

## CALIFORNIA COASTAL COMMISSION

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

# Th6b



Staff: M. Vaughn – LB  
Date: 2/20/2020

## ADMINISTRATIVE PERMIT

**Application No.** 5-19-0133

**Applicant:** Patterson Custom Homes

**Agent:** Swift Slip Dock & Pier Builders, Inc.

**Project Description:** Remove one, rectangular, 10' by 27' boat dock float, 10' by 6' pier platform and 3' by 20' gangway and construct three new, rectangular, 8' by 14' boat dock floats and 3' by 24' gangways. Two, 14" diameter piles will be removed and six new, 12" diameter piles will be installed.

**Project Location:** 3900 Channel Place, Newport Beach, Orange County  
APN: 423-061-10

## 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:

**Thursday, March 12, 2020 9:00 am**  
Hilton Scotts Valley  
6001 La Madrone Drive  
Santa Cruz, CA 95060

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

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

JOHN AINSWORTH  
Executive Director

By: Meg Vaughn  
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 THROUGH TEN.**

**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 proposed project includes removal of one, rectangular, 10' by 27' boat dock float, 10' by 6' pier platform, and 3' by 20' gangway; and construction of three new, rectangular, 8' by 14' boat dock floats and 3' by 24' gangways. Two 14" diameter piles will be removed and six new 12" diameter piles (two piles per each new boat dock) will be installed. Each of the three proposed gangways will extend from the bulkhead to the dock floats. No piers or pier platforms are proposed. The proposed project also includes the payment of \$2,500 by the applicant to Orange County Coastkeeper's eelgrass restoration program in Upper Newport Bay (Exhibit 4). OC Coastkeeper describes the program as follows:

"With this contribution we can expand upon our successful eelgrass restoration efforts to monitor and replant eelgrass in our UNB restoration sites originally installed in 2015-2016. This contribution will support our annual spring monitoring efforts. In each of four restoration areas in UNB we are assessing eelgrass percent cover. If the original target planted area has fallen below our target percent cover (%60 cover or higher) we will replant additional plants in these areas. One of the most effective techniques found to work in varied site conditions in Newport Bay is the bundling method. This method involves the bundling of 10-15 eelgrass blades or shoots into a planting unit which is then transplanted to the restoration site. Mature plants are carefully collected by hand by divers and separated in seawater trays on land into planting units which are attached to biodegradable anchors (a tongue depressor and hemp string). Volunteers prepare the bundles on shore, then divers plant the bundles by hand, making small holes within the restoration site and burying the biodegradable anchors in the sediment."

More information regarding the eelgrass program from OC Coastkeeper is attached as Exhibit 4. Special Condition No. 5 requires that the applicant carry out the payment in support of the eelgrass restoration program as proposed.

The boat dock to be removed was associated with one single family residence constructed across three separate residential lots. The three proposed docks will be associated with three new single family residences to be constructed on each of the underlying separate lots. A coastal development permit for the demolition of the one single family residence and construction of the three new single family residences on the three lots was approved by the City of Newport Beach via Coastal Development Permit Nos. CD2018-086 (PA2018-209), CD2018-087 (PA2018-210), and CD 2018-088 (PA2018-211). Each of the proposed boat docks will be associated with one of these new single family residences.

The subject site is associated with the residentially zoned, harbor front lots at 3900 Channel Place (which will become 3900, 3902, and 3904 Channel Place) in Newport Harbor in the City of Newport Beach, Orange County (Exhibit 1). The docks will be used for boating related purposes only. The majority of the residentially zoned land fronting

5-19-0133 (Patterson Custom Homes)  
Administrative Permit

Newport Harbor is developed with single-family residences and associated private boat docks, as is proposed in this case. The proposed boat docks are generally consistent with the size and configuration of similarly situated docks in this area of Newport Harbor. Newport Harbor Permit Policies limit the channelward extent of boat docks in this area to no more than 30 feet from the bulkhead. The proposed docks are consistent with this requirement.

The total overwater area of the existing boat dock is 390 square feet. The total overwater area of the three proposed new boat docks is 552 square feet. Thus, the proposed project would result in an increase in overwater coverage of 162 square feet. In addition, the proposed project would result in an increase of fill of coastal waters due to the additional, though smaller, piles. The existing boat dock's two, 14" diameter piles result in 306 square inches of fill. The proposed boat docks' six, 12" diameter piles will result in 678 square inches of fill (an increase of 372 square inches, or about 2½ square feet). Although the proposed project will result in some increase in over water coverage and fill, the increases are relatively minimal increases and the applicant has attempted to reduce the sizes as much as possible while still providing one boat dock per residential lot. In addition, the proposed docks are consistent with the size of other docks in the area and with past Commission actions, and no eelgrass impacts are expected based on the most recent eelgrass survey.

The proposed piles will be hammered into place (dry pull and dry drive method), which the applicant states is intended to reduce turbidity compared to jetted pile installation. The boat dock parts will be constructed on land and floated via barge to the project site. No manufacturing will occur at the site. No staging area is required. Silt curtains will be utilized to control turbidity during all construction activities. Floating booms will be maintained around the project site during the entire construction process to capture any floating debris that may inadvertently enter the water. 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 placed where they may be washed by rainfall or runoff into the harbor waters. All debris and trash generated by construction activities will be disposed of properly as soon as possible or at the end of each day. No soaps, paints, detergents or any products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye will be used on the dock and will not be allowed to drain into the harbor.

The subject site is located within the City of Newport 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 and 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 water area within which the boat dock project is proposed is land use designated and zoned Tidelands and Submerged Lands. A private boat dock associated with single family residential development on the adjacent lot is recognized by the City's certified LCP as an allowable use, specifically with

Implementation Plan Chapter 21.30 Harbor and Bay Regulations, which allows private boat docks abutting residential uses within the Tidelands and Submerged Lands zone. The City of Newport Beach Harbor Resources Division reviewed the proposed plans and issued Approval-in-Concept No. 1630 dated 10/29/2018.

The subject site was surveyed for eelgrass and *Caulerpa taxifolia* (Dive Works, 10/29/2019, (Survey)). The Survey found that no eelgrass or caulerpa was present in the project vicinity. 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). *Caluerpa taxifolia* surveys are valid for 90 days. Although the eelgrass survey is valid as of the date of this staff report, by the date of the Coastal Commission hearing on the matter, it will have expired. The caulerpa survey has expired.

No impacts are expected to occur to eelgrass as a result of the proposed project because no eelgrass was observed in the project vicinity. Although eelgrass impacts are not expected, that cannot be known with certainty without surveys current at the time construction commences. Valid eelgrass and *Caulerpa taxifolia* surveys will be required prior to beginning of the boat dock replacement work. If the surveys reveal the presence of either eelgrass or *Caulerpa taxifolia*, additional steps will be required. Therefore, the Commission imposes **Special Conditions No. 2 and No. 3**, which identify the procedures necessary to be completed prior to beginning any construction. Also, if any eelgrass or *Caulerpa taxifolia* is found on the project site, **Special Condition Nos. 2 and 3** identify the procedures that must be completed prior to beginning any construction.

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 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. 1**, 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 nearest public access to the harbor is located at the 39<sup>th</sup> Street street end adjacent to the subject site and at the street ends at either end of Channel Place, approximately 400 feet east and west of the subject site. There is also a public harbor front beach at Newport Island Park, approximately 400 feet south of the subject site. The sandy public ocean-fronting beach that runs the length of the Balboa Peninsula is located approximately 1,800 feet southwest of the subject site. The proposed project will not result in any new adverse impacts to public access. In order to preserve and maintain access to the public tidelands, **Special Condition No. 4** 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.

## **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)**

The City of Newport Beach LCP was effectively certified on January 13, 2017. 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 the Chapter 3 policies 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.

## **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 are prohibited at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity;
- (6) Floating booms shall 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 shall 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 shall 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 shall 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 shall practice preventive engine maintenance and shall 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 shall 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 shall 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 shall not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

**2. 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 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 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 legally required.

**3. Pre-construction *Caulerpa Taxifolia* Survey**

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to

determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and 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 *Caulerpa 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 *Caulerpa taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**4. 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.

**5. Orange County Coastkeeper**

As proposed by the applicant, the applicant shall carry out the payment of \$2,500 to Orange County Coastkeeper in support of Orange County Coastkeeper's eelgrass restoration program in Upper Newport Bay, as generally described in Exhibit 4 to this staff report. Within sixty days of Coastal Commission action on this permit, the applicant shall submit to the Executive Director written evidence that the payment has been received and accepted by Orange County Coastkeeper.

**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