

**CALIFORNIA COASTAL COMMISSION**

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



Click here to go to  
original staff report

# Th13a

## ADDENDUM

DATE: March 7, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **Addendum to Item Th13a:** Coastal Development Permit Application No. 5-15-1459 (Newport Harbor Yacht Club), scheduled for the Commission meeting of March 10, 2016

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### I. REVISIONS TO THE STAFF REPORT

This addendum modifies the staff report dated 2/26/16 in the following sections: Motion and Resolution, Special Conditions, and Findings and Declarations. Language removed from the staff report is identified in ~~strike through~~ and added language is identified in **bold underline**.

#### **Page 5 of the staff report – Motion and Resolution**

Commission staff recommends that the second motion and resolution be struck through because they are superfluous. The Commission may grant the applicant's request for a fee waiver through its approval of Special Condition 19 and the associated findings, which are captured by the first motion and resolution.

#### ~~Motion II:~~

~~I move that the Commission direct the Executive Director to waive the permit application fee for Coastal Development Permit Application No. 5-15-1459 pursuant to the staff recommendation.~~

#### ~~Resolution II:~~

~~The Commission hereby directs the Executive Director to waive a new permit application fee for Coastal Development Permit Application No. 5-15-1459 submitted by Newport Harbor Yacht Club.~~

#### **Page 7 of the staff report – Special Condition 3(D)**

Commission staff recommends new language to clarify that Special Condition 3(D) would apply to any public access and recreation improvement project proposed under the fund created by the applicant's offer (not only the Central Avenue Pier).

3. Implementation of Proposed Public Access Improvements. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$350,000 has been paid to an accepting entity as proposed by the Newport Harbor Yacht Club in a letter dated January 29, 2016 and as described further below.
  - A. The proposed public access improvement fund payment of \$350,000 (herein 'fund') shall be deposited into an interest-bearing account, to be established and managed by one of the following entities which may be approved by the Executive Director: the City of Newport Beach, the California Coastal Conservancy, or a similar Executive Director-approved entity, in support of providing increased public access to Newport Harbor. The proposed recipient-entity must be approved by the Executive Director, in writing, prior to any payment to that entity. The entire fund and accrued interest shall be used for the above stated purpose in consultation with the Executive Director. All development funded by this account will require a coastal development permit. The funds shall be used in their entirety within five years of being deposited into the interest-bearing account established and managed by the accepting entity (or entities). If any portion of the funds remain in the account after five years and the Executive Director determines the funds should be reassigned, those funds shall be donated to an agency or nonprofit entity, to be selected by the Executive Director, providing increased public access opportunities to the Coastal Zone in Newport Beach.
  - B. Subject to review and approval of the Executive Director, the City of Newport Beach (herein 'City') may receive some or all of the funds if the City obtains a Coastal Development Permit for a public dock at the northerly terminus of Central Avenue. The public dock shall be ADA compliant and provide public access to or from a float designed to serve small powered and hand carried vessels.
  - C. If the City does not enter into a memorandum of understanding (MOU) with the Coastal Commission as required in subsection D and apply for a coastal development permit for the dock within 24 months of issuance of Coastal Development Permit 5-15-1459, all funds may be assigned to another entity approved by the Executive Director, in order to be used for the purposes stated in subsection A above.
  - D. Prior to expenditure of any funds required pursuant to this condition, the Executive Director shall review and approve in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition the entity accepting the funds required by this condition shall enter into an MOU with the Commission, which shall include, but not be limited to, the following: 1) a description of the **public access improvement that provides increased public access to Newport Harbor, which may consist of the** Central Avenue pier and float facility, **identified in subsection B, above**; 2) the terms provided in subsection A, and/or B, if applicable, of this condition; and 3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit; 4) the

entity accepting the funds will commence development of the **public access improvement that provides increased public access to Newport Harbor, which may consist of the Central Avenue pier and float facility** identified in subsection B, above, within 36 months of the MOU date of effectiveness. The Executive Director may extend the above-identified deadlines, in writing, for good cause.

**Page 17 of the staff report – Findings and Declarations [Project Location and Description] is modified as follows:**

The proposed development also includes a temporary facilities plan to enable continued yacht club activities during demolition and construction of the clubhouse, **which will last approximately 18 months**. In order to provide space and structural stability for an approximately 20-foot by 80-foot boat to moor adjacent to the site and serve as a temporary clubhouse facility during construction of the new clubhouse, the applicant proposes to remove three piles and three fingers over the tidelands administered by the City of Newport Beach, totaling approximately 600 square feet, and temporarily install three new piles and an approximately 400 square foot dock float connector. Following completion of the new clubhouse, the temporary piles and dock float will be removed and the pre-existing piles and fingers re-constructed in their original location (Exhibit 6). Also during construction, six temporary modular structures will be placed in the east yard to accommodate management and food preparation facilities. All structures would connect to existing electrical and plumbing infrastructure and the existing restroom in the east yard would remain operational for members and guests. The largest proposed structure is 25-feet by 40-feet, none of the structures require foundations, and all will be removed following construction of the new clubhouse. **The City of Newport Beach approval of the project includes construction-related requirements related to time, noise, dust, and cleanup responsibilities.**

**Page 18 of the staff report – Findings and Declarations [Project Location and Description] is modified as follows:**

The Commission received a letter from a member of the public opposed to the proposed development (**Exhibit 9**), asserting that it does not provide adequate public access and that the construction and operation of the yacht club will be disruptive to residents and visitors of the neighborhood. **The applicant indicates that the club membership includes women and minorities and that the sole criteria for membership are good citizenship, an ability to pay your dues and charges, and love for boating and the sea. The applicant further indicates that NHYC is the base for local high school sailing teams. Any student wishing to participate in the high school programs is welcome at NHYC and participates without regard to financial ability. The applicant characterizes the other concerns in the letter as non-Coastal Act issues.**

**Page 29 of the staff report – Findings and Declarations [Public Access and Recreation] is modified as follows:**

The Commission finds that the completion of the proposed 8th Street end improvements and the Central Avenue Pier project will result in substantially improved public

recreation opportunities within Newport Bay, to offset the continued private use of the adjacent State tidelands by private yacht club docks and uses, consistent with the public access and recreation policies of the Coastal Act and the certified Land Use Plan. In order to ensure that the public amenities are provided in a timely manner and maintained in working condition, the Commission imposes **Special Condition 3** requiring the permittee to provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$350,000 has been paid to an accepting entity as proposed by the Newport Harbor Yacht Club in a letter dated January 29, 2016. If that accepting entity is the City of Newport Beach, the City will be required to apply for a coastal development permit within 24 months of issuance of Coastal Development Permit 5-15-1459 and commence the development within three years of the effective date of the MOU. **If another entity is selected by the applicant and approved by the Executive Director to accept the funds, that accepting entity must also obtain a coastal development permit and will also be required to commence development of public access improvements within Newport Harbor within 36 months of the MOU date of effectiveness.**

## II. APPLICANT'S LETTER

The Commission received a letter from the applicant dated March 6, 2016, included in this addendum. The applicant's letter responds to the anonymous letter dated October 5, 2015, which was attached as Exhibit 9 of the staff report.

## III. PUBLIC CORRESPONDANCE

The Commission received a letter in support of the project from California State Assemblyman Matthew Harper, dated March 7, 2016 and included in this addendum.

## IV. COMMISSIONER EX PARTE COMMUNICATIONS

See attached.

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG  
REBECCA A. THOMPSON  
NANCI S. STACEY  
KIMBERLY RIBLE  
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March 6, 2016

Mr. Zach Rehm  
California Coastal Commission  
200 Oceangate, #1000  
Long Beach, CA 90082

**TH 13a**

Re: CDP No. 5-15-1459 (Newport Harbor Yacht Club)

Dear Mr. Rehm:

You have requested a response to the anonymous letter dated October 5, 2015, which was attached as Exhibit 9 to the Staff Report. Although received in the Long Beach office on October 8, 2016, Newport Harbor Yacht Club ("NHYC") was unaware of the letter until it received the staff report last Friday. Had we been aware of the letter earlier, we would have responded earlier.

The anonymous author (who claims to be a neighbor) seeks to use the NHYC waterfront, the NHYC parking lot, the NHYC shore boat, or prevent NHYC from constructing a new building. To advance this objective, the claim is made that NHYC operates in an exclusionary and racist manner. As noted, the memo is anonymous. This should discount its credibility.

NHYC membership practices are not biased. Women have been NHYC members since the 1930's and people of color since the 1960's. Women serve on the board, as Commodore, and on governing committees. Spouses have every privilege that the member has and continue as a member when a spouse dies. No restrictions are contained in the NHYC rules and NHYC does not engage in restrictive practices. The sole criteria for membership is good citizenship, an ability to pay your dues and charges, and love for boating and the sea. NHYC has never maintained a separate count of women or minorities.

NHYC members are not the only persons who enjoy NHYC facilities. Dozens of sailing regattas are conducted at NHYC every year. Entries are open to sailors from any other location, without regard to ethnicity. NHYC is the base for local high school sailing teams. Any student wishing to participate in the high school programs is welcome at NHYC and participates without regard to financial ability. The schools have no ethnic barriers. NHYC charges nothing for use of its facilities.

NHYC junior sailing coaches often double as high school coaches. Students who want to expand their racing training are encouraged to join NHYC as Junior Members whose dues are \$10.00 per month. The Newport Harbor Sailing Foundation has raised funds for the past 19 years to assist young sailors who might otherwise be unable to participate.

NHYC does not engage in discriminatory practices.

Mr. Zach Rehm  
California Coastal Commission  
March 6, 2016  
Page 2

As to the remaining issues which are raised, we have the following comments:

1. The house east of the NHYC property has been purchased by a member who wishes to be close to his mother and father who live a few doors away. It is not a purchase on behalf of NHYC.
2. The mooring field is not a City mooring field. The City licenses the tideland area to NHYC which pays the City Tideland Trust Fund. NHYC places, owns and maintains the moorings, and manages the field. This is consistent with the certified CLUP.
3. The NHYC shore boats are privately owned and operated by NHYC to serve its mooring field. Even NHYC members who have boats moored outside the NHYC mooring field cannot get service to and from their boats without special permission on each occasion.
4. The privately owned parking lot could not serve NHYC adequately if public parking was also permitted. Management of the parking is covered by Special Condition 7.
5. There is not a sufficient nexus or rough proportionality to require public access to NHYC property. NHYC has offered to provide a new public pier in an area of the harbor with little public access to the water. Special Condition No. 3 was not exacted from NHYC, but offered by NHYC as part of its continuing commitment to public recreational use of Newport Harbor.
6. Construction is anticipated to require 18 months. All construction projects produce temporary impacts on surrounding owners. The City conditions limit time, noise, dust, cleanup and other local concerns. Temporary construction impacts on neighbors that do not affect the natural environment have not been a Coastal Act concern. Construction impacts to the natural environment are the subject of Special Conditions 5, 8, 10, 11, 12, 13, 14, 15, 16, and 17.

We believe that this letter responds adequately to the anonymous claims which have been made.

Very truly yours,

*Sherman L. Stacey*

SHERMAN L. STACEY

cc: Jack Ainsworth  
Steve Hudson  
Paul Marshall  
Tim Collins  
Jeff Gordon  
Gary P. Hill

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California Legislature



**MATTHEW HARPER**  
ASSEMBLY MEMBER, SEVENTY-FOURTH DISTRICT

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COSTA MESA, CA 92626  
(714) 668-2100  
FAX (714) 668-2104

March 7, 2016

Chairman Steve Kinsey  
c/o California Coastal Commission  
200 Oceangate  
Long Beach, CA 90802

**RE: Application Number CDP No. 5-15-1459**

Dear Chairman Kinsey:

I am writing to you today to express my support for the Newport Harbor Yacht Club's (NHYC) application to rebuild its clubhouse.

As you know, the NHYC's proposed project consists of the demolition of the current 19,234-square-foot clubhouse in order to construct a new and improved 23,163-square-foot clubhouse. The NHYC has always been committed to enhancing the Newport Harbor Bay and the public's access to it. This project will help ensure that. There will be no increased intensity of use, membership levels, or events, and the project, where feasible, will help enhance the scenic view of the coastal area. In addition, it is worth noting that the current clubhouse is 100-years-old and non-conforming for sea level, energy conservation, and employee areas. This new clubhouse complies with the City's General Plan, the Coastal Land Use Plan, the Commission's sea level rise guidelines, and modern energy conservation measures.

Thank you for your time and consideration of this matter. If I can be of further assistance, please do not hesitate to contact my office at (714) 668-2100.

Sincerely,

A handwritten signature in black ink that reads "Matthew Harper". The signature is written in a cursive, slightly stylized font.

Matthew Harper  
Assemblyman, 74<sup>th</sup> District

**EX PARTE COMMUNICATION DISCLOSURE FORM**

- Filed by Commissioner: Wendy Mitchell
- 1) Name or description of project: Newport Harbor Yacht Club
- 2) Date and time of receipt of communication: 3/4/16
- 3) Location of communication: Court call - LA  
 (If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Sherman Stacey
- 5) Identity of person(s) on whose behalf communication was made: Newport Yacht Club
- 6) Identity of persons(s) receiving communication: Wendy Mitchell
- 7) Identity of all person(s) present during the communication: Sherman Stacey Wendy Mitchell

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

We discussed their support of the staff recommendations and the public access they provided as part of the remodel of the marina. They addressed sea level rise and they anonymously letter received in October by staff and supplied to applicant this month. Closing

3/4/16  
Date

[Signature]  
Signature of Commissioner

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

**CALIFORNIA COASTAL COMMISSION**

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



# Th13a

Filed:	9/18/15
180th Day:	3/16/16
Staff:	Z. Rehm-LB
Staff Report:	2/26/16
Hearing Date:	3/10/16

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-15-1459

**Applicant:** Newport Harbor Yacht Club

**Agent:** Sherman Stacey

**Location:** 720 West Bay Avenue, Newport Beach, Orange County (APNs 048-010-03 and 047-272-12).

**Project Description:** Demolish existing 19,234 sq. ft. clubhouse, construct 23,163 sq. ft. two-story approx. 36-foot high clubhouse supported by pile and pier foundation and elevated bulkhead (+9.4 feet NAVD88), replace fencing, construct new access ramps to existing docks, install and remove temporary approx. 400 square foot dock float and relocate three piles to enable 80-foot long vessel to provide temporary clubhouse during construction, locate temporary management and food preparation facilities in east yard during construction, and provide \$350,000 to City of Newport Beach or other accepting agency for construction of public access improvements in Newport Beach.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The Newport Harbor Yacht Club requests a permit to demolish its existing 97-year old clubhouse structure and construct a new clubhouse at 720 West Bay Avenue on the bay side of the Balboa Peninsula in Newport Beach. The proposed development also includes a temporary facilities plan to enable continued yacht club activities during demolition and construction of the clubhouse, which is expected to take at least one year to complete. The proposed development includes improvements to the site's perimeter fencing and installation of new public access signs along 8<sup>th</sup> Street, a public right-of-way and coastal access way that runs between the primary yacht club parcel and a smaller

private bay-fronting boat storage area to the west. Finally, the proposed development includes an offer to fund \$350,000 of public access improvements elsewhere in Newport Beach, preferably at the site of the old Central Avenue Bridge, where the City is proposing a public pier and ADA-compliant public dock float designed to serve small powered and hand-carried vessels to offset the private use of the State tidelands located bayward of the yacht club for private docks and yacht club uses only.

The major issues raised by the proposed development are shoreline development, sea level rise, consistency with the marine resources and water quality policies of the Coastal Act, consistency with the development standards of the certified Land Use Plan, and adequacy of the proposed public access and recreation improvements.

The applicant proposes to support the new structure with a pile and pier foundation at +9.4 feet (NAVD88), to reinforce the existing bulkhead by drilling secant piles or a sheet pile wall on the inland side, and to elevate the bulkhead by pouring a concrete cap to increase its elevation to +9.4 feet. The applicant's coastal hazards analysis indicates that under the mid-range sea level rise scenario of 36 inches by 2090, combined with the highest observed astronomical tides, the proposed development will not experience flooding except during storm events. However, if the sea level rises by more than 36 inches at any point in the future, the development will experience overtopping and flooding during astronomical tide events (several times per year). If the sea level rises 57 inches by 2090 (the high-range scenario), the clubhouse and associated facilities will experience daily flooding during high tides. The most severe scenario is a 75-year storm combined with the highest astronomical tide and 57 inches of sea level rise, resulting in water levels up to 12.3 feet, and potential flooding of the bottom three feet of the clubhouse (along with all of the streets and most of the infrastructure on the Balboa Peninsula). The applicant proposes adaptation measures which the yacht club will implement if sea level rise and future flood hazard is more severe than the mid-range scenario identified in the hazards analysis. The applicant states that the bulkhead will be engineered to accommodate an additional 6-inch cap in the future and that the lower floor of the clubhouse structure will be designed to withstand temporary flooding, including door inserts and waterproof outer walls. The applicant has also agreed to waive any potential right to future bayward extension of shoreline protective devices into the State tidelands located bayward of the bulkhead and parcel and to assume the risks of the development.

Commission staff recommends **approval** of the proposed development with 20 special conditions requiring the applicant to 1) undertake development in accordance with the approved final plans; 2) submit a final temporary facilities plan; 3) implement the proposed public access improvements, including payment of \$350,000 into a fund managed by the City of Newport Beach, the Coastal Conservancy, or a similar agency subject to the monitoring, review, and approval of the Executive Director; 4) submit a final fence and public access sign plan for the 8<sup>th</sup> Street public coastal access way; 5) agree to waive any potential right to future bayward extension of shoreline protective devices; 6) agree that the club membership shall not increase beyond the current cap of 1,200 unless the Commission approves an amendment which shall be accompanied by a new parking management plan; 7) comply with the terms of the approved parking management plan; 8) submit final plans in conformance with the recommendations of the geotechnical investigation and coastal hazards evaluation; 9) assume the risks of the development, waive liability against the Commission, and indemnify the Commission against future claims; 10) carry out pre-construction and post-construction eelgrass surveys and provide eelgrass mitigation consistent with the California Eelgrass Mitigation Policy if the post-construction survey identifies an adverse impact to eelgrass;

11) carry out a pre-construction *Caulerpa taxifolia* survey; 12) implement construction best management practices; 13) dispose of all demolition and construction debris at an appropriate location outside the coastal zone 14) implement a storm water pollution prevention plan; 15) implement a water quality management plan; 16) implement post-construction best management practices for marinas; 17) landscape with only drought tolerant non-invasive plants; 18) comply with the requirements of the resource agencies; 19) submit proof of certification at a minimum of LEED Gold or equivalent within three years of permit issuance in order to qualify for application fee reduction; and 20) record a deed restriction against the property incorporating the special conditions of the permit.

The applicant submitted Coastal Development Permit Application No. 5-14-1671 for a substantially similar development on September 30, 2014, along with a check in the amount of \$19,728 and a Letter of Credit in the amount of \$13,152, representing the total application fee amount of \$32,880 (for development cost between \$10,000,001 and \$25,000,000 based on the 2014 fee schedule). The applicant intends to obtain a Leadership in Energy and Environmental Design (LEED) Gold Certification for the development, which would qualify for a 40% application fee reduction pursuant to Section 13055(h)(3) of the Commission's regulations. As the Commission's regulatory deadline (270<sup>th</sup> day) was approaching, the applicant agreed to withdraw the previous application and submit the subject application in order to continue working the City of Newport Beach and Coastal Commission staff to revise the project consistent with the certified Land Use Plan and with the public access and recreation policies of the Coastal Act. Because the withdrawal and resubmittal occurred by mutual agreement of the applicant and Commission staff, staff is recommending that the Commission grant the applicant's request for a waiver of any new fee. The fee previously submitted under CDP Application No. 5-14-1671 will be retained and carried over to the newly submitted application. Staff notes that the LEED Certification fee reduction provision expired on January 1, 2015. However, since the original application was submitted prior to this date, staff is recommending that the allowance for fee reduction for LEED certification (and future fee collection should LEED Gold standard or equivalent not be met) be carried forward with the new application. Pursuant to Section 13055(h)(1) of the California Code of Regulations, the Executive Director shall waive the application fee where requested by resolution of the Commission.

The motions and resolutions to approve the application and waive the fees are on page five of this staff report. The applicant is in agreement with the staff recommendation.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Photos

Exhibit 3 – Architectural Plans

Exhibit 4 – Foundation Plan

Exhibit 5 – Fence and Amenities Plan

Exhibit 6 – Temporary Facilities Plan

Exhibit 7 – NHYC Mooring Field

Exhibit 8 – Preliminary Central Ave Public Pier Plan

Exhibit 9 – Letters in Opposition to Proposed Development

## **I. MOTIONS AND RESOLUTIONS**

### **Motion I:**

*I move that the Commission **approve** Coastal Development Permit Application No. 5-15-1459 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.

### **Motion II:**

*I move that the Commission direct the Executive Director to waive the permit application fee for Coastal Development Permit Application No. 5-15-1459 pursuant to the staff recommendation.*

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

### **Resolution I:**

*The Commission hereby approves Coastal Development Permit 5-15-1459 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.*

### **Resolution II:**

*The Commission hereby directs the Executive Director to waive a new permit application fee for Coastal Development Permit Application No. 5-15-1459 submitted by Newport Harbor Yacht Club.*

## 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 permittees 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 of 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Project Plans.**
  - A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) full size sets of Final Project Plans, including floor, elevation, grading, foundation, and site plans. The Final Project Plans shall be in substantial conformance with the plans received by South Coast District staff on October 1, 2015; December 15, 2015; January 29, 2016; and February 15, 2016.
  - 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-approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
2. **Temporary Facilities Plan.**
  - A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) full size sets of a temporary facilities plan, including floor plans and elevations of temporary structures, and temporary grading, dredging, piling placement, dock realignment, dock coverage, and utility connections. The temporary facilities plan shall be in substantial conformance with the plans received by South Coast District staff on January 29, 2016.

- B. The temporary facilities plan shall include plans for the removal of the temporary facilities when the reconstruction project has been completed, and the restoration of the facilities which were altered in the Temporary Facilities Plan to the condition which existed prior to placing the temporary facilities. All temporary facilities shall be removed from the site and the site restored to its prior condition within 90 days of the date on which the City of Newport Beach issues a Certificate of Occupancy for the reconstruction project.
  - C. Prior to commencing the installation and the removal of the temporary facilities, the permittee shall conduct the eelgrass (*Zostera marina*) and invasive algae (*Caulerpa taxifolia*) surveys which are required by Special Conditions 10 and 11, and shall have submitted such surveys for the review and approval of the Executive Director.
  - D. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
3. **Implementation of Proposed Public Access Improvements.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$350,000 has been paid to an accepting entity as proposed by the Newport Harbor Yacht Club in a letter dated January 29, 2016 and as described further below.
- A. The proposed public access improvement fund payment of \$350,000 (herein ‘fund’) shall be deposited into an interest-bearing account, to be established and managed by one of the following entities which may be approved by the Executive Director: the City of Newport Beach, the California Coastal Conservancy, or a similar Executive Director-approved entity, in support of providing increased public access to Newport Harbor. The proposed recipient-entity must be approved by the Executive Director, in writing, prior to any payment to that entity. The entire fund and accrued interest shall be used for the above stated purpose in consultation with the Executive Director. All development funded by this account will require a coastal development permit. The funds shall be used in their entirety within five years of being deposited into the interest-bearing account established and managed by the accepting entity (or entities). If any portion of the funds remain in the account after five years and the Executive Director determines the funds should be reassigned, those funds shall be donated to an agency or nonprofit entity, to be selected by the Executive Director, providing increased public access opportunities to the Coastal Zone in Newport Beach.
  - B. Subject to review and approval of the Executive Director, the City of Newport Beach (herein ‘City’) may receive some or all of the funds if the City obtains a Coastal Development Permit for a public dock at the northerly terminus of Central Avenue. The public dock shall be ADA compliant and provide public access to or from a float designed to serve small powered and hand carried vessels.
  - C. If the City does not enter into a memorandum of understanding (MOU) with the Coastal Commission as required in subsection D and apply for a coastal development permit for the dock within 24 months of issuance of Coastal Development Permit 5-15-1459, all funds may be assigned to another entity approved by the Executive Director, in order to be used for the purposes stated in subsection A above.
  - D. Prior to expenditure of any funds required pursuant to this condition, the Executive Director shall review and approve in writing, the proposed use of the funds as being consistent with

the intent and purpose of this condition. In addition the entity accepting the funds required by this condition shall enter into a MOU with the Commission, which shall include, but not be limited to, the following: 1) a description of the Central Avenue pier and float facility; 2) the terms provided in subsection A, and/or B, if applicable, of this condition; and 3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit; 4) the entity accepting the funds will commence development of the pier and float identified in subsection B, above, within 36 months of the MOU date of effectiveness. The Executive Director may extend the above-identified deadlines, in writing, for good cause.

4. **Fence and Public Access Sign Plan.** The final plans submitted for review and approval to the Executive Director shall include a fence and public access sign plan for the 8<sup>th</sup> Street public coastal access way. The plan shall be in substantial conformance to the plan submitted February 15, 2016 and referenced as an exhibit in the staff report dated February 26, 2016, which shall incorporate the following requirements:

- A. The height of the painted iron fences with vertical bars spaced approximately 6-inches apart along the east and west sides of 8<sup>th</sup> Street end shall not exceed six feet, as measured from the centerline of the street.
- B. The height of the wood fencing along Bay Avenue shall not exceed seven feet, as measured from the centerline of the street.
- C. The existing bench at the 8<sup>th</sup> Street end shall remain, and will be maintained or replaced in kind by the City of Newport Beach or the Newport Harbor Yacht Club should it become deteriorated.
- D. The applicant shall install a minimum of two “public viewing location” signs, each a minimum of 12-inches by 16-inches along the east and west fences along the 8<sup>th</sup> Street end adjacent to Bay Avenue. The signs shall be located such that they are visible from the corner of Bay Avenue and the 8<sup>th</sup> Street end.

Additional signs identifying other public amenities and points of interest may be included in the final fence and public access sign plan, subject to the review and approval of the Executive Director. Fences, signs, and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

5. **No Future Seaward Extension of Shoreline Protective Device.**

- A. By acceptance of this permit, the permittee agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device (seawall/bulkhead) shall extend further bayward than the adjudicated public/private property line and existing bulkhead as improved pursuant to Coastal Development Permit No. 5-15-1459. By acceptance of this permit, the permittee waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the permittee shall submit, for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the entire subject parcel and a formal legal description and graphic

depiction of the existing shoreline protective device, and which shall show the footprint of the device inland of the graphic depiction of the property line and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum). The legal descriptions and graphic depiction required in this condition shall be recorded with the deed restriction required by Special Condition 20.

6. **No Membership Expansion.** By acceptance of this permit, the permittee acknowledges and agrees that no amendment, modification, alteration or exception to the By-Laws of the Newport Harbor Yacht Club shall be made which would increase the total authorized membership beyond the current cap of 1,200 without an amendment to Coastal Development Permit 5-15-1459. Any application to amend Coastal Development Permit 5-15-1459 to increase the authorized membership shall be accompanied by a detailed parking study which evaluates whether or not there is adequate parking available to Newport Harbor Yacht Club to accommodate an increase in the number of members. Changes within membership categories which do not change the total authorized members are not affected by this condition.
7. **Parking Management Plan.** The permittee shall comply with the City approved Parking Management Plan dated December 19, 2013. Any change to such Parking Management Plan shall not be implemented without an amendment to CDP 5-15-1459, unless the Executive Director determines that no amendment is legally required.
8. **Conformance of Design and Construction Plans to Geotechnical Engineering Investigation and Coastal Hazards Evaluation.**
  - A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the following coastal engineering and geotechnical reports: “Report of Preliminary Geotechnical Investigation for Proposed New Clubhouse Building: Newport Harbor Yacht Club” as prepared by Associated Soils Engineering, Inc., project No. 09-6136 dated June 18, 2009 and updated January 9, 2015; and “Evaluation of Coastal Hazards for Newport Harbor Yacht Club” as prepared by Anchor QEA dated December 16, 2014 and updated January 28, 2016.
  - B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced coastal engineering and geologic evaluation approved by the California Coastal Commission for the project site.
  - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
9. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from sea level rise, erosion, flooding, and/or wave uprush; (ii) to assume the risks to the permittee 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.

**10. Pre-Construction and Post-Construction Eelgrass Surveys.**

- A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (see [http://www.westcoast.fisheries.noaa.gov/habitat/habitat\\_types/seagrass\\_info/california\\_eelgrass.html](http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html)) (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 Wildlife. The permittee shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development.
- 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 permittee shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (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 Wildlife. The permittee shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the permittee shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy. The exceptions to the required 1.38:1 mitigation ratio found within the California Eelgrass Mitigation Policy shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.

**11. Pre-Construction Caulerpa Taxifolia Survey.**

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

- C. Within five business days of completion of the survey, the permittee shall submit the survey:
  - i. for the review and approval by the Executive Director; and
  - ii. 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 & Wildlife (858-467-4218) or Bryant Chesney, National Marine Fisheries Service (562-980-4043), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the permittee shall not proceed with the project until 1) the permittee provides evidence to the Executive Director that all *Caulerpa taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the permittee has 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.

## 12. Construction Best Management Practices.

- A. The permittee shall comply with the following construction-related requirements:
  - i. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - iii. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - iv. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - v. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- B. Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
  - i. The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and

vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;

- ii. The permittee shall develop and implement spill prevention and control measures;
  - iii. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
  - iv. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
13. **Location of Debris Disposal Site.** The permittee shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the Coastal Zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place.
14. **Storm Water Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Storm Water Pollution Prevention Plan (SWPPP) prepared and signed by licensed engineer that, at a minimum, meets the following:
- A. The Storm Water Pollution Prevention Plan must show that permittee is properly prepared to apply site design, source control and treatment control BMP's, appropriate for the potential stormwater pollutants at this site, in order to protect coastal waters from polluted runoff generated by construction activities to the maximum extent practicable.
  - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
15. **Final Water Quality Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared and signed by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMP's) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
- A. Appropriate structural and non-structural BMP's (site design, source control and treatment control) shall be designed and implemented to minimize water quality impacts to surrounding coastal waters;

- B. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
- C. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized;
- D. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
- E. All runoff from the vehicle wash station shall be collected through the proposed wash rack and sand/oil separator and discharged only through the sewer system;
- F. Runoff from all roofs, walkways, driveway and parking areas shall be collected and directed through a system of structural BMP's including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMP's shall be designed to 1) trap sediment, particulates, and other solids and 2) remove or mitigate contaminants (including trash, debris and vehicular fluids) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
- G. Post-construction structural BMP's (or suites of BMP's) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMP's, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMP's; (8) All BMP's shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMP's shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season;
- H. Debris and other water pollutants removed from structural BMP's during clean-out shall be contained and disposed of in a proper manner; and (10) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMP's according to manufacturer's specifications.

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

**16. Marina Best Management Practices Program.** By acceptance of this permit, the permittee agrees that the long-term water-borne berthing of boat(s) in the approved 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:
  - In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints and debris.
  - In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls is prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and only minimal amounts shall be used.

- The applicants 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:

- 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 be disposed of in a proper manner and shall not at any time be disposed of in the water or gutter.

C. Petroleum Control Management Measures:

- 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 will 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;
- 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
- 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.

17. **Landscaping: Drought Tolerant, Non-Invasive Plants.** By acceptance of this permit, the permittee agrees, on behalf of itself and all successors and assigns, that vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. Species native to coastal Orange County and appropriate to the habitat type are encouraged. Native plants shall be from local stock wherever possible. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low-water-use plants as identified by California Department of Water Resources (<http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

18. **Resource Agencies.** The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in

the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine whether the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

19. **Application Fee.** The Executive Director shall waive the application fee for Coastal Development Permit Application 5-15-1459 and accept the \$32,880 submitted with Coastal Development Permit Application No. 5-14-1671 as sufficient to process the application. Consistent with the requirements of Coastal Act Section 13055(h)(3), the applicant shall submit proof of certification at a minimum of LEED Gold or equivalent within three years of the date Coastal Development Permit 5-15-1459 is issued, upon which time the Commission shall release the letter of credit in the amount of \$13,152, submitted September 26, 2014. If the applicant does not receive a minimum of LEED Gold or equivalent within three years of the date Coastal Development Permit 5-15-1459 is issued, the Commission shall cash the letter of credit or accept cash payment of equivalent value. The Executive Director may grant a one-year extension of the three year deadline for good cause.
20. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, documentation demonstrating that the permittee has executed and recorded against the parcel(s) owned by the permittee that are governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION AND DESCRIPTION

The Newport Harbor Yacht Club (NHYC) requests a permit to demolish its existing 19,234 square foot, one-story, approximately 20-foot high clubhouse, and construct a 23,163 square foot, two-story, approximately 36-foot high clubhouse at 720 West Bay Avenue on the bay side of the Balboa Peninsula in Newport Beach (**Exhibit 1** and **Exhibit 2**).

The existing clubhouse is located behind a bulkhead constructed after the original clubhouse was built on a pile foundation over tidelands in 1919. The bulkhead is located on or inland of the property line which adjudicated the mean high tide line and private/public boundary on August 22, 1928 under Orange County Superior Court Case No. 24080 (sometimes also referenced as Orange County Superior Court Case No. 24090). A March 1949 Orange County Assessor's Parcel Map identified the waterline and the U.S. Government Bulkhead Line fixing the applicant's property

boundary bayward of the waterline. A United States Army Corps of Engineers harbor survey in 1950 identified the bulkhead line in the same location. Based on historical photographs, the existing bulkhead appears to have been constructed after 1919 and prior to 1970. The most recent City of Newport Beach Tidelands Map identifies the same bulkhead line as the previously referenced lines and the subject application identifies the bulkhead line in the same location, including plans showing the proposed clubhouse and landside boating facilities inland of the bulkhead line on a 69,696 square foot (1.6 acre) lot designated as 720 West Bay Avenue and assigned Assessor's Parcel Number 048-010-03. The clubhouse parcel is zoned for Private Institutions by the Newport Beach certified Land Use Plan.

The NHYC also owns the 5,663 square foot (0.13 acre) bayfront parcel to the west (separated by the 8<sup>th</sup> Street end) designated as 800 West Bay Avenue, assigned Assessor's Parcel Number 047-272-12, and zoned Single-Unit Residential by the certified Land Use Plan. The NHYC has been granted a special use permit from the City of Newport Beach to operate a boat storage yard on that parcel with private dock float bayward of the bulkhead along the same bulkhead line as the clubhouse parcel (the bulkhead also protects the 8<sup>th</sup> Street end and the bayfront single family homes to the west). Additionally, the applicant owns 16 parcels inland of Bay Avenue, which are zoned Private Institutions, Single-Unit Residential, and Two-Unit Residential by the certified Land Use Plan, but operated as a 123-space parking lot to serve yacht club patrons and visitors under a special use permit from the City of Newport Beach.

After demolishing the existing clubhouse, the applicant proposes to clear the area behind the existing bulkhead of debris and construct the new clubhouse in approximately the same footprint (**Exhibit 3**). The proposed clubhouse is 3,929 square feet larger than the existing clubhouse, but the assembly spaces would only increase from 7,217 square feet to 7,282 square feet. The applicant indicates that the new clubhouse has not been designed to accommodate additional members or guests and that the club's bylaws do not permit an expansion of the membership beyond the existing cap of 1,200 members. The majority of the space is allocated to locker room facilities, restrooms, stairways, and elevator, and storage areas.

To protect the clubhouse structure from flooding, the applicant proposes a new pile and pier foundation at +9.4 feet (NAVD88), behind the existing bulkhead. The bulkhead is proposed to be reinforced and elevated to +9.4 feet by installing approximately 200 secant piles, each 24 inches in diameter, or a sheet pile wall behind it (landward), wrapping partly around the east and west sides of the clubhouse, and pouring a concrete cap on top of the reinforced wall to reach +9.4 feet (**Exhibit 4**). The applicant states that the bulkhead will be engineered to accommodate additional adaptation measures including a 6-inch cap in the future and that the lower floor of the structure will be designed to withstand temporary flooding, including door inserts and waterproof outer walls. The structure itself will be supported by approximately 50 caissons, each 36 inches in diameter, driven to a depth approximately 25 feet below the bay floor.

The proposed development includes improvements to the fencing and public access signs along the 8<sup>th</sup> Street end that runs between the clubhouse parcel at 720 West Bay Avenue and the boat storage area at 800 West Bay Avenue (**Exhibit 5**). The existing chain link and solid wood fences along the east and west sides of the public street end are proposed to be replaced by 6-foot high painted iron fences with vertical bars spaced approximately 6-inches apart. The spaces between the vertical elements of the new fence would be open on the entire west side. On the east side, panels would be welded to the inside of every other vertical element to obscure the visibility of the inland portion of

the boat maintenance yard where employees work and club boats are stored. Near the water, there would be no panels and the chain link and barbed wire security overhangs would be replaced by painted iron fencing that would extend no further past the bulkhead than the existing fencing. The applicant states that the security overhang is necessary to protect the private property and storage areas. There are fixed employee work tables, a trash enclosure, and storage lockers on both the east and west sides of the street end, which are proposed to remain.

The applicant proposes to replace the solid wood fence along Bay Avenue with a similar wood fence no higher than 7-feet. The applicant states that providing an open fence in the location would not provide adequate security or improve public views because storage lockers are positioned in a line immediately inside the fence.

NHYC proposes new “public viewing location” signs on the east and west fences at the 8<sup>th</sup> Street end. There is also an existing sign erected by the City of Newport Beach identifying vertical public access down the 8th Street end to the top of the bulkhead at the bayfront. There is an existing bench at the 8<sup>th</sup> Street end adjacent to the bulkhead, which is proposed to remain and will be maintained or replaced in kind by the City of Newport Beach or the Newport Harbor Yacht Club should it become deteriorated.

The proposed development also includes a temporary facilities plan to enable continued yacht club activities during demolition and construction of the clubhouse. In order to provide space and structural stability for an approximately 20-foot by 80-foot boat to moor adjacent to the site and serve as a temporary clubhouse facility during construction of the new clubhouse, the applicant proposes to remove three piles and three fingers over the tidelands administered by the City of Newport Beach, totaling approximately 600 square feet, and temporarily install three new piles and an approximately 400 square foot dock float connector. Following completion of the new clubhouse, the temporary piles and dock float will be removed and the pre-existing piles and fingers re-constructed in their original location (**Exhibit 6**). Also during construction, six temporary modular structures will be placed in the east yard to accommodate management and food preparation facilities. All structures would connect to existing electrical and plumbing infrastructure and the existing restroom in the east yard would remain operational for members and guests. The largest proposed structure is 25-feet by 40-feet, none of the structures require foundations, and all will be removed following construction of the new clubhouse.

Finally, the proposed development includes an offer to fund \$350,000 of public access improvements elsewhere in Newport Beach, preferably at the site of the old Central Avenue Bridge, where the City is in the process of developing plans for a public pier and ADA-compliant public dock float designed to serve small powered and hand-carried vessels. The applicant indicates that “the offer to fund the Central Avenue Public Pier arises from the NHYC members’ position as good citizens, prepared to aid the public use of the harbor” and construction of the pier will offset the private use of the State tidelands located bayward of the yacht club for private docks and yacht club uses only. The City of Newport Beach Harbor Commission indicates that it will accept the offer to fund the pier, that construction of the pier will improve visitor access within the harbor consistent with its objectives, and that it expects to have plans for the new pier finalized in the next 45 days. A draft schematic of the pier is included in **Exhibit 8** but NHYC and the City have each acknowledged that a separate coastal development permit from the Coastal Commission will be required for the new public pier, piles, and dock float.

## 5-15-1459 (Newport Harbor Yacht Club)

The City of Newport Beach Planning Commission held public hearings for the proposed development (including a General Plan amendment, Zoning Code amendment, Coastal Land Use Plan amendment, Minor Use Permit, and Planned Development Permit) on September 5, 2013, December 9, 2013, and January 23, 2014. The City Council held a public hearing on February 25, 2014 and approved each of the required entitlement. Coastal Land Use Plan Amendment Request No. 1-14 was submitted for Coastal Commission certification with Newport Beach City Council Resolution No. 2014-19 on April 23, 2014 and withdrawn on September 8, 2015. The City indicated that the LUP amendment was proposed to simplify the zoning designations of the NHYC parcels (it would have re-designated each of them to Private Institutions), but was not required for its approval of the Newport Harbor Yacht Club re-development.

The applicant submitted Coastal Development Permit Application No. 5-14-1671 for a substantially similar development on September 30, 2014, the application was filed as complete February 5, 2015, and it was withdrawn September 16, 2015 in order for the applicant to work with the City of Newport Beach and Commission staff to revise the project consistent with the certified LUP and with the public access and recreation policies of the Coastal Act. The Executive Director waived the six month waiting period between withdrawal and resubmittal for good cause, consistent with Section 13056.1(e) of the California Code of Regulations and the subject Coastal Development Permit Application No. 5-15-1459 was filed September 18, 2015. Commission staff requested additional information from the applicant related to the foundation design, adaptation to sea level rise, and offer to provide public access improvements adjacent to the property and elsewhere in Newport Beach. Additional information was submitted October 1, 2015, December 15, 2015, January 29, 2016, and February 15, 2016.

The Commission received a letter from a member of the public opposed to the proposed development (**Exhibit 9**), asserting that it does not provide adequate public access and that the construction and operation of the yacht club will be disruptive to residents and visitors of the neighborhood.

### **B. DEVELOPMENT – SCENIC AND VISUAL RESOURCES**

The proposed development is located within a developed residential neighborhood on a coastal peninsula popular with coastal visitors.

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

*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, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in*

*visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The proposed clubhouse is most closely characterized as a commercial development which also includes visitor serving components (guests of members may visit the dining areas, assembly spaces, and boating areas and local high school students may utilize the facilities for sailing activities). The proposed clubhouse and boat storage use is consistent with the Private Institutions land use designation of the City of Newport Beach zoning code and the certified Land Use Plan. The development is located within an existing developed area and is compatible with the character and scale of the surrounding area.

The majority of the proposed clubhouse has a maximum height of 31 feet, which is consistent with the non-residential height limit in the area. A small projection in the center of the roof extends to 36.25 feet as measured from the City of Newport Beach required finished floor elevation of 9.0 feet. In fact, the finished floor elevation will be 9.5 feet so the height of the roof could be calculated as 35.75 feet from floor to upper roof projection. In either case, the proposed roof height is about one foot higher than permitted by the Newport Beach certified Land Use Plan. Policy 4.4.2-1 of the LUP provides that the City shall maintain the current 35 foot height limit in the Shoreline Height Limitation Zone. Policy 4.4.2-3 of the LUP provides that the implementation of the regulation of height will be through the zoning code in effect as of October 13, 2005. Newport Beach zoning code section 20.65.030A provides that under a special use permit, sloped roof height is measured to the midpoint of the roof plane provided the height does not exceed 35 feet by more than five feet. The City is in the process of updating its implementing ordinances for potential Coastal Commission certification and the height calculation methodology may change in the new plan, but the Commission finds that the proposed one-foot extension of the height limit for a sloped roof is consistent with the zoning code referenced in Land Use Plan Policy 4.4.2-3. Additionally, the Commission finds that the proposed clubhouse is consistent with the visual resource policies of the Coastal Act because it is sited in approximately the same footprint as the existing clubhouse in a relatively flat, developed area, the proposed structure will not block public views to any greater extent than the existing structure and will not have new adverse impacts on visual resources.

Finally, the Commission finds that the proposal to replace the existing chain link and solid wood fences along the east and west sides of the public street end with new 6-foot high painted iron fences with vertical bars spaced approximately 6-inches apart is consistent with the visual resource policies of the coastal act because it will enhance the visual character of the property adjacent to the 8<sup>th</sup> Street end public access way. In order to ensure that visual resources along the 8<sup>th</sup> Street end are enhanced consistent with the applicant's plan, **Special Condition 4** requires the applicant to submit final plans, for review and approval of the Executive Director, in substantial conformance to the plan submitted February 15, 2016 and referenced as an exhibit in **Exhibit 5**, which shall incorporate the following requirements:

- A. The height of the painted iron fences with vertical bars spaced approximately 6-inches apart along the east and west sides of 8<sup>th</sup> Street end shall not exceed six feet, as measured from the centerline of the street.
- B. The height of the wood fencing along Bay Avenue shall not exceed seven feet, as measured from the centerline of the street.

- C. The existing bench at the 8<sup>th</sup> Street end shall remain, and will be maintained or replaced in kind by the City of Newport Beach or the Newport Harbor Yacht Club should it become deteriorated.
- D. The applicant shall install a minimum of two “public viewing location” signs, each a minimum of 12-inches by 16-inches along the east and west fences along the 8<sup>th</sup> Street end adjacent to Bay Avenue. The signs shall be located such that they are visible from the corner of Bay Avenue and the 8<sup>th</sup> Street end.

As conditioned to require the visual resource improvements proposed by the applicant, the Commission finds that the development is consistent with Sections 30250 and 30251 of the Coastal Act.

### **C. DEVELOPMENT – HAZARDS**

The proposed development is located adjacent to and partially over Newport Bay, which is tidally influenced by the Pacific Ocean. The existing bulkhead extends beyond the natural shoreline and generally protects the existing development on the property from flooding. A bulkhead of the same alignment extends to the west which protects existing residences and other development located between 8<sup>th</sup> and 9<sup>th</sup> streets.

Section 30235 of the Coastal Act states:

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

Section 30253 of the Coastal Act states, in pertinent part:

*New development shall do all of the following:*

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30255 of the Coastal Act states:

*Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated in close proximity to the coastal dependent uses they support.*

To analyze the suitability of the site for new development relative to potential coastal hazards, Commission staff requested the preparation of a wave run-up, flooding, erosion hazard and sea level rise analysis, prepared by an appropriately licensed professional (e.g. civil engineer with coastal experience). The applicant commissioned an analysis from Anchor QEA, which produced an Evaluation of Coastal Hazards for Newport Harbor Yacht Club, dated December 16, 2014. That Evaluation considered a 75 year storm event, which resulted in a peak wave height of 1.0 foot, plus an additional 0.5 foot of wind set up. If the 75 year storm event were to occur during the highest astronomical tide, the analysis found that the water level would reach +7.5 feet Mean Lower Low Water Level<sup>1</sup> and that waves could overtop any bulkhead built up less than +9.7 feet. Additionally, the analysis considered the mid-range sea level rise scenarios for the years 2030, 2050, and a linear interpolation for the year 2090. In both the mid-term (2050) and the long-term (2090), severe storms combined with high tides and mid-range sea level rise scenarios were found to pose a risk to developed structures on the shoreline.

After the application was withdrawn and resubmitted, Commission staff asked the applicant to consider high-range sea level rise scenarios using the best available science and to consider future adaptation measures for the new clubhouse. Anchor QEA updated its analysis in a technical memorandum dated January 28, 2016. The analysis assumed that the bulkhead would be fixed at its existing location, wrapped part way around the sides of the new structure, and elevated from +7.7 feet (NAVD88) to +9.4 feet, consistent with the applicant's most recent foundation design. The analysis noted that a 100 year storm event would produce the same wave height (1.0 foot) as the 75 year storm event. That memo considered mid-range sea level rise in 2030 and an interpolated mid-range scenario for 2090, assuming a 75 year life of the clubhouse consistent with the architect's notes. It provided an uncertainty band around the mid-range extending to the low-range and high-range scenarios for 2030 and 2090, as projected by the National Research Council (NRC) 2012 report "Sea-Level Rise for the Coasts of California, Oregon, and Washington," which is consistent with the Commission's adopted Sea Level Rise Guidance.

The NRC Report provides a range of sea level rise projections for the area south of Cape Mendocino, based on low and high emission scenarios developed by the Intergovernmental Panel on Climate Change – and a projection of future sea level rise for Los Angeles in 2030, 2050, and 2100 based on a mid-range future emission scenario<sup>2</sup>. For the area south of Cape Mendocino (Southern California), the mid-range projection of sea level rise for 2100 is 41 inches and the high-range projection is 66 inches. Interpolated to 2090, the mid-range projection is 36 inches and the high range is 57 inches.

The applicant's coastal hazards analysis indicates that under the mid-range sea level rise scenario of 36 inches by 2090, combined with the highest observed astronomical tides, the proposed development will not experience flooding except during storm events. However, if the sea level rises by more than 36 inches at any point in the future, the development will experience overtopping and flooding during astronomical tide events (several times per year). If the sea level rises 57 inches

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<sup>1</sup> Elevations are in feet relative to North American Vertical Datum of 1988 (NAVD88) where available. Some elevations may be relative to mean lower low water level, which is 0.1 feet higher than NAVD88.

<sup>2</sup> The "low" emission scenario refers to the AR4 scenario, B1, which assumes future shift to energy efficient technologies. The "mid-range" emission scenario refers to the AR4 scenario, A1B, which assumes similar economic and population growth patterns but with a more balanced use of both fossil-intensive and non-fossil sources. The "high" emission scenario refers to the AR4 scenario, A1FI, which assumes a fossil fuel intensive future.

by 2090 (the high-range scenario), the clubhouse and associated facilities will experience daily flooding during high tides. The most severe scenario is a 75-year storm combined with the highest astronomical tide and 57 inches of sea level rise, resulting in water levels up to 12.3 feet, and potential flooding of the bottom three feet of the clubhouse (along with all of the streets and most of the infrastructure on the Balboa Peninsula). This scenario highlights the importance of planning for possible sea level rise, notifying future property owners of potential hazards, understanding the impacts of adaptation options on coastal resources, and planning regionally. The City of Newport Beach and County of Orange, in their capacity as Trustees of Public Tidelands in Newport Harbor, should work to create such a regional adaptation plan.

In considering sea level rise impacts, the Commission has recognized that there may be differences between the conditions used in planning level analysis and those used in design decisions. It is important to understand the range of impacts from the highest possible sea level rise conditions combined with tidal effects, storms, and other flooding indicators; however, it may not be appropriate or possible to design all projects for the most severe sea level rise scenarios. Thus, the Commission considers both the initial design, as well as options for adaptation, to minimize risks to life and property in cases where future sea level rise may exceed today's best projections and assumptions. In reviewing projects for flood risk and hazards related to sea level rise, the Commission considers both the design elements and the options for adaptation.

The proposal to reinforce and elevate the existing bulkhead is an immediate sea level rise adaptation measure proposed by the applicant. The existing bulkhead has the effect of fixing the shoreline in place and preventing natural erosion, and the development proposed by the subject application will continue that condition for the next 75 years. On an eroding shoreline, a beach will exist between the land and the waterline as long as sand is available to form a beach. As erosion proceeds, the profile of the beach also retreats and the beach area migrates inland. This process stops, however, when the backshore is fronted by a hard protective structure such as a seawall/bulkhead. While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. Eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armor. In this case, that process has already occurred and the waterline is flush with the bulkhead at all times except for unusually low tides. The origin of the bulkhead is unknown but appears to have been constructed prior to the effective date of the California Coastal Zone Conservation Act of 1972 ("Proposition 20") and may or may not have received proper approvals from relevant authorities.

Coastal Act Section 30235 states that "construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." The proposed clubhouse is not a coastal-dependent use<sup>3</sup> because its function as a gathering place for members does not require a site on, or adjacent to, the sea to be able to function at all; thus it cannot rely on the presence of the bulkhead for protection. The proposed clubhouse is a coastal-related use, however, because it is dependent on a functional

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<sup>3</sup> Section 30101 of the Coastal Act defines "Coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." Section 30101.3 of the Coastal Act defines "Coastal-related development" as "any use that is dependent on a coastal-dependent development or use."

boating facility with access to the sea (the functional purpose of a yacht club is to promote recreational boating activities). The clubhouse will not be supported by the bulkhead; it will be supported by approximately 50 caissons and its foundation will be elevated to the same height as the bulkhead (+9.4 feet NAVD88), with the potential for an additional six-inch curb along the outer wall.

The existing boat maintenance yards, dry boat storage areas, boat launch structures, and boat access ramps (gangways) are reliant on the bulkhead both for protection from tidal action and flooding and for foundational support. The bulkhead also protects the 8th Street end and the bayfront single family homes to the west (see vicinity map in **Exhibit 1**). If the applicant were required to remove the existing bulkhead in order to carry out the proposed new clubhouse development, it would have the immediate effect of flooding the majority of the applicant's parcel and would render the existing boat maintenance, dry boat storage, and boat launch uses on the parcel infeasible. Removal of the bulkhead would also threaten existing development not associated with the yacht club, including the public street and the adjacent homes.

Under Section 30235, the existing bulkhead may be maintained and strengthened in order to serve coastal dependent uses or to protect existing structures. In this case, the existing boat maintenance yards, dry boat storage areas, boat launch structures, and boat access ramps (gangways) will be protected by the reinforcement and elevation of the bulkhead. Each of those individual components may not be coastal dependent (i.e. they could be located near the sea rather than adjacent to the sea and still function), but together they make up a functional boating facility with access from the shoreline to the Newport Bay, which is a coastal dependent use. The proposal to install the secant pile or sheet pile wall behind (landward of) the existing bulkhead will not have an adverse impact on the local shoreline sand supply because the sand in that area is already covered by the foundational elements of the clubhouse structure and dry boat storage areas.

To ensure that future adverse impacts to marine resources in the public tidelands seaward of the bulkhead and the property line (adjudicated August 22, 1928 by Orange County Superior Court Case No. 24080) are avoided consistent with with Section 30235, the Commission imposes **Special Condition 5** requiring that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) which will be improved pursuant to Coastal Development Permit No. 5-15-1459, shall extend the footprint seaward of the subject shoreline protective device. In this particular case, the bulkhead is located on or inland of an adjudicated mean high tide line, so removal of the bulkhead or its relocation further landward would not result in additional tidelands or beach available for public use. As conditioned, no further encroachment by the private development into State tidelands is permitted.

The proposal to site the clubhouse behind the bulkhead, near the coastal dependent use it supports (the boat facilities and access to the dock floats) is consistent with Coastal Act Section 30255 which states that, when appropriate, coastal-related developments should be accommodated in close proximity to the coastal dependent uses they support. In this case, the applicant already utilizes the parcel for the clubhouse use and there is no more feasible location to site the clubhouse (siting it across Bay Avenue in the existing parking lot might be feasible but is not currently permitted by the underlying residential zoning in the certified Land Use Plan and would result in the loss of the parking lot necessary to serve yacht club guests and boaters). Furthermore, siting the clubhouse in the existing parking lot wouldn't avoid the flooding that is expected to impact the whole peninsula.

The applicant proposes additional adaptation measures which the yacht club will implement if sea level rise and future flood hazard is more severe than the mid-range scenario identified in the hazards analysis. The applicant characterizes the proposal to elevate the bulkhead and the finished floor of the new clubhouse to +9.4 feet, rather than +8.9 feet as required by the City of Newport Beach, to be an immediate adaptation measure. The applicant states that the bulkhead will be engineered to accommodate an additional six-inch cap in the future. The exterior walls of the clubhouse will also be engineered to accommodate a future 6-inch water barrier curb. The doorway openings will be constructed to accommodate specialized water barriers during high tide events. The floor will be designed to prevent penetration from water below during high tides. And the lower floor of the structure will be designed to withstand temporary inundation that may occur during storm events.

Despite the applicant's proposed adaptation strategies, there are scenarios in which water levels would exceed the design conditions of the project site and that could result in future flooding of the lower level of the structure. The clubhouse and the associated coastal dependent facilities have not been designed to withstand flooding during the highest tides under the mid-range sea level rise scenario for 2090 (the end of the anticipated use of the structure). If sea level rise is worse than the mid-range scenarios, the bulkhead and the structures could be damaged by frequent inundation and tidal action. To minimize risks to life and property, the geotechnical engineering investigation and coastal hazards evaluation have provided recommendations. The geotechnical evaluation recommends against tying the foundational elements of the clubhouse to the seawall/bulkhead due to the great additional loads imposed on the bulkhead (page 17 of Report of Preliminary Geotechnical Investigation for New Clubhouse Building; Associated Soils Engineers; June 18, 2009, updated January 9, 2015). The soils report presents several foundation alternatives, which may be selected based on the final plans and the results of future soils testing following demolition of the existing clubhouse and remedial grading. The updated coastal hazards evaluation is based on assumptions related to bulkhead reinforcement alternatives, bulkhead extent and height, foundation design alternatives of the clubhouse structure, and the finished floor elevation of the structure. Therefore, in order to minimize risks to life and property consistent with Coastal Act Section 30253, the Commission imposes **Special Condition 8** requiring the applicant to submit final plans in conformance with the recommendations of the geotechnical engineering investigation and coastal hazards evaluation. Recognizing that these recommendations may not protect the development over its entire life and that development adjacent to the ocean is inherently hazardous, the Commission imposes **Special Condition 9** requiring the applicant to assume the risks of the development, waive liability against the Commission, and indemnify the Commission against future claims.

In order to ensure that development on the site does not occur which could result in adverse impacts to coastal processes, the Commission imposes **Special Condition 1**, which requires the applicant to 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-approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235, 30253, and 30255 of the Coastal Act regarding the siting of coastal-dependent and coastal-related development in hazardous locations.

**D. PUBLIC ACCESS AND RECREATION**

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project must conform with the following Coastal Act policies which protect and encourage public access and recreational use of coastal areas.

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 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The Newport Beach certified Land Use Plan has policies related to shoreline access (Section 3.1.1), bay/harbor encroachments (Section 3.1.4), recreational opportunities (Section 3.2.1), vessel launching (Section 3.3.1), and vessel berthing and storage (Section 3.3.2). The following policies are relevant to the proposed development:

*Policy 3.1.1-1 of the LUP. Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

*Policy 3.1.1-2 of the LUP. Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.*

*Policy 3.1.1-11 of the LUP. Require new development to minimize impacts to public access to and along the shoreline.*

*Policy 3.1.1-27 of the LUP. Implement public access policies in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- *Topographic and geologic site characteristics;*
- *Capacity of the site to sustain use and at what level of intensity;*
- *Fragility of natural resource areas;*
- *Proximity to residential uses;*
- *Public safety services, including lifeguards, fire, and police access;*
- *Support facilities, including parking and restrooms;*
- *Management and maintenance of the access;*
- *The need to balance constitutional rights of individual property owners and the public's constitutional rights of access.*

*Policy 3.1.4-6 of the LUP. Continue to prohibit private piers at street ends.*

*Policy 3.2.1-1 of the LUP. Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.*

*Policy 3.3.1-1 of the LUP. Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor.*

*Policy 3.3.1-3 of the LUP. Protect, and where feasible, expand and enhance low cost public launching facilities, such as trailer launch ramps, boat hoists, commercial loading facilities, and organized recreational boating launch facilities.*

*Policy 3.3.2-7 of the LUP. Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.*

The parcel where the new clubhouse is proposed has been owned by the Newport Harbor Yacht Club for 97 years and currently features a 19,234 square foot clubhouse, dry boat storage area, and private beach. There is no lateral public access along the bulkhead and the public tidelands bayward of the bulkhead are submerged and covered by the yacht club docks.

The NHYC dock floats and members' vessels occupy State tidelands and submerged lands (administered by the City of Newport Beach) between the bulkhead and the pierhead line, and also occupy a large area of State water beyond the pierhead line in Newport Bay. The NHYC mooring field within Newport Bay includes 48 moorings, extending over 100 feet bayward of the pierhead line, over 100 feet west of the extended side property line to the 10<sup>th</sup> Street beach, and over 100 feet east of the extended side property line nearly to Balboa Island (**Exhibit 7**). Immediately to the west of the primary yacht club parcel is the 8<sup>th</sup> Street street end, identified as a Public Beach Access Location on the Coastal Access and Recreation map on page 3-40 of the certified Land Use Plan. To the west of the street end is the 800 West Bay Avenue parcel, owned by the yacht club and utilized for dry boat storage. The public tidelands and submerged lands bayward of the parcel are occupied by the yacht club's dock floats and members' vessels.

The storage of dozens of boats on the public tidelands and submerged lands adjacent to the two parcels inherently affects public access and recreational opportunities on the tidelands and submerged lands in Newport Bay. The NHYC pays annual lease fees to the City of Newport Beach (which oversees the tidelands subject to reenactment of the Beacon Bill of 1978). In 2014, the yacht club paid the City approximately \$135,000 for use of the tidelands and mooring field in the bay. The City utilizes the revenue from its lease program to provide public amenities in the tidelands throughout Newport Beach.

According to a representative of the Newport Harbor Yacht Club, the 8<sup>th</sup> Street street end, bound by the two bay-front private yacht club parcels, historically supported greater public access and recreational opportunities than it does today. There was previously a public dock float for small boat launches over the public tidelands and submerged lands bayward of the street end. The street end is currently bound by six-foot high wood and chain link fences on either side and is sometimes used for staging of yacht club operations (see photo of unoccupied vehicles adjacent to an open gate associated with the yacht club in **Exhibit 2**). A public bench is provided at the end of the street end atop the bulkhead. Any member of the public wishing to access the water would need to step off the bulkhead and drop into the water. Under the current condition, public access to the water, especially to hand launch any kind of personal watercraft, is limited by the steep drop off. Also, yacht club members' boats occupy the public tidelands and submerged lands beyond the bulkhead (creating additional obstacles for kayakers, paddle-boarders, and swimmers). The NHYC does not propose changes to the use of the dry boat storage areas, the dock floats, or the adjacent tidelands, but construction of the new clubhouse will serve to prolong the access-restrictive conditions over the life of the development, noted as 75 years, because it will encourage continued membership of the yacht club and the members' ongoing use of the existing development over public trust submerged and tide lands.

The existing boat storage use at 800 Bay Avenue is not permitted on a Single-Unit Residential parcel under the Newport Beach certified Land Use Plan or zoning code. The City of Newport Beach has historically issued special use permits to allow boat storage on that parcel. The City submitted Land Use Plan Amendment Request No. 1-14 which would have re-designated the parcel Private Institutions, and would have authorized more intense use of the land and the adjacent tidelands, but withdrew that request prior to Commission action.

The City of Newport Beach also sought Land Use Plan Amendment Request No. 1-14 in order to re-designate six parcels on the inland side of Bay Avenue from Single-Unit Residential and Two-Unit Residential to Private Institutions, in order to authorize the existing parking lot use of those parcels. Because the requested amendment was withdrawn, those six parcels are still designated residential and the parking use is not consistent with that designation. The City's parking calculation table indicates that the proposed clubhouse would require 209 parking spaces (one space per 35 square feet of assembly space; 7,282 square feet of assembly space proposed; 209 spaces required). Including the six residential parcels and the adjacent 10 Private Institutions parcels, the applicant currently provides 114 parking spaces. The applicant's application indicates that the lots will be restriped to provide 123 parking spaces and that it will implement a parking management plan to provide adequate parking for the proposed new clubhouse and associated facilities. The plan includes valet parking during peak use periods, monitoring of parking demand generated by special events by the City of Newport Beach Community Development Department, employee parking guidelines and incentives to use other means of transportation, bicycle racks,

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motorcycle spaces, and the encouragement of members to arrive at the club by boat or by foot. The City approved the development with the proposed parking management plan.

Although the parking plan does not conform to the City of Newport Beach's parking calculation table, Chapter 3 of the Coastal Act is the standard of review for the proposed development. In previous actions, the Commission has found that new development is required to provide enough parking to satisfy demand, so that the public parking supply is not overtaken by private development, which would reduce public access to the coast. In this case, the applicant conducted a parking study which indicated that the club provides adequate parking supply most days of the year, although NHYC members and guests were observed parking on the public streets adjacent to the yacht club on each day surveys took place. The parking lot was filled to capacity (113 cars in 114 spaces) during Opening Day festivities Friday, May 4, 2012 and was filled beyond capacity (130 cars stacked and stored in parking aisles) on Saturday May 5, 2012. During other special events, the parking lot provided adequate capacity to serve members and guests (including a wedding attended by 215 people).

The applicant indicates that re-striped parking lot and the parking management plan will be adequate to serve visitors of the proposed clubhouse and NHYC members. The applicant has also indicated that NHYC's membership is capped at 1,200 under its bylaws and that it will not seek to increase the membership as a result of the larger clubhouse. The applicant also states that the larger clubhouse will not be utilized to hold additional or larger events than have historically been held for the previous 97 years. In order to ensure that the new clubhouse uses are not more intense than the existing uses, and can be served by the existing private parking supply rather than the public parking areas in the area, **Special Condition 6** requires the permittee to agree that no amendment, modification, alteration or exception to the By-Laws of the Newport Harbor Yacht Club shall be made which would increase the total authorized membership beyond the current cap of 1,200 without an amendment to Coastal Development Permit 5-15-1459. Any application to amend Coastal Development Permit 5-15-1459 to increase the authorized membership shall be accompanied by a detailed parking study which evaluates whether or not there is adequate parking available to Newport Harbor Yacht Club to accommodate an increase in the number of members. In order to ensure that the applicant's proposed parking management plans are implemented as proposed, consistent with the public access findings above, **Special Condition 7** requires the applicant to comply with the City approved Parking Management Plan dated December 19, 2013. Any change to such Parking Management Plan shall not be implemented without an amendment to CDP 5-15-1459, unless the Executive Director determines that no amendment is legally required.

While the applicant does not recognize the potential for the new clubhouse to perpetuate or worsen any existing public access restrictions, NHYC has worked with the City of Newport Beach and Coastal Commission staff to identify two areas where it can provide public access and recreation improvements that will benefit the public. The first is the proposed fence plan described in the project description and the visual resources section of this report. The new "public viewing location" signs and the more attractive fence will serve to welcome members of the public to explore the 8<sup>th</sup> Street end and enjoy the view of Newport Bay from the existing bench. The second component of the applicant's proposed public access improvement plan is the offer to fund \$350,000 of public access improvements elsewhere in Newport Beach, preferably at the site of the old Central Avenue Bridge, where the City is currently proposing a public pier and ADA-compliant public dock float designed to serve small powered and hand-carried vessels. Both the applicant and the City have indicated that the Central Avenue location will be the most beneficial

location because of its central location within the City, the availability of public parking in the area, and the proximity to recreational and retail businesses serving coastal visitors in the area.

The Commission finds that the completion of the proposed 8<sup>th</sup> Street end improvements and the Central Avenue Pier project will result in substantially improved public recreation opportunities within Newport Bay, to offset the continued private use of the adjacent State tidelands by private yacht club docks and uses, consistent with the public access and recreation policies of the Coastal Act and the certified Land Use Plan. In order to ensure that the public amenities are provided in a timely manner and maintained in working condition, the Commission imposes **Special Condition 3** requiring the permittee to provide evidence, in a form and content acceptable to the Executive Director, that a payment of \$350,000 has been paid to an accepting entity as proposed by the Newport Harbor Yacht Club in a letter dated January 29, 2016. If that accepting entity is the City of Newport Beach, the City will be required to apply for a coastal development permit within 24 months of issuance of Coastal Development Permit 5-15-1459 and commence the development within three years of the effective date of the MOU. **Special Condition 4** would require the NHYC to implement the fence and public access sign plan as provided in the application and detailed in the visual resources section above.

The Commission, therefore, finds that as conditioned the proposed development is consistent with 30210, 30220, 30221, 30222, and the other public access and recreation policies of the Coastal Act.

#### **E. MARINE RESOURCES**

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.*

Bulkheads/seawalls are known to adversely impact marine resources if the structures are placed on actual marine resources, resulting in the destruction of surrounding marine habitat areas. Newport Harbor contains eelgrass beds, which are important nursery habitats for many fish species that maintain the populations of open ocean fish species, many of which are fished commercially and recreationally. Eelgrass beds are the type of habitat area that, pursuant to Section 30230 of the

Coastal Act, deserves special protection as an area of special biological significance. The National Marine Fisheries Service Eelgrass Mitigation Policy (October 2014) states the following:

*Eelgrass species (Zostera marina L. and Z. pacifica) are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such as the Pacific herring. Eelgrass also provides a significant source of carbon to the detrital pool which provides important organic matter in sometimes food-limited environments (e.g., submarine canyons). In addition, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrass, Costanza et al. (2007) determined seagrass ecosystems to be one of Earth's most valuable.*

The NMFS policy also reports the following adverse effects of human development on eelgrass beds like those in the vicinity of the subject site:

*Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze et al. 2006, Orth et al. 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Human activities that affect eelgrass habitat distribution and abundance, including, but not limited to, urban development, harbor development, aquaculture, agricultural runoff, effluent discharges, and upland land use associated sediment discharge (Duarte 2008) occur throughout California. For example, dredging and filling; shading and alteration of circulation patterns; and watershed inputs of sediment, nutrients, and unnaturally concentrated or directed freshwater flows can directly and indirectly destroy eelgrass habitats.*

Eelgrass surveys performed by the City of Newport Beach between 2003 and 2014 identified eelgrass near the shoreline in the vicinity of the subject site, which the City's Eelgrass Protection and Mitigation Plan classifies as a "transitional eelgrass zone" where eelgrass tends to be sparse, patchy, and temporally variable. The development proposed by the subject application is not authorized without mitigation by Regional General Permit 54 approved under Coastal Development Permit 5-14-0200 because it includes in-water construction and temporary fill for new dock facilities. In order to provide space and structural stability for an approximately 20-foot by 80-foot boat to moor adjacent to the site and serve as a temporary clubhouse facility during construction of the new clubhouse, the applicant proposes to remove three piles and three fingers totaling approximately 600 square feet and temporarily install three new piles and an approximately 400 square foot dock float connector. Following completion of the new clubhouse, the temporary piles and dock float would be removed and the pre-existing piles and fingers re-constructed in their original location (**Exhibit 6**). In order to ensure that construction impacts and the piles and dock float are temporary, **Special Condition 2** requires the permittee to submit a temporary facilities

plan, including floor, elevation, grading, foundation, dredging, piling placement, dock realignment, dock coverage, and utility connections, and to remove all temporary facilities following construction of the new clubhouse.

The proposed development includes the installation of secant or sheet piles inland of the existing bulkhead, which will not impact eelgrass because the area behind the bulkhead is already disturbed and covered by the existing clubhouse and deck. Construction of a future bulkhead or seawall that encroaches on transitional or stable eelgrass habitat would be inconsistent with Coastal Act Section 30230 which requires marine resources to be maintained and enhanced and with Section 30231 requiring the biological productivity of coastal waters to be maintained. To ensure that marine resources are not impacted by the seaward expansion of the bulkhead, the Commission imposes **Special Condition 5** requiring that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) which will be improved pursuant to Coastal Development Permit No. 5-15-1459, shall extend the footprint seaward of the subject shoreline protective device.

In order to avoid permanent impacts to eelgrass, which would adversely affect biological productivity in Newport Bay, the Commission imposes **Special Condition 10**, which requires a pre-construction eelgrass survey and identifies reporting requirements prior to construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur, the impacts will be identified and appropriate mitigation required under strict protocol provided in the California Eelgrass Mitigation Policy dated October 2014, which will ensure full mitigation of any impacts to eelgrass should the post-construction survey show that eelgrass impacts occurred during construction. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

*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 Newport Bay, *Caulerpa taxifolia*, if present, could displace eelgrass in the bay.

Underwater surveys recently conducted in Newport Bay have not encountered *Caulerpa taxifolia*, but the applicant has not submitted a valid survey for the proposed development. In order to assure that the proposed development does not cause the dispersal of *Caulerpa taxifolia*, the Commission imposes **Special Condition 11**, requiring 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 legally required.

The applicant has not received final approval for the proposed development from all of the resource agencies. **Special Condition 18** requires the applicant to comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, the

Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and the marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine whether the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

The Commission finds that only as conditioned is the proposed development consistent with the marine resource and biological productivity protections standards within Sections 30230 and 30231 of the Coastal Act.

#### **F. WATER QUALITY**

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. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 12** requiring the applicant to implement construction best management practices and **Special Condition 13** requiring the applicant to dispose of all demolition and construction debris at an appropriate location outside the coastal zone. The Commission also imposes **Special Condition 14** requiring the applicant to implement a storm water pollution prevention plan that must show that permittee is properly prepared to apply site design, source control and treatment control BMP's, appropriate for the potential stormwater pollutants at this site, in order to protect coastal waters from polluted runoff generated by construction activities.

The proposed project is considered development and there is an opportunity to improve water quality. Many of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. The applicant has submitted a preliminary water quality management plan including design features and drainage devices to minimize any impacts to water quality the proposed project may have after construction. In order to ensure that the water quality management plan implemented and maintained, the Commission imposes **Special Condition 15**. In order to ensure that chemicals associated with boat cleaning products do not harm water quality, the Commission imposes **Special Condition 16** requiring the applicant to implement post-construction best management practices for marinas. Newport Harbor Yacht Club representatives indicate that the club provides only biodegradable products for cleaning of boats on site and that the water quality of Newport Bay is of utmost importance to its members.

The applicant has submitted a preliminary landscape plan showing a mix of native and non-native drought tolerant and higher water use landscaping on the subject site. The use of non-native vegetation that is invasive can have an adverse impact on native vegetation. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize water use and potential runoff into coastal waters. The applicant has agreed to modify the landscape plan to provide only drought tolerant plant species native to coastal Orange County and the Commission imposes **Special Condition 17** to require the final landscape plan to implement those requirements. The applicant will also comply with the applicable water efficiency and conservation measures of the City of Newport Beach's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances. As conditioned, the Commission finds that the development conforms with Sections 30230, 30231, and 32032 of the Coastal Act.

#### **G. APPLICATION FEE**

The applicant requests that the Commission direct the Executive Director to waive the permit application fees for Coastal Development Permit Application No. 5-15-1459. Pursuant to Section 13055(h)(1) of the California Code of Regulations, the Executive Director shall waive the application fee where requested by resolution of the Commission.

The applicant submitted Coastal Development Permit Application No. 5-14-1671 for a substantially similar development on September 30, 2014, along with a check in the amount of \$19,728 and a Letter of Credit in the amount of \$13,152, representing the total application fee amount of \$32,880 (for development cost between \$10,000,001 and \$25,000,000 based on the 2014 fee schedule). The applicant intends to obtain a Leadership in Energy and Environmental Design (LEED) Gold Certification for the development, which would qualify for a 40% application fee reduction pursuant to Section 13055(h)(3) of the Commission's regulations.

As the Commission's regulatory deadline (270<sup>th</sup> day) was approaching, the applicant agreed to withdraw the application and submit a new application on September 16, 2015, in order to continue working the City of Newport Beach and Coastal Commission staff to revise the project consistent with the certified LUP and with the public access and recreation policies of the Coastal Act.

Because the withdrawal and resubmittal occurred by mutual agreement of the applicant and Commission staff, the Commission grants the applicant's request and directs the Executive Director to waive any new application filing fee. **Special Condition 19** indicates that the fee previously submitted under Coastal Development Permit Application No. 5-14-1671 will be retained and is sufficient to process the subject application. Although the LEED Certification fee reduction provision expired on January 1, 2015, the original application was submitted prior to that date and the allowance for a fee reduction for LEED certification (and future fee collection should LEED Gold standard or equivalent not be met) may be carried forward with the new application.

#### **H. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 20** requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### **I. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was last updated in October 2009 and the City is in the process of preparing an implementation plan for review and certification of the Commission. Consequently, the Commission's standard of review is the Chapter 3 policies of the Coastal Act and the certified LUP may be used as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

#### **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The City of Newport Beach is the lead agency for the purposes of CEQA review. On March 13, 2014, the City determined that the project is categorically exempt from CEQA review under Section 15302 (Replacement and Reconstruction). The project has been conditioned to maximize public access and recreational opportunities and to avoid adverse impacts to visual resources, marine resources, and water quality. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **Appendix A – Substantive File Documents**

- 1) City of Newport Beach certified Land Use Plan; 1982.
- 2) California Eelgrass Mitigation Policy. National Marine Fisheries Service; 2014.
- 3) Evaluation of Coastal Hazards for Newport Harbor Yacht Club. Anchor QEA; December 16, 2014, updated January 28, 2016.
- 4) Preliminary Water Quality Management Plan. Walden and Associated; January 2015.
- 5) Report of Preliminary Geotechnical Investigation for New Clubhouse Building. Associated Soils Engineers; June 18, 2009, updated January 9, 2015.
- 6) Historical Resources Report. Joel Levanetz, Chambers Group Inc.; November 2013.
- 7) Off-street Parking Analysis and Parking Management Plan. Pirzadeh Associates Inc.; July 2012.

# Newport Harbor Yacht Club Vicinity Map

## Exhibit 1

Page 1 of 1



California Coastal  
Commission



# Exhibit 2

Page 1 of 5



California Coastal  
Commission



# Exhibit 2

Page 2 of 5



California Coastal  
Commission



# Exhibit 2

Page 3 of 5



California Coastal  
Commission



# Exhibit 2

Page 4 of 5



California Coastal  
Commission



# Exhibit 2

Page 5 of 5

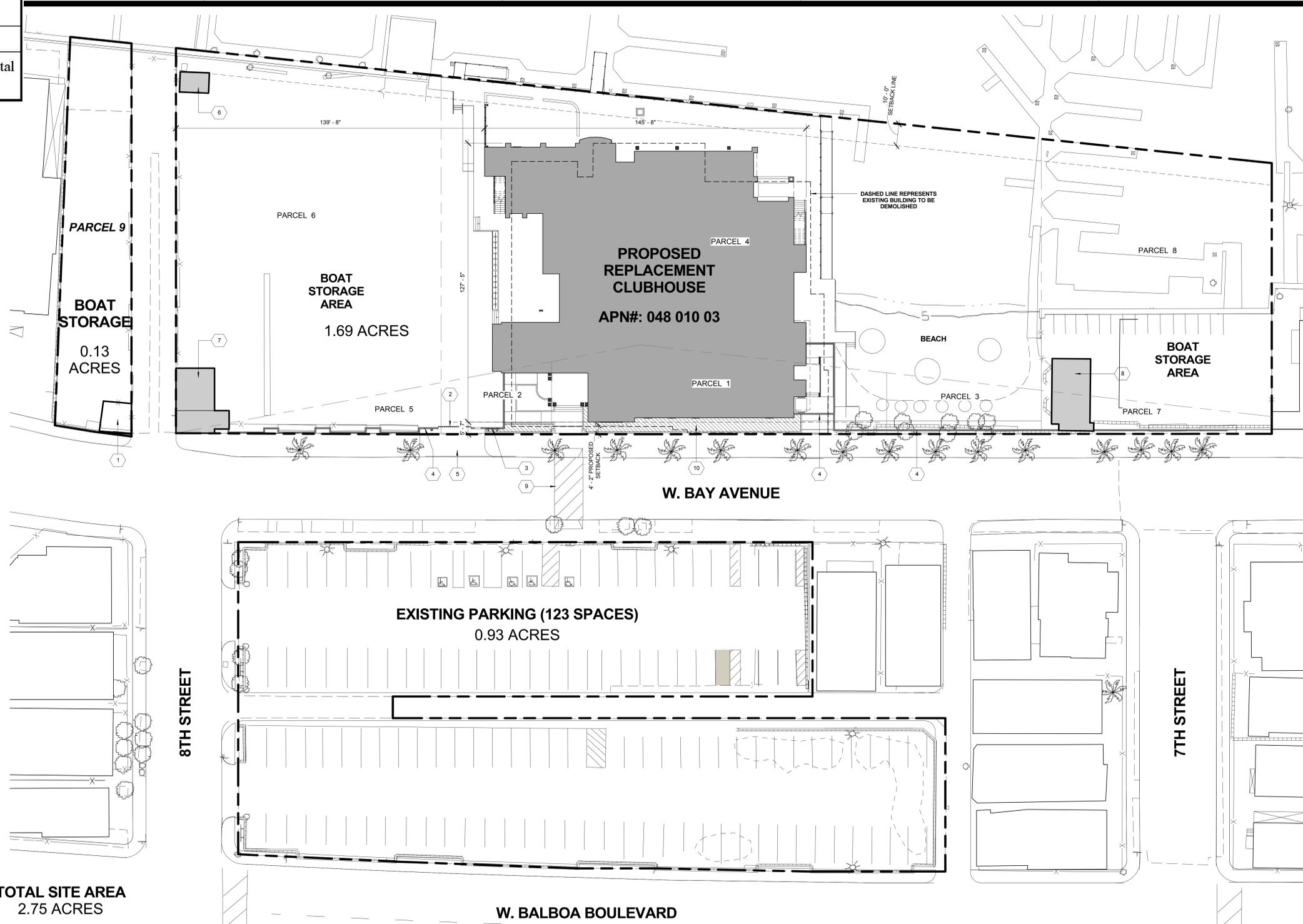
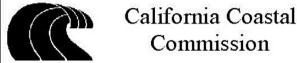


California Coastal  
Commission



# Exhibit 3

Page 1 of 7



## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REPLACEMENT PROJECT

720 WEST BAY AVE, NEWPORT BEACH, CA

REVISIONS	
DESCRIPTION	DATE

### SHEET TITLE SITE PLAN

PLANNING SITE PLAN 1" = 20'-0" 1

- ① EXISTING TRASH ENCLOSURE
- ② NEW SLIDING GATE FOR ACCESS TO BOAT YARD
- ③ RELOCATED PROJECT SIGN (MOUNTED TO FENCE)
- ④ NEW FENCE (BOARD AND BATTEN - 8' HIGH)
- ⑤ EXISTING DRIVEWAY TO BOATYARD TO REMAIN
- ⑥ EXISTING DOCKMASTER OFFICE TO REMAIN (NO WORK)
- ⑦ EXISTING MAINTENANCE SHED TO REMAIN (NO WORK)
- ⑧ EXISTING RESTROOM BUILDING TO REMAIN (NO WORK)
- ⑨ RELOCATED PEDESTRIAN CROSSWALK
- ⑩ LANDSCAPE PLANTER (HATCHED AREA AT STREET SIDE OF NEW BUILDING)

**SITE KEYNOTE LEGEND**

**BUILDING AREA CALCULATIONS**

**EXISTING STRUCTURES (SHADED AND KEYNOTED ABOVE)**

MAINTENANCE SHED	- 574 SF
DOCKMASTER'S OFFICE	- 122 SF
RESTROOM BUILDING	- 569 SF
SUBTOTAL	- 1,265 SF

**NEW BUILDING**

FIRST FLOOR GROSS AREA	- 14,300 SF
SECOND FLOOR GROSS AREA	- 8,863 SF
TOTAL	- 23,163 SF

**SITE TOTAL** 24,428 SF

GROSS AREA CALCULATED IN ACCORDANCE WITH NEWPORT BEACH MUNICIPAL CODE CHAPTER 20.63.

THIS TOTAL EXCEEDS THE ALLOWABLE AREA LIMIT PER ANOMALY NO. 67 (20,000 SF), AND REQUIRES AMENDMENTS TO THE GENERAL PLAN AND ZONING CODE TO INCREASED AMOUNT OF 25,000 SF.

**AREA, HEIGHT AND PARKING CALCULATIONS**

**BUILDING HEIGHT**  
REFER TO SHEET A4 FOR BUILDING ELEVATIONS

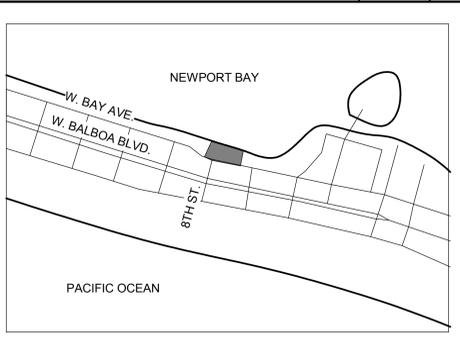
MAXIMUM HT (PEAK OF SLOPED ROOF) - 36'-3" ABOVE GRADE  
MAXIMUM HT (FLAT ROOF) - 26'-6" ABOVE GRADE

TWO SLOPED ROOF AREAS EXCEEDS THE DEVELOPMENT STANDARD OF 31' PER NBMC 20.30.060.C.2.C. (ALTHOUGH MAJORITY OF ROOF AREA FALLS BELOW THIS LIMIT). THIS APPLICATION INCLUDES SEPARATE JUSTIFICATION FOR A HEIGHT INCREASE PER NBMC 20.30.060.C.3 TO 35' FOR FLAT ROOFS AND 40' FOR SLOPED ROOFS.

**PARKING CALCULATIONS**

THE PROJECT IS SERVED BY 123 EXISTING PARKING SPACES IN THE PARKING LOT ACROSS WEST BAY AVE. THIS AMOUNT DOES NOT MEET THE PARKING REQUIREMENT OF 1 SPACE PER 35 SF OF ASSEMBLY SPACE (7282 SF / 35 = 209 SPACES). A SEPARATE PARKING MANAGEMENT PLAN HAS BEEN INCLUDED WITH THIS APPLICATION TO ADDRESS THE PARKING DEMAND FOR THE PROJECT.

**DEVELOPMENT STANDARD CALCULATIONS WERE PERFORMED BY:**  
MVE & PARTNERS  
CONTACT: JEFF LARSEN  
949.809.3388



**VICINITY MAP**

**SHEET NUMBER**  
**A1**

JOB NO. 2008-10214  
DATE Issue Date  
SCALE As Indicated

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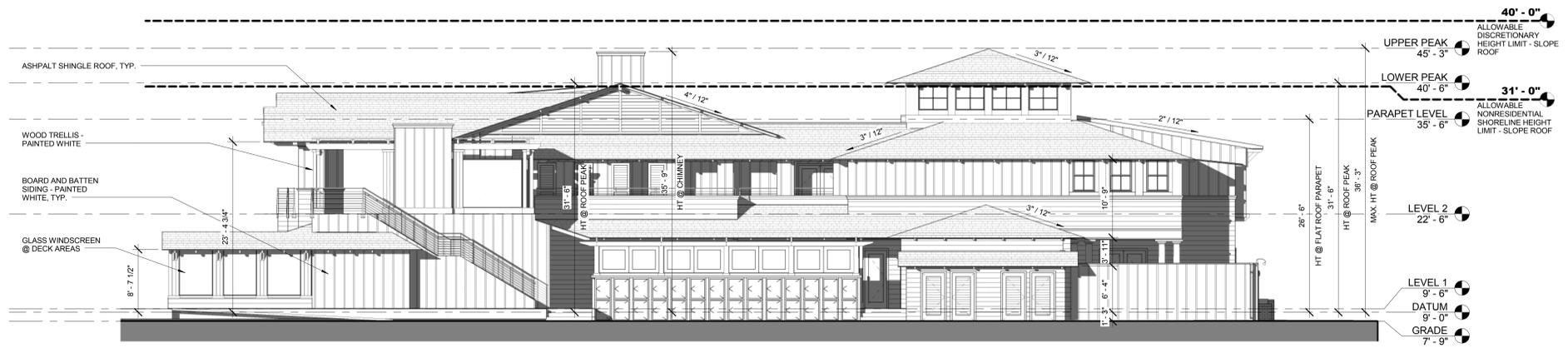
PLANNING PERMIT SUBMITTAL 1/9/13



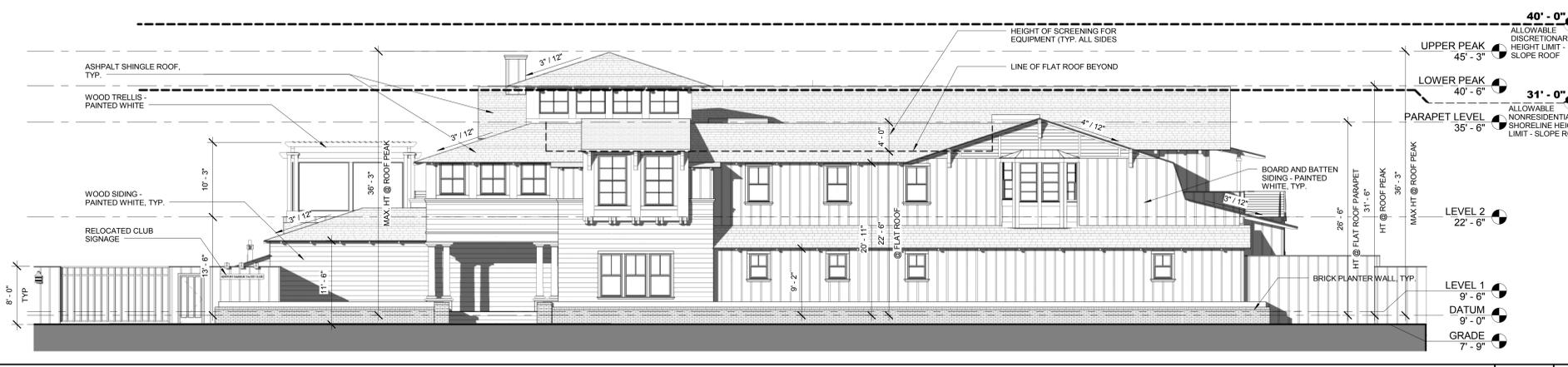


**NEWPORT HARBOR YACHT CLUB  
CLUBHOUSE REPLACEMENT PROJECT**

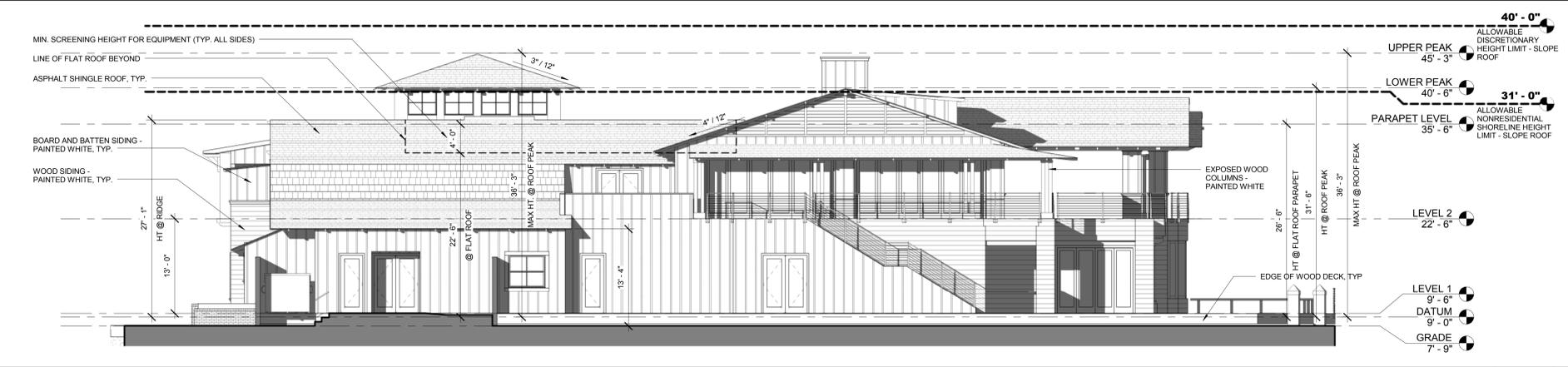
720 WEST BAY AVE, NEWPORT BEACH, CA



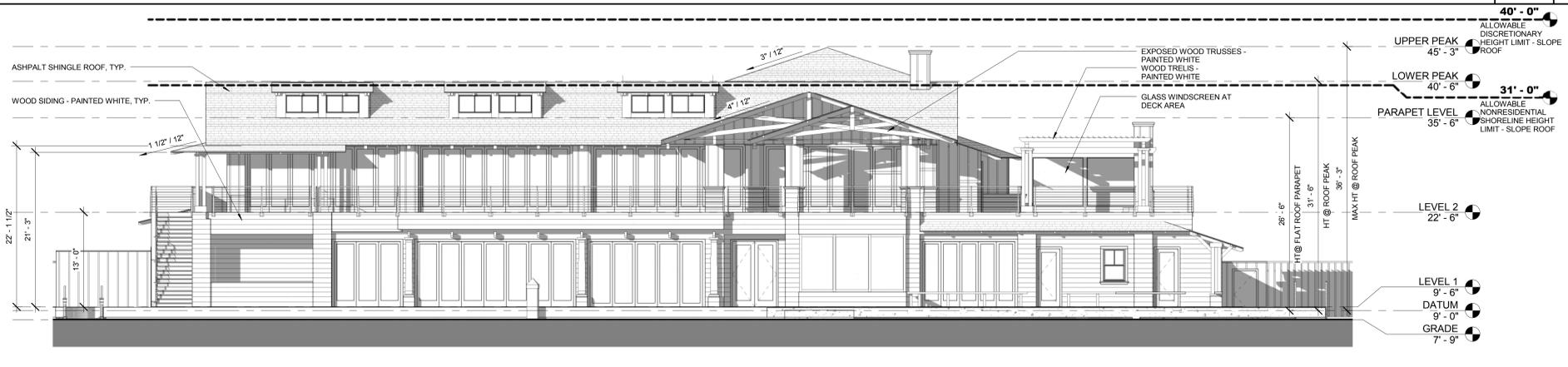
**WEST ELEVATION** 1/8" = 1'-0" 4



**SOUTH ELEVATION** 1/8" = 1'-0" 3



**EAST ELEVATION** 1/8" = 1'-0" 2



**NORTH ELEVATION** 1/8" = 1'-0" 1

**REVISIONS**

DESCRIPTION	DATE

**SHEET TITLE**  
**BUILDING ELEVATIONS**

**SHEET NUMBER**  
**A4**

JOB NO. 2008-10214  
DATE  
ISSUE DATE  
SCALE 1/8" = 1'-0"

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Architecture Planning Interiors

PLANNING PERMIT SUBMITTAL 1/9/13







NW Corner View



NE Corner View



SW Corner View



SE Corner View

**NEWPORT HARBOR YACHT CLUB  
CLUBHOUSE REPLACEMENT PROJECT**

720 WEST BAY AVE, NEWPORT BEACH, CA

**REVISIONS**

DESCRIPTION	DATE

**SHEET TITLE  
AERIAL IMAGES**

**SHEET NUMBER  
A7**

JOB NO.  
2008-10214  
DATE  
Issue Date  
SCALE

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PLANNING PERMIT SUBMITTAL

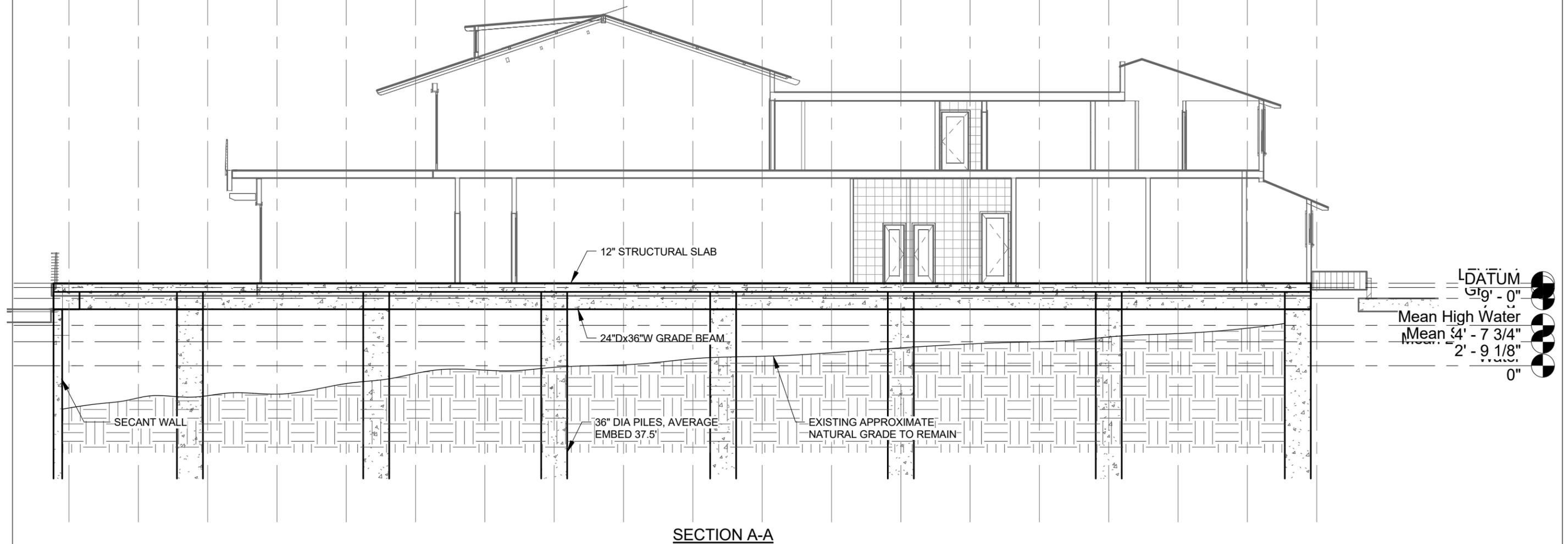
# Exhibit 4

Page 1 of 2



California Coastal  
Commission

F G H J K L M N P Q R S T U V



20381 Lake Forest Drive, Suite B15  
Lake Forest, CA 92630  
Tel: (949) 331-8475

Project: NEWPPORT HARBOR YACHT CLUB

Client: MVE

Title: LONGITUDINAL SECTION A-A

By: PS

Date: 10-19-2015

Job: 2014-10

Sheet:

SKS 2



17981 Sky Park Circle,  
Suite O,

Irvine, CA 92614  
Phone: (949) 748-7170

Project: Newport Harbor

By: PS - RL

Sheet:  
**SKS-4**

Client: MVE

Date: 10/19/2015

Title: Option 2 Sheet Wall

Job: 2014-10

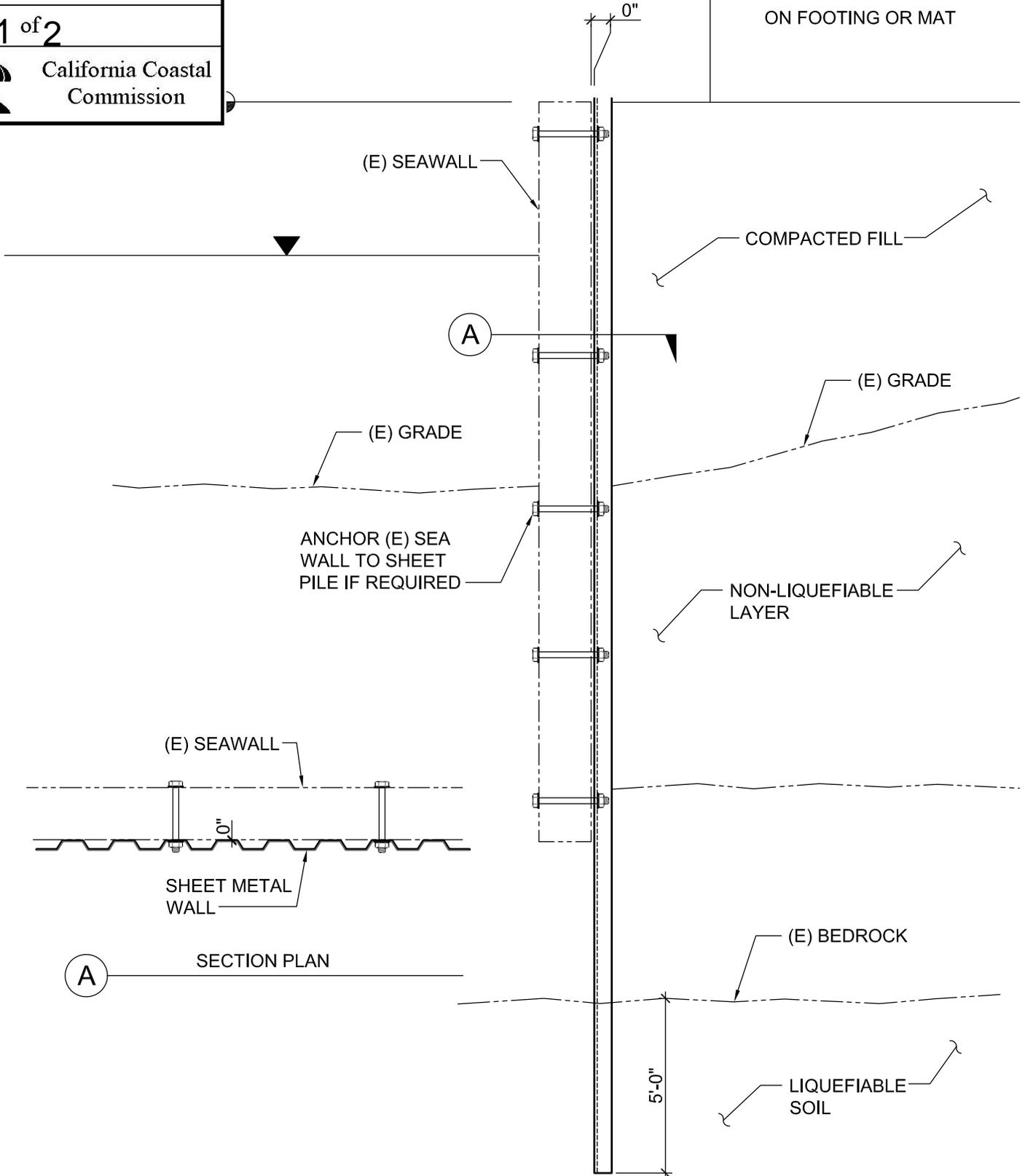
# Exhibit 4

Page 1 of 2



California Coastal  
Commission

CLUB HOUSE  
ON FOOTING OR MAT

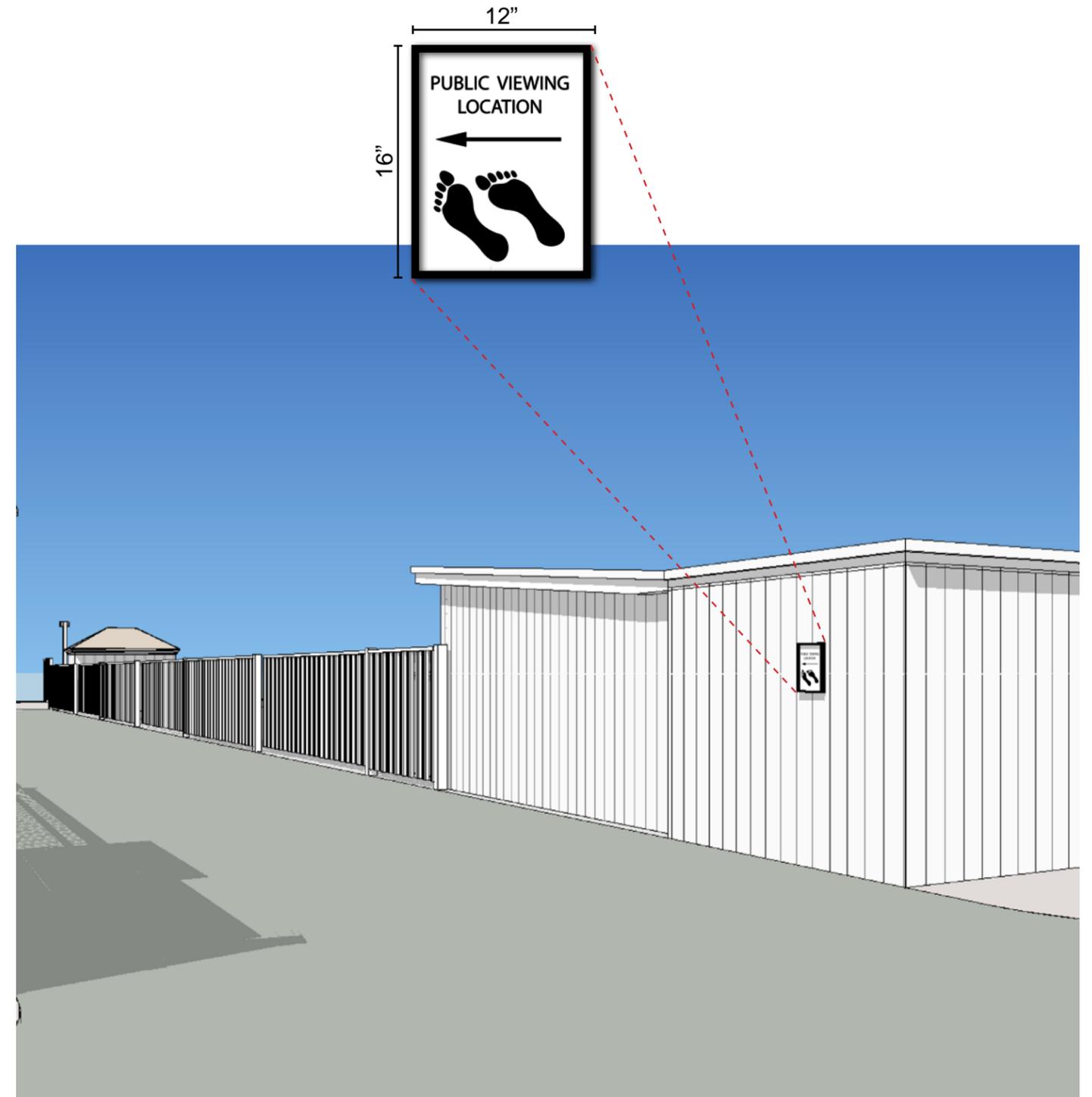


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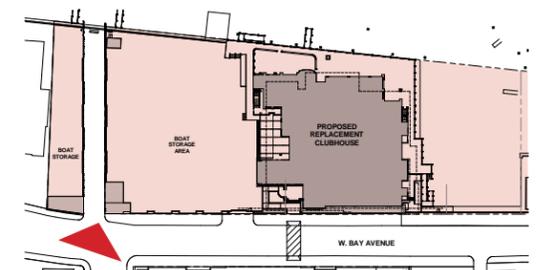
Page 1 of 7



California Coastal  
Commission



NEWPORT HARBOR YACHT CLUB  
CLUBHOUSE REMODEL PROJECT | 02.11.2016

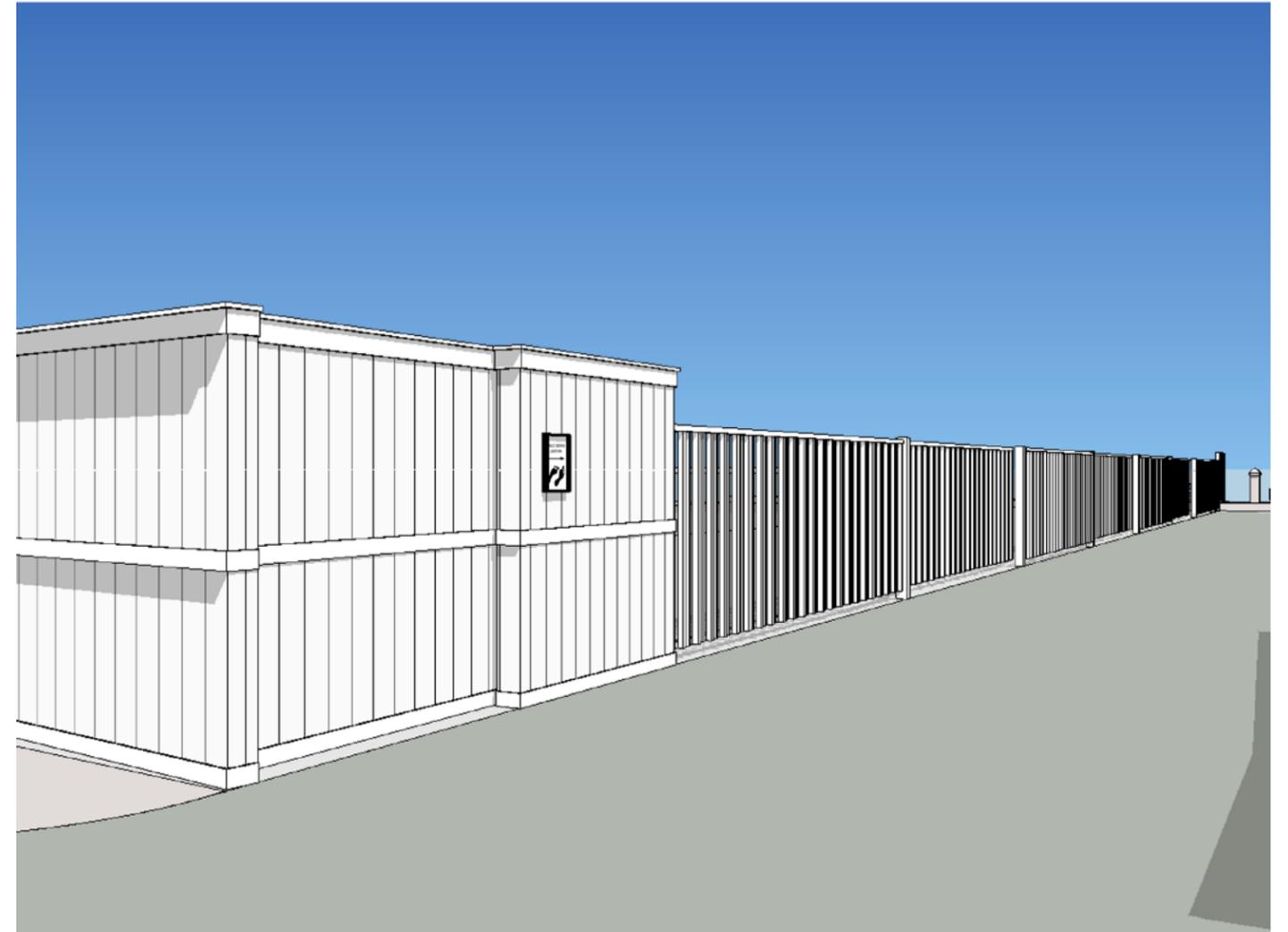


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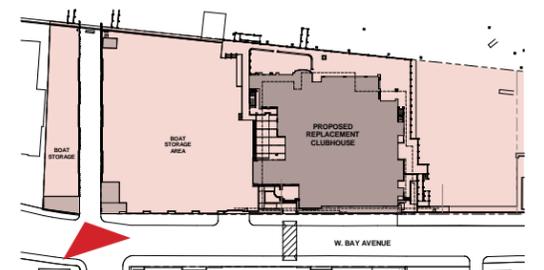
Page 2 of 7



California Coastal  
Commission



## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016

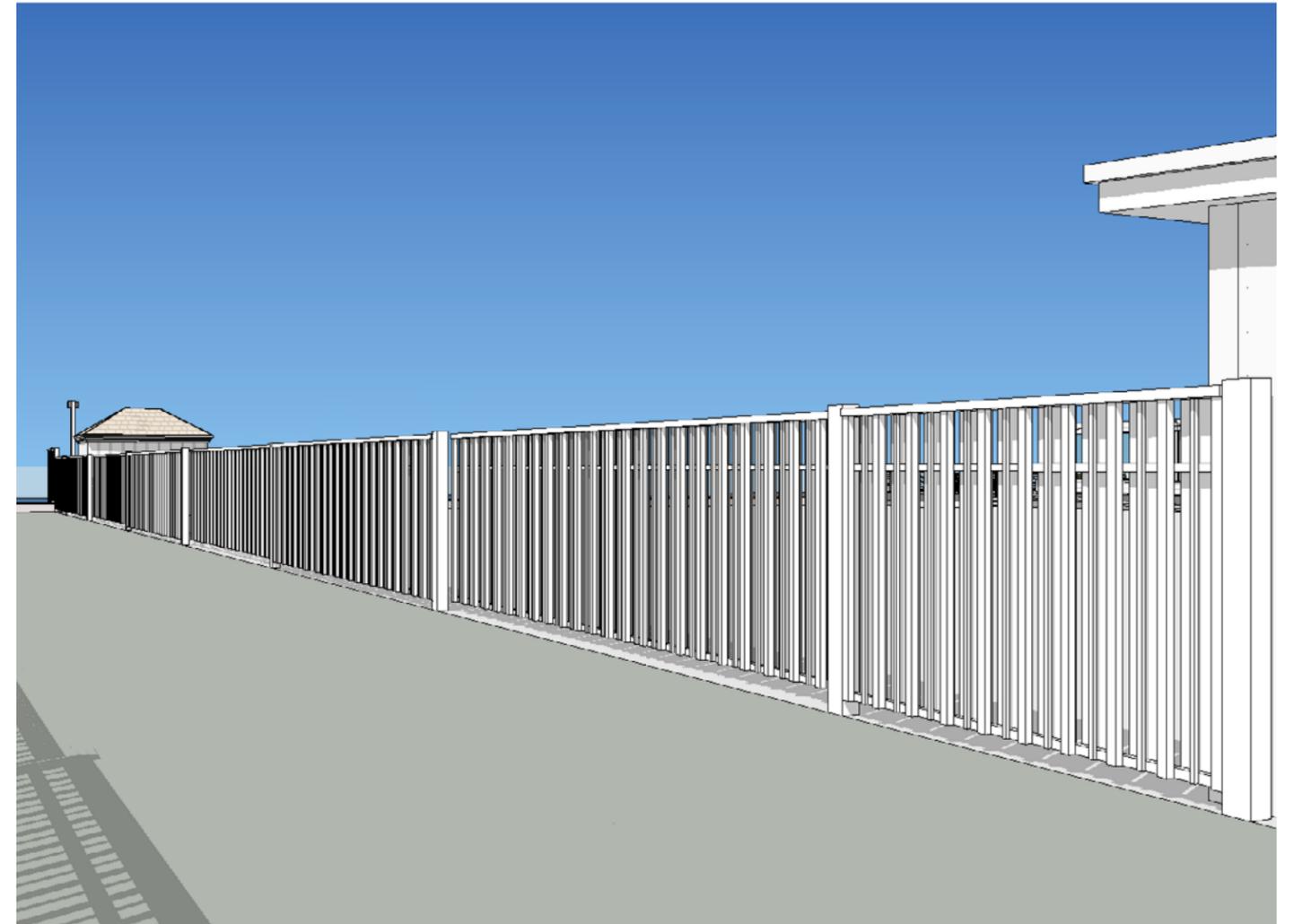


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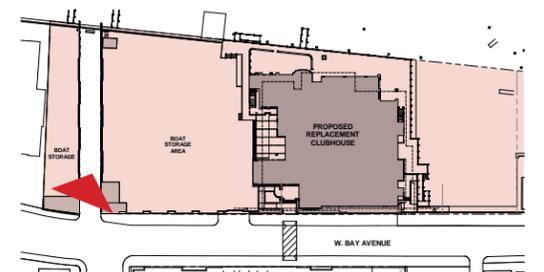
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California Coastal  
Commission



## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016

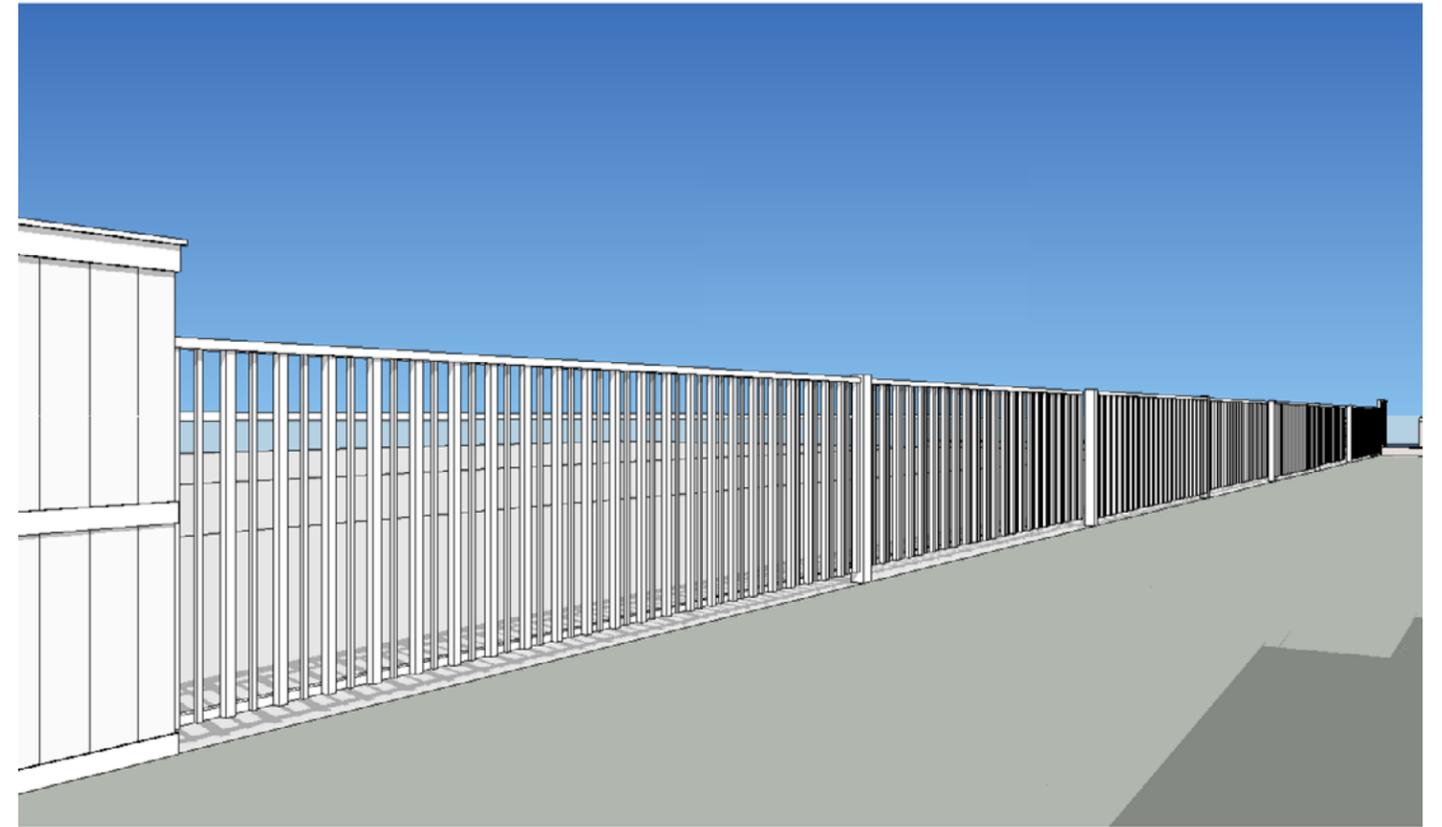


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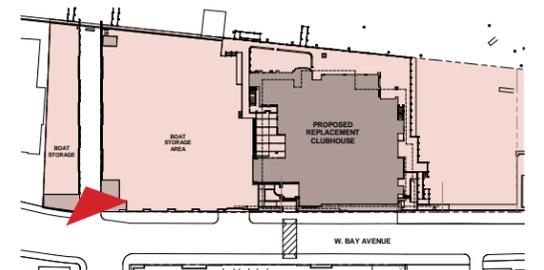
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Commission



## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016



# Exhibit 5

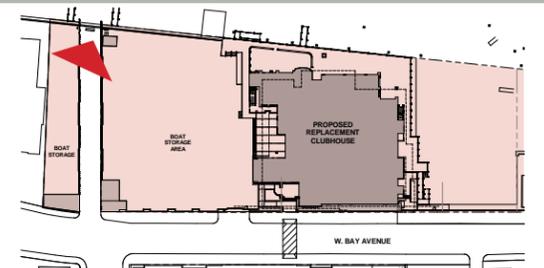
Page 5 of 7



California Coastal  
Commission



## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016



# Exhibit 5

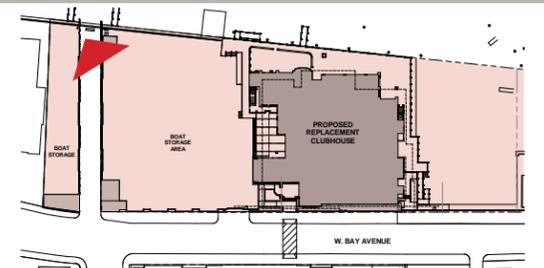
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## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016

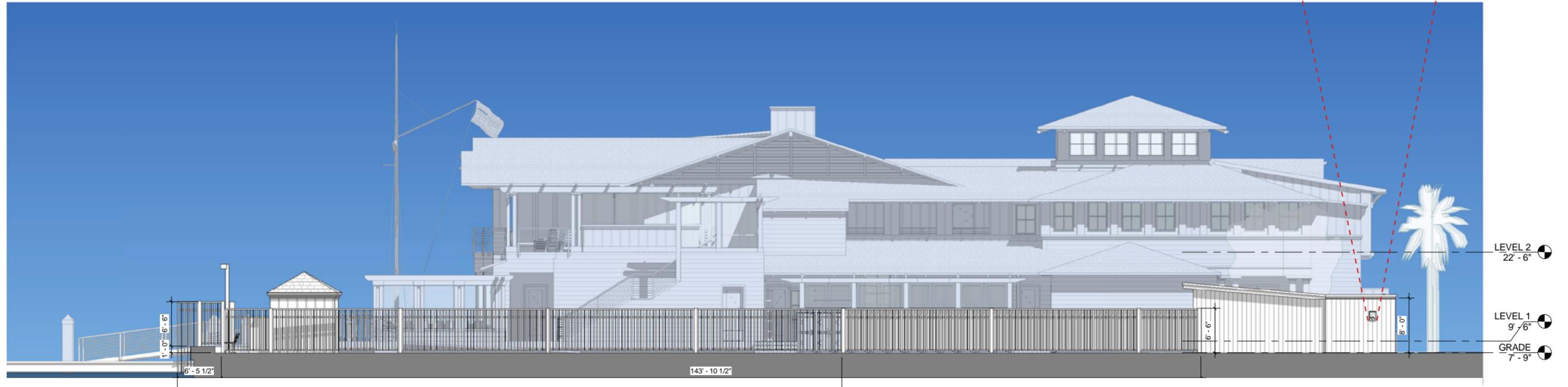
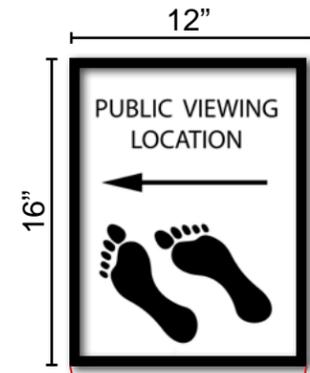


# Exhibit 5

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California Coastal  
Commission

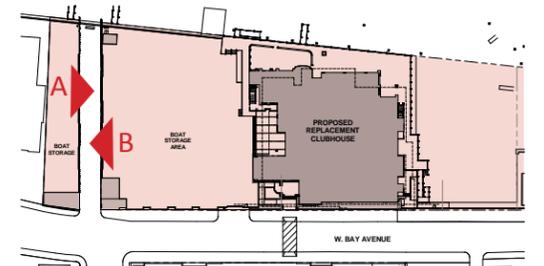


ELEVATION A



ELEVATION B

## NEWPORT HARBOR YACHT CLUB CLUBHOUSE REMODEL PROJECT | 02.11.2016





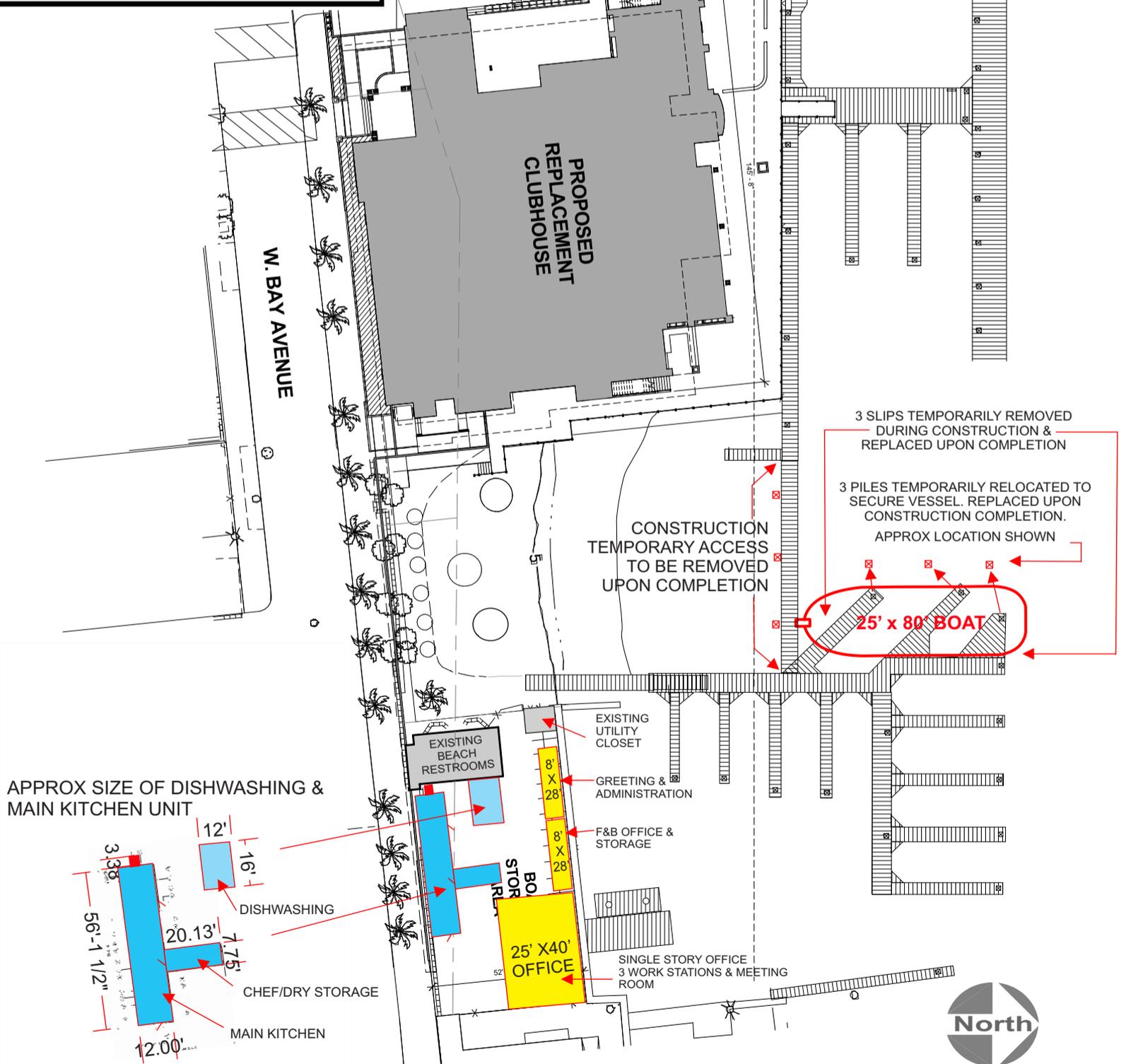
**NEWPORT  
HARBOR  
YACHT CLUB  
FACILITIES  
DEVELOPMENT  
COMMITTEE  
SITE PLAN  
CONCEPTS  
TEMPORARY  
FACILITIES  
BC REV B  
2-4-2016**

# Exhibit 6

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California Coastal  
Commission



ALL NEW UNITS SHOWN ARE PORTABLE & TEMPORARY



Bill Crispin 2-4-2016

# Exhibit 7

Page 1 of 1



California Coastal  
Commission



NHYC

BAY AVE W

99TH ST

BUENA VISTA BLVD

LINDO AVE

EDGEWATER AVE W

ISLAND AVE

GAY ISLAND

100 200ft

# Exhibit 8

Page 1 of 3



California Coastal  
Commission



Public Dock (10'x96')

Gangway  
Platform

ADA Compliant  
80' Gangway

Public Parking

Public Parking

Public Parking

Newport Blvd

Central Ave

# Exhibit 8

Page 2 of 3



California Coastal  
Commission





February 16, 2016

California Coastal Commission  
South Coast District  
200 Oceangate, #1000  
Long Beach, CA 90802

Attention: Zach Rehm

Re: Application for Permit No. 5-15-1459  
Newport Harbor Yacht Club (NHYC)

The City of Newport Beach Harbor Commission ("Commission") is aware of the referenced application. The Commission understands there are opportunities associated with the application to improve public access within Newport Harbor. The Commission strongly supports the proposal to construct a new public pier and float at Central Avenue as the most effective way to provide additional public access to Newport Harbor.

In 2012 the Commission adopted two objectives related to public piers:

1. Improve use of existing public piers to facilitate visitor access to harbor area businesses and amenities.
2. Identify opportunities for additional public piers to facilitate visitor access.

Our research, observations and findings led the Commission to formulate recommendations in support of these objectives in October 2013. Our recommendations were prepared considering where we will achieve the highest returns on investments in public piers. Our number one recommendation in support of the second objective of identifying opportunities for additional public piers was at Central Avenue. In particular, our research identified the Lido Marina Village as the most underserved area in Newport Harbor, lacking availability of a public pier. In November 2015, this recommendation was reprised and reconfirmed as part of a new public pier study conducted by the Commission.

The Central Avenue location is ideal for a new public pier for many reasons:

- Available space to make the pier, gangway and float ADA compliant
- Proximity to public parking and public transport
- Proximity to bike and pedestrian paths
- Proximity to marine serving businesses, services and public amenities

The City's conceptual layout of the Central Avenue public pier is consistent with the Commission's recommendation for the best use of that location. In addition, the development of this new pier will improve public access to Newport Harbor, and is in direct support of the Commission's most significant and compelling findings and recommendations related to public piers. We urge you to approve this special condition to NHYC's Coastal Development Permit because it greatly enhances public access both to and from Newport Harbor.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Girling".

David W. Girling  
Chair, Harbor Commission

# Exhibit 8

Page 3 of 3



California Coastal  
Commission

# Exhibit 9

Page 1 of 1



California Coastal  
Commission

**RECEIVED**  
South Coast Region

OCT 8 2015

CALIFORNIA  
COASTAL COMMISSION

Date: 5 October, 2015

To: Coastal Commission

Re: Newport Harbor Yacht Club Redevelopment Application – 708 W. Bay Ave, Balboa, CA

There is no official news where this review stands, but my wife and I are really questioning what the Coastal Commission is doing. We read that the Newport Harbor Yacht Club may be able to buy its way out of providing waterfront boardwalk access to the neighborhood. We all already know they have bought the house next door to the east that could grant street to street accessability and they have covered that up.

But buying out their obligations? What about this: The Newport Harbor Yacht Club is 110% white only. There are no hispanic, asian, black, or any other ethnicity people in the membership. We know, we see who comes and goes. The staff is largely hispanic. Ask to see their membership roster. Allowing this development to proceed without addressing the need for open racial opportunity for membership on a facility that benefits from public tidelands and private control of public moorings is criminal. That's right, if you are hispanic, black, or asian you are not going to get access to their "public" moorings as well as to their waterfront. After this opportunity when will they ever be forced to do the right thing?

Is anyone looking at the status of the moorings and how they are controlled by the Newport Harbor Yacht Club and never returned to the mooring pool when people sell their boat? Should they be made to agree that when the current user is changed the mooring should become a public mooring again? What about the guy who has been first on the county list for 20+ years and has to wait again as the white only members trade the moorings around among themselves? Should the Newport Harbor Yacht Club have a condition of approval be to agree to grant shore boat support (a ride out to your boat) to all boats in the area in front of the Newport Harbor Yacht Club, member or not? Boardwalk access alone does not get you to the boat.

What about the parking lot? Will they grant parking access to others? They don't use the parking lot just to go to the property, they go to the beach, neighbors, friends down the boardwalk (ironic), and to Catalina for the weekend. They stay overnight with no worry about meters. Are they willing to cede some parking spaces to make up for the impact they make on the neighbors?

Is there another waterfront project with similar public lands that is being allowed to 1) operate this racist way, and 2) not grant access in any event? The Montage created a great boardwalk and it all seems to work fine. And they allow guests of any color too.

We are going to endure years of construction, debris, dust, and lack of street parking. There should at least be some giveback to the neighbors and the population at large, and their white only ways should be corrected.

From the Coastal Commission website, future projects:

*Newport Beach Yacht Club.*

*Demolish existing yacht club and construct 23,163 square foot yacht club; strengthen seawall; modify dock access ramps.*

<http://www.coastal.ca.gov/meetings/coming.html>

It is the Newport Harbor Yacht Club. Why do you call it "Newport Beach Yacht Club" and have no address or case # on the website? It should be called accurately along with address and case # unless you don't want people to know what and where the project really is.