

CALIFORNIA COASTAL COMMISSION

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F10e

ADDENDUM

November 17, 2021

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F10e, APPLICATION NO. 5-21-0232 FOR THE COMMISSION MEETING OF FRIDAY, NOVEMBER 19, 2021.**

I. RESPONSE TO CORRESPONDENCE

On Friday, November 12, 2021, the Commission received a letter from Ms. Katherine Jensen, attorney for Mr. Steve Harder, who lives at 936 Via Lido Nord. The subject site is 944 Via Lido Nord and in addition to owning this property, the applicant also owns the adjacent property located immediately north of the site at 940 Via Lido Nord. Mr. Harder's property is located north of that adjacent 940 Via Lido Nord property. The letter raises concerns pertaining to 1) the alterations of an existing floating dock system without benefit of a coastal development permit; 2) the installation of a floating dry dock without benefit of a coastal development permit; and 3) the installation of a floating dry dock that is not allowed pursuant to the Newport Beach Municipal Code. Below is Commission staff's response to the concerns raised in the letter.

The letter asserts that the unpermitted alterations to the floating dock system located at 944 Via Lido Nord, which is the subject of the staff report, was done to accommodate the floating dry dock and the applicant's boat at the adjacent property. As stated in the staff report, unpermitted development has taken place. The applicant stated that the pre-existing portion of the dock that was demolished was in a state of disrepair, creating a dangerous condition. The applicant has also since submitted a fee two times the amount required for a coastal development permit based on the cost of the development to demolish the pre-existing structure. The applicant notes that the floating dry dock has two outboard motors attached to it, which means it may be classified as a vessel.

The letter from the neighbor's attorney also states the floating dry dock on the adjacent property has not yet been moved and is currently still located on site. The City of Newport Beach confirmed that the floating dry dock is tied to the dock at 940 Via Lido Nord, which is the neighboring property and not the dock located at 944 Via Lido Nord that is subject of the proposed project. The letter raises concern that the proposed project at 944 Via Lido does not include removal of the floating dry dock at 940 Via Lido, and that once the

proposed dock is constructed, the applicant will place the floating dry dock at the new dock on the subject site. The letter states that based on Newport Beach Municipal Code Section 17.35.040, floating dry docks are prohibited bayward of residential areas. The staff report states that placement of the floating dry dock at either property would constitute development under the Coastal Act and would require a coastal development permit from the Coastal Commission. This application is not requesting placement of the dry dock at either property, and, therefore, the permit does not authorize the placement of the floating dry dock at the project site nor does it authorize its placement at the adjacent property. The applicant maintains that the floating dry dock is temporary and will soon be moved to another location. If the applicant proposes to maintain the floating dry dock at the adjacent property, they would need to obtain local approval from the City of Newport Beach, which would include review of the project's consistency with the City's municipal code. Once local approval from the City was obtained, a coastal development permit application would be required to be submitted to the Coastal Commission for review.

The letter further states that besides the floating dry dock resulting in impacts such as shading of water and impacts to eelgrass, there are massive quantities of sea water used to fill the buoyancy chambers of the floating dry dock to submerge the structure and that may impact coastal waters. As stated in the staff report, the floating dry dock is not supported by piles and does not require fill of coastal waters to function, although its extended presence shades the water and could affect eelgrass growth. The floating dry dock's impacts upon any biological resources would be reviewed as part of a coastal development permit application submittal. Its impacts upon biological resources are not being reviewed now, as it is not a part of the proposed project.

Lastly, the letter claims that the adjacent property owner was not given notice of the hearing. Commission staff has verified that Ms. Jensen and Mr. Harder were both identified as known interested parties and hearing notices were mailed to the addresses they provided.

II. CHANGES TO STAFF REPORT

Commission staff recommends changes to the staff report for Item F10e, dated October 28, 2021. The following changes amend the project description, location, and local approval section to clarify that the floating dry dock is unpermitted development. Language to be added is shown in underlined text, and language to be deleted is identified by ~~strike-out~~.

Page 12 – Modify and Add to Section IV. Findings and Declarations/A. Project Description, Local Approval and Standard of Review/Project Description, Location and Local Approval, as follows:

The applicant had previously docked a floating dry dock on site, but has indicated that he intends to ultimately move it to a private marina. A floating dry dock lifts the boat out of the water to protect it from the elements and can also be used to assist with boat maintenance and repairs. The applicant has further stated that while the floating dry dock is not currently docked at the project site, he has placed ~~is considering placing~~ it at the adjacent dock located at 940 Via Lido Nord ~~property in the future~~, which the applicant also owns. Placement of the dry dock at either property ~~would~~ constitutes development under the Coastal Act and ~~would~~ requires a coastal development permit from the Coastal Commission. The floating dry dock is not supported by piles and does not require fill of coastal waters to function, although its extended presence shades the water and could

affect eelgrass growth. This application does not request placement of the dry dock at either property, and, therefore, the permit does not authorize the placement of the floating dry dock at the project site nor does it authorize its placement at the adjacent property, and, therefore, placement of the dry dock at the adjacent property constitutes unpermitted development that is a Coastal Act violation. Commission enforcement staff will consider options to address this violation as a separate matter.