

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4830
(562) 590-5071



W7c

Staff: F. Sy – LB
Date: June 23, 2022

ADMINISTRATIVE PERMIT

Application No.: 5-21-0668

Applicant: NH Island, LLC

Agent: Todd Skendarian

Location: 748 Harbor Island Drive, Newport Beach, Orange County (APN No. 050-431-13)

Project Description: Replace an existing 10 ft., 4 in. long x 5 ft. wide cantilevered from the bulkhead concrete deck like-for-like.

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.

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:

**Town Hall
363 N. Main Street
Fort Bragg, CA 95437**

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: Fernie Sy
Coastal Program Analyst

Contents

STANDARD CONDITIONS..... 4

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION 4

A. PROJECT DESCRIPTION AND PRIOR PERMIT4

B. WATER QUALITY7

C. PUBLIC ACCESS.....7

D. LOCAL COASTAL PROGRAM (LCP)7

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....7

SPECIAL CONDITIONS..... 8

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 eight 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 AND PRIOR PERMIT

Project Description

The proposed project involves the replacement of an existing 10-ft., 4 in. long x 5 ft. wide cantilevered from the bulkhead concrete deck like-for-like ([Exhibit No. 2](#)). The new cantilevered deck will be the same size as the existing and will not result in an

increase in water coverage nor result in an impact to any eelgrass. The proposed work will consist of the construction of a temporary cantilevered wood framed “tray” that is built under the existing cantilevered concrete deck. The existing concrete will be removed from within the tray and the new concrete will be poured into the tray. The tray will serve to protect the water below and also act as the formwork for the repair. The proposed work will not disturb bay waters or bay bottom sediments. An existing post and cable railing along the perimeter of the cantilevered deck will remain, which will not include glass or any material that could adversely impact birds or marine life. The cantilevered deck extends beyond the private property line over coastal waters. An existing private dock system associated with the landside single-family residence is located onsite adjacent to the existing cantilevered deck and bulkhead, but no work to it is proposed with this project.

The subject site is located at 748 Harbor Island Drive in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The subject site is currently developed with a single-family residence on a bulkhead lot and a private dock. Most of the water fronting residences along Harbor Island Drive and Harbor Island Road are developed with single-family residences, many of which also have decks cantilevered beyond the bulkhead and boat docks built in coastal waters within Newport Harbor. The proposed deck is similar in function to the other cantilevered decks 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 25, 2022, for the project and the proposed cantilevered deck has been designed in compliance with the patio deck standards of Municipal Code Section 21.30C.050(G)(5). Specifically, the deck would project a maximum of 5 ft. beyond the bulkhead, maintains minimum setbacks of 5 ft. from the prolongations of the side property lines, and would be located outside Tidelands Trust, which are mapped State tidelands administered by the City.

The proposed deck would cantilever over the waters of Newport Harbor. In this area of Newport Harbor, the property over which the proposed cantilevered deck is to be built is not subject to the public trust because the mean high tide line (MHTL) was adjudicated in this area in case no. 20436 in Orange County Superior Court in 1926 (Orange County v. The Irvine Company). Furthermore, the City obtained fee title to the waterway in conjunction with its approval of Tract No. 3867 that was finalized in June 1972. The waterway was given to the City in fee simple as Lot A, which the tract map states is dedicated “for public water navigation purposes subject, however, to an easement appurtenant to each of the lots within the tract for pier, mooring and maintenance purposes over portion of Lot A lying between the bulkhead line and the pierhead line as shown on the tract map contiguous to each lot”. The City does not assess a fee for private use of the area of water (submerged public land) below the cantilevered deck that is owned by the City. The Commission continues to encourage the City to implement a city-wide lease program and utilize the fee revenue for public access improvements. **Special Condition No. 3** is imposed which requires the applicant to agree that should the City of Newport Beach implement a dock float and

pier/cantilevered deck lease program for the limited-term private use and occupation of City owned submerged land for development associated with recreational activities (i.e., private docks and piers, cantilevered decks, etc.), the development over City owned submerged land subject to this permit shall be subject to the terms of such dock float and pier/cantilevered deck lease program.

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 cantilevered deck 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 cantilevered deck 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 due to the existence of the private dock that extends farther out. Thus, the proposed cantilevered deck 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 is located along a beach in the nearby Beacon Bay community, approximately 525 ft. north of the subject site. There is also a public walkway that surrounds Balboa Island, approximately 1000 ft. northwest of the subject site. 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.

Prior Permit

On June 20, 1977, the Commission approved P-5-20-77-922-(Whitaker) on the subject site for development consisting of the construction of a two-story, single-family residence dwelling with three separate covered parking spaces, one open parking space and workshop area, jacuzzi, deck cantilevered from the bulkhead and boat dock. No special conditions were imposed.

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. 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. 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.

E. 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. Dock Float and Pier Lease Program.

By acceptance of Coastal Development Permit 5-21-0668, the permittee agrees, on behalf of itself and all successors and assigns, that should the City of Newport Beach implement a dock float and pier/cantilevered deck lease program in this

location for the limited-term private use and occupation of City owned submerged land for development associated with recreational boating activities (i.e., private docks and piers, cantilevered decks, etc.), the development over City owned submerged land subject to this permit shall be subject to the terms of such dock float and pier/cantilevered deck lease program.

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