

CALIFORNIA COASTAL COMMISSION

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Staff: FSY-LB
Staff Report: January 19, 2006
Hearing Date: February 8-10, 2006
Commission Action Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-05-291

APPLICANTS: Peter and Linda Segal

AGENTS: Swift Slip Dock & Pier Builders, Inc.

PROJECT LOCATION: 1600 South Bay Front, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Remove an existing dock system and install a new wooden dock system consisting of: a 6' x 40' finger, 10' x 14' pier platform, 3' x 24' gangway, 5' x 37' pier approach, 2-14" concrete pilings, and 4-14" "T" concrete pilings. The project will directly impact 1.1 square feet of eelgrass that will be transplanted on-site at a 1.2:1 ratio.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit #255 (225)-1600/Plan Check #1647-2005) from the City of Newport Beach Harbor Resources Division dated July 26, 2005.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project will result in unavoidable impacts to eelgrass. Staff is recommending approval of the proposed project subject to **Four (4) Special Conditions**, which are necessary to assure that the unavoidable impacts are minimized, that appropriate mitigation occurs, and that marine resources and water quality are protected. The special conditions are necessary in order to find the proposed project consistent with Sections 30230, 30231, and 30233 of the Coastal Act.

Special Condition No. 1 requires that the project conforms with the submitted Eelgrass Mitigation Plan. **Special Condition No. 2** requires pre and post-construction eelgrass surveys and, if impacts to eelgrass are discovered, these impacts will be mitigated pursuant to the *Southern California Eelgrass Mitigation Policy*. **Special Condition No. 3** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *Caulerpa taxifolia* within the project and buffer areas have been eliminated or 2) the applicants have revised the project to avoid any contact with *Caulerpa taxifolia*. **Special Condition No. 4** requires the applicants to follow Best Management Practices to ensure the continued protection of water quality and marine resources.

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 only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Regional Water Quality Control Board (RWQCB) letter dated August 8, 2005; Letter from Commission staff to Swift Slip Dock & Pier Builders, Inc. dated September 1, 2005; Letter from Swift Slip Dock & Pier Builders, Inc. to Commission staff dated November 3, 2005; Letter from Swift Slip Dock & Pier Builders, Inc. to Commission staff dated November 10, 2005; US Army Corp of Engineers (USACOE) letter received November 23, 2005; and *Eelgrass (Zostera Marina) Field Survey, Impact Assessment, and Conceptual Mitigation Plan for a Dock Renovation Project Located at 1600 Bay Front South, Balboa Island (Newport Beach), CA* prepared by Coastal Resources Management dated October 28, 2005.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Proposed Site Plan
 4. Proposed Site Plan with Eelgrass Location
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STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental

Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 this permit is reported to the Commission. 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 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.

III. SPECIAL CONDITIONS

1. Eelgrass Mitigation Plan

The applicants shall conform with the *Eelgrass (Zostera Marina) Field Survey, Impact Assessment, and Conceptual Mitigation Plan for a Dock Renovation Project Located at 1600 Bay Front South, Balboa Island (Newport Beach), CA* prepared by Coastal Resources Management dated October 28, 2005, which includes a five-year monitoring plan. The quantity of eelgrass mitigation to occur shall be as described in the approved mitigation plan, along with any additional eelgrass mitigation required pursuant to Special Condition No. 2 below. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Pre-and Post-Construction 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 Game. The applicants 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 new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in the final eelgrass mitigation plan approved by the Executive Director pursuant to Special Condition No. 1, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 (mitigation to impact) ratio at the same transplantation location(s) identified in the final eelgrass mitigation plan described in Special Condition No. 1 above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition No. 1.

- B. Post Construction Eelgrass Survey.** After completion of project construction, the applicants shall survey the project site to determine the quantity of eelgrass that was adversely impacted. This post-construction survey shall be completed within one month following the completion of construction within coastal waters. 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 Game. The applicants 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 in excess of those disclosed pursuant to Special Condition No. 1, the applicant shall replace the additionally impacted eelgrass at a 1.2:1 (mitigation to impact) ratio at the transplantation site(s) and in accordance with the mitigation plan described in Special Condition No. 1 above. The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply.

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 applicants 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 Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicants 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 & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).

- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide 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 applicants have 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. Water Quality

A. **Construction Responsibilities and Debris Removal**

- (1) No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (2) Any and all construction material will be removed from the site within 10 days of completion of construction.
- (3) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (4) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (5) 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.
- (6) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

B. **Best Management Practices Program**

By acceptance of this permit the applicants agree that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
 - b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only

detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized.

- c. The applicants shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

- a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

- a. Oil absorbent materials shall be examined at least once a year and replaced as necessary. The applicants will recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. Boaters will use preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. Bilges shall be cleaned and maintained. Detergents will not be used for cleaning. The use of soaps that can be discharged by bilge pumps is prohibited.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1600 South Bay Front in the City of Newport Beach (Exhibits #1-2). Single-family residences characterize the subject site and the surrounding area. The applicants are proposing to remove an existing dock system and install a new wooden dock system consisting of: a 6' x 40' finger, 10' x 14' pier platform, 3' x 24' gangway, 5' x 37' pier approach, 2-14" concrete pilings, and 4-14" "T" concrete pilings (Exhibit #3). The proposed dock will be constructed of Douglas Fir. Also, the proposed dock (645 square feet) covers less area than the existing dock (953 square feet). The project will directly impact 1.1 square feet of eelgrass that will be transplanted elsewhere on-site at a 1.2:1 ratio. The proposed dock will extend 12-foot channelward of the U.S. Pierhead Line as allowed by the City of Newport Beach Harbor Permit Policy (policy section: Bayward Location of Piers and Floats. V.1.). This policy allows docks to extend up to 16-foot channelward of the U.S. Pierhead Line. The extension of the proposed dock past the U.S. Pierhead Line is typical of other docks in the area.

In order to anchor the new finger securely, two (2) proposed piles are necessary to withstand the load and adequately support the boating use. Thus the proposed project employs the minimum number and size of piles necessary to adequately support and secure the proposed boat dock

project. Thereby minimizing the amount of fill needed to support the proposed allowable use. However, one (1) of the proposed pilings will be located in areas that would have a direct impact upon eelgrass beds. On the other hand, eelgrass beds occupy most of the project area. Thus, there is no alternative location for the pilings that would avoid the eelgrass impacts. Thus, the proposed location of the pilings is the least environmentally damaging alternative.

The project provides feasible mitigation measures to minimize adverse environmental effects. As proposed, the eelgrass that would be disturbed by the proposed project is proposed to be mitigated through the eelgrass mitigation plan described in the *Eelgrass (Zostera Marina) Field Survey, Impact Assessment, and Conceptual Mitigation Plan for a Dock Renovation Project Located at 1600 Bay Front South, Balboa Island (Newport Beach), CA* prepared by Coastal Resources Management dated October 28, 2005. The mitigation plan identified the presence of 1,736 square feet of eelgrass in the project vicinity. Eelgrass was growing beneath the pier and gangway, between adjacent docks and seaward of the existing dock structure. No eelgrass was present underneath the boat floater or below vessels moored within the slip. Of this area, the applicants indicate there will be a maximum of 1.1 square feet (0.1 square meters) of impact resulting from the result of pile driving at the inshore edge of the proposed boat float (Exhibit #4). To avoid and offset the impacts, the applicants propose to conduct an eelgrass transplant program onsite, at a mitigation ratio of 1.2:1, so that a total of 1.3 square feet (0.12 square meters) will be transplanted to newly available eelgrass habitat where the wider previous dock was located. Transplantation will include moving any eelgrass that could be damaged by piling installation to the mitigation site before the impact occurs. To the extent feasible, the applicants will utilize the project site, more specifically the area where the existing dock is to be removed, as a transplant area. To verify that the proposed mitigation will take place, **Special Condition No. 1** has been imposed, which requires conformance with the proposed eelgrass mitigation plan. In addition, since eelgrass has been identified on site, **Special Condition No. 2** has been imposed, which also requires pre and post-construction eelgrass surveys to assure that all impacts to eelgrass are mitigated.

The site has also been surveyed for *Caulerpa taxifolia* and none was found. This survey was completed on August 29, 2005 and is only valid for 90 days. The project is agendaized for the February 2006 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since it had passed 90 days from when the survey was completed. Thus, **Special Condition No. 3** has been imposed, which requires an up-to-date pre-construction *Caulerpa taxifolia* survey

The proposed development will occur over and in the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, potential water quality issues must be examined as part of the review of this project. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition No. 4.a.** has been imposed which outlines construction-related requirements to provide for appropriate construction methods as well as safe storage of construction materials and the safe disposal of construction debris.

The proposed dock project will allow for the long-term berthing of boat(s) by the homeowner. Some maintenance activities if not properly regulated could cause impacts to the marine environment. To minimize the potential that maintenance activities would adversely affect water quality, the Commission imposes **Special Condition No 4.b.**, which requires the applicants to

follow Best Management Practices to ensure the continued protection of water quality and marine resources.

Lateral public access is available along the existing public walkway, which occurs landward of the proposed development and fronts the harbor bulkhead along the perimeter of Balboa Island. Vertical public access is available adjacent to the site at the Abalone Avenue, street end (Exhibit #2).

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicants have applied for a permit from the U.S. Army Corps of Engineers. The National Marine Fisheries Service (NMFS) has been contacted to review the project.

B. MARINE RESOURCES

The proposed development is the improvement of a recreational boat dock, which promotes recreational boating and is an encouraged marine related use. The proposed development has been designed to minimize the fill of coastal waters and adequate mitigation has been provided. The proposed development has been conditioned to minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, there are no feasible less environmentally damaging alternatives available. Therefore, the Commission finds that the proposed development conforms with Sections 30224, 30230, 30231, 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. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

D. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified

LUP was updated on January 9, 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.