

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 Oceangate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071

**Th21a**

Filed: 10/27/15
 Staff: F.Sy-LB
 Staff Report: 11/19/15
 Hearing Date: 12/10/15

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application Number: 5-15-0060-REC

Applicant: 86 Linda Isle, LLC

Agents: Swift Slip Dock & Pier Builders, LLC, Attn: Jacquelyn Chung

Project Location: 86 Linda Isle, Newport Beach (Orange County)

Project Description: Removal of an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and installation of a new 884 square foot U-shaped dock with new 4-14" square concrete piles and 4' x 24' gangway. The new boat dock system will be comprised of composite material. The proposed boat dock system results in 12 square feet of decreased water coverage.

Commission Action: On October 7, 2015, the Commission approved Application No. 5-15-0060.

Staff Recommendation: Approve the request for reconsideration and waive the reconsideration application fee.

SUMMARY OF STAFF RECOMMENDATION

On October 7, 2015, the Commission approved the applicant's permit application on the grounds that it was consistent with the Chapter 3 policies of the Coastal Act. After approval of the project that day, the agent informed Commission staff that the hearing notice for the project was incorrect and because of it he missed the hearing and his opportunity to voice his concerns to the Commission regarding his opposition to the Commission staff's recommendation. The hearing notice incorrectly identified that the hearing would start at 12pm that day, October 7, 2015. The actual correct hearing time was 9am. After the hearing, Commission staff offered to work with the applicant in order to resolve any

differences he had with Commission staff's recommendation of the project; however, the applicant declined. On October 27, 2015, the applicant submitted a written request for reconsideration of the Commission's action. Having reviewed the applicant's submittals, staff recommends that the Commission **approve** the request for reconsideration on grounds that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter.

Procedural Note:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of the application, or of any term or condition of a coastal development permit which has been granted. [Title 14 Cal. Code of Regulations Section 13109.2.] The regulations also state (*id.* at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, *inter alia*:

*The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.
[Cal. Pub. Res. Code § 30627(b)(3)]*

Section 30627(b)(4) of the Coastal Act states that the Commission "shall have the discretion to grant or deny requests for reconsideration." Furthermore, section 13055(h)(1) of the Commission's regulations provides that the Executive Director shall waive the application fees required in section 13055(a) and (b) where requested by resolution of the Commission. The reconsideration application fee is one listed in section 13055(b).

The applicant submitted a request for reconsideration of the Commission's October 7, 2015 decision on October 27, 2015, stating the alleged grounds within the 30-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration and waive the reconsideration application fee, the Executive Director shall waive the fee and the permit application will be processed as a new application. [Title 14, Cal. Code of Regs., Section 13109.5(c).]

I. MOTION AND RESOLUTION

Motion:

"I move that the Commission grant reconsideration of Coastal Development Permit Application 5-15-0060 and request the Executive Director to waive the filing fee for the application for reconsideration."

Staff recommends a **YES** vote of the foregoing motion. Passage of the motion will result in a grant of the applicant's request for reconsideration and a request that the Executive Director waive the filing fee

for the application for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby grants the request for reconsideration of the Commission's decision on Coastal Development Permit Application 5-15-0060 on the grounds that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and hereby requests that the Executive Director waive the filing fee for the application for reconsideration.

II. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, DESCRIPTION AND PROJECT HISTORY

The applicant, 86 Linda Isle, LLC requested approval of CDP No. 5-15-0060, which the Commission approved at the October 7, 2015 Commission Hearing, to remove an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and install a new 884 square foot U-shaped dock with new 4-14" square concrete piles and 4' x 24' gangway. The new boat dock system comprised of composite material. The proposed boat dock system would have resulted in 12 square feet of decreased water coverage.

Commission staff determined that the proposed dock had not been designed to the minimum required standards found in the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards that would result in less water coverage while still being able to provide for a usable dock system. Adhering to the minimum standards of the Harbor Design Criteria Guidelines and Standards, the proposed dock system could be further reduced to a 584 square foot boat dock system, a reduction of approximately 312 square feet from the existing boat dock system and a reduction of approximately 300 square feet from the proposed boat dock system and result in less water coverage. As a result of a larger dock structure, there would be cumulative impacts to biological productivity of coastal waters resulting from increased water coverage, increased shading of soft bottom habitat, habitat displacement, and decreases in foraging habitat for sight foraging marine birds.

In order to minimize adverse impacts to biological resources and to ensure that there would not be negative cumulative impacts to the Newport Harbor ecosystem, the proposed increased water coverage of the new boat dock system needed to be reduced. Therefore, Commission staff imposed **Special Condition No. 1**, which required the applicant to submit revised project plans to minimize the finger width from 6' and 12' to 4' while maintaining the minimum headwalk width of 6' and 16 square feet for two knee structures and including as an option, an additional maximum 140 square feet for storage boxes. This would result in a dock system varying from a minimum of 444 square feet to 584 square feet. Additional special conditions were also imposed regarding eelgrass and *Caulerpa Taxifolia* surveys; water quality; and constructed on public tidelands and/or within an area subject to public trust doctrine. As conditioned, the Commission approved the project at the October 7, 2015 Commission Hearing.

As stated, the proposed project was previously taken before the Commission at the October 7, 2015 Commission Hearing in Long Beach as Coastal Development Permit No. 5-15-0060. The Commission approved the project as recommended by Commission staff. After approval of the project that day, the agent informed Commission staff that the hearing notice for the project was incorrect and because of it he missed the hearing and his opportunity to voice his concerns to the Commission regarding his opposition to the Commission staff's recommendation. The hearing notice incorrectly identified that the hearing would start at 12pm that day, October 7, 2015 (**Exhibit No. 1**). The actual correct hearing time was 9am. After the hearing, Commission staff offered to work with the applicant in order to resolve any differences he had with Commission staff's recommendation of the project; however, the applicant declined (**Exhibit No. 2**).

B. APPLICANT'S GROUNDS FOR REQUEST FOR RECONSIDERATION

The applicant's request for reconsideration focuses on that fact that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. If the applicant's representative had received a hearing notice with the correct hearing time, he would have had an opportunity to present relevant new evidence to argue his opposition to Special Condition No. 1, which required reduction in size of the proposed dock system.

C. ANALYSIS OF REQUEST FOR RECONSIDERATION

As stated on page two of this report, the Commission's decision whether to accept or deny the applicant's request for reconsideration shall be based on whether there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision. [Cal. Pub. Res. Code § 30627(b)(3)].

The applicant has identified that even with reasonable diligence in relying on the notice indicating a noon start time for his project hearing, he would not have been able to present any relevant new evidence to support his argument against any reduction in size of the proposed dock because the Commission had already voted on the application before the time indicated on the applicant's hearing notice. Thus, had the applicant received a hearing notice with the correct time for the hearing, his representative would not have missed the hearing nor missed his opportunity to present any relevant new evidence to support his argument against any reduction in size of the proposed dock, as required under the terms of Special Condition No. 1.

Furthermore, section 13055(h)(1) of the Commission's regulations provides that the Executive Director shall waive the application fees required in section 13055(a) and (b) where requested by resolution of the Commission. The reconsideration application fee is one listed in section 13055(b). Given the unique circumstances of this case regarding the deficient notice, the Commission finds that the Executive Director shall waive the reconsideration application fee.

D. CONCLUSION

The applicant has proved there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter because the applicant did not have proper notice which would have given him the opportunity to present relevant facts to the Commission to support his argument against any reduction in size of the proposed dock. Consequently, there is a basis for reconsideration, and the Commission exercises its discretion and grants the applicant's request for

reconsideration pursuant to Section 30627(b)(4) of the Coastal Act and directs the Executive Director to waive the reconsideration application fee.

SUBSTANTIVE FILE DOCUMENTS

1. Coastal Development Permit No. 5-15-0060.
2. Letter from Swift Slip Dock & Pier Builder, Inc., dated October 21, 2015

EXHIBITS

Exhibit No. 1 – CDP No. 5-15-0060 October 7, 2015 Hearing Notice.

Exhibit No. 2 – Commission staff correspondence with the agent dated October 21, 2015 and October 27, 2015.

CALIFORNIA COASTAL COMMISSION

South Coast District Office
1000 Ocean Gate, 10th Floor
Long Beach, California 90802-4416
(562) 590-5071 FAX (562) 590-5084

Page: 1

Date: September 21, 2015

**IMPORTANT PUBLIC HEARING NOTICE
COASTAL PERMIT APPLICATION**

PERMIT NUMBER: 5-15-0060

APPLICANT(S): 86 Linda Isle, LLC**PROJECT DESCRIPTION:**

Removal of an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and installation of a new 884 square foot U-shaped dock with new 4-14" square concrete piles and 4' x 24' gangway. The new boat dock system will be comprised of composite material. The proposed boat dock system results in 12 square feet of decreased water coverage.

PROJECT LOCATION:

86 Linda Isle, Newport Beach, CA 92660 (Orange County)

HEARING DATE AND LOCATION:DATE **Wednesday, October 7, 2015**TIME **Meeting Begins at 12:00 pm** ITEM NO: W9dPLACE Long Beach Convention & Entertainment Center
300 E. Ocean Blvd., Long Beach, CA 90802

PHONE (415) 407-3211

HEARING PROCEDURES:

This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to the official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

AVAILABILITY OF STAFF REPORT

A copy of the staff report on this matter will be available no later than 10 days before the hearing on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from Fernie Sy, Coastal Program Analyst, at the South Coast District Office.

SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

IMPORTANT PUBLIC HEARING NOTICE COASTAL PERMIT APPLICATION

- If you wish, you may obtain a current list of Commissioners' names and addresses from any of the Commission's offices and mail the materials directly to the Commissioners. If you wish to submit materials directly to Commissioners, we request that you mail the materials so that the Commissioners receive the materials no later than Thursday of the week before the Commission meeting. Please mail the same materials to all Commissioners, alternates for Commissioners, and the four non-voting members on the Commission with a copy to the Commission staff person listed on page 2.

- You are requested to summarize the reasons for your position in no more than two or three pages, if possible. You may attach as many exhibits as you feel are necessary.

Please note: While you are not prohibited from doing so, you are discouraged from submitting written materials to the Commission on the day of the hearing, unless they are visual aids, as it is more difficult for the Commission to carefully consider late materials. The Commission requests that if you submit written copies of comments to the Commission on the day of the hearing, that you provide 20 copies.

ALLOTTED TIME FOR TESTIMONY:

Oral testimony may be limited to 5 minutes or less for each speaker depending on the number of persons wishing to be heard.

ADDITIONAL PROCEDURES:

The above item may be moved to the Consent Calendar for this Area by the Executive Director when, prior to Commission consideration of the Consent Calendar, staff and the applicant are in agreement on the staff recommendation. If this item is moved to the Consent Calendar, the Commission will either approve it with the recommended actions in the staff report or remove the item from the Consent Calendar by a vote of three or more Commissioners. If the item is removed, the public hearing described above will still be held at the point in the meeting originally indicated on the agenda.

No one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each session at the time listed and considers each item in order, except in extraordinary circumstances. Staff at the appropriate Commission office can give you more information prior to the hearing date.

Questions regarding the report or the hearing should be directed to Fernie Sy, Coastal Program Analyst, at the South Coast District Office.

From: [Jacquelyn Chung](#)
To: [Schwing, Karl@Coastal](#)
Cc: [Sy, Fernie@Coastal](#); [Padilla, Al@Coastal](#); [Henry, Teresa@Coastal](#); [Sarb, Sherilyn@Coastal](#); [Lester, Charles@Coastal](#); [Christen, Matt@Coastal](#)
Subject: RE: 86 Linda Isle LLC - No 5-15-0060
Date: Tuesday, October 27, 2015 9:32:07 AM

Karl,

I spoke with Pete...He'd like to be placed on the December 2015 Coastal agenda in Monterey, CA. Please confirm the day, time, and location.

Jacquelyn

From: Schwing, Karl@Coastal [mailto:Karl.Schwing@coastal.ca.gov]
Sent: Wednesday, October 21, 2015 11:32 AM
To: 'Jacquelyn Chung'
Cc: Sy, Fernie@Coastal; Padilla, Al@Coastal; Henry, Teresa@Coastal; Sarb, Sherilyn@Coastal; Lester, Charles@Coastal; Christen, Matt@Coastal
Subject: RE: 86 Linda Isle LLC - No 5-15-0060

Jacquelyn,

At this point the applicant has at least 2 options. The first would be to accept the Commission's action earlier this month, comply with the conditions as they were recommended by staff, and move forward with that modified project.

Or, the second would be for the Commission to reschedule the matter for a future re-hearing on the matter at which time the applicant and/or his representative may make their case to the Commission for approval of the project as originally proposed.

Based on your prior letter, and my conversation with Mr. Swift at the hearing, we are assuming the applicant wishes to proceed with the 2nd option and are proceeding that way.

Assuming there will be a re-hearing, we ideally would like to present a recommendation to the Commission with which the applicant agrees. Staff's recommendation is aimed at both protecting marine habitat and providing for continued recreational boating. As you know, we don't believe the applicant's original proposal is amply protective of the resources. But we remain open to discussing alternatives that would achieve the applicant's goals and be one that staff could recommend as being consistent with the Coastal Act.

If you and the applicant are similarly open minded, we would like to make arrangements for further discussion.

Karl Schwing

Coastal Program Manager

South Coast Area Office/Long Beach

California Coastal Commission

<http://www.coastal.ca.gov/>



Every Californian should conserve water. Find out how at:



SaveOurWater.com · Drought.CA.gov

From: Jacquelyn Chung [mailto:jacquelyn.chung@sbcglobal.net]
Sent: Wednesday, October 21, 2015 8:38 AM
To: Schwing, Karl@Coastal
Cc: Sy, Fernie@Coastal; Padilla, Al@Coastal; Henry, Teresa@Coastal; Sarb, Sherilyn@Coastal; Lester, Charles@Coastal
Subject: 86 Linda Isle LLC - No 5-15-0060

Karl,

I am writing you as we have yet to hear back regarding the fiasco which occurred at the October Coastal Commission meeting regarding the 86 Linda Isle, LLC application, Coastal Commission file no. 5-15-0060.

We did send the attached letter as a follow up. But, again...no response.

I would greatly appreciate if you could confirm the rescinding of the action taken at the Coastal Meeting. And, that the project can move forward as originally proposed.

I appreciate your time and consideration.

Sincerely,

Jacquelyn

From: jacquelyn chung <jacquelyn.chung@sbcglobal.net>
Date: October 8, 2015 at 7:51:39 AM PDT
To: Fernie Sy <ferniesy@coastal.ca.gov>, Fernie Sy <fsy@coastal.ca.gov>
Cc: ssarb@coastal.ca.gov, thenry@coastal.ca.gov, karl.schwing@coastal.ca.gov, al.padilla@coastal.ca.gov, jacquelyn.chung@sbcglobal.net
Subject: 86 Linda Isle LLC - File NO. 5-15-0060

Fernie,

I'm quite surprised at the events of yesterday's Coastal meeting. As I understand, the 86 Linda Isle LLC project was heard and voted on prior to the noon hour as was announced on your public notification. I'm confused as to how this could have happened. I reviewed our communications and informed you Pete would be speaking at the meeting. I even questioned you about the connection for the powerpoint presentation Pete would be bringing.

Imagine, to Pete's horror, walking into the meeting on time and finding out it had already been discussed and voted on. I can only imagine how insulting it may have been to the Commissioner's to be voting on this Regular Calendar item without the applicant present.

I am very relieved to know yesterday's vote has been rescinded. And, the project will be discussed and allowed its due process at a future meeting. Please provide me the new agenda date.

Thank you,

Jacquelyn Chung
Swift Slip Dock and Pier Builders, Inc.
Permit Specialist
642 Baker Street
Costa Mesa, California 92626
949.631.3121 office

Please contact me directly with any questions.

Sincerely,

Jacquelyn

**Jacquelyn Chung
Permit Specialist
Swift Slip Dock and Pier Builders, Inc.
642 Baker Street
Costa Mesa, California 92626
949.631.3121 office**

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