

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12-275

Applicant: Waterfront Enterprises, Inc.

Agent: Thirtieth Street Architects, Attn: John Loomis

Location: 400 Main Street, Newport Beach (Orange County)

Project Description: Installation of a new cantilevered fixed dining deck on the bayward side of the Balboa Pavilion for the Harborside Restaurant. The new dining deck will have a gross area of 888 square feet and a net public area of 735 square feet. The new dining deck will be enclosed with a 42-inch high glass guardrail, the floor will be impervious and have drains directly to the sanitary sewer and will be supported by beams connected to existing concrete pilings and piers that support the pavilion. Thus, no new pilings are proposed. In order to make room for the new dining deck, an existing floating dock system with a skiff rental will be relocated approximately 32-feet bayward, to the opposite bayward side of the existing concrete piers.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

Commission Staff is recommending **APPROVAL** of a new cantilevered fixed dining deck and relocation of an existing floating dock system within the historic Balboa Pavilion. The proposed project is located in the Balboa Village area toward the end of the Balboa Peninsula in Newport Beach. This is a popular area for visitors because of the historic pavilion and adjacent 'Balboa Fun Zone', a concentration of other shops and restaurants, and the nearby wide sandy beach and Balboa Pier that extends into the Pacific Ocean. There is a large quantity of parking in the area, including

in some private parking lots and structures, on street, and in municipal parking lots that are located within the commercial area and adjacent to the beach and pier. This parking supports the commercial uses and beach visitors interchangeably. Parking demand can be high at certain times, so, parking can be a challenge. There is also a very popular concrete walkway/bikeway along the beachfront that extends along much of the Balboa Peninsula and provides direct access to Balboa Village. So, walking and cycling are also popular ways of reaching this area. The existing historic building does not have any on-site parking, but does have arrangements with nearby properties to provide some limited off-site parking. The proposed addition to the restaurant service area would not be accompanied by any additional parking. Instead, Commission Staff is recommending submittal of a Final Transportation/Parking Demand Alternative Measures Program to help reduce the overall parking demand of the existing/expanded restaurant. These measures will help minimize adverse impacts to parking in the surrounding Balboa Village area resulting in adverse impacts to public access in this popular coastal access area. As proposed, with no such program, the project would be inconsistent with Sections 30210 and 30211 of the Coastal Act regarding public access and recreational opportunities. As conditioned, the proposed project will conform with Coastal Act Policy Sections 30210 and 30211, Section 30250 regarding avoidance of cumulative impacts, and Section 30252 regarding providing non-automobile circulation within the development and substitute means of serving the development with public transportation. As noted elsewhere in the findings the conditions will also assure project consistency with Coastal Act Sections 30230 and 30231 regarding maintaining and enhancing marine resources, biological productivity and water quality.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **SEVEN (7) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires submittal of revised final project plans. **SPECIAL CONDITION NO. 2** requires that the relocated floating dock system remain open and available to the public, as proposed. **SPECIAL CONDITION NO. 3** requires that prior to issuance of the Coastal Development Permit the applicant submits a Final Transportation/Parking Demand Alternative Measures Program. **SPECIAL CONDITION NO. 4** notifies the applicant of construction practices and debris removal responsibilities. **SPECIAL CONDITION NO. 5** requires the applicant to incorporate long term water quality Best Management Practices for the operation of the boat dock system. **SPECIAL CONDITION NO. 6** requires pre- and post-construction eelgrass surveys. **SPECIAL CONDITION NO. 7** requires a pre-commencement of construction *Caulerpa Taxifolia* survey.

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 (LCP). The City of Newport Beach only has a certified Land Use Plan (LUP) 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

EXHIBITS

Exhibit #1 – Location Maps

Exhibit #2 – Site Plan

Exhibit #3 – Elevations & Sections

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-12-275 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 Plans

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of revised final project plans. The revised plans shall be in substantial conformance with the plans received by South Coast District staff on October 10, 2012 and January 25, 2013. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised project design from the City of Newport Beach Harbor Resources Division.
- 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. Public Use

As proposed, the relocated floating dock system, as depicted on Exhibit #2 of the staff report dated June 21, 2013, shall remain open and available to the public.

3. Transportation/Parking Demand Management Program

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of a Transportation/Parking Demand Management Program. The Transportation/Parking Demand Management Program shall be in substantial conformance with the program measures identified in a letter from the applicant dated June 18, 2013, except they shall be modified as follows to include:
1. The permittee shall provide incentives for employees to use public transportation, including the provision of public transit passes to employees (i.e., as proposed, at least half the cost of monthly bus passes for restaurant employees shall be paid for by the permittee).
 2. The permittee shall encourage employees to walk or ride bicycles to work and encourage restaurant patrons to walk or use bicycles to visit the restaurant, and to the maximum extent feasible provide facilities to accommodate bicycles such as additional bike racks on-site.

3. To the extent feasible, the permittee shall organize a carpool program and encourage employee participation using coordinated work schedules, daily reminders, and other incentives.
 4. To the extent feasible, the permittee shall provide a driver and vehicle (at the permittee's expense) during inclement weather and after dark to transport employees who ordinarily use alternative modes of transportation.
 5. To the extent feasible, the permittee shall provide communal bicycles and a company vehicle for use by employees during business hours (to discourage the use of private automobiles).
- 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. 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.

5. 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 relocated boat dock and/or boat slip 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.

6. 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.

7. 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, Prior Commission Action at the Subject Site and Standard of Review

Project Location and Description

The subject site is located at 400 Main Street, at the Harborside Restaurant located within the Balboa Pavilion in the City of Newport Beach, Orange County (Exhibit #1). The Harborside Restaurant is located within the historic Balboa Pavilion, which was constructed in 1906. In 1984, the building was listed in the National Register of Historic Places as a prime example of Victorian waterfront architecture in Southern California.

The surrounding area and its immediate vicinity are characterized by mixed commercial recreational and residential uses in the area known as Balboa Village on the Balboa Peninsula (Exhibit #1). The Balboa Pavilion is also located adjacent to the “Balboa Fun Zone”, an area that includes visitor-serving and recreational facilities that include restaurants, snack bars, boat rentals, sports equipment rentals, boat tours of the harbor, boat launching facilities, games and rides and numerous shops selling specialized merchandise.

The owner of the property is Balboa Pavilion Company which leases the restaurant to Waterfront Enterprises, Inc., operators of the Harborside Restaurant.

The existing Balboa Pavilion partly overhangs the waters of Newport Bay, and so is partly supported by a series of concrete piers embedded in the bay. The existing structure has two (2) floors. The uppermost floor overhangs the water area farther than the lower floor area. The

proposed project will provide new outdoor dining and lounge seating area for the Harborside Restaurant by extending a deck from the bayward side of the lower floor restaurant. The new deck will be underneath the uppermost floor that overhangs the bay (Exhibits #2-3). The new dining deck will have a gross area of 888 square feet and a net public area of 735 square feet. The new dining deck will be enclosed with a 42-inch high glass guardrail, the floor will be impervious and have drains directly to the sanitary sewer. The deck will be supported by beams connected to existing concrete pilings and piers that support the pavilion. Thus, no new pilings in the water are proposed. The new dining deck will also have a 2'-6" x 74' "catwalk" cantilevered along the bayward edge of the proposed dining deck for purposes of access to clean the glass guardrail. The new dining deck will have overhead ceiling fans with lights and infrared heaters. Cut off shields will be provided on the lights to minimize light spillage towards the bay. In order to make room for the new dining deck, an existing floating dock system with a skiff rental will be relocated approximately 32-feet bayward, to the opposite bayward side of the existing concrete piers (Exhibits #2-3). Also, a total of approximately 448 square feet (an approximate 171 square foot section and an approximate 277 square foot section) of new floating dock area associated with the relocated floating dock system is also proposed. The outer edge of the relocated floating dock aligns with the existing roof overhang of the existing 2nd floor of the restaurant and is therefore within the shadow of the existing structure. The new dining deck would also be located underneath the overhang of the existing 2nd floor overhang as well. Therefore, no additional water coverage is proposed.

The proposed fixed cantilevered dining deck has been designed to meet the Secretary of the Interior's Guidelines for the Treatment of Historic Properties by minimizing the visible profile of the deck by using a transparent guardrail.

Public access to the bay is currently available along the proposed to be relocated floating dock system (accessed via existing adjacent float ramps and gangways). Public access will continue to be provided post project with the new relocated floating dock system, which will be accessed the same way the existing dock is accessed (Exhibit #2). The new relocated floating dock system will also continue to have the fishing skiff rental operation.

Following the initial application submittal, the applicant revised a small section of the relocated floating dock system. This was indicated on revised plans that accompanied a letter dated January 23, 2013. However, the revised plans did not have evidence of Approval-In-Concept from the City of Newport Beach Harbor Resources Division. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit revised final project plans with evidence of Approval-in-Concept of the revised project design from the City of Newport Beach Harbor Resources Division.

The Balboa Pavilion was constructed in 1906 which predates the incorporation of Newport Beach and its Zoning Code. Therefore, the existing uses in the historic Balboa Pavilion were "grandfathered in" by the City. Only two (2) on-site handicapped parking spaces are provided to the east of the building. There is no additional on-site parking. However in order to provide additional parking for the restaurant use, the applicant has a current off-site lease for eleven (11) parking spaces at a nearby location (600 East Bay Avenue, Newport Beach), to be used by the restaurant after normal working hours and on the weekends. Additionally, the restaurant utilizes a valet parking service during the evenings, weekends and for banquets.

An Outdoor Dining Permit for the proposed dining deck was approved by the City of Newport Beach Harbor Resources Commission. Under the provisions of the City of Newport Beach Zoning Code (not certified), small outdoor dining area may be added (up to maximum of 1,000 square feet) to existing restaurants without any additional required public parking, as was the case here. Since the net public area was 735 square feet, no parking was required by the City nor proposed by the applicant in its Coastal Development Permit Application.

Prior Commission Action at the Subject Site

Coastal Development Permit No. A-78-3007-(Davey's Locker, Inc.). On April 17, 1978, the Commission approved Coastal Development Permit No. A-78-3007-(Davey's Locker, Inc.) for this site. CDP No. A-78-3007 allowed the relocation of an existing finger float and construction of an additional finger float and pilings. No Special Conditions were imposed.

Coastal Development Permit De Minimis Waiver No. 5-88-052-(Tozer). In February 1988, the Commission approved Coastal Development Permit De Minimis Waiver No. 5-88-052-(Tozer) for this site. CDP No. 5-88-052 allowed the repair and re-location of a commercial dock to accommodate a wider passenger vessel.

Administrative Coastal Development Permit No. 5-08-220-(Balboa Manor, LLC). On February 11, 2008, the Commission approved Administrative Coastal Development Permit No. 5-08-220-(Balboa Manor, LLC) for this site. CDP No. 5-08-220 allowed the removal and replacement of an existing floating dock system (floating dock pier, approach and gangways) in the same configuration, plus the addition of a new 5' x 58' ADA (American Disabilities Act) compliant gangway. No changes were proposed to the existing piles. **FOUR (4) SPECIAL CONDITIONS** were imposed regarding: 1) Construction responsibilities and debris removal; 2) Best Management Practices (BMPs); 3) Eelgrass survey; and 4) *Caulerpa Taxifolia* survey.

Standard of Review

The City of Newport Beach has a certified Land Use Plan (LUP) but the Commission has not certified a Local Coastal Program (LCP) for the City. As such, the Coastal Act polices are the standard of review with the certified LUP providing guidance.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 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 30250 of the Coastal Act states, in pertinent part:

(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.

Section 30252 of the Coastal Act states:

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

City of Newport Beach Certified Coastal Land Use Plan, Nonconforming Structures and Uses, Policy 2.2.5-2 states,

In the older commercial districts of Balboa Village and Corona del Mar, allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their existing intensity only where a finding can be made that the development will not perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Where such development cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.

Sections 30210 and 30211 of the Coastal Act protect the public's right to access the shoreline and water and recreational opportunities. Section 30252 of the Coastal Act encourages the use of public transit and non-automobile circulation to serve the transit needs of new development. The City of Newport Beach's Certified Coastal Land Use Plan (CLUP) Policy 2.2.5-2 also requires that non-conforming structures in the Balboa Village area deal with inadequate parking through the use of alternative modes of transportation.

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 located within Balboa

Village, which due to its location next to the ocean, serves as a primary area for visitors to the coast. Adjacent to the Balboa Pavilion and within Balboa Village is the popular “Balboa Fun Zone”, an area that includes visitor-serving and recreational facilities located within commercial areas that include restaurants, snack bars, boat rentals, sports equipment rentals, boat tours of the harbor, boat launching facilities, games and rides and numerous shops selling specialized merchandise. It is a main draw for visitors to the coast in this area.

Public access to the bay is currently available along the waterfront in this area, including on the proposed to be relocated floating dock. The applicant has proposed that such access will continue to be provided post project with the new relocated floating dock and accessed the same way. Public access to these floating dock systems is from Main Street and East Edgewater Avenue via existing gangways at the west and east ends of the building. The relocated floating dock system and new associated floating dock area will also continue to have the fishing skiff rental operation. In order to make sure that the relocated floating dock system remains open to the public, the Commission is imposing **SPECIAL CONDITION NO. 2**, which states that the relocated floating dock system remain open and available to the public, as proposed.

As stated previously, the existing site has two (2) on-site handicapped parking spaces, and eleven (11) off-site spaces that are available during evenings and weekends. The restaurant also offers valet parking service during the evenings, weekends and for banquets. The proposed project does not include a proposal for any additional parking associated with the new dining deck. An Outdoor Dining Permit for the proposed dining deck was needed and was consequently approved by the City of Newport Beach Harbor Resources Commission. Under the provisions of the City of Newport Beach Zoning Code, small outdoor dining area may be added (up to maximum of 1,000 square feet) to existing restaurants without any additional required public parking. More specifically, it allows outdoor dining with no need for additional parking as long as the outdoor dining area is no more than 10% of the existing net public area of the restaurant or 1,000 square feet, whichever is less. In this case, the proposed dining deck is 735 square feet of net public area, or about 6.7% of the existing public area of the existing restaurant dining and lounge spaces. Thus, no new parking was required by the City nor proposed by the applicant in its Coastal Development Permit Application.

Section 30252 of the Coastal Act requires that new development provide adequate parking facilities *or* provide substitute means of serving the development with public transportation so that the development does not adversely affect the public parking supply that supports public access to the beach. In general, the amount of parking that is “adequate” is determined by calculating the parking demand of a specific project using a parking standard. While no parking was required by the City, if it was required, the City’s Municipal Code, as well as the City’s Certified Land Use Plan (LUP) states that the parking would either be calculated at one (1) space per 30, 40 or 50 square feet of net public space. A City issued Use Permit would have evaluated and determined the specific parking ratio (i.e. whether to use the 1:30, 1:40, or 1:50 ratios). The Applicant’s Parking Study rationalizes that one (1) space per 40 square feet would have been the most appropriate ratio (had the City required such parking). This would have meant that 19 on-site parking spaces would be required.

Although no new parking is provided, the applicant has provided a parking analysis which states that the proposed project will not create adverse impacts on public access (see Parking Study prepared by Thirtieth Street Architects and dated January 22, 2013). The study references two (2)

additional parking studies that were previously done for the area: Municipal Parking Study prepared by Walker Parking Consultants dated 2008 and Parking Management Plan prepared by Nelson Nygaard Associates dated May 2012. The applicant's study concluded that during most times of the year, except on the busiest of summer weekends, there is a surplus of approximately 400 parking spaces within the Balboa Village area. This includes on street parking spaces (approximately 280 spaces available) and in municipal and private parking lots (approximately 1,158 parking spaces available).

As stated previously, the project site is ideally suited to support visitors to the beach and the coastal community. A lack of public parking and/or inadequate public transit discourages visitors from coming to the beach and taking part in other visitor-serving activities in the Coastal Zone. A lack of parking and/or inadequate public transit would therefore have an adverse impact on public access. All development must, as a consequence, provide adequate onsite parking and/or incorporate measures to encourage use of public transit and other modes of non-automobile circulation to minimize adverse impacts on public access. The Commission's typical approach has been to require all new development to supply off-street parking to support it, so that on-street and/or municipal parking lots can remain available for beach visitors. However, the Commission has also recognized that there are some circumstances where the provision of additional parking isn't the best approach, particularly where providing additional on-site parking isn't feasible. In this case, additional on-site parking could only be provided if the existing structure were substantially modified or demolished, which isn't acceptable given the historical significance of the structure. Some cases, like this one, would be best served by instead focusing on transportation demand management measures.

The applicant states that even though 19 on-site parking spaces are not provided, there is sufficient parking in the area to compensate and that they currently partake and are willing to partake in additional Transportation/Parking Demand Alternative Measures to reduce any impacts to parking. For instance, the applicant states that there is an existing bike rack on-site that is heavily used; there is currently a 75-feet of side tie free guest parking at a float adjacent to the proposed dining deck that is utilized by restaurant patrons who drive their boats to the restaurant; and they continually seek out additional off-site parking areas. The applicant has also proposed a new measure, offering to pay half the cost of monthly bus passes for employees of the restaurant.

Recent Coastal Development Permits obtained by the City have also resulted in additional parking in the Balboa Village area. Coastal Development Permit No. 5-01-029, approved in 2001, was a Balboa Village Rehabilitation Project in which part of the project resulted in a net gain of 24 parking spaces in the entire Balboa Village area including the nearby Balboa Pier Parking Lot. Coastal Development Permit No. 5-10-103, approved in 2010, resulted in a new thirty-one (31) and two (2) handicapped public parking spaces parking lot near the Balboa Pavilion. Thus, the number of parking spaces in the Balboa Village has increased over the years.

Thus, while the applicant has made efforts to show that parking will not be impacted by the proposed project and that recent City actions have provided additional parking in the area, additional measures still are necessary to avoid adverse impacts upon parking in the Balboa Village area, that is a significant coastal access area. Such measures include:

1. The permittee shall provide incentives for employees to use public transportation.
2. The permittee shall encourage employees to walk or ride bicycles to work and encourage restaurant patrons to walk or use bicycles to visit the restaurant, and to the maximum extent feasible provide facilities to accommodate bicycles such as additional bike racks on-site.
3. To the extent feasible, the permittee shall organize a carpool program and encourage employee participation using coordinated work schedules, daily reminders, and other incentives.
4. To the extent feasible, the permittee shall provide a driver and vehicle (at the permittee's expense) during inclement weather and after dark to transport employees who ordinarily use alternative modes of transportation.
5. To the extent feasible, the permittee shall provide communal bicycles and a company vehicle for use by employees during business hours (to discourage the use of private automobiles).

Therefore, the applicant needs to submit a Transportation/Parking Demand Alternative Measures Program that includes such measures, including the measures the applicant already partakes in and the measure the applicant has already proposed, paying half the cost of monthly bus passes for employees of the restaurant as identified in a letter from the applicant dated June 18, 2013.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. The lack of on-site parking or Transportation/Parking Demand Alternative Measures to minimize adverse impacts to parking would add to the cumulative adverse effects on public access in an area that is especially a popular access point to the coast. Although lack of parking for one (1) single use may not seem to create significant adverse impacts, the cumulative adverse effect of allowing a development with no on-site parking or Transportation/Parking Demand Alternative Measures to minimize adverse impacts to parking will add up over time. Again, it should be remembered that the Balboa Village area is a key access point to the coast in this area. If other similar uses in the area were permitted without providing on-site parking or Transportation/Parking Demand Alternative Measures it would increase adverse impacts upon public access, which is inconsistent with the Sections 30210 and 30211 of the Coastal Act and the City of Newport Beach's certified CLUP Policy 2.2.5-2.

In order to minimize adverse impacts to public access presented by the proposed project, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires submittal of a Transportation/Parking Demand Alternative Measures Program, which includes measures such as, providing incentives for employees to use public transportation, providing additional bike racks on-site, etc.. Such measures would minimize adverse impacts to public access and also not result in cumulative adverse impacts.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30250 and 30252 of the Coastal Act with regard to the public's right of access to the sea and would avoid cumulative impacts and with the City of Newport Beach's Certified CLUP

Policy 2.2.5-2 regarding how to deal with the inadequate parking of existing non-conforming structures in the Balboa Village area through the use of alternative modes of transportation.

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 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. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts.

Marine Resources/Biological Productivity

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters. Coastal waters covered by structures also impede wildlife foraging activities. Currently, the area where the project will take place is underneath the existing 2nd floor and roof overhang. Thus, natural sunlight does not currently shine upon the location of the project area. The proposed project includes a new dining deck and attached “catwalk” and a relocated floating dock system with associated new floating dock area. The outer edge of the relocated (32-feet bayward) floating dock aligns with the existing roof overhang of the existing 2nd floor of the restaurant and is therefore within the shadow of the existing structure. The new dining deck, “catwalk” and new floating dock area would also be located underneath the overhang of the existing 2nd floor and roof as well. Therefore, the proposed project does not result in any additional water coverage and impacts to marine resources or biological productivity (Exhibit #3).

In order to minimize any adverse impacts to water quality, the applicant states that the floor of the new dining deck will be impervious and have drains directly to the sanitary sewer.

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. 4**, 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. 5**, which requires the continued use and maintenance of post construction BMPs.

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) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fish – 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 pursue fish 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.

An eelgrass survey took place on July 24, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. 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 agendized for the July 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. Therefore, the Commission imposes **SPECIAL CONDITION NO. 6**, 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. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa taxifolia

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa 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 *Caulerpa 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 *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa 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, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on July 24, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized for the July 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. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa 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 *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act with regard to maintaining and enhancing marine resources, biological productivity and water quality.

D. Local Coastal Program (LCP)

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 (LUP) was effectively certified on May 19, 1982. The Certified LUP was updated on November 15, 2012. The City currently has no Certified Implementation Plan (IP). 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 Policy Sections 30210 and 30211 regarding public access and recreational opportunities, Section 30250 regarding avoidance of cumulative impacts, Sections 30230 and 30231 regarding maintaining and enhancing marine resources, biological productivity and water quality and City of Newport Beach's Certified CLUP Policy 2.2.5-2. 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).

E. California Environmental Quality Act (CEQA)

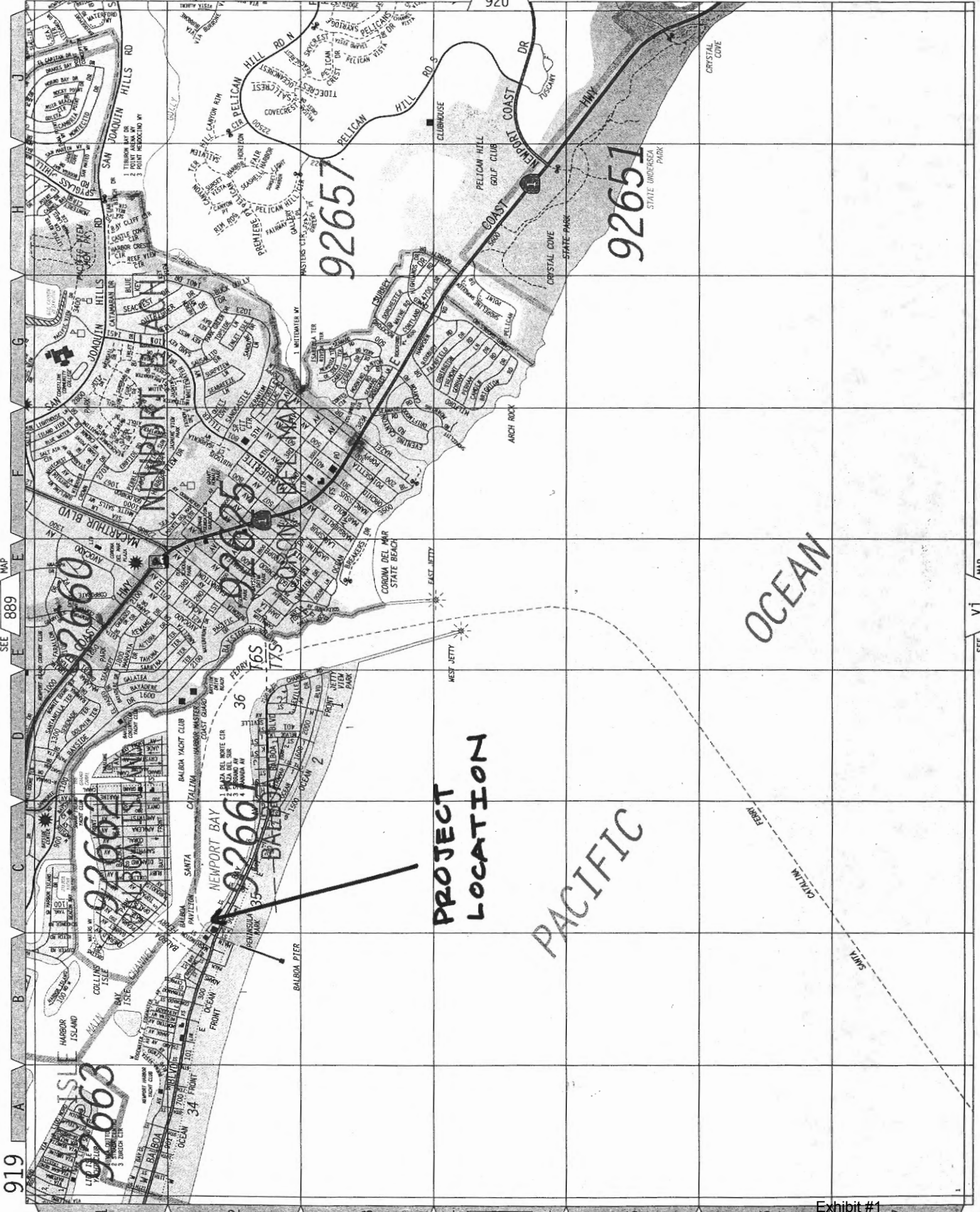
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a

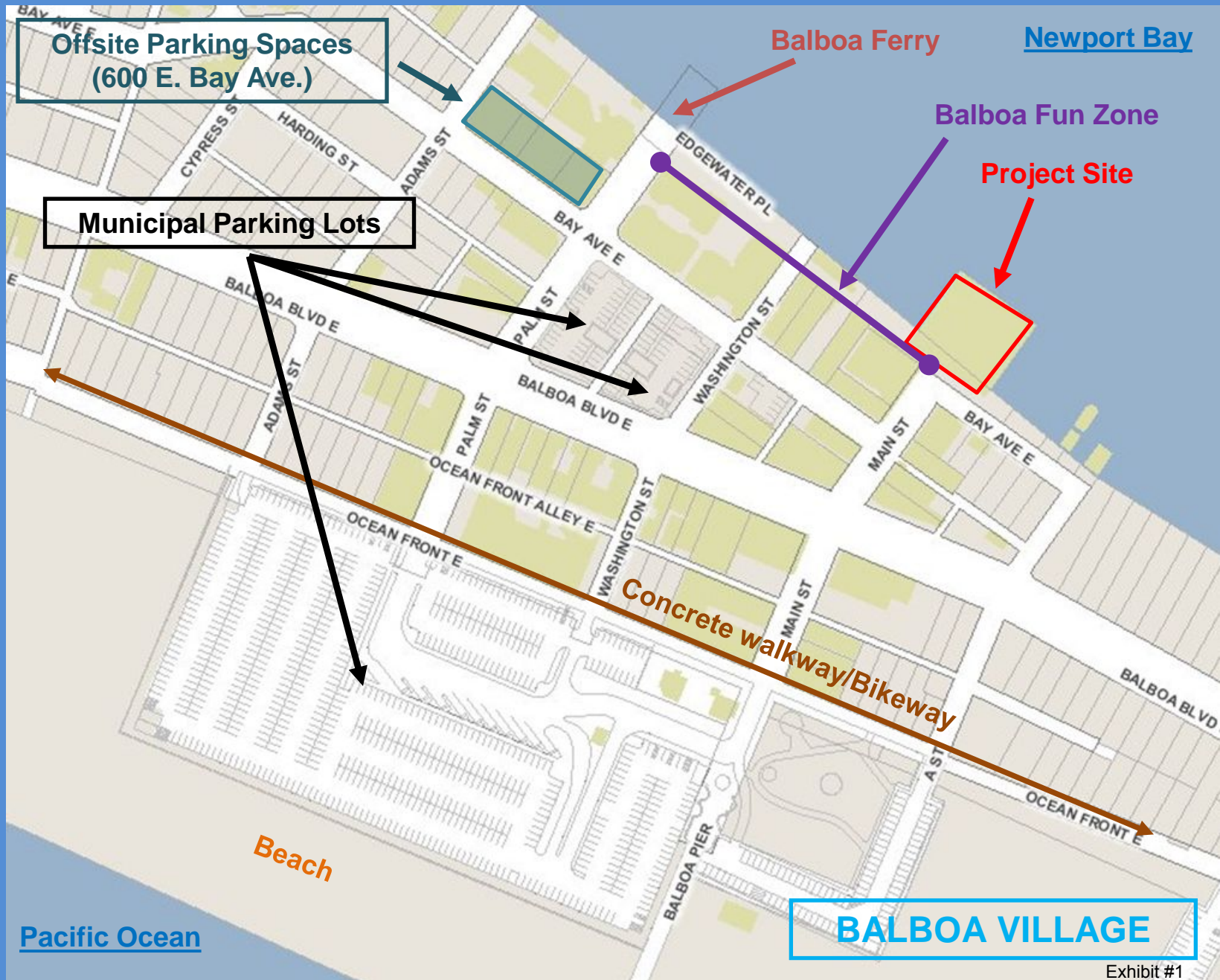
proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt on July 24, 2012. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and recreational opportunities policies, the avoidance of cumulative impacts policy and the marine resource, biological productivity and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

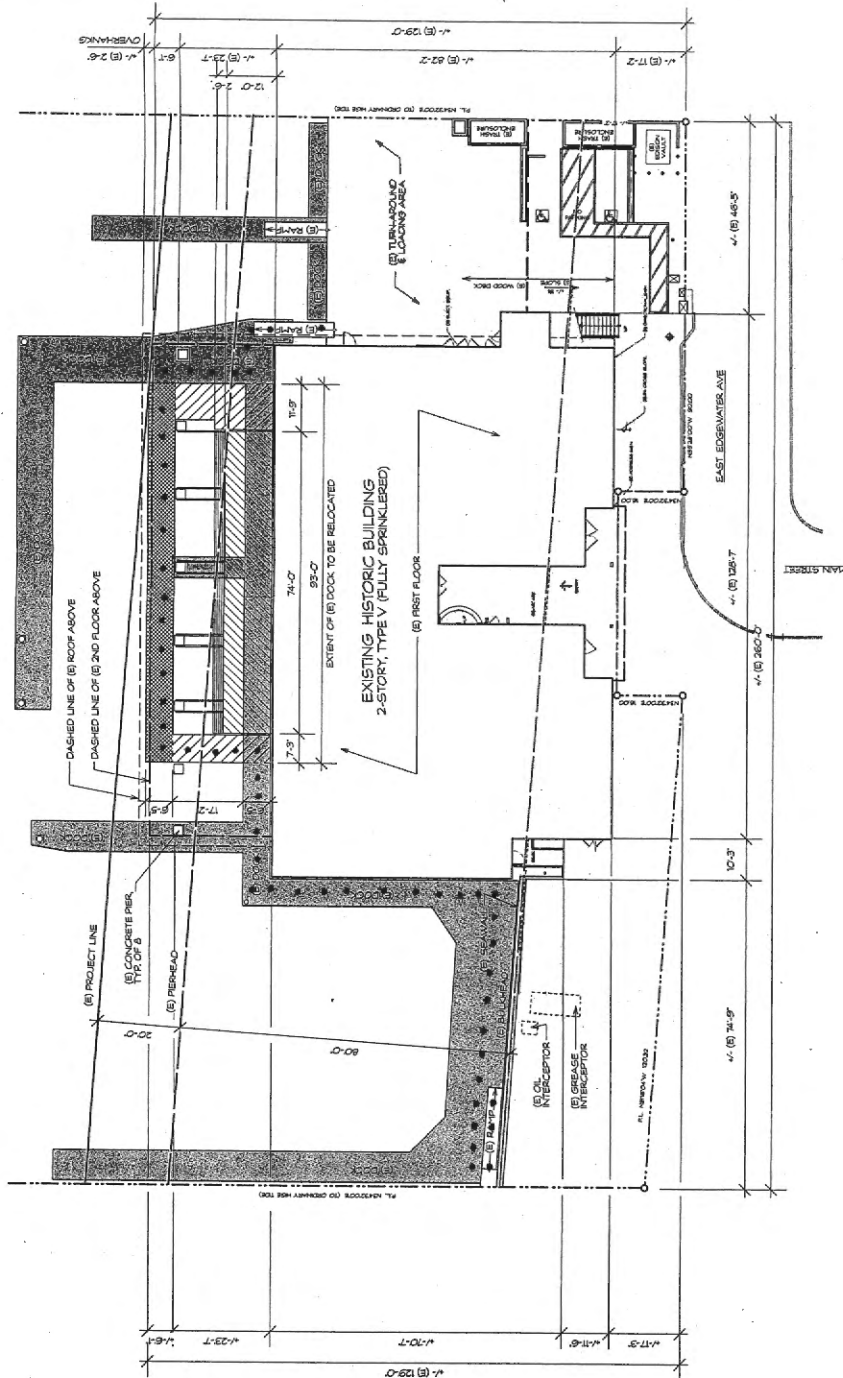
SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Coastal Land Use Plan (CLUP); City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 112-400 and Plan Check No. 1056-2011 dated July 24, 2012; Coastal Development Permit No. 5-01-029-(City of Newport Beach); Coastal Development Permit No. 5-10-103-(City of Newport Beach); Letter from Thirtieth Street Architects, Inc. to Commission Staff dated October 9, 2012; Letter from Commission Staff to Thirtieth Street Architects, Inc. dated November 9, 2012; ; Letter from Thirtieth Street Architects, Inc. to Commission Staff dated January 23, 2013; 2nd Letter from Thirtieth Street Architects, Inc. to Commission Staff dated January 23, 2013; Letter from Thirtieth Street Architects, Inc. to Commission Staff dated January 31, 2013; Letter from Thirtieth Street Architects, Inc. to Commission Staff dated June 4, 2013; and Letter from Thirtieth Street Architects, Inc. to Commission Staff dated June 18, 2013.





LEGEND:

- EXISTING FIXED DOCK
- NEW FIXED DINING DECK
- NEW FLOATING DOCK
- NEW CANALK FOR GUARDRAIL WINDOW WASHING
- RELOCATED FLOATING DOCK
- EXISTING PROJECT LINE
- EXISTING PER HEAD
- EXISTING BULKHEAD
- ... PUBLIC ACCESS



HARBORSIDE RESTAURANT DINING DECK BALBOA PAVILION 400 MAIN STREET, BALBOA CALIFORNIA



EXISTING SITE/FLOOR PLAN
OVER PROPOSED SITE/FLOOR PLAN

12 DEC '12

RECEIVED
South Coast Region

JAN 25 2013

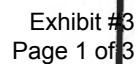
CALIFORNIA
COASTAL COMMISSION

thirtieth street architects, inc.

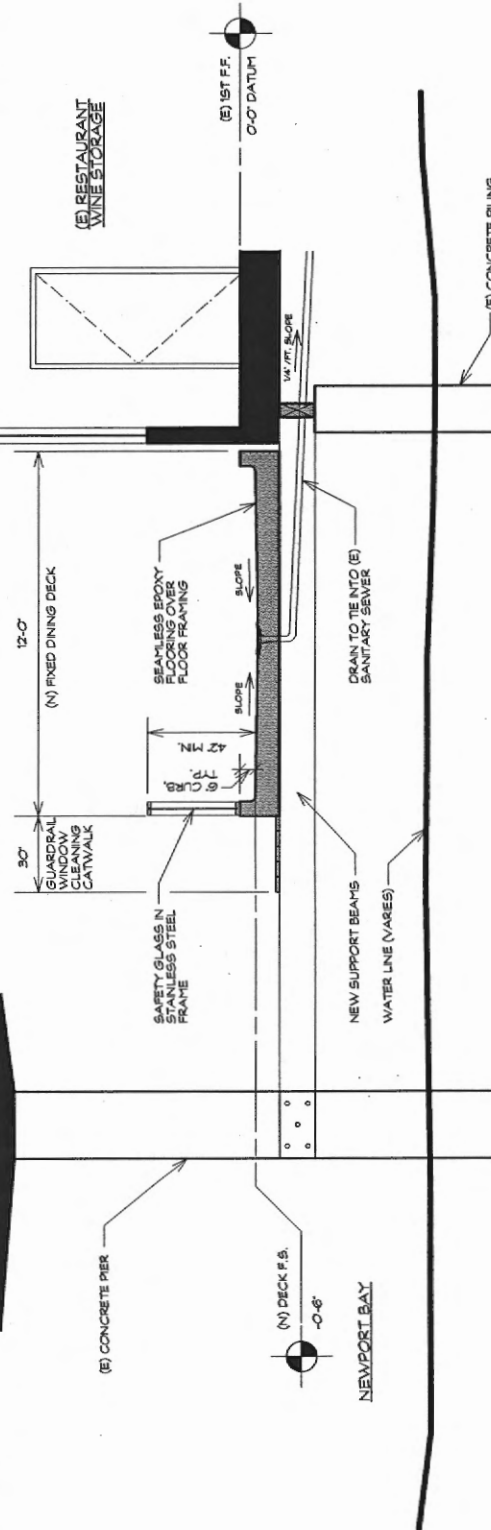


SHEET 1 OF 2

PROPOSED SECTION



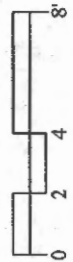
WATERSIDE 2ND LEVEL LANDSIDE



HARBORSIDE RESTAURANT DINING DECK BALBOA PAVILION 400 MAIN STREET, BALBOA CALIFORNIA

GUARDRAIL DETAIL **A**

thirtieth street architects, inc.



22 JUNE '12
18 SEPTEMBER '12

SHEET 9 OF 9

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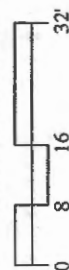
HARBORSIDE RESTAURANT DINING DECK
BALBOA PAVILION

400 MAIN STREET, BALBOA CALIFORNIA

PROPOSED ELEVATION

22 JUNE '12

thirtieth street architects, inc.



SHEET 6 OF 9