

CALIFORNIA COASTAL COMMISSION

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W10a

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-18-0057

Applicant: Randy Davis

Agent: Swift Slip Dock and Pier Builders, Attention: Jacquelyn Chung

Location: 88 Linda Isle, Newport Beach, (Orange County)

Project Description: Remove 845 square foot L-shaped dock float, 3 foot x 22 foot gangway and four 18-inch hexagonal piles, and replace with a 1,012 square foot L-shaped dock float, 3 foot x 40 foot gangway and eight 18-inch square piles.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the removal of a 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 proposed development is located on 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" within the Coastal Commission's retained permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. However, the City's Local Coastal Program (LCP), certified January 13, 2017, includes development standards for the area and provides specific guidance for the Commission's approval of proposed development.

The project is consistent with previous Commission approvals in the area. However, conditions must be imposed in order to minimize potential adverse impacts from the development and to ensure consistency with the Chapter 3 policies of the Coastal Act, using the the City's certified Local Coastal Program (LCP) as guidance.

Since the proposed development is located on public tidelands and submerged lands in Newport Bay that are managed by the County of Orange, 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". However the applicant has not obtained a "Newport Tidelands Encroachment Permit", thus the Commission imposes **Special Condition No. 1**, which requires applicant to the submit from the County of Orange a copy of a letter of permission or approval, or evidence that no permit or permission is required prior to the issuance of permit

While the proposed dock system 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. Therefore the Commission imposes **Special Condition No. 2**, which affirms that approval of a replacement dock does not constitute a waiver of any public rights that exist or may exist at the site.

An eelgrass survey was done on October 28, 2017 for the proposed project and eelgrass was found near the project site, but no impacts to eelgrass are anticipated with the project. However, the project is agendized for the December 2018 Commission Hearing so the eelgrass survey, which is valid for 60 days from the date the survey was taken, will no longer continue to be valid. Thus, the Commission imposes **Special Condition No. 3**, which identifies that an eelgrass survey must be conducted prior to commencement of the project.

A *Caulerpa Taxifolia* survey was also completed on October 28, 2017 for the project site and none was discovered. However, the project is agendized for the December 2018 Commission Hearing so the *Caulerpa Taxifolia* survey, which is valid for 90 days from the date the survey was taken, will no longer continue to be valid. Therefore, the Commission imposes **Special Condition No. 4**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore to address and minimize impacts to water quality and marine resources, the Commission imposes **Special Condition No. 5**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post construction BMPs.

To ensure that the applicant complies with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDF&W), the Regional Water Quality Control Board (RWQCB), the U.S. Army Corps of Engineers (USACOE), and the U.S. Fish and Wildlife Service (USF&WS) with respect to preservation and protection of water quality and marine environment, the Commission imposes **Special Condition No. 6**, which requires that the applicant comply with all their requirements, requests and mitigation measures.

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EXHIBITS

[Exhibit No. 1 – Location and Vicinity Map](#)

[Exhibit No. 2 – Site Plan](#)

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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. County of Orange Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a letter of permission or approval from the County of Orange regarding the proposed project, or evidence that no permit or permission is required. The applicants shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicants obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

2. Public Rights

The approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

3. Eelgrass Survey(s).

- A. Pre-Construction Eelgrass Survey. 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” dated October 2014 (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 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 if completion of construction occurs within the active growth period, 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” dated October 2014 (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 by project

construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

4. Pre-construction *Caulerpa Taxifolia* Survey

- 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.
- 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 of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- 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, subject to concurrence by 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 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.

5. Water Quality

- 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 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.

B. Best Management Practices 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. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project involves the following: removal of an 845 square foot L shaped floating dock, 3 foot by 22 foot gangway, four 18 inch hexagonal concrete float guide piles and replace with a 1,012 square foot L shaped floating dock, 3 foot by 40 foot gangway; and eight 18 inch square concrete guide piles ([Exhibit No. 2](#)). The new dock system will be comprised of wood and composite material, foam and concrete. Water coverage from the proposed float will be increased from 845 square feet to 1,012 square feet (an increase of 167 square feet). While the project results in bayward encroachment and increased water coverage, it would be generally consistent with the size of docks in the adjacent area, is consistent with past Commission issued permits and there are no proposed impacts to eelgrass. The proposed dock float has been designed to the minimum required standards found in the City of Newport Beach Harbor Resources Division Harbor Design Criteria Guidelines and while still being able to provide for a usable dock system. A consideration of the design was the location of the property at the main channel to the Back Bay (Upper Newport Bay). The applicant has indicated that since this location is in direct route of the Back Bay, tidal flow and vessel traffic are a large factor in the required floatation and amount of pile. The proposed dock float also meets the City of Newport Beach Harbor Permit Policy in that it will not extend past the U.S. Pierhead Line.

The subject site is located at 88 Linda Isle in the locked gate community of Linda Isle in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The dock will be used for boating related purposes to serve a single-family residential development. Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area. No public access currently exists through the site.

The proposed development is located on 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” within the Coastal Commission’s retained permit jurisdiction. 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 not yet obtained a “Newport Tidelands Encroachment Permit” from the County of Orange. Thus, the Commission imposes **Special Condition No. 1**, which requires applicant to submit from the County of Orange a copy of a letter of permission or approval, or evidence that no permit or permission is required prior to the issuance of permit

There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, 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. . Therefore, the proposed project does not result in adverse impacts to public access. In order to preserve and maintain access to the public tidelands, **Special Condition No. 2** 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 property.

The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and eelgrass was discovered within 15-feet of the project area; however, no adverse impacts to eelgrass are anticipated as the project has been designed to avoid impacts to eelgrass.

The eelgrass survey took place on October 28, 2017 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 agendized for the December 2018 Coastal Commission Hearing and the eelgrass survey took place on October 28, 2017 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 October 28, 2017 as required by the City of Newport Beach Harbor Resources Division and no *Caulerpa taxifolia* was discovered in the project area. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the December 2018 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. Therefore, the Commission imposes **Special Condition No. 3 and No. 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 No. 4** also identifies the procedures necessary to be completed prior to beginning any construction.

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 ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement. The 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 and the permit is pending coastal development permit approval. To ensure that all impacts (pre- and post-construction) to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 5**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post construction BMPs.

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. 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 30252 of the Coastal Act.

E. LOCAL COASTAL PROGRAM (LCP)

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed development is located within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed development is consistent with the certified LCP and the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is statutorily or categorically exempt from CEQA on December 22, 2017. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality, hazards and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which

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would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: Substantive File Documents

City of Newport Beach Harbor Resources Division Approval-In-Concept dated December 22, 2017; Pre Construction Eelgrass (*Zostera marina*) and *Caulerpa Taxifolia* Survey 88 Linda Isle, Newport Beach, CA dated October 28, 2017; Letter from Commission staff to Swift Slip Dock and Pier Builders, Inc. dated February 23, 2018; Letter from Swift Slip Dock and Pier Builders, Inc. to Commission staff dated March 15, 2018; Letter from Commission staff to Swift Slip Dock and Pier Builders, Inc. dated April 18, 2018; Letter from Swift Slip Dock and Pier Builders, Inc. to Commission staff dated May 16, 2018; Letter from Commission staff to Swift Slip Dock and Pier Builders, Inc. dated June 14, 2018; and Letter from Swift Slip Dock and Pier Builders, Inc. to Commission staff dated June 21, 2018.