

**REGULAR MEETING MINUTES
SAN RAFAEL PLANNING COMMISSION
NOVEMBER 13, 2007**

ROLL

APPROVED

Commissioners Present: Chair Colin, Vice Chair Kirchmann, Lang,
Mills, Paul, Pick, Sonnet

Commissioners Absent: None

Community Development: Bob Brown, Community Development Director
Katie Korzun, Economic Development Coordinator
Nadar Mansourian, City Traffic Engineer
Andy Preston, Public Works Director

AGENDA

CONSENT CALENDAR

RECOMMENDED ACTION

1. Minutes, October 9, 2007
2. Minutes, October 23, 2007

PUBLIC HEARING

3. **Intersection of Third and Union Streets** – Request for General Plan Amendment to establish an acceptable Level of Service (maximum amount of vehicular delay) to allow modifications to this intersection for improved pedestrian and bicyclist safety
Applicant: City of San Rafael; Case No. GPA07-01.
Project Planner: Bob Brown
Environmental Review: Addendum to EIR
4. **740 Francisco Blvd. West (Nissan dealership)** – Request for Environmental and Design Review, use Permit and Sign Program to remodel an existing dealership and operate a new auto franchise; APN: 013-041-47, 4f8 & ptn. 29; Francisco Blvd. West Commercial Zone (FBWC); Peter Sonnen, applicant; Francisco Blvd. West Investors, LLC, owner; Case Nos.: ED07-0069, UP07-039m SR07-070
Project Planner: Katie Korzun
Environmental Review: Categorically Exempt
5. **700 Francisco Blvd. West (VW/Audi dealership)** – Request for Environmental and Design Review, Use permit and Sign Program for the construction and operation of a new 56,400 sq. ft. Auto dealership; APN: 018-014-49, 29, 12; Francisco Blvd. West Commercial (FBWC); Peter Sonnen, applicant; Francisco Blvd. West Investors, LLC

and Baxter Limited Partners, owners; Case Nos.: ED07-069, Up07-040, SR07-71, ND07-04

Project Planner: Katie Korzun

Environmental Review: Mitigated Negative Declaration

6. **8 Portofino Road, 4 Portofino Road and 154 Canal Street** - Appeals of three conditionally approved Tidelands Permits for construction and modification to existing docks: APN's: 017-191-28, -29, -30; Marine-Canal Overlay (M-C) District; owners: Bruce Blakely (8 Portofino Road), Sam Ferguson/Laura Albini (4 Portofino Road), Larry Luckham (154 Canal Street); Larry Luckham, appellant; File No.: AP06-001.

Project Planner: Bob Brown

Environmental Review Categorically Exempt

DIRECTOR'S REPORT

COMMISSION COMMUNICATIONS

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PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

APPROVAL OR REVISION OF ORDER OF AGENDA ITEMS

AYES:	Commissioners:	Chair Colin, Vice Chair Kirchmann, Lang, Mills, Paul, Pick, Sonnet
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None

PUBLIC NOTIFICATION OF MEETING PROCEDURES

Chair Colin explained for the benefit of the audience the Public Hearing procedures to be followed.

URGENT COMMUNICATIONS - None

CONSENT CALENDAR

1. Minutes, October 9, 2007

Chair Colin asked for a motion.

Commissioner Kirchmann moved and Commissioner Paul seconded, to approve the October 9, 2007 minutes as amended. Motion carried. Mills abstained.

AYES: Commissioners: Kirchmann, Paul, Chair Colin, Lang, Pick, Sonnet
NOES: Commissioners: None
ABSENT: Commissioners: None
ABSTAIN: Commissioners: Mills

2. Minutes, October 23, 2007

Chair Colin asked for a motion.

Commissioner Paul moved and Commissioner Mills seconded, to approve the October 23, 2007 minute as amended. Motion carried. Chair Colin, Pick & Sonnet abstained.

AYES: Commissioners: Paul, Mills, Kirchmann, Lang
NOES: Commissioners: None
ABSENT: Commissioners: None
ABSTAIN: Commissioners: Chair Colin, Pick, Sonnet

PUBLIC HEARINGS

- 3. Intersection of Third and Union Streets** – Request for General Plan Amendment to establish an acceptable Level of Service (maximum amount of vehicular delay) to allow modifications to this intersection for improved pedestrian and bicyclist safety
 Applicant: City of San Rafael; Case No. GPA07-01.
Project Planner: Bob Brown
Environmental Review: Addendum to EIR

Bob Brown, Director, summarized the staff report and recommended that the Commission take the following action: Adopt a resolution 1) recommending that the City Council approve modifications to the Third and Union intersection, exempting the intersection from adopted Level of Service standards and establishing a new Level of Service standard for the intersection of LOS E with a maximum vehicular delay of 70 seconds in the AM peak hour; and 2) finding that the previously certified Final EIR for General Plan 2020 adequately addresses all potential environmental impacts associated with the proposed project.

Chair Colin opened the public comment on this item, and seeing no one wishing to speak, the Chair closed the public portion and brought the matter back to the Commission for discussion and action.

Commissioner Sonnet asked staff if the use of a “no turn” on red plays into this at all. Nadar Mansourian, Traffic Engineer, responded that “no right turn” on red would not help. They are separating north and southbound traffic completely.

Commissioner Sonnet asked staff if headed westbound on Third in the morning and crossing Irwin and Heatherton, would he sit through a number of light cycles. He wondered if that could be related to the 66-second average delay at the intersection. Engineer Mansourian responded that the delay figure related to congestion on Third and Union.

Commissioner Sonnet asked staff what delay would be added from the approved Loch Lomond marina project. Engineer Mansourian responded that Loch Lomond would only add 4 or 5 seconds.

Commissioner Sonnet asked staff if any retailers participated in the funding. Engineer Mansourian noted that Montecito Shopping Center paid for the improvements last year that was around \$100,000. A substantial amount of money would come from previously paid traffic mitigation fees.

Commissioner Pick asked staff if the Fire Department reviewed this plan. Engineer Mansourian pointed out that the proposal would not impact the Fire Department. Staff discussed the plans with the last two fire chiefs and the last few modifications were made to the driveway and access.

Commissioner Pick asked staff why there would be such a disproportionate impact on the AM peak traffic. Engineer Mansourian responded that the LOS is determined by conflicting movements and how signals work and that is why the LOS is worse during the afternoon because there is more volume from the shopping center. Staff further pointed out that cycles at the light will not be as long.

Commissioner Pick asked staff if the metering effect of this intersection is being made up by less delay at subsequent intersections to the west. Engineer Mansourian suspects westbound traffic will experience more of a delay. Coordination of signals with Third and Union is not present but will be included in the project to achieve lights working in a sequential basis at least in the morning to reduce the delay created. Commissioner Pick asked staff if the overall trip time would be impacted. Engineer Mansourian indicated that at times it would be impacted.

Commissioner Lang asked staff if they assumed every car westbound would stay westbound or would some take that right hand turn at Union and go around. Engineer Mansourian looked at projected volumes and as they implement these changes some of the volumes will be shifted. Commissioner Lang asked staff how much parking is being removed. Engineer Mansourian responded that about four or five spaces will be removed on Third to create this right turn lane.

Commissioner Paul stated that the current traffic exceeds LOS D basically in the AM period and even the PM period with anticipated future development. Engineer Mansourian noted that LOS in the morning has always been worse than the afternoon. It would be very difficult to have a different LOS standard between AM and PM and achieve the goal because the signals would operate the same.

Commissioner Mills asked staff if they set it at 70-second maximum average delay what if that maximum is exceeded. Director Brown noted that they cannot allow approval of a development project if traffic exceeds that limit without processing an EIR and City Council adopting an override. Commissioner Mills asked staff if the 70 seconds includes Loch Lomond project. Director Brown responded in the affirmative. Also, the future development assumed by the General Plan includes development of a portion of the Glenwood School and second units, but no Quarry development was considered. Commissioner Mills believed 70 seconds provides flexibility.

Commissioner Sonnet stated that the changes are long overdue. It is a very dangerous intersection as well as threatening and it must be addressed. His only question is Option 5 versus Option 4. They do not know what will occur with implementation of the Loch Lomond project. They are jumping without Loch Lomond from a 30 second delay to a 70 second delay, which is huge and without any checkpoints with the two major changes, he desired some ability of the Commission to review the incremental impacts of future development proposals. He supported the project, just recommended Option 5 to set the new LOS at a level which accommodates only existing traffic plus the Loch Lomond project. Director Brown expressed concern with Option 5 because the City is required by State law to have internally consistent General Plan. Staff would have some legal concerns if they estimated a certain level of development and only allowed traffic capacity for a lesser amount. In addition, this would mean that any new development project, no matter how small, that added traffic to Third and Union would be required to prepare and EIR to amend the LOS standards.

Commissioner Kirchmann asked staff if arterial segment LOS apply. Engineer Mansourian responded in the affirmative.

Commissioner Pick agreed with Commissioner Sonnet's notion that there should be checks along the way, but would be troubled to basically be rewriting the General Plan at this point, which would be discounting the General Plan. It would be a real problem to foreclose on any option of second units in the future, which is the lowest impact way that communities can generate affordable housing. Option 4 seems acceptable as the staff report outlines, but he is troubled if they are misconstruing the LOS design by limiting themselves within one LOS and wondered if that is a mistake. Commissioner Paul believed it is a mistake. It is better to get these pedestrian improvements for safety. He recommended LOS E with 80 seconds of maximum delay. Safety should not be sacrificed. This will help development in the San Pedro area. He felt it is important to make these improvements and not micromanage the LOS.

Commissioner Lang agreed with Commissioner Sonnet that the situation on the ground in reality should guide what is happening. However, those decisions have been made in the General Plan and this is not the place to revisit. They should set traffic LOS to anticipate development that for better or worse is included in the General Plan. Those projects should not have to come back and re-justify themselves. Also, they should not rollout the red carpet for additional development, which the 80 seconds would provide. They

adopted a plan of development and they should set the traffic as assuming that, which is the only sensible approach.

Commissioner Mills stated that Item 2 specifies maximum of 67 seconds of delay and her view that would be a compromise. Engineer Mansourian stated that methodology will change and LOS of 67 seconds may be a different number when they recalculate. Precise numbers will be much more difficult when they reach close to it for second units and other options. Also, they have to operate the intersection safely and they must make adjustments.

Commissioner Paul believed the 80-second threshold would provide plenty of leeway. Commissioner Sonnet stated that traffic is an issue and it should be a factor when considering development. Traffic is a major issue and suggested having this discussion again when development comes up. They must keep traffic in play as part of these decisions and not set it high. Commissioner Mills agreed.

Commissioner Pick is not ready to change the General Plan and can see the wisdom in the 70 seconds. They have a methodology, it is changing and they have a process. It is important to get this project done.

Commissioner Kirchmann will support the resolution proposed by staff. He is comfortable with the 70-second maximum delay. They would be astonished if all of the allowed growth under 2020 were to occur by 2020. Also, in the real world the freeway improvements on Highway 101 will be completed, which will offer some significant relief and they will see very significant improvement over the next year or so. Chair Colin agreed. Regarding the future, she knows how carefully and responsibly the City looks at traffic and trusts all future decision makers will move in the right direction.

Chair Colin asked for a motion.

Commissioner Kirchmann moved and Commissioner Pick seconded, to adopt the Resolution proposed by staff, which is a maximum AM and PM peak hour delay of 70 seconds. Motion carried 5-2. Lang/Sonnet opposed.

AYES:	Commissioners:	Kirchmann, Pick, Chair Colin, Mills, Paul
NOES:	Commissioners:	Lang, Sonnet
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	None

- 4. 740 Francisco Blvd. West (Nissan dealership)** – Request for Environmental and Design Review, use Permit and Sign Program to remodel an existing dealership and operate a new auto franchise; APN: 013-041-47, 4f8 & ptn. 29; Francisco Blvd. West Commercial Zone (FBWC); Peter Sonnen, applicant; Francisco Blvd. West Investors, LLC, owner; Case Nos.: ED07-0069, UP07-039m SR07-070
Project Planner: Katie Korzun

Environmental Review: Categorically Exempt

Katie Korzun, ED Coordinator, summarized the staff report and recommended that the Commission adopt the resolution conditionally approving the project.

- 5. 700 Francisco Blvd. West (VW/Audi dealership)** – Request for Environmental and Design Review, Use permit and Sign Program for the construction and operation of a new 56,400 sq. ft. Auto dealership; APN: 018-014-49, 29, 12; Francisco Blvd. West Commercial (FBWC); Peter Sonnen, applicant; Francisco Blvd. West Investors, LLC and Baxter Limited Partners, owners; Case Nos.: ED07-069, Up07-040, SR07-71, ND07-04

Project Planner: Katie Korzun

Environmental Review: Mitigated Negative Declaration

Katie Korzun, ED Coordinator, summarized the staff report and recommended that the Commission adopt the resolution adopting the Mitigated Negative Declaration; and adopt the resolution conditionally approving the Environmental and Design Review Permit, Use Permit and Sign Permit.

Kit Wong, Trans Systems, representing Peter Sonnen, stated that the Sonnen team is very excited about this project, bringing some design to the street and looking forward to doing business and bringing tax revenue to the City. From a designer's perspective, the site is extremely challenging. It is in the flood plain so the building must be raised up. It is on bay mud so pile supports are necessary. Also, there are challenges with the Caltrans take. The fly over structure blocks the visibility of the facility from the highway. They understand the challenges and the solution is an urban approach to dealerships. They looked at a configuration of bringing sales and service up one level, parking below. In regards to neighborhood noise, they want to be good neighbors and to the extent noise is generated by the facility they propose limiting hours of operation. In regards to lighting issues, they understand the need for good lighting and DRB's desires and they are glad to work with DRB in that regard. In regards to vibration, there are about 150 piles underneath the building and each pile is 100 to 110 feet long.

Chair Colin opened the public comment on this item.

Helen Simcox, RV Park resident, attended the DRB meeting asking for a soundwall and is surprised that the sound wall is not included but that reduced hours of operation are being considered. The RV park existed before the auto dealership and they deserve a soundwall. Also, parking occurs on Francisco Boulevard and there is a tremendous amount of traffic congestion, so it is impossible to get out of her driveway. She opposed the facility. She believed the design is out of character with the neighborhood. She opposed the warehouse feel. This is a neighborhood, not auto row. She requested that the Commission require a soundwall to reduce the noise impacts.

Richard Hall, representing San Rafael RV Park, stated several tenants are concerned about this facility. They all desire a soundwall, which will mitigate several complaints.

The noise impacts are significant from the car wash, driving of vehicles, and cigarette butts being thrown on the RV Park's property. Also, they have a loud steel door that opens constantly throughout the day. Employees are very loud during the night with their music. Horn honking occurs throughout the day along with car alarms. They were initially promised a soundwall and somehow the facility was built without the soundwall. Several of the nuisances could be mitigated with a soundwall and urged the Commission to require the applicant to install a soundwall.

Dennis Gadorian, RV Park resident, concurred with the previous two speakers and urged the Commission to require the applicant to install a soundwall to help mitigate the noise impacts.

Rick Thompson, RV Park resident, expressed concern for the hours of operation and the noise impacts and requested a soundwall as well.

Fred Bicardo, RV Park resident, stated that money comes in the front and noise goes out the back. The alleyway runs the entire length of both lots and loud noise is generated from the facility at all times of the day and night. He desired a soundwall and would greatly appreciate the Commission requiring the applicant to install a soundwall.

Herman Tribet, RV Park resident, would appreciate a soundwall being installed to mitigate the noise impacts being generated from the facility. Also, a locked gate would be beneficial to enforce the hours of operation, so no employees would be onsite making noise and impacting the neighborhood during late hours.

Commissioner Pick asked staff if there are any conditions of approval of the existing VW/Audi dealership regarding a soundwall. Coordinator Korzun is not aware of any soundwall conditions. Architect Wong discussed the floodgate and explained that the gate is due to the FEMA flood zone. Because there is a level underneath the flood elevation the entire level of the structure must be enclosed, so it is designed as a bath tub. That gate is \$35,000 and is required and used to close off the facility and basement. Also, Sonnen does not tolerate such behavior indicated by the public and those issues will be investigated and would be addressed through better communication with the neighborhood. They must run a business and understand the need to operate as quietly as possible and would be very open to curbing the loud music and late hours of operation.

David Haley, General Manager, noted that the day shift starts at 7am and nightshift starts at 4pm. He was surprised by the concerns of the neighbors since he personally had maybe two complaints in the last few years. He was not aware of employees not acting in a neighborly fashion. The current service hours are open until 11pm and they propose 9pm at night with the start time being the same.

Commissioner Kirchmann asked about the soundwall promised when the facility was initially built and their willingness to install a sound barrier. Architect Wong does not recall any discussion of a soundwall condition requiring a soundwall. The existing floor for the service area is approximately 7 feet above grade and having an 8-foot tall

soundwall would not mitigate the noise impacts. If the sound is coming from a certain source such as car horns and loud music that is an isolated area and a willingness to help mitigate these impacts. The site is supported on piles, so a soundwall will have a very big structure below ground and building a soundwall the entire length of the property line would be upwards of \$1 million.

Commissioner Paul asked if flood proofing is needed on the new building. Architect Wong responded that the existing parking area was designed for activity at the basement level. The proposed ground level is only for parking and water can pass through. The basement in the old building is depressed three feet, which triggered the FEMA requirement to make it flood proof, so the floodgate must be maintained. Architect Wong added that with the new facility, the higher level in the basement is advantageous.

Commissioner Paul asked if lighting levels generated inside the building as well as outside were taken into consideration. Architect Wong responded in the affirmative. They propose 20 foot- candles, which is comparable to lighting levels for Border's and Toys-R-Us. The lights are shielded and there are no visible light sources from the street.

Commissioner Mills is not hearing a sound screening method as indicated in the DRB minutes other than changes in operating hours. The DRB reviewed this item three times and was quite pleased with the design at the end of their review, but desired a sound screening method to be worked out with staff. Architect Wong discussed with staff and described the scenario of a soundwall and its effectiveness. In discussions with staff, they felt elimination of the source of noise generation is more effective than a barrier.

Commissioner Mills believed it is more than sound, but privacy issues as well. She is not sure that talking to the employees will mitigate the issues. She added that an incredible disturbance is occurring to the RV Park residents and any business must respect their rights, which she does not see happening. This is a beautiful design, but a major hole in regard to the neighbors. Commissioner Mills asked the architect to work with the neighbors because communication is needed to resolve the issues. General Manager Haley has not heard any consistent complaints from the neighborhood, but after hearing the public testimony tonight, he will be happy to investigate the issues. He could not challenge any of the issues and they will respond. He cannot comment on a soundwall, but they will take the comments very seriously.

Commissioner Mills asked about the plant selections and the proportion of native plants. The project landscape architect stated that native plants are being used to the degree it is possible. Most of the plants on this palette for all of the West Francisco frontage are non-native, but are native-like with similar tolerances. There is a variety in texture and color of plant species that all work together. Architect Wong noted that they intend to clean up invasive species and bring it back to a natural state and there is a desire to fence off the area..

Commissioner Mills asked if there is a planting design that could answer the question of

sound. The landscape architect stated that plant materials would help to a limited extent, but it must be a different set of plants, mostly dense and evergreen, which are not the kinds of groupings of plants that are the current trend. Coordinator Korzun noted that plants are being added in the drainage way. There is a fairly heavy growth of shrubs and trees down the entire property line now that were installed back in 1993. If a soundwall were to go in then the existing trees and shrubs would need to be removed, since there is a limited area for buffering.

Commissioner Lang asked Mr. Haley if he would accept as a condition of approval a requirement to utilize best efforts to eliminate unnecessary noise by meeting with the neighbors monthly to discuss operational issues and set up a complaint process if this should not be fruitful. Mr. Haley agreed.

Commissioner Sonnet asked if all inside and outside lighting is turned off at night. Architect Wong responded that at night interior lights are on at about the 5-foot candle per square foot level. Also, exterior site lighting is on for security purposes.

Commissioner Sonnet asked if planting along the street frontage would go into the bay mud. Architect Wong responded that it is on bay mud, but there is 2 feet of workable topsoil that supports some growth. The landscape architect noted that there would be gentle mounding and berming.

Commissioner Sonnet hoped the landscaping is better than what was done in front of the Home Center. Landscape architect indicated that the West Francisco plant palette generally includes rather small trees. They will use larger container sizes for the trees than were installed at the Home Center.

Chair Colin asked about the debris being thrown across to the RV Park. Mr. Haley will address the issue with the employees. There are designated break areas for employees. They must review the operational issues and eliminate that behavior.

Commissioner Sonnet suggested a night watchman to be onsite in order to address some of the issues. Mr. Haley responded that they are definitely considering a patrol company to keep the facility secure.

Mr. Hall would appreciate a smoking ban in the area adjacent to their RV Park to mitigate the issues. Customers come through and throw cigarettes on the RV Park property as well. A soundwall along with mature trees would be beneficial. Mr. Haley clarified that they will address these issues with employees and where employees actually congregate during their break and work with the neighborhood in that regard.

There being no further public testimony on this item, the Chair closed the public hearing and brought the matter back to the Commission for discussion and action.

Commissioner Pick believed the noise problems are rather serious. A soundwall that would effectively mitigate the operational noise coming from the service bay would have

to be 14 to 15 feet high. Also, the lower floor used for parking was developed to be more than just auto storage and suggested locating the service at that level. With service at the lower level, then a modest soundwall with relocation of service will mitigate a great deal of public concerns. He reiterated that a modest soundwall, and relocation of service along with monitoring the hours of operation would mitigate the issues discussed by the public tonight. Commissioner Mills agreed with Commissioner Pick's comments and would support his suggestion.

Commissioner Paul believed a soundwall should be explored. He is not convinced that moving the entire service operation downstairs is advisable because it may impact their business. The problem with noise is that noise goes in all different directions. He thinks a modest soundwall such as an 8-foot soundwall would provide visual privacy and get some of the sound attenuated. Depending on the soundwall, if combined with landscaping as well that will help. He stated that the new building is a very handsome design, but is little concerned about the amount of glass. RAB does not create a strongly lit presence. He believed the DRB made great comments on the lighting levels and shielding the lights is appropriate, but believed a 90-day review of the lighting is well advised.

Commissioner Sonnet liked the design and overall project. Several ideas were discussed tonight such as relocating service bays, a soundwall, and he recommended a more thorough study to mitigate the issues as well as operational changes by Sonnen employees. He recommended a continuance to resolve the issues.

Commissioner Kirchmann appreciated the design of the building, which has come a long way. Noise from cars along the driveway can be solved with a relatively low soundwall. His sense is that a good portion of the most objectionable noise is coming from door at the back of the building, so some opportunity to devote direct attention to baffling that noise should be explored. He suggested considering a sound barrier toward the back along with a modest barrier along the rest of the perimeter. He agreed that the solution to the sound issues will require some careful thought and creativity and not a one-feature-solves-all approach. He has confidence that the ownership and design team can address the issue.

Commissioner Lang supported some type of quiet reflection to best resolve the problems.

Chair Colin agreed with eliminating the sound source and supports the idea of a soundwall, especially in the back of the facility.

Commissioner Pick noted for the record specific concerns that must be addressed:

- Vehicle or security gate at either end of the ramp to stop circulation occurring after hours;
- Privacy concerns must be addressed;
- Noise emanating from the back is being reflected and amplified at times; and
- Acoustical design by an engineer should be presented to address issues.

Commissioner Paul stated that although the RV Park has been there a long time it is an

oddity in the Francisco Boulevard area and the rest of the properties are commercial. It is helpful for the residents to realize that they are being surrounded by commercial development, so they can try to ask the applicant to respond as much as possible, but it is a reality.

Commissioner Pick heard a great deal of acceptance of that reality tonight, but he believed due to this pre-existing legal nonconforming use and valuable affordable housing site that they have an opportunity to impact in a positive and practical manner.

Coordinator Korzun noted that the applicant requested a continuance of 740 Francisco Blvd. to December 11th.

Commissioner Lang desired some thought to occur on these issue and believed an acoustical study is needed to address the problems.

Chair Colin asked for a motion.

Commissioner Lang moved and Commissioner Pick seconded, to adopt the Resolution adopting the Mitigated Negative Declaration for 700 Francisco Boulevard; and adopt the Resolution conditionally approving the Environmental and Design Review Permit, Use Permit and Sign Permit. Motion carried unanimously.

AYES:	Commissioners:	Lang, Pick, Chair Colin, Kirchmann, Mills Paul, Sonnet
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	None

Chair Colin asked for a motion.

Commissioner Paul moved and Commissioner Sonnet seconded, to continue 740 Francisco Blvd. West to December 11th to provide the applicant an opportunity to meet with the RV Park representative and an acoustical engineer to mitigate sound and privacy issues as discussed tonight.

Commissioner Kirchmann encouraged the neighborhood to work with applicant.

Motion carried unanimously.

AYES:	Commissioners:	Paul, Sonnet, Chair Colin, Kirchmann, Pick, Lang, Mills
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	None

The Commission took a short recess at 9:41pm.

6. 8 Portofino Road, 4 Portofino Road and 154 Canal Street - Appeal of three conditional approved Tidelands Permits for construction modification to existing docks: APN's: 017-191-28, -29, -30; Marine-Canal Overlay (M-C) District; owners: Bruce Blakely (8 Portofino Road), Sam Ferguson/Laura Albini (4 Portofino Road), Larry Luckham (154 Canal Street); Larry Luckham, appellant; File No.: AP06-001. Project Planner: Bob Brown Environmental Review Categorically Exempt

Bob Brown, Director, explained to the Commission that this item involves three appeals filed by the owner of 154 Canal Street to Tidelands Permits that were granted in 2006 for three properties in the Canal basin between Portofino Road and Capri Court. The docks in question were originally built in the 1960s as common facilities and were used by various property owners around the basin. The last Canal dredging causing changes to be made by the owners in the shared dock structures that resulted in the need for the Tidelands Permits. The first dock to be modified was that associated with 8 Portofino, by Mr. Blakely and Ms. Trac. They replaced the previous dock in 2004 in the same location, but added an additional float between the dock and the shore. The next modification was made by Mr. Luckham, the owner of 154 Canal Street. He modified what was originally a 3-berth dock into a 2-berth dock, eliminating what was formerly Berth 1 and extending the finger dock by 11 feet to the north. Staff then provided slides showing the original dock configuration, and the modifications made by Mr. Luckham which shifted the entire structure about 3 feet to the west. The Tideland Fill Committee, after significant back-and-forth between the property owners requesting additional information since these applications were all contingent upon and related to one another, decided to approve the modifications made by Mr. Luckham with a requirement that the 11 foot extension to the westerly finger dock be removed to improve navigability, or boat access, to a proposed replacement dock for 4 Portofino, property owned by the Ferguson's. The Committee also approved a dock location for 4 Portofino, subject to submittal of new, accurate plans, and finally approved the replacement dock for 8 Portofino. The dispute between these three property owners relate to the ownership rights of these historic common-use docks. There is no longer a governing entity since the demise of the Newport Boating Association. Mr. Luckham asserts ownership rights over his portion of the dock structure due to his past maintenance efforts. The Tideland Fill Committee felt that determination of ownership rights is a civil matter and did not attempt to adjudicate who had what rights to what portion of the basin. Mr. Luckham has submitted a survey of the basin in the materials he provided to the Commission, and asserts that 8 Portofino's dock extends further into the basin than the property across the basin at 3 Capri. The materials the Commission received tonight from Mr. Blakely challenge the accuracy of this survey. Again, the Tideland Fill Committee did not feel the City had the legal authority from the Municipal Code to apportion rights to the basin. Instead, the Committee concluded that, while the previous dock configuration made access to Berth 1 difficult with a boat moored at the 8 Portofino dock, nonetheless, the previous configuration was functional for many years. The Committee concluded that it was the changes made to the structure by Mr. Luckham that resulted in the lack of a reasonable dock location to serve 4

Portofino, and therefore cited the reduced navigability to a dock in this location as the reason for requiring a return of the western finger dock to its previous length. Staff recommended that the Commission adopt the resolution denying the appeals and upholding the approvals of the Tideland Fill Committee.

Larry Luckham, appellant, provided documents to the Commission related to the history of the docks and what was done both in 1992 when this particular group of docks was built and what was done when he modified the docks in June of 2005. He took exception to some characterizations of what was done. He moved an existing dock, nothing was extended or built, but the existing dock fingers were moved 15 feet to make a landing. The length of what had then been the western finger was shortened when that move took place. The question of ownership is discussed in his documents presented to the Commission for their review. There was characterization about who used which slip historically and Berth 1 was used by 4 Portofino, which is not the case and provided photographs taken in 1980 and 1988 of the boats and owners at the time. Also, prior to the modification he made, there has always been an issue of some obstruction to former Berth 1 which has been addressed by various owners in the past. Photographs show previous owners of 8 Portofino dock blocking access to former Berth 1. Also, included in the packet is a letter he wrote to the previous owners asking them to consider a modification to their docks either bringing it closer to shore or lengthening it as with the long 105-foot dock on the eastern side, so with a longer dock or one built back in farther then there would not be this issue, which would solve all problems and concerns. He called attention to the whole issue of safe mooring and the current dock finger configuration is the minimum necessary to safely secure his boat. The standard for marine designs throughout the country is to have finger length and boat length approximately equal, never finger length substantially shorter. He pointed out that the obstruction or access issue for Berth 1 is the same as Berth 3 at the eastern side, which is not a problem because the eastern most finger of Berth 3 is 105 feet long with a 'T' at the end shared by two users. So those two users share 140 lineal feet of docking space and there is no interference. That option as well as pulling the 8 Portofino dock back in anywhere from 2 or 3 feet up to 8.5 feet, which is the amount that the dock projects into the basin farther than eastern-most dock, would solve all problems and create additional width.

Chair Colin opened the public comment on this item.

Bruce Blakely, 8 Portofino owner, noted that the information that Mr. Luckham presented to the Commission was not provided to him for his review. He explained that they first saw the survey three days ago on Friday, yesterday was a national holiday, so the first business day to submit any information was today and he still has no idea what was in the documents Mr. Luckham presented to the Commission. Mr. Luckham is extremely difficult and a contentious individual. His first objection is that he requested to be provided with information and moved to exclude whatever document was not previously submitted to the City as of last Friday when he filed his papers. He moved into his home in May of 2003. The home has a private dock and the only private dock in that basin and has been in place since 1960 before the other homes were built. The purpose of

the permit application with respect to his dock was to replace and repair an existing dock that was failing. It was repaired in 2004 and he was told by both the Senior Engineer and by the Deputy City Attorney that no permit was needed. After Mr. Luckham created this problem, then they were required to file for a permit. The condition of the dock was in dire emergency, in terrible shape, taking on water. It required constant pumping to avoid sinking. The decking was rotted and the gangway was threatening to fall through into the bottom of the canal. They needed to repair to prevent a hazard to the basin. Prior to repairing the dock, he consulted with the neighbors regarding their intention of repair in its present location. Mr. Luckham expressed no dispute with their intention of repairing the dock and endorsed their request and provided assistance in doing so. They added an additional 4-foot by 8-foot floatation area to avoid previous problems. The replacement dock did not affect or change navigation in the basin. In fact, other than an hour or two hours in the past 47 years, the dock has been in the identical location for the last 47 years. In fact, there was no problem with configuration of the dock until Mr. Luckham took away the dock of Mr. Ferguson. He pointed out that tonight several items were misrepresented in terms of the location of the gangway as well as an incorrect statement that the concrete wall was aligned with Ms. Green's property, which is not the case. Depiction that the gangway was 5 feet farther out is not an accurate statement as well. There are numerous other errors described in more detail in their papers submitted to staff. They requested that the Tideland Fill Committee approval of their application to repair their dock be upheld and that the Commission direct Mr. Luckham to reconstruct the community dock in its original configuration.

Lillian Trac, 8 Portofino Road resident, took exception to the accuracy of Mr. Luckham. Luckham's survey purporting that their dock and gangway do not occur at the top of bank and face a concrete wall. All photographic evidence shows otherwise. But the real issue they have tonight is Mr. Luckham's attempt to steal mooring space that does not belong to him. They are present because Mr. Luckham unilaterally removed a dock in front of the Ferguson's home in order to widen his own center slip. With his action, Mr. Luckham denied the Ferguson's their dock and limited their ability to install a dock with similar dimension to what had existed in the front of their property for over 40 years. Having been caught red-handed by the Tideland Fill Committee and ordered to refund the Ferguson's for their loss of their use of the basin, Mr. Luckham is again maneuvering to have someone else pay for his theft. If the Commission grants Mr. Luckham his appeal, the Commission would be legitimizing this theft. Mr. Luckham is using smoke and mirrors to justify his theft by arguing that the basin's width is not equitably shared amongst the property owners. She would like to note that when Mr. Luckham purchased his home, he was fully aware of the amount of mooring space that was allotted to him. He was also fully aware of the navigability issues in the basin. Their dock repair does not reduce the amount of mooring space in the basin. Their dock repair does not reduce the navigability of the basin. It is only Mr. Luckham's new dock installation that has limited the mooring space in the basin and reduced the navigability of the basin. They therefore asked that the Commission deny Mr. Luckham's appeal and uphold the Tideland Fill Committee's approval of their dock repair at 8 Portofino Road.

Sam Ferguson, 4 Portofino, noted that he is completely upset because Mr. Luckham has

manipulated the entire neighborhood, and has been relentless and unfair. At least 50% of his comments are false. He purchased his property in 2004 and ran into the problem of Mr. Luckham right away. He contacted all neighbors to understand the history. They found Mr. Luckham's statements mostly always false. Mr. Luckham dredged their property in 2004 and occupied two docks and refused to move a boat out of Berth 1 or Berth 2. The previous owner of 4 Portofino was a sailboat professional who became critically ill and passed away and during that time Mr. Luckham moved his boat into the dock and occupied it until he purchased the home, then they had the problem of getting Mr. Luckham out. He asked the Commission to thoroughly read the documents presented because they do not line up with Mr. Luckham's statements. He believed when the Commission studies the details, they would understand the facts. He has no dock to his home and no gangway. Mr. Luckham has not tried to work out this matter at all. Mr. Luckham is a neighborhood bully and predator and urged the Commission to uphold the Tideland Fill Committee's approval.

Arlene Sukolsky, Capri resident, stated that the Newport Boating Association was reactivated in 2006 and she is the secretary. She explained that the last year has been very contentious. They have gone through mediation, gone to hearings and been in front of the Tideland Fill Committee. All neighbors would agree to have the Commission uphold the Tideland Fill Committee's approval and support staff's recommendation.

Stan Carlson, Capri Court resident, explained some history about the docks that were designed for side tying. Docks need replacement. He replaced his three times with more modern techniques each time. He visited the site and could not believe that a boat is now in a slip. Slips are for Sausalito, Marin Yacht Club and Lock Lomond with tight quarters. Not one person has a private slip other than the exception of a separate dock, the rest was set up with gangways and side-tie docks without the use of pilings. Now, this boat is sitting right in the middle of the basin, which is owned by Mr. Luckham. No one approved it, no one likes it and it should not be allowed. This is a mission impossible and never should have occurred.

Douglas Traeger, 50 Canal resident, believes the Commission has the opportunity to avoid the bad history and is in a position to show the residents how to act like neighbors again.

Lloyd Watson, Sorrento Way resident, visited the dock today and this is a small cul-de-sac and three small boats can maneuver. Mr. Luckham made a horseshoe dock for himself, and the basin was never designed in that manner. Three boats should be able to tie in the area, which worked fine throughout the years until Mr. Luckham moved into the area.

Director Brown noted a few changes to the staff report on page 3 where it states, "12 feet" should be changed to state, "14 feet." Also, on page 5 the last paragraph in regard to staff's response, the third line down should state, "*the 45-day review period did not commence.*"

Chair Colin pointed out that on page 4 under the second paragraph it should state, "*Berth 4.*" Director Brown agreed.

Commissioner Kirchmann wanted to know how deep the water is inboard of the 8 Portofino dock. Mr. Blakely explained that there is no water. The photograph provided was taken in June of 2006 and mud builds up and will get another 2 to 3 feet lower. Mr. Blakely explained that on the outboard side his recollection is that the dredging took them down 6.5 feet below mean low tide. They have probably around 4 feet of clearance on the outboard side when it is extremely low tide. When he moved into his residence in 2003 it was not possible to boat in there and has been working with the neighbors to encourage the dredging of the basin.

Commissioner Kirchmann asked Mr. Blakely if the dock could be moved closer to his house at Mr. Luckham's expense. Mr. Blakely responded that it would not be in their best interest. They would have to dredge closer to their retaining wall. Mr. Blakely stated that if they moved the dock back, not only would it require cutting the gangway and physically moving the dock and hardware, but also require additional dredging that would create destabilization of the bank. Commissioner Kirchmann asked if it is feasible to move the gangway further north. Mr. Blakely stated that it would require a substantial amount of work.

Commissioner Kirchmann asked Mr. Luckham when he believed his application was "deemed approved", if building permit were been applied for and did BCDC approval was necessary. Mr. Luckham responded that he believed his application was deemed approved 45 days after the July 2005 Tideland Fill Committee meeting that no building permit had been applied for and BCDC approval was not required. He noted that the Water Quality Board and Army Corp is all part of the application package. Commissioner Kirchmann asked if completion certification with the Water Quality Board took place. Mr. Luckham indicated that he filed all the necessary documents.

Commissioner Kirchmann asked if fingers are needed on both sides of the boat. Mr. Luckham responded that both side fingers are not necessary.

Mr. Ferguson suggested having the western finger eliminated in order to open the bay, which would eliminate any navigation issue.

Commissioner Pick asked if the pier as it exists today in space is located in the precise location where there was formally the longer pier. Mr. Blakely stated that their dock was always a private dock, not connected, but adjacent to the sea shape dock shared by other property owners at the basin. Photographs provided depict the situation. Commissioner Pick discussed Exhibit 7 dated spring of 2004, the aerial view shows the L-shape dock and the beginning of three slips behind and asked if the present dock is located in the precise location of the old one. Mr. Blakely stated that it is adjacent to the C-shaped dock, not exactly touching it, but abutting it and yes it is in exactly the same location except they added a 4 by 8-foot flotation on the landward side of the northern-most end of the dock.

John Gonzales, 13 Portofino resident, attested that the last page in the staff report in regard to the dotted area represents what was in place when Mr. Ferguson purchased the house. In 2001, he moved into the area and the configuration was shown in regard to the photographs presented. The photograph in the packet reflects what he had seen several times before the reconstruction.

Mr. Luckham indicated that a licensed surveyor conducted the survey. The survey was done with proper GPS locating equipment and it is reasonably accurate. The purpose was to determine property lines and docks and other structures with respect to property lines. It is very clear from the survey that, if they are talking about the usable space within that basin, which is the space within the inner boundaries of the docks and width is the critical issue; the basin property itself is 81 feet wide. The long wall on the eastern side is at an angle to the property line. He believes the docks first installed many years ago installed without the benefit of a survey and that was the source of the original error. In regard to moving the dock back in the condition around the perimeter of the basin, is the same all the way around. The fact that the eastern side is dredged that much closer to provide clearance under the eastern dock, that condition could be duplicated on the west side. While it would be very nice and equitable for the clearance to be the same on both sides, that is not necessary for the purposes of being able to moor three boats on that southern headwall successfully. The former Berth 1 space, which was 14 feet wide that was relocated could be duplicated by simply pulling the gangway back 8 feet at 8 Portofino. He volunteered several years ago to do that at his expense to resolve longstanding problems of access to that particular Berth 1, which he dealt with for many years as shown in the material he distributed. If ever there was an opportunity to resolve to all benefit now is the time.

Gary Scheiere, Sorrento Way resident, suggested that moving a dock back three feet they must check with a dredging company who is willing to do it. This is undermining the seawall. Just arbitrarily moving the dock back, dredgers are not willing to take on the liability.

There being no further public testimony on this item, the Chair closed the public portion and brought the matter back to the Commission for discussion and action.

Commissioner Pick has no idea in which context to chime in because it seems to be a legal issue and is not sure if they are qualified to deal with this. Chair Colin agreed and asked Director Brown for guidance. Director Brown desired a decision from the Commission to either grant the appeal or not. The legal direction given to the Tideland Fill Committee, is that the City does not have jurisdiction over ownership rights in the basin but should evaluate the changes made in terms of whether they limit navigability. Mr. Luckham modifications, in reality, shifted the docks over more to the center and over 3 feet. The Tideland Fill Committee stated that those changes changed the navigability and access to a dock for 4 Portofino.

Commissioner Lang sees no basis for overturning the permits that have been granted and

would not support granting the appeals. The root cause is the failure of the Newport Boating Association to manage this property. She is astonished that the Public Works Department would process this permit because none of these applicants own this property. The Tidelands Fill Committee got it right by maintaining the status quo to the immediate problem. The Newport Boating Association needs to get organized or they are going to allow this to tear their neighborhood apart. If not organized it creates problems. She would deny the appeals.

Commissioner Kirchmann believes that the fractures in neighborhood relations are too deep to result in a creative solution. The most expensive part of this process is sinking the new pilings and the position of new pilings at the end of what used to be the western part of Berth 1 is in an awkward position. There is an opportunity if all were creative to provide ample berthing for all, but realistically it will not be reached. There is a point raised in the appeal about the application for 154 Canal being deemed approved. The ordinance provides that an approval is only effective for one year and expires if no building permit is obtained. So if indeed the application was deemed approved it has since expired. He suggested that the entire western most finger be eliminated. That would not adversely affect the utility of the two existing berths and would maximize the opportunity of what used to be Berth 1. All of these suppositions about how the docks are affecting navigability depend on the size of the boat. In terms of final conclusion, getting back to what was the status quo, which is a W-shaped dock configuration makes sense. Also, it is very discouraging to see the animosity amongst neighbors. There were a lot of personal emotions expressed tonight and they must all focus on the facts in order to understand the appeal. He would like to see a better solution, but there is no basis for upholding the appeals.

Commissioner Pick stated that Berth 1 never existed in the old configuration if there was a boat moored at the 8 Portofino dock. In terms of the original configuration of the two piers, there does not seem to be any maneuverability for a significantly sized craft, other than a rowboat. In effect, there always were three berths against that headwall in the cul-de-sac. Now, change occurred. There is no way with the present configuration to affect a useful berth in that deep corner, but nor was it before. Commissioner Kirchmann agreed, but because the finger is shorter on eastern side, there is enough room on the other side of the basin.

Commissioner Mills believed it is less about logic and more about property rights and less about access and more about justice and that is where it leaves the Commission's realm and moves into a civil suit. She is afraid that if the neighbors cannot resolve these conflicts through the Association, then it will end up in court. She does not see any reason to uphold the appeals.

Commissioner Paul agreed with previous comments that no evidence was presented to uphold the appeals, so he would deny the appeals. Commissioner Sonnet concurred.

Chair Colin sympathizes for all the parties involved because there was no guiding body. It is not in their realm and desired a reasonable respectful solution to use the docks and

boats. She pointed out that having houses with common shared docks was the spirit. Director Brown stated that to determine ownership rights is the point of civil suits.

Commissioner Kirchmann suggested that, to the extent that a longer finger is necessary to provide safe for Mr. Luckham's boat swapping the longer finger on the eastern side of the berth might work as would as pulling the whole dock assembly closer into the shore.

Chair Colin asked for a motion.

Commissioner Mills moved and Commissioner Lang seconded, to deny the appeals and uphold the approvals of the Tideland Fill Committee. Motion carried. Pick abstained.

AYES:	Commissioners:	Mills, Lang, Chair Colin, Kirchmann, Paul, Sonnet
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	Pick

DIRECTOR'S REPORT - None

COMMISSIONER COMMUNICATIONS - None

ADJOURNMENT

By order of the Chair, the meeting adjourned at 11:25 pm.

Respectfully submitted,
Jessica Woods, Recording Secretary