

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Permit Application No. **5-14-0186**

Date: April 24, 2014

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**W9b****ADMINISTRATIVE PERMIT****APPLICANT:** Emily Vogler**AGENT:** Swift Slip Dock & Pier Builders, Inc.  
Attn: Peter Swift / Jacquelyn Chung**PROJECT DESCRIPTION:** Remove and replace 440 sq. ft. patio deck and 175 sq. ft. cantilever deck, over Promontory Bay fronting residence.**PROJECT LOCATION:** 434 Harbor Island Drive, Newport Beach, Orange County**EXECUTIVE DIRECTOR'S DETERMINATION:** The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

**May 14, 2014**  
**9:00a.m.**  
**Inverness Yacht Club**  
**12852 Sir Francis Drake Blvd.**  
**Inverness, CA 94937**

**IMPORTANT - Before you may proceed with development, the following must occur:**

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

**BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

CHARLES LESTER  
Executive Director

by: ZACH REHM  
Coastal Program Analyst

**STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS:** See pages **four (4) to six (6)**.

**EXECUTIVE DIRECTOR'S DETERMINATION (continued):**

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

**FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:**

**A. Project Location, Description, and Previous Commission Approval On-Site**

The subject site is located at 434 Harbor Island Drive, Newport Beach, Orange County (**Exhibit 1**). Single-family residences with decks and floating docks characterize the subject site and the surrounding area.

The project involves the removal of the existing 440 sq. ft. patio deck and 175 sq. ft. cantilever deck, and installation of a new deck of the same size, shape, and location. The proposed replacement deck will be constructed of 7" thick concrete reinforced with epoxy coated rebar. The deck project will serve an existing single-family residence and an existing adjacent floating dock. Total water coverage for the replacement deck will remain 175 square feet, extending five feet over the existing seawall/bulkhead (**Exhibit 2**).

An eelgrass survey will be required prior to commencement of construction. A *Caulerpa taxifolia* survey must also be conducted prior to commencement of construction. Therefore, the Commission imposes **Special Condition Nos. 2 and 3**, which identify the procedures necessary to be completed pre and post-construction. Also, if any *Caulerpa taxifolia* is found on the project site, Special Condition No. 3 identifies the procedures necessary to be completed prior to construction. The proposed project has received a

Harbor Permit/Approval In Concept from the Harbor Resources Division of the City of Newport Beach. The applicant's agent has sought approval from the U.S. Army Corps of Engineers for the deck replacement project.

The nearest public access to Newport Harbor is located at Beacon Bay public dock and beach, 1,100 feet away from the subject site. There is currently no lateral access along the coastline in this area of Promontory Bay and there will continue to be none pending approval of the proposed development.

The cantilever portion of the deck is located on privately-owned submerged land and/or within an area subject to public trust doctrine. **Special Condition No. 4** is imposed stating that the approval of a Coastal Development Permit for the project does not waive any public rights or interest that exist or may exist on the property.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach does not have a certified LCP, and the location of the deck remains in the original jurisdiction of the Commission. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

On April 18, 1977, the Commission unanimously approved Application Number A-4-4-77-543 and issued an Administrative Permit to Applicant Harry G. Long to construct a 42 foot by 24 foot float ramp and deck adjacent to an existing single-family dwelling.

On May 8, 2013, the Commission unanimously approved Application Number 5-12-262 and issued an Administrative Permit to Applicant Dan Flynn and Emily Vogler to remove an existing 446-square-foot U-shape floating dock, a 3' x 20' gangway, and three 10" diameter steel piles and install a new U-shape floating dock, gangway, and three piles, all of the same size, shape and location.

#### **B. Marine Resources**

The proposed cantilever deck is an allowable marine related use. The project design minimizes impacts of construction and installation. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. There are no feasible less environmentally damaging alternatives available. The project conforms to Sections 30224 and 30233 of the Coastal Act.

#### **C. Water Quality**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

#### **D. Local Coastal Program**

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

**E. California Environmental Quality Act (CEQA)**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**SPECIAL CONDITIONS:**

**1. Construction Responsibilities and Debris Removal**

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away as possible from the receiving waters and storm drain inlets.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

## 2. Eelgrass Survey(s)

- A. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- B. **Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this

permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

**3. Pre-construction *Caulerpa Taxifolia* Survey**

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
  - (1) for the review and approval of the Executive Director; and
  - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish and Wildlife (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**4. Public Rights**

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

**ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:**

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date of Signing



# Exhibit 1: 434 Harbor Island Drive, Newport Beach, Orange County



# Exhibit 2: Replacement deck site and framing plan

