CALIFORNIA COASTAL COMMISSION

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

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Permit Application No. **5-06-450**

Date: May 24, 2007

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ADMINISTRATIVE PERMIT

APPLICANT: Larry Harris

AGENT: Todd Schooler & Associates; Attn: Todd Schooler.

PROJECT

DESCRIPTION: Demolition of an existing single-family residence and construction of a new

4,191 square foot, 24-feet above existing grade, two-story single family

residence with an attached 444 square foot two-car garage on a bulkheaded lot. Grading will consist of 155 cubic yards for recompaction purposes. In addition, the applicant is proposing a pool and work on the existing bulkhead consisting of a new cap on the top edge of the wall (coping), new tie back rods, new 3-foot high guardrail, and a new cantilevered deck. Also, work is proposed to the existing 20' x 10' dock consisting of a 10' x 10' extension on either side of the dock that will result in a 40' x 10' dock. The dock system will be composed of

Douglas fir or Trex decking.

PROJECT

LOCATION: 59 Balboa Coves, Newport Beach (Orange County)

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

<u>NOTE</u>: 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:

Thursday, June 14, 2007 9:00 am Hyatt Vineyard Creek Hotel & Spa 170 Railroad Street Santa Rosa, CA 95401

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.

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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: Fernie Sy

Title: Coastal Program Analyst II

STANDARD CONDITIONS:

- 1. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration.</u> 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. <u>Interpretation.</u> Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> 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.
- 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 six to nine.

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 and Background

1. Project Description

The subject site is located 59 Balboa Coves within the private locked gate community of Balboa Coves in the City of Newport Beach (Exhibit #1). The project site is 13,431 square feet in size and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Low Density Residential and the proposed project adheres to this designation. Single-family residences characterize the subject site and the surrounding area. The proposed project involves the following: demolition of an existing single-family residence and construction of a new 4,191 square foot, 24-feet above existing grade, two-story single family residence with an attached 444 square foot two-car garage on a bulkheaded lot (Exhibits #2-4). Grading will consist of 155 cubic yards for recompaction purposes. In addition, the applicant is proposing a pool and work on the existing bulkhead consisting of a new cap on the top edge of the bulkhead wall (coping), new tie back rods below ground surface (which connect to a subsurface 'deadman' that holds the wall in place vertically), and a new cantilevered deck with 3-foot high guardrail (an "L" shaped cantilevered deck along the southwest potion of the site consisting of a 52'-7 1/4" (L) x 5' (W) section and a 24'-4" (L) x 5' (W) section (Exhibit #5). The cantilevered deck is consistent with the City's Harbor Permit Policy since it is located in an area where the waterway is privately owned and the deck does not encroach more than 5-feet beyond the bulkhead. At the subject site, the cantilevered deck does not raise any visual or public access impacts. All work on the bulkhead will take place on the landward side of the bulkhead. Also, work is proposed to the existing 20' x 10' dock consisting of a 10' x 10' extension on either side of the dock that will result in a 40' x 10' dock (Exhibit #5). The dock system will be composed of Douglas fir or Trex decking. The proposed dock extends into the channel lying westerly of Newport Boulevard, a part of the West Newport Channels), but no more than 30-feet as allowed by the City of Newport Beach Harbor Resources Harbor Permit Policy and is consistent with past Commission actions in the area.

Public access is available along walkway/bikeway/accessway on the Pacific Coast Highway north of the project site and also along Newport Boulevard east of the project site. In addition, coastal public access to the bay is available west of the project site at the Channel Place public park (Exhibit #1).

The dock will be used for boating related purposes to serve single-family residential developments. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and no eelgrass was discovered within 15-feet of the project area. The eelgrass survey took place on January 11, 2007 by the City of Newport Beach Harbor Resources Division. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - March shall be valid until the resumption of active growth (i.e., March 1). The project is agendized for the June 2007 Coastal Commission Hearing and by this time the eelgrass survey would not continue to be valid since it is now during the period of active eelgrass growth. Thus, an up-to-date eelgrass survey must be conducted. In addition, the site has not been surveyed for Caulerpa taxifolia, therefore a preconstruction Caulerpa taxifolia survey must be conducted. Caulerpa taxifolia surveys are valid for 90 days. Therefore, the Commission imposes Special Conditions No. 2 and No. 3, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any Caulerpa taxifolia is found on the project site, Special Conditions No. 3 also identifies the procedures necessary to be completed prior to beginning any construction.

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The proposed project has received an approval-in-concept from the City of Newport Beach Harbor Resources Division (No. 1011-59) and from the City of Newport Beach Planning Department (No. 2340-2006). 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 applicant has applied for a permit from the U.S. Army Corps of Engineers.

The applicant is proposing water quality improvements as part of the proposed project, including downspouts and on site drainage directed to permeable areas (Exhibit #3). Any vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (http://www.cal-ipc.org/) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm. SPECIAL CONDITION NO. 4 implements the landscaping requirements above.

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.

2. Prior Commission Actions at Subject Site

On December 20, 2005, the Commission approved Administrative Permit No. 5-05-425 (Elmore) for the demolition of an existing boat dock and replacement of a like-for-like boat dock consisting of: 10' x 20' float, 3' x 24' gangway, two (2) 12" concrete pilings and use of Douglas Fir and Trex composite materials for deck surface. Three (3) Special Conditions were imposed regarding: 1) water quality; 2) an eelgrass survey; and 3) a *Caulerpa Taxifolia* survey.

B. <u>Marine Resources</u>

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The proposed project includes recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. 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*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. Development

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The project provides adequate parking based on the Commission's typically applied standards. Therefore, the Commission finds that the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act

D. Water Quality

The proposed work will be occurring on, within, and adjacent to coastal waters and has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. Public Access

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act

F. <u>Local Coastal Program</u>

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

G. 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. WATER QUALITY

A. Construction Responsibilities and Debris Removal

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters;
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible;
- (6) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (7) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity:
- (8) 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; and
- (9) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

B. Best Management Practices Program

Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

(1) The applicants shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;

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- (2) The applicants shall develop and implement spill prevention and control measures:
- (3) The applicants shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- (4) The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

By acceptance of this permit the applicant agrees 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 applicant 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. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed 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. The use of soaps that can be discharged by bilge pumps is prohibited.
 - b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge

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- pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

2. <u>EELGRASS SURVEYS(S)</u>

- 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 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.
- В. 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 Game. 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 Game, and the National Marine Fisheries Service.

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- **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 & 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 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. DRAINAGE AND RUN-OFF CONTROL PLAN

The applicant shall conform with the drainage and run-off control plan received on February 7, 2007 showing roof drainage and runoff from all impervious areas directed to permeable areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. 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.

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.		
	Data of Circuit	
Applicant's Signature	Date of Signing	











