

CALIFORNIA COASTAL COMMISSION

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ADMINISTRATIVE PERMIT

Application No.: 5-21-0404

Applicant: Wen Tang Hsu

Agent: JWL Associates. Attn: Carrie Bai

Location: 4071 Morning Star Dr, Huntington Beach, Orange County (APN No.: 178-391-18)

Project Description: Demolition of an existing wooden cantilevered deck over concrete slab and construction of a new concrete deck of same dimensions (40'3" x 5') cantilevered 5 feet beyond the existing seawall. Also proposed along the waterside perimeter is a 42"-tall aluminum guardrail with metal posts affixed to deck mounts at 5-foot intervals. No type of glass or transparent medium is proposed.

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission on November 19, 2021. PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

John Ainsworth
Executive Director

By: Shahar Amitay
Coastal Program Analyst

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EXHIBITS

[Exhibit No. 1 – Vicinity Map](#)

[Exhibit No. 2 – Site Plan](#)

STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See pages seven through ten.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION

The applicant proposes to demolish an existing wooden cantilevered deck over concrete slab and construct a new concrete deck of the same dimensions (40'3" x 5') cantilevered 5 feet beyond the existing seawall ([Exhibit 2](#)). The proposed deck is associated with the adjacent single-family residence. Also proposed along the waterside

perimeter of the deck is a 42"-tall aluminum guardrail with metal posts affixed to deck mounts at 5-foot intervals. No type of glass or transparent medium is proposed. A gutter system will catch any runoff from the deck, and deck drainage will be directed back onto the lot. No products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye will be used on the deck, therefore, pollutants from those products will not drain to the harbor during or after construction. No bottom disturbing activities are anticipated. All work on the deck will occur from the landward side of the deck.

Here, the new deck will not be made of any preservative-treated wood; however, the existing deck to be removed is made of preservative-treated wood. Preservative-treated wood in overwater and in-water structures has the potential to adversely impact water quality and aquatic species. The pesticides in wood preservatives – commonly copper – can adversely impact aquatic species, especially fish and invertebrates, and may accumulate in the underlying sediment and impact water quality. Therefore, **Special Condition 2** requires the applicant to comply with construction-phase BMPs to be used for all overwater and in-water structures that are removed that contain preservative-treated wood. The applicant has already confirmed that the preservative-treated lumber will be disconnected from the foundation and demolished offsite, with no in-water demolition or activity that could release materials into the bay.

No increase to the +7.5 feet mean lower low water (MLLW) elevation of the top of the existing bulkhead (i.e., seawall) is proposed. The applicant's coastal engineer has indicated that once the cantilevered deck is retrofitted, the deck can last another 75 years, with maintenance; however, if it is found inadequate to withstand the impacts of sea level rise in the next 75 years, the cantilevered deck can be increased in height, without further seaward encroachment. Thus, if necessary in the future to protect against sea level rise hazards, the subject cantilevered deck assembly can be raised without requiring future fill of coastal waters. To this end, **Special Condition 1** prohibits future bayward encroachment of the footprint of the shoreline structure approved by this coastal development permit, and additionally, it requires conformance of the project with the "as-built" plans, unless modified by a future coastal development permit or amendment.

By cantilevering above the water, the proposed deck would preclude the general public from utilizing the water area underneath the deck for recreation or navigational purposes. However, the proposed deck will not expand further than other existing decks in the area. In fact, most of the Huntington Harbour water frontage is developed with single-family homes, many of which have cantilevered decks and boat docks, including properties adjacent to the project site ([Exhibit 1](#)). The proposed deck at this site is similar in function to the other cantilevered decks associated with residential development within Huntington Harbour and is consistent with past Commission actions in the area. There is no sandy beach area along the bulkhead; therefore, in this case, the placement of a deck cantilevered 5 feet beyond the bulkhead would not create any additional impediment to public access as the existing deck is also cantilevered 5 feet over water. There is no opportunity for the public to walk upon the land in front of the

bulkhead at this site or immediate area. The nearest public access in the area is at Sunset County Beach, located approximately one-half mile west of the subject site. The proposed deck will thus not have any significant adverse impact on public access to the coast or to nearby recreational facilities.

The subject site is located within the City of Huntington Beach, which has a certified Local Coastal Program. However, due to the project location seaward of the mean high tide line, the project is within an area of the Commission's retained permit jurisdiction. Nonetheless, the City's certified Local Coastal Program may be used as guidance. The land use designation at the site of development is Open Space – Water (OS – W). The site is zoned Open Space Water Recreation. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private cantilevered decks abutting residential uses, and with Chapter 210, which provides standards for cantilevered decks in Huntington Harbour in the Open Space Water Recreation zone.

In this area, there is an existing dominant pattern of development of 5-foot-wide decks cantilevered over the bulkhead. Thus, the construction of a cantilevered deck at this site and in this location would not be establishing a new pattern of development (nor create an adverse public access condition, as previously mentioned). Furthermore, in this section of Huntington Harbour, submerged lands are under private fee ownership, and are associated with the adjacent single-family residences. However, the Commission imposes **Special Condition 3** stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property or on adjacent public waters.

In conclusion, as conditioned, the proposed deck will have no adverse impact on coastal access or resources in the project vicinity, and is consistent with the Chapter 3 policies of the Coastal Act.

B. PUBLIC ACCESS

The proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Therefore, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. RECREATION

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

D. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters could result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the special conditions are imposed requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the permit requires the continued use and maintenance of post-construction BMPs. As conditioned, the development conforms to Sections 30230 and 30231 of the Coastal Act.

E. LOCAL COASTAL PROGRAM (LCP)

The proposed development is located seaward of the mean high tide line and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City of Huntington Beach LCP was effectively certified in March 1985 and may provide guidance for development. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS

The permit is granted subject to the following special conditions:

1. Conformance with Proposed Plans.

- A. The permittee shall conform to the plans dated May 14, 2021, as proposed and described in the coastal development permit application. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. No Future Bayward Encroachment. By acceptance of this Permit, the permittee agrees, on behalf of itself and any and all successors and assigns,

that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline structure (bulkhead or seawall) that is the subject of Coastal Development Permit No. **5-21-0404**, as described and depicted on approved project plans (**Exhibit 2** of this staff report dated October 21, 2021), and as depicted on the as-built plans required above, shall result in any encroachment bayward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to construct bayward encroaching shoreline protective devices that may exist under applicable law, including but not limited to Public Resources Code Section 30235.

2. Water Quality.

A. Construction Responsibilities and Debris Removal.

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;

- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. Best Management Practices Program for Treated Wood Removal in Overwater and In-Water Structures. BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall comply with the following requirements for all overwater and in-water structures that are removed that have preservative-treated wood:

- (1) Employ all appropriate construction-phase BMPs to minimize the discharge of treated wood sawdust and debris to coastal waters. Construction-phase BMPs shall specifically address the use of treated wood in aquatic environments, including materials selection, materials storage, cutting or drilling treated wood, preservative field-treatment, and coating application. BMPs shall include, but are not limited to:
 - i. Keep treated wood sawdust and debris out of the water. Because of their large surface to volume area, small, treated wood particles (such as sawdust) entering the water contribute a disproportionately large amount to the leaching of preservatives from the structure.
 - ii. Apply field-treatment of Copper Naphthenate preservative sparingly to cut ends and drilled holes in treated wood, because it does not bond as strongly to wood compared to pressure-treatments. Also avoid drips or spills of Copper Naphthenate into the water.
 - iii. Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets. The treated wood and treated wood debris shall be stored on impervious pavement or an impervious tarp, and covered during rain events.
 - iv. If treated wood is sanded or sawcut during demolition, installation, or maintenance, all sawdust and debris generated shall be contained and removed.
 - v. The applicant shall minimize the use of detergents and cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

3. Public Rights and Public Trust

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

4. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing