

CALIFORNIA COASTAL COMMISSION

South Coast District Office
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Th7b

Staff: C. Seifert – LB

Date: May 19, 2022

ADMINISTRATIVE PERMIT

Application No.: 5-21-0718

Applicant: Edward Contreras

Agent: Swift Slip Dock and Pier Builders, Inc. (Attn: Randy Ocampo)

Location: 440 Harbor Island Drive, Newport Beach, Orange County (APN: 050-421-39)

Project Description: Removal of an existing 470 sq. ft. floating dock and 60 sq. ft. gangway for installation of new 462 sq. ft. floating dock and 72 sq. ft. gangway, as well as like-for-like replacement of three 12-in. pipe piles.

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. The South Coast District office will notify the applicant if such removal occurs.

This permit will be reported to the Commission on March 9, 2022. PLEASE NOTE THAT THIS WILL BE A VIRTUAL AND IN-PERSON MEETING. 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.

The in-person hearing will be held at:

**Hilton San Diego/Del Mar
15575 Jimmy Durante Blvd.
Del Mar, CA 92014**

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

Chloe Seifert
Coastal Program Analyst

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Existing and Proposed Site Plans](#)

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 eight through thirteen.

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 project site fronts Promontory Bay leading to the Newport Harbor, located at 440 Harbor Island Drive in the City of Newport Beach, Orange County ([Exhibit 1](#)). Single-family residences and associated private dock systems characterize the subject site and the surrounding area. The existing dock system and cantilevered deck onsite were

approved by the Regional Coastal Commission under Coastal Development Permit (CDP) No. P-2-3-75-4715 on March 10, 1975.

The proposed project is the removal of an existing 470 sq. ft. dock float and 60 sq. ft. (3-ft. x 20-ft.) gangway, and installation of a new 462 sq. ft. dock float and 72 sq. ft. (3-ft. by 24-ft.) gangway ([Exhibit 2](#)). The project also includes like-for-like replacement of three degraded, 12-in. pipe piles in the existing locations. The proposed like-for-like pile replacement will not alter the existing 2.4 sq. ft. of fill. The existing 147 sq. ft. cantilevered deck adjacent to the dock system will be maintained, but would require a new permit to re-construct or replace. The new floating dock system will be comprised of wood and composite material.

The existing water coverage will increase by 4 sq. ft. to accommodate the gangway size required by local harbor regulations; however, the proposed dock system size is comparable to that of adjacent docks and no eelgrass has been identified in the project area. As such, the slight increase in overwater coverage will not result in significant impacts to coastal resources.

Section 17.35.020.C of the City's uncertified Municipal Code places various limitations on cantilevered decks, including limits on where cantilevered decks are permitted. The City prohibits decks that would be cantilevered over areas described in the City's tidelands trust. However, the area where the proposed dock system and existing cantilevered deck are located is not subject to the public trust. In this area, the mean high tide line (MHTL) was adjudicated away from the project area under Case No. 20436 in Orange County Superior Court in 1926 (Orange County v. The Irvine Company) and extends into the water. Therefore, the applicant may maintain the existing cantilevered deck consistent with the City's uncertified Municipal Code. The City of Newport Beach Harbor Resources Division has developed Harbor Design Criteria Guidelines and Standards which, though not certified by the Coastal Commission, provide criteria for designing dock systems in a way that minimizes water coverage while providing for a usable dock. The proposed project is also consistent with those guidelines and standards.

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. While the proposed floating dock will extend 44 ft. into the bay, it will not impede navigation through the waterway and will be consistent with the City of Newport Beach Harbor Permit Policy. Thus, the proposed project would not be inconsistent with the navigational easement.

The subject site is within the Coastal Commission's retained permit jurisdiction. However, the City is the local permit issuing authority for development (i.e., a floating dock system) located in the waters of Newport Beach and as such, issues Approval-In-Concepts for developments located in these waters. The applicant received an Approval-in-Concept from the City of Newport Beach Public Works on September 8,

2021. The existing and proposed project is located on submerged area that is managed by the City of Newport Beach, and as such, the City also issues permits entitled “City of Newport Beach Harbor Permits” to require a fee for temporary private use of public tidelands. In this case, the project site is not located on public tidelands and the applicant is not required by the City to have an active “City of Newport Beach Harbor Permit.”

There is potential for the discharge of demolition or construction debris into coastal waters at the project 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 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 August 4, 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 construction 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 new 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 August 4, 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.

The nearest public access to Newport Harbor is located 1,170 feet away from the subject site at Beacon Bay public dock and beach. There is currently no lateral access along the coastline in this area of Promontory Bay. 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 within the canals, **Special Condition 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.

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. MARINE RESOURCES

The proposed private recreational boat dock development and its associated structures are an allowable and encouraged marine-related use. The design of the project includes the minimum size and 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*. 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. 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.

D. 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.

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. By acceptance of this permit, the permittee agrees to comply with the following construction related requirements:

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 permittee 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 (BMPs) Program. By acceptance of this permit, the permittee 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:

- i. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
- ii. 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

2. Solid and Liquid Waste Management Measures:

- i. 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 not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

3. Petroleum Control Management Measures:

- ii. 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 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;
- iii. 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

- iv. 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.

2. 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.

3. 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.

4. **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.

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