

CALIFORNIA COASTAL COMMISSION

South Coast District Office
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W7a

Staff: KD – LB

Date: 11/16/22

ADMINISTRATIVE PERMIT

Application No.: 5-22-0378

Applicant: Alexis Salazar

Agent: Swift Slip Dock & Pier Builders

Location: 4006 River Avenue, Newport Beach, CA 92663
(APN No 423-302-03)

Project Description: Remove existing 108 sq. ft. floating dock, (2) 12" sq. ft. concrete marina guide piles, and 60 sq. ft. gangway. Install a new 112 sq. ft. floating dock, (2) new 12" marina piles, and a new 3'X24' code compliant gateway.

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 November 16, 2022. PLEASE NOTE THAT THIS WILL BE A HYBRID MEETING, WITH BOTH VIRTUAL AND IN PERSON PARTICIPATION ALLOWED. Please see the Coastal Commission's Hybrid 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 Hybrid Hearing Procedures, please call 415-904-5202.

The in-person hearing will be held at:

**Monterey County Board of Supervisors Chambers
168 West Alisal St. 1st Floor
Salinas, CA 93901**

The Commission strongly encourages continued participation virtually through video and teleconferencing due to changing Covid-19 conditions.

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: Korrin Davis
California Sea Grant State Fellow

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EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan](#)

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 seven through eleven.

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 AND PRIOR PERMIT

Project Description

The proposed project involves the removal of existing 108 sq. ft. floating dock, (2)

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12" sq. ft. concrete marina guide piles, and 60 sq. ft. Gangway; and installation of a new 112 sq. ft. floating dock, (2) new 12" marina pile, and a new 3'X24' code compliant gateway. There will be a total increase of 16 sq. ft. in overwater coverage with no changes to fill ([Exhibit No. 2](#)).

The subject site is located at 4006 River Avenue in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The subject site is currently developed with a single-family residence on a private dock. Most of the water fronting residences along River Avenue are developed with single-family residences, many of which also have boat docks built in coastal waters within Newport Harbor. The proposed dock is similar in function to the other docks associated with residential development on in this area of Newport Harbor.

The proposed project is located within the Commission's original jurisdiction. The City has issued an Approval-In Concept dated January 26, 2022. The City owns the water and assesses a fee for private use of the area of water (submerged public land) that is owned by the City, which is used for public access improvements within the harbor. Pursuant to Public Resources Code section 7552.5, the submerged land is subject to a navigational easement that, in general, precludes the owner from preventing the public from using the waters for navigational purposes even if the submerged lands are not public trust lands. The proposed project will be landward of the designated pierhead line and, therefore, is not expected to interfere with navigation because pierhead lines are established to ensure that docks and piers do not interfere with navigation. In addition, construction of the proposed dock may hinder but would not completely obstruct the public's ability to access the water areas fronting the applicant's lot for recreational boating purposes and, as a practical matter, is unlikely to have much additional impact on public access. Thus, the proposed dock would not be inconsistent with the navigational easement over the submerged lands.

There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. However, the nearest public access in the area is the public launch site, located approximately 1,056 feet southeast of the site at Newport Island Park adjacent to 39th Street. Therefore, the proposed project does not result in adverse impacts to public access or recreation. In order to preserve and maintain access to the public waters if development patterns change in the future or if there is an effort to expand public access, **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.

There is potential for the discharge of demolition or construction debris into coastal waters at the subject site. This could result in adverse effects on the marine environment. The proposed development includes protective measures to ensure that coastal waters and marine resources will not be adversely affected before, during or after 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, the 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. As conditioned, the proposed project minimizes impacts to biological resources consistent with Sections 30230 and 30231 of the Coastal Act.

The applicant submitted an eelgrass survey for the project site conducted on October 17, 2021, which determined that no eelgrass was located within the project site. Eelgrass surveys completed between August through October are valid until the resumption of active growth (i.e., March 1). This date will pass prior to the reconfiguration of the dock, thus the subject eelgrass survey is no longer valid for project construction. Therefore, the Commission imposes **Special Condition 2**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction. If the pre-construction eelgrass survey required by **Special Condition 2** identifies new eelgrass beds that would be impacted by the proposed dock construction, the applicant must apply for a CDP amendment or new CDP to re-design and/or relocate the dock to avoid eelgrass impacts consistent with Sections 30230 and 30231 of the Coastal Act which protect biological resources.

The applicant has submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on October 17, 2021. The bathymetric surveys did not find evidence of *Caulerpa* onsite—however, *Caulerpa* surveys only remain valid for 90 days. Given the potential for the *Caulerpa* species to take over eelgrass and other marine habitat in the project vicinity, the Commission imposes **Special Condition 3**. This condition requires the applicant to twice survey the project area for the presence of *Caulerpa* (an invasive, nonnative aquatic species), prior to commencement of construction activities, consistent with the requirements for bay bottom-disturbing activities in infected systems specified in the *Caulerpa* Control Protocol developed in consultation with the United States Army Corps of Engineers (USACE), National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and the relevant Water Board offices. If any *Caulerpa* is detected within the project area, **Special Condition 3** identifies the procedures necessary to be completed prior to beginning any construction consistent with Sections 30230 and 30231 of the Coastal Act which protect biological resources.

To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition 5** requires the applicant to comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the RWQCB, the USACE, and the United States Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment consistent with Section 30231, 30232 and 30233 of the Coastal Act.

B. 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 could result in an adverse effect on the marine

environment. To reduce the potential for construction related impacts on water quality, the special conditions are imposed 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 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.

C. MARINE RESOURCES

The proposed private recreational boat dock development and its associated structures are an allowable and encouraged marine-related use. Eelgrass and *Caulerpa* surveys were conducted on October 17, 2021, and no eelgrass beds nor algae were found. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa sp.* 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.

D. PUBLIC ACCESS

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

E. LOCAL COASTAL PROGRAM (LCP)

The proposed development is located seaward of the mean high tide line 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 of Newport Beach certified LCP was certified on January 13, 2017 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 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

The permit is granted subject to the following special conditions:

1. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;

- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

2. Public Rights and Public Trust

The Coastal Commission's 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 now or in the future.

3. 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 prior to the beginning of construction and shall be valid until the next period of active growth. 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 applicant shall undertake mitigation pursuant to the Final Eelgrass Mitigation and Monitoring Plan

approved by the Executive Director.

B. Post-Construction Eelgrass Survey If any eelgrass is identified in the project area or the 10 meter buffer area by the pre-construction survey required by Subsection A of this condition, 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 and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicant shall submit the postconstruction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any additional eelgrass has been adversely impacted beyond the area of impacted identified in the pre-construction eelgrass survey, the applicant shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP. Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio (1.38:1) shall require an amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

4. Pre-construction Caulerpa Sp. Surveys

- A.** Two pre-construction surveys of the project area for Caulerpa species (Caulerpa) shall be conducted by a certified Caulerpa surveyor in accordance with the Caulerpa Control Protocol (version 5) (<https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf>). The surveys shall include the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga Caulerpa sp. The survey shall include a visual examination of the substrate.
- B.** Within fifteen (15) business days of completion of the survey, the applicant shall submit the survey for the review and approval of the:
1. Commission Executive Director; and
 2. California Department of Fish & Wildlife Marine Region (Caulerpa@wildlife.ca.gov) and National Marine Fisheries Service (NOAA Fisheries) (nmfs.wcr.caulerpa@noaa.gov).
- C.** Prior to initiation of any authorized Bottom Disturbing Activity within an Infected System, two surveys, initiated not less than 60 days apart, shall be conducted within the project area of potential effect (APE). The first survey shall be conducted using High Intensity Level techniques and the second survey shall be conducted using Eradication Area Level techniques. Both surveys shall be conducted within the same High Growth Period. Deviations from this condition may be considered on a case-by case basis by the appropriate regulatory agency in consultation with NOAA Fisheries and CDFW.

- D. At least one survey shall be conducted within 45 days of initiation of an authorized Bottom Disturbing Activity (a "Pre-Act Survey"). This survey could be the second (Eradication Area Level) survey conducted during the High Growth Period. However, project delays may require that a third survey be conducted prior to initiation of the Bottom Disturbing Activity in order to meet this 45-day requirement. If a third survey is required, this survey shall be conducted at either a High Intensity Level or Eradication Area Level as determined by the NOAA Fisheries/CDFW Contacts based upon site circumstances and proximity to infestations. To determine appropriate survey level, please contact the NOAA Fisheries/CDFW Contacts with project specific information.
- E. If *Caulerpa* species 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* sp. 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* species. 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. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) 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