

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-22-0804

Applicant: Surf City Partners, LLC

Agent: Keith Bohr
Jeff Bergsma, Team Design HB

Location: 21 and 22 Main Street, on the Huntington Beach Pier
Huntington Beach, Orange County

Project Description:

At **21 Main St.** (former fishing supply building) – interior modifications and addition of a 250 square foot kitchen, and two outdoor dining patios of 320 and 310 square feet each, totaling 630 square feet of new outdoor dining area, to an existing single story, 17 feet high, 820 square foot building; and conversion of the former bait and tackle shop to a new restaurant/bar. No change in height is proposed.

At **22 Main St.** (existing public restroom building) - addition of 480 sq. ft. enclosed storage area and two new ADA compliant restroom stalls available to restaurant patrons and employees only, totaling 480 square feet, and addition of a new 50 square foot trash enclosure area (all additions are for the use of the proposed restaurant), to the existing single story, 17 feet high, 750 square foot public restroom building (currently providing seven restroom stalls, one of which is ADA accessible). No change in height is proposed.

Also proposed is the addition of three new 8 feet by 4 feet commercial carts (a fishing supply cart, a “walkable” beverages and foods cart, and a restaurant merchandise cart) on the pier near the two structures.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located on the Huntington Beach pier. The proposed development would convert a former bait, tackle, and sundries store (which closed in May 2023) into a restaurant. The bait, tackle and sundries store supported fishing from the pier, a lower cost recreational activity. The proposed conversion to a restaurant would require the addition of 250 square feet of interior kitchen area; addition of two new outdoor dining patios of 320 and 310 square feet each, and interior modifications. The project also proposes changes to a public restroom building across the pier from the former bait and tackle shop including the addition of 480 square feet for new enclosed storage area and two private ADA compliant restroom stalls (for use by restaurant patrons and employees only); and a new 50 square foot trash enclosure area. Finally, the project proposes three, 4-foot by 8-foot carts (a total of 96 square feet) to sell walkable foods, restaurant-branded merchandise, and fishing supplies near the proposed restaurant footprint. The project would result in 1,506 square feet of encroachments into public pier recreation area.

The subject site's location on the Huntington Beach Pier is seaward of the mean high tide line. Thus, it falls within the Commission's retained permit jurisdiction. The Coastal Commission is the permit-issuing authority for the proposed project and the Chapter 3 policies of the Coastal Act are the standard of review. The City's LCP may be used as guidance. As explained below, the project raises significant issues pertaining to public access, public coastal views, and priority of use within the Coastal Zone.

Based on information provided by the applicant, it does not appear that a full-service restaurant can be accommodated within the existing footprint of the subject building. In order to meet the California Department of Alcohol and Beverage Control definition of a "bona fide eating establishment," as required by the Huntington Beach Police Department, it must include an on-site kitchen, storage area, and restrooms. These requirements can only be accommodated by expanding the former fishing supply building and the existing public restroom building into public pier area currently available for public pedestrian use. The proposed 1,506 square feet encroachment into public area caused by this development would have adverse impacts on public access, public recreation, and public views.

A restaurant is a visitor serving commercial use. But in this area, there is an abundance of restaurants, including restaurants with ocean views. Consistent with Coastal Act Section 30213, proposed development must be protective of and encourage low cost recreational and visitor facilities, with public recreational opportunities preferred. This proposed project will not be a lower cost restaurant. An additional restaurant in the project vicinity will not result in an increase in the variety of low cost recreational or visitor uses.

With the loss of the former bait, tackle and sundries shop at the site, there are no fishing supply locations on the pier or in the City's coastal zone. When the pier was rebuilt

following storm damage in the mid-1990s, the Commission approved the replacement buildings with the same previous uses, including the bait, tackle, and sundries shop. This proposal also raises environmental justice concerns as it removes space and access to lower-cost recreational opportunities such as pier fishing. Pier angling requires no license and, in Southern California, it is often done by communities of color.

Alternatively, if another use that retains lower cost recreational support facilities for pier fishing were re-established at the site, no encroachment into public areas would be needed and impacts to public access or public views could be avoided, while also providing the higher priority lower cost recreation use. The former tenant of the building proposed for conversion sought to re-new their lease for a bait, tackle and sundries shop, but the City awarded the lease to the current applicant. The fact that the former tenant sought to renew the lease for a use supportive of pier fishing suggests such a use remains viable at the site. Or another use at the site that does not commercialize existing public pier area might be appropriate.

Because the proposed restaurant cannot be accommodated at the site without encroaching into public access and public view areas, there are no special conditions that could bring the proposed project into conformance with the Coastal Act and LCP policies regarding protection of public access and recreation, public views, and priority of use.

Staff is recommending denial of the proposed project because: 1) it would almost triple the size of the existing 820 square foot building's foot print (an increase of 1,506 square feet for a total area of 2,326 square feet) solely to serve the restaurant use by expanding into area that is currently available to the general public for public pedestrian access on the public pier; 2) the expanded footprint would also adversely impact public views along the pier; 3) the proposed project replaces a former fishing support use (bait, tackle, and sundries shop), which supported lower cost recreational fishing on the pier, with a non-lower cost restaurant in an area with an overabundance of restaurants.

The proposed project is inconsistent with the Coastal Act policies that require that public access, public views, and lower cost recreational activities be protected. The proposed project is inconsistent with LCP policies that require protection of public access and public views, and that encourage and protect lower cost recreational opportunities. The LCP includes policies that specifically require fishing and fishing support facilities on the pier. There are alternatives to the project that could lessen or eliminate the adverse impacts of the proposed project.

Commission staff is recommending **DENIAL** of the coastal development permit application. The motion to adopt the staff recommendation is on **Page 5**.

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EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Project Plans
- Exhibit 3 – Rendering of Proposed Restaurant
- Exhibit 4 – Site Plan Depicting Encroachment Areas
- Exhibit 5 – CSLC Lease (pages 1 & 2 only)
- Exhibit 6 – Photos
- Exhibit 7 – Letter from Previous Tenant
- Exhibit 8 – Applicant’s Visual Analysis

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-22-0804 for the development proposed by the applicant.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. Project Description and Location

The proposed project is a request to create a new restaurant on the Huntington Beach pier by converting the former “Let’s Go Fishing” bait, tackle and sundries building (21 Main St.) and the existing public restroom building (22 Main St.) to restaurant and restaurant support uses. The pier is located at the terminus of Main Street, seaward of Pacific Coast Highway ([Exhibit 1](#)). Both buildings are located seaward of the mean high tide line. The building at 21 Main Street is located on the northwest side of the pier, and 22 Main Street is located on the southeast side of the pier. The pier is an integral component of the City’s main visitor serving core and included in the Downtown Specific Plan (DSP). The DSP is part of the City’s Local Coastal Program (LCP). The pier is land use designated Commercial Visitor – Design Overlay – Specific Plan, and zoned Specific Plan 5. Specific Plan 5 is the Downtown Specific Plan.

Changes proposed to the 820 square foot former bait, tackle and sundries building at 21 Main St. include: addition of 250 square feet of interior kitchen area; addition of two new outdoor dining patios of 320 and 310 square feet each, totaling 630 square feet of new outdoor dining area, and interior modifications to convert the former bait and tackle shop for use as a new restaurant ([Exhibit 2](#)). The maximum occupancy for the new restaurant will be 98 people (including a maximum interior dining occupancy of 49; and a maximum outdoor dining occupancy of 49). The proposed outdoor dining patios will be surrounded by 3 feet, 4-inch-high solid walls, topped with 3 feet, 4-inch-high bird safe transparent walls. There will be 2 feet, 4 inches of open area between the top of the

patio walls and the patio dining area roof. The patio areas would be covered with fabric awning, solar panels, and tinted polycarbonate roof panels. The proposed new kitchen area and existing building will retain the existing, solid roofing ([Exhibit 3](#)). The proposed outdoor dining and kitchen area would encroach into area currently available to the general public for public pedestrian access.

Changes proposed to the existing 750 square foot public restroom building at 22 Main St. include: addition of 480 square feet including new enclosed storage area and two new ADA compliant restroom stalls (for use by restaurant patrons and employees only); and a new 50 square foot trash enclosure area; all for the proposed restaurant use ([Exhibit 2](#)). Currently, the public restroom building provides seven restroom stalls (one of which is ADA accessible), which will remain with no changes. Both buildings are 17 feet high. No change in height is proposed to either building. All work proposed to the restroom building will encroach into area currently available to the general public for public pedestrian access.

Three, 4 feet by 8-foot carts are also proposed, one near the proposed restaurant footprint, and two near the restroom building. All three carts are proposed to be located on the interior pier area between the two buildings ([Exhibit 2](#)). The length and width of the carts includes any handles and wheels. The maximum height of all three carts is 6 feet, excluding any canopies, umbrellas, or transparent enclosures. The three carts would be located within area that is currently available to the general public for public pedestrian access. One cart would offer fishing supplies, including fishing pole rentals and bait. Another cart would offer “walkable foods,” including items such as corn dog on a stick, big warm pretzels, hot dog/sausage on a bun, snow cones, ice cream bars and cold soft drinks. The third cart would offer branded merchandise to promote the proposed restaurant, including items such as tee shirts, hats, and water bottles.

Currently there is 30 feet of clear passage between the two pier buildings, through the center of the pier. Both buildings are currently shaped like elongated diamonds ([Exhibit 2](#)). The building at 21 Main Street (proposed restaurant) is set back 10 feet from the perimeter of the pier. With the proposed development, this ten feet of clear public pedestrian passage will remain ten feet wide. The building at 22 Main Street (the public restroom building) is currently setback approximately 21½ feet from the perimeter of the pier along the “flat” side of the diamond shape, and setback approximately 15 feet along the angled walls leading to the “point” of the “diamond.” With the proposed development, the existing 21½ foot setback width will be reduced to only 10 feet of clear public pedestrian passage along the “flat” side of the building. The existing 15-foot-wide area along the angled walls leading to the “points” of the “diamond” would be reduced to 10 feet. ([Exhibit 2](#)).

The pier and pier buildings are owned by the City of Huntington Beach. The Huntington Beach pier is located over sovereign land managed for the State by the California State Lands Commission (CSLC). The area beyond the mean high tide line over which the pier extends is leased to the City by the CSLC, via Lease No. 06616.1. The lease allows “the operation and maintenance of an existing public municipal pier and related

concessions,” ... “with the additional consideration being the public’s use and benefit.” The lease is valid for 25 years, running from June 21, 2018 through June 20, 2043 ([Exhibit 5](#)). The lease area is subject to the Public Trust. The City would need to obtain a lease amendment and an endorsement of sublease from CSLC for the proposed project. That process is underway. In an informal discussion with Coastal Commission staff, CSLC staff indicated they have no major concerns with the proposed project.

The City of Huntington Beach Zoning Administrator conditionally approved Conditional Use Permit 22-012 on July 27, 2022. The City approved the CUP subject to 14 conditions, including: project design changes (that do not affect the proposed footprint), hours of operation and alcohol use, conditions imposed by the Coastal Commission be adhered to, provision of a parking plan, provision of detailed plans for the proposed carts, requirement that one of the three carts provide bait, tackle and fishing related supplies year-round, evidence from a structural engineer that the pier can support the additional load, compliance with approved plans and conditions, building spoils be disposed of appropriately, requirements of the Fire Department, Community Development Department, and Public Works Department be printed on the project plans, the approval will expire within two years unless extended, and that substantial changes to the project will require an amendment.

The subject site is located within the City of Huntington Beach, which has a certified Local Coastal Program (LCP). The LCP is comprised of the Land Use Plan (LUP), which is the Coastal Element of the City’s General Plan; and the Implementation Plan (IP) which includes the City’s Zoning Code and a number of Specific Plans, including the Downtown Specific Plan (DSP). 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. Thus, the standard of review is the Chapter 3 policies of the Coastal Act, and the City’s certified LCP provides guidance.

B. Public Access & Recreation

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 states:

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

Section 30220 states:

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

Section 30221 states:

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

Section 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30604(h) states:

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

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

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

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

C 2.5.1 Require that existing public access to the shoreline and Huntington Harbour waterways be maintained and enhanced, where necessary and feasible, notwithstanding 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 Provide a variety of recreational and visitor commercial serving uses for a range of cost and market preferences.

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

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

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

C 3.2.2 Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. On oceanfront, waterfront or nearshore areas or lands

designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to off-set the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

C 3.2.4 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels, motels, and day spas.

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

C 3.4.1 Provide opportunities for recreational fishing and support facilities on the Huntington Beach Municipal Pier.

C 3.4.3 Require that any plans for restoration or replacement of the Municipal Pier include the following provisions:

- a) Areas for recreational fishing and support facilities.
- b) Unobstructed public views seaward from the end of the Pier.
- c) Significant opportunities for unobstructed public views of the shoreline.
- d) Limit Pier access to pedestrians and trolley type transit.
- e) Maintain a minimum of 70 percent of the total area of the Pier as public open space and ensure that adequate pedestrian flow is maintained along the Pier length.
- f) Provide adequate handicap access.
- g) Limit building heights on the pier to a maximum of 2 stories (35 feet).
- h) Require that public access be maintained around the entire perimeter of the pier.

In addition, the LCP IP includes the Downtown Specific Plan (DSP). The subject site is included within District 6 of the DSP (District 6 Pier & Pier Related Commercial). The DSP defines the purpose of District 6 as:

3.3.6.1. Purpose

This district is intended to insure that the majority of the pier will remain open and accessible to the public at all times at no charge for strolling, fishing, and/or observation. Commercial uses on and alongside the pier that will enhance and expand the public's use and enjoyment of this area may also be permitted. Uses are encouraged that capitalize on the views available from the pier and the unique recreational or educational opportunities it affords. The main thoroughfare of the pier should remain clear for public safety.

Section 3.3.6.6 Maximum Site Coverage of the DSP states:

- 1) No maximum site coverage shall be required, except that no more than 25% maximum of the pier shall be covered by any building or roofed structure.
- 2) 25% maximum of the perimeter of the pier shall be covered with building or other roofed structures.

Section **3.3.6.13** Public Open Space of the DSP states:

Promotion and retention of public open space, pedestrian access, and public views shall be major considerations of development in this district. Free and clear public pedestrian access along the outer (seaward) perimeter of the pier shall be maximized and, at minimum, a 10-foot wide area shall be maintained for public access between the outer (seaward) perimeter of the pier and any development, with the exception of the area of the lifeguard tower. In particular, the required setback area along the pier's perimeter shall be maintained at all times at the seaward end of the pier beyond any outdoor dining or other use that is or may be established.

In addition, all new development shall provide sufficient clear width along the length of the pier for public access and emergency and service vehicles. Public walkways along the pier edge or around the perimeter of new development must be provided.

The City's certified LUP includes public access and recreation policies that mirror the public access and recreation policies of the Coastal Act. Both the Coastal Act and the LUP require maximum public access, and that public recreational opportunities be protected and encouraged. The DSP requires a *minimum* 10-foot clear public pedestrian passage along the perimeter of the pier, and limits overall site coverage on the pier to a *maximum* of 25% by any building or roofed structure. Both the City's LCP and the Coastal Act require that high priority be given to public access and recreation along the coast, particularly to water-oriented recreational uses, including fishing, as well as other types of lower cost access and recreation uses and activities. The LCP tailors that requirement in ways that apply specifically to the City's pier.

LUP Policy 3.2 requires that new development and uses provide a *variety* of recreational facilities for a *range of income groups*, including low-cost facilities and activities. LUP Policy C 3.2.1 encourages facilities, programs and services that increase and enhance public recreational opportunities in the coastal zone. LUP Policy C 3.2.2 also requires that *lower-cost* visitor and recreational facilities be protected, encouraged, and where feasible, *provided*. These LUP policies and others mirror Coastal Act policies that require and encourage lower-cost recreational opportunities and public access. Public fishing opportunities, and fishing support facilities, are high priority, lower cost recreational uses that are specifically recognized and protected by Coastal Act section 30234.5.

Commercialization of Public Space

The proposed project would convert 1,506 square feet¹ of public pier area currently available for public pedestrian access to a private commercial use available only to those willing and able to pay to dine at the proposed restaurant. The width between the buildings on the center of the pier would be reduced from the current 40 feet, to 30 feet. The proposed carts would also be placed in area currently available for public pedestrian use. The DSP requires that a *minimum* 75% of the pier be public open space, unobstructed by buildings or other roofed structures. By the applicant's estimate, 88% of the pier is open space today, and with the proposed project, 86% will remain open space. However, the 75% open space figure is a minimum. Coastal Act and LCP polices (cited above) promote and encourage retention of open space as a means to maximize public access and lower cost recreational opportunities. Additionally, DSP Section 3.3.6.1 requires that the main thoroughfare of the pier should remain clear for public safety. But the proposed restaurant would reduce that area by 10 feet (a 25% reduction in clear passage between the buildings).

The proposed project would almost triple the footprint of the existing structure in order to accommodate the restaurant use. The proposed new development will not add a significant new public benefit because there is already an abundance of ocean view restaurants, including one at the seaward end of the pier, and two at the base of the pier, as well as numerous restaurants along Pacific Coast Highway near the pier. In addition, inland of the pier, in the blocks around Main Street, there are also many restaurants, though not with ocean views. In any case, there are plenty of restaurant opportunities on the pier and within walking distance of the pier. Also, public views are already present from the pier in this area (discussed in more detail later in this report), so that would not be a new public benefit of the proposed project.

In addition to the encroachments into public area proposed to serve the restaurant, the project also proposes to place three, 8 feet by 4-foot carts in existing public area. One cart would provide fishing supplies, the second would provide "walkable" foods, and the third would offer merchandise promoting the proposed restaurant (such as tee shirts, hats, water bottles, and the like). Discussion of the fishing supplies cart is below. These carts will also be located within area currently available to the public for public pedestrian access.

The applicant has stated that the area between proposed development (including outdoor dining, kitchen, and carts) on the interior of the pier "is not located within natural pedestrian pathways, and therefore, does not at all impede pedestrian passage along the pier and consequently would not be 'effectively commercializing public area'." However, it cannot be disputed that the proposed project encroaches into existing public space and reduces the area available for pedestrian passage. The public may still be able to get past one another, but that is not the standard. The reduction in public space makes pedestrian passage less comfortable, which will increase as more people come

¹ Increased project footprint: 250 sq. ft. kitchen; 630 outdoor dining; 480 sq. ft. storage and two new restroom stalls; 50 sq. ft. trash enclosure; 96 sq. ft. three new commercial carts.

to the pier to escape hotter temperatures more and more often. Moreover, the reduction in pedestrian traffic space would exacerbate user conflicts between pier visitors and emergency vehicles (such as lifeguard trucks) that may need to access the pier.

Various restaurant alternatives to the project as proposed were considered. Originally, the project did not include a kitchen, but rather would have had pizza delivered to the site from a delivery-only commercial kitchen. However, according to the applicant and City records, the Huntington Beach Police Department refused to sign off on another bar in the City's downtown area unless it had a full kitchen and met the requirements of a "bona fide eating establishment²," as defined by the California Department of Alcohol and Beverage Control. In order to meet this requirement, the kitchen, storage area, trash enclosure, and additional restroom stalls were added. This substantially increased the project footprint. Thus, a full-service restaurant does not appear to be feasible at this site without significant expansion into area currently available to the general public. Given that the Coastal Act and LCP strongly protect public access, particularly on a public pier, the evidence available to the Commission suggests that this site cannot accommodate a full-service restaurant. There are alternative uses, such as retention of a use similar to the former bait, tackle and sundries shop that could be accommodated without any encroachment into public area. A walk-up snack bar that does not serve alcohol may also be accommodated without encroaching into area currently used for pedestrian access. Or, there may be other visitor serving recreational uses that do not require almost tripling the buildings' footprint.

Following severe storm damage incurred during the 1987/88 El Nino, the damaged pier was removed and replaced with the current concrete pier. After the pier was replaced, the Commission approved a lifeguard tower, a restroom building, a pier end restaurant, a bait and tackle/snack shop, and another snack shop. The Commission found these uses to be appropriate uses on the pier, and that the approved buildings' sizes and footprints were appropriate for the pier. The uses and sizes of the pier buildings approved by the Commission in past actions³ maintained a significant amount of public open area and fishing opportunities. A bait, tackle and sundries shop, with its existing limited footprint, would continue to be an appropriate use in the existing building because it would support a lower cost recreational activity (fishing) without any need to encroach into existing public area. Tripling the footprint of the approved bait and tackle shop and the consequent loss of public access is not encouraged by the Coastal Act or

² CDABC definition: "Bona fide public eating place" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking and an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health.

³ CDPs 5-90-490 (demolition of the damaged pier and construction of the new pier); 5-92-304 (construction of the lifeguard tower and public restroom building); and, 5-93-294 (construction of the pier end restaurant, snack shop, and bait and tackle and snack shop).

LCP. To contemplate such a change, such a project would need to demonstrate that significant public benefits would be provided. One more restaurant among many in this area does not justify the loss of 1,506 square feet of limited public open space on the pier.

The applicant contends that the proposed restaurant will better serve the public than any of the other existing restaurants, due to the expansive views that would be available from the restaurant. The applicant says that the pier end restaurant looks only out to sea, with no nighttime views other than the lighted oil platforms; Duke's and Sandy's restaurants near the landward base of the pier do not offer white water views; neither do the restaurants on Pacific Coast Highway, according to the applicant. However, the view from the project site is already available now to all the general public visiting the pier. The proposed restaurant/bar will not create these views. The views may draw restaurant customers, but they are already available to the general public without the proposed restaurant.

Moreover, there are numerous ocean view restaurants available in the near vicinity, including those previously mentioned by the applicant: the two story, 6,510 square foot restaurant at the end of the pier, Duke's on the Pacific Coast Highway street-level (Duke's) and Sandy's on the beach level, both located immediately downcoast of the landward base of the pier, on the seaward side of Pacific Coast Highway. In addition, there are many restaurants along the inland side of Pacific Coast Highway with ocean views. Importantly, however, the LUP encourages a *variety* of visitor-serving commercial establishments in a *range of cost* and market preferences in the coastal zone. There is an abundance of restaurants in the pier/downtown visitor core area of the City, but there are no fishing supply stores within walking distance of the pier.

Although the proposed use, a restaurant, is typically considered a visitor-serving use which is a high priority under the Coastal Act, in this case there is an abundance of restaurants in the immediate area, whereas open public pier area is much less abundant. Open pier area is used by the public for lower-cost recreational activities, such as strolling, bird watching, fishing, and enjoying the view. The project would diminish public access by commercializing existing area on the pier that is currently available to the general public for public coastal access. A full-service restaurant cannot be accommodated in this existing building without significant encroachments into existing public pier area, due to requirements regarding the need for minimum kitchen and storage space, and the required number of restroom stalls. Thus, the project cannot be brought into conformance with Coastal Act and LCP policies through special conditions.

The Coastal Act and LCP policies cited above require a variety of recreational and visitor commercial serving uses in a range of costs. Additionally, the Coastal Act and LCP policies require that public access be maintained and enhanced. The proposed development does not contribute to a range of visitor serving uses, will not be lower cost, will not support lower cost recreation, and will not maintain or enhance existing public access. Therefore, the proposed commercialization of public pier area is not

consistent with the Chapter 3 policies of the Coastal Act or with the LCP policies regarding public access. There are no special conditions that would make the project consistent with the Coastal Act and LCP. Therefore, the proposed project is denied.

Conversion of Priority Low-Cost Recreational Use

LUP Policy C 3.4.3 states:

Require that any plans for restoration or replacement of the Municipal Pier include the following provisions:

- a) Areas for ***recreational fishing and support facilities***.
[emphasis added].

LUP Policy C 3.4.1 states:

Provide opportunities for ***recreational fishing and support facilities*** on the Huntington Beach Municipal Pier.

Since LUP policy C 3.4.3 was written, the pier has been replaced. The damaged pier was removed and replaced with the current concrete pier. Three CDPs were approved related to the pier replacement: 5-90-490 (demolition of the damaged pier and construction of the new concrete pier); 5-92-304 (construction of the three story, 360 square foot lifeguard building and construction of the 800 square foot restroom building); and, 5-93-294 (construction of a two story, 45 foot high, 6,510 square foot, pier-end restaurant, a 620 square foot, single story snack shop, and an 800 square foot, single story bait and tackle/snack shop). The 620 square foot “berm line” snack shop is located landward of the subject building. The 800 square foot bait and tackle/snack shop is the subject building that is proposed to be converted to a restaurant (though the building is now identified as an 820 square foot building).

The 5-93-294 staff report states, regarding the pier replacement: “Phase Three, the final phase, involves the *replacement of the previously existing* restaurant, *tackle shop* and *snack shops* with the proposed development, as described above ...” [emphasis added]. The project then proposed was intended to *replace* the buildings and uses that were lost when the damaged pier was demolished with “a new pier and new structures with *similar uses*.” [emphasis added]. In essence, the then-approved pier replacement buildings were intended to continue with the same types of uses, including the bait and tackle shop. These uses could be found consistent with the Coastal Act and LUP requirements to provide lower cost visitor serving recreational facilities and protection of recreational fishing. The uses approved with the replacement pier could also be found to be consistent with the LUP policies that require that recreational fishing and fishing support facilities be provided on the pier.

The LUP policies cited previously tailor the Coastal Act requirements of promoting and providing public access and lower cost recreational opportunities more specifically to the City’s coastal zone. For example, specific LUP policies applicable to the Huntington Beach pier describe how the public access and recreation requirements of the Coastal

Act will be applied on the City's pier. These LUP policies implement and augment the Coastal Act policies.

LUP policy C 3.4.3 requires that the Municipal Pier, when replaced, include "areas for recreational fishing and support facilities." This requirement was carried out with the project approved by the Commission via CDP 5-93-294. However, the proposed conversion of the Commission approved bait, tackle and snack shop to a restaurant is not consistent with that LUP policy as it eliminates use of the building for fishing support purposes. Coastal Act section 30221 similarly requires the protection of oceanfront land suitable for recreational use to be protected for such uses and related development.

LUP policy C 3.2.2 requires that lower cost visitor and recreational facilities be protected, encouraged, and, where feasible, provided. It also requires that, in oceanfront areas, such as the subject site, an assessment of the availability of lower costs visitor uses be completed at the time of discretionary review. However, the required assessment was not prepared for the proposed development. If one had been prepared, it would have found there are already numerous ocean view restaurants available in the near vicinity, as described earlier. It would also have found fishing support facilities are very limited.

Moreover, LUP policy C 3.2.4 encourages a *variety* of visitor-serving commercial establishments in the coastal zone. Due to the abundance of restaurants in the pier/downtown core visitor area of the City, one more restaurant would not contribute to the required *variety* of uses. This is especially important because there are no fishing supply shops within walking distance of the pier, and with the loss of the former bait and tackle shop at the subject site, none are present on the pier or in the City's coastal zone. In addition, LUP Policy C 3.4 requires that water oriented recreational activities that cannot readily be provided at inland water areas be encouraged and protected. Pier fishing is an activity that cannot be readily provided inland.

Fishing rods and reels can be purchased starting around \$40 to \$50, and similar equipment for children can be purchased starting around \$25. Prices like these are available at places like Target.⁴ The cost for rods and reels increases from there. The starting point for fishing equipment is fairly affordable, although increasingly more expensive options are available as well. Once the initial rod and reel purchase is made, however, repeat costs should not occur very frequently. Additional costs for things such as bait and hooks are available fairly inexpensive. In addition, no fishing license is required to fish from public piers in California, which makes pier fishing less expensive than other options. California State fishing licenses range from \$19.18 per person for a one-day license to \$58.58 for a resident annual license (there are also some reduced prices for special circumstances, but these are the prices for the general public)⁵. Pier fishing eliminates the need for a boat, which also reduces the cost. Renting beginner

⁴ <https://www.target.com/c/fishing-rods-gear-outdoor-recreation-sports-outdoors/-/N-1877t>

⁵ <https://wildlife.ca.gov/licensing/fishing>

equipment might also be a more affordable option, where available. In any case, after the initial one-time cost of the rod and reel, the costs of pier fishing are relatively low. Thus, pier fishing qualifies as a lower cost recreational activity, encouraged by the Coastal Act and the LCP.

The applicant contends that the proposed development will have no impact on fishing because the perimeter of the pier will remain available to the public. The applicant further contends that the area of the project “is not at all a very popular fishing location,” and offers the following reasons as a basis for that conclusion: 1) the water is shallow in the area directly below this area of the pier; 2) waves break directly below making it too choppy “for fish to want to hang out there;” and 3) the waves below make the area popular for surfers, who present a conflict between anglers’ lines and hooks, making anglers reluctant to fish there.

However, the applicant provides no evidence to support the assertion that the water is too shallow or choppy to attract fish. No depths for the area beneath the subject site were provided. No evidence supporting the predominant location of breaking waves near the site was provided. Nor has any information supporting the statements that fish tend to avoid shallow or choppy water been provided. These assertions also do not address the tides, which would shift water depth twice daily, along with the location of where the swells first “feel the bottom” and begin to break. Surfers do congregate where waves are breaking, obviously. But where those waves are breaking shifts over the time of day, day, and season. Surf conditions can range from large to flat. The line of breaking waves can range landward and seaward depending on swell size, tides, and other factors. The reasons given by the applicant to support the assertion that the subject location is not a good place for successful fishing is not supported by any evidence and does not account for the dynamic nature of the ocean and shifting patterns of depth and waves.

Moreover, the pre-existing bait and tackle shop operated for more than 30 years in this location. Were fishing infeasible on this pier or unpopular, it is unlikely that such a shop would have operated, and attempted to renew its lease, in this location.

The California Department of Fish & Wildlife (CDFW) website⁶ provides the following suggestions for the best ways to increase the likelihood of catching fish from California’s public piers: fish in the early morning or an hour before dusk, fish on an incoming high tide (the rising water level dislodges small invertebrates in sand bars, stimulating fish to feed), and during mild to moderate surf. Another resource on the CDFW website links to a video with tips for pier fishing in California.⁷ The video describes fishing from various locations on piers. Mid pier fishing, such as at the subject site location, is recommended for catching California halibut, among other fish. These tips from an agency with

⁶ <https://wildlife.ca.gov/Fishing/Ocean/Beach-Fishing>

⁷ <https://www.youtube.com/watch?v=BdcRAEVNOoY>

expertise in fishing, suggest that fishing could indeed be successful from the project location on the pier. In addition, [Exhibit 6](#) depicts people fishing on the Huntington Beach pier, landward of the project location. This suggests that water depth and chopiness are not issues and that fishing does occur in various locations on the pier, not only at the seaward end. While Huntington Beach generally, and the pier specifically, are recognized as among the most active surfing locations anywhere in California, with surfers present almost constantly, depending on the conditions of any given day, fishing on the pier remains viable, and fishing from the subject location on the pier should remain available for those days when conditions support it.

A concern raised by the proposal to convert the former fishing support use to a restaurant, is that anglers may be less comfortable fishing in the area between diners and the edge of the pier, either due to being uncomfortable about interfering with views or being under closer observation than desired (“on display”) while fishing. The applicant has dismissed this concern, stating there “will be absolutely nothing impeding them [anglers] from doing so [fishing]. In fact, some might even delight in being the center of the diners’ attention, hoping to show off their ‘Big Catch.’” The applicant also asserts that the project will not interfere with fishing because it will not reduce the public area between the existing building (to be converted to a restaurant) and the pier’s perimeter railing. In any case, the concern remains that anglers, and the public generally, may be uncomfortable standing between the diners and their ocean views, even though they have the legitimate right to be there.

Furthermore, although it is true that the 10-foot-wide area will remain open between the restaurant building and the pier railing, the proposed width between the existing restroom building and the pier railing will be reduced from 21½ feet to 10 feet. The current 21½ foot width allows more room for anglers to bring tackle boxes, chairs and ice chests (items commonly associated with pier fishing) while still allowing easy passage by non-fishing visitors. The proposed 10-foot width will significantly constrain the ability of fishing and general public passage from occurring concurrently, which has a negative effect both on fishing and on general public access. Furthermore, the reduction in area available to the general public as a result of the proposed restaurant would reduce the feeling of vastness that comes from being on the pier above the sea.

The applicant also argues that even if the fishing opportunities were to be reduced as a result of the project, there are still ample areas from which to fish on the pier. However, any reduction in fishing opportunities on the pier adversely impacts lower cost recreational opportunities. In addition, the best locations from which to fish can shift with the dynamics of the ocean and daily conditions, making any reduction in fishing locations problematic. Lower cost recreational opportunities are relatively scarce in any case, compared to recreational opportunities in the mid and high-cost range, making any loss of lower cost recreational uses significant.

The applicant suggests that the proposed 8-foot by 4-foot cart dedicated to the sale of fishing supplies will adequately offset the conversion of the building and the loss of the fishing support facilities in the building. The cart would offer bait, tackle, and pole

rentals, as well as coffee, tea, and hot chocolate, cold beverages, and assorted sundry items such as sun screen, sunglasses, and pre-packaged snacks. The applicant has indicated a willingness to include a requirement in the lease with the City to maintain the presence of the fishing cart on the pier, and to being open daily, no later than 10 am, and remaining open for no fewer than six hours a day, and no fewer than 300 days per year. The applicant envisions opening the cart likely “no later than 7:00 or 8:00 am,” but does not want to commit to an opening time in a lease restriction. The applicant prefers to experiment with the cart’s hours to see “what time to best open.” The cart will have fishing poles available for rent, not sale. The applicant says the cart would offer both frozen and live bait, stating “no aquarium required.” (It is unclear how live bait will be offered without some form of aquarium in which to keep the bait alive.)

The former “Let’s Go Fishing” 30-year tenant bid to renew the lease with the City, but lost out to the current applicant ([Exhibit 7](#)). This suggests that continuation of a bait, tackle and sundries shop in the existing building remains a viable option at this site. Even if the proposed fishing cart is implemented, the overall presence of fishing support is diminished. Importantly, the proposed restaurant cannot function without significant encroachment onto open public pier area (almost tripling the footprint of the existing building), whereas reviving the fishing support use in the building would not require any encroachment onto the public area of the pier.

In support of the project, the applicant sent photos of pier use, including people fishing on the pier, and included the date and time, concluding from the photos that fishing is not very popular on the pier except at the pier end, and very limited fishing occurs near the project buildings. The photos were taken on 5/8/2023 Monday at about 11:30 am; 5/14/2023 Sunday Mother’s Day at about 1:15 pm, 5/16/2023 Tuesday at about 9:15 am; 5/21/2023 Volleyball Tournament Sunday at about 1:20 pm; 5/27/2023 Memorial Saturday at about 4:20 pm; 5/29/2023 Memorial Monday at about 11:30 am; 7/7/2023 Friday at about 3 pm; and 7/11/2023 Tuesday at about 8:30 am. However, no information was provided regarding tides and surf conditions at the time of the photos. The photos provided were not taken in the early morning or near dusk, times typically popular with anglers and recommended by CDFW for fishing success. The photos provided were anecdotal and do not provide a professional level of assessment. For example, no historical statistics on the number of people or times of day, or days in the year that are historically most popular for fishing on the Huntington Beach pier were provided.

The photos were taken in May and early July of 2023, which were often grey and overcast along the coast this year. According to AccuWeather,⁸ the high temperatures in Huntington Beach the first two weeks of July this year ranged from the high 60s to the low 70s. Also, according to AccuWeather, the highs in the City of Riverside in the first two weeks of July ranged from the mid-80s to the low 90s. In May, temperatures in

⁸ <https://www.accuweather.com/en/us/huntington-beach/92648/july-weather/327160>

Riverside ranged from the high 60s to the mid-70s, with a week in the mid 80s in the middle of the month. But in the last few weeks of July, the range of temperatures in Riverside were in the high 90s to the low 100s. The pier is most active on warm sunny days, especially so when it is excessively warm inland. Very warm days, which did not occur this year until late July, tend to be the biggest drivers of inland residents to the beaches. Huntington Beach pier, with its easy access, is a very popular spot to seek relief on those hot days, especially for those from more inland locations.

The proposed project reduces prospects for lower cost recreational opportunities. The proposed development replaces the former use, a fishing supply shop at the site with a restaurant. "Let's Go Fishing," the former bait and tackle shop in the subject building, just closed in mid-May of this year after losing its lease with the City. The applicant indicated that the restaurant is expected to be mid-cost. Although the project proposes a cart that will make fishing supplies available, the cart will reduce the presence of fishing supplies that would otherwise welcome anglers to the pier. It will also displace existing public pier area. The loss of the use of the entire building for fishing support removes a de-facto welcome sign for all anglers to the pier. Moreover, the primary proposed use is a restaurant, which is neither a recreational use, nor a fishing support use, which are required on the pier by LUP policies. Thus, the proposed project, which would nearly triple the existing building's footprint by encroaching into public pier area and would limit fishing opportunities on the pier, is not consistent with the Coastal Act and LCP polices that require that public access and recreation be maximized and that a variety of recreational opportunities for a range of income levels be provided.

Environmental Justice

Coastal Act Section 30604(h) states:

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

The Commission's Environmental Justice Policy states:

Understanding that even nominal costs can be barriers to access preserving and providing for lower-cost recreational facilities is also an environmental justice imperative. This includes recreational opportunities such as parks, trails, surf spots, beach barbecue and fire pits, safe swimming beaches, **fishing piers**, campgrounds, and associated free or low-cost parking areas. [emphasis added]

The proposed project raises some environmental justice concerns related to the historic and on-going inequitable distribution of public access and recreation benefits in general, and along the coast of California specifically. Throughout California's history, low-income communities, communities of color, and other marginalized populations, generally referred to here as "environmental justice communities," have faced disproportionate social and physical barriers that disconnect them from coastal access

and recreational opportunities. Equitable coastal access and recreation opportunities for all populations have not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices.⁹ Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.¹⁰ Ensuring maximum and equitable public access to the California coastline (as required by Coastal Act Sections 30210 and 30213) is consistent with the environmental justice principles reflected in Coastal Act Section 30604(h).¹¹ The Commission adopted an environmental justice policy in March 2019, committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal benefits are accessible to everyone. In approving the policy, the Commission recognizes that equitable coastal access is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how.

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

The Coastal Act and LCP policies cited earlier require a variety of recreational uses for a range of cost and market preferences. Offering lower-cost recreational uses increases public opportunities in the coastal zone, especially for many environmental justice communities who have historically been denied access to uses within the coastal zone due to historic and social factors. Moreover, the access to these lower-cost recreational opportunities can increase the mental and physical well-being of these communities.

Fishing on piers is recognized as a lower-cost recreation activity, given that fishing on public piers in ocean or bay waters in California (such as the Huntington Beach pier) does not require the purchase of a fishing license. Moreover, the gear required to fish from a pier may be obtained for a reasonable cost and can provide ample recreation

⁹ Robert Garcia & Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, *Stanford Journal of Civil Rights and Civil Liberties*. Pages 143 (2005)

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

¹¹ Government Code Section 65040.12(e) defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

and sustenance. The accessibility and low-cost of pier fishing may be an alluring practice for low-income and environmental justice communities in urban settings. Studies have shown that in Southern California pier fishers have a higher representation of immigrant communities, people of color, and those who speak English as a second language than the local population.¹² In one study, an overwhelming majority expressed that the reason that pier angling was important to them was that the activity was free.¹³

Coastal Act and LCP policies require that public access be maintained and enhanced. The proposed development decreases existing public access by encroaching into public pier area, displacing 1,506 square feet of existing public pier area currently available for public pedestrian access. The restaurant use is not lower cost, is not a recreational use, and could interfere with existing, low-cost public fishing opportunities that may predominantly impact environmental justice communities. The construction of a large restaurant would remove accessible space and not contribute to a variety of commercial uses in a range of costs when compared to the former, smaller bait and tackle shop. The loss of the fishing supplies shop constitutes the loss of a de facto welcome sign for anglers. Pier fishing and walking along the pier are low-cost activities traditionally available to and engaged in by all, including, environmental justice communities.

Thus, the proposed restaurant use would not promote lower-cost recreation activities such as fishing on the pier and encroaches onto existing public pier area, which adversely impacts environmental justice communities. Therefore, the proposed restaurant is not consistent with the Commission's Environmental Justice Policy, which recognizes that even nominal costs can be barriers to access and recreational opportunities for underserved communities.

Conclusion: Public Access & Recreation

In the future, as beaches narrow, and temperatures increase, demand for public areas and lower cost recreational opportunities in the coastal zone will increase. This pier will continue to allow the general public to enjoy the scenic views, to access the ocean's cooling breezes, and to fish even after many beaches are narrowed or lost. The beaches and piers that remain will become more and more important, and likely more and more crowded. The proposed loss of 1,506 square feet of area currently available to the general public, for the purpose of establishing another non-low cost restaurant in an area that already includes an abundance of restaurants is not consistent with the Coastal Act and LCP policies that require protection of existing public access and of lower cost recreational opportunities. The restaurant use would also displace a use that

¹² Pitchon, A., & Norman, K. (2012). Fishing off the dock and under the radar in Los Angeles County: Demographics and risks. *Bulletin, Southern California Academy of Sciences*, 111(2), 141-152.; Steinberg, Steven J., Moore, Shelly, *San Diego Fish Consumption Study, SCCWRP*, (2017)

¹³ Quimby, B., Crook, S. E., Miller, K. M., Ruiz, J., & Lopez-Carr, D. (2020). Identifying, defining and exploring angling as urban subsistence: Pier fishing in Santa Barbara, California. *Marine Policy*, 121, 104197

supported recreational fishing; a use specifically protected by the Coastal Act. LCP policy C 3.2.2 requires that an assessment of the availability of lower cost visitor uses be completed at the time of discretionary review, but none was prepared for this project. It is also not consistent with the LCP policies that require fishing support facilities be provided on the pier and the LUP policies that require a variety of visitor serving commercial uses in a range of affordability levels in the coastal zone. Because requirements to establish a restaurant at this site would require encroachment into public area, there are no special conditions that would make the project consistent with the Coastal Act and LCP. Therefore, the proposed project is denied.

C. Public Views

Coastal Act section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The LCP LUP also includes the following visual resources policies:

C4 Preserve and, where feasible, enhance and restore the aesthetic resources of the City's coastal zone, including natural areas, beaches, harbors, bluffs and significant public views.

C 4.1 Provide opportunities within the Coastal Zone for open space as a visual and aesthetic resource.

C 4.1.1 The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas.

C 4.2 Promote the protection of the Coastal Zone's visual and aesthetic resources through design review and development requirements.

C 4.2.1 (in pertinent part) Ensure that the following minimum standards are met by new development in the Coastal Zone as feasible and appropriate:

a) Preservation of public views to and from the bluffs, to the shoreline and ocean and to the wetlands.

...

b) Evaluation of project design regarding visual impact and compatibility.

C 4.2.2 Require that the massing, height, and orientation of new development be designed to protect public coastal views.

Regarding protection of public views, LCP IP DSP requires, for projects on the pier:

3.3.6.8 Maximum Building Height

- 1) 25' and 2 stories above the pier level.
- 2) 1 story maximum building height on the pier, excluding the end of the pier café
- 3) No maximum building height shall be required for lifeguard towers or other facilities necessary for public safety; however, adverse impacts to public views should be avoided to the maximum extent feasible.
- 4) Development proposals shall include a public view analysis.
- 5) Public views shall be considered and maximized.

Scenic public views exist from, along and to the Huntington Beach pier. The pier and the views from it and toward it are major visitor draws to the area. Scenic views from the pier are available along the pier's perimeter, as well as along the central area of the pier looking up the pier and out to sea, as well as on the return trip looking back toward land. Both sides of the pier offer views of the ocean, up and down the coast, and of the surf line and beach. Coastal Act Section 30251 requires that scenic and visual qualities such as these be protected as a resource of public importance. The requirements of Section 30251 are mirrored in LUP Policy C 4.1. LUP Policy C4 also requires that significant public views be preserved. LUP Policy C 4.1 requires the provision of open space within the coastal zone as a visual and aesthetic resource. Although often it is natural spaces that are considered open space, the pier also provides an open space experience where the public can walk above the ocean and take in the sights, sounds, and smells of the shore. The proposed 1,506 square foot restaurant encroachment into public pier area would reduce the existing expanse of public views to, along, and from the pier. In addition, LUP policies C 4.2.1 and C 4.2.2 require that scenic public views be protected through project design, including through consideration of massing, height, and orientation of new development.

Both the Coastal Act and the LCP require that scenic public views be protected. According to the Visit Huntington Beach Surf City USA website,¹⁴ the pier “symbolizes the heart of Huntington Beach and is the most photographed spot in town. Our pier’s location allows visitors and locals alike to experience the breathtaking views amidst the sounds of crashing waves and ocean breeze.” The popular pier location offers scenic views from the pier, as well as being a scenic view itself.

DSP Section 3.3.6.8(4) requires, for projects on the pier, that “development proposals shall include a public view analysis.” However, no public view analysis was prepared for

¹⁴ <https://www.surfcityusa.com/things-to-do/attractions/huntington-beach-pier/>

the proposed project. A visual analysis, prepared by an appropriate professional with expertise in visual analyses and preparation of related graphics, was requested of the applicant, but not received. The project plans include a sheet titled view analysis, but there is no corresponding written description, analysis, photos, or graphics depicting existing views compared to views with the project. The applicant submitted personal photos of the area, including a series of photos with a tarp intended to roughly approximate the location of the proposed kitchen area ([Exhibit 8](#)). No similar photos for the proposed outdoor dining or expansion of the restroom building were received.

In response to the request for a visual analysis of the proposed development, the applicant states:

“The proposed additions will have extremely minimal impact on views to the pedestrians that walk up and down the HB pier. In fact, the overall viewing opportunities will be greatly increased and improved by means of making 5 of the 6 existing walls all openable windows. Further, the outdoor dining areas will only have pony walls that are 42” in height, with clear glass above, maintaining the ocean views.”

The proposed encroachments into public open areas, as described above, will reduce public views. The kitchen will indisputedly block views down the pier’s central corridor. Currently the central corridor includes views of the ocean on both sides of the pier end restaurant, and in addition, views of Catalina Island are visible to the right of the pier end restaurant (looking seaward). All views to the right will be blocked by the proposed kitchen, when looking toward the pier end while approaching the subject building. A similar portion of existing views will be blocked walking back toward shore. Although the applicant asserts the proposed changes to the restaurant building will actually increase public views because solid walls of the existing building will be replaced with glass, the area in question will be filled with dining activities and covered by new expanded roof area that will certainly interfere with public views across the proposed outdoor dining areas. Public views impacted by expansion of the restroom building will be replaced with solid walls within the 11½ foot wide expansion area, which will plainly block existing scenic public views.

Although public views will continue to be available on the pier, they will unquestionably be significantly reduced by the presence of expanded development. So, in addition to physically reducing the area currently available to the public for pedestrian access, views currently available to those pedestrians will also be lost. The open, unobstructed area on the pier is limited, thus any proposal to reduce that area must be carefully considered. As relayed earlier, requirements for restaurants, including required for kitchen and storage area, and restrooms, prevent modifications to the proposed project that would reduce adverse impacts to public views.

The Coastal Act and LCP require that scenic public views, such as though along, to and from the pier, be protected. The proposed project will not protect these existing scenic public views. Therefore, the project is not consistent with Section 30251 of the Coastal

Act or with the LCP policies that also require protection of public views. There are no special conditions that would make the project consistent with the Coastal Act and LCP. Therefore, the proposed project is denied.

D. Local Coastal Program (LCP)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit must be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The City of Huntington Beach's LCP was effectively certified in 1985 and has been updated since. However, however, the subject site's location seaward of the mean high tide means that it is located in the Commission's retained permit jurisdiction. Thus, the Chapter 3 policies of the Coastal Act are the standard of review for coastal development permits in the area. The City of Huntington Beach certified LCP may be used as guidance where appropriate. As described in this report, the proposed development is not consistent with the Chapter 3 policies of the Coastal Act. There are no special conditions that could be applied to this project to make it consistent with Chapter 3. Therefore, the project must be denied.

E. California Environmental Quality Act (CEQA)

The City of Huntington Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorically Exempt pursuant to 15301 of the CEQA Guidelines because the project would add not add more than 50% of the floor areas of two existing structures before the proposed additions. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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.

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. There are feasible alternatives to the proposed project that would lessen its impacts on the environment. For example, the previous fishing supply or similar use at the site that does not require encroachment into public pier area and does not impact lower cost recreational activities could be approvable. The proposed project has been found to be inconsistent with the public access and recreation, public views, and priority of use policies of the Coastal Act. There are no mitigation measures available which would substantially lessen significant adverse effects the project may have on the environment.

There are alternatives to the proposed development that would not result in adverse impacts to public access, lower cost recreation, and public views. Possible alternatives include retaining a use similar to the immediately previous use where the existing building is used as a bait, tackle and sundries shop. Another possible alternative is use of the existing building as a snack bar, which wouldn't require expansion of the footprint to accommodate a full kitchen. Or the existing building could be used for retail purposes. Or the City, who leases the pier from the CSLC, could establish a public educational use that provides information on topics such as sea life found in the area, the history of surfing in the area, and/or the history of the pier, or other interesting topics relevant to the unique location. The latter could be a meaningful visitor draw, which in turn could support existing restaurants in the area. There are likely other reasonable possibilities that would not require encroachment into public pier area.

Therefore, the Commission finds that there are feasible alternatives available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and is inconsistent with the requirements of the Coastal Act and CEQA.

5-22-0804 (Surf City Partners, LLC)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 5-22-0804 file.

Coastal Development Permit files 5-90-490 (City of Huntington Beach); 5-92-304 (City of Huntington Beach); and 5-93-294 (City of Huntington Beach).

City of Huntington Beach Local Coastal Program