

CALIFORNIA COASTAL COMMISSION

South Coast District Office
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W7a

Staff: M. Vaughn – LB
Date: 8/20/2020

ADMINISTRATIVE PERMIT

Application No. 5-19-0979

Applicant: San Jacinto LLC
Raymond DeAngelo

Agent: Bellingham Marine
Usmita Pokhrel

Project Description: Remove “U” shaped boat dock float, gangway, pier, and pier platform and replace with new “L” shaped boat dock float, gangway, pier approach, and pier platform.

Project Location: 626 Via Lido Nord, Newport Beach, Orange County
APN: 423-23-106

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 on September 9, 2020. PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor’s Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

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

5-19-0979 San Jacinto LLC
Administrative Permit

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 site is located at 626 Via Lido Nord, in the City of Newport Beach, Orange County. The subject site is a bulkheaded property on Lido Isle, fronting on Lido Channel in Newport Harbor ([Exhibit 1](#)).

The applicant proposes to remove an existing "U" shaped boat dock float, 3' by 20' gangway, 4' by 14' pier, 10' by 13' pier platform ([Exhibit 3](#)). The applicant proposes to construct a new, 684 square foot, "L" shaped boat dock float, a 24-foot by 4-foot gangway, a 10-foot by 17-foot pier platform, and 4-foot by 4-foot pier approach ([Exhibit 2](#)). No work is proposed to the existing bulkhead at the site.

Overall overwater coverage will be reduced from 1,002 square feet to 971 square feet. The reduction in overwater coverage is due to replacing the existing three sides of the "U" shaped float with the two sides of the "L" shaped float, and reducing the size of the pier platform and pier ([Exhibits 2 and 3](#)). The existing dock system is supported by 6 piles (three float guide piles, one pile supporting the pier, and two piles supporting the pier platform). The existing piles are all 12" square concrete. All of the existing piles will be removed and replaced with new piles. The proposed dock system would be supported by four piles: two, 14-inch square concrete guide piles to support the "L" shaped float; and, two, 14-inch square "T" piles to support the proposed 10-foot by 17-foot pier platform. The pier platform would be connected to the bulkhead via a 4-foot by 4-foot pier approach. The proposed project would result in decreases in both overwater coverage and the amount of fill due to piles. The number of piles (fill) has been reduced as much as possible while still providing adequate support for the proposed boat dock. The proposed pier platform will be used for boating related uses only, such as storage of small hand launched vessels such as stand up paddleboards or kayaks, and other boating related items.

Marine Taxonomic Services, Ltd. conducted an eelgrass survey of the subject site on 10/24/2019 and found no eelgrass present. Prior to that survey, the site was surveyed by the City of Newport Beach Harbor Resources Division on 7/18/2019 and no eelgrass was discovered within the project area. A pre-construction *Caulerpa taxifolia* survey was not prepared. However, *Caulerpa taxifolia* surveys in the project vicinity have not found *Caulerpa* to be present (e.g. 5-19-1159 at 630 Via Lido Nord on 7/12/2019). **Special Condition No. 3** requires that a current *Caulerpa taxifolia* survey must be conducted prior to commencement of construction.

No impacts are expected to occur to eelgrass with the proposed project because no eelgrass was observed in the project vicinity during the two site surveys. 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. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). The eelgrass survey is no longer valid because it was valid only through March 1. In any case, a subsequent eelgrass survey will be required prior to beginning any construction. A valid *Caulerpa taxifolia* survey will also 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, and in the event the required pre-construction eelgrass or *Caulerpa taxifolia* surveys reveal the presence of either in the project vicinity.

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.

Single-family residences and associated private docks are the typical pattern of development for harbor-fronting properties in Newport Beach ([Exhibit 1](#)). The subject site is developed with a single-family residence. The proposed boat dock is associated with the single-family residential development at the site. The lot is land use designated Single Unit Residential Detached (RSD-C) and zoned Single Unit Residential (R-1). The water area is land use designated Tidelands and Submerged Lands (TS) and zoned Submerged Lands and Tidelands (TS). Private boat docks are an allowable use under the LCP zoning in this water area (although the LCP provides guidance only here). The proposed project received a Harbor Permit/Approval in Concept from the City of Newport Beach (Plan Check No. 1293-2019), dated 7/18/2019. The existing and proposed dock systems do not/will not extend bayward of the U.S. Pierhead line, consistent with the City of Newport Beach Harbor Permit Policies. This project is similar to docks in the adjacent area and is consistent with past Commission actions in the area.

The proposed project includes the removal and replacement of an existing private boat dock system associated with residential development. The proposed project extends out into public tidelands and submerged lands in Newport Bay that are administered by the City of Newport Beach pursuant to a Tidelands Grant (City of Newport Beach Tidelands and Submerged Lands in Newport Bay – Statutes of 919, Chapter 494, Page 1011 and Statutes of 1927, Chapter 70, Page 125). 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.

There is no direct public access to public tidelands through the private residential lot at the subject site. However, vertical public access to public tidelands is available approximately 270-feet southeast of the project site at the Via San Remo street end. From this access point, members of the public may access bay waters and, among other recreational activities, launch a kayak or standup paddle board. In addition, typically at this site, even during low tides, the water extends up to the bulkhead, so there is rarely if ever dry sand area available for walking. Thus, the proposed project does not create adverse impacts to public access or recreation. In order to preserve and maintain access to the public tidelands, **Special Condition No. 4** makes clear 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 is not expected to impact eelgrass beds or 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)

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. Development proposed bayward of the property line is located

within the Commission's jurisdiction and consequently, the standard of review is Chapter 3 of the Coastal Act, and the certified LCP serves as guidance. As conditioned, the proposed development within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach (Planning Department and Harbor Resources Division) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerial or categorically exempt from CEQA (Class 1, CEQA Guidelines Sections 15301) on 7/18/2019.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the marine resources, water quality, and public access and recreation policies of the Coastal Act. As conditioned, the Commission finds that 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 Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and 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 shall 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 shall 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.

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