

CALIFORNIA COASTAL COMMISSION

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Th5b

Staff: Zach Rehm – LB
Date: February 19, 2015

ADMINISTRATIVE PERMIT

Application No. 5-14-1760

Applicants: O'Malley Miller and Accretive Realty Investments LLC

Project Description: Remove existing 240 square foot dock float and 60 square foot gangway and install 228 square foot dock float and 72 square foot gangway. Remove three existing 14-inch square concrete T-piles and replace with two 14-inch and one 12-inch square concrete T-piles. Remove 60 feet of existing 380 square foot approach. Remove 120 square foot pier and construct 155 square foot pier.

Project Location: 1322 and 1324 E. Balboa Blvd., City of Newport Beach (Orange County); APNs 048-162-45 and 048-162-46

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

March 12, 2015, 9:00 a.m.
Chula Vista Council Chambers
276 Fourth Street
Chula Vista, CA 91910

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

CHARLES LESTER
Executive Director

by: Zach Rehm
Coastal Program Analyst

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 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 term or 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.

SPECIAL CONDITIONS: See pages five through nine.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. PROJECT DESCRIPTION

The proposed project is the replacement of a wood boat dock in Newport Harbor shared by and accessed from two residences (**Exhibit 1**). The existing 24-foot long by 10-foot wide dock float, 20-foot long by 3-foot wide gangway, 12-foot long by 10-foot wide pier, and a 15-foot long by 4-foot wide portion of the approach will be removed and demolished off-site. Three 14-inch square concrete piles that currently support the gangway and pier will be removed.

The new wood and composite dock float will be 38-feet long by 6-feet wide, extending the same distance into Newport Harbor as the existing dock float, no closer to the City's established pierhead line or to existing eelgrass in the area (**Exhibit 2**). The dock float will be supported by two existing 12-inch square piles. The new gangway will be 24-feet long by 3-feet wide, which is the minimum size permitted by the City according to the applicants. In total, the new dock float and gangway will be 300 square feet, exactly the same total as existing but in a narrower configuration extending further landward. One new 12-inch square pile will be installed in the approximate location where a 14-inch square pile will be removed, reducing total fill of coastal waters by 0.17 square feet.

The new pier features a 13-foot by 10-foot platform and a 5-foot by 5-foot attachment to connect to the new gangway. The pier will be supported by two new T-piles, each 14-inches at the base in the water and 7-feet wide under the pier (two existing 14-inch T-piles will be removed). The pier will be approximately 15-feet landward of the existing and will connect to the existing approach, which will be 15-feet shorter. In total, the new pier and approach will be 475 square feet, which is 25 square feet less than the existing configuration (**Exhibit 2**).

Vertical access to the beach adjacent to the proposed dock is available from the street end designated as F Street immediately to the east of 1324 E. Balboa Blvd. Lateral access along the section of the beach fronting the properties at high tide is limited by dozens of residential docks in the area (**Exhibit 3**). There will be approximately 5.5 vertical feet of clearance from the sand to the bottom of the approach at low tide and zero clearance at high tide, which is the same as existing conditions.

The proposed project is located partially on the applicants' properties and partially over submerged land subject to public trust doctrine in Newport Harbor, situated between the residences and the City pierhead line (**Exhibit 2**). A Special Condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the properties. The residence at 1324 E. Balboa Blvd. is in the process of being demolished and reconstructed, subject to Coastal Development Permit No. 5-14-1495, approved with conditions by the Commission on November 14, 2014. Neither private property features a seawall and there is no bulkhead fronting either property. The existing dock approach begins at grade on the dry sand between the side property lines of 1322 and 1324 E. Balboa Blvd and will remain in that location (**Exhibit 4**). A Special Condition was imposed by the City and is imposed by the Executive Director stating that the approved development will serve boating related purposes associated with single-family residential development and that patio furniture and landscaping are prohibited on the approach, pier, gangway, and dock float.

An underwater survey conducted on August 8, 2014 documented eelgrass (*zostera marina*) in the area of Newport Harbor near the existing and proposed dock float (**Exhibit 5**). Eelgrass was observed 5-feet north (into the harbor) of the existing dock float (also 5-feet north of the proposed dock float), 10-feet east of the existing dock-float (11-feet east of the proposed), and 8-feet west of the existing dock float (10.5-feet west of the proposed). At no point will the new dock float be closer to existing eelgrass than the existing dock float, and because the new dock will be narrower than the existing, there will be a greater buffer to the eelgrass on both sides. Dredging is proposed south (landward) of the existing eelgrass and a 15-foot buffer will be maintained. **Special Condition 1** requires the applicants to implement best management practices during and post construction in order to avoid any significant adverse impacts to water quality or marine resources.

A survey completed August through October shall be valid until the resumption of active growth (i.e., March 1). Because the project is scheduled for a March 2015 Coastal Commission hearing (after the start of the growth phase in March), a subsequent eelgrass survey will be required prior to commencement of construction.

As required, a pre-construction invasive algae (*caulerpa taxifolia*) survey was conducted on August 8, 2014. No *caulerpa taxifolia* was found. *Caulerpa taxifolia* surveys are valid for 90 days. Because the project is scheduled for a March 2015 Coastal Commission hearing, 90 days will have passed since the survey was completed and an updated *caulerpa taxifolia* survey must be conducted prior to commencement of construction. **Special Condition 2 and Special Condition 3** identify pre and post-construction survey requirements.

The proposed project has received the approval of the City of Newport Beach Harbor Resources Division (11/21/14) and a permit application has been filed with the U.S. Army Corps of Engineers. Therefore, as proposed and conditioned herein, the development will not have any substantial adverse impacts on water quality or marine resources.

B. PUBLIC RECREATION/MARINE RESOURCES

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. There will be no net increase in the number of piles or in the size of the piles. The proposed development has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass. 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 with Sections 30224 and 30233 of the Coastal Act.

C. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and Section 30252 of the Coastal Act.

D. WATER QUALITY

The proposed dock work will be occurring on or within coastal waters. The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates best management practices (BMPs) to minimize the effect of construction and post-construction activities on the marine environment. These BMPs include, but are not limited to, the appropriate management of equipment and construction materials and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. LOCAL COASTAL PROGRAM

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. 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 of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

This permit is granted subject to the following special conditions:

SPECIAL CONDITIONS:

1. Water Quality. By acceptance of this permit, the applicants agree that the approved development shall be carried out in compliance with the following BMPs:

A. Construction Responsibilities and Debris Removal

- (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 applicants 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 as possible from the receiving waters and storm drain inlets.
- (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.

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

B. Best Management Practices Program

(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.
- c. The applicants 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.
- 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.

2. **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 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 Wildlife. The applicants 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 applicants 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 Wildlife. The applicants 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 applicants 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.

3. **Caulerpa Taxifolia Survey(s).**

- 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 Wildlife, 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 and Wildlife (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 applicant shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have 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. **Recreational Boating Uses Permitted.** The Coastal Commission’s approval of this permit is for recreational boating uses associated with single family residential development. Patio furniture, landscaping, and any other materials not associated with recreational boating shall prohibited on the approach, pier, gangway, and dock float.
5. **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 properties. The permittees shall not use this permit as evidence of a waiver of any public rights that may exist on the properties.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant’s Signature

Date of Signing

Applicant’s Signature

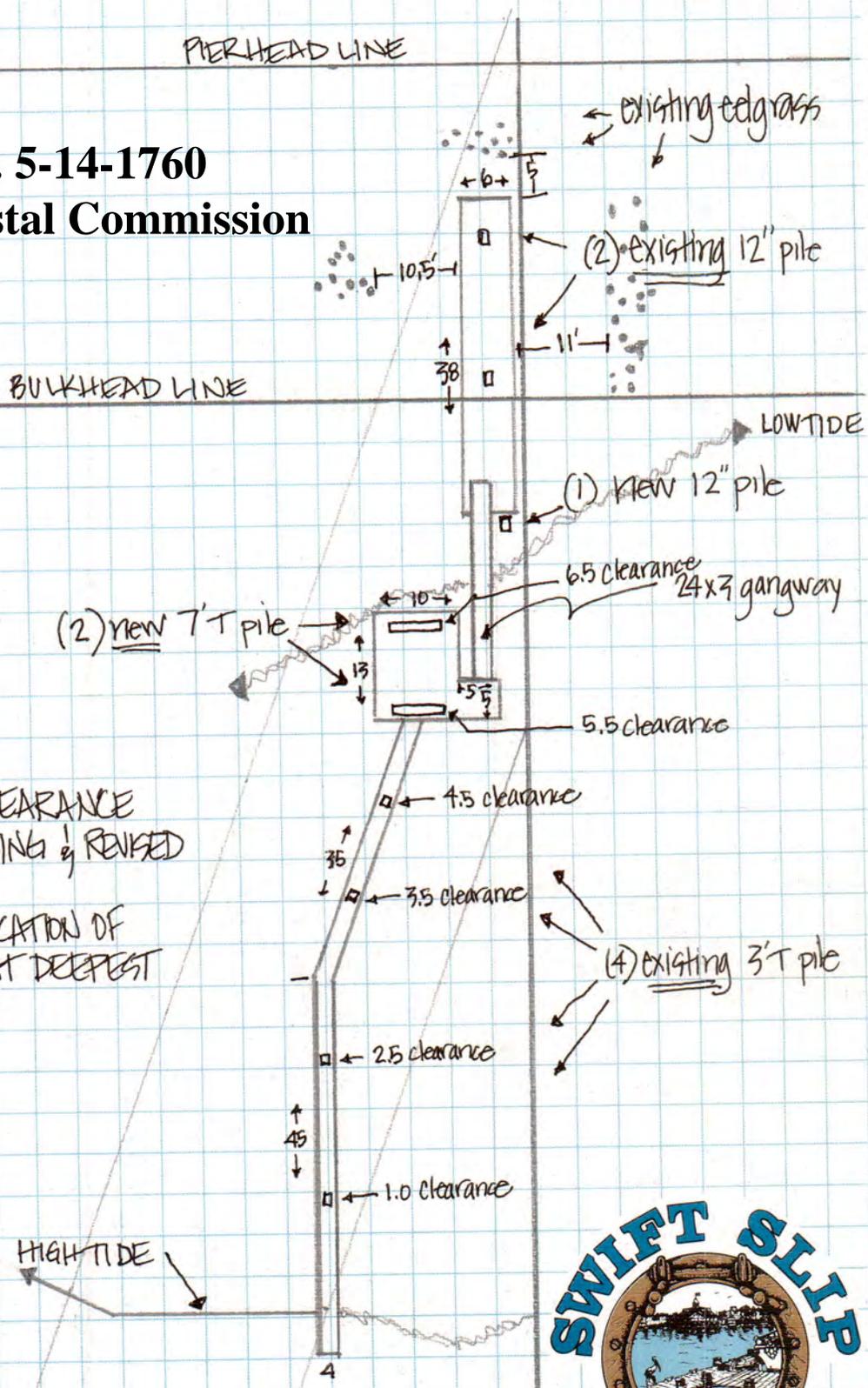
Date of Signing

Exhibit 1: Vicinity Map
Application No. 5-14-1760
California Coastal Commission



Photo: Bing Maps

Exhibit 2
Application No. 5-14-1760
California Coastal Commission



* NO CHANGE TO CLEARANCE BETWEEN EXISTING & REVISED

* NO CHANGE TO LOCATION OF FLOATING DOCK AT DEEPEST WATER DEPTH

1:20

1322 1324
 EAST BALBOA BOULEVARD



DOCK & PIER BUILDERS, INC.

Exhibit 3: Lateral Access
Application No. 5-14-1760
California Coastal Commission



Photo: Commission staff

Exhibit 4: Shared Dock Approach
Application No. 5-14-1760
California Coastal Commission



Photo: Commission staff

Exhibit 5

Application No. 5-14-1760

California Coastal Commission

Eelgrass map for 1320-1324 E. Balboa Blvd

