

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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**W5b**

Staff: Liliana Roman – LB
Date: July 25, 2013

ADMINISTRATIVE PERMIT

Application No. **5-13-217**

Applicant: **Steve Thomas**

Agent: Swift Slip Dock & Pier Builders, Inc.

Project

Description: Demolition of an existing 990 sq. ft. “U” shaped dock system including 3 – 12 in. sq. and 2 – 14 in. sq. “T” concrete piles and installation of a new “L” shaped dock system consisting of a 708 sq. ft. floating dock, a 3’x 24’ gangway, and a 10’ x 14’ pier platform, resulting in a total of 920 sq. ft. water coverage and supported by 3 new 18 in. sq. concrete guide piles and one 14 in. sq. “T” concrete pile.

Project

Location: 81 Linda Isle, Newport Beach (Orange County)

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

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

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

Wednesday, August 14, 2013 8:00 am
Santa Cruz County
Board of Supervisors Chambers
701 Ocean Street
Santa Cruz, CA 95060

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

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

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

CHARLES LESTER
Executive Director

By: Liliana Roman
Title: Coastal Program Analyst

STANDARD CONDITIONS:

This permit is granted subject to the following 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 the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See pages seven thru eleven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

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

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. PROJECT DESCRIPTION

The subject site is located at 81 Linda Isle in the City of Newport Beach (Exhibit #1). Large single-family residences with large private docks characterize the subject area and the surrounding sites on Linda Isle. The proposed project is the demolition of an existing 990 sq. ft. "U" shaped dock system including 3 – 12 in. sq. and 2 – 14 in. sq. concrete guide piles and installation of a new "L" shaped dock system consisting of a 708 sq. ft. floating dock, a 3' x 24' gangway, and a 10' x 14' pier platform, resulting in a total of 920 sq. ft. water coverage and supported by 3 new 18 in. sq. concrete guide piles and one 14 in. sq. "T" concrete pile.

The existing dock configuration and the proposed dock configuration are included as Exhibit #2 of the staff report. The existing dock system covers 990 sq. ft. of water area and its support piles result in 5.7 sq. ft. of fill of coastal waters. The new proposed 920 sq. ft. dock system would result in a 70 sq. ft. decrease in overall water coverage and would result in one less support pile but as the replacement piles are larger to meet current standards, the new piles result in 8 sq. ft. of fill of coastal waters (a 2.3 sq. ft. increase in fill from existing).

Public Access

The subject site is located in the gated community of Linda Isle in the City of Newport Beach. Public access through this locked gate community does not currently exist in the immediate vicinity of the project site. The nearest public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island, and in some areas along the beaches in front of the bulkheads (Exhibit #4). The proposed development consisting of demolition and replacement of a floating dock system on an existing developed residential lot and will not affect the existing public access conditions. It is the locked gate community, not this home or floating dock that impedes public access to and from Linda Isle. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities.

Based on the information available to the Commission at this time, it appears that the property on which the proposed pier and dock is to be built is not subject to the public trust because the mean high tide line (MHTL) was adjudicated in this area in case no. 20436 in Orange County Superior Court in 1926 (Orange County v. The Irvine Company). The court identified the MHTL in this area

as well westward of the subject property. Further, the subject property is part of a subdivision tract that dredged an embayment eastward from the MHTL established in case no. 20436. This dredging changed portions of the property from upland swamp and overflow property to property subject to tidal flow. Thus, the channel is now navigational and is subject to the navigational easement pursuant to Public Resources Code section 7552.5, which, in general, precludes the owner from interfering with the public's right to navigate the embayment. Since the proposed dock will be landward of the designated pierhead line in the embayment, the proposed dock is not expected to interfere with the public's ability to navigate the embayment of Linda Isle because pierhead lines are established to ensure that docks and piers do not interfere with navigation. Therefore, the proposed development will not interfere with the existing navigational easement over the embayment. A special condition is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Furthermore, the proposed project includes a 10'x14' pier deck platform placed adjacent to the bulkhead. The placement of such a large "T" pile supported structure adjacent to the bulkhead has generally raised two concerns in other harbor locations: (1) that a large pier platform adjacent to the bulkhead would create an impediment to public access along the shoreline and (2) that a large pier platform adjacent to the bulkhead (as opposed to further out seaward) would result in the platform utilized for purposes other than boating related (e.g., as a patio extension). In this case, at this site, there is no concern regarding public access as Linda Isle is a gated community with no public access to the Isle from the land side. There is no sandy beach area in front of the subject site, therefore, in this case, the placement of a 10'x14' pier platform and a "T" shaped support pile adjacent to the bulkhead would not create an impediment to public access as there is no opportunity for the public to walk upon the privately owned land in front of the bulkhead at this site. As noted above, the public does have access to the waters seaward of the bulkhead. But the new dock, in this case, creates no more of an impediment to use of these waters than the existing one does. Furthermore, the proposed pier platform would be supported by one less pile than the existing pier platform. The existing dock configuration includes a 10'x14' platform adjacent to the bulkhead supported by *two* "T" piles. As proposed, the existing pier platform and one "T" pile would be demolished and replaced with a new 10'x14' pier platform supported by only one "T" pile.

Regarding the second concern, that the pier platform adjacent to the bulkhead would result in uses other than boating related; Section 30233 of the Coastal Act restricts the filling of coastal waters to only certain limited uses, of which boating facilities is one. As long as the proposed 10'x14' pier platform does not result in an increase in overall number of existing piles or in adverse shading impacts to sensitive marine resources such as eelgrass; the preferred approach is for such pier platforms to be placed as far seaward as possible to ensure that the platform will be utilized for the intended boating uses and not result in an extension of the landside uses when it is placed adjacent to the bulkhead as has been previously documented by staff throughout the harbor.

In this case, there is an existing significant pattern of development with the 10'x14' platforms up against the bulkhead (Exhibit #5). In fact, there already is a 10' x 14' platform at this site (that is proposed to be demolished and replaced). Thus, the construction of a 10' x 14' platform at this site and in this location would not be establishing a new pattern of development (nor create an adverse public access condition, as previously mentioned). Nevertheless, since there is fill of coastal waters

involved, the Commission must ensure that the use is limited to boating related purposes. Therefore, the Commission finds that the proposed pier platform can only be found consistent with Section 30233(3) with the Special Condition that the pier platform can only be used for boating related purposes and prohibits use of it for non-boating related purposes such as patio furniture, barbeques, plants, etc. to be placed on the pier platforms.

Marine Resources

The site was surveyed for eelgrass and *Caulerpa taxifolia* on March 5, 2013. The survey area spanned 60 ft by 60 ft surrounding the existing dock. Eelgrass was mapped within 15 feet of the project vicinity (within the seaward extensions of the property lines). Large thick eelgrass beds (5-8 turions ~16" long) were mapped 5' to 9' seaward of the pierhead line. Exhibit #3 is a rough sketch of the eelgrass beds in the vicinity of the existing dock. No direct or indirect eelgrass impacts will result from the proposed project. Special Condition No. 1 requires the applicant comply with construction best management practices to ensure no adverse impact occurs to the eelgrass in the project vicinity (i.e., turbidity control and debris control). No *Caulerpa taxifolia* was discovered within the entire project area. These eelgrass and *Caulerpa taxifolia* surveys are valid for a limited period of time (until the next growing season for eelgrass and 90 days for *Caulerpa taxifolia*). If construction does not occur within the respective time periods, a subsequent survey will be required. If any additional eelgrass or *Caulerpa taxifolia* are found on the project site, **Special Conditions No. 2 and No. 3** identify the procedures necessary to be completed prior to beginning any construction.

Local Government and Other Approvals

The proposed dock conforms to the U.S. Pierhead Line and is consistent with the City's Harbor Permit Policy. The new dock will be no further seaward than the existing dock. The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division, Harbor Permit Number 133-81 and Plan Check Number 0553-2013. The Regional Water Quality Control Board (RWQCB) has issued a "General Certification for replacement of Sheet and Dock Piles" determining that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a U.S. Army Corps of Engineers' Letter of Permission (LOP) to determine whether the proposed project would have any adverse effect on essential fish habitats.

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.

B. MARINE RESOURCES

The proposed 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 and would result in a decrease in overall water coverage. There are no feasible less environmentally damaging alternatives available.

As conditioned, the project will not significantly adversely impact eelgrass beds located in the vicinity of the project area 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. 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

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. 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.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

1. Water Quality

- A. Construction Responsibilities and Debris Removal:

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

- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. 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.

(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 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. **Eelgrass Survey**

- 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.
- 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 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.
 - 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), or their successors.
 - D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 4. Permitted Uses on Dock Structures.** By acceptance of this permit, the applicant agrees that the approved dock structures shall be used for marine/boating related purposes only (e.g., sails, boating equipment storage lockers, personal watercraft storage, etc.). Patio furniture, barbeques, plants, etc. are not permitted.
- 5. Public Rights.** The Coastal Commission’s approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not

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use this permit as evidence of a waiver of any public rights that may exist on the property.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

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

Applicant's Signature

Date of Signing