

**CALIFORNIA COASTAL COMMISSION**

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# W13b

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-18-0875-A1

**Applicant:** Peter's Landing Marina  
 PG Marina Investors II

**Agents:** Roger Van Wert, Van Wert Inc.  
 Keith Merkel, Merkel & Associates

**Project Location:** 16400 Pacific Coast Highway, Huntington Beach  
 Orange County  
 SLC Lease APNs: 178-023-04, 178-023-05, 178-023-10,  
 178-451-07, 178-451-10, 178-451-13.  
 Privately Owned APN: 178-44-10

**Description of Proposed Amendment:** Establish public fishing improvements, pocket marsh enhancement, eelgrass planting, and water quality improvements within an existing marina.

**Description of Previously Approved Project:**

(P-76-8742, as amended by P-79-6083):  
 Construction of a bulkhead; 244 condominium units; 22 single family residences; commercial development; marina; three public parks; public pedestrian and bike ways; and public facilities such as restrooms, showers, fishing dock, ten public boat slips.

**Staff Recommendation:** Approval with conditions.

### SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to establish public fishing improvements, a coastal salt marsh restoration project, eelgrass planting, and water quality improvements within an existing marina. The subject site is located at 16400 Pacific Coast Highway, Huntington Beach, Orange County. Peter's Landing Marina is located in Huntington Harbour.

As part of the Coastal Commission's original approval of the Peter's Landing project in the late 1970s, which included the subject marina (along with many other components), two public fishing piers were required to be provided in the marina. However, those piers were never provided. The proposed amendment is intended to rectify that omission by establishing a public fishing platform and a public fishing dock, and providing enhancements that are intended to attract fish to the area to enhance the public's fishing experience. The proposed fishing dock will be created by widening the end of an existing dock finger at the channelward end such that it becomes a 14' by 10' platform. The proposed fishing platform will be located on an existing 20' by 5' "pop-out" on the existing public walkway atop the bulkhead. This fishing platform will be located at the interior of the marina. Both fishing areas will include a bench, lighting, and fishing line recycling and trash receptacles. The proposed fishing opportunities will provide lower cost recreational opportunities on Huntington Harbour, where public access is somewhat limited due to the residential nature of the development that fronts on it.

In addition to the proposed fishing platform and dock, the applicant is proposing additional measures to enhance the fishing experience. These include a small coastal salt marsh restoration and eelgrass planting project within the marina. Both of these habitat enhancements provide a number of important ecosystem functions including foraging areas, breeding areas, protective nurseries and shelter to young fish and invertebrates, and spawning surfaces for fish, shellfish, crustaceans and other animals. In addition, both habitat types improve water quality by filtering runoff and excess nutrients. These ecosystem functions support various species, including fish. For these reasons, both coastal salt marsh and eelgrass would have the effect of drawing fish to the area. Increasing the numbers of fish in the area will enhance recreational fishing opportunities. Also proposed are Marina Trash Skimmers, which have been installed beneath the boat docks located at the interior corners of the marina. The applicant is responsible for the power and daily maintenance of the two skimmers. The skimmers operate 24 hours a day, 7 days a week, capturing floating debris and other contaminants, like surface oil. Each skimmer can remove up to 500 pounds of trash per month. Other proposed water quality enhancements include a prohibition on fish cleaning and disposal of fishing wastes at the site, and the provision of fishing line recycling and trash receptacles at each of the two fishing locations.

The proposed project will also include informational and interpretive signage. The informational signage will direct the public to the fishing areas, provide health warnings regarding consumption of fish from the harbor, management of trash, restrictions on discharges, notices for safety and protection of public and private property, and prohibitions on fish cleaning and disposal of fishing wastes on site. Five interpretive signs area also proposed. The interpretive signage will provide interpretation of elements that can be seen at the Peter's Landing Marina site, such as species that are present on a regular basis within the marina and the water quality of the harbor.

However, the coastal salt marsh is proposed to span only 72 square feet. Both the coastal salt marsh restoration and the eelgrass planting plan do not propose traditional

monitoring procedures and defined success criteria. Although the coastal salt marsh restoration is only proposed to comprise 72 square feet, the applicant has submitted a marsh restoration plan encompassing 610 square feet. The applicant has indicated its intent to carry out this larger restoration in exchange for not providing typically required eelgrass monitoring, success criteria, and adaptive measures should the eelgrass planting prove unsuccessful.

Restoring only 72 square feet of marsh coupled with an eelgrass planting plan that would not require some level of success would not be adequate to offset the nearly forty years of deprivation of the public from the required fishing piers. The intent of the marsh restoration and eelgrass planting is to enhance the public's fishing experience by drawing increased numbers of fish to the site, as a means of offsetting the significant length of time there were no fishing piers for the public to use. The benefits of the marina operation have been enjoyed by the applicant (and their predecessors) for nearly forty years without the required fishing piers, inconsistent with the public access and recreation policies of the certified LUP and the Coastal Act. To address this, special conditions are imposed to provide some assurance that the proposed fishing experience is in fact enhanced. The special conditions require construction of the expanded coastal salt marsh, and require that both the marsh restoration and the eelgrass planting be monitored in a way that success can be determined. In the event the success criteria are not achieved, adaptive measures must be devised and implemented.

One special condition requires that the proposed signage be made available in English, Spanish, and other non-English languages. Another special condition requires preparation and implementation of a promotional plan. This plan would set out measures to make the general public aware of the public fishing opportunities available at Peter's Landing Marina, including members of historically underserved communities. The promotional plan could include advertising in established mediums for English and non-English speaking populations, such as but not necessarily limited to smart phone apps, radio, websites and/or print publications. The special condition requires these efforts to be made in in both English and Spanish and other non-English languages spoken in Orange County, and directed to inform historically underserved communities about the recreational opportunities.

As conditioned, the addition of the fishing platform and fishing dock presents an opportunity to provide water front recreational opportunities to historically underserved communities that have been historically excluded from the coast.

Staff is recommending nine special conditions. The special conditions require: 1) that the applicant demonstrate approval of the project from the California State Lands Commission; 2) a Revised Marsh Enhancement and Monitoring Plan; 3) a Revised Eelgrass Planting and Monitoring Plan; 4) a Pre-Construction Caulerpa Taxifolia Survey; 5) a Revised Signage Plan; 6) a Promotional Plan; 7) a requirement for the provision of fishing pole/rod holders; 8) that the project be carried out in a timely manner; and 9) implementation of Water Quality Construction Responsibilities and boating BMPs.

The subject site is located within an area of the City of Huntington Beach that is subject to a certified Local Coastal Program. The proposed project amends Commission-issued CDPs P-76-8742 and P-79-6083, permits issued prior to certification of the City's LCP. Typically, that would mean the standard of review for this amendment would be the now certified LCP. However, the proposed development will occur seaward of the mean high tide line, and thus falls within the Coastal Commission's retained permit jurisdiction. Therefore, the standard of review for the proposed project is the Chapter 3 policies of the Coastal Act. The City's certified LCP may be used as guidance.

Commission staff recommends **approval** of coastal development permit application 5-19-0971, as conditioned. The motion to adopt the staff recommendation is found on page 4.

**PROCEDURAL NOTE:**

The Commission's regulations provide for referral of permit amendment requests to the Commission if: 1) The Executive Director determines that the proposed amendment is a material change, 2) Objection is made to the Executive Director's determination of immateriality, or 3) The applicant appeals the Executive Director's determination that a proposed amendment would lessen or avoid the intended effect of a permit. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code Regs. § 13166.

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change to the previously approved project.

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. P-76-8742, as amended by P-79-6083 and 5-98-085-A1. Therefore, the Executive Director accepted the amendment request.

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### **APPENDICES**

Appendix A – Substantive File Documents

### **EXHIBITS**

Exhibit 1 – Vicinity Map

Exhibit 2 – Project Site Plan (Figure 1)

Exhibit 3 – Fishing Dock Plan

Exhibit 4 – Fishing Platform Plan

Exhibit 5 – CDP 79-6083

Exhibit 6 – CSLC Lease Area Map

Exhibit 7 – CSLC Letter, 3/12/2020

Exhibit 8 – Coastal Marsh Restoration Plan

Exhibit 9 – Sample Informational Signage

Exhibit 10 – Proposed Interpretive Signage

Exhibit 11 – Letter from Peter's Landing Commercial Development

Exhibit 12 - CoSMoS Map

## **I. MOTION AND RESOLUTION**

**MOTION:** I move that the Commission approve the proposed Coastal Development Permit Amendment No. 5-18-0875-A1 pursuant to the staff recommendation.

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 TO APPROVE A PERMIT AMENDMENT:**

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permits P-76-8742, P-79-6083, and 5-98-085-A1, as amended up through amendment number 5-18-0875-A1.

## **III. SPECIAL CONDITIONS**

This permit amendment is granted subject to the following special conditions:

### **1. State Lands Commission Approval.**

**A.** WITHIN SIXTY (60) DAYS OF COASTAL COMMISSION ACTION on CDP Amendment No. 5-18-0875-A1, the applicant shall submit to the Executive Director for review and approval, written evidence that a lease amendment application for the proposed development has been received by the California State Lands Commission.

**B.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval, a written determination from the California State Lands Commission that:

1. No state lands are involved in the development; or
2. State lands are involved in the development, and all permits/approvals required by the State Lands Commission have been obtained: or
3. State lands may be involved in the development, but pending a final determination of state land involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

**C.** Any project change(s) required by SLC that are not in substantial conformance with the proposed plans shall require an amendment to this permit amendment or an additional coastal development permit from the Coastal Commission.

**2. Revised Marsh Enhancement & Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a final detailed revised Marsh Enhancement and Monitoring Plan to restore the coastal pocket marsh area, that is in substantial conformance with the marsh restoration described in the Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020 (except as modified herein). A biologist qualified in the preparation of ecological restoration plans shall design the revised Marsh Enhancement and Monitoring Plan. The revised Marsh Enhancement and Monitoring Plan shall at a minimum include the following:

- A.** Creation of 610 square feet of coastal salt marsh habitat.
- B.** A description of existing site conditions including an updated habitat map with existing site conditions.
- C.** A detailed proposed habitat map, including proposed plantings and contour elevations.
- D.** A detailed written description, supported by maps and plans, of the goals and objectives of the marsh restoration.
- E.** Non-native plant eradication methods (e.g. grow-kill cycling, manual weed removal, etc.), timing/schedule, and details for why the respective methods have been selected for use and are expected to be successful.
- F.** A description of timing/schedule for the various proposed elements of the plan.
- G.** A description of the annual qualitative and quantitative monitoring including a description of the methods that will be employed. The final monitoring plan will

include specific ecological performance or "success" criteria that relate logically to the goals of the marsh restoration.

**H.** A detailed description of final success criteria. Generally, these criteria will include standards for species diversity of both perennial and annual plants, vegetative cover, and approximate dispersion patterns of major species. Relative success criteria provide a comparison of the restored site with appropriate references site(s). If relative success criteria (a comparison of the restored site with appropriate references site(s)) are pursued, the rationale for the choice of reference site must be described. The specific reference site must be identified in the restoration plan. A preliminary field sample must be taken and the results included in the restoration plan. Regardless of whether performance criteria are absolute or relative, the comparison procedure, and the basis for judging differences to be significant must be specified.

**I.** Plans for adaptive management to be applied in the event the success criteria are not achieved, indicating that changes in restoration approach are warranted.

**J.** Provisions for submission of reports of monitoring results to the Executive Director at six months and annually with a final report at year five from the date of initial completion of installation of the proposed restoration vegetation. Each report shall document the condition of the marsh enhancement with photographs taken from the same fixed points in the same directions and report on the quantitative monitoring results. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance criteria. The final report at the end of the five years must evaluate whether the marsh enhancement conforms to the goals, objectives, and performance criteria set forth in the approved final Marsh Restoration and Monitoring Plan.

**K.** If the final report indicates that the marsh restoration project has been unsuccessful, in whole or in part, based on the approved success criteria, the applicant shall submit, within 90 days of completion of the final report (and no more than five years and six months from the date the restoration plan installation was completed) a revised or supplemental plan to meet the approved success criteria. The revised marsh restoration plan, if necessary, shall be processed as an amendment to this coastal development permit amendment.

**L.** The applicant shall implement the proposed Marsh Restoration and Monitoring Plan, consistent with the terms and deadlines therein, within 90 days of its approval by the Executive Director. The Executive Director may grant additional time for good cause.



**M.** If, over the 75-year life of the project, the restored marsh area becomes inundated due to sea level rise such that it no longer functions as an intertidal marsh habitat, the applicant shall plant the same 610 square foot area with eelgrass. Once every five years, the applicant shall submit an update on the function of the of the marsh.

**N.** The applicant shall monitor and manage the marsh restoration site in accordance with the approved Marsh Restoration and Monitoring plan, including any revisions to the plan approved by the Coastal Commission. Any proposed changes to the approved Marsh Restoration and Monitoring plan shall be reported to the Executive Director. No changes to the approved Marsh Restoration and Monitoring plan shall occur without a Commission amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

### **3. Revised Eelgrass Planting & Monitoring Plan.**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit for review and written approval of the Executive Director, a final detailed revised Eelgrass Planting and Monitoring Plan that is in substantial conformance with the Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020 except as modified herein.

**B. Pre-Planting Eelgrass Survey.** A valid pre-planting eelgrass survey shall be completed for the project site. The pre-planting survey shall be completed no more than 60 days prior to the beginning of proposed eelgrass planting and shall be valid until the next period of active growth. The eelgrass survey and mapping shall be prepared in full compliance with the California Eelgrass Mitigation Policy (CEMP), and in consultation with the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW). If side-scan sonar methods will be used, evidence of a permit issued by the California State Lands Commission (SLC) for such activities shall also be provided prior to the commencement of survey work, where SLC approval is required. The applicant shall submit the pre-planting eelgrass survey for review and approval by the Executive Director within five (5) business days of completion of the eelgrass survey and in any event, no later than fifteen (15) business days prior to commencement of eelgrass planting. The required pre-planting survey shall establish the baseline, pre-planting condition.

**C. Eelgrass Planting.** Following the pre-planting survey, and as soon as possible following the issuance of this coastal development permit amendment 5-18-0875-A1, and between the months of April through August (inclusive of those months), the applicant shall carry out the eelgrass planting as proposed in the Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020 (except as modified herein).

**D. Eelgrass Monitoring.** The 538 square feet of eelgrass planted pursuant to Subsection C above will be surveyed to assess survival and plant expansion or contraction during the periods of 6, 12, 24, 36, 48, and 60 months post-planting. The status of eelgrass will be documented including spatial and density metrics in full compliance with the California Eelgrass Mitigation Policy (CEMP, NMFS 2014). This means that eelgrass will be assessed for vegetated cover, areal extent, and spatial distribution. Eelgrass bed turion (shoot) density will be evaluated. A reference site within the general project area will also be monitored to evaluate whether the planting site performs differently than would be expected based on the observed changes in the reference site. The eelgrass planting success shall be based on comparison to the reference site as laid out in the CEMP performance milestones (Page 26 CEMP). Reporting as to the status of the eelgrass planting habitat at the subject site and the reference site will be conducted at the same time, for each of the 6, 12, 24, 36, 48, and 60-month survey intervals.

**E. Detailed Description of Final Success Criteria.** Generally, absolute performance criteria will include values for plant species richness and total vegetative percent cover. Relative success criteria provide a comparison of the restored site with appropriate references site(s). If relative success criteria (a comparison of the restored site with appropriate references site(s)) are pursued, the rationale for the choice of reference site(s) must be described. The specific reference site(s) must be identified in the restoration plan. A preliminary field survey must be conducted and the results included in the restoration plan. Regardless of whether performance criteria are absolute or relative, the comparison procedure, and the basis for judging differences to be significant must be specified.

**F. Failure to Establish.** If after the 60-month period of monitoring review, the proposed 538 square foot area of eelgrass fails to establish successfully, in whole or in part, based on comparison to the reference site, the applicant shall submit an amendment to this coastal development permit amendment to propose another means of offsetting the temporal loss of providing the required fishing piers. This may include habitat enhancement to improve the fishing experience at the site, or it may include a non-habitat alternative that in some other way offsets the temporal loss of not providing the required fishing piers. This shall include a detailed description with supporting documentation (written description, project plans/graphics, etc.) that must be provided along with an application for an amendment to this coastal development permit amendment.

**G. Approved Final Plan.** The applicant shall undertake development in accordance with the approved final plans.

**4. Pre-Construction Caulerpa Taxifolia Survey.** By acceptance of this permit amendment, the applicant agrees to, not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this CDP, undertake a survey of the project area and a buffer area at least 10 meters

beyond the project area to determine the presence of the invasive alga *Caulerpa Taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa Taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol shall be prepared in consultation with the RWQCB, CDFW, and NMFS. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- A. For the review and approval by the Executive Director; and
- B. To the Surveillance Subcommittee of the Southern California *Caulerpa* Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through Loni Adams, California Department of Fish & Wildlife (858/627-3985) or Bryant Chesney, National Marine Fisheries Service (562/980 4037), or their successors.

If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until (1) the applicant provides evidence to the Executive Director that all *Caulerpa Taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or (2) the applicant has revised the project to avoid any contact with *Caulerpa Taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit Amendment unless the Executive Director determines that no amendment is legally required.

#### **5. Revised Signage Plan.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a revised Signage Plan that is in substantial conformance with the proposed signage contained in the Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020, and also includes all of the following elements:

- A. **Specific Details of the proposed signage;** such signage shall be placed so that it is visible to the general public from the Peter's Landing public boardwalk along the bulkhead; such signage shall include signs in English and Spanish, as well as in other non-English languages spoken in Orange County. The required Signage Plan shall include:
  - a. size and dimensions of each sign, including the height and width of each sign, the size of the lettering and any graphics on each sign;
  - b. the language/content to be used on each sign;
  - c. identification of designated fishing areas, health warnings regarding consumption of fish from the harbor, management of trash, restrictions

on discharges, notices for safety and protection of public and private property, and prohibitions on fish cleaning and disposal of fishing wastes on site.

- d. the location of each signage within Peter's Landing shall be depicted on a plan/graphic; and
- e. the means of posting each sign (mounted on railing, free standing, etc.).

**B. Way finding signage** directing the general public to the public fishing opportunities, particularly to the more remote fishing dock; such signage shall be placed such that it is visible to the general public from the Peter's Landing public boardwalk along the bulkhead; such signage shall include signs in English and Spanish, as well as in other non-English languages spoken in Orange County.

The required Signage Plan shall include:

- a. size and dimensions of each sign, including the height and width of each sign, the size of the lettering and any graphics on each sign;
- b. the language/content to be used on each sign;
- c. the location of each signage within Peter's Landing shall be depicted on a plan/graphic; and
- d. the means of posting each sign (mounted on railing, free standing, etc.).

**C.** The Signage Plan shall be carried out as approved.

## **6. Promotional Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a Promotional Plan that includes all of the following elements:

**A.** A plan for making the general public aware of the public fishing opportunities and free parking available at Peter's Landing Marina, including members of the general public who may not otherwise be aware of Peter's Landing and the public fishing opportunities available there, and in particular members of historically underserved communities. This plan may include:

- a. advertising in established mediums for English and non-English speaking populations, such as, but not necessarily limited to, smart phone apps, radio, websites and/or print publications including, but not limited to, those specializing in:
  - i. fishing interests, in the Orange County area,
  - ii. the promotion of recreational opportunities in the Orange County area,
  - iii. the promotion of family activities in the Orange County area,
- b. The plan may include distribution of promotional information (with appropriate permissions) at Title 1 schools, Boys & Girls Clubs, community centers and/or other areas where families may gather.

- c. The promotional platforms may be part of larger outreach that includes similar, no or low-cost recreational sites and opportunities in addition to the public fishing opportunities available at Peter's Landing Marina.
  - d. The promotional materials shall be made available in both English and Spanish and other non-English languages spoken in Orange County, and shall be directed to inform historically underserved communities about the recreational opportunities.
  - e. The promotional activity shall be carried out periodically (a minimum of quarterly) for the first year following completion and opening of the public fishing platform and public fishing dock.
  - f. The plan shall include, at a minimum, specific details of the
    - i. methods of promotion,
    - ii. the means of promotion, and
    - iii. the timing and frequency of promotion.
  - g. Once the Promotional Plan has been approved and implemented, evidence that the promotion is being carried out shall be provided to the Executive Director within 90 days of completion and opening of the public fishing platform and public fishing dock.
- B.** The Promotional Plan shall be carried out as approved.

**7. Additional On-Site Amenities.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and written approval of the Executive Director, a plan, in substantial conformance with the Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020, but that also includes fishing rod/pole holders along the railing of the fishing platform and fishing dock. The plan shall identify the type and location of the fishing rod/pole holders.

**8. Project Timing.**

The applicant shall comply with all special conditions of project approval. Information and actions as described and required in each "prior to issuance" special condition shall be provided to the Executive Director within sixty days of Commission action on this coastal development permit amendment application. The applicant shall commence the project as conditioned within sixty days of issuance of the coastal development permit amendment and pursue it diligently as required by this coastal development permit amendment until all aspects of the project are in place and all required special conditions are in place. The permittee shall maintain the project in accordance with the Commission's approval.

**9. Water Quality.**

- A.** Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit amendment shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with

demolition or construction activity, shall be implemented prior to the on-set of such activity; and

(16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**B. Best Management Practices Program**

By acceptance of this permit amendment the applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

(1) Boat Cleaning and Maintenance Measures:

- a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
- b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and

c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

#### **10. Water Quality Skimmers**

By acceptance of this permit amendment, the applicant agrees to continue the ongoing operation and maintenance of the two Marina Trash Skimmers (or equivalent means of promoting water quality) for the life of the subject marina.

### **IV. FINDINGS AND DECLARATIONS**

#### **A. Project Description and Location**

The subject amendment proposes measures intended to enhance public fishing opportunities in an existing marina including: establish two public fishing areas (a fishing dock and a fishing platform); enhance a coastal pocket marsh located in a corner of the marina; plant 538 square feet of eelgrass at the edges of the marina; and implement water quality improvements. The various elements of the proposed improvements are described in greater detail below. The proposed project elements are intended to address permit violations at the subject marina involving non-compliance with the approved final plans and terms and conditions of Coastal Development Permit (CDP) Nos. P-76-8742, as amended, and P-79-6083, which were previously approved by the Coastal Commission and issued for: "the construction of a bulkhead; 244 condominium units; 22 single family residences; commercial development; marina; three public parks; public pedestrian and bike ways; and public facilities such as restrooms, showers, fishing dock, ten public boat slips." A special condition of the earlier permits required the applicant to provide "two public fishing piers" ([Exhibit 5](#)). Since the Commission's original approval, the project has been amended several times.

The proposed project is located at 16400 Pacific Coast Highway, at Peter's Landing Marina, in Huntington Harbour, in the City of Huntington Beach ([Exhibit 1](#)). The subject site is land use designated and zoned Open Space – Water Recreation, which allows boat docks and marina facilities. Peter's Landing Marina is located on the Main Channel in Huntington Harbour, and is approximately 800 feet northeast (about three blocks) of the sandy public ocean facing beach known as Sunset Beach ([Exhibit 1](#)).

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 commercial center is currently owned by Pendulum Properties Partners and Peter's Landing Property Owner LLC; the Broadmoor Huntington Harbour and Bayport residential condominium communities are separately owned; and Peter's Landing Marina, the subject of this amendment request, is under the ownership of PG Marina Investors II.

As part of the Coastal Commission's original approval of the overall project, including the subject marina, two public fishing piers were required. However, those piers were



never provided. The proposed amendment is intended to rectify that omission by establishing a public fishing platform and a public fishing dock, and providing enhancements that are intended to attract fish to the area to enhance the public's fishing experience.

#### Fishing Dock

Within the existing marina, at the northern end of Dock A, the applicant proposes to enlarge the end of northernmost dock finger from a width of 6 feet to a width of 10 feet, over the fourteen feet of the channel-ward-most end of the dock finger. This will result in a 10 feet by 14 feet overwater platform that will be available for public fishing use. A 3.5 foot high railing is proposed around the platform and down the edge of the adjacent boat slip. A six-foot-wide opening in the railing retains access from the remainder of the dock finger to the fishing dock. Also proposed on the 14 foot by 10 foot fishing dock is a pedestal light, fishing line recycling and trash receptacles, and a six-foot-long, 31" high bench. This fishing dock will be accessed from the existing public walkway at the bulkhead via the existing gangway to Dock A. A sign informing the public of the availability of public fishing opportunities is proposed on the railing at the top of the bulkhead in the location where it meets the gangway leading to Dock A.

The proposed expansion of the existing boat dock finger to accommodate the fishing dock would eliminate one side tie boat dock space. Dock A, including the proposed public fishing dock, would remain within the existing pierhead line. No new piles are proposed, so no fill of coastal waters will occur. The location of the proposed fishing dock would allow "fishing the tide" near the entrance of the harbor's Main Channel. The water in the area of the proposed dock finger expansion is too deep to support eelgrass, so no impacts to eelgrass are anticipated from the proposed fishing dock.

#### Fishing Platform

The proposed public fishing platform will be located on an existing, "pop-out" on the existing public walkway along the bulkhead that cantilevers over the marina waters. The "pop-out" is an approximately 15 foot long area that cantilevers a maximum of 5 feet over the bulkhead (the corners are rounded). This pop-out is located between Docks D and E. In contrast to the fishing dock location, the fishing platform would provide an opportunity to fish the interior of the marina, which would be available to all, but the applicant suggests may be a more suitable location for beginning anglers than the fishing dock. The existing planter boxes along the railing will be removed, and signage will be posted alerting the public to the availability of public fishing opportunities at this location.

#### Coastal Pocket Marsh Enhancement

The applicant is proposing to restore 72 square feet of coastal pocket marsh in an area located just inland of the proposed fishing dock location, in the inland corner between Docks A and B ([Exhibit 2](#)). The marsh enhancement includes creation of tidally influenced coastal salt marsh habitat from present weedy uplands. Excavation of approximately 82 cubic yards of sandy soil is proposed to lower the site. The applicant indicates that the soil will be disposed of outside the coastal zone. Within the coastal

marsh restoration area, the applicant proposes to plant California cordgrass (*Spartina foliosa*), Pacific Pickleweed (*Sarcocornia pacifica*), Alkali heath (*Frankenia salina*), Sea lavender (*Limonium californicum*), Estuary seablight (*Suaeda esteroa*), Saltgrass (*Distichlis spicata*), Shoregrass (*Distichlis (Monanthochloe) littoralis*), and Woolly Seablight (*Suaeda taxifolia*). Although the area of marsh to be restored is proposed at 72 square feet, the applicant has provided plans for a marsh restoration of 610 square feet.

Rather than a traditional monitoring regime, the applicant has proposed:

“Establishment assessment of the marsh habitat will be performed by a qualified biologist at 6, 12, and 24 months post-installation of the habitat. Reporting as to the status of the habitat will be conducted annually for a period of 2 years or until the marsh has achieved a minimum of 72 square feet of new intact coastal salt marsh habitat and 60 percent cover by vegetation over the area of excavation to develop the new marsh habitat.”

The applicant's original intent was to provide the additional salt marsh restoration area (610 square feet) to offset the loss if the proposed eelgrass planting (described below) did not succeed:

“Should eelgrass fall short of meeting a new expansion of 538 square feet within the marina (not counting any eelgrass present prior to planting), then shortfalls in eelgrass would be made up by an equivalent area of additional marsh expansion following the same metrics for coverage by native salt marsh vegetation.”

#### Eelgrass Planting Plan

The applicant is proposing to plant one eelgrass planting unit<sup>1</sup> per square meter over a 600 square foot meter area, with the expectation that up to 50 square meters (538 square feet) of additional stable eelgrass could be generated from the planting. According to the applicant's biological consultant, the expectation is based on “the available habitat, historic occurrence of beds, and anticipated improvements of water quality based on operation of water quality skimmers within the marina.”

Eelgrass is proposed to be planted in areas between Dock B and the bulkhead, Dock E and the bulkhead, and area waterward of the proposed marsh restoration ([Exhibit 2](#)).

Rather than the traditional monitoring regime, the applicant has proposed:

“The proposed eelgrass [planting] will be reviewed to assess survival and plant expansion or contraction during the period of 6, 12, and 24 months post-planting. The status of eelgrass will be documented including spatial and density metrics derived from the California Eelgrass Mitigation Policy (CEMP) (NMFS 2014). This means that eelgrass will be assessed for vegetated cover, areal extent, and spatial distribution. Eelgrass bed turion (shoot) density will be evaluated. A reference site in the project

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<sup>1</sup> A planting unit is comprised of six to eight eelgrass turions and rhizomes harvested from nearby donor beds that are bundled together and transplanted into the receiver site (in this case Peter's Landing Marina).

areas will also be monitored to evaluate whether the planting site performs differently than would be expected based on the observed changes in the reference site. Reporting as to the status of the habitat will be conducted annually.”

The applicant proposed the eelgrass planting as a “pilot effort,” stating “As such [pilot effort], the monitoring is intended to evaluate the effectiveness of the pilot planting and is not intended to determine success or failure of the planting as an obligatory metric of the Plan.” Following conversations with Commission staff, the applicant proposed expanding the area of coastal marsh restoration beyond the proposed 72 square feet, as a backup plan, should the eelgrass planting not achieve 50 square meters (538 square feet) of additional stable eelgrass. To address this, the proposed eelgrass monitoring plan was altered as follows:

“Should eelgrass restoration fall short of the anticipated establishment of more than 50 m<sup>2</sup> (538 sf) of additional eelgrass within the marina property at the end of the 24-month monitoring, then Peter's Landing may replant the eelgrass and commence a second round of monitoring or they may complete a marsh expansion within the pocket marsh area to expand the marsh up to an additional 538 sf of marsh as may be required to meet the shortfall of eelgrass area. This expanded marsh would be added to the minimum of 72 sf of expansion required to offset bay coverage from the construction of the fishing dock.”

#### Signage Plan

The applicant is also proposing informational and interpretive signage. The informational signage includes signage to direct the public to the public fishing opportunities. The informational signage will include posting of designated fishing areas, health warnings regarding consumption of fish from the harbor, management of trash, restrictions on discharges, notices for safety and protection of public and private property, and prohibitions on fish cleaning and disposal of fishing wastes on site. Proposed interpretive signage will focus on providing the public with information about the local area ecology, water quality, and stewardship. The goal of the proposed interpretive signage is to provide interpretation of elements that can be seen at the Peter's Landing Marina site, such as species that are present on a regular basis within the marina and the water quality of the harbor. The specific locations of the proposed signs are not yet known. Samples of possible signage options are attached as [Exhibit 10](#). The Peter's Landing landside commercial development (separate from Peter's Landing Marina) expects to replace the existing railing, and so specific attachment design and location will be determined in conjunction with that process. The Peter's Landing landside development owners are aware of the proposed Peter's Landing Marina project and have agreed to the signage ([Exhibit 11](#)).

#### Water Quality Enhancements

The applicant proposes to provide power and daily maintenance for two Marina Trash Skimmers, which have been installed on the boat docks located at the interior corners of the marina ([Exhibit 2](#)). The water circulators and skimmers were installed through a collaboration between Peter's Landing, Orange County, and the Transportation Authority grant program. Peter's Landing Marina is responsible for their operation and maintenance.

The Marina Trash Skimmers are designed to remove trash and pollutants at a commercial scale. Trash and oils that collect in marina corners, after being pushed there by the tides and currents, are captured by the skimmers. The skimmers operate 24 hours a day, 7 days a week, capturing floating debris and other contaminants, like surface oil. Each skimmer can remove up to 500 pounds of trash per month.

The stationary skimmer machines look like trash containers - about six feet wide by four feet deep - that float on the water beneath the dock to which they are connected. An electric motor sucks in about 300 gallons of water a minute into the device and filters the water, trapping debris, such as paper cups, plastic containers and dead marine plants. The applicants have entered into a Memorandum of Understanding with the City, assuming responsibility for emptying these machines of the collected debris and oils daily, providing the electricity to power them, and for their maintenance.

Other proposed water quality enhancements include a prohibition on fish cleaning and disposal of fishing wastes at the site, and the provision of fishing line recycling and trash receptacles at each of the two fishing locations. In addition, the eelgrass planting and marsh restoration are expected to have positive impacts on water quality.

#### **B. California State Lands Commission**

A portion of the proposed development would occur on the Main Channel in Huntington Harbour. The Main Channel is owned and administered by the California State Lands Commission (SLC). Development in this area requires review and approval from SLC, typically in the form of a lease agreement. The applicant holds a current lease with the California State Lands Commission for the channelward portions the property ([Exhibit 6](#)). The terms of lease run to December 2, 2048. However, in a letter dated 3/12/2020, SLC staff confirmed that elements of the proposed project, including the expansion of the existing boat dock finger to accommodate the fishing dock will require an amendment to the lease ([Exhibit 7](#)). As of the date of this staff report, final approval from SLC of the proposed project, in the form of a lease amendment, has not yet been obtained by the applicant. The applicant has indicated an application for the lease amendment will be submitted once the ultimate outcome of this permit amendment request is known. In order to ensure the proposed project complies with any requirements of SLC, **Special Condition 1** is imposed which requires that evidence of approval of the proposed development from the SLC be submitted prior to issuance of the coastal development permit. **Special Condition 1** also requires that, within sixty days of Commission action on this permit amendment application, the applicant submit evidence that an application for an amendment to the SLC lease has been received by SLC from the applicant. In addition, **Special Condition 1** requires that any project change(s) required by SLC that are not in substantial conformance with the proposed plans shall require an amendment to this permit amendment or an additional coastal development permit from the Coastal Commission.

#### **C. Peter's Landing Marina Permit History**

P-76-8742: Construct bulkhead; 244 condo units, marina, public access, 75 room hotel, 22 single family homes, commercial development, etc.

P-79-6083 Amended P-76-8742

Expand retail, office by adding 20,000 square feet of retail, office, restaurant for a total square footage of 127,132; increase the number of boat slips to 281; increase the number of parking spaces by 79 to 630 spaces.

5-98-085-A1 Amended P-76-8742

Modifications to marina including reconstruction of Dock B and of one slip on Dock A, resulting in a reduction of 9 boat slips and an increase in size of the remaining 26 boat slips; removal of 22 piles and placement of 34 piles.

The first CDP actions at the Peter's Landing site were approved in the late 1970s. The CDP that allowed creation of the Peter's Landing Marina was CDP P-76-8742. CDP P-76-8742 was subsequently amended in 1979 by P-79-6083. CDP P-79-6083 allowed removal of the hotel, expanded office, retail, and office square footage, an increase in the total number of boat slips to 281, and an increase in the number of parking spaces. The original approval included both the marina and the landside development. However, the marina, the commercial development, and the residential development are all now under separate ownership. This project involves the marina portion of the overall project originally approved under CDP P-76-8742 and P-79-6080. CDP P-79-6083 imposed a special condition requiring the provision of two public fishing piers ([Exhibit 5](#)). Additionally, work on Peter's Landing Marina was authorized under CDP amendment 5-98-085-A1, as described above.

#### **D. Standard of Review/Jurisdiction**

The subject site is located within an area of the City of Huntington Beach that is subject to a certified Local Coastal Program. The proposed project amends Commission-issued CDPs P-76-8742 and P-79-6083, permits issued prior to certification of the City's LCP. Typically, that would mean the standard of review for this amendment would be the now certified LCP. However, the proposed development will occur seaward of the mean high tide line, and thus falls within the Coastal Commission's retained permit jurisdiction. Therefore, the standard of review for the proposed project is the Chapter 3 policies of the Coastal Act. The City's certified LCP may be used as guidance.

#### **E. Public Access and Recreation**

**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.

**Section 30213** states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

**Section 30220** states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

**Section 30221** states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

**Section 30223** states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Additionally, Coastal Act section 30604(h) allows the Commission to consider environmental justice when acting on a coastal development permit:

**Section 30604(h)** states:

When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

The City's certified Local Coastal Program Land Use Plan/Coastal Element includes the following policies:

**C 2** Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act Requirements.

**C 2.5** Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.

**C 2.5.1** Require that existing public access to the shoreline and Huntington Harbour waterways be maintained and enhanced, where necessary and feasible, not withstanding overriding safety, environmental or privacy issues.

**C 2.6** Promote and provide, where feasible, additional public access, including handicap access, to the shoreline and other coastal resources.

**C 2.7** Promote public awareness of existing access opportunities to coastal resources.

**C 2.7.1** Maintain and enhance, where necessary, the coastal resource signing program that identifies public access points, bikeways, recreation areas and vista points throughout the Coastal Zone.

**C 3** Provide a variety of recreational and visitor commercial serving uses for a range of cost and market preferences.

**C 3.1** Preserve, protect and enhance, where feasible, existing public recreation sites in the Coastal Zone.

**C 3.1.3** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

**C 3.2** Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

**C 3.2.1** Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.

**C 3.2.2** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. On oceanfront, waterfront or nearshore areas or lands designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to off-set the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

**C 3.4** Encourage and protect water oriented recreational activities that cannot readily be provided at inland water areas.

The City's certified LCP Land Use Plan/Coastal Element includes public access and recreation policies that mirror the public access and recreation policies of the Coastal Act. Both the City's certified LCP and the Coastal Act require that high priority be given to public access to and recreational uses and activities along the coast, particularly to lower cost uses and activities. In addition, the Coastal Act and LCP require that oceanfront land suitable for recreational use be protected for recreational use and development. Coastal Act Sections 30210, 30213, 30220, 30221, and 30223 protect public access and recreation. Each of these Coastal Act Sections have been incorporated into the City of Huntington Beach's certified LCP.

The Commission's original approval of the Peter's Landing development, CDP P-76-8742, required that two public fishing piers be provided with the development. This was one of the requirements imposed to assure consistency of that project with the public access and recreation policies of the Coastal Act. When that CDP was subsequently amended in 1979 by P-79-6083, the Commission found:

“Inasmuch as the two public fishing piers were part of the project approved under P-76-8275 and the permittees for that project have divested that portion of the site which was to contain these facilities it now appears that there is yet an obligation to the discharged to the visiting public. It is the Executive Director's opinion that the satisfaction of this obligation is now incumbent on the applicant for the proposed project.”

In originally approving the larger development that included not only Peter's Landing Marina, but also Peter's Landing Commercial Center, and a number of condominiums, the Commission found that a number of public access amenities were necessary in order to find that the project was consistent with the public access and recreation policies of the Coastal Act. Many of these have been provided, including the public walkway fronting on the marina, public access parking, and a public park/plaza area, among others. However, the requirement to provide two public fishing piers was never fulfilled. The proposed development is intended to resolve this absence.

As described earlier, the applicants are proposing to provide a public fishing platform and a public fishing dock. In addition, to offset the temporal losses of public access and recreational opportunities resulting from the nearly forty year period within which the public did not have the benefit of the public fishing piers, the applicants are proposing a number of measures. These include planting eelgrass and restoration of a coastal pocket marsh to improve the fishing experience.

Coastal salt marshes are productive ecosystems that provide food and refuge to juvenile fish. Tides carry in nutrients that stimulate plant growth in the marsh and carry out organic material that feeds fish and other coastal organisms. Research increasingly points to aquatic wildlife as the main recipient of marsh production. Little vegetation is consumed directly, but is broken down by bacteria and small insects. The decaying plants and microbes are eaten by larger crustaceans, insects, fish, and mussels that reside in the marsh soils and channels where they are protected from predators. Coastal marshes provide habitat for numerous species of fish, birds and invertebrates, which in turn draws fish and so enhances recreational fishing opportunities. In addition, by filtering runoff and excess nutrients, salt marshes also improve water quality, which also improves the ecosystem and supports various species, including fish.

Eelgrass provides a number of important ecosystem functions as well, including foraging areas, breeding areas, protective nurseries and shelter to young fish and invertebrates, and spawning surfaces for fish, shellfish, crustaceans and other animals. Because it is a primary producer, it forms the base of a highly productive marine food web. Eelgrass meadows are one of the most important juvenile habitats for a broad array of fish species. During low tides, on tide flats, eelgrass beds hold moisture like a sponge, offering a safe, wet habitat for small creatures. The unique eelgrass habitat also produces food and oxygen, improves water quality by filtering polluted runoff, absorbs excess nutrients, and stores greenhouse gases like carbon dioxide.



Although a 610 square foot marsh at the subject site would be small, it would nevertheless contribute benefits as described above. Likewise, the successful planting of eelgrass will also provide such benefits. Both coastal salt marsh and eelgrass bed habitats provide food and shelter for fish. For all the reasons mentioned, both coastal salt marsh and eelgrass would have the effect of drawing fish to the area. Increasing the numbers of fish in the area will enhance recreational fishing opportunities and experience.

The applicant is also proposing, together with partners, to operate and maintain water skimmers that will filter up to 500 pounds of trash per month from the marina. The filtering benefits of both habitat types, combined with the water skimmers, and the resulting improved water quality, will further increase the likelihood of higher fish populations in the area. In order to assure these water quality benefits are maintained over the life of the project, **Special Condition 10** requires that applicant shall provide for operation and maintenance of the proposed water quality skimmers (or equivalent water quality protection measure) for the life of the marina.

Finally, in an effort to further support public use of the proposed fishing platform and fishing dock, the applicant has proposed informational and interpretive signage to be installed at the site. However, the proposed signage is not final and, although examples have been submitted, the specifics of the informational signage (such as content/ wording, size, location) have not been defined. Five interpretive signs are also proposed at the site, to provide interpretation of elements found at the Peter's Landing Marina site, such as species that are present on a regular basis within the marina. Four of the five proposed interpretive signs have been described, but the fifth is pending. In addition, specific attachment design and location has yet to be determined for both types of signage. Moreover, in order to maximize awareness of the recreational fishing opportunities available at the site among various California communities, especially among non-English speaking communities, signage should be provided in English and Spanish, as well as in other non-English languages spoken in Orange County. For these reasons, **Special Condition 5** is imposed which requires submittal of a revised signage plan that incorporates these measures. **Special Condition 5** also requires that the signage plan be implemented as approved.

The certified LUP/Coastal Element recognizes that "access to the Huntington Harbour waterways is somewhat limited due to the residential nature of the surrounding area..." Although public access is already available along the public boardwalk atop the bulkhead at the subject site, establishing new fishing opportunities will increase recreational opportunities within the harbour. The proposed project would enhance public opportunities for coastal recreation.

Both the Coastal Act and the City's certified LCP promote public access and recreation. LUP policy C 2.5.1 requires that existing public access to the shoreline and Huntington Harbour waterways be maintained and enhanced. Policy 3.2 requires that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities. Policy C 3.2.1 encourages facilities,

programs and services that increase and enhance public recreational opportunities in the coastal zone. Policy C 3.2.2 also requires that lower cost visitor and recreational facilities be protected, encouraged, and where feasible, provided. These LUP policies mimic many of the Coastal Act policies that require and encourage lower cost recreational opportunities and public access. By adding public fishing opportunities on the harbor front, and measures that would enhance the existing public access and the fishing experience, the project provides the high priority lower cost recreational opportunity in the harbor, where currently such uses are in short supply.

As described below, some changes will be necessary to the marsh restoration plan and to the eelgrass planting plan. With those changes described below and required in **Special Conditions 2 and 3**, the proposed fishing enhancements will provide lower cost, visitor serving recreation.

### **Environmental Justice**

The proposed project provides an opportunity to address some environmental justice concerns related to the inequitable distribution of public access and recreation benefits in California broadly and Huntington Harbour specifically. Throughout California's history, low-income communities, communities of color, and other marginalized populations, generally referred to here as "underserved communities," have faced disproportionate social and physical barriers that disconnect them from coastal access and recreational opportunities. Equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices.<sup>2</sup> Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.<sup>3</sup> Ensuring maximum and equitable public access to the California coastline (as required by Coastal Act Sections 30210 and 30213) is consistent with the environmental justice principles reflected in the Coastal Act. Section 30604(h) states: "when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state."<sup>4</sup> The Commission adopted an environmental justice policy in March 2019, committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal benefits are accessible to everyone. In approving the policy, the Commission recognizes that equitable coastal access is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how.

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<sup>2</sup> Robert Garcia & Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, *Stanford Journal of Civil Rights and Civil Liberties*. Pages 143 (2005)

<sup>3</sup> 39 Reineman, et al., Coastal Access Equity and the Implementation of the California Coastal Act, *Stanford Environmental Law Review Journal*, v. 36, Pages 96-98. (2016)

<sup>4</sup> Government Code Section 65040.12(e) defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

Historic inequalities, as well as California's growing population, changing demographics, socio-economic forces, judicial decisions, and policy choices continue to shape development patterns and population shifts that widen the disparity gap. Not only is equitable access to the coast for all Californians essential, so is protecting coastal natural resources for future generations. People become engaged in the protection of the coast when they have a connection with the coast. Robust public access and environmental justice policies thus bolster the Coastal Commission's mission to protect and enhance the coast for present and future generations.

The proposed project improves visitor serving and recreational facilities that would increase coastal recreation and access benefits available for all income levels. The proposed fishing platform and dock would be available to all, and would not require significant cost, other than the equipment necessary to fish.

The Peter's Landing commercial property is served by a 693-space parking lot, of which 72 spaces are required to be available for public access. These 72 public access spaces are marked as such. Thus, free parking is available to those who wish to take advantage of the fishing opportunities at the site. In addition, there is no charge to park in the Peter's Landing commercial development's remaining spaces.

To further increase access benefits to underserved communities, **Special Condition 6** requires the applicant to submit a Promotional Plan, describing outreach measures for making the general public aware of the public fishing opportunities available at Peter's Landing Marina, including members of the general public who may not otherwise be aware of Peter's Landing and the public fishing opportunities available there, and in particular members of historically underserved communities, through means such as smart phone apps, websites and/or print publications. In Orange County, 26% population speaks Spanish at home.<sup>5</sup> Other non-English languages spoken by Orange County populations include Vietnamese, Chinese, Japanese, Korean, and Tagalog. Thus, the outreach measures are required to be distributed in English, Spanish, and other non-English languages spoken in Orange County. **Special Condition 5**, which requires a revised Signage Plan, requires that the signage include English, Spanish, and other non-English languages spoken in Orange County.

The addition of the fishing platform and fishing dock presents an opportunity to provide water front recreational opportunities to historically underserved communities. The project will provide an opportunity to increase coastal access benefits for underserved communities that have been historically excluded from the coast. The proposed fishing opportunities provide lower cost/free recreational opportunities consistent with Sections 30213, 30220 and 30604(h) of the Coastal Act.

As conditioned, the project is consistent with the LUP and Coastal Act public access and recreation policies sited above.

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<sup>5</sup> Information about languages spoken at home was obtained from EPA EJSscreen 2013-2017 American Community Survey (ACS) Summary Report for Orange County.

## **E. Eelgrass Planting & Marsh Restoration**

Coastal Act Section 30230 states:

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. 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.

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The City's certified Local Coastal Program Land Use Plan/Coastal Element includes the following policies:

**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.

**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.

**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.

The LUP and Coastal Act policies cited above require that the marine resources, biological productivity, and quality of coastal waters be maintained and, where feasible, restored and enhanced. The proposed development will occur in and over coastal waters (the waters of Huntington Harbour). As described above, the proposed project includes habitat enhancements that will be beneficial to biological productivity, marine resources, and the quality of coastal waters. Although the coastal salt marsh restoration is only proposed to be 72 square feet, the applicant has submitted a marsh restoration plan encompassing 610 square feet ([Exhibit 8](#)). The applicant has indicated its intent to carry out this larger restoration, but only if the eelgrass planting proves unsuccessful.

The proposed 72 square foot coastal salt marsh restoration is insufficient to mitigate for the impacts resulting from the applicant's failure to provide the required fishing piers over the past 40 years. Thus, **Special Condition 2** requires that the Marsh Enhancement and Monitoring Plan be modified to provide for immediate implementation of the entire 610 square feet marsh restoration.

Neither the coastal salt marsh restoration nor the eelgrass planting plan propose traditional monitoring procedures and defined success criteria. The restoration proposals that lack success criteria would not be adequate to offset the nearly forty years when the public was deprived of the required fishing piers. As described previously, the intent of the marsh restoration and eelgrass planting is to enhance the public's fishing experience by drawing increased numbers of fish to the site, as a means of offsetting the significant length of time there were no fishing piers for the public to use. The benefits of the marina operation were received by the applicant (and their predecessors) for nearly forty years without the required public recreation features (fishing piers), inconsistent with the public access and recreation policies of the certified LUP and Coastal Act. Thus, to assure that the proposed fishing experience is in fact enhanced, it is necessary that the restoration areas become established. Otherwise the project will not address the absence of the fishing piers for four decades. The expanded coastal salt marsh restoration must be constructed. Moreover, both the marsh restoration and the eelgrass planting must be monitored in such a way that success can be determined, and in the event the success criteria are not achieved, adaptive measures must be devised and implemented.

For the marsh restoration, this includes qualitative and quantitative monitoring including a description of methods to be employed, including specific ecological performance or "success criteria." A detailed description of the success criteria must be defined. And, in the event the success criteria are not achieved, plans for adaptive management will be needed.

For the eelgrass planting, a formal monitoring plan in full compliance with the California Eelgrass Mitigation Policy (CEMP, NMFS 2014) is required. This would mean monitoring for a full five years rather than the two years proposed. In addition, a detailed description of final success criteria must be described. The success criteria may be either relative or absolute, but must be fully described and implemented. And finally, in the case of the eelgrass planting, if after the five year period of monitoring review, the eelgrass fails to establish, in whole or in part, an amendment to this coastal development permit amendment shall be submitted to propose another means of offsetting the temporal loss of providing the required fishing piers. This may include habitat enhancement to improve the fishing experience at the site, or it may include a non-habitat alternative that in some other way offsets the temporal loss of providing the required fishing piers.

There are high expectations of success for the coastal salt marsh, whereas the likelihood of success for eelgrass planting is far less predictable. However, even if it

turns out that the subject site is not suitable to support eelgrass, some long term measure to offset the temporal loss of the public fishing piers is still required. Some assurance that the proposed fishing enhancements will be in place at least as long as the required fishing piers were absent, is required. Otherwise, the proposed project would not be consistent with the public access and recreation policies, as well and the marine resources policies of the City's LCP and the Coastal Act.

As proposed, the eelgrass planting plan and coastal marsh restoration plan do not provide the level of detail typically required by the Commission for habitat enhancement projects. This level of information is necessary to clearly understand the proposal. The marsh restoration plan and the eelgrass planting plan must provide a level of detail such that a technical specialist, who has not been involved in the project, could carry out the plan. It must also be written in such a way that an educated layman could understand and evaluate the plan. The necessary components of both plans are spelled out in greater detail in **Special Conditions 2 and 3**.

Other aspects of the proposed project will also have benefits for coastal water quality, biological productivity, and marine resources. These include the Water Skimmers water quality filters, fishing line recycling and trash receptacles at both the fishing platform and at the fishing dock, and a prohibition on cleaning fish and disposal of fishing wastes at the site. Finally, **Special Condition 9** is imposed which requires the applicant to implement best management practices during construction as well as implementing clean boating practices in the long term.

CoSMoS mapping suggests the area of the restored coastal salt marsh may become inundated with 1.6 feet of sea level rise ([Exhibit 12](#)). Sea level rise of 1.6 feet is expected to occur by about year 2050. If that happens, the coastal salt marsh will no longer function as a salt marsh and so will no longer provide the benefits described above. In order to assure that the enhanced benefits are maintained, if the marsh becomes submerged, the area is required to be planted with 610 square feet of eelgrass. In order to monitor the point at which sea level rise inundates the restored coastal salt marsh, the applicant shall provide the coastal salt marsh viability determinations to the Executive Director every five years. This requirement is reflected in **Special Condition No. 2**.

As conditioned, the project is consistent with the LUP and Coastal Act biological productivity and quality of coastal waters, as well as the marine resources policies sited above.

#### **F. Coastal Act Violations**

Non-compliance with CDP P-79-6083 has occurred on the property, including, but not necessarily limited to, failure to provide two public fishing piers within the marina. 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 Peter's Landing Marina for the above described permit non-compliance. The owner has worked with Commission staff to develop this application to provide improved public fishing opportunities at the marina. The owner is requesting approval of installation of the public fishing platform, public fishing dock, eelgrass planting plan, coastal salt marsh restoration, signage, and maintenance and operation of the marina skimmers water quality features to bring the site into compliance with Commission requirements for public fishing opportunities at the site.

Although required development failed to take place prior to submission of this permit amendment application, consideration of this 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 Chapter 3 policies of the Coastal Act. Approval of this permit amendment does not constitute a waiver of any legal action with regard to any unpermitted development or permit non-compliance that has been undertaken or has occurred on the subject site, except with regard to the alleged Coastal Act violations described herein, nor does it constitute admission as to the legality of any development undertaken on the subject site without a valid coastal development permit, except with regard to the alleged Coastal Act violations described herein. Approval of this application pursuant to the staff recommendation, issuance of the permit amendment, and the applicants' subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations.

#### **G. 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 public access and recreation, marine resources, and water quality policies of the certified LCP.

#### **H. 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. As conditioned, there are no feasible alternatives or additional feasible mitigation

measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate potential impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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**APPENDIX A**

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**SUBSTANTIVE FILE DOCUMENTS**

1. City of Huntington Beach certified Local Coastal Program.
2. Public Access and Marine Resource Enhancement Plan for Peter's Landing Marina, prepared by Merkel & Associates, Inc., dated September 2020.
3. California Eelgrass Mitigation Policy (CEMP, NMFS 2014).