

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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**F5b**

Staff: D. Truong – LB
Date: May 10, 2019

ADMINISTRATIVE PERMIT

Application No. 5-18-0958

Applicant: James P. Warmington, Jr.

Agent: Shellmaker, Inc. c/o Lisa Miller

Project

Description: Remove and replace an existing 819 sq. ft. U-shaped dock structure with gangway, relocate three 18-inch piles and add three new 24-inch concrete piles

Project

Location: 700 W. Bay Avenue, Newport Beach, Orange County (APN: 048-010-04)

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, May 10, 2019, 9:00 am
Oxnard City Council Chambers
305 W. 3rd Street
Oxnard, CA 93030

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 **six** 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 replace an existing 819 sq. ft. wooden “U”-shaped dock and gangway with a new 819 sq. ft. wooden “U”-shaped dock and gangway. The headwalk is proposed to be 6-ft. wide and 36-ft. long. The width and length of the eastern berth is proposed to be 5.1-ft. by 38.5-ft., respectively, and the western berth would be 5.3-ft. by 84-ft. The proposed project complies with the minimum finger size and headwalk size for residential docks under the City’s harbor design criteria. Three (3) existing 18-in. concrete piles would be relocated toward the headwalk and eastern berth. Three (3) new 24-in. concrete piles would be added on the western berth to secure the dock against wave action (**Exhibit 2**). The proposed dock is landward of the Bulkhead and Pierhead line. The dock would consist of an *ipe* wood decking material that is naturally decay-resistant and the dock would have high-density polyethylene floatation. The plastic floatation would be fully enclosed and is ultra-violet stable.

The project site is a bay front lot located over public tidelands 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 private gangway, pier and pier platform. Portions of the dock that will remain as existing are the relocated piles, pier and pier platform.

There is an existing public sandy beach located adjacent to the lot on the east. The beach area is accessed via W Bay Avenue and allows the public to recreate on the sand with views of the harbor’s waters. Landward of the dock is a single-family home and bulkhead approved under CDP No. 5-16-0444. A cantilevered deck is located above public tidelands that are managed by the City. The project site is designated as Tidelands and Submerged Lands (TS) by the City of Newport Beach certified LCP. The project site is located within the Commission’s original jurisdiction because it is proposed to be located above the waters of Newport Bay and involves work to be done in the water. Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area.

The City of Newport Beach issued a Harbor Permit/Approval-in-Concept to “remove and replace dock and gangway and replace with new in a revised configuration; relocate three (3) 18” piles and three (3) 24” new pile” on August 28, 2019 that complies with the City of Newport Beach’s waterfront design guidelines for residential docks.

Special Conditions 1 & 2 are imposed to recognize the public rights on the tidelands and that the dock float along with the associated headwalk and pier platform will be utilized for recreational boating purposes only consistent with tideland uses. 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 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. An eelgrass (*Zostera marina*) and *Caulerpa taxifolia* survey was conducted on

September 4, 2018 by Anghera Environmental and Ecomarine Consulting, LLC. According to the biological report, no *Caulerpa taxifolia* was observed onsite or within the vicinity and no eelgrass were observed in the project area; however, a patch of eelgrass was observed approximately 6 meters (20 feet) northeast of the dock site and is consistent with the City of Newport Beach's digital map of eelgrass presence during the 2018 survey year (**Exhibit 3**).

The patch of eelgrass will not be impacted by the project. Additionally, the proposed dock float is being reconfigured in a location further away from the existing eelgrass patch than the existing dock float. Moreover, the proposed dock would not encroach on or result in shading of the existing eelgrass. However, the proposed removal and driving of piles will cause turbidity plumes that may temporarily shade the adjacent eelgrass beds, allowing less penetration of sunlight and thus reducing biological productivity. In order to avoid potential impacts, the applicant proposes to use silt curtains and spud stabilizers during pile removal and driving to reduce turbidity plumes, as recommended by the applicant's Ecomarine letter dated September 12, 2018. Due to the presence and productivity of eelgrass in the Balboa Peninsula, best management practices (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 fingers of the dock does not fall into the water and to avoid impacts of installation of the new dock float. In addition, **Special Condition 3** imposes BMPs to limit temporary turbidity caused by re-driving the pile into the substrate.

Eelgrass surveys must be completed during the active growth phase (typically March through October) and are valid for 60-days. However, in this case, the survey conducted on September 4, 2018 is only valid until the beginning of the next active growth period which began on March 1, 2019. A pre-construction *Caulerpa taxifolia* survey was also completed on September 4, 2018 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 agendaized for the May 2019 Coastal Commission meeting and by this time the September 2018 eelgrass survey would no longer be valid. In addition, the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, up-to-date eelgrass and *Caulerpa taxifolia* surveys 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.

Pursuant to Coastal Act Section 30233, "*the...filling of open coastal waters...shall be permitted...where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects*". In this case, the project will require three (3) additional 24-in. piles, resulting in additional fill of approximately 12 sq. ft. of soft-bottom habitat. According to the applicant's agent, the increase in structural piles are required in order to meet development standards based on the 2016 California Building code and City of Newport Beach Harbor Design Criteria (**Exhibit 4**), which requires that piles accommodate "loads equal to 253 pounds per linear foot (plf)...of the floating dock" for wind, wave and current forces. The size and addition of piles are the minimum amount necessary to stabilize the residential dock/ boating facility, which is the least environmentally damaging alternative, and as such, no mitigation is required, consistent with Section 30233 of the Coastal Act.

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.

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 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 August 23, 2018, 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 or near the project site. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the project site.
2. **Permit Compliance.** By acceptance of this permit, the permittee agrees that 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.** By acceptance of this permit, the permittee agrees to implement the following:
 - (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) 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” 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 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 1.2:1 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 1.2:1 (mitigation: impact). Any exceptions to the required 1.2:1 minimum final mitigation ratio found within the 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 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.

Applicant’s Signature

Date of Signing