

**CALIFORNIA COASTAL COMMISSION**

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**Th 20c**

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Staff: Fernie Sy-LB  
Staff Report: December 20, 2007  
Hearing Date: January 9-11, 2008  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 5-06-293

**APPLICANT:** Orange Coast College of Sailing and Seamanship

**AGENT:** Bundy-Finkel Architects, Attn: Timothy Bundy

**PROJECT LOCATION:** 1801 West Coast Highway, City of Newport Beach (Orange County)

**PROJECT DESCRIPTION:** Remodel and addition of the existing 5,278 square foot two (2)-story building, including expansion of the boat house, upgrades to classrooms, and expansion of the exercise/training area, resulting in a two (2)-story, 9,994 square foot, 31-foot high (above existing grade) building. The project also includes the following: 1) grading and addition of eleven (11) parking spaces on-site to the existing forty-two (42) parking spaces located on-site for a total of fifty-three (53) parking spaces; and 2) hardscape and landscape work; and 3) an after-the-fact request for approval of work to reinforce the existing bulkhead and installation of a new guardrail.

**SUMMARY OF STAFF RECOMMENDATION:**

The proposed development involves the remodel and addition to the existing Orange Coast College Boat House Building, landscape and hardscape work, addition of parking spaces, and after-the-fact work on the existing bulkhead. The major issues before the Commission relate to protective structures and hazards, marine resources, water quality, public access, and visual resources. Staff is recommending **APPROVAL** of the proposed project subject to **ELEVEN (11) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** states that the bulkhead shall remain open and available to the public. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Final Revised Public Access Signage Plan. **SPECIAL CONDITION NO. 3** requires the applicant to submit a Gate Management Plan. **SPECIAL CONDITION NO. 4** requires the applicant to submit Revised Bulkhead Plans only showing work proposed with this application. **SPECIAL CONDITION NO. 5** requires the applicant to submit plans that show conformance with the bulkhead repair and modification letter and also the geotechnical documents. **SPECIAL CONDITION NO. 6** requires the applicant to conform with construction-phase best management practices. **SPECIAL CONDITION NO. 7** requires the applicant to identify the location of the disposal site of the demolition and construction debris resulting from the proposed project. **SPECIAL CONDITION NO. 8** requires the applicant to submit a Revised Water Quality Management Plan (WQMP). **SPECIAL CONDITION NO. 9** requires the applicant to submit a Revised Landscape Plan, which

only consists of native or non-native drought tolerant plants, which are non-invasive. **SPECIAL CONDITION NO. 10** requires the applicant to comply with any requirements of the RWQCB relative to dewatering. **SPECIAL CONDITION NO. 11** requires the applicant to satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 90 days of Commission action.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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**LOCAL APPROVALS RECEIVED:** Approval-in-Concept (No. 1061-2006) dated June 21, 2006 from the City of Newport Beach Planning Department.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. P-4493-(Orange Coast College); Coastal Development Permit No. P-3081-(Orange Coast College); Coastal Development Permit No. P-5778-(Orange Coast College); Coastal Development Permit No. 5-96-137-(Orange Coast College); Time Extension for Coastal Development Permit No. 5-96-137-E1-(Orange Coast College); Amendment to Coastal Development Permit No. 5-96-137-(Orange Coast College); Administrative Permit No. 5-04-167-(Orange Coast College); Amendment to Administrative Permit No. 5-04-167-A1-(Orange Coast College) (Pending); Letter from Commission staff to Bundy-Finkel Architects dated August 24, 2006; *Water Quality Management Plan (WQMP)* prepared by Luzurianga Taylor, Inc. dated November 3, 2006; Letter from Bundy-Finkel Architects to Commission staff dated December 22, 2006; Letter from Commission staff to Bundy-Finkel Architects dated January 19, 2007; Letter from Bundy-Finkel Architects to Commission staff received February 20, 2007; April 26, 2007; Letter from Commission staff to Bundy-Finkel Architects dated March 14, 2007; Letter from Bundy-Finkel Architects to Commission staff dated April 26, 2007; Letter from Commission staff to Bundy-Finkel Architects dated May 23, 2007; Letter from URS Corporation to Orange Coast College dated May 7, 2007; Letter from the City of Newport Beach Harbor Resources to Orange Coast College dated June 26, 2007; Letter from Bundy-Finkel Architects to Commission staff dated July 6, 2007; Letter from Orange Coast College to Commission staff dated July 10, 2007; *Submittal for Permeation (Chemical) Grouting for Liquefaction Mitigation* prepared by Haywood Baker Inc. dated May 10, 2007; and Letter from Bundy-Finkel Architects to Commission staff dated May 11, 2007.

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## LIST OF EXHIBITS

1. Vicinity Map
2. Site Plan
3. Elevation Plans

## I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 5-06-293 pursuant to the staff recommendation.*

### STAFF RECOMMENDATION OF APPROVAL:

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

### RESOLUTION TO APPROVE THE PERMIT:

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

## II. STANDARD CONDITIONS

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

## III. SPECIAL CONDITIONS

**1. PUBLIC USE**

Public access to and along the bulkhead shall remain open and available to the public. Signage to that effect shall be provided pursuant to SPECIAL CONDITION NO. 2.

**2. FINAL REVISED PUBLIC ACCESS SIGNAGE PLAN**

**A. PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Final Revised Public Access Signage Plan, which indicates the availability of the on-site public amenities. The Final Revised Public Access Signage Plan shall be in substantial conformance with the Preliminary Signage Plan prepared by Bundy-Finkel Architects received in the Commission's South Coast District Office on December 18, 2007. In addition to the specifications above, at a minimum the signage program shall include:

- (1) Signage shall indicate, with graphics and text, the presence of, and location of, public access opportunities at the subject site; and
- (2) Signage shall be clearly visible to pedestrians and occupants of vehicles traveling in either direction along Coast Highway; and
- (3) The project plans shall include, at a minimum, the following components: dimensions and content (graphics and text) of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil.

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

**3. GATE MANGEMENT PLAN**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, two copies of a Gate Management Plan for the gate located at the bulkhead between the subject site (Orange Coast College of Sailing and Seamanship) and the Boy Scout Sea Base (located at 1931 W. Coast Highway) that maximizes public access opportunities to and along the bulkhead. The plan shall be prepared in consultation with the Boy Scout Sea Base and shall include the following:

- (1) Provisions that require the subject gate to remain open at all times, except for temporary closures of limited duration necessary to address safety issues that would exist if the gate were not closed (e.g. during the transport of boats to and from the water); and
- (2) During periods when safety issues are present, the gate may be temporarily latched closed, however, such latching must be operable such that any pedestrian traveling along the bulkhead between the two sites may open, pass

through, and close the gate; the gate shall be re-opened immediately upon cessation of the safety issue; locks shall be prohibited;

- (3) Signs upon and adjacent to the gate clearly visible to pedestrians located on either side of the gate indicating that: i) public access between the two sites is available through the gate at all times it is safe for the pedestrian to use such access; ii) if the gate is latched closed the pedestrian may open, pass through, and close the gate; and iii) the gate shall remain open at all times except for temporary closures of limited duration necessary to address safety issues that would exist if the gate were not closed. The Gate Management Plan shall include, at a minimum, the dimensions and content (graphics and text) of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil.

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

#### 4. **REVISED BULKHEAD PLANS**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of Revised Bulkhead Plans only showing work proposed with this application.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### 5. **CONFORMANCE WITH BULKHEAD REPAIR AND MODIFICATION DESIGN RECOMMENDATIONS AND GEOTECHNICAL RECOMMENDATIONS**

- A. All final bulkhead repair and modification design and construction plans shall be consistent with all recommendations contained in the following documents: Letter from URS Corporation dated May 7, 2007.
- B. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the following documents; Letter from STB Structural Engineers dated July 13, 2007; and *Submittal for Permeation (Chemical) Grouting for Liquefaction Mitigation* prepared by Haywood Baker Inc. dated May 10, 2007
- C. **PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final bulkhead repair and modification design and construction plans and certified that

each of those final plans is consistent with all of the recommendations specified in the above-referenced bulkhead repair and modification evaluation in the above-referenced geologic engineering documents.

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

**6. CONSTRUCTION BEST MANAGEMENT PRACTICES**

- A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;

- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**7. LOCATION OF DEBRIS AND DISPOSAL SITE**

**PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. 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.

**8. REVISED WATER QUALITY MANAGEMENT PLAN (WQMP)**

**A. PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT** the applicant shall submit, for the Executive Director's review and approval, two (2) copies of a Revised Water Quality Management Plan for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall be in substantial conformance with the *Water Quality Management Plan (WQMP)* prepared by Luzurianga Taylor, Inc. dated November 3, 2006. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (1) The WQMP shall incorporate appropriate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site;
- (2) Design elements that serve to minimize directly connected impervious area and maintain permeable space within the development shall be incorporated where feasible. Options include the use of alternative design features such as concrete grid driveways and/or pavers for walkways, and/or porous material for or near walkways and driveways;
- (3) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized through the use of low-maintenance landscaping and efficient irrigation technology or systems;
- (4) Sweep parking lot(s) with a vacuum regenerative sweeper a minimum of three (3) times per week;

- (5) Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
  - (6) Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate pollutants of concern (including trash, debris and vehicular fluids such as oil, grease, heavy metals and hydrocarbons) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
  - (7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
  - (8) All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals;
  - (9) At a minimum, all BMP traps/separators and/or filters shall be inspected and cleaned/repaired or otherwise maintained in accordance with the following schedule: (1) prior to the start of the winter storm season, no later than October 15th each year, (2) inspected monthly thereafter for the duration of the rainy season (October 15th -April 30), and cleaned/maintained as necessary based on inspection and, (3) inspected and maintained where needed throughout the dry season;
  - (10) Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner;
  - (11) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**9. REVISED LANDSCAPE PLAN**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) full sized sets of Revised Landscape Plans that demonstrate the following:

- (1) The plan shall demonstrate that:
  - (a) All landscaping shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council)(<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping that doesn't meet the above requirements shall be removed.
  - (b) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
  - (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan; and
  - (d) All plantings shall be placed in a manner that vegetation will not adversely impact views of Newport Bay from West Coast Highway.
- (2) The plan shall include, at a minimum, the following components:
  - (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
  - (b) a schedule for installation of plants.

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

**10. REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)**

The applicant shall comply with all requirements of the Regional Water Quality Control Board (RWQCB) regarding dewatering. The applicant shall inform the Executive Director of any changes

to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

#### **11. CONDITION COMPLIANCE**

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

#### **A. PROJECT LOCATION DESCRIPTION, AND PREVIOUS AND PENDING COMMISSION ACTION ON-SITE**

##### **1. Project Location**

The project site is 41,270 square feet in size and is located at 1801 West Coast Highway, City of Newport Beach, Orange County (Exhibit #1). The City of Newport Beach Land Use Plan (LUP) designates use of the site for Public Facilities (PF). The subject site is currently developed with the Orange Coast College School of Sailing & Seamanship, which consists of: an existing two-story "Sailing Center" building consisting of 3,160 square feet and an existing two-story "Boat House" building consisting of 5,278 square feet. The college offers courses in basic and advanced sailing, seamanship, navigation and similar activities. Classes and activities offered by the college are available to all members of the general public and this will not change post project. The site is completely open and the parking lot is available for use by both those affiliated with the Orange Coast College School of Sailing and Seamanship and the public to enjoy the bay. Additionally, public pedestrian access is provided from Coast Highway from two public-stairways to the bulkhead via a walkway to a continuous walkway present along the length of the bulkhead. This project is not intended to intensify use of the site, but instead will improve the functionality of the facility.

The project site is located on State Tidelands. Tidelands and submerged lands are subject to a public trust that, among other things, limits, their use to navigation, fishing, commerce, public access, water oriented recreation, open space, and environmental protection. Tidelands and submerged lands within the corporate limits of Newport Beach are, with very limited exceptions, owned by the State. The vast majority of tidelands and submerged lands in Newport Beach have been granted to the City or the County of Orange to administer in a manner consistent with the public trust limitations relative to use of the property and revenue derived from that use.

The project site is located along Pacific Coast Highway (referenced as West Coast Highway in the project vicinity), which is a regional road artery; a wide, high speed boulevard providing a convenient route for regional traffic in an area that is known as "Mariner's Mile" in the City of Newport Beach. Pacific Coast Highway is also the "main

street” of Newport Beach providing access to many neighborhoods and business districts. This area along Pacific Coast Highway provides access to local businesses and the waterfront as well as ingress/egress to adjacent bluff-top neighborhoods. Historically, Mariner’s Mile has always been a focus for marine activities. Yacht brokers, shipbuilding, boat services and haul-out facilities, warehouses, slips and sportfishing docks shared the flat, sandy strip facing the Lido Channel at the foot of the Newport Heights, accessing both the water and the Pacific Coast Highway.

To the north of the site, is West Coast Highway, to the east is the Balboa Bay Club, to the south is Lower Newport Bay, and to the west is the Boy Scouts Sea Base. The facility is located on upland property owned by the County of Orange and on tidelands initially granted to the County of Orange by a State of California Tideland Grant dated May 25, 1919. The subject property was leased in 1953 to the Orange Coast College of Sailing and Seamanship. On May 15, 2007, the County of Orange and Coast Community College District agreed to a new 30-year extension (the current lease will expire in 2009).

## 2. Project Description

The proposed project consists of the remodel and addition of the existing 5,278 square foot two (2)-story “Boat House” building (No work is proposed to the existing “Sailing Center” building) (Exhibits #2-3). More specifically, the project consists of: 1) rebuilding 2,014 square feet of the 1<sup>st</sup> floor (shop, 4 bays); 2) adding 719 square feet to the 1<sup>st</sup> floor; 3) remodeling the existing 2,413 square foot 2<sup>nd</sup> floor (classrooms) ; and 4) adding 1,983 square feet to the 2<sup>nd</sup> floor (exercise/training area). Post project, the two (2)-story “Boat House” building will consist of 9,994 square feet and the maximum height of the structure will be 31-feet above existing grade. The project also includes the following: 1) an addition of eleven (11) parking spaces on-site to the existing forty-two (42) parking spaces located on-site for a total of fifty-three (53) parking spaces; and 2) hardscape and landscape work. The applicant is also seeking after-the-fact approval for bulkhead work consisting of 1) replacement of the concrete cap; 2) repair of the existing wale along the entire length of the bulkhead; and 3) installation of a new guardrail along the bulkhead. Grading will consist of 498 cubic yards of cut and export. In addition, modifications to an existing elevator that provides ADA accessibility from the street level (West Coast Highway) to the bulkhead via a walkway to a continuous walkway present along the length of the bulkhead will take place. The elevator will be modified so that it provides constant access to the bulkhead level 24-hours a day, while it prevents access to the upper level after hours, which house classrooms and offices and could be a safety concern after normal operating times.

## 3. Previous Commission Action On-Site

### Coastal Development Permit No. P-4493-(Orange Coast College)

On January 20, 1974, the Commission approved Coastal Development Permit No. P-4493-(Orange Coast College) for the addition of a storage, maintenance equipment room,

restrooms and stairways to the existing Orange Coast College School of Sailing and Seamanship.

Coastal Development Permit No. P-3081-(Orange Coast College)

On June 3, 1974, the Commission approved Coastal Development Permit No. P-3081-(Orange Coast College) for the expansion of existing boat facilities to the existing Orange Coast College School of Sailing and Seamanship.

Coastal Development Permit No. P-5778-(Orange Coast College)

On September 22, 1975, the Commission approved Coastal Development Permit No. P-5778-(Orange Coast College) for the relocation of existing floats and the addition of 1,200 square feet of additional floats to the existing Orange Coast College School of Sailing and Seamanship.

Coastal Development Permit No. 5-85-827-(Orange Coast College)

On March 13, 1986, the Commission approved Coastal Development Permit No. 5-85-827-(Orange Coast College) for the addition of a 4,577 square foot classroom facility and restrooms to an existing boathouse facility. The Commission did not impose any special conditions on the project.

Coastal Development Permit No. 5-96-137-(Orange Coast College)

On October 10, 1996, the Commission approved Coastal Development Permit No. 5-96-137-(Orange Coast College) for the addition of a 2,512 square foot, 2<sup>nd</sup> floor library/chart room and office facility above an existing single-story carport and restroom structure to the existing Orange Coast College School of Sailing and Seamanship. In addition, a 236 square foot, 2<sup>nd</sup> floor deck was proposed. The finished height of the structure was 28-feet from finished grade and 19-feet from grade of West Coast Highway. The Commission did not impose any special conditions on the project.

Time Extension for Coastal Development Permit No. 5-96-137-E1-(Orange Coast College)

On November 13, 1998, an extension to Coastal Development Permit No. 5-96-137-(Orange Coast College) was approved.

Immaterial Amendment to Coastal Development Permit No. 5-96-137-(Orange Coast College)

On November 13, 1998, the Commission approved an Immaterial Amendment to Coastal Development Permit No. 5-96-137-(Orange Coast College) to increase the proposed expansion to a total of 2,699 square feet, enlarge the proposed deck area to 578 square feet and raise the height 34-feet above the parking level grade (28-feet above the grade of Coast Highway) to the existing Orange Coast College School of Sailing and Seamanship. The Commission did not impose any new special conditions on the project.

Administrative Permit No. 5-04-167-(Orange Coast College)

On October 28, 2004, the Commission approved Administrative Permit No. 5-04-167- (Orange Coast College) for the following: 1) installation of ADA compliant gangway and landing; 2) reinstallation of the existing east gangway; 3) install longer and wider west gangway; 4) reconfiguration of the existing instructional docks; 5) installation of two (2) new 30' x 4' fingers and a new 51' x 4' dock with a 22' x 4' backwalk; 6) installation of eight (8) new steel piles ranging from 8" to 12" in diameter coated with NSP-120; 6) removal of ten (10) existing piles ranging from 8" to 10" in diameter; and 7) installation of a new fire system. The Commission imposed THREE (3) SPECIAL CONDITIONS on the project regarding: 1) water quality; 2) an eelgrass survey; and 3) a *Caulerpa taxifolia* survey.

5. Pending Commission Action On-Site

On April 11, 2006, the applicant submitted an application for an amendment to Administrative Permit No. 5-04-167 for after-the-fact authorization of the addition of a modular plastic dock system (floating pad) for the instructional sailboats. On May 11, 2006, an incomplete letter was mailed out to the applicant. Discussion between Commission staff and the applicant have taken place via telephone, but Commission staff is still waiting on a written response to the incomplete letter dated May 11, 2006.

**B. COASTAL ACCESS AND RECREATION**

Section 30210 of the Coastal Act 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 30212 of the Coastal Act states in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(2) adequate access exists nearby...*

Section 30213 of the Coastal Act states in relevant part:

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

Section 30220 of the Coastal Act 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 of the Coastal Act 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 30252 of the Coastal Act states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Among other policies in the Newport Beach Certified Land Use Plan, the LUP states in its section on Public Access and Recreation/Shoreline and Bluff Top Access, Policy 3.1.1-23 states,

*Provide a continuous walkway along the Mariner's Mile waterfront from Coast Highway/Newport Boulevard Bridge to the Balboa Bay Club.*

The subject site is currently developed with the Orange Coast College School of Sailing & Seamanship. The college offers courses in basic and advanced sailing, seamanship, navigation and similar activities. Classes and activities offered by the college are available to all members of the general public and this will not change post project. The site is completely open and the parking lot is available for use by both those affiliated with the Orange Coast College School of Sailing and Seamanship and the public to enjoy the bay. Additionally, public pedestrian access is presently provided from Coast Highway to the bulkhead via two public-stairways and walkways that lead to a continuous walkway along the length of the bulkhead. The applicant is proposing to enhance access by removing vegetation that obstructs one of the vertical walkways to the bulkhead, providing signs along Coast Highway announcing public access opportunities at the site, and by making changes to an existing elevator such that ADA-access to the bulkhead is available 24-hours per day.

Access to and along the bayfront is a public access priority in Newport Beach. The City of Newport Beach's certified Land Use Plan (LUP) has a policy that states that a walkway along the Mariner's Mile waterfront from Coast Highway/Newport Boulevard Bridge to the Balboa Bay Club is a goal. The subject site is located within this area. In fact, the City has already conducted preliminary studies for the construction of a walkway (Mariners Mile Waterfront Walkway Feasibility Study prepared by Cash & Associates dated 2005). Therefore, the City is actively pursuing this continuous walkway. The Commission finds that the proposed project should facilitate provision of continuous access along the bayfront.

In order to make sure that the bulkhead remains open to the public, the Commission is imposing **SPECIAL CONDITION NO. 1**, which states that the bulkhead shall remain open and available to the public.

The applicant describes some of their plans to enhance public use of the site on preliminary plans received on December 18, 2007 that show signs will be posted near the two stairways described above that will identify that public access is available on site. The signs proposed are solely comprised of graphics/symbols, with no text. Some individuals may not be familiar with the symbols proposed, thus, text should accompany the graphics so that the availability of public access is clear. However, the applicant's preliminary plans lack this information. Thus, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of a Final Revised Public Access Signage Plan, which will indicate the availability of the on-site public amenities.

While access to and along the bay is provided on site, there is an existing gate located at the western property line adjacent to the bay that is an impediment to access between the College and the Boy Scouts site. Currently, the applicant has stated that the gate remains unlocked and can be used for access between the sites. However, there are no signs or any type of information that inform pedestrians that the gate may be opened to facilitate access along the bay and there is no formalized plan to ensure that access along the bulkhead is maximized. The applicant is proposing to demolish the existing gate and replace it with a new one. Preferably, the gate would be entirely removed and not replaced. However, the applicant has expressed concern regarding site safety were the gate to be entirely removed. For instance, the applicant has indicated that some temporary control of access along the bulkhead is necessary when boats are being transported to and from the water. The applicant has also indicated that the Boy Scouts host certain activities that involve small children and that some temporary closure of the gate may be necessary during those activities so that children don't wander onto the College site where there is no railing along the bulkhead (such railing is absent to allow boat launching). In these limited instances, a safety hazard would exist. In order to deal with this, the College could put together a document, in consultation with the Boy Scouts, subject to the review and approval of the Executive Director, that would detail those limited circumstances when the gate could be closed. Thus, the Commission is imposing **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a Gate Management Plan that details the requirement that the gate would remain open, and how the public and users of either the College or Boy Scouts site can use it, and the limited circumstances under which the gate may be temporarily closed.

The applicant states that the goal of the project is to enhance the capabilities of the site and post project will continue to provide services for the public to enjoy nautical activities. In addition to the remodel of the "Boat House", the project will add eleven (11) parking spaces on-site to the existing forty-two (42) parking spaces located on-site for a total of fifty-three (53) parking spaces. As such, this addition of parking will enhance the opportunity for those affiliated with the college and the public to better access the site to enjoy the coastal amenities that are found on-site.

## CONCLUSION

To minimize impacts to coastal access and recreation, **THREE (3) SPECIAL CONDITION** have been imposed. **SPECIAL CONDITION NO. 1** states that the bulkhead shall remain open and available to the public. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Final Revised Public Access Signage Plan, which will indicate the availability of the on-site public amenities. **SPECIAL CONDITION NO. 3** requires the applicant to submit a Gate Management Plan. Therefore, as conditioned, the Commission finds that the project is consistent with Sections 30210, 30212, 30213, 30220, 30221 and 30252 of the Coastal Act.

**C. PROTECTIVE STRUCTURES AND HAZARDS**

Section 30235 of the Coastal Act states:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Section 30253 of the Coastal Act states in relevant part:

*New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...*

An existing bulkhead is located on-site and no new work on the bulkhead is currently proposed. However, work on the existing bulkhead did take place without a Coastal Development Permit. The applicant is requesting authorization for this work which has already been completed. A letter from URS Corporation dated May 7, 2007 explained the need for this previously completed bulkhead work which consisted of: 1) replacement of the concrete cap; 2) repair of the existing wale along the entire length of the bulkhead; and 3) installation of a new guardrail along the bulkhead. The applicant has submitted plans showing this work; however, these plans also show other work that is not part of the proposed project such as new piles and gangways. Thus, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires submittal of revised bulkhead project plans only showing the work proposed on the bulkhead associated with this project. The request for approval indicates the work on the existing bulkhead did not change the location or alignment of the bulkhead. The letter also goes on to say that a new ADA compliant gangway was also installed. The installation of this new gangway was associated with previous administrative permit 5-04-167-(Orange Coast College). The letter also goes on to make recommendations in order to make sure that there be no risk to the existing wall imposed by the new construction, such as that any building extension have a minimum 20-foot setback from the bulkhead wall and that the building be supported by piles or one of many ground improvement methods to relieve liquefaction potential. In response to these recommendations, the applicant has acknowledged them and has had the structural engineers verify that the loads on the soil from the new building within 20-feet of the existing bulkhead will not adversely impact the existing bulkhead (letter from STB Structural Engineers dated July 13, 2007). In regards to the liquefaction potential, the applicant has sought out and obtained a study regarding liquefaction potential on site: *Submittal for Permeation (Chemical) Grouting for Liquefaction Mitigation* prepared by Haywood Baker Inc. dated May 10, 2007. In order to ensure that repairs and modifications of the existing bulkhead do not adversely affect adjacent properties, that they minimize risks to life and property, and to assure stability and structural integrity, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicant to submit, for the review and approval of the Executive Director, final design and

construction plans reviewed and signed by the bulkhead and geotechnical consultants indicating that the recommendations contained in the bulkhead and geotechnical reports have been incorporated into the design of the proposed project.

The bulkhead is required at the subject site to protect the structural integrity of the lot from tidal activity. In addition, the bulkhead is necessary to protect the adjacent structures from tidal activity. If the bulkhead were removed and not replaced, tidal activity would erode and destabilize the adjacent lots (the Balboa Bay Club to the east and the Boy Scout Sea Base to the west). Therefore, the proposed repair of the bulkhead is necessary to protect existing structures. In addition, the existing bulkhead will not be moved seaward, which would result in fill of coastal waters. The proposed bulkhead repair would not result in new fill of coastal waters or changes to shoreline sand supply/erosion at the site.

## CONCLUSION

The existing seawall/bulkhead does not meet present engineering standards and poses a risk to life and property because lot stability may be threatened by failure of the aging existing bulkhead. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior bulkhead system. To minimize the potential hazards associated with the proposed project, the Commission imposes **TWO (2) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 4** requires the applicant to submit revised bulkhead project plans only showing the work proposed on the bulkhead associated with this project. **SPECIAL CONDITION NO. 5** requires the applicant to incorporate the recommendations in the bulkhead and geotechnical evaluations. Therefore, as conditioned, the Commission finds that the proposed development conforms with Sections 30235 and 30253 of the Coastal Act.

## **D. WATER QUALITY AND THE MARINE ENVIRONMENT**

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The protection of water quality is an important aspect of the Coastal Act. Section 30230 of the Coastal Act requires that marine resources shall be maintained, enhanced and where feasible, restored. Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters be maintained and where feasible restored. Water from the project site will flow into the City of Newport Beach's storm drain system and will ultimately drain to Newport Bay and the Pacific Ocean. Newport Bay is on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the harbor does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal established for this waterbody. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. Recent beach closures occurring throughout Orange County, including those in Newport Beach have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

The construction will occur adjacent to the water. Construction of any kind adjacent to coastal waters has the potential to impact the marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

#### **1. Construction Impacts to Water Quality**

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 6** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. In addition, in order to further prevent impacts to coastal waters, **SPECIAL CONDITION NO. 7** requires that all demolition and cut material debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

#### **2. Post-Construction Impacts to Water Quality**

The proposed project will result in urban runoff entering Newport Harbor through the new proposed storm drain system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering storm water systems. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach.

Currently, on-site drainage is directed to the existing catch basin with a filter located in the parking lot that ultimately drains into the bay, the gutter off of West Coast Highway or other impervious surfaces. For the proposed project the applicant has submitted a *Water Quality Management Plan (WQMP)* prepared by Luzuriaga Taylor, Inc. dated November 3, 2006. The WQMP states that with the proposed project, the existing catch basin located in the parking lot will have a new Hancor Flogard +Plus insert filter.

The Coastal Act requires that adverse effects on coastal waters and the marine environment be minimized. Although the harbor is considered an "impaired" water body, and much of the pollutants entering the harbor, such as sediment or toxic substances such as grease, motor oil, heavy metals, and pesticides contained within the runoff discharged into the harbor, come from inland developed areas outside the coastal zone, or from other sources within the coastal zone besides the proposed or existing pipes, such as from boats in the harbor, the Commission finds that it is necessary to minimize adverse water quality impacts to the extent feasible within its jurisdiction. Thus, additional measures must be incorporated into the project design in order to minimize impacts on coastal waters and the marine environment, such as the minimization of irrigation and the use of fertilizers and other landscaping chemicals through the use of low-maintenance landscaping and efficient irrigation technology or systems. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires the applicant to submit a Revised WQMP. The Revised WQMP shall meet water quality goals such as use of appropriate structural and non-structural BMP's designed to treat, infiltrate, or filter the runoff from all surfaces and activities on the development site and that runoff from all roofs and parking areas shall be collected and directed through a system of structural BMP's and/or gravel filter strips or other vegetated or media filter devices. In addition, this WQMP shall incorporate measures that reduce water quality impacts resulting from the new parking lot. The implementation of BMP's is necessary to reduce the cumulative adverse impact existing polluted runoff has upon Newport Harbor. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality.

The applicant has stated that landscaping is proposed and plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Commission staff has reviewed the submitted Landscaping Plan and determined that an invasive plant has been found: *Washingtonia Robusta* (*Mexican Fan Palm*). In addition, *Carissa M* (*Green Carpet*) is not drought tolerant. Lastly, the invasiveness and drought tolerancy of the proposed *Ligustrum* hedge could not be determined. Therefore, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires the applicant to submit

a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive.

### **3. Regional Water Quality Control Board (RWQCB)**

The submitted WQMP states that there is a possibility that dewatering is potentially necessary on-site. Dewatering would require approval from the Regional Water Quality Control Board (RWQCB). The RWQCB typically requires filtration of water before discharge. If dewatering is necessary, the applicant must contact the RWQCB for their review and approval. **SPECIAL CONDITION NO. 10** requires that the applicant comply with any requirements imposed by the RWQCB. If the RWQCB approval results in changes to the currently proposed project, the applicant may be required to obtain an amendment to the current coastal development permit amendment.

## **CONCLUSION**

To minimize the adverse impacts upon the marine environment, **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 6** requires the applicant to conform with construction-phase best management practices. **SPECIAL CONDITION NO. 7** requires the applicant to identify the location of the disposal site of the demolition and construction debris resulting from the proposed project. **SPECIAL CONDITION NO. 8** requires the applicant to submit a Revised Water Quality Management Plan (WQMP). **SPECIAL CONDITION NO. 9** requires the applicant to submit a Revised Landscape Plan, which only consists of native or non-native drought tolerant plants, which are non-invasive. **SPECIAL CONDITION NO. 10** requires the applicant to comply with any requirements of the RWQCB relative to dewatering. Therefore, as conditioned, the Commission finds that the proposed development conforms with Sections 30230 and 30231 of the Coastal Act.

## **E. VISUAL IMPACTS**

Section 30251 of the Coastal Act 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 land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

This facility is between the first public road and the sea and is a bayfront lot. The site is located along a stretch of West Coast Highway where there are a number restaurants and commercial uses, thus it is an urbanized area. The public views to the bay from West Coast Highway are limited in this area of Newport Beach. The elevation difference between West Coast Highway and the Orange Coast College School of Sailing and Seamanship varies between approximately five to six feet, with the street level approximately five to six feet higher than the bulkhead. Currently, the project site provides a 140-foot (eastern portion of site fronting West Coast Highway) view corridor of the bay along West Coast Highway (Exhibit #2). Along the remaining 160-foot (western portion of site fronting West Coast Highway) are existing buildings that currently block any view of the bay.

A significant portion of the proposed project will take place along this stretch of the site (western portion of the site fronting West Coast Highway) where coastal views of the bay already do not exist. Along the 140-foot section along the eastern portion of the site fronting West Coast Highway, development consisting of grading and installation of 11 additional parking spaces (that will become tandem to the existing parking spaces) and installation of *Washingtonia Robusta* (Mexican Fan Palm) on the property fronting West Coast Highway will take place. The grading and installation of the new 11 parking spaces are below the level of West Coast Highway by approximately 5 to 6-feet; thus, no views of the bay will be impacted by the installation of new parking spaces. However, the installation of the new vegetation, such as the proposed Mexican Fan Palms, could adversely impact views from West Coast Highway, as those palms would be at approximately the same level as West Coast Highway. For reasons described elsewhere, the Commission also has concerns about the proposed use of Mexican Fan Palms. Thus, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires the applicant to submit a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive and do not adversely impact views of Newport Bay from West Coast Highway.

## CONCLUSION

To minimize visual impacts, **ONE (1) SPECIAL CONDITION** have been imposed. **SPECIAL CONDITION NO. 9** requires the applicant to submit a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive and do not adversely impact views of Newport Bay from West Coast Highway. Therefore, as conditioned, the Commission finds that the proposed development conforms with Section 30251 of the Coastal Act.

## **F. UNPERMITTED DEVELOPMENT**

Development consisting of 1) replacement of the concrete cap; 2) repair of the existing wale along the entire length of the bulkhead; and 3) installation of a new guardrail along the bulkhead has occurred on the subject site without the required coastal development permit.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. 11** requires the applicant to satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 90 days of Commission action. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

## **G. LOCAL COASTAL PROGRAM (LCP)**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Visitor-Serving and Recreational Development/Commercial, Policy 2.3.1-2 states,

*Continue to provide waterfront-oriented commercial uses, including eating and drinking establishments and recreation and entertainment establishments, as a means of providing public access to the waterfront.*

Visitor-Serving and Recreational Development/Commercial, Policy 2.3.1-3 states,

*On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependent industry.*

Visitor-Serving and Recreational Development/Commercial, Policy 2.3.1-5 states,

*Protect special communities and neighborhoods which, because of their unique characteristics, are popular destination points for recreational uses.*

Land Use and Development/Coastal-dependent/Related Development/Public Facilities, Policy 2.4.2-1 states,

*Continue to designate lands for coastal-dependent/related educational and recreational uses.*

Land Use and Development/Tidelands and Submerged Lands, Policy 2.5.2-1 states,

*Administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust and all applicable laws, including Chapter 70 of the Statutes of 1927, the Beacon Bay Bill (Chapter 74, Statutes of 1978), SB 573 (Chapter 317, Statutes 1997), AB 3139 (Chapter 728, Statutes of 1994), and Chapter 715, Statues of 1984 and the Coastal Act.*

Land Use and Development/Tidelands and Submerged Lands, Policy 2.5.2-2 states,

*Promote the public's right of access to the ocean, beach, and bay and to the provision of coastal-dependent uses adjacent to the water in the leasing or re-leasing of publicly owned land.*

Transportation/Parking, Policy 2.9.3-3 states,

*Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations in the Zoning Code as of October 13, 2005.*

Public Access and Recreation/Shoreline and Bluff Top Access/, Policy 3.1.1-1 states,

*Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.*

Public Access and Recreation/Shoreline and Bluff Top Access/, Policy 3.1.1-19 states,

*Develop and implement a long-range plan for public trails and walkways to access all appropriate commercial area of the Harbor.*

Public Access and Recreation/Shoreline and Bluff Top Access/, Policy 3.1.1-23 states,

*Provide a continuous walkway along the Mariner's Mile waterfront from Coast Highway/Newport Boulevard Bridge to the Balboa Bay Club.*

Coastal Resource Protection/Water Quality, Policy 4.3.2-14 states,

*Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into receiving waters.*

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

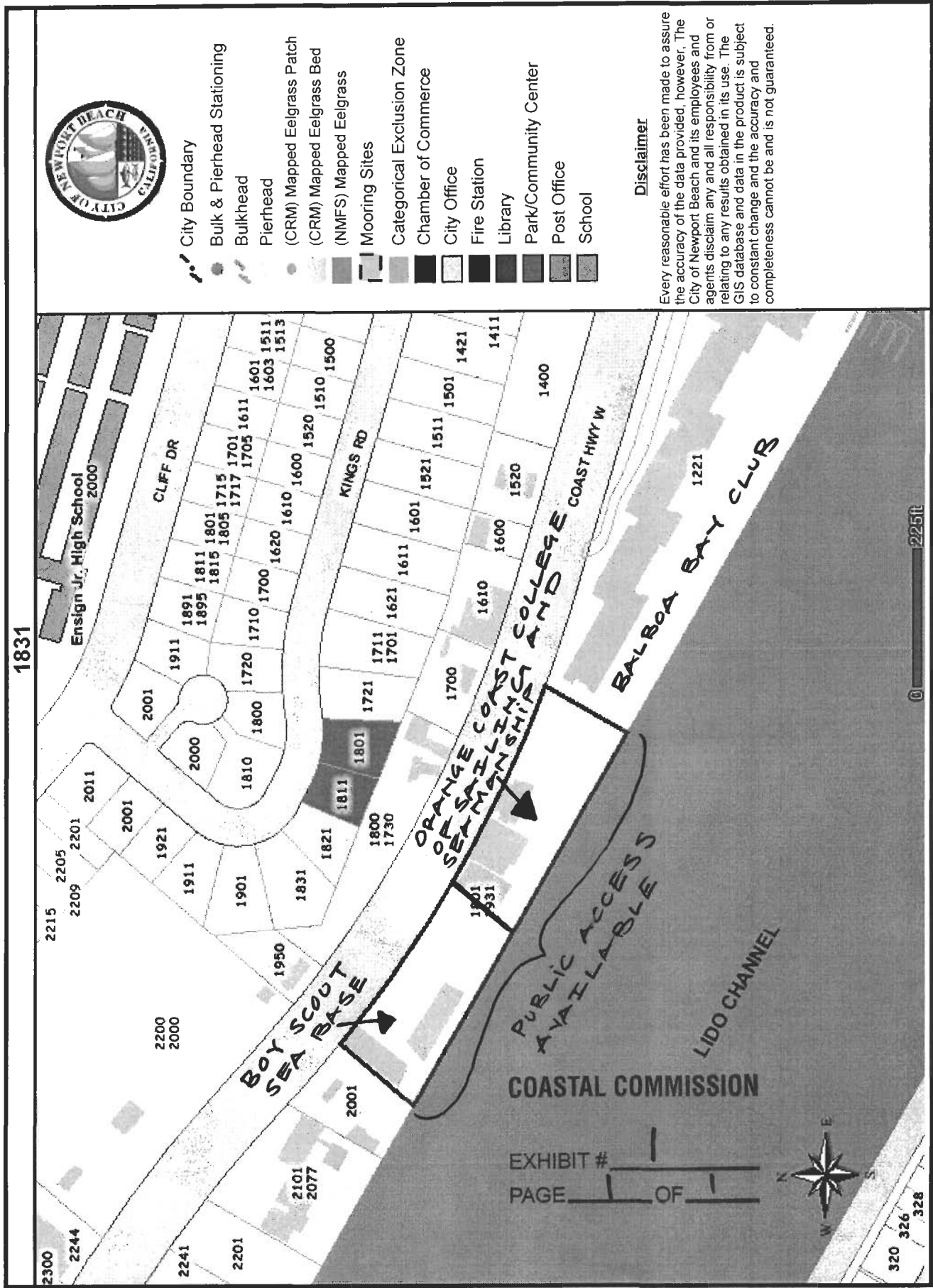
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County of Orange is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to be Categorical Exempt (Class 3, Item a).

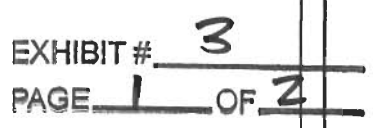
The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The following Special Conditions were imposed. **SPECIAL CONDITION NO. 1** states that the bulkhead shall remain open and available to the public. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Final Revised Public Access Signage Plan. **SPECIAL CONDITION NO. 3** requires the applicant to submit a Gate Management Plan. **SPECIAL CONDITION NO. 4** requires the applicant to submit Revised Bulkhead Plans only showing work proposed with this application. **SPECIAL CONDITION NO. 5** requires the applicant to submit plans that show conformance with the bulkhead repair and modification letter and also the geotechnical documents. **SPECIAL CONDITION NO. 6** requires the applicant to conform with construction-phase best management practices. **SPECIAL CONDITION NO. 7** requires the applicant to identify the location of the disposal site of the demolition and construction debris resulting from the proposed project.

**SPECIAL CONDITION NO. 8** requires the applicant to submit a Revised Water Quality Management Plan (WQMP). **SPECIAL CONDITION NO. 9** requires the applicant to submit a Revised Landscape Plan, which only consists of native or non-native drought tolerant plants, which are non-invasive. **SPECIAL CONDITION NO. 10** requires the applicant to comply with any requirements of the RWQCB relative to dewatering. **SPECIAL CONDITION NO. 11** requires the applicant to satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 90 days of Commission action.

As conditioned, no feasible alternatives or further feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging alternative and is consistent with CEQA and the policies of the Coastal Act.







[illegible]

FUNDING SOURCES		FUNDING PURPOSES	
1	State of New York	1	General Fund
2	Federal Government	2	General Fund
3	Local Government	3	General Fund
4	Private Industry	4	General Fund
5	Non-Profit Organizations	5	General Fund
6	Individuals	6	General Fund
7	Other	7	General Fund
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9		9	General Fund
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