

HARBOR COMMISSION AGENDA

City of Newport Beach
Council Chambers – 3300 Newport Blvd.
Wednesday, November 18, 2009
Regular Meeting – 6:00 pm

Karen Rhyne - Chairman

John Corrough
Tim Collins
Marshall Duffield

Don Lawrenz
Ralph Rodheim
Vincent Valdes

The Harbor Commissioners are citizens of Newport Beach who volunteer to serve on the Harbor Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

Chris Miller
Manager, Harbor Resources

Shannon Levin
Supervisor, Harbor Resources

Lorrie Arcese
Specialist, Harbor Resources

NOTICE TO THE PUBLIC

Regular meetings of the Harbor Commission are generally held on the second Wednesday of each month at 6:00 p.m. Staff reports or other written documentation have been prepared. The agendas, minutes and staff reports are available on the City's web site the Friday afternoon before the meeting. The address is: <http://www.city.newport-beach.ca.us>, under Agendas & Minutes, then Harbor Commission. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Harbor Resources staff at (949) 644-3034.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Lorrie Arcese, Harbor Resources Secretary at (949) 644-3034, at least 48 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible.

NEWPORT BEACH HARBOR COMMISSION AGENDA

3300 Newport Blvd., Newport Beach, CA
Wednesday, November 18, 2009

CALL TO ORDER 6:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL/INTRODUCTION:

"The Commissioners sitting before you are citizens of Newport Beach who volunteer to serve on the Harbor Commission. They were appointed by the City Council at large by majority vote for 4-year terms. The people sitting at the table in front are City staff members and are here to advise us during the meeting. Immediately to my left are:

*Chris Miller, Harbor Resources Manager
Shannon Levin, Harbor Resources Supervisor
Lorrie Arcese, Harbor Resources Specialist*

MINUTES: **Recommended Action:** Approve minutes from last meeting.

PUBLIC COMMENTS: *Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Harbor Commission – Speakers must limit comments to 3-minutes. Before speaking, please state your name and address for the record.*

ALL TESTIMONY GIVEN BEFORE THE HARBOR COMMISSION IS TAPE RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE MINUTES ON ALL ITEMS. (Red light signifies when three minutes are up; yellow light signifies that the speaker has one minute left for summation.)

ACTION & APPEAL ITEMS

ITEM #1

Subject: **AERIE Dock Structure at 201-207 Carnation Avenue – Resolution No. 2009-001**

Issue: Should the Harbor Commission adopt Resolution No. 2009-001 with affirms the Harbor Permit / Approval in Concept for the AERIE project located at 201-207 Carnation Ave?

Discussion:

Public Comments:

Action: The Harbor Commission may:

1. Adopt Resolution No. 2009-001 which affirms the AERIE Harbor Permit / Approval in Concept.

SUB-COMMITTEE REPORTS – Receive and File

HARBOR RESOURCES UPDATE – Receive and File

PUBLIC COMMENTS ON SUB-COMMITTEE REPORTS OR HARBOR RESOURCES UPDATE

COMMISSIONER'S ANNOUNCEMENTS OR MATTERS TO BE PLACED ON FUTURE AGENDAS FOR DISCUSSION, ACTION OR REPORT

RECOMMENDED TOPICS FOR FUTURE AGENDAS

- Statewide Coastal Marinas Permit – Report by Jim Sinasek
- Sea Lions – Preventative measures and possibly tighter controls
- Harbor Patrol Update

DATE AND TIME FOR NEXT MEETING: To be determined

ADJOURNMENT

**CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT**

Agenda Item No. 1
November 18, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@newportbeachca.gov

SUBJECT: AERIE Dock Structure at 201-207 Carnation Avenue – Resolution No. 2009-001

ISSUE

Should the Harbor Commission adopt Resolution No. 2009-001 which affirms the Harbor Permit / Approval in Concept for the AERIE project located at 201-207 Carnation Ave?

RECOMMENDATION

The Harbor Commission may:

1. Adopt Resolution No. 2009-001 which affirms the AERIE Harbor Permit / Approval in Concept.

DISCUSSION

On October 14, 2009, the Harbor Commission heard an appeal by the AERIE project opponents and considered the material previously submitted and discussed at prior Harbor Commission meetings. The Harbor Commission then affirmed the decision of the Harbor Resources Manager who had approved the Harbor Permit / Approval in Concept for the dock system. This Resolution finalizes the Harbor Commission's action.

PUBLIC NOTICE

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

Exhibit 1
Resolution 2009-001

RESOLUTION NO. 2009-001

A RESOLUTION OF THE HARBOR COMMISSION OF THE CITY OF NEWPORT BEACH AFFIRMING THE HARBOR PERMIT / APPROVAL IN CONCEPT FOR THE AERIE PROJECT LOCATED AT 201-207 CARNATION AVENUE.

THE HARBOR COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by AERIE, with respect to property located at 201-207 Carnation Avenue, and legally described as having two parcels and a small portion of a third (584 square feet), encompassing a total area of 1.4 acres, which is currently occupied by an existing 14-unit apartment building and single family residence requesting approval for a residential development.
2. The applicant proposes to develop the 1.4 acre site with an 8-unit condominium development. Project implementation includes the demolition of the residential structures and the existing dock structures which will be replaced with an eight (8) slip dock and one (1) guest side tie dock.
3. The subject property's dock is classified as residential as defined in Title 17.
4. The subject property is located within the coastal zone.
5. A public hearing was held on April 8, 2009 and July 8, 2009 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Harbor Commission at this meeting.
6. The Harbor Resources Manager issued a Harbor Permit / Approval in Concept for the dock portion of the AERIE development on July 31, 2009.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines). It can be seen with certainty that this activity will have a significant effect on the environment. Therefore, this activity is subject to CEQA.

1. A draft Environmental Impact Report (SCH# 2007021054) has been prepared in compliance with the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The DEIR was circulated for a 45-day comment period. The DEIR was considered by the Harbor Commission in its review of the proposed project.
3. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation

Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.

4. The dock structure approved by the Harbor Resources Manager in the Harbor Permit / Approval in Concept is part of the project fully analyzed in the EIR and falls firmly within the EIR's project description. As such, the dock structure was fully analyzed under CEQA. No further CEQA analysis is necessary.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 17.65.040 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *On July 31, 2009, the Harbor Resources Manager issued a Harbor Permit / Approval in Concept with Special Conditions for the dock system, and on August 13, 2009, the project opponents appealed the issuance of the Harbor Permit.*

Facts in Support of Finding:

- A-1. On October 14, 2009, the Harbor Commission heard the appeal and considered the material previously submitted and discussed at the prior Harbor Commission meetings. The Harbor Commission then affirmed the decision of the Harbor Resources Manager who had approved the Harbor Permit / Approval in Concept for the dock system.
- B. *The application does conform to the provisions of Title 17 and the Design Criteria approved by City Council for the dock system.*

Facts in Support of Finding:

- B-1. The project was reviewed by the Harbor Resources Manager who determined the project does conform to Title 17 and the Design Criteria for dock systems.
- C. *The project application is not likely to create navigational congestion, or otherwise interfere with the rights of the other harbor permittees within Newport Harbor, or other bay front property owners.*

Facts in Support of Finding:

- C-1. Navigational issues were considered by a subcommittee of the Harbor Commission who found that the entrance channel would not be significantly impacted. The entrance channel is wide enough for 10 lanes (one channel = 50' wide), and the project does not impact this existing system. This affirmation was confirmed by placing buoys in the water to mark the proposed dock location, and it was found that the dock system with a vessel side tied to the outside float, would not impact navigation.
- D. *The proposed application conforms to the policies and regulations of the certified Local Coastal Program.*

Facts in Support of Finding:

D-1. The proposed dock structure is consistent with the Newport Beach Coastal Land Use Plan as evidenced in the facts to support the findings contained within Council Resolution No. 2009-052. The project is a permitted use of open coastal waters pursuant to Policy 4.2.3-1 that allows the filling of open coastal waters for expanded boating facilities. The docks are also consistent with Policy 4.2.3-2 that allows recreational docks and piers within intertidal areas. The proposed project also does not significantly impact coastal access, as access through and to the site from the water will be maintained. The proposed project will not significantly impact coastal resources given the implementation of the conditions of approval and Construction Management Plan that includes measures to avoid impacting eelgrass and marine resources.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Harbor Commission of the City of Newport Beach hereby affirms the Harbor Permit / Approval in Concept, subject to the conditions attached to the Harbor Permit (or modified at the meeting).
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 17 Harbor Code, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 18th DAY OF NOVEMBER, 2009.

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

BY: _____
Karen Rhyne, Chairman

BY: _____
Don Lawrenz, Secretary

Exhibit 2
Special Conditions



HARBOR RESOURCES DIVISION
829 Harbor Island Drive
Newport Beach, CA 92660
(949) 644-3034 / Fax (949) 723-0589

Special Conditions

July 31, 2009

Property Address: 201-207 Carnation Ave.

With reference to the plans currently under consideration at the above referenced address to reconfigure or modify the dock system or bulkhead, the following conditions will now be in effect:

1. The project proponent is aware of the Harbor Permit Policies (Council Policy H-1) and Title 17 of the City of Newport Beach Municipal Code. The project proponent understands that the above referenced structure(s) is under the purview of these Policies and Codes.
2. Any future work on the above mentioned structure(s) requires permits with the City of Newport Beach and any other applicable agencies. Painting and work considered to be cosmetic in nature does not require a permit.
3. The conditions set forth in this document pertain to the proposed dock system and/or bulkhead under consideration. Any future modifications or alterations to the dock system and/or bulkhead may require new conditions which may override or change these conditions. These conditions supersede all past conditions associated with this property.
4. Only marine oriented uses are allowed on the pier, pier platform, gangway and float. Patio furniture, plants etc...are not permitted.
5. In accordance with Municipal Code 10.08.030 A. the project proponent shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases: ...For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."
6. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.
7. In accordance with Municipal Code 10.28.040 the following noise regulations apply: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."
8. The contractor shall post and update a two week schedule of construction activities at a location(s) easily accessible to local residents.

9. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.

10. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction. In addition, the Beach Protection Plan shall include Best Management Practices for protecting the beach after the project is complete.

11. The project applicant and its successors are notified that even though the proposed dock system replaces an existing dock system, the new docks will be constructed in the Entrance Channel to Newport Bay which is subject to surge and swell activity which may cause damage to the dock system and vessels berthed therein. It is the responsibility of the project applicant and its successors to maintain and operate the dock system to minimize damage to the dock system and vessels. The dock system shall be subject to nuisance abatement per Title 17 of the Municipal Code, if in the opinion of the Harbor Resources Manager, it presents an endangerment to other facilities or vessels in the harbor.

12. The project applicant must remove the existing dock system including the gangway and pier within 90 days of receiving all final regulatory permits allowing the construction of the replacement dock system.

13. The vessels that will be side-tied to the outside, bayward-most float which is positioned on the Pierhead Line, shall not extend into the harbor more than 24 feet from the edge of this outside, bayward-most float. This is shown on the approved drawings as the "Vessel Width Limit Line." The vessels side tied at this location shall be safely secured to withstand various weather and ocean/bay conditions. The applicant shall also prepare an Inclement Weather Action Plan which describes in detail, the preventative measures that will be taken with respect to the vessels during storm conditions. This Inclement Weather Action Plan must be reviewed by the Harbor Commission and approved by the Harbor Resources Manager prior to commencement of construction.

14. The guest side-tie on the north end of the dock system shall only be available for vessels less than or equal to 30 feet in length. This side tie shall be used for guest berthing only and will not be used for any permanent, long term vessel storage, and will not be rented or leased.

15. The number of boat slips and side ties approved in the final design must be the same as the number of dwelling units plus one guest side-tie as approved by the City Council in the final project approval, yielding nine berths total.

16. The side property lines extend in the water along their same bearings. Vessels shall not encroach upon the neighbor's property on either side.

17. The slips and side ties are only available for AERIE owner's use, except for the guest side tie. They are not to be used by anyone else, whether by rental, lease or loan or any other measure. On January 1st every year, the applicant shall provide the Harbor Resources Manager with a list that demonstrates that the AERIE homeowners are owners of their corresponding vessels. At any time the City may request registration and ownership information. Failure to comply with Special Condition #17 may result in administrative action.

18. The applicant will comply with the conditions and mitigation measures applicable to the dock/pier construction portion of the project as provided in Council Resolution No. 2009-52.

Chris Miller, Harbor Resources Manager

Applicant Signature

Print Name

Date