

CALIFORNIA COASTAL COMMISSION

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

Th 7c**ADDENDUM**

December 9, 2013

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM TH 7C, COASTAL COMMISSION PERMIT APPLICATION NO. 5-13-0478-(IRVINE COMPANY) FOR THE COMMISSION MEETING OF THURSDAY, DECEMBER 12, 2013.**

CHANGES TO STAFF REPORT

Commission staff recommends modification and additions to Section II (Findings and Declarations) 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 9 – Modify Section IV.A., as follows:

The proposed slips will be used for boating related purposes to serve an existing marina. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and eelgrass was discovered within 15 feet of the project area. However, the applicant states that since there will not be any work that disturbs the bottom of the bay that there will not be any impacts to eelgrass. The applicant proposes to prevent construction debris from entering marina waters via floating debris catchers and removal of any debris which inadvertently enter the waters within 24 hours of occurrence to address possible construction-phase impacts. ~~As stated, the proposed project does not anticipate eelgrass impacts, in addition, the new reduced sized fingers will open up a previously shaded area and expose more bay bottom to sunlight, making additional eelgrass growth a possibility.~~

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Filed: August 14, 2013
180th Day: February 10, 2014
Staff: F. Sy-LB
Staff Report: Nov. 21, 2013
Hearing Date: Dec. 11-12, 2013

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-0478

Applicant: Irvine Company

Agents: CAA Planning, Attn: Shawna Schaffner

Location: 1099 Bayside Drive, City of Newport Beach (County of Orange)

Project Description: Replacement of the existing 12,200 square feet of deteriorated wood decking of the Villa Cove Marina. No new piles or change to slip count or layout is proposed.

Staff Recommendation: Approval with conditions.

I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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 will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

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.

II. SPECIAL CONDITIONS

1. Public Use

Public use of the project headwalk, which is part of a public walkway that begins at Bayside Drive and concludes at the Balboa Island Bridge, during construction of the proposed project will be provided at all times with temporary closures due to construction activity. Once construction has been completed, the public walkway will be open and available for use without any obstruction.

2. Construction Responsibilities and Debris Removal

The permittee shall comply with the following construction related requirements:

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

amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

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

3. Best Management Practices (BMPs) Program

By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved marina project will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

- A.** Boat Cleaning and Maintenance Measures:
 - 1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
 - 2. 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

3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

B. Solid and Liquid Waste Management Measures:

1. 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.

C. Petroleum Control Management Measures:

1. 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;
2. 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
3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

4. Eelgrass Survey

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "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 of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be

impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area 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 (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 of 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 Southern California Eelgrass Mitigation Policy. 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 required.

5. 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 applicants 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.
- 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 applicants shall submit the survey:
1. For the review and approval of the Executive Director; and
 2. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through 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 applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *Caulerpa Taxifolia* discovered within the buffer area have 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 applicants have revised the project to avoid any contact with *Caulerpa 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at the Villa Cove Marina at 1099 Bayside Drive in the City of Newport Beach, Orange County (Exhibit #1). The Villa Cove Marina is a private marina with boat slips which are available for lease to the public. The proposed project involves the replacement of the existing 12,200 square feet of deteriorated wood decking of the Villa Cove Marina (Exhibit #2). There will be no change to the existing water surface coverage as the wooden decking will be in-kind replacement with no new water area coverage. The new wooden decking will be made of natural hardwood IPE. No bayward encroachment of the dock system will occur. No other changes or modifications are involved, as well as, no landside development. The applicant states that the finger replacement will not require any modifications to the water-side piles supporting the boat dock system since these piles are in excellent condition and do not need to be replaced. In addition, the applicant states that the floats are in excellent condition and do not need to be replaced as well. Also, the applicant states that barricades and/or temporary plywood decking will be in place to provide safe, temporary walking surfaces to protect the construction area and manage pedestrian traffic where areas of the marina are to be open to the public, including the existing public walkway, during the construction process. Access impacts to the public walkway will only be temporary during the construction of the project.

The replacement of the Villa Cove Marina wooden decking which consists of a headwalk and fingers (Exhibit #2) will take approximately 3 months to complete. The headwalk is part of a public walkway, while the fingers are associated strictly with the private marina. The public walkway begins west of the site at an existing public access (vertical access) easement and walkway extending from Bayside Drive (919 Bayside Drive) to the North Channel ending at a viewing platform and then connecting via a gangplank to an existing public access (lateral access) easement and walkway provided by a floating walkway along the existing docks. The public walkway then connects to the public headwalk of the Villa Cove Marina and concludes at the Balboa Island Bridge (Exhibit #2).

The applicant states that finger decking will be removed and replaced with no impact to the public walkway. As fingers are reconstructed, barricades and/or temporary plywood decking will be installed to allow uninhibited public access along the public headwalk. The applicant states that the

heaviest use of the public walkway occurs in the early morning, so in order to avoid times when the walkway is used heavily by the public, construction of the headwalk will not start until 8:00am daily.

The public headwalk is 6 feet wide and will be constructed in a series of approximate 10 foot to 12 foot segments. For a period of 15 to 30 minutes, the applicant indicates that barricades will be placed on either side of the immediate public walkway and the existing decking will be removed and internal framing cleaned. Immediately after this takes place, temporary plywood decking will be installed and the barricades removed allowing for unimpeded public access. Either that same day or on the subsequent day, temporary barricades will be placed once again, plywood removed, and permanent deck boards installed. This effort should take approximately 30 to 45 minutes per segment.

When an interruption of use of the public walkway will occur, notification will also be placed at the two landside access points to the public walkway, one near the Balboa Island Bridge entrance, and one at the Bayside Drive entrance. Once the work impacting the public walkway is complete, these notifications will be removed. The marina will remain fully operational during the entire construction process.

The public walkway provides an opportunity for the public to enjoy Newport Bay and the applicant as described above intends to maintain availability of the public walkway during the course of the proposed project construction. In order to verify that public access will be available during construction, the Commission imposes Special Condition No.1, which requires the applicant to provide continuous use of the project headwalk (public walkway) for the public during the course of the proposed project construction, but allows for temporary closures throughout the day. Once the construction has been completed, unobstructed access to the public walkway will be available. This special condition will ensure that public access during the course of the construction will be provided and that after construction the headwalk will remain open and available for public use.

Public access to the bay is available along the headwalk of the site which is part of a public walkway that begins at Bayside Drive and concludes at the Balboa Island Bridge. Public access also exists in the project vicinity along the public boardwalk that surrounds Balboa Island.

In order to minimize water quality impacts, the applicant states that construction debris will be prevented from entering marina waters. However, any debris inadvertently entering the water will be removed by divers within 24 hours of occurrence. While the applicant has proposed these measures to protect water quality, additional measures are necessary to ensure that no adverse impacts to water quality occur. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes Special Condition No. 2, which requires, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission imposes Special Condition No. 3, which requires the continued use and maintenance of post construction BMPs.

The proposed slips will be used for boating related purposes to serve an existing marina. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and eelgrass was discovered within 15 feet of the project area. However, the applicant states that since there will not be any work that disturbs the bottom of the bay that there will not be any impacts to eelgrass. The applicant proposes to prevent construction debris from entering marina waters via floating debris catchers and removal of any debris which inadvertently enter the waters within 24 hours of occurrence to address possible construction-phase impacts. As stated, the proposed project does not anticipate eelgrass impacts, in addition, the new reduced sized fingers will open up a previously shaded area and expose more bay bottom to sunlight, making additional eelgrass growth a possibility.

The eelgrass survey took place on April 12, 2013 as required by the City of Newport Beach Harbor Resources Division and 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 December 2013 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. A pre-construction *Caulerpa taxifolia* survey was completed on April 12, 2013 as required by the City of Newport Beach Harbor Resources Division. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendaized for the December 2013 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes Special Conditions No. 4 and No. 5, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, Special Condition No. 5 also identifies the procedures necessary to be completed prior to beginning any construction.

The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The applicant has stated that no permits are necessary from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers.

B. MARINE RESOURCES

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

C. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into

coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

D. LOCAL COAST PROGRAM

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

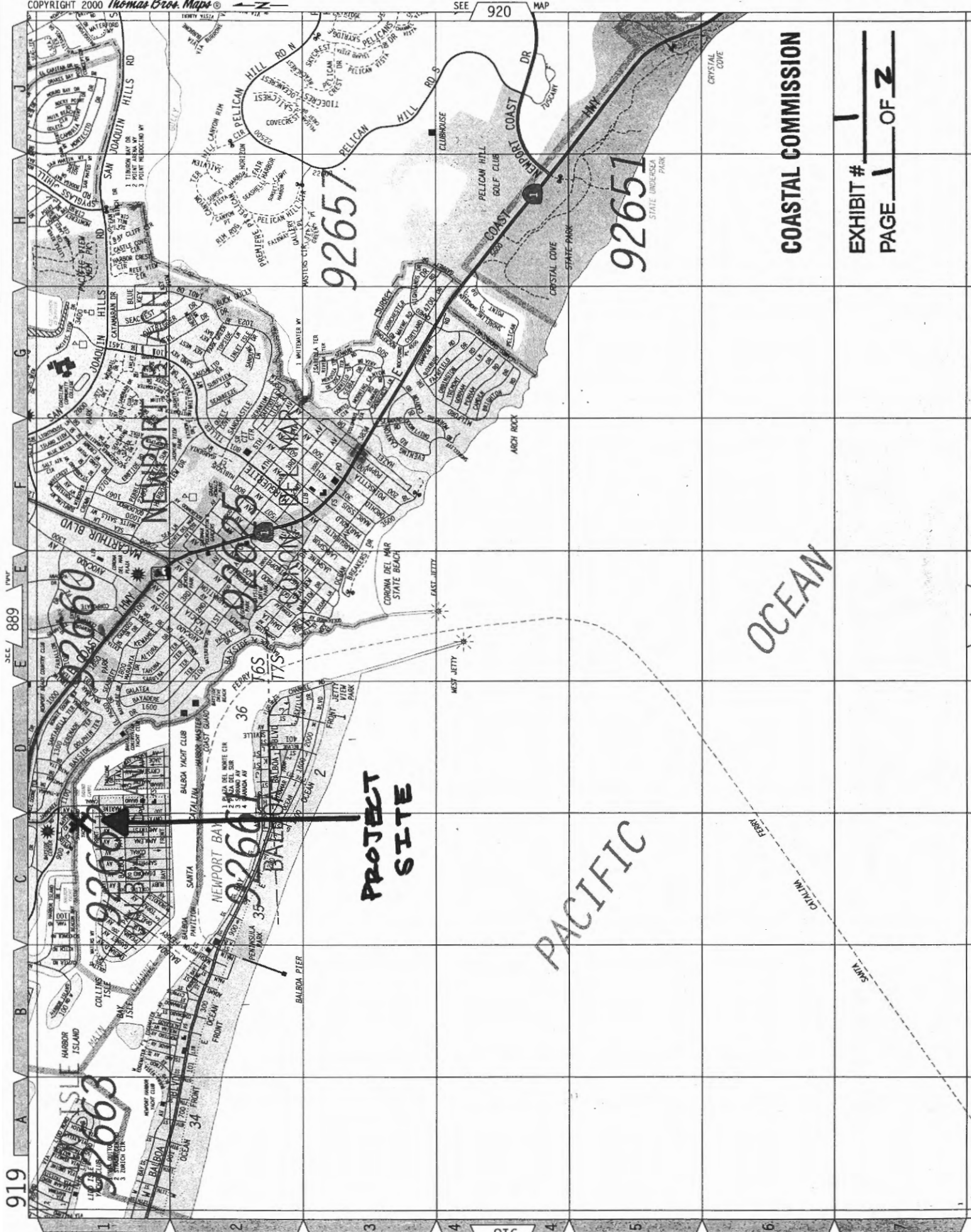
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is categorically exempt. Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Approval-In-Concept from the City of Newport Beach Planning Department dated July 1, 2013; Approval-In-Concept from the City of Newport Beach Harbor Resources Division dated May 8, 2013; Letters from CAA Planning to Commission staff dated July 3, 2013; *Eelgrass Survey Reporting Form, Villa Cove Marina Re-Decking Project* prepared by *Coastal Resources Management, Inc.* received July 3, 2013; *Caulerpa taxifolia Survey Reporting Form, Villa Cove Marina Re-Decking Project* prepared by *Coastal Resources Management, Inc.* received July 3, 2013; Letter from Commission staff to CAAA Planning dated August 1, 2013; and Correspondence from CAA Planning to Commission staff received August 14, 2013.



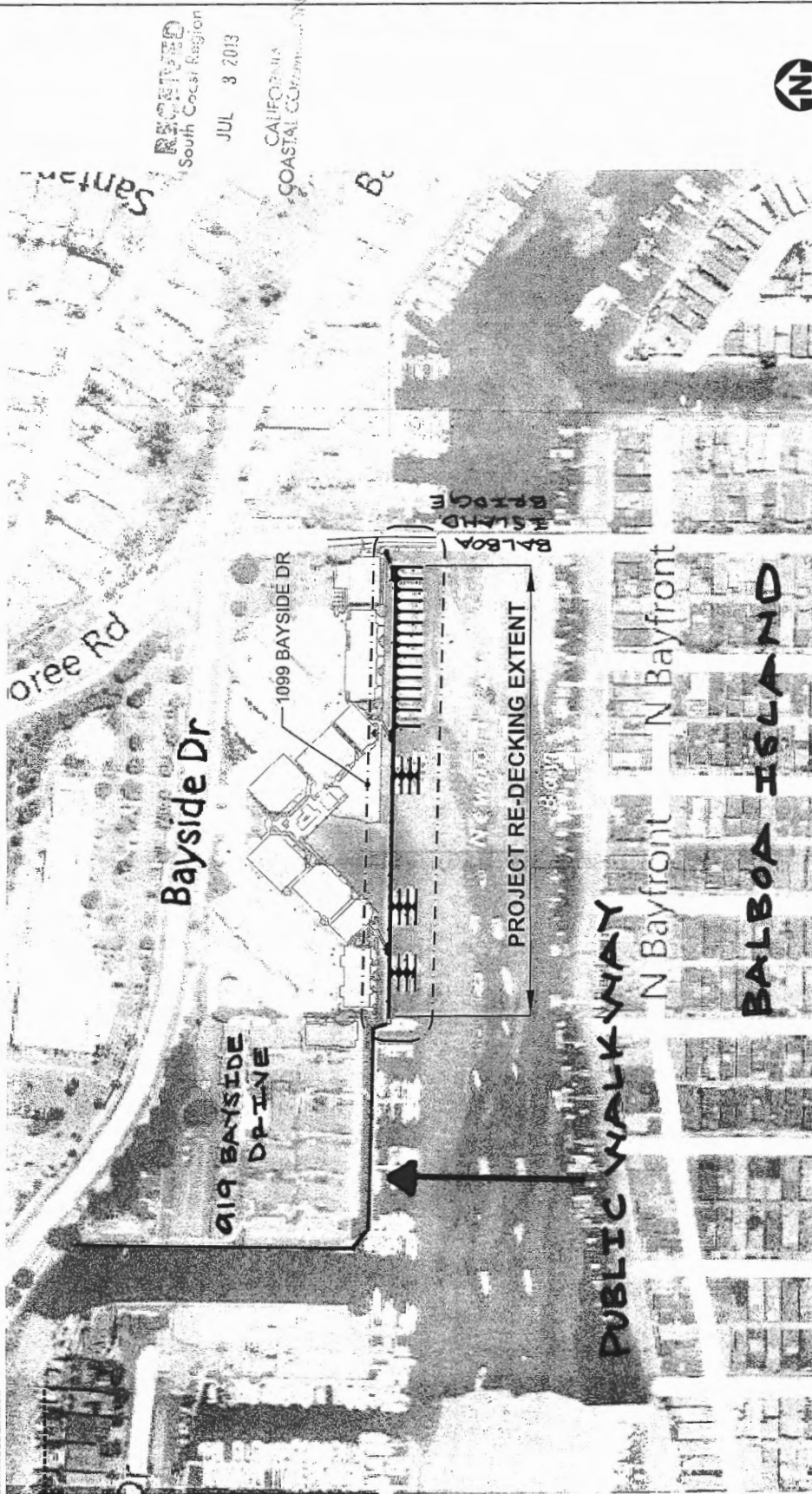
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EXHIBIT #

PAGE 1 OF 2

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THE IRVINE COMPANY 516 Newport Center Drive Newport Beach, CA 92660		URS 110 Golden Shore, Suite 150 Newport Beach, CA 92660 Tel: (949) 384-2000 Fax: (949) 256-7005		ENGINEER DESIGNER CAD OPERATOR CHECKER PROJECT MANAGER	RHM RHM RHM RHM RHM	VILLA COVE MARINA Newport Beach, CA RE-DECKING PROJECT VICINITY MAP	SCALE NTS PROJECT NUMBER 30990345 DRAWING NUMBER SP-1
NO. DATE 10/22/07 ISSUED FOR REVIEW DESCRIPTION REVISIONS		NO. DATE DESCRIPTION REVISIONS		BY DESCRIPTION REVISIONS		BY DESCRIPTION REVISIONS	

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EXHIBIT # 1
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California Coastal Commission
South Coast District Office
APPROVED
Permit No. **SCD-18-478**

By: _____
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Date: _____

