

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260

PERMIT APPLICATION NO. 2-05-017
DECEMBER 22, 2005
PAGE 1 OF 6

**W16a****ADMINISTRATIVE PERMIT**

APPLICANTS: Anna and Kim Desenberg.

PROJECT

DESCRIPTION: Repair of existing access stairway, and repair, remodel, and 40 sq. ft. expansion of a boathouse, repair and remodel of decking, railings, bathroom and kitchen.

LOCATION: 12884 Sir Francis Drake Boulevard, Inverness, Marin 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 location:

DATE: January 11, 2006
TIME: Meeting Begins at 10:00 a.m., Item W16a
PLACE: Los Angeles Harbor Hotel
601 S. Palos Verdes St.
San Pedro, CA 90731
(310) 519-8200

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.

PETER DOUGLAS
Executive Director

By: Alfred L. Wanger
Title: Deputy Director

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 of interpretation of any 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

1. Disposal of Removed Debris. No construction materials, debris, or waste shall be placed in Tomales Bay. All construction materials, debris, and waste shall be removed from the site after project completion, and shall be legally disposed of outside of the Coastal Zone consistent with the proposed project description.
2. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from seismic activity, flooding, storm surge, waves, and tsunamis; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agent,

and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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 Description

The applicants request authorization for repair of an existing access stairway and an after-the-fact permit for: (1) the repair, remodel, and 40 sq. ft. expansion of a boathouse including the removal of dry rot damaged floor and roofing; (2) repair of 400 square feet of dry rot damaged decking; (3) replacement of 45 square feet of hand railings; and (4) removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence (Exhibit 4, Site Plans and Elevations). To remove and repair the damaged wood, the applicants would use hand held tools and a table saw. All material and debris collected from the development would be collected and hauled away to Marin County sanitary district transfer station in San Rafael, California.

The Commission had previously approved an after-the-fact permit (CDP No. 2-01-024) on August 9, 2002, which included the repair, remodel, and 40 sq. ft. expansion of the boathouse including the removal of dry rot damaged floor and roofing; repair of 400 square feet of dry rot damaged decking; replacement of 45 square feet of hand railings; and removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence. This permit required that, prior to issuance of the coastal permit, the permittee record a deed restriction. This permit was later extended until August 9, 2005. However, the permit expired before the permittee recorded the deed restriction required by the conditions of permit CDP 2-01-024. This applicant seeks after-the-fact authorization for the work that was previously approved as part of the now expired permit CDP 2-01-024.

B. Water Quality

The proposed development is located on the shoreline and over the mudflats of Tomales Bay. Tomales Bay is within the Gulf of the Farallones National Marine Sanctuary, one

of four national marine sanctuaries in California and one of thirteen in the nation. The Sanctuary was designated in 1981 to protect and manage the 1,255 square miles encompassing the Gulf of the Farallones, Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Bay, Estero San Antonio, Estero de Americano, Duxbury Reef, and Bolinas Lagoon. The Marin LCP emphasizes the importance of Tomales Bay on many levels. It provides important habitat for birds, marine mammals and over 1,000 species of invertebrates. In addition, sharks and rays spawn in the Bay. The Bay also supports a significant aquaculture industry.

Coastal Act Section 30231 requires that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Protecting the water quality and biological productivity of Tomales Bay is essential to preserving the Bay and the coastal resources it supports. Although none of the development is proposed in Tomales Bay, development would occur over the bay and adjacent to it. Removal of the damaged wood would generate dust and debris, which could degrade the water quality and biological productivity of Tomales Bay if they are allowed to enter the water, inconsistent with Section 30231 of the Coastal Act. Therefore, to prevent dust and debris from entering Tomales Bay, **Special Condition No. 1** prohibits the placement of any construction materials, debris or waste in the bay and requires the applicants to remove such materials from the project site after project completion.

Thus, as conditioned, the proposed development ensures that the proposed development would not significantly adversely affect the water quality and biological productivity of Tomales Bay. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

C. Hazards

Coastal Act policy 30253(1) states that new development shall minimize risks to life and property in areas of high geologic, flood and fire hazard. Although this site has not been flooded in the past, it is located in a 100-year coastal floodplain and is subject to potentially hazardous storm waves. Since the proposed development is located in a flood-prone area, there is some risk of extraordinary flooding that could result in destruction or partial destruction of the remodeled and enlarged boathouse or other development approved by the Commission. Given that the applicants have chosen to implement the project despite such hazard, the applicants must assume these risks. Accordingly, the Commission imposes **Special Condition 2** concerning assumption of risk, waiver of liability, and indemnity agreement.

Special Condition 2 requires the landowner to assume the risks of extraordinary seismic, wave, storm surge, tsunami, and flooding hazards of the property and waive any claim of liability on the part of the Commission. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Therefore, as conditioned, the proposed development minimizes risks to life and property in areas of high geologic, flood, and fire hazard and is consistent with Section 30253 of the Coastal Act.

D. Alleged Violation

Sometime in 2001, without benefit of a coastal permit, the applicants undertook development consisting of (1) the repair and remodel of a boathouse including the removal of floor and roofing damaged by dry rot; (2) the repair of 400 square feet of deteriorated decking due to dry rot; (3) replacement of 45 square feet of hand railings; and (4) removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence (Exhibit 5, Site Photographs). In September of 2001, the applicants applied for after-the-fact authorization of the above-mentioned development.

The Commission previously approved an after-the-fact permit (CDP No. 2-01-024) on August 9, 2002, which included the repair, remodel, and 40-foot expansion of the boathouse including the removal of dry rot damaged floor and roofing; repair of 400 square feet of dry rot damaged decking; replacement of 45 square feet of hand railings; and removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence. This permit required that, prior to issuance of the coastal permit, the permittee record a deed restriction. This permit was later extended until August 9, 2005. However, the permit expired before the permittee recorded the deed restriction required by the conditions of permit CDP 2-01-024. This applicant seeks after-the-fact authorization for the work that was previously approved as part of the now expired permit CDP 2-01-024.

Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the policies of the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

E. California Environmental Quality Act (CEQA)

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which 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.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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