

**CALIFORNIA COASTAL COMMISSION**

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Hearing Date: 6/14/2019

## STAFF REPORT: APPEAL – DE NOVO

**Application No.:** A-5-HNB-19-0067/5-79-6083-A1

**Applicant:** Pendulum Properties Partners  
Kevin Hayes and Bryan Russell

**Agent:** Kevin Schmidt, Axiom Advisors

**Local Government:** City of Huntington Beach

**Appellant:** Tony Sellas

**Project Location:** 16330 – 16470 Pacific Coast Highway, Huntington Beach,  
Orange County  
APNs: 178-451-02, 178-451-12, 178-451-04, 178-441-15,  
178-441-13, 178-441-16, 178-441-17, 178-441-14

**Project Description:** Establish a shared parking program to accommodate the existing 98,823 square foot shopping center (Peter's Landing) and up to an additional 2,666 square feet of future commercial development. Also, update current status of site development including uses at Peter's Landing commercial shopping center (retail, office, restaurant, marina, and religious assembly), parking, landscaping, tree trimming and management plan, signage plan and public amenities

**Staff Recommendation:** Approval with Conditions

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## **SUMMARY OF STAFF RECOMMENDATION**

The applicant is proposing modifications and updates to Peter's Landing commercial center, a 98,823 square foot center with retail, office, restaurant, and religious assembly uses. Peter's Landing was originally constructed in the late 1970s, approved by Coastal Development Permit P-76-8742 (as subsequently amended). The subject site lies between the waters of Huntington Harbour and Pacific Coast Highway, in the City of Huntington Beach. More specifically, the applicant is proposing a Shared Parking Plan, a landscape plan, and two signage plans: a Coastal Access Plan and a commercial Signage Plan. In addition, a Tree Trimming and Management Plan (TTMP) is proposed to avoid impacts to the black-crowned night herons and snowy egrets present at the site. There is a public walkway along the harbor front at the subject site. Due to the varied and lengthy history of permit actions and approvals related to the project site, this amendment is intended to establish the baseline square footage and mix of uses at the site as they exist at the site. Establishing a common baseline will assist the applicant, City and Commission staff moving forward. Minor, non-structural upgrades not requiring a coastal permit are currently underway on the existing structures at the site.

In addition, the previous owner of the Peter's Landing commercial center failed to provide 72 Commission-required public access parking spaces and 50 bicycle racks, as well as related signage, all of which were required by a previously issued Coastal Development Permit. Commission staff sent a notice of violation letter to the previous owner and they began the process of working with staff to resolve the above described non-compliance. The current owner, the applicant, is requesting approval of installation of public access parking signage to bring the site into compliance with Commission requirements for public access parking and to enhance the visibility of public parking opportunities for coastal access at the site. As part of this application, the applicant is also proposing to provide the bicycle racks for fifty bicycles at locations on the site that were selected to maximize their use by the public.

Issues raised by the proposed project include protection of public access, public views, priority of use, and sensitive habitat. These are addressed by the recommended nine special conditions, which: 1) re-impose all previously required special conditions of earlier Coastal Development Permits and permit amendments for the site; 2) re-impose the previous requirement for 72 public access parking spaces and 50 bicycle racks, as well as related signage; 3) revise public access signage plan; 4) maintain public harbor-front walkway; 5) maintain public park/plaza and additional public amenities; 6) require recordation of Joint Use Parking Agreement; 7) maintain minimum 50% visitor serving uses at the site; 8) require revision of the TTMP; and, 9) require recordation of a deed restriction imposing all special conditions.

Although the proposed project falls within area now covered by a certified LCP, the proposed project represents a material change to and affects special conditions of Commission-issued coastal development permits (P-76-8742, P-79-6083, A-372-80, A-5-79-5662), granted when there was no certified LCP for the project area. Because development approved by these earlier permits has been built, the permit has been vested. Therefore, the permits remain under the jurisdiction of the

Commission for purposes of condition compliance and amendment. Thus, the proposed project is being processed as an amendment to the Commission's earlier CDPs.

The motion to adopt the staff recommendation is found on page 5.

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### APPENDICES

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### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – CDP P-76-8742

Exhibit 3 – CDP A-372-80

Exhibit 4 – CDP A-79-5662

Exhibit 5 – CDP P-79-6083

Exhibit 6 – *Parking Demand Analysis* prepared by Linscott Law & Greenspan Engineers and Planners, dated 7/19/2018; Table 2: Exhibit 6, page 11 (online only)

Exhibit 7 - Peter’s Landing Parking Management Plan – May 2018

Exhibit 8 - Bike Parking Exhibit, Conceptual Design & Planning Company, 1/29/2019

Exhibit 9 – Landscape Plan, prepared by Conceptual Design & Planning Company, received in the South Coast District Office on 2/11/2019

Exhibit 10 – Coastal Access Signage Plan, received in the South Coast District Office on 2/11/2019

Exhibit 11 – Commercial Signage Plan (in part), received in the South Coast District Office on 2/11/2019

Exhibit 12 – Sign Type A, Tenant Pylon Monument Plan, received in the South Coast District Office on 2/11/2019

Exhibit 13 – Sign Type M, Project ID Lettering, received in the South Coast District Office on 2/11/2019

Exhibit 14 – City of Huntington Beach Letter, 12/7/2018 (without attachments)

Exhibit 15 – City of Huntington Beach Letter, 5/4/1998 (without attachments)

Exhibit 16 – Tree Trimming & Management Plan, Hamilton Biological, 4/26/2019

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-HNB-18-0067 pursuant to the staff recommendation.*

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. 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 on which 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 of interpretation of any 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.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

**1. Previous Special Conditions.** Unless specifically altered by this permit and permit amendment, all special conditions of the original Coastal Development Permits applicable to the Peter's Landing commercial development site including: P-76-8742, P-79-6083, A-79-5662, and A-372-80 (which are being amended under the de novo portion of this appeal A-5-HNB-18-0067/CDP amendment number 5-79-6083-A1) remain in effect. The special conditions of this amendment are in addition to and/or complementary to the original special conditions.

**2. Public Access Parking.** In addition to adequate parking to serve all uses of the commercial development and adjacent marina, as required by Coastal Development Permit No. A-372-80 and consistent with the applicant's proposal, the subject site will also provide a minimum of 72 on-site public beach parking spaces, as described in the *Parking Demand Analysis* prepared by Linscott Law & Greenspan Engineers and Planners, dated 7/19/2018, and as depicted on the document titled Peter's Landing Parking Management Plan – May 2018 (Exhibit 7 of this staff report). The availability of the public beach parking spaces shall be made known pursuant to the signage requirements detailed in Special Condition No. 3, below. In addition, parking on site shall be available to serve visitors to the site for public access and recreational purposes, such as fishing, walking along the harbor front walkway, etc. whether or not such visitors patronize the commercial establishments at the site.

In addition, as required by Coastal Development Permit No. A-372-80 and consistent with the applicant's proposal, bicycle racks sufficient to accommodate a minimum of 50 bicycles shall be provided on site and available to the general public. These bicycle racks shall be installed as depicted on Bike Parking Exhibit, prepared by conceptual design & planning company, dated January 29, 2019 (Exhibit 8 of this staff report) within 30 days of issuance of this permit.

#### **3. Public Access Signage**

Prior to issuance of the Coastal Development Permit and permit amendment, the applicant shall submit, for the review and approval of the Executive Director, a revised Coastal Access Signage Plan which shall be in substantial conformance with the Coastal Access Signage Plan submitted by the applicant (attached as Exhibit 10 of this staff report), except for the following revisions to the coastal access sign required to be visible to motorists traveling along Pacific Coast Highway (depicted on the second page of the Coastal Access Signage Plan), as follows: 1) identify the size of

the sign lettering and of the barefoot/wave logo; 2) identify the location of the sign on the subject site; and, 3) demonstrate that this sign shall be double sided and oriented perpendicular to Pacific Coast Highway.

The applicant shall implement the signage plan within 30 days of issuance of this permit and maintain the approved Coastal Access Signage Plan for the life of the commercial development originally approved via CDP P-76-8742.

#### **4. Public Harbor-Front Walkway**

By acceptance of this permit and permit amendment, the applicant agrees that the public harbor-front walkway shall remain free and clear and available to the general public for a minimum width of ten (10) feet as measured landward from the bulkhead. No development shall be allowed to interfere with the general public's continued use of this public walkway.

#### **5. Public Park/Plaza, Harbor-front Walkway & Other Public Amenities**

By acceptance of this permit and permit amendment, the applicant agrees to protect existing and proposed public areas on the project site for continued public access. Consistent with the Coastal Commission's approval of Coastal Development Permit P-76-8742 (and subsequent approvals) which allowed, among other things, development of the Peter's Landing commercial center, all public access amenities, including, but not limited to: the public park/plaza, the public harbor-front walkway, the area located adjacent to the southeast corner of the public walkway, and the area of the cantilevered viewpoints on the water side of the public walkways (i.e. all public areas depicted on the proposed Landscape Plan, Exhibit 9 of this staff report) shall remain open and available to the general public, at a minimum from 5 am to midnight and at any time any of the project site businesses are open to the public.

The public park/plaza shall be a minimum of 8,582 square feet and shall maintain a public view corridor across the public park/plaza, which shall remain a minimum width of 143 linear feet.

Development at the Peter's Landing commercial center shall not interfere with public access and recreation amenities and the protection of coastal resources required of the Peter's Landing Marina, including, but not limited to, public fishing access, and habitat restoration.

#### **6. Joint Use Parking Agreement**

Prior to issuance of the Coastal Development Permit and Amendment, the applicant shall submit, for the review and approval of the Executive Director, written evidence that a Joint Use Parking Agreement has been prepared. Upon acknowledgement by the Executive Director that the Joint Use Parking Agreement is acceptable, the applicant shall record the approved Agreement, as Exhibit C of the Deed Restriction required in Special Condition 9, below.

The approved Joint Use Parking Agreement shall be implemented and carried out by the applicant for the life of the commercial development originally approved via CDP P-76-8742.

#### **7. Visitor Serving Use**

By acceptance of this permit and permit amendment, the applicant agrees on behalf of itself and future successors in interest, that a minimum fifty percent (50%) of the tenant space of the subject commercial center shall be occupied by Commercial Visitor (CV) uses as defined in the City of Huntington Beach certified Local Coastal Program.

#### **8. Tree Trimming & Management Plan (TTMP)**

By acceptance of this permit and amendment, the applicant agrees on behalf of itself and future successors and assigns to conform to the proposed Tree Trimming and Management Plan (prepared by Hamilton Biological, Inc., dated April 26, 2019, attached as Exhibit 16 of this staff report, TTMP). In addition, the applicant further agrees to notify the Executive Director prior to any tree trimming or removal on the site, and that no tree trimming or removal shall occur without written authorization to proceed from the Executive Director of the Coastal Commission. Executive Director authorization to proceed shall include review of information contained in seasonal reports required by the approved Tree Trimming & Management Plan. The applicant further acknowledges that: 1) additional information, as necessary, may be requested of the applicant prior to making a determination regarding authorization to proceed; and, 2) all trimming and removal (removal may occur only when it has been demonstrated to be necessary to protect life, health, property or essential public services as described in the TTMP or that it will have no effect on the function of the heronry), must occur outside the nesting season (except in the case of a documented emergency as defined in the TTMP).

The applicant shall comply with the approved Tree Trimming and Management Plan and all requirements of this special condition for the life of the commercial development originally approved via CDP P-76-8742.

**9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AND AMENDED PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.



## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes modifications and updates to Peter's Landing commercial center. Peter's Landing commercial center is a 98,823 square foot commercial center with retail, office, restaurant, and religious assembly uses, originally constructed in the late 1970s, subject to Coastal Development Permit P-76-8742<sup>1</sup> (Exhibit 2). Based on the data contained in the Parking Analysis<sup>2</sup> provided by the applicant, the mix of uses currently present at the Peter's Landing commercial center include retail, restaurant, office, health club, bank, marina office, marine sales, and a church. Based on the data contained in the Parking Analysis, the proposed mix of uses will be a similar mix of retail, restaurant and office uses, but the percentage of restaurant uses will increase (from 11,490 square feet to 30,983 square feet). General retail, office and health club uses square footage will decrease. The marina office will be eliminated (78 square feet). There will be no change to the following existing site uses: marine sales (2,473 square feet), cafe<sup>3</sup> (1,800 square feet), church (6,934 square feet), bank (492 square feet), and storage area (1,502 square feet). There is also a stand-alone 728 square foot restroom/shower facility that serves the marina patrons. No change to this facility is proposed. No construction of new, additional structural area is proposed. The commercial center will remain at 98,823 square feet<sup>4</sup>. These are the uses and areas (square footages) used to determine the site's parking demand (along with the requirement to provide parking for 300 boat slips per the site's CC&Rs, and the 72 public beach parking spaces required by CDP A-372-80). Table 2 from the parking analysis itemizes each proposed use area (Exhibit 6, page 11).

The general mix and square footages itemized in Table 2 in the applicant's Parking Analysis establishes the baseline square footage and mix of uses at the site. It is expected that individual commercial uses at the site will shift over time, but as long as the square footage of structures at the site, and the general mix of uses (i.e. no increase in intensity of overall use at the site) remains largely the same, and a minimum 50% of the tenant space of the site are Commercial Visitor (CV) uses, then no further CDP action would be triggered by a tenant change in the future. If the square footage (i.e. the size of the approved structures) changes, and/or the intensity of use at the site changes, then an amendment to this permit or a new permit would be required. The baseline information provided in Table 2 can then be used to compare the site development with original coastal development permits approved at the site. This CDP amendment is intended to update the

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<sup>1</sup> Coastal Development Permit P-76-8742 is also known as P-8-27-76-8742. The shorter CDP number will be used throughout this staff report, including in the special conditions.

<sup>2</sup> Parking Demand Analysis Letter #1 for Peter's Landing Marina Project, prepared by Linscott, Law & Greenspan Engineers, dated 5/23/2018, discussed further later in this staff report.

<sup>3</sup> A Starbucks café use operates in a single 1,800 square foot stand-alone structure in the parking lot near Pacific Coast Highway.

<sup>4</sup> The Parking Analysis also analyzes the parking demand for additional future uses, expected to be outdoor dining area. But no plans for future uses have been provided, and so only the commercial square footage as it currently exists, with the proposed mix of uses, is included in this Coastal Development Permit.

record and provide a basis for determining the proposed project's consistency with earlier Commission actions, particularly with regard to previously imposed special conditions, in addition to consistency with the City's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Many of the previously proposed special conditions were found to be necessary in order for the commercial center project, when it was originally approved, to be found to be consistent with the Chapter 3 policies of the Coastal Act. Since the applicant and successors in interest have enjoyed the benefits of the project originally approved by the Coastal Commission for approximately forty years, it is important to assure that the requirements that were imposed at that time as necessary to find the project consistent with the Chapter 3 policies of the Coastal Act remain in effect, including the provisions for public access and recreation amenities.

Minor, non-structural upgrades are currently underway on existing structures at the site. This work is deemed minor enough that no coastal development permit is required (i.e. this work is exempt from coastal development permit requirements<sup>5</sup>). Public access to the harbor-front walkway and to the public beach access parking spaces remains available during this work.

As approved in 1976 under CDP P-76-8742, the commercial center included 107,132 square feet of commercial space (retail/office/restaurant). CDP P-79-6083 allowed an additional 20,000 square feet of commercial space and also added an additional 79 parking spaces, bringing the approved total commercial square footage to 127,132 square feet, 28,309 square feet more than is currently present at the site. It appears that the maximum allowed square footage was never constructed. Over the years, various CDPs at the subject site have been approved, including some by the City of Huntington Beach once the City's LCP was certified in 1985. One of the goals of the current project is to identify the structures and uses on the site, review them for conformance with past CDP actions at the site, the City's LCP, the public access and recreation policies of the Coastal Act, and establish the correct, current baseline for existing square footage and range of uses. To that end, modifications and updates proposed to the center include: a shared parking program; installation of bicycle racks, public access signage; a comprehensive signage program for the commercial development (tenant signs, directory signs, project identification signage, banner signs, regulatory signs); landscape plan, and public amenity improvements. Also proposed is a Tree Trimming and Management Plan to protect the black-crowned night-heron and snowy egret activity present at the site.

It should be noted that the Starbucks (in the stand-alone structure) at the site was not part of any Coastal Commission action on a CDP or CDP amendment. The City asserts it was approved by a local coastal development permit. The City indicated, in a letter dated 12/7/2018 (Exhibit 14), that they did send the Notice of Final Action (NOFA) to the Coastal Commission office as required, and that an appeal period was set up and expired without appeal. However, no evidence (such as a copy of the NOFA or correspondence from Commission staff typical with the post-certification appeal process) of the City's CDP was included with the City's correspondence. Regardless, it is now apparent that approval of the Starbucks should have been processed by the Coastal Commission, as an amendment to the earlier CDPs at the site. As new construction within the existing parking lot

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<sup>5</sup> The on-going development is judged to be an improvement to a structure other than a single family residence or public works structure, located between the sea and the first public road, that does not increase height or internal floor area by more than 10%. (California Code of Regulations 13255).

that was approved by the Commission to serve the commercial center, the Starbucks project displaced parking spaces and materially affected the Commission's earlier approval of the commercial center. The 1,800 square foot Starbucks café is included as part of the proposed project for this CDP action.

By way of background, in 1998 the Coastal Commission processed an amendment to the original CDP P-76-8742, related to the marina (5-98-085-A1). Related to that amendment and in response to a request by CCC staff, the City sent a letter intended to identify any local past CDPs for the Peter's Landing site (Exhibit 15). In that letter (dated 5/4/1998), the City referenced three CDPs. Local CDP 85-24 permitted construction of the restroom and laundry facility for Peter's Landing Marina tenants. This approval was reflected in minutes from the Huntington Beach Board of Zoning Adjustments, 10/9/1985 attached to the City's letter. No NOFA or other evidence that the Coastal Commission had been notified was attached. The City's 1998 letter indicates that local CDP 90-41 was attached, but it was not. The letter indicates that local CDP 95-2 was not available. Again, the letter did not attach NOFAs or other evidence that the Coastal Commission had been notified, so it is unclear what the CDPs addressed. The letter also references Local CDP 95-2 as a nearby project, not located at the subject site. Moreover, the City's 12/7/2018 letter states that "... *the City began issuing Coastal Development Permits at the subject site beginning with CDP No. 1985-024. Despite processing seven CDP permits over the last 30 years, including the construction of a new stand-alone Starbucks building, the City has never been given direction to proceed otherwise by the Coastal Commission [staff]. The Coastal Commission has been notified of each City action, held the required appeal periods, corresponded with the City at the conclusion of the appeal periods, and never questioned the City's legal ability to proceed with the CDPs based on the original approval by the Coastal Commission.*" However, no documentation was provided by the City to support these assertions, such as local Notice of Final Actions (NOFAs) or correspondence from the Coastal Commission staff regarding these local CDPs.

However, this CDP action will enfold the Starbucks structure, the restroom/laundry structure, and other changes in question and will recognize site development as it currently exists that may have been subject to a local CDP (though no evidence of such has have been produced to document that a valid local CDP<sup>6</sup> was obtained). The action currently before the Coastal Commission is intended to rectify the uncertain permitting history at the site and to recognize the development as it currently exists, and as proposed to be modified. Any modifications to site development necessary to assure conformance with the requirements of past Coastal Commission actions will be achieved via special conditions of the current action on the amendment.

### Project Location

The subject site fronts on the waters of Huntington Harbour and abuts Pacific Coast Highway, a major public access route. There is a public walkway along the harbor front at the subject site. The public walkway extends along the harbor-front beyond the subject site, in both directions, providing

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<sup>6</sup> For a local CDP to be valid, a Notice of Final Action (NOFA) must be received in the appropriate CCC office (see Tit. 14, Div. 5.5, Cal. Code of Regs. § 13315), and an appeal period must have been established and either the appeal period expired, or the project was approved on appeal by the Coastal Commission. However, in this case, a local CDP could not have been valid because, due to the Commission's earlier CDP conditional approvals, an amendment from the Coastal Commission would have been required.

an approximately 2,400 feet public walkway along the waters of Huntington Harbour. In addition, approximately three blocks southwest of the subject site is the public ocean fronting sandy beach known as Sunset Beach (Exhibit 1). Due to the pattern of development in Huntington Harbour, public access to and along the harbor front is limited, making protection of available public access, such as along the harbor front public walkway and other public amenities at the site, all the more critical.

Under the City's certified LCP, the land use designation at the subject site is Commercial Visitor (CV) and the zoning is CV Visitor Commercial District. The Commercial Visitor designation allows uses such as hotels/motels, restaurants, recreation-related retail sales, cultural uses (e.g. museums) and similar uses oriented to coastal and other visitors to the City. The Visitor Commercial District implements the Visitor Serving Commercial land use designation within the coastal zone and provides uses of specific benefit to coastal visitors. More specifically, the CV district provides opportunities for visitor-oriented commercial activities, including specialty and beach related retail shops, restaurants, hotels, motels, theaters, museums, and related services.

#### Permit History and Background

In the Commission's original approval of the commercial center under CDP P-76-8742, the Commission required a number of public access amenities including: a public plaza/park, a harbor-front walkway along the bulkhead, public walkways throughout the site from Pacific Coast Highway and the parking areas to the harbor-front walkway, a public access signage plan, a small public beach, public transient docks, and public fishing piers. The Commission's original approval also included a 75 unit hotel. When the hotel was subsequently deleted from the project under CDP A-372-80, that project proposal also included the provision of 72 on-site public beach parking spaces. The proposed 72 public beach parking spaces were also required in the special conditions of approval. Also required in the special conditions of that approval were bicycle racks adequate to accommodate 50 bicycles, and signage along Pacific Coast Highway indicating the availability of the public beach parking on site (Exhibit 3). CDP A-372-80 amended CDP P-76-8742.

The Commission's original approval of CDP P-76-8742 required the public walkway along the harbor front and public pedestrian accessibility from Pacific Coast Highway and the parking area through the site to the harbor-front walkway, as well as provision of a public park/plaza area. As proposed, the plans indicate "bar height dining tables at restaurant patio" to be located within the public harbor-front walkway, adjacent to the water. The current unobstructed width of the harbor-front public walkway is a minimum of 10 feet, expanding in areas of the cantilevered overlooks which extend 5 feet beyond the bulkhead. Also, the existing project includes an 8,582 square foot public park/plaza that will include shaded (by steel trellis) and open seating areas, a fire table, a bocce court, grassy area (synthetic turf), oversize lawn games (such as Connect 4, Jenga, and Tic Tac Toe) and a child's play structure. Six parking spaces are proposed to be removed to increase the size of the public park/plaza over what is currently provided on-site<sup>7</sup>. Additional public seating areas are proposed to be scattered along the waterfront at the subject site.

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<sup>7</sup> This loss of six parking spaces is accounted for in the Parking Analysis. Also accounted for in the Parking Analysis is the fact that three other existing spaces will be lost to meet current disabled parking requirements and that five new spaces will be created on site. Thus, the net loss of on-site parking spaces with the proposed project is four spaces.

The proposed public park/plaza and amenities and the additional scattered seating are consistent with the Commission's original approval of the project as long as they remain available to visitors regardless of whether or not they patronize the commercial establishments. The Commission's original approval also required a view corridor from Pacific Coast Highway toward the harbor. The view corridor coincided with the public park/plaza area. As the applicant is proposing the plaza in the same area, a view corridor will be maintained.

Public amenities included in the Commission's original approval of CDP P-76-8742 were a small public beach, habitat restoration, public transient docks, and public fishing docks. However, in subsequent years, via subsequent Commission actions (new CDPs or CDP amendments), the larger overall project was divided into distinct parts with separate owners. The Peter's Landing Marina is now under separate ownership and has responsibility to provide the transient public boat docks, public fishing piers, and habitat restoration. The small public beach became the responsibility of the Grimaud condominium development, adjacent and southeast of Peter's Landing commercial center.

The public amenities that remain the responsibility of the Peter's Landing commercial center are: the public harbor-front walkway, and public accessibility from Pacific Coast Highway and the parking area, through the site, to the harbor-front walkway, provision of a public park/plaza area, provision of 72 public beach parking spaces, bicycle racks to accommodate 50 bicycles, and public access signage making the public aware of the public beach parking available at the site.

#### Signage Plans

The proposed project includes two signage plans: a Coastal Access Plan and a commercial Signage Plan to promote the commercial uses at the site. These plans are described in greater detail later in this staff report.

#### Landscape Plan

The proposed project includes a new landscape plan for the subject site, but proposes to retain various existing trees including palms, melaleuca, and coral trees within the parking lot and site perimeter. All trees known or suspected to have supported black-crowned night-herons and snowy egrets, including nesting and roosting activities, will be retained (see discussion regarding proposed Tree Trimming and Management Plan). Existing coral trees are shown on the proposed landscape plan as to be removed, however, those identified pursuant to the TTMP as supporting the black-crowned night-herons and snowy egrets will be retained (with the exception of one coral that was removed prior to the discovery of nesting roosting activity on the site).

#### Ownership

The larger project site at the time of its original approval in October 1976 was under the control of a single owner, Robert F. Maguire, III. Since the time of the Commission's original approval, the original site has been divided and ownership has been dispersed among several different owners: Peter's Landing marina is under the ownership of PG Marina Investors II; the Broadmoor Huntington Harbour and Bayport condominium communities are separately owned; and Peter's Landing commercial center is currently owned by Pendulum Properties Partners. The subject of this

Commission action is the Peter's Landing commercial center, now owned by Pendulum Properties Partners.

**B. STANDARD OF REVIEW/JURISDICTION**

The subject site is located within the area of the City of Huntington Beach that is subject to a certified Local Coastal Program. Although the proposed project falls within area now covered by a certified LCP, the proposed project represents a material change to and affects special conditions of Commission-issued coastal development permits (P-76-8742, P-79-6083, A-372-80<sup>8</sup>, A-5-79-5662)<sup>9</sup>, granted when there was no certified LCP for the project area.

The applicant's proposed project directly effects previously approved CDPs for the subject site: P-76-8742, which approved the commercial development the proposed shared parking plan is intended to serve; P-79-5662, which approved a signage plan for the commercial development and specifically required an amendment to the permit if any additional signing, not included in this permit, were contemplated in the future; and, A-372-80, which addressed on-site parking serving the commercial development at the subject site and required on-site public beach parking and bicycle racks, as well as signage notifying the public that these spaces were available. These previous coastal development permits imposed special conditions of approval in order to conform the development to the Chapter 3 policies of the Coastal Act. The Commission retains the responsibility for insuring that the conditions of approval are complied with. The acceptance of a Commission issued coastal development permit creates a contractual relationship between the Commission and the applicant/permittee and their successors, to which local governments are not a party. Consequently, the Commission's right to insist upon compliance with the terms and conditions of permits it has issued is not transferred to a local government after LCP certification. The permits approved by the Commission at the subject site are subject to a variety of conditions. Because development approved by these earlier permits has been built, the permit has been vested. Therefore, the permits remain under the jurisdiction of the Commission for purposes of condition compliance and amendment.

The City approved a coastal development permit for the proposed Shared Parking Plan. That permit was appealed to the Coastal Commission. On 12/12/18 the Commission found that the project as approved by the City raised a substantial issue based on inconsistencies with the public access and recreation policies of the Coastal Act and the City's certified LCP. Notwithstanding the City's action on a local coastal development permit for the proposed Shared Parking Plan, the project is appropriately processed as an amendment to the Commission's earlier actions at the site, as described above. In any case, at the 12/12/2018 Coastal Commission hearing, the Coastal Commission found that the appeal of the local CDP raised a substantial issue as to conformance to the certified LCP and the public access/recreation policies of the Coastal Act and took jurisdiction over the CDP application. The standard of review for the de novo permit is the City's certified LCP and the public access and recreation policies of Chapter three of the Coastal Act.

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<sup>8</sup> CDP A-372-80 is also known as A-80-7393. The CDP A-372-80 will be used throughout this staff report, including in the special conditions.

<sup>9</sup> Other CDPs/CDP amendments affect the original CDP P-76-8742, but they do not affect Peter's Landing commercial center.

### **C. PUBLIC ACCESS/RECREATION**

Projects located between the sea and the first public road paralleling the sea, such as the subject site, must be consistent with the public access and recreation policies of the Coastal Act, in addition to the certified LCP policies regarding public access and recreation.

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Regarding public access and recreation, the City's certified LCP Land Use Plan includes the following policies:

Coastal Act Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30252 states, in pertinent part:

*The location and amount of new development should maintain and enhance public access to the coast by(1)... ,(2) ... ,(3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation,(5) ... ,(6) ... .*

#### **LAND USE PLAN POLICIES:**

##### **Policy C 1.1.3a**

*The provision of public access and recreation benefits associated with private development (such as but not limited to public access ways, public bike paths, habitat restoration and enhancement, etc.) shall be phased such that the public benefit(s) are in place prior to or concurrent with the private development but not later than occupation of any of the private development.*

##### **Policy C 2.2.6**

*Provide adequate bike racks at appropriate locations within the Coastal Zone with special emphasis for facilities adjacent to the beach.*

Policy C 2.4.1

*Maintain an adequate supply of parking that supports the present level of demand and allows for the expected increase in private transportation use.*

Policy C 2.4.2 (in pertinent part)

*Ensure that adequate parking is maintained and provided in all new development in the Coastal Zone utilizing one or a combination of the following:*

- a. Apply the City's parking standards at a minimum.*

Policy C 2.5.1

*Require that existing public access to the shoreline and Huntington Harbour waterways be maintained and enhanced, where necessary and feasible, notwithstanding overriding safety, environmental or privacy issues.*

In addition, IP Section 231.06 Joint Use Parking states:

*In the event two (2) or more uses occupy the same building, lot or parcel of land, the total requirement for off-street parking shall be the sum of each individual use computed separately except as provided in this section.*

*The Planning Commission or Zoning Administrator may grant a reduction in the total number of required spaces as part of the entitlement for the use or uses, or by conditional use permit when no other entitlement is required, when the applicant can demonstrate that the various uses have divergent needs in terms of daytime versus nighttime hours or weekday versus weekend hours. Such joint use approvals shall be subject to the following:*

- 1. The maximum distance between the building or use and the nearest point of the parking spaces or parking facility shall be 250 feet; and*
- 2. There shall be no conflict in operating hours based on parking space requirements for the different uses on the parcel; and*
- 3. Evidence of an agreement for such joint use shall be provided by property legal instrument, approved as to form by the City Attorney. The instrument shall be recorded in the Office of the County Recorder and shall be filed with the City prior to issuance of building permit and/or certificate of occupancy, whichever occurs first.*

Maximizing public access is one of the most important requirements of the Coastal Act. Support for public access often requires the provision of adequate parking to serve a development, and in this case also additional parking spaces for public beach use. Likewise, support for public access also includes encouraging non-automobile transportation, through such measures as providing bicycle racks on site. In the Huntington Harbour area, only limited access to the waters of the harbor are available, making it all the more important to assure public access remains available in those few areas where it does exist, such as at the subject site. This is one of the reasons the Commission imposed the requirement to provide signage for the required public beach access parking spaces under CDP A-372-80.



As stated earlier, the subject site fronts on the waters of Huntington Harbour where there is a public walkway along the bulkhead. The public walkway extends along the harbor-front beyond the subject site in both directions for a distance of approximately 2,400 feet. The Peter's Landing commercial center provides a public plaza/park as well as public fishing opportunities, and public beach parking as well. In addition, approximately two blocks southwest of the subject site is the public ocean fronting sandy beach known as Sunset Beach. Protection of these public access opportunities at the subject site and in the vicinity is important. Both the certified LCP and the Coastal Act require that public access be protected and maximized; and both find that adequate parking is important to assure that public access opportunities are supported. Both the LCP and Coastal Act also recognize the importance of providing bicycle racks as a means of supporting public access and as a means of supporting alternate transportation to the coast and coastal amenities. These requirements are reflected in the Coastal Act and LUP policies cited above.

#### Parking: Vehicles

The availability of public parking in the area is already constrained, especially during peak use periods such as throughout the summer. Many older residences and commercial developments in the project vicinity pre-date current parking standards and do not provide enough parking to serve those developments. Thus, the on-street parking that is available is often usurped by overflow parking from these developments. The lack of adequate parking to serve commercial development leads to reductions in beach access.

In support of the LUP public access policies, the LCP Implementation Plan (IP) provides the parking standard identifying the number of parking spaces to be provided with various types of development. The IP requires that development provide the full complement of parking spaces required for each use on site, with two exceptions as described in IP Sections 231.06 and 231.08. The parking program approved by the City is a shared use parking program, which is allowed by Section 231.06 of the certified IP.

The proposed Shared Parking Plan is reflected in the Parking Demand Analysis Letter #1 for Peter's Landing Marina Project, prepared by Linscott, Law & Greenspan Engineers, dated 5/23/2018 (Parking Analysis, Exhibit 6). The Parking Analysis evaluates the parking requirements of the commercial center based upon the proposed uses and square footages. The Parking Analysis applied the Urban Land Institute's Shared Parking methodology. Shared Parking methodology considers parking usage patterns based upon the parking demand for each type of on-site use by various times of day and day of the week. The Parking Analysis quotes the Urban Land Institute shared parking definition as "*a parking space that can be used to serve two or more individual land uses without conflict or encroachment.*"

The Shared Parking methodology is based on the understanding that, typically, a mix of land uses results in an overall parking demand that is less than the sum of the individual peak requirements for each land use tabulated separately. This is based upon different peak parking demands of the mix of uses. For example, the peak office parking demand would occur on weekdays between approximately 10 am and 3 pm, whereas peak use for fine/casual restaurants would occur between 7

pm and 9 pm on weekends. Likewise health club use would peak between 6 pm and 7pm on week days and between 5 pm and 6 pm on weekends.

The Parking Analysis found that, for the proposed project, based on the proposed mix of uses, peak demand would be 651 parking spaces and would occur at 1 pm on a week day. This peak parking demand includes parking required to serve the marina, as well as the 72 public beach parking spaces required by CDP A-372-80. The subject site provides 693 parking spaces. Thus, based upon the Parking Analysis, as proposed development would meet peak parking demand, or even exceed it by up to 42 parking spaces.

The Parking Analysis states: *“It should be noted that the ‘demand’ results of the shared parking calculation are intended to be used directly for comparison to site supply. No further adjustments or contingency additions are needed because such contingencies are already built into the peak parking ratios and time of day profiles used in the calculation.”*

The Parking Analysis calculated the parking demand based upon anticipated future build out of the commercial center, including an additional 2,666 square feet of uses for a total of 101,489 square feet of mixed commercial uses. The current commercial center includes 98,823 square feet of mixed uses (restaurant, retail, office). According to the applicant, the additional, future uses are expected to be outdoor dining use. Although the Parking Analysis finds that adequate parking is available to serve the additional development, a plan depicting where the additional uses (whether outdoor dining or other) has not been provided by the applicant. The Commission cannot approve 2,666 square feet of future use, without knowing the specifics of the use including the specific type of use and where the use will be located. This is especially important in this case, given the existing public access available on-site, including the public, harbor-front walkway. The existing on-site public access must be protected. Whether the future development would adequately preserve public access cannot be known if the location of potential future development is not known. For example, if the future development would adversely impact continued public use of the public harbor-front walkway, even though adequate parking would be available, the future development could not be found to be consistent with the public access policies of the certified LCP or the Coastal Act. Adequate parking is one aspect of assuring public access with new development. But there must also be assurances that development will not physically interfere with public access. The Commission is not at this time reviewing a request for or issuing a permit for the additional 2,666 square feet of new uses. Nevertheless, the parking analysis has indicated that there is sufficient on-site parking to support the existing 98,823 square feet of current uses onsite and, therefore, the Commission finds that the proposed development (which does not include the additional 2,666 square feet of additional uses) and the proposed shared parking program is consistent with the public access policies of Chapter 3 of the Coastal Act.

Even though the Parking Analysis finds there would be adequate parking to serve both the existing development and up to 2,666 square feet of additional development, the provision of adequate parking is not the only basis for determining whether a project would result in adverse impacts on public access. In this case, because it is currently anticipated that the 2,666 additional square feet would be largely directed to outdoor dining, the placement of that dining particularly relative to the previously required public spaces on the site, would need to be evaluated. Accordingly, future

development at the site, including the anticipated up to 2,666 square feet of additional commercial area at the site, would need an amendment to this permit, or a new coastal development permit in order to assure that public access will be preserved. For this reason a special condition is imposed which requires that future development will need to obtain approval of an amendment to this Coastal Development Permit or a new Coastal Development Permit. Therefore, only as conditioned to require an amendment to this CDP or a new CDP for any future development, can the proposed development be found to be consistent with the public access policies of the City's certified LCP and the Coastal Act.

In addition, Section 231.06 *Joint Use Parking*, subsection 3 requires that a joint use parking program be subject to the following: "*Evidence of an agreement for such joint use shall be provided by proper legal instrument, approved as to form by the City Attorney. The instrument shall be recorded in the Office of the County Recorder and shall be filed with the City prior to issuance of building permit and/or certificate of occupancy, whichever occurs first.*" Without such a recorded agreement, there is no assurance that the standards outlined in the *Parking Demand Analysis* and as reflected on the plan titled *Peter's Landing Parking Management Plan – May 2018* (Exhibit 7 of this staff report) would be implemented in a manner to assure that adequate parking is indeed provided as described and remains for the life of the development. Therefore, a special condition is imposed that requires that a Joint Use Parking Agreement be recorded as required by Section 231.06.3 of the certified IP. This is necessary to assure that the parking as proposed is carried out for the life of the project. Only as conditioned, can the proposed development be found to be consistent with the public access policies of the Coastal Act and the certified LCP.

#### Parking: Signage

The Commission's earlier approval of CDP A-372-80 for Peter's Landing required that on-site parking spaces be provided for public beach access, available to the general public. The Commission originally found that the Peter's Landing commercial development could only be found to be consistent with the public access policies of the Coastal Act if both the on-site parking spaces were available for public beach access AND that signage alerting the public of the availability of these spaces was provided. Without such signage it is unlikely that the general public would know that general public parking is available on the site regardless of whether a member of the public patronizes any of the commercial establishments on the site or not. Without public signage notifying the public that such parking is available, and thus without knowledge of that the spaces are for public beach use, it is unlikely that a member of the general public would take advantage of the public beach access parking available on the site. Without such signage public access is not maximized as required by the public access policies of the Coastal Act and the City's certified LCP. It would also be inconsistent with the Commission's original approval of the Peter's Landing development.

Thus, in re-visiting the appropriate amount of parking required for the Peter's Landing development, it is important that in addition to providing the required on-site public beach access parking spaces, the signage required to make the public aware of the availability of the public parking spaces on-site also be required. Without providing the informational signage, the effectiveness of providing public beach parking spaces on site would be significantly diminished.

Even when 72 public access parking spaces are provided, if the spaces are not signed as available to the public, public access would not be maximized.

To address this, the applicant has provided a Parking Analysis (Linscott, Law & Greenspan, 5/23/2018) prepared for the project which recognizes that 72 spaces must be available for public beach access. The applicant has proposed the required parking spaces, as reflected in the Parking Analysis and on the *Peter's Landing Parking Management Plan – May 2018* (Exhibit 7). The Commission's earlier approval also required that the availability of these public beach access parking spaces be promoted with signage. The applicant has now posted the required public access parking signage within the applicable area of the parking lot. In addition, the applicant is proposing to add an additional, larger sign that would be visible to motorists traveling along Pacific Coast Highway, consistent with the requirements of the Commission's earlier approval.

The parking lot signage ranges in size from 12" by 24" to 12" by 36", with 1.5" high lettering. Such signs are suitably visible from cars already in the parking lot. To be seen from a moving vehicle traveling along Pacific Coast Highway, where the posted speed limit is 45 miles per hour, a sign and the sign's lettering would need to be larger. To accomplish this, the applicant is proposing a larger sign to be placed along the Pacific Coast Highway edge of the property in the area of the beach access parking spaces on subject site. However, the specific location of the sign is not identified in the proposed Coastal Access Signage Plan or depicted on the *Peter's Landing Parking Management Plan – May 2018* (Exhibit 7). Also, the sign would need to be two-sided and placed such that the face is perpendicular to Pacific Coast Highway, so as to be visible to motorists traveling in either direction. These aspects are not included in the currently proposed signage plan. Therefore, a special condition is imposed which requires the applicant to submit a revised Coastal Access Signage Plan that retains the proposed parking lot signage as described therein, but also addresses these specifics regarding signage visible from Pacific Coast Highway. In its earlier approval, the Commission required "adequate signing along Pacific Coast Highway indicating the availability of the parking to the public." The Commission found then that signage promoting the availability of the public access parking was necessary in order to find the commercial center project consistent with the public access policies of the Coastal Act. Still today, without such signage, the public beach access parking spaces would not effectively promote public access. Therefore, only as conditioned for these revisions to the Coastal Access Signage Plan, can the applicant's Coastal Access Signage Plan be found to be consistent with the public access policies of the City's certified LCP and the Coastal Act.

#### Parking: Bicycles

In addition, the Commission also originally found that the Peter's Landing development could only be found to be consistent with the public access policies of the Coastal Act when 50 bicycle racks were provided on-site. Section 30252 (3) of the Coastal Act requires non-automobile circulation within a development, and the provisions for the use of bicycles in and around the development would be consistent with that policy. Bicycle racks promote additional public access and recreation, as well as encourage the use of alternative transportation to the coast, other than private automobiles. Without the previously required bicycle racks, public access is not maximized.

The applicant's proposal includes the provision of bicycle racks sufficient to serve 50 bicycles, as reflected on the project's proposed landscaping plans and on the proposed Bike Parking Exhibit, prepared by Conceptual Design & Planning Company, dated 1/29/2019 (Exhibit 8). As proposed, a total of fifty bicycle racks will be placed throughout the site, at the six main entries of the commercial center. With the provision of these bicycle racks, in locations readily seen by visitors to the site, the proposed project is consistent with the Commission's earlier approval which found that such bicycle parking was necessary to meet the public access requirements of the Coastal Act. Therefore, the Commission finds that this aspect of the project is consistent with the public access policies of the Coastal Act and the City's certified LCP.

#### Public Harbor-front Walkway & Other Public Amenities

As a condition of its 1976 approval of the original CDP at the subject site, the Commission required provision of a lateral public access walkway adjacent to the harbor waters, along the site's bulkhead. The public walkway is present at the subject site, consistent with the requirements of the Commission's earlier approval. The current unobstructed width of the harbor-front public walkway is a minimum of 10 feet, expanding in areas of the cantilevered overlooks which extend 5 feet beyond the bulkhead. In addition, the current project proposes upgrades to the existing public park/plaza area that include shaded (by steel trellis) and open seating areas, fire table, bocce court, grassy area (synthetic turf), oversize lawn games (such as Connect 4, Jenga, or Tic Tac Toe), and a child's play structure. Additional seating is proposed to be located throughout the common areas of the site along the water's edge (Exhibit 9). The applicant has proposed these amenities in a manner that will allow coastal visitors to enjoy the park plaza and common areas without having to patronize any of the site's commercial establishments.

It should be noted that the project approved by the Commission under CDP P-76-8742 included a "23,400 square foot plaza providing a 180 lin. ft. view corridor." The proposed project plans indicate that the current public plaza/park is 8,582 square feet and the distance between buildings (the view corridor) is 121 feet 3 inches. However, it appears from the project plans that the distance between buildings in the area of the plaza is a bit wider, approximately 10 feet wider per side, because these areas are identified as "patio" on the project plans. It is not clear from the record whether the 23,400 square foot figure refers to a single plaza area in the location of the proposed plaza, or if it includes other common areas on site such as a second open area in the southeast corner of the site adjacent to and inland of the public walkway, the five cantilevered marina overlook areas, some areas along the parking lot, and, possibly the waterfront walkway area.

There is an existing grassy knoll with a small kiosk in the area of the proposed public plaza/park. The kiosk is currently vacant and last served as the ticket booth for a now defunct gondola ride business. The width of the gap between buildings in this area has been the same since the original construction of the commercial center pursuant to the earlier CDPs, so it is difficult to see where a single 23,400 square foot plaza would have been accommodated on the site. Nevertheless, the proposed project will maintain the required public park/plaza area where one is currently located and is proposing to provide additional public seating areas consisting of three seating groupings in the southeast corner of the site adjacent to the public walkway, and in the cantilevered areas on the waterside of the public walkway. All of these public seating amenities, from which the public may

enjoy views of the marina and harbor beyond, would act as a public plaza area and provide public benefits.

The current proposal, however, includes outdoor dining area within the public walkway, as depicted on the proposed landscape plans. The outdoor dining would be located along an approximately 45 foot length of the walkway, opposite the larger building (Building 6 on the project plans), along the southwest side of the “U” shape of the walkway (at the “bottom” of the “U”)<sup>10</sup>. The tables and chairs, as depicted on the proposed landscape plans, would occupy approximately 4 feet of the 10 foot wide public walkway, in the area closest to the water. In addition, it is assumed that wait staff would need to traverse back and forth within the public walkway to serve these tables in the public area. Private commercial uses (such as restaurant uses) within public areas can have adverse impacts on public access. Even when a portion of the public walkway ostensibly remains open for public use, oftentimes the presence of private diners and servers deters the public from walking through, feeling they are intruding upon the private dining activities. Also, the outdoor dining shown on the project plans is located immediately adjacent to the waterward side of the public walkway, impeding to some extent, the public's view toward the water.

Moreover, as reflected in the project's Parking Analysis, additional development (likely outdoor dining) of up to 2,666 square feet is contemplated in the future (though not specifically proposed at this point)<sup>11</sup>. It is important to assure that the public areas and amenities required by the Coastal Commission in its original approvals of the development are not diminished or lost entirely. Although the Parking Analysis demonstrates that the site could provide adequate parking to serve some additional development, public access impacts in addition to parking must also be evaluated. For example, outdoor dining in the public walkway could either physically displace or psychologically prevent public use of the public harbor-front walkway and/or other public areas such as the public park/plaza, or other public seating areas scattered throughout the development.

However, it is also possible that some outdoor dining at the site might enhance the visitor experience, when it is demonstrated that visitors who are not restaurant patrons will still be comfortable accessing all the public amenities at the site. Thus, because it is not known at this time specifically what additional development may be proposed in the future or where it will be located, an evaluation of impacts to public access (or other LCP protected resources) cannot be undertaken. At this time, it may be premature to outright prohibit outdoor dining at the site. Therefore, if the applicant decides in the future to propose outdoor dining, an amendment or new Coastal Development Permit would be required. If such a request is made, the application must include sufficient evidence to determine whether and how public access, especially within the public areas of the site, will be protected. For this reason a special condition is imposed which requires that future development will need to obtain approval of an amendment to this Coastal Development Permit or a new Coastal Development Permit. For the time being, the project will maintain the existing public park/plaza area and the public walkway, and the other common areas for the benefit

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<sup>10</sup> Although the Peter's Landing commercial center site is “L” shaped, the walkway itself extends along the three sides of the marina. It also extends in either direction beyond the “U” shape. The reference here to the “U” shape is intended to help the reader more easily locate the area of outdoor dining.

<sup>11</sup> No plans depicting the contemplated additional development have been submitted.

of public access. Therefore, only as conditioned can the proposed development be found to be consistent with the public access policies of the City's certified LCP and the Coastal Act.

#### **D. MARINE RESOURCES AND HABITAT**

The certified LCP includes the following polices regarding protection of marine resources and the biological productivity of coastal waters, and protection of sensitive habitat:

##### Policy C 6.1.2

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance.*

##### Policy C 6.1.3

*Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

##### Policy C 6.1.4

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain organisms and for the protection of human health shall be maintained and, where feasible, restored.*

Subsequent to the Commission's finding of Substantial Issue on the appeal of the City's approval of the Shared Parking Plan for the proposed project and prior to preparation of this staff report, black-crowned night-heron and snowy egret activity was discovered in the trees on the subject site. Coastal Commission staff observed a number of black-crowned night-herons occupying trees at the subject site. The applicant had been conducting routine tree trimming at the site. However, when apprised by Commission staff of the presence of the herons/egrets in the trees at the site, the applicant agreed to cease all tree work and to submit a Tree Trimming and Management Plan (prepared by Hamilton Biological, Inc., dated 4/26/2019) to address the birds' presence on-site.

The Tree Trimming and Management Plan (TTMP) states: "An initial evaluation of colonial waterbird nesting and roosting was completed by Hamilton Biological in April 2019, with documentation of several roosting Snowy Egrets (*Egretta thula*), and a few broken eggshells of either Snowy Egrets or Black-crowned Night-Herons (*Nycticorax nycticorax*) under two coral trees on the property. Accumulations of guano, or "whitewash", beneath several melaleuca and coral trees on the property indicated that herons/egrets routinely roost in several trees not currently used for nesting. The initial evaluation revealed no indication of colonial waterbirds using any of the palm trees on the site for nesting." The TTMP continues: "An eBird checklist from June 23, 2016 (<https://ebird.org/view/checklist/S30363743>) reported nesting at the site by Black-crowned Night-Herons (four juveniles; Snowy Egrets (20+ adults plus at least eight nests with young of different ages, plus some recently-fledged juveniles); and possibly Great Egrets (two "seemed to be sitting on nests")." Based on information contained in the TTMP (in addition to Commission staff's observation at the site), it is evident that the site supports egret and heron nesting and roosting.

“Development” is broadly defined by Section 30106 of the Coastal Act and includes “the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operation.” “Development” is also defined by Section 245.04(J) of the City of Huntington Beach LCP as including “the removal or harvesting of major vegetation.” The trees at the site that support heron and egret nesting and roosting constitute major vegetation, and thus, trimming or removal of any of these trees and/or major branches is “development,” and therefore, requires a coastal development permit.

It is important to ensure protection of nesting and roosting sites for egrets and herons, thereby protecting the local population of such birds and, by extension, the marine resources and biological productivity of the surrounding Huntington Harbour area, including Huntington Harbour itself and the Bolsa Chica Wetlands and the Anaheim Bay National Wildlife Refuge.

Hérons and egrets experienced severe population declines at the turn of the 20<sup>th</sup> century when they were hunted for their beautiful plumage which was highly prized for women's hats. Several laws outlawing hunting, including the 1918 Migratory Bird Treaty Act, were passed and heron and egret populations recovered. While heron and egret populations are no longer threatened, the wetland ecosystems upon which they depend are in trouble. The United States Geologic Survey conducted a study of wetland loss in the United States between the 1780's and 1980's. California has lost the largest percentage of original wetland habitat (91%) of all the states<sup>12</sup>. It is now estimated that California has less than 500,000 wetland acres remaining (from an estimated 5 million in 1780). This is less than one-half of one percent of California's total acreage.

In southern California, many wetlands have been replaced by marinas and herons and egrets have adapted by relocating their roosting and nesting sites to stands of tall non-native pines, palms, ficus, and coral trees within highly developed areas. This relocation to non-native trees near marinas is due to the virtual absence of any native trees, the proximity of the non-native trees to primary foraging habitat, and the height of the non-native trees which affords protection from predation and disturbance. Herons and egrets utilize these trees for both roosting and nesting. In many southern California locations, herons and egrets roost at colony sites all year<sup>13, 14</sup>. Herons and egrets are normally shy and retiring birds that are sensitive to human disturbance. The fact that they have established roosting and nesting sites in areas of high human density and disturbance suggests that suitable roosting and nesting areas are scarce.

The major determinate of heron and egret colony location is suitable wetland foraging habitat. An average Snowy Egret foraging trip is 1.7 miles from roosting and nesting sites to their main foraging area<sup>15</sup>. The trees at the Peter's Landing commercial center are located less than 400 feet

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<sup>12</sup> United States Geologic Survey: <http://www/npwrc.usgs.gov/resource/wetlands/wetloss/summary.htm>

<sup>13</sup> Butler, R. W. 1992. Great Blue Heron. *In* The Birds of North America, No. 25 (A. Poole, P. Stettenhelm, and F. Gill, Eds.). Philadelphia: The Academy of Natural Sciences; Washington, DC: The American Ornithologists Union

<sup>14</sup> Parson, K. C. and T. L. Master. 2000. Snowy Egret (*Egretta thula*). *In* The Birds of North America, No. 489 (A. Poole and F. Gill, Eds.). The Birds of North America, Inc., Philadelphia, PA

<sup>15</sup> Parson & Master (2000) op. cit.



from Huntington Harbor and about 2000 feet from the Seal Beach National Wildlife Refuge; both foraging areas for herons and egrets. The trees are also about a mile from the Bolsa Chica wetlands, another heron and egret foraging area. Herons and egrets roost and nest in the Seal Beach Wildlife Refuge and the Bolsa Chica wetlands.

It is likely that the reason herons and egrets have established nests and are roosting in the trees at the subject site, as they are doing in non-native tree stands in other parts of coastal southern California such as Ventura Harbor, Marina del Rey, Long Beach, and other areas of Huntington Harbour (i.e. Tennis Estates), is a lack of suitable nesting and roosting areas in remaining local wetlands. In addition to proximity to primary foraging habitat, predation and disturbance also influence heron and egret choice of roosting and nesting tree species and locations. Herons and egrets select nest sites difficult for mammalian predators to reach and in areas distant or removed from disturbance. In urban areas this translates into a preference for tall trees. Raccoons are one of the top heron and egret nest predators in Southern California<sup>16</sup>. Tall trees are the main deterrent to raccoon predation. Dense foliage that provides camouflage and protection is also important in southern California as a deterrent to predation from birds such as American crows, *Corvus brachyrhynchus*, who prey on eggs and chicks and red-tailed hawks, *Buteo jamaicensis*<sup>17</sup>. Both herons and egrets choose specific trees that are within a specific distance of primary foraging grounds and are safe from predation and disturbance. Herons do habituate to nonthreatening repeated activities which explain the location of Southern California heronries in highly disturbed areas.

Heron and egret are integral components of fully functioning wetland ecosystems. They are top predators whose foraging activities maintain a balance in prey populations. Wetlands lacking such top predators may be subject to invertebrate, amphibian, reptile, rodent, and fish population explosions, eutrophication events, disease outbreaks, and any number of other unsustainable cycles<sup>18</sup>. Southern California wetlands are experiencing pressure from a number of fronts including loss of native species, loss of area due to development, invasive species, and pollution. Herons and egrets are critical members of wetland ecosystems and their roosting and nesting colonies provide very important ecosystem functions. The trees on the subject site fit the criteria for a heron and egret roosting and nesting site. The trees are within the foraging range required by the heron and egret species utilizing the trees. The trees are tall, thus distancing the birds from predation and disturbance, and have dense foliage that offers camouflage and protection from predation. Stands of trees such as those located on the subject property are an important natural resource and provide necessary ecological services for local southern California heron and egret populations, which, in turn, are critical to the healthy functioning of the nearby wetlands.

The applicant's proposed TTMP makes this recommendation: "*to determine the current status of nesting and roosting colonial waterbirds on the Peters Landing site, and to track such usage over time, a qualified biologist shall conduct a minimum of three surveys per nesting season (January 1*

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<sup>16</sup> Parson & Master (2000) op. cit.

<sup>17</sup> Parson & Master (2000) op. cit.

<sup>18</sup> Keddy, P.A. Wetland Ecology: Principles and Conservation. 2000. Cambridge Univ. Press, Cambridge, United Kingdom. 614 pp.

*through September 30)*”; and, that “*an annual report, incorporating the methods and results of the nesting-season surveys, shall be provided to the City and the CCC with 90 days of completion of the year’s final survey.*” The proposed TTMP also recommends that “*tree trimming (and removal when necessary and authorized) be undertaken as early as possible after the nesting season ends (including juvenile fledging).*” If the Tree Trimming and Management Plan is implemented as proposed, continued use of the site by the Egrets and Herons, is likely. Therefore, it is essential that the TTMP be implemented as proposed.

However, an additional requirement must also be imposed to assure protection of egrets and herons that use the site now and in the future, and thus protection of the very important wetland ecosystem functions the egrets and herons provide, as described above. The applicant or successor must notify the Executive Director prior to any tree trimming or removal at the site. Based on the seasonal reports required by the proposed TTMP, a determination will then be made as to whether the trimming/removal may proceed as proposed. Additional information may be requested of the applicant prior to making the determination. As indicated in the proposed TTMP, all trimming and removal (removal may occur only when it has been demonstrated to be necessary to protect life, health, property or essential public services as described in the TTMP or that it will have no effect on the function of the heronry), must occur outside the nesting season (except in the case of a documented emergency as defined in the TTMP). Only as conditioned to carry out the TTMP as proposed, and to notify the Executive Director of the Coastal Commission prior to any tree trimming or removal activities, and refraining from trimming and/or removal until authorized by E.D., can the proposed development be found to be consistent with the LCP policies requiring protection of marine resources and the biological productivity of coastal waters, and protection of sensitive habitat.

#### **E. PRIORITY OF USE**

The certified LCP includes the following policies regarding priority of use within the coastal zone:

##### **C 1.1.3**

*The use of private lands suitable for visitor serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agricultural or coastal-dependent industry.*

##### **C 1.1.4**

*Where feasible, locate visitor-serving commercial uses in existing developed areas or at selected points of attraction for visitors.*

##### **C 3.2.4**

*Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including, but not limited to, shops, restaurants, hotels and motels, and day spas.*

The land use designation at the subject site is Commercial Visitor (CV) and the zoning is CV Visitor Commercial District. The Commercial Visitor designation allows uses such as hotels/motels,

restaurants, recreation-related retail sales, cultural uses (e.g. museums) and similar uses oriented to coastal and other visitors to the City. The Visitor Commercial District implements the Visitor Serving Commercial land use designation within the coastal zone and provides uses of specific benefit to coastal visitors. More specifically, the CV district provides opportunities for visitor-oriented commercial activities, including specialty and beach related retail shops, restaurants, hotels, motels, theaters, museums, and related services.

The proposed uses at the subject site, based on Table 2 of the Parking Analysis, are comprised of a mix of restaurant, retail, personal service (i.e. health club), office, and an existing church:

Retail:	13,147 square feet;
Restaurant:	30,117 square feet (the total restaurant from Table 2 is 32,783, however this figure includes the future 2,666 square feet of development, which is not included in this current CDP proposal);
Personal Services:	9,175 square feet;
Office:	36,280 square feet
Church:	6,934 square feet

Thus, the total visitor serving uses at this Visitor Commercial site is currently less than 50% of the total site uses (13,147 sq. ft. retail + 30,117 sq. ft. restaurant = 43,264 VSC sq. ft./88,719 total sq. ft. = 48%). However, religious assembly uses are specifically allowed within the City's visitor serving zone pursuant to LCPA 2-09 (certified by the Coastal Commission on 8/13/2010). So if that use is eliminated from the site calculations, the overall percentage of visitor serving uses proposed at the site is 52%. In the Commission's approval of CDP P-76-8742, it found that the commercial development would encourage public use of the site by the provision of greater than 50% visitor serving uses. At that time the adjacent marina was also part of the single development approved under CDP P-76-8742. However, the marina is now under separate ownership. In any case, it is important that this designated visitor serving site retain predominantly visitor serving uses. That can be found to be the case with the currently proposed development, including the proposed mix of uses as well as the public amenities that will be provided on-site. However, it is important to assure that the mix of uses at the site remain a minimum 50% visitor serving (restaurant, retail, recreation, etc.). This means that future development must consider the mix of uses and maintain a minimum of 50% visitor serving uses. For this reason a special condition is imposed which requires that future development will need to obtain approval of an amendment to this Coastal Development Permit or a new Coastal Development Permit. Therefore, only as conditioned to require an amendment to this CDP or a new CDP, can the proposed development be found to be consistent with the priority of uses policies of the City's certified LCP.

## **F. VISUAL RESOURCES**

The certified LCP includes the following policies regarding visual resources:

### C 4.1.1

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas.*

C 4.2

*Promote the protection of the Coastal Zone's visual and aesthetic resources through design review and development requirements.*

C 4.2.1 [in pertinent part]

*Ensure that the following minimum standards are met by new development in the Coastal Zone as feasible and appropriate:*

- a) *Preservation of public views to and from the bluffs, to the shoreline and ocean and to the wetlands.*
- c) *Evaluation of project design regarding visual impact and compatibility.*

C 4.2.2

*Require that the massing, height, and orientation of new development be designed to protect public coastal views.*

C 4.2.3

*Promote the preservation of significant public view corridors to the coastal corridor, including views of the sea and the wetlands through strict application of local ordinances, design guidelines and related planning efforts, including defined view corridors.*

C 4.5

*Minimize the negative aesthetic impacts of signage in the Coastal Zone.*

C 4.5.2

*Establish special regulations for on-premise signs within the Coastal Zone that may include but will not be limited to:*

- a) *Prohibition of signs that do not display information related to an activity, service or commodity available on the premises, excluding direction signage and informational signage for beach areas.*
- b) *Limits to the height, size, design and materials of signs.*
- c) *Prohibition of rooftop signs.*
- d) *Restrictions on the use of lights and moving parts in signs.*
- e) *Enforcement of maintenance controls.*

The public views in this area are views to and of the waters of Huntington Harbour. In addition, Pacific Coast Highway (PCH) is recognized as a Major Urban Scenic Corridor in the City's certified LCP. The Commission's approval of CDP P-76-8742 recognized a 180 linear foot view corridor across the area of the public plaza (believed to be the area of the currently proposed public park/plaza). The proposed project will also provide a view corridor in this area, of approximately

142 feet wide (discussed earlier in this staff report). In addition, the Commission approved CDP A-79-5662 for a signage program for Peters Landing commercial, residential, marine, and visitor serving complex previously approved by the Commission (Exhibit 4). That signage program was comprised of highway identification sign, directory sign, clock tower sign, directional, restroom and telephone signs, and tenant identification signs, and slip signs. In approving CDP A-79-5662, the Commission imposed a special condition which required that “*any additional signing not included in this permit requires a new permit.*” Protection of public views, such as the views from Pacific Coast Highway across the public park/plaza to the harbor, is required by the LCP policies cited above. Also, views from the public walkway, public park/plaza, and various other public amenities on the site to the harbor are also public views protected by these LCP policies. Existing development prevents public views from Pacific Coast Highway other than the view across the public plaza in the subject area. However, consideration of visual impacts to PCH as a Major Urban Scenic Corridor must also be considered.

The proposed project includes two signage plans: the Coastal Access Signage Plan and the commercial development's Signage Plan. The Coastal Access Signage Plan is comprised of the public access signs required to promote the availability of the public beach parking spaces on site (Exhibit 10). And the second is the Sign Program designed to promote the commercial center and the commercial establishments at the site (Exhibit 11).

#### Coastal Access Signage Plan

The public access signs proposed in the Coastal Access Signage Plan will be located in the area of the 72 public beach access parking spaces. These spaces are located at the southeast end of the project site, in and adjacent to the site parking lot, near Pacific Coast Highway. In this location there is existing development between Pacific Coast Highway and the harbor waters, so these signs will not block any public views to the harbor. In addition, these signs are necessary to achieve the goal of promoting the availability of the public beach parking spaces on-site. All the public access signs (except the sign required to be visible to motorists traveling along Pacific Coast Highway), will be on a stake 75 inches tall. The face of these signs will be between 36 to 24 inches high by 12 inches wide. The lettering on these signs will be 1.5 inches high.

The sign required to be visible to motorists traveling along Pacific Coast Highway is also depicted in the applicant's proposed Coastal Access Signage Plan. It is on a 6 foot, 2 inch stake, and the face of the sign will be 3'4" high by 22 inches wide. It will say “*Coastal Access Parking*” and will include the barefoot footprints and wave logo typical of Coastal Commission public access signage. The scale of the lettering and access logo appears adequate, but no actual size for the lettering or logo is identified for this sign. Without this information, it is difficult to know with certainty what the lettering and logo sizes will be. It is important to be certain the sizing will allow visibility from PCH. In addition, the location and orientation of this sign on the site is not described or depicted in the proposed Coastal Access Signage Plan. Finally, this sign is not proposed to be two-sided and its orientation relative to PCH is not depicted. If the sign is two-sided and oriented perpendicular to PCH, it will be visible from both directions on PCH. However, it is not proposed as such. Otherwise the proposed Coastal Access Signage Plan meets the requirements of the special condition of the Coastal Commission's approval of CDP A-372-80. Therefore, a special condition is imposed which requires the applicant to carry out the proposed Coastal Access Plan once modified

to address the shortcomings of the sign that is required to be visible to motorists traveling along Pacific Coast Highway, as follows: 1) identify the size of the lettering and of the barefoot/wave logo; 2) the location of the sign on the site; and, 3) demonstrate that this sign shall be double sided and oriented perpendicular to Pacific Coast Highway.

### Commercial Signage Plan

The proposed commercial Signage Plan is comprised of fifteen different types of signs. Many of the signs will be posted on the sides of existing structures. None of the signs will exceed the height of the existing structures. There will be no rooftop signs. The City has approved the applicant's proposed Signage Plan. The proposed sign types that may raise visual impact issues are the two Tenant Pylon Monument (Sign Type A of the plan, Exhibit 12) signs and the Project ID Lettering (Sign Type M of the plan, Exhibit 13) signs. These signs are proposed on the subject site adjacent to Pacific Coast Highway. The Tenant Pylon Monument signs are proposed to be located at the two vehicular entries into the subject site. They are proposed to be 25 feet in height, of varying width with a maximum width of 10 feet. The Sign Plan states that these signs are intended to "*identify the [commercial] center and business names occupying the building suites to motorists and pedestrians along PCH.*" Although both signs are proposed to be placed in areas where there is existing development between Pacific Coast Highway and the harbor waters, the sign located at the Anderson Street entry might, potentially obstruct views at a certain angle from vehicles traveling south on Pacific Coast Highway across the proposed public park/plaza to the harbor.

Moreover, the Tenant Pylon Signs exceed the maximum square footage and maximum sign height allowed in Section 233.06.A.2.c of the City's certified LCP Implementation Plan (Zoning Code). The maximum height allowed for this type of sign in this type of location is 15 feet. The proposed Tenant Pylon Monument signs' height is 25 feet, ten feet higher than allowed (a 40% increase over the allowed height). The maximum area allowed for this type of sign in this type of location is 70 square feet. The area of the proposed Tenant Pylon Monument signs is over 175 square feet, more than double the allowable area. The applicant argues that the signs must be of this scale in order to stand out from the background architecture, to adequately display the six primary tenants as well as the regional project name, and to be visible to motorists traveling along Pacific Coast Highway. However, it is not clear what is unique about the subject site that creates issues that make the site distinct from other properties to which this zoning sign sizing standard applies, especially given the scale of the proposed deviations from the Implementation Plan standard. These same arguments were not made by the applicant with regard to the public access sign that also must be visible (readable/legible) by motorists on PCH. In that case, the applicant is proposing a much smaller sign, even though the same visibility standard applies.

Another factor to be considered is that Pacific Coast Highway is recognized as a Major Urban Scenic Corridor in the City's certified LCP. The scale of these signs would dominate the PCH Scenic Corridor in this area. No other businesses have freestanding signs of this scale along this stretch of PCH in the Huntington Harbour/Sunset Beach area (other than three billboards in the general area). Sufficient justification for exceeding the required sign size limits has not been presented. Thus, in order to avoid potential view impacts from PCH to the harbor that may arise due to the Tenant Pylon sign at the Anderson Street site entrance, and to avoid adverse visual impacts

due to overbearing, imposing signage along the PCH Scenic Corridor, these signs must be revised to be less visually intrusive.

The other proposed signage type that may raise visual impact issues is the Project ID Lettering (Sign Type M). This sign is comprised of 13 individual, 4 foot high letters that will spell out “Peters Landing”, located on the subject site in the area adjacent to and along PCH. The area between the letter signs and the harbor includes existing site development and so these letter signs will not block views of the harbor from PCH. This sign would also exceed the area permitted in Section 233.06.A.2.c of the City's certified LCP Implementation Plan (Zoning Code). The allowable area is 70 square feet and the proposed area is 269 square feet if measuring the rectangle occupied by the letters. However, the total area of the letters themselves, not counting the negative space between and within the letters, is 170 square feet. This still exceeds the 70 square feet allowed by the IP. However, in this case, unlike the Tenant Pylon Monuments discussed above, this signage will be low, only 4 feet in height, the physical area of each letter is only about 13 square feet. The sign will be open and airy, not imposing and overbearing. This signage is whimsical and welcoming. It does not create adverse visual impacts along PCH and it will not block views to the harbor. It likely will catch the traveler's eye, as intended, without being obtrusive, drawing a visitor in to the site. The applicant has described the design of the proposed sign as providing architectural interest and in proportionate scale with the landscaping. Therefore, even though it would exceed the maximum sign area allowed for this type of signage, because it will not create adverse visual impacts, it can be found to be consistent with the policies of the certified LCP Land Use Plan cited above. In addition, the City has approved this signage (and the total commercial Signage Plan), so the Commission's approval of it will not create a local conflict with regard to consistency with the City's standards and LCP.

In order to assure that the proposed project signage will protect visual resources and public views to the harbor and along PCH, a special condition is imposed which requires a revised commercial Signage Plan, which reduces the size, scale and mass of the proposed Tenant Pylon Monuments. The special condition also requires a revised Coastal Access Signage Plan as described above. Therefore, only as conditioned to require the revised signage plans, can the proposed development be found to be consistent with the visual resource protection policies of the City's certified LCP.

#### **G. UNPERMITTED DEVELOPMENT AND PERMIT NON-COMPLIANCE**

Non-compliance with CDP A-372-80 has occurred on the property, including, but not necessarily limited to, failure to provide 72 onsite parking spaces for public coastal access, failure to provide required signage along Pacific Coast Highway indicating the availability of public parking for coastal access, and failure to provide bicycle racks for fifty bicycles. Failure to comply with a previously issued permit constitutes a violation of the Coastal Act.

On October 5, 2015 Commission staff issued a notice of violation letter to the previous owner of the Peter's Landing commercial center, Taki Sun, for the above described permit non-compliance. The previous owner immediately began working with Commission staff to design a coastal access parking signage program that effectively notifies the public of the availability of parking for coastal access at the commercial center and to provide the 72 onsite parking spaces and bicycle racks for

fifty bicycles. The current owner has continued this process and is requesting approval of installation of public access parking signage to bring the site into compliance with Commission requirements for public access parking. As part of this application, the current owner is also proposing to provide the bicycle racks for fifty bicycles.

Furthermore, additional development has occurred on the subject site without benefit of the required valid coastal development permit, including construction of the free standing 1,800 square foot structure that houses a café (Starbucks) and construction of the free standing, approximately 146 square foot structure that houses the marina tenants' restroom/laundry facilities. The applicant has requested approval of the unpermitted development as part of this CDP/CDP amendment, and the heretofore unpermitted development would be authorized by this CDP/CDP amendment.

Although development has taken place prior to submission of this permit application, consideration of this permit and permit amendment by the Commission has been based solely on the consistency of the proposed development with the certified City of Huntington Beach Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a valid coastal development permit. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

#### **H. LOCAL COASTAL PROGRAM (LCP)**

The City of Huntington Beach Local Coastal Program was certified by the Commission in March 1985. The City's Coastal Element makes up the Land Use Plan portion of the certified LCP. The City's Zoning and Subdivision Ordinance, including a number of Specific Plans, comprises the Implementation Plan portion of the certified LCP. As conditioned, the proposed project has been found to be consistent with the visual resources, sensitive habitat, public access and recreation, and priority of use policies of the certified LCP.

#### **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Huntington Beach is the lead agency for the purposes of CEQA review.



## **Appendix A - Substantive File Documents**

City of Huntington Beach certified Local Coastal Program

*Parking Demand Analysis* prepared by Linscott Law & Greenspan Engineers and Planners, dated  
7/19/2018

Coastal Access Signage Plan, received in the South Coast District Office on 2/11/2019

Commercial Signage Plan, received in the South Coast District Office on 2/11/2019

Tree Trimming & Management Plan, Hamilton Biological, 4/26/2019