

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
 301 Ocean Blvd., Suite 300  
 Long Beach, CA 90802  
 (562) 590-5071



# Th7a

Filed: 10/15/2019  
 180th Day: 4/12/2020  
 Staff: M. Vaughn-LB  
 Staff Report: 11/21/2019  
 Hearing Date: 12/12/2019

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-19-0990

**Applicant:** William & Michelle Schmit

**Agent:** Swift Slip Dock & Pier Builders

**Project Location:** 16841 Bolero Lane, Huntington Beach, Orange County (APN: 178-37-115).

**Project Description:** Removal of a 480 square foot single finger boat dock float and replacement with a 676 square foot U shaped boat dock float. Two existing 16” diameter concrete piles will be retained and re-used in the same location, with one new 16” diameter concrete pile proposed. The 3’ by 18’ gangway will be retained.

**Staff Recommendation:** Approval with conditions

### SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to remove a single finger boat dock float and replace it with a new “U” shaped boat dock float, retain two piles, and install one new pile. Staff is recommending APPROVAL of the proposed project with five special conditions requiring: 1) evidence of State Lands Commission approval; 2) protection of any public rights that may exist at the subject site; 3) pre- and post-construction eelgrass surveys; 4) pre- and post-construction caulerpa surveys; 5) water quality protection measures.

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 are found on page 3.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION</b> .....	3
<b>II. STANDARD CONDITIONS</b> .....	3
<b>III. SPECIAL CONDITIONS</b> .....	4
<b>IV. FINDINGS AND DECLARATIONS</b> .....	7
A. PROJECT DESCRIPTION .....	7
B. MARINE RESOURCES.....	10
C. WATER QUALITY .....	10
D. PUBLIC ACCESS.....	10
D. LOCAL COASTAL PROGRAM.....	10
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	11

### EXHIBITS

Exhibit 1 – Vicinity Map and Aerial Photo

Exhibit 2 – Project Plans

Exhibit 3 – Project Engineer’s Letter, 10/4/2019

## 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. **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.

Any project change(s) required by SLC that are not in substantial conformance with the proposed plans shall require an amendment to this permit or an additional coastal development permit from the Coastal Commission.

2. **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.
3. **Eelgrass Survey(s).**
  - A. **Pre-Construction Eelgrass Survey.** 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” dated October 2014 (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 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 if completion of construction occurs within the active growth period, 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 (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 by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP 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 legally required.

**4. 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.

## **5. 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:

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.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The applicant proposes to remove a 480 square foot, single finger boat dock float and replace it with a 676 square foot, "U" shaped boat dock float. The proposed float will include an 8' by 11' square foot gangway landing. Two existing 16" diameter concrete piles will be retained and re-used in the same location. One new 16" diameter concrete pile is proposed. The 3' by 18' gangway will be retained and re-used. The project plans are attached as **Exhibit 2**. The subject site is associated with a residentially zoned, harbor front lot at 16841 Bolero Lane, in Huntington Harbour in the City of Huntington Beach, Orange County (**Exhibit 1**).

The proposed dock is located in 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 (SLC). Development in this area requires review and approval from SLC, typically in the form of a lease agreement. SLC staff has informed Coastal Commission staff that they had *“looked over the existing lease and the proposed project and it looks like the scope of the boat dock replacement would most likely require an amendment of lease.”* As of the date of this staff report, final approval from SLC of the proposed dock project has not yet been received by the applicant. In order to ensure the proposed deck project complies with any requirements of SLC, **Special Condition 1** is imposed which requires that evidence of approval from the SLC be submitted prior to issuance of the coastal development permit. **Special Condition 1** also requires that any project change(s) required by SLC that are not in substantial conformance with the proposed plans shall require an amendment to this permit or an additional coastal development permit from the Coastal Commission.

The proposed boat dock float will result in increased overwater coverage of 196 square feet, from 534 square feet to 730 square feet. The increase is primarily due to the change from a single finger float to a “U” shaped float. The “U” shaped float consists of one 5’ wide finger, one 4’ wide finger, a 4’ wide headwalk, and the 8’ by 11’ gangway landing lobe. The change to a “U” shaped float is proposed to accommodate the applicant’s vessels. It should be noted that many boat docks in general, and in this area in particular, include “U” shaped floats (**Exhibit 1.2**). In addition, the proposed float’s 8’ by 11’ lobe is needed to allow enough area at the base of the gangway (where it connects to the float) to accommodate elevation level shifts due to tides, as well as pedestrian clearance at the base of the gangway.

The applicant’s consultant has indicated that an earlier iteration of the dock design included 5’ width for all three sides of the “U”, but it was determined that two of the three sides could be reduced to a 4’ width. The applicant’s consultant has further indicated that the one, 5’ wide finger is necessary for stability considering the size of the vessels to be docked, and to allow the applicants water access for kayaks and paddleboards. The applicant’s consultant states: *“Narrowing the right finger [5’ wide finger] will create safety concerns for [the] homeowners and would make it more difficult maneuvering on the dock finger as well as getting in and out of the water with such recreational activities [kayaking and paddleboarding].”*

With regard to the additional guide pile, the applicant’s engineering consultant has indicated it is required for overall boat dock stability (**Exhibit 3**). To minimize disruption, the applicant has proposed to retain and re-use the two existing guide piles. The new pile will be hammered into place.

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. The new boat dock float will be constructed on land and floated into position. Silt curtains will be utilized to control turbidity during all construction activities. Floating booms will be maintained around the project site to capture any floating debris that may inadvertently enter the water during the entire construction process. Divers will recover non-buoyant debris accidentally



discharged into the water as soon as possible after the loss. Floating debris will be removed from the water and disposed of properly. The contractor will ensure that no debris, rubbish, oil or petroleum products related to construction will be allowed to enter into or be placed where they may be washed by rainfall or runoff into the water. All debris and trash generated by construction activities will be disposed of properly as soon as possible or at the end of each day.

The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. To ensure that all impacts (pre- and post- construction) to water quality are minimized and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 5**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and the continued use and maintenance of post construction BMPs.

The subject site was surveyed for eelgrass and *Caluerna taxifolia* (Dive Works, dated 8/11/2019) (Survey). The Survey determined that no eelgrass or *Caluerna taxifolia* was present at the site. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60 days with the exception of surveys completed in August – October, such as the subject survey. A survey completed in August - October is valid until the resumption of the following active growth phase (i.e., March 1). *Caluerna taxifolia* surveys are valid for 90 days. The project is agendized for the December 11-13, 2019 Coastal Commission hearing, so the eelgrass survey is currently valid. However, the *Caluerna taxifolia* survey has expired.

Eelgrass impacts are not expected, however that cannot be known with certainty without surveys current at the time construction commences. Valid eelgrass and *Caulerpa taxifolia* surveys are required prior to beginning of the proposed boat dock project. If the surveys reveal the presence of either eelgrass or *Caulerpa taxifolia*, additional steps will be required. **Special Conditions 3 and 4** identify the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition No. 4** identifies the procedures necessary to be completed prior to beginning any 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. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development. The City of Huntington Beach reviewed the proposed plans and issued an Approval-in-Concept dated 7/31/2019.

Currently, there is no direct public pedestrian access to public tidelands through the private residential lots at the subject site. The nearest public access is located at Davenport Beach Park, a small, sandy harbor-front park approximately 1,500 feet east of the subject site. Additional public access is available at Sunset County Beach, approximately 1.2 mile to the west of the site. The proposed project will not create any new adverse impacts to public access. In order to preserve and maintain access to the public tidelands, **Special Condition No. 2** 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.

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 boat dock is associated with the single-family residences on the applicants' property. The proposed dock float is generally consistent with the size and configuration of similarly situated docks in the Huntington Harbour area, is consistent with past Commission actions in the area. Impacts to eelgrass are not expected. The dock will be used solely for boating related purposes by the residents of the adjacent single-family home. Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area. The proposed development is consistent with past Commission actions on boat docks in the area.

## **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. 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, 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. PUBLIC ACCESS**

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

## **E. LOCAL COASTAL PROGRAM (LCP)**

An LCP for the City of Huntington Beach was effectively certified in March 1985. The proposed development is located seaward of the mean high tide and 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 City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

**F. 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 Executive Director 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.