

CALIFORNIA COASTAL COMMISSION

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W7a

Staff: E. Greer – LB
Date: March 23, 2023

ADMINISTRATIVE PERMIT

Application No.: 5-22-0234

Applicant: Angel Del Villar

Agent: CPS Consulting, Attn: Jacquelyn Chung

Location: 16842 Marina Bay Drive, Huntington Beach, Orange County (APN: 178-652-04)

Project Description: Remove an unpermitted dock float and construct a new 920 sq. ft. floating dock, with three 16-in. guide piles and a 3 ft. x 18 ft. gangway.

EXECUTIVE DIRECTOR'S DETERMINATION

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

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

This permit will be reported to the Commission on April 12, 2023. PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

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

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

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

Dr. Kate Huckelbridge
Executive Director

by: Emily Greer
Coastal Program Analyst

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EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Plans

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 nine through fourteen.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

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

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION

The applicant proposes to remove an unpermitted 931 sq. ft. dock float and install a new 920 sq. ft. floating dock float with a 3 ft. by 18 ft. gangway ([Exhibit 2](#)). The applicant is also requesting an after-the-fact approval to retain three unpermitted 16-in. guide piles.

The subject site is associated with a residentially zoned, waterfront front lot at 16842 Marina Bay Drive, in Huntington Harbor in the City of Huntington Beach ([Exhibit 1](#)). Although the City of Huntington Beach has a certified Local Coastal Program (LCP), the project location is seaward of the mean high tide line and is therefore within 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 Implementation Plan (Chapter 213 Open Space District), which allows private docks in conjunction with adjacent single-family dwellings. The City of Huntington Beach Department of Public Works reviewed the proposed plans and issued an Approval-in-Concept dated December 20, 2022.

Most of the Huntington Harbor water frontage is developed with single-family homes, many of which have boat docks over public waters, including properties adjacent to the project site. The proposed dock will be used for boating related purposes to serve a single-family residential development and is consistent with past Commission actions in the area.

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 the public beach located approximately 850 feet southwest of the project site at the 11th Street Beach ([Exhibit 1](#)). In this area, there is an existing dominant pattern of development of similarly sized docks in the area and the proposed dock would not extend further into the navigable waters than neighboring docks. Thus, the construction of a dock system at this site and in this location would not be establishing a new pattern of development nor have any significant adverse impact on public access to the coast or to nearby recreational facilities. However, the Commission imposes **Special Condition 3** stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property or on adjacent public waters.

The applicant submitted an eelgrass survey for the project site conducted on March 2, 2022, which identified Eelgrass (*Zoster marina*) less than 15 feet from the project site. However, the proposed new dock system would not shade the existing eelgrass. No impacts are expected to occur to eelgrass with the proposed project because no piles aside from the unpermitted piles will be removed or added, there will be no bottom disturbing activities, and the proposed area of overwater coverage would not shade the eelgrass. There are no feasible less environmentally damaging alternatives available, as the proposed dock has been designed to provide the greatest buffer to the eelgrass on site.

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 2**, which requires a new eelgrass survey and identifies the

procedures necessary to be completed prior to beginning construction. If the pre-construction eelgrass survey required by **Special Condition 2** identifies 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 and 30231 of the Coastal Act which protect biological resources.

The applicant has submitted a *Caulerpa* survey conducted in conjunction with the eelgrass survey on March 2, 2022. The bathymetric surveys did not find evidence of *Caulerpa* onsite.

There is potential for the discharge of demolition or construction debris into coastal waters at the project site. This could result in adverse effects on the marine environment. The proposed development includes protective measures to ensure that coastal waters and marine resources will not be adversely affected before, during or after construction. To ensure that all impacts (pre- and post- construction) to water quality are minimized, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 1**, which requires, but is not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post-construction BMPs. As conditioned, the proposed project minimizes impacts to biological resources consistent with Sections 30230 and 30231 of the Coastal Act.

Any potential addition/expansion to the floating dock system, whether temporary or permanent, even if not required to be attached to the bulkhead or a pile in the harbor, would constitute development as defined in section 30106 of the Coastal Act¹, 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 6** further clarifies that any improvement or repair or maintenance of the subject proposed development will require an amendment to this CDP or a new CDP.

¹ Section 30106 of the Coastal Act defines "Development" as follows: "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with [Section 66410 of the Government Code](#)), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the [Z'berg-Nejedly Forest Practice Act of 1973](#) (commencing with [Section 4511](#)).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

To ensure that the proposed project adheres to the requirements from other resource agencies, **Special Condition 4** requires the applicants to comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife (CDFW), the RWQCB, the USACE, and the United States Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment consistent with Section 30231, 30232 and 30233 of the Coastal Act.

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 5** 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. The lease fee shall be used for public access improvements within the City of Huntington Beach.

B. MARINE RESOURCES

The proposed recreational boat dock development and its associated structures constitute an allowable and encouraged marine related use. There will be no net increase in number of piles or fill of coastal waters. The proposed development has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. PUBLIC ACCESS

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

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 would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions 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 Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act have occurred on the subject site, including but not limited to construction of a 931 sq. ft. floating dock with a 3 ft. by 18 ft. gangway and three 16-in. guide piles, without benefit of the necessary coastal development permit. According to documentation, the construction took place in 1979. Although the original property owners received a construction permit from the local government, no CDP was issued for construction. 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.

As explained above, the applicant is proposing to replace the unpermitted dock float and gangway with a new dock float and gangway, and is seeking an after-the-fact approval for the construction of three 16-in. guide piles. Upon this permit becoming effective, the subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations described above.

Although development has taken place prior to submission of this permit application, 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. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations).

F. AFTER-THE-FACT PERMIT FEE

Pursuant to Section 13055 of the Commission's regulations (Division 5.5, Title 14, California Code of Regulations), after-the-fact applications are subject to additional fees equaling up to 5 times the total fee that would apply to a regular application. This fee can be reduced by the Executive Director when it is determined that either: 1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit), or 2) the owner did not undertake the development for which the owner is seeking the ATF permit. In this case both criteria for reduction are met; therefore, the Executive Director has authorized an after-the-fact fee of 2 times the total permit fee for this project. The applicant paid the after-the-fact fee prior to the Commission hearing.

G. 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 and the proposed development requires a coastal development permit. The City of Huntington Beach LCP was certified on March 1985 and 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.

H. 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

This permit is granted subject to the following special conditions:

1. Water Quality

A. Construction Responsibilities and Debris Removal

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

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

B. Best Management Practices Program

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.

2. 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 or the 10 meter buffer 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.

3. Public Rights and Public Trust

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

4. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the 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.

5. Overwater Development, Dock Float and Pier Lease Program

By acceptance of Coastal Development Permit 5-22-0234, 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.

6. Future Development

This permit is only for the development described in CDP No. 5-22-0234. 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. 5-22-0234, including the proposed private dock float system. 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. 5-22-0234 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

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