



CITY OF

NEWPORT BEACH

City Council Staff Report

May 28, 2019
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dave Webb, Public Works Director - 949-644-3330
dawebb@newportbeachca.gov

PREPARED BY: Chris Miller, Public Works Administrative Manager,
cmiller@newportbeachca.gov

PHONE: 949-644-3043

TITLE: 939 Via Lido Soud Residential Dock Reconfiguration – Appeal of Harbor Commission’s Decision

ABSTRACT:

The applicant at 939 Via Lido Soud, Mr. Conzelman, is appealing the Harbor Commission’s denial of his proposed residential dock reconfiguration (“Project”) based upon its findings that the Project would negatively impact (1) navigation; (2) adjacent property owners; and (3) existing harbor uses as provided in City Council Policy H-1. For City Council’s consideration is whether to affirm, modify or reverse the Harbor Commission’s decision.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review;
- c) The City Council may either affirm, modify or reverse the Harbor Commission’s denial of the proposed dock reconfiguration at 939 Via Lido Soud. By either modifying or reversing the Harbor Commission’s decision, the City Council authorizes staff to issue an Approval in Concept for the project; and
- d) If the City Council affirms the Harbor Commission’s decision, adopt Resolution 2019-48, *A Resolution of the City Council of the City of Newport Beach, California, Affirming the Harbor Commission’s Denial of an “Approval In Concept” (Project File No. 2585-2018) for the Removal and Replacement of a Dock System at the Property Located at 939 Via Lido Soud.*

FUNDING REQUIREMENTS:

Beyond the related staff time needed to administer and process this item, there is no anticipated fiscal impact related to this item.

DISCUSSION:

Newport Beach Municipal Code Section 17.35.030(A) provides that piers and floats may not extend beyond the Pierhead Line unless approved by Council Policy. In 2018, City Council Policy H-1 was amended so that piers or floats may not extend beyond the Pierhead Line unless a determination is made that the extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.

Existing Permit and Residential Dock Configuration

The applicant at 939 Via Lido Soud has a residential dock on the easterly tip of Lido Isle, opposite Bay Island, and adjacent to the designated short-term anchorage area (See Attachment A). The float is currently configured as a U-shape and is also slanted to the north. According to the applicant's current permit, the existing float is permitted to extend up to the Pierhead Line. However, as seen on the aerials, the existing float extends approximately 9 feet beyond the Pierhead Line (as measured on the southern edge of southern finger).

2018 Application for Residential Dock Reconfiguration

In October 2018, the applicant submitted a proposal to remove the existing pier-approach, gangway and U-shape float, and replace it with a new gangway lobe, gangway and reconfigured U-shape float which would extend 16 feet beyond the Pierhead Line (See Attachment B). Staff denied the request based on City Council Policy H-1 which does not allow floats to extend beyond the Pierhead Line unless approved by the Harbor Commission.

As indicated above, City Council Policy H-1 (also see Attachment C) states:

Newport Beach Municipal Code Section 17.35.030(A) provides that piers and floats may not extend beyond the Pierhead Line unless approved by Council policy.

The Harbor Commission may permit a pier or float to extend beyond the Pierhead Line if the Harbor Commission makes a determination that such extension will not negatively impact (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.

Any permit issued by the City of Newport Beach before July 12, 2018, which allows a pier or float to extend beyond the Pierhead Line, is ratified by the City Council and may continue as valid unless and until such pier or float is extended or enlarged.

Since the application seeks to extend the float beyond the Pierhead Line, City Council Policy H-1 is triggered, thus requiring the Harbor Commission to make the findings set forth above in order to grant the permit.

Harbor Lines Defined

To provide context when reviewing Harbor Lines and their significance in the harbor, a brief explanation is below:

The original Harbor Lines map was approved by the federal government in 1917 then revised periodically until the most recently used 1951 Army Corps of Engineers ("Corps") approved Harbor Lines map. This 1951 map is the version the City references for mapping the harbor lines in the City's GIS system.

Harbor lines note the relationship of structures to the channel along the harbor's perimeter. Harbor lines are generally straight lines with a "station number" at either end that help define a particular area of the harbor. Wherever the land curves, there is a new station number defining the beginning of the next line.

Bulkhead Line: This line generally, but not always, follows the physical bulkhead around the harbor. As described above, the Bulkhead Line is defined by Bulkhead Station Numbers at every point where the land curves. Lastly, the Bulkhead Line denotes either: (1) the division between tidelands and upland (most cases); or (2) the division between tidelands and the water landward of the Bulkhead Line (i.e. private waterways).

Pierhead Line: This line is parallel to, and generally 50 to 80 feet offset from, the Bulkhead Line. Its purpose is to delineate the distance a float may extend out into the water or channel.

Project Line: This line is parallel to, and generally 10 to 20 feet offset from the Pierhead Line. The Project Line denotes the dredge limit line for the Corps. (e.g. The Corps dredges from Project Line to Project Line in any given channel). The Project Line creates a dredging "buffer zone" from the Pierhead Line to account for the usual sloughing that occurs when dredging the federal channel.

(Note: The harbor lines were originally developed over one hundred years ago when the vision for the future harbor was slightly different from today's reality. Also, via earlier versions of City Council Policy H-1, the City Council previously allowed floats beyond the Pierhead Line in certain parts of the harbor, generally to account for changing beach conditions and the effect of those beaches on the slips. It is important to note the Corps' indifference on any extensions beyond the Pierhead Line. Their practical response, as demonstrated during the last federal dredge project in 2012, was to simply dredge around any impediment, like a float, therefore creating a buffer area.)

Harbor Commission Appeal

The applicant appealed the Public Works Director's denial to the Harbor Commission, and a Public Hearing was held on February 13, 2019 (See Attachment D). The Harbor Commission discussion mainly focused on the proximity of the property to the adjacent channel and anchorage area.

As demonstrated in Attachment A, the residential dock is located on a curve on the easterly tip of Lido Isle, opposite Bay Island and across from the designated short-term anchorage area and the Newport Harbor Yacht Club mooring field at the convergence of two navigable channels. The channel adjacent to the anchorage area is 256 feet wide and is very active and well used. Additionally, under the existing configuration with a slip width of 21 feet, it is conceivable that an 82 foot vessel could potentially berth in the existing slip. In this hypothetical, worst case scenario, a vessel of this size could legally extend approximately 16 feet beyond the Project Line as measured from the inside of the southern finger. Conversely, the Project as proposed, would accommodate an 85 foot vessel and extend potentially 18.5 feet beyond the Project Line. NBMC 17.25.020(C)(2) states that vessels may not extend bayward beyond the end of the slip a distance of more than the vessel beam.

With a float extending beyond the Pierhead Line coupled with a vessel extending even farther beyond, the Harbor Commission was concerned with the lasting effect on navigation. The Harbor Commission upheld the Public Works Director's denial 6-1 with Commissioner Drayton voting against.

City Council Appeal

The applicant appealed the Harbor Commission's denial to the City Council within the required timeframe (See Attachment E). The proposed application conforms to the applicable provisions of Newport Beach Municipal Code Title 17 entitled "Harbor Code."

In addition, the applicant is requesting a modification to the City of Newport Beach Waterfront Project Guidelines and Standards Harbor Design Criteria for Commercial and Residential Facilities ("Harbor Design Guidelines") as it relates to the location of the piles at the end of the finger floats beyond the Pierhead Line. Figure No. 10A of the Harbor Design Guidelines describes the relationship between the Pierhead Line and the Project Line with respect to future, potential federal dredging (See Attachment F). However, the City's Building Official may allow this request via a modification if the strict letter of the Harbor Design Standards does not lessen the health, accessibility, life and fire safety or structural requirements. In this case, the applicant is stating that piles at the end of the finger floats are a necessary structural requirement to adequately support the finger length and the corresponding large vessel.

Section 17.65.040(F) authorizes the City Council to affirm, modify or reverse the original decision after consideration of an appeal. Additionally, Section 17.50.040(A) authorizes the City to issue Harbor Development Permits upon the determination that a new permit and/or a revision to an existing permit conforms to the Harbor Design Guidelines and all applicable standards and policies in conjunction with plan reviews by the Public Works Department. As detailed in the attached resolution, the project conforms to the Harbor Design Guidelines and applicable standards and policies of the City with the exception of the aforementioned two piles at the end of the finger floats which the Building Official may grant as a modification.

If the City Council wishes to modify or reverse the Harbor Commission's decision, the City Council would direct staff to modify Resolution No. 2019-48 as applicable, return to City Council for review and approval (which would include CEQA review) and then direct staff to issue an Approval in Concept for the proposed project as modified, subject to any special conditions, and provided the project complies with all applicable codes.

ENVIRONMENTAL REVIEW:

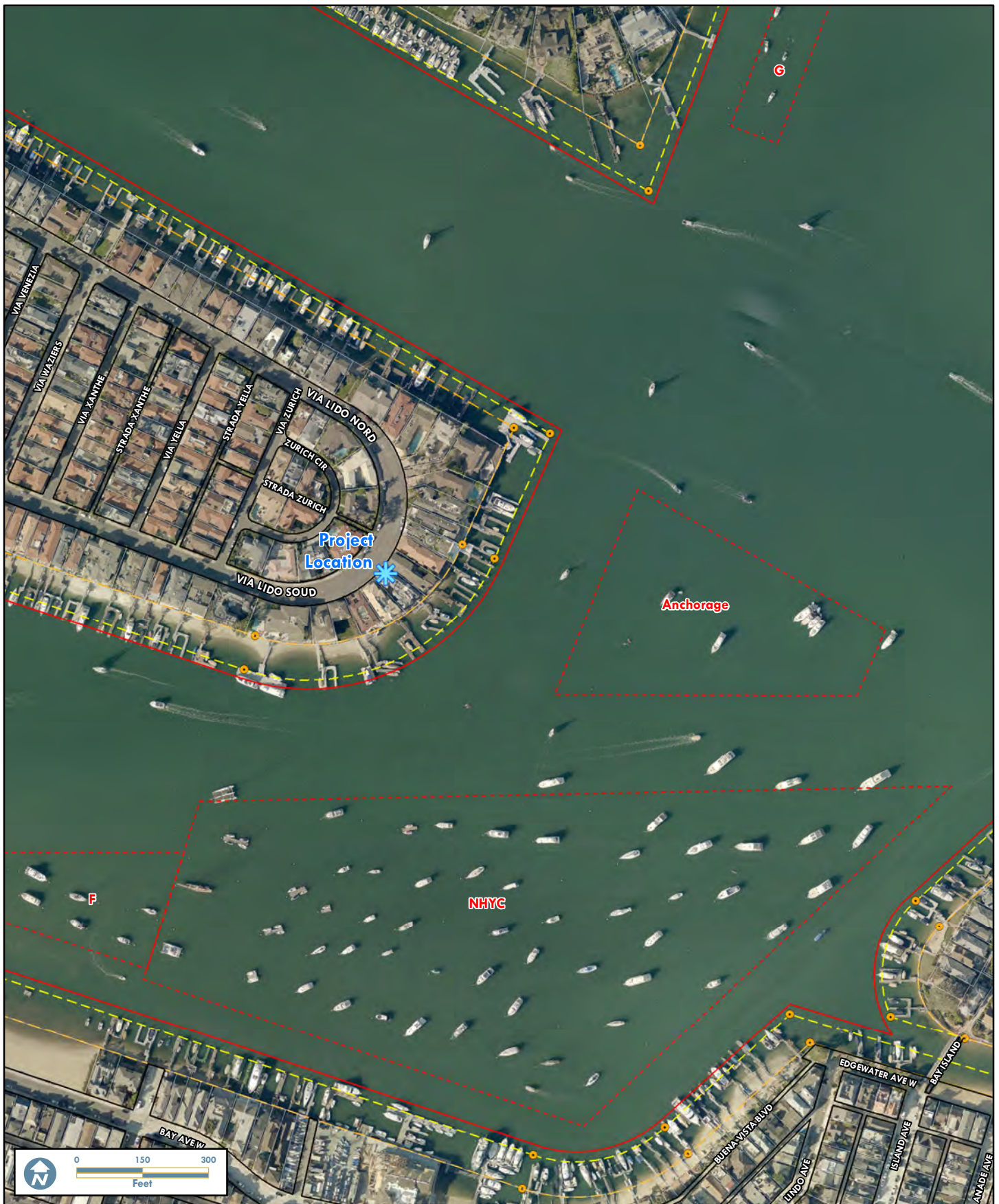
Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). The public hearing was also noticed to all residents within a 300' radius per NBMC 21.62.020(B)(2)(c) and published in the newspaper.

ATTACHMENTS:

Attachment A – Vicinity Map (Aerials)
Attachment B – Proposed Dock Reconfiguration
Attachment C – City Council Policy H-1
Attachment D – Harbor Commission Minutes (February 13, 2019)
Attachment E – Appeal
Attachment F – Harbor Design Guidelines (excerpt)
Attachment G – Resolution No. 2019-48



939 Via Lido Soud

(Proposed Dock Project)



City of Newport Beach
GIS Division
April 17, 2019



939 Via Lido Soud (Proposed Dock Project)



City of Newport Beach
GIS Division
April 17, 2019



939 Via Lido Soud

(Proposed Dock Project)



City of Newport Beach
GIS Division
April 17, 2019

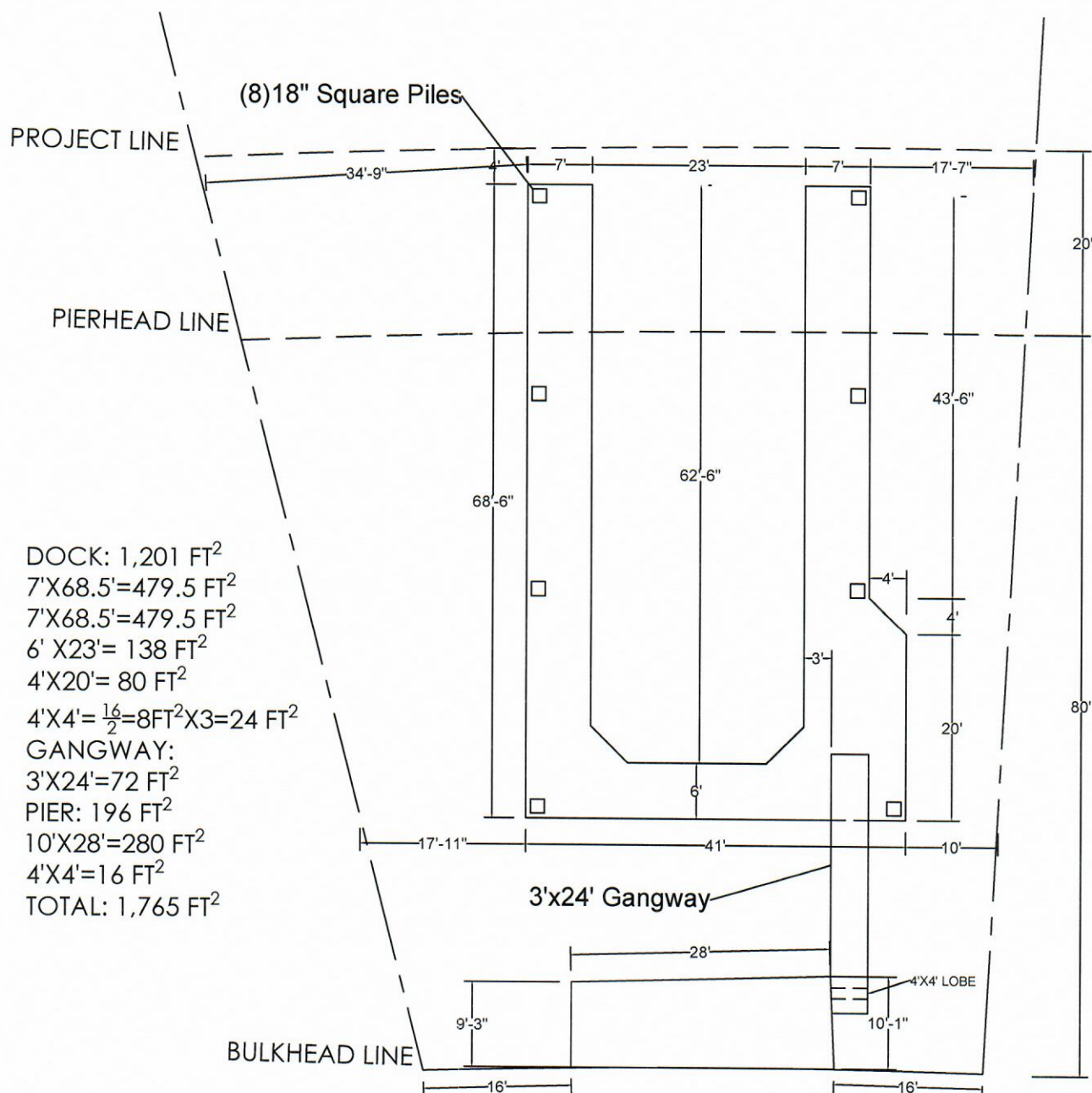
ATTACHMENT B



SWIFT SLIP DOCK & PIER BUILDERS, INC

6351 Industry Way, Westminster 92683
Phone: (949) 631-3121
Fax: (714) 509-0618

CLIENT:	CONZELMAN, MARK	BL	--	3.0	4/17/19	AMENDMENTS:			
		DRAWN:	Checked	REVISION	DATE:	REV:	DESCRIPTION:	BY:	DATE:
SITE:	939 VIA LIDO SOUD NB, CA (PROPOSED)					-	----	-	-
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ATTACHMENT C

HARBOR PERMIT POLICY

Background

Newport Beach Municipal Code Section 17.35.030(A) provides that piers and floats may not extend beyond the pierhead line unless approved by Council policy.

Policy

The Harbor Commission may permit a pier or float to extend beyond the pierhead line if the Harbor Commission makes a determination that such extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.

Any permit issued by the City of Newport Beach before July 12, 2018, which allows a pier or float to extend beyond the pierhead line, is ratified by the City Council and may continue as valid unless and until such pier or float is extended or enlarged.

History

Adopted H-1 – 6-1-1964
Amended H-1 – 10-19-1964
Amended H-1 – 10-26-1964
Amended H-1 – 4-27-65
Reaffirmed H-1 – 8-30-1966
Amended H-1 – 1-9-1967
Amended H-1 – 7-24-1967
Amended H-1 – 6-24-1968
Amended H-1 – 8-19-1968
Amended H-1 – 12-23-1968
Amended H-1 – 1-26-1970
Reaffirmed H-1 – 3-9-1970
Reaffirmed H-1 – 2-14-1972
Amended H-1 – 8-14-1972
Amended H-1 – 6-25-1973
Reaffirmed H-1 – 12-10-1973
Amended H-1 – 12-17-1973
Amended H-1 – 6-10-1974
Reaffirmed H-1 – 11-11-1974
Amended H-1 – 3-10-1975
Amended H-1 – 4-28-1975

Amended H-1 – 5-27-1975
Amended H-1 – 10-28-1975
Amended H-1 – 12-8-1975
Amended H-1 – 5-10-1976
Amended H-1 – 10-26-1976
Amended H-1 – 11-22-1976
Reaffirmed H-1 – 1-24-1977
Amended H-1 – 5-23-1977
Amended H-1 – 5-22-1978
Amended H-1 – 12-11-1978
Amended H-1 – 3-12-1979
Amended H-1 – 6-25-1979
Amended H-1 – 6-9-1980
Amended H-1 – 6-23-1980
Amended H-1 – 11-23-1981
Amended H-1 – 6-28-1982
Amended H-1 – 10-12-1982
Amended H-1 – 10-25-1982
Amended H-1 – 6-27-1983
Amended H-1 – 1-14-1985
Amended H-1 – 3-25-1985
Amended H-1 – 6-24-1985
Amended H-1 – 6-22-1987
Amended H-1 – 6-13-1988
Amended H-1 – 11-28-1988
Amended H-1 – 6-26-1989
Amended H-1 – 9-25-1989
Amended H-1 – 11-27-1989
Amended H-1 – 5-14-1990
Amended H-1 – 6-25-1990
Amended H-1 – 4-8-1991
Amended H-1 – 6-24-1991
Amended H-1 – 10-28-1991
Reaffirmed H-1 – 1-24-1994
Amended H-1 – 6-27-1994
Amended H-1 – 6-26-1995
Amended H-1 – 3-25-1996
Amended H-1 - June 8, 1998
Amended H-1 – 12-14-1998
Amended H-1 – 5-8-2001
Amended H-1 – 9-10-2002
Amended H-1 – 10-28-2003
Amended H-1 – 4-13-2004

Amended H-1 - 1-8-2008
Amended H-1 - 5-22-2018

ATTACHMENT D

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Council Chambers – 100 Civic Center Drive, Newport Beach CA
Wednesday, February 13, 2019
6:30 PM

1) CALL MEETING TO ORDER

The meeting was called to order at 6:30 p.m.

2) ROLL CALL

Commissioners: Dave Girling, Chair
Scott Cunningham, Vice Chair
John Drayton, Secretary
Ira Beer, Commissioner
Paul Blank, Commissioner
Bill Kenney, Commissioner
Don Yahn, Commissioner

Staff Members: Kurt Borsting, Harbormaster
Yolanda Summerhill, Assistant City Attorney
Armeen Komeili, Deputy City Attorney
Chris Miller, Public Works Manager
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Commissioner Drayton

4) PUBLIC COMMENTS

None

5) APPROVAL OF MINUTES

1. Minutes of January 9, 2019, Regular Meeting

Chair Girling announced the recording equipment malfunctioned at the January meeting, causing staff to prepare the draft minutes from notes and memory. Commissioners, the public, and parties appearing at the January meeting may offer revisions, but the Commission will review the minutes again in March before approving them.

Commissioner Kenney recommended Mr. Mosher's proposed revisions be incorporated into the minutes.

Chair Girling clarified that staff prepared draft minutes, and other staff, some Commissioners and some of the parties to the meeting reviewed and provided input to the draft minutes.

Commissioner Kenney proposed those comments be incorporated into the minutes as well. With respect to the 2888 Bayshore Drive appeal, the staff report recommended the Harbor Commission find the project exempt from CEQA, but his substitute motion specifically stated the project is subject to the California Environmental Quality Act (CEQA).

Chair Girling requested the first instance of "LCP" in the final paragraph on page 2 state "Local Coastal Plan (LCP)."

6) **PUBLIC HEARING(S)**

1. Residential Dock Reconfiguration at 939 Via Lido Soud – Appeal

The applicant at 939 Via Lido Soud is appealing the Public Works Director's denial of the proposed residential dock reconfiguration. For the Harbor Commission's consideration is the decision whether to uphold, amend, or reverse the Public Works Director's decision to deny an Approval in Concept ("AIC") requesting the residential float to extend beyond the Pierhead Line.

Recommendation:

- 1) Conduct a public hearing;
- 2) Find the project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment; and
- 3) The Harbor Commission may either uphold, amend, or reverse the Public Works Director's denial of the proposed residential dock reconfiguration at 939 Via Lido Sound.

Commissioners Blank and Drayton disclosed longstanding personal relationships with members of the public who may speak to the item. The relationships will in no way influence their ability to make fair and impartial decisions regarding the matter.

Commissioners Beer and Yahn disclosed sporadic conversations with Mr. Swift regarding other business, but the relationship will not affect in any way their decisions.

Public Works Manager Chris Miller reported the item is an appeal of the Public Works Director's decision to deny the proposed residential dock configuration. The Harbor Commission may either uphold, amend, or reverse the Director's decision. An aerial photo shows the neighboring anchorage area and the approximate distance of 200 feet between the anchorage area and the Project Line. The existing dock is built at an angle or slant to the house, and its fingers extend 6-6.5 feet beyond the Pierhead Line. An aerial photo is a good but not perfect representation of the existing conditions. Council Policy H-1, which became effective in May 2018, states no pier shall extend beyond the Pierhead Line unless it has been previously permitted, in which case the owner may build to the same position. The proposed dock reconfiguration will align the dock with the house and extend the dock fingers to the Project Line. According to a previously approved drawing in the City's records, the float is shown to extend to the Pierhead Line but not beyond. The previously approved configuration is dated September 10, 1981 with "OK 2-9-98" handwritten on its face. The two dates may be explained through staff's practice of pulling the last drawing for a dock, in this case a drawing from 1981, and updating it with new drawings, in this case in 1998. If the Harbor Commission chooses to reverse the Director's decision and approve the proposed dock reconfiguration, it must find the extension does not negatively impact navigation, does not negatively impact adjacent property owners, and does not negatively impact existing harbor uses.

In reply to Commissioner Beer's question, Public Works Manager Miller indicated the applicant's drawing shows the distance between the Pierhead Line and the Project Line as 15 feet. Public Works Manager Miller had not measured the distance. Commissioner Beer reported drawings for the properties immediately adjacent to the north and south of the subject property show the distance between the Pierhead Line and the Project Line as 20 feet. Public Works Manager Miller advised that the distance is 20 feet for most locations in the Harbor, but he seemed to recall some locations with a distance of 10 feet.

In response to Commissioner Kenney's inquiries, Public Works Manager Miller believed Council Policy H-1 allows a dock to extend the same distance beyond the Pierhead Line rather than allows the same amount of square footage to extend beyond the Pierhead Line. The first decision for the Harbor Commission is whether the float can extend beyond the Pierhead Line. If the Harbor Commission allows the float to extend beyond the Pierhead Line, the next decision is whether the float can extend to the existing distance of 6-6.5 feet beyond the Pierhead Line or to the Project Line as the applicant proposes.

In answer to Commissioner Drayton's query, Public Works Manager Miller explained the 1981 drawing does not show an extension beyond the Pierhead Line. Staff could not find a prior approval for the float to extend any distance beyond the Pierhead Line.

In reply to Commissioner Beer's inquiry, Public Works Manager Miller advised that the existing dock is unpermitted compared to the approved drawings on file.

In answer to Commissioner Yahn's questions, Public Works Manager Miller remarked that the margin of error for the accuracy of aerial photography is not very much, perhaps one foot.

Commissioner Beer shared his calculations for maximum vessel size for the applicant's and six adjacent property owners' docks. The applicant's existing dock could accommodate a vessel of 76.5 feet. A vessel of this size would extend 11.5 feet beyond the Project Line. For the dock at 941 Via Lido Soud, the largest vessel would fall 4 feet short of the Project Line. For the docks at 940 and 944 Via Lido Soud, the largest vessel would fall at the Project Line. For the dock at 933 Via Lido Soud, the largest vessel would extend 12 feet 5 inches beyond the Project Line. For the dock at 929 Via Lido Soud, the largest vessel would extend 7 feet beyond the Project Line. For the dock at 925 Via Lido Soud, the largest vessel would extend 12 feet beyond the Project Line. The applicant's proposed configuration would accommodate an 85-foot vessel, and it would extend 23 feet beyond the Project Line.

Commissioner Kenney reminded Commissioners that the navigable channel was 220 feet wide. The navigable channel between the anchorage and the Newport Harbor Yacht Club mooring field is sometimes cluttered.

Chair Girling clarified that the existing dock is not permitted to extend beyond the Pierhead Line. Therefore, any extension would not be eligible for the preexisting conditions listed in Policy H-1.

Pete Swift, appellant representative, reported the 1981 drawing on file with the City could show an incorrect location for the Pierhead Line because satellite imagery, GPS, GIS, and aerial photographs were not common in 1981. He thought the criteria for allowing a dock would be merit, use of the dock, the effect on the area, the owner's intent to moor his boat or to generate profit, the long-term effect, and increased safety. The three criteria stated in Policy H-1 are simpler. Between the subject property and Via Koron, there are 64 docks, 50 of which extend to or beyond the Project Line. The final house on Via Lido Soud is 941, which would be a good point to disallow extensions to the Project Line. If the City disallows this project and projects for the other 49 houses, people could build docks without obtaining permits. The distance from the project site to the anchorage is 250 feet and from the project site to mooring field D is 300 feet. Because of the distance, the proposed dock would not be a threat to navigation. Thirty-foot sailboats on a race course would have sufficient room to navigate.

Mark Conzelman, applicant, indicated he proposed a dock reconfiguration so that the dock would be uniform with neighbors' docks, could accommodate as many Harbor 20s as possible for regattas, and could accommodate his wife's dream boat.

Gary Thorne commented that the Conzelmans support boating and sailing in the Harbor. Rescue boats and chase boats for regattas are allowed to use their dock. The Conzelmans are hospitable and provide first aid to boaters. The Conzelmans' dock is not an issue for laying out a sailboat race course.

Dennis Lockhard suggested 220 feet was sufficient width for a navigable waterway. The proposed reconfiguration will enhance navigation and existing Harbor uses and increase the safety of boaters in the area.

Philip Thompson related several times Mr. Conzelman had offered assistance or the use of his dock to boaters. The Conzelmans have received commendations and awards for providing service to the community. A dock extending an additional 8 feet into the Harbor would not affect navigation or other boaters.

In reply to Commissioner Blank's query, Public Works Manager Miller reported there are no restrictions preventing the applicant from relocating the float landward.

Commissioner Blank commended Mr. Conzelman for his generosity and service to the community. Commissioners were very careful in drafting the language for Policy H-1. He strongly opposed unpermitted extensions beyond the Pierhead Line. The applicant should consider moving the float system closer to the bulkhead. The dock is located at the convergence of two navigable channels, which are very congested. He supported bringing the dock into compliance at the current time.

Chair Girling opened and closed the public hearing with no public comment.

Mr. Swift indicated the applicant did not want to build the dock the width of the boat and put the dock out as far as possible. The seawalls are some of the oldest in the Harbor, and dredging will cause them to fail. He has already moved the dock 15-20 feet towards shore and done everything possible to fit the dream boat on the dock.

In answer to Commissioner Beer's question, Mr. Swift reported the proposed vessel's overall length is 79 feet. The boat's bow is going to come up over the dock 6-7 feet. He wants to get it as close as possible so they can board on the swim step.

In reply to Commissioner Drayton's query, Public Works Manager Miller advised that staff has not received any communications from adjacent properties or neighbors.

Commissioner Drayton explained that Commissioners drafted the language of Council Policy H-1 in consideration of the Commission hearing appeals and the Commission's need for some discretion. Given the prevailing winds and the location of docks in the area, he was not concerned about the proposed dock extending 7 feet past the Project Line.

Commissioner Beer explained that a 79-foot vessel put in the slip properly will extend 17 feet. An 85-foot vessel would extend 23 feet past the Project Line. For the four adjacent properties, the average that any vessel could possibly protrude is just under 11 feet, which is consistent with the existing condition. He encouraged the applicant to move the dock further back in order to accommodate the dream vessel or to limit the beam width so that it is more consistent with the existing condition. The difference between the existing dock and the proposed dock creates an opportunity for more docks in the area to extend beyond the Pierhead Line. The area is very congested in the summer. The fact that the existing dock is not permitted is an important consideration.

Commissioner Kenney advised that the dock extension, if approved, will be approved in perpetuity. Docks along Via Lido Soud and Via Lido Nord project beyond the Pierhead Line and may be to and beyond the Project Line, but the Harbor Commission cannot do anything about those docks. This is a difficult decision for the Harbor Commission.

Chair Girling noted Council Policy H-1 does not require the Harbor Commission to allow an extension if the configuration meets the three criteria. He questioned whether the proposed configuration would affect adjacent property owners. Allowing the proposed configuration would create a precedent that the Harbor Commission did not want to create.

Commissioner Blank moved to uphold the Director's decision denying the application. Commissioner Beer seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Girling, Vice Chair Cunningham, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

Nays: Commissioner Drayton

Abstaining: None

Absent: None

7) **CURRENT BUSINESS**

1. **Review of Mooring Slip and Rental Initial Application Fee**

The City Council reviewed the Harbor Department's Fees and Rents at their January 22, 2019 City Council meeting and requested the Harbor Commission to review on fee entitled "Mooring Slip and Rental Initial Application Fee."

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Recommend to the City Council removing this proposed fee from further consideration as it is not common practice in the boating community.

Harbormaster Kurt Borsting reported in August 2018 the Harbor Commission reviewed and recommended the City Council adopt fee and rent updates, and the Council reviewed and approved all but one update on January 22, 2019. The City Council asked the Harbor Commission to reconsider the one-time mooring and slip initial application fee of \$17. In concept, a new customer to the Harbor would pay the fee to cover staff time for processing the application. Several Council Members felt the fee was not usual or customary in either municipal or private marinas. In addition, the fee could be perceived as not being customer-friendly. Incorporating the fee in the City's software proved to be a challenge as well. Staff anticipated the proposed fee would generate approximately \$5,100 in annual revenue; therefore, eliminating the fee would not result in a substantial amount of lost revenue.

In answer to Commissioner Blank's question, Harbormaster Borsting understood the fee would apply to any new customer regardless of the length of his stay in the Harbor.

Commissioner Blank suggested the cost for processing a new permittee application should be included in the mooring transfer fee. Transient visitors should not be burdened with such a fee. In answer to Commissioner Kenney's inquiry, Commissioner Blank clarified his belief as any administrative burden placed on staff for processing a mooring transfer is covered within the existing mooring transfer fee. An additional \$17 is not warranted to administer that process. In other words, the fee should not be charged to anyone.

Chair Girling requested public comment and received none.

Commissioner Beer moved to recommend the City Council remove the mooring and slip initial application fee from further consideration. Commissioner Kenney seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Girling, Vice Chair Cunningham, Commissioner Drayton, Commissioner Beer, Commissioner Blank, Commissioner Kenney, Commissioner Yahn

Nays: None

Abstaining: None

Absent: None

2. **Harbor Commission 2018 Objectives: Ad Hoc Committee Updates**

Each ad hoc committee studying their respective Functional Area within the Commission's 2018 Objectives will provide a progress update.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title

- 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Receive and file.

Functional Area 1: Vice Chair Cunningham reported he attended the California Marine Affairs and Navigation Conference (CMANC), where he learned a lot. Beneficial reuse of sediment as a means to reduce costs has a lot of momentum up and down the coast. He will attend the annual CMANC trip to Washington, DC. The subcommittee is reviewing the entire RGP-54 process in anticipation of renewing the permit in 2020. Bringing a hydraulic dredger to the Harbor is a high priority in 2019.

In reply to Commissioner Kenney's inquiries, Public Works Manager Miller advised that technology exists to treat dredged material. The treatment techniques are most effective on small-quantity projects. For the City and deep-channel dredging, hauling dredged material is more economical than treating it. Test cases or small specific projects could utilize onsite treatment, but finding the space to do it is challenging. Treating material could be feasible for a small project such as dredging under a dock.

Functional Area 2: Commissioner Drayton advised that efforts to enhance code enforcement have continued. The subcommittee will meet with the Mooring Owners Association to discuss issues of mutual interest.

Functional Area 3: Commissioner Beer related that efforts have been focused on establishing policies for modifications to mooring sizes. Data has led the subcommittee to believe a more concise and objective method to determine which fields and which rows can accommodate certain sizes of vessels is possible.

Functional Area 4: Commissioner Kenney indicated the review of Title 17 continues. The next topic for discussion is marine activities permits. Hopefully, by late April the subcommittee can begin scheduling stakeholder meetings.

Functional Area 5: Chair Girling stated the subcommittee is rescheduling meetings with charter fleet operators.

Functional Area 6: Commissioner Blank reported the subcommittee is working to identify constituent groups and schedule outreach sessions for them. The visioning process is running parallel to the General Plan Update.

5. Harbormaster Update – January 2019

The Harbormaster is responsible for on-water management of the City's moorings, the Marina Park Marina, and code enforcement on the water. This report will update the Commission on the Harbor Department's activities for January 2019.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
- 2) Receive and file.

Harbormaster Borsting reported the Harbor Department used a California Department of Fish and Wildlife grant to purchase a portable trailer, 1,000 feet of boom material, absorbents, and other equipment, which can be utilized for oil spills in the Harbor. The grant included training for 16 staff members and an Orange County Deputy Sheriff. Members of the Council and Harbor Commission attended a media event to highlight the new equipment. In January, staff met with various stakeholders in an effort to increase outreach. Currently, 48 live-aboard permittees reside in the Harbor. Staff inspected 26 live-aboard vessels in January.

Chair Girling and Commissioner commended Harbormaster Borsting for making great progress with the live-aboards.

In reply to Commissioners' questions, Harbormaster Borsting indicated staff observes the operability of live-aboard vessels as the vessels travel to Marina Park for the inspection. Staff is aware of the preregistration deadline to apply for a grant to dispose of abandoned vessels. In addition, staff is working to expend the remaining grant funds prior to the deadline. The oil spill trailer is temporarily parked at Marina Park. Staff is searching for long-term parking adjacent to the Harbor and will be mapping deployment locations. Two Harbor Department pontoon-style vessels are rentals. Staff has developed specifications for a patrol boat but is now looking at a bid process for two different styles of vessels, the patrol boat and a work boat. Code Enforcement Supervisor Matt Cosylion will work with the Harbor Department through June 30. In the upcoming budget, staff requested an extension of his time with the Department by 12 months.

Commissioner Blank remarked that during the Council planning session, Assistant City Manager Carol Jacobs advocated for retaining Mr. Cosylion in the Harbor Department for another year. Some Council Members and the Mayor seemed amenable.

Commissioner Cunningham requested staff confirm permits have been issued for docks when staff observes dock construction. Public Works Manager Miller commented that the dock industry notifies staff when other people are working without a permit.

Public Works Manager Miller reported a letter has been sent to the Coast Guard regarding the City's request for the West Anchorage. The goal is to have a program in place in June. An engineering study has been conducted. Commissioner Kenney advised that constituents had contacted him in support of the West Anchorage.

8) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Vice Chair Cunningham announced the third annual Harbor underwater cleanup is scheduled for June 1.

Commissioner Blank referred to an article in the *Stu News* regarding Harbor-related businesses. The Harbor Commission approved a list of businesses and amenities needed to maintain a healthy, vibrant, and functioning Harbor.

9) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES

None

10) MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT (NON-DISCUSSION ITEM)

Chair Girling requested an item regarding Lower Castaways be scheduled for the April meeting as he would not be present for the March meeting.

In reply to Chair Girling's query, Harbormaster Borsting felt, after a phone conversation with the Coast Guard, the Coast Guard is open to discussing a navigational aid/lighthouse. Commissioner Kenney recommended enhanced lighted markers for the jetties be discussed with the Coast Guard in conjunction with navigational aids. Chair Girling requested an item on this topic in April or May. Staff should engage Keith Yonkers in the next 30-60 days.

11) DATE AND TIME FOR NEXT MEETING: Wednesday, March 13, 2019

16) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:21 p.m.

Appeal Application



City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
949-644-3005

Clerk's Date & Time Stamp

RECEIVED

2019 FEB 26 PM 1:31

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

Appeals are time sensitive and must be received by the City Clerk specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ Community Development Director Action to the Planning Commission - \$1,637
- ☐ Zoning Administrator Action to the Planning Commission - \$1,637
- ☐ Planning Commission Action to the City Council - \$1,637
- ☐ Hearing Officer Action to the City Council - \$1,637
- ☐ Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1,637
- ☐ Chief of Police Action on an Operator License to the City Manager - \$710
- ☐ City Manager Action on a Special Events Permit to the City Council - \$1,639
- ☐ Harbor Resources Manager Action on a Lease/Permit to the Harbor Commission - \$100
- ☐ Harbor Resources Manager Action to the Harbor Commission - *Hourly Cost*
- ☒ Harbor Commission Action to the City Council - *Hourly Cost*
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): Pete Swift - Swift Slip Dock & Pier Builders
Address: 6351 Industry Way
City/State/Zip: Westminster, California 92683
Phone: 949.631.3121 Email: Jacquelyn@swiftslipdocks.com

Appealing Application Regarding:

Name of Applicant(s): MARK CONZELMAN Date of Final Decision: 2.13.2019
Project No.: 2585-2018 Activity No.: _____

Application Site Address: 939 Via Lido Sound

Description of application: Remove and replace existing floating dock, pile, gangway, and gangway lobe

Reason(s) for Appeal (attach a separate sheet if necessary): We are appealing a decision of the Harbor Commission that withholds our right to build to the Project Line as designated by the United States Federal Government. The Project Line was created after the 1935-1936 dredging improvements of the

Signature of Appellant: [Signature] Date: 2.25.2019

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: 2-26-19, 20____.

[Signature]
City Clerk

cc: Department Director, Deputy Director, Staff, File
Cashier Code: CDD004 (Harbor Appeals HBR001)



Federal Government which created Newport Harbor as we know it today. This action was taken prior to the dedication of Newport Beach in 1936

We are appealing a decision of the Harbor Commission that withholds our right to build to the Project Line as designated by the United States Army Corps of Engineers under the Rivers and Harbors Act of 1899 (30 Stat. 1151, Ch. 425, §11 (March 3, 1899); codified at 33 U.S.C. §404). The Project Line was designated by the Secretary of the Army in a map published on December 26, 1950, by the Army Corps District Engineer, and approved by the Secretary of the Army on April 15, 1951. The map designates 3 lines, the bulkhead line, the pierhead line, and the project line. No subsequent map has been published by the Army Corps of Engineers.

The project line is the limit of federal dredging project responsibility (whether or not the Federal Government carries out this responsibility). Newport Beach has approved floats for the mooring of private vessels connected by gangways to the adjacent property to extend to the project line. The Harbor Commission limited the float at 939 Via Lido Soud to the pierhead line. The existing float already extends beyond the pierhead line as do many of the floats which surround Lido Island.

Municipal Code §17.35.030A limits dock floats to the pierhead line “unless approved by Council Policy”. Council Policy H-1 allows for dock floats to extend beyond the pierhead line up to the project line if “such extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.” Many existing floats along Via Lido Soud extend not only beyond the pierhead line, but often beyond the project line. In some cases the float is parallel to the shore at the project line with wide beamed vessels extending beyond the project line.

The proposed float at the project line will not affect navigation, adjacent property owners, or existing harbor uses. Most neighboring properties have floats that extend to or beyond the project line. From 801 to 941 Via Lido Soud, almost every property extends to or beyond the project line, and every property extends beyond the pierhead line. If there was to be an impact on navigation, it would have become apparent long before now. As the adjacent property owners enjoy privileges denied to this property owner, there can be no negative impact on adjacent property owners. The only adjacent harbor use is a temporary visitor anchorage which is more than 220 feet from the project line. This is a more than adequate channel for the vessels to pass between the project line and the anchorage boundaries.

The City recently adopted a Local Coastal Program. Municipal Code §21.30C.050 governs the construction of docks at private residences. No portion of this provision limits the float to the pierhead line nor modifies the provisions of Municipal Code §17.35.030A or Council Policy H-1.

U.S. Army Corps of Engineer and California Coastal Commission approval will be required. Each agency will apply its required statutory standards to the proposed project. There is nothing in either the Army Corps regulations or the Coastal Commission regulations which would limit the property owner’s pier to the pierhead line.



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3311 | 949 644-3308 FAX
newportbeachca.gov/PublicWorks

February 19, 2019

DELIVERED VIA FIRST CLASS REGULAR MAIL

Swift Slip Dock and Pier Builders, Inc.
Attn: Pete Swift
6351 Industry Way
Westminster, CA 92683

RE: 939 Via Lido Soud – Notice of Harbor Commission's Decision

Mr. Swift,

Pursuant to Newport Beach Municipal Code Section 17.65.040(F), at a noticed public hearing of the Harbor Commission held on February 13, 2019, the Harbor Commission upheld the Public Works Director's denial of the Approval in Concept for the proposed residential dock reconfiguration at 939 Via Lido Soud, Newport Beach, CA.

Pursuant to Newport Beach Municipal Code Section 17.65.020, the decision of the Harbor Commission will become final unless appealed by the filing of the necessary form and fees to the City Clerk's Office located at 100 Civic Center Drive, Newport Beach, CA 92660 within fourteen (14) days of the decision.

If you have any questions or comments regarding this notice of decision, please feel free to contact me directly at (949) 644-3043.

Regards,

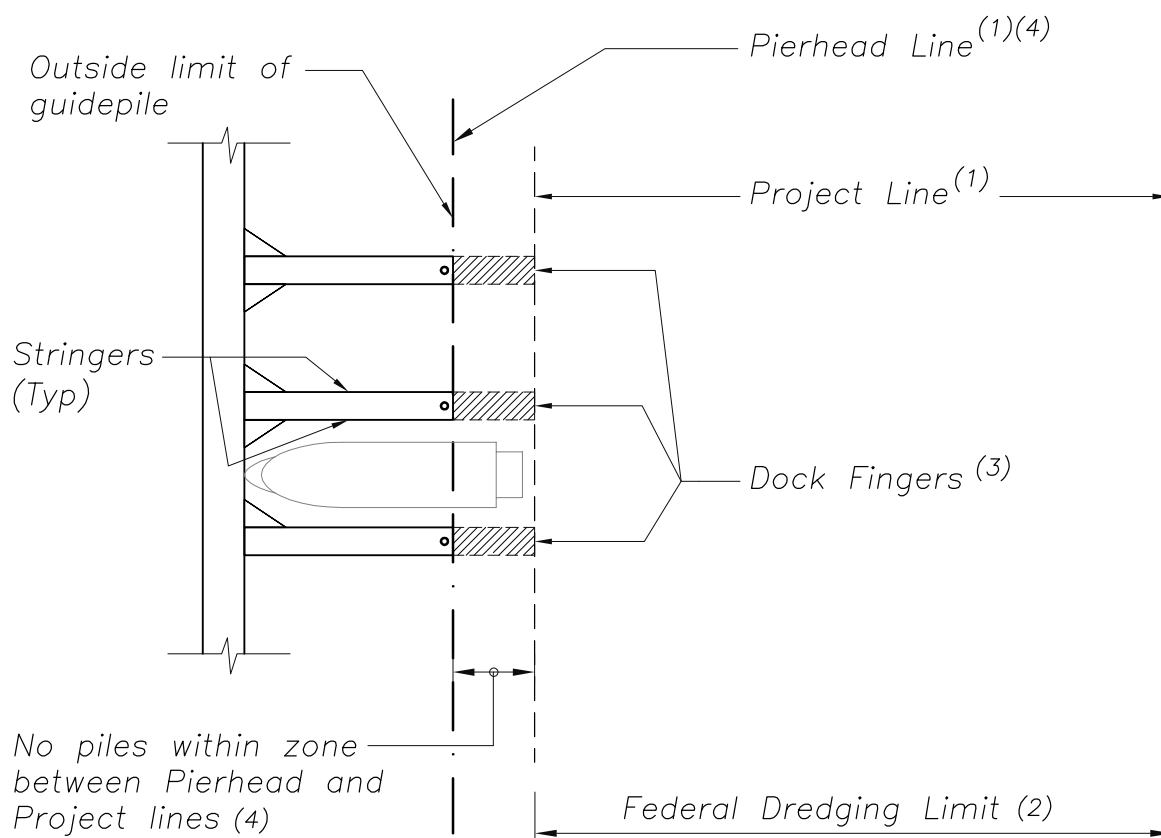
Chris Miller
Administrative Manager
Public Works

CITY OF NEWPORT BEACH WATERFRONT PROJECT GUIDELINES AND STANDARDS

HARBOR DESIGN CRITERIA COMMERCIAL & RESIDENTIAL FACILITIES



2017 EDITION



- (1) Pierhead and Project lines are established and managed by the federal government.
- (2) Portions of floating docks that extend into Federal Dredging Limit must be removed by the dock owner at dock owner's cost, when the federal government conducts periodic dredging operations.
- (3) Dock fingers must be designed and constructed in such a way that provides structural integrity of the fingers to resist lateral impact and mooring line loads without guide piles at the finger ends. Continuous structural stringers and/or special moment and shear-carrying splices must be engineered and submitted to the Building Department for approval.
- (4) The City council has allowed exceptions for dock construction beyond the Pierhead Lines as noted in Council Policy H-1.

DOCK ARRANGEMENT CASE 9B

ATTACHMENT G

RESOLUTION NO. 2019-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AFFIRMING THE HARBOR COMMISSION'S DENIAL OF AN "APPROVAL IN CONCEPT" (PROJECT FILE NO. 2585-2018) FOR THE REMOVAL AND REPLACEMENT OF A DOCK SYSTEM AT THE PROPERTY LOCATED AT 939 VIA LIDO SOUD

WHEREAS, an application for an Approval in Concept ("AIC") was filed by **Mark Conzelman** to remove the existing gangway and U-shape float and replace it with a new gangway lobe, gangway and reconfigured U-shape float ("Project") at the property located at 939 Via Lido Soud, City of Newport Beach, County of Orange, State of California ("Property");

WHEREAS, Newport Beach Municipal Code ("NBMC") Section 17.50.030(B)(4) requires City of Newport Beach Public Works Director to issue an AIC for all development areas where the Coastal Commission retains coastal development permit authority;

WHEREAS, the Property is located within the coastal zone;

WHEREAS, on or about October 2, 2018, the Public Works Director denied the application and determined that the Project did not comply with NBMC Section 17.35.030(A) and Council Policy H-1 (Harbor Permit Policy) in that the gangway and reconfigured U-shape float (currently permitted to extend up to the pierhead line) would extend 16 feet beyond the pierhead line;

WHEREAS, NBMC Section 17.65.010(A) authorizes appeal of the Public Works Director's decision to the City of Newport Beach Harbor Commission by any interested person;

WHEREAS, on or about January 15, 2019, Swift Slip Dock and Pier Builders, Inc. on behalf Mark Conzelman ("Appellant") filed a timely appeal of the decision with the basis of the appeal, in pertinent part, being the following: the dock will accommodate the applicant's larger vessel and most of the residential docks from 939 Via Lido Soud to Via Waziers on Via Lido Soud extend to the project line;

WHEREAS, on or about February 13, 2019, the Newport Beach Harbor Commission held a public hearing in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. Notice of the time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et. seq.* ("Ralph M. Brown Act") and NBMC. Evidence, both written and oral, was presented to, and considered by, the Harbor Commission at the public hearing. At the conclusion of the public hearing, the Harbor Commission voted to uphold the Public Works Director's decision to deny the Project;

WHEREAS, on or about February 26, 2019, the Appellant filed a timely appeal of the Harbor Commission's decision with the basis of the appeal, in pertinent part, being the following: the Project will not affect navigation, adjacent property owners or existing harbor uses;

WHEREAS, on or about May 28, 2019, the City Council held a public hearing in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. Notice of the time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at the public hearing;

WHEREAS, NBMC Section 17.50.040(A) authorizes the City to issue Harbor Development Permits upon the determination that a new permit and/or a revision to an existing permit conforms to the design criteria and all applicable standards and policies in conjunction with plan reviews by the Public Works Department;

WHEREAS, NBMC Section 17.35.030(A) does not allow piers and floats to extend beyond the pierhead line unless approved by Council Policy H-1;

WHEREAS, Newport Beach Council Policy H-1 provides that a pier or float may not extend beyond the pierhead line unless the Harbor Commission makes a determination that such extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses; and

WHEREAS, after consideration of an appeal, NBMC Section 17.65.040(F) authorizes the reviewing body to affirm, modify or reverse the original decision.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: Pursuant to Title 14, Division 6, Chapter 3 of the California Code of Regulations ("CEQA Guidelines") Section 15270, projects which a public agency rejects or disapproves are not subject to CEQA review.

Section 2: The City Council does hereby affirm the Harbor Commission's decision and denies the Project. The City Council's decision is made in accordance with NBMC Section 17.50.040 and is supported by the following findings and facts:

A. Section 17.50.040(A) and (B)(1). The Project does not conform to the policies in conjunction with plan reviews by the City.

Facts in Support of Finding. The Project does not conform to the Harbor Design Guidelines Figure 10A in that the two piles at the end of the finger extend beyond the federal dredging limit. In order to allow the two piles to extend beyond the federal dredging limit, the Building Official must find there are practical difficulties in carrying out the provisions of the code and a special individual reason exists for making the strict letter of this code impractical. Additionally, the Building Official must find that the modification complies with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. California Building Code Section 104.10.

B. Section 17.35.030(A). Piers and floats may not extend beyond the pierhead line unless approved by Council policy as may be amended from time to time.

Facts in Support of Finding. As proposed, the Project does not comply with Section 17.35.030(A) in that the pier would extend 16 feet beyond the pierhead line.

C. City Council Policy H-1. Piers and floats may extend beyond the pierhead line, as an exception to Section 17.35.030(A), if the Harbor Commission makes a determination that such extension will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.

Facts in Support of Finding. The Project is located in an area congested with various harbor uses. The Project is located on a curve on the easterly tip of Lido Isle, opposite Bay Island, across from the designated short-term anchorage area and the Newport Harbor Yacht Club mooring field at the convergence of two navigable channels. The navigable channel is 256 feet wide with significant congestion between the anchorage and Newport Harbor Yacht Club mooring field. Additionally, the Project, as proposed, could accommodate an 85-foot vessel that would extend by as much as 18.5 feet into the navigable channel. Therefore, the Project, as proposed, does not comply with Harbor Policy H-1 in that it would negatively impact navigation, adjacent property owners and existing harbor uses.

D. Section 17.50.040(B)(2). The Project is likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor.

Facts in Support of Finding. The Project is located in an area congested with various harbor uses. The Project is located on a curve on the easterly tip of Lido Isle, opposite Bay Island, across from the designated short-term anchorage area and the Newport Harbor Yacht Club mooring field at the convergence of two navigable channels. The navigable channel is 256 feet wide with significant congestion between the anchorage and Newport Harbor Yacht Club mooring field. Additionally, the Project, as proposed, could accommodate an 85-foot vessel that would extend by as much as 18.5 feet into the navigable channel. Therefore, the Project, as proposed, does not comply with Harbor Policy H-1 in that it would negatively impact navigation, adjacent property owners and existing harbor uses.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

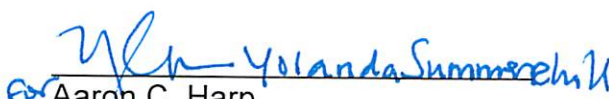
ADOPTED this 28th day of May, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney