

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
301 E. Ocean Boulevard, Suite 300  
Long Beach, CA 90802  
(562) 590-5071



**F10e**

**5-21-0232 (LUCKEY)**

**NOVEMBER 19, 2021**

**CORRESPONDENCE**

November 12, 2021

**VIA ELECTRONIC MAIL**

Steve Padilla, Honorable Chair  
Honorable Commission Members  
California Coastal Commission  
301 E. Ocean Boulevard  
Suite 300  
Long Beach, CA 90802

Re: Public Comment on November 2021 Agenda Item Friday 10e - Application No. 5-21-0232 (Luckey, Newport Beach)

Dear Honorable Chair and Commission Members:

Rutan & Tucker, LLP has been retained by Mr. Steve Harder, who owns the home located at 936 Via Lido Nord, on the eastern end of Lido Island, which is immediately adjacent to the applicant's property. As indicated in the staff report, not only did Mr. Luckey make alterations to his dock without the benefit of permits, he also, without any approval or permit, installed a floating dry dock at the bayward of 944 Via Lido Nord. As noted in the staff report for the above-referenced item, the installation of that dry dock constitutes development under the Coastal Act, and, if it were a permitted use, such development would require a Coastal Development Permit. However, as explained below, such dry docks are not permitted at that location.

It is our understanding that Mr. Luckey made the unpermitted alterations to his dock for the purpose of installing the dry dock and storing Mr. Luckey's boat, the Spirit of Musgrave (reported to be 24 meters in length [78.74 feet] and 110 gross tons) above the water. Attached to this letter are photographs of the subject boat, the dry dock as it was delivered to the site and then installed by crane, the installed dry dock, and a finally a photograph of an attempt to load the subject boat onto the dry dock, which we understand was unsuccessful for technical reasons.

While Mr. Luckey apparently installed two outboard motors on the dry dock to attempt to argue it is a vessel, there can be no question that this is a floating dry dock. The company that constructed the dry dock for Mr. Luckey is Boat Float. Information regarding the company and the dry dock can be found at <https://boat-float.com/services/27-50/>. That website specifically references these structures as dry docks:

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### DryDock Boat Lift Solutions – Boat Float

DryDock Boat Lift Solutions. DryDock boat lifts take simplicity and durability to a whole new dimension. Built one-at-a-time using fusion welded extruded HDPE pipe, your DryDock lift has no moving parts and no metal fasteners holding it together. This is no ordinary "plastic pipe" we're talking about: the wall thickness on the primary tanks is in excess of an inch and a half thick!

boat-float.com

Regarding dry docks for boats over 50 feet in length, the company indicates that they are sturdy enough to outlive the life of the vessel being dry docked:

DryDock boat lifts were designed specifically to address the heavy-boat market for vessels weighing in over 8000 pounds. This system is made from industrial-grade extruded polyethylene with primary tubes that have more than a one and one-half inches wall thickness. [¶] On the lift itself, there are only two pieces of stainless steel, each smaller than your fist. And these pieces of metal only get wet when the lift is in the lowered position. Simply put, with its 50 year service life, this lift is likely to outlive the boat its protecting.

Wikipedia defines floating dry docks as follows:

A floating dry dock is a type of pontoon for dry docking ships, possessing floodable buoyancy chambers and a "U"-shaped cross-section. The walls are used to give the dry dock stability when the floor or deck is below the surface of the water. When valves are opened, the chambers fill with water, causing the dry dock to float lower in the water. The deck becomes submerged and this allows a ship to be moved into position inside. When the water is pumped out of the chambers, the dry dock rises and the ship is lifted out of the water on the rising deck, allowing work to proceed on the ship's hull.

Wikipedia also identifies boat lifts as a form of dry docks in definition of "dry dock."

Floating Dry Docks are specifically regulated in Newport Beach Municipal Code section 17.35.040, regulating "Other Structures" in subsection B, and are expressly prohibited bayward of residential areas. That Code states as follows:

B. **Floating Dry Docks.** Permits for floating dry docks may be approved by the Public Works Director. **An application for a floating dry dock permit shall be filed with the Public Works Department in accordance with Section 17.60.020** and shall be approved if:

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1. The Public Works Director makes the findings set forth in Section 17.05.140(D)(1);
2. The location of the floating dry dock is in waters bayward of commercial, manufacturing or unclassified zones; and
3. A harbor development permit has previously been approved.
4. Permits for floating dry docks are issued for one location only. A new permit must be obtained to move a floating dry dock from one location to another location within the harbor. (Highlighting added.)

While the staff report indicates that Mr. Luckey intends to move the illegal dry dock, it has not been moved as of yet, and there appears to be no express requirement in the proposed approval to require its removal. My client, as well as numerous other neighboring property owners, are concerned that it will not be removed, or if it is removed, it will be reinstalled once the dock alterations are made. Mr. Luckey has expressly indicated his intent to have the dry dock at his property. However, the dry dock cannot legally be installed bayward of a residentially zoned area. This is prohibited by the highlighted language above. Nor could the necessary findings be made pursuant to Section 17.05.140(D)(1). Just as one example, it would be impossible to find that “[t]he design, location, size and/or operating characteristics of the use are compatible with the allowed uses in the vicinity.”

Moreover, we want to be sure the Commission appreciates the scope of the unpermitted work that has already taken place. The attached PDF demonstrates the amount of the demolition that has already taken place in order to install the unpermitted dry dock. The bottom two photos below show that the only remaining part of the previous dock is the portion that is leaning. We suspect that was left for purposes of draining the subterranean work that Mr. Luckey is doing in his lot across the street. The construction of the dry dock was a massive undertaking, with a crane. The magnitude of the unpermitted dry dock can be seen in the photos below, including the photo of the dry dock when it arrived on site.

This certainly is an extreme case, and is not suitable for an after-the-fact request for forgiveness or retroactive permitting.

Moreover, in addition to blighting the area aesthetics, shading the water and potentially effecting the eelgrass growth, massive quantities of sea water are used to fill the buoyancy chambers of dry dock to submerge the structure. While the structure may not require any earthen fill of coastal waters, the dry dock certainly intakes, stores, and ultimately releases large amount of coastal waters in order to function.

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Finally, despite assurances from California Coastal Commission staff, as confirmed by e-mail of August 6, 2021, we did not receive notice of this hearing and, in fact, only learned of it because of an article in the local newspaper.

We respectfully request that the Commission require the immediate and permanent removal of the dry dock.

Very truly yours,

RUTAN & TUCKER, LLP

A handwritten signature in black ink, appearing to read "M. Katherine Jenson". The signature is fluid and cursive, with the first name "M." and last name "Jenson" clearly legible.

M. Katherine Jenson

MKJ:lr

cc: John Ainsworth, Executive Director

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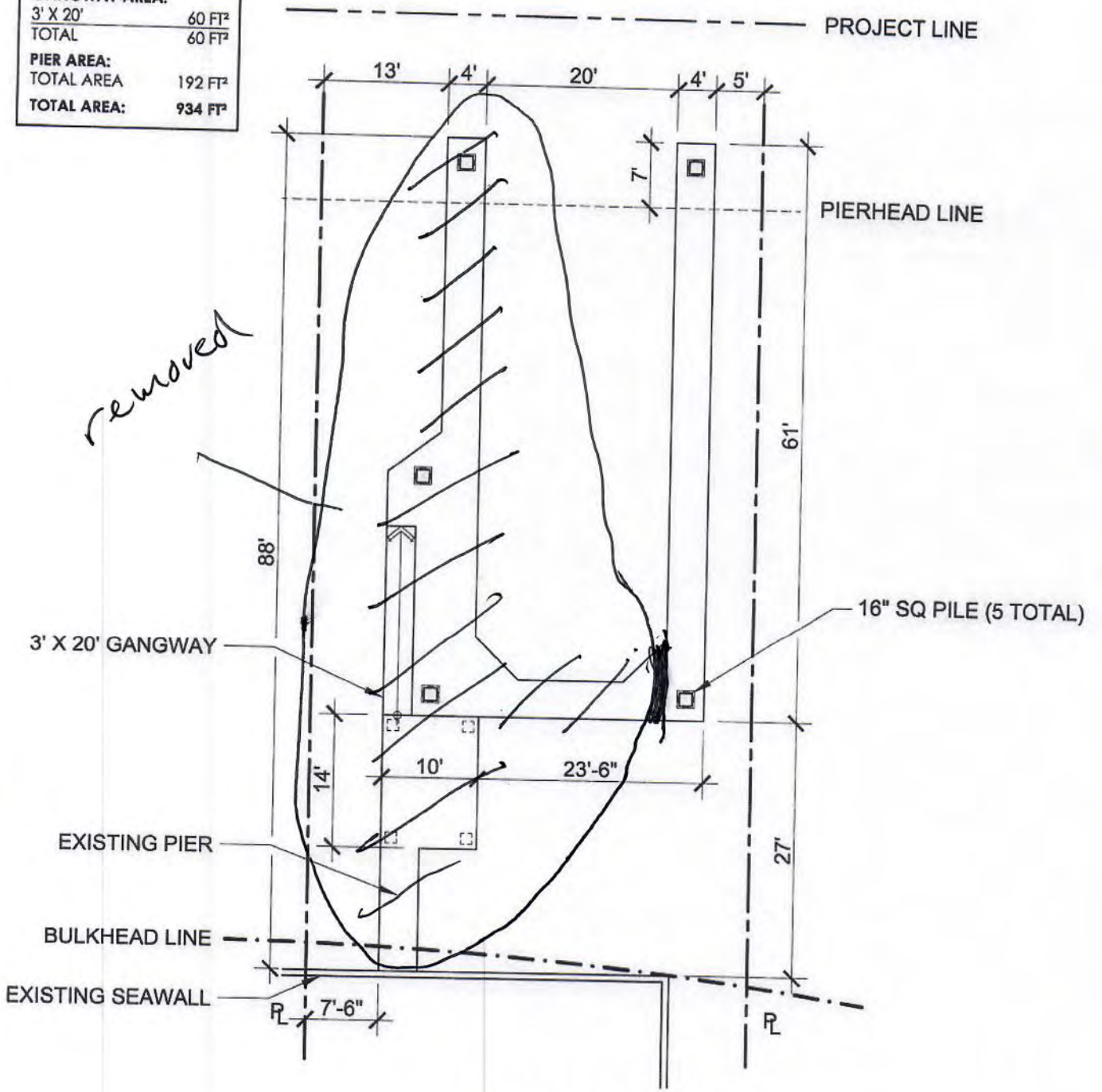


SWIFT SLIP DOCK & PIER BUILDERS, INC.

6351 Industry Way, Westminster, CA 92683  
 Phone: (949) 631-3121  
 Fax: (714) 509-0618  
 www.swiftslipdocks.com

CLIENT <b>LUCKEY, PALMER</b>		RO DRAWN	CHECKED	1.0 REVISION	03/17/21 DATE	AMENDMENTS				
SITE 944 VIA LIDO NORD, NEWPORT BEACH, CA 92663						REV	DESCRIPTION	BY	DATE	

<b>DOCK AREA:</b>	
TOTAL AREA	682 FT <sup>2</sup>
<b>GANGWAY AREA:</b>	
3' X 20'	60 FT <sup>2</sup>
TOTAL	60 FT <sup>2</sup>
<b>PIER AREA:</b>	
TOTAL AREA	192 FT <sup>2</sup>
TOTAL AREA:	934 FT <sup>2</sup>



**EXISTING**