

CALIFORNIA COASTAL COMMISSION

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Th5b

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ADMINISTRATIVE PERMIT

Application No.: 5-22-0447

Applicant: Niantic Trust dd 2/23/2016. Attn: Joe Neuah, Trustee

Agent: JWL Associates. Attn: Carrie Bai; Jacquelyn Chung

Location: 16302 Niantic Circle, Huntington Beach, Orange County (APN No.: 178-034-79)

Project Description: Repair voids beneath toe of existing seawall footing and deteriorated timber piles, remove 17.17 sq. ft. of concrete overpour at base of seawall, and install 4.76 sq. ft. of sheet piles along toe of 100-ft.-long footing, in association with an existing 5,200 sq. ft. single-family residence.

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 on February 8-10, 2023. 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.

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
- [Exhibit No. 3](#) – Eelgrass Survey

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 ten through fifteen.

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 proposed project is located at 16302 Niantic Circle in Huntington Harbour in the City of Huntington Beach, Orange County ([Exhibit 1](#)). The site is currently developed with a 5,200 sq. ft. single-family residence on a bulkhead lot with a cantilevered deck, a private boat dock, and gangway.

The applicant proposes to repair voids beneath the toe of the seawall footing and repair deteriorated timber piles. This will include the removal of 17.17 sq. ft. of concrete overpour at the base of the seawall and installation of 4.76 sq. ft. of sheet piles along the face of the 100-ft.-long footing, which the supports the bulkhead structure abutting the residence ([Exhibit 2](#)).

The property submerged by water under the project site is maintained by the City under public trust and is associated with the adjacent single-family residence. There is no sandy beach area along the bulkhead, therefore, in this case, the bulkhead repair, which is not proposed to encroach further seaward, would not create any additional impediment to public access, since 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 the public launch site, located approximately 1,300 ft. east of the site at Humboldt Park adjacent to Humboldt Drive.

Development of Huntington Harbour in the 1960s created a number of residential islands surrounded by waterways. Most of the Huntington Harbour water frontage is developed with single-family homes, many of which have cantilevered decks and boat docks over public waters, including properties adjacent to the project site. The bulkhead repair is associated with the adjacent single-family residential use and is consistent with past Commission actions in the area. No work will be done to the existing cantilevered deck or boat dock as part of the proposed project. While the proposed bulkhead repair would be performed from the docks, with a small 36-ft. by 12.5-ft. tied, secured barge to facilitate the handling of materials, and by divers, the proposed construction staging and activities will not have any significant adverse impact on public access to the coast or to nearby recreational facilities. However, the Commission imposes **Special Condition 9** 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.

The development of these islands and surrounding waterways included construction of supporting bulkheads surrounding each island and waterway. Virtually all development in Huntington Harbour, including numerous residential units, is supported by the bulkheads created at the time the Harbour was developed. These bulkheads, constructed in the 1960s, are comprised of sheet pile wall, concrete footing, cutoff wall, and supporting front (battered/angled) untreated timber piles, and rear (upright) untreated timber piles.

Over time, at numerous locations throughout Huntington Harbour,¹ erosion beneath the footings occurred, resulting in a gap between the existing footing and the natural

¹ Past CDPs for repairs to these Huntington Harbour bulkheads include: 5-20-0667 (Buchbinder); 5-20-0265 (Westchester Bay Homeowners and Seagate Lagoons Associations); 5-17-0118 (Mandla); 5-16-0037 (Cyprus); 5-14-1790 (Garcia); 5-14-1287 (Stein); 5-12-173 (Sackin Pryor); 5-12-006 (Nielsen); 5-11-106 (Hernandez); 5-03-078 & 5-03-078-A1 (Buchanan); 5-06-436, -437, -438, & -439 (Tetra Tech).

mudline. This erosion resulted from tidal currents/exchange, vessel prop wash, and settlement, among other factors. The resulting gap has allowed aquatic lifeforms to burrow beneath the footings, resulting in the loss of footing support causing wall instability. This condition has also caused marine organisms to damage the timber piles. If protective measures are not implemented, additional damage to the bulkhead will result, causing potential failure of the bulkhead and damage to the existing, pre-Coastal upland structures, including, in this case, the adjacent residences. The purpose of the proposed project is to restore the foundation of the bulkhead and to limit future erosion which may jeopardize the bulkhead's structural integrity and ability to support existing residential development.

During initial construction of the bulkheads throughout Huntington Harbour, a significant amount of concrete overpour occurred. Concrete overpour resulted from concrete placed for the bulkhead footing that over-flowed the concrete forms, flowing uncontrolled and freely over the original mudline. This resulted in substantial amounts of concrete on the Harbour bottom that is not necessary for the structural support derived from the bulkhead. The applicant proposes to remove the existing concrete overpour along the toe of the footing to allow the installation of 7/16-inch, marine grade carbon fiber reinforced vinyl ester resin sheet pile panels (made from thermoset composite) with 4 sq. in. interlocks at the toe of the existing bulkhead footing. Due to the voids and varying mudline depth along the toe of the bulkhead, the actual depth that the panels will extend into the Harbour bottom below the bottom of the concrete bulkhead footing will vary. The minimum amount of panel penetration into the Harbour bottom for structural stability has been determined to be at least 3.5 ft. The installation of the sheet piles will result in 4.76 sq. ft. of fill of coastal waters. This fill of coastal waters is proposed to be mitigated by removing the concrete overpour in the vicinity of the project. To mitigate the permanent coverage of 4.76 sq. ft. of soft bottom habitat, the applicant proposes to remove 17.17 sq. ft. of concrete overpour adjacent to the bulkhead which dates from the time of the bulkhead's original construction in the 1960s, resulting in the reclamation of 12.41 sq. ft. of soft bottom habitat. **Special Condition 5** requires that the soft bottom mitigation (removal of the concrete overpour) be carried out as proposed. In addition, **Special Condition 2** requires submittal of "as-built" plans to document the location of the approved bulkhead footprint relative to the concrete overpour removed. Furthermore, **Special Condition 8** requires conformance with the proposed plans.

Alternatives to the proposed project were considered by the applicant including the 1) installation of driven sheet piles with rip rap rock at the base; 2) concrete encasement of the existing wood piles in place; 3) the use of steel sheet piles; 4) repair of individual piles as they become damaged (do nothing alternative) and; 5). placement of filter fabric across the void which would be held in place with rock. All of the alternatives other than the proposed project would result in greater impacts to the marine environment (additional fill of soft bottom habitat and additional non-natural materials in the water column). Thus, the proposed project is the least environmentally damaging feasible alternative.

The proposed bulkhead repairs would occur in the following order:

1. Concrete overpour removal;
2. Cutoff wall inspection and removal, if necessary;
3. Pile inspection and repair, if necessary;
4. Placement of sheet piles;
5. Pumping concrete grouting behind the forming/sheet piles to fill voids.

The initial phase of the project includes removing the existing concrete cut-off wall that extends beneath the toe of the seawall footing to allow the evaluation of the condition of the timber piles. To remove the concrete overpour, the applicant proposes to use a small impact hammer. The broken pieces of concrete overpour would then be collected and discarded at an approved disposal site. Following removal of the overpour, the contractor would inspect the condition of the cutoff wall and timber piles (if accessible). If the cutoff wall is damaged or disassociated with the footing, it will be removed.

As described above, the carbon fiber sheet pile will be driven in interlock flush with the face of the footing across the entire property line. Stainless steel anchor rods are installed through the sheet pile and epoxied into the footing securing the sheets in place. The sheet pile panels will provide a barrier to seal off the voids. After installation of the panels, grout will be injected into the voids beneath the footing and around the timber piles supporting the seawall. The panels will have holes in them approximately every four feet. The pre-mixed grout will be pumped through a hose and injected through the holes in the panels to fill the void under the footing and around the timber piles. Since the panels will be installed prior to the injection of the grout to fill the voids, dispersion of the grout into the Harbour will be prevented. As the grout is pumped into a void, the holes in the adjacent panels will be closely monitored to ensure that grout does not escape into the water. Once the grout is observed at an adjacent hole, pumping will immediately halt, and the injection holes will be temporarily plugged until the grout has hardened. This process will continue until all of the voids are filled. Sealing off the voids and filling them with grout will reduce the exposure of the timber piles beneath the footing and reduce the potential for continued deterioration from marine borers and other forms of deterioration.

No spuds would be required in conjunction with the proposed project. The proposed bulkhead repair would be performed from the docks, with a small 36-ft. by 12.5-ft. tied, secured barge to facilitate the handling of materials, and by divers. Proposed water quality measures include: spill kits, containment booms, or other forms of barriers that will be placed around staging areas to prevent debris from entering the water; all construction related equipment will be inspected daily and maintained in good working order to minimize the potential for hazardous waste spills; hazardous material spill prevention and cleanup plans will be maintained on site; machinery or materials not essential for construction will be prohibited from subtidal or intertidal zones at all times; floating booms will be maintained around the project site to capture floating debris; divers will recover non-buoyant debris from the Harbour bottom within 72 hours; all debris and trash will be collected and disposed of in appropriate waste containers by the

end of each construction day; discharge of hazardous material into the project site will be prohibited; and, following project completion, the project area will be inspected to ensure that no construction debris, trash, or materials remain and that the project has not created any hazards to navigation. In addition, **Special Condition 3** outlines additional construction responsibilities.

An eelgrass survey was conducted by Anghera Environmental on March 22, 2022 along the length of the seawall, plus an additional 5 meters on each side of the seawall and an additional 5 meters from the seawall to the channel. The survey found one small patch of eelgrass within the project's vicinity measuring approximately 11 ft., bayward of the existing boat dock and approximately 25 ft. bayward of the toe of the bulkhead ([Exhibit 3](#)). In response, the applicant submitted an Eelgrass Mitigation Plan on September 8, 2022 that ensured that project activities would avoid a 10-meter buffer area from the outward limits of the eelgrass bed, and should impacts occur, employment of a 1.38:1 mitigation-to-impact ratio in full compliance with the California Eelgrass Mitigation Policy (CEMP).

Due to the ephemeral nature of eelgrass, however, an eelgrass certification is only valid until the next period of active growth. More than a year may elapse before construction commences since the most recent survey. Even though the eelgrass inspection indicated that eelgrass impacts could be avoided, and in the case of potential impacts, mitigated, additional eelgrass may have established within the project area between the time the survey was conducted and commencement of construction. If eelgrass is present in the project area, adverse impacts from the proposed project could result. Therefore, measures to avoid or minimize such potential impacts must be in place in order for the project to be found consistent with Section 30230 of the Coastal Act. **Special Condition 6** requires pre- and post-construction eelgrass surveys will be completed in the project area.

In addition, also on March 22, 2022, Anghera Environmental conducted a *Caulerpa taxifolia* survey of the project site and vicinity and none was found. The genus *Caulerpa* consists of approximately 75 different species of single-celled aquatic organisms that can grow rapidly and have the potential to adversely impact native marine habitat along the west coast, one of which was observed in Newport Beach in April 2021. Therefore, **Special Condition 7** requires a pre-construction *Caulerpa* species survey prior to the commencement of construction in order to ensure that *Caulerpa* species have not migrated to the area in the time since the previous survey was conducted.

No increase to the existing bulkhead (currently measured at +9.0 ft. mean lower low water (MLLW) elevation of the top of the structure) is proposed. The applicant's coastal engineer has indicated that once the timber piles that support the seawall and the cantilevered deck are retrofitted, the seawall 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 could be feasibly increased in height to 13.9 ft. MLLW, without further seaward encroachment. Thus, if necessary in the future to protect against sea level rise hazards, the subject cantilevered deck assembly could

be raised without requiring future fill of coastal waters. **Special Condition 4** prohibits future bayward encroachment of the footprint of the shoreline structure approved by this coastal development permit. To that end, **Special Condition 2** requires submittal of “as-built” plans to document the location of the approved, post-construction bulkhead footprint.

The Commission has expressed concern about the use of plastic in the marine environment. The sheet piles used in the proposed development are made from a thermoset composite, as opposed to a thermoplastic, and the sheet piles do not contain any plastic. To minimize the potential of the sheet piles breaking apart and entering the water due to damage or deterioration, **Special Condition 1** requires that the project be carefully monitored at least once every two years for the life of the project. Finally, **Special Condition 10** requires the applicant to comply with requirements imposed by other resource agencies including The Army Corps, Regional Water Quality Control Board, and California Fish & Wildlife.

Conclusion

The proposed bulkhead repair project is necessary to protect the existing residential development. Section 30235 of the Coastal Act requires the Commission to approve such projects when necessary to protect existing structures and when designed to eliminate or mitigate adverse impacts. Section 30233 of the Coastal Act states that fill of coastal waters may be allowed when a project is 1) an allowable use (in this case Section 30235 allows the project); 2) the least environmentally damaging alternative; and, 3) when adequate mitigation is provided. A number of alternatives were considered, and the proposed alternative has been found to be the least environmentally damaging alternative. The proposed project includes on-site mitigation to restore soft bottom habitat at the site. As proposed and conditioned, measures will be in place to protect water quality during and after construction. Also, as conditioned, eelgrass and *Caulerpa* surveys will be conducted pre- and post- construction to assure that any unanticipated impacts to eelgrass that may occur are addressed and to assure that the project will not result in the spread of the invasive algae *Caulerpa* species. Measures to prevent the use of plastic in the marine environment are also imposed as special conditions.

In conclusion, as conditioned, the proposed bulkhead repair will have no adverse impact on coastal access or marine 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. Bulkhead Monitoring Plan.** The permittee shall maintain the bulkhead reinforcement in good condition throughout the life of the development.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval a Bulkhead Monitoring Plan. The permittee and their successors in interest shall be responsible for carrying out all provisions of the approved Monitoring Plan for as long as the bulkhead reinforcement remains in place. The monitoring plan, at a minimum, shall provide for:
- (1) Regular inspections by a qualified person familiar with bulkhead structures who is able to document via photos and provide written descriptions based on personal observation whether any cracks, breaks or deterioration have occurred. These inspections shall be performed at least every 2 years; and
 - (2) Inspections shall examine the exposed portions of the bulkhead reinforcement (to the mud line) for signs of weakness or possible failure, including, but not limited to cracking, bending, splitting, splintering, or flaking. All weak or potential failure areas should be marked on an as-built plan of the bulkhead reinforcement, and there should be photographs and text to explain the nature and extent of each weakness.
- B. Inspection reports shall be prepared and conveyed to the Executive Director within 30 days of the inspection work. These reports shall provide information on and photographs from the date of the inspection, the name and qualifications of the person performing the inspection, and an overall assessment of the continued integrity of the bulkhead reinforcement. If the inspection identifies any areas where the bulkhead reinforcement has been damaged, the report shall identify alternatives to remedy the damage.
- C. In the event that any sections of the bulkhead reinforcement are damaged or flaking, the permittee shall notify the Commission within 10 days; and in such event, within 30 days of such notification, submit to the Commission a complete application for any coastal development permit amendment, or new permit, necessary for the repair or replacement of the bulkhead reinforcement, unless the Executive Director deems that none is legally required.
- 2. As-Built Plans.** Within thirty (30) days of the date of completion of construction of the bulkhead repair project as depicted on the proposed project plans ([Exhibit 2](#) of this staff report dated January 20, 2023), the applicant shall submit As-Built Plans, showing the permitted structure in relation to the existing topography and existing, surrounding development.
- 3. Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:

- 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.
- 4. 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. 5-22-0447, as described and depicted on approved project plans ([Exhibit 2](#) of this staff report dated January 20, 2023), 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.
- 5. Soft-Bottom Mitigation.** By acceptance of this permit, the permittee shall assure that the soft bottom mitigation shall be carried out as proposed by the removal of 17.17 sq. ft. of concrete overpour at the existing bulkhead toe at the subject site.
- 6. Eelgrass Survey(s).**
- A. Pre-Construction Eelgrass Survey. 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 within 60 days before the start of construction. 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) working days of completion of each eelgrass survey and in any event no later than fifteen (15) working 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 survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, 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 to determine if any eelgrass was adversely impacted. 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 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 impacted by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

7. Pre-Construction *Caulerpa* Species Surveys(s).

- D. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement 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.
- E. 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.
- F. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- (1) for the review and approval of the Executive Director; and
 - (2) 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).
- G. If *Caulerpa* sp. 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* sp. 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. Conformance with Proposed Plans.** The permittee shall conform to the plans dated September 8, 2022, including the restoration of 17.17 sq. ft. of soft bottom habitat (to be used as mitigation for soft bottom impacts due to the subject project at the subject site) 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.
- 9. 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.
- 10. 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