

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-23-0543

Applicant: Thomas Nucum

Agent: CPS Consulting, Attn: Jacquelyn Chung

Location: 16854 Bayview Drive, Huntington Beach, Orange County (APN: 178-532-14).

Project Description: Remove an 8 ft. x 53 ft. floating dock, 4 ft. x 19 ft. gangway, 3 ft. x 7 ft. gangway platform, two 14 in. guide piles, and terminate an easement on the north side of Ramora Channel. Proposed project also involves the creation of a new easement on the south side of Ramora Channel, removal of an unpermitted dock system, consisting of a 160 sq. ft. floating dock, swim ladder and two unpermitted 3 in. guide piles, and the construction of a new 140 sq. ft. floating dock with a 3 ft. x 11 ft. gangway platform, 3 ft. x 17 ft. gangway and two 14 in. guide piles. The applicant is also proposing to construct a new 5 ft. by 21 ft. cantilevered deck with a 42 in. bird safe glass railing.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the removal of an 8 ft. x 53 ft. floating dock, 4 ft. x 19 ft. gangway, 3 ft. x 7 ft. gangway platform, two 14 in. guide piles, and to terminate an easement on the north side of Ramora Channel. The northern dock that the applicant proposes to remove is a shared dock between two homeowners. The second homeowner is Ashley Skylar, the applicant of CDP application 5-23-0333, which is also being heard at the December 2023 Commission hearing. The applicant also proposes to create a new easement on the south side of Ramora Channel, and to remove an unpermitted 160 sq. ft. floating dock, swim ladder and two unpermitted 3 in. guide piles. Additionally, the applicant proposes to construct a new 140 sq. ft. floating dock with a 3 ft. x 11 ft. gangway platform, 3 ft. x 17 ft. gangway and two 14 in. guide piles. The applicant is also proposing to construct a new 5 ft. by 21 ft. cantilevered deck with a 42 in. bird safe glass railing.

The proposed project is on and over the water and is associated with a single-family residence on a harbor front lot in Huntington Beach. The proposed project is located within the Commission's original permit jurisdiction because it is on and over the waters of Huntington Harbor. The standard of review for this development is Chapter 3 of the Coastal Act, and the City's certified Local Coastal Plan (LCP) may provide guidance.

The major issues raised by this proposed development concern consistency with the marine resources, water quality, public access, and recreation policies of the Coastal Act.

After discussion with Commission staff, the applicant provided an alternative that reduces the width of the dock float to 7 ft., compared to the 8 ft. width that was originally proposed, and relocates the dock float 2 ft. landward of its initially proposed location. This relocation would require an approximately 3 ft. x 11 ft. gangway platform and a 3 ft. x 17 ft. gangway that would be reoriented so that it connects to the gangway platform and runs parallel to the floating dock. This revised design would eliminate all impacts to eelgrass. The least environmentally damaging alternative is this proposed alternative. Therefore, staff recommends the Commission impose **Special Condition 1**, which requires the applicant to submit revised project plans, in substantial conformance with the proposed alternative.

The cantilevered deck and dock have been designed in a manner that minimizes adverse impacts to marine resources while still maintaining a usable dock and enabling recreational boating. However, to minimize potential adverse impacts to biological resources and avoid negative cumulative impacts to the Huntington Harbor ecosystem, staff recommends the Commission impose **Special Condition 6**, which requires the applicant to prepare a new eelgrass survey prior to construction. This condition will also require the applicant to apply for a permit amendment to relocate or redesign the dock to avoid direct impacts to existing eelgrass beds if the updated survey indicates eelgrass would be impacted by the proposed dock footprint. Staff also recommends the Commission impose **Special Condition 7**, which requires the applicant to survey the project area for the presence of *Caulerpa* (an invasive, non-native aquatic species), prior to commencement of construction activities.

In order to ensure that future development on the site does not adversely impact biological resources, public access, or any other protected resource, staff recommends the Commission impose **Special Condition 11**, which informs the applicant that future development at the site requires a permit amendment or a new CDP. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition 8** states that the approval of a CDP for the project does not waive any public rights or interest that exist or may exist on the property. To ensure that no future work to the seawall/bulkhead results in bayward extension of the seawall/bulkhead, and to thereby prevent intrusion into tidelands, staff recommends the Commission impose **Special Condition 3**, which mandates no future bayward extension of the existing seawall/bulkhead. The applicant also proposes to add a 42-inch-high bird-strike prevention glass railing around the perimeter of the cantilevered deck. **Special Condition 12** requires the applicant to use bird safe glass to prevent bird strikes.

During construction and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, **Special Condition 4** outlines construction responsibilities and debris removal requirements for the applicant and **Special Condition 5** requires the applicant to implement post-construction operational Best Management Practices (BMPs) to protect water quality.

To ensure that the applicant complies with all requirements, requests and mitigation measures from 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 the marine environment, **Special Condition 9** requires that the applicant comply with all the requirements, requests, and mitigation measures of these agencies.

Finally, the City of Huntington Beach does not have a dock float and pier lease program for the limited-term private use and occupation of State tidelands for development associated with recreational boating activities (i.e. private docks and piers). Therefore, **Special Condition 10** requires the applicant to agree to provide mitigation in the form of a lease fee to the City should the City of Huntington Beach implement an overwater development, dock float and pier lease program. Additionally, because the applicant is proposing to extinguish the easement on the northern side of the channel and remove the dock associated with such easement, **Special Condition 2** requires that prior to issuance of this CDP the applicant shall record the Termination and Elimination Agreement for the dock on the northern side of the channel ([Exhibit 3](#)).

Commission staff is recommending APPROVAL of the coastal development permit (CDP) application with **12** special conditions.

The motion and resolution to carry out the staff recommendation is found on page 5.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Termination and Elimination Agreement](#)

[Exhibit 4 – City Resolution No. 2022-04](#)

[Exhibit 5 – Tract Map 5829](#)

[Exhibit 6 – Easement Grant Deed for Northern Dock](#)

[Exhibit 7 – Quitclaim Deed \(Easement\) for Southern Dock](#)

[Exhibit 8 – Eelgrass Survey](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-23-0543 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

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

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Submittal of Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two (2) full size sets of the following final plans:
 - a. Final dock design plans that reduces the width of dock float to 7 ft.; relocates the proposed dock system 2 ft. landward of its original proposed location; includes a 3 ft. x 11 ft. gangway platform; and reorients the 3 ft. x 17 ft. gangway, as proposed by the applicant on November 29, 2023 and as shown in [Exhibit 2](#);
 - b. The revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Coastal Commission's approval and with the recommendations of any required technical reports;
 - c. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Huntington Beach.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Termination and Elimination Agreement.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record the Termination and Elimination Agreement for the dock on the northern side of Ramora Channel and provide a copy of the recorded document to the Commission's Executive Director ([Exhibit 3](#)).

3. No Future Bayward Encroachment

By acceptance of this Permit, the permittee agrees, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-23-0543, shall result in any encroachment bayward of

the authorized footprint of the shoreline structure. By acceptance of this Permit, the permittee waives, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

4. Water Quality - Construction Responsibilities and Debris Removal

- a. 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;
- b. 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;
- c. 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;
- d. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- e. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- f. 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;
- g. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- h. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- i. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- j. 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;
- k. 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;
- l. 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;
- m. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- n. 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;

- o. 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
- p. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Best Management Practices

By acceptance of this permit 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.
- d. Any and all debris/trash found near the dock will be removed.

2) Solid and Liquid Waste Management Measures:

- a. 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.

4) Leakage Measures:

- a. Any leakage or spills must be immediately reported to the management team, Huntington Beach Fire Department and/or the City of Huntington Beach Hazmat Team.
- b. In the event of leakage or spill of hazardous materials to the marine environment, the source of the leakage or spill is terminated immediately.
- c. All tenant vessels should have absorbent pads on board. This product should be an oil-only absorbent product which soaks up hydrocarbons – gasoline, diesel fuel, oil, hydraulic fluids- but not water. Other absorbent products that “eat” hydrocarbons are not allowed. No boater shall pour loose remediation productions or spray any remediation products on the water at anytime.

6. Eelgrass Survey(s)

- a. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- b. **Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the pre-construction survey required by Subsection A of this condition, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site and the 10 meter buffer area to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the CEMP adopted by the NMFS (except as modified by this special condition), and in consultation with the CDFW. If side-scan sonar methods are to be used, evidence of a valid permit from CSLC must also be provided prior to the commencement of each survey period. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been adversely impacted, the applicant shall replace the impacted eelgrass at a minimum final 1.38:1 ratio on-site (mitigation: impact), or at another location, in accordance with the CEMP. Any exceptions to the required 1.38:1 minimum final mitigation ratio found within the CEMP shall not apply. Based on past performance of eelgrass mitigation efforts, in order to achieve this minimum, the appropriate regional initial planting ratio provided in the CEMP should be used. Implementation of mitigation to ensure success in achieving the minimum final mitigation ratio (1.38:1) shall require an amendment to this permit or a new coastal development permit unless the Executive Director provides a written determination that no amendment or new permit is required.

7. Pre-construction Caulerpa Sp. Survey

- a. Not earlier than 90 days nor later than 30 days prior to commencement or recommencement of any development authorized under this coastal development permit (the "project"), the applicant shall 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* sp. The survey shall include a visual examination of the substrate.
- b. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- c. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - i. for the review and approval of the Executive Director; and
 - ii. to the Surveillance Subcommittee of the Southern California *Caulerpa* Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- d. If *Caulerpa* species 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, subject to concurrence by the Executive Director, that all *Caulerpa* sp. 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* species. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. 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.

9. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the Regional Water Quality Control Board (RWQCB); the U.S.

Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), 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.

10. Overwater Development, Dock Float and Pier Lease Program

By acceptance of Coastal Development Permit 5-23-0543, the permittee agrees, on behalf of itself and all successors and assigns, that should the City of Huntington Beach implement an overwater development, dock float and pier lease program in this location for the limited-term private use and occupation of State Tidelands for development associated with recreational boating activities (i.e., cantilever decks, private docks and piers), the development over State Tidelands subject to this permit shall be subject to the terms of such dock float and pier lease program.

11. Future Development

This permit is only for the development described in CDP No. 5-23-0543. Pursuant to Title 14 of the California Code of Regulations, Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by CDP No. 5-23-0543, including the proposed private dock float system and cantilevered deck. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to CDP No. 5-23-0543 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

12. Bird Strike Prevention.

Harbor front deck railing systems, fences, screen walls, gates, and windows subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, gate, or window. Such materials may consist, all or in part, of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed only if it contains UV-reflective glazing that is visible to birds designed to reduce bird strikes by reducing reflectivity and transparency. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. The permittee shall undertake development in accordance with

the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The subject site is associated with a residentially zoned, harbor front lot at 16854 Bayview Drive, in Huntington Harbor in the City of Huntington Beach ([Exhibit 1](#)). The subject site is located within the City of Huntington Beach, which has a certified Local Coastal Program (LCP). 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 LCP may be used as guidance. The land use designation at the water portion of the site is Open Space – Water Recreation (OS – W) and zoned Open Space Water Recreation. The applicant's property (the land) is designated and zoned for residential use in the certified LCP. The proposed development is consistent with the City's certified LCP, specifically with Implementation Plan Chapter 213 Open Space District, which allows private docks and cantilevered decks in conjunction with adjacent single-family dwellings, and with Chapter 210, which provides standards for cantilevered decks in Huntington Harbor in the Open Space Water Recreation zone. The City of Huntington Beach reviewed the proposed plans and issued Approval-in-Concept dated 06/19/2023, however the City has not reviewed the applicant's revised proposal, which will be detailed below.

The applicant proposes to remove an 8 ft. x 53 ft. floating dock, 4 ft. x 19 ft. gangway, 3 ft. x 7 ft. gangway platform, two 14 in. guide piles, on the northern side of Ramora Channel, located adjacent to the project site. This dock was constructed prior to enactment of the Coastal Act. The northern dock that the applicant proposes to remove is a shared dock between two homeowners. The second homeowner is Ashley Skylar, the applicant of CDP application 5-23-0333, which is also being heard at the December 2023 Commission hearing. The applicant also proposes to remove an unpermitted 160 sq. ft. dock float, swim ladder and two unpermitted 3 in. guide piles on the southern side of the project site channel, adjacent to the subject residence. Additionally, the applicant proposes to construct a new 140 sq. ft. floating dock, with a 3 ft. x 11 ft. gangway platform, 3 ft. x 17 ft. gangway and two 14 in. guide piles ([Exhibit 2](#)). The proposed project also involves the construction of a new 5 ft. by 21 ft. cantilevered deck with 42 in. bird safe glass railing. No bayward encroachment of the existing bulkhead footprint will occur or is proposed.

Most of the Huntington Harbor water frontage is developed with single-family homes on lots supported by bulkheads, many of which have cantilevered decks and boat docks over public waters, including properties adjacent to the project site. The proposed dock and deck are associated with the single-family residence on the applicant's property.

The proposed dock and deck are similar in function to the other docks and cantilevered decks associated with residential development within Huntington Harbor.

In the harbor along the waterways used for water vessel navigation, wharfage areas are designated for docking vessels. The City is responsible for establishing the pierhead lines that provide the separation of navigation waterways and the wharfage area. The pierhead lines in this area were not established until March of 2022 ([Exhibit 4](#)).

The pierhead lines in the City are typically established on a Final Tract Map to create wharfage area for the purpose of mooring and docking vessels of the adjacent lots being created at the same time. However, Tract Map 5829 ([Exhibit 5](#)) did not locate the pierhead line adjacent to the newly created lots, but rather across Ramora Channel, next to what would become Channel Lane with the construction of Admiralty Island. On that map, the Huntington Harbor Corporation dedicated Lots A and B (i.e. Ramora Channel) as a navigable public waterway, but further reserved an easement over Lot B for the purpose of mooring and docking, thereby establishing the wharfage area on Lot B across from the residential lots. Since the map recorded in 1968, only one dock has existed on Lot B, within an easement that was sold and quitclaimed in March of 2021 to the owners of Lots 6 and 7 (Ms. Ashley Skylar, the applicant for CDP application No. 5-23-0333, and Mr. Thomas Nucum, the applicant for CDP application No. 5-23-0543) ([Exhibit 6](#)), who have since been working with the City and Huntington Harbor Corporation to relocate the easement to their side of the channel ([Exhibit 7](#)). As a part of the coordination, the applicant is applying for CDP approval for the relocation of the easement described above, as well as the extinguish and quitclaim of the existing easement on Lot B.

Standard of Review

The City of Huntington Beach LCP was effectively certified on March 1985. The proposed project is beyond the bulkhead located bayward of the mean high tide line and is thus 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's certified LCP is advisory in nature and may provide guidance.

B. Marine Resources / Water Quality

Section 30230 of the Coastal Act 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.

Section 30231 of the Coastal Act states:

The biological productivity and 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.

Section 30232 of the Coastal Act, Oil and hazardous substance spills, states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 of the Coastal Act states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launch areas.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

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 Harbor).

Marine Resources/Biological Productivity

The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by lower order green algae, phytoplankton, and diatoms that form the basis of the marine food chain. In addition to reduced sunlight and decreases in the biological productivity of coastal waters, increased coverage of coastal waters is a significant concern since it also impedes avian foraging activities. Although the coverage of harbor surface area habitat associated with any one project may not seem significant, the cumulative effect of allowing unnecessarily large dock structures and resulting increases in water coverage throughout Huntington Harbor could be significant. It should be noted that there are hundreds of private residential docks in Huntington Harbor. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with the Coastal Act, the cumulative effect would be a significant loss of coastal waters and soft bottom habitat.

Eelgrass (*Zostera marina*) can be adversely affected by increased water coverage. Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately one to three-ft. long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

Water Coverage and Eelgrass

The applicant proposes to remove an 8 ft. x 53 ft. floating dock, 4 ft. by 19 ft. gangway, and 3 ft. by 7 ft. gangway platform totaling of 521 sq. ft. of overwater coverage on the northern side of the channel ([Exhibit 1](#)). This dock that the applicant proposes to

remove is a shared dock between two homeowners, therefore the square footage reduction counted towards this CDP application is 260 sq. ft. The applicant also proposes to construct a new 140 sq. ft. dock float, with a 33 sq. ft. gangway platform and a 51 sq. ft. gangway that overlaps with the dock float on the southern side of the channel ([Exhibit 2](#)). The project would result in a total square footage of 224 sq. ft. with an overwater coverage of 173 sq. ft.; therefore, the overwater coverage from the applicant's half of the existing dock system to the proposed dock system will be reduced by 87 sq. ft.

Regardless, the Commission must analyze new overwater development independently of existing coverage. The proposed dock system is of a similar size to docks in the surrounding area and is consistent with past Commission actions in the area. More importantly, it has been designed at the minimum size to ensure the structural stability necessary for private recreational boating opportunities with commonly sized recreational vessels.

The applicant submitted two eelgrass surveys for the project site conducted on July 15, 2021 and October 27, 2022, which determined that existing eelgrass beds were located throughout the site ([Exhibit 8](#)). Eelgrass surveys completed between August through October are valid until the resumption of active growth (i.e., March 1). This date has passed and the subject eelgrass survey is no longer valid for project construction. Therefore, the Commission imposes **Special Condition 5**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction.

The applicant was initially proposing to construct a 160 sq. ft. dock which would've resulted in 47.5 sq. ft. of direct shading of eelgrass. However, the applicant has revised the design and location of the proposed dock to avoid direct impacts to eelgrass based on the October 2022 bathymetric survey. The proposed dock will be located directly adjacent to the eelgrass patch. With the implementation of the revised design the dock has been designed to be as far away from the eelgrass as feasible and is the least environmentally damaging alternative. Therefore, staff recommends the Commission impose **Special Condition 1**, which requires the applicant to submit revised project plans, in substantial conformance with the proposed alternative. If the pre-construction eelgrass survey required by **Special Condition 5** shows new eelgrass beds that would be impacted by the proposed dock construction, the applicant must apply for a CDP amendment or new CDP to re-design and/or relocate the new dock to avoid eelgrass impacts consistent with sections 30230, 30231, and 30232 of the Coastal Act relating to marine habitat conservation.

Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa and Soft-Bottom Habitat

In 1999, a non-native and invasive aquatic plant species, *Caulerpa*, was first discovered in portions of Huntington Harbor. *Caulerpa* is a type of marine algae identified as a significant threat to California's coastal marine environment due to its ability to displace native aquatic plant species and habitats, including eelgrass. *Caulerpa* is known to grow on rock, sand, or mud substrates in both shallow and deep-water areas. Information available from NMFS indicates that *Caulerpa* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Native seaweed, seagrasses, and kelp forests can be displaced, which can adversely impact marine biodiversity, causing attendant impacts upon fishing, recreational diving, and tourism.

The applicant has submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on October 27, 2022. The bathymetric surveys did not find evidence of *Caulerpa* onsite—however, *Caulerpa* surveys only remain valid for 90 days. Commission staff recommends an up-to-date *Caulerpa* survey be conducted prior to commencement of the project, as addressed by **Special Condition 7**. Also, if any *Caulerpa* is found on the project site, **Special Condition 7** identifies the procedures necessary to be completed prior to beginning any construction.

In order to protect the biological resources on-site from potential future impacts, **Special Condition 11** also requires that the applicant must obtain a permit amendment or a new permit for any future repair or maintenance of the proposed dock system.

Fill of Coastal Waters

Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, and estuaries to certain uses only, including “new or expanded boating facilities.” However, fill for boating facilities is only allowed where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The City's certified LCP also mirrors this Coastal Act regulation.

The applicant proposes to remove two 14 in. guide piles from the dock on the northern side of the channel. The applicant also proposes to install two new 14 in. guide piles on the southern side of the channel. This will result in new fill of 2.12 sq. ft on the south side of the channel, while reducing fill by 2.12 sq. ft. on the north side of the channel.

This is the minimum number of piles necessary for structural stability of the project; therefore, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act and with corresponding portion of the City's certified LCP, which is used as guidance for this project, as it is for a boating-related use.

Construction and Post-Construction Impacts

The proposed work will occur in and over coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in adverse impacts on the marine environment. The applicants are proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as

placing a catch bucket and floating boom at the project site to prevent debris from entering the water and to also capture floating debris. The Commission imposes **Special Condition 4**, which requires appropriate storage and handling of construction equipment and materials to minimize the potential for pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, **Special Condition 5** also requires the continued use and maintenance of postconstruction BMPs.

Cantilevered Deck

The existing waterfront patio yard has drainage to the street which will remain in place. The proposed new cantilevered deck will direct water to the existing piped drainage. In addition, as proposed by the applicant, soaps, paints, detergents, or any products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye will not be used on the deck, and so will not be allowed to drain into the harbor waters.

Construction of the new cantilevered deck will occur primarily from the landward side. No anchoring on the bay floor will occur and no construction equipment will be placed in the water. No harbor bottom disturbing activities will occur during construction of the cantilevered deck. Additionally, the applicant has proposed standard best management practices (BMPs) that will be practiced during deck construction. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject wave, wind, or rain erosion and dispersion. Floating booms will be used to contain debris that may be discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day. Divers will recover non buoyant debris discharged into coastal waters as soon as possible after loss. At the end of the construction period, the applicant will inspect the project area and ensure that no debris, trash or construction material has been left on the shore or in the water, and that the project has not created any hazard to navigation. Nevertheless, the Commission imposes **Special Condition 5** to ensure that the applicant adheres to the BMPs during construction.

Any potential addition/expansion to the cantilevered deck, whether temporary or permanent, would constitute development as defined in section 30106 of the Coastal Act, would be located in Huntington Beach within the Commission's retained jurisdiction and would necessitate review and approval by the Coastal Commission, including issuance of an amendment to this permit or a new CDP. This review would also give the Commission an opportunity to review and analyze any potential adverse impacts of an increase of water coverage in an area where such coverage is already a concern. **Special Condition 11** further clarifies that any improvement or repair or maintenance of the subject proposed development- including the proposed dock float and the cantilevered deck- will require an amendment to this CDP or a new CDP. The applicant also proposes to add a 42-inch-high bird-strike prevention glass railing around the perimeter of the cantilevered deck. **Special Condition 12** requires the applicant to use bird safe glass to prevent bird strikes.

The proposed deck will be cantilevered over the existing bulkhead. A Bulkhead Condition Report & a Coastal Hazards Analysis Report was prepared for the proposed development by Blue Horizon Consulting Engineers, Inc., dated March 21, 2023. The Report assumes a project (cantilevered deck) design life of 75 years. The Report assessed the condition of the existing bulkhead and states:

“The cast in place concrete panels of the seawall are in very good shape with minor repairable cracks. The length of each cast in place panel is about 26 ft. Thickness of seawall panels is 8 ½”. There is no sign of seawall movement. The top elevation of the existing seawall is at +8.00 NAVD88 = + 8.20 M.L.L.W.”

The Report further states:

“Top of the cantilevered deck would be above sea level till year 2072. Because it is an accessory structure, if sea level rise prediction holds true or if sea level rise was higher than predicted rate, the deck can be demolished.”

No increase to the +8.00 ft. NAVD88 elevation of the top of the existing bulkhead (i.e., seawall) is proposed. Thus, the proposed development will not adversely affect the condition of the bulkhead, will not prevent repairs to the bulkhead in the future, and will not prevent sea level rise adaptation measures which may be implemented along and atop the bulkhead in the future. The applicant's engineer has indicated that if the seawall displays any sign of distress that requires immediate attention over economic life of the existing house, it should be repaired or replaced at that time accordingly, without seaward encroachment from its current location. To ensure that no future work to the seawall/bulkhead results in bayward extension of the seawall/bulkhead, and to thereby prevent intrusion into tidelands, staff recommends the Commission impose **Special Condition 10**, which mandates no future bayward extension of the existing seawall/bulkhead.

Resource Agencies

The applicant has applied for a permit from the United States Army Corps of Engineers (USACE), which is pending until coastal development permit approval. To ensure that the proposed project adheres to the requirements from other resource agencies, and to account for changes to other resource agency permits that may be necessary given the design alternative required by the Commission, **Special Condition 9** requires the applicants to comply with all requirements, requests and mitigation measures from the Regional Water Quality Control Board (RWQCB); the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), and the U.S. Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232, 30233 and 30250 of the Coastal Act and with the portions of the City's certified LCP used as guidance that generally require maintaining,

protecting, and enhancing the biological productivity and the water quality of coastal waters.

C. 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 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.

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

Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the coast. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses, such as boating. The City's certified LCP also includes a number of similar policies that protect public access. Numerous private boat docks and public marinas line the shores of Huntington Harbor. Sandy shoreline areas along the harbor are also used for access/recreation, including swimming and hand launching of small watercraft such as kayaks and stand-up paddleboards.

The proposed project includes the removal and construction of a private boat dock system associated with residential development, as well as construction of a new cantilevered deck. Currently, the City of Huntington Beach does not have a dock float and pier lease program for the limited-term private use and occupation of State tidelands for development associated with recreational boating activities (i.e. private docks and piers). **Special Condition 10** requires the applicant to agree that that should the City of Huntington Beach implement an overwater development, dock float and pier lease program for the limited-term private use and occupation of State Tidelands for development associated with recreational boating activities (i.e., private docks and piers), the development over State Tidelands subject to this permit shall be subject to the terms of such dock float and pier lease program.

There is no sandy beach along the bulkhead; therefore, the project would not create any new impediment to public access as there is currently no opportunity for the public to walk in front of the bulkhead at this site or immediate area. The nearest public access in the area is 11th Street Beach, located approximately 300 feet south of the project site.

The proposed dock system does not extend beyond the pierhead line and maintains a navigable corridor in the subject channel for recreational boat use. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition 8** states that the approval of a CDP for the project does not waive any public rights or interest that exist or may exist on the property.

As previously explained, the applicant is seeking approval for the relocation of the easement on the southern side of the channel, as well as the extinguishment and quitclaim of the existing easement on Lot B (northern side of the channel). Therefore, in order to ensure that the easement on the northern side of the channel is properly terminated, the Commission imposes **Special Condition 2** requiring the applicant to record the Termination and Elimination Agreement ([Exhibit 3](#)) prior to issuance of this CDP.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30220, 30221, and 30224 of the Coastal Act and the City's certified LCP used as guidance regarding the public's right of access to the sea and does not interfere with recreational opportunities on public tidelands.

D. Unpermitted Development

Violations of the Coastal Act have occurred on the subject site, including but not limited to construction of a 160 sq. ft. floating dock, the installation of two 3 in. guide piles, and a swim ladder without the benefit of the necessary coastal development permits. Upon review of historical aerial photographs, Commission staff has confirmed the unpermitted construction took place sometime between May 2019 and February 2020. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act, which is the case here.

In an effort to offset adverse impacts resulting from the unpermitted development, the property owner (applicant) has agreed to take remedial action, consisting of removal of the unpermitted development discussed above.

If the staff recommendation is approved by the Commission, and if the unpermitted development is removed as proposed by the applicant, the Coastal Act violations regarding the unpermitted development will be resolved. However, if removal of the unpermitted dock system does not occur as proposed, South Coast District enforcement staff will consider subsequent enforcement action(s) to address the ongoing Coastal Act violations.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above-described violations going forward.

E. Local Coastal Program

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 and the proposed development requires a coastal development permit. The City of Huntington Beach LCP, which was certified on March 1985, is advisory in nature 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)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Huntington Beach is the lead agency, and the Commission is a responsible agency for the purposes of CEQA. The City of Huntington Beach determined that the proposed development is exempt under Section 15303. 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, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. Therefore, the Commission finds that 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application Number 5-23-0543 and associated file documents