

CALIFORNIA COASTAL COMMISSION

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Sent via Email and Regular U.S. Mail

May 20, 2019

Lt. Chris Corn
Harbormaster
Orange County Sheriff's Department
Homeland Security / Marine Operations
1901 Bayside Dr.
Corona Del Mar, CA 92625

Subject: Public Access and Recreational Boating Amenities at the O.C. Sheriff's Harbor Patrol Headquarters in Newport Harbor

Dear Lt. Corn:

Thank you for taking the time to discuss some of the public access issues and coastal development permit ("CDP") history of the O.C. Sheriff's Harbor Patrol Headquarters ("OCSHP") facility in Newport Harbor. Through this letter, I would like to provide greater detail on California Coastal Commission ("Commission") staff's position regarding the public access and recreational boating amenities at the OCSHP facility in Newport Harbor. Our staff recognizes the critically important public safety and maritime security services that the OCSHP facility and its staff provide to the community, and we're confident that achieving the goals of our agencies can be harmonized. As you may know, the Commission is the state agency created by, and charged with administering, the Coastal Act¹ of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, provide maximum public access to the sea, including Newport Harbor. The protection of public access to the coast and ocean is one of the fundamental purposes and a principal goal of the Coastal Act.

Our staff has confirmed that development that is non-compliant with CDP's No. 5-07-370 and 5-94-255, which are described below, has occurred at the OCSHP facility as well as areas within the Commission's original jurisdiction, including; 1) change in use of 2 public guest docks to lifeguard boat storage, 2) placement of "Keep Out" and "Authorized Personnel Only" signage at a) the entrance area to the public guest docks and b) on the public guest dock pilings facing towards Newport Harbor, 3) change in public dinghy tie up access from 72 hours to 20 minutes 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, and 6) failure to provide a Commission approved beach drop off point for beach patrons. Our

¹ The Coastal Act is codified in California Public Resources Code ("PRC") sections 30000 to 30900. Unless otherwise specified, all further section references are to the PRC, and thus, to the Coastal Act.

staff is concerned about the above mentioned development activities because they have individually and cumulatively resulted in a change in public access to a protected public resource- the public guest dock area and accompanying public amenities at the OCSHP facility, and this has occurred without benefit of the necessary CDP or amendment, as discussed in more detail below.

Permit Background

On January 12, 1995 the Commission issued CDP No. 5-94-255 to the County for the installation of a new 550 foot long seawall, demolition of two buildings, construction of a 1000, sq. ft. Coast Guard building, demolition and reconstruction of an 8,485 sq. ft. Harbor Patrol building, exterior improvements to building facades, upgrade of all site utilities, provision for temporary facilities, replacement of an underground fuel storage tank, improvements to beach access, and addition of 20 parking spaces.

On July 9, 2008 the Commission issued CDP No. 5-07-370 to the County for the 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, and on-site placement of temporary Coast Guard facility. The findings of the CDP No. 5-07-370 state: "the site consists of a Coast Guard operations building, floating dock to berth the USCGC *Narwhal* (used to conduct law enforcement, search and rescue and homeland security operations), a Harbor Patrol dock with nine slips accommodating four official use slips docks (primarily for Harbor Patrol lifeguard vessels) and five guest slips, and a pump out float adjacent to the *Narwhal* berth. A 174 foot steel bulkhead parallel to the harbor channel comprised of interlocking steel sheet piling, supports the Coast Guard station, parking lot and gangways that access the adjacent guest docks. A public beach is located immediately northeast of the U.S. Coast Guard Station providing picnic tables, volleyball net, bathrooms and a surface parking lot clearly designating 11 parking spaces for beach use."

Additionally, the findings of CDP 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." It is clear from the Commission's findings that maintenance of public use of the guest docks was a consideration to find the development consistent with Sections 30210 and 30212 of the Coastal Act regarding public access.

Furthermore, the findings of CDP No. 5-07-370 state: "keeping the existing bulkhead in place and the installation of a new bulkhead approximately 3' - 2" seaward of the existing wall that results in fill of 522 sq. ft. of soft bottom bay habitat can be considered to be an allowable use under incidental public service purposes as the bulkhead protects the U.S. Coast Guard Station and the Orange County Sheriff Harbor Patrol facilities which provide public services," and "the

placement of piles in open coastal waters for the re-construction of a new boating dock is an allowable use under Section 30233(a)(3) of the Coastal Act. Safe use of the docks for marine recreational purposes would be precluded without replacement of the deteriorated docks." It is clear from the findings that the Commission and the County envisioned a shared public safety and public recreational use of the docks.

Permit Non-compliance

The non-compliance at issue consists of: 1) change in use of 2 public guest docks to lifeguard boat storage, 2) placement of "Keep Out" and "Authorized Personnel Only" signage at a) the entrance area to the public guest docks and b) on the public guest dock pilings facing towards Newport Harbor, 3) change in public dinghy tie up access from 72 hours to 20 minutes 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, and 6) failure to provide a Commission approved beach drop off point for beach patrons. Each of these instances of non-compliance is described in more detail below. Non-compliance has occurred because Special Condition 12 of CDP No. 5-07-370 restricts future development at the OCSHP facility. In relevant part, Special Condition 12 states:

12. Future Development Restriction

A. 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.

Pursuant to Special Condition 12, in order for the above described changes in access and changes in use to be authorized, the County must apply for an amendment to CDP No. 5-07-370. None was applied for nor obtained.

Reduction in number of guest docks from 5 to 2

Non-compliance with CDP No. 5-07-350 has occurred because public access has changed to 2 of the 5 public guest docks; it appears that 2 of the 5 guest docks have changed use from publicly available guest docks to boat storage for lifeguard rescue boats, in non-compliance with CDP No. 5-07-370. The reduction in guest docks is non-compliant with CDP No. 5-07-370 because 5 guest docks were approved for public use and now only 3 guest docks are available to the public.

"Keep Out" and "Authorized Personnel Only" signage at the entrance to the public guest docks and on dock pilings

The above described signage located at the entrance area and pilings of the public guest docks gives the appearance the entire dock is closed to the public. Placement of the signs at issue requires a CDP since they purport to restrict public access to public guest docks. At first glance, the public may be intimidated by this signage. We believe that through the CDP process our staff can work with the County to design a signage plan that both informs the public of their right to access to the guest docks, loading and unloading area at the pumpout dock, and dinghy tie up area while also meeting the public safety needs of the County.

Public dinghy tie up access and signage

As noted above, the change in public dinghy tie up access located adjacent to the public guest dock from 72 hours to 20 minutes and placement of accompanying signage constitutes development that requires a CDP. The public dinghy tie up is a public access amenity that was available to the public before the time limit was changed by the County. 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. To that end, this important public resource is protected under the Coastal Act and we would like to work with the County and OCSHP staff to ensure any change to public dinghy tie up access is consistent with the Coastal Act.

Emergency Dock and Visitor Dock

Additionally, the Visitor Dock, which once allowed for loading and unloading of boat owners and their guests, has been changed to an Emergency Dock. Our staff fully appreciates the need for an Emergency Dock at the OCSHP facility, however, the change in use from Visitor Dock to Emergency Dock is development that requires a CDP. It appears that visitors are now allowed to load and unload behind the pump out dock and our staff is open to working with the County through the CDP process to consider such a change, with adequate signage at the pump out dock to reflect these changes.

Public Parking Spaces and Beach Drop Off Point

Furthermore, non-compliance with CDP No. 5-94-255 has also occurred. The findings of CDP No. 5-94-255 state: "the facility provides 5 to 10 berths for traveling boat owners to dock for a minimum fee. Located directly to the south of the facility is the Bayside Drive public beach area. Access to the public beach is gained through the entrance to the Harbor Patrol site. As part of their proposed development the applicants are proposing to increase public access by providing a drop-off point for patrons of the beach. In addition, the applicants are increasing the number of parking spaces on site from 48 to 68, 10 of which will be for public use." Furthermore the findings state: "implementation of the plan will facilitate public access by providing 10 parking spaces for beach use and for providing a drop-off point." In relevant part, Special Condition 5 states:

5. Beach Parking and Signage

Prior to issuance of the Coastal Development Permit the applicant shall submit a signage plan, subject to review and approval of the Executive Director, which shows the designs, dimensions, and location of signs near the beach entrance for the 10 public beach parking spaces. Parking shall be provided consistent with the approved plan. The sign shall state that the spaces are designated for public beach use only for the hours between 8 am and 5 pm and shall be posted in a visible location at the site of the parking spaces.

However, staff has confirmed that the public beach parking spaces have been relocated to the portion of the parking lot closest to the OCSHP facility entrance on Bayside Drive, in non-compliance with the approved plans. Per the approved Beach Parking and Signage plan, the 10 public beach parking spaces are designated on the southernmost portion of the parking lot, both immediately adjacent to and across from the beach accessway.

Our staff does appreciate that there are now 11 total public beach parking spaces and that the hours have been extended to from 8 AM-5 PM to 6 AM-10 PM, and that on the weekend members of the public may park in the "Harbor Patrol, U.S. Coastguard, and Lifeguard Business Parking" spaces that are located directly across from the public beach parking spaces, and we're open to discussing amendment of the Beach Parking and Signage Plan to allow this change. However, additional non-compliance related to parking has occurred because the above mentioned drop off point for patrons of the beach has not been provided, in contravention of CDP No. 5-94-255. During peak beach season the public parking spaces at the OCSHP facility are frequently full, therefore, the public would greatly benefit from a drop off point. The County's failure to provide the drop off point constitutes non-compliance with CDP No. 5-95-255.

Public Access Protection

Failure to provide the public beach drop off point, a change in access to the public dinghy tie up area and public guest docks, and placement of the unpermitted signage that precludes public use of a public dock and a dock designated for public access effectively limits the public's use and enjoyment of a protected public resource, and is thus inconsistent with the public access policies of the Coastal Act, including the following policies:

Section 30210 states:

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

Section 30211 states:

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

Public access to boat berthing and storage in Newport Harbor is a protected public resource and our staff believes that we share this goal with the County.

Unpermitted Development

Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

Commission staff has confirmed from visiting the site and researching aerial photographs and other files that unpermitted development has been undertaken at the OCSHP facility. The following activities undertaken at the OCSHP facility constitute development: 1) change in access to the coast, e.g. a) change in public dinghy tie up access located adjacent to the public guest dock from 72 hours to 20 minutes and placement of accompanying signage; b) placement of unpermitted "Keep Out" and "Authorized Personnel Only" signage located at the entrance area and on the pilings of the public guest docks; and c) elimination of the use of 2 public guest docks for lifeguard boat storage; and 2) placement of solid materials, i.e. signage. It is our goal to work with the County to resolve the unpermitted development at issue and we believe this can be accomplished through the coastal development permit process.

Resolution

We request that you apply for a CDP amendment to address the above described violations and bring the OCSHP facility into compliance with the Coastal Act. The CDP amendment should include: 1) restoration of the public access amenities at the OCSHP facility including the public dinghy tie up access to 72 hours, public access to all five guest docks, installation of the Commission required drop off point for beach patrons; 2) removal of the unpermitted "Keep Out" and "Authorized Personnel Only" signage; and 3) a new signage plan that informs the public of the available public access amenities at the OCSHP facility and also meets the security requirements of the OCSHP facility. If the County is interested in making changes to the OCSHP facility to best meet its mission goals, you must first apply to the Commission to make those

changes. Placement of any new signage and any proposed changes to public access that the County may propose at the OCSHP facility will require Commission authorization. Please contact me, or in my absence Andrew Willis, by no later than **May 29, 2019** to discuss options for authorization

Sincerely,



Jordan Sanchez
Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Supervisor, CCC
Karl Schwing, Deputy Director, CCC
Amber Dobson, District Manager, CCC
Stacey Blackwood, Director, OC Parks