

CALIFORNIA COASTAL COMMISSION

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Filed:	12/2/14
180th Day:	5/31/15
270th Day:	8/10/15
Staff:	AD-LB
Staff Report:	5/20/15
Hearing Date:	6/11/15

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 four 50 foot long docks and gangway and construct four new 85 foot long docks (94 foot long with back walk) with 7 new piles and a new 80 foot long ADA gangway, with no change in the number of slips. Relocate dinghy berths and relocate three large charter vessels from the center of the dock system to the south end.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the dock reconfiguration project and charter vessel relocation. 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 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 4 existing docks approximately 50 feet long, which currently accommodate 5 vessels (provides for 4 slips with 1 vessel having dock access on 1 side only). The construction will include 4 larger docks, at 85 feet long, but will provide the same number of slips (again, provides for 3 slips with 2 vessels having dock access on 1 side only) (**Exhibit 2**). The configuration of the docks will be constructed to adjoin the existing docks and will provide improved access to the charter vessels. There will be no change to the number of slips available to the public (24 slips total along this side of the development) and no change to the use of the docks.

In the relocation process, two 50 foot boats and one 56 foot boat and 41 feet of additional dinghy tie space will occupy the slips currently occupied by the charter vessels at the midpoint of the dock system. The three large charter vessels will be relocated to the southern end of the dock system, occupying the space (with proposed new larger docks) currently occupied by the three smaller 50-56 foot boats. An additional space will be provided at the most southern point large enough for a 85 foot long boat, but could also accommodate the 50 foot long boat currently there.

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 applicant is 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. [Special Condition 9](#) requires that the applicants maintain the existing boat uses and slip sizes, in order to ensure that there is a mix available. Any changes to the boat uses or slips will require an amendment to this permit.

While the reconfiguration of the docks does increase over-water coverage by 271 sq. ft., 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 the invasive alga, *Caulerpa Taxifolia*.

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](#) requires approval from the City of Newport Beach Harbor Resources Division and consultation with RWQCB, CalTrans, and other involved agencies. [Special Condition 8](#) requires revised plans, stamped “Approval in Concept” by the City of Newport Beach Harbor Resources Division and a final signage plan.

As conditioned, Staff recommends **approval** of the project.

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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 – Comment letter from CalTrans and proposed BMPs

Exhibit No. 5 - 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 stormdrain, 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 SEMP. 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 SEMP 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. Other Approvals. By acceptance of this permit, the applicant agrees to obtain all other necessary State or Federal permits that may be necessary for all aspects of the proposed project (including the City of Newport Beach, Regional Water Quality Control Board, etc.).

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).

The permittee shall also submit, for Executive Director review and approval, signage plans. Plans shall identify the location, design and content of any signs and interpretive displays used for illustrative, educational or directional purposes. Signs should be kept relatively small in size, designed in keeping with the maritime character of the area, and placed in locations that avoid disruption of scenic coastal views. Signs should clearly identify that public coastal access is available.

9. Permit Compliance. Coastal Development Permit No. 5-14-1717 permits only the development expressly described and conditioned herein. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions, including the slip size distribution, total number of slips, and number of commercial charter boats, as shown in **Exhibit 2**. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required pursuant to the requirements of the Coastal Act and the

California Code of Regulations. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

IV. FINDINGS AND DECLARATIONS:

A. DESCRIPTION AND PROJECT LOCATION

The project includes demolishing four 50 foot long docks and gangway and constructing four new 85 foot long x 8 feet wide fingers (94 feet long with backwalk) with 7 new piles (five 18 inches in diameter and thirteen 24 inches in diameter), with 52 square feet of fill, and a new 80 foot long ADA gangway. The overwater coverage will increase by 271 square feet. The project is designed to enlarge dock slips and relocate dinghy berths in order to relocate 3 charter vessels currently berthed in the 24 dock system, which will open view corridors, increase public access, and protect improvements to the existing sea wall. The proposed project will reconfigure the docks and does not include any changes to the adjacent commercial development on land. The applicant also proposes to add public access signage to the boardwalk area.

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.

There are no docks existing within the development that could accommodate the relocated vessels, therefore the enlargement and reconfiguration of existing docks is proposed to accommodate the large charter vessels. The project will not result in an increase in the number of 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 85 foot slips summarized below:

Length of Slip (in feet)	Existing number	Proposed number
28	1	1
36	6	6
38	3	3
40	2	2
50	5	4
58	1	1
64	1	1
85	0	1
38-50 (versatile)	1	1

85 (Charter Vessels)	3	3
Feet of dinghy tie space	175 lateral feet	216 lateral feet

The project will include removal of 4 existing docks approximately 50 feet long, which currently accommodate 5 vessels (provides for 4 slips with 1 end tie). The construction will include 4 larger docks, at 85 feet long, but will provide the same number of slips (again, provides for 3 slips with 2 end ties) (See **Exhibit 2**). The configuration of the docks will be constructed to adjoin the existing docks and will provide improved access to the charter vessels and will include American Disability Act (ADA) requirements. 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. [Special Condition 9](#) ensures that the slip size distribution, total number of slips, and number of commercial charter boats is limited to what is approved under this permit.

The three charter vessels that are currently using the docks are being relocated between 100 and 250 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. The relocation of these vessels does not impact the existing parking conditions or traffic.

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. 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.

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.

The City of Newport Beach Harbor Resources Division analyzed a version of 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 increase sightlines and improve navigation for smaller boats navigating in and around the larger vessels.

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 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.

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.

B. LOCAL GOVERNMENT AND OTHER APPROVALS. The project has received a preliminary approval from the City of Newport Beach Harbor Resources Division Permit, however the project is conditioned to provide revised plans stamped with the “approval in concept” prior to issuance of the permit. 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. CalTrans has provided a comment letter concerning specific transportation aspects of construction and demolition. The applicant has addressed these concerns by proposing relevant BMPs (**Exhibit 4**).

C. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

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

Section 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 30224 of the Coastal Act states:

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

Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30210 of the Coastal Act protect the publics' 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 encourages the use of public transit and non-automobile circulation to serve the transit needs of new development. Section 30224 encourages recreational boating uses and berthing space in harbors. Section 30234 provides for the protection of recreational boating and upgraded facilities.

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 net change in the overall dock configuration will be an increase in size of 1 dock, from 50 feet to 85 feet long (**Exhibit 2**). 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 could result in the loss of lower cost recreational opportunities as smaller boats are less expensive than larger ones. Such a loss 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.

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. [Special Condition 9](#) requires that the applicants maintain the existing boat uses and slip sizes, in order to ensure that there is a mix available. Any changes to the boat uses or slips will require an amendment to this permit.

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.

The three charter vessels are currently permitted to occupy dock space at the Lido Marina Village. 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. 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.

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 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 the applicants have

proposed to install 1 sign (no greater than 3 x 3 feet and not blocking any views of the Bay) indicating that the boardwalk is open, and will remain open, to the public.

As proposed, the Commission finds that the proposed project is consistent with Sections 30210, 30252, 30224, and 30234 of the Coastal Act with regard to the public's right of access to the sea and recreational boating.

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. 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.

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. [Special Condition 2](#) ensures proper construction BMPs during the dock construction. 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.

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. 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. 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, and or include grating and light-penetrating surfaces, thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight.

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 4,063 square feet and the proposed boat dock system consists of 4,334 square feet. As proposed, the proposed boat dock system results in approximately 271 square feet of increased water coverage.

While grating panels 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. Because the new gangway and docks will be used as the single point of access for the charter vessels, which accommodate between 150-300 people per boat, a large number of people accessing the gangway and slip fingers at any given time. Grating panels are impractical where people are not wearing appropriate footwear (frequently the case for members of the public attending special events). In addition, the grated material can provide less stability to the dock structure so the slip fingers may have to be enlarged or additional piles may be required to provide stability (which is critical with a large number of people on the dock all at one time, waiting to board).

Therefore, constructing the minimum sized dock necessary is the only feasible alternative to limit over-water shading and coverage. The City of Newport Beach Harbor Resources Division has established Harbor Design Criteria Guidelines and Standards for dock projects, which state that the minimum width necessary for an 85 foot long dock is 8 feet wide. This is consistent with the project’s design. Consistent with past Commission action (CDP 5-14-0580), no mitigation for additional over water coverage is required. Additionally, because of the limited impacts to the marine environment, this project represents the least environmentally damaging alternative. **Special Condition 8** ensures that the docks are constructed with the minimum width necessary for ADA regulations and City specifications (docks width 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.

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 new larger boat dock systems replacing aging existing dock systems could add to cumulative adverse effects on biological resources in Newport Harbor. Although a single larger boat dock system may not seem to create significant adverse impacts, the cumulative adverse effect of allowing increased water coverage will add up over time. It should be noted that an increase of water coverage does not occur frequently in the subject area. While the project does result in additional water coverage, it has been reduced the least amount possible (271 square feet) and represents an infrequent occurrence in the area. The project does continue to provide a varied mix of boat slip sizes available to the public. As proposed, the dock system reconfiguration does not contribute to cumulative adverse impacts and it minimizes impacts to marine resources and preserves open water area and therefore is 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 7 new piles will result in fill of 52 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 7 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 vessels and 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 charter vessels in the current location would not allow for improving the docks for present engineering and safety standards and ADA requirements and improved public sightlines the harbor from the adjacent development and street. 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 towards the bay at the subject site and would not protect the repairs to the

existing seawall and would not provide for ADA improvements, which aids the Commission's goal of maximizing access to all of the general public, including the public with disabilities.

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 7 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 fewest number of piles necessary to accomplish the goal of securing the proposed dock system, the piles associated with the boat docks represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing berthing of three commercial recreational vessels. 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 7 piles are an allowable and encouraged marine related use because they will allow for safe berthing of boats that are available to the public for recreational purposes in the coastal waters of Newport Bay. 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 52 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 naturally present in the bay. The hard substrate receiving normal tidal exposure can harbor organisms typical within the upper tidal zone on a rocky coast, including barnacles, limpets, crabs, muscles, sea anemones, and invertebrates. Given the size and scale of the proposed project, the small scale of the soft bottom impact, the proposed hardscape habitat is the only onsite 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.

In between the existing commercial buildings lining Via Oporto there are breezeways/walkways 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, blocked by the current location of the large charter vessels, are approximately 15 feet wide (**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 two primary breezeways. Minor pathways throughout the development provide additional public view opportunities from the street, however they are smaller in width than the major breezeways, and are partially obstructed by stairways, landscaping, etc. Moving the charter vessels away from the major breezeways and toward the smaller pedestrian pathways with existing view obstructions will not result in any additional adverse view impacts, but will enhance the views in the major two view corridors in the development.

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.

G. 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.

H. 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
- Marine Activities Permit issued by City of Newport Beach Public Works Department, Harbor Resources, January 7, 2015

PROJECT SITE



Exhibit 1



California Coastal
Commission

PROJECT SITE

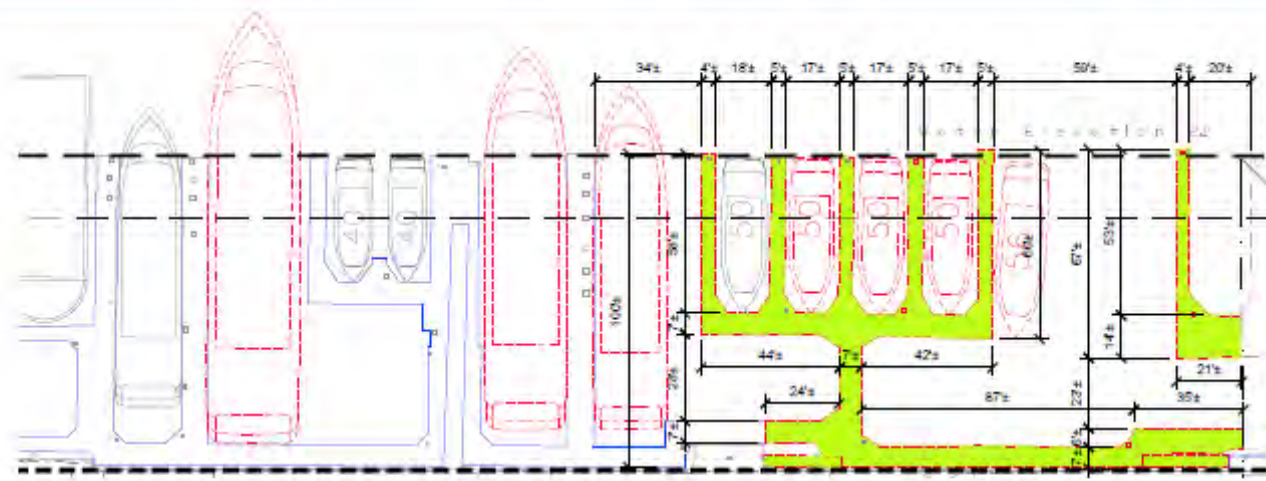


Exhibit 1

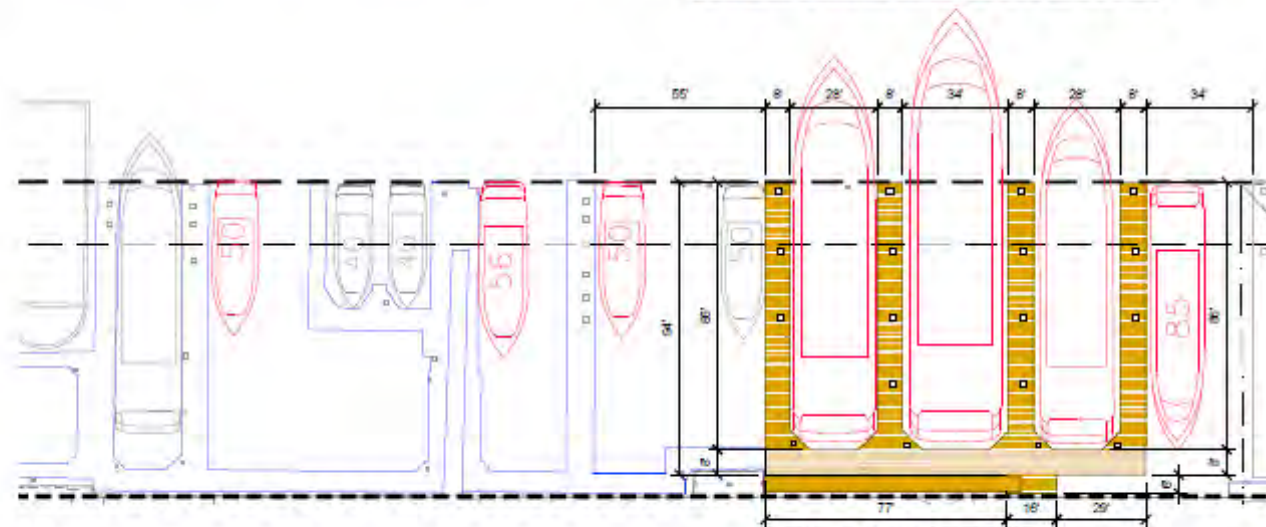


California Coastal
Commission

DOCK PLANS



EXISTING DOCK LAYOUT - DEMO PLAN



PROPOSED REPAIR PLAN

Length of Slip (in feet)	Existing number	Proposed number
28	1	1
36	6	6
38	3	3
40	2	2
50	5	4
58	1	1
64	1	1
85	0	1
38-50 (versatile)	1	1
85 (Charter Vessels)	3	3
Dinghy tie space	175 lateral feet	216 lateral feet

Exhibit 2



California Coastal
Commission

Photographs

Rear of
Commercial
and Retail

Public Boardwalk

02/04/2015 13:11

Exhibit 3



California Coastal
Commission

Photographs



Exhibit 3



California Coastal
Commission

Photographs



Public view will be open

Exhibit 3



California Coastal
Commission

Photographs



Public view will remain open

02/04/2015 13:21

Exhibit 3



California Coastal
Commission

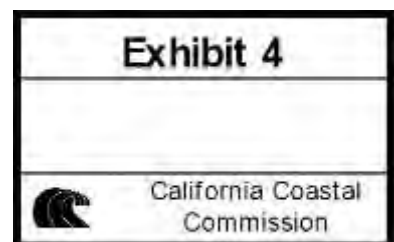
Coastal Development Permit #5-14-1717
Proposed BMPs

It is anticipated that demolition would not result in more than 3 flatbed truck trips (one for concrete piles, and up to two truck trips for the remainder of the material). The docks would most likely be disassociated from the existing marina, towed to one of the boat yards close to the site and within the harbor, then lifted onto flatbed trucks, covered, and sent to an approved upland disposal site. The concrete piles will likely be taken to a concrete recycling facility and crushed to separate concrete and aggregate from the reinforcing within.

For the construction of the marina, piles will be brought in to the site by barge. The docks would probably be trucked to a local boat yard and loaded to a barge for transport to the site. One truck trip would be required to deliver the piles. For the docks (fingers and headwalk) up to 2 truck trips may be required as well. These docks would be prefabricated and trucked to one of the local boat yards, placed in the water by hoist or crane, then “tugged” to the site and installed.

While no impacts to any Caltrans roadway or facility are anticipated, in response to comments from Caltrans District 12, the following BMPs are proposed by the applicant and will be followed to address potential demolition and construction concerns:

- Hauling of construction materials and debris shall not occur during AM or PM peak periods of travel on State roadways during demolition and construction of the Project. Vehicle loads shall be covered to prevent materials and debris from falling onto the Caltrans right-of-way.
- A Caltrans encroachment permit shall be required for any project work that occurs in the vicinity of the Caltrans right-of-way. Such permit shall address environmental concerns such as storage of materials, emergency access improvements, sewer connections, storm drain construction among others identified by Caltrans.
- All construction runoff shall be prevented from draining into Caltrans right-of-way.



DEPARTMENT OF TRANSPORTATION

DISTRICT 12

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*Serious drought.
Help save water!*

May 13, 2015

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

File: IGR/CEQA
Coastal Permit #5-14-1717
Log #: 4385
SR-55 PM 0.096

Dear Ms. Dobson:

Thank you for including the California Department of Transportation (Caltrans) in the review process for the proposed Coastal Development Permit #5-14-1717 for DJM Capital Partners, Inc. (Lido Group Retail LLC). The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. The Local Development-Intergovernmental Review (LD-IGR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities of infill, conservation, and efficient development. To ensure a safe, efficient, and reliable transportation system, we encourage early consultation and coordination with local jurisdictions and project proponents on all development projects that utilize the multimodal transportation network. The proposed project will relocate and enlarge 3 dock fingers and 3 dinghy berths to open view corridors, increase public access, and protect improvements to the existing sea wall by demolishing two 50 foot long dock fingers and constructing three new 94 foot long fingers with 6 new piles and a new 80 foot long ADA gangway. The new piles will require 36 square feet of fill. There will be no change in the number of slips or the use of the docks. This proposed project is located at 3400 Via Oporto, Newport Beach, in proximity to State Route 55 (SR-55) and SR-1. **Caltrans is a commenting agency** on this project.

The following comments are based on the **Notice of Public Hearing** and **Staff Report** for Coastal Permit Application. Per our telephone conversation on May 12, 2015, the Public Hearing has been postponed from May 13th to June, or July 2015.

- Any hauling of materials should not occur during A.M. and P.M. peak periods of travel on State facilities during demolition and/or construction of the proposed project. All vehicle loads should be covered so that materials do not blow over or onto the Caltrans' Right-of-Way (R/W).

Ms. Dobson
May 13, 2015
Page 2

- If any project work (e.g. storage of materials, emergency access improvements, sewer connections, storm drain construction, etc.) occurs in the vicinity of the Caltrans R/W, an encroachment permit would be required and environmental concerns must be adequately addressed.
- Any runoff draining into Caltrans R/W from construction operations, or from the resulting project, cannot be approved by District 12 Environmental Planning.

Please continue to keep us informed of this project and any future developments that could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Leila Carver at (949) 756-7827.

Sincerely,



MAUREEN EL HARAQUE
Branch Chief, Regional-Community-Transit Planning
District 12

Allen Matkins

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Via Electronic Mail

May 11, 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. 5-14-1717
(Item 16c May 13 Coastal Commission Agenda)

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.

We are informed that there has been some confusion regarding the letter sent by me today to you on behalf of New Port regarding the above Application. So that there is no confusion:

- New Port and the Applicant have now reached an agreement, by working in a cooperative matter, in regards to a relocation of the party boats and dock involved in this Application (the "Revision"). The Applicant will be submitting revised information to the Coastal Commission. The Revision involves shifting the docks 39'6" in a northwesterly direction away from 3388 Via Lido. In addition, the largest charter boat will be located in the middle of the new slip fingers, and not immediately adjacent to 3388 Via Lido, as shown in the attached drawing.
- Based on this agreement, and in reliance thereon, New Port supports the Application for the Revision.
- New Port withdraws any and all objections to the Application, as that Application will now be for the relocation as shown on the Revision.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Ms. Amber Dobson

May 11, 2015

Page 2

Thank you for your consideration of this matter.

Very truly yours,



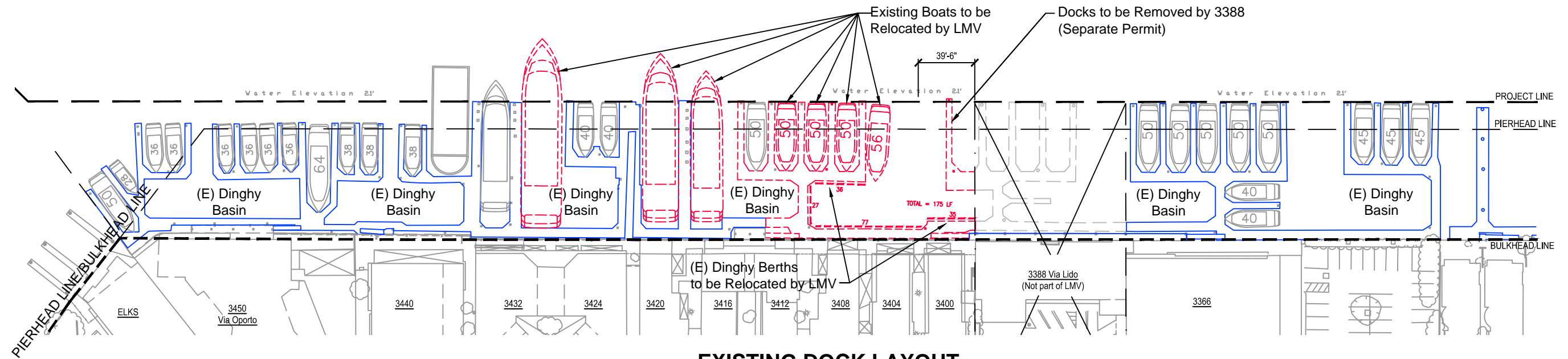
Mark J. Hattam

MJH:cs

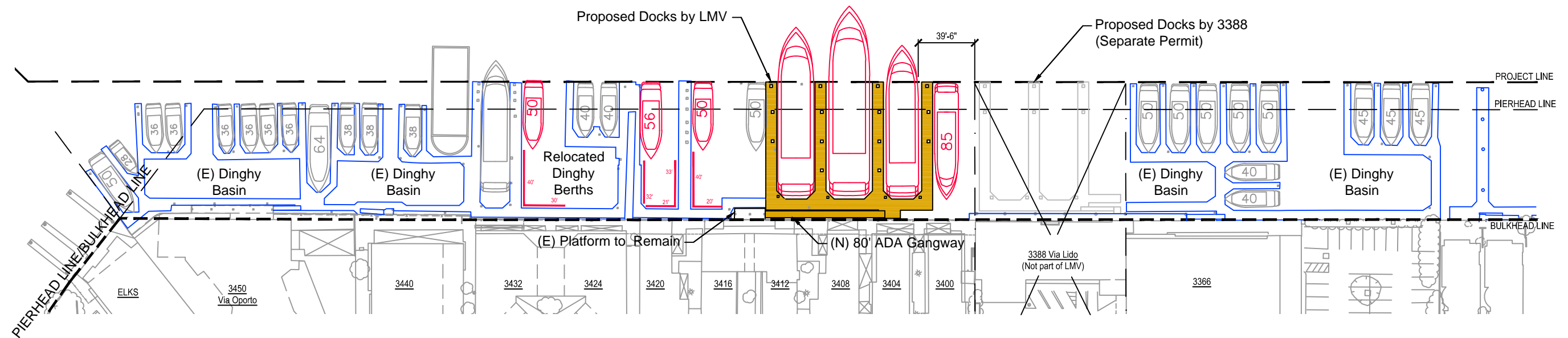
Enclosure

cc: Ms. Shawna Schaffner (via email)
S. Stanley Gilhool, Esq. (via email)
Mr. Steven Mills (via email)
Mr. Jerry Conrad (via email)
Mr. Justin Park (via email)
Ms. Alison Evans, AICP (via email)
Gary S. McKitterick, Esq. (via email)
Susan E. Graham, Esq. (via email)

May 11, 2015 8:32am rrazonable H:\AutoCAD Project Files\Projects\000-Lido Group Retail LLC\Lido Marina Repair Layout-Opt B1.1.dwg 11x17



EXISTING DOCK LAYOUT



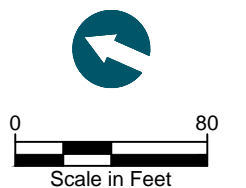
PROPOSED REPAIR PLAN

	Existing/Removed	Proposed	Net Change
Boats to be relocated by LMV	7	7	0
Dinghy Berth (LF)	175 LF	216 LF	+41 LF
Piles (Area)	11 (11.0 SF)	18 (63.2 SF)	+7 (52.2 SF)
Water surface shading	4,063 SF	4,334 SF	+271 SF

Pile Size	Existing		Proposed	
	Qty	Area	Qty	Area
12"	11	11.0 SF		
18"			5	11.2 SF
24"			13	52.0 SF
Total	11	11.0 SF	18	63.2 SF

LEGEND:

- Existing Dock and Piles to Remain
- Existing Dock and Piles to be Removed
- New Dock and Piles



Agenda Item: 16c
Application #: 5-14-1717
Name/Position: New Port Beach
Mixed Development LLLP
Conditionally Opposed

Allen Matkins

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Mark J. Hattam
E-mail: mhattam@allenmatkins.com
Direct Dial: 619.235.1529 File Number: 371997-00009/SD829817.03

Via Electronic Mail & FedEx

May 11, 2015

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

**Re: Conditional Objection to Party Boat Application (Item 16c), and
Related Staff Report Findings and Approval Recommendation
Coastal Development Permit Application No. 5-14-1717**

Dear Ms. Dobson and Coastal Commission:

**[THE APPLICANT AND NEW PORT HAVE NEGOTIATED A MODIFIED
RELOCATION OF THE PARTY BOATS THAT ARE AT ISSUE IN THIS
APPLICATION. THE OBJECTION STATED IN THIS LETTER IS MADE
CONDITIONALLY IN CASE SUCH MODIFIED RELOCATION IS NOT
APPROVED OR PERFORMED. IF THE AGREED MODIFIED
RELOCATION IS APPROVED AND PERFORMED, THIS OBJECTION IS
WITHDRAWN.]**

Our firm represents New Port Beach Mixed Development, LLLP ("New Port"), the owner of the \$18,000,000 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 a major developer in Newport Beach, with three active developments totaling over \$100,000,000. New Port is in receipt of the subject revised 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 May 13 in Santa Barbara, California. New Port will be in attendance to speak at the hearing.

This letter constitutes continued objection by New Port to the Application and the related findings, and a request that the Coastal Commission (the "Commission") reject the Application.

New Port is very concerned that the Application was improperly considered by the City of Newport Beach, and that the fundamental findings by Commission staff for the Application are

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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 May 13 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 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, indeed right against its property line.

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. The 3rd, 4th and 5th

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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. 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 foot) 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 24 off-site commercial parking spaces at the 32nd Street Lot as well as 9 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

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The Eternity:



The Destiny:



Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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The Athena:



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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 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.

Indeed, the clear nuisance nature of these party boats is even admitted by the Lido Isle Community Association, a supporter of the boats being moved. In their April 10, 2015, letter to the Commission for a prior hearing on this Application (attached as Exhibit "3"), that group stated:

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.

[W]e also appreciate that alleviating the visual and view-impeding impact of the party boats on the storefronts . . . will attract the premier tenants . . .

Staff's recommendation, per its Staff Report (the "Report"), is that the Commission approve the Application. This is inappropriate. The 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. New Port raised all these issues on its March 6, 2015, letter to the Commission.

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Staff has attempted to respond to the points raised in our prior correspondence. In the rest of this letter we address Staff's new comments and show they are inaccurate and/or insufficient.

A. Increase Of Noise, Fumes, Lights, Traffic And Other Related Effects (Staff Report Response Number 1, Page 13)

The Report attempts to sidestep the numerous concerns raised by New Port and other objectors over the serious nuisances caused by the party boats, but the analysis is flawed. Here are the points made in this section of the Report, and why they are simply "straw man" arguments and/or in error: +

- The Report says the Application "does not change the use or number of boat slips." This is true, but immaterial. The issue is not a change in number of boats or slips, but the changed location of the huge, nuisance-creating party boats.
- The Report says the party boats are regulated by a permit from the City of Newport Beach. Again, true but immaterial. No one contended the boats were operating without permits.
- The Report says the concerns of New Port were not "presented to the City of Newport Beach when the MAPs for the vessels were issued." What The Report says here is technically true, but it is very misleading. New Port and others had no objection to the party boats when they were at their prior location. When the Applicant decided to change the location of the boats, it did so through an improper "over-the-counter" process at the City which provided notice to no one, and New Port and other residents had no idea what was going on.³ It is therefore unfair and a denial of due process to assert that New Port and others did not object. When staff contacted me weeks ago about whether New Port had objected at the City, I informed staff that New Port had no opportunity to do so, as it had never been noticed of the City's approval in concept decision. The Report should have informed the Commission of this fact, rather than making it appear New Port had a chance to object and did not do so.

³ To the extent New Port takes action at the City, it will inform Commission staff. The City performed no CEQA review at all, simply citing in its approval in concept that the decision was "ministerial or categorically exempt" from CEQA, which it was not. The Commission, as a Responsible Agency under CEQA (noted by the Report at page 24), has a duty to do more than simply recite the City's non-review under CEQA, as the Report attempts at pages 24-25.

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Since these are the only arguments made by the Report for the host of nuisance issues raised by New Port, the Report is still woefully deficient, and it is not sufficient for the Commission to act upon.

B. No Traffic Or Parking Studies (Report Response Number 2, Page 14)

The Report in this section just makes completely unsupported conclusions. After first stating that the party boats are 300 feet south of their current location, it then says this 300-foot change "did not trigger any parking or traffic studies through the permit process because the parking and traffic flow will not change." Why will the flows not change? No facts are presented to support this conclusion.

Similarly, the Report then states that there is no change in overall use or intensity, and that the Lido parking structure the boats have always used is sufficient, before concluding that, "The relocation of these vessels does not impact the existing parking or traffic conditions." However, this is completely circular and off point. The question is whether the location change will affect parking or traffic, not whether the boats had approved parking and traffic at their present location. Again, the Report provides no substantive basis for its conclusions.

C. Public Access Signage Not Conditioned (Report Response Number 3, Page 14)

The Report again simply provides an unsupported conclusion, stating that, "The vessel relocation will not impact public access nor the boardwalk." It then states that the Applicant has proposed to install signage that the boardwalk is open and will remain open to the public. However, there is no requirement to complete a public access signage program indicating the boardwalk would be open to the public, and this is inconsistent with other recently assigned requirements for provision of signage to ensure ongoing and safe public access to the Bay. A condition should be added for a signage program.

D. Lack Of Analysis Of Public Views (Staff Report Response Number 4, Page 15)

The Report details the opening of public views where the boats are now located, but ignores the blocked views at the proposed new boat location.

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 Report, which just discusses opening up the view where the boats are currently located as if that is the end of the analysis. 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

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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 Staff Report Response
Number 5, Page 15)

The Report yet again relies on the fact that the boats are already located in the area to ignore looking at any effects on navigation that might change due to the proposed move.

What is 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? No one knows, because the Report ignores the issue. Any potential line of sight difficulties or other operational issues for smaller vessels to navigate into the adjacent slips and/or dingy basins need to be understood and taken into consideration, but it has not been reviewed.

F. Increase In Foot Traffic (Report Response Number 6,
Page 15)

Similar to the rest of its content, the Report once more states a conclusion without any real analysis: "The parking structure will remain in the current location, so there will be no change to existing 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 [sic] relocation." (p.15). How does the Report know all this? No studies have been done.

The Report then goes on to note that the area is open to the public, and that the party boat customers are entitled to park, drive, and walk anywhere the public can park, drive, and walk. Such largesse in staff reports is not common, and indeed is contrary to the very goal of public agency review of traffic and parking issues. Is it prudent for a public agency report to address a major business being moved to a new location by simply saying that no traffic or parking studies need to be done, because the users of the business are just part of the public-at-large and so, of course, they can access all areas open to the public in any event. This begs the effect of the change in location of these major party boat businesses. That is an effect unstudied by the Applicant, the City of Newport Beach, or the Commission.

G. Seawall Impacts (Report Response Number 7, Page 16)

In response to the litigation materials noted earlier in this letter, the Report now claims that any seawall issues are resolved by the fact that "procedures for moving into and out of the slips [that caused the earlier problems] have been modified by the charter vessel companies [by contract]." Report, p.16.

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However, the Report is missing two fundamental elements regarding this issue:

1. What are the new proper procedures that will not impact the seawall?
2. Why is the Commission not requiring use of the new, allegedly proper, procedures by conditioning its approval on those procedures being used?

There is a clear admission by the Report that the party boats have previously damaged the seawall: "Damage to the wall was caused by the charter vessel propellers improperly being left on for long periods of time" Given this history of harm from the party boats, it is unfair, and potentially dangerous to property, for the Commission to just adopt staff's recommendation that everyone rely on the goodwill performance of a contract between the boat operators and their landlord. Instead, the exact procedures required to protect the seawall should be spelled out, and the Commission should require adherence to those methods by conditioning any approval on full compliance with those procedures.

H. Lack Of Proper Noticing (Report Response Number 8, Page 17)

The earlier hearing on this matter was not properly noticed, but New Port did receive hearing notice for the May 13 hearing.

However, there was never proper notice posted at the project location. The Report states there was notice posted "adjacent to the docks," which is true. However, what the Report fails to note is that the subject site where the boats were to be moved to was never posted. 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.

3. **Conclusion**

In summary, all of New Port's previous objections remain un rebutted. The Report simply states, on many topics, conclusions without any evidentiary basis. Additional studies must 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

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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 email & FedEx)
S. Stanley Gilhool, Esq. (via email)
Mr. Steven Mills (via email)
Mr. Jerry Conrad (via email)
Mr. Justin Park (via email)
Ms. Alison Evans, AICP (via email)
Gary S. McKitterick, Esq. (via email)
Susan E. Graham, Esq. (via email)

EXHIBIT 1

1 Steven A. Silverstein, Bar No. 64610
Mark W. Huston, Bar No. 119872
2 Robert I. Cohen, Bar No. 168686
SILVERSTEIN & HUSTON
3 701 South Parker Street, Suite 5500
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4 Tel: (714) 547-2511
Fax: (714) 547-0230
5 silverstein@silversteinhuston.com
6 Attorneys for Plaintiff, ELECTRA CRUISES, INC.
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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

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

ELECTRA CRUISES, INC., a Florida
corporation,

Plaintiff,

v.

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

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.
15
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28

EXHIBIT "A"



OF THE CITY OF NEWPORT BEACH, CALIFORNIA

MANAGEMENT LEASING OFFICE

500 VIA OPORTO SUITE 100 NEWPORT BEACH, CA 92663-0002 • PHONE 949.661.2800 • FAX 949.661.7685

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

10
11 SUPERIOR COURT, STATE OF CALIFORNIA
12 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
13

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

16 Plaintiff,

17 vs.

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

20 Defendants.

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

(Assigned For All Purposes To Judge)

VERIFIED COMPLAINT FOR
UNLAWFUL DETAINER

21 COMES NOW Plaintiff Lido Group Retail, LLC, a California limited liability company, and
22 for causes of action against Defendants Electra Cruises, Inc., a Florida corporation, and Does 1
23 through 50, inclusive, alleges as follows:
24

25 **GENERAL ALLEGATIONS**

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

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

1 3. The true names and capacities, whether individual, corporate, associate or otherwise,
2 of Defendants named herein as Does 1 through 50, inclusive, are unknown to Plaintiff who
3 therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to
4 show their true names and capacities when the same have been ascertained.

5 4. Plaintiff is informed and believes and based upon such information and belief
6 alleges, that at all times mentioned herein, Defendants, and each of them, were the agents, servants
7 and employees of the other Defendants and were acting within the course and scope of such agency
8 and employment.

9 5. The property, the possession of which is the subject of this action, is situated within
10 the jurisdictional limits of this Court. This action is not subject to the provisions of
11 Section 1812.10 or 2984.4 of the Civil Code of California.

12
13 **FIRST CAUSE OF ACTION**
 (Unlawful Detainer)

14 6. Plaintiff is the owner and lessor of that certain commercial real property commonly
15 known as Lido Marina Village in Orange County, California ("the Property") which includes the
16 following lagoons and slips (sometimes collectively referred to herein as "the Premises") and the
17 seawall that borders them:

18 Lagoons: 425
 525
19
20 Slips: 425a1
 425a2
 425b
21 506
 507
22 508
 509
23 517
 518
24 713
 714
25

26 7. On or about February 6, 1996 Plaintiff's predecessor-in-interest, as lessor, and
27 Electra, as lessee, entered into and executed a written agreement titled Yacht Storage and Rental
28 Agreements (the "1996 Lease") whereby Electra agreed to occupy Lagoon 525 on the terms and

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;
and Tenant shall have no further claim thereon or
thereunder;”

28 ///

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 its 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.

17

18 DATED: September 26, 2013.

SEED MACKALL LLP

19

20

By: 

21

Peter A. Umoff

22

Alan D. Condren

23

Attorneys for Plaintiff Lido Group Retail, LLC

24

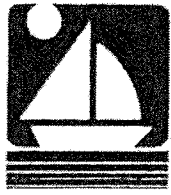
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EXHIBIT 3



lido isle
community
association

701 VIA LIDO SOUND, 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



1100 Newport Center Dr., Suite 200 Newport Beach, CA 92660-6254 949-760-9150

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,

A handwritten signature in black ink, appearing to read "Scott Burnham", written over a horizontal line.

Scott Burnham
Chairman of the Board and CEO