

CALIFORNIA COASTAL COMMISSION

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W11a**ADDENDUM**

June 12, 2012

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to the original staff report.](#)

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W11a, COASTAL COMMISSION PERMIT APPLICATION NO. 5-10-229-(CITY OF NEWPORT BEACH) FOR THE COMMISSION MEETING OF WEDNESDAY, JUNE 13, 2012.**

1) Letter received June 8, 2012 from Schmitz & Associates (Attached as Exhibit A)

Commission staff received a letter from Schmitz & Associates, agents for the City of Newport Beach project, on June 8, 2012 discussing their concerns regarding a number of the Special Conditions, as stated in the staff report. Their concerns are discussed below.

A. 71-FOOT HIGH LIGHTHOUSE

SPECIAL CONDITION NO.1
REVISED FINAL PROJECT PLAN
PAGE 5 OF THE STAFF REPORT DATED JUNE 1, 2012

1] Lighthouse

The applicant's discussion begins by the applicant providing the City's Certified Land Use Plan (LUP) policy regarding height limits, as shown below:

Section 4.4.2-1 of the City's Certified LUP states as follows:

"Maintain the [existing] 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4.3" [emphasis added]

The City's letter states that the intent of the above cited Certified Land Use Plan policy is to 'maintain' and enforce the provisions of the City's "existing" shoreline height limitations ordinance. However, the term "existing" is not part of the certified policy and was only included as emphasis by the City in their discussion. The actual certified policy states the following:

Section 4.4.2-1 of the City's Certified LUP states as follows:

“Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4.3”

Additionally, the City states that the ordinance is explicit that the 35-foot height limit may be raised by the City's discretionary action. As previously stated in the staff report, the City's certified LUP does not provide any exception to the 35-foot height limit in the Shoreline Height Limitation Zone. Additionally, the Municipal Code provisions that the City cites have not been reviewed by the Commission and are not certified. Thus, it remains that the proposed 71-foot high lighthouse is twice the allowable height in the area, is not consistent with the Certified Land Use Plan, would not be consistent with the height of other structures in the vicinity, and would not be consistent with Section 30251 of the Coastal Act which requires development to be visually compatible with the character of surrounding areas. Therefore, Commission staff continues to recommend imposing **SPECIAL CONDITION NO. 1.A.1.**, that requires the City to lower the proposed structure to 35-feet, or to eliminate it from the plan.

2] Oloids

The applicant states their engineers have now shown that the proposed marina will not have the poor flushing rates and poor water quality initially reported. Therefore, the City asserts that the mechanical water circulation devices (e.g. Oloids) required by **SPECIAL CONDITION NO. 1.A.5.** are not necessary. The City has produced a Memorandum, prepared by Moffatt & Nichol Engineers, entitled “*Regulatory Guidance for Marina Flushing*” dated December 22, 2010. The Memorandum clarifies that the anticipated flushing rate will be adequate without the need of the water circulation devices (e.g. Oloids). Therefore, Commission staff recommends removal of the portion of **SPECIAL CONDITION NO.1** requiring inclusion of water circulation devices. Nevertheless, there is some uncertainty that actual conditions will match anticipated conditions. The analysis submitted by the City indicates a small margin for error (i.e. that the anticipated percent of flushing is just 1.5% greater than the minimum recommended). Given the uncertainty, the Commission imposes **SPECIAL CONDITION NO. 15**, which states that if water quality in the new marina is not consistent with the standards or expectations as discussed in the Moffatt & Nichol memorandum “*Regulatory Guidance for Marina Flushing*” dated June 21, 2010, that the applicant shall address those adverse water quality impacts and shall apply for any new development involved with addressing those adverse water quality impacts.

B. PARKING MANAGEMENT PLAN

SPECIAL CONDITION NO.3

PARKING MANAGEMENT PLAN

PAGE 6 OF THE STAFF REPORT DATED JUNE 1, 2012

The applicant states that all the proposed 157 public parking spaces on-site are required for the uses on-site and that there is no excess of 72 public parking spaces remaining on-site even after peak parking need during the school year and summer months is factored in. The applicant acknowledges that during the course of preparing the EIR that the parking needed for the site was based upon using the ITE (Institute of Traffic Engineers) rate, which took into account all the uses on site, including the buildings, marina, Girl Scout house, café, etc.. However, the applicant also states that the submitted Parking Management Plan focused primarily on parking for the proposed “programs” on-site and did not take into account other uses such as the proposed café, offices, etc. The applicant has indicated they will need to revise the parking management plan to consider parking demands based on actual site usage (i.e. considering time of day, time of year, fluctuations in the demands of the various uses). Given those fluctuations, the applicant believes there may be parking spaces available for general public use, but the quantity is unknown at this time. Therefore, the conditioned Final Parking Management Plan (**SPECIAL CONDITION NO. 3**) must be revised and take this into account. Staff’s recommendation continues to require that any ‘excess’ spaces be available for general public parking, on a first come, first serve basis.

The proposed project results in the loss of 7 on-street parking spaces. The staff recommendation includes findings that these spaces lost would be offset by spaces to be located on site. However, as discussed above, the applicant has informed staff that, based on ITE parking standards, their current analysis assumes there will not be excess parking on-site (though actual demand may prove lower than ITE standards suggest); hence, the 7 spaces would not be offset in the manner described by staff. However, the applicant has also clarified that the existing Girl Scout Building and Community Center (to be demolished) do not have adequate on-site parking, and that current users occupy up to 30 on-street public parking spaces. The proposed project, which includes a new Girl Scout Building and Community Center will provide adequate on-site parking and will no longer require on-street parking to satisfy the parking demand. Thus, approximately 30 on-street public parking spaces will be made available for general public use, which will offset the project’s proposed loss of 7 on-street parking spaces.

C. CONSTRUCTION TIMING

SPECIAL CONDITION NO.5
TIMING OF CONSTRUCTION
PAGES 6-7 OF THE STAFF REPORT DATED JUNE 1, 2012

The applicant states that clarification is necessary regarding the language “no construction or deposit” in this Special Condition. The applicant contends that prohibition on construction for 8 months (Feb thru Sept) would create an enormous financial burden and is unwarranted. The applicant also reiterates that no bird nesting is currently occurring on-site. Furthermore, the applicant requests that the Special Condition be revised from an outright time-of-year prohibition to a monitoring condition instead. This way construction may proceed during those previously prohibited months but at the same time require a biological monitor be present during the beach nourishment activities to determine if any bird nesting or grunion spawning impacts would occur. In order to address the applicant’s concerns and at the same time maintain public access to the beach on-site and protect biological resources (i.e., bird nesting and grunion spawning), Commission staff recommends the following:

- 1) Deleting the prohibition of construction of the Marina Park project between February and the day after Labor Day weekend as currently stated in **SPECIAL CONDITION NO. 5** and instead clarification through submittal of the required Construction Staging Plan (**SPECIAL CONDITION NO. 6**) that public access to the beach fronting the Marina Park project site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project construction; and
- 2) Modify **SPECIAL CONDITION NO. 5**, to remove the prohibition of beach nourishment during the bird nesting season (Feb thru Aug) and during the grunion spawning season (Mar thru Aug), and instead replace it with language requiring monitoring by a biological monitor instead during beach nourishment activities to determine if that activity will adversely impact any bird nesting/roosting or grunion spawning.

D. FINAL PLANS

SPECIAL CONDITION NO.8
CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO COASTAL
ENGINEERING STUDY AND GEOTECHNICAL REPORT
PAGES 8-9 OF THE STAFF REPORT DATED JUNE 1, 2012

The applicant states that the required “Final” plans would not be available until after successfully obtaining a contractor for the project. This is fairly common among municipal/public works projects, where the municipality identifies specifications, but leaves the construction methods up to the contractor so as to save on costs. Once a contractor has been obtained, they will proceed to put together these required Final plans. The applicant states that providing these “Final” plans before a contractor has been selected is problematic and creates a

timing issue in regards to obtaining a Coastal Development Permit. In order to deal with this concern, Commission staff proposes to revise **SPECIAL CONDITION NO. 15** so that these “Final” plans must be submitted “At Least 120 Days Prior to Construction” instead of “Prior to Issuance of the Coastal Development Permit”. This would alleviate the applicant’s concern regarding their timing issue in obtaining a Coastal Development Permit.

E. LANDSCAPING

SPECIAL CONDITION NO.16
REVISED LANDSCAPING PLAN
PAGES 14-15 OF THE STAFF REPORT DATED JUNE 1, 2012

The applicant states that they wish to include plants that are of medium water use. The current landscaping condition prohibits those types of plants and only allows low water use plants. The subject site is located in an urban area and is not adjacent to any sensitive terrestrial habitat that would be highly sensitive to the water use on the site. The use of a low percent cover of moderate water use plants (non-invasive) for accent purposes would not have any significant adverse impacts. Therefore, staff is recommending the Commission revise **SPECIAL CONDITION NO. 16** to allow limited moderate water use plant species, only for accent purposes.

2) Changes to Staff Report

Commission staff recommends modification and additions to the Summary of Staff Recommendation, Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report to modify Special Condition No.1, 3, 5, 6, 8, 15 and 16 and make corresponding additions and revisions within the body of the staff report. Language to be added to the findings is shown in ***bold, underlined italic*** and language to be deleted is in ~~strike-out~~, as shown below

Page 2 – Modify the Summary of Staff Recommendation, as follows:

Staff recommends that the Commission **APPROVE** the proposed projects subject to **TWENTY (20) SPECIAL CONDITIONS**. The **SPECIAL CONDITIONS** require: **1)** submittal of Revised Final Project Plans showing: a) the proposed 71-foot lighthouse shall be reduced in height and shall be no higher than the allowed maximum height of 35-feet; b) any proposed glass railings will be replaced with frosted or etched glass screens or will be replaced with a different type of material (i.e. metal fence, etc) to minimize bird-strike hazards; ***and c) 3)*** as proposed, removal of the two tennis courts from the lawn area adjacent to the American Legion building; **4)** ~~plans for the conversion of two (2) existing mobile homes into converted office space for construction contractors during construction and then into space for recreation and park maintenance staff post project; and 5) mechanical water circulation devices (e.g. Oloids) will be included as part of the proposed development to circulate water in the proposed marina;~~ **2)** submittal of a Final Dredging Disposal Plan; **3)** submittal of a Final Parking Management Plan;

4) additional approvals for any future development; **5)** ~~timing construction limitation~~ **biological monitor during pre-construction and construction activities**; **6)** submittal of a Construction Staging Plan; **7)** submittal of a Traffic Control Plan; **8)** conformance to the Geotechnical/Coastal Engineering Reports; **9)** an Assumption of Risk agreement; **10)** pre- and post-construction eelgrass surveys; **11)** a pre-commencement of construction *Caulerpa Taxifolia* survey; **12)** adherence to Construction Best Management Practices; **13)** debris disposal site to be located outside of Coastal Zone; **14)** submittal of a Storm Water Pollution Prevention Plan (SWPPP); **15)** submittal of a Final Water Quality Management Plan (WQMP); **16)** submittal of Revised Landscape Plan that will provide and protect public views of the bay through the site from West Balboa Boulevard, including views provided at the 16th and 17th Street, street ends; **17)** conformance with responsibilities (BMP's) during waterside work; **18)** conformance with construction responsibilities (BMP's) during dredging; **19)** submittal of a Final Clean Marina Program; and **20)** the City to conform with the "*Marina Park-Marina & Marine Uses*" document.

Page 5 – Modify Section III, Special Condition No.1, as follows:

1. REVISED FINAL PROJECT PLAN

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 a Revised Final Project Plan, including floor, elevation, grading, foundation, **bulkheads, docks, groin**, etc. The Revised Final Project Plan shall be in substantial conformance with the plans received by South Coast District staff on October 7, 2010, September 27, 2011 and December 22, 2011, except they shall be modified as follows: 1) the proposed 71-foot high lighthouse-shaped architectural feature that is part of the proposed Balboa Center Complex shall be reduced in height and shall be no higher than the allowed maximum height of 35-feet or eliminated from the plan; 2) to minimize bird-strike hazards, any proposed glass railings will be replaced with frosted or etched glass screens or will be replaced with a different type of material (i.e. metal fence, etc); **and** 3) as proposed, remove two tennis courts from the lawn area adjacent to the American Legion building; 4) ~~provide plans for the conversion of two (2) existing mobile homes into converted office space for construction contractors during construction and then into space for recreation and park maintenance staff post project; and 5) mechanical water circulation devices (e.g. Oloids) will be included as part of the proposed development to circulate water in the proposed marina.~~

Page 6 – Modify Section III, Special Condition No.3, as follows:

3. PARKING MANAGEMENT PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Parking Management Plan. The Final Parking Management Plan shall be in substantial conformance with the *Parking Management Plan* received September 21, 2011, except it shall be modified as follows: .1) provide a more specific description of the “*various parking management-alternatives*” to operate the Main Parking Lot that the applicant has proposed; 2) identify that the minimum length of parking time duration of the proposed on-street parking meters is 6 hours; 3) document that the fees charged by the City for the proposed parking meters (on-street and on-site) shall be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula); 4) if the Final Parking Management Plan for the 157 on-site parking spaces shows that parking spaces exist in excess of the on-site demands during any time period, those spaces shall be made available during the identified time period for the general public on a ~~provide that parking available on-site shall be predominantly first come, first serve~~ basis; and 5) clarify that the “*parking control system*” for the Main Parking Lot currently does not include gating the parking lot and that gating the parking lot cannot occur without a Coastal Development Permit.

...

Pages 6-7 – Modify Section III, Special Condition No.5, as follows:

5. TIMING OF CONSTRUCTION

~~By acceptance of this permit, the applicant agrees to minimize adverse impacts to the beach adjacent to the project site as well as at the beach nourishment locations pursuant to Coastal Development Permit No. 5-10-229, as required below:~~

~~No construction or deposit (beach nourishment) shall occur on the beach between February and the day after the Labor Day weekend, to include: 1) the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year; 2) the bird nesting season, defined as February through August; and 3) the grunion spawning season, defined as March through August.~~

5. BIOLOGICAL MONITORING DURING PRE-CONSTRUCTION AND CONSTRUCTION ACTIVITIES

The applicant shall retain the services of a qualified biologist or environmental resources specialist (hereinafter, "environmental resources specialist") with appropriate qualifications acceptable to the Executive Director, to monitor the site during construction activities and conduct sensitive species pre-construction surveys. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit the contact information of all monitors with a description of their duties and their on-site schedule to the Executive Director for review and approval. The applicant shall ensure that the Environmental Specialist shall perform all of the following duties, and the applicant shall observe the following requirements:

- A. The environmental resource specialists shall: (1) conduct a survey of the project site to determine presence and behavior of sensitive species one day prior to commencement of any activities related to sediment deposit (beach nourishment), (2) immediately report the results of the survey to the applicant and the Commission, and (3) monitor the site during all sediment deposit (beach nourishment) activities.**
- B. In the event that the environmental resources specialist reports finding that any sensitive wildlife species (including but not limited to California least tern, western snowy plover, California grunion, Beldings savannah sparrow) exhibit reproductive or nesting behavior, the applicant shall cease work and immediately notify the Executive Director and local resource agencies. Project activities shall resume only upon written approval of the Executive Director.**
- C. Prior to the commencement of any sediment deposit (beach nourishment) activities, the applicant shall have the environmental resource specialist conduct a survey of the sediment deposit (beach nourishment) sites, to determine presence of California grunion during the seasonally predicted run period and egg incubation period, as identified by the California Department of Fish and Game (CDF&G). If the environmental resources specialist determines that any grunion spawning activity is occurring and/or that grunion are present in or adjacent to the project site, then no beach nourishment activities shall occur on, or adjacent to, the area of the beach where grunion have been observed to spawn until the next predicted run in which no grunion are observed. Surveys shall be conducted for all seasonally predicted run periods in which material is proposed to be placed at any of the sites. If the applicant is in the process of placing material, the material shall be graded and groomed to contours that will enhance the habitat for grunion prior to the run period. Furthermore, placement activities shall cease in order to determine whether grunion are using the beach during the following run period. The applicant shall have the environmental resource specialist provide inspection reports after each grunion run observed and shall provide copies of such**

reports to the Executive Director and to the California Department of Fish and Game (CDF&G).

- D. Prior to initiation of daily project activities, the resource specialist shall examine the beach area to preclude impacts to sensitive species. Project activities, including sediment deposit (beach nourishment), shall not occur until any sensitive species (e.g., California least tern, western snowy plovers, Belding's savannah sparrows, etc.) have left the sediment deposit (beach nourishment) sites or its vicinity. In the event that the environmental resource specialist determines that any sensitive wildlife species (including but not limited to California least tern, western snowy plover, Belding's savannah sparrow, California grunion) exhibit reproductive or nesting behavior, the applicant shall cease work, and shall immediately notify the Executive Director and local resource agencies. Project activities shall resume only upon written approval of the Executive Director. The applicant shall cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise. The environmental resource specialist(s) shall require the applicant to cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise. The environmental resource specialist(s) shall also immediately notify the Executive Director if development activities outside of the scope of Coastal Development Permit No. 5-10-229 occur. If significant impacts or damage occur to sensitive wildlife species, the applicant shall be required to submit a revised, or supplemental program to adequately mitigate such impacts.
- E. The environmental resource specialist will conduct surveys of trees and sediment deposit (beach nourishment) sites on and adjacent to the project site (within 500 feet of any construction activities), just prior to any construction activities and once a week upon commencement of construction activities including sediment deposit (beach nourishment) will be carried out between December 1st and September 30th, inclusive. Such surveys shall identify the presence, nests, and eggs or young, of California least tern, western snowy plovers, Belding's savannah sparrows, etc. or other sensitive species in or near the project site. All surveys shall be submitted to the Executive Director of the Coastal Commission.
- F. The environmental resource specialist shall be present at all weekly construction meetings and during all significant construction activities including pile sediment deposit (beach nourishment) activities to ensure that nesting birds are not disturbed by construction related noise. The environmental resources specialist shall be onsite monitoring birds and noise every day at the beginning of the project during heavy equipment use. The environmental resources specialist must review the 2006 guidance issued by the United States Fish and Wildlife Service (USFWS) for estimating the effects of auditory and visual disturbance to northern spotted owls and marbled

murrelets. The USFWS document provides guidance for making determinations with regard to potential effects of construction noise on owls and murrelets. While these two species are not expected to be impacted by this project, the guidelines and procedures apply to the herons and egrets that potentially could be impacted.

G. The applicant shall submit documentation prepared by the environmental resource specialist which indicates the results of each pre-construction survey, including if any sensitive species were observed and associated behaviors or activities. Location of any nests observed shall be mapped.

Page 7 – Modify Section III, Special Condition No.6, as follows:

6. CONSTRUCTION STAGING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT
the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Construction Staging Plan, which indicates that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the sandy public beach.

...

- (c) The construction staging area will gradually be reduced as less materials and equipment are necessary; ~~and~~
- (d) The construction access route will only be intermittently closed for transport of equipment and materials. When not in use for transportation of equipment and materials, it will be made available for undisrupted public access; **and**

(e) That public access to the beach fronting the Marina Park project site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project construction.

...

Page 8 – Modify Section III, Special Condition No.8, as follows:

8. **CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO COASTAL ENGINEERING STUDY AND GEOTECHNICAL REPORT**

...

- B. **AT LEAST 120 DAYS PRIOR TO COMMENCEMENT OF CONSTRUCTION**~~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 all final design and construction plans, including foundation, grading and drainage plans and** evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced coastal engineering and geologic evaluation approved by the California Coastal Commission for the project site.

...

Page 14 – Modify Section III, Special Condition No.15, as follows:

...

- (9) Debris and other water pollutants removed from structural BMP's during clean-out shall be contained and disposed of in a proper manner; ~~and~~
- (10) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMP's according to manufacturer's specifications; **and**
- (11) If at any time water quality in the new marina is not consistent with the standards or expectations as discussed in the Moffatt & Nichol Memorandum "Regulatory Guidance for Marina Flushing" dated June 21, 2010, the applicant shall address those adverse water quality conditions and shall apply for any new development involved with addressing those adverse water quality conditions.**

...

Pages 14-15 – Modify Section III, Special Condition No.16, as follows:

16. REVISED LANDSCAPING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Revised Landscape Plan, prepared by a licensed landscape architect that includes 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. **Except for no more than 5% of landscape coverage (for accent purposes) that may be of ‘medium’ water use.** All **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;

...

Page 22 – Modify Section IV.A.2., as follows:

Since submittal of the proposed project, elements of the project have changed, such as removal of the two (2) proposed tennis courts, and revised plans have been submitted. ~~Additionally, plans have not been submitted for the conversion of two (2) existing mobile homes into converted into office space for construction contractors during construction and then into space for recreation and park maintenance staff post project.~~ Thus, in order to verify that the submitted plans contain all the current and correct elements of the project, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Final Project Plan.

Page 36 – Modify Section IV.C.5.a.2.,as follows:

In addition, the following have been determined to be invasive: *Washingtonia robusta* (Mexican Fan Palm), *Limonium perezii* (Statice). Therefore, the Commission imposes **SPECIAL CONDITION NO. 16**, which requires the applicant to submit a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive *Except for no more than 5% of landscape coverage (for accent purposes) that may be of 'medium' water use, all plants shall be of low water use as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).*

Pages 38-39 – Modify Section IV.C.5.a.2.b. and CONCLUSION., as follows:

(b) Marina Flushing

As discussed earlier in the staff report, the *Marina Park Coastal Engineering Study* prepared by URS/Cash & Associates dated October 2008 stated that long term water quality within the proposed marina will suffer from poor flushing rates, which would be below EPA guidelines. Inadequate tidal flushing in the marina basin will result in lowered dissolved oxygen levels, higher water temperatures, lower water transparency, higher plant nutrient concentrations, and increased sedimentation. The colonization of marina habitats by plants, invertebrates, and fish, and long-term productivity of the marina's biota can be severely limited by these conditions. The potential influence of degraded water quality in the marina on adjacent harbor water quality could have an indirect impact on managed fish species living in Newport Bay outside the marina, especially in view of already degraded water quality in Lower Newport Bay. Because of this potential impact, this study, as well as conditioned by the EIR, recommends that Oloids be installed in the marina to enhance circulation. These mechanical devices would improve water quality by raising dissolved oxygen concentrations and improving flushing times within the marina basin. *In response to the EIR requiring the inclusion of Oloids, one of the applicant's consultants, Moffatt & Nichol, prepared a Memorandum entitled "Regulatory Guidance for Marina Flushing" dated December 22, 2010 and submitted it with their 401 Water Certification application to the Regional Water Quality Control Board (RWQCB). The Memorandum clarified that the flushing rate was actually adequate without the need of the water circulation devices (e.g. Oloids). The RWQCB agreed and clarified this in their Section 401 Permit dated December 22, 2010 for the proposed project. Therefore, the EIR requirement for these devices was no longer necessary. While it has been clarified that flushing rates will be adequate, there is concern for future potential inadequate flushing rates. Thus, the Commission imposes SPECIAL CONDITION NO. 15, which requires the applicant to submit a Final Water Quality Management Plan (WOMP) that requires that if water quality in the new marina is not consistent with the standards or expectations as*

discussed in the Moffatt & Nichol Memorandum “Regulatory Guidance for Marina Flushing” dated June 21, 2010, that the applicant shall address those adverse water quality impacts and shall apply for any new development involved with addressing those adverse water quality impacts.

However, these mechanical devices were not included as part of the proposed project. No description regarding inclusion of these Oloids were included in the project description nor were any plans submitted. Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Final Project Plan that includes plans for the Oloids (or equivalent mechanical water circulation device).

CONCLUSION

To minimize the adverse impacts upon the marine environment and water quality, **ELEVEN (11) TWELVE (12) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Final Dredging Disposal Plan. **SPECIAL CONDITION NO. 10** requires pre- and post-construction eelgrass surveys. **SPECIAL CONDITION NO. 11** requires a pre-commencement of construction *Caulerpa Taxifolia* survey. **SPECIAL CONDITION NO. 12** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 13** requires that all demolition and cut material debris be disposed of at a legal site. **SPECIAL CONDITION NO. 14** requires the applicant to submit a Storm Water Pollution Prevention Plan (SWPPP). **SPECIAL CONDITION NO. 15** requires the applicant to submit a Final Water Quality Management Plan (WQMP) **that also requires that if water quality in the new marina is not consistent with the standards or expectations as discussed in the Moffatt & Nichol Memorandum “Regulatory Guidance for Marina Flushing” dated June 21, 2010, that the applicant shall address those adverse water quality impacts and shall apply for any new development involved with addressing those adverse water quality impacts.** **SPECIAL CONDITION NO. 16** requires the applicant to a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive. **No more than 5% of landscape coverage (for accent purposes) that may be of ‘medium’ water use.** **SPECIAL CONDITION NO. 17** outlines construction responsibilities (BMP’s) during waterside work. **SPECIAL CONDITION NO. 18** outlines construction responsibilities (BMP’s) during dredging. **SPECIAL CONDITION NO. 19** requires the applicant to submit a Final Clean Marina Program. ~~**SPECIAL CONDITION NO. 1**~~ requires the applicant to submit a Revised Final Project Plan that includes the Oloids (or equivalent mechanical water circulation device). Only as conditioned does the Commission finds that the proposed project is consistent with Section 30230, 30231, 30232, 30233 and 30250 of the Coastal Act.

Pages 40-41 – Modify Section IV.D.1. and 2. and CONCLUSION., as follows:

...

While nesting/roosting birds are not currently anticipated to be at the project site (Marina Park) or sediment (beach nourishment) locations, there is potential that they may be present in the future during construction. Any adverse impacts to their nesting/roosting must avoided. Thus, the Commission imposes **SPECIAL CONDITION NO. 5, which requires a biological monitor during pre-construction and construction activities to verify that adverse impacts to nesting/roosting birds are avoided**~~3~~, which prohibits construction during the bird nesting season, defined as February through August.

...

Grunion are not expected to occur on the beach fronting the project site (Marina Park) because they favor more exposed beaches with significant wave action, such as those ocean beaches that are potential sand disposal sites (Site #2: the ocean beach between 40th and 52nd Street and Site #3: the ocean beach between 6th and 16th Street). Thus, there is potential with the proposed project that adverse impacts to grunions is possible. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5, which requires a biological monitor during pre-construction and construction activities to verify that adverse impacts to grunion are avoided**~~3~~, which prohibits the deposit (beach nourishment) during the grunion spawning season, defined as March through August. By imposing this condition, adverse impacts to grunion will entirely be avoided since beach nourishment will not be allowed at any time during the grunion spawning season.

CONCLUSION

To minimize the adverse impacts upon biological resources, ~~TWOTHREE (23)~~ **SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 5 requires a biological monitor during pre-construction and construction activities to verify that adverse impacts to nesting/roosting birds and grunion are avoided**~~3~~ prohibits construction during the bird nesting season, defined as February through August. **SPECIAL CONDITION NO. 1** requires the applicant to submit Revised Final Project Plans showing that these proposed glass railings will be replaced with either frost or etch the proposed glass railings or revise that the railings will be replaced with a different type of (i.e. metal fence, etc). ~~SPECIAL CONDITION NO. 3~~ prohibits the deposit (beach nourishment) during the grunion spawning season, defined as March through August. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30240 of the Coastal Act.

Pages 44-48 – Modify Section IV.E.1., 3. and CONCLUSION., as follows:

...

In order to verify that the proposed project will be adequately parked, a parking analysis within the *Parking Management Plan* received by Commission staff September 21, 2012 was conducted and assembled. The analysis took into account the parking needs during the non-summer and summer months for the existing uses on-site: the community center, the sailing/boating activities, private/special events and the Girl Scout House. The analysis identified a peak parking need for Marina Park in the range of 80 parking spaces during the school year and 85 parking spaces during the summer months. This range took into account the parking needs for the proposed Balboa Center Complex and also considered the public who will visit the proposed marina, park, bay beach, and Girl Scout House and will park in the additional spaces provided by the project. The proposed project has identified that 157 public parking spaces will be provided for the on-site uses. Therefore, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 public parking spaces remaining. Thus, adequate parking will at all times be provided for the on-site uses since the peak parking needs during the non-summer and summer months is less than the parking being provided resulting in an abundance of parking on-site. In order to make sure that parking on-site is managed correctly, the city has provided a Parking Management Plan.

...

While the applicant has provided a parking management plan to show how parking will be adequately accomplished on-site, the plan lacks significant information. Information such as, the various parking management alternatives to operate the main parking lot that the City proposed are not fully explained. For example, the plan mentions possible use of heightened parking fees, but are not explained any further. A better explanation of how the Main Parking Lot will operate as parking for both users of the Balboa Complex Center for classes and events and also for users of the other facilities on-site needs to be provided. The parking available on-site should be predominantly first come, first serve. Furthermore, the pay rate for the on-site parking meters has not been explained and neither has the parking pay rate for those taking classes at the Balboa Center Complex. The fees for the proposed parking meters should be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula). The allowed duration of parking is also not identified. This should be sufficient to allow people to park and enjoy the beach. Typically, this has been for at least 6 hours. Thus, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a Final Parking Management Plan. There is significant potential for adverse impacts to public beach access as a result of any parking deficiency with the proposed project. Thus, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 4**, which is a future improvements special condition.

As discussed previously, the proposed project results in the loss of 7 on-street public parking spaces. The loss of these 7 on-street spaces is significant as the area is a primary location for public access to the Balboa Peninsula. However the loss of these 7 on-street parking spaces is offset by the project's provision of at least 71 on-site parking spaces

that are available for general public use. As stated earlier, the project has identified that 157 public parking spaces will be provided for the on-site uses. The number of peak summer day parking spaces needed for the on-site uses is 85 parking spaces. Thus, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 parking spaces remaining, which will be available for general public use. The final parking management plan must include provisions to assure these spaces are readily available to the public on a first come, first serve basis, as are the existing metered spaces to be removed.

The applicant is proposing 157 parking spaces to adequately serve the proposed uses on the project site, which was based on ITE (Institute of Traffic Engineering) rates. In order to verify that the proposed project will be adequately parked, a parking analysis and Parking Management Plan received by Commission staff September 21, 2012 was conducted and assembled. While the applicant has provided a parking management plan to show how parking will be adequately accomplished on-site, the plan lacks significant information in order to determine if the Parking Management Plan is effective. While 157 parking spaces was based on ITE (Institute of Traffic Engineers) rates, demand may actually be less. The Parking Management Plan did not fully evaluate if there was any excess on-site parking after reviewing parking requirements and demand for all of the on-site uses. If any excess on-site parking is determined, they should be made for the public, first come, first serve. Also, information such as, the various parking management alternatives to operate the main parking lot that the City proposed are not fully explained. For example, the plan mentions possible use of heightened parking fees, but are not explained any further. A better explanation of how the Main Parking Lot will operate as parking for both users of the Balboa Complex Center for classes and events and also for users of the other facilities on-site needs to be provided. Furthermore, the pay rate for the on-site parking meters has not been explained and neither has the parking pay rate for those taking classes at the Balboa Center Complex. The fees for the proposed on-site and on-street parking meters should be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula). The allowed duration of parking is also not identified. This should be sufficient to allow people to park and enjoy the beach. Typically, the typical duration of on-street public parking meters is at least 6 hours. Thus, the Commission imposes SPECIAL CONDITION NO. 3, which requires the applicant to submit a Final Parking Management Plan. There is significant potential for adverse impacts to public beach access as a result of any parking deficiency with the proposed project. Thus, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes SPECIAL CONDITION NO. 4, which is a future improvements special condition.

As discussed previously, ~~the~~ proposed project results in the loss of 7 on-street public parking spaces. *However, the applicant states that the existing Girl Scout Building and Community Center was under parked and resulted in approximately 30 on-street public parking spaces being taken up for these two uses. The proposed project, which included a new Girl Scout Building and Community Center will be adequately parked*

on-site and thus will no longer take up on-street parking. Thus, approximately 30 on-street public parking spaces will be made available for general public use, which will offset the project's proposed loss of 7 on-street parking spaces. The loss of these 7 on-street spaces is significant as the area is a primary location for public access to the Balboa Peninsula. However the loss of these 7 on-street parking spaces is offset by the project's provision of at least 71 on-site parking spaces that are available for general public use. As stated earlier, the project has identified that 157 public parking spaces will be provided for the on-site uses. The number of peak summer day parking spaces needed for the on-site uses is 85 parking spaces. Thus, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 parking spaces remaining, which will be available for general public use. The final parking management plan must include provisions to assure these spaces are readily available to the public on a first come, first serve basis, as are the existing metered spaces to be removed.

...

3. CONSTRUCTION IMPACTS

The Marina Park project site has a public beach that offers public access to the bay. A section of the beach will be dredged in order to install a new marina. However, the remaining portion of the beach will remain as public beach. During staging and construction of the proposed Marina Park project site there is potential to impact public access to this beach. Access along this beach must be protected and preserved during construction. Thus, the Commission imposes SPECIAL CONDITION NO. 6, which requires a Construction Staging Plan that also shows that public access to the beach fronting the Marina Park site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project construction sites including Marina Park and the dredge deposit areas, are all locations where the public has access to coastal recreation activities. Construction activities during the "peak beach use" (as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year) may adversely impact public access to these locations. Thus, Commission imposes **SPECIAL CONDITION NO. 5**, which prohibits construction on the beach during the "peak use" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

During construction of the proposed project, there is a chance that public access may be adversely impacted. In order to verify that public access is protected during construction, a Construction Staging Plan and Traffic Control Plan required. However, neither of these plans have been submitted. Thus, in order to ensure access to the beach is protected during the peak summer season and that public access is not hindered during construction, the Commission finds that it is necessary to impose **SPECIAL CONDITION NO. 6** and **SPECIAL CONDITION NO. 7**. **SPECIAL CONDITION NO. 6**, which requires the applicant to submit a Construction Staging Plan. Construction of the proposed project may also impact traffic in the area and thus impact public

access. Thus, the Commission imposes SPECIAL CONDITION NO. 7, which requires the applicant to submit a Traffic Control Plan.

CONCLUSION

To minimize the adverse impacts upon public access, ~~FOURFIVE (45)~~ **SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** requires the applicant to submit Final Parking Management Plan. **SPECIAL CONDITION NO. 4** is a future improvements special condition. ~~SPECIAL CONDITION NO. 5~~ prohibits construction during the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. **SPECIAL CONDITION NO. 6** requires the applicant to submit a Construction Staging Plan that also shows that public access to the beach fronting the Marina Park site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project. **SPECIAL CONDITION NO. 7** requires the applicant to submit a Traffic Control Plan. Only as conditioned does the Commission find the proposed development is consistent with Sections 30211, 30221, 30223, 30224 and 30252 of the Coastal Act.

Page 51 – Modify Section IV.G. and CONCLUSION., as follows:

However, construction activities may impact the public beach fronting Marina Park during the “*peak beach use*” (as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year) may adversely impact public recreational opportunities to these locations. Thus, Commission imposes ~~SPECIAL CONDITION NO. 5~~, which prohibits construction on the beach during the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Thus, the Commission imposes SPECIAL CONDITION NO. 6, which requires a Construction Staging Plan that also shows that public access to the beach fronting the Marina Park site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project

CONCLUSION

To minimize the adverse impacts upon lower-cost visitor and recreational facilities, **TWO (2) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 20** requires the City to conform with the “*Marina Park-Marina & Marine Uses*” document. SPECIAL CONDITION NO. 6 requires the applicant to submit a Construction Staging Plan that also shows that public access to the beach fronting the Marina Park site, not including the public beach area impacted by the construction of the new marina, will remain open to the public during the course of the project~~SPECIAL CONDITION NO. 5~~ prohibits construction during

~~the “peak use” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Only as conditioned does the Commission find the proposed development is consistent with Section 30213 of the Coastal Act.~~

Pages 54 – Modify Appendix 1 by including the following document into the Substantive File Documents List, as follows:

Letter to Schmitz & Associates, Inc. from Commission staff dated April 10, 2012;~~and Marina Park-Marina & Marine Uses” prepared by the City of Newport Beach received by Commission staff on April 11, 2012;~~ and Moffatt & Nichol Memorandum “Regulatory Guidance for Marina Flushing” dated June 21, 2010

3) Letter received June 5, 2012 from Mary Jane Veirs (Attached as Exhibit B)

A letter of opposition to the project was received from Mary Jane Veirs.

4) Letter received June 7, 2012 from the Central Newport Beach Community Association (Attached as Exhibit C)

A letter of support was received from the Central Newport Beach Community Association.

5) Letter received June 8, 2012 from James and Toni Niemiec (Attached as Exhibit D)

A letter of opposition to the project was received from James and Toni Niemiec.

6) Letter received June 11, 2012 from Joseph McCarthy (Attached as Exhibit E)

A letter of opposition to the project was received from Joseph McCarthy.

RECEIVED
South Coast Region

JUN 8 2012

June 07, 2012

CALIFORNIA
COASTAL COMMISSION

To: California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Attn: Fernie Sy

Subject: Response to Coastal Staff Report for Marina Park Project, **CDP Application No. 5-10-229**

Dear Mr. Sy:

This letter is in response to the conditions listed in the "Coastal Staff Report" dated June 01, 2012 for the upcoming Coastal Commission hearing on June 13th for the Marina Park project. Upon reviewing the staff report there are items requiring further discussion and are presented in the following letter.

1(A): **Height Limitation:** The condition states: "*the proposed 71-foot lighthouse shall be reduced in height and shall be no higher than the allowed maximum height of 35-feet.*" The applicant maintains that the 71 foot lighthouse tower complies with both the provisions of the Coastal Act and the City's Certified LUP; therefore the applicant does not agree that the 71 foot tower feature will have any adverse impact upon scenic views from LUP designated locations.

I. The Tower Feature Complies with the Certified LUP

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Section 4.4.2-1 of the City's Certified LUP states as follows:

"Maintain the [existing] 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3" [emphasis added]

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The intent of the Land Use Plan is simply to continue to 'maintain' and enforce the provisions of the City's "existing" shoreline height limitations ordinance. This ordinance was adopted in the early 1970's to regulate and control development pressures within the harbor area. Staff's conclusion that the ordinance precludes the permitting and



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construction of structures taller than 35' is simply not accurate. In fact, the ordinance is explicit that the 35' height limit may be raised by the City's discretionary action (consistent with good planning and with the appropriate findings having been made).

Subsection (c) of Section 20.30.060 Height Limits and Exceptions (City's Height Ordinance) provides as follows:

"C. Increase in Height Limit.

1. Procedure. The base height limits established in Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards) may be increased within specified areas with the adoption of a Planned Community District, adoption of a specific plan, or approval of a planned development permit, or site development review." [Emphasis Added]

The City of Newport Beach in approving the Marina Park Project made the requisite findings and took the necessary discretionary actions to permit the tower feature on site to exceed the "base" height limit prescribed in the City's Zoning/ Height Limitation Ordinance.

It is worth noting again, the LUP did not create a "new" restriction on development within the harbor, nor did sec. 4.4.2 evidence intent to modify the City's existing shoreline height limitation provisions. LUP sec. 4.4.2 does not set a Maximum 35' height limitation on the property; rather the LUP merely requires consistency with the City's existing ordinance. The tower feature, in complying with the City's height ordinance thus complies with sec. 4.4.2 of the City's Certified LUP.

I. The Tower Feature Complies with Section 30251 of the Coastal Act

The City previously evaluated the potential for adverse view impacts that might be occasioned by the tower feature (2010 visual impact analysis previously submitted to staff—on file). Renderings were prepared showing the tower's height and bulk as viewed from 4 separate locations, 3 of which were designated scenic viewing areas in the City's LUP. The renderings demonstrate unequivocally that the tower, while visible enough to perform its intended function, was not bulky, obtrusive or otherwise objectionable in nature. The function of the tower is to facilitate navigation of watercraft to the new visitor serving marina as well as to "draw" the beach going public into the park in furtherance of and consistent with the public access policies of the Coastal Act. As the City has posited previously the tower serves a critical function for the project. The simple height of the tower cannot and should not be viewed as "per se" evidence that the tower will have an "Adverse" impact upon coastal views. The height of the tower should not be considered in a vacuum. Good planning practice requires that the tower be viewed in proper context.

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Kevin Lynch the contemporary expert on community design, a long and distinguished professor of the MIT School of Architecture and Planning, wrote in his groundbreaking book Image of the City about the importance of creating landmarks and honorific public structures. *“There seemed to be a tendency for those more familiar with a city to rely increasingly on systems of landmarks for their guides – to enjoy uniqueness and specialization, in place of the continuities described earlier. Since the use of landmarks involves the singling out of one element from a host of possibilities, the key physical characteristic of this class is singularity, some aspect that is unique or memorable.”* Lynch, p. 78

In addition to the more “functional” role that the tower plays, the lighthouse tower is intended to be the type of iconic design feature that Kevin Lynch speaks of in his prolific works. The tower is a feature that is illustrative of the City’s history and culture. The finding of an “adverse” view impact implies precisely the opposite, that the aesthetic created by the tower is “undesirable.” The City stringently maintains that the lighthouse feature is critical to the project in terms of both its functional and aesthetic value; the tower is not obtrusive, does not violate the City’s codes and policies, and only serves to enrich and further exhibit the City’s rich cultural and maritime heritage.

In sum, the City objects to the imposition of this condition, finds it inconsistent with the City’s Certified LUP, and requests that staff remove this condition from its report prior to hearing.

1(B): **Glass Railing**: Agree to Condition

1(C): **Removal of Two Tennis Courts**: Agree to Condition

1(4): **Utilization of mobile homes** for office space - the city does not intend to proceed with the conversion of these mobile homes for future offices during construction (not practicable or desirable). Plans submitted to Coastal will indicate removal of these mobile homes in their entirety. Agree to Condition

1(5): **Mechanical Water Circulation Devices** - Find enclosed a memorandum prepared by Moffatt & Nichol dated June 21, 2010 titled “Regulatory Guidance for Marina Flushing”. This memorandum originally included with the CDP application report summarizes:

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*For the Marina Park basin, the estimated flushing rate without mechanical aerators based on the Cardwell and Koon's methodology cited by the EPA documentation is 31.1%, which exceeds the minimum **recommended flushing rate of 30%**. In addition, the tidal flushing efficiency was also assessed with methods from the US Army Corps of Engineers' Engineering Manual. These analytical results indicate that the tidal flushing efficiency of the proposed Marina Park basin meets the requirements of the US Army Corps of Engineers' Engineering Manual **without additional mechanical mixing**. [Emphasis Added].*

In summary, the Coastal Engineering Study prepared by Everest Consultants dated October 2008 (ref: FEIR Appendix H.2) ***inaccurately applied EPA guidelines for tidal flushing within the Marina***. Mitigation Measure 5.7-A.2 stated "*the use of mechanical devices shall meet the EPA guidelines for adequate tidal flushing (at least 70% exchange every 24 hours)*". The FEIR included a misinterpretation of the EPA standard as stated in the Moffat Nichol (M&N) memorandum "A weak statistical relationship was established and, by pooling data from the five marinas, it was determined that adequate water quality was maintained within marinas that exhibit a **flushing rate of 30%**" (Not 70% as stated in the Everest study).

This memorandum prepared by M&N was submitted to the RWQCB staff as a part of the 401 Water Quality Certification application. The Regional Board concurred with the M&N memorandum and issued the 401 Water Quality Certification on December 22, 2010 stating the following:

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR relating to water quality. Based on the mitigation proposed in the Marina Park Recirculated EIR, State Clearinghouse Number 2008051096, information submitted by the City in the June 21, 2010 Moffatt & Nichol memorandum, "Marina Park-Regulatory Guidance for Marina Flushing," and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level

The Moffatt & Nichol memorandum and the City's 401 Water Quality Certification have been provided to Coastal staff previously.

Therefore Condition 1(5) in the staff report stating: mechanical water circulation devices (e.g. Oloids) will be included as part of the proposed development to circulate water in the proposed marina is requested to be deleted as this condition

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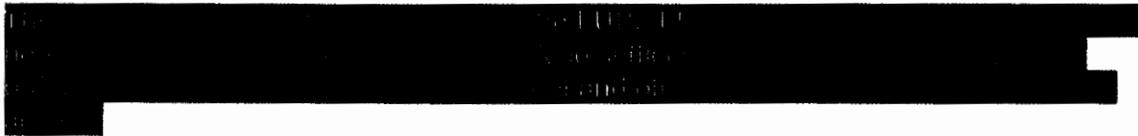
is not consistent with the findings made by the City, its consultants and the Regional Water Quality Control Board.

2. Final Dredging Disposal Plan – Agree to Condition

3. Parking Management Plan - The Parking Management Plan (PMP) Prepared by the city summarizes the following:

*The Parking Management Plan demonstrates how the number of on-site parking spaces would be managed to accommodate the activities that will be conducted on the premises. The plan identified a peak parking need for Marina Park in the range of 80 spaces during the school year and 85 spaces during the summer months. This range takes into consideration the parking needs for the Balboa Center Complex. **Others who visit the marina, park, bay beach, and Girl Scout House will park in the additional spaces provided with this project.***

The 85 parking spaces cited were based on classroom programming needs. Other uses within the Balboa Center such as a café, lobby and employee parking are not a part of these 85 spaces. The intent was to show that parking is available beyond the classroom peak demand.



Parking for Marina Park has been designed to meet this requirement and was based upon the Institute of Traffic Engineers parking generation rates which provide parking ratios based on building square footage and usage. This parking demand is provided in the chart below. **Per ITE rates 157 spaces are required and 157 spaces are provided.** In regards to discussions of parking in the EIR, the ITE rates were utilized to indicate that adequate parking is provided for the uses planned for the Marina Park project.

Revised Square Project Description - 9/13/11

LU#	Land Use	Size	Unit	Spaces Req'd
	Girl Scout House	5.5	TSF	13
495	Community Center	11.048	TSF	66
495	Sailing Center	12.784	TSF	64
420	Visitor Marina	23	Berth	14
Total Spaces				157

- Utilizing Land Uses used in EIR & TS
- Unprogrammed space and duct chase square footages are not included

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The following statement from the coastal staff report is made:

As stated earlier, the project has identified that 157 public parking spaces will be provided for the on-site uses. The number of peak summer day parking spaces needed for the on-site uses is 85 parking spaces. Thus, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 parking spaces remaining, which will be available for general public use.

The statement above is inaccurate inasmuch as it did not consider the total demand for parking that is occasioned by all uses proposed at the project site; therefore the conclusion that there remaining or otherwise "available" parking spaces is not accurate. Therefore the city disagrees with the condition to provide up to 72 spaces for general parking (for offsite uses) as this would be inconsistent with the City's LUP sec. 9.3.2 as well as several other corollary provision in the LUP that require that any new development project provide adequate off street (on site) parking for the uses that it generates.

The condition to identify the minimum length of parking time duration is 6 hours appears to be providing preferential treatment to providing parking for *ocean beach* visitors. Due to the project's close proximity to the ocean beach (as opposed to the Harbor Beach), it is important that the proposed onsite parking spaces provide adequate parking for the users of the proposed Marina Park facilities. **The proposed parking lots are intended for the project only and are not intended to provide additional ocean beach parking.** Public parking along the Newport Peninsula for the ocean beach visitor is not impacted due to the construction of the Marina Park project. Therefore the City disagrees with this condition to provide 6 hour minimum parking for "**off street**" parking. Metered spaces along public streets will be constructed consistent with other such parking on the Peninsula.

In summary the condition as noted in the staff report is requested to be modified as follows:

The Final Parking Management Plan shall be in substantial conformance with the *Parking Management Plan* received September 21, 2011, except it shall be modified as follows:

- 1) Provide a more specific description of the "*various parking management-alternatives*" to operate the Main Parking Lot that the applicant has proposed; Agree to Condition
- 2) Identify that the minimum length of parking time duration of the proposed parking meters is 6 hours. Request Condition to be removed as this would prohibit the City from providing adequate parking for the project and the uses that generate the need.

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- 3) Document that the fees charged by the City for the proposed parking meters (**off site only**) shall be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula); Agree to Condition as revised.
- 4) Provide that parking available on site shall be predominantly first come, first serve; Request Condition to be removed. Parking should be managed consistent with the uses permitted on site; placing a first come first serve limitation would also frustrate the City's ability to adequately park the facility on site consistent with the LUP.
- 5) Clarify that the "*parking control system*" for the Main Parking Lot currently does not include gating the parking lot and that gating the parking lot cannot occur without a Coastal Development Permit. Agree to Condition

4. Additional Approvals of any Future Development

CAL. PRC. CODE § 30610 states: Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Agree to Condition

5. Construction Timing Limitation

The staff report states:

No construction or deposit (beach nourishment) shall occur on the beach between February and the day after the Labor Day weekend, to include: 1) the "peak use" beach Season, defined as the period starting the day before the Memorial Day weekend and Ending the day after the Labor Day weekend of any year; 2) the bird nesting season, Defined as February through August; and 3) the grunion spawning season, defined as March through August.

The following issues are brought to your attention:

1. The statement "no construction or deposit" needs to be clarified. To condition no construction on the project is problematic for the city when the issues of concern are beach nourishment.
2. The statement "on the beach" is similarly unclear. Please clarify.

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3. In regards to the peak use beach season "Peak Season "beach nourishment has never posed a problem in the past. For our smaller in-harbor projects, the City has performed several beach nourishment activities during the summer months, resulting in a temporary impact to that portion of the beach that is affected. In fact, the public embraces beach nourishment during the summer months because it is during this time that the new sandy material can actually be used. Otherwise, if replenished during the winter months, the sand has a higher likelihood of migrating off the beach so it could never be enjoyed. The residents understand sand movement, and also greatly appreciate beach nourishment activities. This impact is considered very temporary and minimal at best (a few hours during the day) also, homeowners along the harbor perform private dredging with beach replenishment on public beaches throughout the year, and this has never caused a problem.
4. In regards to bird nesting this would relate to removal/ relocation of the Washingtonian Palms at time of demolition (There is no bird nesting on the shore or on land). The EIR Sec 5.3 Vegetation states the following: "A hedge of ornamental shrubs separates the public beach from the mobile home park and ornamental palm trees line the sidewalk that borders the public beach. These trees and ornamental vegetation do not include any native vegetation and provide only limited habitat value, primarily as cover and perching areas for birds and common terrestrial wildlife normally associated with developed areas."

Also, Section 5.3 Wildlife states: "Birds observed on the site include house sparrow, house finch, American Crow, and Mourning Dove, all considered urban adapted species. The sandy beach would also be expected to be used as a *resting* area by a number of shorebirds and seabirds. (Not nesting areas)

Summary:

Bay Beach Construction Timing Limits: The staff report raises concerns over "possible" impacts to sensitive species of birds. The report further notes that the EIR found no sensitive species of birds on site. The report concludes that sensitive/protected birds could migrate to the site and could nest on site in which case impacts may arise.

The City concludes (as did the EIR) that the *probability* of impacts to the nests of protected birds occasioned by construction on the project site is extremely low. To require that the City not perform construction of any sort for 8 months out of the year on this project would create an enormous financial burden and is unwarranted. Instead of prohibiting development on the site for 8 months out of the year, the City requests that staff revise the condition to provide for biologic monitoring of the site prior to and during construction (no prohibition period). If protected birds or nests are located on site then the City would be amenable to

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providing adequate buffers and ongoing monitoring consistent with the Fish and Game Code and regulations. The standard conditions utilized by both Fish and Game and the Coastal Commission provide for monitoring as opposed to a prohibition on construction for extended periods of time. Accordingly the City requests that construction prohibition on the Marina Park site be replaced with a condition requiring monitoring and buffering as may be needed.

Ocean Beach Limitations: Regarding protections and mitigation for off site ocean beach nourishment the City requests that staff agree to follow the conditions outlined in the US Army Corps permit and as stated in the letter to NMFS, (attached): as follows: The issue with sand placement in the near shore zone, (ocean beaches where grunion historically have occurred) are excluded between March 31 and June 30th (The peak season). There is a probability the grunion may run outside of this timeline **but adequate monitoring of construction activities would occur between March 01 and March 31 Or June 30 to August 31.** We request the CCC adopt this pragmatic approach to placing sand in the near shore zone.

6 .Construction Staging Plan - Agree to Condition

7 .Traffic Control Plan - Agree to Condition

8. Conformance to Geotechnical Reports

The Coastal staff report states:

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and Approval, evidence that an appropriately licensed professional has reviewed and Approved all final design and construction plans and certified that each of those Final plans is consistent with all of the recommendations specified in the Above-referenced coastal engineering and geologic evaluation approved by the California Coastal Commission for the project site.

In response to the request to provide detailed construction plans regarding the foundation for the Balboa Center, the city consulted with the building architect, structural engineer, marine engineer and geotechnical engineer. A conceptual stone column foundation plan was presented to Coastal staff to mitigate the specific liquefaction inherent to the site. Bundy Finkel, the building architect, had a brief conversation with Leslie Ewing from the CCC office in Northern California and confirmed that the use of stone columns is a

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mitigation method used and even recommended by the California State Geologic Survey in similar soil conditions along the coastal sites.

It is to be noted that this system is being proposed as a design-build solution with the ultimate design based upon Development of *Performance Specifications* prepared by the project Geotechnical Engineer. Due to the installation of the stone columns being a specialty construction item, the specialty contractor will utilize the *Performance Specifications* for use in the design-build solicitation package for liquefaction remediation. These construction documents will incorporate the *Performance Specifications* for the stone columns design subsequently reviewed by the city building official and certification by the Geotechnical Engineer. **The final construction drawings being provided after award by the successful qualified contractor creates a timing issue in regards to obtaining a Coastal Development Permit.**

Therefore the City is requesting the CDP be issued based on the conceptual stone column foundation plans previously provided and the *Performance Specification* prepared by the Project Geotechnical Engineer. The City further would be pleased to provide conceptual foundation plans for the Girl Scout house approved by the Geotechnical Engineer.

9. **Assumption of Risk, Waiver of Liability and Indemnity** - Agree to Condition

10. **Pre and Post Construction Eelgrass Survey** - Agree to Condition

11. **Pre-Construction *Caulerpa Taxifolia* Survey** - Agree to Condition

12. **Construction Best Management Practices** - Agree to Condition

13. **Location of Debris Disposal Site** - Agree to Condition

14. **Storm Water Pollution Prevention Plan (SWPPP)** - Agree to Condition

15. **Final Water Quality Management Plan (WQMP)** - Agree to Condition

16. **Landscape Plans**

The planting plans for Marina Park will use a palette consisting of a mix of native, naturalizing and adapted plants suited for the climate, location and program for the park. It is our intention to utilize plants identified as low water users in WUCOLS or low/medium water users in Bob Perry's Landscape Plants for California Gardens. Using these two sources we would refine the proposed plant list to identify plant species growing successfully on the Balboa Peninsula, in the vicinity of the project site. These

COASTAL COMMISSION

10

EXHIBIT # A
PAGE 10 OF 12

species have demonstrated the ability to tolerate both the high water table and the high concentrations of salt air found on peninsula. Final plant selection will emphasize low water use and tolerance of air and water borne salts. Other considerations will include longevity, hardiness in a maintained landscape situation, and suitability for a park programmed for active, informal and passive use.

In addition we will be using a state of the art irrigation system that monitors rain fall and soil moisture, is updated with climate information remotely and automatically regulates the amount of water applied to the plants. We also will design the system so that trees are on separate valves from shrubs and turf. This allows for a very precise application of water to the volume of the tree root ball. Using these techniques, we have found this system can reduce water use 50% over a baseline case using a conventional irrigation system.

Given the complexity of the requirements and the demands of the site, we propose the condition state rather than "All plants shall be low water use plants as identified by California Department of Water Resources (Wucols)" that "Final landscape Plans endeavor to use a majority of low and low to medium water use plants, and that the final landscape plans be reviewed and approved by the Coastal Commission staff".

17. **Construction Responsibilities During Waterside Work** - Agree to Condition

18. **Construction Responsibilities During Dredging** - Agree to Condition

19. **Final Clean Marina Program** - Agree to Condition

20. **Marina Park-Marina And Marine Uses Document** - Agree to Condition

If you have any questions, please do not hesitate to contact us.

Sincerely,



Christopher M. Deleau, JD, AICP
Special Projects Manager
Schmitz & Associates, Inc.

Conejo Office
5234 Chesebro Road, Suite 200
Agoura Hills, CA 91301
818-338-3636
818-338-3423 fax

COASTAL COMMISSION

EXHIBIT # 7
PAGE 11 OF 12

Malibu Office

29350 Pacific Coast Hwy, Suite 12

Malibu, CA 90265

310-589-0773

310-589-0353 fax

www.schmitzandassociates.com

Enclosure

Cc: Dave Webb, Deputy Public Works Director, CNB
Iris Lee, Senior Civil Engineer, CNB
Mark Reader, Project Manager, CNB
Dan Herman, Principal, RHdo
Kim Garvey, Engineer, Moffatt Nichol

COASTAL COMMISSION

EXHIBIT # A

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June 1, 2012

California Coastal Commission
South Coast District Office
Gary Timm, District Manager
200 Oceangate, 10th Floor
Long Beach, Ca. 90802

RECEIVED
South Coast Region

JUN 5 2012

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Gary Timm,

I am Mary Jane Veirs, a mother of five kids and three grand children, also one of 58 low income family residents of Marina Park Mobile Homes in Newport Beach. I am pleading with the California Coastal Commission to please look at our low income housing that the Newport Beach City Council wants to throw us out of. Our Marina Park of mobile homes has been in Newport Beach for over 50 years. With the recession now, families are especially struggling. All summer long people use the public beach, along with several wild ducks that migrate to it. One of our residents actually feeds a whole family from her front porch daily. I have been involved with Marina Park since I was a child. Marina Park is the longest and only last 3 blocks of public beach on the bay of Newport Beach that doesn't have docks in front of it. We were told that the City Council wants to park large enormous size yachts in slips where our beach is now. We have children summer day camps all summer long use the public beach, along with boaters that stop to play with their family and dogs there.

There are also World War I and II veterans that live here, that have served their life for their country. The city of Newport Beach gets approximately one million dollars a year in rent from us residents. With the city of Newport Beach severely in debt, the Newport Beach City Council is not working for the people, but for greedy land developers that want to destroy our coastline and profit themselves and who knows what else.

I am please asking for you and the California Coastal Commission to visit us senior citizen residents living here and find out the real truth. Please walk down our public sidewalk that is used for bicyclists, joggers, and walkers. We have people tell us that they did not know that we were even living here. The Newport Beach City Council doesn't want the people of Newport Beach to know about our three block section of public bay front beach here right in front of us.

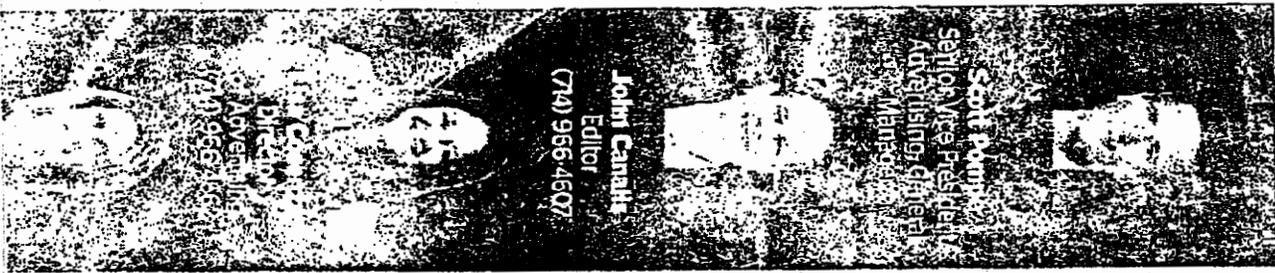
Sincerely,

Mary Jane Veirs

(957-818-9698)

COASTAL COMMISSION

EXHIBIT # B
PAGE 1 OF 2



Scott Paine
Sello, Vice President
Advertising, General
Manager

John Canella
Editor

(714) 966-4607

Not only is this commendable, it's also something of a shock for those of us used to the city's old website, which made it hard to access key public documents. Many of those documents were online but were poorly organized or hard to find.

But the new website tools make looking at detailed compensation reports, budgets, permits and other

documents easier. We're glad that the folks at City Hall did something to make it easier to find. It makes our jobs as journalists easier, but more importantly it makes it easier for residents to find out how government is spending their money.

"Costa Mesa going from an F to

an A-plus website transparency grade is a real transformation," Kristin McMurray, managing editor of the Sunshine Review, said in a press release. "It's what all citizens should expect of their local government, and Costa Mesa went above and beyond by creating their local salary database."

Several people deserve credit for the revamp, but from what we understand city Chief Executive Tom Hatch spearheaded the effort to, as they say in the newspaper business, let the sun shine in. We hope every city in Orange County follows their lead. It's still pretty dark out there.

DAILY PILOT NEWS

Marina Park not what you think

(ARTICLE SEP. 2011)

COASTAL COMMISSION

I am offering a rebuttal to the Community Commentary article written by Dr. Patricia Frostholtz ("Action needed on making park public" Aug. 11). She has quite a few misconceptions about Marina Park and its residents.

Frostholtz obviously does not observe the three-block section of sand during the day. Monday through Friday, the beach is used extensively by day camps and sailing programs. I know, because I live smack in the middle of the spot of beach in one of the "beaches" as she calls them. Sometimes, I'm grateful when these many groups of children leave, as they are loud when they frolic,

while taking a break from kayaking or sailing, but I'm a gratefully senior citizen on a fixed income, not a rich multi-home resident, as she seems to think we all are.

I am one of many older residents here who are indeed grateful to be living in hard-to-find low income housing, noise and all, even though the city is our landlord and will not fix anything, except exterior issues, such as the watering or electrical systems. Also, there are quite a few families with small children who live here full-time. I suggest she take a walk along the public sidewalk sometime and talk to more than one resident. She will also observe how many bicyclists,

joggers, walkers and visitors use the public sidewalk.

She also must not know that the city-owned beach in front of us is the only stretch of beach not impeded by docks in Newport Bay. But in order for the city to someday generate more revenue (although what they are planning is costing many millions), they plan to dredge back several hundred feet to allow for docks for guests that have large yachts. Of course, they must demolish Marina Park in order to accomplish their goal. The demolition is also costing a lot of money and involves many environmental issues. She is under the misconception that this piece

will be a park. Forget it, just more docks!

Also she is incorrect in stating that it says "private property" near the sidewalk and beach. Every 30 yards or so along the sidewalk there are signs stating "public access." The only place it says "private property" is the parking lot for the residents. Obviously, it must be private or we would never be able to park near our condos because the lot would be full of beachgoers.

So she should enjoy this public park while she can because like so many things that seem so nice, it will soon be gone forever.

Karen Whittaker
Manager Board



Pier @ Pier



RECEIVED
South Coast Region

JUN 07 2012

CALIFORNIA
COASTAL COMMISSION

Central Newport Beach Community Association
PO Box 884 • Newport Beach, CA • 92661-0884
www.CentralNewport.Org

Date: June 5, 2012

TRANSMITTED VIA USPS & E-MAIL

To: California Coastal Commissioners

From: Central Newport Beach Community Association (CNBCA)

Subject: Application No. 5-10-229, City of Newport Beach Bayfront Public Park & Marina

The Central Newport Beach Community Association would like to take this opportunity to provide comments on the City of Newport Beach's Coastal Development Permit application for the Marina Park project. As one of the oldest community associations in the City of Newport Beach, our community association represents hundreds of member households and businesses surrounding this site on the Balboa Peninsula. Our members have closely participated in efforts over the last five (5) decades to re-develop the Marina Park site into a recreational asset for the community, city, and county.

In the case of the currently proposed Marina Park project, our Board of Directors and hundreds of member households and businesses that surround the site wholeheartedly support the project.

With the help of another local organization, Protect Our Parks (POP), nearly eight (8) years ago our association mounted a grass-roots effort to conduct an outreach campaign to local residents and potential stakeholders. We surveyed the needs, retained a world-class landscape architect to design several early iterations of the park, and then passed the concept to the City of Newport Beach. Thousands of volunteer hours have been devoted to this project.

Under the stewardship of several mayors and many council members, the sailing center, community center, and visiting vessel marina designs were refined by dedicated city staff, talented architects, and volunteers with world-class expertise in harbor and marina design. The CNBCA Board of Directors and member households and businesses could not be more pleased with the current park design.

We encourage each of the Commissioners to thoughtfully review the application and act as expeditiously as possible to approve the project and issue a Coastal Development Permit.

Thank you for the opportunity to comment.

Central Newport Beach Community Association Board of Directors
Louise Funderberg, President

cc: City of Newport Beach Council Members
City of Newport Beach Manager

COASTAL COMMISSION

EXHIBIT # C
PAGE 1 OF 1

JUN 08 2012

CALIFORNIA
COASTAL COMMISSION

James and Toni Niemiec
1611 W. Balboa Blvd.
Newport Beach, CA 92663

California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

May 31, 2012

SUBJECT: Permit Number: 5-10-229

To the attention of all Commissioners and Alternates,

We have many serious concerns about the planned new public marina for the 10.45 acres of land that is located on the property location of 1600 W. Balboa Blvd.

Having been a resident of our beach cottage since 1941 (yes that many years) we have enjoyed a very quiet life style with very few problems other than weekend traffic during the summer season.

OUR CONCERNS ARE THE FOLLOWING:

OF MAJOR CONCERN - NOISE, TOO MUCH TRAFFIC, CRIME AND THE RELATED DEVALUATION OF HOME AND THE LACK OF PRIVACY WHICH ALL OF US HAVE ENJOYED FOR SO MANY, MANY YEARS! LIVING ACROSS THE STREET FROM A PUBLIC PARK WILL UNDOUBTLY MAKE A DRASTIC CHANGE IN THE NEIGHBORHOOD AND NOT FOR THE BETTER!

Other major concerns:

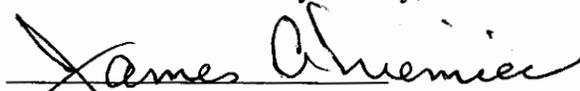
1. LACK OF VIEW OF THE BAY
2. THE PARKING STRUCTURE
3. GREATLY INCREASED NOISE LEVEL
4. ESTHETIC BEAUTY OF THE AREA
5. PROPOSED PARK WOULD LIKELY ATTRACT LARGE GROUPS
6. INCREASED CRIME IN THE AREA
7. TRASH
8. ELEGAL STREET CROSSING
9. POLICING PROBLEMS
10. POLLUTION
11. DIRTY STREETS AND CURBS
12. OVER FLOWING TRASH CONTAINERS ATTRACTING MORE FLIES AND FILLING THE PERSTINE AIR WITH GERMS FROM A VARIETY OF SOURCES
11. ELEGAL USE OF THE AREA

COASTAL COMMISSION

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PAGE 1 OF 2

12. LOITERING
13. ATTRACTING HOMELESS (IE. Newport Pier area)
14. LACK OF POLICING FOR ELEGAL ACITIVITIES (IE. City of Newport Beach doesn't even police the boardwalk for skate boards and other motorized vehicles and that restriction has been in place for a number of years!)
15. INCREASED TRAFFIC FOR THE ENTIRE PENNINSULA
16. THE EXCAVATION OF DRY LAND (SAND) TOTALING 68,000 CUBIS YARDS, COULD HAVE AN ADVERSE AFFECT ON ADJOINING PROPERTIES EVEN ACROSS BALBOA BLVD.
17. THE CONSTRUCTION OF A 35-FOOT TALL MULTI-PURPOSE ROOM WOULD BE AN EYE SORE.
18. ROUTING OF TRAFFIC CREATING NUMEROUS PROBLEMS.
19. ANY KIND OF BBQ'S OR OTHER PERMITTED OR UNPERMITTED FIRES WOULD ADD POLLUTION TO OUR PRESTINE WEATHER
20. LIVE ON BOATERS AND RELATED PROBLEMS WITH THEIR TRASH DISPOSAL SEWAGE INTO THE BAY (IE. TAP WATER, MAINTANENCE OF BOAT AND WIND BLOWN TRASH
21. QUESTION THE NEED FOR A 200-FOOT DOCK. THE PUBLIC DOCK AT 15TH STREET IS ADEQUATE, ALONG WITH THE PUMP OUT STATION
22. CONCERN FOR SAFETY OF ALL PROPERTY OWNERS, WITH OUT OF CITY GANGS BE DRAWN TO THE NEW PARK
23. CONCERN FOR PUBLIC SAFETY
24. IMPACT ON SANDY BEACH WHICH IS ABOUT AS PRISTINE AS ANY IN NEWPORT BAY
24. ADDED COST OF LIFE GUARDS AND OTHER PATROL OFFICERS
25. REDUCED VALUE OF MY HOME AS A DIRECT RESULT OF THE PROPOSED BAYFRONT PUBLIC PARK NOT KEEPING ENVIRONMENTALS CONCERNS AND ISSUES THAT WOULD ADVERSELY AFFECT LOCAL RESIDENTS

Submitted this 31st Day of May, 2012.


James A. Niemiec


Toni L. Niemiec

COASTAL COMMISSION

EXHIBIT # D
PAGE 2 OF 2

RECEIVED
South Coast Region

JUN 11 2012

CALIFORNIA
COASTAL COMMISSION

June 11, 2012

California Coastal Commission
South Coast District Office
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416
(562) 590-5071
FAX (562) 590-5084

Attention: Sherilyn Sarb, Deputy Director
Teresa Henry, District Manager

Reference: **Application No.: 5-10-229; City of Newport Beach Marina Park Project**

Ms. Sarb and Ms. Henry:

Thank you for the opportunity to discuss my thoughts on the above referenced project.

I am concerned that the type of dock system proposed has not been established on this project. I have found that marinas utilizing rotomolded plastic flotation tubs used in timber dock systems are not the best product for our coastal environment. I would expect that the Coastal Commission and City of Newport Beach would have no problem specifying that they plan to use concrete floating docks for this project for multiple reasons.

- Timber docks typically last approximately 30 years, while concrete docks are exceeding 50 years. Based simply on the life cycle cost of the concrete versus wood dock systems – almost all projects (especially municipal) today are being constructed with a concrete dock product, simply because of the economic and life cycle costs. All of Marina del Rey, and the City of Long Beach have been specifying concrete docks in recent Coastal Commission reports for their longevity which is significantly better for the environment.
- Concrete docks do not use plastic in the marine environment for flotation. Over the years, there is possible deterioration and subsequent increase in marina debris due to cracking, peeling and sloughing. Plastic is an inorganic material that can adversely affect the marine environment.
- Concrete docks weigh more than timber docks, so therefore have a deeper draft (distance in the water). This provides a greater surface area for marine organisms to adhere and grow on the bottom of concrete docks. Check it out the next time you look at a dock system. Concrete docks have much more growth on the docks compared to plastic tubs in the water for timber docks. Marine organisms cannot adhere to plastic as well as concrete.
- Concrete docks require less guide pile than timber docks. Guide pile driven into the bay bottom disturbs marine life that may be present. The less pile in a given dock system is better for the environment.
- Timber dock systems generally have higher maintenance costs than concrete docks. Timber docks typically have numerous bolts, screws, and nails that fasten the docks together. After completion, you cannot visually inspect or maintain all of the components without disassembling

COASTAL COMMISSION

Received Jun-11-12 10:57am

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To-California Coastal

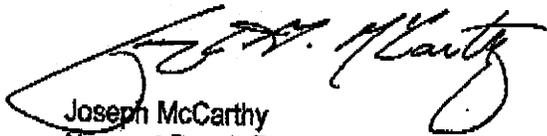
Page 001

portions of the timber dock. In contrast, with concrete docks, you have through-rods that attach the timber stringers/walers on the edges of the dock to the concrete floats, which are easy to inspect, occasionally tighten, and, if necessary, replace. Lastly, in regards to longevity, concrete dock systems outperform timber dock systems as well.

- When evaluating the performance of concrete and wood docks, concrete tends to provide a significantly more stable platform with much higher allowable live loads on the dock. This is particularly useful if a large number of people might be expected on the dock. Because of the greater stability inherent in the concrete dock design, concrete docks are also less prone to listing when subjected to eccentric loads.

Concrete docks have been specified in Marina del Rey, Long Beach, and other recent harbor projects due to these reasons, and I see no reason why this shouldn't continue at Marina Park in the City of Newport Beach. I would recommend that this be set forth as a condition of this permit.

Sincerely,


Joseph McCarthy
Newport Beach Resident & Concerned Boater

COASTAL COMMISSION

EXHIBIT # E

PAGE 2 OF 2

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W 11a

Filed: January 11, 2012
180th Day: July 9, 2012
Staff: F. Sy-LB
Staff Report: June 1, 2012
Hearing Date: June 13-15, 2012

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-10-229

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Attn: Chris Deleau, Special Projects Manager

Project Location: 1600 West Balboa Boulevard, Newport Beach (County of Orange)

Project Description: Construct new bayfront public park with new public marina on 10.45 acres of land, including removal of mobile home park, various community buildings and recreational facilities, and construction of 23,832 sq.ft., 35-ft. high multi-purpose and sailing program building with 71-ft. high architectural design feature representing a lighthouse (non-functioning); 5,500 sq.ft. Girl Scout building; 157-space public parking area; public park amenities including new restroom with 34-ft. high lighthouse (non-functioning); and new public marina (including bulkhead and groin) consisting of 23 slips and 200-ft. long side tie area, to be partly excavated from dry land (total 68,000 cu.yds.); and tentative parcel map to combine 35 lots into 4 lots

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach proposes the Marina Park project. The primary issues before the Commission are the project's consistency with the public access, lower-cost visitor and recreation, hazards, marine resource, water quality, biological resource, and scenic resource policies of the Coastal Act. The proposed project raises a number of Coastal Act concerns that are analyzed in the staff report. The height of the proposed 71-foot high lighthouse tower (non-

functioning) has raised issues regarding consistency with the certified LUP and impacts to public views and community character. The certified LUP contains a 35 foot height limit, and most, if not all, buildings in the area comply. The proposed lighthouse tower is more than double the height limit. Therefore, approval of the 71-foot high lighthouse would be inconsistent with community character, would set an adverse precedent for development in the area and would prejudice the City's ability to prepare a certifiable LCP. Impacts to water quality due to the projects have raised concerns. There are biological resource concerns resulting from sediment disposal, eelgrass, *Caulerpa taxifolia*, bird strikes and grunions which are addressed in the conditions of approval.

Staff recommends that the Commission **APPROVE** the proposed projects subject to **TWENTY (20) SPECIAL CONDITIONS**. The **SPECIAL CONDITIONS** require: **1)** submittal of Revised Final Project Plans showing: a) the proposed 71-foot lighthouse shall be reduced in height and shall be no higher than the allowed maximum height of 35-feet; b) any proposed glass railings will be replaced with frosted or etched glass screens or will be replaced with a different type of material (i.e. metal fence, etc) to minimize bird-strike hazards; 3) as proposed, removal of the two tennis courts from the lawn area adjacent to the American Legion building; 4) plans for the conversion of two (2) existing mobile homes into converted office space for construction contractors during construction and then into space for recreation and park maintenance staff post project; and 5) mechanical water circulation devices (e.g. Oloids) will be included as part of the proposed development to circulate water in the proposed marina; **2)** submittal of a Final Dredging Disposal Plan; **3)** submittal of a Final Parking Management Plan; **4)** additional approvals for any future development; **5)** timing construction limitation; **6)** submittal of a Construction Staging Plan; **7)** submittal of a Traffic Control Plan; **8)** conformance to the Geotechnical/Coastal Engineering Reports; **9)** an Assumption of Risk agreement; **10)** pre- and post-construction eelgrass surveys; **11)** a pre-commencement of construction *Caulerpa Taxifolia* survey; **12)** adherence to Construction Best Management Practices; **13)** debris disposal site to be located outside of Coastal Zone; **14)** submittal of a Storm Water Pollution Prevention Plan (SWPPP); **15)** submittal of a Final Water Quality Management Plan (WQMP); **16)** submittal of Revised Landscape Plan that will provide and protect public views of the bay through the site from West Balboa Boulevard, including views provided at the 16th and 17th Street, street ends; **17)** conformance with responsibilities (BMP's) during waterside work; **18)** conformance with construction responsibilities (BMP's) during dredging; **19)** submittal of a Final Clean Marina Program; and **20)** the City to conform with the "*Marina Park-Marina & Marine Uses*" document.

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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APPENDICES

Appendix 1 – Substantive File Documents

Appendix 2 – The Three (3) Phases of the Proposed Marina Park Project and Expanded
Description of the Project Elements

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Plans

Exhibit 3 – Hardscape/Floor Plans

Exhibit 4 – Elevation Plans

Exhibit 5 – Dredging Plans

Exhibit 6 – Visual Simulations

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-10-229 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, 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 will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. REVISED FINAL PROJECT PLAN

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 a Revised Final Project Plan, including floor, elevation, grading, foundation, etc. The Revised Final Project Plan shall be in substantial conformance with the plans received by South Coast District staff on October 7, 2010, September 27, 2011 and December 22, 2011, except they shall be modified as follows: 1) the proposed 71-foot high lighthouse-shaped architectural feature that is part of the proposed Balboa Center Complex shall be reduced in height and shall be no higher than the allowed maximum height of 35-feet or eliminated from the plan; 2) to minimize bird-strike hazards, any proposed glass railings will be replaced with frosted or etched glass screens or will be replaced with a different type of material (i.e. metal fence, etc); 3) as proposed, remove two tennis courts from the lawn area adjacent to the American Legion building; 4) provide plans for the conversion of two (2) existing mobile homes into converted office space for construction contractors during construction and then into space for recreation and park maintenance staff post project; and 5) mechanical water circulation devices (e.g. Oloids) will be included as part of the proposed development to circulate water in the proposed marina.

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.

2. FINAL DREDGING PLANS

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,

the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Dredging Plan. The Final Dredging Plan shall be in substantial conformance with the Dredging Plan submitted with the project application received by Commission staff on October 7, 2010, except it shall be modified as follows: 1) identification of the final dredge deposit/beach nourishment locations from the identified five (5) potential locations; 2) identification of the quantity of dredge deposit/beach nourishment material to be placed at each dredge deposit/beach nourishment location; 3) identification of the method of dredge deposit/beach nourishment at each locations; 4) the duration of the dredge deposit/beach nourishment activity; 5) require that any dredge deposit/beach nourishment location be a minimum 15-feet away from any

eelgrass beds; and 6) require that any dredge deposit/beach nourishment activity must avoid sensitive aquatic or terrestrial habitat.

- 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. **PARKING MANAGEMENT PLAN**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Parking Management Plan. The Final Parking Management Plan shall be in substantial conformance with the *Parking Management Plan* received September 21, 2011, except it shall be modified as follows: .1) provide a more specific description of the “*various parking management-alternatives*” to operate the Main Parking Lot that the applicant has proposed; 2) identify that the minimum length of parking time duration of the proposed parking meters is 6 hours; 3) document that the fees charged by the City for the proposed parking meters shall be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula); 4) provide that parking available on site shall be predominantly first come, first serve; and 5) clarify that the “*parking control system*” for the Main Parking Lot currently does not include gating the parking lot and that gating the parking lot cannot occur without a Coastal Development Permit.
- 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.

4. **FUTURE DEVELOPMENT**

This permit is only for the development described in Coastal Development Permit No. 5-10-229. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-10-229. Accordingly, any future improvements to the Marina Park facilities authorized by this permit, including repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-10-229 from the Commission or shall require a separate Coastal Development Permit from the Commission.

5. **TIMING OF CONSTRUCTION**

By acceptance of this permit, the applicant agrees to minimize adverse impacts to the beach adjacent to the project site as well as at the beach nourishment locations pursuant to Coastal Development Permit No. 5-10-229, as required below:

No construction or deposit (beach nourishment) shall occur on the beach between February and the day after the Labor Day weekend, to include: 1) the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year; 2) the bird nesting season, defined as February through August; and 3) the grunion spawning season, defined as March through August

6. CONSTRUCTION STAGING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Construction Staging Plan, which indicates that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the sandy public beach.

- (1) The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;
 - (b) Construction equipment, materials, or activity shall not be placed on the sandy beach outside of the immediate construction zone;
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary; and
 - (d) The construction access route will only be intermittently closed for transport of equipment and materials. When not in use for transportation of equipment and materials, it will be made available for undisrupted public access.
- (2) The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - 1. limits of the staging area(s);
 - 2. construction corridor(s);
 - 3. construction site; and
 - 4. location of construction fencing and temporary job trailers with respect to the existing parking lot, day use area and the sandy beach.

- 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.

7. TRAFFIC CONTROL PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Traffic Control Plan that demonstrate the following:

- (1) Every effort shall be made to minimize the duration of sidewalk, bike and road lane closures so that impacts upon public access are minimized;
- (2) The sidewalk, bike and road lanes should be opened, even intermittently, whenever possible during construction; and
- (3) A detour plan to re-route pedestrian and bicycle traffic shall be identified for those periods when the sidewalk and/or bicycle lane is closed within the project area.

- 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.

8. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO COASTAL ENGINEERING STUDY AND GEOTECHNICAL REPORT

- A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the following coastal engineering and geotechnical reports: *Geotechnical Investigation, Marina Park, Newport Beach, California (Project No. 2573)* prepared by TerraCoasta Consulting Group, Inc. dated August 7, 2008; and *Marina Park Coastal Engineering Study* prepared by URS/Cash & Associates dated October 2008.

- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced coastal engineering and geologic evaluation approved by the California Coastal Commission for the project site.

- C. 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. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from sea level rise, erosion, flooding, and/or wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. Prior to any conveyance of the property that is the subject of this coastal development permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (A) of this condition. The restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

10. PRE-CONSTRUCTION EELGRASS SURVEY

- A. **PRE-CONSTRUCTION EELGRASS SURVEY.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the "*Southern California Eelgrass Mitigation Policy*" Revision 8 (except as modified by this special

condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.

- B. POST CONSTRUCTION EELGRASS SURVEY.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “*Southern California Eelgrass Mitigation Policy*” Revision 8 (SCEMP) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.

11. PRE-CONSTRUCTION CAULERPA TAXIFOLIA SURVEY

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “*project*”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa taxifolia* survey expires, a new survey is required prior to commencement of work in that area.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval by the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

12. 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. BMP's 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 (BMP's) 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 BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The permittee 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 permittee shall develop and implement spill prevention and control measures;
- (3) The permittee 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 storm drain, open ditch or surface water; and
- (4) The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

13. LOCATION OF DEBRIS DISPOSAL SITE

The permittee shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the Coastal Zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place.

14. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Storm Water Pollution Prevention Plan (SWPPP) prepared and signed by licensed engineer that, at a minimum, meets the following:

The Storm Water Pollution Prevention Plan must show that permittee is properly prepared to apply site design, source control and treatment control BMP's, appropriate for the potential stormwater pollutants at this site, in order to protect coastal waters from polluted runoff generated by construction activities to the maximum extent practicable.

- 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.

15. FINAL WATER QUALITY MANGEMENT PLAN (WQMP)

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared and signed by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall be in substantial conformance with the *Preliminary Water Quality Management Plan (WQMP) (JN: 1001.01.01)* prepared by City of Newport Beach Public Works Department dated October 17, 2008 (Revised September 13, 2010). The WQMP shall incorporate structural and non-structural Best Management Practices (BMP's) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
- (1) Appropriate structural and non-structural BMP's (site design, source control and treatment control) shall be designed and implemented to minimize water quality impacts to surrounding coastal waters;
 - (2) Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
 - (3) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized;
 - (4) 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;
 - (5) All runoff from the vehicle wash station shall be collected through the proposed wash rack and sand/oil separator and discharged only through the sewer system;
 - (6) Runoff from all roofs, walkways, driveway and parking areas shall be collected and directed through a system of structural BMP's including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMP's shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants (including trash, debris and vehicular fluids) 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 BMP's (or suites of BMP's) 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 BMP's, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMP's;
- (8) All BMP's shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMP's shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season;
- (9) Debris and other water pollutants removed from structural BMP's during clean-out shall be contained and disposed of in a proper manner; and
- (10) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMP's 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.

16. REVISED LANDSCAPING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Revised Landscape Plan, prepared by a licensed landscape architect that includes 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) Proposed landscaping shall not adversely impact public views of the beach and bay provided through the site from West Balboa Boulevard, including those views provided at the 16th Street and 17th Street, street ends.. All landscaping within the view corridor to the beach and bay shall be comprised of plant species that, at maximum growth (width/height), do not reduce, obstruct, or in any way interfere with, public views. The required Revised Landscape Plan shall provide information regarding the maximum height and width of the proposed landscaping vegetation. Landscaping shall be trimmed/maintained such that impacts upon public views are avoided. Once planted, if the Executive Director determines that any landscaping within the view corridor to the beach and ocean is causing an impact upon public views, the applicant shall modify or replace such landscaping with different plant species that meet the requirements of this special condition, as directed by the Executive Director;
- (c) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage; and
- (d) 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;

(2) The plan shall include, at a minimum, the following components:

- (a) Two (2) full size copies of 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.

17. CONSTRUCTION RESPONSIBILITIES DURING WATERSIDE WORK

The permittee shall comply with the following construction related requirements:

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- K.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;

- L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- M. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- O. Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- P. All BMP's shall be maintained in a functional condition throughout the duration of construction activity.

18. CONSTRUCTION RESPONSIBILITIES DURING DREDGING

Dredging activities authorized under this Coastal Development Permit shall comply with the following construction-related requirements:

- A. No construction materials, debris, waste, oil or liquid chemicals shall be placed or stored where it may be subject to wave erosion and dispersion, stormwater, or where it may contribute to or come into contact with nuisance flow;
- B. If turbid conditions are generated during construction, a silt curtain shall be utilized to minimize and control turbidity to the maximum extent practicable. In addition, Best Management Practices (BMP's) that will further reduce the impact of turbidity include using appropriate machinery when dredging and transporting materials, and employing proper maintenance and operation on equipment (including adequate training, staffing and working procedures). Turbidity monitoring should be conducted during dredging operations to insure compliance with standards set forth by the Regional Water Quality Control Board (RWQCB);
- C. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.

- D. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- E. Dredge equipment shall be used that is designed to minimize the generation of turbid conditions in the dredge area and to avoid dispersal of contaminated sediments from the dredge area to the maximum extent practicable;
- F. The dredging contractor shall be required as part of the dredging contract to ensure that dredging activities shall be conducted so as not to disturb sensitive biological habitats and resources in Newport Bay;
- G. No vessel discharge in the harbor or any receiving waters shall be prohibited;
- H. Dredging and spoils disposal must be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation; and
- I. Should ocean disposal be required for the project, project operations will require that the scow doors used to release dredged material remain closed until the scows are towed to the disposal site.

19. FINAL CLEAN MARINA PROGRAM

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Clean Marina Program for the post-construction project site, prepared and signed by a licensed water quality professional, and shall include plans and descriptions. The WQMP shall be in substantial conformance with the *Clean Marina Program for The Marina Park Project* prepared by the City of Newport Beach dated December 9, 2012, except it shall be finalized and modified to include the following:
 - (1) An Emergency Response Manual to address uses such as fire response and oil spill response;
 - 2) A fuel and oil spill prevention containment plan;
 - 3) Educational materials will be provided to visiting boaters regarding how the use of solvents, paints and varnishes for in-slope boat maintenance can contribute to pollution entering the water. The Rules and Regulations of the marina will specify the types of minor repair projects which are allowed while the visitors are berthed at the slip;
 - (4) Visitors of the marina will be allowed to clean their hulls by selecting a pre-qualified vendor from the City's list of certified cleaners who demonstrate knowledge of Best Management practices as it relates to boat hull cleaning and recommended by such associations as the Professional

Divers Association of California. These vendors will also demonstrate knowledge of detecting aquatic invasive species;

- (5) Materials, supplies, vehicles and equipment needed by the City to provide maintenance of the marina will be stored indoors at a designated area within the proposed Sailing Center building since storage outdoor can lead to exposure to rain and can produce runoff resulting in water pollution. Marina visitors will be given a copy of the Emergency Procedures and Rules and Regulations of the marina which address the issues outlined in the Clean Marina Score Sheets. Trash bins will be provided in the parking lot and the parking lot is designed such that runoff from the parking lot will not enter the bay and will be filtered through permeable paving and bio-swales on-site;
- (6) Waste shall be managed in designated areas that are covered and designed to limit runoff to the storm water conveyance system;
- (7) Boat sewage discharge procedures will be included in the Rules and Regulations given to visiting boaters;
- (8) Solid waste, liquid waste and hazardous materials proper disposal will be discussed in the Emergencies, Procedures and Maintenance sections of this manual; and
- (9) The Marina Park project will have a Water Quality Management Plan (WQMP).
- (10) Boat Cleaning and Maintenance Measures:
 - (a) In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - (b) In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
 - (c) The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
- (11) Solid and Liquid Waste Management Measures:
 - (a) All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze,

waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

(12) Petroleum Control Management Measures:

- (a) Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- (b) If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
- (c) Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

- 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.

20. MARINA PARK-MARINA AND MARINE USES DOCUMENT

The permittee shall conform with the “*Marina Park-Marina & Marine Uses*” prepared by the City of Newport Beach received by Commission staff on April 11, 2012. Any proposed changes to the approved plan for public use of the marina shall be reported to the Executive Director. No changes to the approved plan for public use of the marina shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION AND OTHER AGENCY REVIEW

1. PROJECT LOCATION

The project site is located on the Balboa Peninsula in the City of Newport Beach on approximately 10.45 acres of land that is located between Balboa Boulevard on the south, sandy beach area and Newport Bay (Lower) on the north, 15th Street on the east and 19th Street on the west (Exhibit #1). The site is designated PR for Parks and Recreation according to the City's Certified Coastal Land Use Plan (LUP). The General Plan (uncertified) Designation is PR (Park & Recreation) & PF (Public Facility), and the Zoning (uncertified) Designation is PC (Planned Community) & GEIF (General Education Institution Facility). The project site also includes the sandy beach area and Newport Bay (Lower) north of the project site.

The project site currently contains the Marina Park Mobile Home Park (with fifty-seven (57) Mobile homes and fifteen (15) full time residents), a public beach, the Las Arenas park; the 4,710 square foot Balboa Community Center; the 3,900 square foot Girl Scouts House; four (4) tennis courts; a half basketball court, public parking lots and the 19th Street public restroom (Exhibit #1).

The Marina Park Mobile Home Park is approximately 50 years old and is an existing non-conforming use under the current PR land use designation in the City's Certified LUP. Lands designated with the PR designation are intended for active public or passive public recreational use. Permitted uses include the following: parks (active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar activities.

The northerly side of the project site is a ¼ mile long, about 75 foot wide public beach that fronts Newport Bay and occupies the entire waterfront of the project site from American Legion Post 291 on the east to 19th Street on the west, and includes public restrooms at the west end. Currently, the beach may be accessed at the terminus of 18th Street and 19th Street along the water's edge.

2. PROJECT DESCRIPTION

The City of Newport Beach states that the basic purpose of the project is to enhance recreational and community facilities on the Balboa Peninsula. To achieve that purpose, the City of Newport Beach has established five (5) basic objectives:

- 1) Redevelop the site with land uses that are consistent with, and permitted by, the legal restrictions on the use of tidelands;

- 2) Enhance public access and community facilities on the site;
- 3) Complement efforts to revitalize Balboa Village and enhance other commercial areas on the peninsula;
- 4) Provide community facilities to meet the goals of the General Plan for recreation and harbors and beaches; and
- 5) Provide for additional marine-related facilities that can be used by coastal visitors for sailing and boating.

As such, the project has been designed with those concepts in mind.

The proposed project includes removal of the existing structures on site, as described above, and the construction will include: a 11,048 square foot, 35-foot high Multi-Purpose Building and a 12,784 square foot, 35-foot high Sailing Program Building that also includes a 71-foot high architectural feature representing a lighthouse (non-functioning) (which together comprise the 23,832 square foot Balboa Center Complex); a new 5,500 square foot 21-foot high Girl Scout building; expanded public parking areas providing a total of 157 parking spaces and lighted public access ways both to and along the beachfront as well as throughout the property; an expanded public park with two (2) basketball half-courts, landscaping, a public restroom, a children's play area with a new restroom facility that appears as a 34-foot high lighthouse (non-functioning); a new restroom at the 19th Street end of the beach to replace the existing facility; demolition of an existing groin (approximately 170-feet west of the existing groin) and dredging out a portion of the dry beach and construction of a new bulkhead to construct a new public marina consisting of 23 slips (21 slips for boats up to 40-feet in length and 2 slips for boats up to 57-feet in length) and 200-foot long side tie area to accommodate short-term visits by recreational vessels and sailing center docks and boats. Approximately 68,000 cubic yards of total excavation/dredging will be required in order to construct the project. 2.71 acres of the project site will be dredged (53,000 cubic yards of sand/sediment will be redeposited off-site while 15,000 cubic yards of fill will be deposited on-site. Furthermore, a Tentative Parcel Map to combine thirty-five (35) lots into three (3) lots is proposed (Exhibit #2-6).

The City has stated that the project has been divided into three (3) phases that can be individually implemented. A description of these three (3) phases can be found in Appendix 2. Additionally, an expanded description of the project elements can also be found in Appendix 2.

Since submittal of the proposed project, elements of the project have changed, such as removal of the two (2) proposed tennis courts, and revised plans have been submitted. Additionally, plans have not been submitted for the conversion of two (2) existing mobile homes into converted into office space for construction contractors during construction and then into space for recreation and park maintenance staff post project. Thus, in order to verify that the submitted plans contain all the current and correct elements of the project, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Final Project Plan.

3. OTHER AGENCY REVIEW

a) State Lands Commission (SLC)

The subject site includes tidelands subject to the Public Trust doctrine. Initially the SLC and the City of Newport Beach had a disagreement regarding the boundary line separating the tidelands and uplands owned by the City on the Marina Park project site. Since then, the Commission has been notified in a letter from the SLC dated November 30, 2011 that the City of Newport Beach and the SLC have finalized a Title Settlement and Land Exchange for the Marina Project which established an agreed boundary between State tidelands and City owned lands on the project site. The SLC formally approved the agreement at its September 1, 2011 SLC meeting and the agreement has been executed by the City and the SLC. Through this agreement, the following will be located on City owned uplands and outside of the tidelands: the proposed Balboa Center Complex, Girl Scout Building, basketball courts and the existing tennis courts (not part of the project). The other uses, to be located on tidelands, were found by SLC to be consistent with the public trust doctrine.

b) California Department of Fish & Game (CDFG)

In an email from the CDFG) dated August 13, 2010, the CDFG expressed two concerns and thus proposed two (2) recommendations regarding construction activities taking place during grunion spawning and the mitigation and monitoring plans for the loss of intertidal related to the project impacts.

c) National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS)

In a letter from the NOAA/NMFS dated May 4, 2011 to the U.S. Army Corps of Engineers (USACOE), NOAA/NMFS expressed their concerns with the proposed project. The letter discussed three (3) main concerns. The first concern deals with the City's proposed compensation for the loss of 0.66 acres of intertidal area, which will be mitigated though the conversion of 0.9 acres of non-aquatic, upland area (sandy beach) into subtidal area. NOAA/NMFS does not believe that this was an appropriate means of compensation for the loss of intertidal bay area: *"Although there will be a net increase in subtidal habitat, this newly created habitat will be subject to effects from overwater structures, vessel use and maintenance, poor circulation, and associated infrastructure. Therefore, the habitat created will have limited functional value. Furthermore, intertidal bay habitat provides unique ecological functions that are not completely offset by creation of subtidal habitat."* Because of its value, NOAA/NMFS believes that the intertidal area should be conserved. To deal with the loss of the intertidal area, NOAA/NMFS recommends that the City should develop an appropriate compensatory mitigation plan prior to construction for the loss of intertidal area. The City, ultimately, did not prepare such a plan because the USACOE found the proposed sub-tidal area to be created to be adequate mitigation. NOAA/NMFS second concern deals with the potential placement of dredged materials on China Cove Beach. NOAA/NMFS believes that this site has an abundance of high quality marine resources (i.e. diverse assemblage of organisms on adjacent rock outcroppings and eelgrass beds offshore of China Cove).

NOAA/NMFS recommends that dredged materials should not be placed at this site. The third and last concern they had deals with impacts to grunion during construction. In order to avoid any impacts to grunion the City has proposed that placement of dredge material will not occur on or adjacent to ocean beaches between March 31st to June 30th. However, NMFS additional recommends that if dredged sediments are used for beach nourishment between March 1st and March 31st or June 30th and August 31st, then adequate monitoring of grunion spawning should be conducted. Furthermore, if spawning does occur, implementation of appropriate measures to minimize impacts to grunion should take place.

d) U.S. Army Corps of Engineers (USACOE)

In a letter from the U.S. Army Corps of Engineers (USACOE) dated February 2, 2012; USACOE responded to the NMFS letter dated May 4, 2011. In response to the mitigation issue, the USACOE stated that they do not generally require a permittee to mitigate for project associated impacts to the active beach intertidal area in the absence of eelgrass, as is the situation here. Because of the absence of eelgrass and the conversion of 0.9 acres of upland area to subtidal area, the USACOE believed that the expansion of the aquatic habitat would ensure that the project would not be contrary to the public interest and that alternative mitigation measures would not serve to address the concern of sandy beach, intertidal area in Newport Bay. Regarding the China Cove issue, the USACOE clarified that NMFS no longer was at odds to sediment deposit (beach nourishment) at China Cove Beach and that this was no longer an issue. Lastly, the USACOE agreed with NMFS regarding grunion monitoring, but also added that no deposit (beach nourishment) occur between March 31st and June 30th.

e) Regional Water Quality Control Board (RWQCB)

The RWQCB has issued a Section 401 Permit dated December 22, 2010 for the proposed project.

B. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

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...

City Coastal Land Use Plan, Bulk and Height Limitation, Policy 4.4.2-1 states,

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3.

The subject site is located in the Shoreline Height Limitation Zone.

City Coastal Land Use Plan, Bulk and Height Limitation, Policy 4.4.2-2 states,

Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected. Similarly, the policies of the City's certified Coastal Land Use Plan aim to maintain the character and visual scale of the City. At the subject site, that character is defined by a 35 foot height limit.

Currently, the existing Mobile Home Park, the tennis courts in Las Arenas Park and other structures located on the project site prevent public views of the bay. The City states that one of the central goals of this project was to eliminate these visual impacts to provide an open "Window to the Bay." The proposed project would remove those impeding elements and provide public views to the bay from West Balboa Boulevard, including from the 16th Street and 17th Street, street ends that terminate at the entrance to the project site. The public views from these major coastal access route will provide public views that do not currently exist. However, the proposed project includes an element that would create a new visual impact that is not in keeping with community character, and could set an adverse precedent for the bulk and scale of redevelopment in the community.

1. 71-FOOT TALL LIGHTHOUSE TOWER (NON-FUNCTIONING)

The proposed project includes the construction of five (5) buildings on-site: a 14-foot high above finished grade public restroom; a new 21-foot high above finished grade Girl Scout Building; a new 34-foot high above finished grade public restroom that resembles a lighthouse (non-functioning); a 35-foot high above finished grade Multi-Purpose Building; and 35-foot high above finished grade Sailing Program Building (the Multi-Purpose Building and Sailing Program Building will comprise the Balboa Center Complex) that will have as an attached architectural feature, a 71-foot tall above finished grade non-functioning lighthouse (Exhibit #6).

The height limit in the certified LUP and the City's municipal code is 35-feet. Thus, the proposed 71-foot lighthouse exceeds the height limit by 36-feet. The City believes that the excessive height of the lighthouse architectural feature has functional significance (visitor recognition and boating navigation) and does not impede the public's view toward the bay or any other significant viewing area as identified in the LUP. The City states that the 35-foot height limitation as provided for in the LUP and the City of Newport's Municipal Code is exclusive of architectural projections such as the lighthouse. Thus, the City claims that the structure is consistent with the certified LUP and the Zoning Code. However, that is incorrect. The City's certified LUP does not provide any exception to the 35-foot height limit in the Shoreline Height Limitation

Zone. Additionally, the City's Municipal Code is not certified as the City's Implementation Plan, as the City only has a certified LUP.

The buildings in the surrounding area are consistent with the 35-foot height limit. Therefore, the proposed buildings, with the exception of the 71-foot high lighthouse, will be consistent with the community character. While the proposed project does remove the previous impediments on-site to public views and opens up views to and from the site, the proposed 71-foot high lighthouse tower would be inconsistent with the allowed height of 35-feet as stated in the certified LUP and would also have an adverse impact to public views due to the extreme height and mass of the proposed tower. This 71-foot lighthouse tower would be twice the allowable height in the area. There are no structures of similar height in the area. The proposed project also includes another lighthouse tower (non-functioning) element, but that lighthouse tower would be consistent with the 35-foot height limit. Thus, the proposed 71-foot lighthouse tower could be reduced to match the height of the other proposed lighthouse tower and be consistent with the height allowed in the certified LUP. Thus, the commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Final Project Plan showing that the proposed 71-foot lighthouse will be reduced to in height and will be no higher than the allowed maximum height of 35-feet.

2. LANDSCAPING

As stated by the City, one of the central goals of this project was to eliminate the existing on-site visual impacts so as to provide an open "*Window to the Bay*." The proposed project area has a high aesthetic value since it affords a view to the beach and the bay from a major coastal access route, West Balboa Boulevard. The proposed project would remove the existing impeding objects to public views of the bay and provide previous non-existent public views of the bay from West Balboa Boulevard, as well as from 16th Street and 17th Street, street ends that terminate at the entrance to the project site. While removal of the existing buildings removes those view impediments and the new layout of the project site does provide improved coastal views, these views may be impacted by the proposed landscaping. For example, the height and width of the proposed landscaping may adversely impact the view to the beach and bay that this project intends to provide. A "*landscape wall*" blocking the view could unintentionally be installed. The provided landscape plan does not provide information regarding the height or width of the proposed landscaping. Thus, there is a potential adverse visual impact without knowing this information. Thus, additional information must be included with the landscape plan. Therefore, the Commission imposes **SPECIAL CONDITION NO. 16**, which requires the applicant to submit a Revised Landscaping Plan, which consists of landscaping which does not adversely impact scenic coastal views provided on site and maintenance of that landscaping such that views are not impacted.

CONCLUSION

To minimize the adverse impacts to scenic resources, **TWO (2) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 1** requires the applicant to submit a Revised Final

Project Plan showing that the proposed 71-foot lighthouse will be reduced to in height and will be no taller than the allowed maximum height of 35-feet. **SPECIAL CONDITION NO. 16** requires the applicant to submit a Revised Landscaping Plan, which consists of landscaping which does not adversely impact public scenic coastal views provided through the site from West Balboa Boulevard, including from the 16th Street and 17th Street, street ends and requires maintenance of that landscaping such that public views are not impacted. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

C. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and 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.

Section 30232 of the Coastal Act states:

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

Section 30233 of the Coastal Act states, in relevant part:

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

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

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems

Section 30250 of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. Section 30232 of the Coastal Act requires protection from hazardous substances. Section 30233 of the Coastal Act discusses the types of allowable development resulting from the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes. Section 30250 of the Coastal Act requires that cumulative adverse impacts on coastal resources be avoided.

1. MARINE RESOURCES

The proposed project includes construction of a new bulkhead, groin, docks and marina associated with a public facility that results in the fill of open coastal waters. The proposed project also includes dredging to excavate an area of bayfront beach for the new public marina, which results in the loss of 0.66 acres of coastal waters (intertidal) and the conversion of 0.9 acre of non-aquatic upland area (sandy beach) into coastal waters (subtidal). Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233 of the Coastal Act, a project that involves dredging/filling in/open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least

environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

a) Fill/Dredging of Coastal Waters

1) Allowable Use

Under Section 30233 of the Coastal Act, the proposed project must be one of the uses specifically allowed.

The proposed project includes fill and dredging and construction of a new bulkhead, groin, docks and marina along the shoreline of the bay, an open coastal water.

Therefore, since the City is proposing to fill/dredge open coastal waters to expand the existing boating facilities at the subject site, the proposed project is an allowable use under section 30233.

2) Alternatives

Under Section 30233 of the Coastal Act, the proposed project must be the least environmentally damaging alternative. The Environmental Impact Report (EIR).provided three (3) alternatives to the proposed project.

1) No Project Alternative

The alternative involves no action on the project site and avoids all construction impacts including the fill and dredging of wetlands/open coastal waters. However, the use of the site will remain inconsistent with the City's Certified LUP designation of the site as PR (Park and Recreation) since the existing use of the project site would remain as a mobile home park. Additionally, this alternative will not result in construction of Marina Park, which will provide coastal public recreational opportunities not currently available on-site. Furthermore, this alternative will not result in a new subtidal area that will provide biodiversity in the bay.

2) Reduced Marina Alternative

The City States that this alternative includes something similar to the proposed project, but reduced to approximately one-half the size (12 slips instead of the proposed 24 slips). While it will provide most of the coastal public recreational opportunities identified with the proposed project, it will be reduced in scope compared to the proposed project. Additionally, this alternative

will not provide the same amount of biodiversity in the bay as a result of the scope of the new subtidal area of the proposed project.

3) No Marina Alternative

This alternative will not involve construction of the visiting vessel marina and the area of the proposed marina will instead remain beach or converted to park. This alternative will be similar to the proposed project, but will no longer include dredging, excavation or pile driving associated with the proposed marina. While this alternative will include increased public park space, improved public access, avoid impacts upon coastal resources such as the fill and dredging of wetlands/open coastal waters and degraded water quality conditions due to the marina, it will not provide a new public marina in Newport Bay, where there is currently a significant lack of this type of public facility. Additionally, the loss of the marina will not provide the facilities needed to support the City's sailing programs associated with the proposed Sailing Program Building. Furthermore, it will not provide the biodiversity as a result of the new subtidal area of the proposed project.

While the proposed project will result in fill of open coastal waters, it does so as an allowable use under Section 30233 of the Coastal Act. Even though the proposed project is an allowable use, the proposed project must still be the least environmentally damaging alternative. The proposed project has been designed to result in the least amount of impact. For example, the minimum amount of piles (approximately 48) for the boat docks is being proposed and the proposed groin is smaller than the existing groin (the existing groin is 110-linear feet and the new groin will be 70-linear feet, a reduction of 30-linear feet). Additionally, the groin and piles will provide hard substrate that can be used by some marine life, although, this new subtidal habitat area isn't equivalent to the intertidal habitat area being impacted. The proposed project will result in the creation of a new subtidal habitat area (as discussed above), a hard substrate that will be colonized by marine algae as well as invertebrates and increase biodiversity. However similar to the groin and piles, this subtidal habitat area isn't equivalent to the intertidal habitat area being impacted, but it does provide increased biodiversity within the bay. This alternative represents the least environmentally damaging feasible alternative while still providing increased coastal public recreational opportunities and also providing biodiversity within the bay. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233 of the Coastal Act that it be the least environmentally damaging feasible alternative.

3) Mitigation

Under Section 30233 of the Coastal Act, the proposed project must provide adequate mitigation to offset any impacts created by the project.

In order to construct the proposed marina, the proposed project includes dredging and construction of a new marina (including bulkheads, a new groin wall, and placement of pilings for docks/piers) which results in the loss of 0.66 acres of sandy intertidal area. This area is not vegetated and is characterized in the City's biological report as having low biodiversity. Some new pilings for the new docks will also be located in existing sub-tidal area. To compensate for this loss of intertidal area (and minimal subtidal loss due to pilings), the City states that 0.9 acre of non-aquatic upland area will be converted into subtidal habitat. While this new subtidal habitat area is not equivalent to the intertidal area being impacted, it does provide increased biodiversity by creating hard substrate that will be colonized by marine algae as well as invertebrates (mussels, crabs, and worms). The algae and invertebrates living on the hard substrate will provide an increased food-base that will attract perch and other species of fish. In addition, the new groin and piles will provide hard substrate that can be used by some marine life. Ideally, mitigation should result in the creation of equivalent types of aquatic environments. However, the City has not identified any areas where intertidal area could be created either on-site or nearby. The creation of sub-tidal area is what is feasible in this case. Therefore, the Commission finds the proposed project meets requirements of Section 30233 of the Coastal Act since it provides adequate mitigation to offset any impacts created by the project.

Therefore, the project is consistent with Section 30233 of the Coastal Act since it has proven itself to be one of the uses specifically allowed, the least environmentally damaging alternative, and provides adequate mitigation to offset any impacts created by the project.

2. DREDGING

In order to ensure that the materials proposed for beach nourishment are suitable for such purposes, the applicant has performed sediment testing to evaluate the physical characteristics of the materials. Based on those results, the applicant states that of the 68,000 cubic yards of total dredging, 53,000 cubic yards of sand/sediment will be redeposited off-site at while 15,000 cubic yards of fill will be deposited on-site. The City states that this material is compatible with the identified five (5) potential beach nourishment/disposal sites. Commission staff has reviewed this submitted information and agrees that these five (5) identified potential beach nourishment sites are acceptable. Adequate information about the potential impacts of placing dredge material at these sites has been supplied and analyzed. However as stated previously, within the boundary of the five (5) sites, the final amount and the precise location of the dredged materials at those sites has not been identified. Other information is also missing, such as the duration of the deposit and requirement that avoidance of sensitive aquatic or terrestrial

habitat impacts be adhered to. Furthermore, information the applicant has submitted to the U.S. Army Corps of Engineers (USACOE) raises some inconsistencies with the deposit (beach nourishment) locations, as well as, the amount of material deposit (beach nourishment). Thus, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit a Final Dredging Disposal Plan consistent with their preliminary plan, but revised to include the specifics identified in the condition.

3. EELGRASS

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

The applicant stated that eelgrass surveys from 2003 to 2008 were evaluated in order to determine if eelgrass was present at the project area or at any of the potential dredge disposal area. These surveys indicated that extensive eelgrass beds are located in the eastern and central portions of Newport Bay. Eelgrass beds were not found along the beach fronting potential dredge disposal locations since eelgrass only grows in soft sediments within coastal bays and estuaries. No eelgrass beds were found along the shore between 15th Street and 19th Street where the project site is located. However, eelgrass was found in the intertidal and subtidal habitats of China Cove (one of the potential beach nourishment sites). Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the June 2012 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid, especially since the surveys they City used in making their determination are now significantly dated (the latest survey being from 2008). Therefore, a subsequent eelgrass survey of the project site and the China Cove dredge disposal site will be required prior to beginning any construction. Therefore, the Commission imposes **SPECIAL CONDITION NO. 10**, which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required.

4. CAULERPA TAXIFOLIA

In the late 1990's, a non native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G) which occupies habitat similar to that occupied by eelgrass. *C. taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *C. taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *C. taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *C. taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *C. taxifolia*, if present, could displace eelgrass in the channels.

If *C. taxifolia* is present, any project that disturbs the bay bottom could cause its spread by dispersing viable tissue fragments. The proposed project would disturb the harbor bottom by dredging and *C. taxifolia* could be distributed to other parts of the bay or to the open ocean through transport of the dredge spoils for ocean disposal. The applicant stated that *C. taxifolia* surveys from 2003 to 2008 were evaluated in order to determine if *C. taxifolia* was present at the project area or at any of the potential dredge disposal area. These surveys determined that no *C. taxifolia* was located in the project area or at any of the potential dredge disposal area. *C. taxifolia* surveys are valid for 90 days. The project is agendized for the June 2012 Coastal Commission Hearing and by this time the *C. Taxifolia* survey would not continue to be valid since 90-days have passed significantly since the survey was completed. Thus, an up-to-date *C. taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *C. taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 11** which requires the applicant, prior to commencement of development, to survey the project area for the presence of *C. taxifolia*. If *C. taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *C. taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

5. WATER QUALITY

The proposed project is located along and in the coastal waters of Lower Newport Bay (LNB). Newport Harbor (located within Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the Santa Ana Regional Water Quality Control Board (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency (EPA). Further, the RWQCB has targeted the Newport Bay watershed, which will include Lower Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative.

Consequently, projects which can have an adverse impact on water resources should be examined to assure that potential impacts are minimized.

a) Land side Water Quality

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 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. 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. 12** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. In order to prevent impacts to coastal waters, **SPECIAL CONDITION NO. 13** requires that all demolition and cut material debris be disposed of at a legal site. Choice of a site within the Coastal Zone shall require an amendment to this permit or a new Coastal Development Permit, unless the Executive Director determines that no amendment or new permit is legally required.

Besides adhering to the Construction Best Management Practices as required by **SPECIAL CONDITION NO. 12** above, a Storm Water Pollution Prevention Plan (SWPPP) should be prepared for the proposed project that would specifically deal with water quality on site during construction. The applicant acknowledges that a SWPPP needs to be development for the project site, but such a plan has not yet been development. Therefore, it is necessary to impose **SPECIAL CONDITION NO. 14** which requires the applicant to submit a Storm Water Pollution Prevention Plan (SWPPP)

2) Post-Construction Impacts To Water Quality

The proposed development will result in urban runoff entering the storm water 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 the storm water system. In this case, the site drains a previous mobile home park, public park, community center, Girl Scout House, parking area and hardscape area. Post project, the site drains the Balboa Center Complex; Girl Scout building; expanded public parking areas; an expanded public park, public restrooms, a children's play area, and hardscape area. Therefore, the primary post-construction water quality concerns associated with the proposed project include grease, motor oil, heavy metals, trash, pesticides and fertilizer. The proposed development would result in the discharge of storm water into the storm

water conveyance system. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach

Currently, runoff from the eastern portion of the site is conveyed via existing storm drain lines to the storm drain line at Balboa Boulevard that ultimately discharges into the Lower Newport Bay at 15th Street. Runoff from the western portion of the site is conveyed via existing storm drain lines to the storm drain line at Balboa Boulevard that ultimately discharges to the Lower Newport Bay at 18th Street. Additionally, the existing project site (except the beach) does not provide permeable surfaces that will allow for infiltration and passive water quality BMP's. The proposed project is new development, which affords an opportunity to improve water quality. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. 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. As such, appropriate measures must be taken to assure that adverse affects on water quality are minimized. The applicant has taken this opportunity to improve water quality and has provided the following: *Preliminary Water Quality Management Plan (WQMP) (JN: 1001.01.01)* prepared by City of Newport Beach Public Works Department dated October 17, 2008 (Revised September 13, 2010) that discusses the proposed water quality features resulting in a beneficial impact on-site. The WQMP states that under proposed conditions, runoff will flow in similar patterns to existing conditions, and continue to drain to the storm drain lines at Balboa Boulevard. The existing lines within the project site will be removed. Low-flow and first-flush runoff on-site will generally sheet flow to the proposed treatment control BMP's, including porous concrete pavers for parking stalls, trench drains and landscaped biocells. Higher flows will continue to flow to the existing storm drain lines at Balboa Boulevard. Source Control BMP's such as BMP maintenance, Common Area Litter Control, Catch Basin Inspection, and Street Sweeping are proposed. However, the submitted WQMP was only preliminary. Therefore, it is necessary to impose **SPECIAL CONDITION NO. 15**, which requires the applicant to submit a Final Water Quality Management Plan (WQMP). The Final Water Quality Management Plan 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, parking areas, maintenance areas and driveways shall be collected and directed through a system of structural BMP's and/or gravel filter strips or other vegetated or media filter devices.

The applicant has stated that landscaping is proposed and plans have been submitted. The placement of 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.caleppc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. 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 the following were not drought tolerant: *Syragus romanzoffianum* (Queen Palm), *Ficus macrophylla* (Moreton Bay Fig), *Melaleuca quinquenvervia* (Cajeput Tree), *Araucaria heterophylla* (Norfolk Island Tree), *Spathodea campanulata* (African Tulip Tree), *Chamerops humilis – multi* (Mediterranean Fan Palm), *Eucalyptus ficifolia* (Red Flowering Gum), *Ulmus parvifolia* (Evergreen Elm), *Metrosideros excelsa* (New Zealand Christmas Tree), *Carissa macrocarpa* (Natal Palm), *Escallonia species* (Escallonia), *Leptospernum scoparium ‘Compact Ruby Glow’* (New Zealand Tea Tree), *Leptospernum scoparium ‘Snow White’* (New Zealand Tea Tree), *Pittospernum tobira ‘Cream de Mint’* (Tobira), *Agapanthus “Ramcho White”* (Dwarf White Lily of the Nile), *Erigeron karvinskianus* (Santa Barbara Daisy), *Calamagrostis foliosus* (Mendocino Reed Grass), *Calamagrostis X Acutiflora* (Feather Reed Grass), *Carex pasadena* (Pasadena Sedge), *Carex praegracilis* (California Field Sedge), *Carex subfusca* (Rusty Sedge), *Juncus effuses pacificus* (Quartz Creek Rush), *Juncus patens ‘Elk Blue’* (Elk Blue California Gray Rush), *Juncus mexicanus* (Mexican rush), *Helictotrichon sempervirens* (Blue Oat Grass), *Lomandra longifolia ‘Gary’s’* (Mat Rush), *Miscanthus transmorrisonensis* (Evergreen Eulalia), *Muhlenbergia capillaries* (Hairy Awn Muhly), *Phalaris arundinacea ‘Dwarf Garters’* (Reed Canary Grass), *Scriptus cyperinus* (Wool Grass), *Sesleria autumnalis* (Autumn Moor Grass), and *Gazania linearis Colorda Gold* (Colorado Gold).

In addition, the following have been determined to be invasive: *Washingtonia robusta* (Mexican Fan Palm), *Limonium perezii* (Statice). Therefore, the Commission imposes **SPECIAL CONDITION NO. 16**, which requires the applicant to submit a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive.

b) Waterside Water Quality

(1) Construction Impacts To Water Quality

During the construction activities involving waterside elements of the project, such as the new bulkhead, groin, docks and marina and dredging, there is potential for adverse impacts to water quality. To avoid and minimize potential project impacts on water quality during dredging and construction of these project elements, several Best Management Practices (BMP's) need to be implemented. Therefore, the Commission imposes **SPECIAL CONDITION NO. 17**, which

outlines construction responsibilities (BMP's) during waterside work. Additionally, the Commission imposes **SPECIAL CONDITION NO. 18**, which outlines construction responsibilities (BMP's) during dredging.

(2) Post-Construction Impacts To Water Quality

(a) Clean Marina Program

In order to maintain water quality and prevent water quality impacts associated with the new marina post project, the City has submitted the following document: *Preliminary Clean Marina Program for The Marina Park Project* prepared by the City of Newport Beach dated December 9, 2012. The purpose of the General Clean Marinas Program is to encourage marinas and yacht clubs to use Best Management Practices (BMP's) in order to prevent or reduce pollution in our waters. It is the intent of the City of Newport Beach to certify the proposed marina in Marina Park as a 'Clean Marina'. While this document is only preliminary, it is outlined to indicate that BMP points need to achieve certification and identify BMP's to be incorporated into the final design.

The City of Newport Beach currently operates a marina at the Balboa Yacht Basin from which the following procedures will be emulated. These procedures are listed below:

- 1) An Emergency Response Manual to address uses such as fire response and oil spill response;
- 2) A fuel and oil spill prevention containment plan;
- 3) Educational materials will be provided to visiting boaters regarding how the use of solvents, paints and varnishes for in-slope boat maintenance can contribute to pollution entering the water. The Rules and Regulations of the marina will specify the types of minor repair projects which are allowed while the visitors are berthed at the slip;
- 4) Visitors of the marina will be allowed to clean their hulls by selecting a pre-qualified vendor from the City's list of certified cleaners who demonstrate knowledge of Best Management practices as it relates to boat hull cleaning and recommended by such associations as the Professional Divers Association of California. These vendors will also demonstrate knowledge of detecting aquatic invasive species;
- 5) Materials, supplies, vehicles and equipment needed by the City to provide maintenance of the marina will be stored indoors at a designated area within the proposed Sailing Center building since storage outdoor can lead to exposure to rain and can produce runoff resulting in water pollution. Marina visitors will be given a copy of the Emergency Procedures and Rules and Regulations of the marina which address the issues outlined in the Clean Marina

Score Sheets. Trash bins will be provided in the parking lot and the parking lot is designed such that runoff from the parking lot will not enter the bay and will be filtered through permeable paving and bio-swales on-site;

- 6) Waste shall be managed in designated areas that are covered and designed to limit runoff to the storm water conveyance system;
- 7) Boat sewage discharge procedures will be included in the Rules and Regulations given to visiting boaters;
- 8) Solid waste, liquid waste and hazardous materials proper disposal will be discussed in the Emergencies, Procedures and Maintenance sections of this manual; and
- 9) The Marina Park project will have a Water Quality Management Plan (WQMP).

The submitted Clean Marina Program does provide a number of measures that would ensure water quality is protected. However as stated previously, the submitted Clean Marina Program is only preliminary in nature. Therefore, it is necessary to impose **SPECIAL CONDITION NO. 19**, which requires the applicant to submit a Final Clean Marina Program.

(b) Marina Flushing

As discussed earlier in the staff report, the *Marina Park Coastal Engineering Study* prepared by URS/Cash & Associates dated October 2008 stated that long term water quality within the proposed marina will suffer from poor flushing rates, which would be below EPA guidelines. Inadequate tidal flushing in the marina basin will result in lowered dissolved oxygen levels, higher water temperatures, lower water transparency, higher plant nutrient concentrations, and increased sedimentation. The colonization of marina habitats by plants, invertebrates, and fish, and long-term productivity of the marina's biota can be severely limited by these conditions. The potential influence of degraded water quality in the marina on adjacent harbor water quality could have an indirect impact on managed fish species living in Newport Bay outside the marina, especially in view of already degraded water quality in Lower Newport Bay. Because of this potential impact, this study, as well as conditioned by the EIR, recommends that Oloids be installed in the marina to enhance circulation. These mechanical devices would improve water quality by raising dissolved oxygen concentrations and improving flushing times within the marina basin. However, these mechanical devices were not included as part of the proposed project. No description regarding inclusion of these Oloids were included in the project description nor were any plans submitted. Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to

submit a Revised Final Project Plan that includes plans for the Oloids (or equivalent mechanical water circulation device).

CONCLUSION

To minimize the adverse impacts upon the marine environment and water quality, **TWELVE (12) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** requires the applicant to submit a Final Dredging Disposal Plan. **SPECIAL CONDITION NO. 10** requires pre- and post-construction eelgrass surveys. **SPECIAL CONDITION NO. 11** requires a pre-commencement of construction *Caulerpa Taxifolia* survey. **SPECIAL CONDITION NO. 12** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 13** requires that all demolition and cut material debris be disposed of at a legal site. **SPECIAL CONDITION NO. 14** requires the applicant to submit a Storm Water Pollution Prevention Plan (SWPPP). **SPECIAL CONDITION NO. 15** requires the applicant to submit a Final Water Quality Management Plan (WQMP). **SPECIAL CONDITION NO. 16** requires the applicant to a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive. **SPECIAL CONDITION NO. 17** outlines construction responsibilities (BMP's) during waterside work. **SPECIAL CONDITION NO. 18** outlines construction responsibilities (BMP's) during dredging. **SPECIAL CONDITION NO. 19** requires the applicant to submit a Final Clean Marina Program. **SPECIAL CONDITION NO. 1** requires the applicant to submit a Revised Final Project Plan that includes the Oloids(or equivalent mechanical water circulation device). Only as conditioned does the Commission finds that the proposed project is consistent with Section 30230, 30231, 30232, 30233 and 30250 of the Coastal Act.

D. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30240 of the Coastal Act requires that sensitive habitat be protected.

1. BIRDS

- a) Nesting/Roosting

The proposed project site is a developed site within an urbanized area. A number of sensitive species of animals were evaluated for their potential to occur in the project area. Black abalone (*Haliotis cracherodii*), Light-footed clapper rail (*Rallus longirostris levipes*), coastal California gnatcatcher (*Polioptila californicus*) and Tidewater goby (*Eucyclogobius newberryi*) were determined to have no potential to occur at either the project site (Marina Park) or the sediment deposit (beach nourishment) sites.

The California Least Tern (*Sterna antillarum*) was also evaluated to determine its potential to occur on-site. It was determined that it does not breed or nest near the project site or sand disposal locations, but birds from the nesting colonies in the region do forage in Newport Bay and nearshore coastal waters during the February through August breeding season.

The Western snowy plover (*Charadrius alexandrinus nivosus*) was also evaluated and until recently has not been observed nesting in the beaches in the area, but in 2009, one nest on the beach near the eastern end of the Balboa Peninsula produced three young. Snowy plovers have consistently roosted on the same beach during the winter, but they are considered to have a low potential for occurring on the project site and the sediment disposal locations.

While nesting/roosting birds are not currently anticipated to be at the project site (Marina Park) or sediment (beach nourishment) locations, there is potential that they may be present in the future during construction. Any adverse impacts to their nesting/roosting must avoided. Thus, the Commission imposes **SPECIAL CONDITION NO. 3**, which prohibits construction during the bird nesting season, defined as February through August.

b) Glass Railings

The submitted plans show that glass railings are proposed along the 2nd floor balcony decks of the proposed Balboa Center Complex. However, the use of glass railings has raised concerns due to bird strikes caused by the transparent glass. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit Revised Final Project Plans showing that these proposed glass railings will be replaced with either frost or etch the proposed glass railings or revise that the railings will be replaced with a different type of (i.e. metal fence, etc).

2. GRUNION

The California grunion (*Leuresthes tenuis*) is a member of the New World silversides family, *Atheriniopsidae*, along with jacksmelt and topsmelt. Their usual range extends from Point Conception, California, to Point Abrejos, Baja California. Occasionally, they are found farther north, to Monterey Bay, California, and south to San Juanico Bay, Baja California. They inhabit the nearshore waters from the surf to a depth of 60 ft. Tagging studies indicate that they do not migrate. Grunion leave the water at night to spawn on beaches during the spring and summer months (March through August). For

four (4) consecutive nights, beginning on the nights of the full and new moons, spawning occurs after high tides and continues for several hours. As waves break on the beach, grunion swim as far up the slope as possible. While spawning may only take 30 seconds, some fish remain stranded on the beach for several minutes. Beach replenishment activities could potentially bury grunion eggs or change the beach profile such that juvenile grunion are unable to return to the ocean. Part of the proposed project, is the deposit (beach nourishment) of the dredged material at five (5) possible locations: 1) the project site; 2) the ocean beach between 40th and 52nd Street; 3) the ocean beach between 6th and 16th Street; 4) the beach at Newport Pier and 5) China Cove near the Newport Bay entrance channel.

Grunion are not expected to occur on the beach fronting the project site (Marina Park) because they favor more exposed beaches with significant wave action, such as those ocean beaches that are potential sand disposal sites (Site #2: the ocean beach between 40th and 52nd Street and Site #3: the ocean beach between 6th and 16th Street). Thus, there is potential with the proposed project that adverse impacts to grunions is possible. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, which prohibits the deposit (beach nourishment) during the grunion spawning season, defined as March through August. By imposing this condition, adverse impacts to grunion will entirely be avoided since beach nourishment will not be allowed at any time during the grunion spawning season.

CONCLUSION

To minimize the adverse impacts upon biological resources, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** prohibits construction during the bird nesting season, defined as February through August. **SPECIAL CONDITION NO. 1** requires the applicant to submit Revised Final Project Plans showing that these proposed glass railings will be replaced with either frost or etch the proposed glass railings or revise that the railings will be replaced with a different type of (i.e. metal fence, etc). **SPECIAL CONDITION NO. 3** prohibits the deposit (beach nourishment) during the grunion spawning season, defined as March through August. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30240 of the Coastal Act.

E. PUBLIC ACCESS

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30221 of the Coastal Act states:

5-10-229 (City of Newport Beach)

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 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Section 30211 of the Coastal Act protects the public's right of access to the sea. Section 30221 of the Coastal Act requires that oceanfront land suitable for recreational use be protected for recreational use and development. Section 30223 of the Coastal Act protects upland areas necessary to support coastal recreation use. Section 30224 of the Coastal Act requires that increased recreational boating use be encouraged. Section 30252 of the Coastal Act requires that new development maintains and protects public access.

The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor and marina facilities and its coastal amenities. Like many beach communities, Newport Beach receives an influx of visitors during the summer. The project site is ideally located in an area that does provide public access to the coast. Vertical access is currently available at 18th Street and 19th Street intersecting the bay and horizontal access is available along the sandy public beach fronting the project site. However, vertical access to the sandy beach through the site is currently impeded by the existing mobile home park and other physical barriers. The proposed project will remove these barriers and provide vertical and

horizontal access to the sandy public beach and also enhance public coastal recreational opportunities with the construction of the Balboa Center Complex and the remaining elements of the Marina Park project.

1. PARKING: ON-SITE AND ADJACENT ON-STREET PARKING

The proposed project includes changes to the existing on-site parking and adjacent on-street parking. Post project, the site will provide a total of 157 public parking spaces on-site (within three (3) separate lots). Additionally, the project will result in 214 adjacent on-street (off-site) parking spaces.

There is no public parking currently on-site. The existing on-site 102 parking spaces, which only serve the mobile home residents of the site, will be eliminated for the Marina Park Project. In its place, a 116-space public parking lot (Main Lot) (metered through automated pay station) will be installed. Of the 116 parking spaces, 6 spaces will be allocated for short-term pick-up/drop-off at no charge. This lot is intended for users of the Balboa Center Complex (to be discussed further later). Additionally, a new public metered parking lot (East Lot) consisting of 15 parking spaces will be installed, which is intended for staff of the Balboa Center Complex and harbor users (to be discussed later). A new public metered parking lot (West Lot) consisting of 26 parking spaces will also be installed. This parking lot is intended for park, marina, and Girl Scout House users.

Currently, there are metered 39 parking spaces along 15th Street, of which 18 spaces are located along the westerly curb adjacent to Marina Park. These parking spaces will not be impacted and will remain as metered public parking.

There are currently 81 public metered parking stalls along the West Balboa Boulevard center median between 15th Street and 18th Street and these parking spaces are typically utilized by residents and visitors to the ocean beach side of the Balboa Peninsula (opposite of the Marina Park project site, on the oceanward side of West Balboa Boulevard). The proposed project will result in 6 of these metered parking spaces being displaced to provide for the Marina Park driveway approach. There are 48 unmetered parking spaces along the northerly side of West Balboa Boulevard adjacent to the project site. Because of the proposed project, 5 northerly parking stalls will be displaced for the 17th Street Marina Park entry and bus pad and 6 median parking spaces will be removed at 16th Street to accommodate an eastbound left-turn entry into the Marina Park parking lots (described previously). Per the Proposed Parking Exhibit, a total of 37 metered parking spaces will be provided along the northerly stretch of West Balboa Boulevard between 15th and 18th Streets. Along 18th Street, there are currently 5 existing public metered parking spaces. The proposed project includes widening of 18th Street to provide for additional parking, creating a total of 15 parking spaces for a net increase of 10 parking stalls. The parking spaces on 18th Street will continue to be public metered parking. In summary, 22 parking spaces total will be removed on 18th Street and West Balboa Boulevard and 15 metered parking stalls will be added due to the widening of 18th Street for a net loss of 7 on-street parking spaces. The loss of 7 on-street parking spaces will be discussed further in the report.

On West Balboa Boulevard, between, between 17th and 18th Streets, there is a small parking lot consisting of 6 parking spaces for the existing (to be demolished) Girl Scout House and the Community Center. These parking spaces will be removed. The parking for the proposed Girl Scout House and Community Center will be discussed further later in the staff report.

There are currently 47 metered parking spaces along West Balboa Boulevard and 19th Street that will remain and not be affected by the construction.

At the northeast corner of 18th Street and West Balboa Boulevard there is an existing public metered parking lot with 24 parking spaces that will be removed for the construction of the proposed project. Those parking spaces will be replaced with a new public metered (automated pay stations) parking lot (West Lot) consisting of 26 parking spaces. This parking lot is intended for park, marina, and Girl Scout House users.

In order to verify that the proposed project will be adequately parked, a parking analysis within the *Parking Management Plan* received by Commission staff September 21, 2012 was conducted and assembled. The analysis took into account the parking needs during the non-summer and summer months for the existing uses on-site: the community center, the sailing/boating activities, private/special events and the Girl Scout House. The analysis identified a peak parking need for Marina Park in the range of 80 parking spaces during the school year and 85 parking spaces during the summer months. This range took into account the parking needs for the proposed Balboa Center Complex and also considered the public who will visit the proposed marina, park, bay beach, and Girl Scout House and will park in the additional spaces provided by the project. The proposed project has identified that 157 public parking spaces will be provided for the on-site uses. Therefore, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 public parking spaces remaining. Thus, adequate parking will at all times be provided for the on-site uses since the peak parking needs during the non-summer and summer months is less than the parking being provided resulting in an abundance of parking on-site. In order to make sure that parking on-site is managed correctly, the city has provided a Parking Management Plan.

As stated previously, the Main Lot will contain 116 metered parking spaces for users of the Balboa Center Complex; the East Lot will contain 15 metered parking spaces for staff of the Balboa Center Complex and harbor users; and the West Lot will contain 26 metered parking spaces for park, marina, and Girl Scout House users. There will also be 214 adjacent on-street (off-site) parking spaces for the general public.

The Main Lot will be metered through automated pay stations. Registered classroom attendees will be provided a no-fee parking permit for this lot. The City states that in the summer months and on weekends that coincide with an event, the main parking lot will be staffed in addition to the parking control system. Additionally, parking spaces will be set aside for events/programs with the rest of the parking spaces open to visitor parking. During the school year, the main parking lot will only be operated by a parking control system. Similar to summer months and the weekends that coincide with an event, parking spaces will be set aside for events/programs with the rest of the parking spaces

open to visitor parking. Any events on-site will be coordinated with the programmed classes to make sure that there are no conflicts during peak usage times.

The East Lot will be metered and primarily serve Balboa Center Complex staff users of the harbor.

The West Lot will be metered through automated pay stations and will provide parking for the park, marina and Girl Scout House users. The City may elect to designate 4 parking spaces on an as-needed basis for Girl Scout events.

Additionally, construction of the proposed project will also enhance the adjacent-on-street parking available along West Balboa Boulevard, West Bay Avenue, 18th Street, and 15th Street resulting in a total of 214 metered parking spaces.

Due to the project site's proximity to the ocean beach, it is important that the proposed on-site parking spaces provide adequate parking for the users of the proposed Marina Park facilities. The applicant states that the proposed main parking lot is intended for the uses programmed for the Balboa Center Complex only and is not generally intended to provide additional oceanside beach parking, which is provided in adjacent surrounding area as discussed above (i.e., on-street metered parking within the Balboa Peninsula). To limit the Main Parking Lot from being used by beach users, various parking-management alternatives have been identified and will be implemented including heightened parking fees, automated pay stations, dedicated parking spaces for registered class attendees, additional parking enforcement patrol and/or other systems to ensure parking is available to the visitors of Marina Park. Additionally, the community classes, which occur during the peak summer period (June to September) will be scheduled in the morning (i.e. beginning 8am) or later in the evening to avoid the impact from beach visitors. The city also plans to reserve some parking stalls in the East and West parking lots for Girl Scout leaders and full time staff parking for building operations.

While the applicant has provided a parking management plan to show how parking will be adequately accomplished on-site, the plan lacks significant information. Information such as, the various parking management alternatives to operate the main parking lot that the City proposed are not fully explained. For example, the plan mentions possible use of heightened parking fees, but are not explained any further. A better explanation of how the Main Parking Lot will operate as parking for both users of the Balboa Complex Center for classes and events and also for users of the other facilities on-site needs to be provided. The parking available on site should be predominantly first come, first serve. Furthermore, the pay rate for the on-site parking meters has not been explained and neither has the parking pay rate for those taking classes at the Balboa Center Complex. The fees for the proposed parking meters should be comparable and also not exceed the public parking meter fees of the surrounding area (Balboa Peninsula). The allowed duration of parking is also not identified. This should be sufficient to allow people to park and enjoy the beach. Typically, this has been for at least 6 hours. Thus, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit a Final Parking Management Plan. There is significant potential for adverse impacts to public beach access as a result of any parking deficiency with the proposed

project. Thus, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 4**, which is a future improvements special condition.

As discussed previously, the proposed project results in the loss of 7 on-street public parking spaces. The loss of these 7 on-street spaces is significant as the area is a primary location for public access to the Balboa Peninsula. However the loss of these 7 on-street parking spaces is offset by the project's provision of at least 71 on-site parking spaces that are available for general public use. As stated earlier, the project has identified that 157 public parking spaces will be provided for the on-site uses. The number of peak summer day parking spaces needed for the on-site uses is 85 parking spaces. Thus, even if 85 parking spaces were taken up on a peak summer day, there will still be 72 parking spaces remaining, which will be available for general public use. The final parking management plan must include provisions to assure these spaces are readily available to the public on a first come, first serve basis, as are the existing metered spaces to be removed.

2. BALBOA CENTER COMPLEX, PARK AND DOCKS

Limited coastal public recreational opportunities are currently provided on-site because of the existing mobile home park. However, those opportunities will be enhanced, as well as expanded, with the construction of the Balboa Center Complex consisting of the Multi-Purpose Building and the Sailing Program Building. This facility will provide educational classes and support the community. Besides providing classes and meeting facilities, it will also provide locker room facilities and marina service facilities such as laundry and an office, indoor boat and equipment storage. A small café to serve on-site workers and visitors is also proposed.

The proposed project will also increase the subject site's public park area from approximately 2 acres at present to nearly 5 acres. The public park will include two (2) half court basketball courts; a children's play area; benches and picnic tables; fitness equipment; beach access; and restroom facilities with outdoor showers, including a new restroom at the 19th Street end.

Additionally, the proposed project includes the construction of a new visiting vessel marina facility that will provide a total of 23 transient/guest slips (21 for boats up to 40-foot and 2 boats up to 54-foot). These slips are intended to provide visiting boaters a place to berth for up to two weeks. The facility will also accommodate small-boat sailing programs connected to the Sailing Center.

Each proposed individual slip will have utility hookups, including electrical, water and sewer connections. A sewage pump out connection will also be provided in order to allow the visiting boaters to remain in the slip to manage pump out operations. The marina will also include a floating dinghy storage dock, a 200-foot long dock on the bay

that can accommodate additional vessels and boating events, and security fencing and lighting.

As stated above, the proposed vessel marina facility will consist of two areas: a marina area for visitors/short term users and also a dock area to accommodate small-boat sailing programs associated with the Sailing Program Building. Below is a breakdown of the facilities provided for each use (Exhibit #2):

The Sailing Program Building Docks will consist of:

- 1) 40 Sabots on Racks
- 2) 28 Dinghies on Floats
- 3) 4-5 Sailing Center Instructor Safety Boats
- 4) 200' Public Side-Tie Dock
- 6) 3-T Dinghy Hoist & Basin

The Visitor/Short Term Marina

- 1) 140' Public Side-Tie Dock (6-10 Duffies/Dinghies)
- 2) 2 Duffy/Dinghy Basins 12-16 boats
- 3) 2 Harbor Resources/Patrol Boats (+30')
- 4) 22 Public Visitor/Short Term Slips Visitor/Short Term End Tie
- 5) Marina/Security/HP Offices
- 6) Restrooms>Showers/Laundry
- 7) 1 Vessel Waster Pumpout

Opportunities for staging and launching kayaks and other small watercraft will also be provided on-site near the Sailing Program Building docks, but a specific enclosed launching area is not proposed. Furthermore, this launch/staging area is not intended for overnight or permanent storage of small watercraft on the beach.

Currently, there are limited coastal public recreational opportunities on-site because of the existing mobile home park. However, those opportunities will be enhanced, as well as expanded, with the construction of the Balboa Center Complex, park and marina. Public access opportunities will be greatly enhanced by the proposed project.

3. CONSTRUCTION IMPACTS

The project sites including Marina Park and the dredge deposit areas, are all locations where the public has access to coastal recreation activities. Construction activities during the "*peak beach use*" (as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year) may adversely impact public access to these locations. Thus, Commission imposes **SPECIAL CONDITION NO. 5**, which prohibits construction on the beach during the "*peak use*" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

During construction of the proposed project, there is a chance that public access may be adversely impacted. In order to verify that public access is protected during construction,

a Construction Staging Plan and Traffic Control Plan required. However, neither of these plans have been submitted. Thus, in order to ensure access to the beach is protected during the peak summer season and that public access is not hindered during construction, the Commission finds that it is necessary to impose **SPECIAL CONDITION NO. 6** and **SPECIAL CONDITION NO. 7**. **SPECIAL CONDITION NO. 6**, which requires the applicant to submit a Construction Staging Plan. **SPECIAL CONDITION NO. 7**, which requires the applicant to submit a Traffic Control Plan.

CONCLUSION

To minimize the adverse impacts upon public access, **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** requires the applicant to submit Final Parking Management Plan. **SPECIAL CONDITION NO. 4** is a future improvements special condition. **SPECIAL CONDITION NO. 5** prohibits construction during the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. **SPECIAL CONDITION NO. 6** requires the applicant to submit a Construction Staging Plan. **SPECIAL CONDITION NO. 7** requires the applicant to submit a Traffic Control Plan. Only as conditioned does the Commission find the proposed development is consistent with Sections 30211, 30221, 30223, 30224 and 30252 of the Coastal Act.

F. COASTAL HAZARDS AND GEOLOGY

Section 30235 of the Coastal Act states, in relevant part:

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.

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 or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states that revetments (bulkheads) and groins are permitted when required to serve coastal dependent uses. Section 30253 of the Coastal Act states that new development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

The proposed project includes the removal of an existing groin and construction of a new bulkhead and groin. Section 30235 of the Coastal Act states that revetments (bulkheads) and groins are permitted when required to serve coastal dependent uses. "*Coastal-dependent development or use*" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all. The proposed bulkhead and groin are necessary to construct the proposed public marina, which is clearly a coastal-dependent development and use. Thus, the proposed project will be consistent with Section 30235 of the Coastal Act.

The City states that in order to preclude the gradual but material accumulation of wind-driven harbor sands beneath the marina, the existing groin located easterly of the proposed Marina and to the North of the beach will need to be demolished and relocated to the west to enclose the new marina. Furthermore, the City states that the proposed groin as well as the project bulkheads and other components of the marina will need to be constructed in order for the project to be feasibly constructed and maintained. To assess the proposed bulkhead and groin, the applicant has provided the following coastal engineering study: *Marina Park Coastal Engineering Study* prepared by URS/Cash & Associates dated October 2008. This study included an analysis of the existing and proposed groin walls, wave loading calculations for the docks, boats, and piles within the proposed marina basin, as well as analyses of the water quality and sedimentation issues. The study made a number of determinations such as the following: operational winds at the basin were found to produce very small waves at the basin; tidal flushing post project will be below EPA guidelines; the proposed groin will be effective in preventing fine sediments from migrating into the proposed marina; there is no compelling engineering reason to keep or remove the existing groin since removing it would only slightly improve water quality and would only prevent some fine sediment from migrating into the marina (Despite this determination, the applicant is removing the existing groin)¹. . The coastal engineering study also provided certain recommendations, such as: the use of Oloids, mechanical devices to improve tidal flushing of the proposed marina basin (to be further discussed in the Water Quality Section of the Staff Report). In order to assure that risks are minimized, the coastal engineering consultant's final recommendations must be incorporated into the design of the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, 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 coastal engineering consultant indicating that the recommendations contained in the coastal engineering report have been incorporated into the design of the proposed project.

To assess the geologic feasibility of the project including the landside and waterside components of the project, the applicant has provided the following report: *Geotechnical Investigation, Marina Park, Newport Beach, California (Project No. 2573)* prepared by TerraCoasta Consulting Group, Inc. dated August 7, 2008. In preparing the report, TerraCoasta Consulting Group, Inc reviewed results from field investigations, laboratory testing, and analyses, and provided geotechnical engineering recommendations for grading and construction of the proposed improvements. The report made many determinations such as the following: the site

¹ Despite this determination by the engineer, there are other compelling reasons to remove the obsolete groin, such as restoration of bay bottom habitat. Thus, the Commission finds removal of the obsolete groin to be beneficial and consistent with the Coastal Act.

underlain by hydraulic fill, bay deposits, and older alluvial deposits; groundwater levels at the site can be expected to vary in response to tidal fluctuations; and potential geologic hazards may exist on the site including ground shaking, liquefaction, seismic induced settlement, lateral spreading, seiches and tsunamis. In order to adequately deal with these conditions, the report includes certain recommendations for the proposed landside development, such as: recompaction; matt foundation for the restroom facilities and other small buildings; and a deep foundation for the Balboa Complex Center consisting of driven piles or stone columns. The geotechnical report also provided certain recommendations for the waterside component of the project, such as: installation of the Sailing Center foundations prior to installation of the interior marina bulkhead anchors to avoid potential conflicts between the tiebacks and piles or stone columns; tiebacks be installed with the use of a casing drill; the jetting of guide piles; and specific load deformation and structural requirements for the groin. In order to take into account for potential sea level rise, the top of the new bulkhead walls will be at +10-feet MLLW (The current *Harbor Construction Standard* for the City of Newport Beach requires bulkhead cap elevations of +9.0-feet MLLW) and the bulkheads have been designed to accommodate possible vertical extensions of the cap if necessary without necessitating seaward encroachment of the wall. The applicant has provided a foundation plan for the Balboa Center Complex utilizing a driven stone column foundation. However, the foundation for the other project components , such as the restroom facilities has not been submitted. Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Final Project Plan, including foundation plans.

In order to assure that risks are minimized, the geotechnical consultant's final recommendations must be incorporated into the design of the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, 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 geotechnical consultant indicating that the recommendations contained in the geotechnical report have been incorporated into the design of the proposed project.

Since the proposed development is taking place adjacent to the ocean in an area that is potentially subject to sea level rise, erosion, flooding and wave uprush, the Commission is imposing **SPECIAL CONDITION NO. 9**, which is its standard waiver of liability Special Condition.

CONCLUSION

To minimize the adverse impacts caused by hazards, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 8** requires the applicant to submit, for the review and approval of the Executive Director, final design and construction plans reviewed and signed by the coastal engineering and geotechnical consultant indicating that the recommendations contained in the coastal engineering and geotechnical report have been incorporated into the design of the proposed project. **SPECIAL CONDITION NO. 1** requires the applicant to submit a Revised Final Project Plan, including foundation plans. **SPECIAL CONDITION NO. 9** is a standard waiver of liability Special Condition. Only as conditioned does the Commission finds that the proposed project is consistent with Sections 30235 and 30253 of the Coastal Act.

G. LOWER COST VISITOR AND RECREATIONAL FACILITIES DEVELOPMENT

Section 30213 of the Coastal Act states in part:

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

Section 30213 of the Coastal Act requires that lower-cost visitor and recreational facilities be protected encouraged, and where feasible, provided.

Lower-cost visitor and recreational facilities are a priority use since they provide the public an opportunity to enjoy the coast. The proposed project takes place along the bay and also on public beaches (Marina Park and beach nourishment sites). Public beaches constitute a lower cost visitor-serving facility. As such, any development on a public beach is subject to scrutiny as to whether the development would affect the public’s recreational interest. In this case, the proposed project, as conditioned, will not adversely impact public access or recreation. The proposed project will enhance public recreation opportunities to the beach by removing existing impediments to access to the beach and also would construct facilities that would better provide public recreational opportunities to the coast. The proposed project also includes a public marina that will provide a low cost boating facility. A description of the public use of this marina is found in the “*Marina Park-Marina & Marine Uses*” document submitted by the City. To make sure that the public marina functions as a public marina for transient/guest use and for public boating/sailing courses as described in this document, the Commission imposes **SPECIAL CONDITION NO. 20**, which requires the applicant to conform with the “*Marina Park-Marina & Marine Uses*” document. However, construction activities during the “*peak beach use*” (as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year) may adversely impact public recreational opportunities to these locations. Thus, Commission imposes **SPECIAL CONDITION NO. 5**, which prohibits construction on the beach during the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

CONCLUSION

To minimize the adverse impacts upon lower-cost visitor and recreational facilities, **TWO (2) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 20** requires the City to conform with the “*Marina Park-Marina & Marine Uses*” document. **SPECIAL CONDITION NO. 5** prohibits construction during the “*peak use*” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Only as conditioned does the Commission find the proposed development is consistent with Section 30213 of the Coastal Act.

H. LOCAL COASTAL PROGRAM (LCP)

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan (LUP) 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.

Section 30604(a) 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 permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project will conform with Coastal Act Sections 30211, 30221, 30223, 30224, 30252, 30213, 30235, 30253, 30230, 30231, 30232, 30233, 30250, 30240, and 30251.

The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by 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 feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach is the lead agency for purposes of CEQA compliance. An Environmental Impact Report was approved for this project in May 2010 pursuant to the provisions of CEQA. Mitigation measures included a measure to minimize any impacts to biological resources, geology and hydrology.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the public access, lower-cost visitor and recreation, hazards, marine resource, water quality, biological resource, and scenic resource policies of the Coastal Act.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

SUNSTANTIVE FILE DOCUMENTS

Approval from the City of Newport Beach Harbor Resources Division dated September 10, 2010;

Approval in Concept (#2010-052) from the City of Newport Beach Planning Department dated September 23, 2010;

Final Environmental Impact Report (EIR) SCH # 2008051096;

City Council Resolution No. 2010-46: Certifying the Final Environmental Impact Report (FEIR) SCH # 2008051096 dated May 11, 2010;

City Council Resolution No. 2010-47: Adopting a Statement of Overriding Considerations and Approving the Site Plans for the Three Phases of the Marina Park Project dated May 10, 2010; *Geotechnical Investigation, Marina Park, Newport Beach, California (Project No. 2573)* prepared by TerraCoasta Consulting Group, Inc. dated August 7, 2008;

Marina Park Coastal Engineering Study prepared by URS/Cash & Associates dated October 2008;

Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc. dated October 15, 2008 (revised December 18, 2009);

Preliminary Water Quality Management Plan (WQMP) (JN: 1001.01.01) prepared by City of Newport Beach Public Works Department dated October 17, 2008 (Revised September 13, 2010);

Letter from the City of Newport Beach dated December 7, 2010;

Preliminary Clean Marina Program for The Marina Park Project prepared by the City of Newport Beach dated December 9, 2012;

Email from the California Department of Fish & Game (CDFG) dated August 13, 2010

Letter from the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) received May 4, 2011;

Regional Water Quality Control Board (RWQCB) Section 401 Permit dated December 22, 2010;

Letter to Schmitz & Associates, Inc. from Commission staff dated November 5, 2010;

Letter to Commission staff from Schmitz & Associates, Inc. dated December 20, 2010;

Letter to Schmitz & Associates, Inc. from Commission staff dated January 19, 2011;

Letter from the City of Newport Beach dated August 26, 2011;

Letter to Commission staff from Schmitz & Associates, Inc. received September 27, 2011;

Parking Management Plan received September 21, 2011;

Letter to Schmitz & Associates, Inc. from Commission staff dated October 20, 2011;

Letter from California State Lands Commission (SLC) dated November 30, 2011;

Letter to Commission staff from the City of Newport Beach dated December 21, 2011;

Letter from the U.S. Army Corps of Engineers (USACOE) dated February 2, 2012;

Letter to Schmitz & Associates, Inc. from Commission staff dated February 22, 2012;

Letter to Schmitz & Associates, Inc. from Commission staff dated April 10, 2012; and *Marina Park-Marina & Marine Uses* prepared by the City of Newport Beach received by Commission staff on April 11, 2012.

APPENDIX 2

THE THREE (3) PHASES OF THE PROPOSED MARINA PARK PROJECT

Phase No. 1 (Landside)

This phase will include the following:

- 1) The existing mobile homes will be removed. However, two (2) of the existing mobile homes may be retained and converted into office space for construction contractors during construction and then into space for recreation and park maintenance staff post project. The remaining area once occupied by the mobile homes will be transformed into a public park;
- 2) A new ADA-compliant temporary restroom facility;
- 3) Two (2) concrete walks to provide pedestrian access (compliant with Americans with Disabilities Act) from the new parking lot to the existing beach;
- 4) Access gates in the existing fences located at the existing half basketball court and the parking lot between the Girl Scout House and the Balboa Community Center;
- 5) A new crosswalk that provides beach access from the vicinity of Las arenas Park (The existing beach frontage sidewalk and stairs will remain for beach access);
- 6) The alley between the mobile home park and the beach will be restriped to provide one-hundred five (105) temporary public parking spaces and five (5) handicapped public parking spaces,
- 7) Removal of an existing gate near the American legion facility will provide continuous vehicular access from 15th Street to 18th Street; and
- 8) A new portable lifeguard tower will be installed on the beach to be staffed by the City Fire Department during the summer months.

Phase No. 2 (Landside)

This phase will include the following:

- 1) Replace the underlying material from Phase No. 1 with new turf and irrigation; and
- 2) Additional pedestrian paths and picnic areas.

Phase No. 3 (Landside and Waterside)

Phase No. 3 will consist of the final build out. Essentially all of the existing site features, including the temporary improvements installed in Phases No. 1 and No. 2 will be removed and replaced. More specifically, this phase will include the following:

- 1) The new Balboa Center Complex consisting of the Multi-Purpose Building and the Sailing Program Building;
- 2) A new 21-foot high Girl Scout building (to be constructed separately by the Girl Scouts; City to provide building pad and utility connections);
- 3) Expanded public parking areas and lighted public access ways both to and along the beachfront as well as throughout the property;
- 4) An expanded public park with basketball half-courts (lights on timers with use to terminate at 10pm), lawns, a public restroom, and a children's play area with a restroom facility (34-foot high, lighthouse);
- 5) A new 14-foot high public restroom at the 19th Street end of the beach to replace the existing facility;
- 6) Re-configured and enhanced landscaping;
- 7) Demolish an existing groin and construction of a new groin located approximately 170-feet west of the existing groin, dredge and deposit (beach nourishment) and construct a new bulkhead system;
- 8) A new marina to accommodate short-term visits by recreational vessels and sailing center docks and boats;
- 9) The existing small-boat beach launching facility at the foot of 18th Street will remain; and
- 10) A Tentative Parcel Map to combine thirty-five (35) lots into three (3) lots.

It is anticipated that the project will take two (2) years to complete.

EXPANDED DESCRIPTION OF THE PROJECT ELEMENTS

1) Balboa Center Complex

The proposed 23, 832 square foot Balboa Center Complex consisting of the Multi-Purpose Building (11,048 square feet) and the Sailing Program Building (12,784 square feet) will be located approximately at the east end of the site that is currently occupied by the mobile home park and will provide educational classes and support the community. The Multi-Purpose Building will include: classrooms, reception and offices, open space to support a variety of community activities, as well as storage and restroom facilities. The Sailing Program Building will include: classrooms, a flexible meeting room, reception and offices, restroom and locker room facilities, marina service facilities such as laundry and an office, indoor boat and equipment storage, and a small café (seating for twenty-seven (27) in the café and available seating for forty-two (42) on the 2nd floor deck intended to serve on-site workers and visitors (e.g., staff, visiting vessel crews, participants in Balboa Center and local community programs). Both buildings will be two-story structures (approximately 35-foot high) with large, 2nd story outdoor decks. The buildings will be

supported on foundations of stone columns (similar to pilings) with a ribbed slab. Building designs will incorporate sustainable elements which may include movable sun screening, reflective roof coating, and rainwater collection devices.

Additionally, the Sailing Program Building will have a 71-foot high architectural feature representing a lighthouse (non-functioning).

2) Marina

The proposed visiting vessel marina facility, adjacent to the existing property leased to the American Legion, will be designed to accommodate small-boat sailing programs and provide visiting boaters a place to berth for up to two weeks and includes: a sheetpile bulkhead for the landside perimeter of the new marina, floating docks to provide 23 slips (21 slips for boats up to 40-feet in length and 2 for boats up to 57-feet in length with a total of up to 48 piles (up to 40-14” piles and 8-16” piles), a floating dingy storage dock, dockside utility connections, a 200-foot long dock that can accommodate additional vessels and boating events, and security fencing and lighting. The larger piles will be for the 57-foot dock and the smaller piles will be for the smaller docks and gangways.

Each individual slip will be provided with utility hookups, which include electrical, water and sewer connections. A sewage pump out connection will allow the visiting boater to remain in the slip to manage pump out operations. The docks will include an Americans with Disabilities Act (ADA)-compliant access ramp and non-lethal pinniped (i.e., seal and sea lions) deterrence features, to be developed in consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries.

3) Dredging and Disposal

The proposed project will include approximately 68,000 cubic yards of total excavation/dredging in order to construct the project. 2.71 acres of the project site will be dredged and 53,000 cubic yards of sand/sediment will be redeposited (beach nourishment) off-site while 15,000 cubic yards of fill will be deposited (beach nourishment) on-site. The project includes dredging/excavation both above (landward of) and below (bayward of) the high tide line. The amount and location of the disposal sites has not been finalized as of yet, but preliminary amounts and locations have been identified. For the purposes of this permit, the high tide line is defined as +7 feet Mean Lower Low Water (MLLW) and the high tide line is very close to the U.S. Bulkhead Line. A more specific description of the proposed dredging is located below:

The total dredge/excavation footprint is approximately 2.71 acres. This includes:

- a) 0.90 acres of existing upland area (sandy beach, landward of the high tide line) which is to be converted into subtidal area upon dredging of the new marina. Currently, this area is paved area of existing mobile home park, landward of the existing sandy beach/existing sidewalk and above the high tide line (referred to as AREA A) (Exhibit #5).
- b) 0.66 acres of existing intertidal area which will also be converted into subtidal area. Intertidal is defined as the area between -2-feet (MLLW) and the high tide line (+7 feet MLLW). Currently, this area is beach/intertidal area between existing sidewalk and 0-foot MLLW, includes areas both above and below high tide line (referred to as AREA B) (Exhibit #5).
- c) 1.15 acres of existing subtidal area which will be dredged to increase water depths, but will remain subtidal area upon completion of dredging. Currently, this area is water area below (bayward of) 0-foot MLLW, below the high tide line (referred to as AREA C) (Exhibit #5).

The design depth of the marina is -12 feet MLLW. The perimeter of the marina basin will be dredged to have a 5:1 (H:V) slope adjacent to the perimeter walls.

As stated previously, the total cut amount is 68,000 cubic yards. This includes 30,000 cubic yards of cut BELOW the high tide line and 38,000 cubic yards ABOVE the high tide line. This results in a net excess of 53,000 cubic yards to be disposed (beach nourishment) off site. The remaining 15,000 cubic yards of fill will be deposited (beach nourishment) on-site

The City has identified five (5) potential deposit (beach nourishment) sites for this material: 1) the project site; 2) the ocean beach between 40th and 52nd Street; 3) the ocean beach between 6th and 16th Street; 4) the beach at Newport Pier and 5) China Cove near the Newport Bay entrance channel (Exhibit #5). This deposit of material will replenish the beach by placing the material either directly onto the sandy beach (dry sand using trucks, or in the ocean just offshore of the beach, near shore disposal) by a bottom dumping disposal barge. The four (4) sand disposal sites at beach locations outside of the project site include sandy beach, intertidal beach and subtidal shallow water. Additionally, the ocean beach site between 40th and 52nd Street (Site #2) includes rocky habitat in form of groins and China Cove site (Site #5) includes rock outcroppings and adjacent eelgrass beds.

Dredging will be accomplished by a small, diesel powered tugboat, a diesel powered barge-mounted dredge, one or two barges and several heavy-duty trucks to haul the dredged/excavated material, and one or two

small workboats. Clamshell and hydraulic type dredges will likely be used and the material will be placed at the receiving sites by bottom-dump barge (nearshore disposal) or truck (dry sand beach placement and will be spread by a small bulldozer. Measures will be implemented to minimize water quality and biological impacts, including the use of silt curtains at the dredging site; limiting the cycle time of the clamshell; restricting dredging and disposal near sensitive habitats and conducting water quality monitoring to assess turbidity levels.

As stated previously, the final amount and location of the dredged materials has not been identified. Only preliminary amounts and locations have been identified. Other information is also missing, such as the duration of the deposit and requirement that avoidance of sensitive aquatic or terrestrial habitat impacts be adhered to. Additionally, information the applicant has submitted to the U.S. Army Corps of Engineers (USACOE) raises some inconsistencies with the deposit (beach nourishment) locations, as well as, the amount of material deposit (beach nourishment). Therefore, there is a significant amount of information that still needs to be identified. Thus, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit a Final Dredging Disposal Plan.

4) Bulkhead

The landside perimeter of the new marina will consist of approximately 1,000 linear feet of pre-stressed concrete sheet pile bulkhead walls along the three (3) land sides of the new marina with tiebacks to prevent overturning of the wall. Construction of the bulkhead, as well as the groin, pilings and placement of the floating docks as described below, will be accomplished by a pile-drive rig, which will likely be mounted on a barge, a diesel powered pile-drive, a small mobile crane. Flatbed delivery trucks and concrete delivery trucks, and miscellaneous equipment.

5) Groin Wall

An existing groin wall (approximately 110-linear feet) that is located on the east side of the project site, adjacent to the neighboring American Legion will be removed and a new 70-foot long concrete sheet pile groin will be constructed approximately 170-feet west of the existing location at the west side of the new marina. The new groin will be 40-feet shorter than the existing groin. The top of the groin wall is proposed to be +8 MLLW. The groin wall is needed to prevent the sand west of the Marina Park from migrating into the marina basin. In addition, the groin wall will retain the sand to its west to maintain the recreational beach area. Dondrift movement of sand will not change from the existing condition as the new groin performs the same function as the existing groin.

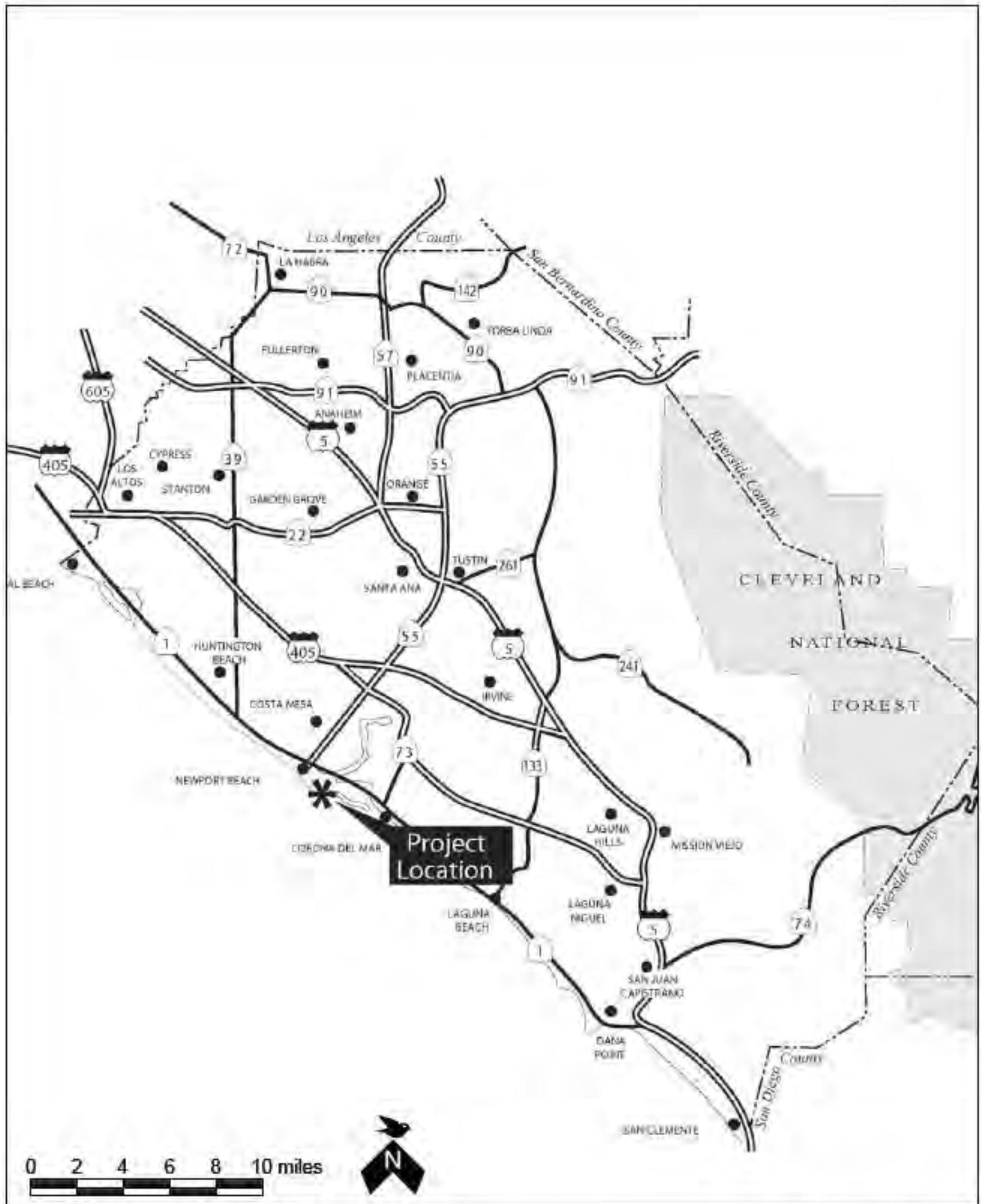
6) Public Park Facilities

The proposed project will increase the subject site's public park area from approximately 2 acres at present to nearly 5 acres. The beach will be approximately 1.6 acres, which will be 0.37 acres smaller than the existing beach as a result of installation of the marina facility. The public park will include a pedestrian entrance at 17th Street providing a view of the bay; two (2) half court basketball courts; a children's play area; benches and picnic tables; fitness equipment; beach access; and restroom facilities with outdoor showers, including a new restroom at the 19th Street end.

Furthermore, the park will consist of a mix of native , naturalizing and adapted plants suited for the climate, location and program for the park. Landscaping will include bioswales and biocells to capture and treat storm water. Paved pathways will connect the park entrance to the Balboa Center, the children's play area, and the public beach. Pedestrian access from the parking lots to the beach at the east end of the site will be via walkways between the Balboa Center Complex buildings and along 15th Street. The play area will have a rubberized surface, an adjacent restroom in the form of a 34-foot high non-functioning lighthouse, and protective shade canopies. The area and the play equipment will have a nautical theme reflecting the configuration of Newport Harbor. The park and its facilities will include security lighting and area lighting with glare-minimizing technology.

7) Girl Scout House

The 5,500 square foot, 21-foot high Girl Scout House will be located at the northwest corner of Marina Park. The facility will operate Monday through Thursday for troop meetings and adult leadership meetings. Overnight-stay events during non-summer months (September through June) will take place Friday afternoons through Sunday afternoons. During the summer months (mid-June through early September), the facility will be utilized 7 days per week for troop overnight stays.



Source: Michael Brandman Associates, 2008

Exhibit 3-1 Regional Location Map

CITY OF NEWPORT BEACH • MARINA PARK
ENVIRONMENTAL IMPACT REPORT

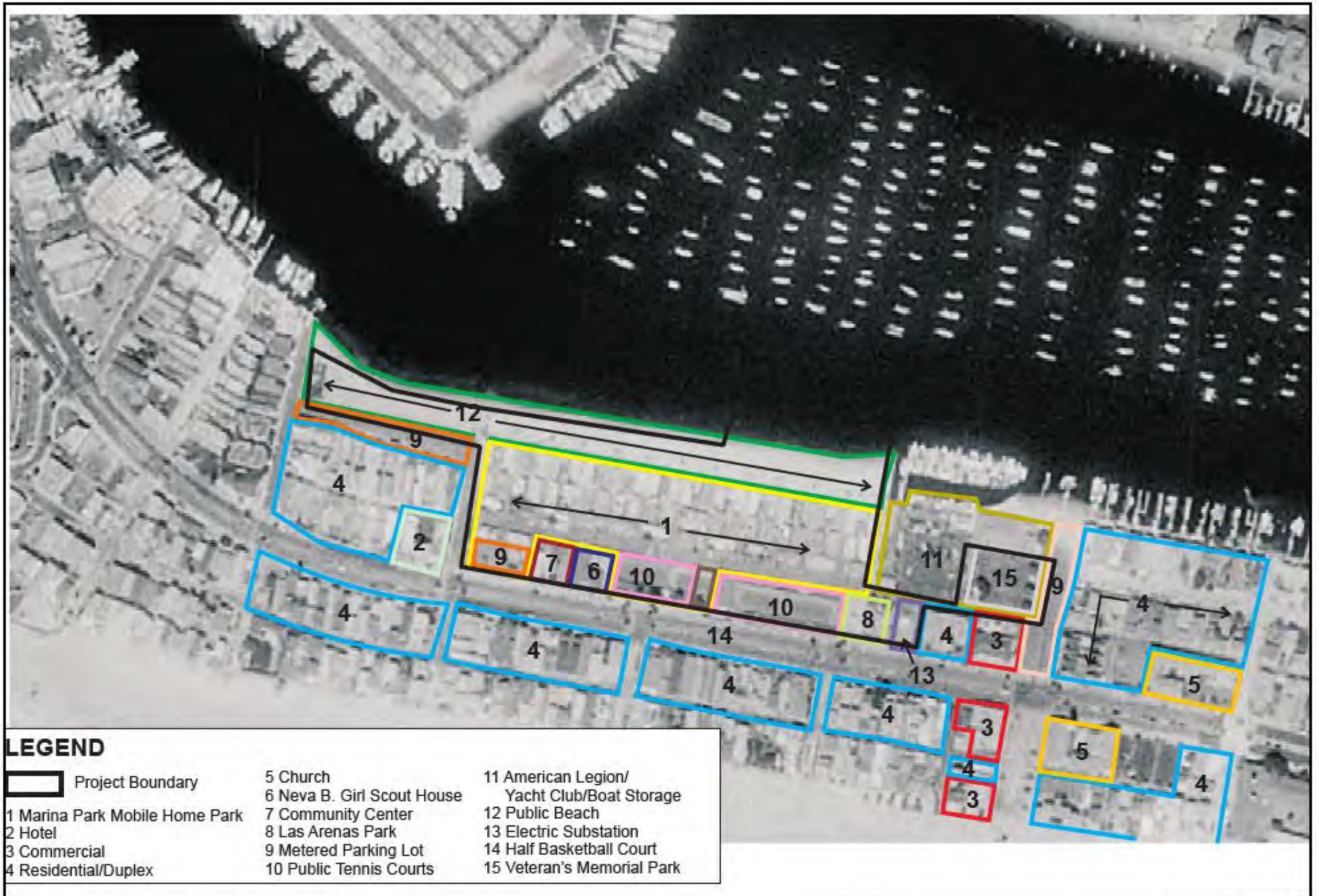


Source: Thomas Guide Digital Edition, 2003

Exhibit 3-2 Local Vicinity Map

CITY OF NEWPORT BEACH • MARINA PARK
ENVIRONMENTAL IMPACT REPORT

5-10-229



Source: USGS Newport Beach SE 3.75' DOQQ

Exhibit 3-3 Onsite and Surrounding Land Uses

71' HIGH LIGHTHOUSE TOWER

NO LONGER PART OF PROJECT

SAILING PROGRAM BUILDING

CHILDREN'S PLAY AREA

MULTI-PURPOSE BUILDING GYM

35' HIGH LIGHTHOUSE TOWER

9TH STREET RESTROOM

Marina Park Phase 3 Plan
August 25, 2011



Rabben/Herman design office

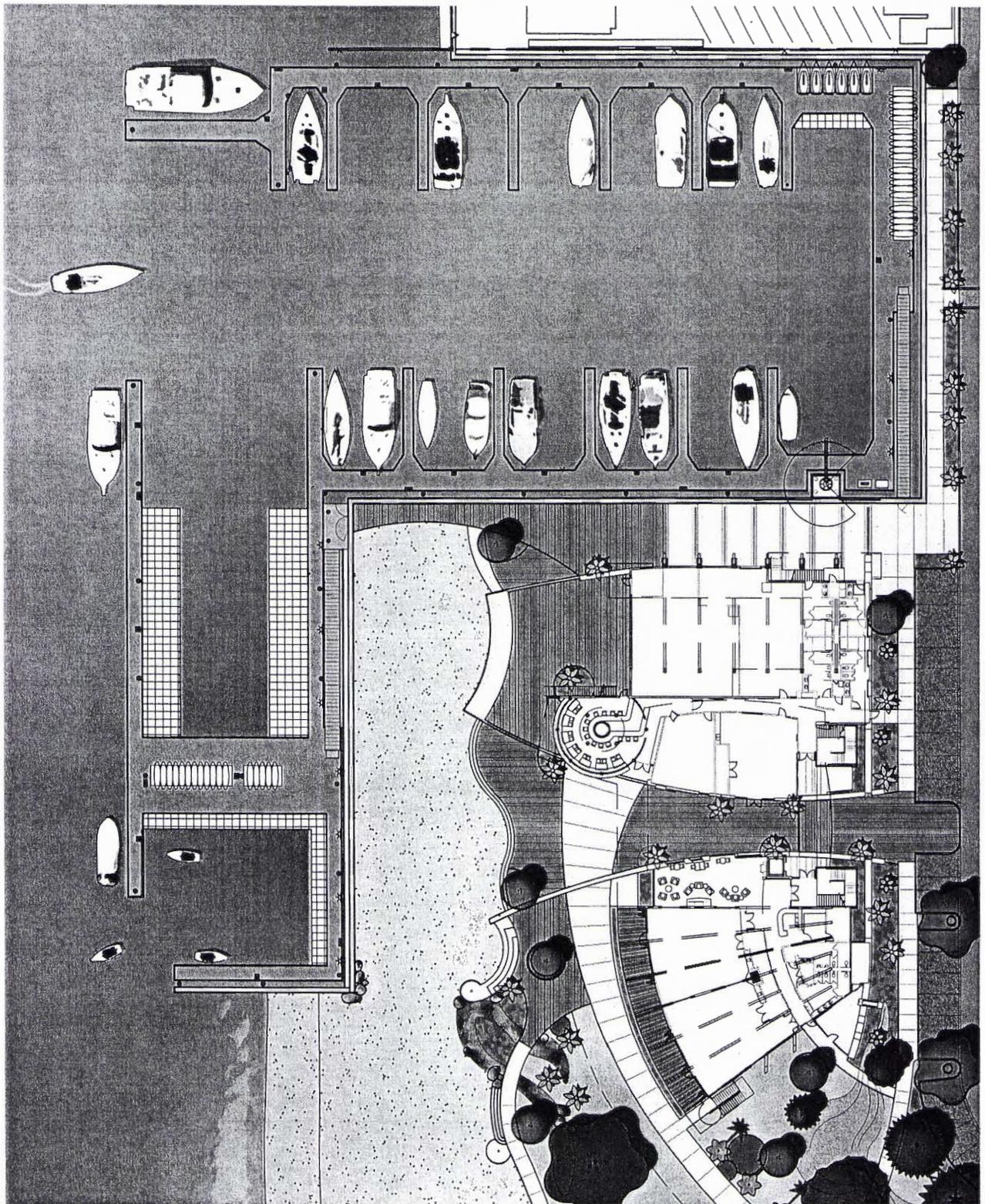
MAIN PARKING LOT

PARK

WEST PARKING LOT

GIRL SCOUT BUILDING

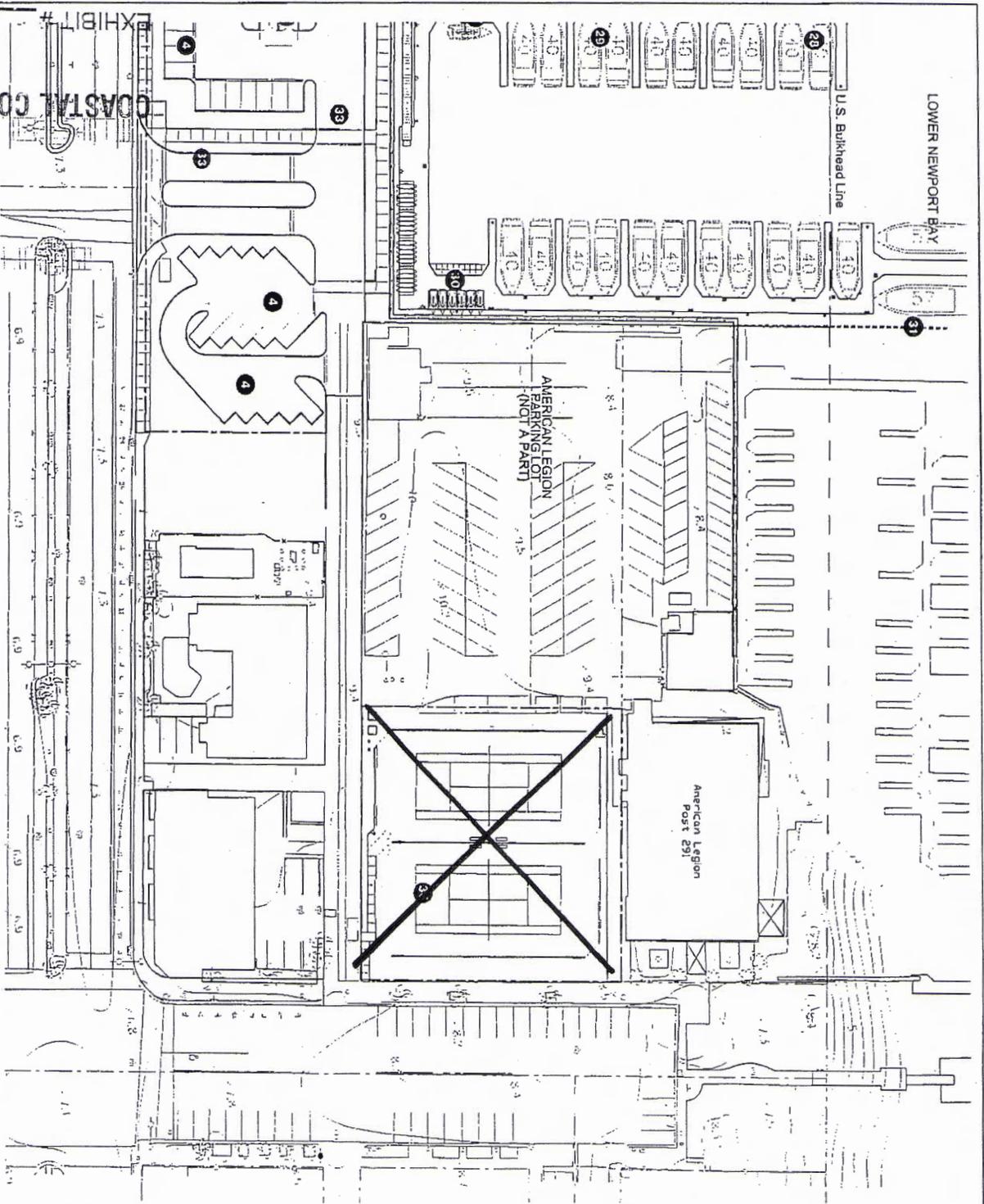
EAST PARKING LOT



BALBOA CENTER COMPLEX
AZRA
AZRA
AZRA







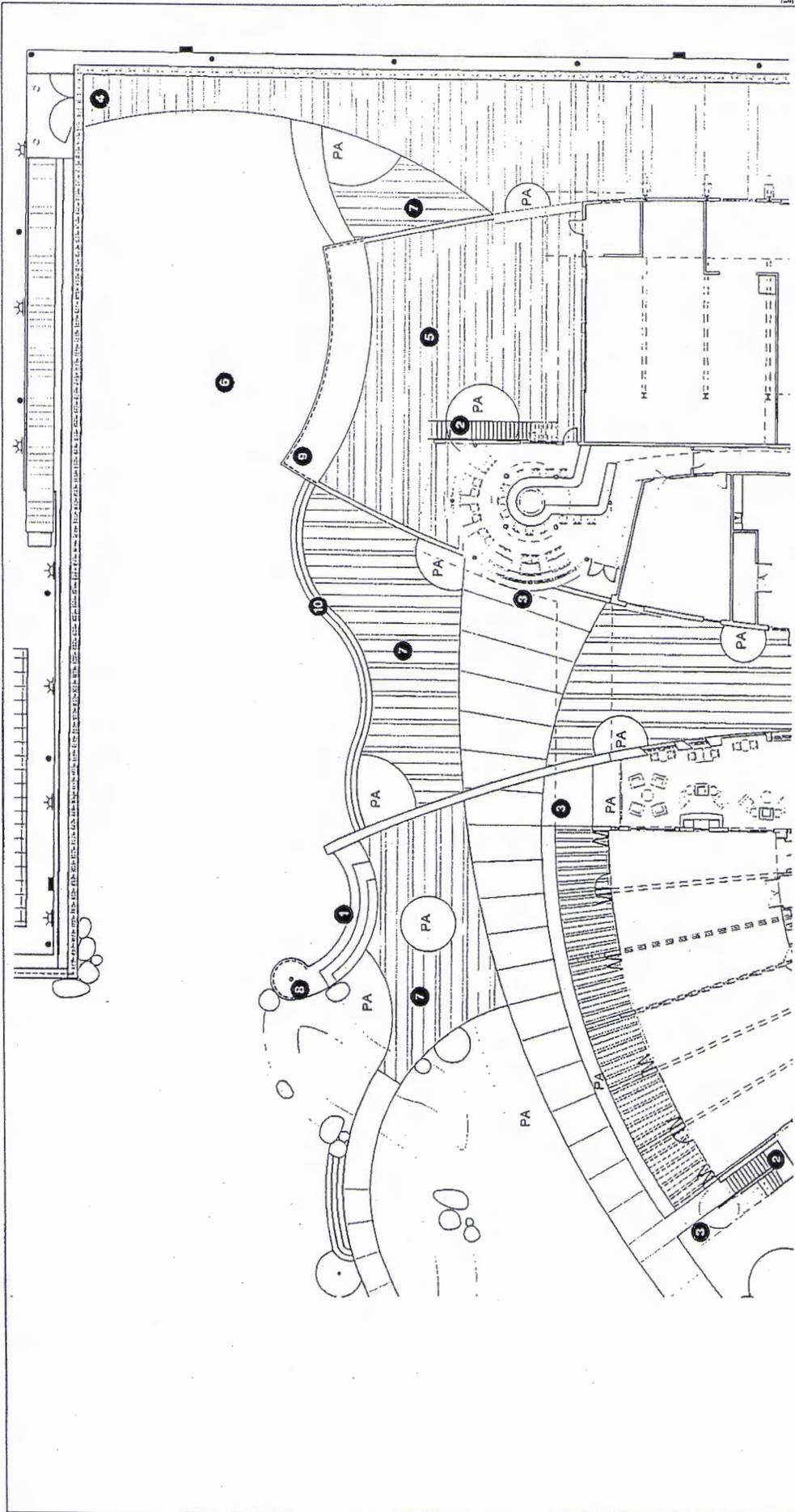
PLAN CALL OUTS

- 1 Improved Portage vessel launch area
- 2 Girl Scout House - Construction by Others
- 3 Auxiliary Parking lot
- 4 Permeable Concrete Pavement at Parking Areas
- 5 Half Court Basketball Courts
- 6 Main Play Area See Sheet L1.22
- 7 Restroom at Play area
- 8 Starting Point for Fitness Route
- 9 Fire Lane Access to Balboa Center and LightHouse Restaurant Buildings
- 10 Open Turf Area for informal play
- 11 Showers & Steps to beach
- 12 Thickened walk edge provides seating
- 13 Expanded Beach Area
- 14 Berm at entry
- 15 Drop Off area on Balboa Boulevard
- 16 Sign and entry Arch
- 17 Bioswale for Runoff Filtration
- 18 Intermediate Station on Fitness Route
- 19 Multipurpose Building at Balboa Center Complex
- 20 Sailing Program Building at Balboa Center Complex
- 21 Controlled Vehicular Access to Sailing Center
- 22 Sailing Center Activity Beach
- 23 New Gravel Wall to protect Sailing Center Dock
- 24 Accessible Ramp to Dock
- 25 Sublot Paved
- 26 200' Public Side (ie Visitor Dock) (5'-30" length)
- 27 Sail Driftly floats dock
- 28 Permanent Sailing Center Berths - Quantity to be determined
- 29 Visiting Vessel Marina with Utility Hookups
- 30 Dinghy Tie ups, Float Ramp and Rack Space
- 31 Demolish Existing Green Wall at edge of Legion Berths
- 32 Trash Enclosure
- 33 Enhanced Parking at Cross Walks & Main Entry
- 34 Widening of 18th Street
- 35 Restrooms Stations for Fitness Route
- 36 Tennis Courts at existing Park - See Sheet L1.23
- 37 Small Boat Hoist

Rabben/Herman
 Design Office
 Landscape Architecture Master Planning Urban Design

NO.	DATE	DESCRIPTION OF REVISION	APPROVED

Handscape Plan East
MARINA PARK - PHASE 3
 Approval in Concept Package
 CITY OF NEWPORT BEACH
 PUBLIC WORKS DEPARTMENT
 SCALE: 1" = 10'

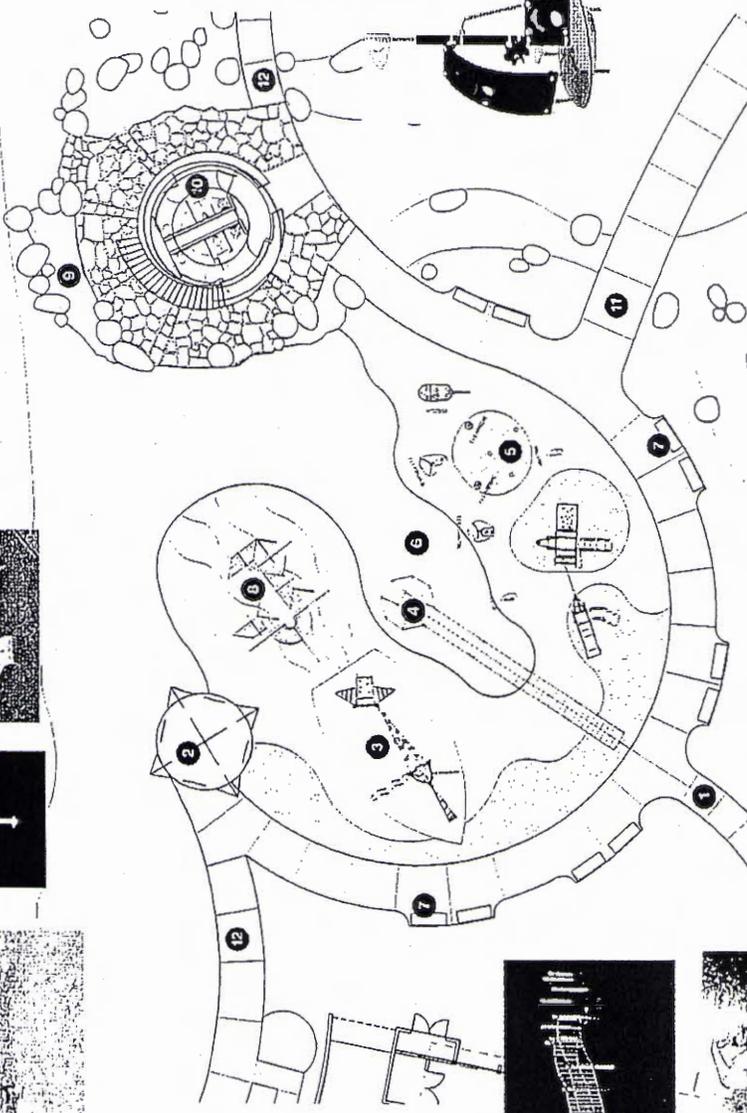
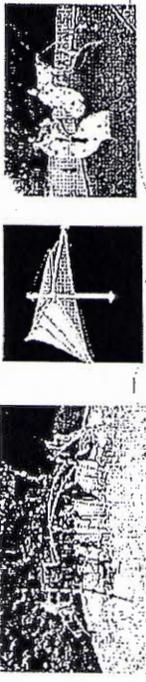


- 1 Amphitheater at Beach
- 2 Access to Upper level deck
- 3 Upper level Walkway
- 4 Gated Access to Sailing Dock
- 5 Instruction and work area at Sailing Center
- 6 Sand Beach Area
- 7 As Wood Concrete Paving
- 8 Flag Pole and Overlook
- 9 Railing at gathering area
- 10 Steps to Sand Beach

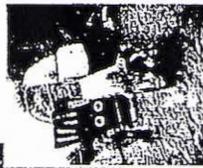
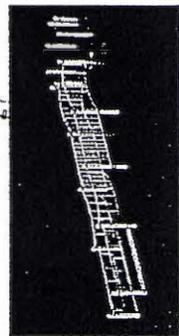
Hardscape Enlargement Building North
MARINA PARK - PHASE 3
 Approval in Concept Package
 CITY OF NEWPORT BEACH
 PUBLIC WORKS DEPARTMENT
 L1.21
 08/01/11

NO.	DATE	DESCRIPTION OF REVISION	APPROVED

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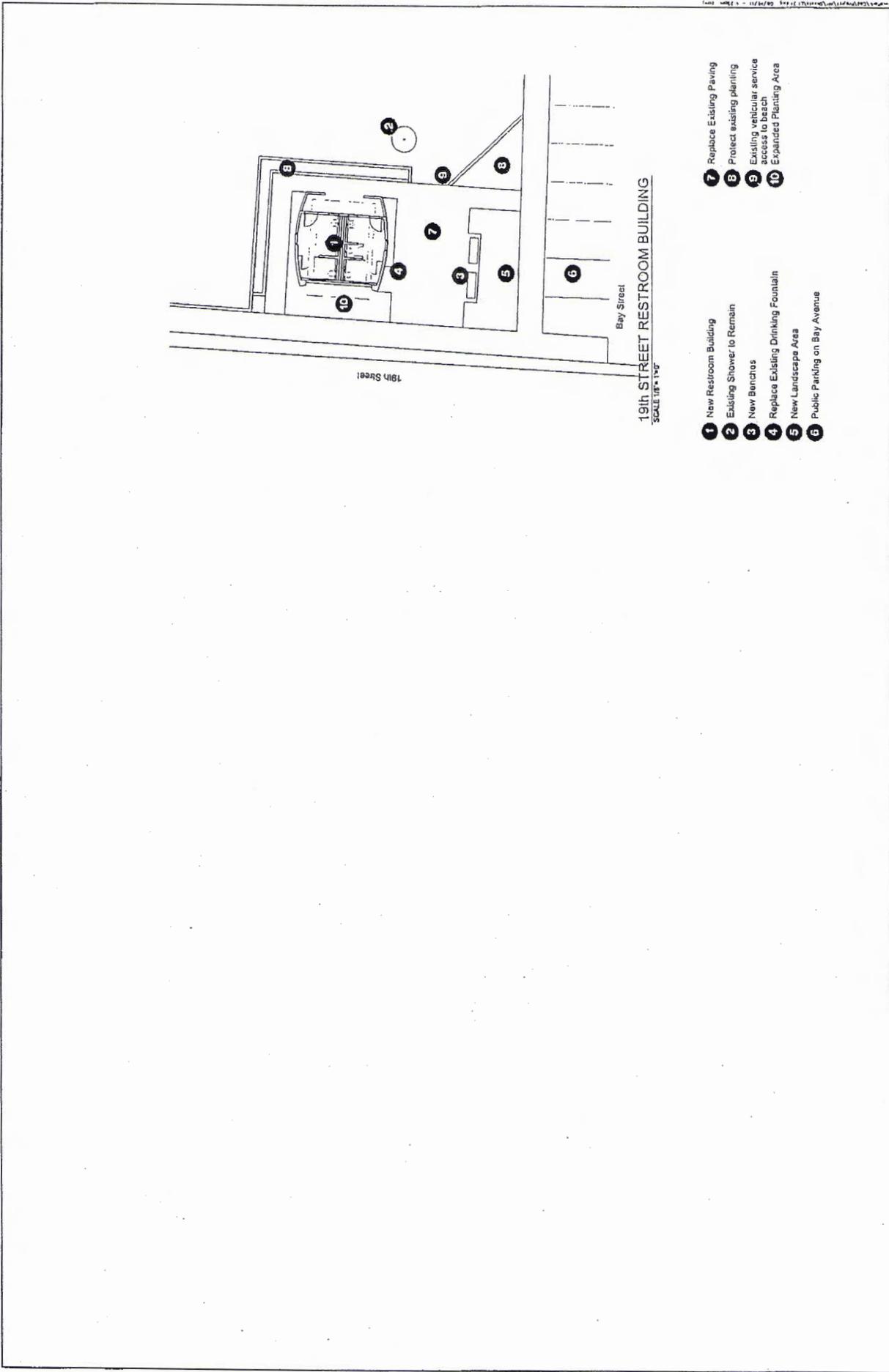
- 1 Path to Auxiliary Parking Lot
- 2 Shaded Overlook with Seating
- 3 Play Structure with Boat Theme
- 4 Gangway and Overlook tower
- 5 Small Children Play Area
- 6 Sand Play Area
- 7 Benches at Perimeter
- 8 Boat Wake Climbing Structure
- 9 Grasses and Boulders at Restroom
- 10 Restroom Building Themed as Lighthouse
- 11 Path to Main Park
- 12 Path At beach



PLAY AREA ENLARGEMENT
SCALE 1/8"=1'-0"

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Hardscape Enlargement - Play Area
MARINA PARK - PHASE 3
Approval in Concept Package
CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT
L1.22
SC041.001



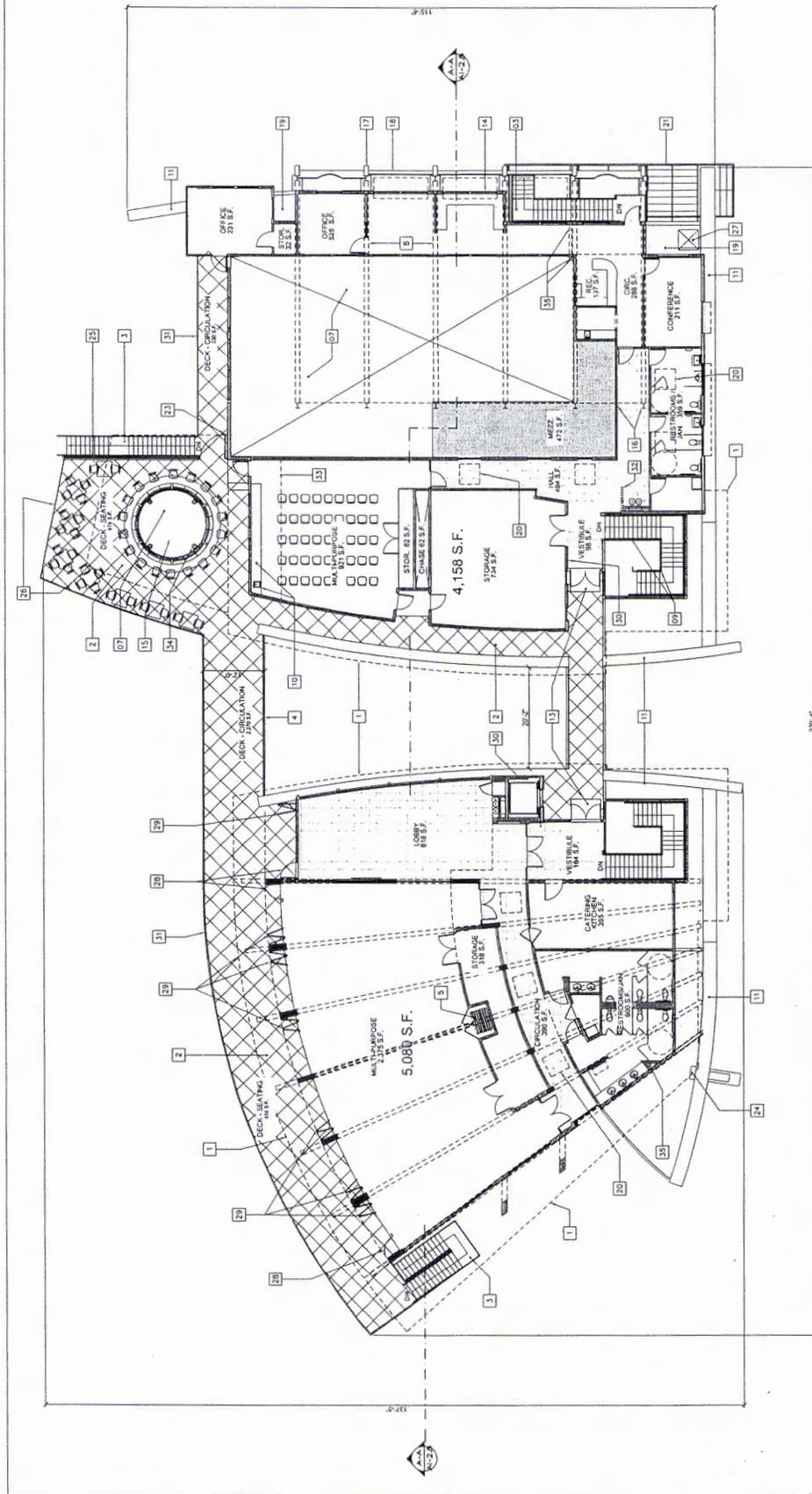
19th STREET RESTROOM BUILDING
SCALE: 1/8" = 1'-0"

- 1 New Restroom Building
- 2 Existing Shower to Remain
- 3 New Benches
- 4 Replace Existing Drinking Fountain
- 5 New Landscaped Area
- 6 Public Parking on Bay Avenue
- 7 Replace Existing Paving
- 8 Protect existing planting
- 9 Existing vehicular service access to beach
- 10 Expanded Planting Area

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design office
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Handicaps Enlargement - 19th Street Restroom
MARINA PARK - PHASE 3
Approval in Concept Package
CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT
L1.74
SHEET 3/11

NO.	DATE	DESCRIPTION OF REVISION	APPROVED



229'-4"

- 1 ROOF EDGE ABOVE
- 2 CONCRETE OF ALN. DECK STRUCTURE
- 3 STEEL EXIT SIGN
- 4 DOOR PARTITION POCKET WITH FOLDING PARTITION TO DUNE SPACE
- 5 ACCORDION DOOR TO PARTITION SPACE
- 6 ACCORDION WINDOW SYSTEM
- 7 OPEN TO BELOW
- 8 STEEL FRAMING ABOVE
- 9 STAINLESS STEEL HAND & GUARD RAILING
- 10 CORNERPOST W/ SHGC CABINETS BELOW
- 11 WALL BELOW
- 12 BEAM BELOW
- 13 RECESSED FLOOR MAT AT EXTERIOR DOORS-TYP
- 14 OPERABLE WINDOWS FOR DAYLIGHT AND VENTILATION
- 15 LINE OF "LOUNGHOUSE" TOWER ABOVE
- 16 LAPPED STEEL COL. W/ ALUMINUM WINDOW TO TRANSITION TO NON WOOD
- 17 STRUCTURAL STEEL FRAMES
- 18 EDGE OF STANDING BEAM ROOF BELOW
- 19 SINGLE PLT MEMBRANE ROOFING
- 20 SIGHTLINE ABOVE
- 21 LINE OF METAL SHADE BELOW
- 22 ALUMINUM WRAPPED STEEL COLUMN
- 23 SECURITY GATE
- 24 RAIN CHANN
- 25 Poured in PLACE CONCRETE WALL
- 26 3" WALL AND SCREEN
- 27 SIGHTLINE BELOW
- 28 EXIT DOOR
- 29 ACCORDION DOOR SYSTEM
- 30 ACCENT WOOD VENEER WALL
- 31 1/2" THICKER GLASS BALANCE
- 32 1" HIGH WOOD PARTITION SCREEN WALL
- 33 LINE OF CLERESTORY WINDOWS ABOVE
- 34 LOUNGHOUSE TOWER COLUMN - 10' TO 12' DIA
- 35 FIRE SPRINKLER RISER



NOTE: MEZZANINE SPACE (472 S.F.) IS NOT INCLUDED IN BALANCE CENTER SQUARE FOOTAGE CALCULATION (178 S.F.)

**BALBOA CENTER
BLDG. 1 & 2 - SECOND FLOOR PLAN
MARINA PARK-PHASE 3**
Approval in Concept Package
CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

APPROVAL: _____
ASSISTANT CITY ENGINEER
DATE: _____



APPROVED: _____
DATE: _____

NO.	DATE	DESCRIPTION OF REVISIONS

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PORTLAND, OR 97208
503.255.1111

Rabben Herman design office
Landscape Architect
833 Dove, Suite 200
Newport Beach, CA 92660
949.440.8800
rabbenherman.com





Source: City of Newport Beach, Google Earth Pro, 2009

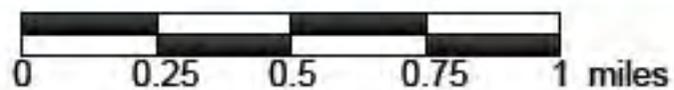


Exhibit 3-7 Sand Disposal Locations

CITY OF NEWPORT BEACH • MARINA PARK
ENVIRONMENTAL IMPACT REPORT

5-10-229

The total dredge/excavation footprint is approximately 2.71 acres. This includes:

- 0.90 acres of existing upland area (landward of the high tide line) which is to be converted to subtidal area upon dredging of the new marina;
- 0.66 acres of existing intertidal area which will also be converted to subtidal area. (Intertidal is defined as the area between -2 feet MLLW and the high tide line (+7 feet MLLW)).
- 1.15 acres of existing subtidal area which will be dredged to increase water depths, but will remain subtidal area upon completion of dredging.

Sediment sampling and analysis was set up based on three areas:

- Area A – paved area of existing mobile home park - landward of existing sandy beach / existing sidewalk and above the high tide line;
- Area B – beach/intertidal area between existing sidewalk and 0 feet MLLW – includes areas both above and below the high tide line;
- Area C – water area below (bayward of) 0 feet MLLW – below the high tide line.

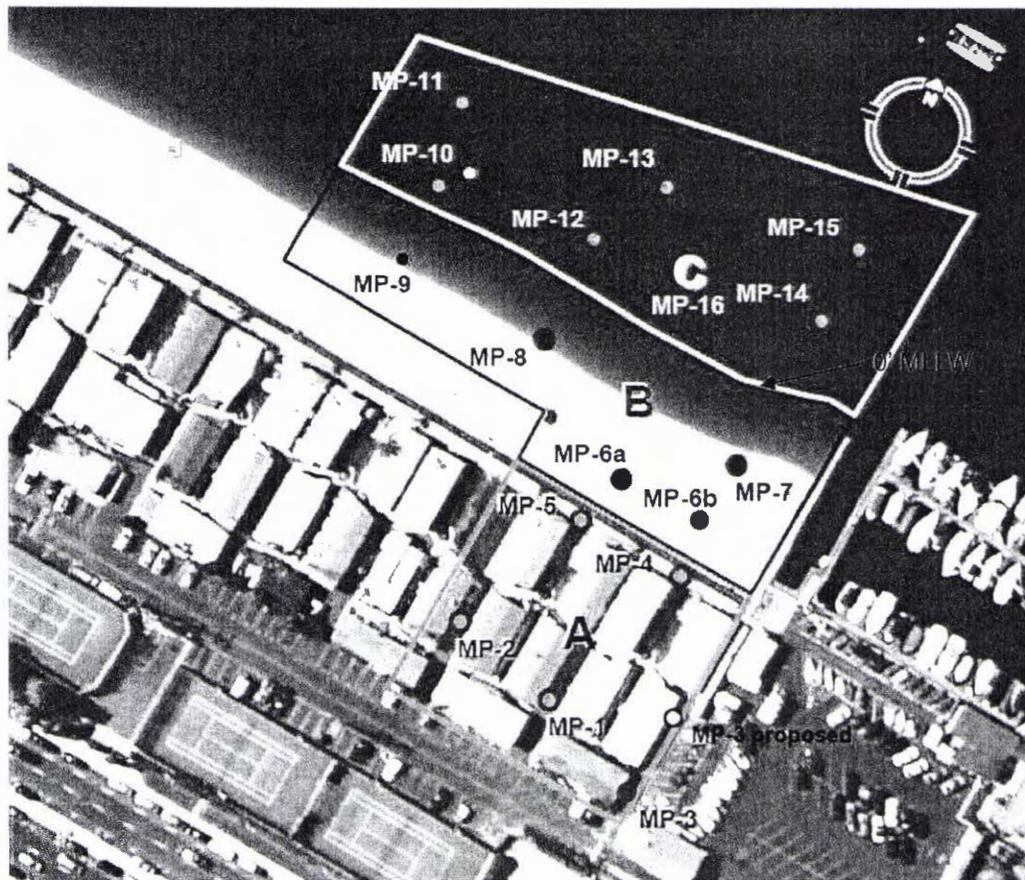
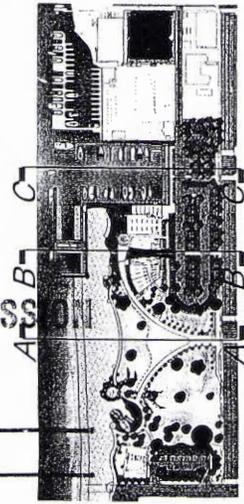


Figure 2 – Sediment Sampling Areas/Locations on Aerial Photo of Existing

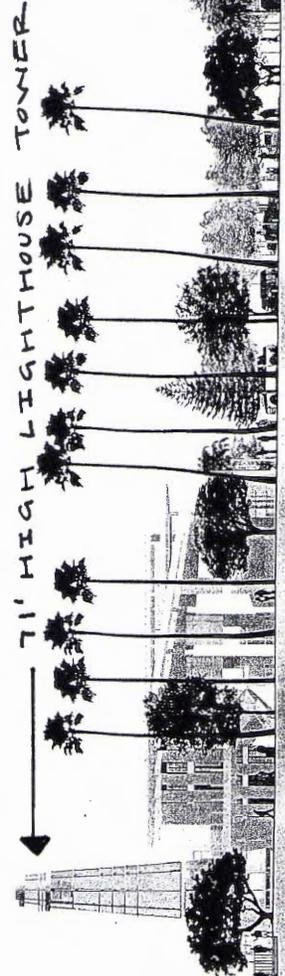


COASTAL COMMISSION

EXHIBIT # _____
PAGE _____ OF _____

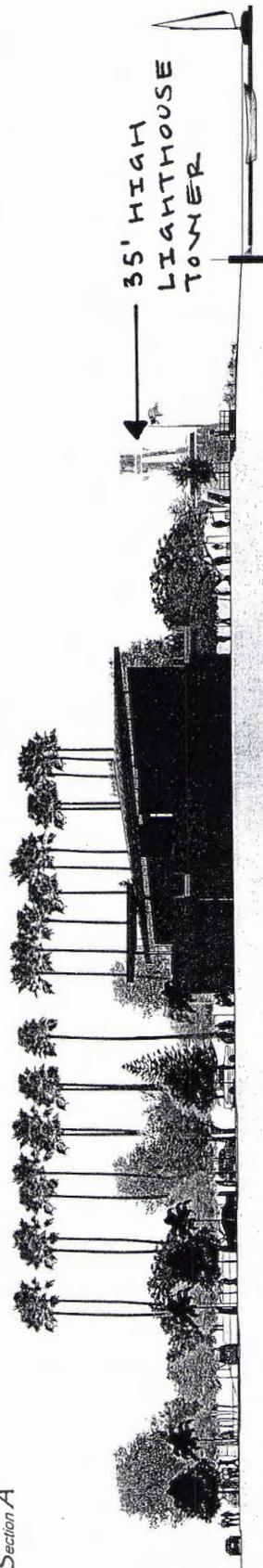


Site Sec



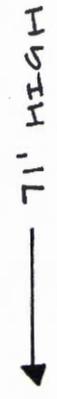
EAST VIEW

Section A



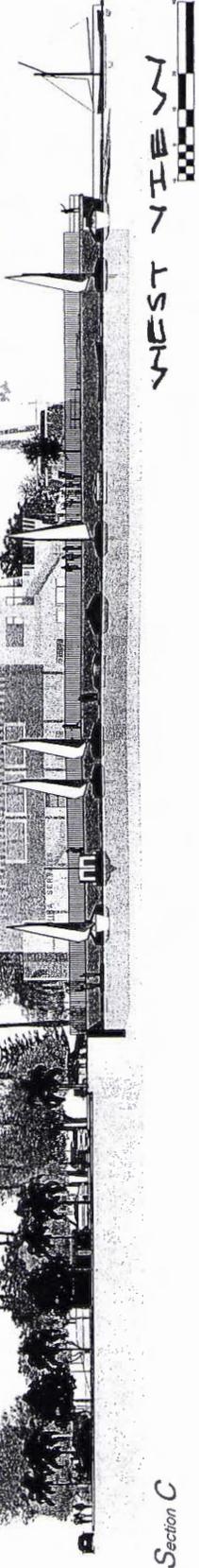
WEST VIEW

Section B



35' HIGH

Section C



WEST VIEW

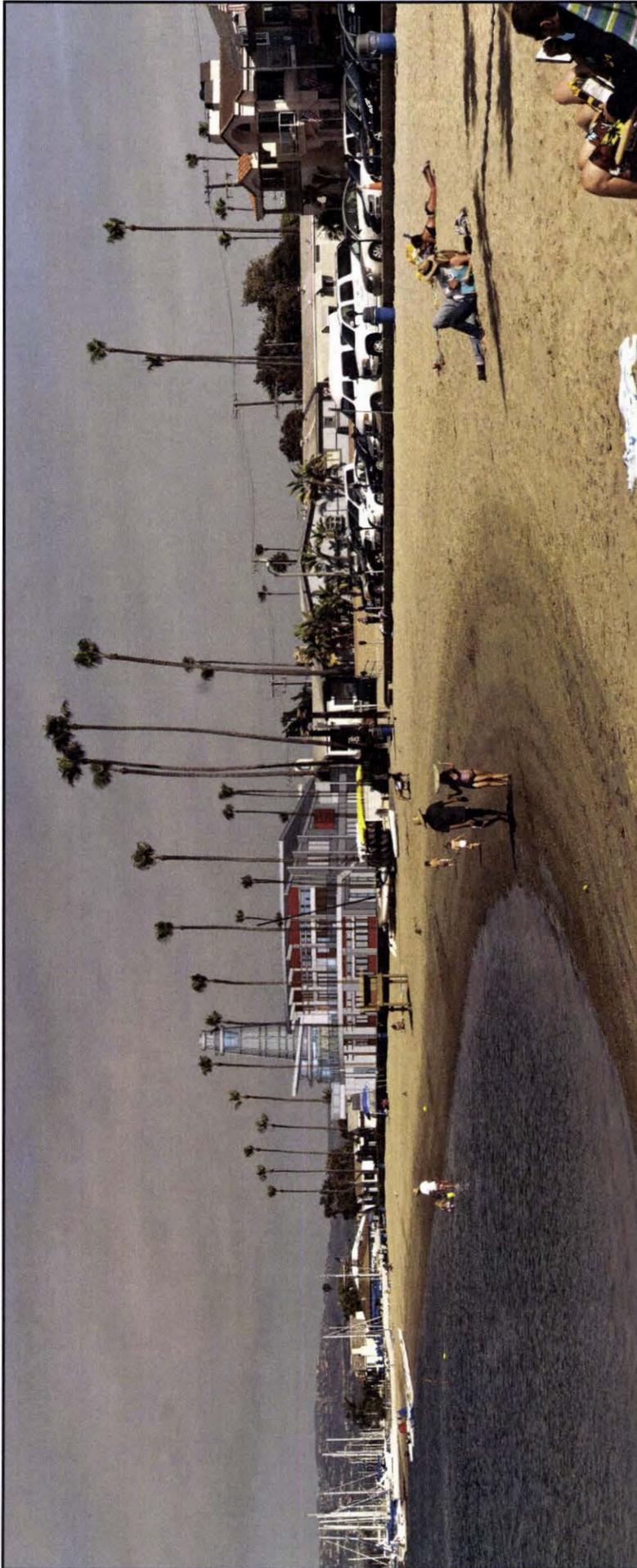
Marina Park Schematic Design





VIEW FROM NORTH





Attachment A
View from 19th Street Beach/Public Restroom

Note: The Balboa Center is the only element of the proposed Marina Park design depicted in this visual impact simulation.



Key Map

MARINA PARK

Tower Element-Visual Impact Analysis

City of Newport Beach

Prepared by Rabben/Herman design office
August 2, 2010

