

CALIFORNIA COASTAL COMMISSION

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Filed: June 13, 2014
180th Day: Dec. 10, 2014
Staff: F. Sy-LB
Staff Report: Oct. 23, 2014
Hearing Date: Nov. 12-14, 2014

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-1103

Applicants: UC Irvine, Attn: Richard Demerjian, Director of Office of Environmental Planning & Sustainability

Location: 600 Shellmaker Island, City of Newport Beach (County of Orange)

Project Description: Replacement of an existing landside approximately 2,240 square foot concrete slab with a new like for like concrete slab at the same location at the University of California, Irvine rowing facility.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the replacement of an existing landside concrete slab with a new like for like concrete slab at the same location. The major issue of this staff report concerns bay front development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future. A coastal hazard's analysis was prepared that concluded that the project would not be at risk of erosion or flooding under existing or future sea level rise scenarios. However, since coastal processes are dynamic and can change, a number of special conditions have been imposed in order to make sure that precautions are in place.

Staff is recommending **APPROVAL** of the proposed project with **FIVE (5) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** submittal of construction staging plans; and **5)** storage of construction materials, mechanized equipment, and removal of construction debris.

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.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicants 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.

2. No Future Shoreline Protective Device.

- A. By acceptance of this Permit, the applicant agrees, on behalf of them self and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to coastal development permit No. 5-13-1103 including, but not limited to, the concrete slab, and any future improvements, in the event that the development is threatened with damage or destruction from sea level rise, flooding, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of them self and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the concrete slab, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the wetland before they are removed, the landowner shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Future Development Restriction. This permit is only for the development described in Coastal Development Permit No. 5-13-1103. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-13-1103.

Accordingly, any future improvements to the concrete slab authorized by this permit, including but not limited to 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. 5-13-1103 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Construction Staging Plans.

A. **Prior to Issuance of the Coastal Development Permit**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of construction staging plans which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.

(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; and
- (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.

(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;
- 4. location of construction fencing and temporary job trailers with respect to existing wetlands.

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.

5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, 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. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. 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;

- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. 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;
- H. 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;
- I. 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;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K. 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;
- L. 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; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is located in the Upper Newport Bay Ecological Reserve (UNBER), which was created in 1975 to conserve and enhance 752 acres of saltwater marsh ecosystem in the upper reaches of Newport Bay, commonly referred to as the Back Bay. More specifically, the project takes place at the University of California, Irvine (UCI) rowing facility that is used by student athletes for rowing activities that is located on Lower Shellmaker Island near the Back Bay Science Center (Exhibit #1). Shellmaker Island is located at the southern one-third of the UNBER immediately north of the Dunes Marina Boat Launch facilities at the southern boundary of the UNBER and has been under the stewardship of the California Department of Fish & Wildlife (CDF&W) since it was acquired from the County of Orange and the Irvine Company in 1974. A tidal channel separates Lower and Upper Shellmaker Island.

The proposed project is the replacement of an existing landside approximately 2,240 square foot concrete slab (approximately 58-feet x 39.5-feet) with a new like for like concrete slab in the same

location (Exhibit #2). This concrete slab connects the landward existing UCI boathouse and the bayward existing dock together. The shoreline fronting the project site is vegetated and unarmored and the adjacent shoreline areas to the north and south of the site are also unarmored and vegetated. The concrete slab is used by student athletes to carry rowing shells from the boathouse to the dock and for other boating activities, such as shell maintenance preparation. The project does not include any other work including any expansion of the existing rowing facility (boathouse or dock). No grading is proposed. Additionally, no construction in or over water or in wetlands is proposed with this project.

The concrete slab is located at elevation 8.41-foot Mean Lower Low Water (MLLW) landward of the bay but is located approximately 10-foot inland from the 5.4 feet Mean Higher High Water (MHHW) and subject to coastal hazards. To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a coastal hazard's analysis of the site prepared by an appropriately licensed professional (e.g. coastal engineer). In response, the applicants submitted such an analysis of the site entitled *Evaluation of Coastal Hazards for the Shellmaker Island Rowing Center Deck Replacement Coastal development Permit Application No. 5-13-1103* prepared by *Anchor QEA (Project: 141099-01.01)* dated May 9, 2014. This analysis evaluated the risks from erosion, wave attack, wave-run up and sea level rise for the life of the structure. The analysis concluded that the project would not be at risk of erosion or flooding under existing or future sea level rise scenarios.

While the submitted analysis states that the proposed project is not at risk of erosion or flooding under existing or future sea level rise scenarios, the location of the project site makes it susceptible to potential risks from future erosion or flooding that may occur from changing coastal conditions and so the applicant must assume the risks. Therefore, the Commission imposes **Special Condition No. 1**, which requires an assumption-of-risk agreement. To ensure that the proposed project does not result in future adverse effects to coastal processes from a shoreline protective device, the Commission imposes **Special Condition No. 2**, which prohibits the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development authorized as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. The project site is located near the bay and may be subject to future flooding and erosion as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the water could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **Special Condition No. 3**, which states that any future development or additions on the property requires a coastal development permit from the Commission or its successor agency.

If construction equipment and staging is not appropriately managed, adverse impacts upon the adjacent wetland could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. The applicant has submitted a construction staging plan that identifies a construction staging area within UCI's leasehold landward of the project site in the existing parking lot that will be used for the proposed 10-day construction period (Exhibit #3). The location of the staging area will not impact any wetland areas. However, a more detailed construction staging plan

is necessary. Therefore, the Commission imposes **Special Condition No. 4**, which requires the applicants to submit construction staging plans, which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.

The applicant has provided a list of Best Management Practices (BMP's) they intend to follow to ensure that impacts to water quality and the wetlands do not occur, which include education of the employees and contractor about water quality BMPS's, employment of fiber rolls along the perimeter of the project adjacent to the dock and the bay to contain any silt or sediment, etc. While the applicant has provided these measures to protect impacts to water quality and wetlands, additional measures need to be imposed. Thus, in order to ensure that construction and materials are managed in a manner which avoids impacts to water quality and wetlands, the Commission imposes **Special Condition No. 5**, which provides guidance for the storage of construction materials, mechanized equipment and removal of construction debris.

The CDF&W has reviewed the project and determined that the project will not impact any habitat.

Public access is available on Shellmaker Island, the ecological reserve along Back Bay Drive, and along trails surrounding the bay. Additionally, the California Department of Fish & Wildlife (CDF&W) provides public interactive walks and other functions available to the public at the Back Bay Science Center.

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 Coastal Land Use Plan (CLUP) 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 Coastal Land Use Plan may be used for guidance.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with

the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. HABITAT

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

E. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

F. WATER QUALITY

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-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 and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

G. LOCAL COASTAL PROGRAM (LCP)

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

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

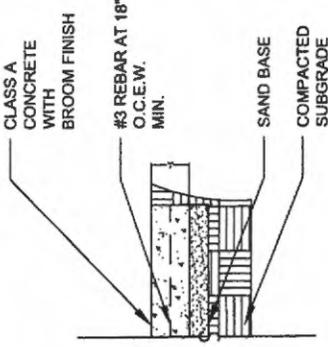
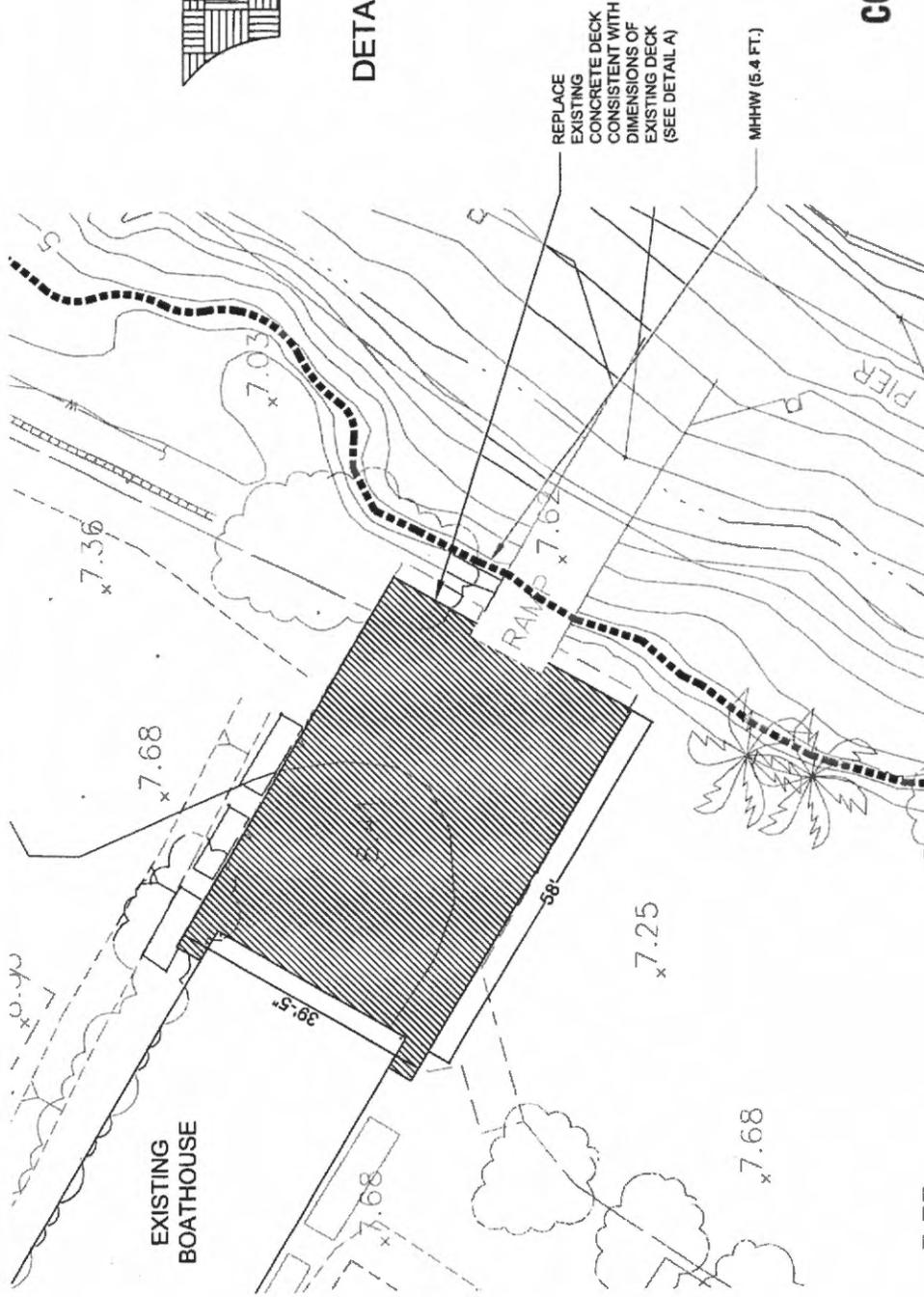
The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's 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: Notice of Exemption dated November 12, 2013; Letter from Commission staff to UCI, Office of Environmental Planning and Sustainability dated December 13, 2013; Letter from UCI, Office of Environmental Planning and Sustainability to Commission staff dated June 12, 2014; UC Irvine Shellmaker Island Concrete Deck Repair Water Quality Best Management Practices; Letter from the California Department of Fish and Wildlife to UCI, Office of Environmental Planning and Sustainability dated June 4, 2014; and *Evaluation of Coastal Hazards for the Shellmaker Island Rowing Center Deck Replacement Coastal development Permit Application No. 5-13-1103* prepared by *Anchor QEA (Project: 141099-01.01)* dated May 9, 2014.





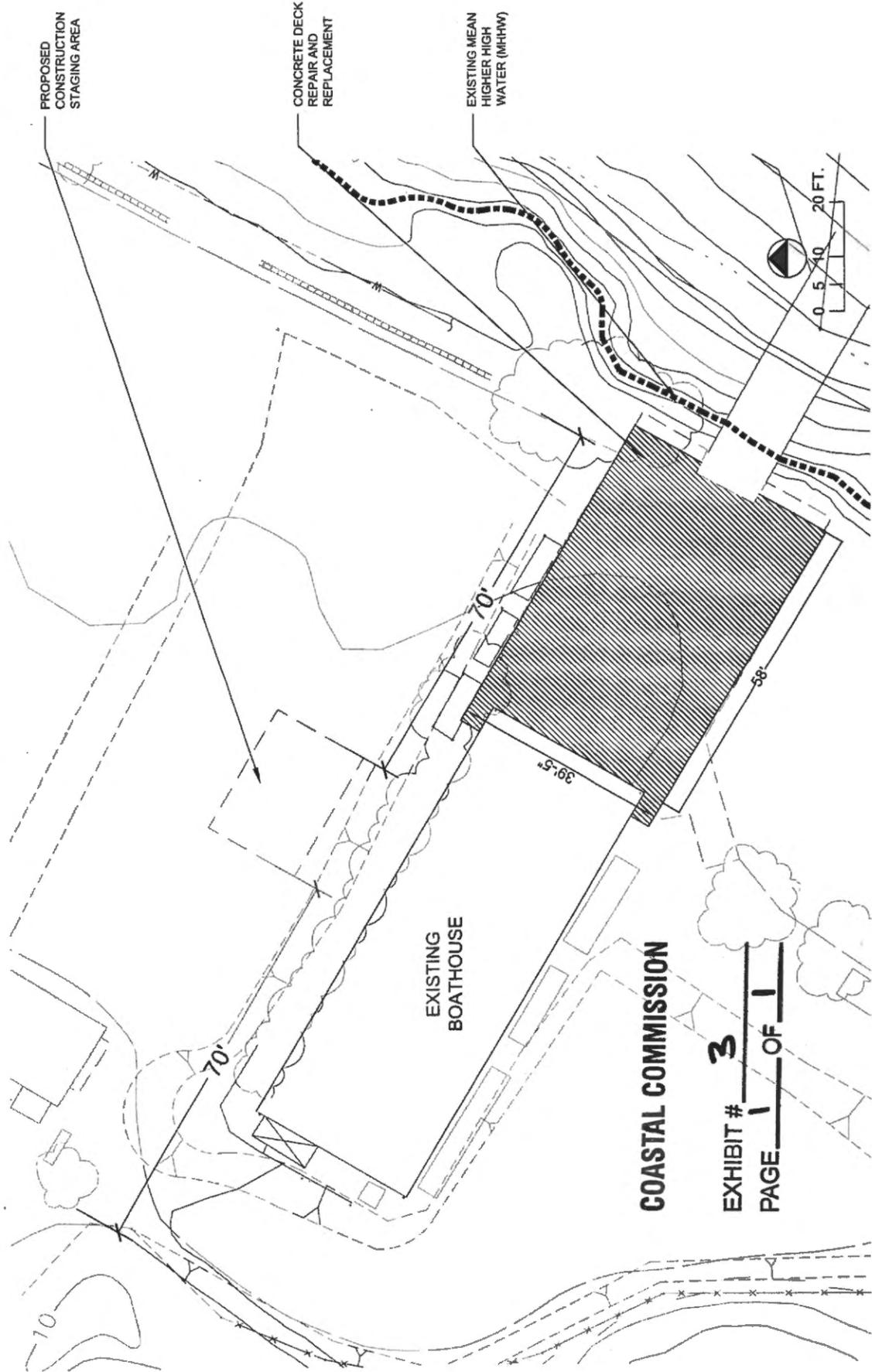
DETAIL A

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EXHIBIT # 2
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UCI BOATHOUSE DECK REPAIR - SITE PLAN & DETAIL



UCI BOATHOUSE DECK REPAIR - CONSTRUCTION STAGING PLAN

EXHIBIT 3

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