

CALIFORNIA COASTAL COMMISSION

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Staff: Meg Vaughn-LB
Staff Report: 9/22/10
Hearing Date: 10/13-15/2010
Commission Action:

W 17c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-088

APPLICANT: Steve Dunbar

AGENT: Brady Helms, Swift Slip Dock & Pier Builders

PROJECT LOCATION: 4102 River Avenue
Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing 10' by 17' floating dock including removal of two 12-inch diameter concrete piles and construction of a new 8' by 12' float with two 12-inch diameter concrete piles. The existing gangway is proposed to be re-decked and re-used. Also proposed is construction of a separate 10' by 13' platform supported by the bulkhead and one new fourteen-inch "T" pile.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the boat dock portion of the project and elimination of the proposed separate platform. Staff is recommending elimination of the platform because it requires the support of a 14-inch diameter pile in coastal waters. Fill resulting from placement of the pile to support the platform is inconsistent with Coastal Act Section 30233, a Coastal Act policy which limits fill of coastal waters. Although the applicant asserts that the platform will be used solely for boating related purposes, staff believes the platform is not necessary to achieve the goal of berthing a boat at the site. The proposed dock float will be 8 feet by 12 feet and appears able to accommodate the marshalling of boating related items. The proposed fill for the platform is also inconsistent with Section 30250 which requires that new development be located where it will not have cumulative adverse effects on coastal resources. The single pile proposed to support the platform would add to the cumulative adverse effects of unallowable fill of coastal waters.

Therefore, staff is recommending the Commission **approve** the proposed project subject to six special conditions which are necessary to assure that the project conforms with Coastal Act Section 30233 regarding fill of coastal waters, Sections 30230 and 30231 regarding protection of marine resources and water quality, and Sections 30210 and 30224 regarding public access and recreation. Special Condition No. 1 requires that the separate 10' by 13' platform be eliminated

from the proposed development. Special Condition No. 1 further requires that prior to issuance of the coastal development permit the applicant submit revised plans indicating that the platform has been deleted. Special Condition No. 2 requires pre- and post-construction eelgrass surveys; Special Condition No. 3 requires a pre-commencement of construction caulerpa taxifolia survey; Special Condition No. 4 notifies the applicant of construction practices and debris removal responsibilities; Special Condition No. 5 requires the applicant to incorporate long term water quality Best Management Practices for the operation of the dock; and, Special Condition No. 6 states that approval of this permit does not waive any public rights that may exist at the site.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; City of Newport Beach Harbor Permit Policies; City of Newport Beach Harbor Permit/Approval in Concept Harbor Permit No. 241-4102 and Plan Check No. 0487-2010 dated 3/25/10.

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-10-088 pursuant to the staff recommendation.

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 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 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. Elimination of 13' by 10' Separate Platform

- A. The development approved under this coastal development permit (5-10-088, Dunbar) at 4102 River Avenue in Newport Beach includes only the demolition of the existing 10' by 17' floating dock and removal of two existing, 12-inch diameter concrete piles and construction of a new 8' by 12' float and placement of the two related 12-inch diameter concrete piles, and re-decking and re-using the existing gangway; and does not include approval of the proposed 13' by 10' platform supported by the bulkhead and pile within coastal waters.
- B. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, revised plans indicating that the platform has been deleted from the project.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Eelgrass Survey**

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera 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.
- 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 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 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:
 - i. for the review and approval of the Executive Director; and
 - ii. 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), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this coastal development permit until 1) the applicants provide evidence to the Executive Director that all *C. taxifolia* discovered within the project area and all *C. taxifolia* discovered within the buffer area have 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. **Construction Responsibilities and Debris Removal**

The permittee shall comply with the following construction related requirements:

- A. 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.
- B. 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.
- C. 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.

- D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F. 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.
- G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J. 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.
- K. 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.
- L. 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.
- M. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N. 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 from the receiving waters and storm drain inlets as possible.
- O. 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.

- P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Best Management Practices Program

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.

(a) Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.
2. 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.
3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(b) Solid and Liquid Waste Management Measures:

1. 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 shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

(c) Petroleum Control Management Measures:

1. 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 shall 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.

2. 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 pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
3. 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.

6. 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 subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this coastal development permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to demolish an existing 10' by 17' floating dock including removal of two, 12-inch diameter concrete piles and construction of a new 8' by 12' float with two, 12-inch diameter concrete piles. The existing gangway is proposed to be re-decked and re-used. Also proposed is construction of a separate 10' by 13' platform supported by the existing bulkhead (on the landward side of the platform) and one new 14-inch pile in the water.

All parts of the proposed dock are to be constructed in the Swift Slip yard and transported via trailer and then by water to the subject job site where they will be floated into place and assembled.

The subject site is located at 4102 River Avenue in Newport Beach. The site is located in the interior of Newport Harbor on the Rivo Alto channel (see exhibit A). The proposed dock is associated with the adjacent single family residential use. In this area of Newport Harbor, most of the water frontage is developed with single family homes, many of which also have private boat docks. The nearest public access in the area is at Channel Place Park, located approximately one and a half blocks to the northwest of the subject site. Channel Place Park affords a grassy field, tot lot and a small sandy beach.

B. Fill of Coastal Waters

Section 30233 of the Coastal Act states, in pertinent part:

(a) The diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities ...

...

The proposed project includes replacement of an existing boat dock float with a new one and construction of a new rear yard platform. The platform is proposed to be supported by the existing bulkhead on the landward side and one new 14-inch diameter "T" pile in the water. The proposed boat dock float will be supported by two, 12-inch diameter, concrete piles. The three piles are proposed to be located in coastal waters. Placement of the piles for both the boat dock float and the platform will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

1) Allowable Use

The proposed project includes replacement of the boat dock float. The boat dock float is proposed to be supported by two, 12-inch diameter, concrete piles. The float would not be safe or effective without the anchoring piles. Thus, the piles are an integral part of the boat dock system. The boat dock, including the float and supporting piles, constitutes a boating facility, which is an allowable use for which fill may be permitted consistent with Section 30233(a)(3) of the Coastal Act. Therefore, the proposed fill resulting from placement of the two supporting piles is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

However, the project would also result in fill of coastal waters due to placement of the pile to support the proposed 13-foot by 10-foot platform. The applicant asserts that the proposed platform will be used for boating related purposes. In a letter dated 6/23/10 (see exhibit C) the applicant's representative states: "The pier platforms intended use is for the marshalling of boating related items." However, it is unclear why marshalling of boating related items requires the proposed platform, which has no connection to the dock float. Specific information regarding the nature of the items to be marshalled has not been provided. The boat float itself is proposed to be eight feet by twelve feet, seemingly large enough to accommodate a dock storage box and/or to stage a few items while loading a boat at the dock. In addition, no information has been submitted demonstrating that the marshalling of boating related items can't occur in the applicant's rear yard, and then carried down the gangway to the boat. Thus, it appears that the proposed platform is not necessary to support the boating related use and therefore the fill resulting from the

placement of the pile is inconsistent with Section 30233 of the Coastal Act which allows fill of coastal water only for the specific uses enumerated in that Section.

Moreover, Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. The single, 14-inch diameter pile that would be necessary to support the proposed platform would add to the cumulative adverse effects of unallowable fill of coastal waters. Although a single, 14 inch diameter pile may not seem to create significant adverse impacts, the cumulative effect of allowing additional piles will add up over time, especially when the piles are not necessary to support an allowable use under Section 30233 such as a boating related use. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the amount of fill beyond that which is consistent with the Section 30233, the overall effect would be a significant loss of coastal waters and soft bottom habitat.

It should be noted that in the vicinity adjacent to the project, some sites do have platforms similar to the one proposed. However, review of aerial photos in the area suggest that many of those platforms anchor the gangway of a boat dock and so it could be argued those platforms are in effect the boat dock pier, which would constitute a boating related use. In any case, the most recent coastal development permit approved for one of these platforms was in 1999 (5-99-366), more than ten years ago. The Commission has, in the last ten years, allowed platforms in association with boat docks only when a pier is an integral part of the overall boat dock project and then only when the platform (a widened area on the pier) does not create the need for additional piles (fill) beyond those which are already necessary to support the pier. Here, the applicant proposes driving an additional 14-inch diameter pile into coastal waters to support the proposed platform, which is not an integral part of the overall boat dock project. Therefore, considering the platform is additional to, and not necessary for, the principal boating related facility – the floating boat dock – it cannot be found consistent with Coastal Act Section 30233.

2) Alternatives

The proposed placement of the three piles will result in fill of coastal waters. The placement of the two, 12-inch diameter piles to secure the boat dock float is the minimum amount of construction necessary to safely anchor the float. Fewer and/or smaller piles would not adequately secure the dock and the boat berthed therein. By using the least number of piles necessary, coupled with the smallest footprint, to accomplish the goal of securing the dock, the two piles associated with the boat dock float represent the least environmentally damaging feasible alternative. This alternative (with regard to the two float piles) represents the least environmentally damaging feasible alternative capable of achieving the project goal of allowing boat berthing. Therefore, with regard to the two piles proposed to anchor the boat dock float, the Commission finds the proposed alternative meets the requirements of Section 30233 that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

However, as described above, the one, 14-inch diameter pile proposed to support the rear yard platform does not constitute an allowable use under Section 30233 of the Coastal Act. It is not needed to safely secure the boat dock. It will result in fill of coastal waters and impacts to soft bottom habitat. In the case of the 14-inch diameter pile, the no pile alternative is the least environmentally damaging alternative. It would still accomplish the project goal of allowing the applicant to berth a boat at the subject site. Therefore, the Commission finds the 14-inch diameter pile proposed to support the rear yard deck is not consistent with Section 3033 of the Coastal Act in that it is not the least environmentally damaging alternative.

3) Mitigation

The proposed recreational boat dock and its associated two 12-inch diameter piles are an allowable and encouraged marine related use. The project design for the boat dock float includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock. The two piles will provide hard substrate that can be used by some marine life, although, this isn't equivalent to the habitat being impacted. There are no feasible less environmentally damaging alternatives available. The project site was surveyed for eelgrass and none was found to exist at the site. Section 30224 of the Coastal Act requires that recreational boating use of coastal waters be encouraged by, among other things, providing berthing space in existing harbors. 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 conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

Conclusion

For the reasons described above, the Commission finds that the proposed boat dock float replacement with the two associated piles is consistent with the requirements of Section 30233 of the Coastal Act which limits fill of coastal waters.

However, as described above, the 14-inch diameter pile associated with the proposed rear yard platform is inconsistent with Section 30233 of the Coastal Act in that it is not one of the allowable uses specified in Section 30233 and it is not the least environmentally damaging alternative. Therefore, Special Condition 1 is imposed which requires that the proposed rear yard platform with the associated pile be eliminated from the project and updated plans reflecting these changes be submitted to the Executive Director prior to permit issuance. The Commission finds that only as conditioned to eliminate the rear yard platform and its associated piling can the proposed development be found to be consistent with Section 30233 of the Coastal Act regarding fill of coastal water.

C. Marine Resources & Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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 shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water 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.

Section 30230 of the Coastal Act requires that marine resources be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts.

The proposed project includes measures to help assure protection of coastal waters and marine resources. Measures proposed include: all parts of the proposed dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, in order to assure that all impacts to water quality are minimized, special conditions are imposed that specify and impose construction phase and post construction measures to avoid adverse impacts on marine resources.

Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

The site was surveyed for eelgrass on March 5, 2010 and no eelgrass was found at the subject site. Thus, no eelgrass impacts are anticipated. However, eelgrass surveys are valid for a limited period of time (until the next growing season – typically March-October). If construction does not occur within the time period during which the current survey is valid, subsequent surveys will be required. Therefore, Special Condition 2 is imposed which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa Taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa taxifolia*, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa taxifolia*, if present, could displace eelgrass in the channels.

The site was surveyed for *Caulerpa taxifolia* on March 5, 2010 and none was found. The survey is valid for a limited period of time (90 days for *Caulerpa taxifolia*). If discovered in the project area, *Caulerpa taxifolia* could possibly be dispersed through construction of the proposed project. Because of the time elapsed since the survey (ninety days from March 5 was June 3, 2010), construction will not occur within the period that the survey is valid. Thus, a subsequent survey is required. In order to assure that the proposed project does not cause the dispersal of *Caulerpa taxifolia*, the Commission imposes Special Condition 2 which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa taxifolia*. If *Caulerpa taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality.

D. Public Access and Recreation

The proposed project includes the replacement of a private boat dock associated with residential development. The nearest public access in the area is at Channel Place Park, located approximately one and a half blocks to the northwest of the subject site. Channel Place Park includes a grassy playing field, a tot lot and a small sandy beach. The proposed project will have no impact on existing public access in the area.

Berthing of boats is an encouraged recreational use under Section 30224 of the Coastal Act. Special Condition 6 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 subject property, including the tideland and submerged land beneath the development approved by this coastal development permit. Furthermore, as conditioned, the proposed project, replacement of an existing boat dock, will have no impact on existing public access. The proposed development will not adversely affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, is in conformity with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. California Environmental Quality Act

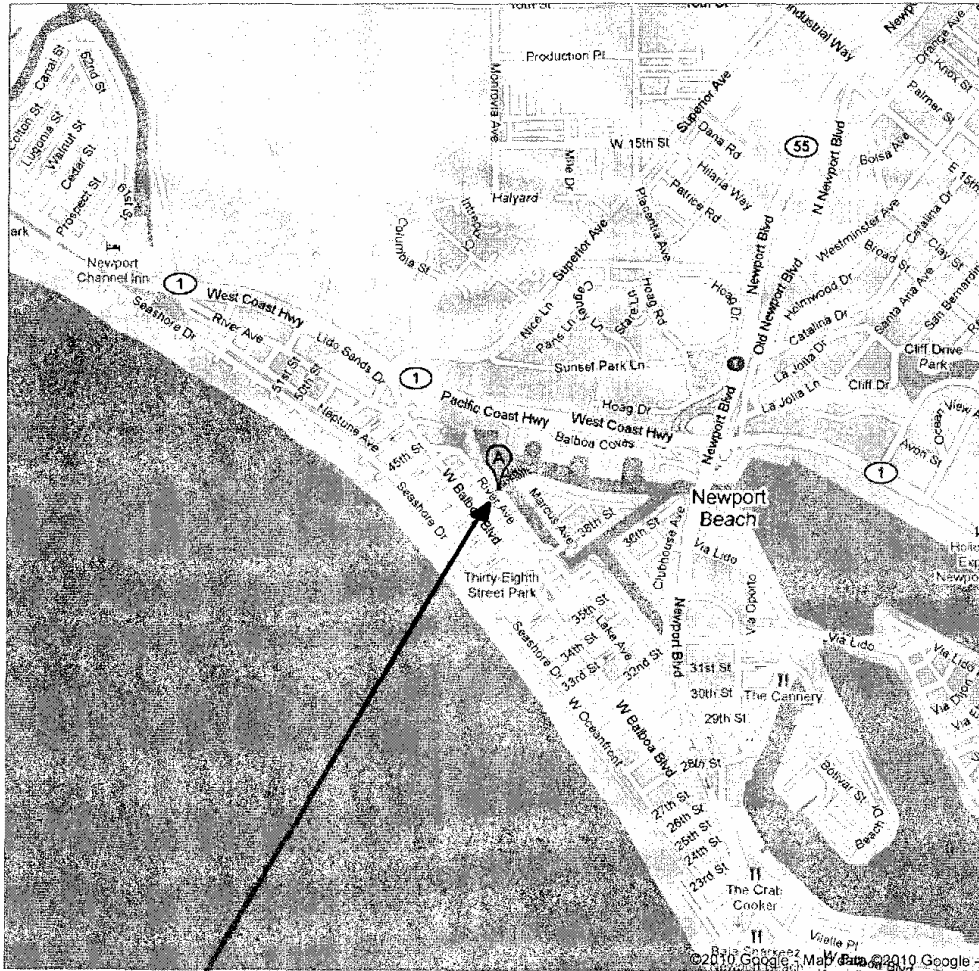

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Newport Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt on March 25, 2010. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Google maps

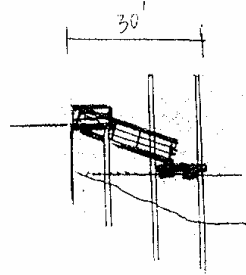
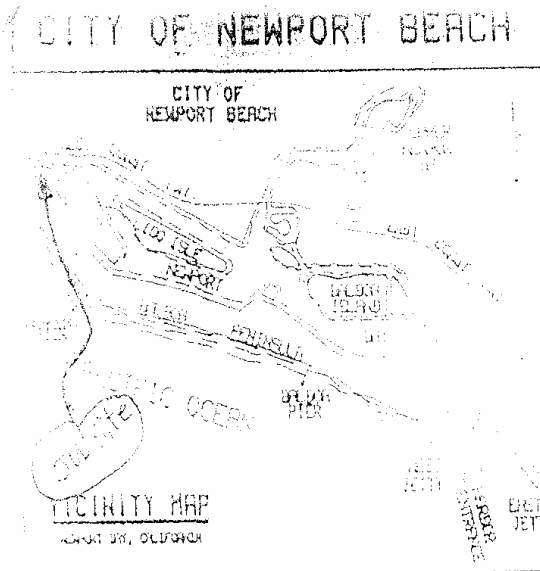
Address 4102 River Ave
Newport Beach, CA 92663

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subject site

COASTAL COMMISSION
5-10-088
EXHIBIT: A
PAGE 1 OF 1

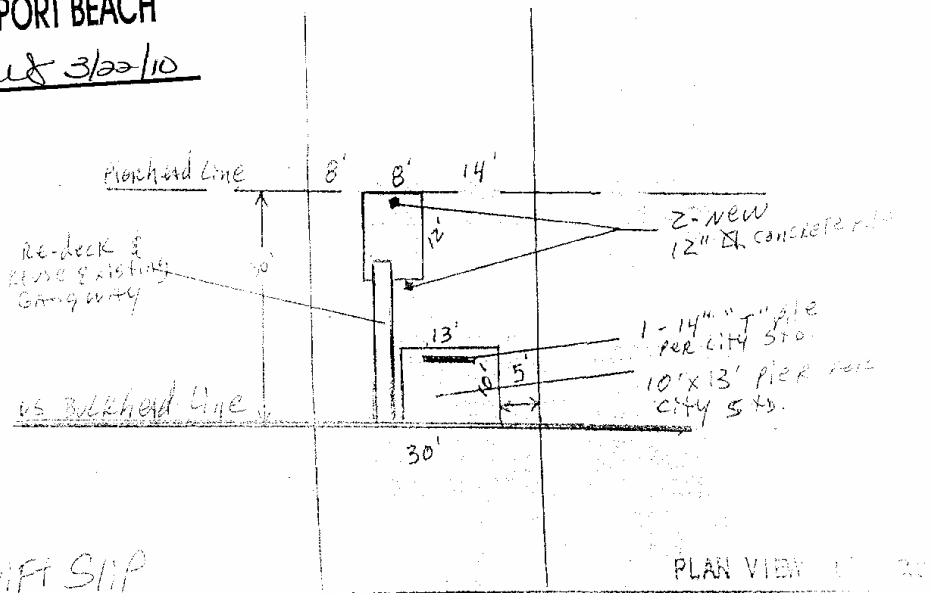


PROFILE 1' = 40'
SOUNDINGS ARE EXPRESSED IN FEET AND DECIMALS
ELEVATIONS BASED ON MEAN LOWER LOW WATER

EEL GRASS INSPECTION
 Eelgrass within 15' of project
 Eelgrass within 15 - 30' of project
 No Eelgrass in project area
 Signature: *[Signature]*
 3/5/10 1100
 Inspection Date & Time

SCOPE OF WORK:
 Remove Existing float & pile. Install new 8' x 12' float with 2-12" concrete pile. Install new 10' x 13' pier with 1-14" T pile. Re-deck & Re-use existing Gangway.

HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH
[Signature] 3/22/10



COASTAL COMMISSION
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 PAGE 1 OF 1

cont. SWIFT SLIP
 APPLICANT'S NAME: Steve Dunbar | JOB ADDRESS: 4102 River Ave | DATE: 3-5-10

Swift Slip

Dock & Pier Builders Inc.
949-631-3121 fax 949-631-3122
2027 Placentia Ave Costa Mesa CA 92627
bhswiftslip@sbcglobal.net
www.swiftslipdocks.com

6-23-10

To: Meg Vaughn
California Coastal commission

From: Brady Helm
Swift Slip Dock & Pier Builders

Ref CCC App # 5-10-088

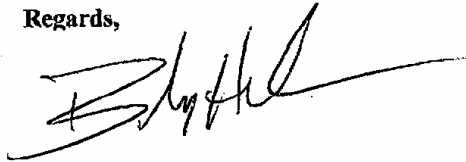
Meg,

Find attached the response to your request for more information for the dock project at 4102 River Ave.

The pier platforms intended use is for the marshalling of boating related items. The backyard of the property is small and doesn't provide adequate room. The float size was reduced in an effort to justify the pier platform. We designed the pier platform utilizing one support pile instead of the more traditional two piles for support in an effort to make the smallest impact possible.

Find attached the proof of applicant's legal interest you asked for.

Regards,



Brady Helm
Permit Coordinator
Swift Slip Dock & Pier Builders
Cell 714-296-6969

RECEIVED
South Coast Region

JUL 2 2010

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

5-10-088

EXHIBIT # C
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