

CALIFORNIA COASTAL COMMISSION

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**W10a**

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 Hearing Date: 11/13/2019

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-19-0376

Applicant: Frank & Dona Degelas

Agent: Brion Jeanette Architecture

Project Location: 3632 Venture Dr., Huntington Harbour, City of Huntington Beach Orange County (APN: 178-691-30).

Project Description: Demolition of an existing deck cantilevered 5-feet beyond the bulkhead and construction of a 67-foot long concrete deck cantilevered 4.5 feet beyond the bulkhead with a glass railing along the perimeter of the deck. The glass railing will be etched, frosted, or clear glass with a UV-reflective glazing that is visible to birds.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to remove and replace a deck that cantilevers beyond the bulkhead. Staff is recommending APPROVAL of the proposed project with three special conditions requiring: 1) water quality protection measures; 2) State Lands Commission approval; and 3) protection of any public rights that may exist at the subject site.

The City of Huntington Beach has a certified Local Coastal Program (LCP), but because the project is located seaward of the mean high tide line, it is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act.

The motion and resolution to carry out the staff recommendation is found on page 3.

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EXHIBITS

Exhibit 1 – Vicinity Map and Aerial Photo

Exhibit 2 – Project Plans

I. MOTION AND RESOLUTION

Motion:

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

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

Resolution:

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

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 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

This permit is granted subject to the following special conditions:

1. 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.

2. **State Lands Commission Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, a written determination from the State Lands Commission that:
 - A. No state lands are involved in the development; or
 - B. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained: or
 - C. State lands may be involved in the development, but pending a final determination of state land involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.
3. **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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The applicant proposes to demolish an existing deck cantilevered 5 feet beyond the bulkhead and construct a 67-foot long, concrete deck cantilevered 4½ feet beyond the bulkhead with a glass railing along the perimeter of the deck ranging in height between 42-inches and 84-inches. The glass railing will be etched, frosted, or partially frosted, or clear glass with a UV-reflective glazing that is visible to birds. The cantilevered deck will be set back more than 5 feet from the extension of each of the side property lines. The project plans are attached as **Exhibit 2**. The subject site is associated with a residentially zoned, harbor front lot at 3632 Venture Dr., in Huntington Harbour in the City of Huntington Beach (**Exhibit 1**).

The proposed deck drainage will be directed away from harbor waters and toward the lot and area drains connected to an on-site bio-filter. In addition, as proposed by the applicant, soaps, paints, detergents or any products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye will not be used on the deck, and so will not be allowed to drain into the harbor waters. All the construction activities are proposed to occur from the landward side of the bulkhead with the exception of temporary brackets that will support the forms for the proposed concrete cantilevered deck. This will be accomplished by drilling holes to secure temporary anchors to hold the form in place off of a barge. Any dust from this activity is proposed to be collected with a vacuum and at no time will any debris be allowed to fall into the water. No harbor bottom disturbing activities will occur during this operation. Additionally, all standard BMPs (best management practices) will be practiced during deck construction. Additionally, **Special Condition 1** requires the applicant to incorporate water quality best management practices (BMPs) into the project during construction.

The subject site is located within the City of Huntington Beach, which has a certified Local Coastal Program (LCP). However, due to the project location seaward of the mean high tide line, the project is within an area of the Commission's retained permit jurisdiction. Nonetheless, the City's certified LCP may be used as guidance. The land use designation at the water portion of the site is Open Space – Water Recreation (OS – W) and zoned Open Space Water Recreation. The applicant's property (the land) is designated and zoned for residential use in the certified LCP. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private cantilevered decks abutting residential uses, and with Chapter 210, which provides standards for cantilevered decks in Huntington Harbour in the Open Space Water Recreation zone. Moreover, Section 210.06(R)(2) of the IP allows: "*The maximum height for windscreens shall be seven feet above the finished surface of the deck at the bulkhead line.*" The City of Huntington Beach reviewed the proposed plans and issued Approval-in-Concept dated 10/4/19.

The proposed deck is located over the water area bayward of the associated single family residence. The proposed development would occur on the Main Channel in Huntington Harbour. The Main Channel is owned and administered by the California State Lands Commission (CSLC). Development in this area requires review and approval from CSLC. However, final approval from CSLC of the proposed deck project has not yet been received by the applicant. Staff from CSLC anticipates this project will be heard at the CSLC hearing in December. In

order to ensure the proposed deck project complies with any requirements of CSLC, **Special Condition No. 2** is imposed which requires that evidence of approval from the CSLC be submitted, prior to issuance of the coastal development permit.

Most of the Huntington Harbour water frontage is developed with single-family homes on lots supported by bulkheads, many of which have cantilevered decks and boat docks over public waters, including properties adjacent to the project site. The proposed deck is associated with the single-family residence on the applicant's property. The proposed deck is similar in function to the other cantilevered decks associated with residential development within Huntington Harbour. The proposed development is consistent with past Commission actions in the area.

Although cantilevered above the water, the proposed deck would preclude the general public from utilizing the public water area underneath the deck for recreation or navigational purposes. However, there is no sandy beach area along the bulkhead and a boat dock is present waterward of the area of the proposed cantilever; therefore, in this case, the construction of a deck cantilevered five feet beyond the bulkhead would not create a new impediment to shoreline public access as there is no opportunity for the public to walk or boat in the area immediately waterward the bulkhead at this site. The nearest public access in the area is along the public walkway that runs along the bulkhead on the western half of Trinidad Island (location of the subject site), which is approximately 1,000 feet west of the subject site. There is also a small public harbor-front beach park adjacent to Trinidad Lane at the entrance to the island. Public access to the harbor is also located at Sea Bridge Park, approximately one half mile west of the site.

The proposed development will not have any significant adverse impact on public access to the coast or to nearby recreational facilities. In this case, there is an existing significant pattern of development of 5-foot wide decks cantilevered over the bulkhead. Thus, the replacement of a cantilevered deck 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). Because development patterns or use of public Tidelands may change in the future, the Commission imposes **Special Condition 3** 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 or on adjacent public waters.

The proposed deck will be cantilevered over the existing bulkhead. A Bulkhead Condition Report & Sea Level Rise Discussion (Report) was prepared for the proposed development by GeoSoils, Inc., dated July 25, 2019. The Report assessed the condition of the existing bulkhead and states:

“The bulkhead is in good condition and is functioning as intended. There were no signs of any movement, or visible scour at the mudline. The weep holes are functioning. There were some small vertical shrinkage cracks in the concrete face which is typical. The small cracks do not impact the performance of the bulkhead. The construction joints are in good condition. The bulkhead face is level and continuous with the bulkheads fronting the adjacent properties (no rotation).”

The Report further states:

“For the likely COPC SLR estimate range (high emissions) the bulkhead/deck is safe from flooding until after the year 2090. For SLR greater than 2.9 feet the height of the bulkhead/deck will need to be increased. For the 0.5% SLR case this may occur in about the year 2070. This is about 50 years from today and may be at the end of the useful life of the deck.”

The Report also states:

“The proposed deck/bulkhead can be adapted to respond to sea level rise. The height of the bulkhead can be extended vertically. Such an extension would not require additional harbor channel encroachment. Based upon the low emissions range of the 67% probability SLR projection, the bulkhead/deck will be safe from flooding until the year +/-2100. The existing bulkhead can structurally accommodate an increase in height. Extension is considered a viable means of mitigating SLR and harbor water impacts to the Huntington Harbor bulkheads and residences. An additional +/- 2.08 feet of height, to about elevation +12.0 feet NAVD88, can be added to the deck/bulkhead, which would protect against the 0.5% probability SLR flood risk past the year 2095. Such an adaptation would not result in additional bay-ward encroachment since it could be added directly on top of the existing deck/bulkhead.”

Thus, the proposed development will not adversely affect the condition of the bulkhead, will not prevent repairs to the bulkhead in the future, and will not prevent sea level rise adaptation measures which the City may implement along and atop the bulkhead.

Therefore, as proposed and conditioned herein, the Commission finds that the development will not have any significant adverse effects on coastal resources and is consistent with the Chapter 3 policies of the Coastal Act.

B. PUBLIC ACCESS

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. WATER QUALITY

The proposed work will be occurring in a location where there is a potential for discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-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 and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

D. LOCAL COASTAL PROGRAM

An LCP for the City of Huntington Beach was effectively certified in March 1985. However, the proposed development is occurring within the Commission's original permit jurisdiction. The standard of review is Chapter 3 of the Coastal Act and the City's LCP is used only as guidance. 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)

As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.