

ATTACHMENT A

RESOLUTION NO. 2019-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING THE RESIDENTIAL DOCK RECONSTRUCTION PROJECT (FILE NO. 2585-2018) 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 December 11, 2018, the Public Works Director determined 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 determination to the City of Newport Beach Harbor Commission by any interested person;

WHEREAS, on or about December 13, 2018, Swift Slip Dock and Pier Builders, Inc. on behalf Mark Conzelman ("Appellant") filed a timely appeal of the determination 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: Title 14, Division 6, Chapter 3 of the California Code of Regulations (“CEQA Guidelines”) Section 15301 (Class 1) applies to the “operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” The Project is an existing facility that has existed for several decades. The overwater coverage of the Project will increase from 1,287 square feet to 1,765 square feet. The Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301.

CEQA Guidelines Section 15302 (Class 2) applies to the “replacement or reconstruction of existing structures and facilities where the new structures will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced[.]” The Project is in the same location and is substantially the same size, purpose and capacity as the dock system it replaces. The overwater coverage of the Project will increase from 1,287 square feet to 1,765 square feet. The Project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15302.

Section 2: The City Council does hereby reverse the Harbor Commission’s decision and approves the Proposed Dock Configuration at 939 Via Lido Soud, attached hereto as Attachment A, and including the special conditions also set forth in Attachment A, which is incorporated herein by this reference. Additionally, the Project is conditioned so that any vessel berthed at the float shall not extend past the end of the float by more than fifty percent (50%) of the beam (i.e. overall vessel width). 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 conforms to the policies in conjunction with plan reviews by the City.

Facts in Support of Finding. The Project conforms to the Harbor Design Guidelines. Although the two piles at the end of the finger may extend beyond the pierhead line, the extension may be authorized by the Building Official if 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. The Building Official has reviewed the plans and found 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 subject to City Council Policy H-1 which authorizes such extension provided the Project will not negatively impact: (1) navigation; (2) adjacent property owners; and (3) existing harbor uses.

Facts in Support of Finding. The Project will not negatively impact (1) navigation, (2) adjacent property owners or (3) existing 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 near the convergence of two navigable channels. With respect to (1), the navigable channel in front of the Property to the anchorage is 256 feet wide, which provides adequate space to navigate the channel. With respect to (2), the Project will not interfere with adjacent property owners as evidenced by correspondence of support for the Project from adjacent property owners at 929, 933, 941 and 944 Via Lido Soud. With respect to (3), the Applicant provided evidence that the Project would have no impact on harbor dredging as the closest piling to the federal project line is set back five feet. Additionally, correspondence from the former Harbor 20 Fleet Captain indicated the Project would not negatively affect sailboat racing in the area of Newport Harbor east of Lido Isle. No other evidence was submitted that the Project would have a negative impact on existing harbor uses.

C. Section 17.50.040(B)(2). The Project is not likely to create navigational congestion, or otherwise interfere with the rights of other harbor permittees within Newport Harbor.

Facts in Support of Finding. As indicated above, the navigable channel in front of the Property to the anchorage is 256 feet wide, which provides adequate space to navigate the channel. Additionally, correspondence in support of the Project was submitted from the adjacent property owners at 929, 933, 941 and 944 Via Lido Soud. The Applicant provided evidence that the Project would have no impact on harbor dredging as the closest piling to the federal project line is set back five feet. Finally, correspondence from the former Harbor 20 Fleet Captain indicated the Project would not have an impact on sailboat racing in the area of Newport Harbor east of Lido Isle. No other evidence was submitted that the Project would have a negative impact on 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 by 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.

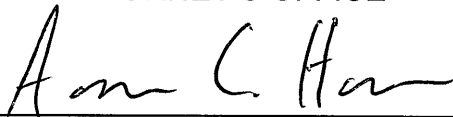
ADOPTED this 11th day of June, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment A: Proposed Dock Configuration at 939 Via Lido Soud including Special Conditions

ATTACHMENT A



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

DRAWN:

Checked

REVISION

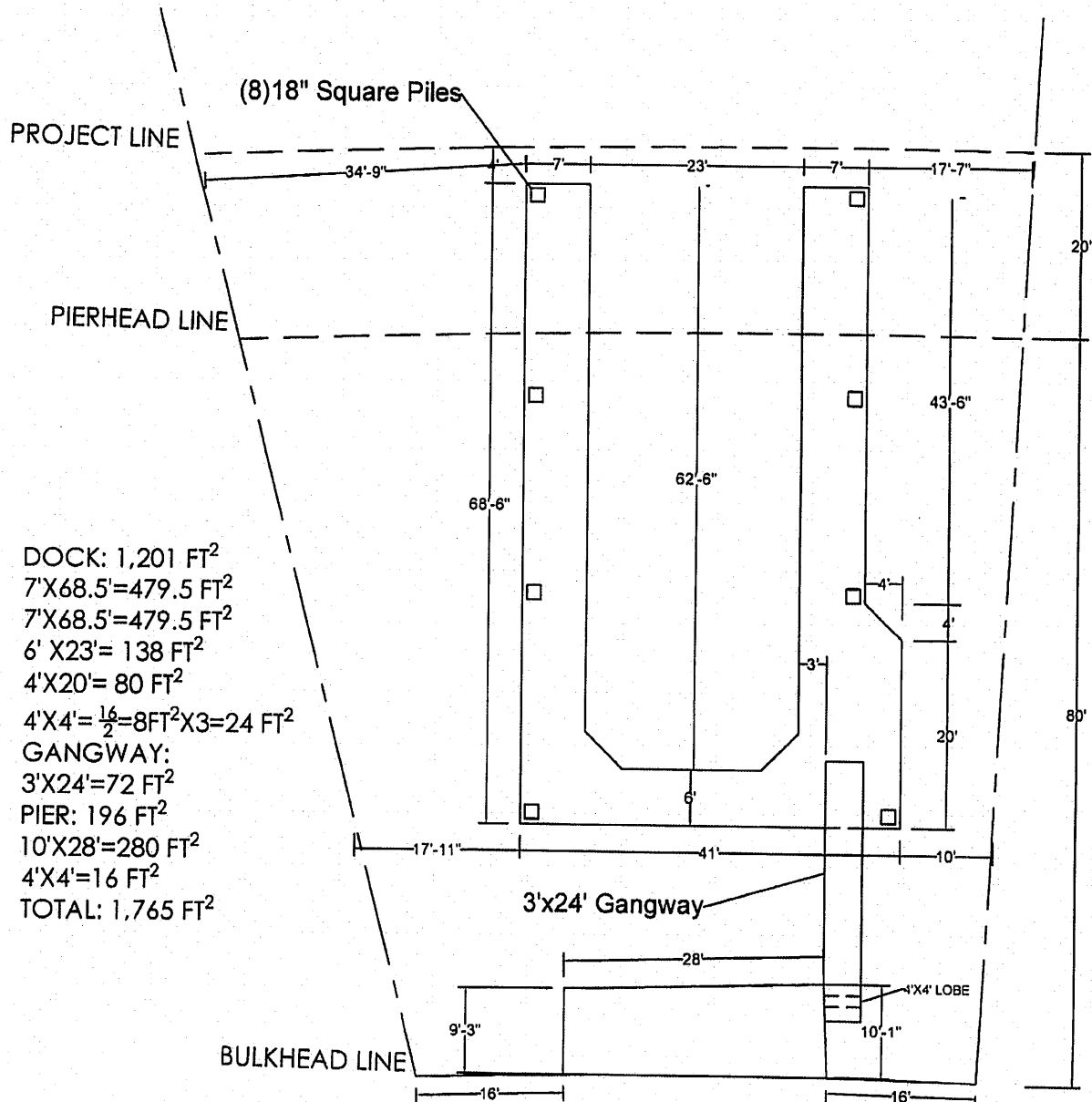
DATE:

AMENDMENTS:

REV.	DESCRIPTION:	BY:	DATE:
-	----	-	-
-	----	-	-
-	----	-	-

SITE

939 VIA LIDO SOUD NB, CA. PROPOSED





Public Works
100 Civic Center Drive
Newport Beach, CA 92660

Special Conditions

June 11, 2019

939 Via Lido Soud

With reference to the plans currently under consideration at the above referenced address to remove the existing gangway and U-shaped float, and replace with a new gangway lobe, gangway and reconfigured U-shape float, the following conditions will now be in effect:

1. The project proponent is aware of the Harbor Permit Policies (Council Policy H-1) and Title 17 of the City of Newport Beach Municipal Code. The project proponent understands that the above referenced project and structure(s) are subject to all applicable federal, state, county and City of Newport Beach statutes, rules, ordinances, laws, and regulations, including but not limited to these Policies and Codes.
2. Any future work on the above mentioned structure(s) beyond that which is expressly permitted herein may require permits from the City of Newport Beach and any other applicable agencies. Painting and work considered to be cosmetic in nature does not require a permit. This approval does not extend to any changes to the operational characteristics, structures, and project beyond those expressly included as part of this approval.
3. The conditions set forth in this document pertain to the proposal to remove the existing gangway and U-shape float, and replace with a new gangway lobe, gangway and reconfigured U-shape float under consideration. Any future modifications or alterations may require additional and/or updated conditions which may override or change these conditions. These conditions supersede all past conditions associated with this property.
4. Only marine oriented uses are allowed on the pier, pier platform, gangway and float. Patio furniture, plants, etc. are not permitted.
5. In accordance with subsections A and B.3 of Newport Beach Municipal Code section 10.08.030, as amended from time to time or any successor statutes thereto, the project proponent shall obtain the proper permits for equipment and materials storage. Such subsections read "A. Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases: ... 3. For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."
6. The project shall be implemented in conformance with the current version of the City of Newport Beach Local Coastal Program - Coastal Land Use Plan.

7. The project proponent acknowledges that the noise regulations in Newport Beach Municipal Code Section 10.28.040, as amended from time to time or any successor statute thereto, apply. Such Section 10.28.040 reads, in pertinent part: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."

8. Your side property lines extend in the water along their same bearing. Vessels shall not encroach upon the neighbor's property on either side.

9. Vessels berthed at the float shall not extend past the end of the float by more than fifty percent (50%) of the beam (i.e. overall vessel width) per the City Council's decision on June 11, 2019 and per Resolution 2019-48.

10. All required insurance shall be maintained in full force and effect during the pendency of this Approval In Concept.

11. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless the County of Orange, its Board of Supervisors, the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Approval in Concept, the applicant's exercise of this Approval in Concept, the activities of the applicant carried on under authority of this Approval in Concept, and/or any related California Environmental Quality Act determinations. This indemnification shall include, but not be limited to, damages awarded against the County or the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, County or City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the County or City for all of County or City's costs, attorneys' fees, and damages which County or City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the County and/or City upon demand any amount owed to the County or City pursuant to the indemnification requirements prescribed in this condition.

Chris Miller, Public Works

Date

Applicant Signature

Print Name

Date

Joint Pier Applicant Signature (if applicable)

Print Name

Date