

**CALIFORNIA COASTAL COMMISSION**

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

**F5a**

Staff: D. Truong – LB  
Date: November 21, 2017

**ADMINISTRATIVE PERMIT**

**Application No.** 5-17-0801

**Applicant:** Rudy Svrcek

**Agent:** Swift Slip Dock and Pier Builders Inc.,  
Attn: Jacquelyn Chung

**Project Description:** Reconfigure an existing dock float to reduce size by 29.5 square feet, and relocate a 14-inch square concrete pile approximately 5 feet to the east.

**Project Location:** 1907 E. Bay Avenue, Newport Beach, Orange County (APN: 048-240-26)

**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:

**Friday, December 15, 2017, 9:00 am**

**Ocean Institute**

24200 Dana Point Harbor Drive  
Dana Point, California 92629

**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.**

JOHN AINSWORTH  
Executive Director

By: Denise Truong  
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 **five** thru **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

The applicant is proposing to dismantle the western float and headwalk of the U-shaped dock float in order to reconfigure the sections to the proposed design at an off-site facility ([Exhibit 2](#)). The newly re-configured dock will be floated back to the subject site in Newport Bay for installation. One marina guide pile approximately 14" will be relocated approximately 5 feet eastward to accommodate for the reduced dock size. The existing 20-foot long gangway will not be affected. The proposed dock system is being constructed on and over public tidelands and within an area subject to public trust doctrine. There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, an existing public launch site is located 90 feet away from the subject site on K Street for pedestrian access to the public tidelands ([Exhibit 3](#)). The private dock will continue to be used for boating-related purposes to serve a single-family residence. The applicant states that the re-configured dock with its enlarged headwalk is necessary for the storage of multiple kayaks and associated boating-related equipment, and acknowledges that use of the dock for other uses is not permitted. Water coverage from the proposed dock system will decrease by 29.5 square feet (from 354 square feet to 324.5 square feet). In addition, the proposed dock system is generally consistent with the size of the other private docks in the area and the proposed project will not impact eelgrass.

Eelgrass exists adjacent to the subject site near the western portion of the dock ([Exhibit 3](#)), according to the Eelgrass and *Caulerpa* study completed by the applicant in August 2017 (Appendix) and a City of Newport Beach Eelgrass and *Caulerpa* 2016 survey. Eelgrass has not been identified on site of the re-located pile or under the re-configured dock float. No *Caulerpa* exists on site. The eelgrass survey has been reviewed and approved by the City of Newport Beach Harbor Resources Division. The City of Newport Beach issued a Harbor Permit/Approval-in-Concept to "revise existing floating dock, Re-locate (1) existing pile" to the applicant on September 5, 2017.

The project site is a bay front lot located on the Balboa Peninsula in the City of Newport Beach, Orange County ([Exhibit 1](#)). The project site is developed with an existing floating dock system with a shared private gangway and pier. A wooden bulkhead exists along the property and extends 137 feet to 1913 E. Bay Avenue, which was approved by the Commission in 1981 under CDP No. 5-81-421. The project site is designated as single unit residential detached (RSD-B) by the City of Newport Beach certified LCP. Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area.

**Special Conditions 1 & 2** are imposed to recognize that public rights on the tidelands are in perpetuity and that the reconfiguration of the dock float along with the associated enlarged headwalk will be utilized for the storing kayaks and recreational boating equipment. Any other uses are not permitted.

Eelgrass (*Zostera marina* and *Z. pacifica*) are seagrasses which serve as critical habitat for many common and protected threatened marine species in which caution must be taken to minimize impacts to existing eelgrass beds and their associated habitats afforded by nation-wide policies and guidelines. The proposed dock will not impact the adjacent eelgrass habitat since the dock float is

being reconfigured to a smaller overwater surface area and away from the existing eelgrass patch. Moreover, the proposed dock would not encroach on or result in shading of the existing eelgrass. Due to the presence and productivity of eelgrass in the eastern Balboa Peninsula, BMPs and responsible construction activities must be enforced in order to minimize potential impacts to existing eelgrass beds adjacent to the site. **Special Condition 3** is imposed to assure that debris during the detachment of the headwalk and western finger of the dock does not fall into the water. In addition, **Special Condition 3** imposes BMPs to limit temporary turbidity caused by re-driving the pile into the substrate.

The dock will be used for recreational boating related purposes to serve a single-family residential development. The site has been surveyed for eelgrass and none were discovered in the project area. The eelgrass survey took place on August 11, 2017 as required by the City of Newport Beach Harbor Resources Division. Eelgrass surveys must be completed during the active growth phase (typically March through October) and are valid for 60-days. The project is agendized for the December 2017 meeting and will no longer be valid. Therefore, a new eelgrass survey must be conducted within 60 days of the start of construction. A pre-construction *Caulerpa taxifolia* survey was also completed on August 11, 2017 as required by the City of Newport Beach Harbor Resources Division and no *Caulerpa taxifolia* was discovered in the project area. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendized for the December 2017 Coastal Commission meeting and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **Special Conditions 4 and 5**, which identifies the procedures necessary to be completed prior to and after construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition 5** also identifies the procedures necessary to be completed prior to construction.

**Special Condition 6** is imposed to assure that the proposed project will be carried out in conformance with the requirements of the resource agencies, including the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations agency policies. The related policies include, but are not limited to, the *Magnuson-Stevens Fishery Conservation and Management Act*, *California Eelgrass Mitigation Policy*, Chapter 3 policies of the Coastal Act and *Eelgrass Protection and Mitigation Plan for Shallow Waters* in the City of Newport Bay.

## **B. MARINE RESOURCES**

The proposed recreational 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. 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, this permit 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 this permit requires the continued use and maintenance of post construction BMPs. As conditioned, the development conforms to Sections 30230 and 30231 of the Coastal Act.

### **D. LOCAL COASTAL PROGRAM**

The LCP for the City of Newport Beach was effectively certified on January 13, 2017. The proposed project is in the Commission's original jurisdiction. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

### **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The local government is the main jurisdiction for CEQA review. During the issuance of the Harbor Permit on September 5, 2017, the City determined the project to be categorically exempt. 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 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. **Public Rights.** The 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 use this permit as evidence of a waiver of any public rights that may exist on the property.
2. **Permit Compliance.** The permitted use of the approved development is for boating related uses only (e.g., kayak storage, docking of vessels). Private use of the dock for non-boating purposes is not permitted. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans, no matter how minor, must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.
3. **Water Quality**
  - A. **Construction Responsibilities and Debris Removal**

- (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; and

- (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; and
- 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; and
- 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.

**4. Pre-and Post-Construction Eelgrass Survey(s)**

**A. Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre- construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full

compliance with the “California Eelgrass Mitigation Policy and Implementing Guidelines” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) adopted by the National Marine Fisheries Service (except as modified by this special condition) and shall be prepared in consultation with the California Department of Fish and Wildlife. 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 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, 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 “California Eelgrass Mitigation Policy” dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) (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 Wildlife. 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 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy 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.

**5. 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 Wildlife, 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 California Department of Fish & Wildlife (858/467-4218) 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, subject to concurrence by 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.
6. **Resource Agencies.** The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

**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.

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Applicant's Signature

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Date of Signing