

CALIFORNIA COASTAL COMMISSION

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W12a

CDP 5-07-370-A2 (ORANGE COUNTY PARKS DEPARTMENT)

MARCH 10, 2021

CORRESPONDENCE

1995 Permit – Application No. 5-94-255

Pursuant to Section 30604(c) of the Coastal Act, because the proposed development is located between the first public road and the sea, the public access policies contained in Chapter 3 of the Coastal Act apply to the entire project.

The Coastal Act has several policies which address the issue of public access to the coast.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30213 of the Coastal Act states, in part:

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

As stated in the above Coastal Act policies, the Coastal Act requires that maximum access and recreational opportunities be provided for all people. The Coastal Act also protects the public's right to access the sea and encourages the development of recreational facilities.

The proposed site houses public agencies, the Coast Guard and Harbor Patrol, which have an ocean-oriented public transportation mission. In addition, 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 (see Exhibit 2). 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 beach use.

Implementation of the development plan will not result in adverse impacts to public access to the beach. In fact, implementation of the plan will facilitate public access by providing 10 parking spaces for beach use and for providing a drop-off point.

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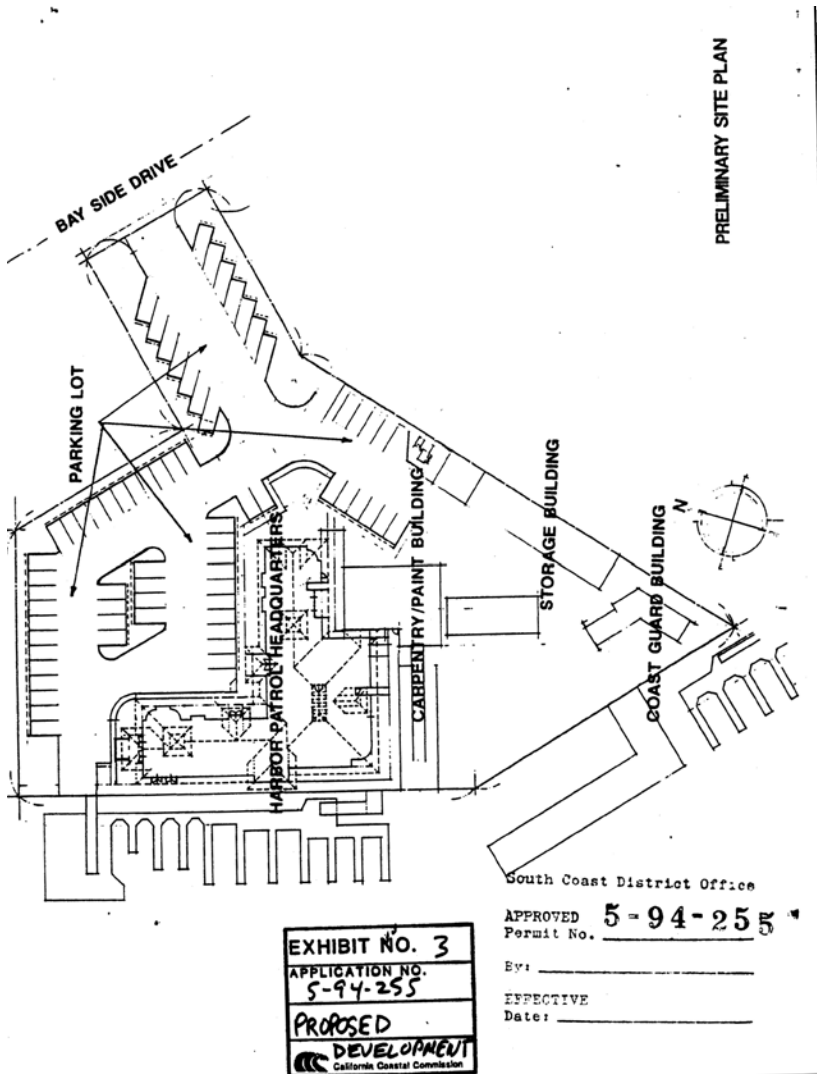
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Implementation of the development plan will not result in adverse impacts to public access to the beach. In fact, implementation of the plan will facilitate public access by providing 10 parking spaces for beach use and for providing a drop-off point.

The proposed project is located between the sea and the first public road. The project is located adjacent to Bayside Drive public beach. The applicants are proposing to increase public access to the beach by providing 10 parking spaces for beach use and a beach drop-off point. The applicants are increasing public parking and facilitating public access to the beach. To ensure that the 10 parking spaces are for beach use only, the Commission is requiring that the applicant place a sign at the public parking spaces indicating that the spaces are to be used for public beach access between the hours of 8 am and 5 pm.

Permit states 5 to 10 berths for traveling boat owners to dock for a minimum fee, but currently there are often only 2 – 3.

Is there a schematic, other than the one below, that indicates the parking, drop off, guest docks, and other public access amenities the County was conditioned to provide and included in the preceding text of the staff report? The exhibit below is labeled Exhibit 3, but the staff report references Exhibit 2 which is the existing site in 1994 and doesn't clearly show what the new development site plan should be with respect to the public access amenities. This preliminary site plan doesn't include any public access references.

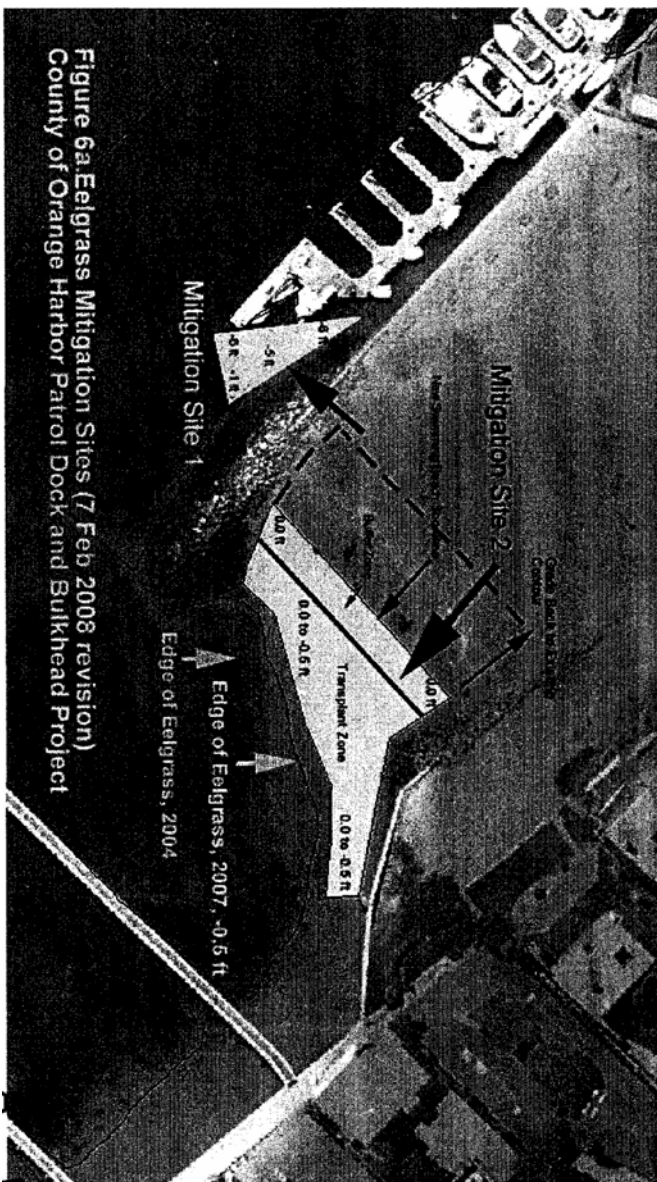


2008 Permit – Application No. 5-07-370

Eelgrass survey:

Mitigation Alternative 2 consists of the same 1,000 sq. ft. on-site transplant area located at the south end of the guest dock proposed for dredging however, the second 4,200 sq. ft. transplant area at the adjacent public beach is modified so that beach sands would only be removed between 0.0 and +2 ft MLLW and graded to an elevation consistent to that where eelgrass currently grows along the beach's perimeter. This would result in the beach shoreline to be moved landward approximately 20 feet back. The same buffer area at the upper end of the newly created habitat would be created to allow for beach-goers to wade in the shallow area. Planting would be conducted at the lower two-thirds of the created habitat within a 42' wide x 100' long (approx 4,200 sq. ft.) area.

The Commission supports approval of Mitigation Alternative 2 as this alternative would not significantly impact the public recreational beach. **SPECIAL CONDITION NO. 8** requires compliance with the proposed Eelgrass Mitigation Plan utilizing Alternative 2.



Status of eelgrass in 2019?

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 (Exhibit 2). 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.

The proposed project would replace the remaining 174 feet of bulkhead and upgrade the official use and guest docks at the site.

As proposed, access to the adjacent public beach will be maintained during construction including availability of the 11 parking spaces designated for beach use.

The project site is located within a lot that consists of a waterfront bulkhead, U.S. Coast Guard and Harbor Patrol facilities, a parking lot, an adjacent public beach and public restrooms. A dock and other boating related structures are located bayward of the bulkhead. 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; public access is limited to the *USS Narwhal*. 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. The adjacent public beach will remain open and parking available during construction.

The project site is the U.S. Coast Guard Station located at 1911 Bayside Drive, near the Newport Harbor Entrance Channel in the City of Newport Beach, Orange County (Exhibit 1). The Coast Guard Station shares the site with the Orange County Sheriff Department Harbor Patrol facilities located immediately adjacent to the north. 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 pumpout 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 (Exhibit 2). 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. Another on-site surface parking lot provides parking for the Coast Guard and Harbor Patrol crews.

Additional Discussion Points

Changing dinghy dock from 72 hours to 20 minutes. Was this discussed with the CCC or was it publicly noticed? Was a permit required to change use?

Loading/visitor/emergency dock - this dock previously served three purposes. The Harbor Patrol has reduced it down to purely emergency access stating they are allowing loading at the pump out dock to mitigate this loss of public access. The pump out dock will now be overcrowded as pumping out can take up to 30 minutes. They have essentially taken away 40 feet of public loading dock space, installed unpermitted signage that would lead the public to believe that the entire area is closed to the public, and have limited every area to a scant 20 minutes. Please also note that this is the only loading dock in the harbor that's near the mouth of the harbor/exit to ocean. This is also the likely location for most inland dock users and boaters given it's conveniently located near Jamboree and with the removal of these facilities, anyone coming from the southern half of Orange County would have to drive another 10 miles to access a similar public loading dock and about another 5 miles to access an alternate public dinghy dock. There are limited dinghy docks in Newport all of which are

over-crowded. This isn't about just servicing those that live in the immediate high-income area, but should also allow inland visitors to easily access the docks, slips, small beach, and ocean.

Misleading and unwelcoming signage in this entire public access area, including the parking area.

Based on the past permits, it would appear that there have always been, and still should be, 5 guest docks. This is well documented in the two staff reports referenced earlier. These docks need to be protected for future generations and those visiting from the inland areas of Orange County and Riverside County. It would appear from the photos and multiple visits to the area, that only three guest docks are available, but again, the signage would lead the public to believe that this entire area is not open to the public, nor is the tie-up area.

While Homeland Security and other security issues are being cited, how will the Harbor Patrol and OC Parks mitigate what were previously areas of public access conditioned in the permit(s)? At this point, nearly all of the public access has been blocked off, or signage has been erected to lead the public to believe the area is off limits to the public.

Lt. Corn has communicated via email that the Harbor Patrol has opened up the front side of the pump out dock for 20 minute access for big boats to mitigate taking away the visitor dock that previously had a "20 minute loading" sign. This "mitigation" is flawed and inadequate for a few reasons:

The new "20 minute" sign on the pump out dock indicates the access is only for pump out or for accessing the back of the dinghy dock. It in no way indicates it is for loading goods or people from land and actually leads the public to believe it is not open to the public. It basically implies don't enter or walk on this land. The signs on the gangway to the pump out dock indicating "authorized personnel only" goes further to convince the public that the area is not open to the public after decades of this being public access based on the previous permits.

The original visitor/loading dock is much closer to Bayside Drive and much easier for people to access relative to the dinghy dock.

The pump out dock is highly used by boaters actually pumping which takes at least 30 minutes (not 20 minutes as posted) between docking, opening holding tank, stretching pump out lines, pumping out, storing pump lines, rinsing off dripping black water and shoving off. On peak days there will be extremely limited availability for using it as a loading dock. Why the new limited time if boaters are to conduct a proper pump out?

The pump out dock needs to be available for pumping out. To over burden this dock space with "20 minute loading" may unintentionally cause boaters to pass the pump out dock and unnecessarily pump out at sea causing pollution. The CCC has a major public education program focused on good pump out stewardship, but perhaps the Harbor Patrol and OC Parks are unfamiliar with this program since they are making it extremely difficult for the public to comply. Have either of these agencies availed themselves of boating and waterways grants or educational materials in the past?

Five (5) to 10 guest docks (berths) were approved nearly 25 years ago:

The docks are numbered 1 through 9. Historically, docks 5 – 9 were used as the guest docks. Following multiple visits, there are usually only 2 – 3 guest docks available as the lifeguard boats have taken all of the docks on an ongoing basis.

The pilings surrounding the guest docks are labeled “KEEP OUT” which again discourages the public from even approaching the area, much less docking there or thinking there is a guest dock program in place. Was the KEEP OUT signage or any other signage permitted?

The OC Sheriff Harbor Patrol website indicates, “pull up to our visitor dock in order to check into a guest dock.” There is no visitor dock (it is currently painted red and has a sign indicating “sheriff only”). How does the public rent a guest dock or even know they are available based on the prohibitive signage that is literally all over the property clearly conveying that the public is NOT welcome – KEEP OUT.

Given the current intimidating and forbidding signage on the guest docks and everywhere the public looks, the Harbor patrol needs to properly label the 5 guest docks with 5 separate “Guest Dock” signs and replace all other existing signs that intimidate the public and deny them public access.

Line 6 and 7 of App. No. 5-07-370 page 10 of the staff report, indicates a dock with 9 slips has been available for 4 lifeguard boats (historically 2 NB City Lifeguard boats and 2 State Lifeguard boats) and 5 guest slips. The harbor patrol has been allowing 6 Lifeguard boats to dock there which leaves 3 public guest slips.

1995 Permit

In addition to the public access issues, is there any ongoing monitoring of the required mitigation area? Permit required protection of mitigation site in perpetuity – 550 sf of intertidal habitat due to the incremental loss of bay habitat. What is the current condition of the site?

What is the current condition of the very large seawall that was constructed 24 years ago?

While the permit required 10 parking spaces (out of the total 68 spaces) with signage that indicated beach parking from 8 AM to 5 PM, there are no ADA spaces. The existing, very limited ADA spaces are behind a sign that will not allow the public to access them. There is no easy ADA access to the docks or beach and even the abulatory public must walk through a work yard that’s parked with trucks, heavy equipment, and a lot of staff that don’t pay any attention to the health and safety of the public attempting to access the docks. The public is not made to feel at all welcome on any level in any area of this property.

The permit states that redevelopment would require 20 additional parking spaces, beach drop off and 10 public parking spaces. Since there isn’t a schematic that illustrates the layout of all of the requirements may we please discuss how all of this has been accommodated and maintained by the applicant since 1995. The beach drop off area no longer exists at all.

Does OC Parks have any school programs, including Title I programs, that are conducted in this area, i.e. boating and waterways education or other on-the-water programs that would require public access and ADA access to these docks and beach? And if they are not conducting any programs, how might we incentivize them to do so?

If your time permits, an on-the-water site tour would provide a better view of how impactful and intimidating the signage that fronts this property really are. From the moment you approach this property, either by boat or car, it’s very clear the public is NOT welcome.

Photos attached for your reference on the following pages organized by the approach to the property, parking lots first, then docks.

Parking

Entry parking lot – Harbor Patrol parking takes half of front lot at the entrance



Public/Beach parking on other side of above-referenced lot



ADA parking is located behind this red line and sign and is limited to only 2 spaces



Additional signage prohibiting access to ADA parking spaces



Guest Services? This sign is posted in an area where the public is prohibited from entering. Is this where the public would sign up for a guest dock? There are restrooms in the lobby of this building but the public is not allowed to use them, but the County website states this building is open to the public.



Loading, Visitor, Emergency dock CLOSED to the public, but immediately adjacent to the above sign



Loading, Visitor, Emergency dock CLOSED to the public from the water side.



Guest Dock area and extensive signage to prohibit public access on ALL docks



Guest Docks 7, 8 & 9 – only 3 of the 5 guest docks that are to be made available to the public, but all have KEEP OUT signs posted on them.



Pump Out Dock – KEEP OUT signs immediately adjacent to 20 Minute sign



Example of public access parking being closed during private Harbor Patrol party. Note: The other side of the parking lot as shown in previous photos is the "Harbor Patrol" parking side of the lot, but Harbor Patrol took over the entire parking lot for their private event and have done this on other occasions as deemed warranted advising that, "It's our parking lot, we can do whatever we want to do" when questioned about there being no public parking available.



Archival photos from the web documenting previous sparse signage, or lack thereof on pilings.



From: Jim Mosher jimmosher@yahoo.com
Subject: Observations regarding the Orange County Harbor Patrol property in Newport Beach
Date: January 2, 2020 at 4:08 PM
To: Jordan.Sanchez@coastal.ca.gov, Liliana Roman liliana.roman@coastal.ca.gov
Cc: Wade Womack wade@orangecoastla.com, Penny Elia greenp1@cox.net



Dear Jordan & Liliana,

Happy New Year!

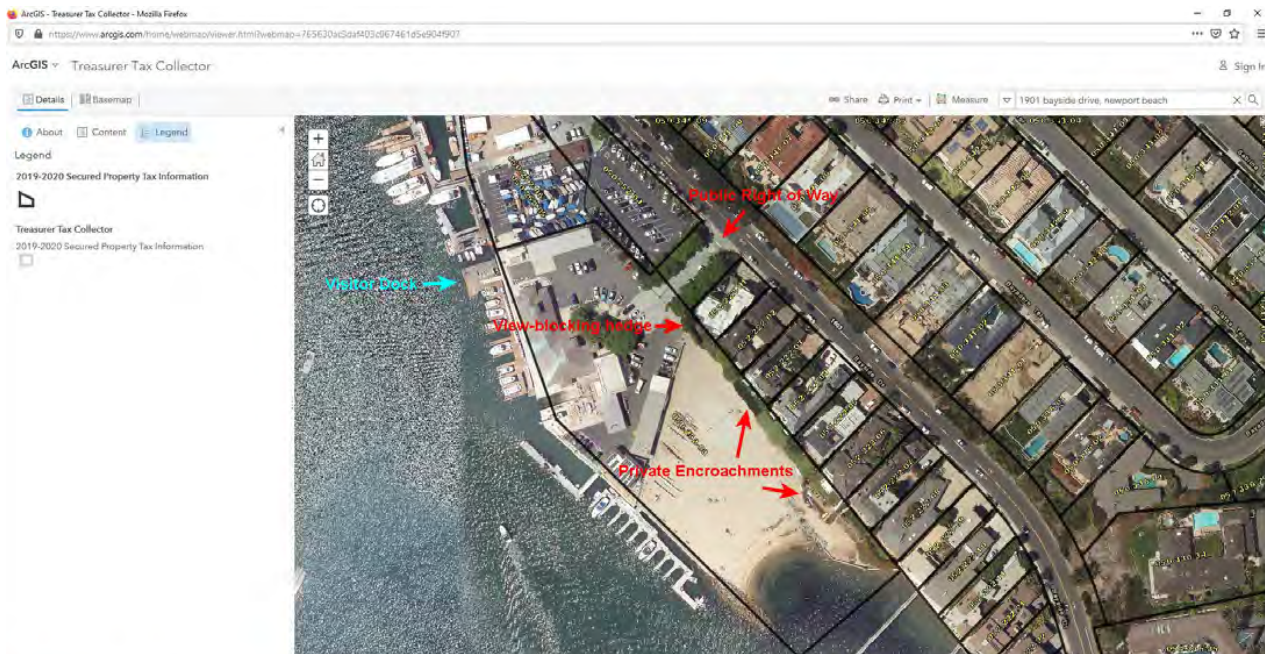
I understand you may be addressing some public access issues that have arisen involving the Harbor Patrol parcel at 1901 Bayside Drive in Newport Beach, and a CDP application to address some of them.

I do not have access to the existing CDP, but based on a recent visit, I certainly agree that the closing the visitor dock to the public was uncalled for and that the parking lot signage suggesting "Authorized Vehicles Only" are allowed beyond a red line in the pavement impedes access for all (suggesting, as it does, that even those with legitimate business at the state and county offices cannot go beyond the line, even to use the handicapped parking, and have to find spaces elsewhere).

I wanted to pass on these additional observations that you may or may not be aware of:

(1) The bulk of the area landward of the red line, in a portion of which the County "allows" the public to park, does not appear to be part of the County-administered tidelands parcels.

As best I can tell, it is, instead public right of way. See the following [parcel map](#) from the Orange County Treasurer-Tax Collector, which shows it as being part of the Bayside Drive right of way:





This public right of way status is corroborated by [the City's GIS mapping](#), as well as by the 1954 subdivision [Tract Map](#) (which shows it adjacent to "Lot 1"), and where the dimensions of the 80-foot-wide right of way match those measured from the City's mapping:



(20 feet of additional bluff-face right of way were added to the width of Bayside Drive when [Irvine Terrace](#) was subdivided in 1957).

It seems very unusual for parking spaces in public right of way to be dedicated for exclusive use by a particular entity, even a government one, and I am unaware of how (or if) the County obtained authorization to reserve half these spaces for their use.

(2) Second, as is evident in both the above images (where the black and orange lines indicate the private property lines) that the County has allowed the private homeowners abutting the beach to create private encroachments intruding out onto what the City designates as filled state tidelands -- similar to what the Commission has found issue with at Peninsula Point (in Newport Beach), in Sunset Beach and, I assume, elsewhere.

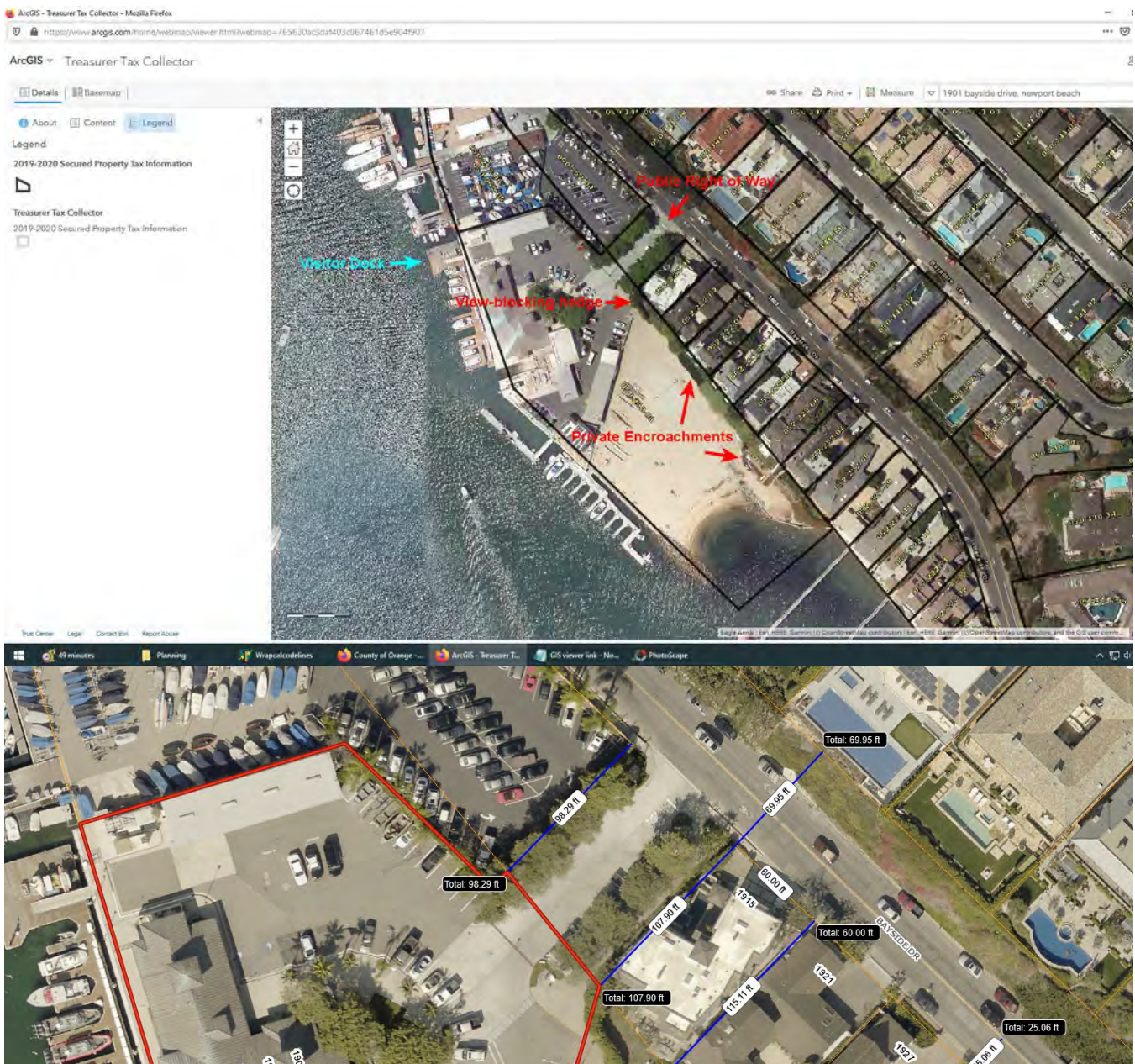
The **private encroachments** that the County has tolerated (and worked around) **include a tall hedge** at the location indicated in the first image. This is not only used by the owner of 1915 Bayside Drive to create a private yard on public trust lands, but it **impedes visibility and physical access to the beach from the parking lot.**

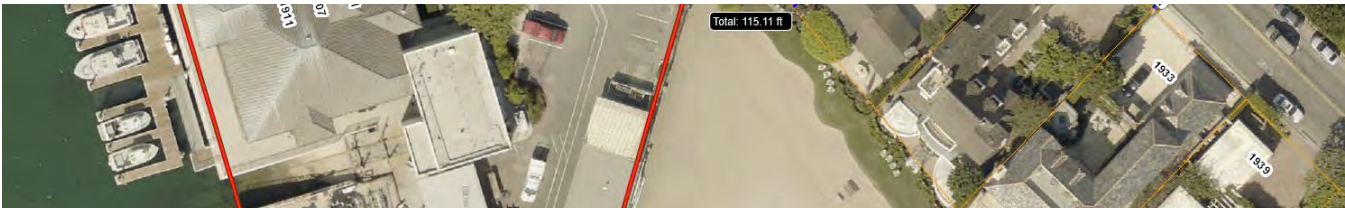
(3) Finally, I am not a boater, but I noticed the County's use of **green** paint to (without permission) denote 20-minute vessel docking zones is inconsistent with the system promulgated for public docks in the City-controlled parts of the harbor per Municipal Code [Section 17.25.10.C.1](#), and could, for that reason, be causing confusion. I don't know if the City follows its own code, but **blue** paint is supposed to be used for 20 minutes, while **green** indicates a 3-hour limit.

I hope this helps you in your consideration of the corrections needed to the public access problems existing on these County-administered parcels.

Yours sincerely,

Jim Mosher





Additional Newport Harbor Patrol Documents

Brett Korte (clinic) <bkorte.clinic@law.uci.edu>

Fri 12/18/2020 12:06 PM

To: Revell, Mandy@Coastal <Mandy.Revell@coastal.ca.gov>

Cc: Sanchez, Jordan@Coastal <Jordan.Sanchez@coastal.ca.gov>; Wade Womack <wade@orangecoastla.com>; Sarah Spinuzzi <sarah@coastkeeper.org>

 1 attachments (6 MB)

Newport Harpor Patrol CDP - Outstanding Issues (Dec. 2020).pdf;

Dear Mandy,

Thank you for meeting with us earlier this month regarding the Newport Harbor Patrol site. I am sending you a packet of information on behalf of Wade that he prepared to further illustrate many of Orange County Coastkeeper's concerns discussed at our meeting. We hope these documents are helpful as the Commission considers OC Park's CDP application for the site. Please let me know if you have any trouble with the attachment, any questions, or would like to discuss further.

Best Regards,

Brett

Brett M. Korte, Esq.
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Outstanding Concerns and Suggestions: Orange County CDP Amendment Application-1901 Bayside Dr.

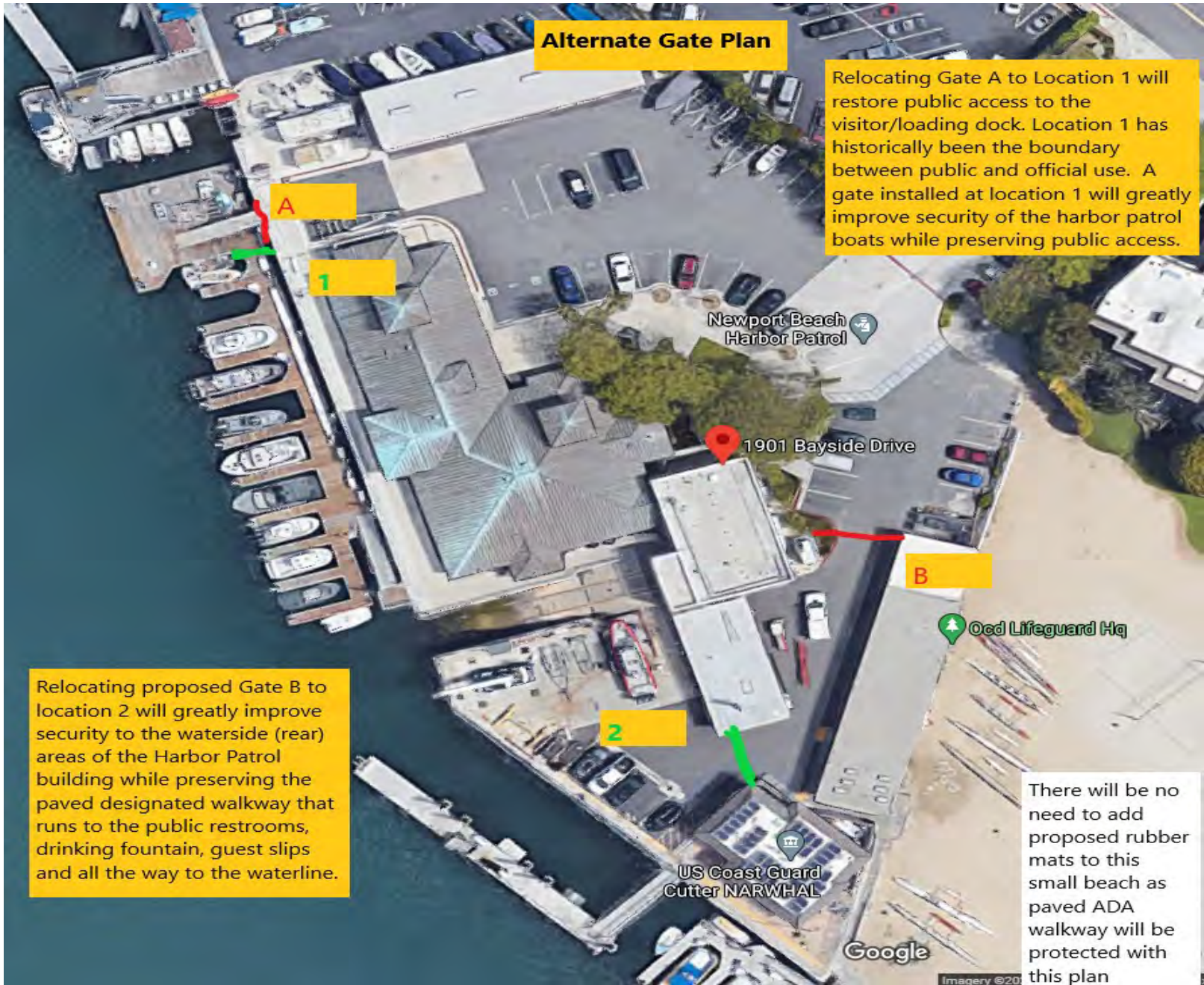
Prepared by and submitted on behalf of Wade Womack on 12.18.20

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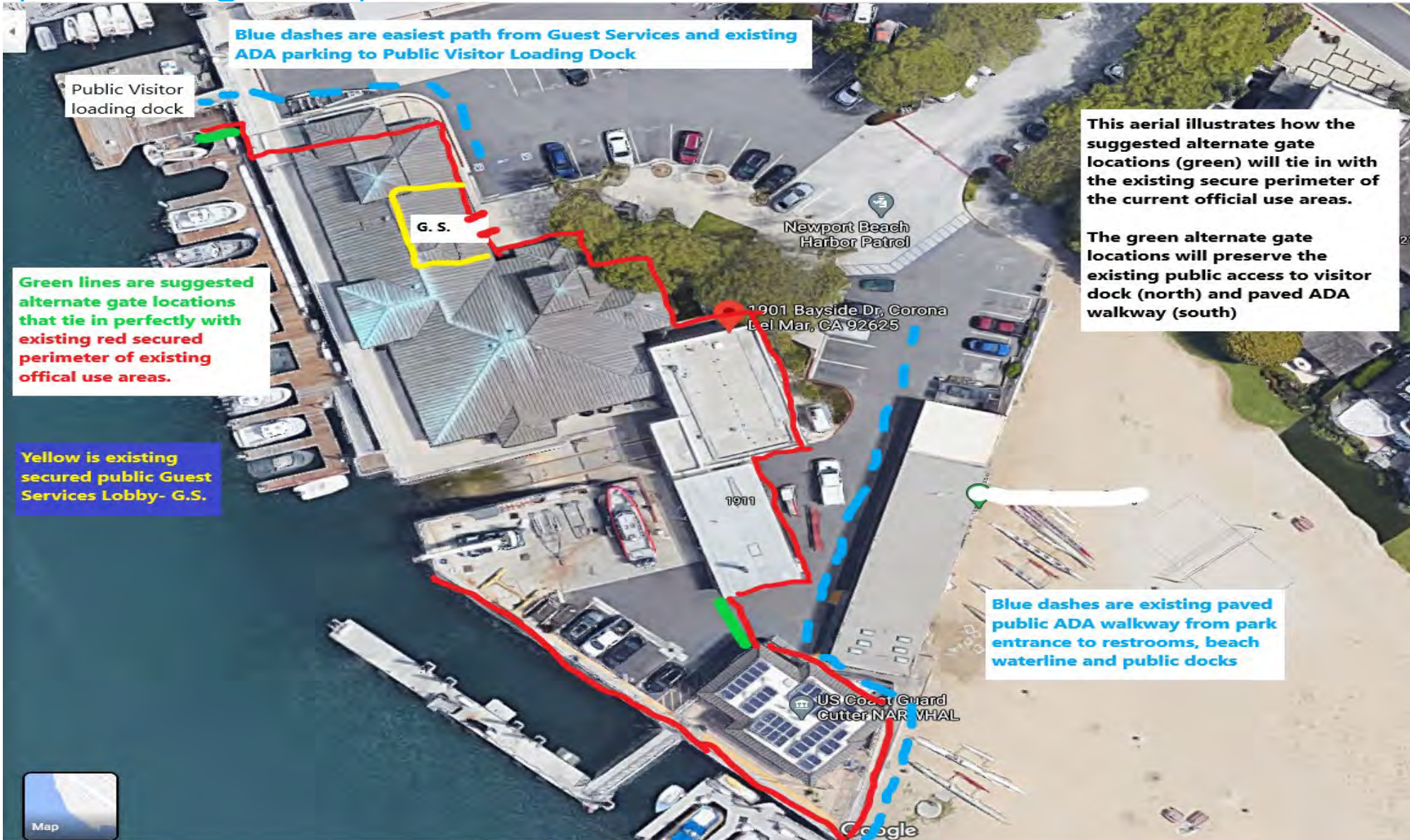
Historical Use of Facility - Fully Occupied Public Dock Area

1. Many Small Boats on Dinghy Dock
2. Boat Pumping Out Station
3. Public Boats Occupying All 5 Guest Slips (A-E)
4. Large Boat Using Visitor Dock





Alternate Gate Plan will complete red perimeter security while preserving blue public access



Need to preserve painted white walkway



The paved walkway is used for ADA, kayak launching and dock carts to guest slips

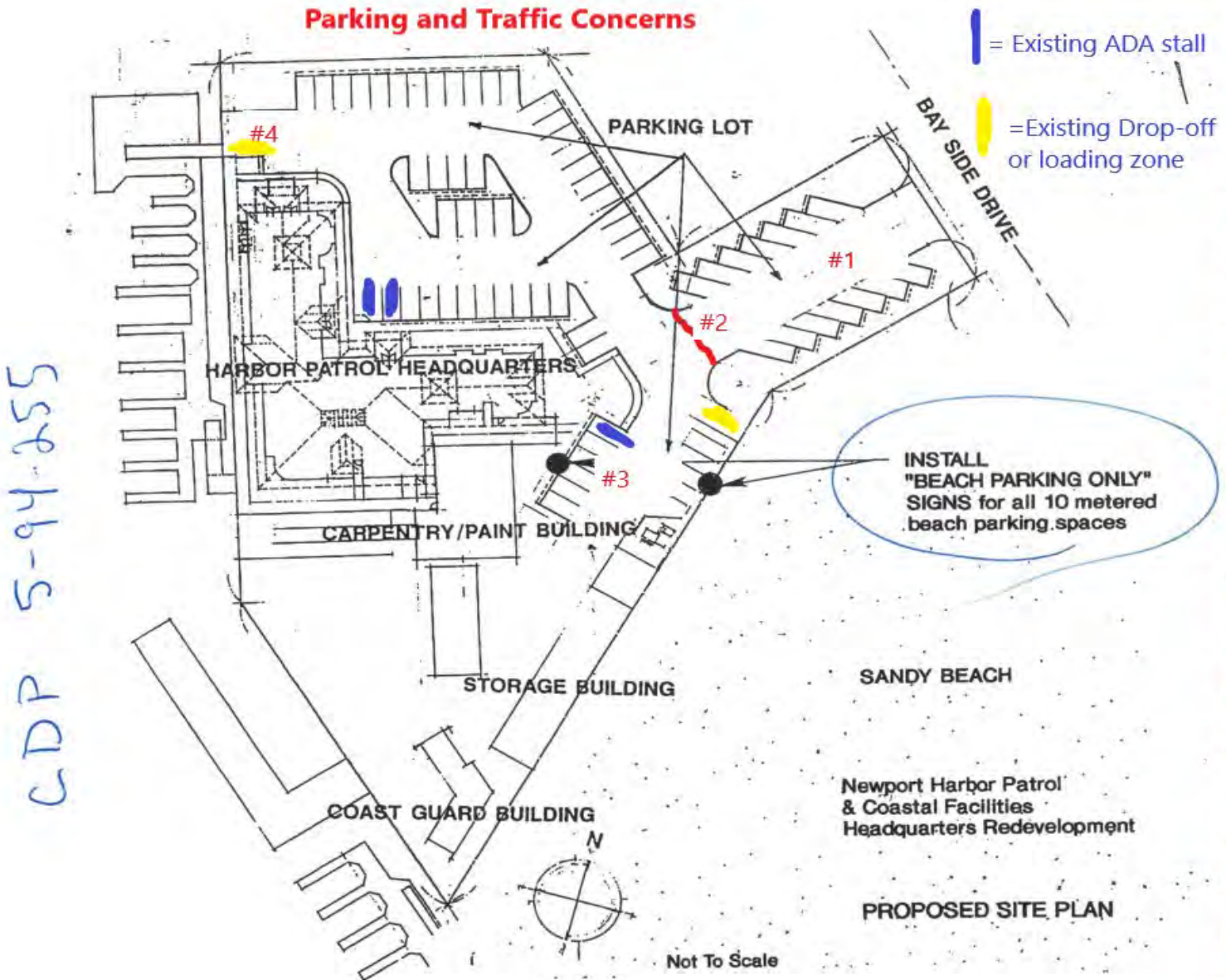


ADA ramp to public restrooms w/ yellow tactile warning device-truncated domes

The paved walkway is used by folks with limited mobility to access the waterline, restrooms and public docks from the parking lot.

The white paint identifying the public access is barely visible. it needs to be repainted

Problematic changes proposed by County overlayed on existing CDP



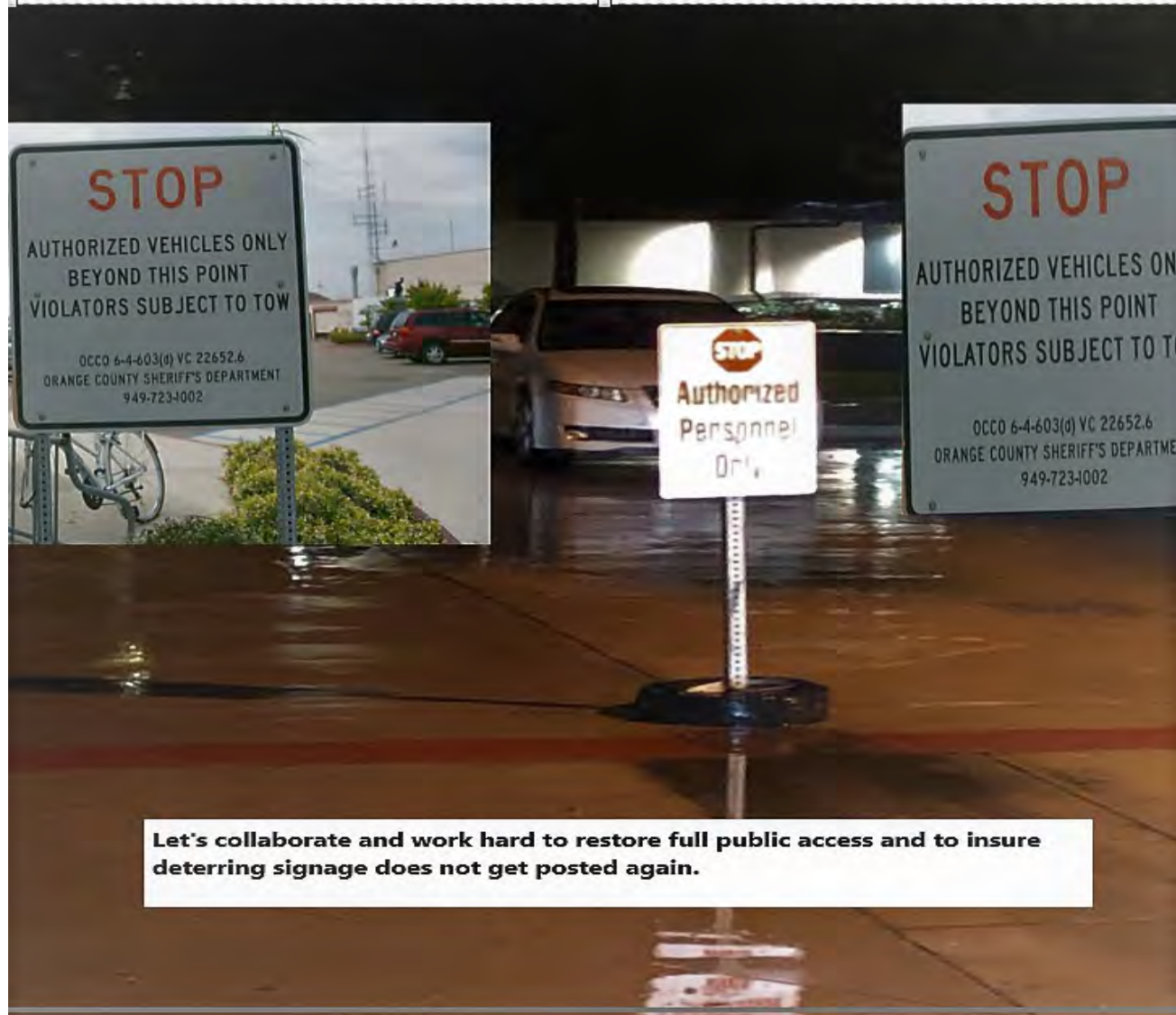
CDP 5-94-255

Original CDP is in black and white:

- #1- Parking spaces are at an angle due to narrow width of entrance drive and to force vehicles to use proper turnaround within the facility. The parking spaces are now perpendicular which creates traffic flow problems.
- #2- The "Stop-Authorized Vehicles Only" in middle of narrow entrance combined with red limit line deter use of beach drop-off, ADA spaces and passenger drop off at visitor dock (#4).
- #3-The original beach parking spaces are closer to the restrooms, guest slips, shaded picnic lawn. They are also 1 to 2 feet wider than spaces at #1 (105" vs appx 120") with proper ADA Van clearance. Users of this parking bring kayaks, SUPs, and fishing gear for boats, proximity is important.
- #4. White curb was for vehicle loading at visitor dock. CCC staff has not noted this to date . There is no closer loading zone to a public dock in all Newport Harbor. Proximity is important for loading a boat, ADA, elderly etc.

“Authorized Personnel Only” Sign was posted at main entrance to Public Facility

These 3 signs existed to the left, right and center of red limit line prior to CCC staff enforcement action. Please note the "STOP- AUTHORIZED PERSONNEL ONLY" sign in the center. Many public amenities exist beyond this red line such as ADA Parking, vehicle loading zone at visitor dock, beach drop-off, shaded picnic lawn, and paved pedestrian walkway to restrooms and docks. This signage deterred public access



Traffic flow issue created by red line and "Stop-Authorized Vehicles Only" (deters access to drop-off & ADA too)



The red limit line combined with the "STOP-AUTHORIZED PARKING ONLY" sign posted in the middle of the narrow roadway prohibit drivers from safely turning around when entrance spaces are full and deter full access to the amenities.



Suggested Parking Plan consistent with existing CDP

Alternate Parking Plan

#1-Restore 10 beach parking spaces per CDP. They are closest to restrooms, beach, guest slips and paved ADA walkway to waterline.

#2-move existing red limit line and change it to a white limit line with sign indicating "Sheriff Parking-ADA and loading OK in marked spaces". This helps delineate Sheriff parking while still inviting appropriate public access.

#3- Move existing ADA stall "B" to this stall next to existing ADA "C". This stall is wide and ADA van can share the existing striped blue area with stall C.

#4-Post sign with arrow pointing left with words "Beach Parking" to direct vehicles entering the location. This will help protect Sheriff Parking to the right.

#5- Restore while loading zone. The Harbor Patrol has been parking various trailers there for unknown reasons. You can see faint image of boat trailer.

#6- convert a few of these spaces to "Official Use M-F (9-5)" which is the signage in area #7. This will help offset for restoring public parking in #1. **Please note that Harbor Patrol uses minimal parking on weekends because 90% of staff off (Admin, mechanics, maintenance, clerks etc). They only have around 4 deputies on any given shift on the weekends.** This creates a great opportunity to create public parking when most heavily used on the weekends. Increasing weekend public parking is a great way to mitigate for past violations.



Signage on frontage road can be improved



Existing signage on Bayside Dr directing public to Harbor Patrol, Coast Guard and Public Beach. The public won't be able to access Coast Guard location with proposed gate blocking paved walkway. Coast Guard offers Burial at Sea and other public services.

Signage can be improved to include more amenities such as:

1. Beach Parking
2. Public Restrooms
3. Hand launching of kayaks
4. Public guest slips

This is the only public facility on the south end of Newport Harbor

LA County Sheriff's Dept allows good traffic flow at Paramount Police Station



Public Parking at building entrance

Red painted lines only used to block off designated parking stalls compared to Harbor Patrol red line at entrance which deters use of public amenities and public parking.

This LA Sheriff Paramount substation is proof that there is no need to block off public access when your job is to serve the public. The Harbor Patrol has tried to articulate that their location is a "Police Station". Real police stations have a Jail which may require extra layer of security. There is no jail in Newport Harbor. The OC Parks facility in Newport Harbor should feel at least this inviting.

-No red line at vehicle entrance

Email ordering Dinghy Dock closed without improper justification

Dinghy Dock-unjustified restriction of hours

This email received from OC Sheriff Dept on 5/17/19 via Public Records Act Request

From: Corn, Christopher F <cfcorn@ocsd.org>
Sent: Tuesday, June 12, 2018 2:22 PM
To: Marble, Steven D; Ketcham, Paul T; Guy, Darin A; Lewellyn, Gary R; Felter, Isaac D; Hove, Neil E; Packard, Lawrence D
Cc: Kibby, Gregory S; Cooper-Jehangiri, Sally A
Subject: Guest/Pump Out Dock

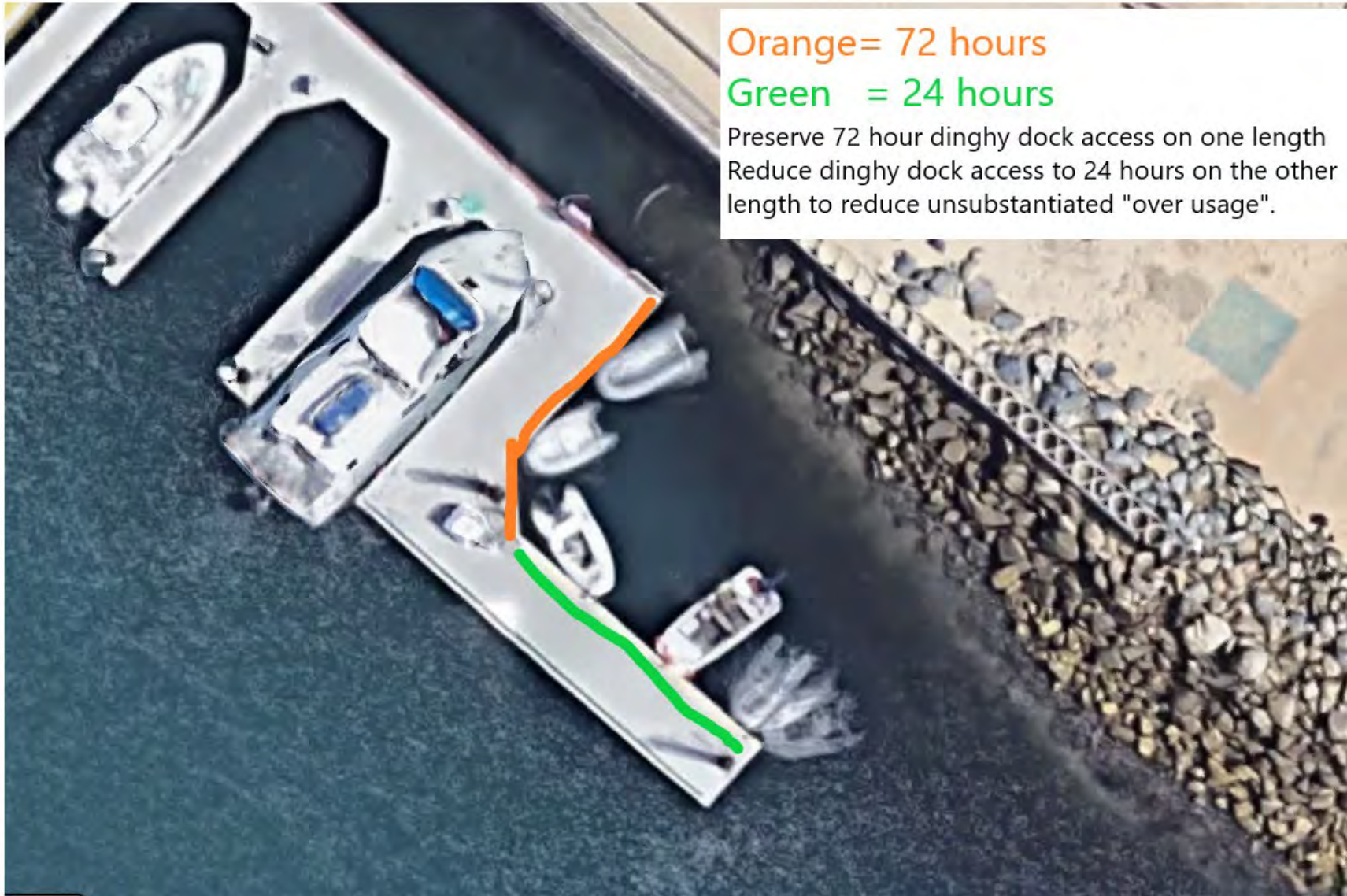
Good afternoon,

Since we are not in the mooring rental business, except for G mooring, we are not required to allow small boats to tie up to the back of the County pump out dock. I have seen the same boats tied up there for the last few years. The boats appear to belong to live-a-boards or people permanently storing them for weekend use. I have asked Greg Kibby to paint that area of the dock with a red stripe and have the words "No Tie Up" written as well. The signage will be changed to reflect the new restricted area. Boaters who rent a slip or mooring from us will still be able to tie their dinghy behind the dock. Please pass this on to your staff. If you have any questions or concerns please let me know.

I have asked Sally to note on the rental agreement if the renter has a dinghy to tie up. If they do, the CF numbers will be noted on the slip.

This email, ordering the permanent closure of the 72 hour dinghy dock, is from the newly installed Sheriff Harbormaster to his staff. It appears that the closure order is in response to the City of Newport Beach supplanting the Sheriff's Harbor Patrol in the management of the moorings. The email appears to target live-aboard mooring users that rely on this overnight dinghy dock to access land for work, food and medical needs 24/7. This is the only dinghy dock on the south end of the harbor. The County has attempted to justify restricting dinghy dock access to "day-use" only by indicating a desire to make the dinghy dock available for beach users. However, this email suggests the original intent was for permanent closure and for questionable reasons. I pray the Coastal Commission staff does not accept the County's articulation and fully restores 72 hour access to the dinghy dock

Original email from PRA is in black and white ink. Blue ink are added commentary



Orange= 72 hours

Green = 24 hours

Preserve 72 hour dinghy dock access on one length
Reduce dinghy dock access to 24 hours on the other
length to reduce unsubstantiated "over usage".

Drop in Guest Slip usage after “Keep Out” signs were posted

5 Public Guest Slips- Must protect full access as agreed upon in existing CDP

Spreadsheet image inside blue rectangle received from Harbor Patrol via PRA 6/2019. Everything outside blue were added and not part of the PRA

The 5 guest slips rent out for \$40 per night. These guest slips comparable to RV campsites, but they are for people and families camping on a boat. The revenue totals on far right show dramatic decrease from 2015 to 2018. This suggests public access was not prioritized and that the keep out signs greatly impeded public use.

Decrease in Revenue at Public Boat Guest Slips at County Facility in Newport Due to Shutting out of Public Boaters at Public Facility

GUEST SLIP RENTALS

Fiscal Year	January	February	March	April	May	June	July	August	September	October	November	December	Totals
2014				\$2,944.00	\$2,906.00	\$3,280.00	\$5,884.00	\$5,090.00	\$4,648.00	\$3,920.00	\$2,480.00	\$3,520.00	\$34,672.00
2015	\$1,656.00	\$2,008.00	\$2,920.00	\$3,120.00	\$2,985.00	\$2,800.00	\$4,143.00	\$5,160.00	\$3,888.00	\$3,720.00	\$2,008.00	\$2,840.00	\$37,248.00
2016	\$384.00	\$0.00	\$0.00	\$320.00	\$2,507.00	\$3,398.00	\$4,520.00	\$5,320.00	\$4,680.00	\$2,707.00	\$1,648.00	\$1,800.00	\$27,284.00
2017	\$120.00	\$480.00	\$1,760.00	\$720.00	\$1,800.00	\$2,480.00	\$1,400.00	\$2,680.00	\$1,040.00	\$160.00	\$120.00	\$440.00	\$13,200.00
2018	\$240.00	\$1,000.00	\$0.00	\$840.00	\$240.00	\$560.00	\$1,040.00	\$1,694.00	\$680.00	\$1,120.00	\$520.00	\$1,080.00	\$9,014.00
2019	\$280.00	\$40.00	\$320.00	\$280.00									\$920.00

Year	Annual Rev	/	Nightly Fee	= # of Nights of public use
#1 2015	\$37,248	/	\$40	= 931 Nights of public use
#2 2018	\$ 9,014	/	\$40	= 225 Nights of public use

In 2018 the public was short-changed 706 nights of boat camping at guest slips relative to 2015

"KEEP OUT- AUTHORIZED PERSONNEL ONLY" signs were posted on each and every piling to the 5 public guest slips (#5-#9). A review of guest slip receipts indicate that private boats associated with Sheriff's Department personnel (including, but not limited to, active harbor patrol and retirees were berthed in the 5 public guest slips frequently. I am concerned that the Harbor Patrol was likely deterring public use by reducing the number of slips to 3, posting "keep out" signs and sending boaters away to the City Marina while preserving access to these low cost guest slips for Sheriff Department associates.



These two "KEEP OUT" and authorized personnel only (x2) signs posted at the only gangway to public guest slips and dinghy dock deterred public access for years at the location.



There are other locations for berthing redundant Lifeguard Boats



This image of a Newport Beach City Lifeguard Boat berthed at the unrelated City Marina was taken on 12/2/2020 and is indicative of the fact that the lifeguard agencies have alternate locations to berth any redundant lifeguard boats.

The existing CDP calls for 4 lifeguard slips and 5 public guest slips. The lifeguards will always be able to berth at 4 lifeguard boats at the OC Parks location. The lifeguards have historically berthed redundant boats on the adjacent end-tie (which is still available) or on one of the many vacant moorings in the area. Per the existing CDP, the 5 public guest slips should always be open and available for public use.

It should be noted that Lifeguard boats are rarely (if ever) used for call-outs as they are assigned to a 9 to 5 type shift in a particular surf zone during summer months only (The Harbor Patrol handles after hour calls). Therefore, it has little (if any) impact on lifeguard emergency operations to berth a redundant lifeguard boat at an alternate location given the lifeguards will always have 4 "rescue ready" lifeguard boats at the subject County location.

HB City Lifeguards berth ALL of their boats far from surf zone near HB Pier with no problems



The Huntington Beach City Lifeguards berth rescue boats deep in Huntington Harbor at Warner & PCH proving its not a burden to ask the County to cease berthing lifeguard boats in the 5 public guest slips as lifeguards have alternate locations available in Newport. The yellow line is the route the HB lifeguards take to their reporting surf zone.

From City of HB website:
https://www.huntingtonbeachca.gov/government/departments/fire/Fire_Operations/FireStations/facility_show.cfm?id=13

Warner Firestation 7
Address: 3831 Warner Ave
Map to Location
Fire Station 7-Warner opened in 1977 and serves the Huntington Harbor area, as well as the Bolsa Chica State Beach. The Marine Safety Department shares a portion of the facility and docks their rescue boats in the harbor behind the fire station.

Public boater concerned County was deterring access to guest slips

Re: Guest slip experience today at OC Sheriff Harbor Patrol in Newport



To Wade Womack

[redacted]@gmail.com >

On 6/6/20 a boater inquired about a guest slip rental. The OCSD Harbor Patrol Deputy immediately referred the boater to the City guest slips which are 30 minutes away by boat. When the boater inquired further about his desire to use the County slips, he was told none were available. The boater went down to the location to seek further clarification and what told he needs to contact the "Lifeguards" (who have nothing to do with the slips). The boater immediately went for a paddle in the area and was appalled when he realized that the three remaining guest slips (#7,8,9) were all vacant. The combination of "keep out signs", verified drop in revenue, personal use of the guest slips by Deputies are cause for great concern. We need to protect the 5 low-cost public guest slips at the location

→ Forward



Sat 6/6/2020 9:07 PM

You forwarded this message on 6/8/2020 5:57 AM.

Exactly correct **Boater Reply**

On Jun 6, 2020, at 1:51 PM, Wade Womack <wade@orangecoastia.com> wrote:

Hi

For my notes, I'd like to verify that I have the facts straight regarding your experience today:

Around 9am you called the OC Sheriff's Harbor Patrol in Newport Harbor to inquire about renting a public guest slip at their facility in Newport. The OCSD employee that answered the phone said "you will need to call the City, they have guest slips available". You accepted that information and followed up by asking if they do in fact had public rental slips at the location. The OCSD employee told you they had 3 public guest slips but they are not available at this time.

Around 10am you verified with your own eyes that slips 7,8, and 9 were all three vacant while on an SUP paddle in the area.

Later in the day (around 12pm), you went down to their office in person and asked how you can rent a guest slip. An OCSD Employee with last name Davis told you that you need to contact the lifeguards and that the lifeguards will be there on Monday.

Do I have a correct understanding of your experience today?

Thanks,
Wade

Note: The boater involved in this situation requests to stay anonymous out of fear of retribution from Sheriff's Dept. A confidential meeting with Coastal Staff can be facilitated if staff wishes to inquire further.

Office is staffed 24/7 but signage does not imply County will be offering guest slip rentals outside business hours

15

Guest Services Direction
(A,B,C)

**Orange County
Sheriff's Department**

**Newport Harbor
Marine Operations/Police Services**
1901 Bayside Drive
Corona Del Mar, CA

Business Hours:
Monday - Friday 8:00AM - 4:30PM
Closed Saturday, Sunday and Holidays

In case of Emergency dial 911
For Harbor Patrol non-emergencies call
(949) 723-1002

Public Restrooms are located
in the next building behind the
U.S. Coast Guard office

on steel post

HARBOR PATROL
↑ Guest Services A

HARBOR PATROL
→ Guest Services B

HARBOR PATROL
← Guest Services C

This signage relating to guest slip rentals is proposed by County. Historically, the guest slips have been available for rental on a 24/7 basis as the Harbor Patrol Office is staffed 24/7 and has bank teller type bullet proof glass and buzzer to accommodate occasional after hour guest slip rental. Please add

"Guest slip rental available 24/7" to help inform the public of the availability that has traditionally been provided.

This picnic lawn is the only shaded area at this OC Parks location. The County has a red line at the entrance to this general area deterring public access. The public parking area (designated on existing CDP) has been unlawfully moved further from this public amenity. The County has proposed to move the ADA and public parking further from this amenity into tighter parking stalls.



Barrier needs to be re-installed at the original location over red line for proper public access and real security for Harbor Patrol



The red line on the visitor dock historically separated the public visitor dock from the patrol boats. The barrier was previously posted over the red line. If a gate were to be installed over the red line, it would drastically improve security while preserving public access to visitor dock. The County has a gate on dock in Dana between pump out and patrol boats.

10.

Email confirms visitor dock can stay open if alternate security measures are taken

Kirkpatrick, Jeff PRA RECEIVED 6-6-2019

From: Corn, Christopher F <ccorn@ocsd.org>
Sent: Monday, May 6, 2019 3:45 PM
To: Blackwood, Stacy
Subject: RE: Compromise on access to Visitor Dock (aka emergency dock)

Hi Stacy,

I hope you are having fun at your conference. 😊

One of the first things I did when I got to the Harbor Patrol in April of 2018, was to see how we could increase the level of security around the facility. We have looked into a new camera system, gates, fencing, signage, etc... I believe we have quotes for all of them. Currently, we have been unable to acquire any of them

I would be open to reducing the restriction on the Emergency Dock for "Harbor Patrol business", once we can make the dock, boats, fuel station and equipment more secure. The red line on the dock and the moveable barrier offer no security. What I do not want is a dock that is open to anyone. We have found people on our boats, wandering around our dock, stealing outboard motors off the impounded boats, etc.. What a lot of people forget is that this is a police station and the dock is the parking area for our Law Enforcement boats and property.

What [REDACTED] really wants is a dock that he can use to load and unload his passengers that is most convenient for him. He could use any one of the 15 City Public Docks or our pump out dock, they are just not as convenient.

OK I'm off my soapbox...lol..Let's talk when you return.

Thank you,
Chris

From: Blackwood, Stacy <Stacy.Blackwood@ocparks.com>
Sent: Monday, May 06, 2019 2:28 PM
To: Corn, Christopher F <ccorn@ocsd.org>; Reiter, Bill [OCCR] <bill.reiter@ocparks.com>
Subject: Fwd: Compromise on access to Visitor Dock (aka emergency dock)

I'm out at a conference but wanted to share the below. Let me know what you think.

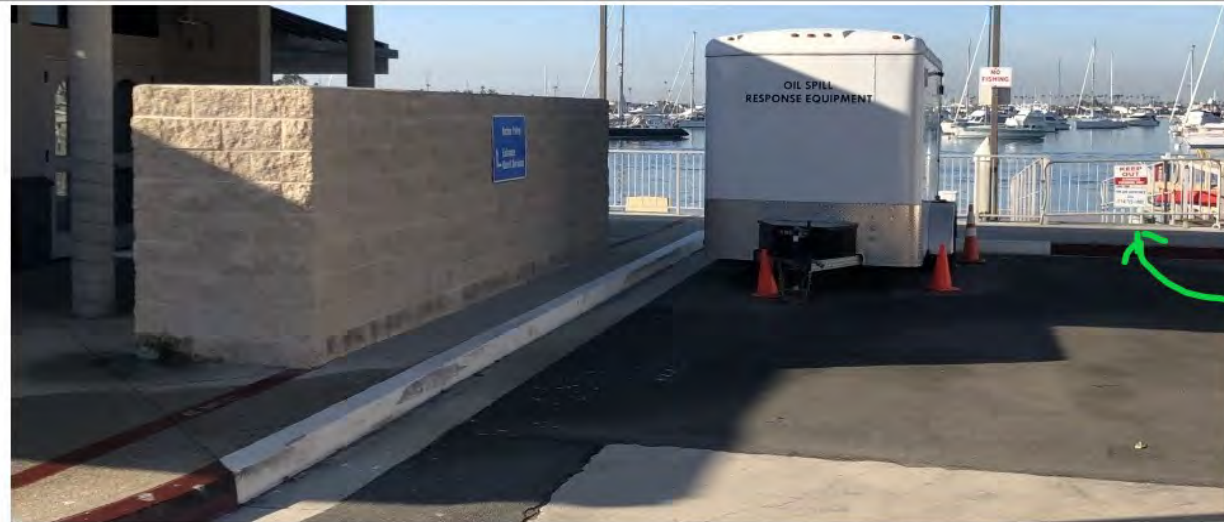
Stacy Blackwood
Director, OC Parks

Note: This is an email provided by OC Parks regarding whereby the Harbor Patrol is replying to OC Parks Director regarding a citizen suggestion to restore access to the visitor dock. The ranking harbor patrol officer indicates he is willing to restore public access to the visitor dock and mentions alterate security options suchs as cameras. Unfortunately, the officer passes judgement on the citizen apparantly to sway the OC Parks Director. There are no other public docks on the south end of Newport Harbor and using the pump-out dock unintended uses may lead to congetion and dumping in the harbor.

We need to keep visitor dock and adjacent white vehicle curb open for convenient public access



Existing Condition



This white public vehicle loading zone is 5ft from visitor dock entrance. This is the easiest access to a boat for ADA or others with arthritis etc (not to mention a mother boarding a boat with a baby in one arm and a toddler in the grasp of her other hand.

This has been always been public dock b/c easiest way for boater to check in to guest slip while harbor patrol compares registration against visual of boat on visitor dock

Top half- two images from County CDP Amend Application showing empty boat trailer blocking public access to white public loading zone (for visitor dock loading). Angles of County photo do not show white curb. Lower half is photo of condition as of 12/10/20 showing a trailer blocking access and obstruction gorgeous view shed. The good news is the trailer has wheels and can be moved to other locations quite easily to restore public access.



RBOC
Protecting your boating interests.™

925 L Street • Suite 260
Sacramento CA 95814
916.441.4166
www.rbo.org

May 28, 2019

To: Director Blackwood, OC Parks stacy.blackwood@ocparks.com
To: Lt Corn, OCSD Harbor Patrol cfcorn@ocsd.org
Cc: Jordan Sanchez Coastal Commission Jordan.sanchez@coastal.ca.gov

RE: Public Access - including the "72 hour Dinghy Dock" and the "20 Minute Loading Dock"

Recreational Boaters of California [RBOC] respectfully requests that the County of Orange [OC] take action to protect access to the county's beaches and docks for public safety and recreational users.

RBOC is the nonprofit advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC has been promoting the enjoyment, protection, and responsible use of our waterways for over 50 years, since its inception in 1968.

RBOC respectfully requests that the County of Orange:

1. Restore full access to including the "72 hour Dinghy Dock" and the "20 Minute Loading Dock" at the Orange County Parks Facility located at 1901 Bayside Drive in Corona Del Mar.
2. Maintain public access to the beach and docks via water and land for public safety and recreational users.

As you may be aware, there are no other public docks on the Corona Del Mar side of the Harbor. Furthermore, there are few public docks in Newport Harbor and they are all highly impacted.

The change in access to the two docks at 1901 Bayside has had (and will continue to have) a negative impact on boaters, guests of boaters, harbor enthusiasts and mooring users in the County of Orange.

Please restore the full access to these two docks which community has enjoyed and relied upon for the past many years.

Thank you for this opportunity to express RBOC's position on public access. I can be reached at 650.703.0813 or please feel free to contact RBOC's Director of Government Relations, Jerry Desmond with Desmond & Desmond LLC, at 916.441.4166.

Sincerely,

Ray Durazo, RBOC President

Ray Durazo
President

Dan Hodge
Vice President – South

Paul Clausen
Vice President – North

Otis Brock
Secretary – Treasurer

John Marshall
Past President

Legislative Advocate
Jerry Desmond
Director of
Government Relations

Mail donation checks to
RBOC
c/o Otis Brock
1253 Yuba Avenue
San Pablo, CA 94806

Donations to RBOC are
not tax deductible due
to our extensive lobbying
activities

<https://newportmooringassociation.org/news>
**Coastal Commission Review of the recent Harbor Patrol
Dinghy Dock Access Restrictions**

This week the Coastal Commission is meeting in Newport Beach, and among the topics being discussed is public access to the Harbor Patrol's dinghy dock, which has recently been reopened, but with restricted hours.

Among the speakers lined-up for public comment was the NMA's John Fradkin. The public comment session got cut short due to time constraints, and unfortunately John did not have an opportunity to comment. The Coastal Staff is likely reviewing the County CDP application over the next few weeks and will issue their recommendations. Here is the text of John's comments, in which he states the NMA's position on attempts to reduce hours on dinghy docks. This letter will be distributed to the Commissioners and staff:

Honorable Coastal Commissioners

Sep 11, 2019

My name is John Fradkin. I am a director of the Newport Mooring Association.

The Newport Mooring Association champions the rights and needs of the mooring permittees who lease moorings from the City of Newport Beach. Dinghy access from public docks is of paramount importance to our membership. If you can't access your mooring easily, then that mooring has very little value.

There are over 700 offshore moorings in Newport Harbor. Only about 150 of them have access to a regular shoreboat service – those being the moorings controlled by the Newport Harbor Yacht Club and the Balboa Yacht Club. The remaining 550 offshore moorings are accessed by several ways, but primarily by small dinghies launched at public docks. Mooring permittees are the single largest user group of the public docks.

Life on a mooring is not easy. Fresh water access is difficult. Access to electricity is difficult. Just accessing the boat is difficult. When attempting a multi-day maintenance project on a boat on a mooring, it is very helpful to be able to leave your dinghy at a dock overnight so that you can return the next morning and get back to work with a minimum of effort.

We need more public access to the harbor and anytime there is a reduction in public access from public dinghy docks in Newport Harbor, the Newport Mooring Association feels compelled to speak out in protest

Unfortunately this past year saw a reduction in public access to Newport Harbor at the Orange County Sherriff Department facility's dinghy dock located on Bayside Drive. This is an especially important access point for mooring permittees as it is the only public pier on that side of the harbor. Additionally there is always easy parking availability nearby, and if you have a mooring in the A field, it allows you to not have to drive your car all the way out to the end of the Balboa Peninsula which saves you a lot of time.

Access to this dinghy dock has gone from 72 hours to daylight hours only. Why was this change made? Because some people were abusing the 72 hour rule and their leaving dinghies there for extended periods of time. That is not a good excuse in my mind. Enforcing a 72 hour rule is a simple code enforcement issue that is not too different from enforcing the daylight hours only rule now in place. A cell phone camera and some stickers would be the only additional equipment necessary. In my estimation, it would only add a minute or two to the current job of enforcing a daylight hours only policy.

The Newport Mooring Association respectfully asks you to encourage the reinstatement of 72 hour dinghy dock access at the Orange County Sherriff Department dock on Bayside Drive so that mooring permittees can better access and maintain their boats.

Thank You.



November 23, 2020

Michelle Steel, Chair
Orange County Board of Supervisors
333 W Santa Ana Blvd
Santa Ana, CA 92701

RE: Coastal Development Permit Application No. 5-07-370-A2

Dear Chair Steel and Supervisors,

The Newport Beach Chapter of Surfrider Foundation represents 590 members in our coastal and inland areas who are dedicated to the protection and enjoyment of our ocean, beaches, and waves. We write to address Coastal Development Permit Application No. 5-07-370-A2, submitted by OC Parks to the California Coastal Commission, with regard to the facilities and beach located at 1901 Bayside Drive, Newport Beach, and overseen by Orange County Sheriff's Department Harbor Patrol (OCSD). **We urge you to immediately resolve public access policies in violation of the Coastal Act at this coastal access location and to prioritize the public's access to resources onsite, including docks, the beach, and parking.** The bayside of Newport Beach is largely private, and this year has shown that preserving public docks and access points is important for not only our health but also our coastal economy.

The current pandemic has led to changes in both lifestyle and local economy. During this period of reduced indoor business activity, which includes shuttered gyms and entertainment venues, we have observed locally greater use of public park and beach areas – for recreation, exercise, and overall health. During the summer months, formerly less popular beaches were used often, and every small patch of grass seemed to be claimed for family picnics, complete with lawn chairs and even hammocks. At Corona Del Mar's sea cliff, people ate pizza while sitting in the trunks of their cars and watching the sunset. And now, despite the cooler fall temperatures, our coastline still sees a constant stream of visitors.

Most local businesses have been hard hit in this pandemic, but one steady area of growth has been outdoor recreation, including the supplies people need to engage in it. Anecdotal evidence and market research show that consumers are spending more on outdoor recreational activities and durable goods.

The *MRAA/Baird/Trade Only Marine Retailer Pulse Report*¹ for October 2020 reported on a survey of marine retailers in North America, which revealed a striking trend of increased retail growth and consistently low inventories of new and used boats since the start of the pandemic. Back in June, 89% of surveyed retailers had reported sales growth, and in October, 88% and 78% of retailers reported boat

¹ *MRAA/Baird/Trade Only Marine Retailer Pulse Report*, a report on a survey of marine retailers from Baird Equity Research, in partnership with the Marine Retailers Association of the Americas (MRAA) and Soundings Trade Only (October): https://cdn.ymaws.com/www.mraa.com/resource/resmgr/pulse_report/2020_October_PulseReport.pdf; see also June: https://cdn.ymaws.com/www.mraa.com/resource/resmgr/pulse_report/2020_June_pulsereport.pdf

inventories for new and used boats, respectively, to be “too low”, after several months of similar sentiment.

ActionWatch, a Costa Mesa-based market research firm specializing in the surf and skate industries, reported² this summer that June sales of surf hardgoods (e.g., surfboards and standup paddleboards) increased by 113% year-over-year.

While the data is affected by a dip in sales in the months after the shutdowns began, the recent sales increases are significant enough to suggest that the levels of outdoor recreation pertinent to this access point (i.e., boating and paddle sports) are increasing and may persist in the future, especially in light of increased COVID-19 activity. Additionally, data for California fishing license sales shows that as of the end of October, the number of total license sales for this year is up 14% over that for all of 2019.³

When visitors trek to Orange County's coastline for a day or longer, they bring economic activity to our coastal cities. The COVID-19 pandemic may very well show that outdoor recreation will be a key driver in the economic recovery of our region. A variety of public access options opens up the coast to more visitors, who can partake in the many benefits the ocean provides, and we want to preserve and increase those options in our county.

The beach and docks at 1901 Bayside Drive are particularly an attractive location because of their relative ease of access on the road and in the bay; access should be protected for the benefit of the public. The location is close to the Newport channel entrance, and street traffic is less congested here than on the peninsula and nearby Balboa Island.

We request that you resolve as soon as possible restrictions in access that have been occurring for many months. Specifically, we ask that you:

- **Restore the dinghy dock's time limit of 72 hours.**
- **Restore the visitor dock, which was designated by OCSD as an emergency dock.**
- **Restore rentals of two overnight slips that have been designated as lifeguard storage docks.**
- **Clearly indicate with signage the public docks.**
- **Locate public parking spaces at the Coastal Commission-approved location adjacent to the beach access point.**

Public coastal access is vital to the health of our community and the wealth of our local economy. We ask that you protect a valuable bay access location for public use. Thank you for your time and your efforts to support our county's residents and businesses during this difficult period.

Sincerely,

Michelle Giron
Chair, Surfrider Foundation - Newport Beach Chapter

² “V-shaped June recovery for US surf and skate, but concerns remain” (August 4, 2020) (<https://actionwatch.com/2020/08/04/v-shaped-june-recovery-for-us-surf-and-skate-but-concerns-remain>)
³ California Department of Fish and Wildlife License Statistics (<https://wildlife.ca.gov/Licensing/Statistics>)

Email between County staff regarding recent development at location while in violation of Coastal Act -review of related correspondence indicates new framing, new floats, new decking and other significant development

From: Metz, Erika
To: Fegley, William
Subject: EW859728 - Newport Harbor Patrol Dock Repairs Project - Lighting Upgrades
Date: Tuesday, February 11, 2020 12:29:29 PM

Good Afternoon,

OCSD requested that we attain a proposal to upgrade the lighting as part of the Newport Harbor Patrol Dock Repairs Project. The existing lighting is in poor condition and was not suitable to be reinstalled after the deck repairs were completed. The scope of work includes:

- Install eight new electrical posts, 12' height, made from aluminum
 - Square Aluminum Pole
- Install eight new strong visibility LED floodlights
 - RAB IVELOT, Type 2, 94 watt, 4000K, 73 CRI, Black
- Install six new 30A twist lock duplex with a light switch
- Replace nine 20A GFCI circuit breakers
- Replace one photocell at existing electrical panel
- Add three dimmer switches

Construction cost \$26,297.44 + \$512.80 JOC Fee = \$26,810.24 TOTAL

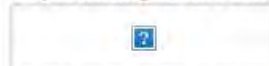
This results in a new total contract/project value of \$316,941.13

Could you please advise if this is approved and, if so, are we to use the same funding code (405-012-405-9022-1404-EN30843)? Please do not hesitate to contact me with any questions or comments.

Thank you!

Erika Metz

Project Manager, OC Facilities Maintenance & CUF



1143 E. Fruit Street | Santa Ana, CA 92701

Office: 714-667-3295 | Mobile: 714-474-4240



November 15, 2019

SENT VIA ELECTRONIC MAIL

Jack Ainsworth, Executive Director
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219
John.Ainsworth@coastal.ca.gov

RE: NEWPORT HARBOR PATROL CDP AMENDMENT APPLICATION

Dear Executive Director Ainsworth:

The University of California, Irvine Environmental Law Clinic submits this letter on behalf of Orange County Coastkeeper (“OC Coastkeeper”) to raise concerns regarding Orange County’s pending Coastal Development Permit (“CDP”) amendment application for the Orange County Sheriff’s Department Harbor Patrol (“Sheriff’s Department”) facility located at 1901 Bayside Drive in Corona Del Mar, California (“the Site”). The application, dated August 5, 2019, seeks to amend CDP Nos. 5-07-370 and 5-94-255.

As an Orange County Parks (“OC Parks”) property, the Site provides many low- or no-cost public recreation and coastal access resources. Public amenities at the Site include a parking lot; a beach with calm water, a volleyball net, and small craft storage racks; public rental slips; and two docks—a visitor dock at the western end of the property (“the Visitor Dock”), and a dock with a pump-out station and dinghy boat tie-ups on the eastern end (“the Dinghy Dock”). Recreational users, such as kayakers, stand-up paddleboarders, and beachgoers, enjoy the Site’s docks and public beach. Boaters also rely on the Site for important uses including dinghy tie-ups for shore access, the pump-out station, and the low-cost, overnight slip rentals. The facility is conveniently located near the entrance of the harbor and is the only publicly accessible marina on the east side of the harbor. While it can take 45 minutes or more to access the west side of the harbor via boat where many of the other amenities are located, the Site provides boaters with easy tie-up access, restrooms, and vehicle parking. The Site’s pump-out station provides an essential service because it can accommodate larger vessels than many other pump-out stations in the harbor, and it is the nearest pump-out station to the entrance of the harbor, allowing boaters to conveniently empty their sewage waste holding tanks as they enter or exit Newport Harbor.

In addition to providing recreational amenities, OC Parks also allows the Sheriff’s Department’s Harbor Patrol division and the United States Coast Guard to use portions of the Site for public safety and law-enforcement purposes. Unfortunately, recent actions by the Sheriff’s Department severely limit public access opportunities at the Site. Despite receiving notice from the Coastal Commission, the Sheriff’s Department continues to violate the California

Coastal Act. Indeed, in its CDP amendment application, the Sheriff's Department seeks retroactive approval of unpermitted changes made at the Site, and fails to address additional, ongoing coastal access issues.

In this letter, OC Coastkeeper (1) highlights some specific ways the proposals in the Sheriff's Department's CDP amendment application would diminish public access; (2) raises concerns about unauthorized changes not contemplated in the application; and (3) offers suggestions for improving public access at the Site. OC Coastkeeper respectfully requests that, when considering the Sheriff's Department's application, the Coastal Commission protect and enhance public access consistent with its mandate under the Coastal Act.

I. The Sheriff Department's Proposed CDP Amendments Would Negatively Affect Public Access

A. Dinghy Dock

The Sheriff's Department seeks the Coastal Commission's retroactive approval for reducing tie-up access at the Dinghy Dock from 72-hour use to day-use only (6am-10pm daily), severely restricting boaters' access to the shore. In its CDP amendment letter, the Sheriff's Department provides "long term boat parking" as a reason for the change, but fails to provide further detail. If the Sheriff's Department's concern is misuse of the 72-hour period due to longer-term tie-ups, the appropriate response should not be to reduce the time limit for all users, but simply to enforce the original time limit. Before these changes were made, "live-aboard" mooring users and out-of-town boaters in Newport Harbor could use the Site's Dinghy Dock to access the shore or return to their boat during early-morning or late-night hours. By limiting the Dinghy Dock to day-use only, the Sheriff's Department is restricting the ability of "live-aboard" boaters to access the shore for irregular job hours or other purposes. Ultimately, the Sheriff's Department has not adequately justified the change it requests the Coastal Commission validate.

B. Visitor Dock

The CDP amendment application requests that the Coastal Commission approve the Sheriff's Department's unilateral conversion of the Visitor Dock to an emergency-only dock. The Sheriff's Department attempts to justify this request based on a threat assessment by Orange County Intelligence Assessment Center; however, it fails to explain how the threat assessment justifies the change. Converting this dock into an emergency dock takes away the only visitor dock on that side of the harbor, which is a drastic change considering there are other docks closer to nearby hospitals that could better accommodate emergency needs. The conversion of the Visitor Dock into an emergency-only dock has already been implemented at the Site, despite the existence of alternatives—discussed in Section III—that would ensure the dock's availability to emergency responders while still allowing public use.

C. Public Rental Slips

In recent years, there have been a minimum of five public slips at the Site available for low-cost, overnight rental. Without Coastal Commission approval, the Sheriff's Department reduced this number to three. In its CDP amendment application, the Sheriff's Department proposes returning the number of slips to five; however, it requests that up to two city lifeguard boats retain the right to occupy unrented slips. If this amendment is approved, lifeguard boats will inevitably occupy rentable slips, and when that occurs, it is unlikely that members of the public will realize they are available. Additionally, the proposed conversion of the Visitor Dock to an emergency dock, mentioned above, also affects the public's ability to rent the slips on Site, as the Visitor Dock was previously used by members of the public to disembark and request information about slip rentals from the Sheriff's Department.

D. Parking Plan

In the CDP amendment application, the Sheriff's Department requests the relocation of ten parking spaces and the addition of one parking space. However, the Sheriff's Department fails to explain where it would like to move these spaces and whether the new location will enhance or inhibit public access. The location of these spaces is of particular concern because the Sheriff's Department previously made changes to the parking lot to the detriment of public access. For example, it painted a bright red line on the ground that separated the public parking lot from the beaches, the docks, the only public drop-off point, and the only available Americans with Disabilities Act ("ADA") accessible parking space in the lot. This change caused driver confusion and traffic congestion as drivers—who could not find public parking—attempted to unload their vehicles before leaving the lot, or attempted to back out of the lot without crossing the red painted line. The Sheriff's Department fails to state whether the only ADA accessible parking space will still be located beyond the painted red line next to the Harbor Patrol office, or whether the relocated parking spaces will be open seven days per week. In the event the ADA accessible parking space is relocated outside of the painted red line, it would necessarily require augmenting the existing parking stripes and may reduce available non-ADA compliant public parking spaces. Currently, half of the public parking spaces are available to the public only on weekends. The limitation on weekday public parking seems to prioritize the lot's use by Sheriff's Department staff and unduly restricts the public's access to the Site.

II. The Sheriff's Department Continues to Disregard the Coastal Act

In addition to changes for which the Sheriff's Department seeks retroactive approval, it also made unilateral changes to the Site not contemplated in its CDP amendment application. Like many changes included in the application, these actions negatively affect public access and diminish the Site's function as recreational park space. Longstanding public uses at the Site have been curtailed in favor of the Sheriff's Department's own preferred uses in disregard of the Coastal Act. OC Coastkeeper is concerned that the Sheriff's Department will continue to chip away at public access without Coastal Commission approval, and hopes that the Coastal Commission will intervene now by asserting the importance of public access at the Site, and conditioning any CDP amendments on preserving and enhancing public use.

A. Changes to Signage

As mentioned above, the pump-out station located at the facility is an important resource for boaters. Its convenient location helps protect Newport Harbor and the coast from ecological damage and human health risks posed by boaters dumping sewage waste into surrounding waters. However, the Sheriff's Department recently installed signage indicating that there is now a 20-minute time limit for pump-out tie-up, which does not give boaters sufficient time to use the pump-out station. The unreasonably short time limit discourages use of the station and may have the unintended consequence of boaters dumping their waste offshore instead. By combining the functions of the pump-out station and the Visitor Dock, the Sheriff's Department is putting further stress on this inadequate pump-out time limit because it increases demand for the dock.

The Sheriff's Department also posted a variety of signs discouraging public access throughout the property in recent months; for example, "Keep Out" signs were posted on guest slips, and signs were posted near the parking lot that limited public parking to one side of the lot during weekdays and warned the public not to pass the red painted line. The Sheriff's Department removed many of these signs only after pushback from community members and the Coastal Commission itself. The Sheriff's Department's changes in signage and lack of signs indicating public access likely resulted in public confusion and deterred people from using the Site. Frustratingly, some of these issues persist today. For example, slip numbers five and six are still missing "Guest Slip" signs, indicating that the Sheriff's Department is not prioritizing the slips' public function. The Sheriff's Department's actions with signage exhibit a general disregard for public access; OC Coastkeeper requests that the Coastal Commission restore and enhance public access at the Site.

B. Changes to Painted Parking Lot Curbs and Dock Edges

In addition to the signs, the Sheriff's Department made changes to the painted curbs and docks around the facility. Beyond the red line that separates the public parking spaces from the rest of the Site, there is a white curb that has allowed the public to conveniently unload from their car to their vessel at the Visitor Dock. However, the Sheriff's Department often discourages its use by parking a trailer alongside the curb for long periods of time, rendering it unavailable for short-term parking. Without the use of the white curb, boaters need to park in the lot or on the street in order to load their vessel, further aggravating traffic congestion issues.

For many months in 2018, the Dinghy Dock was painted red, causing confusion over whether it was available for use at all. Although both the pump-out and tie-up edges of the Dinghy Dock are now repainted green, none of these changes were mentioned in the Sheriff's Department's CDP amendment application.

C. Changes to Public Amenity Use

The Site currently offers bathrooms for public use. However, the bathrooms are located in positions that may be hidden by gates proposed in the Sheriff's Department's amendment application. OC Coastkeeper is concerned that public access to these bathrooms will be discouraged, reduced, or eliminated by the proposed changes. The Sheriff's Department's silence on this issue in its CDP amendment letter suggests it has not considered the value of this public resource.

Even more concerning is the Sheriff's Department's deficient acknowledgment of the impact that proposed changes will likely have on ADA accessibility at the Site. Added gates will cut off the use of paved pathways, create irregular routes from the docks to the parking lot, increase reliance on uneven surfaces, create longer walks, and make it more difficult (and likely more expensive) for the OC Parks to meet accessibility needs such as access to restrooms. The Sheriff's Department's request to replace a paved pathway with removable, ADA-approved mats placed over sand strongly suggests that providing ADA access is of secondary concern to the Sheriff's Department.

Finally, the Sheriff's Department has not addressed the picnic area close to the Visitor Dock with an appealing view of the harbor. To the best of OC Coastkeeper's knowledge, the deck was once available for public enjoyment. Without explanation or public notice, the Sheriff's Department closed this space to the public and presumably uses it for its own purposes.

III. Suggestions for Improving Public Access at the Site

OC Coastkeeper believes that the Sheriff's Department's public safety purpose can be achieved without limiting important public access at the Site. OC Coastkeeper requests that the Coastal Commission condition any amendment to the CDP on the following suggestions, which address public safety concerns while protecting and promoting public access.

A. Dual Functioning Visitor-Emergency Dock

Since use of the Visitor Dock for emergency purposes is infrequent, it is unnecessary to cut off public access to that important resource completely. Instead of entirely closing off the Visitor Dock to members of the public, gates could be installed separating the publicly accessible space from the emergency vessels and equipment stored adjacent to the dock. Additionally, the Sheriff's Department could at least reinstate the previous 20-minute time limit on the Visitor Dock, or require that someone capable of operating the vessel remain in the immediate vicinity in order to ensure that space could be cleared for first responders in the event of an emergency.

B. Alternatives to Slip Space for OCSD Storage

In its CDP amendment application, the Sheriff's Department proposes to limit public slip access in favor of first responder boat storage. However, its needs could be accommodated through better use of the Site and surrounding moorings. There is a functional end-tie space with capacity for at least one more first responder boat in between the public slips and the Coast Guard dock. Historically, this space accommodated a lifeguard boat; recently however, it has not been in use. Using the end-tie would ease the Sheriff's Department's need for additional storage and allow for one of the slips to be returned to public use as it was previously designated. Additionally, there are seven unused moorings in the harbor nearby that could be used for berthing lifeguard vessels. If these spaces could be better utilized, the Sheriff's Department would have the additional storage it needs without affecting the public slips.

C. Gate Installation for Ease of Public Access and Site Security

The Sheriff's Department raises concerns about safety and security at the Site in its CDP amendment application that could be resolved simply and without negatively affecting public access. The Sheriff's Department already has many security features in place, such as security video cameras and round-the-clock personnel, so installing a gate on the Visitor Dock separating the first responder boat slips could fully secure the area. The Sheriff's Department's CDP amendment application also proposes the installation of a rolling gate at the driveway to the Harbor Patrol facility, near the Site's primary point of public access. OC Coastkeeper believes that installing a rolling gate between the secured Coast Guard building and the Harbor Patrol workshop would suffice to secure the Harbor Patrol outdoor maintenance yard and the back side of the Harbor Patrol headquarters building, without unnecessarily limiting public use. The installation of these gates would accomplish the Sheriff's Department's goal of further securing the Site, with no impact on public access.

D. Public Rental Racks for Recreational Users

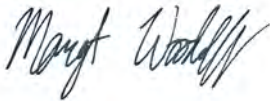
The Site is regularly used by kayakers and stand-up paddleboarders. Given the high expense of motorized boat fishing, kayak fishing is an affordable alternative for many members of the public, and stand-up paddleboarding is a relatively inexpensive way many people enjoy the harbor. OC Coastkeeper appreciates the requests in the CDP amendment application for canoe storage, storage racks, and a storage closet for use by local clubs, but requests the Coastal Commission condition any CDP amendments on the provision of racks that would allow for public rental and not just club use.

IV. Conclusion

The unilateral changes implemented at the Site, and the retroactive CDP amendment application demonstrate that preserving the Site's public access resources has not been a recent priority of the Sheriff's Department. For decades, public and law enforcement uses successfully

coexisted at the Site, and until recently, the public could take full advantage of the Site's beaches, docks, and other amenities. Today, the Sheriff's Department continues to limit or altogether eliminate these valuable recreational uses. OC Coastkeeper reiterates its request that the Coastal Commission prioritize public access in its analysis of Orange County's CDP amendment application, and restore and promote public access at the Site consistent with the Coastal Act. Thank you for your careful consideration of this issue. Please feel free to contact the Environmental Law Clinic with any questions. We welcome the opportunity to discuss the Site with Coastal Commission staff.

Sincerely,



Alexandra Carubis & Maggie Woodruff
Certified Law Students
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cc: Colin Kelly, Senior Staff Attorney, Orange County Coastkeeper
Brett Korte, Environmental Law Clinic Fellow, UCI Environmental Law Clinic
Prof. Michael Robinson-Dorn, Supervising Attorney, UCI Environmental Law Clinic



July 2, 2020

SENT VIA ELECTRONIC MAIL

Jack Ainsworth, Executive Director
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219
John.Ainsworth@coastal.ca.gov

RE: NEWPORT HARBOR PATROL CDP AMENDMENT APPLICATION

Dear Executive Director Ainsworth:

The University of California, Irvine Environmental Law Clinic submits this letter on behalf of Orange County Coastkeeper (“OC Coastkeeper”) regarding Coastal Development Permit Application No. 5-07-370-A2 (“CDP Application”) for the Orange County Sheriff’s Department Harbor Patrol (“Sheriff’s Department’s” or “OCSD”) facility located at 1901 Bayside Drive in the Corona Del Mar neighborhood of Newport Beach, California (“the Site”). Specifically, this letter responds to communication between the Coastal Commission and Orange County Parks (“OC Parks”) related to Notices of Incomplete Application (“NOIAs”) issued by the Coastal Commission on September 6, 2019 and April 1, 2020.¹

A primary objective of the Coastal Act is to “preserve existing public rights of access to the shoreline and to expand public access for the future.”² The Coastal Act also stipulates that “[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.”³ Granting the CDP amendment sought by OC Parks and OCSD, as submitted, would contravene the Coastal Act, both by reducing public access protected by the Site’s existing CDP, and rubber-stamping OCSD’s encroachment onto public property, including ongoing violations for which OC Parks seeks retroactive approval.⁴ OC Coastkeeper appreciates the careful attention to the CDP Application demonstrated by the Commission to date, and writes to assist the Commission in fulfilling its mandate to protect public access at the Site. This letter will address five of OC Coastkeeper’s specific public access concerns with the CDP Application, and provide several recommendations for addressing OCSD’s security concerns while eliminating the need to reduce coastal access or recreational amenities at the Site.

¹ Many of the issues raised herein were previously presented to the Commission in a letter dated November 16, 2019, before OC Parks responded to the initial NOIA. For additional background about the Site, and further detail regarding public amenities and coastal access, please refer to OC Coastkeeper’s November 16, 2019 letter.

² *Pac. Legal Found. v. California Coastal Com.*, 33 Cal. 3d 158, 163, 655 P.2d 306, 308 (1982); *See also* CAL. PUB. RES. CODE § 30001.5(c).

³ CAL. PUB. RES. CODE § 30213.

⁴ *See generally* Letter from Jordan Sanchez, Enforcement Officer, Cal. Coastal Comm’n, to Lt. Chris Corn, Harbormaster, Orange Cnty. Sheriff’s Dept. (May 20, 2018) [hereinafter “Enforcement Letter”].

I. Public Rental Slips

In its first NOIA response, OC Parks modified the CDP Application to request approval to permanently eliminate one of the five public rental slips and designate it for official use only.⁵ The Commission requested a mitigation plan addressing the loss of the public slip, but instead of providing one, OC Parks attempted to justify not mitigating the loss because the “request is made for the primary purpose of public safety,” and by claiming that there is lack of demand for the fifth public slip.⁶ Neither reason provided adequately justifies eliminating this important public access and recreational amenity.

First, OC Parks claims that without the change in slip designation, lifeguards are forced to dock on the other side of Newport Harbor, and race at high-speeds through dense boat traffic to respond to emergencies (“Code-3” responses).⁷ However, City of Newport Beach lifeguards generally have several other boats available for any Code-3 response at the nearby beaches. Based on observations at the Site and information available to OC Coastkeeper, there are typically two State lifeguard boats and two City of Newport Beach lifeguard boats docked at the Site. Generally, the lifeguard rescue boat operators starting on the west side of Newport Harbor arrive at their boats around 10:00 am, then slowly make their way out of the harbor to their respective beach zones to assist tower lifeguards during the peak rescue hours of 12:00 pm to 5:00 pm. There is no problem having one of the several lifeguard boats make its way from Marina Park in the mornings, as the primary response boats are already docked at the Site. Furthermore, there are other options available near the Harbor Patrol facility for lifeguard boat storage, such as the end-tie adjacent to the first lifeguard slip which was historically used for a lifeguard boat, or the nearby Harbor Patrol moorings which are not currently utilized.

Second, OC Parks provided the Commission data compiled by OCSD that seems to indicate that demand for the public rental slips has decreased in the past three years due to the completion of Marina Park in 2016, which has additional slips available for rent.⁸ However, there are several other possible reasons that use of public rental slips has decreased at the Site during the years cited. First, OCSD claims there was a slip available to rent 97.5% of the time during 2018, but fails to acknowledge that it had “Keep Out” signs posted at every public slip, in violation of the Coastal Act, for much of that year.⁹ Similarly, according to OCSD, at least one slip was available to rent 95.89% of the time in 2019. However, OC Coastkeeper has knowledge of prospective renters being referred to Marina Park slips by OCSD when inquiring about slips at the Site. Finally, OCSD points out that as of April 27, there were no days in 2020 when all of the rental slips were occupied. This is unsurprising considering that boating is less popular in winter months, and the COVID-19 pandemic began in mid-March.

⁵ Letter from Susan M. Brodeur, Senior Coastal Eng’r, Cnty. of Orange, to Liliana Roman, Coastal Program Analyst, Cal. Coastal Comm’n (Feb. 25, 2020) [hereinafter “First NOIA Response”].

⁶ Letter from Susan M. Brodeur, Senior Coastal Eng’r, Cnty. of Orange, to Mandy Revell, Coastal Program Analyst, Cal. Coastal Comm’n (April 27, 2020) [hereinafter “Second NOIA Response”].

⁷ *Id.*

⁸ *Id.*

⁹ See Enforcement Letter, *supra* note 4, at 1.

Importantly, at \$40 per night, the public rental slips at the Site provide the lowest-cost overnight slip rental opportunity in Newport Harbor. The most affordable slips at Marina Park cost more than double at \$81.27 per night.¹⁰ The availability of other slips does not justify reducing public access at the Site, and even less so due to the price discrepancy. OC Coastkeeper asks that the Commission deny any request to reduce public rental slip amenities at the Site. If the Commission considers OC Parks' request, the Commission should conduct its own review of slip demand, and at a minimum, require mitigation for the reduced access to a low-cost amenity if the request is granted.

II. Dinghy Dock

In its May 20, 2019 Enforcement Letter, a Coastal Commission Enforcement Officer notified OCSD that by changing access to the Dinghy Dock from the historical 72-hour limit to a 20 minute limit, and placing accompanying signage, it was in violation of the applicable CDPs.¹¹ OCSD responded, not by correcting its violations, but by changing access to an equally unlawful 6:00 am to 10:00 pm limit. OC Parks is requesting permission in the CDP Application to make the 6:00 am to 10:00 pm limit permanent. Meanwhile, OCSD continues to flagrantly violate the Coastal Act by limiting an important public access amenity critically important to mooring-users, and particularly people that live aboard their boats.

To OC Coastkeeper's knowledge, OC Parks has not provided the Commission with any rationale for requested changes to Dinghy Dock access in the CDP Application. However, an internal OCSD email obtained through a California Public Records Act request (**Attachment 1**) is revealing. In the email, OCSD Harbormaster, Lieutenant Chris Corn, informs colleagues that he unilaterally ordered staff to prohibit all Dinghy Dock tie-ups except for guest slip renters. Lt. Corn's reasoning was that OCSD is "not in the mooring rental business," he had "seen the same boats tied up there for the last few years," and "[t]he boats appear to belong to live-a-boards or people permanently storing them for weekend use."¹²

People that use or live aboard a larger boat on a mooring need overnight access to dinghy docks at all hours of the day and occasionally need leave a dinghy overnight. The Site offers the only dinghy dock on the east side of Newport Harbor and the dinghy dock most conducive to public to access for people traveling to or from the south by vehicle. As OC Coastkeeper noted in its November 16, 2019 letter, if dinghies violating the 72-hour time limit bothered OCSD, it could have simply enforced the time limit rather than depriving harbor users of this vital, no-cost amenity. To reduce the 72-hour limit in the Site's CDP would unduly limit a no-cost public access amenity.

¹⁰ *Harbor Fees*, CITY OF NEWPORT BEACH, <https://www.newportbeachca.gov/government/departments/harbor/harbor-fees> (last visited June 29, 2020).

¹¹ See Enforcement Letter, *supra* note 4, at 1.

¹² Email from Lt. Christopher F. Corn, Harbormaster, Cnty. of Orange, to Steven D. Marble, et al., (June 12, 2018) [included as Attachment 1].

III. Visitor Dock

OC Coastkeeper has continuing concerns about OCSD's conversion of the Visitor Dock to an emergency-use-only dock. Prior to OCSD's unlawful closure of the Visitor Dock, it served important public access functions 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. OCSD has not provided any specific justification for its proposed change, but merely references vague security concerns with no clear relation to the Visitor Dock. These concerns appear to be overstated. For example, data available for the 12 months between May 2018 and May 2019 show that the dock in question was used just once for emergency purposes (**Attachment 2**). Before considering the requested amendment, the Commission should, at a minimum, request further data on emergency response uses of the Visitor Dock.

The Commission expressed willingness to work with OCSD to permit the elimination of the Visitor Dock and instead designate the pump-out dock for visitor use.¹³ OC Coastkeeper does not support this compromise because maintaining convenient and accessible pump-out stations is critical to protecting and improving the environmental health of Newport Harbor and nearby off-shore habitats. Furthermore, the signage proposed by OC Parks clearly limits use of the pump-out dock to a 20-minute time limit and for using the pump-out station only.¹⁴

In November 2019, OC Coastkeeper offered a potential solution that should address OCSD's public safety concerns. The Visitor Dock could serve as a dual-purpose visitor/emergency dock, and new gate could be installed to separate the Visitor Dock from the official-use slips. The Commission must not simply rubber-stamp OCSD's elimination of public access and no-cost recreational amenities, particularly when there are reasonable alternatives available that protect those amenities.

IV. Beach Access

OC Parks is requesting the Commission's permission to replace an existing, paved walkway with ADA-complaint mats laid over sandy beach to provide access from the public parking lot and drop-off site to the beach amenities, public restrooms, and public docks. OCSD's desire to cordon off the workshops adjacent to the existing walkway is understandable, but the proposed solution is an unacceptable burden on amenities at the Site. The mats would reduce usable beach space, and there are alternatives available for achieving OCSD's desired workshop security. For example, by changing the location of one proposed gate, and painting one unobtrusive red line, or installing a simple, removable fence between the existing walkway and OCSD's workshop, OC Parks would secure the areas at issue and maintain existing public

¹³ See Enforcement Letter, *supra* note 4, at 4.

¹⁴ First NOIA Response, *supra* note 5, at Attachment 1.

access. This would also eliminate the need for costly mats that require maintenance and eventual replacement, and remove sandy beach from recreational use.

V. Parking

The signage plan submitted by OC Parks in response to the Commission's first NOIA does not assuage OC Coastkeeper's concerns about parking and vehicle access at the Site. The proposed signs at the Site's entrance include one directing users to the "Public Beach Drop-Off."¹⁵ However, the sign above it will say "Authorized Parking Only," and both signs will sit atop an existing, red painted line across the roadway.¹⁶ This signage is confusing and will undoubtedly discourage some members of the public from using amenities at the Site, particularly the beach drop-off area.

Additionally, it should be noted that OC Parks points to the proposed addition of one parking spot to justify the requested elimination of the guest rental slip discussed above.¹⁷ OC Parks refers to the Site's 1994 CDP requirement of 10 sites, but ignores the fact that the more recent 2007 CDP already requires them to maintain 11 public parking spots much closer to the beach than the current location.¹⁸ The Coastal Commission should take care not to eliminate or discourage use of any public access amenities available at the site prior to OCSD's recent unlawful actions.

VI. Conclusion

If granted, the CDP Application amendments sought by OC Parks would result in significant reduction of public access and low- or no-cost recreational amenities at the Site. Worse, OC Parks is essentially using partial restoration of public access OCSD unlawfully restricted at the Site over two years ago as a negotiation tactic in the CDP amendment process. Unfortunately, Californians are all too use to private actors encroaching on public coastal resources; that the applicant here is a public agency ostensibly devoted to protecting parks is all the more troubling.

The Coastal Commission should require OCSD to immediately restore public access and recreational amenities to the status quo ante established by the existing CDP permits. When considering the CDP amendment application, the Commission should evaluate data behind any proffered justifications for reducing public access, evaluate alternatives to requests that would reduce public access, and require robust mitigation for any amendment requests granted. OC

¹⁵ *Id.*

¹⁶ A discrepancy within the "Signage and Wayfinding" plan submitted to the Coastal Commission should be noted. In the diagram showing signs side-by-side, the proposed sign says "Authorized Parking Only," but in the "Proposed Condition" rendering, it says "Authorized Vehicles Only." The latter would likely lead to even greater discouragement of public use.

¹⁷ Second NOIA Response, *supra* note 6.

¹⁸ CAL. COASTAL COMM'N, STAFF REPORT ON PERMIT NO. 5-07-370 (June 19, 2008); *see also* Enforcement Letter, *supra* note 4, at 5.

Coastkeeper appreciates the Commission's careful attention to this issue, and welcomes any further dialogue that may assist the Commission, including meeting with Commission staff, OC Parks, and OCSD.

Sincerely,

/s/

Brett M. Korte, Esq.
Clinical Fellow
Environmental Law Clinic
University of California, Irvine School of Law
bkorte.clinic@law.uci.edu

cc: Sarah Spinuzzi, Staff Attorney, Orange County Coastkeeper
Mandy Revell, Coastal Program Analyst, California Coastal Commission
Jordan Sanchez, Enforcement Officer, California Coastal Commission
Susan M. Brodeur, Senior Coastal Engineer, County of Orange
Stacey Blackwood, Director, OC Parks

Attachment 1

Garcia, Kristine A

From: Corn, Christopher F
Sent: Tuesday, June 12, 2018 2:22 PM
To: Marble, Steven D; Ketcham, Paul T; Guy, Darin A; Lewellyn, Gary R; Felter, Isaac D; Hove, Neil E; Packard, Lawrence D
Cc: Kibby, Gregory S; Cooper-Jehangiri, Sally A
Subject: Guest/Pump Out Dock

Good afternoon,

Since we are not in the mooring rental business, except for G mooring, we are not required to allow small boats to tie up to the back of the County pump out dock. I have seen the same boats tied up there for the last few years. The boats appear to belong to live-a-boards or people permanently storing them for weekend use. I have asked Greg Kibby to paint that area of the dock with a red stripe and have the words "No Tie Up" written as well. The signage will be changed to reflect the new restricted area. Boaters who rent a slip or mooring from us will still be able to tie their dinghy behind the dock. Please pass this on to your staff. If you have any questions or concerns please let me know.

I have asked Sally to note on the rental agreement if the renter has a dinghy to tie up. If they do, the CF numbers will be noted on the slip.

Attachment 2

Request Details

Request: Fire Related Records Request - Wade Womack

Type: Fire Related Records Request

Ticket #: 352734

Location Type: NONE

Create Date: 5/20/2019

Location:

Status: COMPLETED

[map it!](#)

Case Worker: Debbie Alcaraz

Comments & History [+ Add Comment](#)

By: DEBBIE ALCARAZ (cnb)

5/28/2019 1:32:39 PM

Type: Comments

Good afternoon Mr. Womack: In response to your request how many of the reports previously provided to you relate to picking up a victim from a boat,..." The incident number would be N1808777.

By: ERIC BRYAN (cnb)

5/20/2019 1:44:46 PM

Type: Assignment

Case assigned to: Debbie Alcaraz

By: Wade(user)

5/20/2019 12:43:58 PM

Type: Details

Hello, thank you for providing the information for my previous request (ticket #352358). From reviewing the response, it appears there were 7 calls for transport at 1901 bayside in the past 12 months. Can you look at the 7 reports and tell me how many were regarding picking up a victim from a boat? #17 seems to not related to picking up a victim from a boat as it indicates "in front of 1901 Bayside. #12 through #18 appear to be the calls from the past 12 months. If you could take a look at the 7 reports and tell me how many relate to picking up a victim from a boat, that would be great. Here are the #'s: 1805518, 1807446, 1807760,1808081, 1808777, 1808963, 1902933

Additional Access Issues at Newport Harbor Patrol Site (1901 Bayside)

Brett Korte (clinic) <bkorte.clinic@law.uci.edu>

Fri 1/29/2021 2:28 PM

To: Revell, Mandy@Coastal <Mandy.Revell@coastal.ca.gov>

Cc: Sanchez, Jordan@Coastal <Jordan.Sanchez@coastal.ca.gov>; sarah@coastkeeper.org <sarah@coastkeeper.org>; wade@orangecoastla.com <wade@orangecoastla.com>; Daniel Lammie (clinic) <dlammie.clinic@law.uci.edu>; Michael Robinson-Dorn <mrobinson-dorn@law.uci.edu>

 1 attachments (219 KB)

wqo2004-0017.pdf;

Dear Mandy,

OC Coastkeeper would like to bring some additional public access issues regarding OC Parks' CDP Application for 1901 Bayside Drive in Newport Beach to the Coastal Commission's attention.

First, OC Coastkeeper has previously expressed concern about OC Parks' proposal to eliminate the visitor dock and convert the pumpout dock to a dual-use visitor/pumpout dock, so wanted to share the attached State Water Resources Control Board Water Quality Order. The order shows 1) that the existence of pumpout amenities at the site was contemplated by the Regional and State Water Boards when they developed and adopted a comprehensive vessel waste disposal program to protect water quality in Newport Harbor (see page 6 of the Fact Sheet), and 2) that the agencies require pumpout docks to "be marked to prevent parking of vessels other than for use of the pumpout facility..." (see Fact Sheet pg. 20, item E4). OC Coastkeeper believes OC Parks' proposal would undermine efforts to address the harbor's water quality issues, in addition to reducing important public access.

Second, OC Coastkeeper wants to ensure that the Coastal Commission is aware of the restroom facilities in the Harbor Patrol office building, in addition to those adjacent to the beach. Current and proposed signage located at the building entrance says, "Public Restrooms are located in the next building behind the U.S. Coast Guard office," but the restrooms inside the office should also be available for public use.

Third, and related to the restroom issue, OC Coastkeeper is concerned about OC Parks' proposed signage plan. Despite proposed signs directing the public to "Guest Services" and pointing towards the Harbor Patrol office, nothing proposed to be posted on the office indicates that "Guest Services" are available in the building. OC Coastkeeper is concerned that the unclear signage will discourage the public from using the services provided by the Harbor Patrol, including providing information about slip rental available on site.

Finally, OC Coastkeeper would like to recommend that OC Parks use an online reservation system for slip rental at the site, as it does for campgrounds, in addition to taking reservations over the phone or in-person. OC Coastkeeper believes this will help with public

awareness of the amenities, while also relieving law enforcement officers of the burden of facilitating some of the rentals.

Thank you for your continued efforts to promote coastal access at this incredibly important public facility. Please let us know if you have any questions about the issues raised above, or if we can be of any assistance to the Coastal Commission.

Sincerely,

Brett

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**STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 2004-0017-DWQ**

**GENERAL ORDER REQUIRING OWNERS AND OPERATORS OF SPECIFIED VESSEL
TERMINALS LOCATED IN NEWPORT BAY AND HUNTINGTON HARBOUR TO INSTALL,
MAINTAIN, AND OPERATE PUMPOUT FACILITIES AND DUMP STATIONS WHERE
NECESSARY TO PROTECT WATER QUALITY
(GENERAL ORDER)**

The State Water Resources Control Board (State Board) finds that:

1. The Federal Clean Vessel Act prohibits the discharge of sewage into No Discharge Zone (NDZ) waters. An NDZ is an area of a water body or an entire water body into which the discharge of treated or untreated sewage from all vessels is prohibited to protect environmentally sensitive areas, including shellfish beds, coral reefs, and fish spawning areas, or drinking water sources. States can establish NDZs if they can demonstrate to United States Environmental Protection Agency (U.S. EPA) that safe and adequate vessel sewage pumpout facilities are available
2. Newport Bay and Huntington Harbour were designated NDZs by the U.S. EPA in 1976. At that time, there were an appropriate number of pumpout facilities in Newport Bay and Huntington Harbour. Since that time, there has been an increase in the number of vessels using both harbors.
3. In 1988, the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) found that the vessel waste program in Newport Bay was inadequate and thus adopted Resolution No. 88-89 and Orders No. 88-83, 88-84, 88-85, 88-89, 88-91. Resolution No. 88-89 approved a vessel pumpout program for Newport Bay and the other orders required certain vessel terminals to install vessel pumpout facilities. These orders were neither waste discharge requirements nor enforcement actions, and no follow-up was done to determine compliance. These orders and the resolution are active and need to be rescinded concurrently with the State Board's adoption of this order.
4. Water contact recreation (REC1) is one of the designated beneficial uses for Huntington Harbour. Water contact recreation (REC1) and shellfish harvesting (SHEL) are designated beneficial uses for Newport Bay. The Water Quality Control Plan (Basin Plan) specifies numeric water quality objectives for fecal coliform bacteria in order to protect these designated beneficial uses of Huntington Harbour and Newport Bay. Discharges of sewage from vessels adversely affect these beneficial uses and may cause or contribute to violation of the fecal coliform objectives.
5. In 1994, Newport Bay was listed on the federal Clean Water Act Section 303(d) list of impaired water bodies due to bacterial contamination. In 1998, the Santa Ana Regional Board established the Newport Bay fecal coliform total maximum daily load (TMDL) to address bacterial contamination. The TMDL includes a zero waste load allocation for vessel waste discharges, in recognition of the NDZ status of the Bay. The TMDL requires the City of Newport Beach and the County of Orange to conduct additional studies to assess the effectiveness of the vessel pumpout program.
6. In 1994, Huntington Harbour was listed on the 303(d) list of impaired water bodies due to bacterial contamination. No bacteria TMDL has yet been established for Huntington Harbour. Once established, the TMDL is expected to include a zero waste load allocation for vessel waste discharges, in light of the NDZ status of Huntington Harbour.
7. California Harbors and Navigation Code Section 776 provides the authority to the State Board to require vessel terminal owners/operators to provide adequate vessel sewage retention device pumpout capability at locations that are convenient to the vessel users. Title 23, Chapters 20 and 20.1 of the California Code of Regulations implements the Harbors and Navigation Code requirements for vessel sewage waste.

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8. California Code of Regulations (Title 23, Chapters 20 and 20.1) contain regulations for the State Board and Regional Water Quality Control Boards (Regional Boards) to follow in requiring any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability at locations which are convenient and accessible to vessel users. The regulations include standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities and specifies administrative procedures to be followed to provide a standard method of determining which vessel terminals shall be required to install and operate these facilities.
9. If the Regional Board determines there is a need for additional pumpout facilities, the Regional Board is to request that the State Board require specified vessel terminals to install and operate the vessel waste pumpout facility where necessary to protect water quality. The Regional Board is also required to provide a list of the existing vessel terminals in the area being considered for additional pumpout facilities, whether these vessel terminals are privately owned or publicly owned, whether they are for private or public use, and the locations of existing pumpout facilities.
10. If the Regional Board determines that there is no public vessel terminal within an area in which additional pumpout facilities are needed, the State Board is required to hold a public hearing to determine whether private vessel terminals should be designated to provide pumpout facilities.
11. In October 2002, the Orange County CoastKeeper (OCCK) conducted a survey of pumpout facilities in Huntington Harbour and Newport Bay and found significant deficiencies. Problems noted included inoperable pumpout facilities, poor housekeeping, and limited or no access to the existing pumpout facilities.
12. On March 19, 2003, Santa Ana Regional Board staff and OCCK surveyed several of the pumpout facilities surveyed in the OCCK study. Santa Ana Regional Board staff noted similar deficiencies. In addition, Santa Ana Regional Board staff determined that there are no dump stations in Newport Bay or Huntington Harbour. Dump stations are used by boaters who have an on-board port-a-potty to receive and retain sewage in lieu of an installed sewage retention device.
13. Based on the surveys and consideration of relevant federal and state guidelines, Santa Ana Regional Board staff prepared a "Pumpout Facilities Need Report" (Report). The Report lists the existing publicly and privately-owned vessel terminals in Newport Bay and Huntington Harbour; specifies whether these vessel terminals are for public and/or private use; and, identifies the locations of existing pumpout facilities. The Report describes the observed deficiencies in the vessel sewage disposal program in both waterbodies and specifies a recommended "Vessel Sewage Disposal Program".
14. Based on the findings of the Report, three (3) additional pumpout facilities and three (3) dump stations are necessary in Huntington Harbour; five (5) additional pumpout facilities and three (3) dump stations are necessary in Newport Bay. The locations of the needed pumpout facilities and dump stations are specified in the recommended "Vessel Sewage Disposal Program". Further, to ensure the success of the recommended program in Huntington Harbour and Newport Bay, the Santa Ana Regional Board has recommended that vessel terminal owners/operators and/or responsible agencies implement an operation, maintenance, and public education and outreach program. The installation and maintenance of these facilities are necessary to comply with NDZ provisions and to protect REC-1 and SHEL beneficial uses in Newport Bay and Huntington Harbour.
15. The Santa Ana Regional Board held public workshops on May 16, 2003 and August 22, 2003 to solicit comments regarding staff's recommendations for additional pumpout facilities, the need for dump stations, and the operation, maintenance, public education and outreach and monitoring program specified in the "Pumpout Facilities Need Report". Santa Ana Regional Board staff also had extensive discussions with interested agencies and parties, who provided comments leading to modification of the recommended "Vessel Sewage Disposal Program".

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16. On August 22, 2003, the Santa Ana Regional Board approved Resolution No. R8-2003-0074, approving the pumpout facility need delineated in the "Pumpout Facility Need Report" and requesting that the State Board adopt requirements implementing the recommended "Vessel Sewage Disposal Program" for Newport Bay and Huntington Harbour. These include requirements for the installation of additional vessel waste disposal facilities (pumpout facilities and dump stations) at specified vessel terminals and the implementation by responsible parties and agencies of specified operation, maintenance, public education and outreach, and monitoring programs.
17. On September 10, 2003, the Santa Ana Regional Board submitted a "Transmittal of Regional Board Recommended Vessel Sewage Disposal Program for Newport Bay and Huntington Harbour" to the State Board, requesting that the State Board require the implementation of the recommended "Vessel Sewage Disposal Program" in Newport Bay and Huntington Harbour.
18. Under the Harbors and Navigation and Code and applicable State Board regulations, the State Board is authorized to require vessel terminals to install facilities for the transfer and disposal of sewage from marine sanitation devices. The Harbors and Navigation Code defines marine sanitation device to mean "any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat the sewage". The State Board is also authorized to, and has, adopted standards governing the design, construction, operation and maintenance of vessel pumpout facilities.
19. It is appropriate to approve authorized provisions of the Santa Ana Regional Board's "Recommended Vessel Sewage Disposal Program" in order to protect water quality in Newport Bay and Huntington Harbour. These provisions include the requirements to install pumpout facilities and dump stations and to comply with existing mandates in the Harbors and Navigation Code and applicable State Board regulations.
20. The Santa Ana Regional Board developed a comprehensive Vessel Sewage Disposal Program that requires the installation of pumpout facilities and dump stations in compliance with existing mandates of the Harbors and Navigation Code and applicable State Board regulations. The Santa Ana Regional Board's program is consistent with the State Board's minimum standards for the design, construction, operation, and maintenance of pumpout facilities. The Santa Ana Regional Board's program also contains elements, such as, cost provisions, education and access, and live-aboard vessel provisions, that go beyond the State Board's minimum standards. The Santa Ana Regional Board may implement these provisions under their own authorities, as appropriate.
21. On November 3, 2004, the State Board held a public hearing to receive comments and testimony on the proposed adoption of a general order requiring specified vessel terminal owners/operators to install and operate vessel waste pumpout facilities and dump stations at the specified locations. The proposed order includes an implementation schedule. The State Board has considered the evidence in the record, including the hearing record, in reaching a decision on this proposed order. In particular, the State Board and the Santa Ana Regional Board have considered the number and types of vessels that use or are berthed at the vessel terminals and whether there are pumpout facilities at other locations that are convenient, accessible, and have sufficient capacity for vessels that use or are berthed at the vessel terminal.
22. The Regional Board's Recommended Program's targeted facilities were identified for installation of sewage disposal facilities based on a capacity for 50 or more marine vessels and other required factors contained in the Harbors and Navigation Code and State Board regulations. The actual occupancy of the marina, which varies with time, was not a factor.
23. It is neither the State Board's nor the Regional Board's intent to require privately owned and operated marine vessel terminal to provide services to the general public.

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24. The California Department of Boating and Waterways administers the Clean Vessel Act Pumpout Grant Program to reimburse recipients for up to 75% of the installed cost of pumpout facilities and dump stations. The grant is available to the private and public sector when sewage disposal facilities are made available for public use.
25. Issuance of a State Board Order requiring the installation and operation of pumpout facilities at specified vessel terminals is exempt from the requirement of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* as an action to protect the environment (Title 14, CCR Section 15308) and an action requiring the placement of minor structures accessory to existing commercial or institutional facilities (Title 14, CCR Section 15311).
26. Further, the State Board and the Santa Ana Regional Board have considered the factors specified in the California Code of Regulations [title 23, section 2834.1(c)] in determining which marine terminals should be required to provide pumpout facilities. A detailed explanation of these factors is contained in the [Fact Sheet](#) to this order, which is hereby incorporated into this order.

IT IS HEREBY ORDERED that owners and/or operators of specified vessel terminals shall comply with the following:

A. Pumpout Facilities and Dump Stations:

1. **Newport Bay** – The following owners of vessel terminals located in Newport Bay are required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users:
 - a. **Swales Yacht Anchorage** - 2888 Bayshore Drive –Installation of one pumpout facility.
 - b. **Bayshores Marina** - 301 Shipyard Way - Installation of one pumpout facility.
 - c. **Bahia Corinthian Yacht Club** - 1601 Bayside Drive – Installation of one pumpout facility.
 - d. **Lido Yacht Anchorage/Dry Storage (Bellport)** - 201 Shipyard Way – Installation of one pumpout facility and one dump station.
 - e. **Bayside Village (De Anza)** – 300 East Coast Highway – Installation of one dump station.
 - f. **Newport Dune Resort Marina** – 101 N. Bayside Drive – Installation of one dump station.
 - g. **Balboa Marina** – 201 East Pacific Coast Highway – Installation of one pumpout facility.
2. **Huntington Harbour** – The following owners of vessel terminals located in Huntington Harbour are required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users:
 - a. **Davenport Marina** – 4052 Davenport Drive, Huntington Beach - Installation of one pumpout facility.
 - b. **Coral Cay Marina** – 27405 Puerta Real, Mission Viejo – Installation of one pumpout facility.
 - c. **Tennis Club Estates** – 2888 Bayshore Drive, Huntington Beach – Installation of one pumpout facility.
 - d. **Sunset Aquatic Marina** - 2901 A Edinger Avenue, Huntington Beach – Installation of two dump stations.

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e. Lifeguard Dock – City of Huntington Beach – Installation of one dump station.

3. For facilities managed by a Homeowners' Association, where the association determines that it cannot justify the need based on a low number of boats with marine sanitation devices or the expense of installing a vessel waste pumpout facility, the Santa Ana Regional Board may authorize, subject to appropriate conditions, the Homeowners' Association to (1) employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule in lieu of installing pumpout facilities or (2) contract with another marina located in Huntington Harbour, with an existing pumpout facility, to allow the Association's boat owners to use the marina's pumpout facility.
4. Where a vessel terminal owner/operator determines that a pumpout facility cannot be installed as required, the Santa Ana Regional Board may allow, subject to appropriate conditions, the owner/operator to contract with a private pumping service for all of its tenants' vessels as an alternative to installing the required pumpout facility.
5. With Santa Ana Regional Board approval and subject to appropriate conditions, landside restroom facilities may be used as an alternative to installation of a required dump station at vessel terminals with less than 50 vessels under 26 feet in length.
6. Vessel terminal owners and operators shall comply with State Board regulations that establish minimum standards for the design, construction, operation, and maintenance of vessel pumpout facilities. In addition, they must comply with any more stringent requirements that the Regional Board, within its authority and discretion, imposes to implement this general order.
7. By November 30, 2005, the Regional Board shall evaluate the approved Vessel Sewage Disposal Program to assess the need to expand the requirements to include all of the marinas located within the Santa Ana Region and present their findings and recommendations to the State Board.

B. Time Schedule:

Vessel terminal owners must comply with the following installation time schedule unless the Regional Board, for good cause, revises the time schedule:

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<u>Task</u>	<u>Compliance Date</u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	30 days after State Board Order Issued
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	90 days after commitment
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	30 days after plans and specs approved
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	30 days after maintenance plans submitted to Santa Ana Regional Board
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	90 days after construction commencement
<ul style="list-style-type: none"> • Notify Executive Officer of the Santa Ana Regional Board. 	Within 30 days after construction completed.

IT IS FURTHER ORDERED that the Santa Ana Regional Board Resolution No. 88-89 and Orders Nos. 88-83, 88-84, 88-85, 88-89, and 88-91 are hereby rescinded.

CERTIFICATION

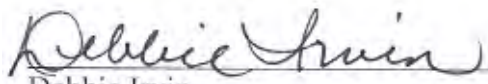
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted a meeting of the State Water Resources Control Board held on November 18, 2004.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board

STATE WATER RESOURCES CONTROL BOARD

FACT SHEET

WATER QUALITY ORDER NO. 2004-0017-DWQ

GENERAL ORDER REQUIRING OWNERS AND OPERATORS OF SPECIFIED VESSEL TERMINALS LOCATED IN NEWPORT BAY AND HUNTINGTON HARBOUR TO INSTALL, MAINTAIN AND OPERATE PUMPOUT FACILITIES AND DUMP STATIONS WHERE NECESSARY TO PROTECT WATER QUALITY

I. Background

Newport Bay and Huntington Harbour were designated No Discharge Zones (NDZ) by the U.S. Environmental Protection Agency (U.S.EPA) in 1976. A NDZ is an area of a water body or an entire water body into which the discharge of treated or untreated sewage from all vessels is prohibited to protect environmentally sensitive areas, including shellfish beds, coral reefs, and fish spawning areas, or drinking water sources. States can establish NDZs if they can demonstrate to U.S.EPA that safe and adequate pumpout facilities are available.

In 1988, the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) found that the vessel waste program in Newport Bay was inadequate and thus adopted Resolution No. 88-89 and Orders No. 88-83, 88-84, 88-85, 88-89, 88-91. Resolution No. 88-89 approved a vessel pumpout program for Newport Bay and the other orders required certain vessel terminals to install vessel pumpout facilities. These orders were neither waste discharge requirements nor enforcement actions, and no follow-up was done to determine compliance. Currently, these orders and the resolution are active and will need to be rescinded if the State Water Resources Control Board (State Board) adopts an order requiring the installation of vessel pumpout facilities in Newport Bay.

In 1994, Newport Bay was listed on the federal Clean Water Act Section 303(d) list of impaired water bodies due to bacterial contamination. In 1998, the Santa Ana Regional Board established the Newport Bay fecal coliform total maximum daily load (TMDL) to address bacterial contamination. The TMDL includes a zero waste load allocation for vessel waste discharges, in recognition of the NDZ status to the Bay. The TMDL requires the City of Newport Beach and the County of Orange to conduct additional studies to assess the effectiveness of the vessel pumpout program.

In 1994, Huntington Harbour was listed on the 303(d) list of impaired water bodies due to bacterial contamination. No bacteria TMDL has yet been established for Huntington Harbour. Once established, the TMDL is expected to include a zero waste load allocation for vessel waste discharges, in light of the NDZ status of Huntington Harbour.

Water contact recreation (REC1) is one of the beneficial use designations specified for Huntington Harbour in the Santa Ana Regional Board's Water Quality Control Plan (Basin Plan). Water contact recreation and shellfish harvesting (SHEL) are among the beneficial use designations specified for Newport Bay in the Basin Plan. The Basin Plan specifies numeric water quality objectives for fecal coliform bacteria in order to protect these designated beneficial uses of Huntington Harbour and Newport Bay. Discharges of sewage from vessels adversely affect these beneficial uses and may cause or contribute to violation of the fecal coliform objectives.

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In October 2002, the Orange County CoastKeeper (OCCK) performed a survey of vessel waste pumpout facilities in Orange County (including those in Huntington Harbour, Newport Bay and Dana Point Harbor). The survey revealed major problems related to pumpout facilities, in particular those located in Newport Bay and Huntington Harbour. These include: limited number of pumpout facilities, inoperable pumpout facilities, limited access to existing pumpout facilities, poor housekeeping, improper use of the pumpout facilities, lack of public education on proper use of pumpout facilities and high bacteria levels in the water in the vicinity of the pumpout facilities.

On March 19, 2003, Santa Ana Regional Board staff, accompanied by the OCCK, surveyed several of the pumpout facilities listed in the OCCK report to determine their status. Santa Ana Regional Board staff noted similar deficiencies. In addition, Santa Ana Regional Board staff determined that there are no dump stations in Newport Bay or Huntington Harbour. Dump stations are used by boaters who have an on-board port-a-potty to receive and retain sewage in lieu of an installed sewage retention device.

II. Statutory and Regulatory Authorities:

California Harbors and Navigation Code (Chapter 6, Division 3) provides the statutory authority for the State Board, in coordination with Regional Water Quality Control Boards (Regional Boards) to develop and adopt standards for the location, construction, operation, and maintenance of vessel pumpout facilities and require installation of sewage disposal facilities at vessel terminals. Vessel terminals are defined in the Harbors and Navigation Code as any private or shore-side installation on any waters of the state that provides mooring, docking, berthing, and other facilities for the use of vessels. The Harbors and Navigation Code specifies "Every vessel terminal shall, as required by the Regional Board for the protection of the quality of the waters of this state be equipped with vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices. In imposing this requirement, the Regional Board shall take into account the number and type of vessels that use or are berthed at the vessel terminal and whether there exists at other locations pumpout facilities that have a total capacity sufficient for, and are convenient and accessible to, vessels that use or are berthed at the vessel terminal." [Section 776.(a)]

The California Code of Regulations (Title 23, Chapters 20 and 20.1) contain regulations for the State Board and Regional Board to follow in requiring any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability at locations which are convenient and accessible to vessel users. The regulations include standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities (Sections 2815 through 2829) and specifies administrative procedures to be followed to provide a standard method of determining which vessel terminals shall be required to install and operate these facilities (Sections 2833 through 2835).

Chapter 20.1, Article 2, requires Regional Boards to determine if there is a need for additional pumpout facilities. If there is found to be a need, the Regional Board is to request that the State Board require specified vessel terminals to install and operate pumpout facilities where necessary to protect water quality.

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If the Regional Board determines that there is no public vessel terminal within an area in which additional pumpout facilities are needed, the State Board is required to hold a hearing to determine whether private vessel terminals should be designated to provide pumpout facilities. After consideration of the Regional Board request and the record of any Regional Board hearing or State Board hearing, the State Board may issue an order requiring vessel terminals to install and operate vessel waste pumpout facilities. The order would include an implementation schedule. Copies of the order would be sent to the Regional Board, the vessel terminal owner, and to other vessel terminals within the area of activity.

III. Santa Ana Regional Board's Recommended Vessel Sewage Disposal Program for Newport Bay and Huntington Harbour

On August 22, 2003, the Santa Ana Regional Board approved Resolution No. R8-2003-0074 requesting the State Board to require implementation of the recommendations of the proposed "Vessel Sewage Disposal Program" for specific vessel terminal owners/operators, the cities of Huntington Beach and Newport Beach and the County of Orange to install, operate and/or maintain pumpout facilities and dump stations in Newport Bay and Huntington Harbour. The Santa Ana Regional Board found that adoption of Resolution No. R8-2003-0074 is exempt from the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* as an action to protect the environment (Title 14, CCR Section 15308) and the placement of minor structures accessory to existing institutional facilities (Title 14, CCR Section 15311).

The Santa Ana Regional Board prepared a "Pumpout Facilities Need Report" that: (1) identifies existing publicly and privately owned vessel terminals in Newport Bay and Huntington Harbour; (2) specifies whether these vessel terminals are for public and/or private use; (3) identifies the locations of existing sewage disposal facilities; (4) describes the observed deficiencies in the vessel sewage disposal program in both waterbodies; and, (5) specifies a recommended Vessel Sewage Disposal Program. The Report also includes the OCCK's "Survey of Pumpout Facilities Report, October 2002".

Based on findings of the Report, three (3) additional pumpout facilities and three (3) dump stations are needed in Huntington Harbour; five (5) additional pumpout facilities and three (3) dump stations are needed in Newport Bay. The locations of the needed pumpout facilities and dump stations are specified in the recommended "Vessel Sewage Disposal Program" [see Section 2833.1(c) below]. Further, to ensure the success of the vessel sewage waste program in Huntington Harbour and Newport Bay, the Santa Ana Regional Board is recommending that vessel terminal owners/operators and/or responsible agencies implement an operation, maintenance, monitoring, and public education and outreach program.

Information submitted by the Santa Ana Regional Board is organized below in accordance with the General Provisions and Administrative Procedures contained in Chapter 20.1 - Designation of Vessel terminals to Provide Adequate Sewage Retention Device Pumpout Facilities (regulatory language is in bold).

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Article 1. Section 2831 – General Provisions

Pursuant to Chapter 6 (commencing with Section 775) of Division 3 of the Harbors and Navigation Code the State Board shall, as needed for the protection of water quality, require any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability, at locations which are convenient and accessible to vessel users. It is the intent of these regulations to provide a standard method of determining which vessel terminals shall be required to install and operate pumpout facilities.

Article 2. Administrative Procedures

Section 2833 –Regional Board Request

Each Regional Board, upon determining a need for additional pumpout facilities within its region, shall request the State Board to require specified vessel terminals to install and operate pumpout facilities where necessary to protect water quality.

On September 10, 2003, the Executive Officer of the Santa Ana Regional Board submitted: (1) Resolution No. R8-2003-0074 – Requesting that the State Board “Require the Implementation of a Vessel Sewage Disposal Program in Newport Bay and Huntington Harbour”; and (2) “Pumpout Facilities Need Report”. The program requested by the Santa Ana Regional Board includes: (1) the installation of additional vessel waste disposal facilities (pumpout facilities and dump stations) at specified vessel terminals, (2) pumpout facility and dump station operation, monitoring, and maintenance requirements, and (3) implementation of boater educational programs. The transmittal includes:

1. Resolution No. R8-2003-0074 – Requesting that the State Board Require the Implementation of a Vessel Sewage Disposal Program in Newport Bay and Huntington Harbour, including the Installation of Pumpout Facilities and Dump Stations at Specified Vessel Terminals and Rescinding Orders No. 88-83, 88-84, 88-85, 88-89, 88-91.
2. Pumpout Facilities Need Report
3. Transcripts of the Santa Ana Regional Board’s deliberation on this matter at an August 22, 2003 public hearing.

Section 2833.1 – Contents of Santa Ana Regional Board’s Request for Pumpout Facilities

Requests for requiring vessel terminals to install and operate vessel waste pumpout facilities shall be forwarded to the State Board by the Regional Board. Each request shall be based upon the guidelines contained in Section 2834.1 and shall include the following as well as any other information requested by the State Board.

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(a) Designation of the area where additional facilities are needed:

Designated areas include Newport Bay and Huntington Harbour.

(b) Explanation of the need for additional pumpout facilities within the area including:

(1) An estimate of the number of vessels with sewage retention devices requiring pumpout facilities:

Newport Bay: 7,500 boats need pumpouts and 1,000 boats need dump stations.

Newport Bay has approximately 10,000 recreational vessels. The majority of these are berthed on moorings or residential piers. A survey conducted in 2000 showed that only about 2,000 of the 10,000 vessels would be docked at a vessel terminal; the rest of the vessels were berthed at residential docks.

The City of Newport Beach estimates that 75% of these 10,000 boats are larger than 16 feet and would require the use of a pumpout facility. Of the remaining 25% of the vessels, 15% are smaller than 16 feet and are considered day use vessels, without a need for a dump station. The remaining 10% are also smaller than 16 feet but would have a portable toilet, thus requiring a dump station. There are no dump stations in Newport Bay.

Huntington Harbour: 3,000 boats need pumpouts. In addition, three dump stations are recommended.

The City of Huntington Beach staff estimates that approximately 3,000 boats are moored in Huntington Harbour. It is estimated that a large percentage of the 3,000 boats are greater than 16 feet and would require the use of a pumpout facility. There are no dump stations in Huntington Harbour.

(2) The location of each vessel terminal:

Newport Bay – The Regional Board’s “Pumpout Facilities Need Report” (Table No. 1) identified the names and locations of twenty-nine (29) facilities located in Newport Bay, including marinas, vessel terminals, anchorages, and piers.

Huntington Harbour – The Regional Board’s “Pumpout Facilities Need Report” (Table No. 2) identified the names and locations of nine (9) facilities located in Huntington Harbour, including marinas, homeowner associations with private docks, and one lifeguard dock.

(3) The location and capacity of existing pumpout facilities:

Newport Bay – Currently, there are twenty-five (25) pumpout facilities in Newport Bay. Eleven (11) are located at privately owned facilities and are for private use only. Six (6) are located at privately owned facilities but are available for public use. There are two publicly owned vessel terminals in Newport Bay with a total of three (3) pumpouts.

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Five (5) pumpouts are located at four public piers. Information on capacities of the facilities was not provided. Typically, pumpouts empty directly into sewer connections and therefore capacity is not a significant factor. Specifically:

Locations of pumpout facilities located at privately owned vessel terminals for private use only (Private/Private):

1. Icon Yacht Charters – 3400 Via Oporto – One slip and one pumpout
2. Larson’s Shipyard – 2703 W. Coast Highway – One slip and one pumpout
3. Nautical Museum – 151 E. Coast Highway – one slip and one pumpout
4. Adventures at Sea – 3101 W. Coast Highway – three slips and one pumpout
5. Pavillion – 111 and 111 ½ Marine Avenue – five slips and one pumpout
6. Hornblower Yacht Charter – 2431 W. Coast Highway – six slips and one pumpout
7. Orca Yacht Charters - 2901 W. Coast Highway – six slips and one pumpout
8. Fun Zone Boat Company – 600 Edgewater Place – 10 slips and one pumpout
9. Crow’s Nest Marina – 2801 W. Coast Highway – 20 slips and one pumpout
10. Lido Yacht Anchorage/Dry Storage – 201 Shipyard Way – 265 slips and one pumpout
11. Blue Water Grill – 630-670 Lido Park Drive (number of slips unknown) – one pumpout.

Locations of pumpout facilities located at privately owned vessel terminals available for public use (Private/Public):

1. American Legion - 215 15th Street - 50 slips and one pumpout
2. Harbor Marina - 3333 West Coast Highway - 50 slips and one pumpout.
3. Lido Village Marina - 3400 Via Oporto – 85 slips and one pumpout.
4. Balboa Yacht Basin - 829 Harbor Island Drive – 171 slips and one pumpout
5. Bayside Village (De Anza) - 300 East Coast Highway – 225 slips and one pumpout.
There is no public restroom.
6. Bayside Marina, 1353 Bayside Drive – 101 slips and one pumpout

Locations of pumpout facilities located at publicly owned vessel terminals (Public/Public):

1. Balboa Bay Club - 1221 West Coast Highway – 140 slips and one pumpout.
2. Newport Dunes Resort Marina and Launch - 101 North Bayside Drive – 232 slips and two pumpouts.

Docks with pumpout facilities available for public use:

1. 15th Street Public Pier – one pumpout
2. Fernando Street Public Pier – one pumpout
3. Harbor Patrol – 1901 Bayside Drive – 2 pumpouts
4. Washington Street Public Pier – one pumpout

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Santa Ana Regional Board staff surveyed 8 of the fourteen pumpout facilities available for public use in Newport Bay. Problems observed included: limited or no access to several of these pumpout facilities; lack of meters to determine usage; and hoses at all of the pumpout facilities were laying on the slips, which could result in backwash or spillage of sewage once the pump is turned off, and denotes improper housekeeping practices.

Huntington Harbour - There are eight (8) privately owned vessel terminals in Huntington Harbour and one public dock. Four of the privately owned vessel terminals are managed by Homeowner Associations for the exclusive use of homeowners to moor their boats. Five (5) of the vessel terminals have no vessel waste disposal facilities. Three (3) privately owned vessel terminals have pumpout facilities and make them available for public use. There is an additional pumpout facility for public use at a lifeguard dock. At the time of the Santa Ana Regional Board report, only one of the four available pumpout facilities was operational. There are no dump stations in Huntington Harbour.

Locations of pumpout facilities located at privately owned facilities for public use:

1. Peters Landing Marina - 16400 Pacific Coast Highway – 325 slips and one pumpout.
2. Huntington Harbour Marina - 4281 Warner – 190 slips and one pumpout.
3. Sunset Aquatic Marina - 2901 A Edinger Avenue – 262 slips and one pumpout.
4. Lifeguard Dock - no slips and one pumpout.

Problems identified included the use of duct tape to repair hoses, broken valves, lack of signs on how to operate the pumpout facilities, lack of signs indicating that Huntington Harbour is a designated NDZ, lack of operational instructions, lack of maps indicating the location of vessel waste pumpout facilities, lack of current phone number for a contact person in case the pumpout facility is inoperable, hoses at all the pumpout facilities were laying on the slips (threatening backwash or spillage of sewage containing water once the pump is turned off), and lack of meters on the pumpout facilities to determine usage.

(c) Recommendations as to which vessel terminal or terminals should install and operate pumpout facilities, the capacity of the facilities which should be installed, and reasons for such recommendations.

Newport Bay - Five additional pumpout facilities and three dump stations are needed. Facilities identified for additional disposal facilities include:

1. Swales Yacht Anchorage - 2888 Bayshore Drive – A privately owned facility for private use only with 57 slips and no pumpouts. Installation of one pumpout recommended.
2. Bayshores Marina - 301 Shipyard Way – a privately owned marina for private use only with 135 slips and no pumpouts. Installation of one pumpout recommended.
3. Bahia Corinthian Yacht Club - 1601 Bayside Drive – a privately owned facility for private use only with 75 slips and no pumpouts. Installation of one pumpout recommended.

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4. Lido Yacht Anchorage/Dry Storage (Bellport) - 201 Shipyard Way – a privately owned facility for private use only with 265 slips and no pumpouts. Installation of one pumpout and one dump station recommended.
5. Bayside Village (De Anza) – 300 East Coast Highway – a privately owned facility open to the public, with 225 slips and one pumpout. Installation of one dump station recommended.
6. Newport Dune Resort Marina – 101 N. Bayside Drive – a privately owned facility open to the public with 232 slips and two pumpouts. Installation of one dump station recommended.
7. Balboa Marina – 201 East Pacific Coast Highway – a privately owned facility with 132 slips and no pumpouts. Installation of one pumpout recommended.

Huntington Harbour - Three additional pumpout facilities and three dump stations are needed. Facilities identified for additional disposal facilities include:

1. Davenport Marina – 4052 Davenport Drive, Huntington Beach – a privately owned facility for private use only with 65 slips and no pumpouts. Installation of one pumpout recommended.
2. Coral Cay Marina – 27405 Puerta Real, Mission Viejo – a privately owned facility managed by a Homeowners Association. For private use only with 58 slips and no pumpouts. Installation of one pumpout recommended.
3. Tennis Club Estates - Huntington Beach – a privately owned facility managed by a Homeowners Association. For private use only with 63 slips and no pumpouts. Installation of one pumpout recommended.
4. Sunset Aquatic Marina - 2901 A Edinger Avenue, Huntington Beach – a privately owned facility open to the public with 262 slips and one pumpout. Installation of two dump stations recommended.
5. Lifeguard Dock – City of Huntington Beach – a public dock with no slips and one pumpout. The pumpout was not operable based on July, 2002 survey. Installation of one dump station recommended.

For those facilities that are managed by a Homeowners Association, if the association determines that they cannot justify the need based on a low number of boats with holding tanks or the expense of installing a vessel waste pumpout facility, it is recommended that they employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule. For this alternative to be used, it is recommended that Homeowner Association agreements include this provision and that a copy of the agreement be provided to the Santa Ana Regional Board.

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Recommendations on capacity of needed facilities were not provided. Per telephone conversation with Kevin Atkinson, California Department of Boating and Waterways (DBW), capacity of pumpouts is not relevant if the pumpouts are hooked up to municipal sewer systems. DBW requires 12 gallons per minute as a minimum acceptable flowrate for DBW grant funded projects that are directly hooked-up to the municipal sewer.

Reasons for Recommendations:

Based on the findings in the OCCK pumpout facility survey and the most recent Santa Ana Regional Board staff survey, it is apparent that adequate housekeeping of pumpout facilities and education of facility users are major issues that need to be addressed in Newport Bay and Huntington Harbour. In addition, Santa Ana Regional Board staff believes that there is a need for additional pumpout facilities and for the installation and proper operation of dump stations.

Santa Ana Regional Board recommendations are based on site-specific considerations. In assessing the need for additional pumpout facilities and dump stations, the following factors were considered: (1) the number of vessels with sewage retention devices requiring pumpout or dump stations; (2) the location of vessel terminals in the affected area; (3) the location and capacity of existing pumpout facilities; and (4) receiving water characteristics such as beneficial uses and sensitivity. Also, DBW guidelines and federal guidelines were considered (See Section IV, page 19).

The fact that both Newport Bay and Huntington Harbour are designated NDZs (this designation is contingent, in part, on the demonstration that adequate pumpout facilities are available) speaks to the sensitivity of these waters and the significance of their beneficial uses. Neither Newport Bay nor Huntington Harbour meet the federal and State guidelines for a minimum number of pumpout facilities per numbers of vessels. Finally, as already noted, both water bodies are included on the Clean Water Act Section 303(d) list as the result of bacterial impairment of beneficial uses.

(d) The name, owner, and address of each vessel terminal recommended pursuant to (c) above:

Newport Bay:

1. Swales Yacht Anchorage, 2888 Bayshore Drive, Newport Beach, 92663
Owner: Ron E. Presta and Steven Farewell
Mailing Address: P.O. Box 7099, Newport Beach, CA 92658

2. Bayshores Marina, 301 Shipyard Way, Newport Beach, 92663
Prior Owner: Irvine Company
Prior Owner Address: 550 Newport Center Drive, Newport Beach, 92660
Current Owner: California Recreation Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625

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3. Bahia Corinthian Yacht Club, 1601 Bayside Drive, Newport Beach, 92625
Owner: Bahia Corinthian Yacht Club, Brian Carlson, General Manager
Mailing Address: same as above
4. Lido Yacht Anchorage/Dry Storage, 201 Shipyard Way, STE 1, Newport Beach, 92663
Owner: Lido Peninsula Co., LLC – Managed by Bellport Group, Patti Connors
Mailing Address: P.O. Box 1549, Newport Beach, CA 92658-1549
5. Bayside Village (De Anza), 300 East Coast Hwy, Newport Beach, 92660
Prior Owner: Bellport Group, 101 Shipyard Way, Newport Beach, CA. 92663
Current Owner: California Recreational Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625
6. Newport Dune Resort Marina & Launch, 101 N. Bayside Dr., Newport Beach, 92660
Owner: Joseph Vallejo, Managed by Wade Kirley
Mailing Address: 2501 Ocean Blvd., Corona Del Mar, CA 92625
7. Balboa Marina, 201 East Pacific Coast Highway, Newport Beach, 92660
Prior Owner: Bellport Group, 101 Shipyard Way, Newport Beach, CA. 92663
Current Owner: California Recreational Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625

Huntington Harbour:

1. Davenport Marina, 4052 Davenport Drive, Huntington Beach, 92649
Owner: Davenport Marina
Mailing Address: Same as above
2. Coral Cay Marina, 27405 Puerta Real, Suite 300, Mission Viejo, 92691
Homeowner Association President – Mary Ellen Moschetti
Mailing Address: 3612 Courtside Circle, Huntington Beach, CA 92649
3. Tennis Club Estates, 2888 Bayshore Drive, Huntington Beach, 92625
Homeowner Association President – Joe Rosen
16441 Wimbledon Lane, Huntington Beach, CA 92649
4. Sunset Aquatic Marina, 2901 A Edinger Avenue, Huntington Beach, 92649
Owner: County of Orange – Contact Person, Mary Anne Skorpanic
Mailing Address: P.O. Box 4048, Santa Ana, CA 92702
5. Lifeguard Dock, City of Huntington Beach
Owner: City of Huntington Beach – Contact Person, Geraldine Lucas and Larry Neshi
Mailing Address: P.O. Box 190, Huntington Beach, CA 92648

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(e) An appropriate installation time schedule pursuant to Section 2835:

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities and dump stations be installed and in operation within 6 months of the adoption of the State Board order.

(f) Copies of any comments received as a result of the Notice of Pumpout Facility Need

The Santa Ana Regional Board held public workshops on May 16, 2003 and a Public Hearing on August 22, 2003 to solicit comments regarding staff's recommendations contained in the Pumpout Facility Need Report.

The Santa Ana Regional Board prepared a Notice of Public Hearing for the Adoption of Resolution No. R8-2003-0074. The basis for the request was the Pump-out Facility Need Report. Comments included:

1. August 5, 2003: Mr. Garry Brown, OCCK – Letter strongly endorses and supports the adoption of Resolution No. R8-2003-0074.
2. August 15, 2003: Mr. Richard A. Tinnelly, Law Offices of Richard A. Tinnelly – Letter requests that the Coral Cay Marina be removed from consideration as a potential site for a new pumpout or dump station because it is operated and maintained solely for the benefit of member homeowners.
3. August 20, 2003: Mary Ellen Moschetti, President, Coral Cay Community Association - Letter requesting that Coral Cay Marina not be considered for installation of a pumpout.
4. September 8, 2003: Mr. Randy T. Fuhrman, Vice President, Huntington Harbour Property Owners Association (HHPOA) – Letter provides concerns with inadequate data used for Huntington Harbour. Mr. Fuhrman claims that there are large marinas in Huntington Harbour that are not included in the report. Both the Santa Ana Regional Board and OCCK prepared responses to Mr. Fuhrmans letter.

Additional Comments:

City of Huntington Beach, City of Newport Beach, and OCCK provided comments to the Santa Ana Regional Board on a Draft *Pump-out Facilities Need Report* prior to the May 16, 2003 workshop. In addition, public comments were brought up at an August 14, 2003 meeting with vessel terminal owners/operators. These comments are summarized below, together with Santa Ana Regional Board staff responses.

Issues/Comments Identified in the Public Hearing Transcript:

1. General Comment: Vessel Terminal owners or operators believe that requiring additional pumpout facilities may not result in better water quality. They would like to keep the current pumpout facilities without requiring additional ones. It was agreed that proper operation and maintenance are important and are open to a program that only stresses that.

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- Response: Santa Ana Regional Board staff's position is that the NDZ designation of these harbors is contingent upon there being an adequate number of pumpout facilities. Based on federal and state guidelines and survey results, there are an inadequate number of pumpout facilities in these harbors and the current pumpout facilities are inadequately maintained and operated.
- 2. Coral Cay Marina: Additional pumpout facilities would result in requiring someone to give up their slip and that would result in loss of revenue. This primarily applies to Homeowner Associations with slips deeded to individual homeowners.

Response: The Sewage Waste Disposal Program would allow for the use of a pumpout service in the case where a pumpout facility cannot be installed.

- 3. Tennis Club Estates: Santa Ana Regional Board did not do a complete survey. They just selected areas with contact people. Larger areas such as the SeaGate Community, which is many times larger, has never been contacted. Facilities with existing pumpouts available to the public should be required to add additional facilities instead of asking private facilities to do it. No one has ever figured out how the usage of existing pumpout facilities. Its kind of reckless to just recommend that we spend more money for something that may not be used. If this goes to the state level, I assure you a couple of hundred people from the Harbour are going to be represented, because we are trying to stop the issue here.

Response: The sewage disposal program includes provisions for Homeowner Associations to contract with a vessel pumpout service in lieu of installing a pumpout facility. Santa Ana Regional Board staff tried to identify locations around both harbors that appear to warrant the installation of these facilities. Santa Ana Regional Board staff and OCCK made every effort to canvas these harbors and understand the physical layout and location to the best of their ability. If someone wants to bring forward new information, the new information will be shared with the State Board to take into account in their deliberations. The Santa Ana Regional Board will revise their recommendations to the State Board based on any new information.

The OCCK, in a letter dated December 11, 2003, confirmed the identification of marinas in Huntington Harbour. There are approximately six (6) additional residential developments with wet slips in Huntington Harbour. These wet slips are individually owned by homeowners and in most cases, the slips are located in front of the owner's home/condominium. These slips are not configured like a marina nor do they meet the definition of a Parking Lot Harbor or a Transient Harbor. The slips are uniformly constructed and are configured side by side in a single row going out from the seawall. It is OCCK's opinion since these slips are individually owned by homeowners for their exclusive use, these slips do not meet the definition of a marina of "10 or more slips" nor are there any common areas or docks in which to locate vessel waste facilities.

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Section 2833.2 - Notice of Pumpout Facility Need

Prior to requesting the State Board to require a vessel terminal to install and operate pumpout facilities the Regional Board shall prepare a Notice of Pumpout Facility Need and shall forward a copy of the notice to known interested agencies and persons, including each vessel terminal owner in the proposed area of pumpout facility need. The Regional Board shall publish the notice at least once in a newspaper of general circulation in the proposed area of pumpout facility need. Proof of publication of the notice shall be submitted to the State Board. The notice shall provide a 30-day comment period in which interested persons may comment upon the notice. The notice shall contain:

- (a) A designation of the area considered by the Regional Board.**
- (b) The reason pumpout facilities are believed to be necessary for the protection of water quality in that area.**
- (c) The names, location, and addresses (if available) of vessel terminals which may be required to install or operate pumpout facilities.**

The Santa Ana Regional Board distributed a “Notice of Public Hearing” for the “Adoption of Resolution No. R8-2003-0074 Requesting the State Water Resources Control Board to Require Specified Vessel Terminals in Huntington Harbour and Newport Bay to Install and Properly Maintain Pumpout Facilities and Dump Stations.” The public hearing was held on August 22, 2003.

The Santa Ana Regional Board published a “Notice of Public Hearing – Adoption of Resolution No. R8-2003-0074 on the following dates.

Newport Beach–Costa Mesa Daily Pilot – July 21, 2003.

Huntington Beach Independent – July 24, 2003.

The Notice of Public Hearing and the newspaper public notices included the following required information:

- 1. Designation of the area considered:** “The California Regional Water Quality Control Board, Santa Ana Region will conduct a public hearing to consider adoption of a resolution requesting the State Board to require specified vessel terminals to install and properly maintain pumpout facilities and dump stations in Huntington Harbour and Newport Bay.”
- 2. Reason pumpout facilities are believed to be necessary for the protection of water quality in that area:** “The basis for the request is a Pump-out Facility Need Report (Report) prepared by Santa Ana Regional Board staff. The Report provides an assessment of the current program addressing vessel sewage waste in Newport Bay and Huntington Harbour. The Report finds that the current programs addressing vessel sewage waste discharges from vessels with installed toilets are inadequate and proposes that additional pumpout facilities and dump stations be installed in both Huntington Harbour and Newport Bay.”

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3. **The names, location, and addresses (if available) of vessel terminals which may be required to install or operate pumpout facilities.** Although the public notice did not specifically identify targeted vessel terminals, information specified that the Santa Ana Regional Board is “requesting the State Water Resources Control Board to require specified vessel terminals in Huntington Harbour and Newport Bay to install and properly maintain pumpout facilities and dump stations.” Readers were provided information on where to obtain a copy of the “Proposed Pump-out Facility Need Report” and staff reports. Copies of the report were available upon request to Santa Ana Regional Board staff or from the Santa Ana Regional Board website.

Section 2833.3 – Hearings by Regional Boards.

Upon the request of the State Board, any interested person, or upon its own motion, the Regional Board may hold a public hearing prior to requesting the State Board to require a vessel terminal to install pumpout facilities. The Regional Board shall transmit any comments received together with their request to the State Board.

The Santa Ana Regional Board held a public workshop on May 16, 2003 and a public hearing on August 22, 2003 to solicit comments regarding staff’s recommendations specified in the Pumpout Facilities Need Report, including: (1) installation of additional pumpout facilities; (2) the need for dump stations; (3) an operation and maintenance program; (4) public education and outreach; and, (5) a monitoring program. Santa Ana Regional Board staff also had extensive discussions with interested agencies and parties, who provided comments leading to modification of the recommended Vessel Sewage Disposal Program. Specifically:

On May 16, 2003, the Santa Ana Regional Board conducted a public workshop to review staff’s recommendations for a vessel sewage disposal program for Newport Bay and Huntington Harbour. The May 16, 2003 staff report provided information describing the federal and state regulations and guidelines pertaining to vessel sewage waste and the adequacy of the current vessel sewage disposal program in Newport Bay and Huntington Harbour. The report also outlined preliminary recommendations for a Vessel Sewage Disposal Program for these waterbodies. Staff recommended that the Santa Ana Regional Board request the State Board to require certain vessel terminal operators to install pumpout facilities and dump stations. In addition, staff recommended that the Santa Ana Regional Board request that the State Board action include requirements for operation, maintenance and public education activities related to vessel sewage disposal systems.

Section 2833.4 – Hearings by State Board

Upon the request of any interested person, or upon its own motion, the State Board may hold a public hearing regarding a proposed requirement that a vessel terminal install pumpout facilities.

The State Board held a public hearing on November 3, 2004. A public hearing was required because the recommendations include installation of pumpout facilities and dump stations at privately owned vessel terminals (See Section 2834 (1) (b) below).

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Section 2834. – Further Procedures

The State Board may require vessel terminals to install and operate vessel waste pumpout facilities after consideration of the request of the Regional Board, the record of any Regional Board or State Board hearing and the following guidelines. Copies of the order requiring installation and operation of pumpout facilities shall be sent to the Regional Board, the vessel terminal owner, and to other vessel terminals within the area of activity.

Section 2834.1 – Guidelines for Vessel Terminal Selection.

- (a) Upon a determination that an area needs additional pumpout facilities, such need should be met by public vessel terminals, if possible.**

Newport Bay: There are two publicly owned vessel terminals in Newport Bay: Balboa Bay Club and Newport Dune Resort Marina. The public marinas have existing pumpout facilities. Installation of five additional pumpout facilities is recommended. The five recommended pumpouts are to be located at privately owned facilities that are not available to the public. In addition, installation of three dump stations is recommended. All are to be located at privately owned facilities, two of which are open to the public.

Huntington Harbour: Installation of three pumpouts and three dump stations is recommended. The three recommended pumpouts are to be located at privately owned facilities that are not available to the public. The three recommended dump stations are to be located at publicly owned facilities.

- (b) Upon a determination by any Regional Board that there is no public vessel terminal within an area in which additional pumpout facilities are needed for protection of water quality, the State Board shall hold a hearing to determine whether private vessel terminals should be designated to provide sewage retention device pumpout facilities.**

In both Newport Bay and Huntington Harbour, private vessel terminals have been designated to provide pumpout facilities to provide services to their boating tenants. It is not the State Board's intention to require the privately owned vessel terminal to provide public access.

- (c) In addition, the State Board and Regional Boards shall, as a minimum, consider at least the following factors in determining which vessel terminals should be required to provide pumpout facilities:**

- (1) Availability of private vessel terminals with pumpout facilities not available to the general public.**

Newport Bay: There are twenty-five existing pumpout facilities in Newport Bay. Eleven are located at private vessel terminals that are restricted to private use only. Six are located at private vessel terminals that are available for public use. Three are located at two publicly owned vessel terminals. Five are located at public piers and a harbor patrol dock.

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Huntington Harbour: There are four existing pumpout facilities in Huntington Harbour. All are available for public use. Three are located at privately owned vessel terminals. An additional pumpout facility is located at a public lifeguard dock.

It is important to note that significant deficiencies were found at many of the existing pumpout facilities in both Huntington Harbour and Newport Bay during October 2002 and March 2003 surveys conducted by the OCCK and Santa Ana Regional Board staff.

- (2) **Priority consideration should be given to vessel terminals with fuel docking capability.**

There are no vessel terminal fueling docks located in Huntington Harbour or Newport Bay.

- (3) **The number of vessels with sewage retention devices berthed at each vessel terminal in the area.**

Newport Bay has approximately 10,000 recreational vessels. The majority of these are berthed on moorings and residential piers. A survey conducted in 2000 showed that only about 2,000 of the 10,000 vessels would be docked at a vessel terminal; the rest of the vessels are berthed at residential docks. The City of Newport Beach estimates that 75% of these 10,000 boats are larger than 16 feet and would require the use of a pumpout facility. Of the remaining 25% of the vessels, 15% are smaller than 16 feet and are considered day use vessels, without a need for a dump station. The remaining 10% are also smaller than 16 feet but would have a portable toilet, thus requiring a dump station.

The City of Huntington Harbour staff estimates that approximately 3,000 boats are moored in Huntington Harbour. It is estimated that a large percentage of the 3,000 boats are greater than 16 feet and would require the use of a pumpout facility.

- (4) **The depth of water required for the vessels that will be using the pumpout facility.**

According to Garry Brown (OCCK), sailboats require the most depth because they have a large keel. According to Kevin Atkinson (DBW), vessel terminals are already sited and the operator can tell us the amount of water depth that the average boats would require. Additional pumpout facilities are being required at existing marine vessel terminals that are located in depths of water required to accommodate their tenant's boats. Accordingly, information on the depth of water required may not be necessary to obtain.

- (5) **The expense of installing a pumpout facility and access to a means of disposing of or treating the sewage.**

The cost to install a new vessel pumpout facility varies depending on the proximity of the vessel terminal to sewer lines, the cost to hook up to the sewer line and associated permit fees. DBW estimates on average a cost range of \$20,000 to \$40,000 to install a new pumpout facility. Replacement of existing facilities also varies depending on the type of equipment needing replacement. The cost of replacing and/or updating an existing pumpout facility

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ranges between \$3,000 and \$10,000. The cost of purchasing and installing a dump station is estimated to be between \$2,000 and \$10,000.

The Clean Vessel Act provides federal funds in the form of grants for the installation of pumpout facilities and dump stations. In California, these grants are administered by DBW and are available through the year 2007. Grant funds are available to both the public and private sector. The grant will reimburse recipients for up to 75% of the installed cost of pumpout facilities and dump stations. If Clean Vessel Act grants are used, a private facility would not be able to restrict public access.

Section 2835 – Installation Time

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities/dump stations be installed and in operation within six (6) months of the adoption of the State Board order. Santa Ana Regional Board staff recommended the following time schedule (subject to adjustment based on the State Board’s adoption of the relevant order.

<u><i>Task</i></u>	<u><i>Compliance Date</i></u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	1/5/04
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	2/5/04
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	3/5/04
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	6/5/04
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	7/6/04
<ul style="list-style-type: none"> • Full compliance with State Board order; notify Executive Officer of the Santa Ana Regional Board. 	8/6/04

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IV. State and Federal Recommended Guidelines

Federal guidelines recommend, as a general rule: (1) at least one pumpout facility and dump station should be provided for every 300 to 600 boats over 16 feet length overall; and (2) marinas with 50 slips or more that are capable of mooring 26 feet + boats have access to at least one pumpout facility, and marinas with 50 slips or more that are capable of mooring 16-26 feet boats have access to at least one dump station. [Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines – Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Dump Stations in Boating Areas. Federal Register/Vol. 59, No. 47/Thursday, March 10, 1994/Notices]

DBW has developed pumpout and dump station guidelines that recommend a statewide target of one pumpout facility and one dump station for every 300 boats with Type III marine sanitation devices (MSDs), i.e., devices that retain sewage for shore-based disposal or discharge beyond the three mile offshore limit.

Neither set of guidelines has been adopted as regulations. Therefore, they are to be regarded as recommendations, rather than enforceable requirements.

The Santa Ana Regional Board considered the above guidelines when developing their recommendations for additional pumpout and dump stations in Huntington Harbour and Newport Beach. Based on Santa Ana Regional Board recommendations, there would be one pumpout facility for every 500 boats (regardless of size) and one pumpout facility at all vessel terminals with 50 slips or more. All vessel terminals with a capacity of 50 or more vessels under 26 feet in length would have one dump station. These recommendations are within the guidelines recommended by the U.S. EPA.

V. Regional Board's Recommended Vessel Sewage Disposal Program

The Santa Ana Regional Board's recommended vessel sewage disposal program is outlined below in A. through I. The recommended program is broader than pumpout and dump station installation. It also covers plumbing standards, recommended charges, education and access, operation and maintenance, live-aboard vessels and other topics.

A. Pumpout Facilities:

1. Each vessel terminal with 50 or more vessels shall have a pumpout facility for public use in an accessible location, such as at an end tie.
2. For every 500 vessels in each harbor, there shall be at least one pumpout facility for public use, regardless of size of the vessels. This pumpout facility shall be easily accessible, such as at an end tie.
3. All pumpout facilities shall be equipped with a meter for the purpose of measuring use of the pumpout facility.

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4. Where the owner/operator of a vessel terminal with 50 or more vessels determines that a pumpout facility cannot be installed, it shall contract with a private pumping service for all of its tenants' vessels. The pumpout service shall provide for a minimum of one pumpout per month. The vessel terminal owner/operator shall keep the contract current and shall make the contract available for inspection by the Cities of Newport Beach or Huntington Beach, as appropriate, or the Santa Ana Regional Board.
5. To ensure compliance with Sections A (1) and (2) above, a minimum of 5 pumpout facilities in Newport Bay and 3 pumpout facilities in Huntington Harbour shall be installed. These pumpout facilities shall be installed per the implementation schedule in Section I below.

B. Dump Stations:

1. All vessel terminals with a capacity of 50 or more vessels less than 26 feet in length shall have a dump station.
2. Dump stations should be located in conjunction with pumpout facilities whenever possible.
3. Landside restroom facilities may be used as dump stations at vessel terminals with less than 50 vessels under 26 feet in length.

At other facilities such as boat launching ramps that cater to small craft (less than 26 feet) a minimum of one dump station should be provided.

C. Plumbing Standards:

1. Each pumpout facility and dump station shall be constructed and plumbed such that pipe breakage, fitting failure, and related damage is minimized or eliminated.
2. Each pumpout facility and dump station shall be designed and constructed in such a manner that there shall be no leakage or spillage of sewage.
3. Pumps provided at the pumpout facility for the transfer of waste from vessels to the pumpout facility and from the pumpout facility to the disposal system shall:
 - (a) Be of self-priming and non-clogging design.
 - (b) Be of sufficient size and capacity to complete the transfer operation in a reasonable amount of time when operating against the maximum anticipated head.
 - (c) Be designed and installed to prevent leakage or spillage.
 - (d) Be designed and installed to meet all safety requirements.
 - (e) Be constructed of corrosion-resistant material.
4. All piping/hosing used in the design and construction of a pumpout system shall:
 - (a) Be designed to withstand any pumping pressure or vacuum encountered without leakage.
 - (b) Be constructed of material capable of withstanding solar radiation and chemical action of freshwater, salt water, chemical additives, and sewage without excessive deterioration.

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- (c) All fittings shall be of corrosion-resistant material and shall be so constructed and installed as to ensure a water-tight seal. All pumpout systems shall be designed and constructed to have a minimum capability of pumping out vessel marine sanitation devices having 1 ½-inch fittings. The system shall be designed and constructed to prevent leakage when transferring or when the system is disconnected. This would normally require a minimum of four (4) valves. One of each side of the pump, plus one at the storage tank, and one at the vessel holding tank connection.
- 5. The pumpout facility shall be designed and constructed such that a water supply is available at appropriate locations for flushing and cleaning of vessel holding tanks and storage tanks. The water supply shall be protected against back-siphoning of waste into the water system by a backflow prevention device.
- 6. Santa Ana Regional Board staff will convene an adhoc committee consisting of the appropriate staff from the County of Orange, the City of Huntington Beach and the City of Newport Beach to develop and implement appropriate construction standards for pumpout facilities and dump stations within the Region that would be consistent with the sections listed above.

D. Cost Provisions:

While the State encourages the free use of pumpout facilities and dump stations, a maximum fee of \$5 may be charged consistent with DBW requirements.

E. Education and Access:

- 1. All public pumpout facilities and dump stations shall be located preferably at an end tie so that they will be visible and easily accessible by vessel operators.
- 2. Each pumpout facility and dump station shall have signage readily visible to traveling vessels and use instructions in English and Spanish and in colorized graphics as to how to operate the facility, how to minimize leakage, and how to report an inoperable facility.
- 3. Each vessel terminal operator shall provide a 24-hour telephone number for pumpout facility and dump station users to report facility failures.
- 4. Each pumpout facility and dump station location shall be marked to prevent parking of vessels other than for use of the pumpout facility and dump station.
- 5. The Cities of Huntington Harbour and Newport Beach shall notify the owners of slips in front of residences that each harbor is a NDZ and that it is illegal to discharge the contents of their MSDs into the NDZ waters of the State (Newport Bay and Huntington Harbour). Along with the notification, each City shall provide a map identifying the location of the pumpout facilities and dump stations.

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6. Vessel terminal owners/operators shall notify the owners/operators of vessels occupying their terminals that Newport Bay and Huntington Harbour are NDZs and that it is illegal to discharge the contents of their MSDs into the NDZ waters of the State (Newport Bay and Huntington Harbour). The vessel terminal owners/operators shall provide owners/operators of vessels occupying their terminals a map identifying the location of the pumpout facilities and dump stations.

F. Operation and Maintenance:

1. Vessel terminal owners/operators shall prepare a set of operation and maintenance instructions to be used in the operation and maintenance of the pumpout facility/dump station. The operation and maintenance instructions shall be available for inspection at the pumpout facility/dump station and if found to be deficient by Santa Ana Regional Board staff, the vessel terminal owner/operator shall correct the instruction within thirty (30) days.
2. The operation instructions shall have a detailed explanation of valve positions when the system is transferring sewage and when the pumpout facility/dump station is not being used.
3. The operation and maintenance instructions shall include methods that will be used to isolate portions of the pumpout facility/dump station system for maintenance and repair.
4. All pumpout facility/dump stations shall be operated and maintained in such a manner that there shall be no leakage or spillage of sewage.
5. The vessel terminal owner/operator shall inspect their pumpout facilities and dump stations at least three times per week during October 1 through May 31 and five times per week during June 1 through September 30th. The purpose of such inspections is to ensure the pumpout facilities/dump stations are working properly and there are no leaks of sewage into the receiving waters.
6. Vessel terminal owners/operators must keep in stock readily replaceable spare parts such as hoses. When a pumpout facility or dump station is inoperable, its owner shall initiate appropriate repairs within 24 hours of noticing the inoperability. Where the inoperability is found to be due to the failure of a readily available part, such as a hose, the repair must be done within 24 hours. Where necessary, the vessel terminal owner/operator shall secure a licensed plumbing contractor who would assess the reason that the pumpout facility/dump station is not working properly, identify the steps required to bring that pumpout facility/dump station back into working order, and identify a reasonable time frame to complete the necessary repairs. The vessel owner/operator must initiate the repairs promptly, and to take all reasonable steps to assure that the repairs are completed within the time frame identified by the contractor. The vessel terminal owner/operator shall post a sign on the pumpout facility/dump station indicating that it is not working, with a map of other locations of pumpout facilities/dump stations.
7. Vessel terminal owners/operators must maintain, and provide for inspection at any time, maintenance and monitoring logs at the site of each pumpout facility/dump station.

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8. In addition, the Cities of Newport Beach and Huntington Harbour shall inspect each pumpout facility and dump station to ensure that the pumpout facilities and dump stations are operational and that vessel terminal operators keep the necessary maintenance logs. These inspections shall be performed at least monthly. The County of Orange shall be responsible to implement these inspection requirements for those vessel terminals leased by the County to private parties and for those pumpout facilities/dump stations directly under the control of the County.

G. Live-Aboard Vessels (Houseboats):

1. Vessel terminals with live-aboard vessels shall require all live-aboard vessels that are incapable of moving under their own power to have all overboard discharge piping permanently sealed, unless such discharge piping is plumbed directly to appropriate on-shore waste disposal facilities.
2. Vessel terminal owners/operators shall inspect all live-aboard vessels monthly to ensure that all overboard discharge piping has been sealed. A log of these inspections shall be kept at the vessel terminal and made available to the staff of the Santa Ana Regional Board or to staff from the Cities of Newport Bay and Huntington Harbour.
3. Vessel terminal owners/operators with live-aboard vessels capable of moving under their own power shall notify the occupants of such vessels that it is illegal to discharge the contents of their holding tanks into the NDZ waters of the State (Newport Bay and Huntington Harbour) and require them to use a pumpout facility or to subscribe to a pumpout service.
4. The Cities of Newport Beach and Huntington Harbour will be responsible for quarterly inspections of those Live-aboard vessels that are tied to off-shore moorings to ensure that these vessels do not discharge the contents of their holding tanks into the NDZ waters of Newport Bay or Huntington Harbour.
5. The cities of Newport Beach and Huntington Beach will be responsible for quarterly inspections of any 'over the water' public restroom or marine head facilities that are attached to the bulkhead or pier line to ensure that these are working, are easily accessible to the public and conduct repairs and general maintenance of the plumbing system to ensure these facilities do not become a source of pollutants into Newport Bay or Huntington Harbour.
6. Vessel terminal owners/operators and the Cities of Newport Beach and Huntington Beach will be responsible for updating lease agreements with houseboat owners/occupants to ensure that there is adequate authorization for the vessel terminal owner/operator or city staff to board the houseboat and conduct inspections that would ensure that all overboard discharge piping has been sealed.

H. Periodic Review of Effectiveness:

1. The Santa Ana Regional Board shall oversee compliance with the State Board order by the vessel terminal operators and the cities of Huntington Harbour and Newport Beach. Oversight by the Santa Ana Regional Board shall include at a minimum annual inspections, regular collection of samples and review of bacterial data collected from the receiving waters in the

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vicinity of the pumpout facilities.

2. The Santa Ana Regional Board shall also review the effectiveness of the vessel waste pumpout program at a minimum of every 2 years to determine if revisions of the pumpout facility standards are necessary to achieve protection of water quality.

I. Time Schedule:

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities/dump stations be installed and in operation within six (6) months of the adoption of the State Board order.

VI. State Board Staff's Recommended Vessel Sewage Disposal Program

The Regional Board's "Recommended Vessel Sewage Disposal Program" covers not only the installation and operation of pumpout facilities and dump stations but also other topics such as: Cost Provisions, Education and Access, Operation and Maintenance, Live-Aboards, and Periodic Review of Effectiveness. The State Board is authorized under Harbors and Navigation Code section 775 et seq. and implementing regulations to designate vessel terminals that must install pumpout facilities and to establish an appropriate time schedule for installation of the required facilities. The Santa Ana Regional Board may implement the additional Program provisions that go beyond this General Order under the Regional Board's own authority when the General Order is remanded to the Regional Board for implementation.

State Board staff, therefore, recommends that the State Board approve the following provisions of the Santa Ana Regional Board's "Recommended Vessel Sewage Disposal Program". These include the requirements to install pumpouts and dump stations and to comply with existing mandates in the Harbors and Navigation Code, and applicable State Board regulations. Staff recommends that the State Board remand the remaining provisions of the Santa Ana Regional Board's recommended program back to the Santa Ana Regional Board for implementation.

A. Pumpout Facilities and Dump Stations:

Newport Bay – Owners of vessel terminals located in Newport Bay required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users, include:

1. **Swales Yacht Anchorage** - 2888 Bayshore Drive –Installation of one pumpout facility.
2. **Bayshores Marina** - 301 Shipyard Way - Installation of one pumpout facility.
3. **Bahia Corinthian Yacht Club** - 1601 Bayside Drive – Installation of one pumpout facility.
4. **Lido Yacht Anchorage/Dry Storage (Bellport)** - 201 Shipyard Way – Installation of one pumpout facility and one dump station.
5. **Bayside Village (De Anza)** – 300 East Coast Highway – Installation of one dump station.

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6. **Newport Dune Resort Marina** – 101 N. Bayside Drive – Installation of one dump station.
7. **Balboa Marina** – 201 East Pacific Coast Highway – Installation of one pumpout facility.

Huntington Harbour – Owners of vessel terminals located in Huntington Harbour required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users, include:

1. **Davenport Marina** – 4052 Davenport Drive, Huntington Beach - Installation of one pumpout facility.
2. **Coral Cay Marina** – 27405 Puerta Real, Mission Viejo – Installation of one pumpout facility.
3. **Tennis Club Estates** – 2888 Bayshore Drive, Huntington Beach – Installation of one pumpout facility.
4. **Sunset Aquatic Marina** - 2901 A Edinger Avenue, Huntington Beach – Installation of two dump stations.
5. **Lifeguard Dock** – City of Huntington Beach – Installation of one dump station.

For facilities managed by a Homeowners' Association, where the association determines that it cannot justify the need based on a low number of boats with marine sanitation devices or the expense of installing a vessel waste pumpout facility, the Santa Ana Regional Board may authorize, subject to appropriate conditions, the Homeowners' Association to (1) employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule in lieu of installing pumpout facilities or (2) contract with another marina located in Huntington Harbour, with an existing pumpout facility, to allow the Association's boat owners to use the marinas pumpout facility.

Where a vessel terminal owner/operator determines that a pumpout facility cannot be installed as required, the Santa Ana Regional Board may allow, subject to appropriate conditions, the owner/operator to contract with a private pumping service for all of its tenants' vessels as an alternative to installing the required pumpout facility.

With Santa Ana Regional Board approval and subject to appropriate conditions, landside restroom facilities may be used as an alternative to installation of a required dump station at vessel terminals with less than 50 vessels under 26 feet in length.

- B.** Vessel terminal owners and operators must comply with State Board regulations governing the design and construction and operation and maintenance of vessel pumpout facilities. In addition, they must comply with any more stringent requirements that the Regional Board, within its authority and discretion, imposes to implement this general order.
- C.** By November 30, 2005, the Regional Board shall evaluate the approved Vessel Sewage Disposal Program to assess the need to expand the requirements to include all of the marinas located within the Santa Ana Region and present their findings and recommendations to the State Board.

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D. Time Schedule:

Vessel terminal owners must comply with the following installation time schedule unless the Regional Board, for good cause, revises the time schedule:

<u><i>Task</i></u>	<u><i>Compliance Date</i></u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	30 days after State Board Order Issued
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	90 days after commitment
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	30 days after plans and specs approved
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	30 days after maintenance plans submitted to Santa Ana Regional Board
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	90 days after construction began
<ul style="list-style-type: none"> • Full compliance with State Board order; notify Executive Officer of the Santa Ana Regional Board. 	30 days after construction completed.

Definitions:

- (a) “Discharge” means spilling, leaking, pumping, pouring, emitting, emptying, or dumping.
- (b) “Dump Station” means an upland waste reception facility specifically designed to receive waste from portable toilets carried on vessels or from floating restrooms in the water that are not connected to the land and are used solely by boaters. This does not include upland restroom facilities. (Federal Register Vol. 59 No. 47 pp. 11296)

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- (c) “Houseboat” means a watercraft or industrial or commercial structure on or in the waters of the state, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation. “Houseboat” includes platforms, and waterborne hotels and restaurants.
- (d) “Live-Aboard” means the same as “houseboat”.
- (e) “Marine sanitation device” means any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat the sewage.
- (f) “No-discharge zone” means a body of water designated as a no-discharge area under subsection (f) of section 312 of the Federal Water Pollution Control Act [33 U.S.C. Sec. 1322 (f)].
- (g) “Pumpout facility” means any facility or other means used to transfer sewage from a vessel sewage retention device aboard a vessel to storage and/or disposal facilities.
- (h) “Secured” means, for a marine sanitation device not approved for use in a no-discharge area, mechanically controlling valves or facilities in an identifiable manner to prevent any overboard discharge of sewage.
- (i) “Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.
- (j) “Sewage retention device” means any equipment on board a vessel which is designed to receive and retain sewage.
- (k) “Vessel” means every watercraft or other contrivance used or capable of being used as a means of transportation on the waters of the state, excepting foreign and domestic vessels engaged in interstate or foreign commerce upon the waters of the state.
- (l) “Vessel terminal” means any private or public shoreside installation on any waters of this state which provides mooring, docking, berthing, and other facilities for the use of vessels.
- (m) “Waters on this state” shall mean all waters of the state except waters beyond three nautical miles off any shore of the state.