicant submitted an alternatives analysis with a revised proposal—referenced as "Alternative 4"—to reduce the proposed coverage ([Exhibit 3](#)). The applicant now proposes a 970 total sq. ft. dock system, consisting of a 785 sq. ft. dock float (55 by 27-ft.), 84 sq. ft. gangway (3.5 by 24-ft.), 156 sq. pier platform (irregular dimensions), and six square/T-shaped marina guide piles (14 by 14-inches) installed in new locations below the proposed dock system. The applicant's currently proposed Alternative 4 includes a seven-foot wide northern dock finger and landward-facing float projection

¹ Square and T-shaped piles differ in shape solely at the dock-attachment end; the end of the pile installed in harbor substrate is square for both types, resulting in the same amount of fill.

The new dock system will be comprised of wood, composite material, Styrofoam, and concrete. While the proposed gangway presents a 4 sq. ft. increase from the existing gangway, the overall dock system would decrease in coverage by 281 sq. ft. The existing 17.7 sq. ft. of fill in harbor waters would be reduced to 8.1 sq. ft. The existing eight-foot long encroachment of dock fingers beyond the U.S. Pierhead Line would be eliminated for a new dock system with no encroachments.

The applicant submitted an eelgrass survey conducted on March 24, 2022, which found 16 sq. ft. of eelgrass beds existing onsite. The existing dock system does not directly shade the eelgrass beds. The applicant's initial proposal was located directly over a 2 sq. ft. patch of eelgrass; however, the applicant's submitted alternatives analysis to minimize habitat impacts. The applicant's four alternative dock layouts would result in varying levels of eelgrass shading, water coverage, and fill, but the currently proposed project (Alternative 4) would shift the proposed dock system to avoid any direct shading ([Exhibit 3](#)).

The Commission has issued several permits for development on this property in the past. On September 23, 1982, the Commission approved CDP No. 5-82-549 for "revision of an existing private boat dock" associated with an existing single-family residence at 941 Via Lido Nord. On January 11, 2006, the Commission approved Administrative Permit No. 5-05-445 for removal of an existing 128 sq. ft. dock float portion (8 by 16-ft.) and one 12-inch wide square pile for installation of a new 128 sq. ft. dock float portion in a new location at the subject site. No replacement pile was proposed. On January 11, 2018, the City approved local CDP No. CD2017-068 for demolition of the existing single-family residence and construction of a new single-family residence at the subject site, with no work proposed to the dock system. The existing dock system is consistent with the record of past Commission approvals. No other permit history exists for the project area.

The City of Newport Beach LCP was effectively certified on January 13, 2017. The project area is within the Commission's original (or "retained") permit jurisdiction, due to its location beyond the bulkhead and bayward of the mean high tide line. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance.

B. Marine Resources/Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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

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

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

(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...

Policy 3.1.4-4 of the certified Newport Beach Land Use Plan (LUP) states:

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

Policy 4.2.5-1 of the certified LUP states:

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

Policy 4.3.1-8 of the certified LUP states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of

such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 21.30C.050 of the Implementation Plan (IP) states, in relevant part:

D. Eelgrass and Marine Habitat.

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

F. Pollution Control.

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

Sections 30230 and 30231 of the Coastal Act require the biological productivity of coastal waters to be maintained and, where feasible, restored. Section 30232 specifies protection against hazardous substances entering coastal waters as one method of protecting biological productivity via maintaining water quality. Section 30233 requires that fill of open coastal waters for the purposes of new boating facilities shall only be permitted “where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects[.]” These requirements are echoed by relevant policies 3.1.4-4, 4.2.5-1, and 4.3.1-8 of the certified Newport Beach LUP, and Section 21.30C.050 of the City’s certified IP.

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 (*Pelecanus occidentalis californicus*) found throughout Newport Harbor. Although the coverage of bay surface area associated with any one project may not seem significant, the cumulative effect of allowing unnecessarily large dock structures, and the resulting increases in water coverage throughout Newport Harbor, could be significant. It should be noted that there are hundreds of private residential docks in Newport Harbor. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with the

Coastal Act, the cumulative effect would be a significant loss of coastal waters and soft bottom habitat.

Eelgrass (*Zostera marina*) can be adversely affected by increased water coverage. Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately one to three-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 (*Paralichthys californicus*) and corbina (*Menticirrhus undulatus*). Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Furthermore, eelgrass is 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.

Impacts to Marine Habitat

The proposed dock system would reduce existing overwater coverage and fill of soft-bottom habitat by 281 sq. ft. and 9.6 sq. ft., respectively, compared to current conditions ([Exhibit 2](#)). Regardless, the Commission must analyze new overwater development independently of existing coverage. The proposed dock system exceeds the minimum overwater coverage and fill necessary to dock a typical recreational vessel through the inclusion of non-required dock components.

The City of Newport Beach has developed Harbor Design Guidelines which, though not certified by the Coastal Commission, provide guidelines for designing dock systems to minimize water coverage while providing a usable dock. The Design Guidelines require minimum dock finger widths corresponding to specified length ranges. Per these guidelines, the proposed 56.5-ft. long dock fingers must be at least four-feet wide. However, the proposed dock system includes a four-foot wide southern dock finger and seven-foot wide northern dock finger. The applicant's submitted alternatives analysis included Alternative 3 that would reduce the northern dock finger width from the currently proposed seven feet to six feet. While this alternative would still exceed the four-foot minimum width allowed by the Design Guidelines, Alternative 3 would minimize proposed overwater coverage by an additional 56.5 sq. ft. compared to the applicant's current proposal.²

The applicant has stated that the seven-foot width is necessary for dock stability, contending that the finger may wobble when his two recreational vessels are tied to either side of it. But the Design Guidelines allow a lesser minimum width and the proposed dock is already significantly larger than most private recreational docks

² (7 ft. proposed width – 6 ft. width of Alternative 3) * 56.5 ft. length = 56.5 sq. ft. reduced area

approved by the Commission in recent years.³ The applicant also contends the proposed seven-foot width to be necessary for a sufficient walkway around the two piles centered in the proposed dock finger. A six-foot wide dock finger with 14-inch wide piles centered in the middle would leave approximately 2.4 feet of walkway on either side.⁴ However, a deficit of walking area could be resolved by relocating the proposed piles from their center positions to the adjacent sides. This positioning would be consistent with the pile sited at the end of the proposed, 70 sq. ft. landward-facing dock portion ([Exhibit 3](#)). Locating piles on either side of the dock finger may make it more difficult to dock a vessel on each side, since piles often have sharp corners and require a degree of mobility to allow the dock to rise and fall. But this is not sufficient rationale to eliminate relocation of the subject piles as a feasible alternative, as the Commission is not required to approve the dock size and form necessary to support multiple private recreational vessels.

The Design Guidelines also address piers and pier platforms. Piers function as a transitional structure between land and the dock float, as well as a fixed attachment point for gangways as the dock float rises and falls with the tides. Pier platforms are decks stemming from the pier, which can function as storage space for boating equipment or, in some cases, overwater seating area for residents. The latter use is inconsistent with certified LCP Policy 3.1.4-1, which limits piers bayward of the bulkhead to “storage areas... related to vessel launching and berthing.” Aerial satellite images of Lido Isle show several examples of pier platforms used for seating and tables inconsistent with Policy 3.1.4-1, such as the stretch of private piers located between 820 and 800 Via Lido Nord.⁵ The Design Guidelines do not require piers, as gangways may attach directly to the bulkhead. No minimum size is required for piers or pier platforms in Newport Bay. The proposed 140 sq. ft. pier platform would require two piles, rather than the single pile that may be feasible to support a smaller pier.

The proposed platform is located six-feet bayward of the residence patio and may serve storage uses. However, the proposed 10-foot long northern, landward-facing dock float projection could also serve storage uses. The subject projection is not typical of U-shaped docks—the applicant has confirmed its sole use is to add length to the southern dock finger to safely accommodate their approximately 80-ft. long private recreational vessel. The 10-ft. long projection would not be required to accommodate smaller, more commonly-sized private recreational vessels. If the pier platform was eliminated from

³ Ref. Example CDP Nos. [5-18-1154](#) (McFetters), [5-19-0372](#) (Upshall), [5-19-1159](#) (Kruse), [5-20-0029](#) (Harder), [5-20-0437](#) (Simpson), [5-20-0472](#) (Brusco), [5-21-0560](#) (Kadokia), [5-21-0718](#) (Contreras), [5-21-0719](#) (Godoy), [5-22-0612](#) (Devir), [5-22-0661](#) (Ashwill), [5-22-0995](#) (Segerstrom), [5-22-0968](#) (Fluter), [5-23-0015](#) (Schnur), and [5-23-0177](#) (Jordan).

⁴ (6 ft. finger width - 1.2 ft. centered pile) ÷ 2 = 2.4 ft. width on each side of the pile.

⁵ Ref. <https://www.bing.com/maps?&cp=33.611234--117.911388&lvl=20.44&dir=33.495186&style=g&pi=0&osid=39748d12-4b2f-40fb-9e64-3933fbc7a320&imgid=25c3ec6c-2360-466c-9ff6-12feac2c6173&v=2&sV=2&form=S00027>

the proposal, the applicant could instead use the landward-facing projection for storage of boating equipment (like kayaks, fishing rods and mooring rope.)

While potential elimination of a single T-pile from the proposal will only reduce the proposed fill by 1.4 sq. ft., it has the cumulative effect of reducing fill associated with private docks in Newport Harbor. As described above, Newport Harbor hosts hundreds of private docks. Each dock pile reduces the amount of substrate available for eelgrass, pelagic wildlife, and piscivorous shorebirds. Installing piles below the mudline also poses adverse impacts to habitat wildlife: most methods disturb surrounding species with generation of significant underwater noise and vibrations. Turbidity and sedimentation may be limited by silt curtains, but still pose a risk to eelgrass beds. Section 30233 requires minimization of fill of open coastal waters to the greatest extent feasible to minimize these adverse environmental impacts.

Minimizing overwater coverage is crucial for preservation and enhancement of marine habitat—in this case, habitat for eelgrass beds. Sunlight often constitutes the primary limiting factor in the photosynthesis, growth, and depth distribution of eelgrass (although substrate availability also plays a large role.) By blocking light penetration with solid materials, dock systems reduce suitable habitat for eelgrass beds and lessen the likelihood of expansion in shaded areas. This is illustrated by the applicant's submitted eelgrass survey, which includes a survey of a reference site at 932 Via Lido Nord.⁶ The reference site shows vegetated cover along the perimeter of the existing dock system, but none below the dock.

The project site shows vegetated eelgrass cover sited roughly eight feet from the existing pier platform; the proposed new dock system would site the southern dock finger less than one foot from the nearest eelgrass bed. Considering the proposed dock system's overwater coverage, in addition to the applicant's two or more stored vessels, the project leaves limited room for eelgrass expansion onsite. Sections 30230 and 30231 of the Coastal Act require the biological productivity of coastal waters to be maintained and, where feasible, restored. In this case, minimizing overwater coverage to the greatest extent feasible will improve light penetration and the amount of suitable eelgrass habitat onsite. The project does not propose the minimum overwater coverage and fill of soft-bottom habitat necessary, as further confirmed by the applicant's submitted alternatives analysis.

Alternatives Analysis

There are multiple alternatives to the currently proposed project. First, the 'no-project' alternative would maintain the existing 1,306 sq. ft. dock system, resulting in a greater scale of overwater coverage and fill compared to the current proposal. Replacing the dock like-for-like would accomplish the same results. The second submitted alternative shows a 929 sq. ft. dock system with a 56.5-ft. long, 6-ft. wide northern dock finger and an adjoining, eight-foot wide, landward-facing float projection ([Exhibit 3](#)). The third

⁶ Eelgrass surveys typically include reference sites with similar environmental conditions to help illustrate common patterns in eelgrass coverage, density, and distribution near the project site.

submitted alternative is nearly identical to Alternative 2, but further reduces overwater coverage by shortening the northern dock finger to 55-ft. long (resulting in a 920 sq. ft. dock system.) The fourth submitted alternative, currently proposed by the applicant, shows a 970 sq. ft. dock system that would result in more overwater coverage than Alternatives 2 and 3. Alternative 4 shows a seven-foot wide, 56.5-ft. long northern dock finger with an adjoining, seven-foot wide, landward-facing float projection. Alternatives 2 through 4 would all re-locate the proposed dock system to avoid direct eelgrass shading.

Alternative 3 poses the least amount of overwater coverage compared to the applicant's other submitted alternatives. However, it does not reduce the northern, landward-facing dock float projection from seven to six feet in width for consistency with the remaining northern dock finger. Nor does it eliminate the proposed 10 by 14-ft. pier platform, which is not necessary to dock multiple recreational vessels ([Exhibit 4](#)).

Therefore, to ensure the project is the least environmentally damaging alternative feasible while still allowing the applicant to dock an 80-foot vessel and potentially multiple smaller vessels, **Special Condition 1** requires the applicant to submit revised project plans consistent with the plans received on May 15, 2023 (which show Alternative 3), except for additional revisions. The additional revisions shall include reducing the landward-facing dock float projection to six-foot width, eliminating the 140 sq. ft. pier platform, and using the minimum number of piles necessary to support the new pier (i.e. a single pile if structurally feasible). The revised plans shall show evidence of local approval-in-concept stamps and shall be submitted for Executive Director review and approval prior to CDP issuance.

To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition 7** requires the applicant to comply with all requirements and mitigation measures from CDFW, the Regional Water Quality Control Board, the 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. If the proposed eelgrass mitigation plan is not approved by local permitting agencies, the applicant must apply for a CDP amendment or new CDP to propose an alternate form of mitigation.

Caulerpa and Soft-Bottom Habitat

In 1999, *Caulerpa spp.* ("Caulerpa") was first discovered in portions of Huntington Harbor. Caulerpa is a non-native, invasive marine algae identified as a significant threat to California's coastal marine environment, due to its ability to displace native aquatic plant species and habitats (including eelgrass). Caulerpa is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that Caulerpa can grow in large monotypic stands within which no native aquatic plant species can co-exist. Native seaweeds, seagrasses, and kelp forests can be displaced, which can adversely impact marine biodiversity, causing attendant impacts upon fishing, recreational diving, and tourism.

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 submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on March 24, 2022. The bathymetric surveys did not find evidence of *Caulerpa* onsite—however, *Caulerpa* surveys only remain valid for 90 days.

Given the proximity of the project site to the Newport Bay and the potential for the *Caulerpa* species to take over eelgrass and other marine habitat in the project vicinity, **Special Condition 3** requires the applicant to submit updated *Caulerpa* surveys no earlier than 90 days, and no later than 30 days, prior to commencement of project construction. If any *Caulerpa* is found on the project site, **Special Condition 3** requires the applicant to comply with specific procedures for *Caulerpa* removal and provision of proof of removal.

The surveys must be consistent with the requirements for bottom-disturbing activities in infected systems specified in the *Caulerpa* Control Protocol developed in consultation with the Army Corps, NMFS, CDFW, and the Water Boards. To protect the biological resources onsite from any potential future impacts, **Special Condition 4** requires that the applicant must obtain a permit amendment or a new permit for any future repair or maintenance of the proposed dock system.

Construction and Post-Construction Impacts

The proposed work will occur in and over coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in adverse impacts on the marine environment. The applicant are proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as placing a catch bucket and floating boom at the project site to prevent debris from entering the water and to also capture floating debris. The Commission imposes **Special Condition 5**, which requires appropriate storage and handling of construction equipment and materials to minimize the potential for pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, **Special Condition 6** requires the continued use and maintenance of post-construction BMPs.

Conclusion

The project proposes fill of open coastal waters, but has been conditioned to comply with the least environmentally damaging alternative feasible (Alternative 3 with revisions) and to include mitigation measures to address the adverse environmental effects of eelgrass shading. As conditioned, the project will also comply with pre- and post-construction BMPs to avoid impacts to water quality and biological productivity. The project will also avoid adverse environmental impacts associated with invasive *Caulerpa*.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232, and 30233 of the Coastal Act and with relevant portions

of the City's certified LCP used as guidance that generally require maintaining, protecting, and enhancing the biological productivity and the water quality of coastal waters.

C. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

Policy 3.1.1-1 of the certified LUP states:

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Policy 3.1.4-3 of the certified LUP states:

Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the coast. Additionally, sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses, such as boating. The City's certified LCP also includes a number of similar policies that protect public access, including LUP Policy 3.1.1-1 and 3.1.4-3 cited above. Newport Harbor is well known as a popular spot for recreational boating. Numerous private boat docks and public marinas line the shores of the harbor. Sandy shoreline areas along the bay are also used for access/recreation, including swimming and hand launching of small watercraft such as kayaks and stand up paddleboards.

The proposed project includes the removal and replacement of an existing private boat dock system associated with residential development. The existing southern dock finger extends approximately eight feet out into public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. Lateral public access to tidelands is available along an existing public walkway located 0.3 miles west of the subject site.

The proposed dock system would eliminate all encroachment beyond the U.S. Pierhead Line and will not impact the approximately 0.3-mile wide navigable channel between Lido Isle and Bay Island. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition 8** states that the approval of a CDP for the project does not waive any public rights or interest that exist or may exist on the property.

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

D. Local Coastal Program

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

E. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 1, Section 15301 and Class 2, Section 15302 on May 6, 2022. The Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with the resource protection requirements of the Coastal Act and CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Policies of the City of Newport Beach Waterfront Project Guidelines and Standards—
Harbor Design Criteria, Commercial & Residential Facilities cited in report.

Eelgrass Survey Prepared for Swift Slip Dock & Pier Builders, Inc. by Solutions
Provided Inc., dated March 24, 2022.

City of Newport Beach Harbor Resources Division Approval-In-Concept dated May 6,
2022.