

CALIFORNIA COASTAL COMMISSION

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



Th7b

Click here to go to
original staff report

ADDENDUM

April 8, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **CDP NO. 5-15-1521 (Ron & Allyson Presta) FOR THE COMMISSION MEETING OF THURSDAY, APRIL 14, 2016.**

I. CHANGES TO STAFF REPORT

The applicant has modified the proposed project from having a zero-foot setback from the southern marina boundary line to having a 10-foot setback from the southern marina boundary line. Additionally, the area of the proposed marina has decreased from 11,525 square-feet to 11,430 square-feet. As such, Commission staff recommends modifications to the staff report dated March 24, 2016. The modifications are recommended in order to provide project description clarification. Language to be added to the findings and conditions is shown in **underlined italicized bold text**, and language to be deleted is identified by ~~strike-out~~.

A. Page 1, Project Description of Staff Report, shall be modified as follows:

Replacement of an 11,729 square-foot marina, including 22 square-feet of fill related to marina guide piles, with a new 11,525**430** square-foot marina, including 97 square-feet of fill associated with new marina guide piles

B. Page 1, paragraph 1 of Summary of Staff Recommendation, shall be modified as follows:

The applicant proposes to remove an 11,729 square-foot 40-slip marina and construct an 11,525**430** sq. ft. 48-slip marina and install a new ADA gangway. The marina is located over state submerged land, administered by the City of Newport Beach. The proposed project will result in 299**99** square-feet of less water coverage and approximately 75 square-feet of new fill. Despite the applicant's proposed reduction in size of the dock, the removal of the existing dock and construction of a new dock may adversely impact multiple eelgrass patches which surround the existing dock float and gangway. The applicant has acknowledged that the development might impact eelgrass and has proposed to provide eelgrass mitigation on-site if an impact is identified. Other major

issues associated with the proposed project relate to water quality and fill of coastal waters.

C. Page 8, paragraphs 1 & 2, shall be modified as follows:

The subject site is located at 2888 Bayshore Drive in the City of Newport Beach, Orange County (**Exhibit 1**). The Marina is located within a non-gated residential community of Bayshore and is a public marina with 40 total boat slips which are available for lease to the public. The proposed project involves the following: the removal an 11,729 square-foot marina consisting of 18 45' slips, 11 36' slips, 11 25' slips, 23 piles, a gangway, and 10' of the existing 12' X 25' pier and the installation of a new 11,525430 square-foot marina consisting of 5 65' slips, 12 45' slips, 15 30' slips, 13 21' slips, 3 19' slips, 64 piles. The proposed project will result in approximately 75 square-feet of new fill associated with the new guide piles. The applicant also proposes to install a new ADA gangway and reuse the existing 12' X 15' pier.

The project is being proposed because the marina is dilapidated and in need of updates to slips sizes and major repairs. The proposed marina will be able to accommodate 48 vessels, as opposed to the current accommodation of 40, and yield a net increase of ~~20499~~ square-feet of uncovered water area. Because of current design standards, 41 additional marina guide piles (64 total) and resulting in approximately 75 square-feet of new fill will be required. The new fingers will be made of natural hardwood. No bayward encroachment of the docks will occur. The additional fill is necessary in this case in order to meet current harbor design codes and to accommodate the docking of larger and additional vessels. The new marina has been designed with the minimum walkway width necessary for safety purposes and will result in less water coverage, as previously stated.

D. Page 9, paragraph 3, shall be modified as follows:

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The applicant has ~~stated that no~~ pending permits ~~are necessary~~ from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (Permit No. 2015-00829). The applicant proposes to prevent construction debris from entering marina waters via floating debris catchers and removal of any debris which inadvertently enter the waters within 24 hours of occurrence to address possible construction-phase impacts.

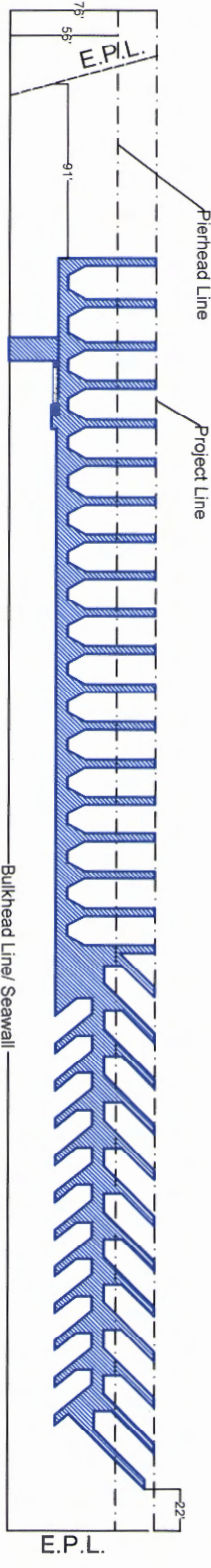
E. Exhibit 2 shall be replaced with new graphics (attached).

II. PUBLIC CORRESPONDENCE

Commission staff received one (1) letter of objection for the proposed project from Thomas B. Matthews, CAA Planning, representing Mr. Kevin Moriarty. The letter indicates that: (1) the southern adjacent neighbor at 2782 Bayshore Drive, Mr. Kevin Moriarty, did not receive notification of the permit application and (2) that the 10-foot setback from the adjoining water space to the south of the proposed marina does not comply with the City of Newport Beach Harbor Resource Design Guidelines or the City's General Development Plan.

Commission records show that the owner of 2782 Bayshore Drive, was included on the notification list provided to staff by the applicant. Notices for the proposed project were mailed from the South Coast District office in Long Beach on April 1, 2016.

Originally, the applicant proposed and the City approved a zero-foot setback from the applicant's southern marina boundary line. The applicant has since changed the proposal and the City approved a 10-foot setback from the southern marina boundary line. The proposed project does not impede on the public's ability to access navigable waters. The City's Harbor Resource Division approval in concept states that the proposed project, including the 10-foot setback from the southern marina boundary line, complies with Harbor Permit Policies and the City's Municipal Code. The City's approval in concept further states that "*vessels shall not encroach upon the neighbor's property on either side,*" and that "*vessels shall not rely on the southern neighbor's property for ingress and egress into the marina, especially to the backside of the marina adjacent to the bulkhead.*" The proposed project has received approval in concept from the City of Newport Beach Harbor Resources Division (April 6, 2016) indicating that it complies with all relative policies and codes. Commission staff concurs with the City's determination and finds that no Coastal Act policies will be violated as a result of the proposed project.



COASTAL COMMISSION

S-15-1521

EXHIBIT # 2

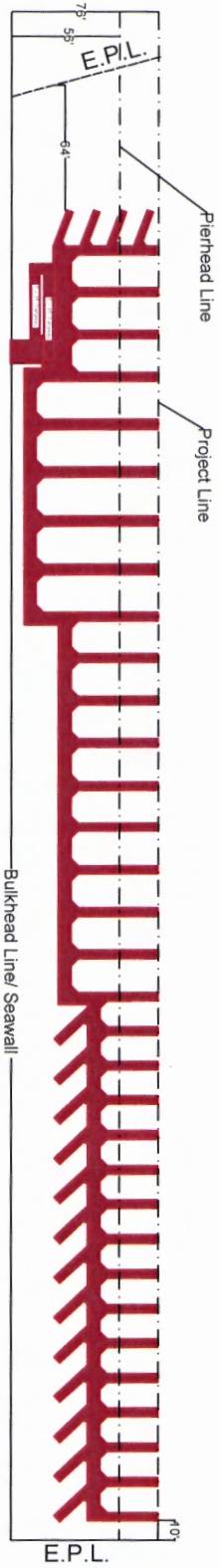
PAGE 1 OF 3



642 Baker St
 Costa Mesa, CA, 92626
 Phone: (949) 631-3121
 Fax: (714) 509-0618

SITE:		2888 Bayshore Drive, Newport Beach, CA			
TITLE:	Existing	DRAWN:	EC	CHECKED:	PS
		REVISION:	C	DATE:	4/4/16
REV:	A	DESCRIPTION:	original draft	BY:	TB
	B			DATE:	2/13/15
	C		extended apron from E.P.L. and dock to 10'		TB 7/23/15
AMENDMENTS:					

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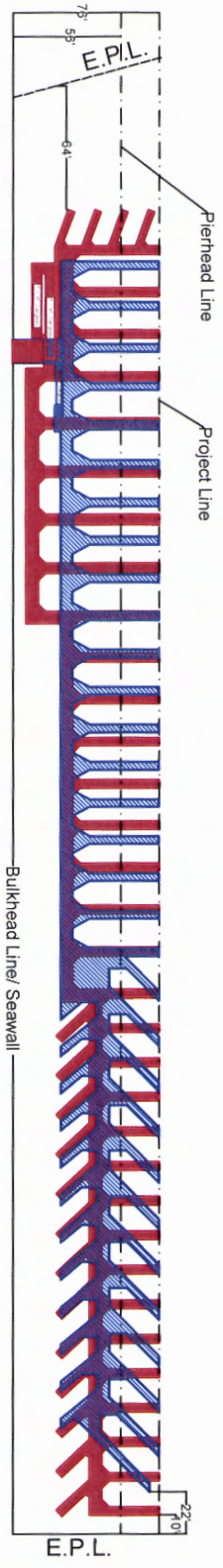
COASTAL COMMISSION

EXHIBIT # 2
 PAGE 2 OF 3

SLI
 SHORELINE
 LANDSCAPE ARCHITECTURE
 642 Baker St
 Costa Mesa, CA, 92626
 Phone: (949) 631-3121
 Fax: (714) 509-0618

SITE:		2888 Bayshore Drive, Newport Beach, CA	
TITLE:	Proposed	EC DRAWN:	PS CHECKED:
		C REVISION:	4/4/16 DATE:
A	original draft	TB	2/13/15
B		TB	7/23/15
C	extended space from EPL and dock to 10'	EC	4/4/16
REV: DESCRIPTION:		BY: DATE:	
AMENDMENTS:			

The documents contained in this drawing is confidential and proprietary to Shoreline Land & Pier Builders, Inc. No part of this drawing may be duplicated, disclosed or reproduced in any form to any third party without written consent from Shoreline Land & Pier Builders, Inc.




COASTAL COMMISSION

EXHIBIT # 2
 PAGE 3 OF 3

- Existing
- Proposed

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 642 Baker St
 Costa Mesa, CA, 92626
 Phone: (949) 631-3121
 Fax: (714) 509-0618

SITE: 2888 Bayshore Drive, Newport Beach, CA

TITLE: Existing vs Proposed

EC PS C

DRAWN, CHECKED, REVISION,

DATE: 4/4/16

REV: A	original draft	TB	2/13/15
B		TB	7/23/15
C	extended space between E.P.L. and dock to 10'	EC	4/4/16
AMENDMENTS:		BY:	DATE:



CAA PLANNING

April 7, 2016

Mr. Al Padilla
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED
South Coast Region

APR 08 2016

CALIFORNIA
COASTAL COMMISSION

Subject: Request to Deny Application No. 5-15-1521 - Marina Expansion at 2888 Bayside Drive

Dear Mr. Padilla:

CAA Planning, Inc. (CAA) respectfully submits the following objection to Coastal Development Permit (CDP) Application No. 5-15-1521 on behalf of Mr. Kevin Moriarty. Mr. Moriarty resides at 2782 Bayshore Drive and shares a common water-side property line with the proposed expansion of the commercial marina at 2888 Bayside Drive, and did not receive any notification of this pending permit application.

If approved as recommended, CDP application No. 5-15-1521 would allow the marina footprint to extend to the shared property line and constrain navigation space to the backside (landside) boat slips at the commercial marina. While the City's zoning code allows for a zero setback from property lines for commercial marinas, the City does not allow access to a commercial marina or a private dock over an adjacent property owner's water space. City of Newport Beach Design Standards Figure 11 (Attachment 1) states:

"Installation of a floating walkway cannot adversely impact the existing berthing and navigation of an adjacent property."

Furthermore, the City's Harbor Resources Manager has stated that utilization of adjoining properties' water space should not be relied upon when configuring a marina, as indicated in an email from Chris Miller, Newport Beach Harbor Resources Manager, and dated July 23, 2014 (Attachment 2).

"Newport Marina [2888 Bayshore Drive] does not have permission to operate past the prolongation of their property lines... Boating is not as exact as driving a car on the street. However, this drifting between properties should not be relied [upon] when configuring a dock/marina."

As currently proposed and configured, the footprint of the proposed commercial marina would not allow vessel access to the landside boat slips without using Mr. Moriarty's water space. The vessel conflict is depicted on Attachment 3 hereto.



Mr. Al Padilla
April 7, 2016
Page 2 of 3

The existing condition, shown on Attachment 4, depicts a 26 foot setback from Mr. Moriarty's property line to the existing marina, and even with the water area created by this setback there have been several incidents of vessels attempting to access the commercial marina and striking Mr. Moriarty's vessel. One such incidence warranted documentation as a hit and run police report due to the severity of damage. As proposed, a zero setback would reduce maneuvering space to an approximate 5 foot distance between the shared property line and Mr. Moriarty's boat. The beam of even the smallest electric Duffy boat is 8 feet, so a zero setback clearly creates a situation that prohibits access to the landside slips.

We alerted the City of Newport Beach Harbor Resources office of the conflict noted above and they have indicated that they are in the process of issuing an updated Approval In Concept for the proposed commercial marina that would relocate the marina 10 feet from the shared property line. We respectfully point out that a 10 foot setback does not address the vessel ingress and egress for the boat slips on the landside of the commercial marina. Once again, the beam of the smallest electric Duffy boat is 8 feet, so a 10 foot setback would leave 1 foot on either side for maneuvering space between the new commercial docks and Mr. Moriarty's boat.

There is clear concern with regard to building the marina to the property line, or even a ten foot setback, as either situation would require crossing the water space at 2782 Bayshore Drive, Mr. Moriarty's property. As pointed out above, marina/dock owners cannot rely on an adjacent property's water space for access across the prolongation of the property line. The proposed marina redevelopment at 2888 Bayshore Drive conflicts with Harbor Resource Design Guidelines and the City's General Plan (Attachment 5) by creating a situation where there will be very limited or no access to approximately 13 slips and associated parallel dock space located on the landside of the marina.

Previous Coastal Commission Approval of CDP No. 5-14-0522

Coastal Commission approval of CDP No. 5-14-0522 (Mr. Moriarty's dock), allowed for the replacement of his private dock at 2782 Bayshore Drive. The CDP process for Mr. Moriarty included extensive coordination with Coastal Staff and resulted in several dock redesigns. Comments from the applicant for No. 5-15-1521 (2888 Bayshore Drive) were considered and incorporated into the final dock plan. On that occasion the current applicant at 2888 Bayshore asked Coastal Staff to impose a navigation easement on Mr. Moriarty's property. This was an unprecedented request which was not allowed and is addressed within the staff report CDP No. 5-14-0522, page 16 (Attachment 6).

Summary

In the commercial marina's current configuration boaters have 26 feet of water space to maneuver in and out of the landside of the existing marina. The redeveloped marina proposes to reduce the setback distance to zero or possibly 10 feet of access within the property.



Mr. Al Padilla
April 7, 2016
Page 3 of 3

The applicant has neglected to take into consideration the effect of tidal flow and wind in this area. These elements will exacerbate an already potentially dangerous situation. Approval of CDP No. 5-15-1521 will create navigation conflicts with Mr. Moriarty's existing dock and vessel and places the applicant in violation of the required findings for the issuance of a Marina Activities Permit (MAP), which is required for the operation of a commercial marina. Chapter 17.10.005.J Findings and Purpose for the issuance of a MAP (Attachment 7) States:

"In adopting this chapter, the City Council intends that the health, safety and welfare of those who use, enjoy and own property near Newport Harbor are not adversely affected by commercial activities conducted on those waters..."

A maneuverability study for the proposed marina should be prepared to ensure safe boater access to the landside of the proposed marina can be achieved solely within the property lines of 2888 Bayshore Drive. Historically, Mr. Moriarty has not taken issue with marina patrons that may drift into his water space. However, this is an existing condition and it should not be perpetuated with the proposed marina redevelopment.

We appreciate your consideration of the information provided herein and request denial of CDP Application No. 5-15-1521, thereby allowing the applicant the time to reconsider this flawed marina plan and advance a new plan that promotes safe boating access to their marina. Please do not hesitate to contact me at (949) 581-2888 if you have any questions or require additional information.

Sincerely,

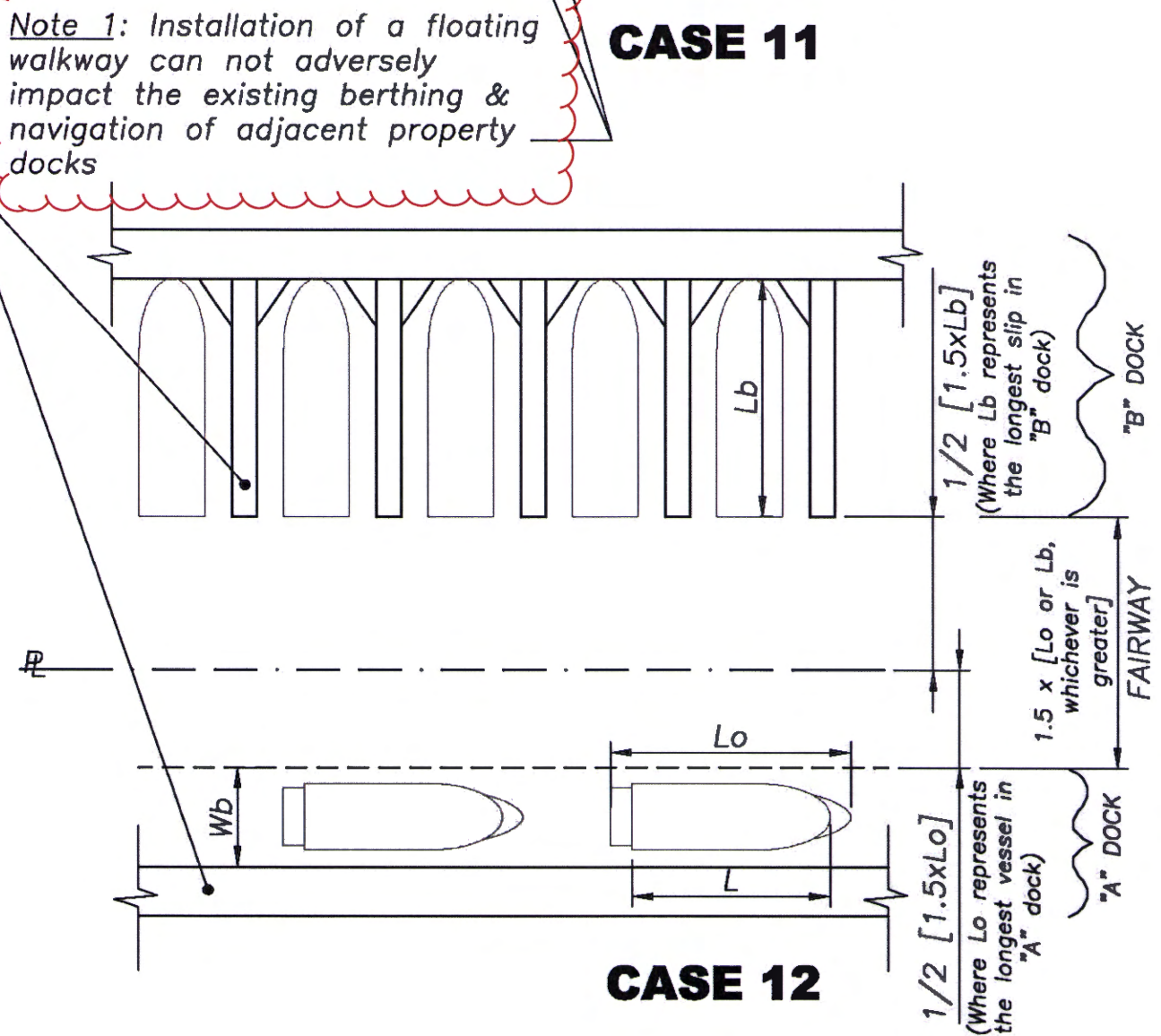
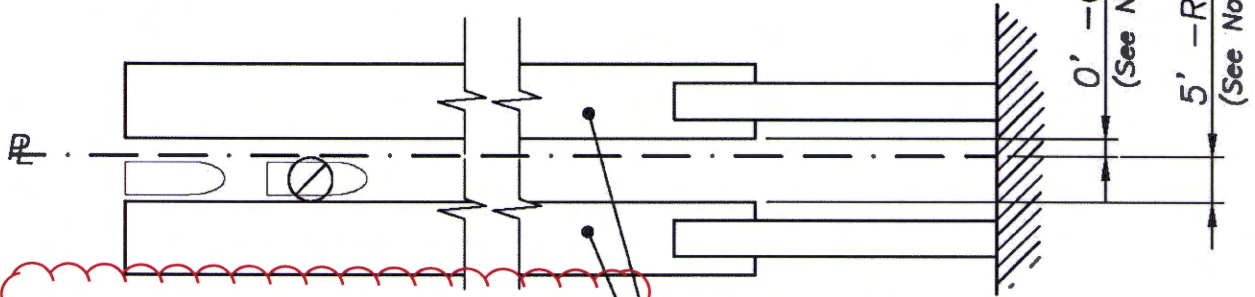
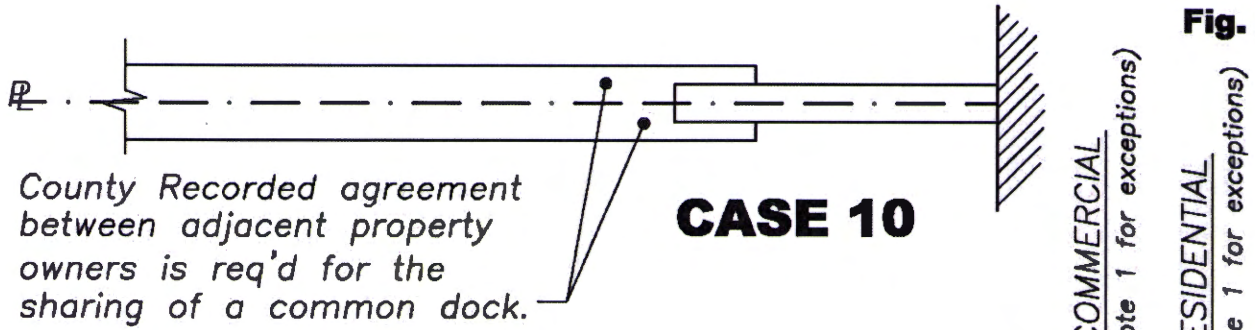
CAA PLANNING, INC.

Thomas B. Mathews

Attachments

c: Shannon Vaughn, Coastal Program Analyst
Chris Miller, Newport Beach Harbor Resources
Kevin Moriarty, 2782 Bayside Drive
Capt. Jason Greystock, Fishing Boats Unlimited

Fig. No. 11



PROPERTY LINE CONDITIONS

From: Miller, Chris <CMiller@newportbeachca.gov>
Sent: Wednesday, July 23, 2014 4:28 PM
To: Shawna Schaffner
Subject: RE: 2782 Bayshores - Moriarty Dock Replacement

Shawna,

I am confirming that Newport Marina does not have permission to operate past the prolongation of their property lines. With that said, and per our conversation last week, it is always conceivable that boats may drift between properties when docking, whether at these properties or elsewhere in the harbor. Boating is not as exact as driving a car on the street. However, this drifting between properties should not be relied when configuring a dock/marina.

Chris

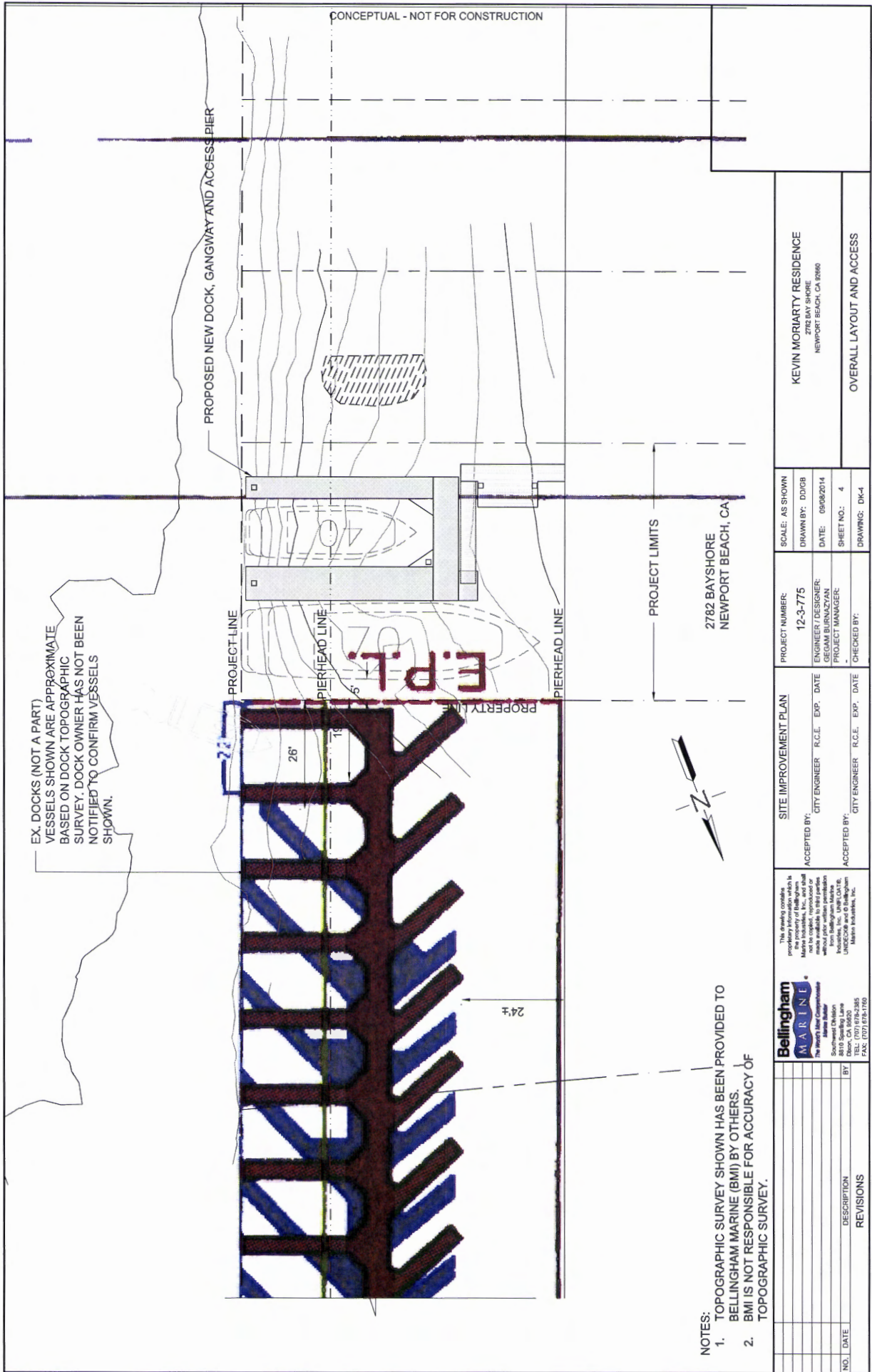
From: Shawna Schaffner [<mailto:sschaffner@caaplanning.com>]
Sent: Wednesday, July 23, 2014 2:30 PM
To: Miller, Chris
Subject: 2782 Bayshores - Moriarty Dock Replacement

Hi Chris –

Would you please confirm that the property at 2888 Bayshores (Swales Marina) does not have permission from the City to operate past the prolongation of their property line per Harbor Code Section 17.35.020 B.2 – *With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.*

Please see the attached highlighted Code section.

Thanks,
Shawna



EX. DOCKS (NOT A PART)
VESSELS SHOWN ARE APPROXIMATE
BASED ON DOCK TOPOGRAPHIC
SURVEY. DOCK OWNER HAS NOT BEEN
NOTIFIED TO CONFIRM VESSELS
SHOWN.

CONCEPTUAL - NOT FOR CONSTRUCTION

PROPOSED NEW DOCK, GANGWAY AND ACCESS PIER

PROJECT LINE

PIERHEAD LINE

PIERHEAD LINE

PROJECT LIMITS

2782 BAYSHORE
NEWPORT BEACH, CA

- NOTES:
1. TOPOGRAPHIC SURVEY SHOWN HAS BEEN PROVIDED TO BELLINGHAM MARINE (BMI) BY OTHERS. BMI IS NOT RESPONSIBLE FOR ACCURACY OF TOPOGRAPHIC SURVEY.
 2. TOPOGRAPHIC SURVEY.

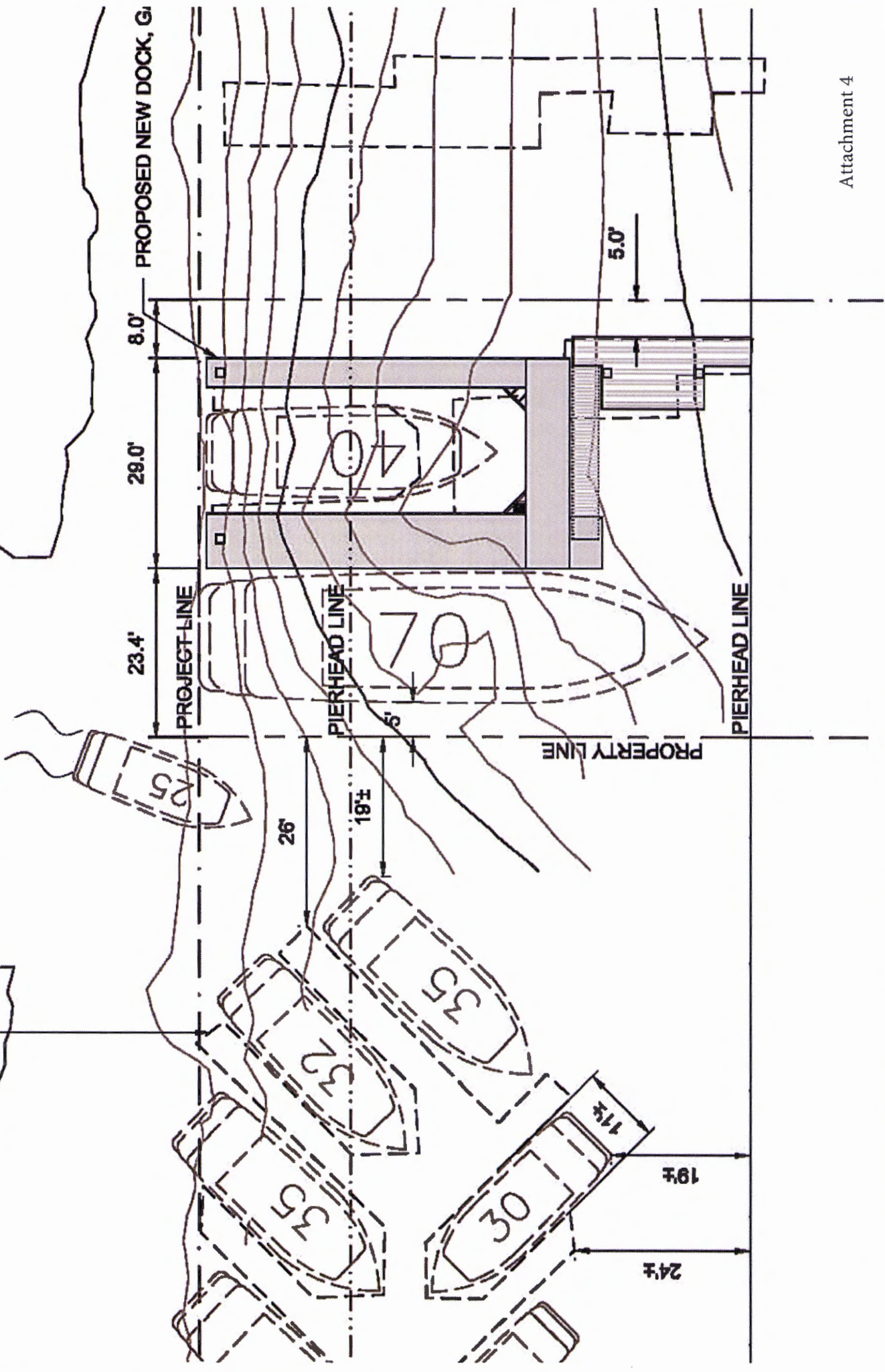
NO.	DATE	DESCRIPTION	BY
REVISIONS			

<p>ACCEPTED BY:</p> <p>CITY ENGINEER R.C.E. EXP. DATE</p> <p>CITY ENGINEER R.C.E. EXP. DATE</p>	<p>ACCEPTED BY:</p> <p>CITY ENGINEER R.C.E. EXP. DATE</p> <p>CITY ENGINEER R.C.E. EXP. DATE</p>	<p>PROJECT NUMBER:</p> <p>12-3-775</p> <p>ENGINEER/DESIGNER:</p> <p>GEGAM BURNAZKAN</p> <p>PROJECT MANAGER:</p> <p>GEGAM BURNAZKAN</p> <p>CHECKED BY:</p> <p> </p>	<p>SCALE: AS SHOWN</p> <p>DRAWN BY: DD/DB</p> <p>DATE: 09/08/2014</p> <p>SHEET NO.: 4</p> <p>DRAWING: DK-1</p>
<p>2782 BAYSHORE NEWPORT BEACH, CA</p>			
<p>KEVIN MORIARTY RESIDENCE 2782 BAY SHORE NEWPORT BEACH, CA 92660</p>			
<p>OVERALL LAYOUT AND ACCESS</p>			

The drawing contains information that is the property of Bellingham Marine Industries, Inc. and shall remain the property of Bellingham Marine Industries, Inc. and shall not be made available to third parties without the written consent of Bellingham Marine Industries, Inc. URGENT DATE: 09/08/2014

Bellingham MARINE
The World's Best Comprehensive Marine Dealer
8810 Spaulding Lane
Bloom, CA 94605
FAX: (707) 478-1700

EX. DOCKS (NOT A PART)
 VESSELS SHOWN ARE APPROXIMATE
 BASED ON DOCK TOPOGRAPHIC
 SURVEY. DOCK OWNER HAS NOT BEEN
 NOTIFIED TO CONFIRM VESSELS
 SHOWN.



Policies

HB 2.1 Design of New Development

Site and design new development to avoid impacts to existing and potential water-dependent and water-related uses. *(Imp 2.1, 7.1, 8.1)*

HB 2.2 Land Use Changes

Consider the impact on water-dependent and water-related land uses when reviewing proposals for land use changes, considering both the subject property and adjacent properties. *(Imp 2.1, 14.6, 24.1)*

HB 2.3 Marine Support Uses

Encourage the preservation and enhancement of existing marine support uses serving the needs of existing waterfront uses and the boating community. *(Imp 2.1, 14.3, 14.6, 21.1)*

HB 2.4 Harbor Related Private Uses

Accommodate private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a working harbor. *(Imp 21.3, 21.4)*

HB 2.5 Waterfront Facilities

Encourage development of waterfront facilities that accommodate displaced water-dependent uses. *(Imp 2.1, 14.3)*

HB 2.6 Public Access Facilities

Ensure that new or improved public access facilities are compatible with existing, permitted land uses and consistent with the availability of supporting infrastructure, such as parking and restrooms. *(Imp 2.1, 21.1)*



Basin Marine Shipyard

displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, and the absence of any potential for on-site or nearby restoration of soft bottom habitat, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

Conclusion

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.

D. Public Access

Section 30210 of the Coastal Act states:

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

Section 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.

The subject site is located in the locked gate community of Bay Shores in the City of Newport Beach. No public access currently exists through the site. Public access to the harbor exists approximately 1/3 of a mile up coast outside and adjacent to the Bay Shore Community at the Balboa Bay Club and Resort. Thus, the project will have no impacts on existing coastal access.

Letters from the public have been received stating that the proposed project will impact access to the existing adjacent private marina north of the project site and requesting that a navigation easement be imposed on the project site for access to the private marina. Access to the private marina is currently available without the need of a navigation easement and there is no such current agreement for access to the private marina through the applicant's private property. The private marina and project site are two separate properties and the proposed project will not impact access to the adjacent private marina. The proposed dock is located entirely within the applicant's water area and setback consistent with local requirements from the property lines.

Chapter 17.10

MARINE ACTIVITIES PERMIT

Sections:

17.10.005	Findings and Purpose.
17.10.020	Permit for Commercial Activities in Newport Harbor Required.
17.10.025	Exemptions.
17.10.030	Application for Permit.
17.10.040	Filing Fee.
17.10.050	Issuance of Permit.
17.10.070	Power to Impose Conditions—Hold Harmless.
17.10.075	Insurance.
17.10.080	Duration of Permit.
17.10.085	Enforcement—Right of Entry.
17.10.090	Suspension/Revocation.
17.10.095	Appeal.
17.10.100	Transfer of Permit.
17.10.110	Licenses and Fees Not Exclusive.
17.10.120	Application to Existing Commercial Activities.

17.10.005 Findings and Purpose.

A. Newport Harbor is a limited resource with an extensive existing and growing demand for marine and recreational use;

B. There has been an increase in the nature and intensity of commercial activities such as harbor cruises, dinner cruises, boat rentals and water taxi services occurring on the waters of Newport Harbor;

C. Some of these vessels carry a number of passengers and some are owned or operated by persons who do not have a fixed base of operation on or near the bay that can provide adequate boarding, parking or sanitation facilities necessary to serve their clients and customers;

D. Commercial activities on Newport Harbor require City services which may not be paid by the patrons or passengers of commercial operators on Newport Harbor;

E. Commercial activity on Newport Harbor has created an additional demand for available parking and created traffic congestion in and around the waterfront;

F. This commercial activity has sometimes created a level of noise which has interfered with the right of residents, persons who own property and visitors on or near Newport Harbor to the peaceful enjoyment of their property and public areas;

G. Commercial activity, especially the mix of large craft with limited maneuverability and restricted uplands access, has the potential to interfere with the safe navigation of boats and vessels operating on the waters of Newport Harbor;

H. The requirements of the chapter are necessary to minimize the traffic congestion, parking shortages, excessive noise, and the discharge of waste that could result from unregulated commercial activity and to ensure safe operation within the capacity and constraints of Newport Harbor;

I. The Harbor and Bay Element of the General Plan establishes an objective to preserve existing commercial uses in Newport Harbor to the extent necessary to maintain and enhance the charm and character of the harbor and to provide support services for visitors, recreational boaters and other water-dependent activities by enforcing existing ordinances and, if necessary, establish new standards for the operation of entertainment, sport fishing and work boats;

J. In adopting this chapter, the City Council intends that the health, safety and welfare of those who use, enjoy and own property near Newport Harbor are not adversely affected by commercial activities conducted on those waters and that suitability and capability of the Newport Harbor infrastructure to accommodate future permit-dependent operations are adequately considered in permit application processes;

K. Fees and charges imposed on commercial users of Newport Harbor should recover City cost and contribute to major harbor maintenance projects (i.e., dredging);

L. Leases should be used where appropriate to recover the fair market value of the use of public tidelands from holders of permits for marine commercial activities on tidelands properties; and

M. To administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Pro-

CALIFORNIA COASTAL COMMISSION

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



Th7b

Filed: 10/23/2015
180th Day: 05/4/2016
Staff: S. Vaughn-LB
Staff Report: 03/24/2016
Hearing Date: 04/14/2016

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-15-1521

Applicant: Ron & Allyson Presta

Agent: Jacquelyn Chung, Swift Slip Dock & Pier Builders

Location: 2888 Bay Shore Ave., Newport Beach, Orange County (APN 049-191-30)

Project Description: Replacement of an 11,729 square-foot marina, including 22 square-feet of fill related to marina guide piles, with a new 11,525 square-foot marina, including 97 square-feet of fill associated with new marina guide piles

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION:

The applicant proposes to remove an 11,729 square-foot 40-slip marina and construct an 11,525 sq. ft. 48-slip marina and install a new ADA gangway. The marina is located over state submerged land, administered by the City of Newport Beach. The proposed project will result in 204 square-feet of less water coverage and approximately 75 square-feet of new fill. Despite the applicant's proposed reduction in size of the dock, the removal of the existing dock and construction of a new dock may adversely impact multiple eelgrass patches which surround the existing dock float and gangway. The applicant has acknowledged that the development might impact eelgrass and has proposed to provide eelgrass mitigation on-site if an impact is identified. Other major issues associated with the proposed project relate to water quality and fill of coastal waters.

Staff is recommending **approval** of the proposed coastal development permit with **four (4)** special conditions regarding: **1) Construction Responsibilities and Debris Removal; 2) Best Management Practices (BMPs) Program; 3) Eelgrass Survey; and 4) Pre-construction *Caulerpa Taxifolia* Survey**

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APPENDICES

[Appendix A](#) - Substantive File Documents

EXHIBITS

Exhibit 1 Vicinity Map
Exhibit 2 Project Plans

I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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 would 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.

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II. SPECIAL CONDITIONS

1. 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.

2. 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 marina project 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.

3. Eelgrass Survey

A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “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 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 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 (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 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 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is required.

4. 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 applicants 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 Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicants shall submit the survey:
 - 1. For the review and approval of 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.
- D.** If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *Caulerpa Taxifolia* discovered within the buffer area have 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 applicants have 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 2888 Bayshore Drive in the City of Newport Beach, Orange County (**Exhibit 1**). The Marina is located within a non-gated residential community of Bayshore and is a public marina with 40 total boat slips which are available for lease to the public. The proposed project involves the following: the removal an 11,729 square-foot marina consisting of 18 45' slips, 11 36' slips, 11 25' slips, 23 piles, a gangway, and 10' of the existing 12' X 25' pier and the installation of a new 11,525 square-foot marina consisting of 5 65' slips, 12 45' slips, 15 30' slips, 13 21' slips, 3 19' slips, 64 piles. The proposed project will result in approximately 75 square-feet of new fill associated with the new guide piles. The applicant also proposes to install a new ADA gangway and reuse the existing 12' X 15' pier.

The project is being proposed because the marina is dilapidated and in need of updates to slips sizes and major repairs. The proposed marina will be able to accommodate 48 vessels, as opposed to the current accommodation of 40, and yield a net increase of 204 square-feet of uncovered water area. Because of current design standards, 41 additional marina guide piles (64 total) and resulting in approximately 75 square-feet of new fill will be required. The new fingers will be made of natural hardwood. No bayward encroachment of the docks will occur. The additional fill is necessary in this case in order to meet current harbor design codes and to accommodate the docking of larger and additional vessels. The new marina has been designed with the minimum walkway width necessary for safety purposes and will result in less water coverage, as previously stated.

Other than access to the marina for boating purposes, no public access currently exists through the site. The project will have no impacts on existing coastal access. Public access to the harbor exists approximately 200 feet north of the site, across Pacific Coast Highway at Castaways Park. Boater access will be improved with newer docks and an increase in the number of slips that will be available to the public.

In order to minimize water quality impacts, the applicant states that construction debris will be prevented from entering marina waters. However, any debris inadvertently entering the water will be removed by divers within 24 hours of occurrence. While the applicant has proposed these measures to protect water quality, additional measures are necessary to ensure that no adverse impacts to water quality occur. 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. To reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 1**, which requires, but 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 2**, which requires the continued use and maintenance of post construction BMPs.

The proposed slips will be used for boating related purposes to serve an existing marina. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and eelgrass was discovered within 15-30 feet of the project area. The applicant states that there will be unavoidable impacts to eelgrass and proposes onsite mitigation for impacts to eelgrass. In addition,

the new reduced sized fingers will open up a previously shaded area and expose more bay bottom to sunlight, making additional eelgrass growth a possibility.

The eelgrass survey took place on May 30, 2015, as required by the City of Newport Beach Harbor Resources Division and 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 shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the April 2016 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. A pre-construction *Caulerpa taxifolia* survey was completed on May 30, 2015 as required by the City of Newport Beach Harbor Resources Division. *Caulerpa taxifolia* surveys are valid for 90 days. 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. Therefore, the Commission imposes **Special Conditions 3 and 4**, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition 4** also identifies the procedures necessary to be completed prior to beginning any construction.

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The applicant has stated that no permits are necessary from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers. The applicant proposes to prevent construction debris from entering marina waters via floating debris catchers and removal of any debris which inadvertently enter the waters within 24 hours of occurrence to address possible construction-phase impacts.

B. MARINE RESOURCES

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. 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*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. WATER QUALITY

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. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the 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 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.

D. LOCAL COAST PROGRAM

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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. 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).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, 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.

Google Maps 2888 Bayshore Dr



Google

Imagery ©2016 Google, Map data ©2016 Google 100 ft

Google Maps

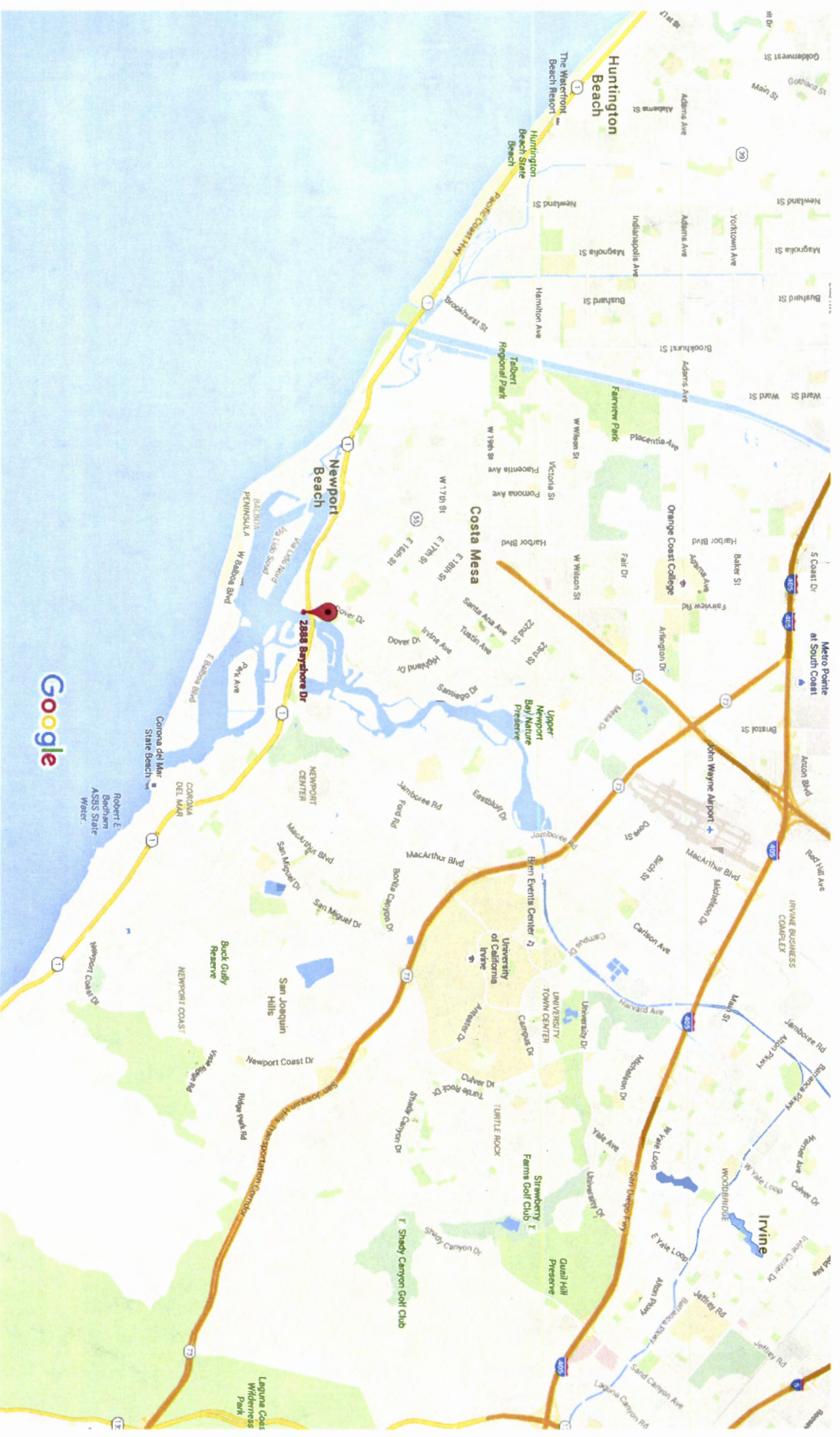
COASTAL COMMISSION

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EXHIBIT # 1

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Google Maps 2888 Bayshore Dr



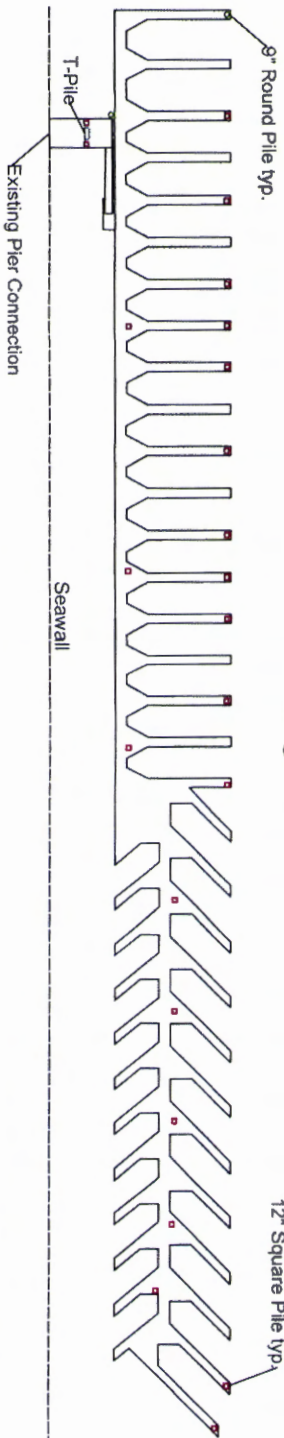
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Google Maps COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

Existing Dock

2888 Bayshore Dr.
Pilings



Total Area of Floating Dock = 11,577 sq. ft.

- 12" Square Piling (23)
- 9" Round Piling (2)
- ▭ T-Pile (1)



Swift Slipp Dock & Pier Builders, Inc.
842 Baker St.
Costa Mesa, California 92626
Phone: (949) 631-3121
Fax: (949) 631-3122

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Date	Revision	No.
7/14/15		

COASTAL COMMISSION

S-15-152a1

EXHIBIT # 2

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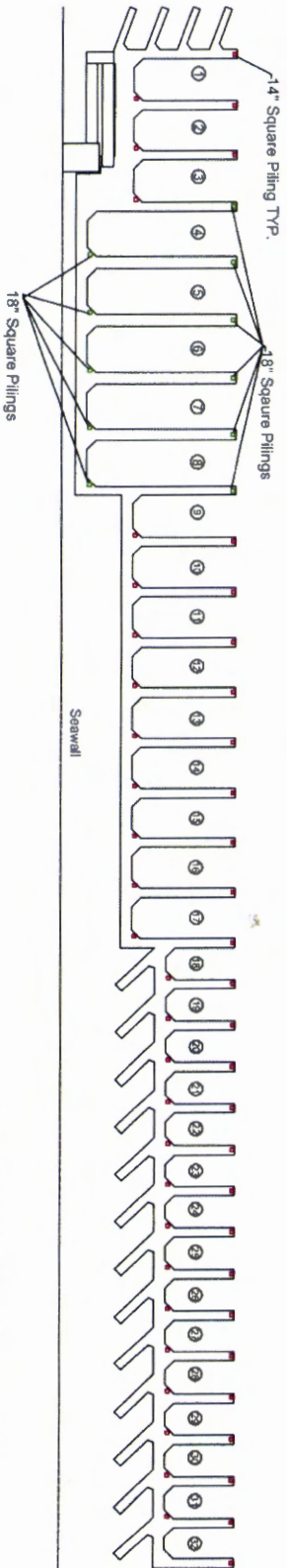
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CALIFORNIA
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Dock Proposal 3

2888 Bayshore Dr.
Pilings



Swift Slip Dock & Pier Builders, Inc.

642 Baker St.
Costa Mesa, California 92626

Phone: (949) 631-3121
Fax: (949) 631-3122

Total Area = 12,259 sq. ft.

Approximate Existing Length = 642'
Approximate Proposal Length = 680'

*All pilings are 14" square unless noted otherwise.

□ = 14" square piling
□ = 18" square piling



Date	Revision	No.
7/14/15		

COASTAL COMMISSION

EXHIBIT # 2

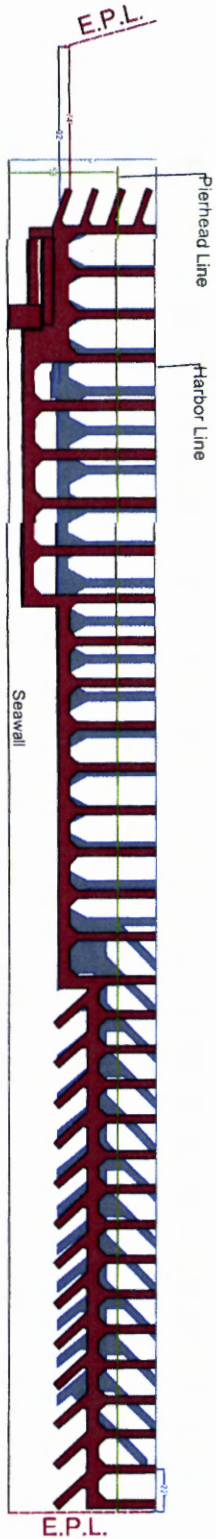
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Existing/Proposed Dock
2888 Bayshore Dr.



Existing = ■
Proposed = ■



Swift Slip Dock & Pier Builders, Inc.
642 Baker St.
Costa Mesa, California 92626
Phone: (949) 631-3121
Fax: (949) 631-3122

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EXHIBIT # 2

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