

CALIFORNIA COASTAL COMMISSION

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Th10b



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ADDENDUM

February 7, 2017

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM TH10b, CDP NO. 5-15-0087 FOR THE
COMMISSION MEETING OF THURSDAY, FEBRUARY 9, 2017.**

1. CHANGES TO STAFF REPORT

Commission staff recommends modifications to the staff report dated 1/25/17. Language to be added to the findings and conditions is shown in **underlined italicized bold text**, and language to be deleted is identified by ~~strike-out~~.

A. Page 2 – Revise the first full paragraph under Summary of Staff Recommendation, as follows:

There is potential for the project to impact the California Least Tern and the California Brown Pelican. Therefore, the Commission imposes **Special Condition No. 1**, which requires a) pre-construction surveys for nesting birds and avoidance of nesting sites during nesting; b) pre-construction surveys for sensitive species; ~~and c)~~ a requirement for monitoring of the site during construction to ensure that construction activities do not result in impacts to sensitive species; **and d) “Ramp up” pile-driving activities (referred to as a “soft start”).**

The proposed 9,900 cubic yards of dredging will impact ~~two small~~ eelgrass beds in the shallow water area totaling ~~1,583,515~~ square feet. The applicants state that that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a **1.38 to 14.2 to 1** (mitigation to impact ratio) such that 618 square feet of eelgrass will be successfully transplanted and have submitted an eelgrass mitigation plan that discusses this. However, the eelgrass mitigation plan needs to be revised since the plan states that mitigation will occur concurrently or immediately after project construction. In past permit action the Commission has consistently required mitigation to occur prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds. In addition, the plan needs to be revised to provide further detail about the proposed mitigation location at the off-site Balboa Marian Eelgrass Mitigation Area on the eastern end of the Balboa Marina. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit a revised Eelgrass Mitigation Plan

The eelgrass surveys took place in ~~June and July 2013~~ **March and April 2016**. However, the project is agendized for the February 2017 Commission Hearing so the eelgrass surveys, which

are valid for 60 days from the date the survey was taken, will no longer continue to be valid. Thus, the Commission imposes **Special Condition No. 3**, which identifies the eelgrass surveys that must be conducted prior to commencement of the project.

B. Page 4 – Replace Exhibit No. 4 with the Attached Updated Exhibit No.4:

Replace existing Exhibit No. 4 with the updated Exhibit No. 4 attached to this addendum.

C. Pages 6-7 Replace Special Condition No. 2. Revised Eelgrass Mitigation Plan, as follows:

~~**2. Revised Eelgrass Mitigation Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit two (2) copies, for review and approval of the Executive Director, of a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015), except as required to be modified as described below. The plan shall be prepared in consultation with the California Department of Fish and Wildlife (CDF&W) and the National Marine Fisheries Service (NMFS). The plan shall be prepared consistent with the requirements identified below and the requirements of the Southern California Eelgrass Mitigation Policy (SCEMP), including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.~~

~~1. The plan shall provide that:~~

- ~~(a) All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.2:1 (mitigation to impact) ratio;~~
- ~~(b) Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;~~
- ~~(c) Additional information regarding the proposed Balboa Marina Eelgrass Mitigation Area discussing the availability of this site as a mitigation location and further details describing this location and its ability to serve as a successful location for eelgrass mitigation for the proposed project;~~
- ~~(d) The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;~~
- ~~(e) Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s);~~
- ~~(f) A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director; submitted at the end of the proposed five-year period;~~

- (g) ~~— A follow up program shall be implemented if the original program is wholly or partially unsuccessful;~~
- (h) ~~— A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;~~
- (i) ~~— An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and~~
- (j) ~~— Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).~~

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

2. Revised Eelgrass Mitigation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, two (2) copies of a final eelgrass mitigation plan for the replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015) and April 28, 2016 (Revised May 17, 2016). The plan shall be prepared in consultation with the California Department of Fish and Game and the National Marine Fisheries Service (NMFS). The plan shall be prepared consistent with the requirements identified below, and otherwise following the guidelines of the California Eelgrass Mitigation Policy and Implementing Guidelines dated October 2014 (CEMP). The latter includes but is not limited to those guidelines focused on: eelgrass mapping; surveying; impact determinations; mitigation site selection, size, and methods; and, monitoring and success criteria. The plan shall provide that:

- 1. All direct impacts to eelgrass and indirect impacts to eelgrass (e.g., shading or scour) shall be mitigated at a minimum final ratio of 1.38:1 (mitigation: impact);**
- 2. Adverse impacts to eelgrass shall be mitigated in-kind, on-site to the maximum extent feasible and, for any portion that cannot feasibly be mitigated on-site, off-site mitigation shall be required. The final location(s) of all on-site and off-site mitigation shall be specifically identified;**
- 3. Inventories of existing and historical information (including maps) shall accompany detailed descriptions for each of the following sites:**
 - i. Eelgrass beds within the approved construction site plus a 10m buffer area, including the areas identified as susceptible to potential eelgrass disturbance, and which should also be clearly indicated on the maps;**
 - ii. Eelgrass beds, if any, within the mitigation site(s);**
 - iii. Eelgrass beds selected as the reference site(s);**
- 4. The proposed mitigation methods shall be described in detail, including specification of the mitigation approach (e.g., recolonization, transplant via bare-**

- root bundles, seed buoys, or transplant frames); whether the mitigation site requires any sort of preparation; sources, quantities, spacing, etc. of donor eelgrass material; and, time estimates for recolonization or transplant activities to be completed.
5. Prior to commencement of construction of the portions of the approved project that would have unavoidable direct impacts on eelgrass, the eelgrass that would be directly impacted shall be transplanted to the mitigation site(s). Any additional mitigation necessary to achieve the milestones described in (8) below should also be considered for implementation prior to the commencement of construction, in order to minimize temporal loss of eelgrass ecosystem function.
 6. At minimum, a monitoring plan for the mitigation and reference sites shall follow CEMP guidelines, and specify: the criteria and process for reference site selection; sampling and/or census methods to be used including frameworks, spatial resolutions, frequencies, and error; methods for statistical assessment; and, any other relevant details such that a specialist unfamiliar with the sites could readily interpret and carryout the plan. Additional metrics (e.g., epifaunal load, blade height or width, qualitative photography) may also be employed and should be thoroughly described.
 7. Construction schedules shall be provided, including specific commencement and completion dates for all work, with attention to the regional eelgrass growing seasons as described in the CEMP.
 8. The CEMP-recommended annual performance milestones shall guide achievement towards the minimum final mitigation goal (i.e., attainment of 100 percent coverage of eelgrass and at least 85 percent density of reference site(s) over not less than 1.2 times the area of the impact site) within three years of completion of the initial mitigation activities, and sustain that goal for an additional two years thereafter. If achievement of this performance milestone schedule is delayed for any reason, monitoring shall continue until the minimum final mitigation goal has been sustained for an additional two years.
 9. Reports shall be submitted to the Executive Director, as follows:
 - i. Annually, with description of the results of the 0, 12, 24, 36, 48, and 60-month (post-planting) performance evaluations at the mitigation site(s), including the areal extent, percent coverage, and density of eelgrass at the mitigation and reference site(s), and any relevant observations, recommended maintenance (including replanting measures), or other adaptive management strategies recommended for consideration;
 - ii. At the end of the proposed five-year period, a comprehensive report describing the results of the plan in detail, similar to that described above for the annual reports but with reference to the overall success of the mitigation effort;
 10. A follow-up mitigation program shall be proposed if the original program is wholly or partially unsuccessful. Prior to implementation, this follow-up program shall be at least reviewed and approved by the Executive Director in writing, and may require an amendment to this permit.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally-required for any proposed minor deviations.

D. Pages 7-8- Replace Special Condition No. 3. Eelgrass Survey, as follows:

3. Eelgrass Survey(s).

~~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. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.~~

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

A. Pre-Construction Eelgrass Survey. 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 within 60 days before the start of construction. 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 applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business

days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "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 applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another location, in accordance with the California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.38:1 (mitigation: impact). Any exceptions to the required 1.38:1 mitigation ratio found within CEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

E. Pages 13-14- Modify Special Condition No. 11. No Future Shoreline Protective Device, as follows:

11. No Future Shoreline Protective Device.

- A. By acceptance of the permit, the applicants/landowner agrees, on behalf of itself and all successors and assignees, that no new shoreline protective device(s) shall ever be constructed to protect the landside development approved pursuant to Coastal Development Permit No. 5-15-0087 including, but not limited to, the restaurant, private marina boater restroom and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices for landside development that may exist under applicable law.
- B. By acceptance of this permit, the applicants/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the restaurant, private marina boater restroom ~~the residence, garage, and driveway/patios~~, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structure to be removed, or if the State Lands Commission requires the structures to be removed in the event that they encroach on to State tidelands. If any portion of the development at any time encroaches onto public

property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

F. Page 14- Modify Special Condition No. 13. Future Development, as follows:

- 13. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-15-0087. Pursuant to Title 14 California Code of Regulations Section 132530(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(ba) shall not apply to the development governed by Coastal Development Permit No. 5-15-0087. Accordingly, any future improvements to the marina and restaurant or any changes to the parking management plan or use of the site authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-15-0087 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

G. Page 15- Modify Special Condition No. 15. Offer to Dedicate for Public Access Easement for Vertical Access, as follows:

15. Offer to Dedicate for Public Access Easement for Vertical Access

...

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement or dedicated area. The public access easement shall be ambulatory, and the easement boundaries and amenities (e.g., path, trail, benches, etc.) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the easement area are necessary to retain their continuity and/or utility. No development except for construction of the public walkway, including paving hardscape, landscape, utilities, public access amenities, and signage as necessary, shall occur within the above-identified easement.

H. Pages 17-18 – Clarify language in Section IV.A. Project Description and Location, as follows:

-First bullet point of page 17:

- The number of available private leasable slips will be increased from 105 to 131, which is one fewer slip than originally constructed at Balboa Marina in 1964.

-Starting at fifth bullet point in the middle of page 17:

- The dredging to design depths to accommodate the marina expansion will directly impact ~~two eelgrass patches totaling 515~~ **1,583** square feet **of eelgrass (Exhibit No. 4)**. The loss of eelgrass will be mitigated at a ratio of **1.38 to 1** ~~to 1~~ (mitigation to impact ratio) such that **2,185** square feet (**202.57** square meters.) of eelgrass will be successfully transplanted at an adjacent off-site eelgrass mitigation area (eastern end of the Balboa Marina) that was approved as part of a previous permit for the site, CDP NO. 5-07-241.
- An existing riprap slope on the west side of the marina will be removed and replaced with the new riprap slope constructed 15-feet landward by grading the western portion of land, **which currently is a portion of an existing paved parking lot** ~~(paved parking lot)~~ **(Exhibit No. 3)**. The new riprap slope will result in removal of existing fill material and an increase of 6,772 square feet of waters of the United States. In addition, a new intertidal mudflat approximately 600 square feet (3.9 feet wide by 155 feet long) in size will be created as a result of the relocated riprap slope. The amount of rip-rap that will be placed is 520 cubic yards. A concrete cap will be poured in place at the top of the relocated riprap slope at the same elevation of the existing bulkhead (+9 Mean Lower Low Water (MLLW)) which separates the parking lot from the existing private Balboa Marina. The westerly extent of the existing southern bulkhead will be trimmed back at an angle consistent with the new riprap slope and a concrete cap will be constructed on top of the reconfigured bulkhead **(Exhibit No. 3, page 2)**. Four new 18" concrete piles supporting the trimmed back bulkhead will be installed on the land side.
- Portions of the new private and public docks will be located over State Tidelands and in this area these tidelands are managed by the County of Orange. Public trust lands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. Public trust doctrine traditionally describe navigation, commerce and fisheries as the acceptable uses within public tidelands, but these uses have been broadened to include the right of the public to fish, hunt, bathe, swim; boating and general recreation; preservation; scientific study; use as open space; and the right of the public to use the bottom of the navigable waters for anchoring, walking, or standing. The applicants have stated that approval from the County of Orange is necessary and that they have been in discussions with the County and an approval is pending. **The approval from the County will consist of a lease for the docks that will be completely or partially within public lands.**

-Second bullet point on page 18:

- Construction of a new, one-story, 24'-9" high, 14,252 square foot restaurant with a net public area of 9,030 square feet and a west facing outdoor deck with a 1,255-square feet of outdoor dining area **(Exhibit No. 5)**. An outdoor patio deck is proposed that will wrap around the west and south elevations of the restaurant. Outdoor dining is limited to the west side of the restaurant. The south side is accessible only to provide egress consistent with building and fire codes. The restaurant will be supported by a pile foundation,

consisting of piles approximately 40-feet deep on the eastern side of the building and approximately 35-feet deep for the remainder of the foundation.

I. Page 23 – Clarify language in the first paragraph in Section IV.C. Marine Resources/Water Quality, as follows:

Project components relevant to marine habitat/water quality

The proposed project includes the development of a new public transient dock area, and an expansion to the existing private boat slips at the Balboa Marina. Figure 4 of the applicants' Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015), see **Exhibit No. 6**, provides a conceptual plan with the Public Transient Docks shown as Area "A" and the Private Dock Expansion shown as Area "B". Both areas will occupy together approximately 0.87 acre of water surface owned principally by Irvine Company. The submerged lands at this location are designated State Tidelands administered and under the jurisdiction of the County of Orange. Area "A" (Public Transient Dock Area) will provide 12 public boat slips, including the relocation of 4 existing public slips currently located in the private Balboa Marina.

Area B (Private Dock Expansion Area) will add ~~26~~²⁴ private boat slips accessible from the existing Balboa Marina and a new private gangway. The expansion will include ~~11~~¹⁴ new slips for boats 20-feet in length and 14 new slips for boats 35-feet and longer. To support the new public and private docks, forty-five piles will be driven into the bay floor. These piles will consist of fifteen, 20-inch diameter piles and thirty, 16-inch diameter piles. The combined surface area of all piles is 65.9 square feet.

J. Pages 24-26 – Include the following language in Section IV.C. Marine Resources/Water Quality, as follows:

-Third paragraph on page 24:

On the western side of the project site near the main channel, a total of 1,583 square feet of eelgrass will be adversely impacted by the proposed dredging ~~there are two small eelgrass beds in the shallow water area totaling 515 square feet or 12.6 square meters. Of this total, 379.3 square feet (73.7%) was mapped at the southern edge of the sandy beach and 26.3 % was mapped south of this location off of the southerly tip of the existing Balboa Marina parking lot. The proposed dredging will adversely impact these eelgrass beds.~~ The applicants' Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015) and later updated April 28, 2016 (Revised May 17, 2016) states that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a 1.38 to 1~~1.2 to 1~~ (mitigation to impact ratio) such that 2,185~~618~~ square feet of eelgrass will be successfully transplanted at the end of a five-year post-transplant monitoring period per provisions of the Southern California Eelgrass Mitigation Policy (SCEMP).

-Last paragraph on page 24:

The placement of the 45 piles is the minimum amount necessary to safely anchor the boat docks. This conclusion is based on the applicant's engineer's evaluation of the minimum number of

piles needed based on their engineering and design. Fewer and/or smaller piles would not adequately secure the boat docks. By using the least number of piles necessary to accomplish the goal of securing the boat docks, the 45 piles associated with the boat docks represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

-Starting at second paragraph on page 25:

Part of the proposed project entails the removal of an existing riprap slope on the west side of the marina and replacement with the new riprap slope constructed 15-feet landward by grading the western portion of land. The new riprap slope will result in removal of existing landside fill material and an increase of 6,772 square feet of waters of the United States and its relocation will create a new intertidal mudflat approximately 600 square feet (3.9 feet wide by 155 feet long) in size. A concrete cap will be poured in place at the top of the relocated riprap slope at the same elevation of the existing bulkhead (+9 Mean Lower Low Water (MLLW)) which separates the parking lot from the existing private Balboa Marina along the southern portion of the lot. The westerly extent of the existing southern bulkhead, approximately 36 to 40 feet, will be trimmed back and the new end will be angled consistent with the new riprap 2:1 slope and a concrete cap will be constructed on top of the reconfigured bulkhead that will also be supported by four new 18" concrete piles installed on the land side. This project component does not result in any fill of coastal waters, as what was once landside area is being removed to create an intertidal area. **As a result of the removal of the fill and moving the revetment landward, open coastal area is now being made available that once was fill, thereby increasing soft bottom habitat and enhancing the opportunity for the public to access the bay and public recreational opportunities.**

The applicant reviewed constructing a seawall as an alternative to the riprap. Their marine engineer (URS Corporation, **2013**) found that a seawall was feasible for the project, but would cause more construction noise and disturbance in the surrounding environment than riprap construction; require slightly more grading; potentially encounter subsurface obstructions; and cost. **Furthermore, the applicants' engineer states that some form of shore protection, such as the proposed revetment is necessary to provide the net gain created in water space for the docks and that without shore protection, the earthen sub-base of the slope would degrade with current and tidal swing. Ultimately without the revetment, the earthen material would become unstable and emulsify into the water column.** The applicant determined a rock revetment, as proposed, would be stable and provide the desired additional water space for the proposed docks.

An analysis of the tidal and flood velocities were conducted by the applicant's engineers. **The URS Corporation, 2013 analysis states that the dredging and revetment would improve the flow characteristics beneath the proposed public transient docks and the narrowed portion of the channel adjacent to the site at E. Coast Highway, and that they would not adversely impact the adjacent northern beach. In an another analysis prepared by Everest International Consultants, Inc. dated March 2013; little observable change was found in the bathymetry between 2003 and 2011, suggesting that little net sedimentation or erosion occurred in the vicinity of the proposed marina extension.** The analysis used bathymetry survey data from the years 2003 and 2011 for areas upstream of the Pacific Coast Bridge near the proposed project

site. Based on the hydrodynamic model results, the report states that impacts to tidal and flood velocities of the proposed marina extension to neighboring areas would be localized, mainly within a few hundred feet downstream of the PCH bridge, and that overall tidal currents in the area are small under existing and with the proposed project conditions, thus, unlikely to cause any erosion. **This analysis states that based on these model results, the potential project impact to the adjacent beach area north of the project site would be limited if there is any.**

Furthermore, the current condition at the project site consists of a bulkhead along the southern edge and a rock revetment and marina along the western edge. The proposed project will have a similar revetment, located further inland, along with a marina. Therefore, as proposed, the project will not have a significant **adverse** impact to shoreline processes.

K. Pages 26-31 – Modify the following language in Section IV.C. Marine Resources/Water Quality, as follows:

In Section IV.C. Marine Resources/Water Quality, starting on page 26, correct the numerical order of the 6 subheadings following the first subheading, “1. Fill”, starting with subheading number 3. Avian Species.

23. Avian Species

L. Pages 26-27 – Modify the following language in Section IV.C. Marine Resources/Water Quality, as follows:

-Starting at last paragraph at the bottom of page 26:

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered important to protect because it functions as important habitat for a variety of fish and other wildlife, according to the ~~Southern~~ California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

On the western side of the project site near the main channel the applicants determined the **presence of eelgrass** ~~location of two small eelgrass beds~~ in the shallow water area totaling ~~2,185~~ **2,185** square feet or ~~202~~ **202** square meters during an eelgrass survey that took place in ~~March and April 2016~~ **June and July 2013**. ~~Of this total, 379.3 square feet (73.7%) was mapped at the southern edge of the sandy beach and 26.3 % was mapped south of this location off of the southerly tip of the existing Balboa Marina parking lot.~~ The proposed dredging will adversely impact these eelgrass beds. The applicants’ Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015) **and later updated April 28, 2016 (Revised May 17, 2016)** states that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a ~~1.38 to 1+2 to 1~~ (mitigation to impact ratio) such that ~~2,185~~ **2,185** square feet of eelgrass will be successfully transplanted at the end of a five-year post-transplant monitoring period per provisions of the ~~Southern~~ California Eelgrass Mitigation Policy (SCEMP). The location of the eelgrass transplant area will not be at

the project site but near the site at the opposite eastern end of the same marina in the Irvine Company's Balboa Marina Eelgrass Mitigation Area, established to mitigate the impacts of the re-construction of the Balboa Marina in 2008-2009 approved by the Commission in May 2008 under Coastal Development Permit No. 5-07-241. The applicants state that the mitigation will occur concurrently or immediately after project construction. However, the Commission typically requires that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting. This general requirement conflicts with the applicants' statement that the mitigation transplanting will occur concurrently or immediately after construction. Therefore, the mitigation plan must be revised so that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall first be transplanted, along with any supplementary planting before commencement of construction. As stated previously, the mitigation site will be near by the project site at the eastern end of the marina at the Balboa Marina Eelgrass Mitigation Area, established to mitigate the impacts of the re-construction of the Balboa Marina in 2008-2009. The applicants have provided information showing that it is a successful eelgrass mitigation location. However, the mitigation plan does not provide further detail about the mitigation location, such as if there is available area within the mitigation site for additional mitigation for the proposed eelgrass impacts. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit a revised Eelgrass Mitigation Plan which clarifies that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting. In addition, the revised eelgrass mitigation plan must provide further detail about the mitigation location, such as if there is available area within the mitigation site for additional mitigation for the proposed eelgrass impacts

The proposed docks and floats would shade 9,045 square feet of shallow water habitat, but would not adversely affect any additional eelgrass, because all of the eelgrass would be removed during dredging.

The eelgrass survey took place in June and July 2013 and March and April 2016 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the

M. Page 35 – Clarify language in Section IV.E. Hazards, as follows:

-Starting with first sentence at top of page 35:

tidal elevation is 1.8~~1.7~~-feet below the 9.0 MLLW crest elevation of the existing bulkhead and revetment.

Based on sea level rise projections from the National Research Council (NRC) 2012 report, sea levels may rise between 1.4-feet to 5.5-feet by the year 2100. The analyses submitted by the applicants' state that for a 75 year design life (2092), sea levels at the site are expected to

increase between 1.3-feet and 4.9-feet. Using the 4.9-foot upper range rise by the year 2092, an extreme high tide still water level of 12.1-feet (7.2-foot MLLW + ~~4.9~~^{4.95}-feet MLLW) could result. Such a rise in either extreme situation would overtop the existing bulkhead and revetment which could result in flooding of the private marina boater restroom, the parking area and access to the restaurant; however, this water level would not exceed the finished first floor elevation of the restaurant. Therefore, even without storms or wave impacts, portions of the proposed landside development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections. If the highest astronomical tides were to coincide with a storm, water levels at the site could rise up to a foot higher during the peak of the higher high tides. The analysis states that in order to protect against the anticipated extreme rise in sea level for the 75-year design life, the parking lot could be raised and the restroom facility could be raised on a higher building pad. In addition, to deal with the extreme flooding scenario, temporary flood protection through the use of sand bags is proposed.

-Third and fourth paragraph on page 35:

The applicants state that the riprap slope revetment is not needed for the proposed restaurant or restroom. The restaurant will be built on a foundation consisting of landside piles and is not reliant upon the riprap. The restroom is located over 300 feet from the western edge of the property where the riprap is proposed, and is adjacent to the existing bulkhead. The riprap is only to support the marina development, a coastal dependent use. *The applicants' engineer states that the revetment is necessary to provide the net gain in crated water space for the proposed docks. Without the revetment, the earthen sub-base of the slope would degrade with current and tidal swing and could become unstable and emulsify into the water column.*

Although the applicants' reports indicate that the site is safe for landside development at this time, bay front areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect shoreline processes that could affect the landside development. Furthermore, because of its location, the marina development, including the riprap, are subject to tidal influences and potentially subject to the effects of tsunamis and seiches. Although the applicant has indicated that shoreline protection is not necessary for the restaurant *or private marina restroom* and the proposed riprap is to support the development of the marina, there is the potential for waterside and landside development to be subject to wave uprush. To minimize the project's potential future impact on shoreline processes, the Commission imposes **Special Condition No. 11**, which prohibits alteration of the proposed riprap revetment or construction of any future shoreline protective device(s) to protect the landside development approved pursuant to Coastal Development Permit No. 5-15-0087 including, but not limited to the restaurant, private marina boater restroom and

N. Page 38 – Clarify language in Section IV.F. Public Access, as follows:

-Last paragraph on page 38:

The existing private marina will be expanded to include 26 new slips that will accommodate a variety of boats including 14 boats ranging in size from 20-feet to 40-feet and 12 boats ranging in size from 50-feet to 80-feet. The number of available *private* slips will be increased from 105 to 131. The new docks will be constructed as an extension of the existing dock structure and access will be from the existing westerly gangway. The existing private Balboa Marina

expansion will continue its existing use as a for-lease boat slip facility. While a private marina, it will continue to provide recreational boating opportunities by continuing to lease docks to the general public to allow coastal boating opportunities.

O. Page 42 – Include the following items under Appendix 1, Substantive File Documents, as follows:

APPENDIX 1

FILE DOCUMENTS: Coastal Development Permit Exemption No. 5-05-059; Coastal Development Permit No. P-5-25-77-987; Coastal Development Permit No. 5-93-125; Coastal Development Permit No. 5-07-241; City of Newport Beach Harbor Resources Division Approval-In-Concept dated December 1, 2014 and December 15, 2015; City of Newport Beach Planning Department Approval-In-Concept dated February 17, 2016; Mitigated Negative Declaration NO. ND2013-002 (State Clearinghouse Number 2014081044); Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015); Storm Water Pollution Prevention Plan (SWPPP) prepared by Stantec dated February 2016, an Erosion Control Plan, Marina Dredging Management Plan, Balboa Marina West Dredging and Public/Transient Dock Development prepared by Anchor QEA, LLC dated January 2016 (Revised February 2016); Water Quality Management Plan (WQMP) (Job No. 1288-001-01) prepared by Fuscue Engineering dated April 23, 2014; Management/Clean Marina Plan for Balboa Marina and Balboa Marina West prepared by the California Recreation Company received March 1, 2016; Sea Level Rise Memorandum prepared by Anchor QEA dated July 24, 2015; Evaluation of Coastal Hazards for Balboa West Marina Expansion Project prepared by Anchor QEA dated June 13, 2016; ~~and~~ Addendum to the Evaluation of Coastal Hazards for Balboa West Marina Expansion Project prepared by Anchor QEA dated July 21, 2016; **Letter from URS Corporation dated August 15, 2013; Balboa West Marina Expansion Project Impact Analysis for Proposed Project Alternatives prepared by Everest International Consultants, Inc. dated March 2013; Geotechnical Investigation Proposed Restaurant Balboa Marina Newport Beach, California prepared by Geotechnical Professionals Inc. dated April 6, 2014; and 2016 Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated April 28, 2016 (May 17, 2016).**

2. CORRESPONDENCE RECEIVED

A total of seven letters and three emails of concern were received from the public. Attached to one of these letters were three letters submitted to the City during the course of City approval of the project. In addition, a petition objecting to the project with approximately 300 signatures was submitted. A large portion of the public that raised concerns with the project were residents of Linda Isle, a private residential island located just south of the project site. Copies of these letters, emails and a sample of the petition have been included with this addendum as **Exhibit No. 1**. The issues raised in these objections have been summarized below:

1) The proposed project results in unacceptable noise levels, loss of views and glare from headlights, as a result of the size and hours of the restaurant/nightclub.

These concerns relate to impacts to the residents of Linda Isle. Noise concerns impacting the Linda Isle residents have been addressed during the course of the City approval by limiting outdoor dining to only the patio on the western side of the development and limiting the southern patio area that faces the residents of Linda Isle to remain only open and accessible for building and fire codes and not be used for outdoor dining. The City approval also included other conditions of approval to mitigate noise, such as using 1-inch thick insulated glass on all windows; having all doors and windows to remain closed after 7:00 p.m., limiting hours of operation for the outdoor deck to 9:00 a.m. through midnight and no amplified sound on the patio; etc.

View and glare concerns of the residents were addressed during the course of the City approval also. The Mitigated Negative Declaration (MND) analyzed the aesthetics impact of the project and found the addition of the docks and restaurant would not have an adverse effect on harbor views. In the Commission staff report dated 1/25/17, view impacts were also evaluated and staff determined that the proposed development would not have a significant impact on public access. The height of the proposed restaurant will be one-story, 24-‘9” high and will comply with the non-residential shoreline height limit as dictated by the City’s certified LCP. Public views of Lower Newport Bay from both E. Coast Highway and Bayside Drive are already impacted by existing development in the area, consisting of the developed harbor and two-story residential structures, such as those located on Linda Isle and in the Bayshores Private Gated Residential Community, and commercial development. The opponents state that their views of the harbor will be impacted with the new docks and restaurant. As stated and more thoroughly addressed in the staff report, public views in this area are already impacted by existing development and the proposed project will not result in additional adverse visual impacts.

In order to deal with the concern of glare raised by the residents of Linda Isle, a 3-foot high landscaped area located between the parking lot and southern waterfront was included as part of the project during the course of the City approval process.

2) The proposed project results in deficient parking for the proposed uses.

The proposed land uses which consist of a new restaurant use and marina and the existing adjacent SOL Mexican Cocina Restaurant all rely on shared parking use, which requires 365 parking spaces based on the City’s Zoning Code. The proposed parking configuration would provide 250 parking spaces, resulting in a parking shortfall of 106 parking spaces. To address the parking shortfall, the applicants during the City’s approval process of the project prepared a Parking Demand Analysis that showed that the site can accommodate all uses except for a slight shortfall at peak demand times (7pm to 8pm). Parking during the day would be adequately provided, but not during peak demand times of 7pm to 8pm. In response to the peak demand parking shortfall, the applicants prepared a Valet Parking Management Plan that was approved by the City, in which 294 parking spaces would be provided onsite, including 31 valet-stacked parking spaces and 13 tandem valet parking spaces for a total of 44 valet and tandem parking spaces. According to the parking demand analysis, the weekday peak demand (7pm to 8pm) is 310 spaces (16 short of the proposed 294 parking spaces) and the weekend peak demand (7pm to 8pm) is 305 spaces (11 short of the proposed 294 parking spaces). In order to accommodate this parking shortfall, the Valet Parking Management Plan requires that sixteen (16) additional

parking spaces will be accommodated on the nearby Bayside Shopping Center (1000 Bayside Drive) on the northwest corner of Bayside Drive and Jamboree Road, approximately .9 mile southeast of the project site, also owned by the Irvine Company, in conjunction with the valet parking operation. Furthermore, peak restaurant demand would occur in the evening hours at a time when the public beach demand is low. Therefore, the proposed project will not have a significant impact.

3) The proposed project results in potential property damage to infrastructure of nearby homes from pile driving and compaction during construction.

During the course of City approval for the project, an acoustic study was completed and the data used to predict future construction-related noise and vibration levels relied on actual, extensively measured construction activity from the 2008-2009 Balboa Marina dock replacement project which is within the Balboa Marina site where the Balboa Marina West project is located that was approved by the Commission under CDP NO. 5-07-241. The analysis determined that no changes had occurred to the physical environment since 2008-2009 indicating that the noise and vibration monitoring data collected at that time would not be representative of worst-case predicted noise and vibration levels for the current project which will use the same type of equipment and construction techniques. In conclusion, the analysis concluded that the potential for impacts to the neighboring residences due to vibration remain below a level of significance.

4) The proposed project results in increased traffic on adjacent roads, Dover Bridge (E. Coast Highway Bridge), E. Coast Highway and Bayside Drive.

A traffic study was required by the City during the course of City approval and the full analysis was included in the MND. The analysis concluded that the project did not exceed the thresholds for significant impacts and did take into account the Back Bay Landing site, which obtained a site specific Local Coastal Plan (LCP) amendment in December 2015. As a result of the analysis, the project was approved by the City with no mitigation required because no significant impacts, individually or cumulatively, would result.

5) The proposed project results in unsafe navigation near and under the Dover Bridge (E. Coast Highway Bridge), as a result of additional docks constructed partially over public land.

The current navigation channel width under the E. Coast Highway bridge is 200-feet, widening to approximately 325-feet south of the Balboa Marina slip limits. The project limits do not extend past the Pierhead Line, which means the harbor water area perimeter lines established in Newport Harbor by the Federal Government that define the permitted limit of fixed pier, floating dock and other in-water structures which may be constructed in the harbor. In addition, the boats to be docked at the proposed slips shall not encroach past the Project Line, which means the harbor water area channel lines of the improvements constructed by the Federal Government. The proposed project will not decrease the navigation area for boats and non-motorized vessels and the project will not impede navigation. The channel width is adequate to accommodate boats, kayaks and paddleboards both at the bridge and adjacent to the project boundary.

Portions of the new private and public docks will be located over State Tidelands and in this area these tidelands are managed by the County of Orange. Public trust lands must be protected for

public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. The applicants have stated that approval from the County of Orange is necessary and that they have been in discussions with the County and an approval is pending. The approval from the County will consist of a lease for the docks that will be completely or partially within public lands.

6) A full Environmental Impact Report is necessary.

As the lead agency, the City of Newport Beach determined that a Mitigated Negative Declaration was the appropriate environmental document Per CEQA Guidelines §15050(c). The City through its City approval process approved the Balboa Marina West Mitigated Negative Declaration and determined that a MND was sufficient and that an Environmental Impact Report (EIR) was not necessary.

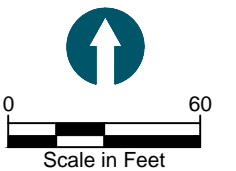
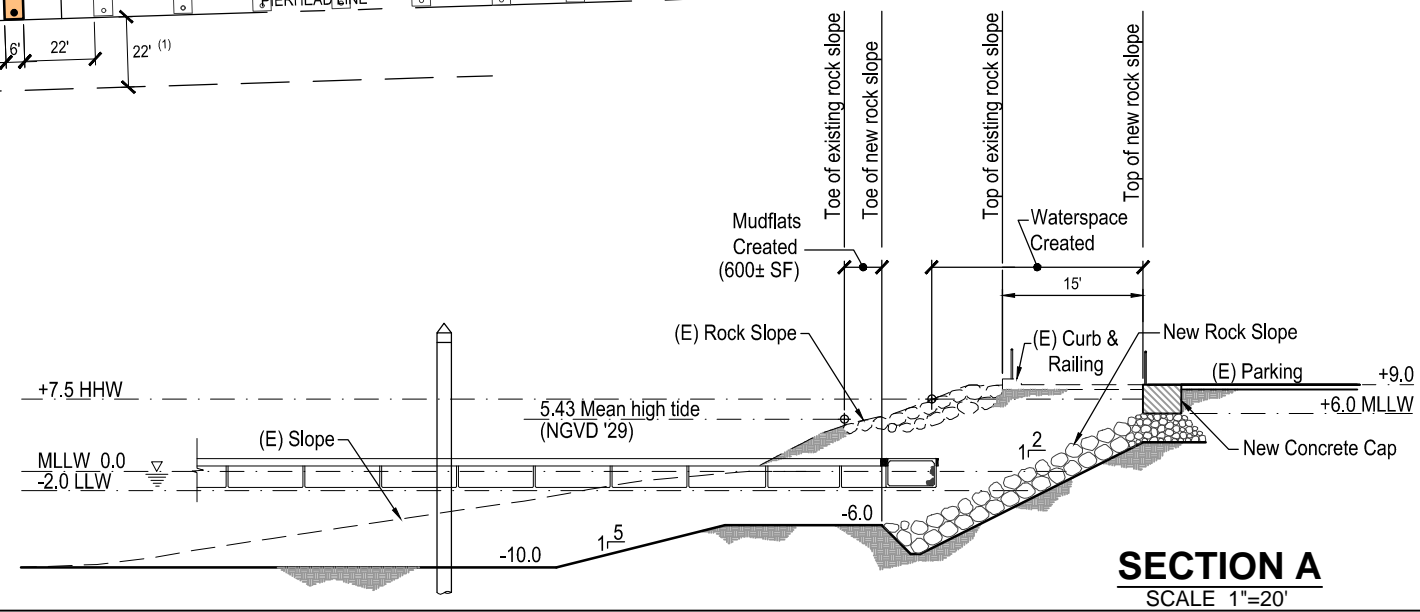
7) The proposed project does not provide public access along the waterfront or restrooms or continuous easement to the Back Bay Landing site.

General public access to the waterfront (bay) is not currently available on the landward side of the project site because of private ownership; however, access is available for dock lessees in the privately owned marina. The existing and new private marina restroom will continue to only be used for the Balboa Marina lessees and guests. The public will continue to access the site via the parking lot and walkway access and sidewalks that currently exist along E. Coast Highway and Bayside Drive. However, in order to expand and enhance public access at the site, the Irvine Company is providing vertical public access to the new public dock via a dedicated eight (8) foot wide vertical (to the shoreline) public access easement that would provide pedestrian access from E. Coast Highway, as required by the City's approval. In addition, the proposed vertical access in the future will connect to the planned accessways in the Back Bay Landing project located immediately north of E. Coast Highway. With the proposed vertical access to the public dock, and its potential connection to future accessways in the planned Back Bay Landing project, public access will be enhanced onsite. In addition, with the new public dock, coastal recreational opportunities will be expanded and enhanced in an area where access has been limited or not available.

H:\AutoCAD Project Files\Projects\0483-The Irvine Company\Baboo Marina West\0483-RP-002 SITE.dwg Fig 2
Feb 07, 2017 1:21pm rrazonable

PROPOSED BOAT COUNT		PILE COUNT
PRIVATE DOCK	14 (35' & Over)	28 (57 SF)
	12 (20' Electric)	
	26 Total	
PUBLIC DOCK	12 (20' class transient equivalents)	17 (38 SF)

(1) Maximum Overhang Allowable



January 24, 2017

Coastal Commission
200 Oceangate 10th floor
Long Beach, CA 90802
Attn. Mr. Fernie Sy
Re: Balboa Marina West Case # 5-15-0087

RECEIVED
South Coast Region

JAN 25 2017

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Sy:

After reading the documents submitted by the applicant, i wish to comment on their "Response to Petition to OCC".

1. First of all, regarding Harbor Views and Navigation:

I feel it is absurd to state that this project will not affect Harbor Views. In fact, it will afford Harbor views ONLY to patrons of the Restaurant/Nightclub or the boat owners of the expanded Marina.

The location of the huge waterfront building will necessarily block views that are currently enjoyed by nearby residents as well as views that are enjoyed by the General Public - from the Dover Bridge and from the Marina. And pedestrians/cyclists coming from the planned 12' BackBay Landing pathway will not be able to continue along the

bulkhead of the Marina but will need to turn onto an 8' path behind Coast Highway.

Likewise, the expanded Marina does not afford access or views for the General Public. The ramp to the new docks is not safe for use by cyclists or families with children. Any views from these docks are only for the boat owners, not the General Public. Also, once those private docks are filled with luxury yachts, those views currently enjoyed by nearby residents as well as the views from the Dover Bridge enjoyed by the General Public will also be eliminated. Of particular concern is the long Southern-most Private Dock where the applicants now show Two 45' boats instead of the One 90' yacht previously shown on designs submitted to and approved by the co-Applicant, City of Newport Beach. Note that the Irvine Co. has used all such long Side Docks in the existing Balboa Marina West for high rent Extra-Large Luxury yachts (never two smaller boats in tandem). The expected extra-large yacht on the new dock would have maximum negative impact on views from nearby residences and views from the Dover Bridge.

Regarding Navigation, the addition of 36 docks ALTERS the present shoreline and, therefore, necessarily affects navigation.

The applicant refers to the former Reuben E. Lee. However, the Reuben E. Lee was NOT a ship. It was a permanent structure on a floating dock in the water. It never moved and therefore never obstructed navigation. The new docks will not be empty. They will be filled with luxury yachts that will enter and exit the docks and will alter the present navigational course available to vessels, etc... in the area.

2. Regarding the Size and Hours of the building being detrimental.

The applicant refers to the building as a Restaurant with a bar. However, despite public opposition, they requested and the City approved a CUP for operation until TWO a.m. Every Night with live entertainment and amplified sound until ONE a.m.. For most people, this defines a Nightclub with food, not a Restaurant with a Bar.

Regarding noise, the City rejected the City Staff's finding that noise would likely be a problem for nearby residents and their recommendation (with agreement from NBPD) that South facing

windows should be fixed. Instead, the City approved Sliding Windows -in order "to allow flexibility".

Regarding Coast Highway Safety, since the Hours of Operation are a magnet for the late-night bar crowd, and since the seating capacity for this 14,242 square foot building will be 417 , it is not a surprise that we consider this nightclub detrimental to nearby traffic safety. Note that in the City Staff report, it was reported that this area has 10% more crime than other districts in the City of Newport Beach. The Police attribute this to Alcohol, noting that 42% of the arrests were DUI's. I feel that the residents of Newport Beach have good reason to worry about adding the largest restaurant/nightclub in Newport Beach to this same area.

Also, the Applicant refers to the site previously including restaurant uses. In fact, the Reuben E. Lee was a structure that had Boating Memorabilia on display in several rooms and had a one room restaurant in the back area (facing Dover Bridge). It was dining

restaurant and closed early. One cannot judge the impact of the proposed huge restaurant/nightclub, which is open until 2 a.m., seven nights a week, to the old Reuben E. Lee dining room.

3. Regarding Inadequate Parking

The City requires 356 parking spaces for a project of this size. There are only 294 spaces available. Obviously, the project size is too big and it should not have been approved at this size. Yet, co-applicant, City of Newport Beach approved the project anyway. T.I.C. states that it will utilize 16 spaces at their Bayside Restaurant location (.8 miles away!), but this still leaves an unacceptable shortfall. Note that T.I.C. states it would make a potential pathway connection to BackBay Landing 10', UNLESS lack of parking required it to reduce it to 8'. However, lack of parking is a GIVEN, so it is obvious that the path is intended to be 8'. Note that the Planning Commission and the City of Newport Beach approved the pathway to be 8' (rejecting the recommendation from City Staff that the pathway be 10' !).

4. Regarding Traffic, especially considering nearby proposed projects.

The City states that it has conducted Traffic impact analyses. I do not agree with their results since I currently often experience gridlock on Dover Bridge and cannot comprehend how all the many approved & proposed projects will not increase the traffic that I am now experiencing. In addition, Last Month the City of Newport Beach approved reducing the traffic lanes on Bayside Drive from four to two lanes (one each way). Note that Coast Highway & Bayside Drive is the route for additional parking for this project and is also the route that many patrons would be using. It is also the site of numerous traffic accidents (some fatal) including one accident ten days ago - Saturday, 1/14, in the evening..

5. Possibility of Damage from Pile Driving and Compaction

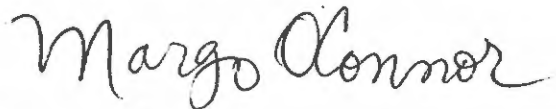
The Applicants assure us that there will not be damage from construction of docks even though there were no tests done on Linda Isle. I am also concerned about the construction of the Building!

6. Need for an Environmental Impact Report.

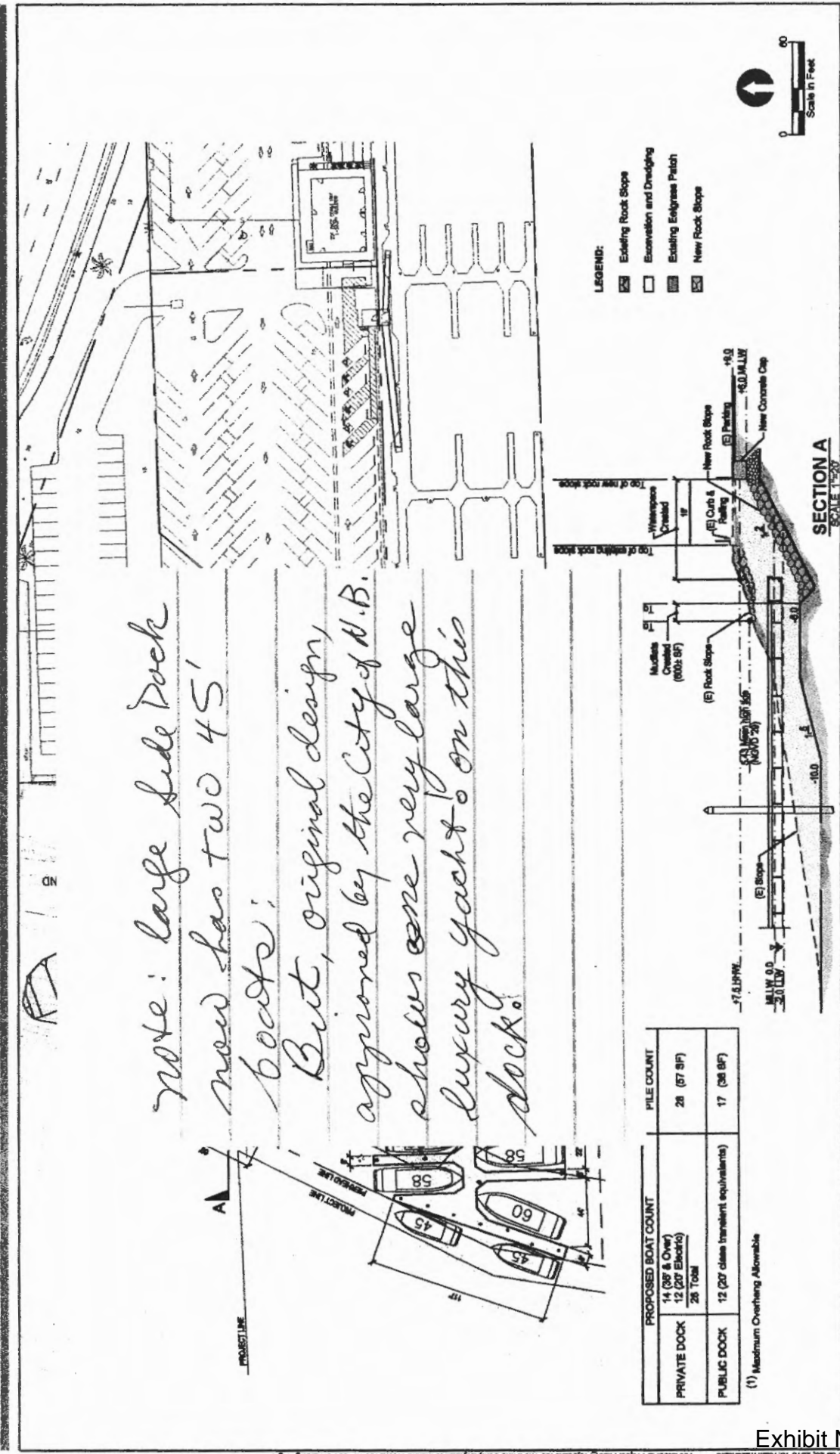
Again, we are told that this is not needed because the co-applicant, the City of Newport Beach, says so. The applicants, themselves, are determining the important issues of Traffic, Noise, the use of an MND instead of a complete EIR, etc.... I do not agree, based on all the concerns I have expressed and also those expressed in the statements by the attorneys, Jackson, De Marco, Tidus....(which have been sent to you).

I appreciate your taking the time to read my comments regarding the "Responses to the petition to CCC".

Thank you,

A handwritten signature in cursive script that reads "Margo O'Connor".

Margo O'Connor



*note: large side dock
now has two 45'
boats;
Bit, original design,
approved by the City of N.B.
shows one very large
luxury yacht on this
dock.*

Figure 1
Conceptual Dock Plan
Public Transient Dock and Marina Expansion
City of Newport Beach / Irvine Company Joint Project

2 ANCHOR
QEA

California Coastal Commission
200 OceanGate 10th floor
Long Beach, CA 90802
Attn. Mr. Fernie Sy
Re: Balboa Marina West Case# 5-15-0087

January 23, 2017

RECEIVED
South Coast Region

JAN 25 2017

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Sy:

I want to address several items that have not been addressed prior to the City of Newport Beach giving approval to T.I.C. for their "restaurant" project.

Our attorneys have pointed out the obvious CEQA violations that exist. I would like to point out some other issues that were overlooked by the City. The Irvine Co. states that the project is on the site where a restaurant existed for many years. However, the structure that included a small restaurant was Offshore and not directly across from residences. It was reached by a walk to a floating dock that included construction that resembled an old Paddle Wheel Boat but was a fixed structure. There was nothing

on land (except the small yacht brokerage which will be the site of the new restroom building).

I am a resident of Linda Isle. There are a myriad of fears created by the T.I.C. project being across from our quiet residential island. However, I wish to address the issues that concern the General Public as well as our own neighborhood:

Environmental & Safety Issues:

Linda Isle has a sewer system that is below sea level. Seismic events from Pile Driving and Compaction create a potential pollution problem for the entire Newport Harbor. No effort was made to examine or monitor Linda Isle.

The other issue that deeply concerns me is the potential damage from construction - from compacting, pile driving, and other producers of tremors. Linda Isle has its utilities underground in a tunnel that runs around the island about 100 feet from the sea walls. Problems with our sea walls would result in damage to our electricity and ultimately our sewage system.

Our sewer system is below sea level and sewage is pumped out with electric pumps. No tests or simulations were done on Linda Isle. The last time T.I.C. did pile driving there was significant structural damage to Mama Gina's (that caused it to be torn down). Our attorney pointed out that this lack of oversight is also a CEQA violation.

The other safety issue that I am concerned with is how much of the area below the existing Dover Bridge will be blocked by the new Large Boat docks and by the entrance/exit of those Large Boats in/out of the docks. Adding that to the present simultaneous activity of Kayaks, Paddle Boards, and Small Craft as well as all the larger Boats, entering and exiting the Back Bay could potentially result in catastrophic accidents.

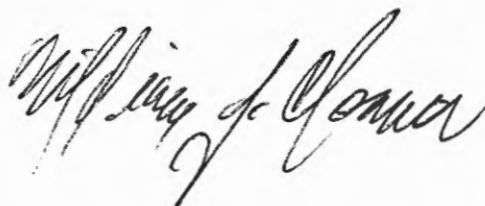
In closing, I feel there is an opportunity for the California Coastal Commission to encourage a beautiful multi-use pathway around the Marina for the enjoyment of the General Public.

Instead of a twelve-foot multi-use Public path (as exists for the BackBay Landing Project), any connecting walkway in this project would be 8-10' and require a 90 degree turn and follow along the bushes in the rear of the parking lot by Coast Highway. If there were a 12 foot pathway that continued around the shoreline of the T.I.C. property, it could meet with the planned larger and improved Newport Beach bicycle path or it could cross P.C.H. and join the beautiful bicycle and foot pathways that go for miles. This would allow the General Public (and not just Restaurant patrons/owners of the luxury boats) access to enjoy the beautiful views from this very special iconic location. All this could be achieved by just having the Restaurant/Nightclub be set back a few feet.

Also, I would encourage a full Environmental Report, which should have been done initially on this project.

Respectfully,

Bill O'Connor

A handwritten signature in cursive script, appearing to read "Bill O'Connor", written in black ink.

Coastal Commission
200 Oceangate 10th floor
Long Beach, CA 90802
Attn: Mr. Fernie Sy

RECEIVED
South Coast Region

OCT 05 2016

CALIFORNIA
COASTAL COMMISSION

Re: Case #5-15-00087
Location: 201 E. Coast Hwy, Newport Beach

Dear Mr. Fernie Sy;

My husband and I have been residents of Newport Beach since 1958. We reside at #92 Linda Isle directly across from the proposed development. In 2012 we purchased our home primarily for the unobstructed view of the harbor and observing the fun water related activities of the public.

We have justifiable concerns regarding our loss of harbor views and the public's restricted safe use and enjoyment of same portion of the harbor. The extension of the private marina dock will have a highly significant negative impact and loss of enjoyment for both parties.

The architectural design, location, size and operating characteristics of the landside project, a fine dining restaurant/nightclub, outdoor patio and private restrooms lacks sufficient design and operational features to minimize potential noise and parking impacts. The mitigated conditions i.e., noise, parking and glare are insufficient and difficult to enforce. The sound study estimates the noise from 40 people in the outdoor dining area would generate an average noise level of 64.5 dBA which exceeds the City's daytime (55dBA) and nighttime (50dBA) noise standards.

With the exception of the public dock, wherein the City's written proof of ownership, lease or conditions of use of have not been clearly established or disclosed, the proposed project does not seem to offer much to the general public in terms of public access along the waterfront, restrooms or a continuous easement to the Back Bay Landing project.

It is a concern that the public dock could revert to the Irvine Company and the project would not offer anything to the public. The City acquired the Lower Castaway Property, located across the bay, in a land exchange with the Irvine Company. It carries a deed restriction prohibiting a commercial marina and specifies public use only – it is an ideal location for future public berthing for this portion of the harbor. The four slips in the existing marina are not over used so it's not clear if additional public berthing is needed at this location.

It is our opinion, due to the City's extreme interest in acquiring the public dock, a conflict of interest wherein the City, acting as a co-applicant, has failed to uphold principles of fairness and created a probability of actual bias in favor of the Irvine Company. The City has invested \$125,000 or more for the entitlement process of CEQA (which was not applied), permitting and studies.

This project also seems unusual in that a Mitigated Negative Declaration was approved before a project had been defined. The "MND" was based on a conceptual plan for a 19,400 square foot marine commercial building to house a yacht brokerage office, public restrooms, outdoor patio accessible to the public, restaurant with dancing and underground parking and a waterside component consisting of a public dock and marina extension.

The details of which were then compiled for structuring the CLUP. Following completion of the CLUP the AIC was scuttled and replaced and approved by the City with the currently proposed 14,252 square foot restaurant, private outdoor patio, private marina restrooms, and docks. Therefore the CLUP contains data that is inconsistent with the approved project. The City stated that because the proposed building contains less square footage than the AIC it is their opinion that CEQA is not

Page Two

required because the project does not have a significant impact. We believe the noise and loss of views are extremely significant.

There have been numerous inconsistencies and misstatements made throughout this process, all of which are public record. We do not wish to burden you with full reports and excessive paperwork but as we will likely not be able to attend the Hearing we would like to address some items of contention that may develop.

Community Outreach:

The Irvine Company made a presentation to the Linda Isle Homeowners Association 6/26/14 wherein they produced renderings of a large building that was solid wall construction on the side facing the island but would not confirm what the project would contain. They also shared renditions of the extended marina and public dock. We were not informed that the private dock extension or public dock were to expand into public tidelands.

On 1/1/16 I along with neighbors from #89, #90 and #91 met with Irvine Company representatives at their office in an attempt to resolve our concerns on noise, hours of operation and parking. They later offered to triple glaze some windows but otherwise the meeting was unproductive. They indicated that a portion of the roof is retractable and the dining room facing Linda Isle is actually a banquet room, which is often as noisy as a bar. Neither are disclosed or analyzed in the conceptual renderings or sound report.

Our HOA which represents 107 homes has incurred legal fees in excess of \$75,000 and many neighbors have invested hours of personal time attending Planning Commission, City Council meetings and writing letters to the City in an attempt to reach a mutually acceptable project but have failed in all aspects. Our Board of Directors has determined that it is financially unfeasible to send our attorney to the Coastal Hearing and it is my understanding that Margo O'Connor has provided the Commission with copies of our attorney's concerns.

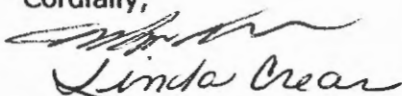
This is a beautiful location on the harbor and should have a far more thoughtful design and planning concept that benefits the public, is considerate of the residential properties and satisfies the financial interests of the applicant.

We respectfully request that the Commission deny the private marina expansion and private outdoor dining patio.

We hope the commission will find the restaurant too imposing, if not we request that all of moveable glass walls in the building be stationary, the glass windows in the banquet room be replaced with masonry plaster wall construction and the retractable roof, be eliminated.

Attached please find exhibits detailing our concerns. We sincerely appreciate your time and consideration for reviewing this information and if you require full reports or have any questions we hope you will contact us.

Cordially,



Andrew and Linda Crean
#92 Linda Isle, Newport Beach CA 92660
lalacrean@gmail.com

EXIBITS

A-1

Loss of View

A-2

Loss of Public Access & Recreation

A-3

Existing and Proposed Private Marina Dock – schematic 1 of 2 from “MND” illustrating duplication of (5) 18-20 electric boat slips in existing marina. Schematic 2 of 2 revised AIC depicts re-location of proposed additional dock segment gangway

A-4

Moveable Glass Wall & Proposed Solid Banquet Wall Rendering Modification Request if Project is Approved

A-5

Retractable Roof Rendering

A-6

Patio Noise and Banquet Room Floor Plan

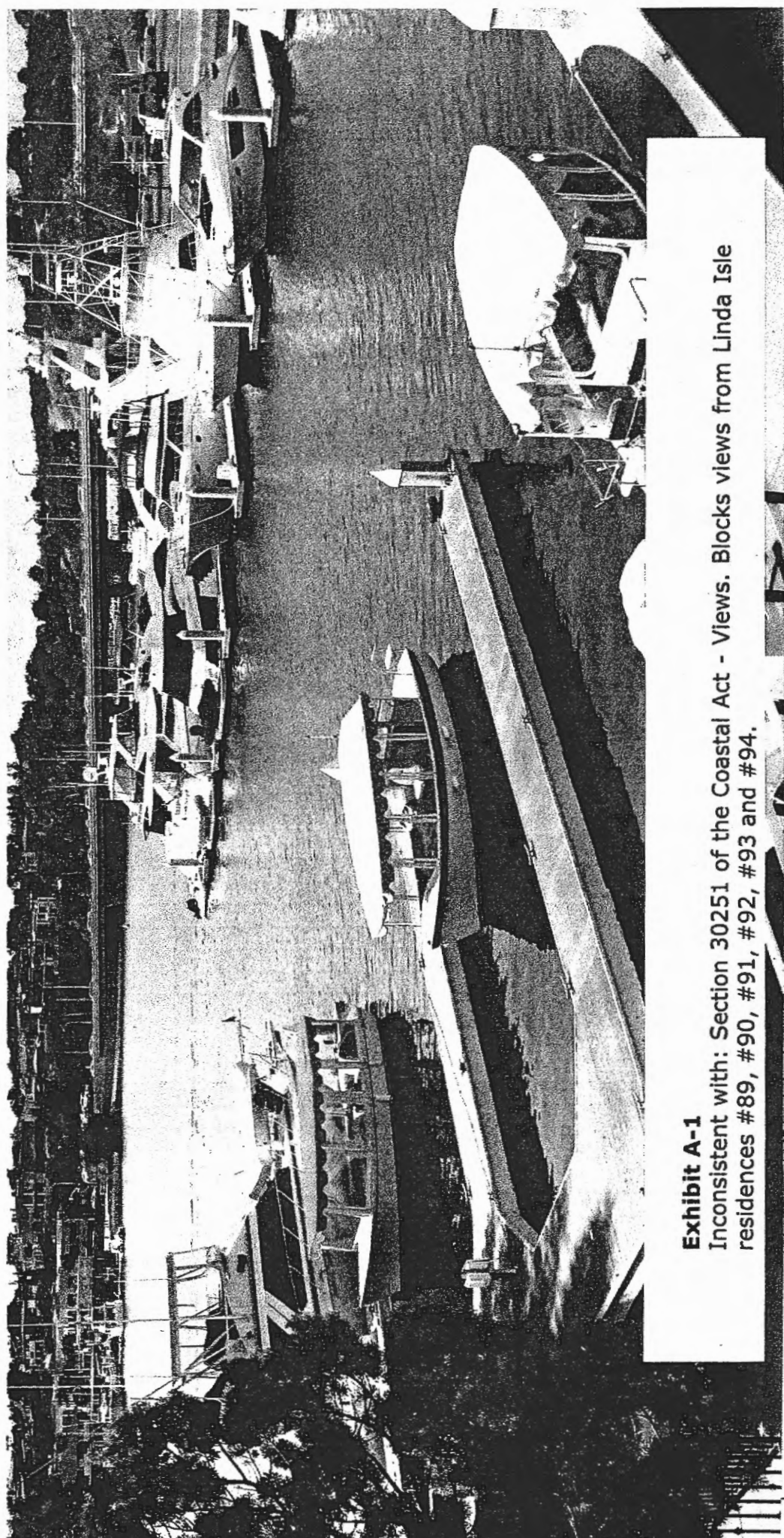


Exhibit A-1
Inconsistent with: Section 30251 of the Coastal Act - Views. Blocks views from Linda Isle
residences #89, #90, #91, #92, #93, and #94.

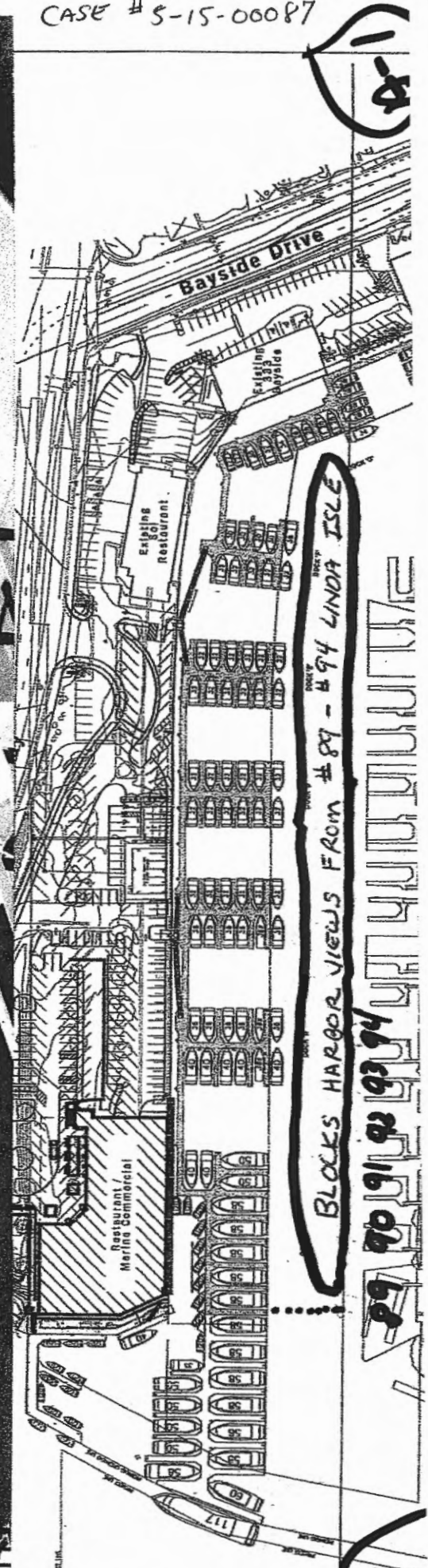
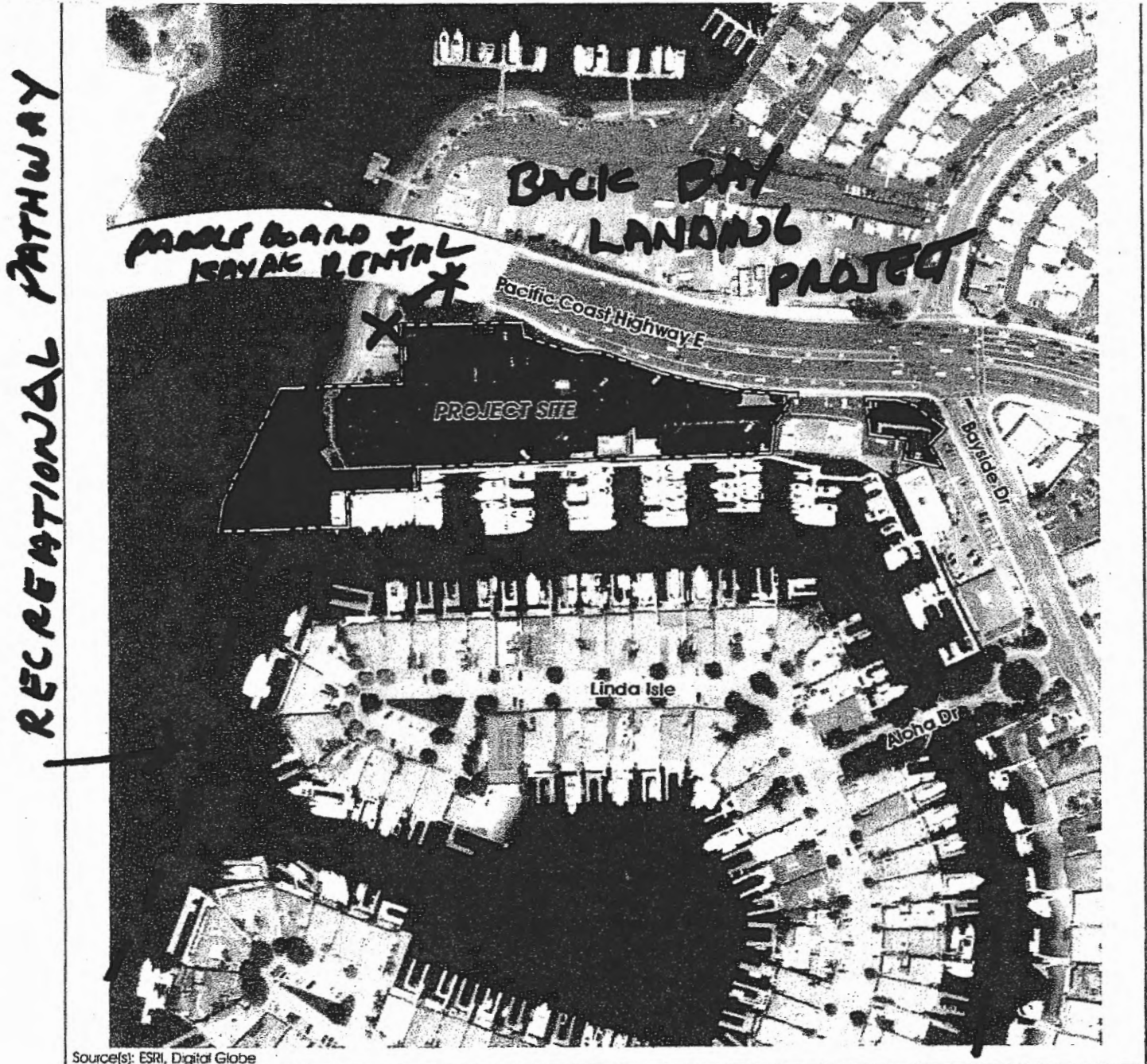


Exhibit A-2

Inconsistent with: Section 30210 of the Coastal Act – Public Access and Recreation – This location in the harbor, which is located on public tidelands, is enjoyed and utilized by thousands of kayaks, paddleboard, outrigger and float tube enthusiasts annually. It provides safe navigation in a busy channel similar to that of a bike path on a public road. It does not seem reasonable that public tidelands be denied for recreational opportunities and converted to 50 – 100 foot private slips for luxury yachts and corporate profit where adequate berthing exists. The marina was not approved a multi-phase project.



Source(s): ESRI, Digital Globe



NOT TO SCALE

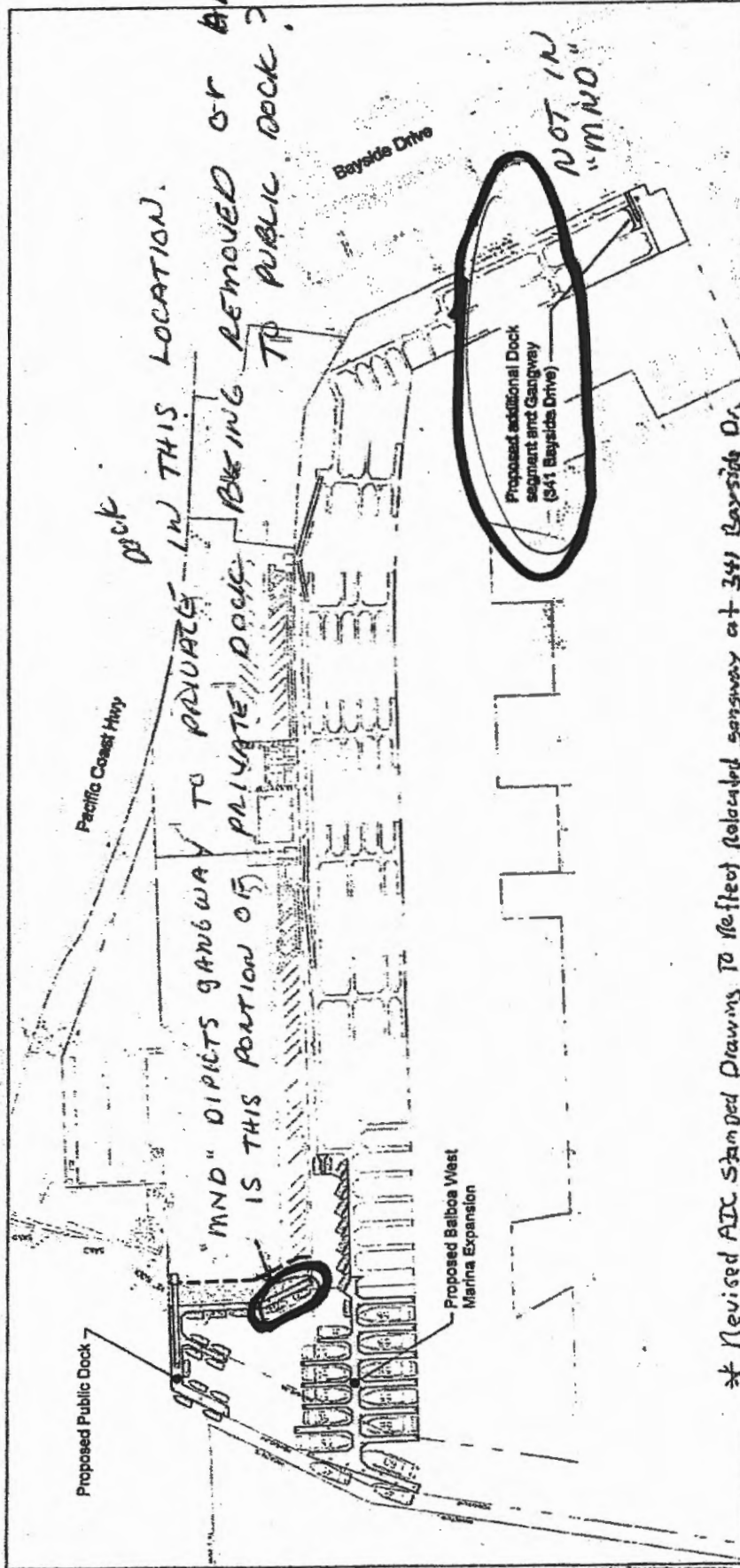
Balboa Marina West
Lead Agency: City of Newport Beach

Figure 2-3

AERIAL PHOTOGRAPH

August 18, 2014
Page 2-10

Exhibit No. 7
Page 17 of 62



* Revised ADC Stamped Drawing To reflect relocated gangway at 341 Bayside Dr.

SOURCE: Base map prepared from existing topographic survey provided by San
 City Survey.
 HORIZONTAL DATUM: California State Plane, Zone VI, NAD83.
 VERTICAL DATUM: Mean Lower Low Water (MLLW).



SECTION

☒ Eelgrass within project area
☐ No Eelgrass in project area

2 ANCHOR
 OEA

Site Plan
 Public Transient Dock and Marina Expansion
 City of Newport Beach / Irvine Company Joint Project

Signature *[Signature]* 12/15/15

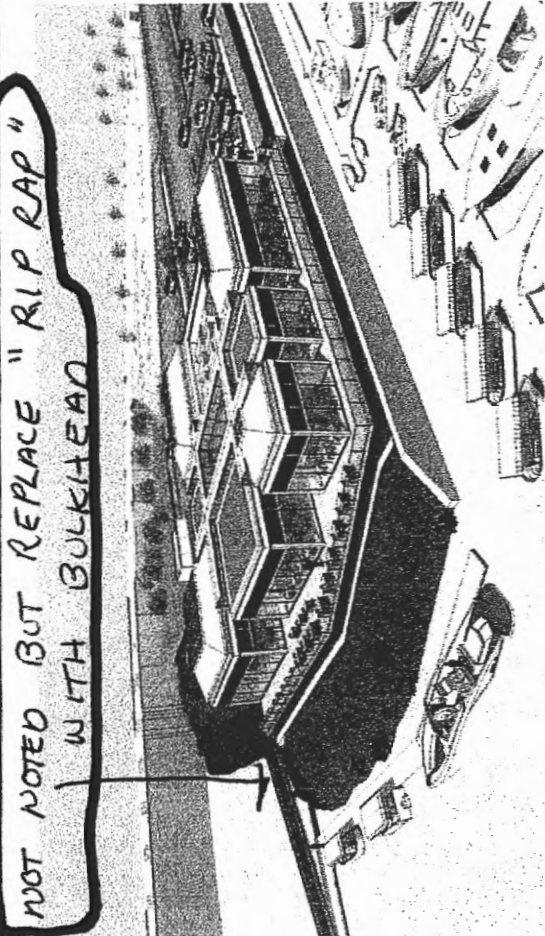
See Report Previously Submitted
 Inspection Date & Time

CITY OF NEWPORT BEACH
[Signature] 12/15/15

9-32002

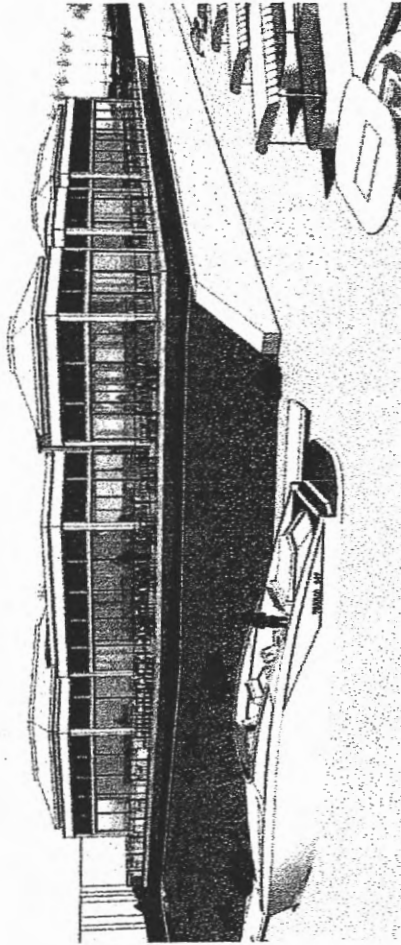
MODIFICATION REQUEST IF BUILDING IS APPROVED

JUNE 19, 2015



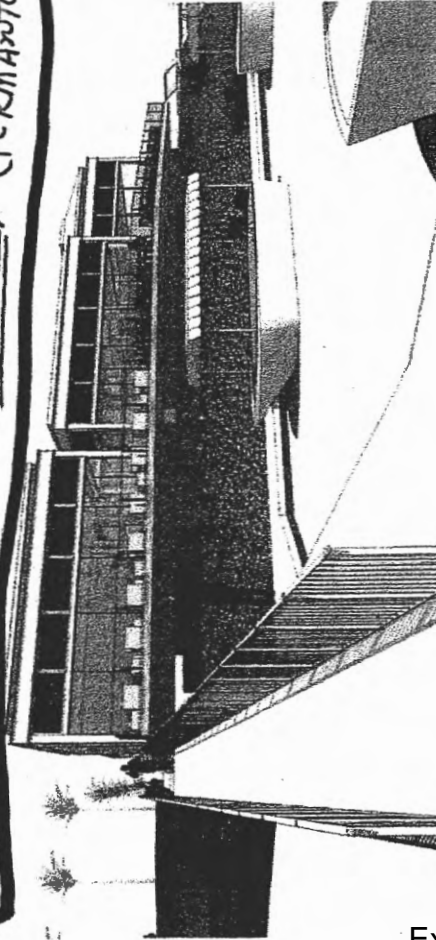
SOUTHWEST AERIAL

NOT NOTED BUT REPLACE "RIP RAP" WITH BULKHEAD



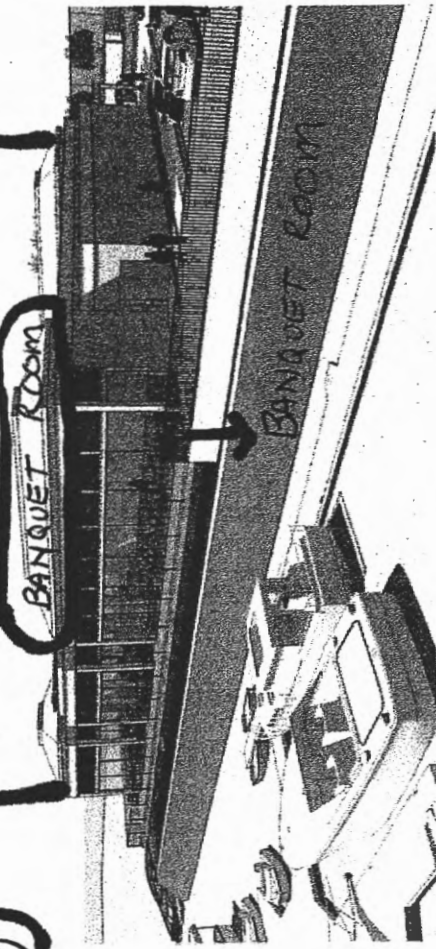
SOUTHWEST VIEW

MODIFY ALL MOVEABLE GLASS WALLS IN BLOC TO BE STATIONARY (PERMANENTLY)



FROM WEST DOCK

C
REPLACE GLASS WINDOWS w/ MASONRY / RASTER WALLS



SOUTHEAST VIEW

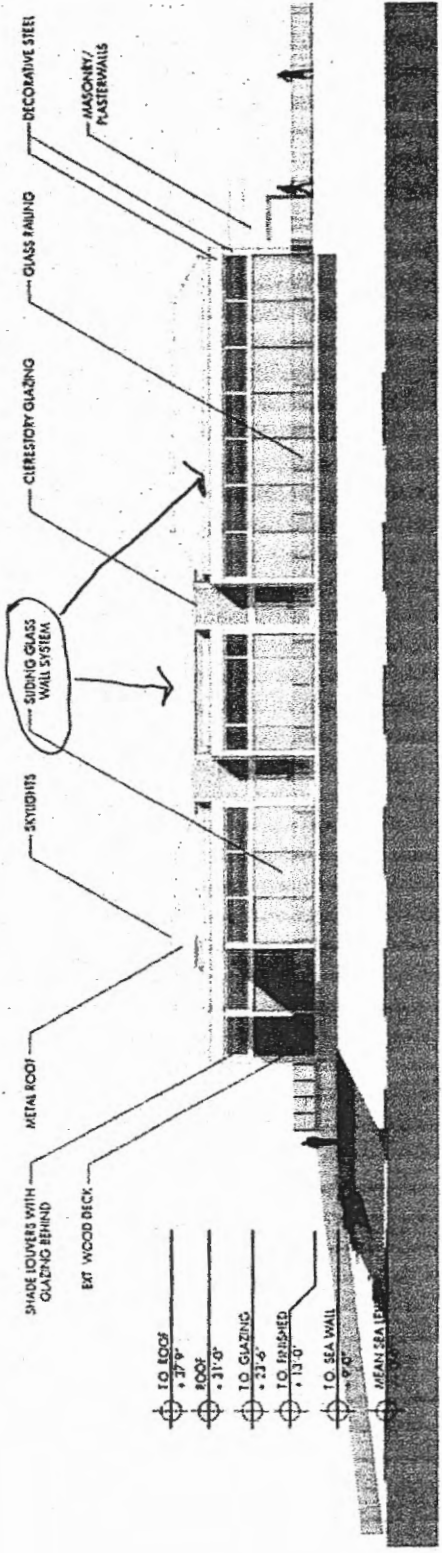
CASE #5-15-00087

BALBOA MARINA RESTAURANT NEWPORT BEACH, CA

© IRVINE COMPANY

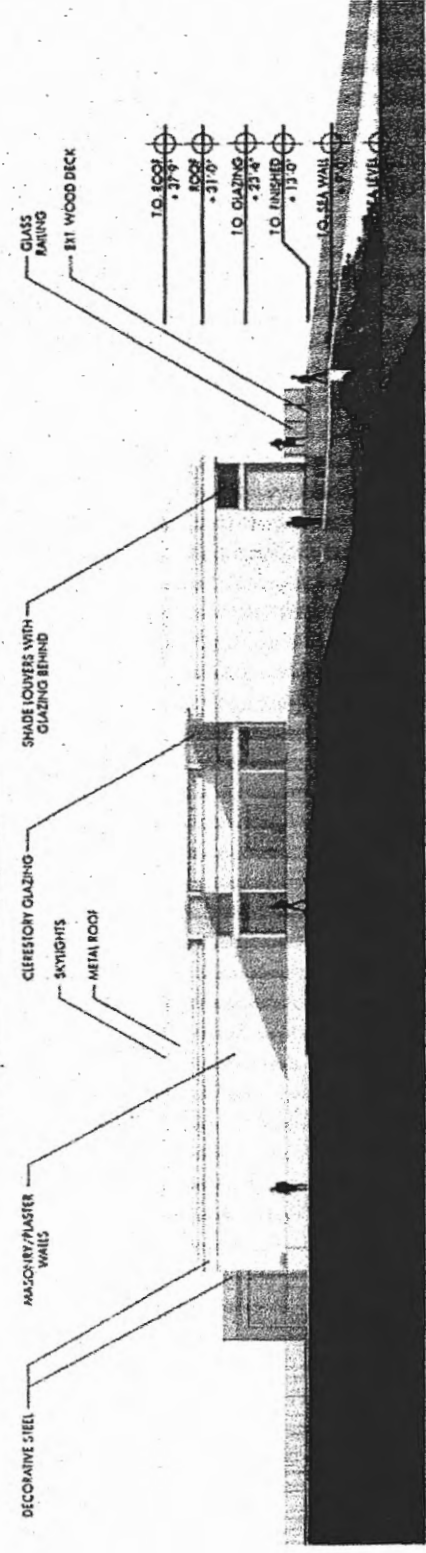
BCV

RETRACTABLE ROOF ? NOT DISCLOSED



SOUTH ELEVATION

LOCATE RETRACTABLE ROOF



NORTH ELEVATION

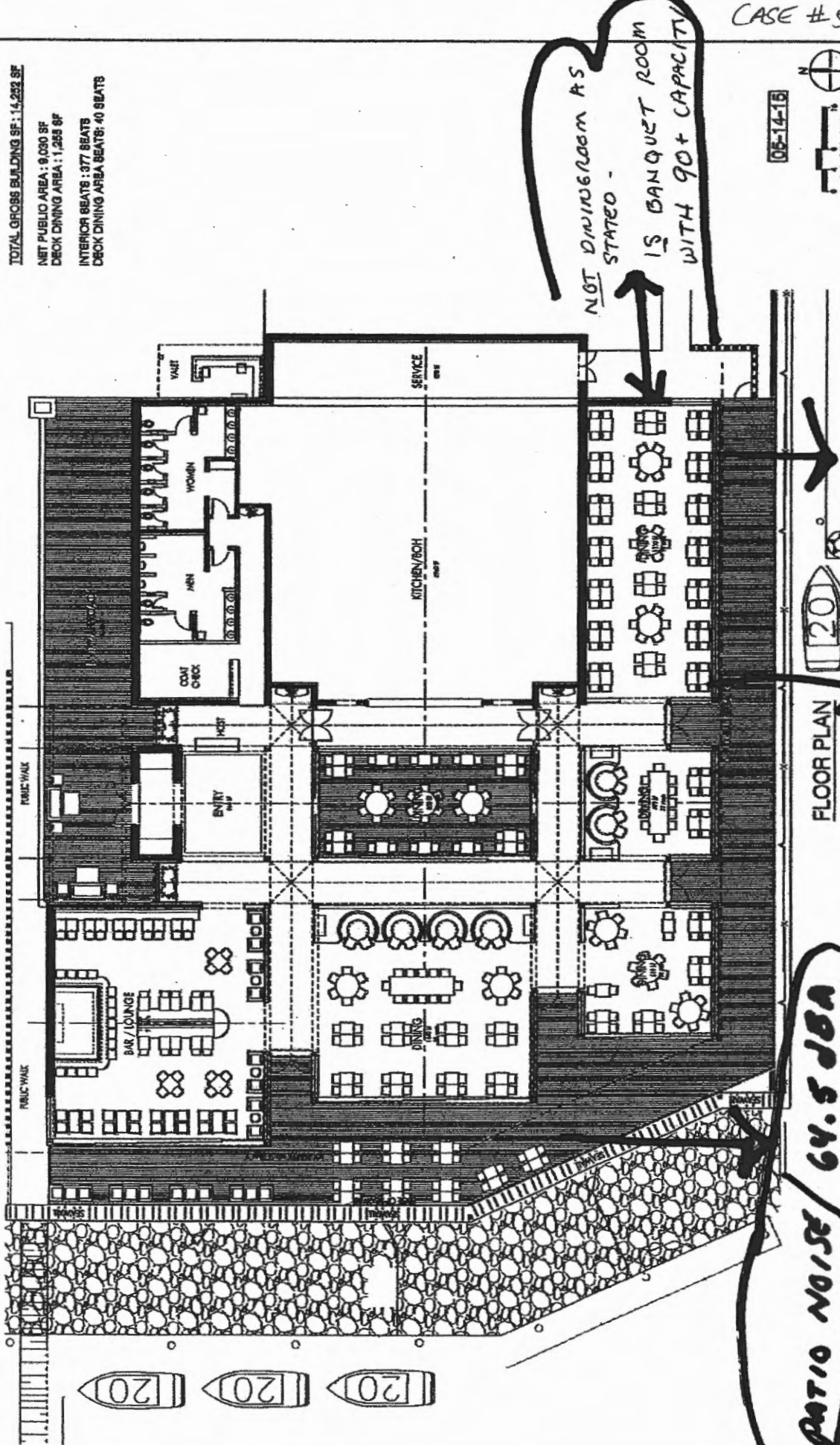
SCALE: 1/8"=1'-0"

BALBOA MARINA RESTAURANT NEWPORT BEACH, CA

© IRVINE COMPANY

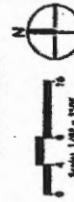
A-1

TOTAL GROSS BUILDING SF: 14,252 SF
 NET PUBLIC AREA: 9,030 SF
 DECK DINING AREA: 1,255 SF
 INTERIOR SEATS: 377 SEATS
 DECK DINING AREA SEATS: 40 SEATS



CASE #5-15-00087

05-14-16



BYRNE COMPANY

FLOOR PLAN
 BALBOA MARINA
 LINDA ISLE
 RESIDENCES
 NEWPORT BEACH, CA

Exhibit No. 1

RECEIVED
South Coast Region

AUG 17 2016

CALIFORNIA
COASTAL COMMISSION

August 12, 2016

Coastal Commission
200 Oceangate 10th floor
Long Beach, CA 90802
Att: Mr. Fernie Sy

RE: Balboa Marina West Project Case # 5-15-0087
location: 201 E. Coast Highway, Newport Beach

Dear Mr. Fernie Sy:

Re: Objections to the Balboa Marina West Project presented to Newport Beach by Jackson, DeMarco, Tidus and Peckenpaugh on behalf of Linda Isle Homeowners Ass..

On 10/2/2014, the Newport Beach Planning Commission approved the Mitigated Negative Declaration for the Balboa Marina West project, even though the project was "conceptual", giving it an "approval in concept".

On 11/25/2014, Linda Isle HOA, appealed the MND approval on the basis of CEQA violations, failure to analyze cumulative impacts with nearby projects and the lack of analysis of water and wastewater demands, aesthetic impacts, grading impacts, etc... The City Council denied the Appeal.

On 12/17/2015, the Newport Beach Planning Commission held a public hearing for Balboa Marina West Landside. Linda Isle HOA requested denial based upon impacts related to noise, glare, traffic and parking that were not specifically analyzed as part of the 2014 MND. The appeal stated that the City had violated CEQA's policy against deferred analysis and mitigation and proposed that the City conduct a new analysis. The Planning Commission approved the BMW Landside.

On 2/9/2016, the Newport Beach City Council heard Linda Isle HOA's appeal of the 12/17/15 Planning Commission decision and denied it.

Herein I am sending you the complete statements presented by Jackson,... at the 10/25/14, 12/17/15 and 2/9/16 Newport Beach meetings.

Thank you for considering the concerns expressed in these statements.

Respectfully,

Margo O'Connor

Margo O'Connor

Linda Isle resident

*90 Linda Isle
Newport Beach, CA 92660*

Jackson|DeMarco|Tidus
Peckenpaugh

A L A W C O R P O R A T I O N

RECEIVED
South Coast Region

AUG 17 2016

CALIFORNIA
COASTAL COMMISSION

October 15, 2014

Direct Dial: 949.851.7409
Email: mstaples@jdtplaw.com
Reply to: Irvine Office
File No: 6008-46360

VIA E-MAIL (lbrown@newportbeachca.gov) AND HAND DELIVERY

City Council
Attn: Leilani I. Brown, City Clerk
City of Newport Beach
Bay East, Second Floor
100 Civic Center Drive
Newport Beach, CA 92660

**Re: Notice of Appeal re: Planning Commission Approval of Balboa Marina West
Draft Initial Study/Mitigated Negative Declaration (October 2, 2014
Planning Commission Agenda Item No. 2)**

Dear Honorable Councilmembers:

We represent the Linda Isle Homeowners Association ("Linda Isle") in connection with the Draft Initial Study / Mitigated Negative Declaration No. ND2013-002 (SCH No. 2014081044), Mitigation Monitoring and Reporting Program, Responses to Comments and Errata (collectively, "MND") for the Balboa Marina West project ("Project") proposed by the City of Newport Beach ("City") and The Irvine Company ("TIC"). Linda Isle is the nearest residential community, located directly across the harbor from the Project site.

In accordance with City Municipal Code section 20.64, this letter serves as formal notice of Linda Isle's appeal of the Planning Commission's approval of the MND on October 2, 2014. We request that this letter and the attached exhibits be included as part of the administrative record for this matter.

As outlined below, the Planning Commission's approval of the MND should be rescinded for failure to comply with several requirements of the California Environmental Quality Act (Pub. Resources Code §§ 21000, *et seq.*) ("CEQA") and the CEQA Guidelines (14 Cal. Code Regs. sec. 15000, *et seq.*), including, among other things: failing to adequately analyze and mitigate potential Project-specific environmental impacts associated with aesthetics, construction noise, operational noise, vibration from pile driving, and water use impacts;

2030 Main Street, Suite 1200 Irvine, California 92614 t 949.752.8585 f 949.752.0597	2815 Townsgate Road, Suite 200 Westlake Village, California 91361 t 805.230.0023 f 805.230.0087	www.jdtplaw.com
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failing to adequately analyze and mitigate cumulative impacts of the Project together with the adjacent Planning Area 2 of the Back Bay Landing project associated with air quality, construction noise, operational noise, aesthetics, light and glare, and traffic impacts; piecemealing its analysis of the Project; and failing to provide a stable Project description. The Planning Commission erred in approving the MND despite these serious defects which, both individually and collectively, support a fair argument that the analysis in the MND is inadequate and that the Project will result in significant environmental impacts. (CEQA Guidelines, § 15063(b).) The City Council should, accordingly, vacate the Planning Commission's decision and direct Staff to revise and re-circulate the MND to incorporate the additional Project impact analyses, corrections, clarifications, and mitigation measures discussed below, or otherwise prepare an environmental impact report due to the Project's potential unmitigated significant impacts.

1. The MND Violates CEQA By Failing to Analyze and Mitigate the Potential Environmental Impacts of the Balboa Marina West Project Together With the Approved Back Bay Landing Project.

CEQA requires a lead agency to evaluate a project's cumulative impacts when "viewed in connection with the effects of past projects, the effects of other current projects, *and the effects of probable future projects.*" (CEQA Guidelines § 15065(c) (emphasis added).) Projects currently under environmental review unequivocally qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. (*See San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74, fn.13.) In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. (*Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 284.)

The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408.) The requirement of a cumulative impacts analysis of a project's regional impacts is considered a "vital provision" of CEQA. (*Bozung*, 13 Cal.3d at p. 283.) Moreover, an EIR must examine not only the anticipated cumulative impacts, but also reasonable options for mitigating or avoiding the project's contribution to significant cumulative impacts. (CEQA Guidelines, § 15130, subd. (b)(3).)

Both the MND's Response to Comments submitted by the HOA on September 17, 2014 and the City's presentation to the Planning Commission on October 2, 2014 confirm that the MND mistakenly evaluated only the cumulative impacts of the Project together with the portion of the Back Bay Landing project located north of East Coast Highway. The MND failed to analyze any potential cumulative impacts of the Planning Area 2 portion of the Back Bay Landing project located south of East Coast Highway. (Response to Comments, p. 28, and

October 2, 2014, presentation to Planning Commission [see Planning Commission hearing recording at 28:40.) The Back Bay Landing project, which is a proposed mixed-use bayfront village development, includes five proposed planning areas. Planning Areas 1, 3, 4 and 5 are located on the north side of East Coast Highway, while Planning Area 2 is located directly adjacent to the Project site on the south side of East Coast Highway. According to the City, the MND evaluated the cumulative impacts of Planning Areas 1 and 3-5, ***but did not disclose or evaluate any potential cumulative impacts of Planning Area 2.*** (See Attachment 1 to October 2, 2014, hearing submittal package [Aerial Map of Nearby Projects].) The City approved the future development of commercial and recreational marine land uses on Planning Area 2 of the Back Bay Landing project. During the October 2nd Planning Commission hearing, City staff explained that it considers the MND's failure to evaluate any environmental impacts associated with the Planning Area 2 portion of the Back Bay Landing project to be a non-issue based on the City's assumption that there couldn't be any cumulative impacts attributable to Planning Area 2. (October 2, 2014, presentation to Planning Commission [hearing recording at 1:09:50].)

Contrary to the City's statements during the October 2nd hearing, the failure to account for any impacts from Planning Area 2 of the Back Bay Landing project is a significant error that affects all of the cumulative impact analyses. For example, the MND's aesthetics analysis is clearly inadequate as the visual simulations included as Appendix L do not reflect ***any development*** on Planning Area 2 of the Back Bay Landing project. Similarly, the MND includes no analysis of the potential cumulative light and glare, noise, traffic and air quality impacts that may result from the proposed Project together with Planning Area 2 of the Back Bay Landing project during periods when both projects are being constructed or operated. In addition, although both projects obtain access from Bayside Drive, the cumulative traffic analysis does not address Planning Area 2 of the Back Bay Landing project. ***The City cannot approve findings that there would be no significant cumulative environmental impacts based upon technical studies that never even evaluated the question.*** By evaluating only a portion of the adjacent Back Bay Landing project's environmental impacts, the MND violates the cumulative impact analysis requirements of CEQA and the CEQA Guidelines.

The MND must be revised and recirculated to disclose, analyze and mitigate the potential cumulative impacts of the Balboa Marina West Project together with the entire Back Bay Landing project, including Planning Area 2.

2. **The MND Must be Revised to Include Additional Information Necessary to Analyze and Mitigate the Project's Temporary and Permanent Noise and Vibration Impacts to HOA Residents.**

The Wieland Acoustics Report prepared in connection with the Project measured noise impacts at only two locations – neither of which were on Linda Isle. (See Technical Appendix J, Wieland Report, pp. 17-18, Figure 8-1.) Rather, the MND relied entirely on outdated monitoring

data gathered in 2008-2009 by a *different consultant* (Anchor QEA) analyzing noise impacts to a Linda Isle residents for a *different project* (Balboa Marina Dock Replacement project) that fails to account for current conditions and ambient noise levels at Linda Isle. The MND and underlying Wieland Report cannot accurately analyze noise impacts to Linda Isle associated with construction and operation of the Project without current baseline noise measurements from this nearest sensitive receptor location. The MND must be revised and a supplemental noise analysis prepared that discloses and analyzes these impacts based on current, measurable data from Linda Isle, the nearest sensitive receptor most likely to be affected by the Project's construction and operational noise impacts.

The MND states that the restaurant proposed to be constructed as part of the Project, particularly music and events conducted on the restaurant's outdoor patio, has the potential to violate the City's Noise Ordinance and produce significant noise levels at residences on Linda Isle. (MND, p. 5-105.) However, based on noise measurements performed for other restaurants in the City and "taking into account the distances to the nearest residences on Linda Isle or Bayshore Drive (270' to 650')," the MND concludes that any such impacts would be less than significant and therefore mitigation is not required. In fact, the only mitigation measure included in the MND other than temporary construction mitigation, is a requirement that the applicant for the restaurant/bar/lounge/nightclub perform an acoustical study as part of any conditional use permit application to verify that the proposed business operations comply with the City's noise ordinance. (MND, p. 5-108 [MM N-1].) Additionally, the MND's analysis of construction noise impacts and mitigation is inadequate. Although the City required a noise barrier as mitigation for construction within the Back Bay Landing project's Planning Area 2, which is located farther away from Linda Isle, no such mitigation has been included for the Project. The MND is inadequate and insufficient to disclose, analyze and mitigate the Project's potential noise impacts to Linda Isle residents.

Moreover, delaying the analysis and mitigation of noise impacts to Linda Isle until after the use permit application is submitted is also a violation of CEQA's prohibition on deferred mitigation. (CEQA Guidelines, § 15126.4(a)(1)(b).) "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations.]" (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396 [conditioning a permit on "recommendations of a report that had yet to be performed" constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine*

from increased vehicles entering and leaving the site, car alarms, and other potential sources of parking lot-related noise.

Further, the MND mistakenly concludes that there is no risk of structural damage to residences on Linda Isle (or any other structures) due to low vibration impacts caused by pile driving and boring activities. This conclusion is groundless and contrary to the language in the Wieland Report acknowledging that “the risk of structural damage still exists even at relatively low vibration velocities (in particular due to dynamic settlements caused in loose soils).” (Technical Appendix J, Wieland Report, p. 15.) There is no dispute that the soils in the water bottom where the primary pile driving activities will be conducted consist of loose sand (MND, p. 5-66) thereby increasing the risk of dynamic settlement and associated structural damage. Additional information and mitigation is required regarding geology and construction methods for the proposed subterranean restaurant parking garage. The MND must be revised to incorporate additional analysis of these risks and mitigation measures designed to address the potential structural impacts to Linda Isle residences associated with the boring and pile driving activities.

Moreover, the City’s analysis in the MND regarding potential construction vibration impacts is premised on the fact that there were no such impacts to Linda Isle during construction of the 2008 marina dock replacement project. However, the 2008 project included several vibration-related mitigation measures and a monitoring program that are not included in the MND and/or required for the current Balboa Marina West project. (Response to Comments, p. 29.) The fact that fewer pilings will be installed at a distance slightly further from Linda Isle than occurred in 2008 does not mean that there will be no impacts to Linda Isle and therefore no requirement for mitigation. (*Id.*; October 2, 2014, presentation to Planning Commission [hearing recording at 1:08:00].) In order to ensure that there will be no construction vibration impacts to Linda Isle during construction of the current project, the City should, at minimum, impose the same measures and require the same monitoring program required on the 2008 project. The City cannot expect to have the same result – no impacts – without the same protective measures in place.

CEQA declares that it is the policy of the state to take all action necessary to provide the people of California with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and ***freedom from excessive noise*** [emphasis added] (Pub. Resources Code, § 21001, subd. (b).) The MND must evaluate the potential noise impacts to Linda Isle residences both during the construction period and following Project completion based on actual, measurable data. The City cannot defer its analysis of these impacts and the development of mitigation until after permit plans are submitted. (*Quail Botanical Gardens Foundation, Inc., supra*, 29 Cal.App.4th at p. 1605, fn. 4.) The City must analyze and incorporate feasible mitigation measures ***now*** to mitigate the Project’s direct and indirect noise impacts. In the

absence of such measures, the right of Linda Isle residents to quiet enjoyment of their properties will be significantly impaired.

3. The MND Must be Revised to Provide Additional Information and Analysis of the Project's Water and Wastewater Demands.

The Project proposes a two-story commercial building with up to 19,400 square feet of commercial space and tuck-under parking that would accommodate a restaurant with outdoor patio, marina bathrooms and an office for the yacht brokerage business that will be displaced from the small onsite building that is proposed for demolition, and associated landscaping. (MND, p. 3-5.) According to the Water and Wastewater Generation Estimate prepared by the City's consultant, Stantec, the water and wastewater figures were calculated based upon Land Use and Water Use factors provided by the Irvine Ranch Water District ("IRWD") for generic "Community Commercial" land uses, not for the Project's proposed restaurant, yacht brokerage business offices, public restrooms, associated landscaping, and other uses included in the Project description.

Additionally, the water use analysis does not address the January 17, 2014, Governor Proclamation No. 1-17-2014 declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the State is experiencing record dry conditions, with 2014 projected to become the driest year on record. Due to the State's dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the January Proclamation calls on all Californians to reduce their water usage by 20 percent. The MND does not analyze the Project's water use compared with existing water use at the Project site, or otherwise address how the Project's restaurant and landscape irrigation, and other water demands comply with the Proclamation.

Also, although the landscaping water use estimates are based on low water use plants. (City Response to Comments, p. 40 [Landscape Area Water Demand Calculations]), this is inconsistent with the City's assertion that a "landscape zone densely planted with trees" will block headlight impacts to residents of Linda Isle from the raised northern portion of the reconfigured parking lot, and that the Project's water conservation measures rely on cut-backs to irrigation water. (Response to Comments, p. 31 [Response to HOA Comment No. 4].) Absent this information, the MND's water/wastewater analysis is inadequate and must be revised.

4. The MND Must be Revised to Provide Additional Information and Analysis of the Project's Aesthetic Impacts.

The MND's analysis of the Project's aesthetic impacts fails to adequately address the potential light and glare impacts to Linda Isle residents from the commercial building windows, and reconfiguration and intensified use of the parking lot and internal circulation. As noted

above, the MND and information included in the Stantec grading report show that the parking area will be raised as much as 9 feet above existing grade. This increase would create the potential for vehicle headlights and parking lot lights to shine across the water directly into Linda Isle residences. Although there is currently no screening in place for the southern portion of the parking lot adjacent to the marina docks directly across from Linda Isle under existing conditions, use of this area will be significantly intensified with the new commercial building and public dock. The dense foliage referenced in the City's response to the HOA's comments (Response to Comments, p. 31) is not required by the Project's landscaping plans or mitigation measures, and there is currently no Project standard or mitigation measure requiring shielding of headlights and parking lot lights. The maintenance of dense foliage in the northern parking lot is also inconsistent with the City's reliance on cut-backs of landscape irrigation to comply with drought-level water restrictions. The MND must be revised to disclose, analyze and incorporate changes to the Project design or enforceable measures to mitigate potential light and glare from vehicles entering and leaving the Project site, such as Plexiglas shields along the perimeter of the parking lot.

In addition, the MND states that the proposed commercial building will be a maximum 40 feet high from existing grade. (MND, p. 3-5.) This is inconsistent with the City's recent approval of the development plan for Planning Area 2 of the Back Bay Landing Project, located immediately adjacent to the Project site south of the Pacific Coast Highway bridge. The original development plan for Planning Area 2 would have allowed for 35 feet for flat roofs and 40 feet for sloped roofs; however, the City revised these standards to limit building heights in Planning Area 2 to a maximum 26 feet for flat roofs or 31 feet for sloped roofs. The City should impose the same height requirements on the Project's proposed commercial building in order to reduce visual impacts and ensure consistency between development approvals in the surrounding area.

5. The MND Must be Revised to Provide Additional Information of the Project's Grading Impacts.

The MND "assumes a haul distance of one-mile as the source for imported material." (MND, p. 3-7.) There is no analysis of the potential traffic impacts associated with traveling back and forth from the source location to the Project site. In fact, neither the MND nor the April 14, 2014, Traffic Study prepared on behalf of the City by Kunzman Associates, Inc., includes any information about earthwork-related traffic impacts. These impacts could be potentially significant depending on the number of trips required to transport the material and other considerations for which there was no information or analysis provided in the MND. The City's Response to Comments to the HOA's comments states only that the Project proponent, TIC, owns several properties nearby from which the earth material would be hauled and therefore the assumption of a one-mile haul distance is "accurate." (Response to Comments, p. 32.) However, there is no specific information provided about the addresses of these properties,

their distance from the Project site and/or their capacity to store earth material. Absent this information, the MND fails to provide a full and complete analysis of the Project's grading impacts and, accordingly, must be revised.

6. The City Has "Piecemealed" the Project's Environmental Analysis and Failed to Provide a Stable Project Description.

Under CEQA, a "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (CEQA Guidelines § 15378(a).) A "'project' does not mean each separate governmental approval." (CEQA Guidelines § 15378(c).) The lead agency must consider "[a]ll phases of project planning, implementation, and operation." (CEQA Guidelines § 15063(a)(1).) CEQA prohibits a lead agency from "segmenting" or "piecemealing" a project into small parts if the effect is to avoid full disclosure of environmental impacts. The California Supreme Court has explained that the requirements of CEQA cannot be avoided by piecemeal review which results from "chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.) Rather, the examination of a "project" requires an analysis of "all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project." (*Laurel Heights Improvement Assoc. v. Regents of University of Cal* (1988) 47 Cal. 3d 376, 394.)

Likewise, "An accurate, stable and finite project description is the Sine qua non of an informative and legally sufficient EIR." (*Cnty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 3d 185, 193.)

During the October 2nd Planning Commission hearing, Dan Miller of TIC, which is a co-applicant for the Project along with the City, told the Commission that the commercial building proposed as part of the Project may or may not be a restaurant. (October 2, 2014, presentation to Planning Commission [hearing recording at 103:30].) The proposed commercial building could be any one of numerous commercial uses permitted in the Commercial Recreational and Marine (CM) zoning designation under the City's Municipal Code, each of which would involve varying degrees of noise, traffic, and other environmental impacts.

Additionally, the City has attempted to justify its failure to disclose, analyze and mitigate several of the Project-specific environmental impacts discussed above on grounds that its action is simply "approval in concept" of the Project and that the analyses will be undertaken at a later stage in the approval process. The City cannot find that the Project will not have any significant adverse environmental impacts when it has not disclosed or analyzed potential impacts of the Project's uses described in the MND. The City cannot piecemeal its CEQA analysis on the grounds that potential impacts will be evaluated and corresponding mitigation measures

developed in the future when applications for the ultimate development projects for the Balboa Marina West commercial building are submitted (CEQA Guidelines, § 15126.4(a)(1)(b)).

The MND's analysis of the Project's impacts and proposed mitigation measures is inadequate, and the Project description itself is not stable or finite, in violation of CEQA. The MND must be revised and recirculated to disclose, analyze and mitigate the potential environmental impacts of the Balboa Marina West Project as described in the MND.

7. The MND Must be Revised and Recirculated.

Under CEQA section 21068, a significant environmental impact is defined as "a substantial, or potentially substantial, adverse change in the environment." CEQA Guidelines section 15073.5 requires a lead agency to re-circulate a negative declaration when the MND must be revised to address any new, avoidable significant effect that is identified and to add mitigation measures or project revisions in order to reduce the effect to insignificance. Revision and recirculation of the MND for public comment would be required because the proposed MND has not analyzed or mitigated several "potentially substantial adverse environmental effects" discussed above. (*Vineyard*, 40 Cal.4th at pp. 447-448.)

In order for the City to approve the MND, measures must be added to fully mitigate the potential impacts discussed above. Otherwise, because there is substantial evidence in the record to support a "fair argument" that the Project may have a significant effect on the environment, CEQA would require preparation of an EIR instead of a MND. (*Citizens for Responsible & Open Government v. City of Grand Terrace*, *supra*, 160 Cal.App.4th at p. 1331; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400.)

8. Conclusion.

For the reasons set forth above and in the prior correspondence and exhibits submitted by the HOA, the HOA respectfully requests that the City Council: (i) vacate the Planning Commission's October 2, 2014, decision to approve the MND and the Project; and (ii) and direct Staff to revise and re-circulate the MND to incorporate the additional Project corrections, clarifications, and mitigation measures discussed above, or, alternatively, prepare an environmental impact report due to the Project's potential unmitigated significant impacts.

Sincerely,

Michele A. Staples

cc: City Council Members

Attn: Leilani I. Brown, City Clerk
October 15, 2014
Page 11

Planning Commission Members
Kimberly Brandt, Community Development Director
David Kiff, City Manager
Aaron C. Harp, City Attorney
Dan Miller, The Irvine Company

Attn: Leilani I. Brown, City Clerk

October 15, 2014

Page 12

bcc: Jim Jordan* (jimcjordan@gmail.com)
Bill O'Connor* (wjoc2@roadrunner.com)
Michael L. Tidus*
Paige H. Gosney*

*via email

Jackson|DeMarco|Tidus
Peckenpaugh
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CALIFORNIA
COASTAL COMMISSION

December 17, 2015

Direct Dial: 949.851.7463
Email: ebeltran@jdtplaw.com
Reply to: Irvine Office
File No: 6008-46360

VIA EMAIL (PAlford@newportbeachca.gov) AND U.S. MAIL

Patrick J. Alford, Planning Program Manager
City of Newport Beach
Community Development Dept., Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

**Re: Balboa Marina West Minor Site Development Review No. SD2015-003 and
Conditional Use Permit No. UP2015-030 (Agenda Item No. 3)**

Dear Mr. Alford:

We represent the Linda Isle Homeowners Association ("Linda Isle") in connection with the Balboa Marina West Development and, more specifically, the proposed project described in the City's staff report as follows:

"A minor site development review for a new 14,252-square-foot restaurant building with outdoor dining and a new 664-square-foot marina restroom building. And a conditional use permit for a restaurant (food service, late hours) with full alcoholic beverage service, and live entertainment, and a reduction in required off-street parking" (proposed "Project").

The Project is proposed by The Irvine Company. Linda Isle is the nearest residential community, located directly across the harbor from the proposed Project site. We request that this letter be included as part of the administrative record for this matter along with the prior correspondence, oral comments and materials submitted by Linda Isle.

As discussed in greater depth below, Linda Isle requests that the Planning Commission deny the proposed Project based upon the significant impacts to residents of Linda Isle, including impacts related to noise, glare, traffic and parking, that are newly-defined and were not specifically analyzed as part of the Mitigated Negative Declaration adopted in 2014 ("MND").

The MND reviewed a conceptual project.¹ The MND did not have any information on an actual proposed project and as a result the only analysis of the restaurant and marina restroom

¹ According to Attachment PC. 11 to the staff report for the December 17, 2015 Planning Commission meeting, the MND was prepared for "Balboa Marina West, a new public boat dock in the Newport Harbor, improvement and

components was a broad “envelope” analysis. At the public hearing held on October 4, 2014, the Commission members and the public were informed that the actual project proposal would be reviewed at a later time and would be subject to CEQA.²

The City now has a proposed Project and is disclosing design features available for review. This means it is now time for the City to conduct an environmental analysis on the potential environmental impacts of the proposed Project. This project level analysis was not a part of the MND and as a result has not been publicly vetted under CEQA.

The City must conduct a new, comprehensive analysis of the potential impacts of the proposed Specific Project discussed below in order to comply with the requirements of the California Environmental Quality Act (Pub. Resources Code §§ 21000, et seq.) (“CEQA”) and the CEQA Guidelines (14 Cal. Code Regs. sec. 15000, et seq.) or otherwise prepare an environmental impact report due to the Project’s potential unmitigated significant impacts.

For the reasons set forth in this letter, our previous letters on the record and testimony on the Project, we hereby request that the Planning Commission a) deny the Project or b) continue the hearing in order to conduct the proper CEQA impact analysis for the proposed Specific Project and/or the addition of mitigation measures to reduce significant Specific Project impacts to the Linda Isle community.

1. The City Has Violated CEQA’s Policy Against Deferred Analysis and Mitigation.

The City’s delay in disclosing, analyzing and mitigating noise and other environmental impacts to Linda Isle from when the MND was adopted until the current, newly-defined proposed Specific Project is a violation of CEQA’s prohibition on deferred analysis and mitigation. (CEQA Guidelines, § 15126.4(a)(1)(b).) “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations.]” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.)

Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396 [conditioning a permit on “recommendations of a report that had yet to be performed” constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency “simply requires a project applicant to obtain a biological report and then comply with any

expansion of the existing Balboa Marina, and the construction of a 19,400 square feet marine commercial building for a yacht brokerage office, public restrooms, and a restaurant.”

recommendations that may be made in the report”]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [“mitigation measure [that] does no more than require a report be prepared and followed, ... without setting any standards” found improper deferral]; *Sundstrom, supra*, 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4 [city is prohibited from relying on “postapproval mitigation measures adopted during the subsequent design review process”].)

Instead of describing the proposed project and performing one comprehensive and complete analysis of the proposed project’s environmental impacts under CEQA, the City evaluated an “envelope” of potential impacts for an undefined project – no actual project features – when it approved the MND in 2014. There have been several changes and modifications to the *hypothetical project* analyzed in 2014 as part of the MND and the *proposed Project* that is currently before the Planning Commission.

For the first time, the City is disclosing such basic project features as the proposed building height and configuration of the proposed restaurant building and outdoor patio. The City should, accordingly, continue the hearing in order to perform a full and complete analysis of the potential environmental impacts of the proposed Specific Project in accordance with CEQA, and develop mitigation measures intended to mitigate those potential impacts. Failure to do so deprives the public of a meaningful opportunity to comment on the proposed Project and renders any approval an impermissible post hoc rationalization.

2. The Project Fails to Adequately Analyze and Mitigate Noise Impacts to Linda Isle.

CEQA declares that it is the policy of the state to take all action necessary to provide the people of California with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and *freedom from excessive noise*. (Pub. Resources Code, § 21001, subd. (b).) The hearing on the Project should be continued to allow time for the City to evaluate, disclose and mitigate the potential noise impacts to Linda Isle residences both during the construction period and following Project completion based on actual, measurable data. The City cannot defer its analysis of these impacts and the development of mitigation until after permit plans are submitted. (*Quail Botanical Gardens Foundation, Inc., supra*, 29 Cal.App.4th at p. 1605, fn. 4.)

The October 26, 2015, Wieland Acoustics Report (“Weiland Report”) prepared in connection with the Project acknowledges that the Project will introduce several new noise sources into the area, including indoor/outdoor dining activities, live and recorded music, congregation of patrons on the outdoor patio area and parking lot activities. Despite this influx of newly disclosed noise sources caused by the Project, the Weiland Report measured noise impacts at only two locations – *neither of which were on Linda Isle*. (Attachment No. PC 5, pp. 7-8.) The Wieland Report cannot accurately analyze noise impacts to Linda Isle associated with construction and operation of the Project without current baseline noise measurements from this nearest sensitive receptor location. A supplemental noise analysis should be prepared that

discloses and analyzes these impacts based on current, measurable data from Linda Isle, the nearest sensitive receptor most likely to be affected by the Project's construction and operational noise impacts.

Further, the Weiland Report states that noise impacts from mechanical equipment, such as rooftop air conditioning units, kitchen exhaust fans and other similar equipment, was not included as part of the analysis because the restaurant building has not yet been designed. (Attachment No. PC 5, p. 1.) The omission of these impacts renders the Weiland Report incomplete and its analysis of the Project's noise impacts insufficient. A supplemental report must be prepared that addresses these impacts and analyzes them in accordance with CEQA.

The City cannot defer this analysis until the "final engineering stage" of the Project design. (Staff Report, pp. 8-9.) Deferring analysis is impermissible piecemealing. Under CEQA, a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15378(a).) A "project" does not mean each separate governmental approval." (CEQA Guidelines § 15378(c).) The lead agency must consider "[a]ll phases of project planning, implementation, and operation." (CEQA Guidelines § 15063(a)(1).) CEQA prohibits a lead agency from "segmenting" or "piecemealing" a project into small parts if the effect is to avoid full disclosure of environmental impacts. The California Supreme Court has explained that the requirements of CEQA cannot be avoided by piecemeal review which results from "chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.) Rather, the examination of a "project" requires an analysis of "all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project." (*Laurel Heights Improvement Assoc. v. Regents of University of Cal* (1988) 47 Cal. 3d 376, 394.)

In addition, the Staff Report and Weiland Report **do not include any analysis** of the impacts associated with activities in Parking Area B, including noise associated with vehicles entering and leaving the parking area late at night within the impact area of the homes on Linda Isle. Staff Report downplays noise impacts from this area, such as car doors closing, car alarms, loud stereos, and patrons talking, by characterizing them as mere "single event noise disturbances." (Staff Report, p. 7.) This is insufficient and does not relieve the City of the obligation to disclose, analyze and mitigate the impacts of noise from these sources to Linda Isle residents, whether on an individual or collective basis.

Moreover, the Staff Report acknowledges that the Weiland Report did not "specifically address noise from valet operations" in Parking Area B. (Staff Report, p. 7.) Instead, a general recommendation to add signs to this area asking patrons to "keep noise at a minimum" is included as a condition of approval. There is, however, no assurance that such signs will have any practical effect. The City should perform a **real analysis** of the noise impacts from this area and impose **meaningful mitigation measures** to reduce these impacts on Linda Isle residents and others in the surrounding community.

In addition, there is no analysis of potential noise impacts from pedestrians walking to and from the parking areas and the proposed restaurant along the marina frontage. The Project does include a designated public pedestrian walkway that will direct pedestrians from the parking areas along East Coast Highway to the restaurant and public docks; however, there is no impediment or restriction that would prevent these same pedestrians and restaurant customers from choosing to instead walk along the docks within much closer proximity to Linda Isle residences. Allowing public access along the south side of the commercial building by late night revelers and customers of the proposed restaurant and visitors to the public dock would generate additional noise impacts to Linda Isle residents above and beyond the impacts attributable to the restaurant and outdoor patio. The City must, accordingly, consider and analyze these additional potential noise impacts and incorporate measures to restrict public pedestrian access along the private Balboa Marina portion of the Project site.

Additionally, the significance of the operational noise impacts of the Project on Linda Isle residents was not disclosed or evaluated in the MND. The proposed restaurant and nightclub is proposed to operate until *2:00 a.m. daily*, with a last call until 1:30 a.m. daily. The outdoor patio area will remain open until *12:00 a.m. daily*. Further, *amplified sound* at the restaurant will be permitted until *1:00 a.m. daily*. Although the Project's Conditions of Approval contain some noise mitigation recommendations, these are not sufficient to reduce impacts to Linda Isle residents.

For example, limiting restaurant dining to the west side of the outdoor patio which does not directly face Linda Isle will not prevent noise from restaurant patrons seated on the patio from reaching Linda Isle residents, particularly during late night hours. Further, this does not account for noise caused by patrons and pedestrians who can freely access the south portion of the patio facing Linda Isle and the marina frontage walkway. In addition, while Linda Isle appreciates the proposal to require that fixed windows be installed and that all windows and doors to be shut when recorded or live music is being played or after 10:00 p.m., this will not mitigate sound from restaurant workers and patrons traveling from inside of the restaurant to the outside patio deck, during which time the doors would be open and amplified sound and other noise would escape and significantly impact Linda Isle residents.

Further, simply prohibiting deliveries, loading and unloading, and trash removal from the loading dock area which directly faces Linda Isle during the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and 10:00 p.m. and 9:00 a.m., is insufficient. Noise impacts from the loading dock area are significant and will directly interfere with the quiet use and enjoyment of Linda Isle residents' homes.

The City must analyze and incorporate feasible mitigation measures now to analyze, disclose and mitigate the Project's direct and indirect noise impacts, including, but not limited to:

- 1) prohibiting amplification;
- 2) requiring installation of sound attenuating windows at the restaurant's south side;
- 3) prohibiting any patio or other outdoor use of the restaurant's south side closest to Linda Isle; and
- 4) restricting public pedestrian access along the private Balboa Marina portion of the Balboa Marina West Development site.
- 5) Restricting live entertainment to a piano, or one or more musicians playing amplified guitars with accompanying vocals.³

In the absence of such measures, the right of Linda Isle residents to quiet enjoyment of their properties will be significantly impaired.

In sum, the Project should be denied or, alternatively, continued in order to permit sufficient time for the City to disclose, analyze and mitigate the significant noise impacts associated with the newly-defined Project, as required under CEQA.

3. The Project Fails to Adequately Analyze or Mitigate Potential Light and Glare Impacts to Linda Isle.

The Staff Report and related Project documents fail to adequately address the potential light and glare impacts to Linda Isle residents from the commercial building windows, parking lot and internal circulation within the reconfigured parking area. The MND and information included in the Stantec grading report prepared in connection with the MND indicate that the parking area will be raised as much as 9 feet above existing grade. This increase would create the potential for vehicle headlights to shine across the water directly into Linda Isle residences. Linda Isle appreciates that a 3-foot high landscaped area between the parking lot and the southern waterfront will be included as part of the Project to reduce glare and light impacts to Linda Isle residents; however, additional measures, such as Plexiglas shields, should also be required in order to mitigate potential light and glare from vehicles entering and leaving the Project site. Similarly, the requirement under Condition 20 that the commercial building "incorporate" non-reflective materials and colors is commendable; however, additional

³ The staff report (p.4) states: "live entertainment would be in the form of a disc jockey (DJ) or other form of live entertainment, such as musicians and other forms of amplification sound. The technical noise study prepared by the applicant assumes that live entertainment would consist of a piano, or one or more musicians playing amplified guitars with accompanying vocals." Because the technical study did not analyze the noise impacts from a live DJ, a live DJ must not be permitted.

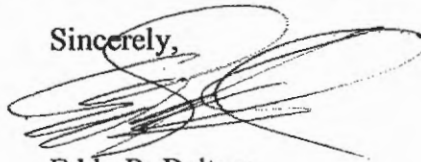
mitigation and performance standards are needed to ensure that residents of Linda Isle are not significantly impacted by light and glare from the Project site.

4. **Conclusion.**

For the reasons set forth in this letter, our previous letters on the record and testimony on the Project, we hereby request that the Planning Commission a) deny the Project or b) continue the hearing to allow for the required impact analysis and the addition of mitigation measures to reduce impacts to the Linda Isle community.

Thank you for your consideration of these comments to the proposed Project. We would be happy to provide additional information to assist the City in complying with CEQA and reducing the Project's impacts on Linda Isle residents and members of the HOA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eddy R. Beltran', with a large, stylized flourish extending from the end of the signature.

Eddy R. Beltran

cc: City Council Members
Planning Commission Members
Kimberly Brandt, Community Development Director
David Kiff, City Manager
Aaron C. Harp, City Attorney
Dan Miller, The Irvine Company

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December 23, 2015

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Reply to: Irvine Office
File No: 6008-46360

VIA E-MAIL (lbrown@newportbeachca.gov) & HAND DELIVERY

City Council
Attn: Leilani I. Brown, City Clerk
City of Newport Beach
Bay East, Second Floor
100 Civic Center Drive
Newport Beach, CA 92660

**Re: Notice of Appeal re: Planning Commission Approval of Balboa Marina West
Minor Site Development Review No. SD2015-003, and Conditional Use
Permit No. UP2015-030 (December 17, 2015, Planning Commission Agenda
Item No. 3)**

Dear Honorable Council Members:

We represent the Linda Isle Homeowners Association ("Linda Isle") in connection with the Balboa Marina West Development and, more specifically, the proposed "14,252-square-foot restaurant building with outdoor dining and a new 664-square-foot marina restroom building. And a conditional use permit for a restaurant (food service, late hours) with full alcoholic beverage service, and live entertainment, and a reduction in required off-street parking" approved by the City Planning Commission on December 17, 2015 (the "Project"). The Project is proposed by The Irvine Company ("TIC"). Linda Isle is the nearest residential community, located directly across the harbor to the south of the proposed Project site.

In accordance with City Municipal Code section 20.64, this letter serves as formal notice of Linda Isle's appeal of the Planning Commission's December 17, 2015, approval of the minor site development review and conditional use permit for the Project. We request that this letter be included as part of the administrative record for this matter along with the prior correspondence, oral comments and materials submitted by Linda Isle.

As outlined below, the Planning Commission's approval of the Project should be rescinded based upon the significant, unmitigated impacts to residents of Linda Isle, including impacts related to noise, glare, traffic and parking, that are newly-defined and were not specifically analyzed as part of the conceptual project reviewed in connection with the Mitigated

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Exhibit No. 1
Page 42 of 62

Negative Declaration adopted in 2014 ("MND").¹ The MND did not have any information on an actual proposed project and as a result the only analysis of the restaurant and marina restroom components was a broad "envelope" analysis. At the public hearing held on October 4, 2014, for the MND, the Commission members and the public were informed that the actual project proposal would be reviewed at a later time and would be subject to the California Environmental Quality Act (Pub. Resources Code, §§ 21000, et seq.) ("CEQA"). This was reaffirmed by the City Council during the November 25, 2014, hearing regarding Linda Isle's appeal of the MND, and in discussions with the City Attorney following the denial of Linda Isle's appeal. The City-approved conceptual "project" that was analyzed as part of the MND was not a proposed project and was never submitted to the California Coastal Commission.

The Project that was approved by the Planning Commission on December 17, 2015, discloses certain design features and long term operations that were not previously subjected to environmental review for potential environmental impacts under CEQA. This project level analysis was not a part of the MND and, as a result, the Project has not been publicly vetted under CEQA. The Planning Commission's approval of the Project under these circumstances was premature and violates CEQA and the Linda Isle community's due process rights. The City Council should, accordingly, vacate the Planning Commission's decision and direct Staff to conduct a new, comprehensive analysis of the potential impacts of the proposed Project in order to comply with the requirements of CEQA and the CEQA Guidelines (14 Cal. Code Regs., §§ 15000, et seq.) or otherwise prepare an environmental impact report due to the Project's potential unmitigated significant impacts.

1. The City Has Violated CEQA's Policy Against Deferred Analysis and Mitigation.

The City's delay in disclosing, analyzing and mitigating noise and other environmental impacts to Linda Isle from when the MND was adopted until the current, newly-defined proposed Project is a violation of CEQA's prohibition on deferred analysis and mitigation. (CEQA Guidelines, § 15126.4(a)(1)(b).) "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations.]" (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.)

Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396 [conditioning a permit on "recommendations of a

¹ According to Attachment PC. 11 to the Staff Report for the December 17, 2015, Planning Commission meeting, the MND was prepared for "Balboa Marina West, a new public boat dock in the Newport Harbor, improvement and expansion of the existing Balboa Marina, and the construction of a 19,400 square feet marine commercial building for a yacht brokerage office, public restrooms, and a restaurant."

report that had yet to be performed” constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency “simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report”]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [“mitigation measure [that] does no more than require a report be prepared and followed, ... without setting any standards” found improper deferral]; *Sundstrom, supra*, 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4 [city is prohibited from relying on “postapproval mitigation measures adopted during the subsequent design review process”].)

Instead of describing the proposed project and performing one comprehensive and complete analysis of the proposed project’s environmental impacts under CEQA, the City evaluated an “envelope” of potential impacts for an undefined project – no actual project features – when it approved the MND in 2014. There have been several changes and modifications to the *hypothetical project* analyzed in 2014 as part of the MND and the *proposed Project* that was approved by the Planning Commission on December 17, 2015, and is the subject of this appeal.

For the first time, the City is disclosing such basic project features and operations as the proposed building height and configuration of the proposed restaurant building and outdoor patio, and amplified music that will result in noise levels in excess of those allowable under the City’s noise standards. The City should, accordingly, rescind the Planning Commission’s approval of the Project in order to perform a full and complete analysis of the potential environmental impacts of the proposed Project in accordance with CEQA, and develop mitigation measures intended to mitigate those potential impacts. Failure to do so deprives the public of a meaningful opportunity to comment on the proposed Project and renders the Planning Commission’s December 17, 2015, approval of the Project an impermissible post hoc rationalization.

2. The Project Fails to Adequately Analyze and Mitigate Noise Impacts to Linda Isle.

CEQA declares that it is the policy of the state to take all action necessary to provide the people of California with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and *freedom from excessive noise*. (Pub. Resources Code, § 21001, subd. (b).) The Planning Commission’s decision to approve the Project without the necessary sound attenuation measures must be vacated to allow time for the City to evaluate, disclose and mitigate the potential noise impacts to Linda Isle residences both during the construction period and following Project completion based on actual, measurable data in accordance with CEQA. The City cannot defer its analysis and mitigation of these impacts and the development of mitigation until after permit plans are submitted. (*Quail Botanical Gardens Foundation, Inc., supra*, 29 Cal.App.4th at p. 1605, fn. 4.)

The October 26, 2015, Wieland Acoustics Report (“Weiland Report”) prepared in connection with the Project acknowledges that the Project will introduce several new noise

sources into the area, including indoor/outdoor dining activities, live and recorded music, congregation of patrons on the outdoor patio area and parking lot activities. Despite this influx of newly disclosed noise sources caused by the Project, the Weiland Report measured noise impacts at only two locations – *neither of which were on Linda Isle*. (Attachment No. PC 5, pp. 7-8; see also Attachment A [October 29-31, 2014, e-mail chain].) The Weiland Report cannot accurately analyze noise impacts to Linda Isle associated with construction and operation of the Project without current baseline noise measurements from this nearest sensitive receptor location. A supplemental noise analysis should be prepared that discloses and analyzes these impacts based on current, measurable data from Linda Isle, the nearest sensitive receptor most likely to be affected by the Project's construction and operational noise impacts.

The Weiland Report concluded that certain noise attenuation measures must be undertaken in order to prevent excessive noise to the Linda Isle community. (Weiland Report, § 6, pp. 12-13.) Nevertheless, in approving the Project, the Planning Commission modified the Project to remove certain of those noise attenuation measures.

Further, the Weiland Report states that noise impacts from mechanical equipment, such as rooftop air conditioning units, kitchen exhaust fans and other similar equipment, was not included as part of the analysis because the restaurant building has not yet been designed. (Attachment No. PC 5, p. 1.) The omission of these impacts renders the Weiland Report incomplete and its analysis of the Project's noise impacts insufficient. A supplemental report must be prepared that addresses these impacts and analyzes them in accordance with CEQA.

The City cannot defer this analysis and mitigation until the "final engineering stage" of the Project design. (Staff Report, pp. 8-9.) Deferring analysis is impermissible piecemealing. Under CEQA, a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (CEQA Guidelines, § 15378(a).) A "project" does not mean each separate governmental approval." (CEQA Guidelines, § 15378(c).) The lead agency must consider "[a]ll phases of project planning, implementation, and operation." (CEQA Guidelines, § 15063(a)(1).) CEQA prohibits a lead agency from "segmenting" or "piecemealing" a project into small parts if the effect is to avoid full disclosure of environmental impacts. The California Supreme Court has explained that the requirements of CEQA cannot be avoided by piecemeal review which results from "chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.) Rather, the examination of a "project" requires an analysis of "all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project." (*Laurel Heights Improvement Assoc. v. Regents of University of Cal* (1988) 47 Cal. 3d 376, 394.)

In addition, the December 17, 2015, Planning Commission Staff Report and Weiland Report **do not include any analysis** of the impacts associated with activities in Parking Area B, including noise associated with vehicles entering and leaving the parking area late at night within the impact area of the homes on Linda Isle. The Staff Report downplays noise impacts from this

area, such as car doors closing, car alarms, loud stereos, and patrons talking, by characterizing them as mere "single event noise disturbances." (Staff Report, p. 7.) This is insufficient and does not relieve the City of the obligation to disclose, analyze and mitigate the impacts of noise from these sources to Linda Isle residents, whether on an individual or collective basis.

Moreover, the Staff Report acknowledges that the Weiland Report did not "specifically address noise from valet operations" in Parking Area B. (Staff Report, p. 7.) Instead, a general recommendation to add signs to this area asking patrons to "keep noise at a minimum" is included as a condition of approval. There is, however, no assurance that such signs will have any practical effect. The City should perform a *real analysis* of the noise impacts from this area and impose *meaningful mitigation measures* to reduce these impacts on Linda Isle residents and others in the surrounding community.

In addition, there is no analysis of potential noise impacts from pedestrians walking to and from the parking areas and the proposed restaurant along the marina frontage. The Project does include a designated public pedestrian walkway that will direct pedestrians from the parking areas along East Coast Highway to the restaurant and public docks; however, there is no impediment or restriction that would prevent these same pedestrians and restaurant customers from choosing to instead walk along the docks within much closer proximity to Linda Isle residences. Allowing public access along the south side of the commercial building by late night revelers and customers of the proposed restaurant and visitors to the public dock would generate additional noise impacts to Linda Isle residents above and beyond the impacts attributable to the restaurant and outdoor patio. The City must, accordingly, consider and analyze these additional potential noise impacts and incorporate measures to restrict public pedestrian access along the private Balboa Marina portion of the Project site.

Additionally, the significance of the operational noise impacts of the Project on Linda Isle residents was not disclosed or evaluated in the MND. The proposed restaurant and nightclub is proposed to operate until **2:00 a.m. daily**, with a last call until 1:30 a.m. daily. The outdoor patio area will remain open until **12:00 a.m. daily**. Further, **amplified sound** at the restaurant will be permitted until **1:00 a.m. daily**. Although the Project's Conditions of Approval contain some noise mitigation recommendations, these are not sufficient to reduce impacts to Linda Isle residents.

For example, limiting restaurant dining to the west side of the outdoor patio which does not directly face Linda Isle will not prevent noise from restaurant patrons seated on the patio from reaching Linda Isle residents, particularly during late night hours. Further, this does not account for noise caused by patrons and pedestrians who can freely access the south portion of the patio facing Linda Isle and the marina frontage walkway. In addition, while Linda Isle appreciates the proposal to require that fixed windows be installed and that all windows and doors to be shut when recorded or live music is being played or after 10:00 p.m., this will not mitigate sound from restaurant workers and patrons traveling from inside of the restaurant to the outside patio deck, during which time the doors would be open and amplified sound and other noise would escape and significantly impact Linda Isle residents.

Further, simply prohibiting deliveries, loading and unloading, and trash removal from the loading dock area which directly faces Linda Isle during the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and 10:00 p.m. and 9:00 a.m., is insufficient. Noise impacts from the loading dock area are significant and will directly interfere with the quiet use and enjoyment of Linda Isle residents' homes.

The City must analyze and incorporate feasible mitigation measures now to analyze, disclose and mitigate the Project's direct and indirect noise impacts, including, but not limited to:

- 1) prohibiting amplification;
- 2) requiring installation of sound attenuating windows at the restaurant's south side;
- 3) prohibiting any patio or other outdoor use of the restaurant's south side closest to Linda Isle;
- 4) restricting public pedestrian access along the private Balboa Marina portion of the Balboa Marina West Development site; and,
- 5) restricting live entertainment to a piano, or one or more musicians playing amplified guitars with accompanying vocals.²

In the absence of such measures, the right of Linda Isle residents to quiet enjoyment of their properties will be significantly impaired. Furthermore, during the December 17, 2015, Planning Commission meeting, the Commission removed the mitigation measure requiring that certain sliding doors to the outdoor patio deck remain closed during periods of amplified sound inside the restaurant. ***The Commission removed this mitigation measure despite the fact that it was identified by the City's own noise expert in the Weiland Report as necessary to avoid significant adverse noise impacts to Linda Isle.*** The City Council must, at minimum, reinstate this mitigation measure for the Project in addition to those additional measures discussed above.

In sum, the Planning Commission's approval of the Project should be vacated in order to permit sufficient time for the City to disclose, analyze and mitigate the significant noise impacts associated with the newly-defined Project, as required under CEQA and basic due process protections.

² The Planning Commission's December 17, 2015, Staff Report (p.4) states: "live entertainment would be in the form of a disc jockey (DJ) or other form of live entertainment, such as musicians and other forms of amplification sound. The technical noise study prepared by the applicant assumes that live entertainment would consist of a piano, or one or more musicians playing amplified guitars with accompanying vocals." Because the technical study did not analyze the noise impacts from a live DJ, a live DJ must not be permitted.

3. **The Project Fails to Adequately Analyze or Mitigate Potential Light and Glare Impacts to Linda Isle.**

The December 17, 2015, Staff Report and related Project documents fail to adequately address the potential light and glare impacts to Linda Isle residents from the commercial building windows, parking lot and internal circulation within the reconfigured parking area. The MND and information included in the Stantec grading report prepared in connection with the MND indicate that the parking area will be raised as much as 9 feet above existing grade. This increase would create the potential for vehicle headlights to shine across the water directly into Linda Isle residences. Linda Isle appreciates that a 3-foot high landscaped area between the parking lot and the southern waterfront will be included as part of the Project to reduce glare and light impacts to Linda Isle residents; however, additional measures, such, as Plexiglas shields, should also be required in order to mitigate potential light and glare from vehicles entering and leaving the Project site. Similarly, the requirement under Condition 20 that the commercial building "incorporate" non-reflective materials and colors is commendable; however, additional mitigation and performance standards are needed to ensure that residents of Linda Isle are not significantly impacted by light and glare from the Project site.

4. **Conclusion.**

For the reasons set forth above and in the prior correspondence and exhibits submitted by Linda Isle, Linda Isle respectfully requests that the City Council: (i) vacate the Planning Commission's December 17, 2015, decision to approve the Project; and (ii) and direct Staff to conduct a new, comprehensive analysis of the potential impacts of the proposed Project in accordance with CEQA or otherwise prepare an environmental impact report due to the Project's potential unmitigated significant impacts.

Sincerely,



Michele A. Staples

Enclosure

cc: City Council Members
Planning Commission Members
Kimberly Brandt, Community Development Director
David Kiff, City Manager
Aaron C. Harp, City Attorney
Dan Miller, The Irvine Company

OCT 6 2016

California Coastal Commission
200 OceanGate 10th floor
Long Beach, CA 90802 Att.: Mr. Fernie Sy

September 30, 2016

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Sy:

In reading my files about this project, I notice some additional points I would like to highlight.

1. The Newport Beach Planning Commission STAFF report noted that sliding windows should be fixed on the South side due to likelihood of noise levels exceeding allowed levels and the effect of this noise (until 2 a.m. nightly) on the nearby homes on Linda Isle. The Staff noted agreement on this from NB Police Department.

However, the Commission approved sliding windows so as to allow the applicant "flexibility".

2. The STAFF report also noted that there was a shortfall of 62 parking spaces.

The applicant's only solution was to use an additional 16 spaces at its "nearby" property (Bayside Restaurant) - over 3/4 mile away. The City approved despite city requirements.

3. The STAFF noted the potential connection to the BackBay Landing, which has a 12' wide public access walkway. The STAFF recommended a 10' path. The City approved an 8' path!

4. Operating until 2 a.m. will contribute to unsafe driving by autos on Coast Highway and by watercraft in the harbor due to the "bar crowd" leaving the restaurant/nightclub. The STAFF report states that the Newport Beach Police Dept. shows this reporting district to have 10% more crimes than other districts and attributes the excess to alcohol. (42% of arrests are DUI's).

5. The critical area above, near, and below the Dover Bridge is already stressed and will soon be further compromised by the approved BackBay Landing project (residential, retail, dry dock facility for 100+ boats), the Newport Dunes Event Center (permitting 5,000+ attendees), and the proposed Mariner's Mile and Lower Castaways projects.

6. The proposal has changed from 21 docks (12 Public and 9 Private) and NO restaurant to the latest proposal of 36 docks (12 Public and 24 Private) and a 14,000+ sq. ft. Restaurant/Nightclub (largest in Newport Beach). HOA Minutes of 2012 Irvine Co. meeting are attached.

7. Not All the recent and proposed projects in Newport Beach (Fashion Island Condominiums, Museum House, etc...) require California Coastal Commission approval. However, they will all impact the traffic on Coast Highway and the critical Dover Bridge area.

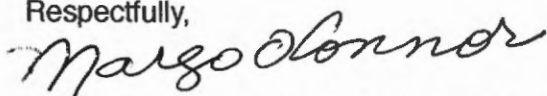
This project, landslide and marine side, is too large and the hours of the restaurant/nightclub are too long. There is no allowance for the cumulative effects of this project and others approved or being planned for the area (Back bay Landing, Mariner's Mile, Newport Dunes Event Center, and Lower Castaways).

The above concerns, along with those I presented in my 6/2/16 letter, further demonstrate that this project was rushed through with a Mitigated Negative Declaration and approved by a Planning Commission and City Council that is supporting excessive development in this city.

The area involved is one of the most critical, iconic areas in Newport Beach Harbor.

PLEASE HELP THIS AREA REMAIN AS SAFE AND ENJOYABLE AS POSSIBLE FOR
BOATERS, NEARBY RESIDENTS, AND THE GENERAL PUBLIC.

Respectfully,



Margo O'Connor 90 Linda isle Newport Beach, CA 92660 moconn949@gmail.com

**LINDA ISLE COMMUNITY ASSOCIATION
SPECIAL TOWN HALL MEETING
RE: BALBOA MARINA/PUBLIC BOAT SLIPS
FEBRUARY 7, 2012
MINUTES**

I. CALLED TO ORDER – 5:45 P.M.

II. GUEST: Mayor Nancy Gardner
Councilman Ed Selich
Chris Miller – City of Newport Beach
Representatives from the Irvine Company
Dan Miller
Robin Leftwich
Greg Sinks
Consultants
Tom Mathews
Randy Mason

III. DISCUSSION: A joint project between the Irvine Company
and the City of Newport Beach

Move the guest docks to the area where the
Ruben E. Lee was located.

Randy Mason Of URS Design said they are
proposing to put in 12 – 14 guest slips, 20' – 25'
in length which would have an independent
gangway. They are also proposing to put in
9 additional slips to the Marina on the south
side of the guest docks. These 9 slips will
accommodate 40' to 80' yachts.

Chris Miller said this will create more
public access and there will be security
and sound control.

Mayor Nancy Gardner said that having
guest docks is a requirement of the Coastal
Commission.

Heated and emotional discussion occurred from the homeowners in attendance.

Mayor Gardner asked that the homeowners help them to make it better since they have to have the new guest docks.

The Irvine Company is paying for the additional docks. This is their private property.

A question was asked if they were also planning a restaurant on this location and Dan Miller said it was not in the plans at this time.

Mayor Gardner thanked the residence for the special town hall meeting.

ADJOURNMENT

The meeting was adjourned at 6:30 P.M.



September 6, 2016

Coastal Commission
200 Oceangate 10th floor
Long Beach, CA 90802

Attn: Mr. Fernie Sy

Re: Case # 5-15-00087

Location: 201 E. Coast Highway, Newport Beach, CA 92660

RECEIVED
South Coast Region

SEP 14 2016

CALIFORNIA
COASTAL COMMISSION

The Irvine Co. is seeking Coastal Commission approval for its plan to add 33 more docks to the Balboa Marina and also a 9,000+ sq. ft. restaurant/nightclub with live entertainment, outdoor dining, and operating nightly until TWO a.m.

The Linda Isle Homeowner's Association is concerned that Linda Isle residents and the general public will be adversely affected by this project.

Areas of concern are:

- A) 33 new docks are proposed to be constructed, partially over public land, which will eliminate views for the public and many residents of Linda Isle, and affect safe navigation near and under the Dover bridge.
- B) Parking is totally inadequate for the combined restaurant, proposed docks, and existing restaurants.
- C) The general public will suffer due to the increased traffic on Dover Bridge and Coast Highway.
- D) Operating the restaurant past 11 PM until 2 AM will attract the "bar crowd" which will have a detrimental effect on highway safety.

We hope that the Coastal Commission will take into consideration all the arguments that were submitted and presented by Jackson, DeMarco, Tidus and Peckenpaugh at the 10/25/2014, 12/17/2015 and 2/9/2016 Newport Beach City meetings as well as all the letters written by Linda Isle residents.

The attorney's arguments and resident letters were submitted to your office and are in your files.

Respectfully,

Linda Isle Community Association Board of Directors

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South Coast Region

JUN 9 2016

CALIFORNIA
COASTAL COMMISSION

June 2, 2016

Coastal Commission
200 OceanGate 10th floor
Long Beach, CA 90802
ATT: Mr. Fernie Sy

Re: Case # 5-15-0087
location: 201 E. Coast Highway, Newport Beach

Dear Mr. Fernie Sy:

On Wednesday, May 11, 2016, I spoke before the Coastal Commission that was meeting in Newport Beach. During my 3 minutes, I asked the Commissioners and Staff to please visit this iconic location whose character will be totally changed by the Balboa Marina West project. I pointed out that the view of Newport Beach Harbor as one drives over the Dover Bridge is, in fact, the only view of the water from the time one leaves Huntington Beach and drives on Coast Highway all the way through Newport Beach and Corona del Mar. That view is very brief but beautiful. Also, the parking lot south of the Bridge, nearest the harbor, is where the public can enjoy the view (as families often do, especially on weekends).

Eight years ago, The Irvine Co. reconfigured the Basin Marina so that there were fewer but larger new docks that could accommodate luxury yachts (i.e. much higher rent docks). The marina is full. Now they wish to add 24 more private docks for yachts up to 80 feet. The project will include 9 public slips. However, they are removing 4 public docks that were part of the reconfiguration eight years ago so, in reality, they are only adding 5 new public docks and in return want 24 more high rent docks which will change the views of the harbor from the Dover Bridge, Coast Highway and parking lot.

Many boats enter the Back Bay under the Dover Bridge. Besides the boaters that live in the Back Bay communities, there are the many boaters that use the only Boat Launch Ramp in Newport Beach, located in the Back Bay. In addition, the Coastal Commission has already approved a new Dry Dock Boat Storage facility (140 boats) as part of the Back Bay Landing project. As of now there is room for all boats and paddle boarders and kayakers who rent their equipment on the Back Bay side of the Bridge can hug the eastern shore and then keep to the side channels of the harbor, if they wish. Imagine 24 more luxury boats docked west of the Marina, and you will see that all the boat traffic under the Dover Bridge must necessarily move westward. Kayakers and paddle boarders will need to do that also, mingling with the boats that make their way under the Bridge. Irvine Co. does not own the water for the Marineside part of this project but they say they "control" it via lease. Does that give them the right to change the present Coastal views or make the navigation in this critical area less safe??

In addition to the docks, the Irvine Co, will build a 9,000+ sq. ft. restaurant/nightclub (the largest in Newport Beach) with live entertainment and operating nightly until 2 a.m.. This is not a family dining establishment. If you stand at the rail and look at the harbor, that is exactly where this huge building will be located and the view that you can enjoy today and has been enjoyed for decades will only be available in the future to patrons of the restaurant/nightclub that Irvine Co. plans to build there.

Furthermore, the Coastal Commission approved, as part of the BackBay Landing project, a Public Walkway that extends under the Dover Bridge. In this project, that walkway would not continue. As soon as it reaches Irvine Co. property, the walkway would turn back toward the Coast Highway. Harbor Views from Irvine Co. property are reserved for restaurant/nightclub patrons.

In conclusion, I am hoping that the Coastal Commission's mission to conserve California's coast for the enjoyment of Everyone will supersede Irvine Co's desire for more docks for luxury yachts and a very large, expensive restaurant/nightclub on the shore of the Marina.

Respectfully,

Margo O'Connor
90 Linda Isle
Newport Beach, CA 92660
moconn949@gmail.com

Sy, Fernie@Coastal

From: Kurt Toney <kurttoneys@gmail.com>
Sent: Monday, August 22, 2016 5:27 PM
To: Margo O'Connor; Sy, Fernie@Coastal; Shelly Sterling
Cc: Jim Jordan; Sheree Vaughan; Zac Eglit; David Moore; Kathryn Moore; Bill; Douglas C. Liechty; Linda Crean
Subject: Re: Case#5-15-0087 Balboa Marina West

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Date: 8.20.16

To: Coastal Commission

200 Oceangate 10th floor Long Beach, CA 90802

Att: Mr Fernie Sy

Re: Case # 5-15-00087

Location: 201 E. Coast Highway, Newport Beach

Dear Mr. Fernie Sy: The Irvine Co. is seeking Coastal Commission approval for its plan to add 33 more docks to the Balboa Marina and also a 9,000+ sq. ft. restaurant/nightclub with live entertainment, outdoor dining, and operating nightly until TWO a.m.

We detail an important concern below:

Pubic safety and hazards to navigation: central to any consideration to expand rental boating docks, should consider the location of proposed

dock increases, the high volume of multi-modal traffic on the water that intersects at this inlet with the channel and adjacent to bridge abutments. On any weekend one could spend an hour and see the non stop traffic consisting of SUP (stand up paddlers), little motorized boats, large ocean going vessels, sail boats, fishing boats, paddlers with children, paddlers with dogs, a remarkable diversity of craft with close calls and near misses we see on a daily basis. Now then, shrink the channel at this critical high volume intersection and add a large number of inexperienced, (some intoxicated) boaters launching and landing into this mix and we believe there is a recipe for accidents, injury and possible loss of life. We believe further traffic and navigational studies, at minimum should be undertaken to confirm this to be an acceptable risk for the people of California and The City of Newport Beach.

Respectfully, I thank you in advance for listening to our concerns and know you will take the course of carefully reconsidering the health and safety ramifications and potential risks and civic liability associated with the inappropriate and unsafe addition of the boating slips incorporated in the proposal referenced above.

Sincerely yours,

Kurt Toney 424.234.0552

For: Shelley Sterling

#91 Linda Isle

Newport Beach, CA 92660

On Mon, Aug 22, 2016 at 4:53 PM, Margo O'Connor <moconn949@gmail.com> wrote:

Dear interested parties:

Received this email from Coastal today. Now that the application is accepted as complete, the Coastal Staff will be finalizing their recommendations for the Commission.

If you haven't done so already, Please send your letters to Mr Sy as soon as you can.

Sy, Fernie@Coastal

From: LewCoppersmith@coppersmith.com
Sent: Wednesday, July 20, 2016 1:14 PM
To: Sy, Fernie@Coastal
Subject: Balboa West Marina Case No.5-I5-0087

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Important

Dear Mr. Sy,

We have been reading about the various proposals to create a major development off of PCH next to the Dover Bridge.

Before any approvals are considered, we hope that some responsible in-person inspections are made about understanding the ramifications of such a development.

Right now the whole area around the bridge is the hub for Stand-up paddle boards, kayaks and canoes. ALL of the public participants are visitors to Newport and have no awareness of any boat safety or "Rules of the Road" that the boaters observe to avoid collisions. Encouraging more boat traffic in addition to boats going to and from the Back Bay is courting a dangerous situation.

The addition of another restaurant/nightclub in that area is of huge concern with people moving off and onto PCH where the traffic is already being backed up today at the Bayside signal. Encouraging a late-night drinking and partying location is a radical change in the neighborhood and promises to create the famous problems that we all read about in the West Newport area of our city.

The traffic congestion, the lack of parking, the radical changing of a residential community by introducing the nighttime noise, lights, etc. is not in the best interest of Newport Beach. The only way such a development might be dropped down into the proposed area is because the members of the committees have failed to address the concerns of the people most directly effected.

We hope that the committee will give thoughtful consideration to these negative considerations and act in the best interest of our community and the general public.

Sincerely
Lew E. Coppersmith

Sy, Fernie@Coastal

From: Linda Crean <lalacrean@gmail.com>
Sent: Wednesday, January 25, 2017 10:30 PM
To: Sy, Fernie@Coastal
Cc: 'Margo O'Connor'; 'Kurt Toney'; 'Douglas C. Liechty'
Subject: Case#5-15-00087 201 E. Coast Hwy, Newport Beach

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Important

Dear Mr. Fernie Sy,

Thank you for meeting with my neighbors Bill & Margo O'Connor who reside at 90 Linda Isle. I do understand that many of our concerns do not fall under the Coastal Commission jurisdiction. In my letter to you I included as exhibit A-1 a photograph which shows that the extension of the private dock will totally block the harbor view from six residential properties on Linda Isle. After reviewing the application from the City of Newport Beach/Irvine Company I find it most misleading in that it states that views will not be impacted from the extension of the existing private marina – this is a false statement.

On February 7, 2012 a "Special Town Hall Meeting" was held to discuss moving the marina's guest slips to the proposed location and at that time adding nine additional private slips to accommodate 40' to 80' yachts. In attendance was Mayor Nancy Gardner, Councilman Ed Selich, Chris Miller – City of Newport Beach, Dan Miller, Robin Leftwich, Greg Sinks – Irvine Company, Tom Mathews, Randy Mason - Consultants and Linda Isle Homeowners. The minute's record: "Mayor Nancy Gardner said that having guest docks is a requirement of the Coastal Commission". Also, "Heated and emotional discussion occurred from the homeowners in attendance". Further recorded is "Mayor Gardner asked that homeowners help them to make it better since they have to have the new guest docks. The Irvine Company is paying for the additional docks. This is their private property". The applicant's are fully aware that the private extension will block the Linda Isle resident's harbor view.

My husband and I fully support the guest docks and any improvements that benefit the public. The notion that adding six 58', one 60', four 50' and the two 45' side ties (which could ultimately berth an 80' – 100' vessel) best serves the interest of the public is disingenuous. The public is currently enjoying and utilizing that portion of the harbor for recreational purposes and as stated it absolutely has a negative effect on harbor views. These large docks only provide berthing for the elite and enormous profits for the applicant, neither serving the best interest of the public.

The applicant had every opportunity to apply for the additional slips in their 2007 Coastal Development Permit NO: 5-07-241 and chose not to do so. Please recommend that the private dock extension be denied. I will be out of town and returning late January 31st. If you have any questions Margo O'Connor can speak on my behalf and she has a copy of the above mentioned minutes.

Respectively,

Linda Crean
92 Linda Isle
949-675-2501

PETITION TO CALIFORNIA COASTAL COMMISSION

RE: BALBOA MARINA WEST PROJECT: CASE # 5-15-00087

Construction of 33 additional docks and a 14,000+ sq. ft. building for a Restaurant/
Nightclub with live entertainment, outdoor dining, and operating daily until 2 a.m..

We urge the California Coastal Commission to deny approval of this project. Some of our concerns are:

1. Unacceptable noise levels, loss of views and glare from headlights due to the size and hours of the restaurant/nightclub.
2. Increased Bayside Drive traffic as valets park cars at Bayside Restaurant (3/4 mile away) to solve lack of available parking (62 space shortfall). (applicant's solution)
3. Possible property damage to infrastructure of nearby homes from pile driving and compaction during construction.
4. Increased traffic on the Dover Bridge and on Coast Highway.
5. Unsafe Navigation near and under the Dover Bridge as a result of 33 additional docks for luxury yachts (constructed partially over Public Land).
6. The need for a full Environmental Impact Report.

Print Name	Print Address	Signature
NADINE LEYTON	1150 POLARIS DR	Nadine Leyton
LINDA OXFORD	1 Celestial Irvine	Linda Oxford
DONA KRAEGER	9 Celestial Irvine	Dona Kraeger
JULIA KRAEGER	21 SUNRISE IRVINE	Julia Kraeger
Sherree Vaughn	82 Linda Isle NB	Sherree Vaughn
Jettina Laughlin	417 Via Lido Noed	Jettina Laughlin
Monette Carter	1290 Hillcrest LB	Monette Carter
Janet S Tomaseck	2213 Channel Rd. VAB	Janet S Tomaseck
SUSAN OLMO	920 Bonnie Way	Susan Olmo
Marie Marble	23 Northampton Ct	Marie Marble
Dolly Phelps	2 Calais	Dolly Phelps
Doreen Shubin	2001 Eganville Rd CM	Doreen Shubin
LIZ BREMAN	6 Rue Saint Cloud NB	Liz Breman
KATIE OGDEN	2015 YACHT RESOLUTE NB	Katie Ogden
LUCILLE ERICKSON	43 Southampton	Lucille Erickson
Suzanne Richman	35 Eget Ct	Suzanne Richman

Exhibit No. 1

QUESTIONS

RESPONSES

192

Section 1 of 2

X :

Petition to California Coastal Commission

VOTE NO on More Development near Dover Bridge!
(Balboa Marina West Project, 201 E. Coast Highway, Newport Beach)

Dear Commissioners:

Please vote to deny approval of the Irvine Co.'s application for the Balboa Marina West Project (Case#5-15-0087).

This proposal will add 36 more docks and a 14,000+ sq. ft. Restaurant/Nightclub (largest in Newport Beach), open daily until TWO a.m..

Some of our concerns are:

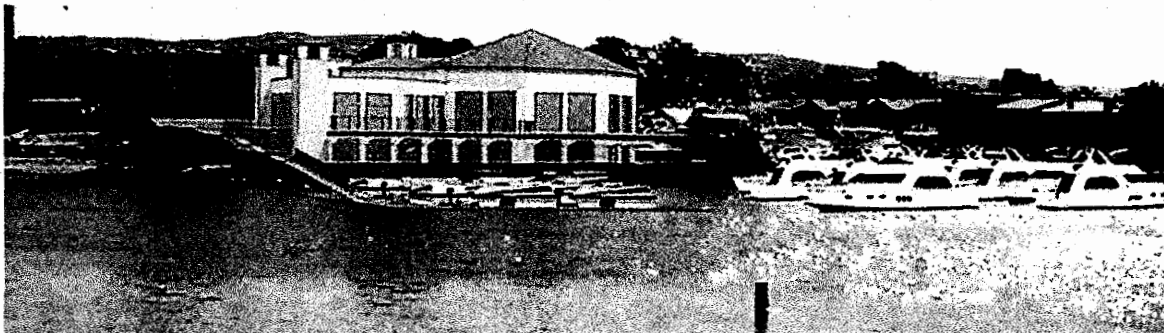
1. The addition of 36 docks (constructed partially over Public Land) would affect Harbor Views and also Navigation for boats, kayaks, paddle boards, etc... near and under the Dover Bridge.
2. The Size and Hours of the Restaurant/Nightclub will result in Unacceptable Noise Levels and Light Pollution and will be detrimental to Coast Highway Safety.
3. There is inadequate parking for such a large building (62 space shortfall). The applicant's solution is parking some cars at Bayside Restaurant (3/4 mile away) on Bayside Drive.
4. This project would increase traffic on Dover Bridge, Coast Highway and Bayside Drive, in addition to the traffic increases expected from recently approved/proposed projects (BackBay Landing, Newport Dunes Center, Mariner's Mile, Lower Castaways, etc....).
5. There is a possibility of property damage to the infrastructure of nearby homes from pile driving and compaction during the construction of docks.
6. This proposal should include a complete Environmental Impact Report.

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South Coast Region

Image title

JAN 19 2017

CALIFORNIA
COASTAL COMMISSION



FIRST NAME *

Short answer text

LAST NAME *

Short answer text

ZIP CODE *

Short answer text

STREET ADDRESS *

Short answer text

E-MAIL (so we can provide you with a Petition Recap)

Short answer text

COMMENTS

Long answer text

Section 2 of 2



**Thank you for supporting our request for a No
Vote by the California Coastal Commission on
the Balboa Marina West Project.**

Description (optional)

CALIFORNIA COASTAL COMMISSION

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



Th 10b

Filed:	7/27/16
180th Day:	Waived
270th Day:	4/23/17
Staff:	F. Sy-LB
Staff Report:	1/25/17
Hearing Date:	2/9/17

STAFF REPORT: REGULAR CALENDAR

Application No.:	5-15-0087
Applicants:	Irvine Company & City of Newport Beach
Project Location:	201 E. Coast Highway, City of Newport Beach, (Orange County)
Project Description:	<p>The project entails landside and waterside development. On the waterside, 9,900 cubic yards dredging is proposed and the existing private marina will be expanded and a new public dock system will be installed. The existing riprap slope will be removed and replaced with a new riprap slope landward. On the landward side, the existing surface parking area and an existing building will be demolished and a new one-story, 14,252 square foot restaurant will be constructed. In addition, there will be grading, hardscape and landscape installed, the parking lot will be redesigned, a new restroom will be constructed, and a dedicated public walkway from E. Coast Highway to the new public dock system will be installed.</p>
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the expansion of the Balboa Marina that will include an expansion of the private docks and installation of a new public dock. Also, an existing riprap slope will be removed and replaced with a new riprap slope landward and a portion of the adjacent existing bulkhead will be trimmed back. In addition, the project entails demolition of the existing parking lot and a private marina restroom facility and reconfiguration

of the parking lot and construction of a new restaurant. The major issues raised by this proposed development concern impacts to marine resources, water quality, visual resources, hazards, and public access.

There is potential for the project to impact the California Least Tern and the California Brown Pelican. Therefore, the Commission imposes **Special Condition No. 1**, which requires a) pre-construction surveys for nesting birds and avoidance of nesting sites during nesting; b) pre-construction surveys for sensitive species; and c) a requirement for monitoring of the site during construction to ensure that construction activities do not result in impacts to sensitive species.

The proposed 9,900 cubic yards of dredging will impact two small eelgrass beds in the shallow water area totaling 515 square feet. The applicants state that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a 1.2 to 1 (mitigation to impact ratio) such that 618 square feet of eelgrass will be successfully transplanted and have submitted an eelgrass mitigation plan that discusses this. However, the eelgrass mitigation plan needs to be revised since the plan states that mitigation will occur concurrently or immediately after project construction. In past permit action the Commission has consistently required mitigation to occur prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds. In addition, the plan needs to be revised to provide further detail about the proposed mitigation location at the off-site Balboa Marian Eelgrass Mitigation Area on the eastern end of the Balboa Marina. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit a revised Eelgrass Mitigation Plan

The eelgrass surveys took place in June and July 2013. However, the project is agendized for the February 2017 Commission Hearing so the eelgrass surveys, which are valid for 60 days from the date the survey was taken, will no longer continue to be valid. Thus, the Commission imposes **Special Condition No. 3**, which identifies the eelgrass surveys that must be conducted prior to commencement of the project.

A *Caulerpa Taxifolia* survey was completed for the project site and none was discovered. However, to verify that no *Caulerpa Taxifolia* is impacted, a pre-construction *Caulerpa Taxifolia* survey should be conducted. Therefore, the Commission imposes **Special Condition No. 4**, which requires the applicants, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*.

During construction and post construction, the proposed project, because of the construction activity in and near the water, has potential for adverse impacts to water quality and marine resources. Therefore, as a result, several standard special conditions have been imposed in order to minimize any impacts to water quality and marine resources the proposed project may result in: **Special Condition No. 5** requires the applicants to implement construction Best Management Practices (BMPs) to protect water quality during landside work; **Special Condition No. 6** requires the applicants to implement construction Best Management Practices (BMPs) to protect water quality during waterside work; **Special Condition No. 7** requires the applicants to submit a Construction Staging Plan; **Special Condition No. 8** requires the continued use and maintenance of post construction BMPs for the long-term berthing of boats; **Special Condition No. 9** requires the applicants to submit a landscape plan that only consists of native plants or non-native drought tolerant plants, which are non-invasive; and **Special Condition No. 10**

requires applicants to submit from the County of Orange a copy of a letter of permission or approval, or evidence that no permit or permission is required prior to the issuance of permit.

Although the applicants' reports indicate that the site is safe for development at this time, bay front areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect shoreline processes. To minimize the project's potential future impact on shoreline processes, the Commission imposes **Special Condition No. 11**, which prohibits construction of any future shoreline protective device(s) to protect the landside development, such as the proposed restaurant, parking lot and restrooms.

The proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 12**, which requires the applicants to assume the risk of development.

In order to ensure that future development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 13**, which informs the applicants that future development at the site requires an amendment or a new coastal development permit.

Because of the developments proximity to the water and provision of public docks, the proposed project may result in adverse impacts to coastal public access during the operation of the new marina if not adequately signed informing boaters and the public of the public marina and access locations, and during construction. As a result, special conditions have been imposed in order to minimize any impacts to public access the proposed project may result in: **Special Condition No. 14** requires the applicants to submit and implement a coastal public access sign plan identifying the location of the visitor-serving/coastal access directional sign; **Special Condition No. 7** requires the applicants to submit a Construction Staging Plan, **Special Condition No. 15** requires the applicant, the Irvine Company, to irrevocably offer to dedicate a public access easement; and **Special Condition No. 16** requires that for the life of the restaurant development located at 201 E. Coast Highway, that sixteen (16) parking spaces will be provided at the 1000 Bayside Drive off-site parking lot for employee parking.

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 No. 17**, which requires the property owner record a deed restriction against the project site.

In February 2017, the City obtained certification of their Local Coastal Plan (LCP). The landward side of the development is within the City's jurisdiction; however, since the project was submitted prior to certification of the City's LCP, the Commission will be processing the coastal development permit. The City's certified LCP is the standard of review for the landside development.

A portion of the proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit No. 1 – Location Maps

Exhibit No. 2 – Landside and Waterside Site Plans

Exhibit No. 3 – Dredging, Revetment & Bulkhead Plan

Exhibit No. 4 – Eelgrass Location Map

Exhibit No. 5 – Restaurant and Private Marina Restroom Building Plans

Exhibit No. 6 – Figure 4 of the applicants' Marine Biological Impact Assessment for the Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015)

Exhibit No. 7 – Preliminary Improvement Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-0087 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned is in conformity with both the policies of the Local Coastal Program for the landward portions of the development within the City's LCP jurisdiction and the provisions of the Coastal Act for the portions of the development within the Commission's original permitting jurisdiction. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Avoidance of Sensitive Species.

- A. Nesting Birds. Prior to commencement of any construction activities between February 15 through August 31, a qualified biologist shall conduct a breeding behavior and nesting survey for birds protected by the United States Fish and Wildlife Service, California Department of Fish and Wildlife, the Migratory Bird Treaty Act, and California species of special concern within 300 feet of the project site (500 feet for raptors and owls). If any occupied nests of any sensitive species are discovered, construction activities within 300-feet of the nest (500-feet for raptors and owls) shall be monitored to ensure that construction noise levels do not exceed 65 dB peak within 100 feet of the nest until the nest is vacated and juveniles have fledged and there is no longer evidence of a second attempt at nesting. The applicants shall implement a larger buffer if the biologist recommends a larger buffer from the nest area.
- B. Sensitive Species Monitoring. Prior to undertaking any development including, but not limited to, construction, grading, or excavation, a qualified biologist shall survey the project site to determine whether sensitive bird species, including but not limited to California Least Tern and/or the California Brown Pelican, are present within 100-feet of the project site, and whether sensitive plant species, including but not limited to Sagebrush Scrub. Any identified species shall be flagged for avoidance.
- C. An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during the breeding season, and once every two weeks during the non-breeding season, during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as construction that could result in disturbances to sensitive species. Based on field observations, the biologist shall advise the applicants regarding methods to avoid significant impacts which could occur to sensitive species or habitat areas.
- D. "Ramp up" pile-driving activities (referred to as a "soft start") at the start of pile-driving activities (at the beginning of the day, and at restarting of construction after lunch breaks, or other pile driving interruptions of longer than 15 minutes).

2. Revised Eelgrass Mitigation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit two (2) copies, for review and approval of the Executive Director, of a Revised Eelgrass Mitigation Plan for transplanting and replacement of eelgrass adversely impacted by the project that shall be in substantial conformance with the Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015), except as required to be modified as described below. The plan shall be prepared in consultation with the California Department of Fish and Wildlife (CDF&W) and the National Marine Fisheries Service (NMFS). The plan shall

be prepared consistent with the requirements identified below and the requirements of the Southern California Eelgrass Mitigation Policy (SCEMP), including but not limited to the requirements outlined relative to mapping, and mitigation site, size, techniques, monitoring and success criteria, but excepting the allowed exclusions and timing requirements that conflict with the requirements identified below.

1. The plan shall provide that:
 - (a) All direct eelgrass impacts and shading impacts to eelgrass shall be mitigated at a minimum 1.2:1 (mitigation to impact) ratio;
 - (b) Adverse impacts to eelgrass shall be mitigated on-site to the maximum extent feasible and, for the portion that cannot feasibly be mitigated on site, off-site mitigation will take place. The final location of all on-site and off-site mitigation shall be specifically identified;
 - (c) Additional information regarding the proposed Balboa Marina Eelgrass Mitigation Area discussing the availability of this site as a mitigation location and further details describing this location and its ability to serve as a successful location for eelgrass mitigation for the proposed project;
 - (d) The mitigation site(s) shall be covered with eelgrass at pre-project densities of the impacted site within five years of the initial planting;
 - (e) Prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting in accordance with subsection (a) above, to the mitigation site(s).
 - (f) A report that describes densities, and recommended maintenance and replanting measures shall be submitted annually to the Executive Director; submitted at the end of the proposed five-year period;
 - (g) A follow-up program shall be implemented if the original program is wholly or partially unsuccessful;
 - (h) A final inventory and map showing the location of existing eel grass beds within the approved construction area and showing the areas of potential eel grass disturbance;
 - (i) An inventory and map showing the location of existing eel grass beds, if any, within the mitigation site(s); and
 - (j) Performance standards that will assure achievement of the mitigation goal (i.e., attainment of pre-project densities at the mitigation site(s) within five years).

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

3. Eelgrass Survey(s).

- 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. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

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

4. Pre-construction *Caulerpa Taxifolia* Survey.

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

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

- 5. Construction Best Management Practices (BMPs) During Landside Work.** The permittees shall comply with the following construction-related requirements:
- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
 - H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related

- materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Construction Best Management Practices (BMPs) During Waterside Work. The permittee shall comply with the following construction related requirements:

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

- O. Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- P. All BMP's shall be maintained in a functional condition throughout the duration of construction activity.

7. Construction Staging Plan. PRIOR TO ISSUANCE OF THE COASTAL

DEVELOPMENT PERMIT the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of construction staging plans, which indicate that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the coast.

- 1. The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;
 - (b) Construction equipment, materials, or activity shall not be placed within any habitat area or within 100-feet of any drainages; and
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary.
- 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) limits of the staging area(s);
 - (2) construction corridor(s); and
 - (3) construction site; and
 - (4) location of construction fencing and temporary job trailer(s); and
 - (b) A narrative that describes and explains the plan

The permittee shall undertake development in accordance with the approved final plan. 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.

8. Best Management Practices (BMPs) for the Long-Term Berthing of Boats. By acceptance of this permit the applicants agrees that the long-term water-borne berthing of boat(s) in the approved boat dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

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

- (b) In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
 - (c) The applicants shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
- 2. Solid and Liquid Waste Management Measures:
 - (a) All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.
- 3. Petroleum Control Management Measures:
 - (a) Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
 - (b) If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
 - (c) Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

9. Native Landscaping, Drought Tolerant Non-Invasive Plants. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and written approval of the Executive Director, two (2) full size sets of landscaping plans prepared by a qualified licensed professional. The plan shall include the following:

- 1. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the

U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

2. A map showing the types, size, and locations of all plant materials that will be on the site, the temporary irrigation system, topography of the developed site, and all other landscape features;
3. A schedule for installation of native plants/removal of non-native plants; and
4. The site shall be stabilized immediately with jute matting or other BMPs after any grading occurs to minimize erosion during the raining season (November 1 to March 31) if plantings have not been fully established; and
5. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

The permittee shall undertake development in accordance with the approved final plan. 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.

10. County of Orange Approval. PRIOR TO ISSUANCE OF THE COASTAL

DEVELOPMENT PERMIT, the applicants shall provide to the Executive Director a copy of a letter of permission or approval from the County of Orange regarding the proposed project, or evidence that no permit or permission is required. The applicants shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicants obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

11. No Future Shoreline Protective Device.

- A. By acceptance of the permit, the applicants/landowner agrees, on behalf of itself and all successors and assignees, that no new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-15-0087 including, but not limited to, the restaurant, private marina boater restroom and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this permit, the applicants/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the residence, garage, and driveway/patios, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structure to be removed, or if the State Lands Commission requires the structures to be removed in the event that they encroach on to State tidelands. If any portion of the development at any time encroaches onto public property, the permittee shall either

remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

12. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicants acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

13. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-15-0087. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-15-0087. Accordingly, any future improvements to the marina and restaurant or any changes to the parking management plan or use of the site authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-15-0087 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

14. Final Updated Plans.

A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of the following final updated plans, modified as required below:

1. Foundation plans with an included narrative describing the foundation system accompanied with a geotechnical analyst prepared by an engineer; and
2. The coastal public access sign plan shall substantially conform with the plans received on March 1, 2016, 2016, except they shall be modified as required below:
 - a. The coastal public access sign plan shall show the location of the visitor-serving/coastal access directional sign(s) located in a conspicuous locations along E. Coast Highway, in the adjacent parking lot and as near as possible to the proposed dock; and
 - b. The proposed sign(s) shall be in compliance with the Coastal Access Sign Program that is a part of the City's certified LCP.

B. All final updated plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on

current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

- C. The permittee shall undertake development in conformance with the approved final updated plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

15. Offer to Dedicate for Public Access Easement for Vertical Access

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the applicant shall execute and record a document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity, approved by the Executive Director, a public access easement for public access and recreational uses. The easement shall be an 8-foot wide public walkway for vertical public access to the public boat dock and Newport Bay. Such easement shall be located from the northeast corner of the lot adjacent to E. Coast Highway then along the northern apportion of the site as it travels west to the public dock and Newport Bay, as generally depicted in **Exhibit No. 2, page 2**.

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement or dedicated area. The public access easement shall be ambulatory, and the easement boundaries and amenities (e.g., path, trail, benches, etc.) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the easement area are necessary to retain their continuity and/or utility. No development except for construction of the public walkway shall occur within the above-identified easement.

- B. The irrevocable offer to dedicate shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.
- C. The irrevocable offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowner in perpetuity, and shall be irrevocable for a period of 21 years, such period running from the date of recording, and indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

- 16. Off-Site Parking.** The sixteen parking spaces located at the 1000 Bayside Drive off-site parking lot (as generally depicted on **Exhibit No. 1, page 1**) must be provided for the life of the restaurant use located at the project site, 201 E. Coast Highway, Newport Beach. Any proposed changes to the parking shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

17. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) 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 DESCRIPTION AND LOCATION

The proposed project entails both landside and waterside development, collectively known as Balboa Marina West. On the waterside, dredging is proposed and the existing private marina (Balboa Marina) will be expanded and will include the installation of a new public dock system (**Exhibit No. 2, page 2**). Also, the existing rock riprap slope on the west side of the marina will be removed and replaced with a new rock riprap slope landward. In addition, a portion of the existing bulkhead (south of the riprap) adjacent to the existing riprap slope will be revised. On the landward side, the existing surface parking area and an existing building will be demolished and a new one-story restaurant will be constructed (**Exhibit No. 2, page 1**). In addition, there will be grading, hardscape and landscape installed, the parking lot will be redesigned, a new restroom will be constructed, and a dedicated public walkway from E. Coast Highway to the new public dock system will be installed. The project components are more specifically described below:

Waterside portion of the project includes:

- Expansion of the private marina docks to include 26 new slips. The new docks will be constructed as an extension of the existing dock structure and access will be from the existing westerly gangway. The expansion will accommodate a variety of boats including 14 boats ranging in size from 20-feet to 40-feet and 12 boats ranging in size from 50-feet to 80-feet.
- Installation of new public docks including a new gangway, an additional 8 public transient slips and the relocation of 4 existing public transient slips for a total of 12 public transient use slips for boats up to 20-feet in length. The new public dock is in the shape of an inverted “E”, with three main fingers. The outer finger is 65-feet in length and 10-feet in width. The center finger is approximately 51-feet in length and 6-feet in width and the interior finger is approximately 70-feet in length and 6-feet in width. The main dock

portion is 85' in length and will be accessed via an 80-foot ADA accessible gangway. A dedicated public walkway through the parking lot will provide access from the public dock to the landside. The gangway and the public docks will be maintained by the City.

- The number of available slips will be increased from 105 to 131, which is one fewer slip than originally constructed at Balboa Marina in 1964.
- Installation of the new docks will include the installation of 45 pilings consisting of fifteen, 20-inch diameter piles and thirty, 16-inch diameter piles to support the docks.
- An existing private gangway will be relocated to the east end of the existing private marina.
- Dredging of 9,900 cubic yards of material to accommodate the new docks that will provide for safe navigation and vessel berthing and the dredged materials will be transported and be disposed of at ocean disposal site LA-3, an Environmental Protection Agency (EPA) and Commission approved disposal site located approximately 4 miles southwest of the Newport Harbor entrance (**Exhibit No. 3**).
- The dredging to design depths to accommodate the marina expansion will directly impact two eelgrass patches totaling 515 square feet (**Exhibit No. 4**). The loss of eelgrass will be mitigated at a ratio of 1.2 to 1 (mitigation to impact ratio) such that 618 square feet (57.4 square meters.) of eelgrass will be successfully transplanted at an adjacent off-site eelgrass mitigation area (eastern end of the Balboa Marina) that was approved as part of a previous permit for the site, CDP NO. 5-07-241.
- An existing riprap slope on the west side of the marina will be removed and replaced with the new riprap slope constructed 15-feet landward by grading the western portion of land (paved parking lot) (**Exhibit No. 3**). The new riprap slope will result in removal of existing fill material and an increase of 6,772 square feet of waters of the United States. In addition, a new intertidal mudflat approximately 600 square feet (3.9 feet wide by 155 feet long) in size will be created as a result of the relocated riprap slope. The amount of rip-rap that will be placed is 520 cubic yards. A concrete cap will be poured in place at the top of the relocated riprap slope at the same elevation of the existing bulkhead (+9 Mean Lower Low Water (MLLW)) which separates the parking lot from the existing private Balboa Marina. The westerly extent of the existing southern bulkhead will be trimmed back at an angle consistent with the new riprap slope and a concrete cap will be constructed on top of the reconfigured bulkhead (**Exhibit No. 3, page 2**). Four new 18" concrete piles supporting the trimmed back bulkhead will be installed on the land side.
- Portions of the new private and public docks will be located over State Tidelands and in this area these tidelands are managed by the County of Orange. Public trust lands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. Public trust doctrine traditionally describe navigation, commerce and fisheries as the acceptable uses within public tidelands, but these uses have been broadened to include the right of the public to fish, hunt, bathe, swim; boating and general recreation; preservation; scientific study; use as open space;

and the right of the public to use the bottom of the navigable waters for anchoring, walking, or standing. The applicants have stated that approval from the County of Orange is necessary and that they have been in discussions with the County and an approval is pending.

Landside portion of the project includes:

- Demolition of the existing surface parking lot and the 1,200 square foot yacht brokerage/restroom building.
- Construction of a new, one-story, 24-‘9” high, 14,252 square foot restaurant with a net public area of 9,030 square feet and a west facing outdoor deck with a 1,255-square feet of outdoor dining area (**Exhibit No. 5**). An outdoor patio deck is proposed that will wrap around the west and south elevations of the restaurant. Outdoor dining is limited to the west side of the restaurant. The south side is accessible only to provide egress consistent with building and fire codes. The restaurant will be supported by a pile foundation.
- Construction of a new 644 square foot private marina restroom for the use of the Balboa Marina lessees and guests (**Exhibit No. 5 page 2-7**).
- Dedication of an 8-foot-wide public walkway from E. Coast Highway to the public dock (**Exhibit No. 2, page 2**).
- Redesign of the parking lot to improve traffic circulation resulting in 250 parking spaces plus 44 tandem/valet-stacked parking spaces for a total of 294 parking spaces.
- Grading consisting of 3,381 cubic yards of cut and 3,761 cubic yards of fill.
- Installation of a 3-foot-high landscape screening between the waterside and the parking lot.

The project site consisting of an existing parking lot and marina is located in the northern portion of Lower Newport Bay at 201 E. Coast Highway, City of Newport Beach (Orange County) adjacent to the E. Coast Highway bridge over the portion of Newport Harbor where Lower Newport Bay and Upper Newport Bay meet (**Exhibits No. 1**). The existing facility known as the Balboa Marina is privately owned/operated and accessible to slip lessees and not open for general public use. This landward portion of the facility is on privately owned land and located between the first public road and the sea and the marina is located in Lower Newport Bay. A portion of the existing parking lot at the Balboa Marina and the water area immediately adjacent to the western terminus of the parking lot were previously used for approximately 40 years by the Reuben E. Lee Riverboat restaurant and later by the Newport Harbor Nautical Museum (the Riverboat has since been dismantled and removed from the site). The landward side of the project site is designated Recreational and Marine Commercial under the City’s certified Local Coastal Plan (LCP) and the proposed project adheres to that use. The State Lands Commission does own title interest in the western portion of the property that is in an area that is subject to the public easement in navigable waters and is the location of portions of the proposed marina expansion. The project site is surrounded by commercial uses and E. Coast Highway to the

north, Bayside Drive to the east, Newport Bay channel to the west, and single-family residential developments to the south across the side channel at the private gated community of Linda Isle. There are commercial areas immediately adjacent to and east of the site that consists of restaurants (SOL Mexican Cocina Restaurant and 3 Thirty 3 Waterfront Restaurant, an office building and a surface parking lot.

B. PRIOR COMMISSION PERMIT ACTIONS

1. Previous Commission Permit Action Near the Project Site

On July 11, 1977, the Commission granted to The California Department of Transportation, Coastal Development Permit No. P-5-25-77-987 for development consisting of: construction of a new bridge over Upper Newport Bay that included redesign and reconstruction of Coast Highway intersections at Dover Drive and Bayshore Drive. One (1) Special Condition was imposed that required an analysis of toxicity levels of the proposed fill material.

On August 2013, the Commission granted to The Irvine Company, Coastal Development Permit No. 5-93-125 for development consisting of: subdivision of an existing single parcel into four parcels. No Special Conditions were imposed.

2. Previous Commission Permit Action at the Project Site

On May 6, 2005, the Commission granted to The Irvine Company, Exemption No. 5-05-059 for development consisting of: repair of approximately 2,000 linear feet of a concrete sheetpile bulkhead located at the Balboa Marina. The repairs took place on the waterside face of the bulkhead, as well as, the waterside and top surface of the concrete cap. More specifically, the project entailed: 1) concrete spall repair applied by hand patch or trowel; 2) concrete spall repair by form and pour or cast-in-place; 3) anti-corrosion coating of reinforcing steel; 4) concrete crack repairs by epoxy injection; 5) application of migrating corrosion inhibitor; and 6) grouting and sealing of all joints between the concrete sheet piles. Concrete sealants were used for the bulkhead repair. Most repairs took place under dry condition, coordinated with low tide levels. Repairs that took place from the landward side above the bulkhead used an articulating crane and from the water, when necessary, where obstructions adjacent to the bulkhead precluded access. About 25% of the repairs were performed from the water side of the bulkhead and completed by utilizing an approximate 3' x 5' floating platform. No debris was allowed to fall onto the docks, boats, or to enter the harbor waters. All debris resulting from construction was removed from the site and properly disposed of.

On May 7, 2008, the Commission granted to The Irvine Company, Coastal Development Permit No. 5-07-241 for development consisting of: demolition of an existing 132 slip, 27,643 square foot marina and re-construction of a new 105 slip, 20,931 square foot marina including a reduction from 67 to 64 concrete guide piles, new lighting, water supply lines, communication hook ups, pump-out facility and fire-fighting facilities. In addition, the project included construction of a 7,800 square foot eelgrass habitat as mitigation for direct and potential eelgrass impacts due to dredging activities associated with the project. Additionally, improvements to existing bulkhead were also proposed. Six (6) Special Conditions were imposed regarding: 1) construction responsibilities and debris removal; 2) location of debris disposal site; 3) revised final plans; 4) Water Quality Management Plan (WQMP); 5) Marine Water Quality Best Management Practices Program; and 6) biological monitoring. This development, as built,

represents the existing conditions of the Balboa Marina project site that is the subject of the current development proposal.

C. MARINE RESOURCES/WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

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

Section 30233 of the Coastal Act states (in relevant part):

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-4 states,

Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.

Coastal Land Use Plan, Eelgrass Meadows, Policy 4.1.4-5 states,

*Where applicable require eelgrass and *Caulerpa taxifolia* surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and *Caulerpa taxifolia* Survey protocols.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-1 states,

Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

- A. Construction or expansion of port/marine facilities.*
- B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*
- C. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- D. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- E. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- F. Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- G. Restoration purposes.*
- H. Nature study, aquaculture, or similar resource-dependent activities.*
- I. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

Coastal Land Use Plan, Dredging, Diking and Filling, Policy 4.2.3-2 states,

Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.

Coastal Land Use Plan, Dredging, Eelgrass Protection and Restoration, Policy 4.2.5-1 states,

Avoid impacts to eelgrass (Zostera marina) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.

Coastal Land Use Plan, TMDLs, Policy 4.3.1-8 states,

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

Coastal Land Use Plan, NPDES, Policy 4.3.2-1 states,

Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.

Coastal Land Use Plan, NPDES, Policy 4.3.2-6 states,

Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.

Coastal Land Use Plan, NPDES, Policy 4.3.2-7 states,

Incorporate BMPs into the project design in the following progression:

☐ *Site Design BMPs.*

☐ *Source Control BMPs.*

☐ *Treatment Control BMPs.*

Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.

Coastal Land Use Plan, NPDES, Policy 4.3.2-19 states,

Require parking lots and vehicle traffic areas to incorporate BMPs designed to prevent or minimize runoff of oils and grease, car battery acid, coolant, gasoline, sediments, trash, and other pollutants to receiving waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-20 states,

Require commercial development to incorporate BMPs designed to prevent or minimize the runoff of pollutants from structures, landscaping, parking areas, loading and unloading dock areas, repair and maintenance bays, and vehicle/equipment wash areas.

Coastal Land Use Plan, NPDES, Policy 4.3.2-22 states,

Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

Coastal Land Use Plan, NPDES, Policy 4.3.2-23 states,

Require new development applications to include a Water Quality Management Plan (WQMP). The WQMP's purpose is to minimize to the maximum extent practicable dry weather runoff, runoff from small storms (less than 3/4" of rain falling over a 24-hour period) and the concentration of pollutants in such runoff during construction and post-construction from the property.

Project components relevant to marine habitat/water quality

The proposed project includes the development of a new public transient dock area, and an expansion to the existing private boat slips at the Balboa Marina. Figure 4 of the applicants' Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015), see **Exhibit No. 6**, provides a conceptual plan with the Public Transient Docks shown as Area "A" and the Private Dock Expansion shown as Area "B". Both areas will occupy approximately 0.87 acre of water surface owned principally by Irvine Company. The submerged lands at this location are designated State Tidelands administered and under the jurisdiction of the County of Orange. Area "A" (Public Transient Dock Area) will provide 12 public boat slips, including the relocation of 4 existing public slips currently located in the private Balboa Marina.

Area B (Private Dock Expansion Area) will add 24 private boat slips accessible from the existing Balboa Marina and a new private gangway. The expansion will include 10 new slips for boats 20-feet in length and 14 new slips for boats 35-feet and longer. To support the new docks, forty-five piles will be driven into the bay floor. These piles will consist of fifteen, 20-inch diameter piles and thirty, 16-inch diameter piles. The combined surface area of all piles is 65.9 square feet.

The development of Area "A" (Public Transient Dock Area) and Area "B" (Private Dock Expansion Area) will require dredging and excavation of approximately 9,900 cubic yards of material in order to reach project depths of -6 and -10 feet mean lower low water, plus a 2-foot overdepth allowance to create the depths required for the marina to accommodate the new boat slips. The area to be dredged consists of intertidal area and a sandy beach area that is north of the site to the E. Coast Highway bridge. The dredged materials will be transported and be disposed of at ocean disposal site LA-3, an Environmental Protection Agency (EPA) and Commission approved disposal site located approximately 4 miles southwest of the Newport Harbor entrance. Approximately 5,250 cubic yards of dredged material would be mechanically dredged, likely via clamshell or excavator type dredges, which would place sediment directly into scows tethered alongside the dredge area. The scows will be towed to the LA-3 using tugboat assistance. Shoreline excavated material accounting for the remaining 4,650 cubic yards will likely be excavated with a landside track-mounted excavator.

An existing riprap slope/embankment along the western side of the project will be reconstructed approximately 15-feet landward of the existing riprap slope/embankment to maximize the number of boat slips. The amount of rip-rap that will be placed is 520 cubic yards. A portion of the existing cement bulkhead landward of the riprap slope/embankment will also be removed in order to move the riprap slope/embankment landward. A new cap wall will be installed at the top of the new riprap slope that connects with the cement bulkhead. As a result of the relocated riprap slope/embankment, new intertidal mudflats approximately 600 square feet (3.9 feet wide by 155 feet long) in size will be created.

The rock riprap slope/embankment extends bayward into the low intertidal/shallow subtidal area of Lower Newport Bay. Beyond the riprap, the bay floor consists of silts, sands, and shell debris in the Main Channel of Lower Newport Bay, west of the project site. The southern corner and bulkheaded portion fronting the Balboa Marina consist of finer, silty sediments.

On the western side of the project site near the main channel, there are two small eelgrass beds in the shallow water area totaling 515 square feet or 12.6 square meters. Of this total, 379.3 square feet (73.7%) was mapped at the southern edge of the sandy beach and 26.3 % was mapped south of this location off of the southerly tip of the existing Balboa Marina parking lot. The proposed dredging will adversely impact these eelgrass beds. The applicants' Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015) states that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a 1.2 to 1 (mitigation to impact ratio) such that 618 square feet of eelgrass will be successfully transplanted at the end of a five-year post-transplant monitoring period per provisions of the Southern California Eelgrass Mitigation Policy (SCEMP).

The proposed docks and floats would shade 9,045 square feet of shallow water habitat, but would not adversely affect any additional eelgrass, because all of the eelgrass would be removed during dredging.

1. Fill

The expanded marina will include 45 pilings consisting of fifteen, 20-inch diameter piles and thirty, 16-inch diameter piles displacing soft bottom habitat to support the dock systems. Placement of the piles will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233(a) of the Coastal Act. In order to be consistent with Section 30233(a), a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

The piles for the boat docks are proposed to be located in the open coastal waters of Newport Bay. Since the total 45 piles will support the boat docks, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use.

The placement of the 45 piles is the minimum amount necessary to safely anchor the boat docks. Fewer and/or smaller piles would not adequately secure the boat docks. By using the least number of piles necessary to accomplish the goal of securing the boat docks, the 45 piles associated with the boat docks represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds

the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

The proposed recreational boat dock systems, which consist of an expanded private marina and a new public dock, are allowable and encouraged marine related uses. The project design for the boat dock includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat docks. Although the hard substrate of the piles is not equivalent to the displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area by providing substrate where organisms, such as algae, barnacles, mussels, and limpets can attach. Many of these organisms are food for fish, whereby increasing the species diversity in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case.

Part of the proposed project entails the removal of an existing riprap slope on the west side of the marina and replacement with the new riprap slope constructed 15-feet landward by grading the western portion of land. The new riprap slope will result in removal of existing landside fill material and an increase of 6,772 square feet of waters of the United States and its relocation will create a new intertidal mudflat approximately 600 square feet (3.9 feet wide by 155 feet long) in size. A concrete cap will be poured in place at the top of the relocated riprap slope at the same elevation of the existing bulkhead (+9 Mean Lower Low Water (MLLW)) which separates the parking lot from the existing private Balboa Marina along the southern portion of the lot. The westerly extent of the existing southern bulkhead, approximately 36 to 40 feet, will be trimmed back and the new end will be angled consistent with the new riprap 2:1 slope and a concrete cap will be constructed on top of the reconfigured bulkhead that will also be supported by four new 18" concrete piles installed on the land side. This project component does not result in any fill of coastal waters, as what was once landside area is being removed to create an intertidal area.

The applicant reviewed constructing a seawall as an alternative to the riprap. Their marine engineer (URS Corporation) found that a seawall was feasible for the project, but would cause more construction noise and disturbance in the surrounding environment than riprap construction; require slightly more grading; potentially encounter subsurface obstructions; and cost. The applicant determined a rock revetment, as proposed, would be stable and provide the desired additional water space for the proposed docks.

An analysis of the tidal and flood velocities were conducted by the applicant's engineers. The analysis used bathymetry survey data from the years 2003 and 2011 for areas upstream of the Pacific Coast Bridge near the proposed project site. Based on the hydrodynamic model results, the report states that impacts to tidal and flood velocities of the proposed marina extension to neighboring areas would be localized, mainly within a few hundred feet downstream of the PCH bridge, and that overall tidal currents in the area are small under existing and with the proposed project conditions, thus, unlikely to cause any erosion. Furthermore, the current condition at the project site consists of a bulkhead along the southern edge and a rock revetment and marina along the western edge. The proposed project will have a similar revetment, located further

inland, along with a marina. Therefore, as proposed, the project will not have a significant impact to shoreline processes.

As proposed and designed, the project satisfies all three elements required to find consistency with Section 30233(a) of the Coastal Act, as well as City of Newport Beach LCP policies, with respect to the fill component of the proposed project, as listed above.

3. Avian Species

The proposed marina reconstruction will temporarily disturb the waters within the project area and may impact marine resources. Therefore, mitigation measures are necessary to protect the biological productivity of coastal waters. The California Least Tern and the California Brown Pelican are identified as endangered species by United States and Fish and Wildlife Service (USFWS) known to exist within the project area. The Least Tern population nests in a site located three miles from the project site in the Newport Beach Ecological Reserve and typically forages in open waters within two miles of their nesting site. Newport Bay is not a potential nesting area for the California Brown Pelican. However, temporary disturbance to the waters within the project area may potentially disrupt foraging areas of these sensitive species. There is potential for the project to impact these species. Therefore, the Commission imposes **Special Condition No. 1**, which requires a) pre-construction surveys for nesting birds and avoidance of nesting sites during nesting; b) pre-construction surveys for sensitive species; and c) a requirement for monitoring of the site during construction to ensure that construction activities do not result in impacts to sensitive species.

There are few marine mammals expected in the project area. However, if present, pile driving in the air and water could result in avoidance behaviors to these marine mammals, such as sea lions and bottlenose dolphins. Occurrences of these species in the bay have shown that they have the ability to adapt to noise and vessel traffic. Breeding would not be affected because sea lions nor bottlenose dolphin breed in the harbor. To lessen the potential for impacts to marine mammals, the applicants has proposed to require slowly ramping up pile-driving activities (referred to as a “soft start”) at the start of pile-driving activities (at the beginning of the day and at restarting of construction after lunch breaks or other pile driving interruptions of longer than 15 minutes). As conditioned, the project is consistent with Sections 30230, 30231 and 30233(a) of the Coastal Act, as well as City of Newport Beach LCP policies, with respect to impacts to avian species, as listed above.

4. Eelgrass (*Zostera marina*)

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered important to protect because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

On the western side of the project site near the main channel the applicants determined the location of two small eelgrass beds in the shallow water area totaling 515 square feet or 12.6 square meters during an eelgrass survey that took place in June and July 2013. Of this total, 379.3 square feet (73.7%) was mapped at the southern edge of the sandy beach and 26.3 % was mapped south of this location off of the southerly tip of the existing Balboa Marina parking lot. The proposed dredging will adversely impact these eelgrass beds. The applicants' Marine Biological Impact Assessment prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015) states that the loss of eelgrass will be mitigated by implementing an eelgrass transplant program at a 1.2 to 1 (mitigation to impact ratio) such that 618 square feet of eelgrass will be successfully transplanted at the end of a five-year post-transplant monitoring period per provisions of the Southern California Eelgrass Mitigation Policy (SCEMP). The location of the eelgrass transplant area will not be at the project site but near the site at the opposite eastern end of the same marina in the Irvine Company's Balboa Marina Eelgrass Mitigation Area, established to mitigate the impacts of the re-construction of the Balboa Marina in 2008-2009 approved by the Commission in May 2008 under Coastal Development Permit No. 5-07-241. The applicants state that the mitigation will occur concurrently or immediately after project construction. However, the Commission typically requires that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting. This general requirement conflicts with the applicants' statement that the mitigation transplanting will occur concurrently or immediately after construction. Therefore, the mitigation plan must be revised so that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall first be transplanted, along with any supplementary planting before commencement of construction. As stated previously, the mitigation site will be near by the project site at the eastern end of the marina at the Balboa Marina Eelgrass Mitigation Area, established to mitigate the impacts of the re-construction of the Balboa Marina in 2008-2009. The applicants have provided information showing that it is a successful eelgrass mitigation location. However, the mitigation plan does not provide further detail about the mitigation location, such as if there is available area within the mitigation site for additional mitigation for the proposed eelgrass impacts. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit a revised Eelgrass Mitigation Plan which clarifies that prior to commencement of construction of the portions of the approved project that would have direct impacts upon eelgrass beds, the eelgrass that would be directly impacted shall be transplanted, along with any supplementary planting. In addition, the revised eelgrass mitigation plan must provide further detail about the mitigation location, such as if there is available area within the mitigation site for additional mitigation for the proposed eelgrass impacts

The proposed docks and floats would shade 9,045 square feet of shallow water habitat, but would not adversely affect any additional eelgrass, because all of the eelgrass would be removed during dredging.

The eelgrass survey took place in June and July 2013 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the

resumption of active growth (i.e., March 1). The project is agendized for the February 2017 Commission Hearing so the eelgrass survey, which is nearly 4 years old, no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Thus, the Commission imposes **Special Condition No. 3**, which identifies the eelgrass surveys that must be conducted prior to commencement of the project.

As conditioned, the project is consistent with Sections 30230, 30231, and 30233(a) of the Coastal Act, as well as Newport Beach LCP policies, with respect to impacts to eelgrass, as listed above.

5. *Caulerpa Taxifolia*

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbor (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A *Caulerpa Taxifolia* survey was completed in June and July 2013 and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendized for the February 2017 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since nearly 4 years have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to ensure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 4**, which requires the applicants, 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 applicants 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.

As conditioned, the project is consistent with Sections 30230, 30231, and 30233(a) of the Coastal Act, as well as the City of Newport Beach LCP policies, with respect to *Caulerpa Taxifolia*, as listed above.

6. Construction Impacts to Water Quality

Construction will occur on land and directly over and in coastal waters. As such, there is a possibility that construction phase activities could result in adverse water quality impacts. In

addition, there is a possibility that improper staging and storage of equipment could have impacts on water quality.

Potential construction phase impacts include improper storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or in a manner which allows such materials to be discharged into the Lower Newport Bay and coastal waters via rain or urban runoff. These actions 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. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. 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.

The applicants are proposing Best Management Practices (BMPs) for reducing or eliminating construction-related impacts to water quality during construction, such as: prohibition of discharge of any hazardous materials into the Lower Newport Bay, disposal of trash in suitable containers on land or on work barges at the end of the construction day, etc.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, and to assure the applicants is aware of their responsibility to provide a debris catching device under this coastal development permit, the Commission imposes **Special Condition No. 5**, which requires the applicants to implement construction Best Management Practices (BMPs) to protect water quality during landside work. In addition, **Special Condition No. 6** is proposed which requires the applicants to implement construction Best Management Practices (BMPs) to protect water quality during waterside work

Besides adhering to the construction Best Management Practices (BMPs) as required by **Special Condition No. 5** and **No. 6** above, a Storm Water Pollution Prevention Plan (SWPPP) should be prepared for the proposed project that would specifically deal with water quality on site during construction. The applicants have submitted a Storm Water Pollution Prevention Plan (SWPPP) prepared by Stantec dated February 2016, which adequately deals with water quality on site during construction.

The applicants have indicated that the construction staging area will be on site and has provided a plan. However, a narrative explaining the details of the plan has not been submitted. Thus, the Commission finds that it is necessary to impose **Special Condition No. 7**, which requires the applicants to submit a Construction Staging Plan for the Executive Director's review and approval.

The proposed dredging and marina construction activities will result in a short-term increase in turbidity from the discharging of the suspended fine sediments with the liquefied portion of the dredge material. In addition, accidental oil or fuel spills may occur during the dredging operation or marina construction that could result in adverse impacts on the fish and wildlife of the harbor. In response to these concerns, the applicants has provided a Marina Dredging Management Plan prepared by Anchor QEA dated January 2016 Revised February 2016 that has

addressed these concerns. For example, measures such as implementing silt curtains surrounding the immediate work area at all times during dredging and positioning the dump scow immediately adjacent to the dredge barge to allow for the clamshell bucket to deposit the dredge material directly into the scow have been identified in the Plan.

As conditioned, the project is consistent with Sections 30230, 30231, 30232, and 30233(a) of the Coastal Act, as well as City of Newport Beach LCP policies, with respect to landside and waterside construction impacts to water quality, as listed above.

7. Post-Construction Impacts to Water Quality

The proposed development will result in urban runoff entering the storm water system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the landward site of the development drains a parking lot and new buildings. Therefore, the primary landside post-construction water quality concerns associated with the proposed project include, grease, motor oil, heavy metals and trash. The proposed development would result in the discharge of storm water into the storm water conveyance system that would discharge into the Lower Newport Bay and into coastal waters. The waterside portion of the project consists of expansion of an existing marina facility. Maintenance activities of the boats docked in the marina expansion and associated boating activities could result in adverse impacts to coastal waters. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach. 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 the proposed project.

In order to deal with these post construction water quality impacts, the applicants has submitted a Water Quality Management Plan (WQMP) (Job No. 1288-001-01) prepared by Fuscue Engineering dated April 23, 2014. While the overall drainage pattern will stay the same on the landward side of the development, the parking area will be reconfigured necessitating the need for additional stormwater catch points. These catch points will have side opening catch basins and they will be interconnected and discharge to a biotreatment device. These devices were selected for use on-site due to the limited amount of landscaping between the buildings and required setbacks. The biotreatment device will convey stormwater to the existing pipe penetrating the bulkhead and flow into the harbor. Runoff from the proposed building and southern portion of the parking lot will drain to a proposed StormFilter media filtration unit, to be located within the garage floor of the proposed building.

Post project, a new public dock and expansion of the existing marina will be located on site. The berthing of boats by the boat dock users and associated boating activities in these new docks have the potential to adversely impact coastal water quality and marine environment through the introduction of pollutants associated with boating activities. To reduce the potential for post-construction impacts to water quality from these boats, the Commission imposes **Special Condition No. 8**, which requires the continued use and maintenance of post construction BMPs for the long-term berthing of boats. Additionally, in order to maintain water quality and prevent water quality impacts associated with the marina expansion, the City has submitted the following document: Management/Clean Marina Plan for Balboa Marina and Balboa Marina West

prepared by the California Recreation Company received March 1, 2016. The purpose of the Clean Marinas California Program is to encourage marinas and yacht clubs in California to use BMPs to protect water quality to minimize the introduction of potential pollutants into the Bay as a result of daily operations, such as regarding debris removal and solid waste management and boat sewage discharge.

Landscaping is proposed with the project; however, only conceptual landscape plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). Thus, the Commission imposes **Special Condition No. 9**, which requires the applicants to submit a landscape plan that only consists of native plants or non-native drought tolerant plants, which are non-invasive for the Executive Director's review and approval.

8. Resource Agency Approval

The applicants have received an approved Clean Water Act Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB) dated July 22, 2015. Additionally, the U.S. Army Corps of Engineers (USACOE) Rivers and Harbors Act Section 10 Permit are pending.

Since portions of the new private and public docks will be located over State Tidelands managed by the County of Orange, approval from the County of Orange is necessary and pending. Thus, the Commission imposes **Special Condition No. 10**, which requires applicants to submit from the County of Orange a copy of a letter of permission or approval, or evidence that no permit or permission is required prior to the issuance of permit

The Southern California Dredged Material Management Team (SC-DMMT), of which the Commission is a part of, gave their approval for the project at their meeting in January 2014. The proposed dredging of 9,900 cubic yards of sediment is exempt from coastal development permit requirements, as it involves less than 100,000 cubic yard of sediment within a twelve month period (California Coastal Commission Regulations, Section 13252). However, the transport of sediment across state waters and disposal of the sediment material at LA-3 ocean disposal site requires Federal Consistency certification and is thus not an element of the coastal development permit application since the disposal location is outside of the Coastal Zone. The disposal will be reviewed separately through the Federal Consistency process at a future date.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30232 and 30233(a) of the Coastal Act and with the marine resources and water quality policies of the City's certified LCP, as listed above.

D. VISUAL RESOURCES

Section 30251 states in relevant part,

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect view 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.

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-6 states,

Protect public coastal views from the following roadway segments:

...

☐ *Bayside Drive from Coast Highway to Linda Island Drive.*

...

☐ *Coast Highway/Newport Bay Bridge.*

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

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

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

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

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

The project site is located along E. Coast Highway and Bayside Drive, both designated as Coastal View Roads in the City's certified LCP. In addition, the project site is located within the Shoreline Height Limitation Zone as identified in the City's certified LCP, which allows non-residential buildings to be built to a maximum of 26-feet with a flat roof. The proposed restaurant will be one-story, 24'-9" high and will comply with the non-residential shoreline height limit. The proposed marina expansion will expand the number of docks and boats, but the visual characterization of the waterside area will remain similar to the existing Balboa Marina.

Public views of Lower Newport Bay from either road are already impacted by existing development in the area, consisting of the developed harbor and two-story residential structures,

such as those located on Linda Isle and in the Bayshores Private Gated Residential Community, and commercial development. Driving downcoast (east) along E. Coast Highway, the view toward the site from the E. Coast Highway Bridge is of the developed harbor (Balboa Marina) and the residential structures on Linda Isle and adjacent commercial development onsite. Driving upcoast (west) on E. Coast Highway, the view toward the site before the E. Coast Highway Bridge is of the Bayshores Private Gated Residential Community and a multiunit residential development. Driving downcoast (east) or upcoast (west) on Bayside Drive toward E. Coast Highway, views of Lower and Upper Newport Bay are already impeded by existing commercial development adjacent to the project site. Thus, the proposed project does not result in any adverse visual impacts. Therefore, the project as proposed is consistent with both Section 30251 of the Coastal Act with respect to visual resource impacts waterside (the expanded marina) and with LCP policies with respect to visual resource impacts landside (the new restaurant structure and parking lot).

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the visual resource policies of both the Coastal Act and the City's certified LCP, as listed above.

E. HAZARDS

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 fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act provides in part:

New Development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazards...

Coastal Land Use Plan, Hazards and Protective Devices, Policy 2.8 1-2 states,

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan, Hazards and Protective devices, Policy 2.8 1-4 states,

Require new development to 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.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-5 states,

Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-6 states,

Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-9 states,

Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

Coastal Land Use Plan, Coastal Erosion, Policy 2.8 6-10 states,

Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).

Due to its bay fronting location, the project site may be exposed to coastal hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards. To analyze the suitability of the proposed development relative to potential hazards; the applicants have submitted the following coastal hazard analyses of the wave and water level conditions expected at the site as a result of extreme storm, wave action and sea level rise over the next 75-100 years for the planned 75-year life of the proposed marina expansion, restaurant, and parking lot redevelopment: Evaluation of Coastal Hazards for Balboa West Marina Expansion Project prepared by Anchor QEA dated June 13, 2016 and an addendum to this analysis prepared by Anchor QEA dated July 21, 2016. The analyses state that there is a bulkhead on the south side of the property facing Linda Isle that is approximately 1,000-foot long with a crest elevation of 9.0 feet MLLW. Additionally, they state that to the west of the property is a riprap revetment approximately 100-feet long with an elevation reaching a height of 9.0-feet MLLW. 9.0-feet MLLW would also be the elevation of the parking lot inland of the bulkhead and revetment. They go on to state that the finished floor elevations of the following project components are: restaurant: 13.00-feet MLLW and private marina boater restroom: 10.5-feet MLLW (**Exhibit No. 7**).

The analyses state that the highest astronomical tide at the Newport Bay entrance is 7.2-feet MLLW, which is 1.8-feet higher than the Mean Higher High Water (MHHW) of 5.4-feet. This

tidal elevation is 1.7-feet below the 9.0 MLLW crest elevation of the existing bulkhead and revetment.

Based on sea level rise projections from the National Research Council (NRC) 2012 report, sea levels may rise between 1.4-feet to 5.5-feet by the year 2100. The analyses submitted by the applicants' state that for a 75 year design life (2092), sea levels at the site are expected to increase between 1.3-feet and 4.9-feet. Using the 4.9-foot upper range rise by the year 2092, an extreme high tide still water level of 12.1-feet (7.2-foot MLLW + 5.5-foot MLLW) could result. Such a rise in either extreme situation would overtop the existing bulkhead and revetment which could result in flooding of the private marina boater restroom, the parking area and access to the restaurant; however, this water level would not exceed the finished first floor elevation of the restaurant. Therefore, even without storms or wave impacts, portions of the proposed landside development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections. If the highest astronomical tides were to coincide with a storm, water levels at the site could rise up to a foot higher during the peak of the higher high tides. The analysis states that in order to protect against the anticipated extreme rise in sea level for the 75-year design life, the parking lot could be raised and the restroom facility could be raised on a higher building pad. In addition, to deal with the extreme flooding scenario, temporary flood protection through the use of sand bags is proposed.

Additionally, the analyses determined that the intermediate value for sea level rise for a 75 year design life (2092), would be 3.1-feet. The predicted highest astronomical tide using this value would be 10.3-feet (7.2-foot MLLW + 3.1 MLLW). Based on this information, the analysis recommends and the applicants have proposed that the restroom facility finished floor elevation be raised to 11-feet and the parking lot raised to 10.5-feet (**Exhibit No. 7**). In addition, the analyses recommend and the applicants proposes that the connection between the back slope of the revetment/bulkhead and the paving for the parking lot be constructed with an erosion resistant layer to limit damage to the structures due to overtopping over the 75-year design life.

The applicants state that the riprap slope revetment is not needed for the proposed restaurant or restroom. The restaurant will be built on a foundation consisting of landside piles and is not reliant upon the riprap. The restroom is located over 300 feet from the western edge of the property where the riprap is proposed, and is adjacent to the existing bulkhead. The riprap is only to support the marina development, a coastal dependent use.

Although the applicants' reports indicate that the site is safe for landside development at this time, bay front areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect shoreline processes that could affect the landside development. Furthermore, because of its location, the marina development, including the riprap, are subject to tidal influences and potentially subject to the effects of tsunamis and seiches. Although the applicant has indicated that shoreline protection is not necessary for the restaurant and the proposed riprap is to support the development of the marina, there is the potential for waterside and landside development to be subject to wave uprush. To minimize the project's potential future impact on shoreline processes, the Commission imposes **Special Condition No. 11**, which prohibits alteration of the proposed riprap revetment or construction of any future shoreline protective device(s) to protect the landside development approved pursuant to Coastal Development Permit No. 5-15-0087 including, but not limited to the restaurant, private marina boater restroom and

any other future landside improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. Furthermore, although no shoreline protection is necessary, the proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 12**, which requires the applicants to assume the risk.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that future development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 13**, which informs the applicants that future development at the site requires an amendment to Coastal Development Permit No. 5-15-0087 or a new coastal development permit.

The applicants state that the restaurant will have a pile foundation, but no foundation plans have been provided. Thus, the Commission imposes **Special Condition No. 14**, which requires the applicants to provide foundation plans.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with Section 30235 of the California Coastal Act and the hazard policies of the City of Newport Beach certified LCP, as listed above.

F. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:[...]*
- (2) adequate access exists nearby, ...*

Coastal Land Use Plan Policy, Parking, 2.9.3-1 states,

Site and design new development to avoid use of parking configurations or parking management programs that are difficult to maintain and enforce.

Coastal Land Use Plan Policy, Parking, 2.9.3-2 states,

Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.

Coastal Land Use Plan Policy, Parking, 2.9.3-3 states,

Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-3 states,

Develop and implement a uniform coastal access signing program to assist the public in locating, recognizing, and utilizing public access trails. Where appropriate, include information advising the public of environmentally sensitive habitats, safety hazards, and to respect adjacent private property.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-13 states,

Require a direct dedication or an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-15 states,

Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-16 states,

Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-17 states,

Require new development in waterfront commercial areas to provide public access easements to and along the waterfront. Where appropriate, integrate public access easements into the project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels.

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-16 states,

Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.

Coastal Land Use Plan Policy, Berthing, and Storage, 3.3.2-2 states,

Protect, and where feasible, enhance and expand marinas and dry boat storage facilities.

Coastal Land Use Plan Policy, Berthing, and Storage, 3.3.2-7 states,

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 proposed project is located seaward of the first public road and within coastal waters. The project site contains privately owned land and a privately owned marina, which leases boat slips to its members, operated by The Irvine Company. General public access to the bay is not available on the landward side, but it is available for dock lessees in the privately owned marina. Public access to the bay is available adjacent to the site from E. Coast Highway and Bayside Drive.

A portion of the western waterside portion of the Balboa Marina was previously home to the Reuben E. Lee Riverboat that operated as a restaurant and then a marine museum prior to being dismantled. The applicants state that since the removal of the Riverboat, that area of the Balboa Marina site has been underutilized. In response to this, the Irvine Company and City of Newport Beach have joined to propose the current project consisting of expansion of the existing private docks and installing a new public transient dock, meaning that there will be no overnight tie ups allowed. It is anticipated that boaters will access the docks from the water-side and use the docks to tie up and access the existing land-side restaurants and commercial uses that are located in this area of the marina.

The existing private marina will be expanded to include 26 new slips that will accommodate a variety of boats including 14 boats ranging in size from 20-feet to 40-feet and 12 boats ranging in size from 50-feet to 80-feet. The number of available slips will be increased from 105 to 131. The new docks will be constructed as an extension of the existing dock structure and access will be from the existing westerly gangway. The existing private Balboa Marina expansion will continue its existing use as a for-lease boat slip facility. While a private marina, it will continue to provide recreational boating opportunities by continuing to lease docks to the general public to allow coastal boating opportunities.

The new public dock will provide public transient access for the boating public in an area of the harbor where there are currently no free docking opportunities. The new public dock will include a new gangway, an additional 8 public transient slips and the relocation of 4 existing public transient slips from the eastern end of the existing Balboa Marina for a total of 12 public transient use slips for boats up to 20-feet in length. A pedestrian walkway through the parking lot will provide access from the public dock to the landside. The gangway and the public docks will be maintained by the City and will provide a new point of vertical access for this area of the Harbor that will increase the opportunity for public access from the harbor to the landside amenities consisting of the new proposed restaurant and nearby existing restaurants and commercial retail establishments. The applicants state that signage directing the general public to the new public transient dock will be provided; however, no such signage plan has been submitted. The proposed signs should be located in conspicuous locations adjacent to E. Coast Highway, in the adjacent parking lot and as near as possible to the proposed dock, so that those visitors arriving and departing from this public dock are directed to the visitor-serving amenities/coastal access opportunities which will help improve public access. Thus, the Commission imposes **Special Condition No. 14**, which requires the applicants to submit a coastal public access sign plan identifying the location of the visitor-serving/coastal access directional sign.

General public access to the bay is not available on the landward side of the project site because of private ownership; however, it is available for dock lessees in the privately owned marina. The public will continue to access the site via the parking lot and walkway access and sidewalks that currently exist along E. Coast Highway and Bayside Drive. However, in order to expand and enhance public access at the site, the Irvine Company is providing vertical access to the new public dock that will also, in the future, connect to the planned accessways in the Back Bay Landing project located immediately north of E. Coast Highway. The vertical access will be a dedicated eight (8) foot wide vertical (to the shoreline) public access easement that would provide pedestrian access from E. Coast Highway, as required by the City's approval. With the proposed vertical access to the public dock, and its potential connection to future accessways in the planned Back Bay Landing project, public access will be enhanced onsite. In addition, with the new public dock, coastal recreational opportunities will be expanded and enhanced in an area where access has been limited or not available. In order to ensure that the proposed dedicated public access easement is part of the proposed project, the Commission imposes **Special Condition No. 15**, which requires the applicant, the Irvine Company, to irrevocably offer to dedicate a public access easement.

The proposed land uses consisting of the new restaurant use and marina and the existing adjacent SOL Mexican Cocina Restaurant, which all rely on shared parking use, require 365 parking spaces based on the City's Zoning Code. The proposed parking configuration would provide 250 parking spaces, resulting in a parking shortfall of 106 parking spaces. However, under the applicants' proposed Valet Parking Management Plan, 294 parking spaces would be provided onsite, including 31 valet-stacked parking spaces and 13 tandem valet parking spaces for a total of 44 valet and tandem parking spaces. The City's Zoning Code allows for reduced parking standards if a parking study with sufficient data indicates that parking demand will be less than the required number of off-street parking spaces, when two or more nonresidential uses on the

site have distinct and differing peak parking demands and a parking management plan mitigate the impacts associated with a reduction in the number of required parking spaces.

In addition, with the proposed eight transient docks, boaters will be accessing without reliant on parking spaces, thereby reducing the demand for parking.

During the City's approval process of the project, the applicants prepared a Parking Demand Analysis that showed that the site can accommodate all uses except for a slight shortfall at peak demand times, 7pm to 8pm on weekdays and 7pm to 8pm on weekends. According to the analysis with the valet parking proposed in the management plan, the weekday peak demand is 310 spaces (16 short) and the weekend peak demand is 305 spaces (11 short). In response to the parking shortfall, the applicants prepared a Parking Management Plan that was approved by the City that states that sixteen (16) additional parking spaces will be accommodated on the nearby Bayside Shopping Center (1000 Bayside Drive) on the northwest corner of Bayside Drive and Jamboree Road, approximately .9 mile southeast of the project site, also owned by the Irvine Company, in conjunction with the valet parking operation (**Exhibit No. 1, page 1**). The parking management plan requires employees to park at this off-site location on Friday/Saturday evenings (peak restaurant demand times) when the demand for parking at the shopping center, consisting of a market, bank and small retail shops, is low. The applicants have provided a copy of a letter from the Irvine Company, which authorizes the use of the Bayside Shopping Center for the use of 16 parking spaces as overflow parking for employees of the restaurant. The City approval of the project requires that a parking agreement guaranteeing the long-term availability of the off-site parking facility for the proposed project be approved by the City Attorney and the Community Director and recorded with the County Recorder's Office.

The parking shortage on the project site will not have a significant adverse impact on public beach access. Peak demand occurs in the evening which is not a high beach use period and the use of the remote lot by employees will not impact use of that shopping center because of the time of use and off hours of the businesses in the shopping center. To ensure that parking will be preserved at the 1000 Bayside Drive off-site parking lot for the commercial uses located at 201 E. Coast Highway, the Commission imposes, **Special Condition No. 16**, which requires that for the life of the restaurant development located at 201 E. Coast Highway, that sixteen (16) parking spaces will be provided at the 1000 Bayside Drive off-site parking lot.

As conditioned, there is no significant potential for adverse impacts to public access. However, future development may potentially result in adverse impacts to public access. To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act and the City's certified LCP, the Commission imposes **Special Condition No. 13**, which requires a future development special condition. Any changes to the proposed development, including the parking management plan and use of the site will require an amendment or a new coastal development permit.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent Section 30210, 30211 and 30211 of the Coastal Act and with the public access policies of the City's certified LCP.

G. 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 No. 17**, which requires the property owner record a deed restriction against the project site located at 201 E. Coast Highway, Newport Beach and the off-site parking lot located at 100 Bayside Drive, Newport Beach 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, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

H. LOCAL COASTAL PROGRAM (LCP)

The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 8, 2009. On September 8, 2016, the Commission approved an Implementation Plan (IP) for the City of Newport Beach. On January 13, 2017, the IP was certified. The landward side work of the proposed development is located within the City's jurisdiction and consequently, the standard of review is the City's certified Local Coastal Plan (LCP) and the public access policies of the Coastal Act. As conditioned, the proposed development is consistent with the City's certified LCP and the access policies of the Coastal Act.

The waterside work of the proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach is the lead agency for purposes of CEQA compliance. A Mitigated Negative Declaration was approved for this project on October 4, 2014 by the Planning Commission and reaffirmed on November 25, 2014 by the City Council pursuant to the provisions of CEQA. Mitigation measures included measures to minimize any impacts to biological resources and hydrology and water quality.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed development has been conditioned to assure the proposed project is consistent with policies of the certified LCP and the Coastal Act. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which

would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.

APPENDIX 1

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Exemption No. 5-05-059; Coastal Development Permit No. P-5-25-77-987; Coastal Development Permit No. 5-93-125; Coastal Development Permit No. 5-07-241; City of Newport Beach Harbor Resources Division Approval-In-Concept dated December 1, 2014 and December 15, 2015; City of Newport Beach Planning Department Approval-In-Concept dated February 17, 2016; Mitigated Negative Declaration NO. ND2013-002 (State Clearinghouse Number 2014081044); Marine Biological Impact Assessment For The Balboa Marina West Project, Newport Bay, Orange County, California prepared by Coastal Resources Management, Inc. dated December 12, 2013 (Revised March 11, 2015); Storm Water Pollution Prevention Plan (SWPPP) prepared by Stantec dated February 2016, an Erosion Control Plan, Marina Dredging Management Plan, Balboa Marina West Dredging and Public/Transient Dock Development prepared by Anchor QEA, LLC dated January 2016 (Revised February 2016); Water Quality Management Plan (WQMP) (Job No. 1288-001-01) prepared by Fuscue Engineering dated April 23, 2014; Management/Clean Marina Plan for Balboa Marina and Balboa Marina West prepared by the California Recreation Company received March 1, 2016; Sea Level Rise Memorandum prepared by Anchor QEA dated July 24, 2015; Evaluation of Coastal Hazards for Balboa West Marina Expansion Project prepared by Anchor QEA dated June 13, 2016; and Addendum to the Evaluation of Coastal Hazards for Balboa West Marina Expansion Project prepared by Anchor QEA dated July 21, 2016.



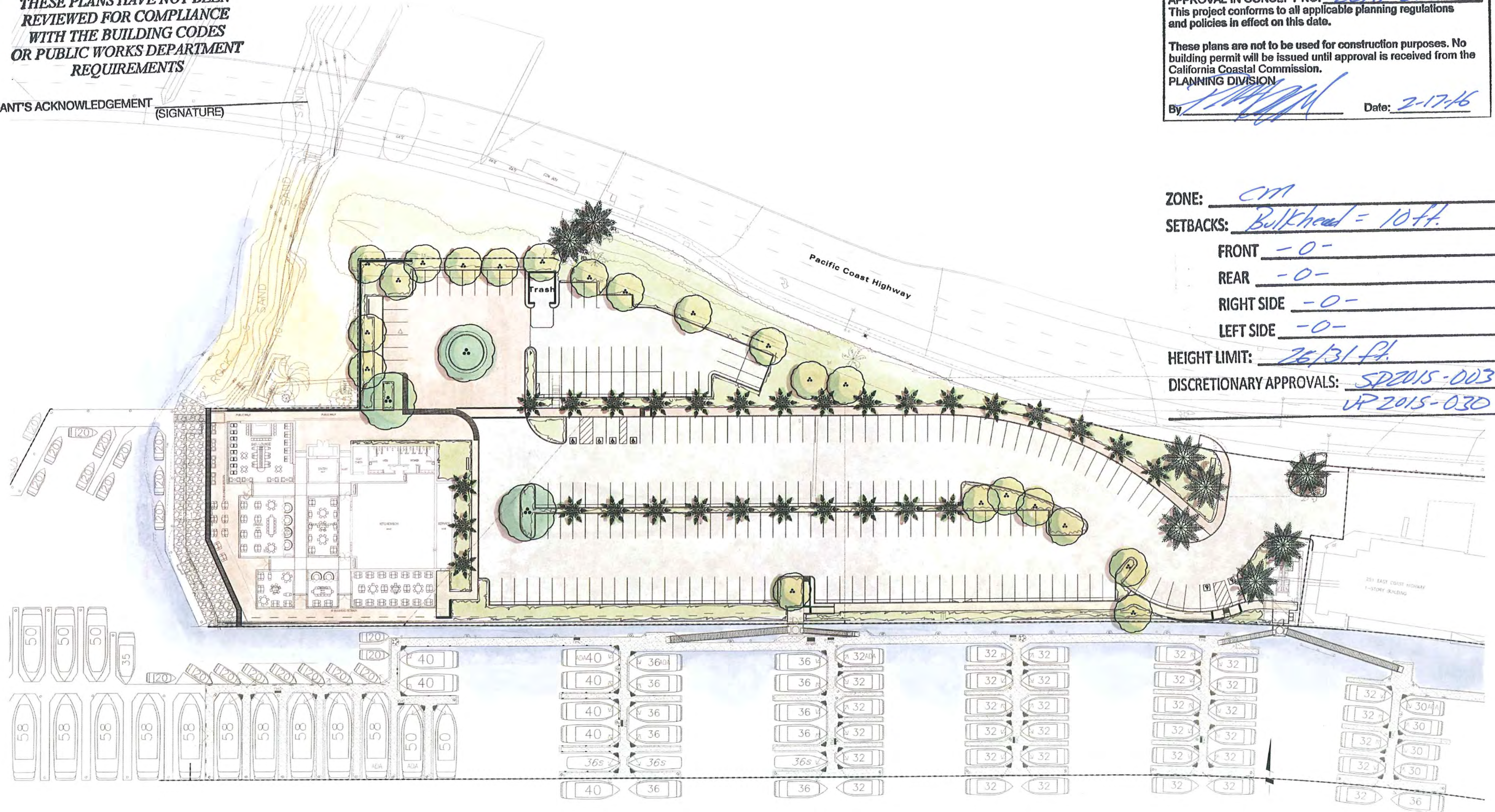


- ZONING APPROVAL IN CONCEPT ONLY -
THESE PLANS HAVE NOT BEEN
REVIEWED FOR COMPLIANCE
WITH THE BUILDING CODES
OR PUBLIC WORKS DEPARTMENT
REQUIREMENTS

APPLICANT'S ACKNOWLEDGEMENT (SIGNATURE)

CITY OF NEWPORT BEACH
 APPROVAL IN CONCEPT NO. 2016-011
 This project conforms to all applicable planning regulations
 and policies in effect on this date.
 These plans are not to be used for construction purposes. No
 building permit will be issued until approval is received from the
 California Coastal Commission.
 PLANNING DIVISION
 By [Signature] Date: 2-17-16

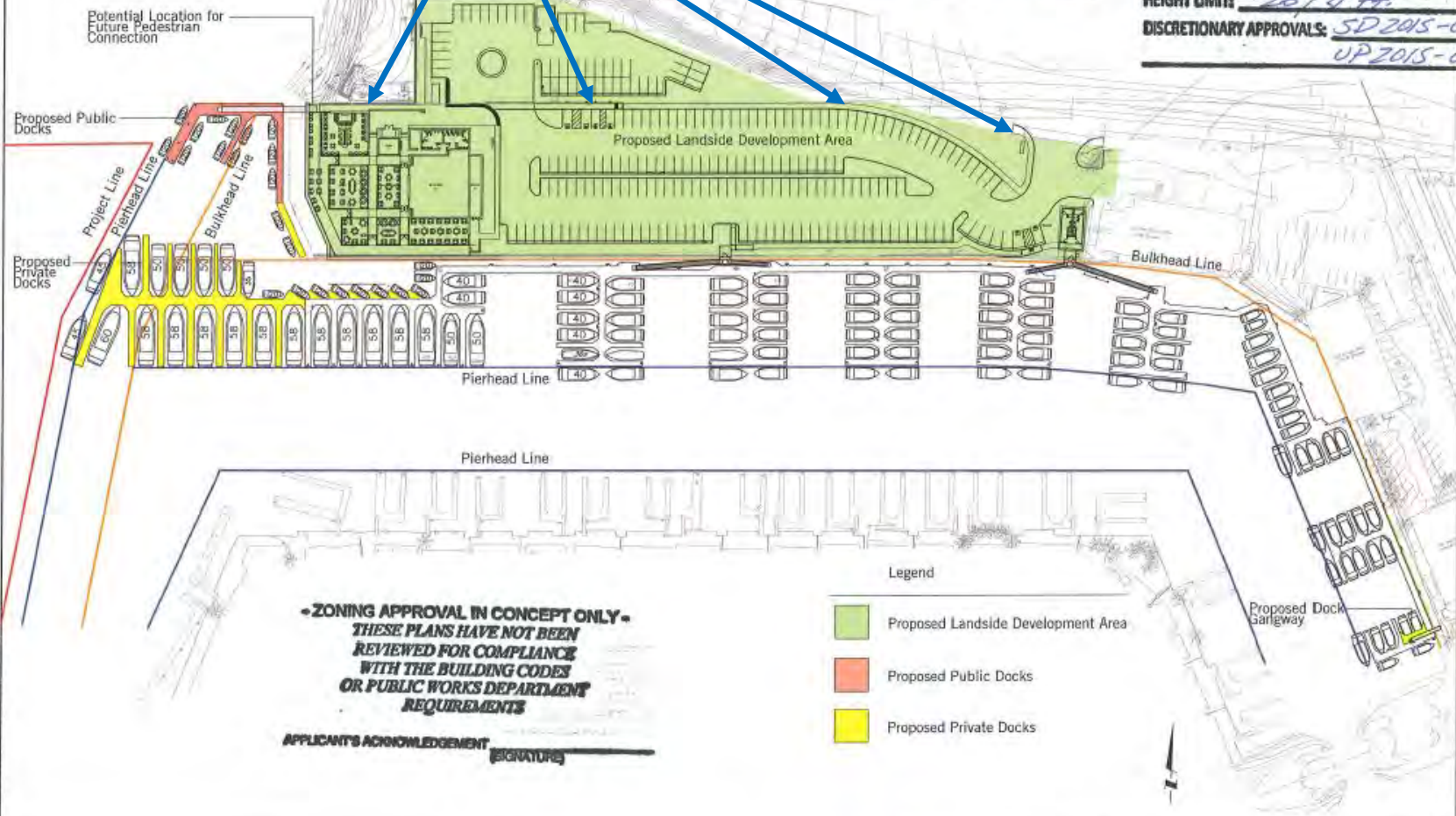
ZONE: CM
 SETBACKS: Bulkhead = 10 ft.
 FRONT -0-
 REAR -0-
 RIGHT SIDE -0-
 LEFT SIDE -0-
 HEIGHT LIMIT: 26/31 ft.
 DISCRETIONARY APPROVALS: SP2015-003
UP 2015-030



8-foot-wide public walkway from E. Coast Highway to the public dock

CITY OF NEWPORT BEACH
APPROVAL IN CONCEPT NO. 2016-011
This project conforms to all applicable planning regulations and policies in effect on this date.
These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.
PLANNING DIVISION
By *[Signature]* Date 2-17-16

ZONE: CM
SETBACKS: Bulkhead = 10ft.
FRONT -0-
REAR -0-
RIGHT SIDE -0-
LEFT SIDE -0-
HEIGHT LIMIT: 26/31 ft.
DISCRETIONARY APPROVALS: SD 2015-0023
UP 2015-030



DESIGNED BY
Stantec
Landscape Architecture
307 Altona, Suite 200, Newport Beach, CA 92660
949.444.1111

DESIGNED BY
burton
Landscape Architecture
307 Altona, Suite 200, Newport Beach, CA 92660
949.444.1111

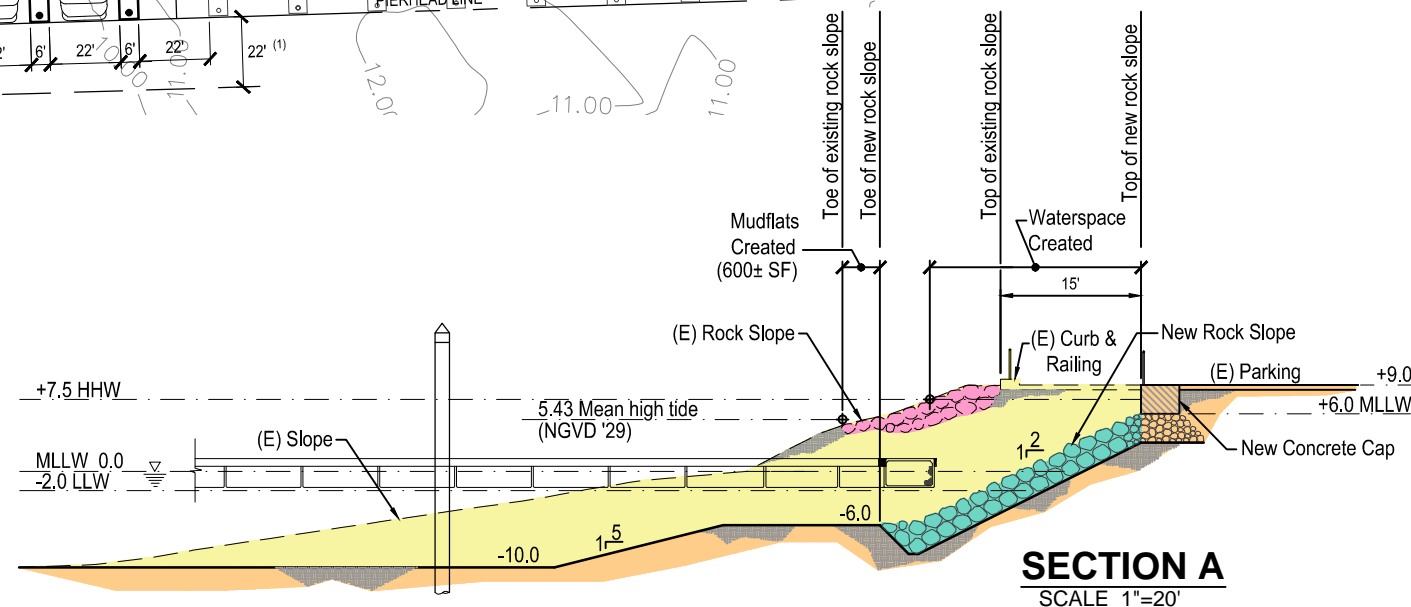
DESIGNED BY
IRVINE COMPANY
Since 1954

Composite Site Plan - Balboa Marina
Land Side & Water Side Projects
DATE: 02/19/2016
BY: *[Signature]*
CHECKED BY: *[Signature]*
SCALE: 1" = 10'

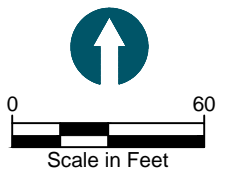
H:\AutoCAD Project Files\Projects\0483-The Irvine Company\Balboa Marina West\0483-RP-001 SITE.dwg Fig 1
Feb 23, 2016 10:16am razorable

PROPOSED BOAT COUNT		PILE COUNT
PRIVATE DOCK	14 (35' & Over)	28 (57 SF)
	12 (20' Electric)	
	26 Total	
PUBLIC DOCK	12 (20' class transient equivalents)	17 (38 SF)

(1) Maximum Overhang Allowable



- LEGEND:**
- Existing Rock Slope
 - Excavation and Dredging
 - Existing Eelgrass Patch
 - New Rock Slope



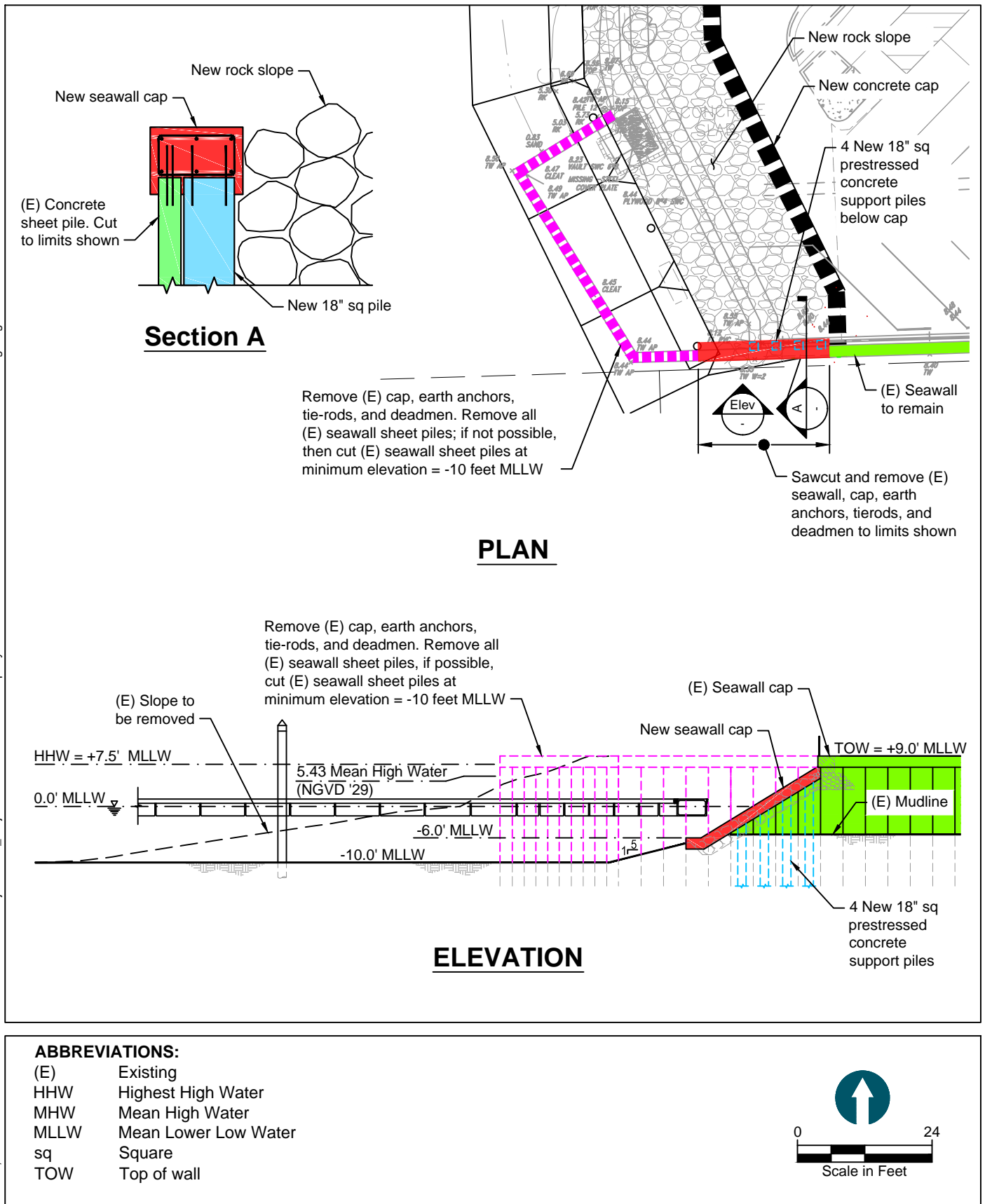
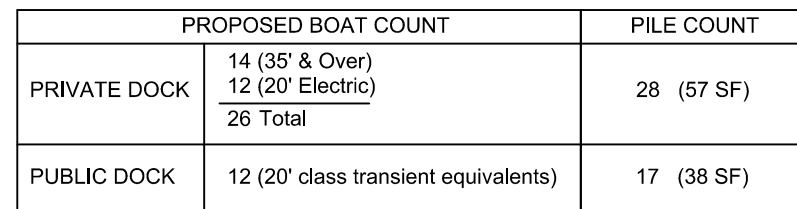


Figure 1

Seawall Retrofit

Public Transient Dock and Marina Expansion
City of Newport Beach / Irvine Company Joint Project

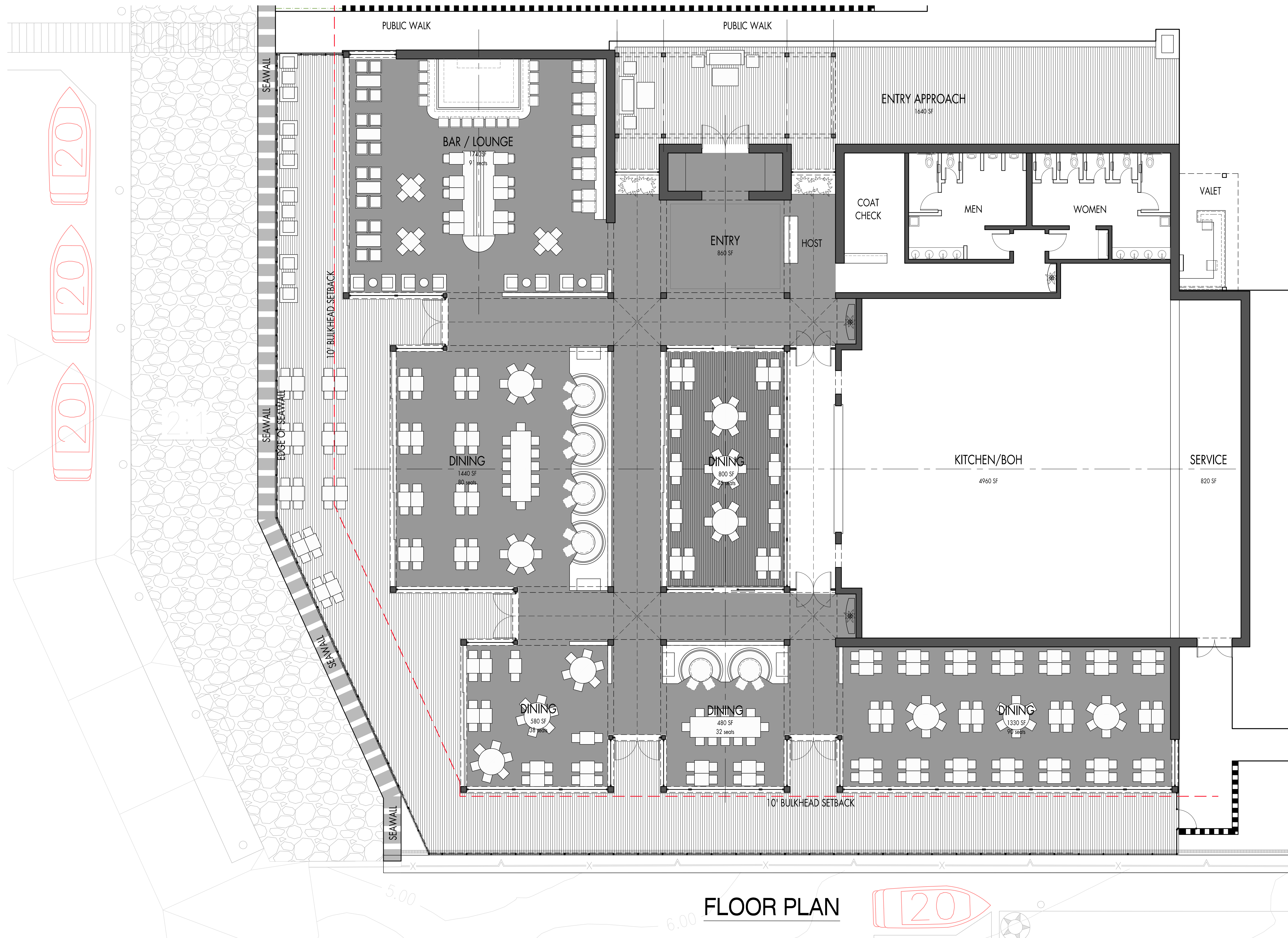


Conceptual Dock Plan

TOTAL GROSS BUILDING SF : 14,252 SF

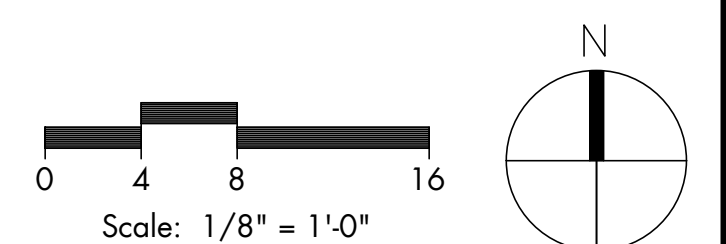
NET PUBLIC AREA : 9,030 SF
DECK DINING AREA : 1,255 SF

INTERIOR SEATS : 377 SEATS
DECK DINING AREA SEATS: 40 SEATS



FLOOR PLAN

05-14-15



BCV

BALBOA MARINA
NEWPORT BEACH, CA

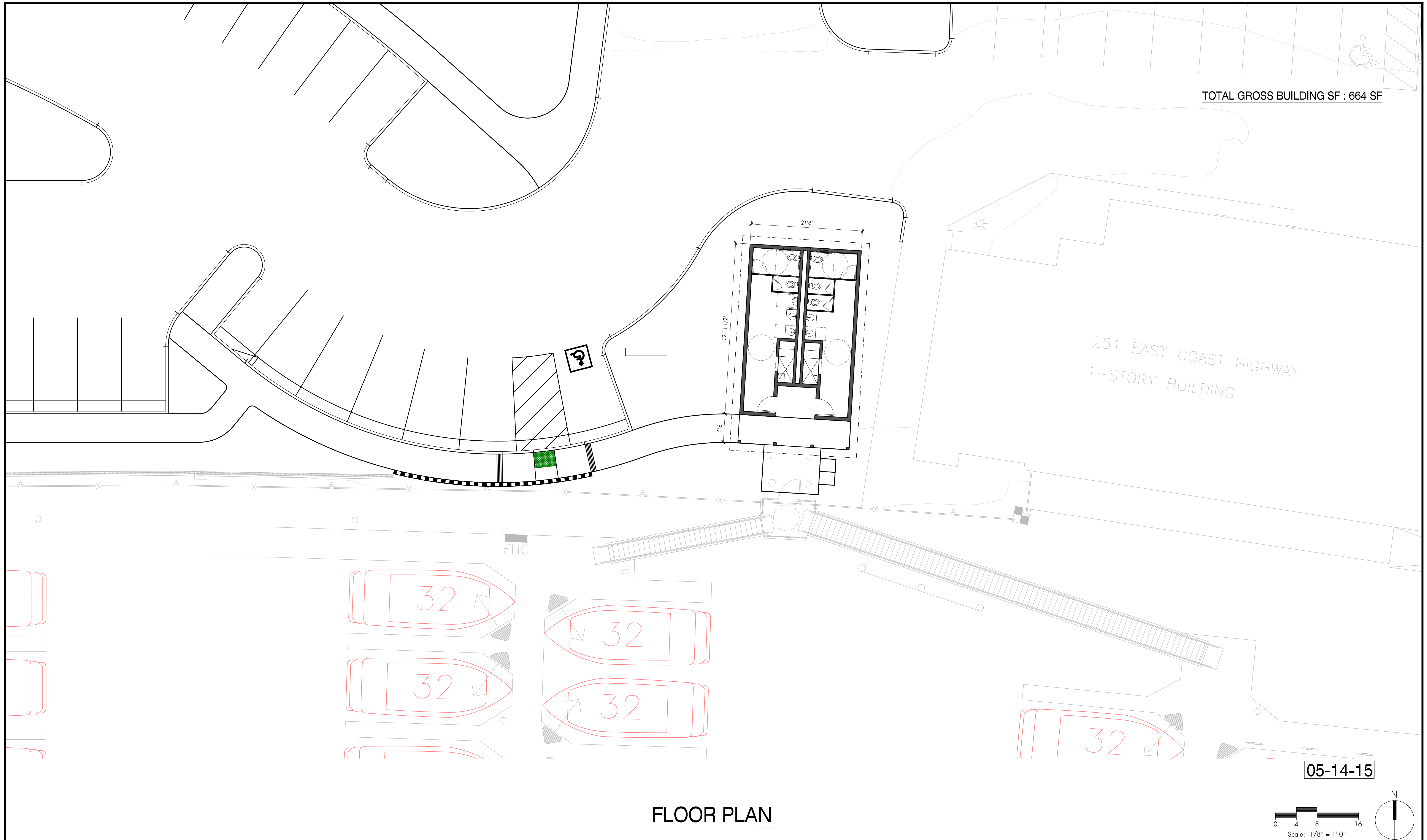
Exhibit No. 5
Page 1 of 7

IRVINE COMPANY
Since 1864

BALDAUF CATTON VONECKARTSBERG

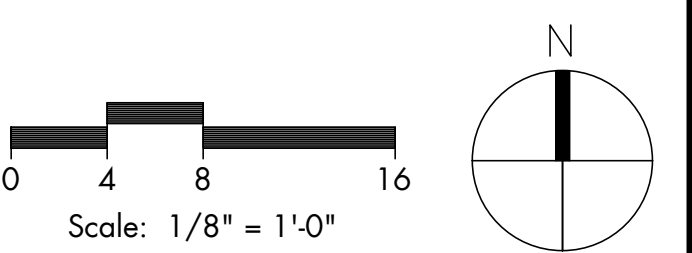


TOTAL GROSS BUILDING SF : 664 SF



FLOOR PLAN

05-14-15



BCV

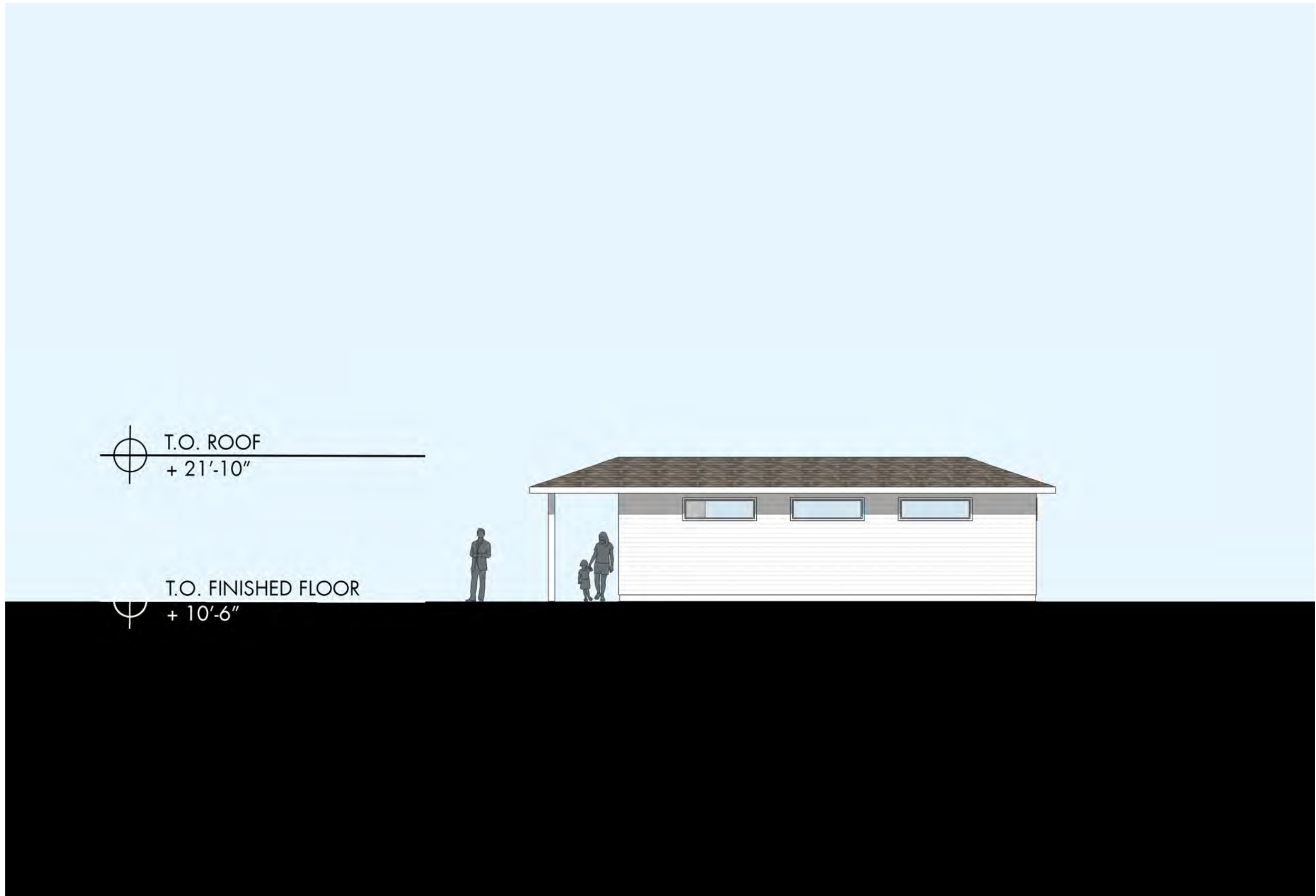
BALBOA MARINA

NEWPORT BEACH, CA

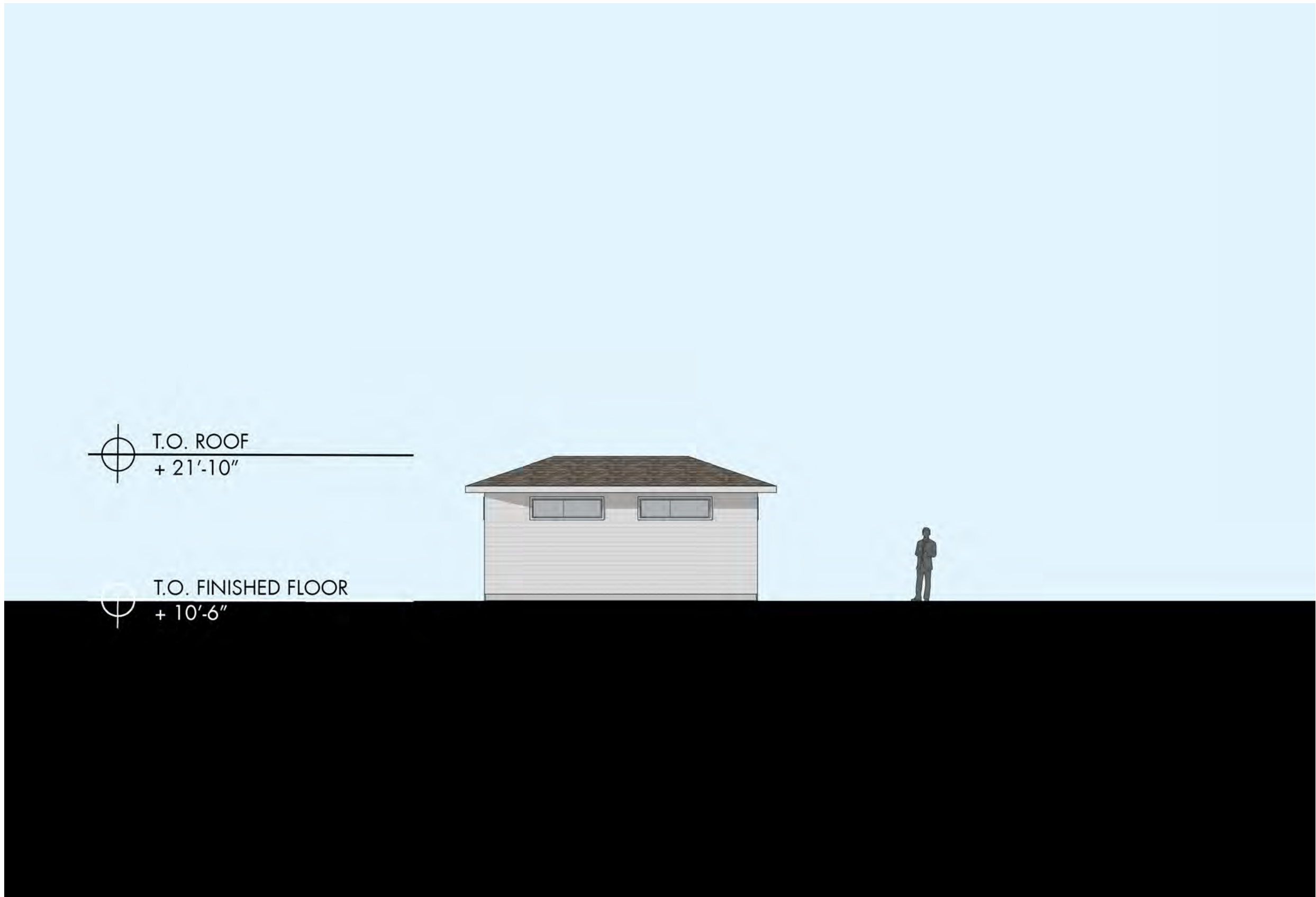
Exhibit No. 5
Page 2 of 7

IRVINE COMPANY
Since 1864

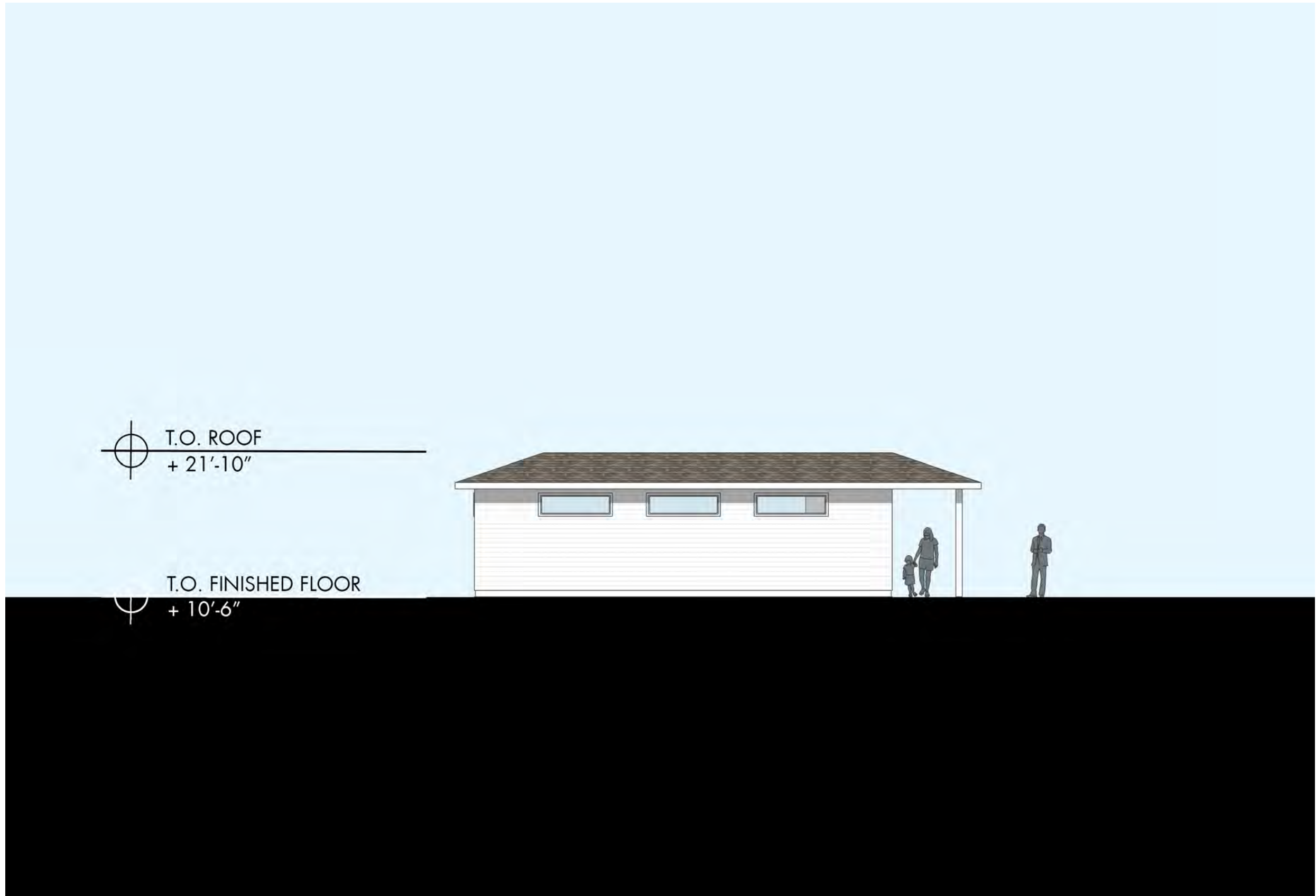
B A L D A U F C A T T O N V O N E C K A R T S B E R G



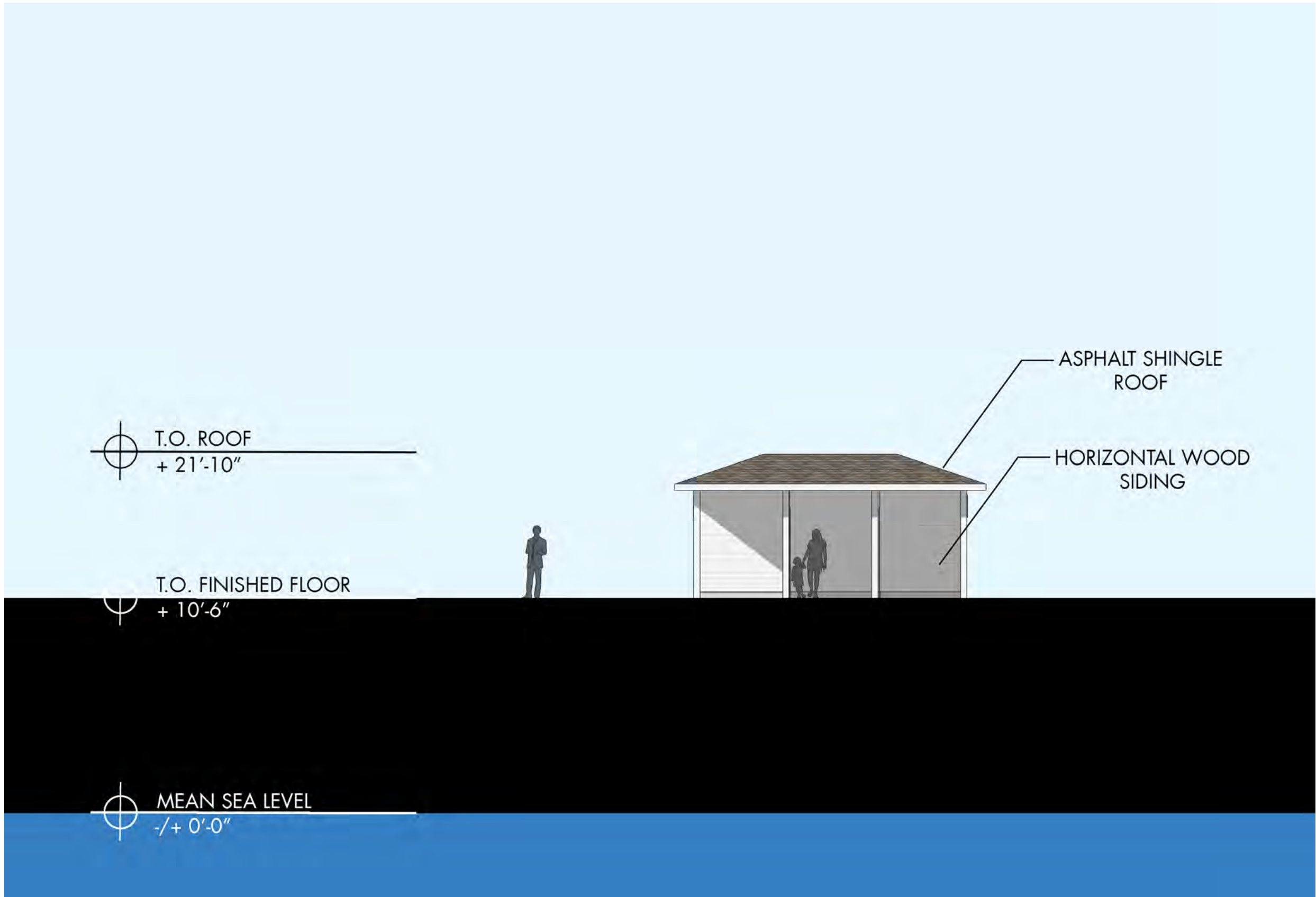
EAST ELEVATION



NORTH ELEVATION

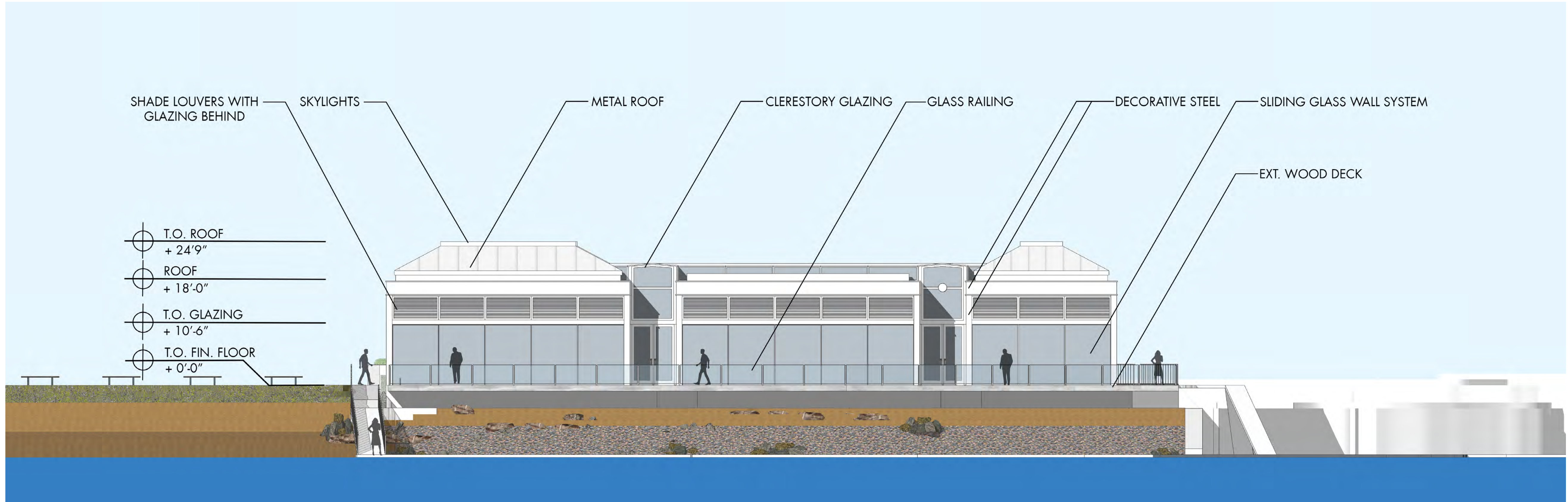


WEST ELEVATION

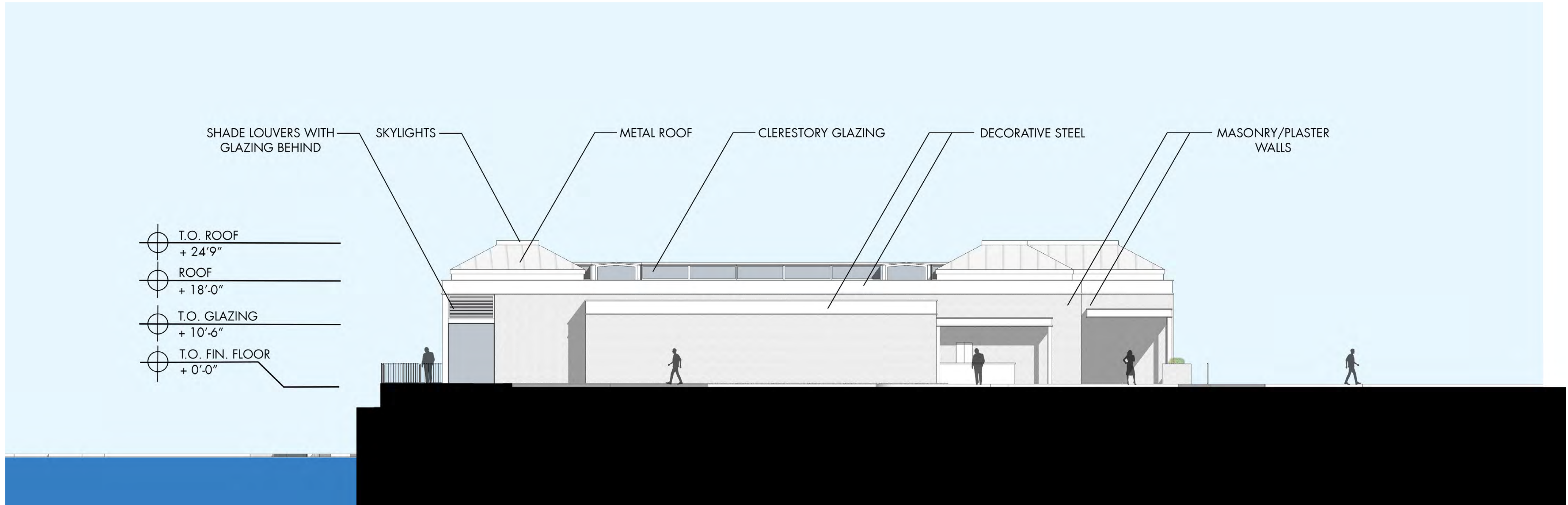


SOUTH ELEVATION

SCALE: 1/8"=1'-0"

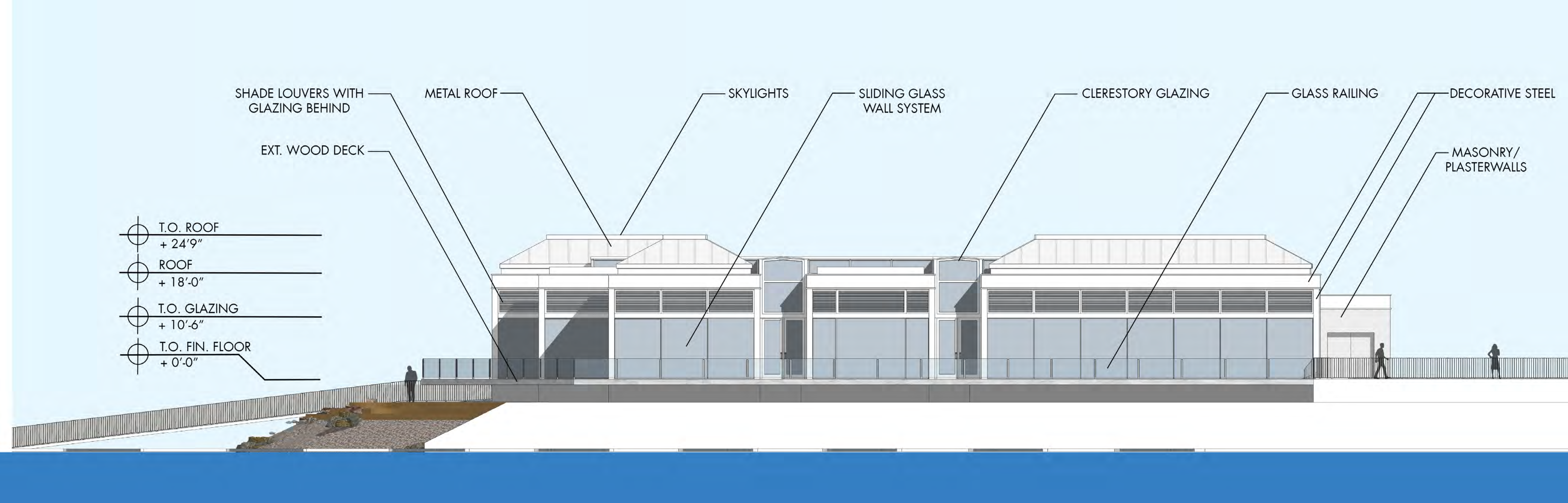


WEST ELEVATION

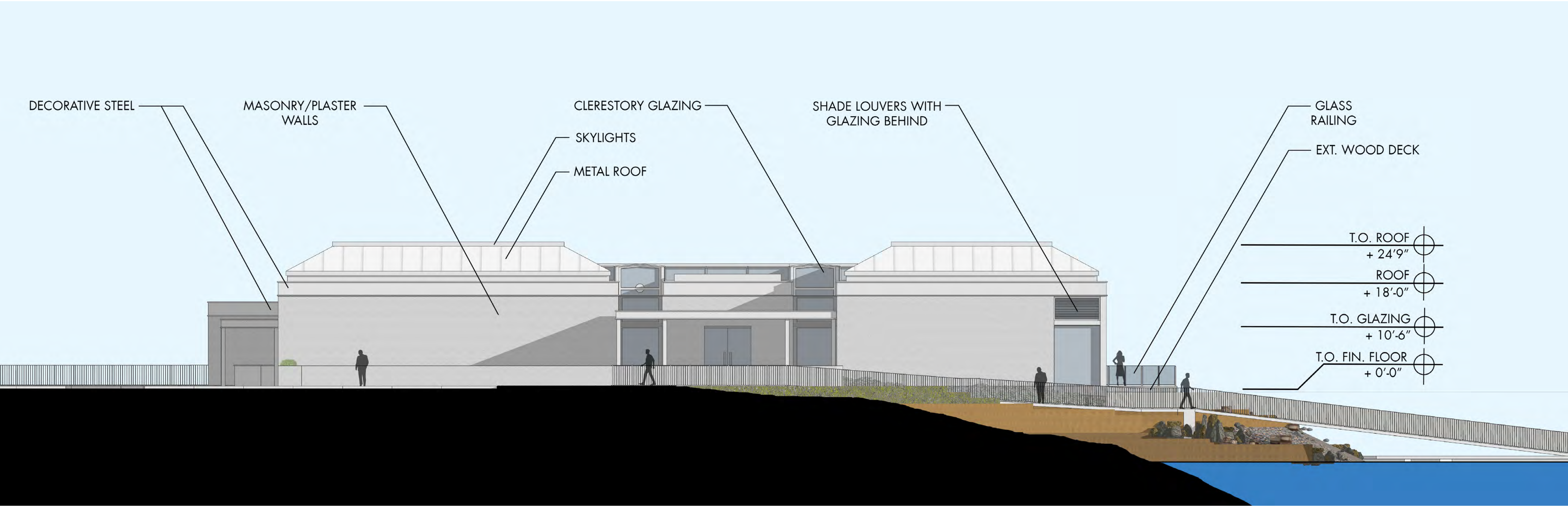


EAST ELEVATION

SCALE: 1/8"=1'-0"



SOUTH ELEVATION



NORTH ELEVATION

SCALE: 1/8"=1'-0"

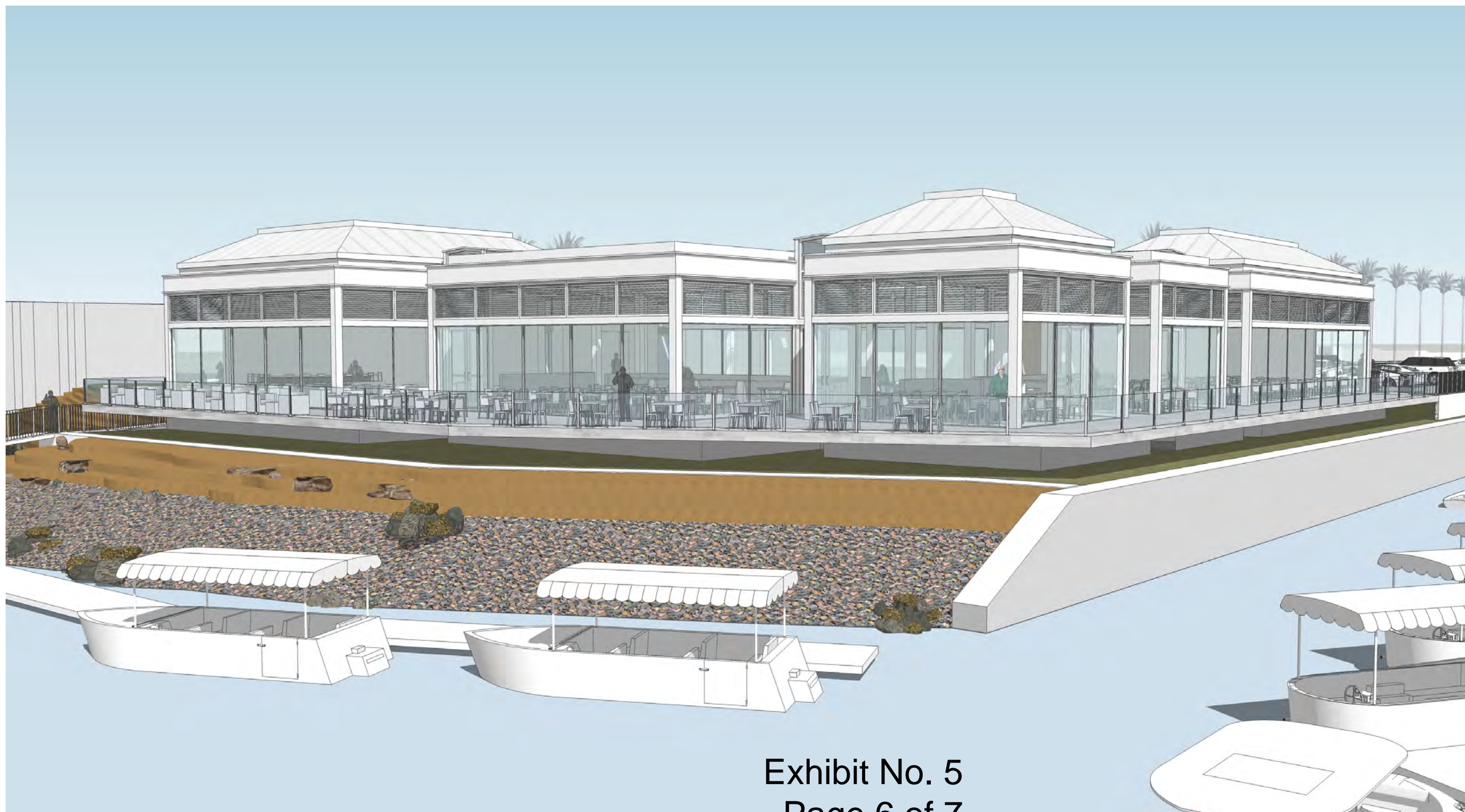


Exhibit No. 5
Page 6 of 7



Exhibit No. 5
Page 7 of 7

URS



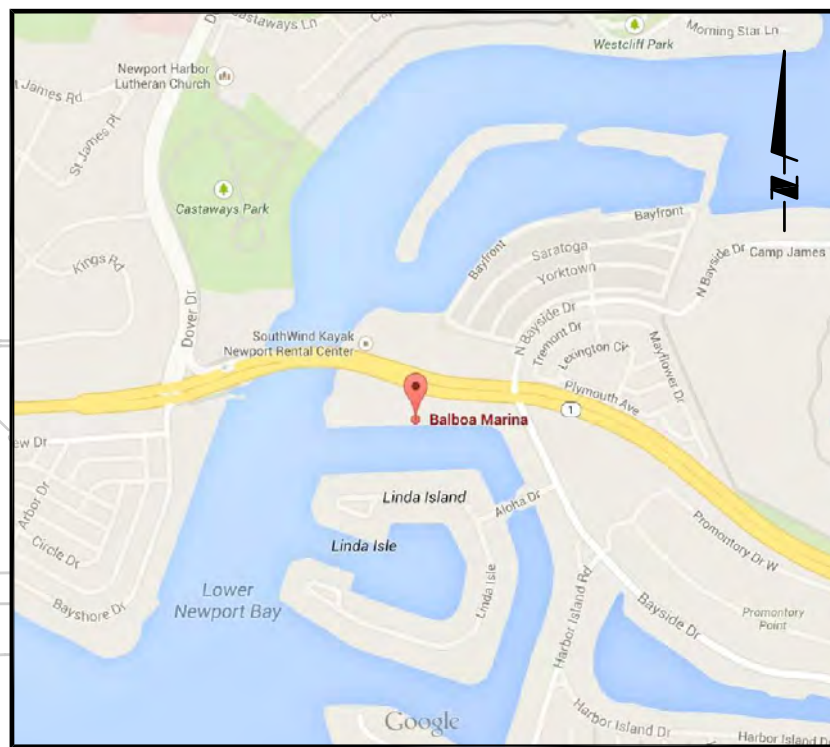
Figure 4

CITY OF NEWPORT BEACH / IRVINE COMPANY JOINT PROJECT



Public Transient Dock and
Marina Expansion
CONCEPTUAL PLAN
BALBOA MARINA WEST

DRAWING: v:\projects\2042431\200\drawing\exhibit_files\431200c--ex015.dwg PLOTTED: 7/25/2016 2:35 PM BY: Chen, Ryan



VICINITY MAP

LEGEND	
	AC IMPROVEMENT
	CONCRETE PAVING
	DAYLIGHT LIMITS
	TOP OF SLOPE
	TOE OF SLOPE
	FLOW DIRECTION
	RETAINING WALL

PARKING SUMMARY	
TOTAL STANDARD PARKING PROVIDED:	169
PARKING STALLS IN VALET AREA:	51
HANDICAP ACCESSIBLE STALLS:	6
TOTAL PARKING PROVIDED:	226

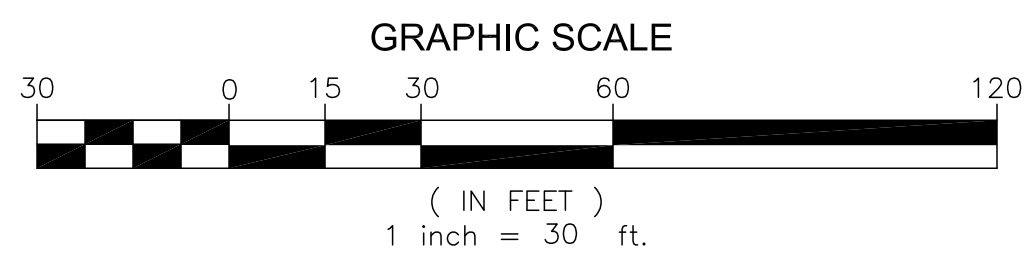
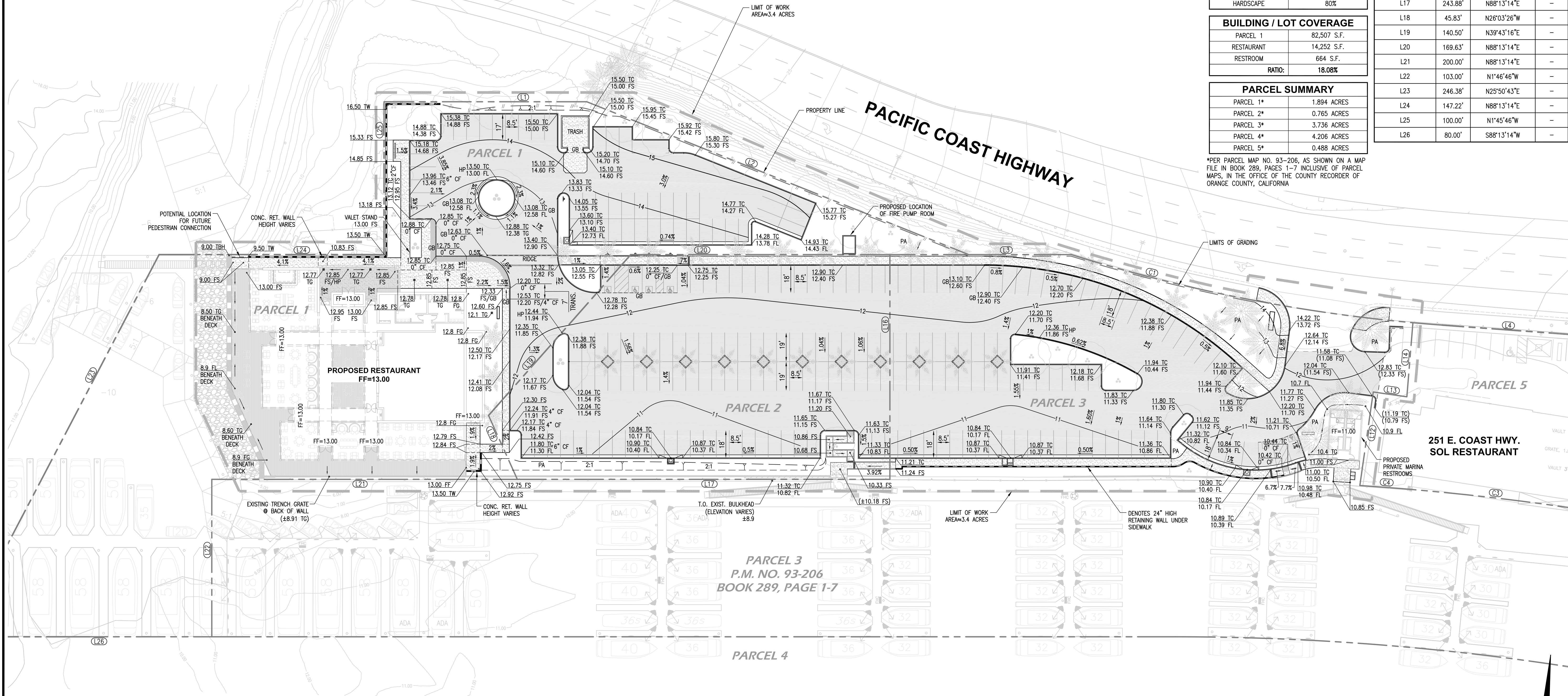
SITE SUMMARY	
LANDSCAPE	20%
HARDSCAPE	80%

BUILDING / LOT COVERAGE	
PARCEL 1	82,507 S.F.
RESTAURANT	14,252 S.F.
RESTROOM	664 S.F.
RATIO:	18.08%

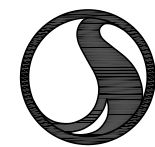
PARCEL SUMMARY	
PARCEL 1*	1.894 ACRES
PARCEL 2*	0.765 ACRES
PARCEL 3*	3.736 ACRES
PARCEL 4*	4.206 ACRES
PARCEL 5*	0.488 ACRES

*PER PARCEL MAP NO. 93-206, AS SHOWN ON A MAP FILE IN BOOK 289, PAGES 1-7 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA

LINE AND CURVE TABLE			
LINE # / CURVE #	LENGTH	BEARING / DELTA	RADIUS
C1	247.66'	13°09'47"	1078.00'
C3	115.56'	3°40'21"	1803.00'
C4	25.89'	0°49'22"	1803.00'
L1	132.72'	N88°13'14"E	-
L2	269.26'	S69°58'40"E	-
L3	67.12'	N88°13'14"E	-
L4	196.81'	S87°36'16"E	-
L12	61.81'	N6°23'48"E	-
L13	22.22'	S83°36'12"E	-
L14	48.63'	N2°53'01"E	-
L16	147.00'	N1°46'46"W	-
L17	243.88'	N88°13'14"E	-
L18	45.83'	N26°03'26"W	-
L19	140.50'	N39°43'16"E	-
L20	169.63'	N88°13'14"E	-
L21	200.00'	N88°13'14"E	-
L22	103.00'	N1°46'46"W	-
L23	246.38'	N25°50'43"E	-
L24	147.22'	N88°13'14"E	-
L25	100.00'	N1°45'46"W	-
L26	80.00'	S88°13'14"W	-



PREPARED BY:



Stantec
38 TECHNOLOGY DRIVE, SUITE 100
IRVINE, CA 92618
949.923.6000 stantec.com

PREPARED FOR:



IRVINE COMPANY
Since 1864

BALBOA MARINA WEST IMPROVEMENT PLAN

BALBOA MARINA, NEWPORT BEACH CA

Exhibit No. 7
Page 1 of 1

DATE:

07/25/2015

SHEET

C1

OF

C3

JOB NO.
2042 431200
JULY 25, 2016