

CALIFORNIA COASTAL COMMISSION

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



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original staff report

W16c

ADDENDUM

DATE: May 11, 2015

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W16c, APPLICATION NO. 5-14-1717(Lido Group Retail, LLC) FOR THE COMMISSION MEETING OF WEDNESDAY, May 13, 2015.**

A. CHANGES TO THE STAFF REPORT

Commission staff recommends modification to the CONDITIONS and FINDINGS of the staff report. Language to be deleted from the staff report is identified by ~~strike-out~~ and where language is to be added the font is **bold and underlined**.

1. The following Special Condition should be added as Special Condition Number 8:

8. Revised Final 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 revised final project plans with the City of Newport Beach Harbor Resources Department approval. The revised project plans shall show the dimensions of the docks with the minimum width (dependent on the length) necessary to meet City (Harbor Department) standards. The docks shall not extend beyond the "project line" noted in the plans).

2. On page 12, section A. Description and Project, at the end of the first paragraph add the following:

There are no docks existing within the development that could accommodate the relocated vessels, therefore the enlargement and reconfiguration of 3 existing docks is proposed to accommodate the large charter vessels. The project will not result in an increase in larger slips since the project is relocating three existing large slips within the 24 slip dock system (located between 3400 and 3450 Via Oporto). The existing 24 slip dock system provides a mix of slips from 28 foot to 40 foot long slips (12 slips), 50 to 64 foot slips (7 slips), and 85

foot slips (5 slips), along with Dinghy basins.

3. On page 14, section A. Description and Project, at the end of the second paragraph add the following:

The Marine Activities Permit (MAP) attached in Exhibit 5, provides specific requirements for the location and berthing of the charter vessels at the dock site. If the MAP was not renewed or if the charter vessels relocated to a different site in the marina, the enlarged docks could be utilized for other vessels or provide docking space for several smaller vessels. This potential change in intensity of use of the docks is prohibited by Special Condition 1, which ensures that any future development, including the relocation of vessels and any change in the use of these docks, must be approved by the Coastal Commission. Therefore, no future change in intensity of use may result through this project.

4. On page 21, D. WATER QUALITY AND MARINE RESOURCES, the second paragraph should be modified as follows:

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Increased water coverage resulting from larger boat dock systems **replacing aging existing dock systems could** would add to cumulative adverse effects on biological resources of multiple large docks in Newport Harbor. Although a single larger boat dock system may not seem to create significant adverse impacts, the cumulative adverse effect of allowing such increased water coverage will add up over time. It should be noted that this **an** increase of water coverage does not occur frequently in the subject area. but if increased water coverage does occur then a serious concern would result. **While** the project does result in additional water coverage, but **it** has been reduced the least amount possible and is **represents** an infrequent occurrence in the area. and **The project** does result in **continue** to provide a varied mix of boat slip sizes in an area that does consist of varied boat slip sizes available to the public. As proposed, the proposed boat dock system **does not contribute to cumulative adverse impacts and it** minimizes impacts to marine resources and preserves open water area and therefore **is** would not have cumulative adverse impacts upon coastal resources and would be consistent with Sections 30230 and 30231 of the Coastal Act.

5. On page 22, Section E. Fill of Open Coastal Waters, should be modified as follows:

1. Allowable Uses

The piles for the boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the total 6 piles will support the boat dock system, this associated fill **and expansion of the boating facilities** would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use **that provide public access & recreational opportunities.**

2. Alternatives

The proposed project must be the least environmentally damaging alternative. The proposed project is the relocation of three large berths and minor reconfiguration of the docks. Alternatives to the proposed project include no project, no change to the existing configuration, or a change to the proposed configuration. Under the no project alternative, the applicant could only pursue simple maintenance repair activity. However, leaving the larger boats in the location of the repaired seawall is not beneficial for the recent repairs, nor would it allow for improving the docks for present engineering and safety standards and ADA requirements and improved sightlines throughout the harbor. Continued, safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system.

The second alternative, replacement of the project in the same configuration, would not allow for the improved sightlines throughout the harbor and would not protect the repairs to the existing seawall and would not provide for ADA improvements. This law is not discretionary and the applicant must meet its terms both in gangway and dock access as well as slip accommodations which require larger slips and therefore, increase in piles and water coverage to meet these requirements.

Under the proposed alternative, the dock and pile layout is changing from the existing layout and will result in an increase in the number of piles required to support the proposed docks. The increase in piles is necessary to support the proposed length and width of the docks, which are the minimum necessary for the project. The applicant is staying within the existing “project line”, thereby minimizing the fill of coastal waters.

The placement of the 6 piles is the minimum amount of construction necessary to safely anchor the boat dock system. Fewer and/or smaller piles would not adequately secure the boat dock float or pier lobe. By using the least number of piles necessary to accomplish the goal of securing the boat dock system, the piles associated with the boat docks represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

3. Mitigation

The proposed recreational boat dock system and its associated 6 piles are an allowable and encouraged marine related use. The project design for the boat dock includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The potential impacts associated with the new piles include potential impacts on eelgrass habitat and potential dispersal of *Caulerpa taxifolia* and the displacement of about 36 square feet of soft bottom bay habitat with a hard substrate. The potential effects on eelgrass and adverse effects related to *Caulerpa taxifolia* dispersal will be mitigated by the requirements of [Special Condition 3](#) and [Special Condition 4](#). Although the hard substrate of the piles is not equivalent to the displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, the proposed hardscape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. As conditioned, the project will not significantly adversely impact eelgrass beds and will not

contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The existing boat dock system consists of 2,004 square feet and the proposed boat dock system consists of 3,394 square feet. As proposed, the proposed boat dock system results in approximately 1,390 square feet of increased water coverage. Special Condition 8 ensures that the docks are constructed with the minimum width necessary for ADA regulations and City specifications (docks with be 8 feet wide and 85 feet long each, 94 feet long with the back walk) in order to minimize the amounts of over-water coverage associated with the construction of new docks. The docks shall not be excessively wide or long. While grating and other light-penetrating dock materials were considered by the applicants in order to mitigate the increased over-water coverage, ultimately these methods are not practical in high-traffic areas and public-use areas such as these. Constructing the minimum sized dock necessary is the only feasible alternative to limit over-water shading and coverage. Additionally, because of the limited impacts to the marine environment, this project represents the least environmentally damaging alternative.

B. CORRESPONDENCE RECEIVED

Commission staff received a letter in support of the project on April 29, 2015 (attached).

April 28, 2015

Ms. Amber Dobson, Coastal Program Analyst
California Coastal Commission
South Coast Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

Via Email: Amber.Dobson@coastal.ca.gov

Subject: Agenda Item W16c, Lido Marina Village

Dear Ms. Dobson:

I am writing to you express my support of DJM Capital Partners in their efforts to relocate the Electra Cruises vessels within their project.

I support DSM's efforts to revitalize the Lido Marina Village as an amenity to the public and as a fellow property owner at Lido Marina Village - as well as a lifelong resident of Newport Beach, I firmly believe that the movement of the boats to the southeastern portion of the marina is a makes-sense solution for the project.

Moving the boats to this area is in the best interests of the Village, as it will allow Newport Beach residents, visitors and business owners/operators in Lido Marina Village to enjoy the beautiful Harbor views that haven't been accessed in recent years due to the boats' current location.

As to the Village itself, I believe that docking the Electra vessels at the southeastern corner of the marina will ultimately attract a higher, more desirable class of tenants to the Lido Marina Village project – the type of tenants that residents and visitors are seeking to patronize at the center.

In talks with my current tenants, the Electra Boats have been a top concern and a continued nuisance, provoking vandalism, impacting quite enjoyment, and causing parking issues, traffic issues and more. I feel that we, as a community, must pursue a plan of action that most effectively mitigates the negative impact that these boats bring to the quality of life and experience at Lido Marina Village. Short of removing the boats from the project, moving the boats to the opposite end of the marina appears to be is the best solution.

Thank you for your time and consideration in this matter. Again, I strongly support DJM Capital Partners in their plan to and relocate the Electra vessels within their property.

Sincerely,



Scott Burnham
Chairman of the Board and CEO

CALIFORNIA COASTAL COMMISSION

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W16c



Filed:	12/2/14
180th Day:	5/31/15
Staff:	AD-LB
Staff Report:	4/23/15
Hearing Date:	5/13/15

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-14-1717

Applicant: Lido Group Retail, LLC

Agent: CAA Planning, Attn: Shawna Schaffner

Project Location: 3400 Via Oporto, Newport Beach (Orange County)

Project Description: Demolish two 50 foot long docks and construct three new 94 foot long docks with 6 new piles and a new 80 foot long ADA gangway, with no change in the number of slips. Relocate dinghy berths and relocate large charter vessels from the center of the dock system to the south end to open view corridors, increase public access, and protect improvements to the existing seawall.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the dock reconfiguration project and charter vessel relocation to improve public views and provide safe public dock access. The project site is in Newport Bay, fronting the Lido Village area of Newport Beach that is primarily developed with commercial uses such as restaurants, salons, apparel, and other specialty shops. Lido Group Retail LLC, the applicant, manages the pedestrian-oriented waterfront development in Lido Village immediately adjacent to the project area that includes visitor-serving commercial and retail.

The existing dock layout places the largest vessels at the mid-point of the commercial dock system which creates sight line difficulties and creates other operational issues for smaller vessels to navigate into their slips and dingy basins. The dock improvements would consolidate the three slips

for larger vessels at the south end and move the smaller vessels and dingy berths to the marina mid-point, thereby improving sight lines for smaller vessels. Public views to Newport Bay would be improved by relocating and consolidating the larger vessels into one area. The proposed project will enhance the visual qualities and coastal views in the area.

The project will include removal of 2 existing docks approximately 50 feet long, which currently accommodate 3 vessels (provides for 3 slips with 1 vessel having dock access on 1 side only). The construction will include 3 larger docks, at 94 feet long, but will provide the same number of slips (again, provides for 3 slips with 1 vessel having dock access on 1 side only). The configuration of the docks will be constructed to adjoin the existing docks and will provide improved access to the charter vessels, but will not provide for an additional slip space between the new docks and the existing docks. There will be no change to the number of slips available to the public and no change to the use of the docks.

The existing docks onsite are available for use by the general public by lease, and some are leased to private companies to provide visitor serving public uses (such as charter boats, duffy boats, kayaks, etc.). This is unique in this area because a majority of docks located in Newport Bay are private docks associated with private residences and not available for the general public to use. While no change in use or change in the number of slips or berths is proposed at this time, the applicants are exploring future transient dock uses, to allow the public to use dock space temporarily while visiting the adjacent commercial buildings. [Special Condition 1](#) ensures that any future changes to the use of the docks will require a permit amendment.

While the reconfiguration of the docks does contribute to over-water coverage, there will be no change in the total number of slips and the enlarged dock fingers do not preclude the use of boats of smaller sizes. Thus, a variety of boats of different sizes could continue to use the docks.

No Eelgrass or Caulerpa has been found at the subject site and no impacts to either are anticipated. However, in order to verify that no impacts to either occur, the Commission has imposed [Special Condition 3](#), which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction and [Special Condition 4](#), which requires the applicant, prior to commencement of development, to survey the project area for the presence of Caulerpa.

To protect water quality during and post construction, conditions have been imposed to minimize impacts to water quality such as Best Management Practices and plans to protect the marine environment ([Special Conditions 2, 5 and 6](#)). As conditioned, the proposed project will conform with the Chapter 3 policies of the California Coastal Act. [Special Condition 7](#) protects the Commission against future litigation fees.

Several letters in opposition to the project were received in March and April 2015. Staff received a response from the applicant's agent addressing the concerns presented by the letters. Letters in support of the project were also received. The letters present a range of concerns regarding the project, which are addressed thoroughly in the staff report. Staff recommends **approval** of the project with conditions.

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APPENDICES

[Appendix A - Substantive File Documents](#)

EXHIBITS

Exhibit No. 1 –Location and project site

Exhibit No. 2 – Dock Plans

Exhibit No. 3 – Site Photographs

Exhibit No. 4 - Letters of opposition

Exhibit No. 5 - Response letter from Applicant and Letters of support

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-14-1717 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. 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 the Commissioners present.

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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 will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-14-1717. 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. 5-14-1717. Accordingly, any change in use or intensity of use and any future improvements to the existing uses authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(b) and Title 14 California Code of Regulations Sections 13253(a)-(b), shall require an amendment to Permit No. 5-14-1717 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

2. Construction Best Management Practices.

A. The permittee shall comply with the following construction-related requirements:

1. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
2. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
4. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

1. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
2. The applicant shall develop and implement spill prevention and control measures;
 3. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm drain, open ditch or surface water; and
 4. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

C. Construction Materials and Timing:

1. To protect water quality concrete piles must be cured on land for at least 30 days, prior to placement in coastal waters. Concrete takes time to cure, approximately 30 days. As chemical processes occur, concrete hardens and alkaline chemicals are released. During curing, the concrete must be kept moist and temperatures controlled. Any waters in contact with the concrete during the curing process can develop a very high pH that can have toxic impacts in enclosed waters.
2. To protect water quality, only Alkaline Copper Quaternary (ACQ) treated wood shall be used for the proposed project. No Creosote-treated wood, Chromated copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA) nor ammoniacal copper arsenate (ACA) treated wood is to be used. Proper certification or documentation regarding the treatment for the wood must be provided by the manufacturer or the retailer and a copy shall be provided to Commission staff.
3. All wood shall be inspected on site before use and any pieces found to have visible residues or bleeding of preservative should be rejected. If treated wood has a noticeable odor, then it has not been properly processed or aged and the preservative may not be properly fixed. The wood will be rejected and not used in the proposed project.
4. Construction debris must be salvaged and disposed of properly. Cutting stations onsite shall be established with large tarps to capture debris. The cutting station should be kept well away from the water to minimize transport of sawdust by wind. Applications of field preservative treatments to cuts and bore holes, water repellants or other coatings, if not applied by the manufacturer at their facility, should take place at the cutting station before the wood is taken to the overwater area. These applications must be allowed to dry and/or cure before being transported into or near the water.
5. If minimal cutting, boring or touch-up preservative applications must be performed over water, then tarps, plastic tubs or similar devices should be used to capture debris, spills or drips. Vacuums may also be used during construction to capture debris. Any excess field preservative should be

wiped off and not applied in the rain. Any debris which falls into the water should be promptly removed. Debris should be stored in a dry place until it is removed from the project site.

3. 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*” 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. 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.

4. 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.

5. 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.

6. 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.

7. Indemnification by Permittee. Liability for Costs and Attorneys Fees. By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. FINDINGS AND DECLARATIONS:

A. DESCRIPTION AND PROJECT LOCATION

The proposed project will reconfigure the docks at the site only, and does not include any changes to the adjacent commercial development on land. The project includes demolishing two 50 foot long fingers and constructing three new 94 foot long fingers with 6 new piles, with 36 square feet of fill, and a new 80 foot long ADA gangway. The overwater coverage will increase by 1,390 square feet. The project is designed to enlarge 3 dock slips and relocated dinghy berths in order to relocate 3 charter vessels to open view corridors, increase public access, and protect improvements to the existing sea wall.

The project will include removal of 2 existing docks approximately 50 feet long, which currently accommodate 3 vessels (provides for 3 slips with 1 vessel having dock access on 1 side only). The construction will include 3 larger docks, at 94 feet long, but will provide the same number of slips (again, provides for 3 slips with 1 vessel having dock access on 1 side only). The configuration of the docks will be constructed to adjoin the existing docks and will provide improved access to the charter vessel, but will not provide for an additional slip space between the new docks and the existing docks (See **Exhibit 2**). There will be no change to the number of slips available to the public and no change to the use of the docks (**Exhibit 3**). [Special Condition 1](#) specifies that any future improvements, including change in use or intensity of use, are required to be reviewed by the Commission.

The new docks will be wood framed construction with wood decking. Floating foam-filled plastic pontoons will be bolted to the underside of the timber framing. All docks will be made offsite and placed in the water at Lido Marina Village and set in place to prevent construction debris from entering the water. [Special Conditions 2 and 5](#) ensures proper construction BMPs during the dock construction, and [Special Condition 6](#) ensures appropriate BMPs will be used for the boats berthed at the site. [Special Conditions 3 and 4](#) ensure proper documentation and surveys for the presence of Eelgrass and Calupera in coastal waters. [Special Condition 7](#) protects the Commission against litigation fees that may arise in the future.

The subject site, 3400 Via Oporto, is located north of the intersection of Via Lido and Via Oporto, facing Newport Bay within the City of Newport Beach, Orange County a County (**Exhibit 1**). The subject site is located seaward of Lido Village area of Newport Beach, which is primarily developed with commercial uses including grocery stores, restaurants, salons, home furnishings, apparel, and other specialty shops. The area also includes Lido Marina Village, which is a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marine uses. Lido Marina Village includes a parking garage, which provides parking for both land uses and water-related uses in the village.

Because there will be no change in the number of slips and the adjacent site already provides parking, the proposed project will not impact existing on-street public parking spaces used by visitors to the coast. Therefore, the project does not contribute to cumulative impacts on public access. The existing docks provide a varying mix of slip sizes for use by the general public and the proposed project would continue to do that and would not result in a net loss of any public available slips. Therefore, as proposed, the project would continue the overall trend of the area to provide slips of varying sizes and slips available for the general public. If, in the future, if there is a trend towards removal of smaller public available slips, that would raise a concern and would need to be reassessed to determine its impact upon public access. However, as proposed, the project will continue to provide slips of various sizes, provide public recreational opportunities, and minimizes impacts to public boating access.

Public pedestrian access to Newport Bay at the subject site is provided along an existing wooden cantilevered public boardwalk located on the seaward side of the commercial development, immediately adjacent to the project area (**Exhibit 4**). The proposed project will not change the existing public boardwalk. The project does include construction of a new ADA compliant gangway for enhanced public access from the boardwalk to the charter vessels.

The existing commercial buildings lining Via Oporto have breezeways that allow for access from the public sidewalk to the public boardwalk, and also provide views of Newport Bay, in between the commercial buildings. Two of the breezeways onsite are blocked by the current location of the large charter vessels (**Exhibit 4**). Relocating these vessels to the southern side of the Lido Maria Village will enhance public view corridors and provide views of the bay and ocean by “unblocking” the views through the breezeways, with the exception of one.

Placement of the 6 new piles will result in fill of 36 square feet of coastal waters. In order to be consistent with Section 30233 of the Coastal Act, a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project. This project meets all three.

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The existing boat dock system consists of 2,004 square feet and the proposed boat dock system consists of 3,394 square feet. As proposed, the proposed boat dock system results in approximately 1,390 square feet of increased water coverage.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. A coastal development permit may be issued if the project can ensure that the uses of the marine environment will be carried out in a manner that will sustain the biological productivity of coastal waters. Larger dock structures take up more of the bay’s water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement) than the smaller piers and docks that the Commission found to be consistent with the Coastal Act. The project does result in additional water coverage but has been reduced to the least amount possible and continues to provide a varied mix of boat slip sizes available to the public.

An eelgrass survey took place on October 24, 2013 and October 16, 2014 as required by the City of Newport Beach Harbor Resources Division. No eelgrass was found in the project area. As a result, the proposed dock enlargement would not encroach on or result in shading of the existing eelgrass. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). Existing eelgrass survey may no longer be valid by the time of construction. Therefore, the Commission imposes [Special Condition 3](#), which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

A pre-construction *Caulerpa Taxifolia* survey was completed October 24, 2013 and October 16, 2014 as required by the City of Newport Beach Harbor Resources Division and none was found.

Caulerpa Taxifolia surveys are valid for 90 days and the current survey may not be valid before construction begins. In order to ensure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes [Special Condition 4](#), which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* 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 Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

Previous Commission approvals onsite include the Emergency permit G-5-13-0222 for repair of the existing seawall immediately adjacent to the charter vessels, and the follow-up permit for the work preformed, CDP 5-13-1342, which allowed for the reinforcement and stabilization of the base of the existing seawall along a 150-200 foot long section of the wall. The dock changes proposed in this application are designed to protect the repairs made to the seawall by relocating the charter vessels away from the repaired area. The seawall will not be impacted in this new location because the procedures for moving into and out of the slips have been modified by the charter vessel companies under the contract between the charter companies and the owners of Lido Marina Village. The operations that caused the erosion to the seawall in the first location have been changed and will not pose a problem to the new location. As proposed, the proposed boat dock system minimizes impacts to marine resources and preserves open water area and therefore would not have cumulative adverse impacts upon coastal resources and would be consistent with Sections 30230 and 30231 of the Coastal Act.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Coastal Land Use Plan (CLUP) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Coastal Land Use Plan may be used for guidance.

The letters in opposition to the project list the following reasons for opposing the project. It should be noted that many of the following statements of opposition are not relevant to review of the project under the California Coastal Act.

1. *The relocation of the vessels will increase the noise, fumes, lights, traffic and other related effects that will impact the residences of 3388 Via Lido.*

The proposed project does not change the use or number of boat slips. The existing dock system has been continuously used by commercial charter boats and the proposed project is redesigning the docks to relocate the charter boats from the mid-line to the south end of the existing boat slip dock system, which currently accommodates 24 boats of various sizes and approximately 175 lineal feet of dinghy berth space.

The charter vessel operations (including adequate parking, hours of operation, noise, etc.) are regulated by a Marine Activities Permit (MAP) issued by the City of Newport

Beach. Each charter vessel operation has a current MAP, issued annually, conditions of which do not allow for amplified music while the vessels are docked and at no time after 10 PM. The most recent MAP was issued January 7, 2015.

These concerns were not presented to the City of Newport Beach when the MAPs for the vessels were issued. MAPs, which are reviewed by the City's Harbor Commission, are appealable within 21 days of issuance to the City Council of the City of Newport Beach, and no appeals were made. Lastly, the Coastal Act regulates noise and light adverse impacts to sensitive species, not necessarily neighboring homes or businesses.

2. *No traffic or parking studies were completed due to the vessel relocation.*

The three charter vessels that are currently using the docks are being relocated between 150 and 300 feet south of their current location. There is no change in use and no change in intensity proposed with the subject marina. The applicants are not adding any additional charter vessels. They are simply being relocated 300 feet (at the most) and within the marina area controlled by the applicant. The relocation of these vessels does not impact the existing parking conditions or traffic.

The three charter vessels are currently permitted to occupy dock space at the Lido Marina Village. The coastal development permit 5-14-1717 is for the construction of the dock reconfiguration and the vessel relocation. As such, the staff report evaluated impacts based on the construction activities and relocation. Because there will be no change in use or intensity, the existing parking provided in the existing parking structure at Lido Marina Village is sufficient for the continued operation of the charter vessels in this development. Relocating the 3 vessels approximately 300 feet to the south did not trigger any parking or traffic studies through the permit process because the parking and traffic flow will not change.

The existing charter vessel companies direct their patrons to park in the existing private parking structure and provide maps and directions to the structure. The Lido Marina Village parking structure contains 345 parking spaces total, of which 200 are available for the charter vessels and the remainder are available for public use. One letter of objection notes that this structure is currently "underutilized," indicating that there is plenty of parking available for the charter vessel patrons and other patrons in the area. Again, the project does not involve any change in use or intensity of use. The relocation of these vessels does not impact the existing parking or traffic conditions.

3. *A public access signage program was not conditioned.*

The area surrounding the docks is open to the public. All the commercial sites landward of the project site are open to the public. There is a public boardwalk immediately inland of the docks. The vessel relocation will not impact public access nor the boardwalk. Because no development is proposed on the landward side of the docks, and there was no proposed change in use or intensity, a public access signage program was not required.

However, in response to the above comment, the applicants have proposed to install signage indicating that the boardwalk is open, and will remain open, to the public.

4. *Lack of analysis of public views.*

Coastal views were covered in detail by the staff report:

The existing commercial buildings lining Via Oporto have breezeways that allow for access from the public sidewalk to the public boardwalk, and also provide views of Newport Bay, in between the commercial buildings. Two of the breezeways onsite are blocked by the current location of the large charter vessels (Exhibit 4). Relocating these vessels to the southern side of the Lido Maria Village will enhance public view corridors and provide views of the bay and ocean by “unblocking” the views through the breezeways, with the exception of one.

Three of the four public views through the breezeways will be opened by relocating and consolidating the charter vessels to the south end of the development. There is a net benefit to the public coastal views by the proposed project.

The letters also assert that the boat relocation may enhance the coastal views from a restaurant located landward in the Lido Marina Village. While the contention in this comment is unclear, again, this area is designated for (Mixed-Use Water) for commercial development that encourages the coastal related and visitor serving uses, including restaurants and the protection of coastal views. If additional public views will be enhanced for visitors in the restaurant, then that is an added benefit of the project, which may improve public use of the restaurant and other visitor-serving sites in the area. The project is consistent with Coastal Act Section 30251 in that it protects and enhances public coastal views.

5. *Lack of analysis of navigation issues.*

The City of Newport Beach Harbor Resources Division analyzed the dock enlargement project and determined that a navigational safety study was not necessary for this project. The length of the docks will not extend past the current line of docks in the project vicinity. The length of the vessels and vessel type will not change. There will be no additional extensions into the harbor due to the relocation of the vessels. The application states that the consolidation and relocation of vessels will actually increase sightlines and improve navigation for smaller boats navigating in and around the larger vessels.

6. The letters reference: *increased foot-traffic as a result of the vessel relocation.*

The parking structure will remain in the current location, so there will be no change to existing street traffic patterns. Similarly, the foot-traffic from the existing parking structure to the existing public boardwalk will not change, nor will foot-traffic increase as

a result of the vessels relocation.

Overcrowding will not result from relocating the vessels. The vessels will continue to accommodate the same number of patrons as they currently do in their current location.

Members of the public, regardless of their intent to use the charter vessels, are permitted to park in any public parking spaces which are shared by all tenants, businesses, visitors to the Lido Marina Village. As stated above, the charter vessel companies are required by local permits to inform their patrons where to park, which is in the parking structure at the Lido Marina Village.

Increased foot-traffic, or members of the public crossing through areas that are public spaces, including commercial spaces, is not discouraged by Coastal Act policies. In fact increased public access to visitor-serving facilities and areas, such as charter vessels and areas surrounding Lido Marina Village, is encouraged under sections 30210 through 30214, 30220 through 30224, and 30252 of the Coastal Act. The letters of objection have not indicated specifically how relocating the charter vessels less than 300 feet from their current location will have a negative impact on current pedestrian traffic patterns in and around Lido Marina Village.

The project location and surrounding areas are currently open to the public, zoned for Mixed-Use Water, prioritizing coastal related uses and visitor serving uses. Pedestrian traffic on either property is allowed, open to the public, and encouraged by the public access policies of the Coastal Act.

7. *Seawall impacts were not analyzed.*

Previous Commission approvals onsite include the Emergency permit G-5-13-0222 for repair of the existing seawall immediately adjacent to the charter vessels, and the follow-up permit for the work performed, CDP 5-13-1342, which allowed for the reinforcement and stabilization of the base of the existing seawall along a 150-200 foot long section of the wall. Damage to the wall was caused by the charter vessel propellers improperly being left on for long periods of time, causing erosion of the seawall adjacent to the propellers. These issues were resolved in 2013.

The erosion problem was fully analyzed by the City and applicant through technical reports that were submitted and reviewed under CDP 5-13-1342. The seawall will not be impacted in this new location because the procedures for moving into and out of the slips have been modified by the charter vessel companies under the contract between the charter companies and the owners of Lido Marina Village. The operations that caused the erosion to the seawall in the first location have been changed and will not pose a problem to the new location.

8. *The letters assert there was a lack of proper noticing.*

The notice was posted onsite on the public boardwalk, adjacent to the docks. Commission staff confirmed the posting notice at a site visit on February 4, 2015. Notices were mailed to all occupants and owners within 100 feet of the project site by Coastal Commission staff on February 24, 2015. Included on the list of notices were the addresses of the owners and occupants that submitted letters of objection, including 3388 Via Lido and 3471 Via Lido. The project was properly noticed according to Section 13063 of the Title 14, Division 5.5, California Coastal Commission Regulations.

Staff concludes that the letters of objection do not raise any additional Coastal Act issues that were not addressed by the staff report. The proposed project is consistent with the Coastal Act and the City of Newport Beach Coastal Land Use Plan designation.

The proposed dock reconfiguration and the relocation of three charter vessels will have no adverse impacts on public access, parking, or coastal resources. The project will result in a continuation of coastal dependent visitor-serving uses, consistent with Coastal Act policies and Land Use designations. Staff recommends **approval** of the project, as conditioned.

B. LOCAL GOVERNMENT AND OTHER APPROVALS. The project has received City of Newport Beach Harbor Resources Division Permit/Approval-in-Concept Harbor Permit No. 124-3400 and Plan Check No. 2153-2014 dated September 30, 2014. The Santa Ana Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used.

C. PUBLIC ACCESS

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 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition

and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30210 of the Coastal Act protect the public's right to access the shoreline and water and recreational opportunities. Section 30252 of the Coastal Act requires that public access to the coast be maintained and enhanced by supplying adequate parking to support new development to encourage the use of public transit and non-automobile circulation to serve the transit needs of new development.

A parking structure is located in Lido Maria Village, which provide access for the public using the dock facilities. Because there will be no change in the number of slips, the project site already provides adequate parking and the proposed project will not impact existing on-street public parking spaces used by visitors to the coast. Therefore, the project does not contribute to cumulative impacts on public access. Thus, with the proposed project, there is no significant potential for adverse impacts to public beach access as a result of any parking deficiency. However, future development may potentially result in insufficient parking forcing patrons of the building to take up public parking spaces in the area intended for visitors to the coast. To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes [Special Condition 1](#), which requires a future development special condition.

The project area is a unique area in that the docks located in the area are private docks that are available for use to the general public and consist of varying slips sizes. It is a unique situation in that a majority of the dock systems in Newport Bay are usually those associated with private residential development and not available for the general public to rent out.

The existing docks provide a varying mix of slip sizes for use by the general public and the proposed project would continue to do that and would not result in a net loss of any public available slips. Therefore, as proposed, the project would continue the overall trend of the area to provide slips of varying sizes and slips available for the general public that are privately owned. However, in the future, if there is a trend towards removal of smaller public available slips, that would raise a concern and would need to be reassessed to determine its impact upon public access. However, as proposed, the project minimizes impacts to public access.

Public access to Newport Bay at the subject site is provided along an existing wooden cantilevered public boardwalk located on the bayward side of the commercial development, immediately adjacent to the project area. The proposed project will not change the existing public boardwalk. The project does include construction of a new ADA compliant gangway for enhanced public access from the boardwalk to the charter vessels.

As proposed, the Commission finds that the proposed project is consistent with Sections 30210 and 30252 of the Coastal Act with regard to the public's right of access to the sea and would avoid cumulative impacts.

D. WATER QUALITY AND MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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

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...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes [Special Condition 2](#), which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement. To ensure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes [Special Condition 5](#), which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes [Special Condition 6](#), which requires the continued use and maintenance of post construction BMPs.

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The existing boat dock system consists of 2,004 square feet and the proposed boat dock system consists of 3,394 square feet. As proposed, the proposed boat dock system results in approximately 1,390 square feet of increased water coverage.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. A coastal development permit may be issued if the project can ensure that the uses of the marine environment will be carried out in a manner that will sustain the biological productivity of coastal waters. 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. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by covering an unnecessarily large area.

Larger dock structures take up more of the bay's water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement) than the smaller piers and docks that the Commission found to be consistent with the Coastal Act. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the state and federally listed California brown pelican, which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may be small compared to the overall water acreage of the harbor, it is a concern because of the cumulative impacts from these kinds of docks. Consistent with those concerns, the Commission has limited the size of shoreline structures to preserve open water area and protect marine resources from adverse impacts. It has found that docks associated should be limited in size to preserve open water areas in bays, thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Increased water coverage resulting from larger boat dock systems would add to cumulative adverse effects on biological resources of multiple large docks in Newport Harbor. Although a single larger boat dock system may not seem to create significant adverse impacts, the cumulative adverse effect of allowing such increased water coverage will add up over time. It should be noted that this increase of water coverage does not occur frequently in the subject area, but if increased water coverage does occur then a serious concern would result. The project does result in additional water coverage but has been reduced the least amount possible and is an infrequent occurrence in the area and does result in continuing to provide a varied mix of boat slip sizes in an area that does consist of varied boat slip sizes available to the public. As proposed, the proposed boat dock system minimizes impacts to marine resources and preserves open water area and therefore would not have cumulative adverse impacts upon coastal resources and would be consistent with Sections 30230 and 30231 of the Coastal Act.

Eelgrass

An eelgrass survey took place on October 24, 2013 and October 16, 2014 as required by the City of Newport Beach Harbor Resources Division. No eelgrass was found in the project area. As a result, the proposed dock enlargement would not encroach on or result in shading of the existing eelgrass. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). Existing eelgrass survey may no longer be valid by the time of construction. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes [Special Condition 3](#), which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa Taxifolia

Caulerpa Taxifolia can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas.

A pre-construction *Caulerpa Taxifolia* survey was completed October 24, 2013 and October 16, 2014 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The *Caulerpa Taxifolia* survey may not be valid before construction begins. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to ensure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes [Special Condition 4](#), which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* 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 Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232, 30233 and 30250 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality and avoiding cumulative impacts.

E. FILL OF OPEN COASTAL WATERS

Section 30233 of the Coastal Act states, in pertinent 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 ...

Placement of the 6 new piles will result in fill of 36 square feet of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

1. Allowable Uses

The piles for the boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the total 6 piles will support the boat dock system, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use.

2. Alternatives

The placement of the 6 piles is the minimum amount of construction necessary to safely anchor the boat dock system. Fewer and/or smaller piles would not adequately secure the boat dock float or pier lobe. By using the least number of piles necessary to accomplish the goal of securing the boat dock system, the piles associated with the boat docks represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

3. Mitigation

The proposed recreational boat dock system and its associated 6 piles are an allowable and encouraged marine related use. The project design for the boat dock includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The potential impacts associated with the new piles include potential impacts on eelgrass habitat and potential dispersal of *Caulerpa taxifolia* and the displacement of about 36 square feet of soft bottom bay habitat with a hard substrate. The potential effects on eelgrass and adverse effects related to *Caulerpa taxifolia* dispersal will be mitigated by the requirements of [Special Condition 3](#) and [Special Condition 4](#). Although the hard substrate of the piles is not equivalent to the displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, the proposed hardscape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30233(a)(3) of the Coastal Act because it is an allowable use, there are no feasible less environmentally damaging alternatives available, and adequate mitigation is provided.

F. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The existing commercial buildings lining Via Oporto have breezeways that allow for access from the public sidewalk to the public boardwalk, and also provide views of Newport Bay, in between the commercial buildings. Two of the three breezeways onsite are blocked by the current location of the large charter vessels. Relocating these vessels to the southern side of the Lido Maria Village will enhance public view corridors and provide views of the bay and ocean by “unblocking” three of the four views through the breezeways. The proposed project does not result in any additional adverse visual impacts. As proposed, the Commission finds that the proposed project is consistent with Sections 30251 of the Coastal Act with regard to protecting visual resources.

H. INDEMNIFICATION

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 7, requiring reimbursement of any costs and attorneys fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit.”

I. LOCAL COASTAL PROGRAM (LCP)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 2005 and in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified CLUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, 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.

In this case, the City of Newport Beach Planning Department and Harbor Resources Division are the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the waterside portion of the proposed development is ministerial or categorically exempt under Class 1 guidelines from

CEQA on October 1, 2014. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the maintenance and enhancement of biological productivity and water quality policies, the avoidance of cumulative impacts policy, the allowable fill of open coastal waters, and the public access and recreational opportunities policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A
Substantive File Documents

- 5-14-1717 CDP Application
- 5-13-1342 CDP Application
- G-5-13-0222 CDP Application
- City of Newport Beach Certified Land Use Plan
- City of Newport Beach Harbor Resources Division Approval-in-Concept No. 124-3400, dated September 30, 2014
- Marine Activities Permit issued by City of Newport Beach Public Works Department, Harbor Resources, January 7, 2015

PROJECT SITE



Exhibit 1
5-14-1717
1 of 2
 California Coastal Commission

PROJECT SITE



Exhibit 1
5-14-1717
2 of 2
 California Coastal Commission

Photographs

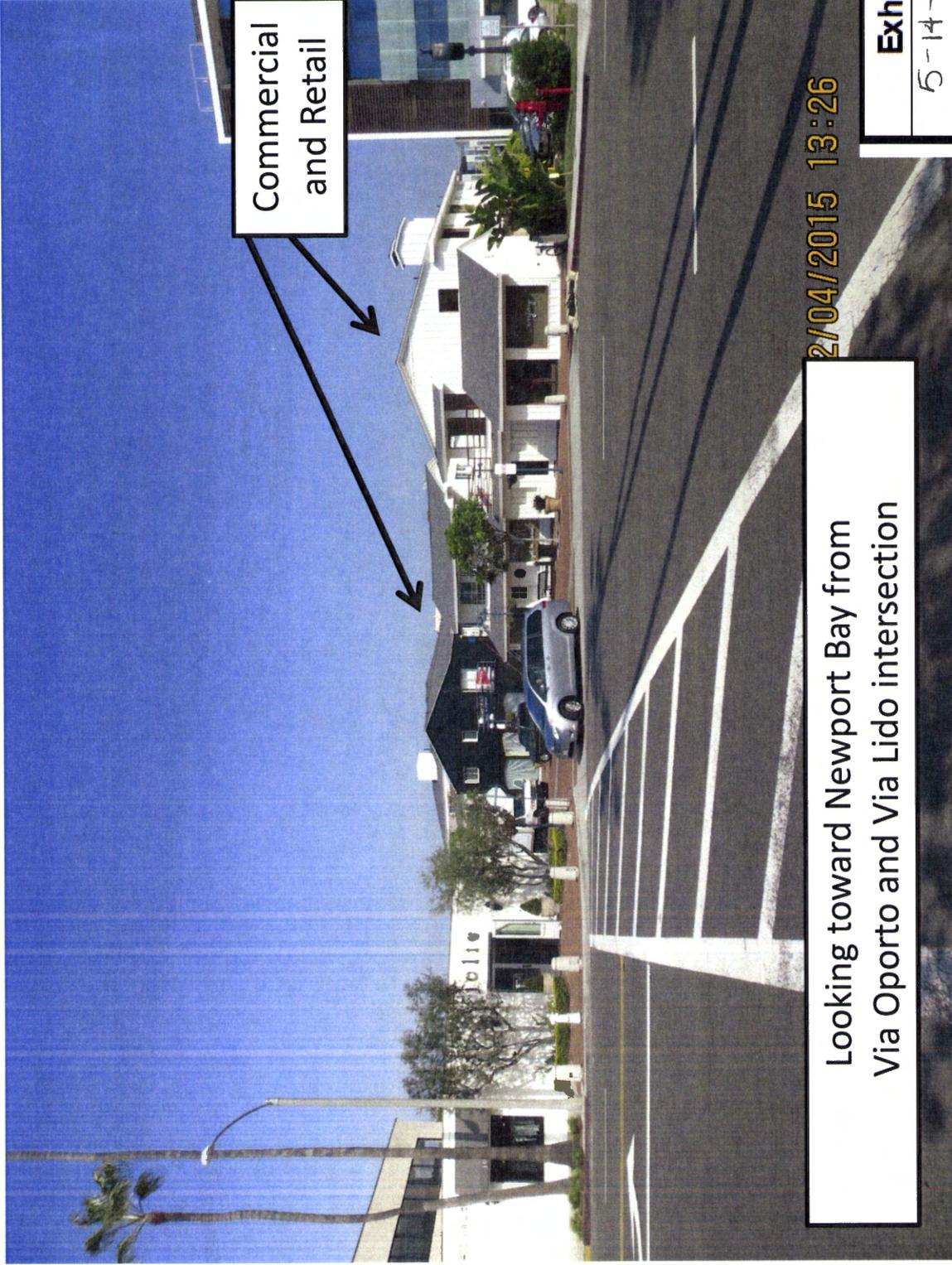


Exhibit 3

5-14-1717

1 of 7

California Coastal
Commission



Photographs

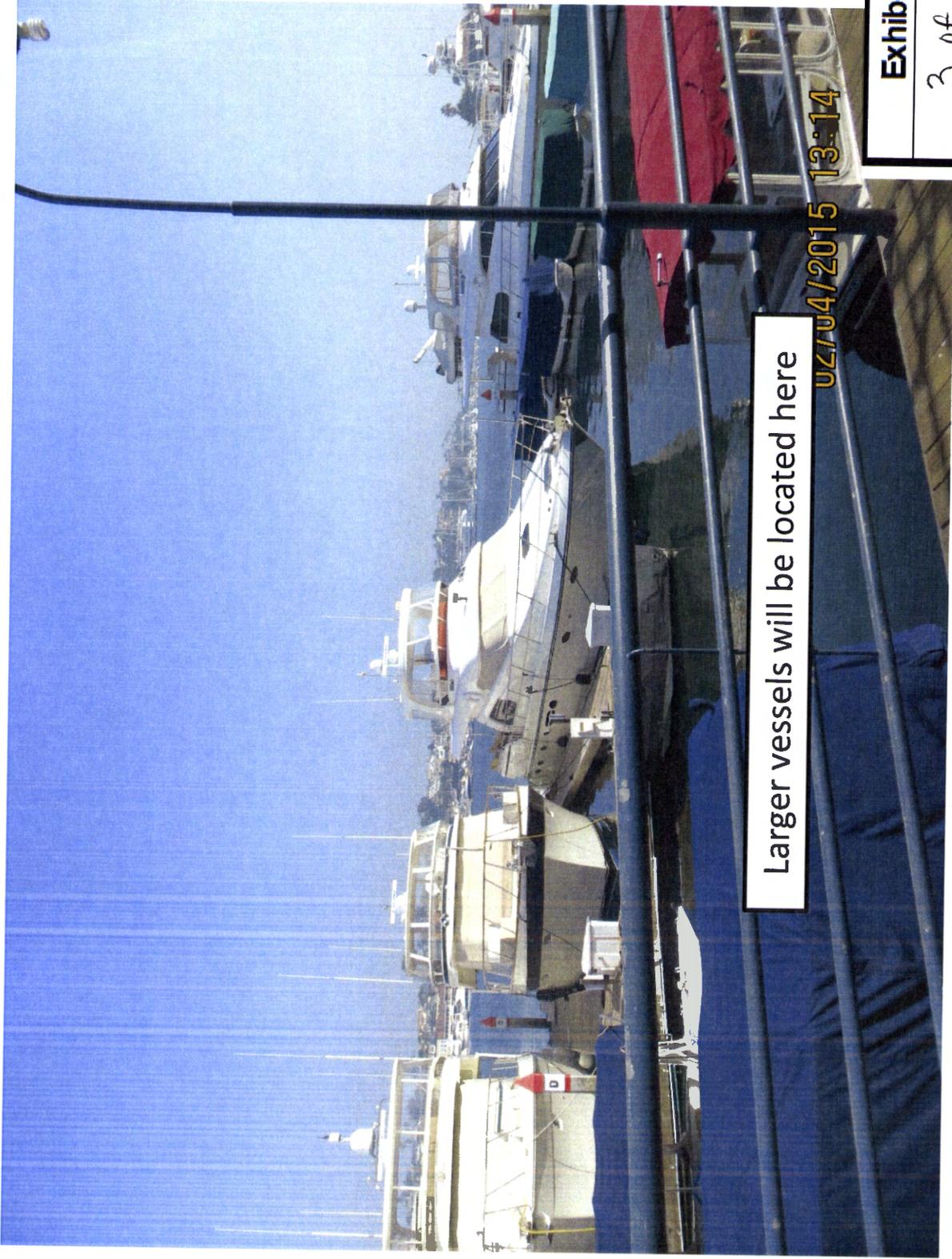


Rear of
Commercial
and Retail

Public Boardwalk

Exhibit 3
2 of 7
 California Coastal Commission

Photographs

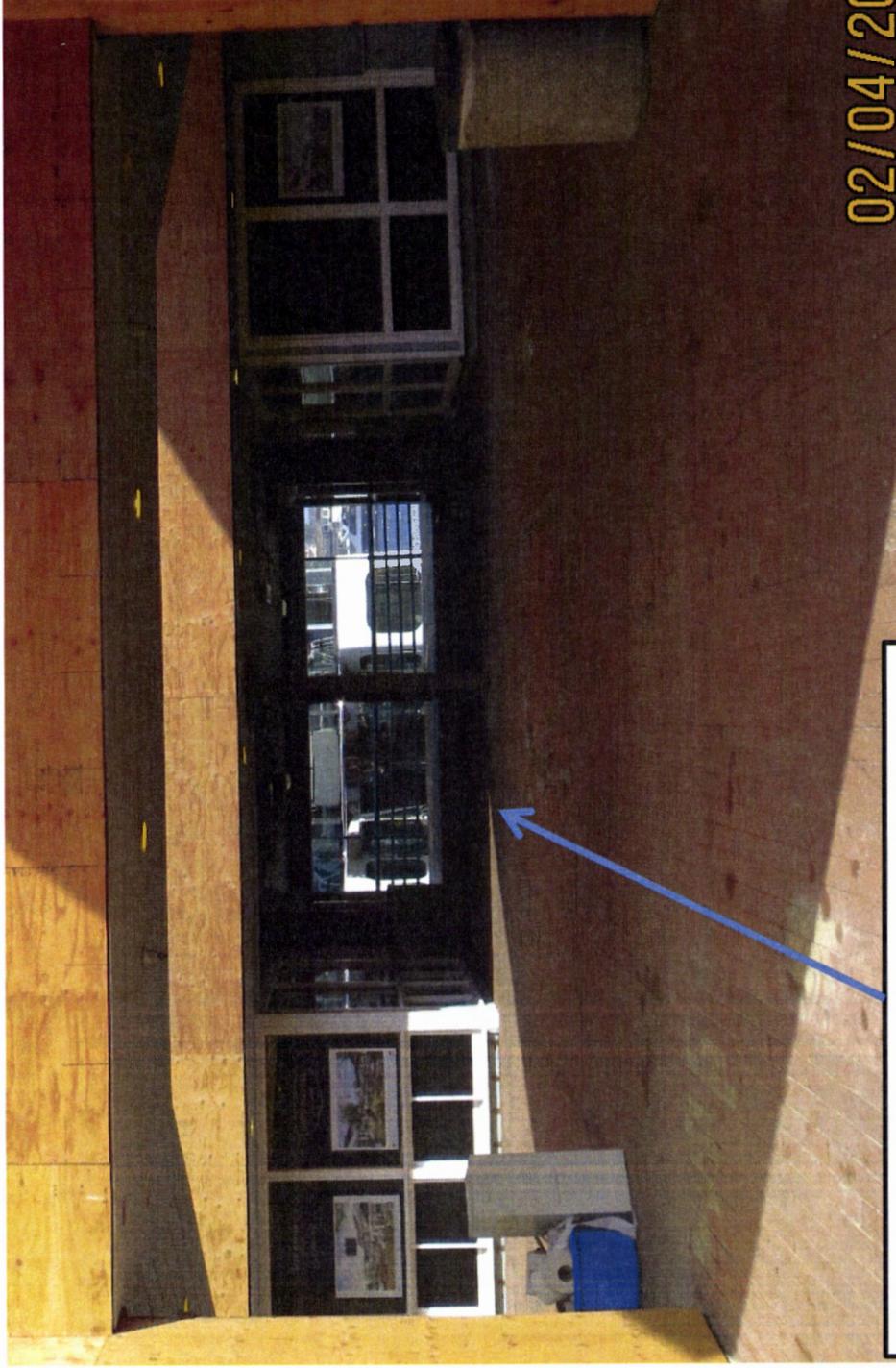


Larger vessels will be located here

04/04/2015 13:14

Exhibit 3
3 of 7
 California Coastal Commission

Photographs



Public view will be open

Exhibit 3
4 of 7
 California Coastal Commission

Photographs

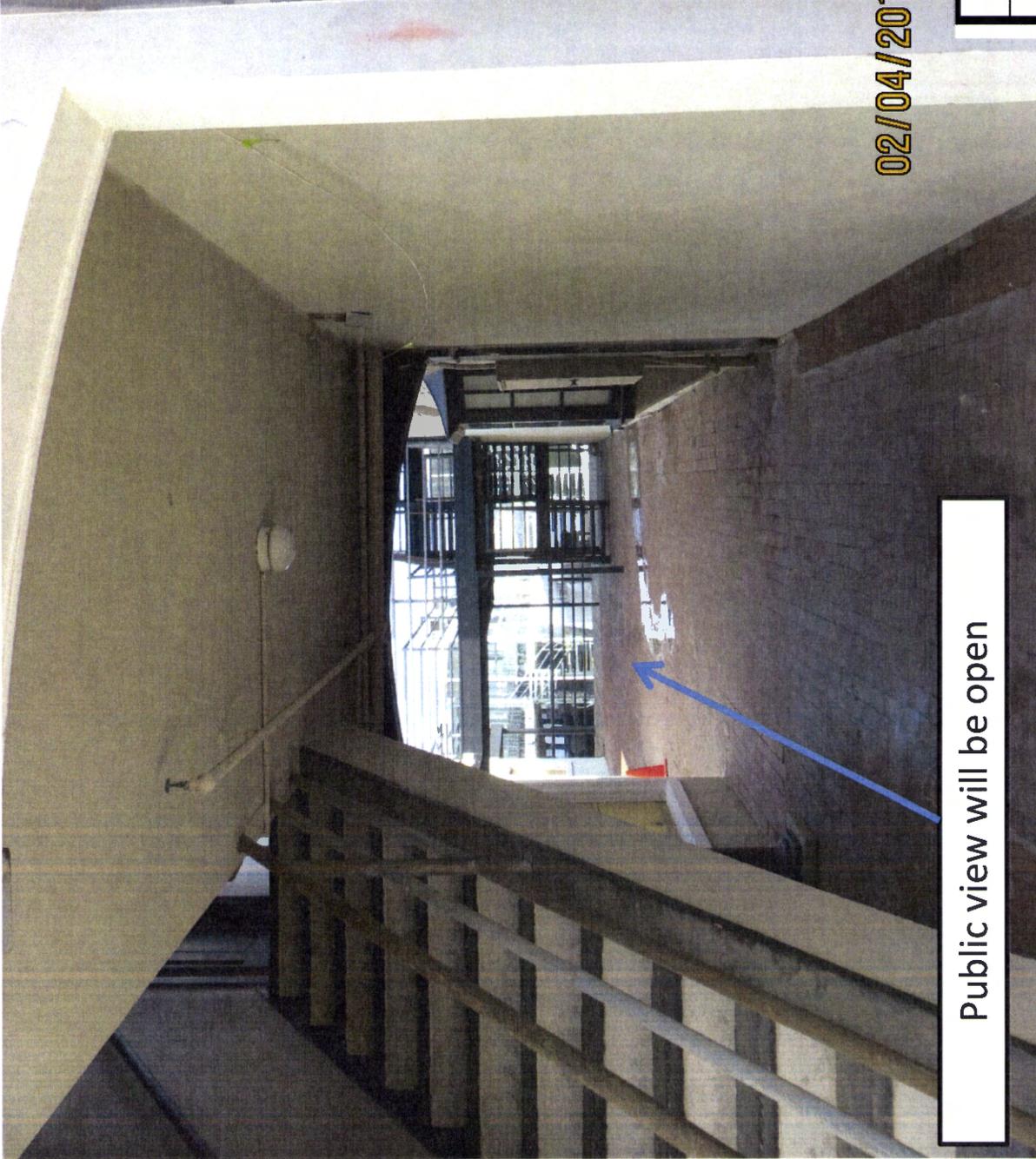


Public view will remain open

02/04/2015 13:21

Exhibit 3
5 of 7
 California Coastal Commission

Photographs



Public view will be open

Exhibit 3
6 of 7
 California Coastal Commission

Photographs



Large Charter Vessels

Exhibit 3
7 of 7
 California Coastal Commission

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South Coast Region

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CALIFORNIA
COASTAL COMMISSION

Allen Matkins

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E-mail: mhattam@allenmatkins.com
Direct Dial: 619.235.1529 File Number: 371997-00009/SD827975.01

Via Electronic Mail And U.S. Mail

March 2, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

**Re: Opposition to Staff Report Findings (Item Th 6b) and
Approval Recommendation for Coastal Development Permit
Application No. 5-14-0717**

Dear Ms. Dobson:

Our firm represents New Port Beach Mixed Development, LLLP ("New Port"), the owner of the mixed-use development and docks at 3388 Via Lido in Newport Beach, located immediately adjacent to the Lido Group Retail LLC property and docks at 3400 Via Oporto. New Port is in receipt of the subject Staff Report for the above-referenced application (the "Application") and the related staff recommendation for approval. We also have received a Public Hearing Notice on the Application for March 12 in Chula Vista, California, and we note that the Application is listed as being on the Consent Calendar.

This letter constitutes: (1) a request that the Application be taken off the Consent Calendar, and re-noticed for a later hearing after further study by your agency is performed; and (2) notice that if the current Application is not subject to more detailed analysis and review and remains in its current configuration, New Port will be submitting a more detailed objection prior to the March 12 hearing date.

New Port is very concerned that the Application has not been thoroughly analyzed, and that any review by the Coastal Commission is therefore premature. New Port also believes that the fundamental findings for the Application are contrary to past precedent, policy goals, and the rights of New Port and other property owners and tenants. Here is a short summary of such concerns:

- The relocation of very large and busy "party boats," with their associated noise, fumes, lights at night, traffic, and other related adverse effects directly adjacent to residences has not been reviewed in any manner. New Port

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EXHIBIT 4

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March 2, 2015
Page 2

believes that the relocation of such boats is a significant alteration of their current docking configuration. There may be better ways to resolve any issues with their current location.

- No traffic or parking studies appear to have been completed to address the relocation of higher intensity commercial uses (i.e. party boats) adjacent to ground floor commercial uses and residential units located on upper levels. Moving the party boats directly next to such persons is a major change from where they are currently located, not the minor incidental change suggested by the current staff report.
- There is no requirement to complete a public access signage program indicating the boardwalk would be open to the public, which is inconsistent with other recently assigned requirements for provision of signage to ensure ongoing and safe public access to the Bay.
- In New Port's recently approved CDP for 3388 Via Lido (CDP No. 5-14-0715), strict on-and-offsite parking conditions were assigned for its proposed commercial uses in perpetuity; no such conditions appear to have been assigned to this CDP. Accordingly, New Port is concerned that adjacent street parking and/or New Port's commercial parking spaces will be overrun with the peak users associated with the relocated charter party boats. New Port requests additional study/documentation on the number of persons accessing these boats, hours of operation, any related parking considerations due to relocation of the boats further from the Lido Group's parking structure, and other potential safety considerations, including increased foot and street traffic and associated spillover effects from offloading persons potentially under the influence of alcohol that is commonly served on these boat cruises.
- Additional view studies should be completed to demonstrate that relocation of the larger charter boats will not block a current open view towards the Bay, such as that seen from the brick walk located between 3400 Via Oporto and 3388 Via Lido. Moving the boats from one viewshed into another does not constitute a net benefit, particularly without the benefit of seeing the effect of the consolidation further from the Lido Group's retail core. We believe this change is sought by the applicant simply to improve their views at a new restaurant, and thus it is just an attempt to transfer a problem they have to New Port and to other residents/tenants.
- Additional study is needed to fully characterize the cumulative effect and navigational safety considerations of increasing the slip size at 3400 Via

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Oporto (i.e., removal of two 50-foot slip fingers and replacement with three 94-foot slip fingers) adjacent to our recently approved dock reconfiguration and improvements at 3388 Via Lido. Any potential line of sight difficulties or other operational issues for smaller vessels to navigate into the adjacent slips and/or dingy basins would need to be taken into consideration.

- The public access easement that New Port was required to grant was not intended to cover the increase in traffic that will be caused by party boat clientele. No analysis was done to consider the unanticipated increase in use of that easement.

There is also a critical issue regarding lack of notice. Neither New Port nor other affected persons were given adequate notice of this major docking change by the City of Newport Beach or the Coastal Commission. It is our understanding that the subject site at 3400 Via Oporto should have been staked and noticed to allow any passersby an opportunity to learn what is being proposed at that property. No such notice was posted or seen. The yellow notice currently located towards the center of the retail area and marina, near the existing charter boats, states the site was posted October 10, 2014. However, New Port never noticed such signage, nor was it posted adjacent to the proposed relocated slip area, where affected owners and residents could see it. As New Port recently completed a year-plus long application process with Commission staff for approval of its dock improvements, New Port is fully aware of the public notification requirements that must be met, and it does not believe notice was adequately provided.

New Port requests that additional studies be prepared to more fully assess the impact and spillover effects of this sought consolidation of higher intensity uses closer to ground floor commercial and upper level residential uses. New Port is not in opposition to the ongoing use of the existing docks for recreational and publicly accessible uses; however, the proposed modification and reconfiguration would result in greater impacts to the Lido Peninsula and would hinder safe and ongoing access to all users when compared to current conditions.

Therefore, New Port respectfully requests that the Application be removed from the Consent Calendar, and that the hearing scheduled for Thursday, March 12, 2015, be postponed until the many issues raised by the Application are vetted and a more appropriate alternative configuration can be proposed. I would appreciate a call from you as soon as possible on my direct line at 619-235-1529, so that I can know whether New Port must quickly prepare a full set of objection documents to submit for the March 12 hearing. I am hopeful this will not be necessary, and that the current hearing will come off calendar.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Ms. Amber Dobson
March 2, 2015
Page 4

A copy of this letter has been sent to the listed Agent for the Applicant, Ms. Shawna Schaffner of CAA Planning. Thank you.

Very truly yours,

Mark J. Hattam

Mark J. Hattam

MJH:cs

cc: Ms. Shawna Schaffner (via e-mail at sschaffner@caaplanning.com and U.S. mail)
Stanley Gilhool, Esq. (via e-mail)
Mr. Steve Mills (via e-mail)
Mr. Jerry Conrad (via e-mail)
Mr. Justin Park (via e-mail)
Ms. Alison Evans (via e-mail)
Susan E. Graham, Esq. (via e-mail)

Agenda Item: 6b
Application #: 5-14-1717
Name/Position: New Port Beach
Mixed Development
LLP -- **Opposed**

Allen Matkins

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Mark J. Hattam
E-mail: mhattam@allenmatkins.com
Direct Dial: 619.235.1529 File Number: 371997-00009/SD827975.01

Via Electronic Mail And FedEx

March 6, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

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South Coast Region

MAR 9 2015

CALIFORNIA
COASTAL COMMISSION

**Re: Objection to Staff Report Findings (Item Th 6b) and
Approval Recommendation for Coastal Development Permit
Application No. 5-14-1717**

Dear Ms. Dobson and Coastal Commission:

Our firm represents New Port Beach Mixed Development, LLLP ("New Port"), the owner of the mixed-use development and docks at 3388 Via Lido in Newport Beach, located immediately adjacent to the Lido Group Retail LLC property and the docks at 3400 Via Oporto. New Port is in receipt of the subject Staff Report for the above-referenced application (the "Application") and the related staff recommendation for approval. We also have received a Public Hearing Notice on the Application for March 12 in Chula Vista, California, and we note that the Application is listed as being on the Consent Calendar.

This letter constitutes an objection by New Port to the Application and the related findings, and a request that the Coastal Commission reject or postpone hearing the Application, at least until further studies are performed that cover all aspects of the proposed moving of three large commercial boats into a larger, reconfigured dock. The matter should not be heard on a perfunctory consent calendar.

New Port is very concerned that the Application has not been thoroughly analyzed, and that any review by the Coastal Commission (the "Commission") is therefore premature. New Port also believes that the fundamental findings for the Application are contrary to past precedent, policy goals, and the rights of New Port and other property owners and tenants.

The Commission can visually see where New Port's development is located by looking at Exhibit "2" to the Staff Report for the March 12 hearing. There, on the top portion of the Exhibit, one can see the current location of the three large boats, and also see that they are some distance from New Port's site (cross-hatched space on the right side of the drawing and designated "3388 Via

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Lido"). Then, if one looks at the bottom proposed change diagram, it is clear the boats will be relocated right next to New Port's site.

Fundamentally, New Port's objection centers around the fact that the Application seeks approval to move, into a new area, three sizable multi-story boats which run commercial enterprises many hours each day and evening, and to have this change approved without any meaningful review of the numerous significant effects of such a major relocation. This Objection provides some historical context of New Port's recently approved development, a summary of the Application in regard to the three boats, and the many potential adverse effects of a move that have not been thoroughly reviewed.

1. New Port's Approved Development

On May 6, 2014, New Port submitted an application that included removal and replacement of the existing boat dock system at its property and requested approval of renovation of the existing five-story building and associated parking lot.

On February 12, 2015, New Port received approval from the Commission of its Application No. 5-14-0715 to renovate the existing building with associated parking lot to accommodate a new mixed use development and also renovations to the associated existing docks and boardwalk.

The building on New Port's property is 60-feet tall, with five stories containing 20,143 square feet (which includes 1,185 square feet contained within new parking garages). Additional parking is provided at an off-site parking lot, approximately 725 feet from the subject site, located at 500 32nd street, also owned by New Port (the "32nd Street Lot").

The renovation work to the building included demolition of the existing bank vault to provide a new lobby area for the commercial tenant space and modification of the existing exterior walls on the 3rd and 4th floors to allow for new balcony space. The footprint of the building remained the same except for the addition of new covered garages for a total of five parking spaces for the two residential units. There was no change in height as a result of the renovation work.

After renovation, the commercial building consists of a total of 8,022 square feet of commercial space as follows: 4,054 square feet on the first floor, occupied by a jewelry store and 3,968 square feet on the second floor, occupied by a loan refinancing business specializing in marine vessel loans. The 3rd, 4th and 5th floors consist of two residential units totaling 8,940 square feet. Twenty-four off-site parking spaces are provided at the 32nd Street Lot, also owned by New Port.

New Port is in the process of obtaining all necessary approvals to renovate the existing boat dock system. New Port received City of Newport Beach Harbor Resources Division Harbor Permit/Approval-in-Concept No. 124-3388 and Plan Check No. 1095-2013 dated August 13, 2013, with recent updates approved on February 5, 2015, to satisfy COP 5-14-0715 Special Condition No.

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7. The Santa Ana Regional Water Quality Control Board determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. New Port has applied for a permit from the U.S. Army Corps of Engineers and the permit is pending receipt of the Commission permit, which was approved on February 12, 2015.

New Port's proposed dock project will include removal of the 3,409 square foot floating dock system with seven slips that also includes ten 14-inch square guide piles and replacement with a new 3,457 square foot boat dock system with three slips with ten 18-inch square concrete guide piles, two 14-inch square concrete "T" piles, a 5-foot x 5-foot gangway platform and new 24-foot x 3-foot gangway. Six existing 14-inch "T" piles supporting the boardwalk will remain. One of the new 14-inch "T" piles will support the new gangway platform and the other will replace an existing 14-inch "T" pile that supports the boardwalk.

Of the three proposed slips, two will be made available for rental to the general public, similar to the existing situation and one will be used by the residential tenants. In addition, the existing 115-foot x 6-foot (690 square feet) public boardwalk will be re-decked and the six existing 14-inch concrete "T" piles supporting the boardwalk will be re-used. New Port has also proposed new public access signage along the re-decked boardwalk.

Section 30250 of the Coastal Act¹ requires that new development be located where it will not have cumulative adverse effects on coastal resources. In the case of the New Port project, it was determined that the proposed project provided adequate parking and did not impact existing on-street public parking used by visitors to the coast, since New Port provided twenty-four off-site commercial parking spaces at the 32nd Street Lot as well as nine on-site commercial parking spaces.

2. The Pending Application

The Application seeks, among other things, to move three boats from their current slips to dock immediately adjacent to New Port's commercial and residential building. These boats are extremely large commercial enterprises, as can be seen from the following pictures taken from the website of the company which runs the boats:²

¹ All references to the Coastal Act are to the Public Resources Code.

² <http://www.electracruises.com/default.asp>

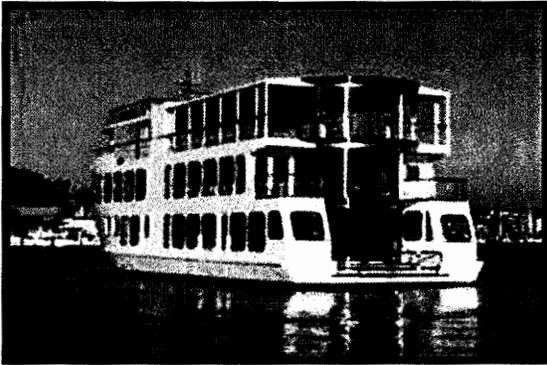
Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Ms. Amber Dobson

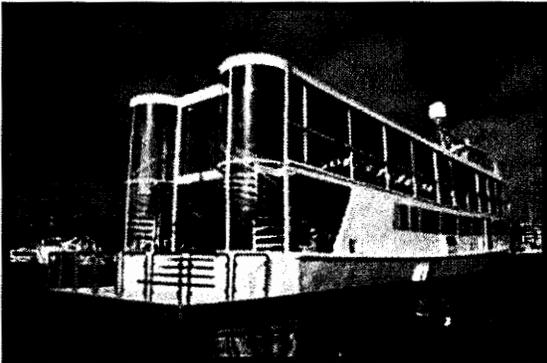
March 6, 2015

Page 4

The Eternity:



The Destiny:

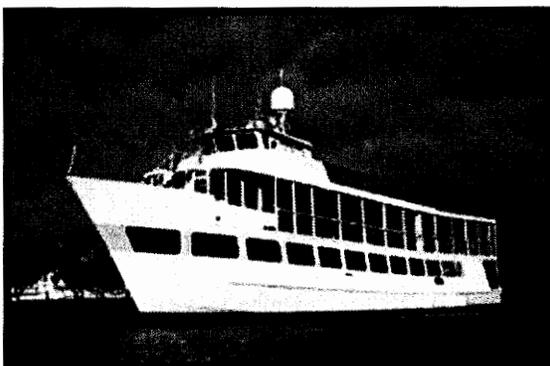


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Attorneys at Law

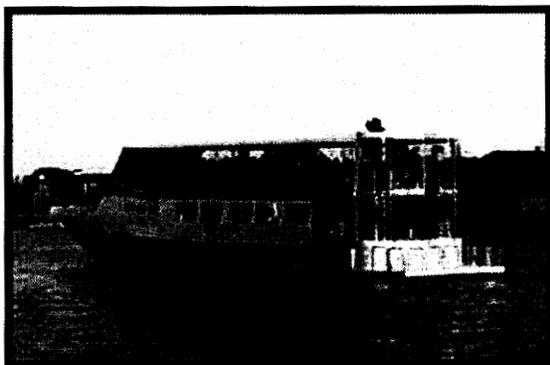
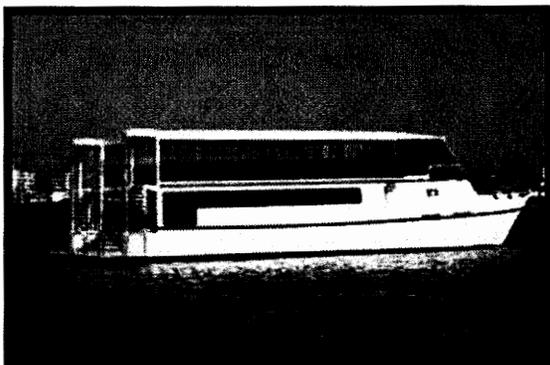
Ms. Amber Dobson

March 6, 2015

Page 5



The Athena:



Per the operators' website, the above boats are allowed to board 300, 150, and 150 passengers, respectively. That is a total of 600 maximum partygoers who may be using these boats

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at any one time, which does not include the crew, or friends and family of the guests who may be on the docks.

The Application is therefore, in reality, a request to allow the relocation of three major commercial enterprises which have extensive noise, night lights, fumes, and traffic/parking issues, all to a new location directly adjacent to residences and commercial space, with virtually no meaningful analysis.

New Port believes this change is sought by the Applicant simply to improve their views at a new restaurant and to move an alleged nuisance tenant, and thus the Application is just an attempt to transfer a problem the Applicant currently has with these boats to New Port and to other residents/tenants. In 2013, the operator of the three boats filed a lawsuit against the Applicant, claiming that the Applicant was making breach of lease claims related to seawall damage (discussed further below) against them "in retaliation for Plaintiff exercising its extension of the lease," because that lease "extension would impact Defendant's development plans for the area surrounding and including Plaintiff's [the boats'] business locations." See attached Exhibit "1" Complaint, ¶ 18. Applicant filed an unlawful detainer lawsuit against the boat operator, claiming its boats damaged the seawall. See second Complaint, attached without exhibits as Exhibit "2." When Applicant's unlawful detainer lawsuit was dismissed, it apparently then turned to foisting these huge boats onto other neighbors.

3. The Application's Fatal Lack Of Review And Evidentiary Support

Staff's recommendation, per its Staff Report for this matter, that the Commission approve the Application on its Consent Calendar, is inappropriate. The Staff Report and findings focus on the suggested conditions for items such as eelgrass and construction methods, but basically ignore a host of other serious issues, some of which implicate a more thorough review. By topic areas, here are matters ignored by the Staff Report, and which lack any analysis or substantial evidence on which the Commission could act:

A. Lack Of Traffic And Parking Analysis

There are only a few conclusory statements in the Staff Report regarding traffic and parking.³ However, there is no data or evidence to back up the assertions that there will be no problems. This is not appropriate for the movement of very large commercial enterprises much further from their designated parking, and near private and public parking and streets that will be affected by the change.

³ Per Sections 30210, 30250, and 30252 of the Coastal Act, public access to coastal resources must be maintained and enhanced by supplying adequate parking and serving the transit needs of new development.

Ms. Amber Dobson
March 6, 2015
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In New Port's recently approved Coastal Development Permit for 3388 Via Lido (CDP No. 5-14-0715), strict on-and-offsite parking conditions were assigned for its proposed commercial uses in perpetuity. Those conditions from the Commission included a finding that, "future development may potentially result in insufficient parking forcing patrons of the building to take up public parking spaces in the area intended for visitors to the coast." Page 18, Findings & Declarations, *Id.* However, though the movement of the boats would cause exactly this issue the Commission warned against, no review of the issue is made, and no mitigating conditions appear to have been assigned to this CDP. The dock reconfiguration and change in slip use by relocating three charter boats constitutes new development requiring such review.

New Port is very concerned that adjacent street parking and/or New Port's commercial parking spaces will be overrun with the peak users associated with the relocated charter party boats. New Port requests that the Commission require additional study/documentation on the number of persons accessing these boats, hours of operation, any related parking and traffic considerations due to relocation of the boats further from the Lido Group's parking structure, and other potential safety considerations, including increased foot and street traffic and associated spillover effects from offloading of persons potentially under the influence of alcohol that is commonly served on these boat cruises. To date, no traffic or parking studies appear to have been completed to address the relocation of higher intensity commercial uses (i.e. party boats) adjacent to ground floor commercial uses and residential units located on upper levels.

B. Lack Of Analysis On Impact To Residents/Businesses

Coastal Act section 30212.5 requires:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

There is no analysis in the Staff Report of the effect of concentrating all three boats next to New Port's site. Currently, there is a large channel between New Port's site and the Applicant's, which will be replaced by all three towering boats, packed together. Why are no other alternatives discussed? Why can't one of the boats stay where currently located, and the other one or two be moved to differing locations? Why is the spot next to New Port the only possible location discussed? There is no consideration being given, or even addressed, as to impacts on the existing residents and businesses of the area.

The relocation of very large and busy "party boats," with their associated noise, fumes, lights at night, traffic, and other related adverse effects directly adjacent to residences has not been reviewed in any manner. New Port believes that the relocation of such boats is a significant alteration of the current docking configuration for those boats.

Ms. Amber Dobson
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C. Lack Of Analysis On Seawall Effects

One of the grounds for the Applicant wanting to move the boats is stated in the proposed Findings and Declarations at page 9 as, "protect improvements to the existing seawall by relocating 3 large charter vessels." Then, on page 11 of the Findings and Declarations it states that there has been damage to the seawall where the boats are currently located, and that the "dock changes proposed in this application are designed to protect the repairs to the seawall by relocating the charter vessels away from the repaired area." However, where are the detailed analysis and findings about what will happen to the seawall at the New Port site when these boats are moved there? There is no analysis, and there are no findings.

Indeed, completely ignored in the Staff Report and related materials are public record lawsuits between the Applicant and the operator of the party boats. In those actions, the complaints of which are attached as Exhibits "1" and "2," it is clear that there is an issue as to whether the operations of the boats caused and cause extensive damage to seawalls. Consider the following allegations in those actions:

Defendant [Applicant] sent a demand letter to Plaintiff [boat operator] to change the berthing of Plaintiff's vessels to no longer berth "stern in" and referring to the need to repair damage to the seawall adjacent to Plaintiff's business operations that Defendants believed was caused by Plaintiff Defendant knew that was impossible to do because the vessels are constructed to load their passengers from the stern.

Exhibit "1" Complaint, ¶ 13.

Plaintiff [Applicant] discovered that contrary to its agreement and its written representations, Electra [boat operator] had not repaired the damage to the seawall, that its vessels were in fact continuing to enter and leave the Premises stern in under power, and that as a result the damage to the seawall had gotten substantially worse.

Exhibit "2" Complaint, ¶ 15.

These are serious claims, and indicate the possibility of similar damage at the seawall next to the New Port site. Yet, they are issues unaddressed in the materials before the Commission at this hearing.

D. Lack Of Analysis Of Public Views

There is a current open view towards the Bay, such as that seen from the brick walk located between 3400 Via Oporto and 3388 Via Lido. That public view would be blocked by the relocation of the large boats. Yet, there is no discussion of that problem in the Staff Report, which just

Ms. Amber Dobson
March 6, 2015
Page 9

discusses opening up the view where the boats are currently located. Moving the boats from one viewshed to block another does not constitute a net benefit. Coastal Act section 30251 requires protection of scenic and visual qualities, including a requirement that development "be visually compatible with the character of surrounding areas." Yet, there is no analysis of the visual issues at the New Port site in the context of moving three multi-story boats next to it.

E. Lack Of Analysis Of Navigation Issues

Additional study is needed to fully characterize the cumulative effect and navigational safety considerations of increasing the slip size at 3400 Via Oporto (i.e., removal of two 50-foot slip fingers and replacement with three 94-foot slip fingers) adjacent to New Port's recently approved dock reconfiguration and improvements at 3388 Via Lido. Any potential line of sight difficulties or other operational issues for smaller vessels to navigate into the adjacent slips and/or dingy basins would need to be taken into consideration.

F. Lack Of Signage

There is no requirement to complete a public access signage program indicating the boardwalk would be open to the public, which is inconsistent with other recently assigned requirements for provision of signage to ensure ongoing and safe public access to the Bay.

4. The Application's Lack Of Notice

There is also a critical issue regarding lack of notice. Neither New Port nor other affected persons were given adequate notice of this major docking change by the City of Newport Beach or the Commission. It is our understanding that the subject site at 3400 Via Oporto should have been staked and noticed to allow any passersby an opportunity to learn what is being proposed at that property. No such notice was posted or seen. The yellow notice currently located towards the center of the retail area and marina, near the existing charter boats, states the site was posted October 10, 2014. However, New Port never noticed such signage, nor was it posted adjacent to the proposed relocated slip area, where affected owners and residents could see it. The Coastal Act makes clear that the public has a right to full notice and participation in Commission matters. See, for example, Sections 30006 and 30320. New Port does not believe there was proper notice to the affected public here.

Therefore, in conclusion, New Port requests that additional studies be prepared to more fully assess the impact and spillover effects of this sought consolidation of higher intensity uses closer to ground floor commercial and upper level residential uses. New Port is not in opposition to the ongoing use of the existing docks for recreational and publicly accessible uses; however, the proposed modification and reconfiguration would result in greater impacts to the Lido Peninsula and would hinder safe and ongoing access to all users when compared to current conditions. Additional alternatives appear feasible.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

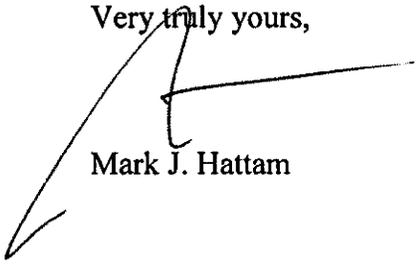
Ms. Amber Dobson

March 6, 2015

Page 10

New Port respectfully requests that the Application be denied or postponed until the many issues raised by the Application are fully analyzed. A copy of this Objection has been sent to the listed Agent for the Applicant, Ms. Shawna Schaffner of CAA Planning. Thank you.

Very truly yours,



Mark J. Hattam

MJH:cs

Enclosures

cc: Ms. Shawna Schaffner (via e-mail at sschaffner@caaplanning.com and U.S. Mail)
Stanley Gilhool, Esq. (via e-mail)
Mr. Steve Mills (via e-mail)
Mr. Jerry Conrad (via e-mail)
Mr. Justin Park (via e-mail)
Ms. Alison Evans (via e-mail)
Susan E. Graham, Esq. (via e-mail)

EXHIBIT 1

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

09/09/2013 at 03:39:00 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

1 Steven A. Silverstein, Bar No. 64610
2 Mark W. Huston, Bar No. 119872
3 Robert I. Cohen, Bar No. 168686
4 SILVERSTEIN & HUSTON
5 701 South Parker Street, Suite 5500
6 Orange, California 92868
7 Tel: (714) 547-2511
8 Fax: (714) 547-0230
9 silverstein@silversteinhuston.com

6 Attorneys for Plaintiff, ELECTRA CRUISES, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

11 ELECTRA CRUISES, INC., a Florida
12 corporation,

12 Plaintiff,

13 v.

14 LIDO GROUP RETAIL, LLC, a California
15 limited liability company; and DOES 1 to 50,
16 inclusive,

17 Defendants.

Case No.: 30-2013-00673378

FIRST AMENDED COMPLAINT FOR:

- 1. **Declaratory Relief – Count 1**
- 2. **Declaratory Relief – Count 2**

Assigned for all purposes to:
Judge Thierry Patrick Colaw, Department C25

Complaint Filed: September 4, 2013
Trial Date: None Set

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1 Come now, Plaintiff, ELECTRA CRUISES, INC., who alleges as follows:

2 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 1. Plaintiff, ELECTRA CRUISES, INC. ("Plaintiff" or "Electra") is, and at all
4 times mentioned herein, a Florida corporation authorized to conduct business and doing
5 business in the County of Orange, State of California.

6 2. Defendant, LIDO GROUP RETAIL, LLC ("Defendant" or "LIDO") is, and at
7 all times mentioned herein was, a California limited liability company that is operating and
8 doing business in the County of Orange, State of California.

9 3. Plaintiff is unaware of the true names and capacities of Defendants sued herein
10 as DOES 1 through 50, inclusive, and therefore sue these Defendants by such fictitious names.
11 Plaintiff will amend the complaint to alleged their true names and capacities when ascertained.
12 Plaintiff is informed and believe and thereon allege that each of the fictitiously named
13 Defendants are negligently or intentionally responsible in some manner for the occurrences
14 herein alleged, and that Plaintiff's losses as herein alleged were proximately caused by such
15 acts.

16 4. All of those named Defendants herein, and each of them, including DOES 1
17 through 50, inclusive, were the officers, directors, agents, representatives, employers,
18 conspirators, aiders and abettors, and/or alter egos of each other, and in acting and omitting to
19 act, did so with the express, implied or ostensible authority, consent or ratification of their
20 principals, or within the scope of their employment, responsibilities and/or for the benefit of
21 their principals, and are jointly and severally liable to Plaintiff under such theories, including
22 but not limited to aiding and abetting, alter ego, conspiracy, respondeat superior and/or
23 vicarious liability.

24 5. Defendant LIDO is the current landlord and landowner that has leased certain
25 properties to Plaintiff Electra to operate its business, namely office spaces at 3439, 3431, 3424
26 (#103), and 3420 (# 203) Via Oporto, Newport Beach, California, as well as various lagoons
27 and slips as follows:

28 a. Lagoons: 424 and 525

1 b. Slips: 506 through 509, 517, 518, 713, and 714

2 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF – COUNT 1**

3 **(By Plaintiff against all Defendants)**

4 6. Plaintiff incorporates by this reference each and every allegation set forth in
5 paragraphs 1-5, inclusive, as though fully set forth herein.

6 7. Under an amendment to the leases for the properties set forth in paragraph 5,
7 two options to extend lease terms were given to the then tenant, Lynda Guinther, which leases
8 have been assigned to Electra with the consent of Defendant's predecessor in interest, Lido
9 Marina Village. Said two options have been exercised and the lease terms extended with the
10 consent of Defendant's predecessor, with the current lease term to conclude on December 31,
11 2015.

12 8. On January 20, 2005, a further amendment to the above referenced lease was
13 given by Defendant's predecessor in interest, Lido Marina Village. Attached hereto as Exhibit
14 "A" is a true and correct copy of this further amendment.

15 9. An actual controversy has arisen and now exists between Plaintiff and
16 Defendant concerning their respective rights and duties under this latest amendment. Plaintiff
17 intends to exercise its option to extend the leases under this written amendment and has
18 communicated to Defendant that this amendment exists and is valid. On April 24, 2013,
19 Defendant, through its legal representative, declined to acknowledge the validity of this lease
20 amendment and thus any further extension rights of Plaintiff. Therefore, Plaintiff desires a
21 judicial determination of its rights and duties and a declaration as to whether this written
22 amendment is valid and enforceable. Plaintiff claims that all conditions set forth in this
23 amendment have been met by Plaintiff in full thereon making such amendment valid and
24 enforceable, whereas Defendant disputes the validity of this document and claims it has no
25 force and effect.

26 10. A judicial declaration is necessary and appropriate at this time under the
27 circumstances in order that Plaintiff may ascertain its rights under this written amendment. It
28 operates its entire business under the various leases as set forth above, as well as the extensions

1 granted thereabout. If Plaintiff waits until the current expiration of the lease in 2015 to have
2 this conflict adjudicated, it will effectively be out of business until such judicial determination
3 can be made. Plaintiff has various charter boats in which the lagoons and slips are required for
4 its business operations. It is imperative to have the determination prior to the current expiration
5 to protect the interest of both parties immediately after the December 2015 expiration date.

6 11. Under the provisions of the leases, the prevailing party in any dispute is entitled
7 to its attorneys' fees. Plaintiff has had to retain counsel to prosecute these issues and is entitled
8 to its attorneys' fees and costs.

9 **SECOND CAUSE OF ACTION- DECLARATORY RELIEF – COUNT 2**

10 **(By Plaintiff against all Defendants)**

11 12. Plaintiff incorporates by this reference each and every allegation set forth in
12 paragraphs 1-11, inclusive, as though fully set forth herein.

13 13. In August 2013, Defendant sent a demand letter to Plaintiff to change the
14 berthing of Plaintiff's vessels to no longer berth "stern in" and referring to the need to repair
15 damage to the seawall adjacent to Plaintiff's business operations that Defendant believed was
16 caused by Plaintiff. Irrespective of fault, Plaintiff undertook to repair the seawall. To do so,
17 Plaintiff hired an engineer who prepared plans for the remediation. After the plans were
18 complete, Plaintiff took the plans to the City of Newport Beach for approval. After obtaining
19 such stamped approval, Plaintiff delivered the plans to Defendant for their consent to begin
20 repairs. This was all accomplished within the deadline given by the Defendant in their demand
21 letter. As to the changing of the berthing, Defendant knew that was impossible to do because
22 the vessels are constructed to load their passengers from the stern. Further, there was no clause
23 in any of the leases that restricted how Plaintiff could berth its vessels and this actually is not
24 causing any issues with the seawall.

25 14. Numerous follow-up communications were done by Plaintiff's representatives to
26 Defendant and Defendant's engineering consultant, also within Defendant's demanded
27 timeframe, wherein Defendant expressed the plans were being reviewed so that construction
28 would commence to remedy the claimed issue. Contrary to Defendant's statements, on

1 September 3, 2013, Plaintiff received a letter dated August 29, 2013 purporting to terminate
2 Plaintiff's tenancy for not repairing the damage to the seawall and not changing the berthing of
3 its vessels, claiming these actions to be a breach of the lease.

4 15. An actual controversy has arisen and now exists between Plaintiff and Defendant
5 concerning their respective rights and duties as relates to the berthing and repairs of the seawall.
6 Therefore, Plaintiff desires a judicial determination of its rights and duties under the lease and a
7 declaration as to whether its action as relates to the seawall repairs and berthing of its vessels are
8 in compliance with its lease obligations.

9 16. Plaintiff contends it has complied and is continuing to comply with its
10 obligations under the leases to repair the seawall issue and thus is not in breach of the leases.
11 Defendant, on the other hand, contends the contrary and believes it can evict Plaintiff from its
12 leased premises.

13 17. A judicial declaration is necessary to ascertain whether Plaintiff is in breach of
14 the leases or has complied and continues to comply with its lease obligations. It operates its
15 entire business under the various leases set forth above.

16 18. Plaintiff claims the Defendant's current position is in actuality retaliation for
17 Plaintiff exercising its extension of the lease as addressed in the first cause of action, which
18 extension would impact Defendant's development plans for the area surrounding and including
19 Plaintiff's business locations. Based on Defendant's wrongful exercise of its rights to evict
20 Plaintiff, when Plaintiff is not in default, Plaintiff believes it is entitled to the issuance of a
21 temporary, preliminary and permanent injunction restraining and enjoining Defendant from
22 evicting Plaintiff.

23 19. WHEREFORE, Plaintiff ELECTRA CRUISES, INC. prays judgment, as
24 follows:

- 25 a. For a declaration that the option as set forth in the January 20, 2005 letter
26 is valid and enforceable.
- 27 b. For a declaration that Plaintiff has exercised its five year option under
28 the January 20, 2005 letter extending its lease until January 1, 2020;

- 1 c. For a declaration that Plaintiff is not in breach of its leases;
2 d. For injunctive relief against Defendant for a temporary, preliminary and
3 permanent injunction restraining and enjoining Defendant from evicting
4 Plaintiff;
5 e. For attorneys' fees according to proof;
6 f. For costs of suit herein incurred; and
7 g. For such other and further relief as the court may deem proper.
8

9 Dated: September 9, 2013

SILVERSTEIN & HUSTON

10
11 By: 

12 Mark W. Huston
13 Attorney for Plaintiff, ELECTRA
14 CRUISES, INC.
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EXHIBIT "A"



OF THE WATERFRONT IN NEWPORT BEACH, CALIFORNIA

MANAGEMENT LEASING OFFICE

3439 VIA OPORTO SUITE 100, NEWPORT BEACH, CA 92663-1002 • TEL: (949) 733-8612 • FAX: (949) 733-8517

January 20, 2005

Randy Goodman
Electra Cruises
3439 Via Oporto
Newport Beach, CA 92663

Reference: Dock remodeling

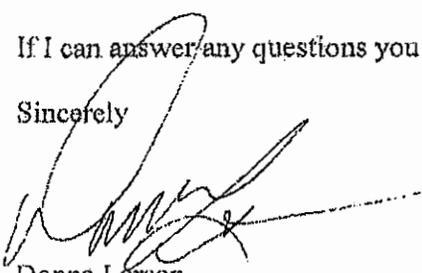
Dear Randy

It is my understanding in December your application was submitted to the Corp of Engineers and California Coastal Commission for the remodeling/renovation of dock area you lease here and approval is expected sometime within the next few months. Based on this and provided the remodeling/renovation is completed and passed all governmental (ie City, County, State etc) agency requirements, the option you requested for an additional five (5) year period will be granted, provided that Electra Cruises (Tenant) is not in default of the Lease Agreements, Amendments and/or Addendums, at the time. This option will be under the same terms and conditions as outlined in the Amendments dated August 23, 2001.

The Amendments to the Lease Agreements dated August 23, 2001 which provides for a termination on the unexpired balance of your office and slip leases will be deleted effective January 2, 2009 if Landlord has not received necessary permits for the major redevelopment and/or demolition of Lido Marina Village (including slips and mooring area).

If I can answer any questions you may have, please contact me.

Sincerely



Donna Larson

Cc: File

EXHIBIT 2

1 SEED MACKALL LLP
2 1332 ANACAPA STREET, SUITE 200
3 POST OFFICE BOX 2578
4 SANTA BARBARA, CALIFORNIA 93120
5 TELEPHONE: (805) 963-0669
6 TELEFAX: (805) 962-1404
7 Peter A. Umoff, Bar No. 091220
8 Alan D. Condren, Bar No. 180624
9 Attorneys for Plaintiff Lido Group Retail, LLC

ELECTRONICALLY FILED
Superior Court of California
County of Orange
09/26/2013 at 08:30:21 AM
Clerk of the Superior Court
By D.Cuevas, Deputy Clerk

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SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

LIDO GROUP RETAIL, LLC, a California
limited liability company,

Plaintiff,

vs.

ELECTRA CRUISES, INC., a Florida
corporation, and DOES 1 to 50, Inclusive,

Defendants.

Case No. 30-2013-00677918-CU-UD-CJC

(Assigned For All Purposes To Judge)

VERIFIED COMPLAINT FOR
UNLAWFUL DETAINER

COMES NOW Plaintiff Lido Group Retail, LLC, a California limited liability company, and for causes of action against Defendants Electra Cruises, Inc., a Florida corporation, and Does 1 through 50, inclusive, alleges as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, Plaintiff Lido Group Retail, LLC, was and now is a limited liability company duly organized and existing under the laws of the State of California with its principal place of business in Orange County, California.

2. Plaintiff is informed and believes, and based upon such information and belief alleges, that at all times mentioned herein Defendant Electra Cruises, Inc. ("Electra"), was and now is a corporation organized and existing under the laws of the State of Florida authorized to conduct business in California, and operating in Orange County, California.

1 conditions set forth in the 1996 Lease. A true and correct copy of the 1996 Lease is attached hereto
2 as Exhibit 1 and incorporated herein by this reference as though fully set forth.

3 8. Since its execution, the 1996 Lease has been amended to add Lagoon 425 and all the
4 above-referenced slips except for Slips 517, 518, 713, and 714. A true and correct of that
5 amendment is attached hereto as Exhibit 2 and incorporated herein by this reference as though fully
6 set forth.

7 9. On or about June 8, 1999 Plaintiff's predecessor-in-interest, as lessor, and Electra's
8 predecessor, as lessee, entered into and executed a written agreement titled Lido Marina Village
9 Lease (the "1999 Lease") whereby Electra's predecessor-in-interest agreed to occupy Slips 713 and
10 714 on the terms and conditions set forth in the 1999 Lease. A true and correct copy of the 1999
11 Lease is attached hereto as Exhibit 3 and incorporated herein by this reference as though fully set
12 forth.

13 10. The 1999 Lease was later amended to add Slips 517 and 518. A true and correct of
14 that amendment is attached hereto as Exhibit 4 and incorporated herein by this reference as though
15 fully set forth.

16 11. Through a series of amendments and executions of options to extend the terms of the
17 1996 Lease and the 1999 Lease (sometimes referred to collectively as the "Leases"), the current
18 term of the Leases, covering all the Lagoons and Slips listed above, expires on December 31, 2015
19 unless earlier terminated.

20 12. The 1996 Lease (covering all Lagoons and Slips listed above except for Slips 517,
21 518, 713, and 714) contains provisions that prohibit Electra from committing waste and allows
22 Plaintiff to terminate the Lease if Electra breaches this provision, as follows:

23 "17. Waste and Quiet Conduct: Tenant shall not commit or
24 suffer any waste upon the lagoon area or any nuisance of other act or
25 things which may disturb the quiet enjoyment of any other tenant in
the marina near or any other slip in the marina in which the lagoon is
located."

26 "20. Breach by Tenant
27 "Tenant shall be in breach of this Lease Agreement if at
anytime during the term of this Agreement . . .

28 * * *
"Tenant fails to observe or perform any of its other covenants,
agreements or obligations hereunder, and such failure is not cured

1 within thirty (30) days after Landlords written notice to Tenant of
2 such 30 day period and thereafter diligently prosecutes the same to
completion;”

* * *

3 “Remedies of Landlord

4 “Termination of Agreement after breach, if Tenant breaches
5 this Lease Agreement and abandons the lagoon before the end of the
6 term, or its right to possession is terminated by Landlord because of
Tenants breach of this Lease Agreement, then this Lease Agreement
shall automatically terminate. . . .”

7 13. The 1999 Lease (covering Slips 517, 518, 713, and 714) contains similar provisions
8 regarding waste and termination, as follows:

9 “6.3 Use Prohibited

* * *

10 “C. Tenant shall not cause, maintain or permit any
11 nuisance in, or on about the property. Tenant shall not
12 commit or suffer to be committed any waste in or upon
13 the Slip. Tenant shall not do or permit anything to be
done in or about the Slip which will in any way
obstruct or interfere with the rights of other tenants of
the building.”

14 “20.21 Tenant shall not commit or suffer any waste upon the slip area
15 or any nuisance or other acts or things which may disturb the quiet
16 enjoyment of any other tenant in the marina area or any other slip in
the marina in which the slip is located.”

17 “17. DEFAULT: REMEDIES

18 “17.1 Default: . . . or should Tenant be in default in
19 the prompt and full performance of any other of its
20 promises, covenant or agreements herein contained
21 and should such default or breach of performance
22 continue for more than a reasonable time [in no event
23 to exceed thirty (30) days] after written notice thereof
24 from Landlord to Tenant specifying the particulars of
such default or breach of performance; . . . then
Landlord may treat the occurrence of any one or more
of the foregoing events as a breach of this Lease, and
in addition to any or all other rights or remedies of
Landlord hereunder by the law provided, it shall be, at
the option of Landlord, without further notice or
demand of any kind to Tenant or any other person:

25 “A. The right of Landlord to declare the
26 term hereof ended and to re-enter the Slip and take
27 possession thereof and remove all persons therefrom;
28 and Tenant shall have no further claim thereon or
thereunder;”

///

1 14. Electra has violated the Leases' prohibitions against committing waste. Plaintiff is
2 informed and believes and based on such information and belief alleges that prior to Plaintiff's
3 acquisition of the Property, Electra became aware that the operation of its vessels was causing
4 severe damage to the seawall at the Property. Specifically, it was discovered that Electra's practice
5 of entering and leaving the Premises stern in, under power, had severely undermined the seawall
6 and created a substantial risk that the seawall would fail due to erosion of the mudline and resulting
7 loss of support and stability. Electra was advised by its expert consultants that the mudline needed
8 to be raised, that it needed to be constantly monitored and maintained at an advised minimum
9 elevation, that the problem had been exacerbated by improper docking of Electra's vessels, and that
10 the captains of the charter boats must exercise care to prevent propeller wash against the seawall
11 during berth and launch operations. Electra agreed to repair the damage to the seawall and to stop
12 entering and leaving the Premises stern in, under power. Plaintiff is further informed and believes
13 that Electra acknowledged that it's operations were damaging the seawall and represented to
14 Plaintiff's predecessor and to City of Newport Beach Harbor Resources and the California Coastal
15 Commission that it had rectified its improper docking procedures (i.e., that it would no longer
16 engage in its practice of entering and leaving the Premises stern in and under power) and further
17 represented in writing that it had instructed its captains that "vessels are to be driven in and out of
18 the slip at idle...vessels will be placed in neutral once they reach half way into the slip preventing
19 further disruption of the soil at the seawall." True and correct copies of Electra's letter to its
20 captains and its consultant's letter to the California Coastal Commission, copies of which Plaintiff
21 is informed and believes were also delivered to City of Newport Beach Harbor Resources, are
22 attached hereto as Exhibits 5 and 6, respectively, and incorporated herein by this reference as
23 though fully set forth.

24 15. In or about June, 2013, Plaintiff discovered that contrary to its agreement and its
25 written representations, Electra had not repaired the damage to the seawall, that its vessels were in
26 fact continuing to enter and leave the Premises stern in under power, and that as a result the damage
27 to the seawall has gotten substantially worse. Plaintiff is informed and believes that Electra did not
28 raise the mudline and that it has not constantly monitored and maintained the mudline at the

1 minimum level recommended by its consultants.

2 16. In accordance with the Leases, on July 17, 2013 Plaintiff provided written notice to
3 Electra of the damage to the seawall and demanded that Electra cease its activities that were causing
4 the damage, as follows:

5 "We are writing to advise you that Lido Group has learned that the
6 nearshore mudflats of the seawall of the marina have been severely
7 eroded in several locations as a result of propeller action in the
8 vicinity of the seawall resulting from your berthing of your vessels
9 "stern in." As a result, the seawall is being undermined and is at risk
10 of failure due to loss of support and stability. To avoid further
11 erosion and damage to the seawall, you must immediately stop
berthing your vessels "stern in." Please make whatever alternative
arrangements you need to make to stop this dangerous and destructive
activity. your failure to make necessary arrangements to cease
berthing "stern in" will result in additional damage to the seawall and
will constitute waste and nuisance and a breach of your lease
obligations."

12 A true and correct copy of Plaintiff's July 17, 2013 letter is attached hereto as Exhibit 7 and
13 incorporated herein by this reference as though fully set forth.

14 17. Despite being provided this notice by Plaintiff, for more than 30 days thereafter
15 Electra continued to berth its vessels stern in, under power and cause further damage and waste to
16 the seawall. Accordingly, consistent with its rights under the Leases, on August 29, 2013 Plaintiff
17 (through its attorneys) notified Electra that its Leases were terminated and that if it did not vacate
18 the Premises Plaintiff would seek to regain possession through an unlawful detainer proceeding. A
19 true and correct copy of Plaintiff's attorney's August 29, 2013 letter is attached hereto as Exhibit 8
20 and incorporated herein by this reference as though fully set forth.

21 18. Electra continues in possession of the Premises without Plaintiff's permission or
22 consent, and contrary to the terms and conditions of the Leases. Such continuance in possession of
23 the Premises by Electra is willful, intentional, deliberate, and obstinate, entitling Plaintiff to
24 statutory damages in the amount of \$ 600, pursuant to Code of Civil Procedure § 1174(b).

25 19. Plaintiff is informed and belief that the reasonable rental value of the Premises is
26 \$17,705.02 per month, and damages to Plaintiff caused by Defendants, and their unlawful
27 detention of the Property, will accrue at the rate of \$519.17 per day for each day Defendants remain
28 in possession after August 29, 2013 (the date of Plaintiff's attorney's notice to vacate).

1 20. Plaintiff has performed all the terms and conditions of the Leases on its part to be
2 performed, except for those as to which its performance is excused.

3 21. The Leases provide that if legal action is instituted to enforce their provisions, the
4 prevailing party shall be entitled to recover its attorneys' fees and costs. Plaintiff has been forced to
5 retain counsel to institute this action and, therefore, is entitled to recover its attorneys' fees and
6 costs incurred in doing so from Defendants.

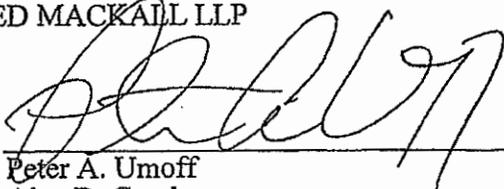
7 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 8 1. For restitution of the Premises;
- 9 2. For statutory damages in the amount of \$600;
- 10 4. For damages in the amount of \$519.17 per day commencing August 29, 2013, for
11 each day Defendants remain in possession of the Premises beyond August 29, 2013;
- 12 5. For an Order that the Leases are forfeited and that Plaintiff is released from all
13 obligations thereunder;
- 14 6. For Plaintiff's attorneys' fees incurred herein;
- 15 7. For Plaintiff's costs of suit incurred herein; and
- 16 8. For such other relief as the Court deems proper.

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DATED: September 26, 2013.

SEED MACKAIL LLP

By: 
Peter A. Umoff
Alan D. Condren
Attorneys for Plaintiff Lido Group Retail, LLC



Real Estate Investment Builders • Developers

Agenda #: Th 6b
Application No.: 5-14-1717
Lido Partners LLC
Oppose Application No.: 5-14-1717

March 4, 2015

RECEIVED
South Coast Region

MAR 6 2015

CALIFORNIA
COASTAL COMMISSION

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Opposition to Staff Report Findings (Item Th 6b)
Approval Recommendation for Coastal Development Permit
Application No. 5-14-1717

Dear Ms. Dobson:

Lido Partners, LLC is the Owner of Via Lido Plaza, and the Fritz Duda Company represents Lido Partners, LLC. Ownership has significant concerns regarding, and opposes, the Commission approval of Application No. 5-14-1717 based on the following concerns.

- Changes to traffic and pedestrian patterns through Via Lido Plaza and the possible effects of such changes to Via Lido Plaza, have not been sufficiently studied. Increased vehicular and foot traffic due to the reconfiguration of the slips will have a negative effect on tenants of Via Lido Plaza.
- Parking studies addressing the “party boats” relocation further from the already underutilized parking structure (a pay to park structure) need to be addressed. Patrons of the “party boats” looking for free parking options have a negative impact on Via Lido Plaza parking, and therefore a negative impact on the tenants of Via Lido Plaza. Patrons of the “party boats” have historically used the free City Hall parking and walked through our common areas to get to the marina. The free parking at City Hall will be closed in the near future for the development of a hotel. The elimination of this free parking lot will further stress the free parking facilities at Via Lido Plaza and impact the tenants of Via Lido Plaza negatively. (See Attached Exhibit)

5950 Berkshire Lane • Suite 800 • Dallas, TX 75225 • 972.616.8777 • Fax 972.991.5184
3425 Via Lido • Suite 250 • Newport Beach, CA 92663-3929 • 949.723.7100 • Fax 949.723.1141
212 West Kinzie Street • 5th Floor • Chicago, IL 60654 • 312.222.0085 • Fax 312.222.0552
4785 Caughlin Parkway • Reno, NV 89519 • 775.332.8251 • Fax 775.827.2185
www.fritzduda.com

Agenda #: Th 6b
ApplicationNo.: 5-14-1717
Lido Partners LLC
Oppose Application No.: 5-14-1717

- The customers coming off the “party boats” have, at times, created security issues for Via Lido Plaza. The rampant alcohol consumption and discarding of alcohol containers in the common areas of Via Lido Plaza create a nuisance and possible safety risk. The lack of a schedule does not allow Via Lido Plaza to be prepared for such issues and creates concerns for the customers and tenants of Via Lido Plaza as well as an economic burden on Lido Partners, LLC and the tenants.
- The traffic and parking burden from these “party boats” has already created a significant increase in trash in the public areas of Via Lido Plaza, increasing maintenance costs. Moving these slips further from the paid parking structure will only cause to increase this economic burden.

Lido Partners, LLC does not feel appropriate notice has been given, nor the appropriate studies been completed, to approve this application, and strongly request the March 12, 2015 hearing be delayed until the concerns of Lido Partners LLC have been appropriately addressed. Lido Partners, LLC also shares the concerns of New Port Beach Mixed Development, LLP, the owner of the mixed-use development and docks at 3388 Via Lido in Newport Beach.

Lido Partners, LLC respectfully requests that the application be removed from the Consent Calendar, and the hearing scheduled for March 12, 2015, be postponed until such time as the concerns contained in this letter can be appropriately addressed.

Thank you in advance for your time and consideration regarding this sensitive matter.

Sincerely,



Paul C. Bernard

Vice President, Western Region
Fritz Duda Company

RECEIVED
South Coast Region

MAR 9 2015

CALIFORNIA
COASTAL COMMISSION

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I am writing to you regarding the Coastal Commission hearing on March 12, 2015 in relation to the relocation of three big party boats in Newport Bay next to my home at 3388 Via Lido, Newport Beach. We never received any notice of this and had to hear about it from our neighbors. This will create a huge problem for the residents and tenants in the area.

I am very concerned about all the noise and intoxicated people that return on these party boats, as well as the traffic and parking issues in my neighborhood. Currently the boats are docked on the other side of the bay and most of the businesses around them are boat related businesses and are used to having them there. The parking structure for all the people that go on those boats is located close to where the boats are currently docked. Why not keep the boats close to the designated parking? We already have a continuous problem with people parking on our property and using it for an unloading station even though it is clearly marked as "private property". This will only make it worse! These party boats are much bigger and extend further out into the bay than anyone else is allowed to. Currently we have a boat next to us that is 40" tall and it already invades our view from our property.

I am absolutely against this move, as I know that it will impact my residence and neighborhood in a negative way. I am asking the Coastal Commission to turn down this application and not allow this to happen.

A Concerned Resident,



Jerry Conrad



RECEIVED
South Coast Region

MAR 9 2015

CALIFORNIA
COASTAL COMMISSION

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I am aware there is a Coastal Commission hearing on March 12 and heard that there is a proposal that would allow three large party boats in Newport Bay to be docked near my business at 3388 Via Lido, Newport Beach, CA.

I am asking that the Coastal Commission reconsider this issue. These boats run at all different times of the day and night and draw a large amount of customers that are inconsiderate, noisy and upon their return have some very rowdy and intoxicated people. The boats are currently situated in an area that is located closer to their designated parking area. The amount of traffic that this will cause by moving them closer to my business is unacceptable. I don't understand why this move was proposed and why they can't stay where they are?

I strongly oppose the moving of these party boats and I don't understand why the residents and businesses near the proposed relocation were not informed of this.

Yours truly,

David Blackman,
Owner

RECEIVED
South Coast Region

MAR 11 2015

CALIFORNIA
COASTAL COMMISSION

March 5, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I believe you are the person to whom this letter should be addressed. If not, please forward it to the right person.

There is a Coastal Commission hearing on March 12 we just heard about that would allow three huge party boats in Newport Bay to be docked near our home. Our address is at 3388 Via Lido, PH2, Newport Beach, CA 92663. We have to object, and ask that the Coastal Commission fully vet this issue. These boats are a major business enterprise, and they have associated effects on their neighbors. They run late at night, with bright lights and noise, and many customers. They draw foot and vehicle traffic, and moving them from their current location will just move all those impacts right to where I live. This is not acceptable. Can you forward us a copy of all the studies on this matter that I am sure your agency has done? If they are too voluminous, please let us know where we could come to review them, please.

Respectfully,

A handwritten signature in black ink, appearing to read "GJ & Heather Hart". The signature is written in a cursive, flowing style.

GJ & Heather Hart
Home & Business Owner



3120 Sovereign Drive, Suite 4B
Lansing, Michigan 48911
P: 888-327-8001
F: 517-244-3601

New Port Beach Mixed Development LLLP * **New Port Beach Townhouse LLLP**

RECEIVED
South Coast Region

MAR 10 2015

NEW PORT BEACH TOWNHOUSE LLLP
3355 Via Lido
Newport Beach, CA 92663

CALIFORNIA
COASTAL COMMISSION

March 6, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Application Number 5-14-1717

Dear Ms. Dobson:

I am the owner of two residential projects located at 3303 and 3355 Via Lido, Newport Beach, CA 92663 ("Residential Projects"). I have just learned that the Coastal Commission will consider Application Number 5-14-1717 on March 12, 2015. This Application would involve relocating three large party boats in Newport Bay. This relocation is very harmful, and should not be approved. I object to any movement of these boats near my Residential Projects.

I am highly concerned as to why notice of this proposed change was not sent to me. My Residential Projects are located near the area where these large and noisy ships would be docked if Application Number 5-14-1717 is approved. Please note that I never received or saw any notice about this proposal. I understand that the City of Newport Beach has already granted some sort of conceptual approval, however I was never informed of, nor heard of, any such meeting with the City. Had I been notified, I would have previously objected.

The three boats that are planned to be moved are extremely large "party" boats. Currently, they are a good distance from my Residential Projects, and located in a purely commercial area. They are also close to public parking for their patrons. In short, they are in a location that makes sense. If they are moved near my Residential Projects, I am very concerned that the noise, additional lights at night, view obstruction, and resulting parking and traffic congestion will be harmful.

Where are the extensive studies for these matters? Are they done? Are they available to the public? This all seems to have been set up "in the dark," and without full public input and study. The Coastal Commission should not approve this Application, as currently presented. Thank you.

Very truly yours,

NEW PORT BEACH TOWNHOUSE LLLP,
a Nevada limited liability limited partnership,

By: *SM*
Steven Mills
Authorized Signatory



From the *Desk* of
Marco J. Rasic

March 5th, 2015

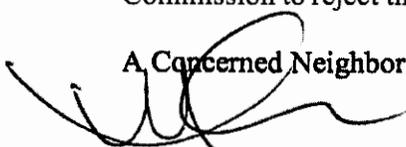
Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

The Coastal Commission has a hearing *set* for March 12 about taking *three* large party boats in Newport Bay and moving them right near *me*, at 3388 Via lido where I have my business. Why did I have to hear about this from my neighbors, and not receive a notice? I object to any decision to allow *these* boats to move near *me*.

I do not understand why the boats cannot stay where they are. Their parking is near their current location, and any commercial businesses next to them always knew the situation. Now, the nuisances these boats create such as loud engines, fumes, noise, and drunken passengers exiting late at night will be moved next to my business? Really? Shouldn't there have been extensive notice about this proposed change to me and all those in my area? I am very confused as to why the boats could not stay where they are, or be moved to the opposite end of the Bay. In any event, whatever the reason for the proposed move, it should not be allowed. The boats cannot be permitted to move to a new area unless a host of conditions were imposed on them, which I am sure they would not desire (such as not running at night, noise reduction, etc.). I ask the Coastal Commission to reject this request. Thanks.

A Concerned Neighbor,



Marco J. Rasic
President / CEO
National Auto Loan Network

March 4, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I believe you are the person to whom this letter should be addressed. If not, please forward it to the right person.

There is a Coastal Commission hearing on March 12 I just heard about that would allow three huge party boats in Newport Bay to be docked near my home. My address is at 3388 Via Lido, PH2, Newport Beach, CA 92663. I have to object, and ask that the Coastal Commission fully vet this issue. These boats are a major business enterprise, and they have associated effects on their neighbors. They run late at night, with bright lights and noise, and many customers. They draw foot and vehicle traffic, and moving them from their current location will just move all those impacts right to where I live. This is not acceptable. Can you forward me a copy of all the studies on this matter that I am sure your agency has done? If they are too voluminous, please let me know where I could come to review them, please.

Respectfully,



GJ Hart
Executive Chairman & CEO



california
PIZZA KITCHEN

Restaurant Support Center

12181 Bluff Creek Drive, Fifth Floor

Playa Vista, CA 90094

(t) 310.342.5000

www.cpk.com

RECEIVED
South Coast Region

MAR 11 2015

CALIFORNIA
COASTAL COMMISSION

March 5, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I believe you are the person to whom this letter should be addressed. If not, please forward it to the right person.

There is a Coastal Commission hearing on March 12 I just heard about that would allow three huge party boats in Newport Bay to be docked near my Foundation. The address is at 3388 Via Lido, Newport Beach, CA 92663. I have to object, and ask that the Coastal Commission fully vet this issue. These boats are a major business enterprise, and they have associated effects on their neighbors. They run late at night, with bright lights and noise, and many customers. They draw foot and vehicle traffic, and moving them from their current location will just move all those impacts right to where I work. This is not acceptable. Can you forward me a copy of all the studies on this matter that I am sure your agency has done? If they are too voluminous, please let me know where I could come to review them, please.

Respectfully,



GJ Hart
Hart of Six Foundation

RECEIVED
South Coast Region

MAR 11 2015

CALIFORNIA
COASTAL COMMISSION

March 4, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Dobson:

I believe you are the person to whom this letter should be addressed. If not, please forward it to the right person.

There is a Coastal Commission hearing on March 12 I just heard about that would allow three huge party boats in Newport Bay to be docked near me. My business address is at 3388 Via Lido, Newport Beach, CA 92663. I have to object, and ask that the Coastal Commission fully vet this issue. These boats are a major business enterprise, and they have associated effects on their neighbors. They run late at night, with bright lights and noise, and many customers. They draw foot and vehicle traffic, and moving them from their current location will just move all those impacts right to where I have my business. This is not acceptable. Can you forward me a copy of all the studies on this matter that I am sure your agency has done? If they are too voluminous, please let me know where I could come to review them, please.

Yours truly,



Heather Hart
Lavender, LLC



CAA PLANNING

March 6, 2015

Ms. Amber Dobson
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

Subject: Coastal Development Permit Application No. 5-14-0717
Lido Marina Village Vessel Relocation Project
Opposition Letter dated 3/2/15

Dear Ms. Dobson:

CAA Planning, Inc. represents DJM Capital (DJM) for approval of a Coastal Development Permit (CDP) (CDP Application 5-14-0717). This letter is in response to an opposition letter from Mark J. Hattam at Allen Matkins Leck Gamble Mallory & Natsis dated March 2, 2015 representing New Port Beach Mixed Development (New Port).

There is no basis for removing the Lido Marina Village item from the Consent Calendar for the reasons enumerated herein. No Coastal Act issues have been raised on which to request removal of the project from consideration as scheduled. The City of Newport Beach (City) regulates charter boat operations through a Marine Activities Permit (MAP) as detailed below, and similarly regulates parking at Lido Marina Village through a Conditional Use Permit.

We understand that the Coastal Commission has just approved an after the fact development application from New Port for a Coastal Development Permit (CDP 5-14-0715) which allows for the removal of four of the existing seven boat slips, replacing the smaller slips with significantly larger slip fingers to accommodate large vessels. Mr. Hattam references the extensive conditions imposed by the Coastal Commission. Such conditions were likely deemed appropriate by the Commission given the after the fact nature of the permit. **The Lido Marina Village project merely relocates existing vessels in the marina with no change to uses, number of slips or intensity.**

The Lido Marina application was reviewed by the City Harbor Resources Department and an Approval In Concept was granted on September 30, 2014 which concluded that the proposed project is consistent with the City's Harbor Regulations. The "party boats" or "charter boats" in question operate consistent with a MAP approved by the City on January 7, 2015 (Permit No. 2015-01), and attached hereto. The MAP regulates operational characteristics including hours of operation, parking and compliance with the City's Municipal Code related to noise and other issues. The assertion by Mr. Hattam that these issues have not been reviewed in any manner is patently incorrect. **The proposed relocation of the charter boats under the Lido Marina Village project is a coastal dependent visitor-serving use and the continuation of such use is**



Ms. Amber Dobson
March 6, 2015
Page 2 of 6

a priority in the City's Local Coastal Program (LCP) Land Use Plan (LUP) and in the Coastal Act, and the relocation should not be delayed over the concern of non-coastal dependent, non-visitor-serving uses. The following comments respond directly to each point identified in the letter from Mr. Hattam.

1) The relocation of three larger vessels as proposed would move the gangway access to the boats 80' closer to the New Port property. Two vessels will be relocated approximately 150' closer to New Port and one vessel approximately 300' closer to New Port. The entire waterfront along this segment of the bay is used for vessel docking and the relocation of these slips is necessary for operational considerations related to the recent seawall repair and for the visitor serving uses located on the landside. This three slip relocation is not a significant alteration of the docking configuration because the relocation will not change the number of slips in the Lido Marina Village and will not change the operations of the marina. In addition, **placing the larger vessels in a side-by-side configuration will provide improved visibility for boaters attempting to navigate past the larger vessels for access to their slips and to the dinghy basins.** The current location is inadequate because of the navigation visibility, the need to maintain the integrity of the repaired seawall and the desire to enhance public views.

2) No traffic or parking studies were required in order to relocate the three slips to a consolidated location within the same marina because there will be no change to the number of slips, and no change in use. Parking conditions for the charter vessels will not change. **There are no changes proposed that would trigger any additional parking. This is a relocation of the charter vessels only.** Available parking is intended to service the entire marina area and the same parking availability will remain after the relocation. As stated above, the City is responsible for the issuance of a MAP for each charter operation and the provision of adequate parking is assessed in that permit. In addition, a conditional use permit was approved by the City in December 2014 for Lido Marina Village which included a parking management plan. The parking management plan provides a comprehensive strategy to manage the existing parking structure, valet operations, improvements to facilitate increased mobility for bicycles, pedestrians and boats. The approved parking management plan also includes a provision for future off-site parking if parking demand exceeds on-site supply and limits uses which generate higher parking demand.

Both the charter operations and the available parking supply are regulated by the City through permits. The City has issued MAPs on a charter-by-charter basis, on a weekly or monthly basis, and most recently approved the permit for a 12-month period expiring on January 7, 2016. The permit can be revoked by the City at any time for failure to comply with the conditions of the permit or for violation of the City's Municipal Code. The MAP is not automatically renewed, but rather requires comprehensive City review prior to expiration of the existing permit.



Ms. Amber Dobson
March 6, 2015
Page 3 of 6

4) **The three slip relocation project does not change public access or impact the existing boardwalk through redesign or closure related to public access.** The new pier/gangway access point would be via an 90' ADA compliant gangway located approximately 165' from the New Port property. The three slip relocation is intended to protect the recently repaired seawall, provide enhanced navigation safety and improve views. Additional signage is not necessary for the existing use, with substantially the same point of access. However, **in response to the concern, the applicant has proposed to install signage along the boardwalk, highlighting the public access and use of the boardwalk.**

3) As indicated above, no new uses are proposed. The City's MAP requires as condition #4 that the "Permittee shall provide adequate direction via maps and/or staff to ensure guests park at the indicated parking location." Parking for the public using the charter vessels is only permitted in the parking structure and is not permitted at the adjacent New Port development. The charter companies direct the visitors to park in the parking structure on the DJ M Capital site. The number of persons accessing the boats, hours of operation and parking considerations will remain as currently permitted by the City and moving the vessel 150-300' from the current locations will not change parking requirements or patterns.

The City's MAP regulates number of persons accessing the boats, hours of operation and provision of adequate parking. **It is inaccurate to suggest that relocating the charter boats 150-300' south on the 3400 Via Oporto property will result in increased foot and street traffic which could affect 3388 Via Lido. The gangway pier is proposed to be relocated 80' so people accessing the boats will have to walk 80' from where they currently access the boats. The new gangway will connect to an existing access pier.** In addition, like any other parking lot in the area, if anyone leaves a car in the private parking lot at 3388 Via Lido, regardless of their intent to use the charter vessels or not, the owners of 3388 Via Lido have the right to tow or ticket the car. **Suggesting that the relocation of these vessels from side of the development to another will increase parking in a private parking lot is unfounded. They are being relocated less than 300 feet away from their current location. This will not have any impact on the public accessing the existing parking structure nor their ability to walk from the parking structure to the charter vessels.** An exhibit is included herein depicting the path of travel from the existing parking structure to the proposed gangway access location.

As noted, the charter boat uses are heavily regulated through issuance of an MAP by the City. The MAP focuses on provision of adequate parking, hours of operation, noise, etc. In the past, the City has issued a MAP on a per charter basis. The current MAP for Electra is for a period of 12 months at which point renewal will be required based on an assessment of uses in place at the future time and any operational concerns. Condition #8 of the MAP does not allow for audible amplified sound while the vessels are located at the dock, and condition #9 prohibits music, live entertainment and all forms of amplified sound after 10:00 PM. Additionally, this is not a coastal issue. This area of Newport is highly developed and the Coastal Act regulates noise impacts to sensitive species, not neighboring homes or businesses.



Ms. Amber Dobson
March 6, 2015
Page 4 of 6

In addition to conditions imposed by the City, the property owners provide security to the site. Security is on-site from 7:00 PM to 7:00 AM providing active management daily. There will be no increased foot or street traffic as suggested by Mr. Hattam because the uses and operations are not changing and security is on-site to address any potential concerns, as is currently the case. Because this project does not include any changes in use, the relocation of the vessels will not increase foot traffic. **Again, the area in and around both 3388 Via Lido and 3400 Via Oporto is highly developed and is currently open to the public, zoned for Mixed-Use water, which prioritizes coastal related uses and visitor serving uses. Foot traffic on either property is allowed and open to the public.**

5) The relocation area is along an existing pedestrian access from the street. Mr. Hattam opines that the relocation of the charter boats will block a current open view towards the Bay. However, the dock renovation approved by the Coastal Commission for New Port will place larger vessels directly adjacent, blocking the same view. In fact, the recent approval of an after the fact CDP for New Port allows for three slip fingers of substantially the same length as those proposed by Lido Marina Village for the existing charter boats. **It is incorrect for New Port to rely on views across the adjacent property because they have just secured approval to install the same sized slip fingers in front of their property. The staff report details that relocating the vessels will actually improve views to the bay from several points throughout the Lido Marina Village. Commission staff visited the site and confirmed this.**

The City's LCP/LUP does not consider this location to be a view corridor. In addition, photographs provided with the Lido Marina Village CDP Application submittal show that the relocated vessels will be visible to people walking towards the bulkhead from the street at that point. The photographs show that the view is currently obstructed by the three 50-56' vessels that are docked in the area where the charter boats will relocate. There is no unobstructed view at this location out towards the harbor. The specific photographs showing this existing condition are attached. Additional view studies are not necessary because the photographs of the existing condition approximate the same view impacts as the relocated vessels where no open water views are or will be available at this point in the marina. As indicated above, the aim of the three slip relocation has three distinct goals including protection of the recently repaired seawall, enhanced navigation visibility for smaller vessels and improved public views from the landside.

6) The largest vessel will be docked immediately adjacent to the docks at 3388 Via Lido, which are substantially the same length, both of which extend to the delineated project line. The vessel lengths will not be staggered in separate locations as under existing conditions and the consolidation of the largest vessels into one location (including the larger vessels that will be accommodated by the New Port slips) will enhance navigation safety. No new or larger charter vessels are being proposed. **Because the Lido Marina Village project is an existing marina, with the same charter boats currently utilizing the docks, the project will not introduce a new or greater safety hazard.**



Ms. Amber Dobson
March 6, 2015
Page 5 of 6

7) As indicated above, the charter boats to be relocated are not new uses and there will be no new increase of traffic across the public access easement required by New Port. **Vehicular traffic related to visitors to the marina will remain the same and the maximum number of visitors who access the boats will remain the same since vessel occupancy is limited.** The City's regulation of operational characteristics via the MAP provides frequent review including the requirement for adequate provision of parking.

With respect to the suggestion that there was a lack of notice, all property owners/occupants within 100' of the property lines (including 3388 Via Lido) were provided with notice via the United States mail consistent with the Coastal Act Regulations. Signs were appropriately posted at the marina to inform the general public and property owners that a Coastal Development Permit application was submitted and a notice that the Coastal Commission meeting had been scheduled. The requirements for notice under the Coastal Act have been met. Notices were posted at the marina on October 10, 2014 and February 10, 2015. **Two signs were posted along the public boardwalk railing for the seawall.** Photographs of these signs were sent via electronic mail to the Coastal Commission offices (Amber Dobson) on February 19, 2015, and are attached hereto along with a photo key map and an affidavit of posting.

Additional studies are not warranted because the charter uses are heavily regulated by the City, as described above. No additional boat slips are proposed; the same vessels currently in the marina will merely be relocated and all commercial and residential uses exist along the entire waterfront and are subject to normal marine activities.

An additional comment letter from Mr. Hattam was received on March 6 which reiterates several of the comments that have been addressed above. The only new issue identified was related to the seawall. In response, Randy Mason from Anchor QEA has provided the following: "As long as this charter operation follows procedures currently in-place for ingress and egress of vessels from their respective slips, there is no impact on the adjacent seawalls."

We trust that the clarifications contained above will provide New Port with a better understanding of the Lido Marina Village project. Mr. Hattam's statement that New Port is not in opposition to the ongoing use of the existing docks for recreational and publically accessible uses is positive, because there will be no change to such uses other than being moved to a consolidated location with appropriate ADA access.

The Lido Marina Vessel Relocation Project will not result in coastal resource impacts under the Coastal Act and our request for consideration of a Coastal Development Permit is appropriate. Unlike New Port, no boat slips will be lost and there will be no increase in intensity of uses. In addition, the project proposed for Lido Marina Village continues provision of water-dependent visitor-serving uses to the general public, provides enhanced views of the water by clustering the larger vessels, protects recent seawall repairs, and improves navigation



Ms. Amber Dobson
March 6, 2015
Page 6 of 6

safety with the new dock design. It is unreasonable for New Port to rely on a perceived view at an adjacent property whilst their renovation under the recently approved CDP 5-14-0715 includes slip fingers of the same length proposed by the applicant.

Seeing as how there are no coastal issues, we respectfully request that Coastal Commission proceed with the project as agendized for the March 12 Consent Calendar.

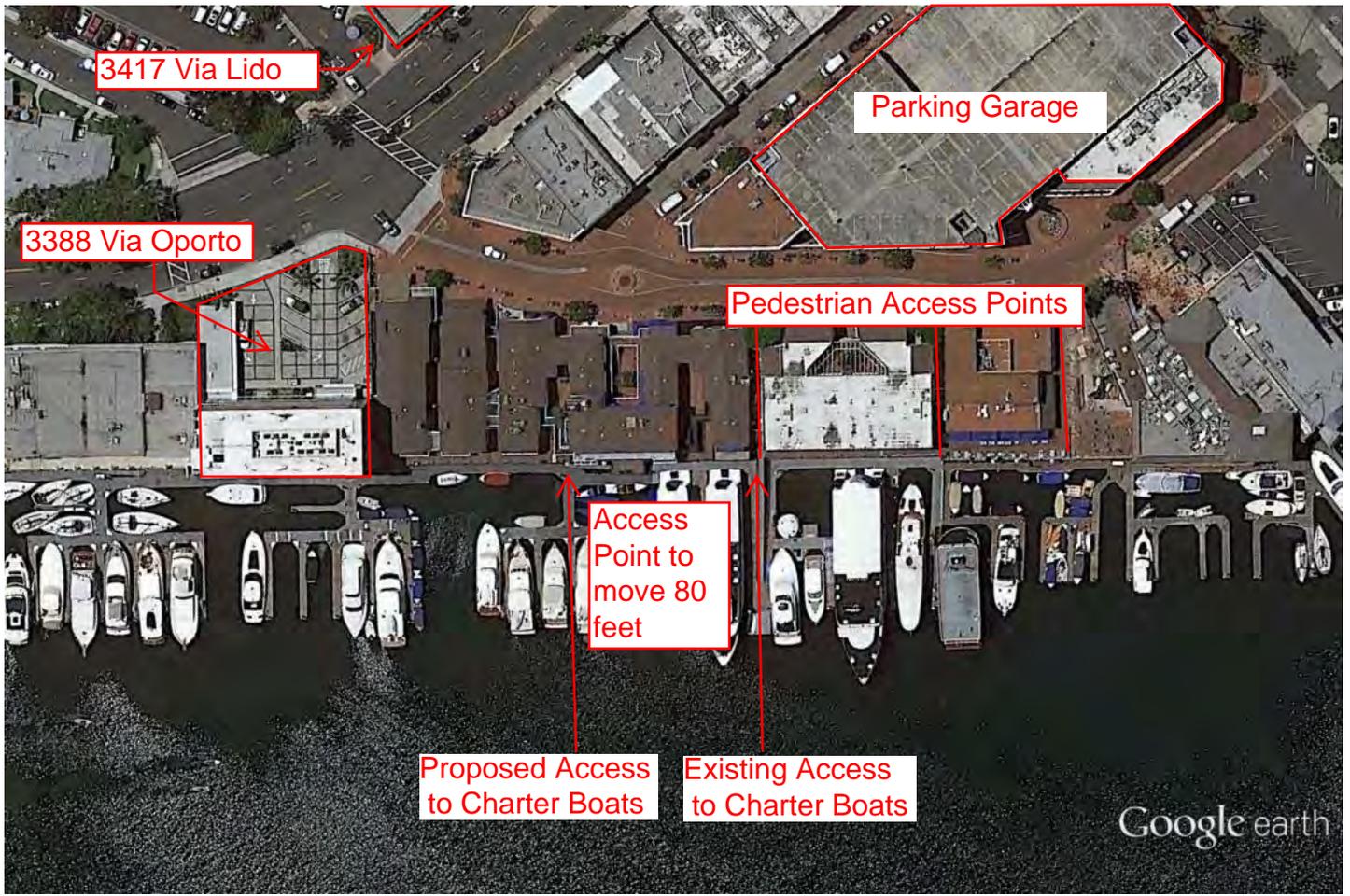
Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner
Chief Executive Officer

Attachments: City of Newport Beach Marine Activities Permit No. 2015-01
Photographs of Proposed Relocation site
Photographs of October 10, 2014 posting
Photographs of February 10, 2015 posting
Affidavit of Posting
Access Pathway from Parking Structure

c: Lindsay Parton, DJM Capital



Google earth

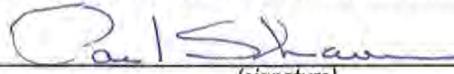


APPENDIX D
(Permit Application)

DECLARATION OF POSTING

Prior to or at the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for the proposed development has been submitted to the Commission. Such notice shall contain a general description of the nature of the proposed development. The Commission furnishes the applicant with a standardized form to be used for such posting. If the applicant fails to post the completed notice form and sign the Declaration of Posting, the Executive Director of the Commission shall refuse to file the application. 14 Cal. Code Regs. Section 13054(d).

Please sign and date this Declaration of Posting form when the site is posted; it serves as proof of posting. It should be returned to our office with the application.

<p>Pursuant to the requirements of California Administrative Code Section 13054(b), I hereby certify that on, <u>February 10, 2015</u> I or my authorized representative posted the Notice <small>(date of posting)</small></p> <p style="text-align: center;">of Pending Permit to obtain a coastal development permit for the development of <u>Lido Marina Village marina vessel relocation project. Six vessels will be relocated within the</u> <u>marina to cluster larger charter vessels, improve visibility for smaller vessels, protect the re-</u> <u>cently repaired seawall and improve public views.</u> <small>(description of development)</small></p> <p>Located at <u>3400 Oporto, Newport Beach</u> <small>(address of development or assessor's parcel number)</small></p> <p>The public notice was posted at <u>Via Lido Marina on the railing along the existing docks</u> <u>In two locations</u> <small>(a conspicuous place, easily seen by the public and as close as possible to the site of the proposed development)</small></p> <p style="text-align: center;"><u></u> <small>(signature)</small></p> <p style="text-align: center;"><u>2/10/15</u> <small>(date)</small></p>

NOTE: Your application cannot be processed until this **Declaration of Posting** is signed and returned to this office.

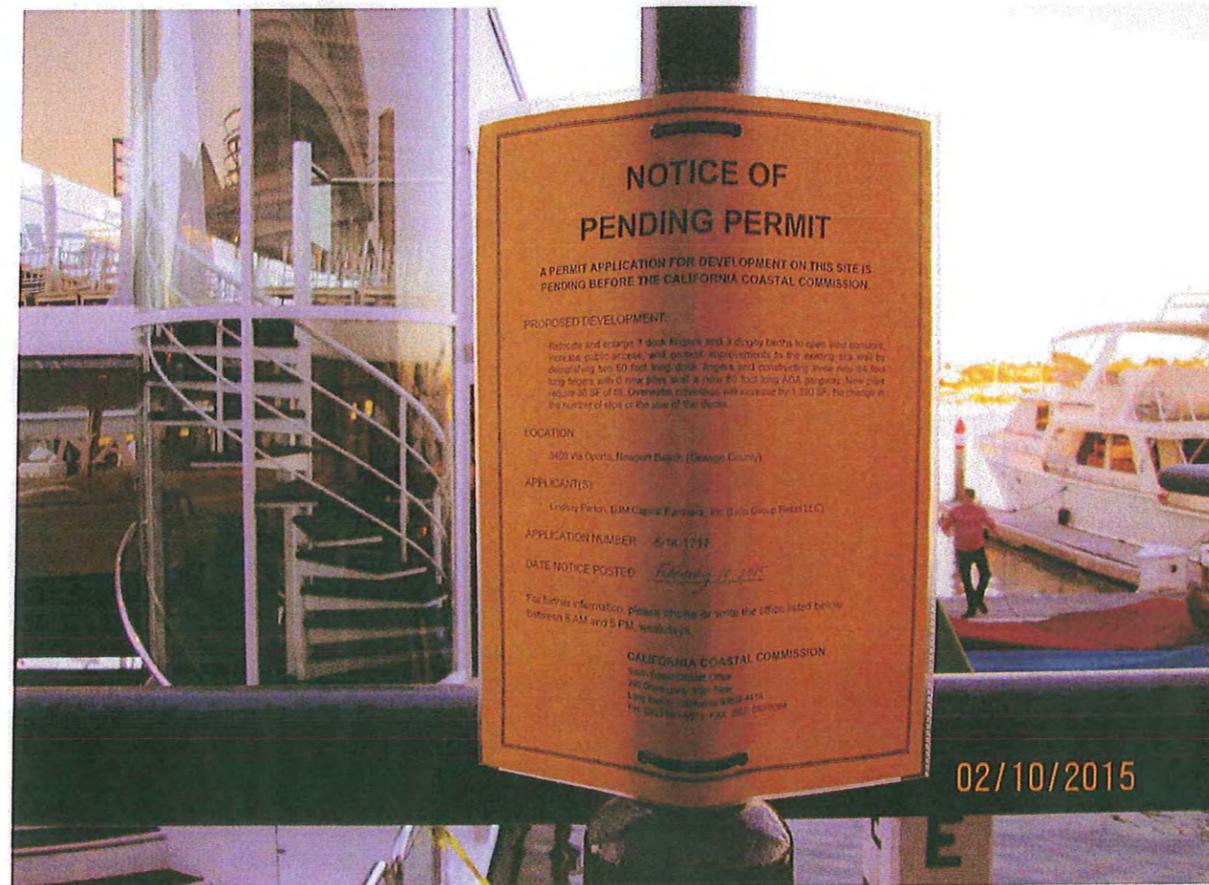
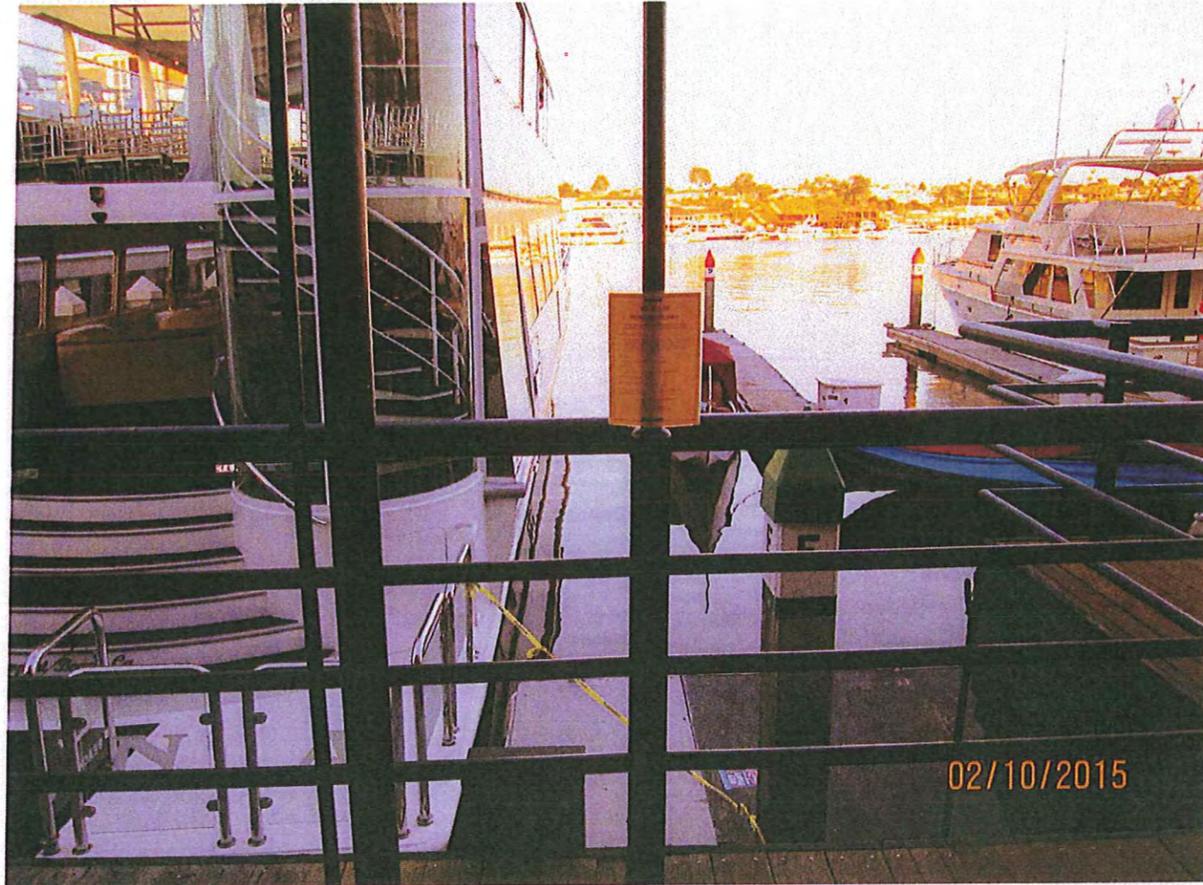
FOR OFFICE USE ONLY
PERMIT NUMBER..... _____
RECEIVED _____
DECLARATION COMPLETE _____

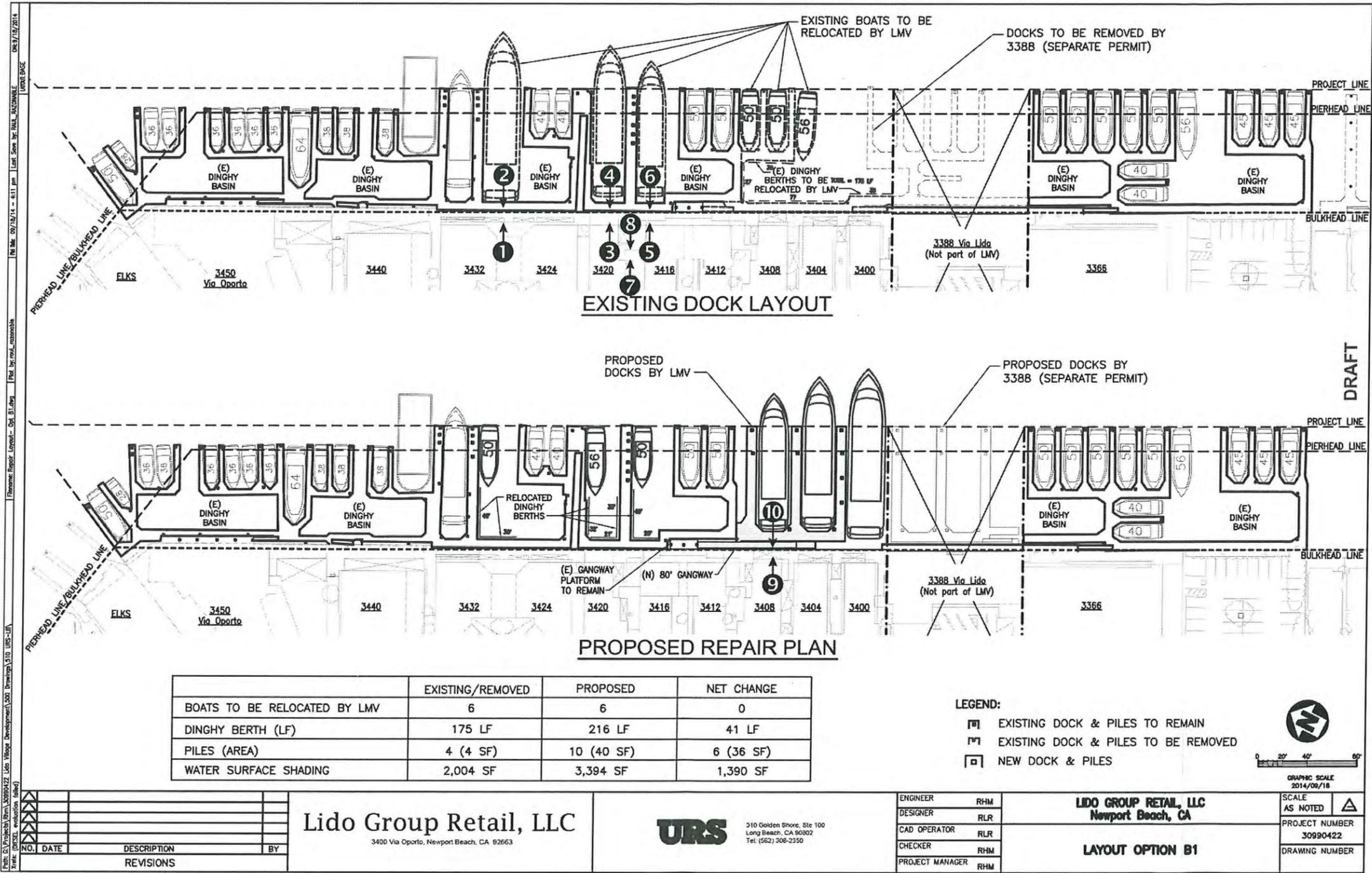
POSTING LOCATIONS

FEBRUARY 10, 2015



Location - #3416 - Photo Key #5





	EXISTING/REMOVED	PROPOSED	NET CHANGE
BOATS TO BE RELOCATED BY LMV	6	6	0
DINGHY BERTH (LF)	175 LF	216 LF	41 LF
PILES (AREA)	4 (4 SF)	10 (40 SF)	6 (36 SF)
WATER SURFACE SHADING	2,004 SF	3,394 SF	1,390 SF

LEGEND:

- EXISTING DOCK & PILES TO REMAIN
- EXISTING DOCK & PILES TO BE REMOVED
- NEW DOCK & PILES

GRAPHIC SCALE
2014/09/18

0 20' 40' 60'

NO.	DATE	DESCRIPTION	BY

Lido Group Retail, LLC
3400 Via Oporto, Newport Beach, CA 92663

URS
310 Golden Shore, Ste 100
Long Beach, CA 90802
Tel: (562) 306-2350

ENGINEER RHM
DESIGNER RLR
CAD OPERATOR RLR
CHECKER RHM
PROJECT MANAGER RHM

LIDO GROUP RETAIL, LLC
Newport Beach, CA

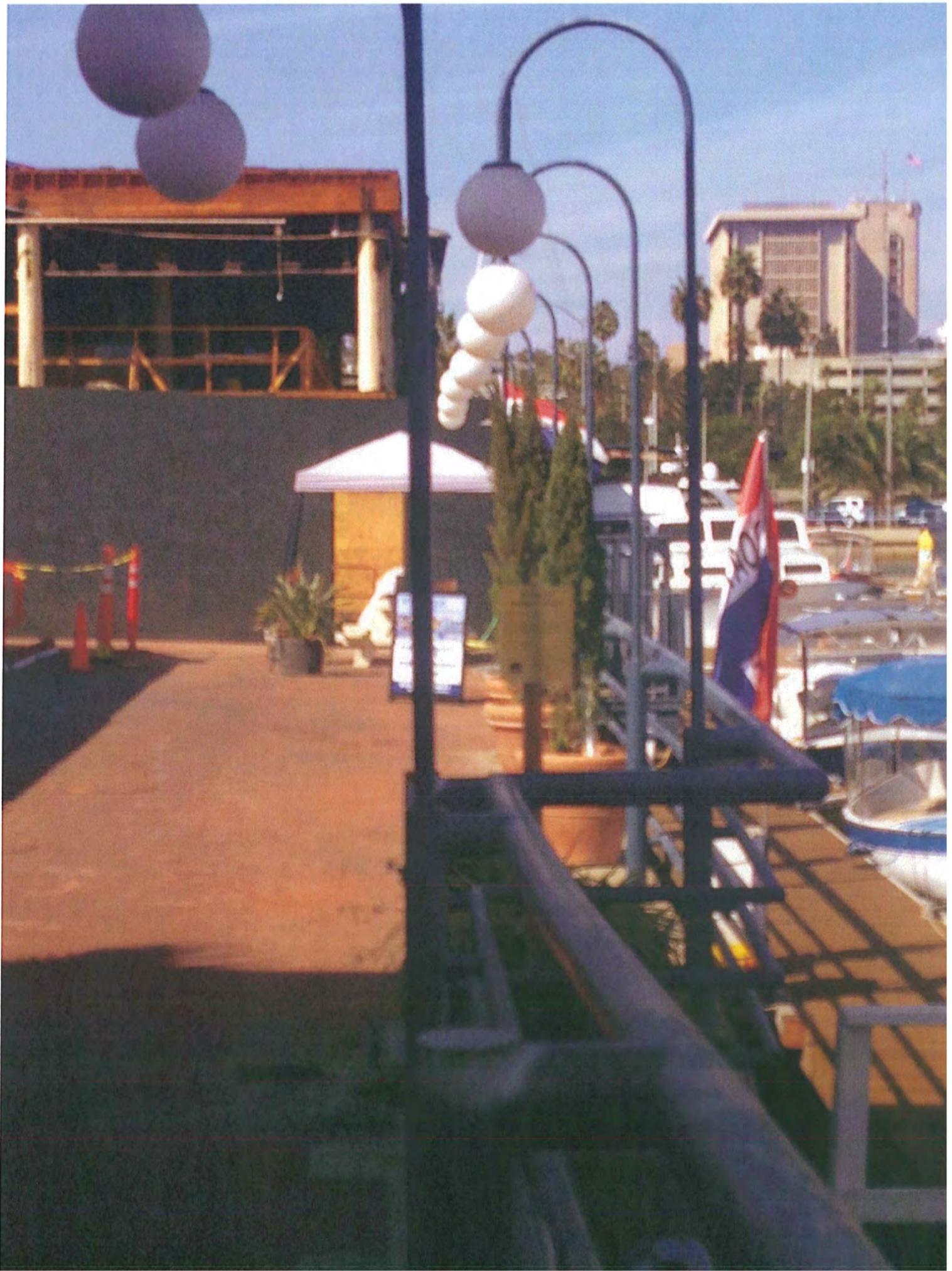
LAYOUT OPTION B1

SCALE AS NOTED
PROJECT NUMBER 30990422
DRAWING NUMBER

Photo Key

POSTING LOCATIONS

OCTOBER 10, 2014





**NOTICE OF
PENDING PERMIT**

NOTICE IS HEREBY GIVEN THAT THE CITY OF... HAS RECEIVED AN APPLICATION FOR A PERMIT TO... THE PERMITTEE HAS BEEN ADVISED THAT THE CITY ENGINEER HAS REVIEWED THE APPLICATION AND HAS DETERMINED THAT THE PROPOSED WORK IS IN ACCORDANCE WITH THE CITY ENGINEERING DEPARTMENT'S STANDARDS AND SPECIFICATIONS. THE PERMITTEE IS ADVISED THAT THE PERMIT IS SUBJECT TO THE CITY ENGINEER'S APPROVAL AND THAT THE PERMITTEE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES. THE PERMITTEE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES. THE PERMITTEE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES.





Photo 9 – View from 3408 building towards new large vessel relocation area

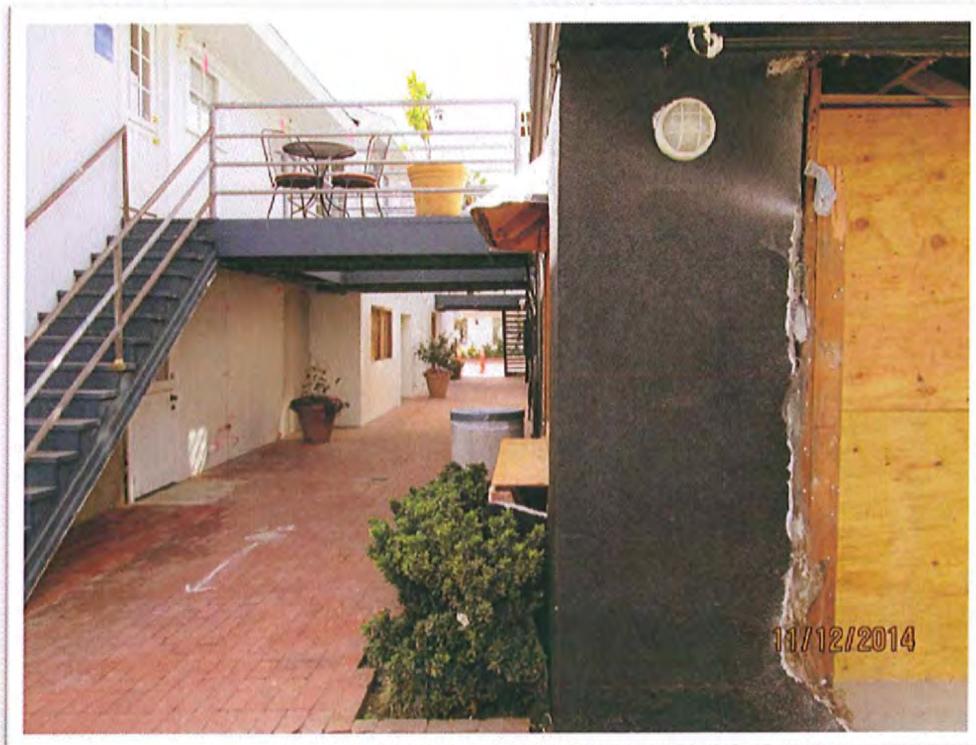


Photo 10 – View from bulkhead towards new pedestrian accessway for charter operation



CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT
HARBOR RESOURCES

Marine Activities Permit

Permit No.: 2015-01

Electra Cruises
3439 Via Oporto
Newport Beach, CA 92663
(949) 723-1069

Permit Valid From: January 7, 2015

To: January 7, 2016

Business License No.: BT30013305

Expires: February 28, 2015

Insurance Expires: August 30, 2015

Boarding Location: 3424 Via Oporto

Parking Location: 3434 Via Lido

No. of Parking Spaces Secured: 200

Permitted Vessel(s): Maximum Passengers & Crewmembers on one or all vessels:

Athena	150
Destiny	150
Electra	150
Eternity	300
Newport Princess	250

This Marine Activities Permit is authorized with the following conditions:

1. This Marine Activities Permit is only valid for the dates, vessels, parking and boarding location indicated above, and may be revoked if the operational characteristics listed on the application should change or the business license and / or insurance documents have expired.
2. Without prior written consent, up to 200 vehicles are permitted at any time at parking location, 3434 Via Lido, until Occupancy Scenario A or B is implemented as referenced in Planning Commission Resolution No. 1966. Prior to the implementation of Occupancy Scenario A or B, a new parking study will be conducted to determine if sufficient parking is available to accommodate all uses in Lido Marina Village at that time.
3. All crew and passengers shall park at the above indicated location(s) only.
4. Permittee shall provide adequate direction via maps and/or staff to ensure guests park at the indicated parking location.
5. No shuttle loading or unloading on City streets.

6. Passenger / provision loading and unloading shall occur at the above indicated location(s) only. No passenger / provision loading and unloading shall occur at any fuel, public or residential dock.
7. Music and sound from the vessel(s) shall be controlled so as not to disturb a person of normal sensitivity at a point 100 feet from the vessel(s).
8. Amplified sound shall not be audible beyond the vessel(s) while at dock.
9. Music, live entertainment and all forms of amplified sound are prohibited after **10:00 PM**.
10. Air horns, whistles, bells and other noisemaking equipment shall not be used except as required by Coast Guard regulations.
11. While cruising in the Harbor, the vessel(s) shall be moving at all times.
12. All trash and litter generated by the charter shall be disposed of in private receptacles.
13. Vessel(s) shall operate within the main navigational channels, as far from shore as practical, and the route of travel must be at least 100 feet from any residence.
14. All Federal, State, County and City statues, rules, ordinances, laws and regulations, including Chapter 17.10 of the Newport Beach Municipal Code, shall be obeyed.
15. Vessel(s) shall be berthed in compliance with the applicable Newport Beach regulations.
16. This permit shall be on board the vessel(s) during all charters.
17. No use of spotlights other than for navigational purposes.
18. Vessels shall not be serviced at residential locations.
19. No balloon releases. Mylar balloons are not permitted on the exterior of the vessel(s).
20. All vessels equipped with marine sanitation devices shall comply with United States Coast Guard requirements in the use of approved holding tanks for raw sewage. Dye tablets shall be installed in the holding tanks during all charter operations.
21. All required insurance shall be maintained in full force and effect for the full term of the permit.
22. Approval of this permit shall not authorize alcoholic beverages in violation of section 25604 of the Business and Professional Code.
23. Permittee must keep accurate headcount records of all passengers for all charters. Permittee is responsible for paying a passenger tax to the City each month after receiving a monthly invoice from the Revenue Department.
24. This Marine Activities Permit may be revoked at any time pursuant to the provisions in Municipal Code 17.10.090.
25. Any change in the permitted operations shall require approval of an amendment to this Permit as determined by the Harbor Resources Manager and pursuant to Chapter 17.10 of the Newport Beach Municipal Code.

I have read, understood and agree to comply with the above listed conditions. I shall defend, indemnify and hold harmless the City of Newport Beach, the County of Orange and the Orange County Service Area Number 26 and their respective officers,



**lido isle
community
association**

701 VIA LIDO SOUD, LIDO ISLE • NEWPORT BEACH, CA 92663
TELEPHONE: (949) 673-6170 • FAX: (949) 673-6827

April 10, 2015

Ms. Amber Dobson
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Coastal Development Permit Application NO. 5-14-0717

As President of the Lido Isle Community Association, and a 42-year resident of Lido Isle, I am writing to you in support of moving the party boats from their current location to the southeastern most point of the Lido Marina Village property. Members of our Association have been meeting with the owners and developers of Lido Marina Village, DJM Capital Partners, frequently over the past 18 months to express our concerns over the party boats, as well as our desires for the redevelopment of the center.

Moving Electra's boats from their current location to the southeast end of the Lido Marina Village docks presents the best option. With the move, we understand that we will be able to enjoy - for years to come - more open, expansive views of the Harbor from the center and its boardwalk area.

In addition, from our talks with DJM representatives, we also appreciate that alleviating the visual and view-impeding impact of the party boats on the storefronts (which a move to the southeastern corner will achieve) will attract the premier tenants to the center that the Lido Isle community - and the Newport Beach community as a whole - has been seeking for decades.

Thank you in advance for your time and consideration on this issue. We hope that you will approve the move of the party boats, per DJM Capital's request, so that we can fully enjoy Lido Marina Village and the quality of life that Lido Isle and Newport Beach stand for.

Sincerely,

Fred Barnes
President
Lido Isle Community Association