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W15b

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STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-15-0060**
Applicant:	**86 Linda Isle, LLC**
Agent:	Swift Slip Dock & Pier Builders, LLC, Attn: Jacquelyn Chung
Location:	86 Linda Isle, Newport Beach (Orange County)
Project Description:	Removal of an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and installation of a new 884 square foot U-shaped dock with new 4-14" square concrete piles and 4' x 24' gangway. The new boat dock system will be comprised of composite material. The proposed boat dock system results in 12 square feet of decreased water coverage.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the removal of an existing boat dock system and installation of a new boat dock system in the City of Newport Beach. The major issues raised by this proposed development concern consistency with the marine resources, water quality and public access and recreation policies of the Coastal Act.

The subject site is a bayfront lot in the City of Newport Beach and the proposed project includes the removal of an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and installation of a new 884 square foot U-shaped dock with new 4-14" square concrete piles and 4' x 24' gangway. The proposed boat dock system results in 12 square feet of decreased water coverage. However, the proposed dock has not been designed to the minimum required standards found in the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards that would result in less water coverage while still being able to

provide for a usable dock system. Adhering to the minimum standards of the Harbor Design Criteria Guidelines and Standards, the proposed dock system could be further reduced to a 584 square foot boat dock system, a reduction of approximately 312 square feet from the existing boat dock system and a reduction of approximately 300 square feet from the proposed boat dock system and result in less water coverage. As a result of a larger dock structure, there would be cumulative impacts to biological productivity of coastal waters resulting from increased water coverage, increased shading of soft bottom habitat, habitat displacement, and decreases in foraging habitat for sight foraging marine birds.

The applicant states that the proposed design is needed in order to accommodate storage boxes for their recreational boating related materials that in an original design were to be placed on a pier platform. However, due to the presence of eelgrass near the dock and impacts upon it from the installation of the pier platform, the pier platform component was not included as part of the project and instead the fingers were designed to be wider to accommodate the storage boxes. However, the Coastal Act does not require approval of an expanded boating facility in order to create additional storage space for a private homeowner's recreational materials. In addition, the boat dock system can be redesigned in order to reduce overall water coverage while still accommodating area where the owner's recreational boating materials can be stored.

The City of Newport Beach Harbor Resources Division has established Harbor Design Criteria Guidelines and Standards for residential dock projects. The minimum required finger widths for the dock based on the lengths of the applicant's proposed berth is 4'. The applicant is proposing widths of 6' and 12'. The minimum width of the float dock headwalk based on the applicant's proposed dock length can be a minimal width of 4', as the applicant has proposed. In order to accommodate storage boxes originally intended to be placed on a standard 10' x 14' (140 square feet) pier platform that could not be included due to adverse eelgrass impacts, Commission staff has included that area (a maximum of 140 square feet) in the amount of area that could be included in the boat dock system to accommodate boating related storage containers. Even with the additional allotment of square footage for storage boxes, the overall square footage of the revised boat dock system based on the minimum standards of the Harbor Design Criteria Guidelines and Standards would result in less water coverage (584 square feet) than the existing (896 square feet) and proposed (884 square feet) boat dock systems.

In order to minimize adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Harbor ecosystem, the proposed increased water coverage of the new boat dock system must be reduced. Therefore, the Commission imposes **Special Condition No. 1,** which requires the applicant to submit revised project plans to minimize the finger width from 6' and 12' to 4' while maintaining the minimum headwalk width of 6' and 16 square feet for two knee structures and including as an option, an additional maximum 140 square feet for storage boxes. This will result in a dock system varying from a minimum of 444 square feet to 584 square feet.

Eelgrass (*Zostera marina*) was discovered near the project site, but is not expected to be impacted by the project. However, to verify that no eelgrass is impacted, a pre-construction eelgrass survey should be conducted. Therefore, the Commission imposes **Special Condition No. 2**, 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.

A *Caulerpa Taxifolia* survey was completed for the project site and none was discovered. However, to verify that no *Caulerpa Taxifolia* is on the site that could result in further dispersal of this invasive species from construction activities, a pre-construction *Caulerpa Taxifolia* survey should be conducted. Therefore, the Commission imposes **Special Condition No. 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxilfolia*.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, several standard special conditions have been imposed in order to minimize any impacts that the proposed project may have on water quality and marine resources: **Special Condition No. 4** states requirements for the applicant regarding construction responsibilities and debris removal; and **Special Condition No. 5** requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality.

The proposed dock is being constructed on public tidelands and/or within an area subject to public trust doctrine. The Commission is not authorizing any new development in open coastal waters that would obstruct public use of or access to those waters. **Special Condition No. 6** affirms that approval of a replacement dock does not constitute a waiver of any public rights that exist or may exist at the site.

As conditioned, the proposed project will conform with Coastal Act Sections 30230, 30231, 30233, 30250, 30210, 30211, and 30212 of the Coastal Act.

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

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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-15-0060 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, located between the first public road and the sea, 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

1. Revised Project Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The intent behind the required re-design is to minimize water coverage of the proposed new boat dock system. The dock float finger widths shall be reduced to the minimum 4' finger width requirement per the City of Newport Beach Harbor Design Criteria Guidelines and Standards for residential boat docks with berths under 55 feet in length. The minimum headwalk width of 6' and 16 square feet for two knee structures will be maintained unless they can be reduced. An allowance will be made to include a maximum 140 square feet to the boat dock system for storage boxes for recreational boating related materials. The revised project plans shall be in substantial conformance, in terms of configuration and location, with the plans submitted on January 12, 2015. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

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

2. Pre-and Post-Construction Eelgrass Survey(s).

A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre- construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. Post Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 (mitigation:impact) ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy and Implementing Guidelines. Based on past performance of eelgrass mitigation efforts in this area, in order to achieve this minimum, an initial planting ratio of 1.38:1 is recommended. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). Any exceptions to the required 1.2:1 mitigation ratio found within the California Eelgrass Mitigation Policy and Implementing Guidelines 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 required.

3. Pre-Construction *Caulerpa taxifolia* Survey.

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

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service (see http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/caulerpa_taxifolia.html).

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval of the Executive Director; and
(2) to the Surveillance Subcommittee to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Wildlife (858-467-4218/William.Paznokas@wildlife.ca.gov) or Bryant Chesney, National Marine Fisheries Service (562-980-4037/Bryant.Chesney@noaa.gov), or their successors.

D. 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 *C. taxifolia* discovered within the project and/or 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 *C. 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.

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

(1) 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;
(2) 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;
(3) 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;
(4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
(5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
(6) 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;
(7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
(8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
(9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
(10) 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;
(11) 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;
(12) 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;
(13) The discharge of any hazardous materials into any receiving waters shall be prohibited;

(14) 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;

(15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and

(16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. 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 dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs:

(1) Boat Cleaning and Maintenance Measures:

a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;

b. 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

c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

a. 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 will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

a. 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 will 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;

b. 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

c. 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.

6. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT DESCRIPTION AND LOCATION, AND OTHER LOCAL AND AGENCY APPROVALS

1. Project Description and Location

The proposed project involves the following: removal of an existing 896 square foot U-shaped dock with 4-14" square concrete guide piles and a 4' x 24' gangway and installation of a new 884 square foot U-shaped dock with new 4-14" square concrete piles and a new 4' x 24' gangway (**Exhibit No. 2**). The new boat dock system will be comprised of composite material. The proposed boat dock system results in 12 square feet of decreased water coverage. The existing dock conforms to the existing U.S. Pierhead Line and the proposed dock system will also conform to it as well. The proposed boat dock system will not encroach bayward into Newport Bay.

	Existing	Proposed
Boat Dock System	Finger 42' x 7 = 294 square feet	Finger 44' x 6' = 294 square feet
	Finger 42' x 7 = 294 square feet	Finger 44' x 12' = 528 square feet
	Headwalk 19' x 6' = 114 square feet	Headwalk 19'x 4' = 76 square feet
	Knees (3) 6' x 6' = 54 square feet	Knees (2) 4' x 4' = 16 Square feet
	Landing 20' x 7' = 140 square feet	
Total Water Coverage	896 square feet	884 square feet
Piles	(4) 14"	(4) 14"
Gangway	4'x 24' = 96 square feet	4' x 24' = 96 square feet

Based on the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards, fingers that are 44' in length should at a minimum be 4' in width. One of the fingers of the proposed dock system is being significantly enlarged from 7' to 12' in width, significantly wider than the minimum required. The other finger, while being reduced from a width of 7' to 6',

still is larger than the minimum width of 4'. The applicant states that the proposed size of these fingers is necessary in order to accommodate storage boxes for boating related materials on the fingers. The applicant states that they had initially designed the project so that a pier platform could be installed as part of the dock system where the storage boxes would be placed. However, due to the presence of eelgrass near the boat dock system and impacts upon it from installation of the pier platform, the pier platform component was not included as part of the project and instead the fingers were designed to be wider to accommodate storage boxes.

The subject site is located at 86 Linda Isle in the locked gate community of Linda Isle in the City of Newport Beach, Orange County (**Exhibit No. 1**). Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area.

2. Other Local and Agency Approvals

The proposed dock conforms to the U.S. Pierhead Line and is consistent with the City's Harbor Permit Policy. The project has received an approval-in-concept from the City of Newport Beach Harbor Resources Division on March 17, 2015 (Harbor Permit No. 133-86 and Plan Check No. 2650-2014). The Santa Ana Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers.

A portion of the proposed project extends out into public tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a "Tidelands Survey for Newport Harbor for the City of Newport Beach". Thus, the County of Orange would be the local encroachment permit issuing authority for development (i.e. dock system) within the public tidelands area and the permits they issue for such development are entitled "Newport Tidelands Encroachment Permits". The applicant has applied and obtained a "Newport Tidelands Encroachment Permit".

B. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial*

interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states in part:

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

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

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

(6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

(a)New residential…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 be maintained and enhanced and that uses of the marine environment sustain biological productivity of coastal waters. Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters be maintained, and where feasible, restored through measures aimed at reducing water resource impacts from proposed development. Section 30233 of the Coastal Act limits the allowable fill of open coastal waters, wetlands and estuaries to certain uses so long as there is no feasible less environmentally damaging alternatives to a proposed use and feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources.

1. Marine Resources/Biological Productivity

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 896 square feet and the proposed boat dock system consists of 884 square feet. As proposed, the proposed boat dock system results in 12 square feet of decreased water coverage. However, the proposed dock has not been designed to the minimum required standards found in the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards that would result in less water coverage while still being able to provide for a usable dock system. Adhering to the minimum standards of the Harbor Design Criteria Guidelines and

Standards, the proposed dock system could be further reduced to a 584 square foot boat dock system, a reduction of approximately 312 square feet from the existing boat dock system and a reduction of approximately 300 square feet from the proposed boat dock system and result in less water coverage.

Sections 30230 and 30231 of the Coastal Act require that marine resources, including biological productivity, be protected. The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by lower order green algae, phytoplankton, and diatoms that form the basis of the marine food chain. In addition to reduced sunlight and decreases in biological productivity of coastal waters, increased coverage of coastal waters is a significant concern since it also impedes avian foraging activities. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the State and federally listed California brown pelican found throughout Newport Harbor. Although the coverage of bay surface area habitat associated with this project may not seem to create significant adverse impacts, the cumulative effect of allowing significant increases in water coverage by dock projects will add up over time, especially as docks are considered a boating related use and is an allowable use of fill under Section 30233. It should be noted that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with Section 30233, the overall effect would be a significant loss of coastal waters and soft bottom habitat.

Coastal Act Section 30233 clearly limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only including "*new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities*." However, fill for boating facilities is only allowable *where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.* The proposed project would not result in any additional fill as 4-14" square concrete piles will be replaced with like for like piles. However, while the amount of water coverage is being reduced by 12 square feet with the proposed project, the amount of water coverage could be significantly reduced by designing the proposed dock system according to the minimum standards of the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standard. Compared to the proposed project, a revised design of the boat dock system adhering to the minimum design is the least damaging environmental alternative and the proposed one is not because the proposed dock's design results in water coverage that could be significantly reduced and results in minimal impacts on the biological productivity of marine resources that depend on light for their existence like the green algae, phytoplankton, and diatoms.

The applicant states that the proposed design is needed in order to accommodate storage boxes for their boating related materials. The applicant states that they had initially designed the project so that a pier platform could be installed as part of the dock system where the storage boxes would be placed. However, due to the presence of eelgrass near the dock and impacts upon it from the installation of the pier platform, the pier platform component was not included as part of the project and instead the fingers were designed to be wider to accommodate storage boxes. However, the Coastal Act does not require approval of an expanded boating facility in order to create additional storage space for a private homeowner's recreational materials. In addition, the boat dock system can be redesigned in order to reduce overall water coverage while still accommodating area where

the owner's recreational boating materials can be stored. Adhering to the minimum standards of the Harbor Design Criteria Guidelines and Standards, the proposed dock system could be reduced to a 584 square foot boat dock system, a reduction of approximately 312 square feet from the existing 896 square foot boat dock system and a reduction of approximately 300 square feet from the proposed 884 square foot boat dock system and result in less water coverage.

The City of Newport Beach Harbor Resources Division has established Harbor Design Criteria Guidelines and Standards for residential dock projects; these are provided as **Exhibit No. 3**. These Standards are minimum requirements. The minimum required finger widths for residential docks depends on the length of the berth, in this case, the applicant is proposing a 44' long x 19' wide berth, therefore, the minimum finger float width is 4', the applicant is proposing 6' and 12'. The minimum width of the float dock headwalk is no less than 6' for dock lengths up to 80'. The proposed boat dock system is a U-shaped dock float with a 6' and 12' wide fingers and a 4' wide headwalk. According to the City's Standards, a 6' wide headwalk, as proposed by the applicant, is the minimum required, but the proposed 6' wide finger floats could be minimized to 4' wide. In order to accommodate storage boxes originally intended to be placed on a standard 10' x 14' (140 square feet) pier platform that could not be included due to adverse eelgrass impacts, Commission staff has included that area (a maximum of 140 square feet) in the amount of area that could be included in the boat dock system to accommodate boating related storage containers. Even with the additional allotment of square footage for storage boxes, the overall square footage of the revised boat dock system would result in less water coverage (584 square feet) than the existing (896 square feet) and proposed (884 square feet) boat dock systems.

Revised Dock Float Fingers (Minimum Requirements)
Head Walk: 4' wide x 19' long = 76 square feet
Finger: 4' wide x 44' long = 176 square feet
Finger: 4' wide x 44' long = 176 square feet
Knees: 4' x 4'triangle (2) = 16 square feet
Pier Platform Storage Area: 10' wide x 14' long= 140 square feet
Total: 584 sq. ft.

In order to minimize adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Harbor ecosystem, the proposed increased water coverage of the new boat dock system must be reduced. Therefore, the Commission imposes **Special Condition No. 1,** which requires the applicant to submit revised project plans to minimize the finger width from 6' and 12' to 4' while maintaining the minimum headwalk width of 6' and 16 square feet for two knee structures and including as an option, an additional maximum 140 square feet for storage boxes. This will result in a dock system varying from a minimum of 444 square feet to 584 square feet.

2. Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic

organisms (e.g. clams, crabs, and worms) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fish – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that pursue fish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

An eelgrass survey took place on March 2, 2015 as required by the City of Newport Beach Harbor Resources Division. Eelgrass was found surrounding the dock within 15-feet of the project area. However, the proposed project has been designed to avoid all impacts to eelgrass. As a result, the proposed boat dock 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). The project is agendized for the September 2015 Coastal Commission Hearing so the existing eelgrass survey is no longer valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **Special Condition No. 2**, 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 under strict protocol provided in the "California Eelgrass Mitigation Policy and Implementing Guidelines" dated October 2014 which will ensure full mitigation of any impacts to eelgrass should the post-construction survey show that unforeseen eelgrass impacts occurred during construction. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

3. *Caulerpa Taxifolia*

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *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. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia,* if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on March 2, 2015 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendized for the September 2015 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-

days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxilfolia*, the Commission imposes **Special Condition No 3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxilfolia*. If *Caulerpa Taxilfolia* 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 Taxilfolia*, unless the Executive Director determines that no amendment or new permit is legally required.

4. Construction and Post-Construction Impacts

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help assure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement.

To assure 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 No. 4**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes **Special Condition No. 5**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30233 and 30250 of the Coastal Act.

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 30211 of the Coastal Act states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in relevant part:

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
> *(2) adequate access exists nearby*

Section 30210 of the Coastal Act requires that maximum public access and recreational opportunities to and along the coast be provided for all the people. Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where adequate access exists nearby.

The subject site is located in the locked gate community of Linda Isle in the City of Newport Beach. No public access currently exists through the site. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island. The proposed development, as proposed, will not result in any new significant adverse impacts to existing public access in the area.

The proposed dock is being constructed on public tidelands and/or within an area subject to public trust doctrine. The Commission is not authorizing any new development in open coastal waters that would obstruct public use of or access to those waters. Furthermore, the proposed expanded dock does not encroach into the navigation channel and does not create an impediment to navigation. **Special Condition No. 6** affirms that approval of a replacement dock does not constitute a waiver of any public rights that exist or may exist at the site.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

D. 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 Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was last updated in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan 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.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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.

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorically Exempt from Provisions of CEQA for the construction.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the marine resources, water quality and public access and recreation policies of the Coastal Act.

Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX 1

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Coastal Land Use Plan (CLUP); City of Newport Beach Harbor Permit Policies; City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and Standards; City of Newport Beach Harbor Resources Division Permit/Approval-in-Concept Harbor Permit No. 133-86 and Plan Check No. 2650-2014 dated March 17, 2015; Letter from Commission staff to agent dated February 10, 2015; Letter from agent to Commission staff dated March 10, 2015; Preliminary Eelgrass and *Caulerpa Taxifolia* Survey prepared by Dive Works dated March 2, 2015, and "Newport Tidelands Encroachment Permit" from the County of Orange dated August 18, 2015.

Exhibit No. 1
Page 1 of 1

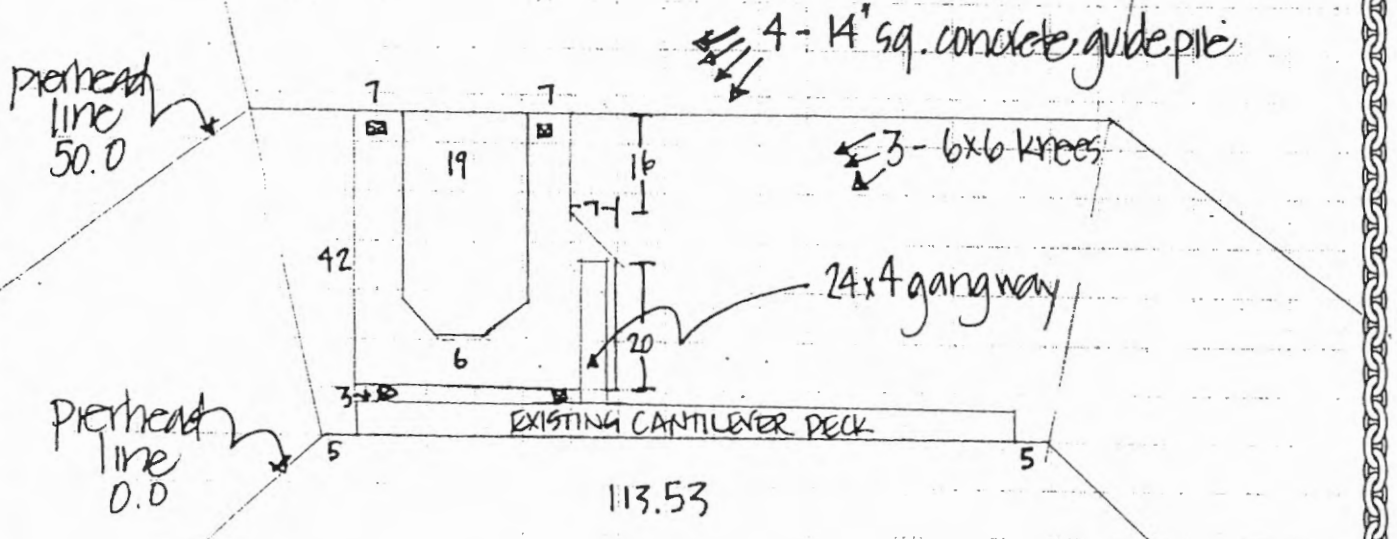
2027 Placentia Avenue, Costa Mesa, California 92627
(949) 631-3121 · Fax (949) 631-3122

5-150060

EXISTING

EXISTING
Floating Dock 896 sq. ft.
42 x 9 = 294
19 x 6 = 114
42 x 7 = 294
20 x 7 = 140
(3) 6x6 knees = 54

Gangway 96 sq. ft
24 x 4



86 LINDA ISLE

SWIFT SLIP
DOCK & PIER BUILDERS, INC.

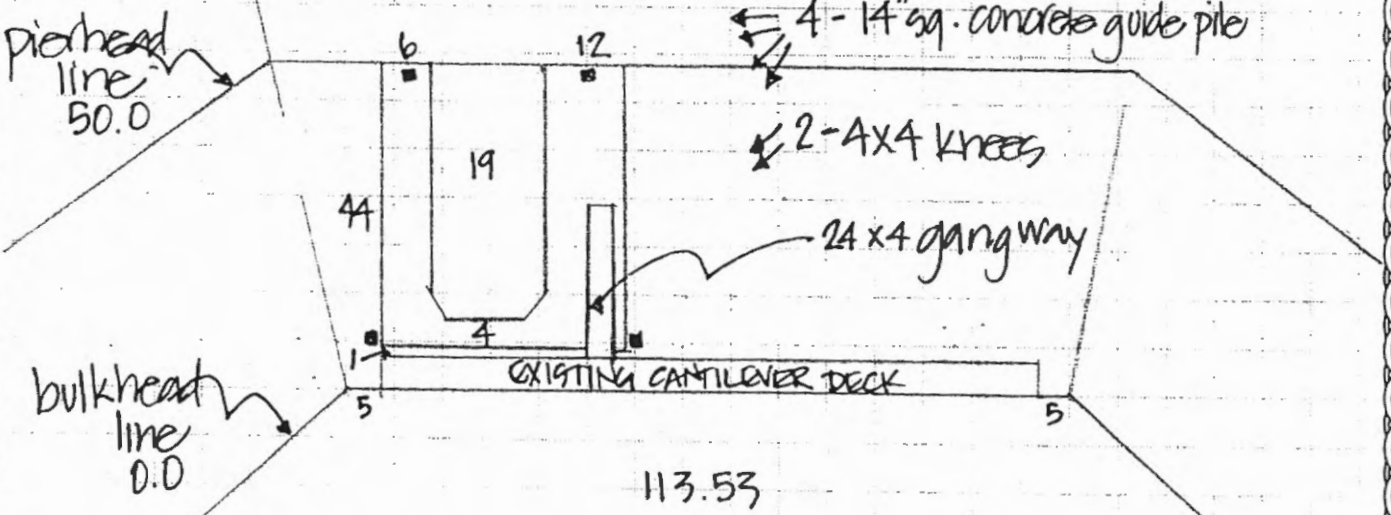
2027 Placentia Avenue, Costa Mesa, California 92627
(949) 631-3121 • Fax (949) 631-3122

5-150060

PROPOSED

PROPOSED
Floating Dock 884 sq ft
44 x 6 = 264
44 x 12 = 528
19 x 4 = 76
(2) 4x4 knees = 16

Gangway 96 sq. ft.
24x4



113.53

86 LINDA ISLE

SWIFT SLIP
DOCK & PIER BUILDERS, INC.

utilized as shown, or in combination with one another, in an overall marina dock scheme.

2. LAYOUT AND DESIGN (Commercial & Residential)

a. General

(1) Layout and design of harbor facilities shall be based upon the use of the facility defined as follows:

(a) Single or joint residential
(b) Multi-residential
(c) Commercial

1) Passenger
2) Recreational boat marina

(2) Harbor structures shall conform to "Layout & Design Guidelines for Marina Berthing Facilities", latest edition, published by the State of California Department of Boating and Waterways, 2000 Evergreen Street, Suite 100, Sacramento, California 95814; Telephone (888) 326-2822, except as modified by the City's harbor standard drawings within the Design Criteria.

(3) See the attached **Harbor Standard Drawings** for plans, sections and details of typical conditions for vessel moorings and docks, gangways, platforms, seawalls, and beach profiles. These Standards are to be considered minimum requirements for the cases represented and, at the City of Newport Beach Building Department discretion, may not apply to the specific project submitted. The Building Department reserves the right to mandate deviation from the Standards, if particular project conditions require special consideration.

b. Slip and Boat Overhang into Adjacent Fairways:

(1) Berths shall not be occupied by vessels more than 3 feet longer than the berth or slip, or in the case of fairways with a 1.75 x Lb width, not more than 10% of the length of the finger.

(2) For berths either parallel or perpendicular to a main channel, vessels can extend beyond the limits of the slip by as much as the ***beam of the boat.***

c. Finger and Walkway Widths:

(1) Minimum finger widths for recreational commercial and residential docks shall be per **Table No. 1.**

(2) Fillets at the connection of walkways to fingers shall not have less than a 4-foot side.

(3) Outer end (end tie) and side-tie fingers shall be a minimum of one foot wider than the minimal widths for all other adjacent finger docks.

(4) Residential Headwalks and Mainwalks:

(a) Minimum residential headwalk widths shall be no less than 6 feet for dock lengths up to 80 feet in total length, and 8 feet wide for dock lengths of more than 80 feet.

(5) Commercial Headwalks and Mainwalks:

(a) Minimum widths shall be no less than 8 feet wide. If use of a walkway is for staging the public while waiting to board a vessel, the minimum dock width shall be 12 feet.

(b) At gangways, a minimum of 6 feet of walking surface shall be maintained in front of the furthermost gangway projection (including toe plate) at high tide, and have a minimum of 4 feet of clear space to walk along the side of any gangway for access to berthed vessels.

Table No. 1
Minimum Finger Widths

Fingerfloat Width (Feet)	Length of Berth (Feet)
F = 5.0'	All ADA Accessible Fingerfloats
F = 3.0'	Up to 35'
F = 4.0'	36' to 55'
F = 5.0'	56' to 70'
F = 6.0' (1)	71' to 84'
F = 8.0' (1)	85' and over

(1) *Widths of more than that shown in this Figure may be necessary for specific site conditions and/or uses of fingers over 70 feet.*
(2) *Minimum 5'-0" widths are required for the entire path of travel for ADA access, including paths along main- and headwalks.*