

**CALIFORNIA COASTAL COMMISSION**

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# W20a

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Hearing Date:	6/09/21

## STAFF REPORT: MATERIAL AMENDMENT

**Application No.:** 5-07-370-A2

**Applicant:** Orange County Parks Department

**Project Location:** 1901 Bayside Drive, Newport Beach, Orange County

**Description of Original Project Approved Pursuant to Permit No. 5-07-370:**

Demolition of the existing Coast Guard Station building and portion of surface parking lot for the installation of a new 174 foot-long bulkhead seaward of the existing bulkhead, replacement of existing County of Orange Harbor Patrol official use and guest docks, 1,200 cubic yards dredging, eelgrass habitat mitigation, new surface parking lot and storm drain system, on-site placement of temporary Coast Guard facility.

**Description of Permit Amendment No. 5-07-370-A1:** No Commission action was taken, and the file was closed in 2015.

**Description of Pending Permit Amendment No. 5-07-370-A2:** Request for after-the-fact reconfiguration of public surface parking spaces, canoe storage area and canoe storage closets on the sandy beach; formalization of shared use of visitor dock with emergency/official use vessels and designation of 8 Orange County Sheriff's Harbor patrol parking spaces available for public beach use on the weekends; approval of change of hours of dinghy dock tie up from 72 hours to 24 hours; increase the hours of public parking availability from 8am to 5pm to 6am to 10pm; installation of wayfinding signage,

safety gates and fencing within the facility; and installation of kayak and canoe storage racks on Bayside Beach. The applicant is also proposing to install an approximately 250-foot long concrete ADA pathway on the sandy beach immediately adjacent to the lifeguard facilities building, and provide two beach wheelchairs onsite.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The Orange County Parks Department (OC Parks) seeks after-the-fact approval to amend Coastal Development Permit No. 5-07-370 to reconfigure the public beach parking spaces approved by Coastal Development Permit 5-94-255 and establish a canoe storage area and canoe storage lockers on the sandy beach. The applicant also seeks to formalize the shared use of the visitor dock with emergency/official use vessels, and to designate eight Orange County Sheriff's Harbor Patrol (OCSHP) parking spaces for public use on the weekends. In addition, the applicant is proposing to change the hours of the dinghy dock tie up from 72 hours maximum to 24 hours maximum, with an allowance for longer tie-up upon notification to the Sheriff Harbor Patrol on an as-needed basis, and to increase hours of public parking availability from 8 am-5 pm to 6 am-10 pm, install wayfinding signage in the parking lot and dock facilities, install two safety gates and fencing within the facility, and install a kayak storage rack and canoe storage rack on Bayside Beach. The applicant also proposes to install an approximately 250-foot long concrete pathway to facilitate Americans With Disabilities Act (ADA)-compliant beach and dock access and provide two beach wheelchairs onsite to offset the change in access that will result from the installation of safety gates within the facility. The applicant also proposes to provide the public drop-off area for beach patrons as was required by CDP 5-94-255 but never implemented.

The Commission's Enforcement staff sent a Notice of Violation letter to the Orange County Sheriff's Department Harbormaster on May 20, 2019, notifying them that development that is noncompliant with Coastal Development Permit Nos. 5-07-370 and 5-94-255 was occurring at the OCSHP facility as well as in areas within the Commission's original jurisdiction, including (1) change in use of two public guest docks to lifeguard boat storage; (2) placement of "Keep Out" and "Authorized Personnel Only" signage at the entrance area to the public guest docks and on the public guest dock pilings facing toward Newport Harbor; (3) change in public dinghy tie-up access from 72 hours maximum to 20 minutes maximum and placement of accompanying signage; (4) change in use from Visitor dock to Emergency Dock; (5) relocation of 10 public beach parking spaces from the Commission-approved location; (6) failure to provide a Commission-approved beach drop-off point for beach patrons; and (7) placement of

outrigger canoes on the public beach.<sup>1</sup> Such development activities individually and cumulatively result in a change in public access to a protected public resource – the public guest dock area and accompanying public amenities at the OCSHP facility—without the benefit of a necessary CDP or amendment to the two above-mentioned CDPs. Upon receipt of the Notice of the Violation letter, the County removed the unpermitted signage, and in consultation with Commission staff, installed temporary signage in order to inform the public of the amenities at the site including the public beach drop off area, public guest slips, and dinghy dock. The temporary signage that was installed is similar to the signage contained in the applicant’s current signage plan and displayed the Commission’s wave and footprints logo which is used statewide to inform the public of coastal access and recreational opportunities. The County also adjusted the dinghy dock tie-up limit from 20 minutes maximum to any amount of time 6am-10pm during the time that the subject application and proposal was pending submittal. The Orange County Parks Department subsequently submitted the subject CDP Amendment Application No. 5-07-370-A2 to resolve the violations, along with seeking authorization of installation of new security gates and new fencing that would help delineate between public access amenities at the site and restricted access areas.

To resolve the violations, the County has removed the unpermitted signage, installed temporary signage, reopened the dinghy dock and is seeking formalization of a shared use as visitor dock and emergency dock, reconfiguration of public surface parking spaces, canoe storage area and canoe storage closets on the sandy beach, authorization for the change of hours of dinghy dock tie ups , and to formally designate eight Orange County Sheriff’s Harbor Patrol parking spaces available for public beach use on the weekends. Additionally, in order to comprehensively mitigate for the public access impacts resulting from these violations, and to improve public access at the site going forward, the applicant is proposing to implement a new wayfinding and signage plan and to provide new public amenities including 1) a public kayak and stand-up paddleboard storage rack at the sandy beach adjacent to the lifeguard headquarters; 2) a marketing and publicity program to advertise the availability of the public guest slips and other public amenities to the general public, including how to rent the slips and the public moorings; and 3) a public access program that provides free monthly participation in the canoe clubs for the public, with a targeted outreach program to environmental justice communities in Orange County. The goal of the new wayfinding and signage plan, public access amenities and recreational opportunities described above is to increase boating access, specifically small watercraft activities such as kayaking, stand-up paddle boarding, and outrigger canoeing at the OCSHP facility and beach to a broader segment of the population that may not own larger boats. In developing this application, it was the overarching goal of the County to help facilitate and expand free

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<sup>1</sup> The unpermitted placement of outrigger canoes was included in the permit amendment application once Commission staff became aware that the placement of approximately 12 outrigger canoes on the public beach was undertaken without the benefit of the necessary coastal development permit.

and low-cost recreational opportunities at the site such as visiting the sandy pocket beach to swim and sunbathe, participating in free traditional Hawaiian outrigger lessons, and providing recreational users the the ability to store a kayak or stand-up paddleboard over a weekend on a storage rack at the beach. As described in more detail below, through the special conditions contained in this coastal development permit amendment application, the County is required to provide and market these opportunities to environmental justice communities, including low-income communities, communities of color, and other historically underserved communities that experience disproportionate environmental burdens and/or fewer direct benefits of environmental protection. Without targeted outreach, individuals from these communities might not otherwise know about the OCSHP facility and beach and its recreational amenities.

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project amends CDP No. 5-07-370, which was issued by the Coastal Commission prior to LCP certification. The standard of review for development within the City's permit jurisdiction is the City's certified LCP. The subject site is depicted on the Commission's post-certification map as partially within the City's coastal development permit jurisdiction and partially within an area that the LCP refers to as "permit jurisdiction," a label that, while not self-explanatory, refers to areas that remain within the Coastal Commission's permitting jurisdiction because they include tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time (the area included in the Bayside Drive Beach). The portion within the City's permitting jurisdiction is partially within the appeals jurisdiction (the OCSHP and U.S. Coast Guard facilities). However, because in 2007 the Commission issued a CDP for the development over the entire site, which the applicant seeks to amend, the proposed amendment remains fully within the Commission's permitting jurisdiction. The portion of the project within the Commission's retained permitting jurisdiction must be consistent with Chapter 3 of the Coastal Act, with the LCP serving as guidance. The portion of the project within the City's permitting jurisdiction and the Commission's appeal jurisdiction must be consistent with the policies of the LCP and with the public access and recreation policies of Chapter 3 of the Coastal Act. The primary issues raised by this application are its potential adverse impacts to the public access and recreation resources protected by the Coastal Act and the City's Certified LCP.

The underlying coastal development permit includes 12 special conditions to protect coastal resources and maximize public access, including provisions the County failed to implement when the development was undertaken but will be implemented through the subject amendment. Commission staff are recommending additional special conditions be added to the permit to ensure that the development proposed in the subject permit amendment is consistent with the Coastal Act and the certified LCP.

The applicant is proposing to install an approximately 250-foot long concrete ADA compliant pathway on the sandy beach adjacent to the lifeguard facilities to connect the public parking area with the beach and public docks. Staff recommends the Commission impose **Special Condition 13**, requiring the applicant to submit a final site plan identifying the location of the pathway including any necessary curb cuts to facilitate a safe path of travel that connects to ADA restrooms, showers, and public docks. **Special Condition 14** requires the applicant to submit a revised beach parking plan demonstrating all of the changes approved with this application. The applicant is requesting to formalize the use of the Visitor Dock as a shared Visitor/Emergency Dock to serve as access reserved for temporary short-term guest dock check-in or immediate loading or offloading from a boat, and to serve as access reserved for emergency/official use vessels. **Special Condition 15** requires the applicant to submit a final signage and wayfinding plan consistent with the approval of this coastal development permit that clarifies that the public's use is limited to 20-minute docking time and is for immediate loading/unloading of passengers only. **Special Condition 15** also requires the signage plan to include the location of a handicapped accessible entrance sign to be posted with the Coastal Access and Beach Drop Off Sign to clarify the entrance of the new ADA pathway. **Special Condition 16** requires the applicant to submit a Public Access Program that provides free monthly participation in the canoe clubs for the public with targeted outreach to environmental justice communities, and to ensure that the public guest slips, public moorings, and other public amenities are known to the general public, **Special Condition 17** requires the applicant to submit a marketing and publicity program to advertise the dock space availability, including how to rent the slips and public moorings. All special conditions applied to the property pursuant to Coastal Development Permit 5-07-370 remain in effect and apply equally to this amendment.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-07-370-A2, as conditioned. The motion is on page 7.

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**PROCEDURAL NOTE** – Coastal Development Permit Amendments:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The amendment request involves changes to the previously authorized project. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit. The proposed amendment would not lessen the intended effect of CDP No. 5-07-370, because the project would restore and continue to protect public coastal access, consistent with the original permit, and would approve new public amenities to ensure the preservation of public access. Therefore, the Executive Director accepted the amendment request for filing.

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PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor’s Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

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**APPENDIX A – Substantive File Documents**

**APPENDIX B -- List of All Conditions That Will Apply to CDP 5-07-370, As Amended.**

**EXHIBITS**

**Exhibit 1—Vicinity Map**

**Exhibit 2—Site Plan and Conceptual ADA Pathway**

**Exhibit 3 – Signage and Wayfinding**

**Exhibit 4 -- Proposed Locations for Gates and Fences**

**Exhibit 5 –Canoe Storage Plan**

**Exhibit 6 – Enforcement Letters to Orange County Parks**

**Exhibit 7 – County of Orange Memo Regarding Occupational Hazards Review, Newport Harbor Maintenance Yard, 1901 Bayside Dr., May 19, 2021.**

**I. MOTION AND RESOLUTION**

**Motion:**

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-07-370-A2, pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment 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 Coastal Development Permit Amendment No. 5-07-370-A2 on the grounds that the development, as amended and subject to conditions, will be in conformity with the Chapter 3 policies of the Coastal Act and the Newport Beach LCP, as applicable. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## II. CHANGE TO CONDITIONS

**NOTE:** Appendix B, attached, includes all standard and special conditions that will apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A2 once this amendment is issued by the Executive Director. All of the Commission's previously adopted special conditions continue to apply in the most recently approved form unless explicitly changed in this action, and the approved project includes any changes in the project description proposed by the applicant and approved by the Commission in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-07-370 remain in effect. This permit amendment is granted subject to the following new special conditions:

- 13. Final Site Plan for Gates, Fences and ADA Concrete Pathway.** PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2, the applicant shall submit a final site plan indicating:
  - a. The location of the new gates and fences, and gates and fences to be replaced within the facility, in substantial conformance with the plan dated April 12, 2021.
  - b. The location of the new ADA-compliant concrete pathway, including necessary curb cuts to facilitate a safe path of travel that connects to ADA-compliant restrooms, showers, and public docks.
  
- 14. Beach Parking Plan.** PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2, the applicant shall submit a revised parking plan in substantial conformance with the plan dated February 25, 2020, subject to the review and approval of the Executive Director, that shows:
  - a. The revised location of the 10 public beach parking spaces and one additional standard and one additional ADA parking space (for a total of



12 spaces). The parking spaces will be located at on either side near the entrance of the parking lot.

- b. The location of the eight Harbor Patrol and U.S. Coast Guard and Lifeguard Business Parking Spaces that are proposed to be available for public beach parking on weekends.

The public beach parking spaces shall be made available to the public within 60 days of issuance of the CDP amendment.

**15. Revised Wayfinding and Signage Plan.** PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2, the applicant shall submit a revised Wayfinding and Signage Plan in substantial conformance with the plan dated April 12, 2021, subject to the review and approval of the Executive Director, that shows:

- a. The designs, dimensions, and location of signs near the parking lot entrance for the public parking spaces. The signs shall state that the 12 vehicle parking spaces (11 regular spaces and one ADA-accessible space) are designated for public beach use exclusively for the hours between 6 am and 10 pm, and shall be posted in visible locations at the site of the parking spaces;
- b. The designs, dimensions, and location of signs for the eight parking spaces proposed for weekend beach use by the public between 6 am and 10 pm, which shall be posted in a visible location at the site of the parking spaces.
- c. The Beach Drop-Off Sign shall be written in both English and Spanish.
- d. A Handicapped Accessible Entrance sign shall be posted with the Coastal Access and Public Access Beach Drop Off Point signs.
- e. The Visitor/Emergency Dock sign shall be posted with a sign that clarifies there is a 20-minute time limit for public use.
- f. An additional sign for the Visitor/Emergency Dock shall be revised to read "For immediate loading/unloading of passengers only. Notice. Do not leave boat unattended OCCO 2-2-134".

Signage shall be installed and visible to the public within 60 days of issuance of the CDP amendment.

**16. Public Access Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT 5-07-370-A2, the applicant shall submit, for review and approval of the Executive Director, a Public Access Program in substantial conformance with the Applicant's response to the Notice of Incomplete Application letter dated June 25, 2020 except the program/plan shall

be developed and expanded as required by this condition. The applicant shall provide:

- a. **Outrigger Canoe Lessons:** As a condition of the County's permit/license or permit/license renewal of public lands to the various Canoe Clubs, the Canoe Clubs as a collective shall be required to offer a minimum of 24 free days per year to the general public.  
The County shall conduct targeted outreach to increase participation of individuals from low-income communities, communities of color, and other environmental justice communities in the free trial days. The program shall describe outreach methods and include a list of organizations, stakeholders and locations where outreach will be prioritized, including but not limited to Title 1 schools, Boys & Girls Clubs, community centers, and existing County contacts at schools, recreational facilities . The County shall encourage the Canoe Clubs to do the same.
- b. The program shall evaluate barriers to participation for individuals from environmental justice communities and describes steps to eliminate or minimize these barriers to the maximum extent feasible in order to increase participation in the free trial days.
- c. The program shall include measures for increasing efficacy of outreach by exploring options to enhance or expand the program in the future, such as consideration of providing public transit opportunities to and from the beach on the free trial days, expanding the number of free days based on demand, and utilizing social media campaigns and platforms.
- d. The County shall submit a monitoring report to the Executive Director every two years, beginning two years from the date the permit amendment is issued, that contains the following information: 1) the number of individuals that participated in the free outrigger canoe lessons, 2) socioeconomic and demographic information of participants, including gender, age, ethnicity, zip code, and income range to evaluate effectiveness of targeted outreach program, 3) the dates on which the free outrigger canoe days were held, 4) photographs of individuals participating in the lessons, and 5) a list of community groups, stakeholders, and locations where outreach was conducted.

Once the Access Program has been approved by the Executive Director, the applicant shall provide evidence that the Program is being carried out to the Executive Director within 90 days of approval of the plan. Should one of the Outrigger Canoe Clubs vacate the site for any reason, the requirements of this Special Condition shall be inapplicable to that canoe club, and the corresponding number of free days offered to the public shall be adjusted accordingly.

17. **Promotional Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT 5-07-370-A2, the applicant shall submit for review and

written approval of the Executive Director a Promotional Plan that includes all of the following elements:

- a. A plan for making the general public aware of the public recreational amenities available at the OCSHP facility and beach including members of the general public who may not otherwise be aware of the public guest slips and public moorings available there, and in particular members of environmental justice communities. This plan shall include:
  - i. advertising in established mediums for English and non-English speaking populations, such as, but not necessarily limited to, smart phone apps, radio, websites and/or print publications including, but not limited to, those specializing in:
    1. recreational boating, in the Orange County area,
    2. the promotion of recreational opportunities in the Orange County area;
  - ii. the promotion of family activities in the Orange County area. The promotional platforms may be part of larger outreach that includes similar, no- or low-cost recreational sites and opportunities in addition to the small watercraft recreational opportunities available at the OCSHP facility and beach.
  - iii. The promotional materials shall include creation of a new page on OC Parks' website advertising the availability of all public recreational amenities and opportunities available at the OCSHP facility and beach, including free Canoe Club days.
  - iv. The promotional materials shall be made available in both English and Spanish and other non-English languages spoken in Orange County and shall be directed to inform environmental justice communities about the recreational opportunities.
  - v. The promotional activity shall be carried out periodically (a minimum of quarterly) for the first year following approval of this coastal development permit amendment 5-07-370-A2, and each year thereafter.
  - vi. The plan shall include, at a minimum, specific details of the
    1. methods of promotion,
    2. the means of promotion, and
    3. the timing and frequency of promotion.
- b. Once the Promotional Plan has been approved by the Executive Director, the applicant shall provide evidence to the Executive Director, within 90 days of the plan's approval, that the Promotional Plan is being carried out.

### III. FINDINGS AND DECLARATIONS

#### A. Project Location and Description

##### Location and Site History

The project site is the Orange County Sheriff's Department Harbor Patrol (OCSHP) dock and landside facilities, as well as the adjacent public beach. The entrance to the site is located at 1901 Bayside Drive, near the Newport Harbor Entrance Channel in the City of Newport Beach, Orange County ([Exhibit 1](#)). The OCSHP provides emergency and law enforcement services within Newport Harbor and the facility has been in continuous use since 1953. OCSHP shares the site with the U.S. Coast Guard Station located immediately to the south. The OCSHP facilities are immediately adjacent to a small sandy beach known as Bayside Drive Beach that is managed by the OC Beaches and Parks Department. Access to Bayside Drive Beach is gained through the entrance to the harbor patrol site off of 1901 Bayside Drive. This small beach has relatively calm water enjoyed by kayakers, stand-up paddleboarders, and users of other personal watercraft. Public amenities at the beach include a volleyball court, picnic tables, and public restrooms. The site consists of a Harbor Patrol dock with nine total slips, accommodating four "official use" dock slips (primarily for Harbor Patrol lifeguard vessels) and five guest slips; a Visitor Dock that is shared between the public (for temporary tie-up and visitor loading and unloading) and the OCSHP; and a sewage pump out float/dinghy dock on the southern end of the facilities for public use. There is a surface parking lot designating 11 public parking spaces for beach use. Another on-site surface parking lot provides parking for the Coast Guard and Harbor Patrol crews. The City of Newport Beach certified LCP designates the use of the site as Open Space. Single-family residential uses surround the site.

The subject application was scheduled for a public hearing and Commission action on March 10, 2021, but was postponed at the request of the applicant. After the publication of the staff report dated March 10, 2021,<sup>2</sup> Commission staff received many emails from various stakeholder groups and members of the public raising concerns regarding the loss of public access to the visitor dock, the change in dinghy dock hours (from 72-hours maximum to day use only from 6am to 10pm), the visual impacts that the gate proposed at the top of the visitor dock would have to public coastal views, and

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<sup>2</sup> The original staff report for CDP No. 5-07-371-A2 recommended approval with conditions for the applicant's request for after-the-fact approval of change in use of visitor dock to emergency dock; reconfiguration of public surface parking spaces; canoe storage area and canoe storage closets on the sandy beach; change of hours of dinghy dock tie up from 72 hours maximum to day use only from 6am to 10pm; increase the hours of public parking availability from 8am-5pm to 6am-10pm; designate eight Orange County Sheriff's Harbor Patrol parking spaces available for public beach use on the weekends; installation of wayfinding signage, safety gates and fencing within the facility; installation of approximately 300 linear feet of ADA compliant roll-out mat on the sandy beach, and installation of kayak and canoe storage racks on Bayside Beach.

the structural integrity of a temporary ADA access mat on the beach in lieu of a permanent pathway which was already available through the OCSHP facilities. Commission staff met with the applicant and numerous stakeholders to discuss their concerns, and the applicant subsequently revised its project description as reflected in this staff report. The applicant is in agreement with the staff's recommendation and special conditions.

### **Previous Permits**

The Commission has approved two previous permits for development on the site.

- 5-94-255 (County of Orange) – Coastal Development Permit for the installation of a new 550 foot long seawall approximately 3' seaward of original seawall, demolition and re-construction of a 1,000 sq. ft. Coast Guard Building, demolition and reconstruction of an 8,485 sq. ft. Harbor Patrol building, upgrade of site utilities, temporary facilities, replacement of an underground fuel storage tank.
- 5-07-370 (County of Orange) – Coastal Development Permit for the installation of a new 174 foot long bulkhead seaward of the existing bulkhead, replacement of existing County of Orange Harbor Patrol official use and guest docks, 1,200 cubic yards of dredging, eelgrass habitat mitigation, new surface parking lot and storm drain system, and on-site placement of temporary Coast Guard facility.

### **Project Description**

The applicant requests after-the-fact approval for several areas of development: reconfiguring public surface parking spaces; designating canoe storage area and installing canoe storage closets on the sandy beach; formalizing the shared use of the visitor dock with emergency/official use vessels; designating 8 Orange County Sheriff's Harbor patrol parking spaces available for public beach use on the weekends; approval of change of hours of dinghy dock tie up from 72 hours to 24 hours; increasing the hours of public parking availability from 8am-5pm to 6am-10pm; installation of wayfinding signage, safety gates and fencing within the facility; and installation of kayak and canoe storage racks on Bayside Beach. The applicant is also proposing to install an approximately 250-foot long concrete ADA-compliant pathway on the sandy beach immediately adjacent to the lifeguard facilities building, and the provision of two beach wheelchairs onsite.

To mitigate for Coastal Act violations that restricted public access and recreation opportunities, and to prevent any future impacts to public access and recreation, the applicant is proposing new public amenities including: 1) a new public kayak and stand-up paddleboard storage rack on the sandy beach on the north end of the lifeguard headquarters; 2) a new marketing and publicity program to advertise the availability of the public guest slips and other public amenities to the general public and how to rent them; and 3) a public access program that provides free monthly participation in the canoe clubs for environmental justice affected communities in Orange County.

## **B. Standard of Review**

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project amends CDP No. 5-07-370, which was issued by the Coastal Commission prior to LCP certification. The standard of review for development within the City's permit jurisdiction is the City's certified LCP. The subject site is depicted on the Commission's post-certification map as partially within the City's coastal development permit jurisdiction and partially within an area that the LCP refers to as "permit jurisdiction," a label that, while not self-explanatory, refers to areas that remain within the Coastal Commission's permitting jurisdiction because they include tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time (the area included in the Bayside Drive Beach). The portion within the City's permitting jurisdiction is partially within the appeals jurisdiction (the OCSHP and U.S. Coast Guard facilities). However, because in 2007 the Commission issued a CDP for the development over the entire site, which the applicant seeks to amend, the proposed amendment remains fully within the Commission's permitting jurisdiction. The portion of the project within the Commission's retained permitting jurisdiction must be consistent with Chapter 3 of the Coastal Act, with the LCP serving as guidance. The portion of the project within the City's permitting jurisdiction and the Commission's appeal jurisdiction must be consistent with the policies of the LCP and with the public access and recreation policies of Chapter 3 of the Coastal Act.

The primary issues raised by this application are its potential adverse impacts to the public access and recreation resources protected by the Coastal Act and the City's Certified LCP.

## **C. Coastal Access and Recreation**

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30214 elaborates on access management considerations, providing, in relevant part, that:

5-07-370-A2 (Orange County Parks)

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

...

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area....

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30013 of the Coastal Act, Environmental Justice, states:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government



Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

Section 30107.3 of the Coastal Act defines Environmental Justice accordingly:

“Environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

The Newport Beach certified Land Use Plan also has the following policies that address public access (Section 3.1.1), recreational opportunities (Section 3.2.1), vessel launching (Section 3.3.1), and vessel berthing and storage (Section 3.3.2). The following policies are relevant to the proposed development:

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

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

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

Policy 3.2.1-1 of the LUP states:

Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.

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Policy 3.3.1-1 of the LUP states:

Protect, and where feasible, expand and enhance vessel launching facilities in Newport Harbor.

Policy 3.3.1-3 of the LUP states:

Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial loading facilities, and organized recreational boating launch facilities.

Policy 3.3.2-7 of the LUP 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 provision of public access to the coast is one of the main tenets of the Coastal Act. Projects proposing to restrict public access to public docks and tidelands are generally inconsistent with the Coastal Act unless they provide alternate and improved access nearby that is equivalent to or better than that which is being lost. Furthermore, the environmental justice policies of the Coastal Act require fair treatment of people of all races, cultures, and incomes with respect to implementation and enforcement of environmental regulations.

The OCSHP facilities are shared between several governmental agencies and the public. There is currently vertical public access to the public docks and beach from the parking lot through the facility's maintenance area, and through the beach entrance in the parking lot. To mitigate for the restriction of public access and recreation that has already occurred, during the time the Coastal Act violations have persisted, and to improve public access to the beach and boating facilities, the applicant is proposing new public components including 1) a new public kayak and stand-up paddleboard storage rack on the sandy beach on the north end of the lifeguard headquarters; 2) a new marketing and publicity program to advertise the availability of the public guest slips and other public amenities to the general public, and to advertise the public access program; and 3) development of a public access program that provides free monthly participation in the rowing activities in coordination with canoe clubs for the general public and identified affected environmental justice community members.

As described more fully and separately from the mitigation, the applicant is proposing several changes to access conditions at the site. These changes include: (1) changing the hours of the public Dinghy Dock; (2) installing gates and fences redirecting public access on a public dock and within the public facility ([Exhibit 4](#)); (3) allocation of a canoe storage area, canoe storage racks and canoe storage closets on the public beach ([Exhibit 5](#)); (4) reconfiguration and increase of public surface parking spaces

([Exhibit 2](#)); and formalization of the shared use of the Visitor Dock between the public's short-term loading/unloading and emergency/official use vessels. Since the proposed installation of the security gate between the public beach parking and the OCSHP facilities maintenance yard will prevent the public from utilizing the existing paved area to access the beach facilities and public docks, the applicant is proposing to install an approximately 250-foot long ADA compliant concrete pathway adjacent to the lifeguard building ([Exhibit 3](#)). The applicant is also seeking to install new signage to clarify the public access and recreational boating features at the OCSHP facility/U.S. Coast Guard station, while maintaining secure official use areas consistent with this coastal development permit ([Exhibit 2](#)). Signage proposed to be changed/installed includes but is not limited to: signage on the four official use slips, five public guest dock slips, change to dinghy dock hours, marking the beach drop-off location, the relocated public beach parking signage to include the Coastal Commission logo, and a handicapped accessible entrance sign ([Exhibit 2 and 3](#)). The applicant is also proposing to expand the beach parking hours. Each of these components raises issues relative to public access and recreation which are discussed in detail below.

#### **1. Formalization of Shared Use Visitor/Emergency Dock, Installation of Security Gates, and Supporting Signage**

The applicant seeks to formalize the designation of the dock on the northwestern end of the Marina historically known as the Visitor Dock to a shared Visitor/Emergency Dock. The Visitor Dock has historically served a public access function for boaters, such as allowing visitors to dock to seek information from Harbor Patrol personnel, use the public restrooms, and load or unload from a personal vehicle parked at the end of the gangway. The OCSHP has also historically used the Visitor Dock for official uses of the Harbor Patrol, State and City Lifeguards, the County Coroner, California Department of Fish and Wildlife, the U.S. Coast Guard, and other Military/ Department of Defense agencies, and as such the applicant contends that the Emergency Dock must continue to be used and managed for emergency, public safety, and governmental services; and with the shared purpose of conducting official harbor patrol business with members of the public when it is not in use for emergency and other governmental services.

In order to effectively share the use of the dock, the applicant is proposing to limit public use with signage notifying the public of a 20-minute docking time and advising the public that public use is "for immediate loading/unloading of passengers only." According to the applicant, past emergency action that resulted in the need to keep this dock clear for emergency situations, and the recommendation from a Vulnerability Assessment and Mitigation Report performed by Orange County Intelligence

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Assessment Center (OCIAC) conducted in May of 2017,<sup>3</sup> has led OCSHP to request to formally limit the time that members of the public can tie up in this location, and prevent them from leaving their boats unattended.

As stated, the Visitor Dock has historically served a public access function for boaters, such as allowing visitors to dock to seek information from Harbor Patrol personnel, use the public restrooms, and load or unload from a personal vehicle parked at the end of the gangway. The findings of the underlying Coastal Development Permit No. 5-07-370 state: “public lateral and vertical access is available from the public beach to the Harbor Patrol guest docks. U.S. Coast Guard and Harbor Patrol facilities are open to the public as are the Harbor Patrol guest docks...” and “the proposed project intends to improve access and use of the public guest docks by dredging accumulated sediment from the dock and stabilizing the bulkhead that supports the docks and landward developments.” Furthermore, the findings also stated that the new fill to support the new sea wall could be found an allowable use due to the fact that the U.S. Coast Guard Station and the OCSHP facilities provide public services. It is clear from the Commission’s findings that maintenance of the public use of the guest docks and facilities was a consideration to find the new bulkhead, dredging, and replacement of the existing OCSHP official use and guest docks and associated development consistent with Sections 30210 and 30212 of the Coastal Act regarding Public Access. Furthermore, the Commission and the County envisioned a shared public safety and public recreational use of the docks.

While the dock in question has not been officially deemed a “Visitor Dock” through previous coastal development permits for the site, this dock has also never been officially authorized for shared use limiting the time that the public could tie-up their boats. Furthermore, all of the dock floats and vessels in this location occupy State tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time. As such, these submerged lands are presumed to belong to the public unless otherwise determined by the State Lands Commission or other legal conveyance.

Section 30214 of the Coastal Act states that the public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case. The City’s LUP Policy 3.1.1-27 extends this consideration to “public safety services, including lifeguards, fire, and police access.” Therefore, under the Coastal Act and the City’s LCP, public access may be restricted in the interest of public safety services.

The applicant has articulated compelling reasons to substantiate the need to restrict the public from tying up their vessels for longer than 20 minutes at a time to maintain a clear

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<sup>3</sup> According to the applicant, the 2017 Assessment and Mitigation Report was not released to the public because it revealed potential security vulnerabilities within the OCHSP and US Coast Guard facilities.

area to be able to effectively deal with harbor-related emergencies. Furthermore, the historic use of the Visitor Dock has mainly been for loading and unloading passengers or nearby vehicles, which does not take longer than 20 minutes. Therefore, the installation of the 20-minute immediate loading/unloading of passengers is reasonable for shared use in light of the specific circumstances.

The presence of visitor support facilities (such as parking) and signage that informs the public of the location of public access and recreational amenities, including parking, can help overcome the public access barriers created with the proposed changes to access. However, such parking improvements in this case do not sufficiently mitigate the loss of public boating access. Therefore, only as conditioned to maintain the same public boating access to dock space is the proposed project consistent with Sections 30210, 30214, 30220, 30221, 30224 of the Coastal Act, and the public access and recreation policies of the Newport Beach LCP.

## **2. Change Hours of Dinghy Dock Tie-Up From 72 Hours Maximum to 24 Hours**

The applicant is also requesting approval to reduce the public dinghy dock tie-up from the current 72-hour maximum public use to 24-hour maximum public use with the inclusion of an allowance for longer tie-up upon notification to the OCSHP on an as-needed basis. The public dinghy tie-up access allows for boat owners and their guests to safely access the adjacent public beach and nearby visitor serving amenities. According to the County, 72-hour access results in long-term boat parking and people storing their dinghies there for weekend use, which reduces availability to general members of the public. In several cases, according to the applicant, some of the same boats had been tied up there for a few years.

Changing the dinghy dock hours from 72-hour access to 24-hour access will provide overnight access to the dinghy dock for “live-a-board” users who need overnight access to the dinghy dock at all hours of the day and night. Furthermore, allowing the inclusion of an allowance for longer tie-up upon notification to the Sheriff as proposed by the applicant builds in flexibility for members of the public to tie up longer than 24 hours if necessary. In addition, restricting access from 72 to 24 hours will improve some public boaters’ ability to access the surrounding visitor-serving amenities by encouraging turnover of the dinghy dock tie-ups every 24 hours and discouraging only a few members of the public from monopolizing this amenity for multiple days at a time. Therefore, as conditioned to reduce the maximum tie-up time but requiring clear signage and an additional public tie space, the proposed project is consistent with Sections 30210, 30214, 30220, 30221, 30224 of the Coastal Act and the public access and recreation policies of the City’s LCP.

## **3. Installation of Gates and Fencing Within the Facility and Supporting Signage**

The applicant also proposes to install a 30-foot long, 5-foot high galvanized double rolling gate with wheels and posts at each end between the Lifeguard Headquarters

Building and the OCSHP building to secure the official use area between the OCSHP building and Lifeguard Headquarters that separates the parking area from the maintenance yard ([Exhibit 4](#)). Additionally, the applicant proposes to install two gates on either side of the official use dock that houses patrol boats to secure the dock boxes with equipment and the fuel station ([Exhibit 4](#)).

Historically, the maintenance yard has been utilized for ADA access and the County provided a painted pathway between the public parking lot and the public beach and dock. The proposed gate would prevent members of the public from accessing the maintenance yard, which is comprised of workshops housing heavy equipment and power tools, paints, and chemicals, which the applicant contends is not safe for members of the public to utilize as a public accessway to the beach and other public amenities. An internal memo written by the Assistant County Safety Manager articulates these hazards ([Exhibit 7](#)). Therefore, the applicant seeks to secure these workshops by installing a gate between the parking lot and this part of the facility.

According to the memo, due to the level of skilled work that requires the use of power tools, paints, chemicals, and heavy machinery, this area poses many risks and frequent hazardous activities that should be safely secured from untrained and unprotected members of the public. Since the public is currently free to walk through the maintenance yard, numerous hazards exist that could potentially harm members of the public, in addition to the employees that perform work in the yard.

In addition, the applicant recently engaged the services of a Certified Access Specialist (CAsp) to analyze the ADA compliance aspects of the project site, and according to the applicant, preliminary feedback revealed that an ADA pathway that requires someone to go behind a car or to ambulate through a drive aisle or vehicular way was not considered safe according to California Building Code. Since a portion of the existing ADA accessway directs the public behind parked cars and through a drive aisle, the existing accessway is not safe and should be re-routed.

To offset this change in public access, the applicant is proposing to install an approximately 250-linear-foot-long, 6-foot wide ADA compliant concrete pathway (discussed in greater detail in the next section) on Bayside Beach from the beach entrance and “Beach Drop-Off” point at the parking lot, which will run parallel alongside the Lifeguard Headquarters building to the public restrooms and showers to the public dock ([Exhibit 2 and 3](#)). According to the CAsp representative, since the proposed route directs the path of travel outside of the maintenance area avoiding the vehicular aisle, it is the preferred route for ADA compliant access. This is a much more visually appealing pathway for beach visitors that is also a safer alternative for members of the public and will ensure security of the workshop facilities.

Lastly, the applicant is proposing to install two security gates on either side of the official use dock that houses patrol boats, dock boxes with equipment, and the fuel station to prevent members from the public from accessing these areas. One of the security issues identified in the 2017 Risk Assessment and Mitigation Report was non-Sheriff



personnel having access to the dock and the potential exposure of adjacent public safety and law enforcement equipment. Therefore, the installation of locked gated enclosures to house equipment and the installation of a locked gate between the Visitor/Emergency dock and lateral dock accessing the OCSHP boats and supporting signage is reasonable in light of the specific circumstances and is consistent with the Coastal Act and LCP.

#### **4. ADA Concrete Pathway**

The applicant analyzed several alternatives for the surface material of the ADA access pathway from the parking lot to the sandy beach and water's edge. The applicant analyzed several criteria, including stability, firmness, slip resistance, grade of the slope, cross-slope, obstacle avoidance, initial cost, long-term maintenance, and aesthetics. Since grade and cross slope and the ability to avoid obstacles are not a factor in this location due to the relatively open and flat beach, the evaluation centered on which materials would provide a firm and stable surface so that people with disabilities would have a quality experience. The material should also blend in with the surrounding environment. Alternatives considered for a stabilized trail surface included concrete, asphalt, modular pavers (brick, blocks, etc.), soil stabilizers, geotextile confinement systems, rubberized surfaces such as ground recycled tires, recycled plastic lumber, and a recycled polyester roll-out mat (which was originally proposed and recommended in the March 2021 staff report).

The applicant determined that pavers would not be a preferred alternative since they can create a height transition between surfaces and are more prone to heaving and buckling, thus creating a tripping hazard and would not be accessible for people that use a cane, for example. Other materials such as rubber are not compatible with the beach environment, and the wood or recycled lumber would have grooves, creating a less than desirable experience for those using wheelchairs or strollers. Additionally, the majority of stakeholders who provided feedback on the proposed mat did not favor the mat alternative. Concrete is the applicant's preferred surface material.

In past actions, the Commission has been reluctant to approve installation of permanent development such as a concrete pathway on a public sandy beach, as it is generally inconsistent with protection of coastal resources due to the Commission's Sea Level Rise Policy guidance to approve such development on beaches that may be vulnerable to sea level rise<sup>4</sup> or because of habitat impacts, public access impacts, or visual resources impacts. Furthermore, future sea level rise will ultimately shrink the size of existing sandy beaches, so it is a priority to ensure development does not displace available public sandy beach with permanent development. However, in this location, the existing ADA pathway

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<sup>4</sup> Coastal Storm Modeling System (CoSMoS) shows that approximately half of this beach will flood in a 100-year storm event even with no sea level rise. [https://www.usgs.gov/centers/pcmssc/science/coastal-storm-modeling-system-cosmos?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/centers/pcmssc/science/coastal-storm-modeling-system-cosmos?qt-science_center_objects=0#qt-science_center_objects)



through the maintenance yard is the only ADA accessible route for members of the public to be able to access the public beach facilities and docks, and it is unsafe for the public due to maintenance yard activities and vehicular use as described above. The concrete pathway is designed to be installed as close as possible to the Lifeguard facilities building where members of the public currently walk to get from the parking area to the water's edge. Therefore, the ADA pathway must be relocated where it connects with the public beach parking, beach facilities and public docks, along the lifeguard facilities building as proposed by the applicant as shown on [Exhibit 2](#). As proposed, the concrete path is located as far landward as feasible to serve its purpose providing public access, and may be found consistent with the coastal resources policies of the Coastal Act as detailed in the findings of following sections of this report.

The proposed concrete path is a substitute for closure of the existing paved ADA accessway and is consistent with 30210, 30213, 30214, 30220, 30221, 30224, and the public access and recreation policies of the Newport Beach LCP.

## **5. Canoe Storage Area, Canoe Storage Racks, Canoe Storage Closets**

The applicant also seeks after-the-fact approval of the designation of approximately 3,600 sq. ft. of sandy beach for outrigger canoe storage that has existed there since at least 2003 without the benefit of a coastal development permit ([Exhibit 5](#)). There are three canoe clubs currently holding permits with the County which allow for canoe storage and a storage locker for an annual fee. Currently, the three clubs holding permits with the County include Offshore (7 canoes and 1 storage locker), Hana Hou (2 canoes and 1 storage locker), and Imua Canoe Club (3 canoes and 1 storage locker). Each club has an approximately 24-square-foot storage locker located next to the Lifeguard Headquarters used exclusively to store club equipment ([Exhibit 5](#)). Although the canoe clubs are private entities, they are non-profit organizations comprised of members of the general public with the goal of educating and generating public interest in canoeing. According to the County, some members from each of the three outrigger canoe clubs travel from across Orange County and southern California in order to participate in club activities. They are from diverse socioeconomic backgrounds and some of the clubs include members of the Polynesian community. The County maintains that the canoe clubs provide a welcoming and inclusive atmosphere, and in the case of the Imua canoe club, "scholarship opportunities [are available] for students or keiki when the situation arises." Furthermore, according to the Imua Canoe Club's website: "Imua welcomes everyone, regardless of gender, age, race, ethnicity, sexual orientation or financial means, with a range of abilities." The canoe club's membership dues are also relatively affordable when compared to other water sports in Newport Bay such as sailing. According to their websites, membership dues range from \$10 a month for all members at the Hana Hou Canoe Club, \$100 a month for kids at Offshore Canoe Club, and \$200 a month for adults at Imua Canoe Club. Moreover, **Special Condition 16** further expands existing access to the canoe clubs by requiring a minimum 24 days per year (two days a month) of free instruction marketed to environmental justice communities through a robust Promotional Plan, as required by **Special Condition 17**.

In response to the County's request to allocate approximately 3,600 sq. ft. of public beach for outrigger canoe club storage, Commission staff requested that the applicant provide an analysis of alternative locations for the storage of the private canoes that does not displace the public beach area. In response, OC Parks reviewed the project area for possible alternative storage locations; however, given the space and security requirements for the existing Harbor Patrol facility and operations, and the desire to maintain and enhance the existing public access support facilities, there are no alternative locations onsite that would not displace public parking or facility areas used by the Sheriff's Department to maintain boats and equipment. OC Parks also evaluated the site area leased to the nearby Balboa Yacht Club but was unable to identify available space to support the use. Although there were no feasible alternative locations for canoe storage, the applicant is proposing to install outrigger canoe racks for those smaller canoes that can be stored in a stacked configuration, which will ultimately reduce the footprint of canoe storage on the beach. It is especially important to conserve open beach sandy area for recreational use to the maximum extent feasible given the upcoming challenges that will result from sea level rise in the near future.<sup>5</sup> Thus, given the size constraints of the public beach in this location, consolidation of the storage of equipment and supplies essential to support the canoe clubs is necessary to support this coastal-dependent recreational use.

Therefore, the Commission finds that as conditioned, the proposed project is consistent with Coastal Act Section 30234 because it provides free access to canoe club activities specifically targeted at environmental justice communities through the conditioned promotional plan, and is furthermore consistent with Section 30213 by improving access to lower cost recreational facilities and opportunities. Furthermore, the Commission finds it is consistent with 30210, 30214, 30220, 30221, 30224, and the public access and recreation policies of the Newport Beach LCP.

## **6. Reconfiguration of Public Surface Parking Spaces**

The applicant also seeks after-the-fact approval to relocate 12 public vehicle parking spaces from the location approved by Coastal Development Permit 5-94-255, which was closest to the OCSHP facility, to an immediately adjacent area closer to the entrance of the parking lot ([Exhibit 2](#)). According to the applicant, the County reconfigured the parking to allow the OCSHP, U.S. Coast Guard, and Lifeguard Business employees easier access to their place of employment and for more convenient loading and unloading of their vehicles.

In addition, the County proposes to designate for public use on weekends eight additional parking spaces currently designated for OCSHP, U.S. Coast, and Lifeguard Business parking immediately across from the 12 public beach spaces at the entrance

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<sup>5</sup> *Id.*

**(Exhibit 2).** The County is also proposing to increase the hours of public parking availability from the current hours of 8 am-5 pm to 6 am-10 pm to coincide with regulated public beach hours.

Since the change in location of public parking has a de minimis impact on public access, and the proposed increase in beach parking hours and increase in available weekend beach parking is a benefit to public access, the Commission finds this aspect of the project proposal is consistent with the public access policies of the Coastal Act and the City's LCP.

## **7. Implementation of Wayfinding and Signage Plan**

The applicant is seeking to install new signage to clarify the public access and recreational boating features at the OCSHP facility/U.S. Coast Guard station, while also maintaining secure official use areas **(Exhibit 2 and 3)**. Signage proposed to be changed/installed includes but is not limited to: signage on the four official use slips, five public guest dock slips, dinghy dock hours, beach drop-off, relocated public beach parking signage to include coastal Commission logo, and a new handicapped accessible entrance sign near the beach entrance. **Special Condition 16** requires the applicant to implement the signage and wayfinding plan.

Commission enforcement staff worked closely with the applicant to ensure that the public access signage included the California Coastal Commission logo and was consistent with previous coastal development permits. The wayfinding and signage plan improves public access at the site and helps delineate between the public amenities from the official use areas that should be maintained separately to ensure public safety. As conditioned, the Commission finds the signage and wayfinding plan clarifies the location of public amenities at the public dock and the beach.

The Environmental Justice policies of the Coastal Act require fair treatment of people of all races, cultures, and incomes with respect to implementation and enforcement of environmental regulations. Language presents a barrier for many individuals from underserved communities who have limited English language proficiency. Many communities face language isolation in the Orange County area. Recognizing that removing language barriers is critical to achieving equitable access to available public services, programs, and resources, the County has proposed to translate the Proposed "Public Beach Drop Off" sign into the Spanish language, which is the second-most commonly spoken language in Orange County. **Special Condition 16** requires the County to implement this proposal.

As conditioned, the Commission finds the signage and wayfinding plan clarifies the location of public amenities at the public dock and the beach. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30214, 30220, 30221, 30224 of the Coastal Act and the public access and recreation policies of the City's LCP.

## **D. Marine Resources and Water Quality**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. Therefore, the proposed development, as conditioned, conforms with Sections 30230, 30231, and 30233 of the Coastal Act regarding the protection of marine resources and water quality to promote the biological productivity of coastal waters and to protect human health.

## **E. Coastal Act Violations**

Violations of the Coastal Act have occurred on the property, including but not limited to 1) change in use of two public guest docks to lifeguard boat storage; 2) placement of “Keep Out” and “Authorized Personnel Only” signage at the entrance area to the public guest docks and on the public guest dock pilings facing toward Newport Harbor; 3) change in public dinghy tie-up access from 72 hours maximum to 20 minutes maximum and placement of accompanying signage; 4) change in use from Visitor dock to Emergency Dock; 5) relocation of 10 public beach parking spaces from the Commission-approved location; 6) failure to provide a Commission-approved beach drop-off point for beach patrons; 7) placement of outrigger canoes on the public beach<sup>6</sup>.

As mentioned above, Enforcement staff sent a Notice of Violation letter to the Orange County Sheriff’s Department on May 20, 2019, notifying them that development noncompliant with Coastal Development Permit Nos. 5-07-370 and 5-94-255 was occurring at the OCSHP facility as well as in areas within the Commission’s original jurisdiction ([Exhibit 6](#)). Since then, the County has worked with Commission staff to develop this application to provide improved public recreational opportunities at the OCSHP facility and beach. Upon receipt of the Notice of the Violation letter, the County removed the unpermitted signage, and in consultation with Commission staff, installed temporary signage in order to inform the public of the amenities at the site including the public beach drop off area, public guest slips, and dinghy dock. The temporary signage that was installed is similar to the signage contained in the applicant’s current signage plan and displayed the Commission’s wave and footprints logo which is used statewide to inform the public of coastal access and recreational opportunities. The County also worked with staff to reopen the dinghy dock tie-up limit from 20 minutes to 6am to 10pm

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<sup>6</sup> The unpermitted placement of outrigger canoes was included in later correspondence once Commission staff became aware that the placement of canoes on the public beach was undertaken without the benefit of the necessary coastal development permit.

during the time that this CDP application was being worked on. The Orange County Parks Department subsequently submitted amendment application No. 5-07-370-A2 to obtain authorization for all of the proposed changes in operation and the proposed new development (both that which had already occurred and the additional development being proposed), as well as to resolve the violations.

To resolve the violations, the County has removed the unpermitted signage, installed temporary signage, reopened the dinghy dock and is seeking after-the-fact approval of change in use of visitor dock to emergency dock, reconfiguration of public surface parking spaces, canoe storage area and canoe storage closets on the sandy beach, and change of hours of dinghy dock tie up from 72 hours maximum to 24 hours maximum, change hours of public parking availability from 8am to 5pm to 6am to 10pm, designate 8 Orange County Sheriff's Harbor Patrol parking spaces available for public beach use on the weekends. Additionally, in order to comprehensively mitigate for the public access impacts resulting from these violations, and to improve public access at the site going forward, the applicant is proposing to implement a new wayfinding and signage plan and to provide new public amenities including 1) a public kayak and stand-up paddleboard storage rack at the sandy beach adjacent to the lifeguard headquarters; 2) a marketing and publicity program to advertise the availability of the public guest slips and other public amenities to the general public, including how to rent the slips; and 3) a public access program that provides free monthly participation in the canoe clubs for environmental justice affected communities in Orange County.

The goal of the new wayfinding and signage plan and the new public access amenities and recreational opportunities described above is to increase boating access, specifically small watercraft activities such as kayaking and stand-up paddle boarding, at the OCSHP facility and beach to a broader segment of the population that may not own larger boats. To that end, in developing this application it was the goal of Commission staff and the County to help facilitate and expand the low-cost recreational opportunities at the site such as visiting the sandy pocket beach to swim and sunbathe, participation in traditional Polynesian outrigger canoe lessons free of charge on a bi-monthly basis, the ability to store a kayak or stand-up paddleboard over a weekend on a storage rack at the beach for the weekend, and to market these opportunities to disadvantaged communities who might not otherwise know about the OCSHP facility and beach and its recreational amenities.

Approval of this permit amendment does not constitute a waiver of any legal action with regard to any unpermitted development or permit non-compliance that has been undertaken or has occurred on the subject site, except with regard to the alleged Coastal Act violations described herein, nor does it constitute admission as to the legality of any development undertaken on the subject site without a valid coastal development permit, except with regard to the alleged Coastal Act violations described herein. Approval of this application, issuance of the permit amendment, and the

applicants' subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above.

In addition to the Coastal Act violations described above, private encroachments have been built on the public sandy beach, apparently by adjacent property owners, without the necessary coastal development permits. Unpermitted installation of encroachments constitutes a violation of the Coastal Act and Local Coastal Program. Commission enforcement staff is investigating these alleged violations and will consider its options to address the matter.

## **F. Local Coastal Plan**

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed project amends CDP No. 5-07-370, which was issued by the Coastal Commission prior to LCP certification. The standard of review for development within the City's permit jurisdiction is the City's certified LCP. The subject site is depicted on the Commission's post-certification map as partially within the City's coastal development permit jurisdiction and partially within an area that the LCP refers to as "permit jurisdiction," a label that, while not self-explanatory, refers to areas that remain within the Coastal Commission's permitting jurisdiction because they include tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time (the area included in the Bayside Drive Beach). The portion within the City's permitting jurisdiction is partially within the appeals jurisdiction (the OCSHP and U.S. Coast Guard facilities). However, because in 2007 the Commission issued a CDP for the development over the entire site, which the applicant seeks to amend, the proposed amendment remains fully within the Commission's permitting jurisdiction. The portion of the project within the Commission's retained permitting jurisdiction must be consistent with Chapter 3 of the Coastal Act, with the LCP serving as guidance. The portion of the project within the City's permitting jurisdiction and the Commission's appeal jurisdiction must be consistent with the policies of the LCP and with the public access and recreation policies of Chapter 3 of the Coastal Act.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified 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 approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

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As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act and the Newport Beach LCP. Feasible mitigation measures which will minimize all adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, complies with the applicable requirements of the Coastal Act to conform to CEQA.



**APPENDIX A: Substantive File Documents**

- Certified Newport Beach Local Coastal Plan
- Coastal Development Permit 5-07-370-A2
- Coastal Development Permit 5-94-255
- Coastal Development Permit Amendment Request No. 5-07-370-A2

## **APPENDIX B: Standard and Special Conditions pursuant to CDP No. 5-07-370 through CDP Amendment No. 5-07-370-A2**

### **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 this permit is reported to the Commission. 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.

### **SPECIAL CONDITIONS**

#### **1. FINAL PLANS CONFORMING TO GEOTECHNICAL RECOMMENDATIONS**

- A. All final bulkhead replacement design and construction plans shall be consistent with all recommendations contained in *Inspection and Evaluation of Marine Facilities U.S. Coast Guard Station Newport Beach, CA* prepared by Noble Consultants, Inc. dated January 2005. 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.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.

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

## **2. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

The permittee shall comply with the following dredging and construction-related requirements:

- a. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave/wind erosion and dispersion;
- b. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- c. Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone;
- d. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- e. If turbid conditions are generated during construction; a silt curtain shall be utilized to control turbidity;
- f. Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- g. Divers shall recover non-buoyant debris discharged into coastal waters as soon as possible after loss.

## **3. LOCATION OF DEBRIS DISPOSAL SITE**

**PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the construction debris resulting from the proposed project and the proposed location of the disposal site of approximately 1,200 cubic yards of dredge material. Disposal of construction debris and dredge material shall occur at the approved disposal site. If the disposal site for the construction debris is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place. If the disposal site for the dredge material is located in the coastal zone, a coastal development permit or amendment to this permit shall be required before disposal can take place. If off-shore disposal of the dredge material is proposed, a federal consistency certification is required before disposal can take place.

**4. STAGING AREA DURING CONSTRUCTION**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access, beach areas or to sensitive habitat areas.

(1) The plan shall demonstrate that:

- a. Construction equipment or activity shall not occur outside the staging area
- b. Public parking areas shall not be used for staging or storage of equipment
- c. Sandy beach or habitat (vegetated) areas shall not be used for staging or storage of equipment
- d. The staging area for construction of the project shall not obstruct vertical or lateral access to the beach, marina or other recreational facilities

(2) The plan shall include, at a minimum, the limits of the staging area(s) and location of construction fencing and temporary job trailers, if any.

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

**5. WATER QUALITY MANAGEMENT PLAN (WQMP)**

A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. In addition to the specifications above, the plan shall include structural BMPs, non-structural BMPs, treatment control BMPs; an operation and maintenance plan for over-water sewer lines that, at a minimum, addresses the following points: the over-water sewer lines include all pipes from sewage pump-out facilities, the on-dock boating facilities, and any other pipe which leads to a sanitary sewer. The over-water sewer lines shall be visually inspected at least once per week and dye- or pressure-tested at least once every six months. All leaks shall be repaired immediately upon discovery. If the applicant determines that a more stringent procedure is necessary to ensure protection of coastal water quality, then the applicant shall update the operation and maintenance plan.

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- B. All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals;
- C. All BMP traps/separators and/or filters shall be, at a minimum, inspected and cleaned/repaired or otherwise maintained in accordance with the following schedule: (1) prior to the start of the winter storm season, no later than October 15th each year, (2) inspected monthly thereafter for the duration of the rainy season (October 15th -April 30), and cleaned/maintained as necessary based on inspection and, (3) inspected and maintained where needed throughout the dry season;
- D. Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner;
- E. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.
- F. 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.

### **6. MARINA BEST MANAGEMENT PRACTICES PROGRAM**

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

#### (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.

C. The applicant 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 will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(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 will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.

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.

C. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

**7. TURBIDITY CONTROL**

The applicant shall ensure that the project does not result in: 1) increases of water turbidity by more than twenty percent (20%) of the natural turbidity during non-storm conditions, nor 2) dissolved oxygen in the receiving waters being depressed below 5.0 mg/l.

**8. EELGRASS MITIGATION**

A. Compliance with Eelgrass Mitigation Plan. The applicant shall implement and comply with the recommendations and Mitigation Alternative #2 contained

within the *Eelgrass Field Survey Results, Impact Assessment and Eelgrass Mitigation Plan, U.S. Coastguard Base Facilities Refurbishment and County of Orange Harbor Patrol Guest Dock Project* prepared by Coastal Resources Management, Inc., revised on February 12, 2008 as they pertain to the development that is the subject of this coastal development permit. The mitigation plan shall be undertaken in full compliance with the "Southern California Eelgrass Mitigation Policy" (SCEMP) adopted by the National Marine Fisheries Service. All impacts to eelgrass habitat shall be mitigated at a ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Eelgrass from the donor site(s) shall be transplanted at the proposed transplantation location(s) prior to commencement of the dredging or other development that causes impacts to eelgrass authorized under this permit. Any changes to the approved mitigation plan, including but not limited to changes to the monitoring program to ensure success of the eelgrass mitigation site, shall require an amendment to this permit from the Coastal Commission or written concurrence from the Executive Director that the changes do not require a permit amendment.

- B. Pre-construction Eelgrass Survey. A valid pre-construction eelgrass 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 condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the new eelgrass survey for the review and approval of the Executive Director within five (5) working days of completion of the new eelgrass survey and in any event no later than fifteen (15) working days prior to commencement of construction. If the new survey identifies, within the proposed project area, any eelgrass which is not documented in the eelgrass survey described in Special Condition No. 9.A. above, the newly identified eelgrass shall be transplanted prior to commencement of construction at a 1.2:1 ratio at the same transplantation locations identified in the eelgrass mitigation plan described in Special Condition No. 9.A. above. The transplantation shall occur consistent with all provisions of the mitigation plan described in Special Condition 9.A. above.
- C. Post-construction Eelgrass Survey. After completion of project construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. This post-construction survey shall be completed in the same month as the pre-construction survey during the next growing season immediately following the completion of construction within coastal waters. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a 1.2:1 ratio at the transplantation site and in accordance with the mitigation plan described in Special Condition No. 9.A. above.



**9. 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 applicant 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 applicant 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 applicant shall not proceed with the project until 1) the applicant 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 applicant 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.

**10. STEEL COATING ON SUBMERGED STRUCTURES SUBJECT TO MARINE CORROSION**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, final revised plans for the proposed project which shall specify use of a steel coating on submerged structures subject to marine corrosion that is inert/non-toxic in the marine environment (e.g. NSP 120 or Carboguard 890). A coating that is toxic in an uncured state may be used if applied off-site in an appropriate facility and, once cured, is inert and non-toxic upon delivery to the project site. The applicant shall provide information and data, as necessary, to demonstrate that the proposed coating will be non-toxic in the marine environment over the life of the coating. The coating shall be subject to review and approval by the Executive Director.

**11. NO FUTURE SEAWARD EXTENSION OF SHORELINE PROTECTIVE DEVICE**

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit No. 5-07-370, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- B. **Prior to the issuance by the Executive Director of the NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the shoreline protective device approved by this permit, as generally described above and shown on Exhibit 4 attached to this staff report, showing the footprint of the device and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

**12. FUTURE DEVELOPMENT RESTRICTION**

This permit is only for the development described in coastal development permit No. 5-07-370. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the development governed by the coastal development permit No. 5-07-370. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-370 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**13. Final Site Plan for Gates, Fences and ADA Concrete Pathway. PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2**, the applicant shall submit a final site plan indicating:

- a. The location of the new gates and fences, and gates and fences to be replaced within the facility, in substantial conformance with the plan dated April 12, 2021.
- b. The location of the new ADA-compliant concrete pathway, including necessary curb cuts to facilitate a safe path of travel that connects to ADA-compliant restrooms, showers, and public docks.

**14. Beach Parking Plan. PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2**, the applicant shall submit a revised parking plan in substantial conformance with the plan dated February 25, 2020, subject to the review and approval of the Executive Director, that shows:

- a. The revised location of the 10 public beach parking spaces and one additional standard and one additional ADA parking space (for a total of 12 spaces). The parking spaces will be located at on either side near the entrance of the parking lot.
- b. The location of the eight Harbor Patrol and U.S. Coast Guard and Lifeguard Business Parking Spaces that are proposed to be available for public beach parking on weekends.

The public beach parking spaces shall be made available to the public within 60 days of issuance of the CDP amendment.

**15. Revised Wayfinding and Signage Plan.** PRIOR TO THE ISSUANCE OF THE CDP AMENDMENT 5-07-370-A2, the applicant shall submit a revised Wayfinding and Signage Plan in substantial conformance with the plan dated April 12, 2021, subject to the review and approval of the Executive Director, that shows:

- a. The designs, dimensions, and location of signs near the parking lot entrance for the public parking spaces. The signs shall state that the 12 vehicle parking spaces (11 regular spaces and one ADA-accessible space) are designated for public beach use exclusively for the hours between 6 am and 10 pm, and shall be posted in visible locations at the site of the parking spaces;
- b. The designs, dimensions, and location of signs for the eight parking spaces proposed for weekend beach use by the public between 6 am and 10 pm, which shall be posted in a visible location at the site of the parking spaces.
- c. The Beach Drop-Off Sign shall be written in both English and Spanish.
- d. A Handicapped Accessible Entrance sign shall be posted with the Coastal Access and Public Access Beach Drop Off Point signs.
- e. The Visitor/Emergency Dock sign shall be posted with a sign that clarifies there is a 20-minute time limit for public use.
- f. An additional sign for the Visitor/Emergency Dock shall be revised to read "For immediate loading/unloading of passengers only. Notice. Do not leave boat unattended OCCO 2-2-134".

Signage shall be installed and visible to the public within 60 days of issuance of the CDP amendment.

**16. Public Access Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT 5-07-370-A2, the applicant shall submit, for review and approval of the Executive Director, a Public Access Program in substantial conformance with the Applicant's response to the Notice of

Incomplete Application letter dated June 25, 2020 except the program/plan shall be developed and expanded as required by this condition. The applicant shall provide:

- a. Outrigger Canoe Lessons: As a condition of the County's permit/license or permit/license renewal of public lands to the various Canoe Clubs, the Canoe Clubs as a collective shall be required to offer a minimum of 24 free days per year to the general public.  
The County shall conduct targeted outreach to increase participation of individuals from low-income communities, communities of color, and other environmental justice communities in the free trial days. The program shall describe outreach methods and include a list of organizations, stakeholders and locations where outreach will be prioritized, including but not limited to Title 1 schools, Boys & Girls Clubs, community centers, and existing County contacts at schools, recreational facilities. The County shall encourage the Canoe Clubs to do the same.
- b. The program shall evaluate barriers to participation for individuals from environmental justice communities and describes steps to eliminate or minimize these barriers to the maximum extent feasible in order to increase participation in the free trial days.
- c. The program shall include measures for increasing efficacy of outreach by exploring options to enhance or expand the program in the future, such as consideration of providing public transit opportunities to and from the beach on the free trial days, expanding the number of free days based on demand, and utilizing social media campaigns and platforms.
- d. The County shall submit a monitoring report to the Executive Director every two years, beginning two years from the date the permit amendment is issued, that contains the following information: 1) the number of individuals that participated in the free outrigger canoe lessons, 2) socioeconomic and demographic information of participants, including gender, age, ethnicity, zip code, and income range to evaluate effectiveness of targeted outreach program, 3) the dates on which the free outrigger canoe days were held, 4) photographs of individuals participating in the lessons, and 5) a list of community groups, stakeholders, and locations where outreach was conducted.

Once the Access Program has been approved by the Executive Director, the applicant shall provide evidence that the Program is being carried out to the Executive Director within 90 days of approval of the plan. Should one of the Outrigger Canoe Clubs vacate the site for any reason, the requirements of this Special Condition shall be inapplicable to that canoe club, and the corresponding number of free days offered to the public shall be adjusted accordingly.

17. **Promotional Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT 5-07-370-A2, the applicant shall submit for review and written approval of the Executive Director a Promotional Plan that includes all of the following elements:
- a. A plan for making the general public aware of the public recreational amenities available at the OCSHP facility and beach including members of the general public who may not otherwise be aware of the public guest slips and public moorings available there, and in particular members of environmental justice communities. This plan shall include:
    - i. advertising in established mediums for English and non-English speaking populations, such as, but not necessarily limited to, smart phone apps, radio, websites and/or print publications including, but not limited to, those specializing in:
      1. recreational boating, in the Orange County area,
      2. the promotion of recreational opportunities in the Orange County area;
    - ii. the promotion of family activities in the Orange County area. The promotional platforms may be part of larger outreach that includes similar, no- or low-cost recreational sites and opportunities in addition to the small watercraft recreational opportunities available at the OCSHP facility and beach.
    - iii. The promotional materials shall include creation of a new page on OC Parks' website advertising the availability of all public recreational amenities and opportunities available at the OCSHP facility and beach, including free Canoe Club days.
    - iv. The promotional materials shall be made available in both English and Spanish and other non-English languages spoken in Orange County and shall be directed to inform environmental justice communities about the recreational opportunities.
    - v. The promotional activity shall be carried out periodically (a minimum of quarterly) for the first year following approval of this coastal development permit amendment 5-07-370-A2, and each year thereafter.
    - vi. The plan shall include, at a minimum, specific details of the
      1. methods of promotion,
      2. the means of promotion, and
      3. the timing and frequency of promotion.
  - b. Once the Promotional Plan has been approved by the Executive Director, the applicant shall provide evidence to the Executive Director, within 90 days of the plan's approval, that the Promotional Plan is being carried out.