



## CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 18, 2025  
Agenda Item No. 2

**SUBJECT:** SOL Mexican Cocina Restaurant (PA2023-0144)  
▪ Conditional Use Permit  
▪ Coastal Development Permit

**SITE LOCATION:** 251 East Coast Highway

**APPLICANT:** Keisker & Wiggle Architects, Inc.

**OWNER:** Russell E. Fluter

**PLANNER:** Jenny Tran, Associate Planner  
949-644-3212 or [jtran@newportbeachca.gov](mailto:jtran@newportbeachca.gov)

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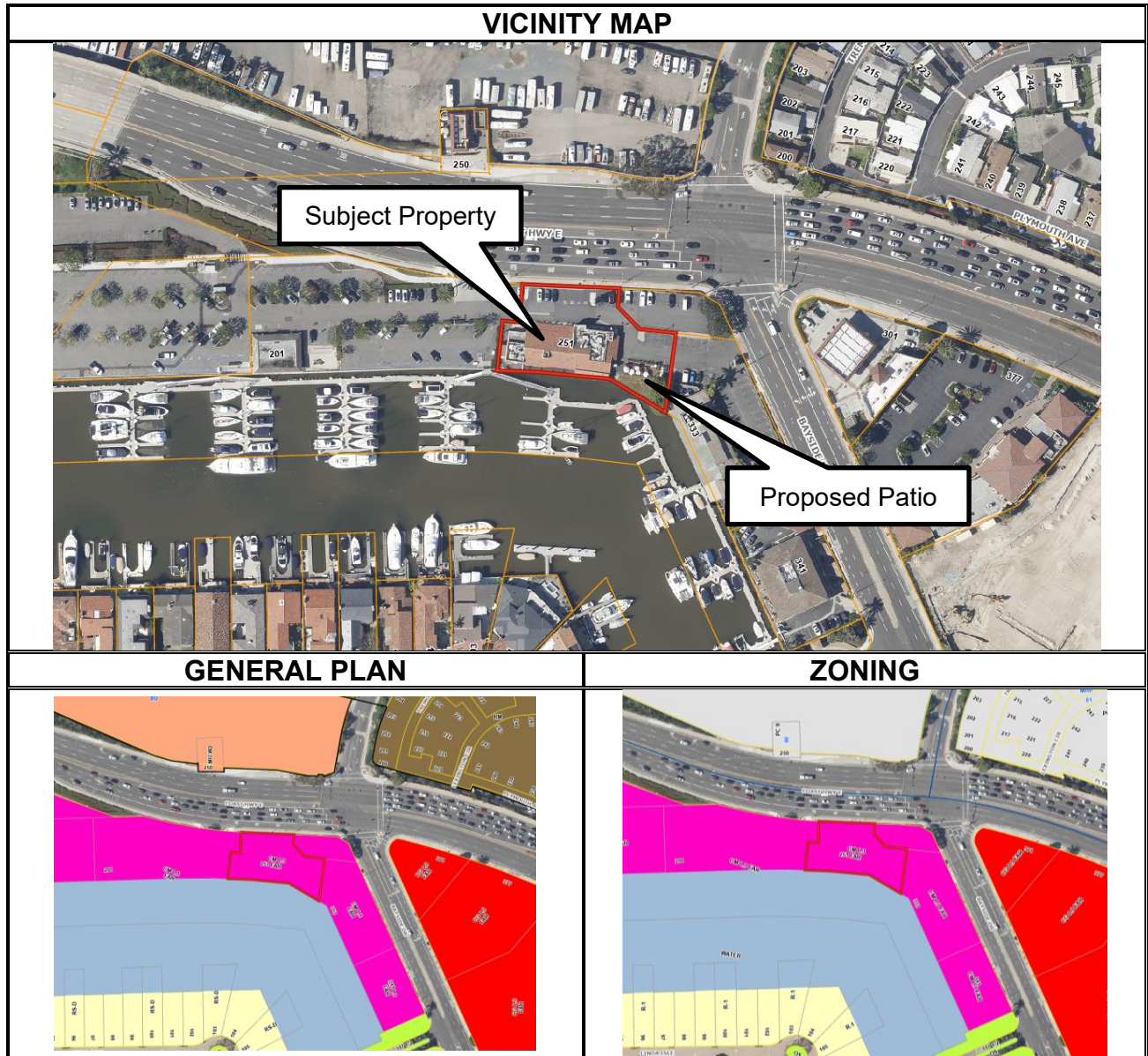
### **PROJECT SUMMARY**

A request for a conditional use permit and coastal development permit to permanently retain a 641-square-foot outdoor dining patio for an existing restaurant (Sol Mexican Cocina) and construct an approximately 7-foot, 6-inch-tall glass/acrylic guardrail along the front of the outdoor dining patio. The existing outdoor dining patio consists of a platform deck with seating that was permitted on a temporary basis. The project requests to expand the existing Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control License to include service of the outdoor dining patio and reauthorize the off-site parking located on the adjacent lots at Balboa Marina (151 and 201 East Coast Highway and APNs 050-451-03 and 050-451-57). The proposed hours of operation for the restaurant and outdoor dining patio are between 10 a.m. and 11 p.m., daily. No live entertainment, dancing, or late hours (after 11 p.m.) are proposed. If approved, this Conditional Use Permit and Coastal Development Permit would supersede Use Permit Nos. UP621 and UP651 and Accessory Outdoor Dining Permit Nos. OD49 and OD49A.

### **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2025-019 approving the Conditional Use Permit and Coastal Development Permit filed as PA2023-0144 (Attachment No. PC 1).

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Recreational and Marine Commercial (CM)	Commercial Recreational and Marine (CM)	Restaurant (SOL Mexican Cocina)
NORTH	Mixed-Use Water 2 (MU-W2)	Back Bay Landing (PC-9)	East Coast Highway/ Kayak rental and RV storage
SOUTH	Single Unit Residential Dwelling (RS-D)	Single-Unit Residential (R-1)	Newport Harbor/ single-unit residential
EAST	CM	CM	Restaurant (Tavern House Kitchen +Bar)
WEST	CM	CM	Newport Beach Sailing School and Balboa Marina parking lot



## INTRODUCTION

### Project Setting and Background

The subject property is approximately half an acre, located on the waterfront side of East Coast Highway. The property is developed with a 5,838-square-foot, one-story restaurant with an attached 324-square-foot covered dining patio known as SOL Mexican Cocina Restaurant. A restaurant has been operating on this site since 1960. The property is adjacent to the Balboa Marina that consists of four separate parcels (151 and 201 East Coast Highway and APNs 050-451-03 and 050-451-57) and is developed with the Newport Beach Sailing School, boat slips, a public dock, and private surface parking for marina uses. South of the property, across from Newport Harbor, are single-unit dwellings on Linda Isle. Figure 1 below shows the location of the subject property (in green) in relation to the Balboa Marina (in orange), and the residential area of Linda Isle (in blue).

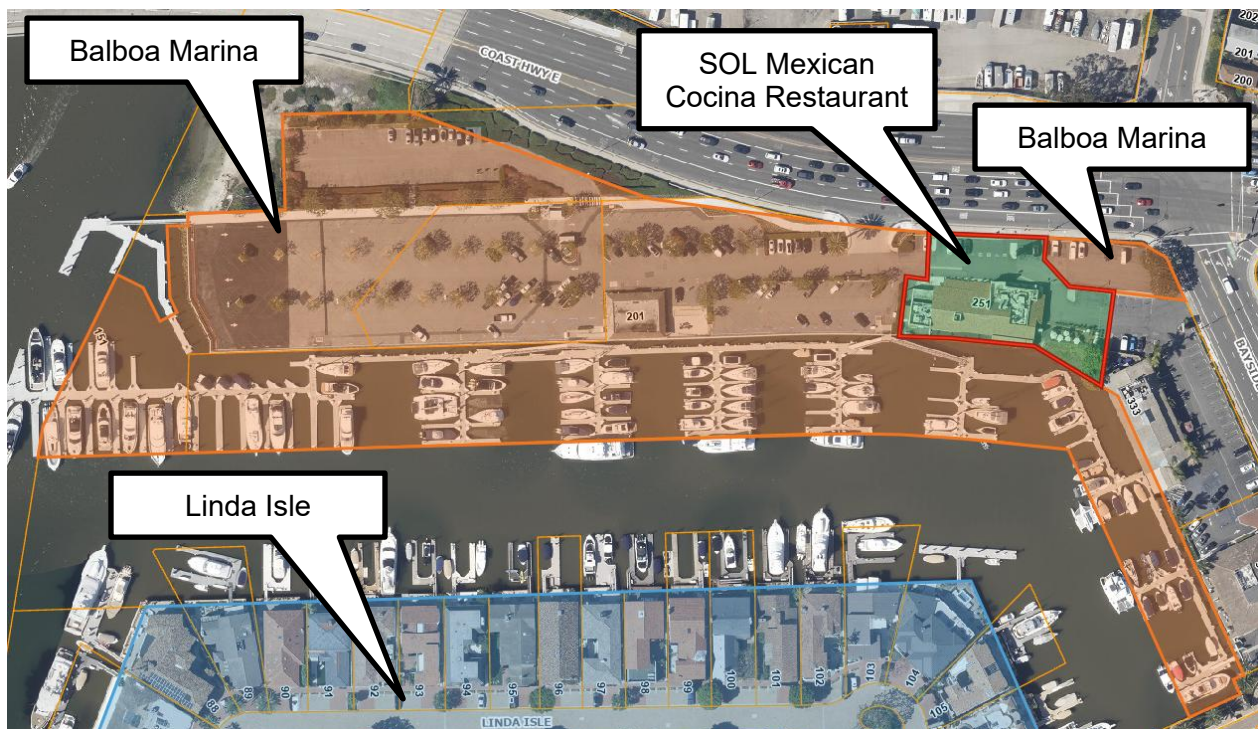


Figure 1: The location of the subject property, Balboa Marina, and Linda Isle.

The existing restaurant provides both on-site and off-site parking. The restaurant has used off-site parking to serve the use since 1960. Off-site parking is provided through a ground lease/parking agreement with the adjacent property owner. Additional details are provided within the *Off-Site Parking Findings* section of this report.

The property has received several approvals for the operation of the restaurant. The following permits were authorized on a permanent basis:

- On May 19, 1960, the Planning Commission approved Use Permit No. 621 (UP621) to authorize the construction of a restaurant and parking on the waterfront of Balboa Marina.
- On July 21, 1960, the Planning Commission approved Use Permit No. 651 (UP651) to allow an on-sale general alcoholic beverage control license for the restaurant.
- On June 4, 1998, the Planning Commission approved Accessory Outdoor Dining Permit No. 49 (OD49) to allow the addition of a 324-square-foot accessory outdoor dining area in conjunction with an existing full-service restaurant.
- On November 18, 1999, the Planning Commission approved an amendment to OD49 (OD49A) to increase the hours of operation for the outdoor dining area. The allowed hours of operation were between 11 a.m. to 10 p.m., daily, and the amendment authorized the outdoor dining area to stay open until 12 a.m. (midnight), daily.

The following permits were authorized on a temporary basis:

- On July 8, 2020, as part of the City's response to the COVID-19 Pandemic with Emergency Order No. 2020-005, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-064 and Emergency Coastal Development Permit No. CD2020-072 (PA2020-143) to allow the temporary addition of an outdoor dining area on the surface parking lot that was approximately 2,100 square feet in area with 84 seats.
- Subsequently, on July 15, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-082 and Emergency Coastal Development Permit No. CD2020-087 (PA2020-167) to add additional tables and seats to the outdoor dining area. This approval superseded the previous approval filed as PA2020-143.
- On August 25, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-138 and Emergency Coastal Development Permit No. CD2020-124 (PA2020-239) to allow a second temporary outdoor dining area on the surface parking lot that was approximately 500 square feet. This approval included a 6-foot-tall temporary fence along East Coast Highway for screening of the larger outdoor dining area. This approval superseded the previous approval filed as PA2020-167.
- On May 20, 2021, the Community Development Director approved Emergency Temporary Use Permit No. UP2021-018 (PA2021-097) to remove the two

temporary outdoor dining areas and replace them with one approximately 870-square-foot deck platform with outdoor dining within seven existing parking spaces adjacent to the restaurant along the waterfront side of the property. The platform deck included an accessible ramp, 11 tables (two accessible), heat lamps, and accessory LED lighting. Although an 870-square-foot outdoor dining area was approved, only a 641-square-foot dining area was built. This approval superseded the previous approval filed as PA2020-239. The outdoor dining patio was required to be removed within 14 days after termination of the City's Emergency Order.

- After termination of the Emergency Order on June 22, 2021, on December 16, 2021, the Zoning Administrator approved Limited Term Permit No. XP2021-025 and Coastal Development Permit No. CD2021-049 (PA2021-196) to maintain the existing deck platform with outdoor dining for a duration of one year with an expiration date December 30, 2022. However, on December 21, 2022, the Zoning Administrator approved a 12-month extension of time that would allow PA2021-196 to expire on December 30, 2023. Therefore, on August 16, 2023, the applicant applied for a conditional use permit and coastal development permit to retain the 641-square-foot outdoor dining area on a permanent basis. Temporary outdoor dining patios have been allowed to remain in place provided applicants have applied for and been diligently processing required entitlement applications authoring permanent operation. During the initial review of the entitlement package, the City determined that the outdoor dining area was located within a City utility easement and water line, requiring further analysis. After a survey was prepared by Joseph C. Truxaw and Associates, Inc. dated May 20, 2025, it was determined that the project would not encroach on the City utility easement or water line and the applicant resubmitted the project to the City.

### Project Description

The applicant requests a conditional use permit and coastal development permit to permanently retain the 641-square-foot outdoor dining area (proposed patio) for the restaurant. The project also requests to expand the existing Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control (ABC) License to include permanent service on the proposed patio. The project also includes the reauthorization of off-site parking located on the adjacent lots at Balboa Marina (151 and 201 East Coast Highway and APNs 050-451-03 and 050-451-57).

Approval of OD49A authorized the restaurant and attached outdoor dining area to operate until midnight. However, PA2021-196 authorized the temporary outdoor dining area to operate until 9 p.m., Monday through Thursday, and 10 p.m., Friday through Sunday. Additionally, OD49A authorized the restaurant to operate with a live entertainment permit.

In contrast, the project proposes uniform hours of operation for the restaurant, existing attached outdoor dining patio, and proposed outdoor dining patio with hours between 10

a.m. and 11 p.m., daily. No live entertainment, dancing, or late hours (i.e., after 11 p.m.) are proposed. The primary operational characteristics of the proposed restaurant are highlighted in Table 1 below.

Table 1 - Proposed Restaurant Operations	
Gross Floor Area	5,838 SF
Combined Outdoor Dining Areas	965 SF
Hours of Operation	10 a.m. to 11 p.m., daily
Live Entertainment	Not proposed
Dancing	Not proposed
Alcoholic Beverage Sales	Type 47 (On-Sale General – Eating Place)

If approved, this Conditional Use Permit and Coastal Development Permit would supersede Use Permit Nos. UP621 and UP651 and Accessory Outdoor Dining Permit Nos. OD49 and OD49A.

## **DISCUSSION**

### Analysis

#### *General Plan*

The General Plan Land Use Element designates the site as Recreational and Marine Commercial (CM), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The intent of the project is to permanently retain an outdoor dining patio for a restaurant that was constructed in response to the COVID-19 Pandemic. No physical changes are proposed to the restaurant, other than to retain the proposed patio on a permanent basis and the installation of a new guardrail. The restaurant provides a dining opportunity for both residents and visitors to the City and the proposed outdoor dining patio provides an additional amenity for patrons that overlooks and provides visual access to the waterfront.

While not exhaustive, the following is a list of notable General Plan policies with which the project is consistent:

- ***Land Use Policy LU 5.2.2 (Buffering Residential Areas).*** *Require that commercial uses adjoining residential neighborhoods be designed to be compatible and minimize impacts through such techniques as:*

*Incorporation of landscape, decorative walls, enclosed trash containers, downward focused lighting fixtures, and/or comparable buffering elements; Attractive*

*architectural treatment of elevations facing the residential neighborhood; Location of automobile and truck access to prevent impacts on neighborhood traffic and privacy.*

Although the property is not directly adjacent to a residential zoning district, Linda Isle, a residential community, is located approximately 250 feet south of the property across Newport Harbor. The project will include the construction of an approximately 7-foot 6-inch-tall glass/acrylic guardrail on the waterfront side of the proposed patio to mitigate any potential noise generated from the proposed patio. Additionally, conditions of approval are included to ensure light sources and noise levels are properly controlled for both the proposed patio and the existing outdoor dining area attached to the restaurant to alleviate any impacts to the residents.

- ***Land Use Policy LU 5.3.6 (Parking Adequacy and Location).*** *Require that adequate parking be provided and is conveniently located to serve tenants and customers. Set open parking lots back from public streets and pedestrian ways and screen with buildings, architectural walls, or dense landscaping.*

Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC requires one parking space per 100 square feet of gross floor area and one parking space per 150 square feet for outdoor dining areas. The total gross floor area of the existing restaurant is 5,838 square feet and no changes are proposed. The existing outdoor dining area attached to the restaurant is 324 square feet and the proposed patio to be retained as part of the project is 641 square feet for a total of 965 square feet for outdoor dining area.

The gross floor area of the restaurant requires 58.4 parking spaces and the outdoor dining areas require 6.4 parking spaces for a total of 64.8 parking spaces, or 65 parking spaces total. The 641-square-foot proposed patio was constructed within seven parking spaces, which leaves a total of 16 parking spaces available on-site. However, the adjacent property at 201 East Coast Highway provides 50 dedicated off-site parking spaces for the restaurant for a total of 66 parking spaces, which exceeds the requirement of 65 parking spaces for the project. Although the project includes the removal of parking spaces to accommodate the proposed dining area, sufficient parking spaces exist on-site and off-site to serve the use. Off-site parking has been provided for the restaurant since 1960 and has proven to be conveniently located to serve tenants and customers. The existing parking lots are landscaped with hedges and trees to provide screening from East Coast Highway.

- ***Noise Policy N 1.7 (Commercial/Entertainment Uses).*** *Limit hours and/ or require attenuation of commercial/ entertainment operations adjacent to residential and other noise sensitive uses in order to minimize excessive noise to these receptors.*



Pursuant to OD49A, the existing restaurant is permitted to operate with late hours until midnight (i.e., after 11 p.m.) with a live entertainment permit. However, the project does not propose late hours, live entertainment, or dancing and the restaurant no longer has an active live entertainment permit. Condition of Approval No. 5 is included to ensure a 7-foot 6-inch guardrail is constructed along the front of the proposed patio to prevent noise impacts to the nearby residents. The condition also requires the existing guardrail along the outdoor patio attached to the restaurant is maintained. Further, Condition of Approval Nos. 7 and 16 is included to prohibit live entertainment or dancing and to ensure the project complies with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC.

- ***Harbor and Bay Policy HB 2.1 (Design of New Development).*** *Site and design new development to avoid impacts to existing and potential water-dependent and water-related uses.*

The property is adjacent to the Newport Beach Sailing School at 201 East Coast Highway and is accessed via a driveway along East Coast Highway. The proposed outdoor dining area will not obstruct access to or impact to use of this sailing school. The required off-site parking spaces for the project are shared on the same property as the sailing school but will not impact or reduce the available parking space for the sailing school as sufficient parking has been provided for all users. The restaurant will continue to serve as an amenity to users of the adjacent marina and serves as a dining option for boaters utilizing the public dock nearby.

### *Zoning Code*

The property is within the Commercial Recreational and Marine (CM) Zoning District, which is intended to provide for areas appropriate for commercial development on or near the waterfront that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on sites located on or near the bay. A Food Service land use with alcohol service and no late hours is an allowed use with approval of a minor use permit. However, pursuant to Section 20.40.100 (Off-Site Parking) of the NBMC, approval of a conditional use permit is required to authorize parking that is not located on the same site it is intended to serve (i.e., off-site parking).

### *Alcohol Sales Findings*

The applicant requests a Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control (ABC) License in conjunction with the restaurant, which would allow the sale of beer, wine, and spirits. When reviewing the application to allow an eating or drinking

establishment to sell, serve, or give away alcohol, Section 20.48.030 (Alcohol Sales) of the NBMC requires the Planning Commission to consider impacts to adjacent uses and proximity to existing alcohol sales, both for on-site and off-site consumption. The Planning Commission must find that:

1. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

The purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is to maintain a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcohol establishments. The project has been reviewed by the Newport Beach Police Department (NBPD) and conditioned to ensure that the purpose and intent of this section is maintained and that a healthy environment for residents and businesses is preserved. Alcohol service will be provided for the convenience of customers of the restaurant, and it is not intended to act as a separate use and destination from the restaurant.

The NBPD prepared a Crime and Alcohol Related Statistics Report using the latest available data from 2024 and a memorandum for the project (Attachment No. PC 2). The data is incorporated into the factors for consideration in the draft Resolution (Attachment No. PC 1). The existing restaurant has operated with alcohol service since 1960, and the request will allow the existing Type 47 ABC License to expand to the proposed patio on a permanent basis. Operational conditions of approval were recommended by the NBPD relative to the sale of alcoholic beverages that will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.

All conditions of approval recommended by the NBPD are incorporated into Exhibit "A" of the attached Resolution.

#### Conditional Use Permit Findings

In accordance with Section 20.52.020(F) (*Conditional Use Permits and Minor Use Permits – Findings and Decision*) of the NBMC, the Planning Commission must make the following findings for approval:

1. *The use is consistent with the General Plan and any applicable Specific Plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and Municipal Code;*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise*

*constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

The existing restaurant and proposed patio are consistent with the purpose and intent of the CM General Plan Land Use designation and Zoning District. A restaurant has been operating at the property since the 1960s, and the project would include the provision of additional outdoor dining opportunities. The restaurant will continue to service the surrounding commercial area by providing dining services, alcohol service, and an option for outdoor dining areas as a public convenience to the surrounding businesses, residents, and visitors to the area. The project has been reviewed and conditioned by the Building Division, Fire Department, Police Department, and Public Works Department and all relevant conditions of approval are included. Any physical alterations to the restaurant, including the retention of the proposed patio and new guardrail, require a building permit prior to construction. The project will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

The subject property is located north of the residential neighborhood of Linda Isle across from Newport Harbor. The proposed patio would operate until 11 p.m., where the existing temporary permit authorized hours until 9 p.m. (Monday through Thursday) and 10 p.m. (Friday through Sunday). Furthermore, the proposed project would reduce potential impacts to nearby residential areas by prohibiting live entertainment and reducing the closing hour of the restaurant to 11 p.m. (i.e. no late hours). Additionally, the conditions of approval require the construction of a new guardrail along the front of the proposed patio and retention of the existing guardrail along the attached patio to ensure the project complies with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC.

#### Off-Site Parking Findings

In accordance with Section 20.40.100(B) (Off-Site Parking – Findings) of the NBMC, in order to approve a conditional use permit for an off-site parking facility, the following findings and facts in support of such findings are set forth:

- 1. The parking facility is located within a convenient distance to the use it is intended to serve;*
- 2. On-street parking is not being counted towards meeting parking requirements;*
- 3. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and*
- 4. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

As previously described, Food Service uses require one parking space per 100 square feet of gross floor area and one parking space per 150 square feet of outdoor dining areas. The subject property originally had 23 striped parking spaces on-site. However, the proposed patio was constructed over seven parking spaces and 16 parking spaces remain on-site. To meet the required parking demand, the project proposes to maintain

off-site parking on the Balboa Marina surface parking lot. Table 2 below provides the parking demand for the restaurant and outdoor dining areas.

Table 2 – Parking Requirement			
Location/Description	Parking Rate	Square Footage	Parking Spaces Required
Restaurant	1 per 100 sq. ft	5,838	58.38
Existing Outdoor Dining Area	1 per 150 sq. ft	324	2.16
Proposed Outdoor Dining Area	1 per 150 sq. ft	641	4.27
<b>Total Required Parking</b>			<b>65</b>
On-Site Parking Spaces Provided			16
Off-Site Parking Spaces Provided			50
<b>Total Parking Spaces Provided</b>			<b>66</b>

The Balboa Marina includes a surface parking lot over four separate parcels (151 and 201 East Coast Highway and APNs 050-451-03 and 050-451-57) that are all under the ownership of The Irvine Company. This surface parking lot serves the Restaurant, the Newport Beach Sailing School, and the marine uses on the property. A Ground Lease and a Parking Agreement was recorded on December 14, 1993, between The Irvine Company and the Property's tenant, the restaurant, to allow for a portion of the restaurant's parking to be located on the Balboa Marina parking lot. The off-site parking areas provide sufficient parking for the Newport Beach Sailing School and the other marina uses in addition to the Restaurant.

The aforementioned parcels within the surface parking lot are adjacent to the Property and are accessible via the same driveway from East Coast Highway or Bayside Drive. Condition of Approval No. 3 is included to require a new Parking Agreement to reauthorize 50 parking spaces on the Balboa Marina parking lot for the benefit of the restaurant. The off-site parking spaces are accessible throughout the daily hours of operation for the restaurant. Figure 2 below shows the parking circulation for both the on-site and off-site parking spaces for the restaurant.

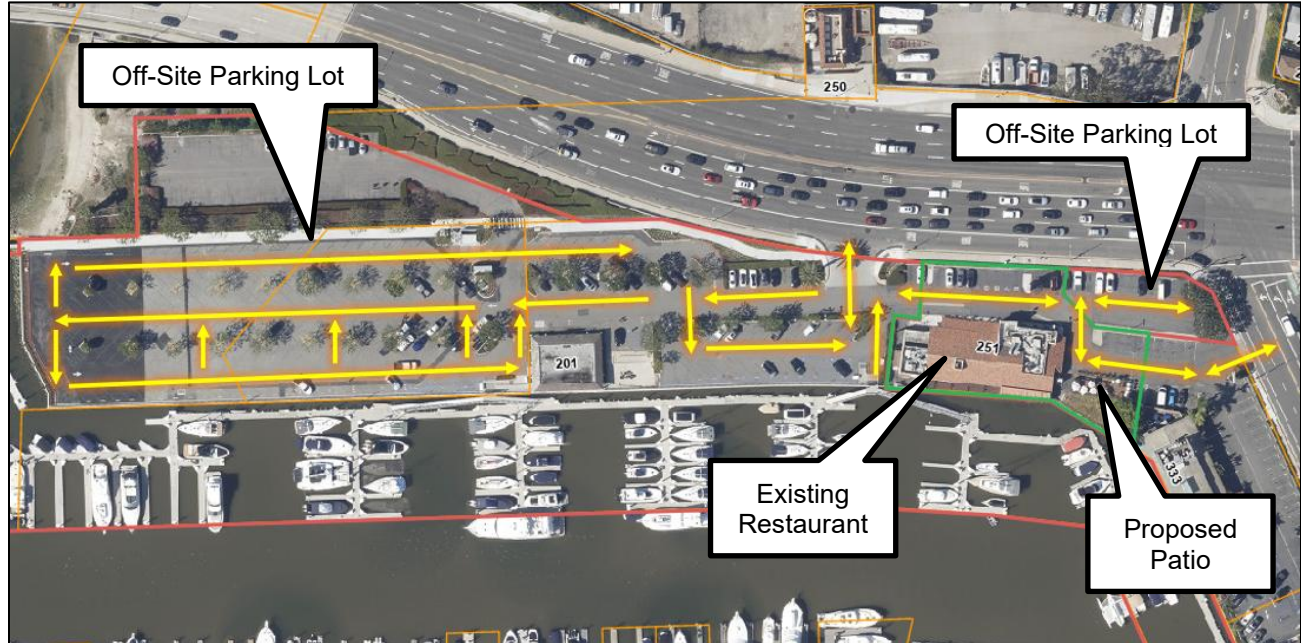


Figure 2: On-site and off-site parking circulation for the restaurant.

### *Local Coastal Plan*

The Coastal Land Use Plan (CLUP) designates the property as Recreational and Marine Commercial (CM-A), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The project is consistent with the CM-A CLUP designation by providing an additional amenity of outdoor dining for an existing restaurant that will provide physical and visual access to the bay on a waterfront commercial property. The restaurant also serves as a visitor destination and is accessible to boaters via the public dock located west of Balboa Marina. Since the project involves intensification of use through the retention of an outdoor dining patio that increases the parking demand a coastal development permit is required to implement the project.

### *Coastal Development Permit Findings*

In accordance with Section 21.52.015(F) (Coastal Development Permits – Findings and Decisions) of the NBMC, the Planning Commission must make the following findings for approval:

1. *Conforms to all applicable sections of the certified Local Coastal Program; and*



2. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

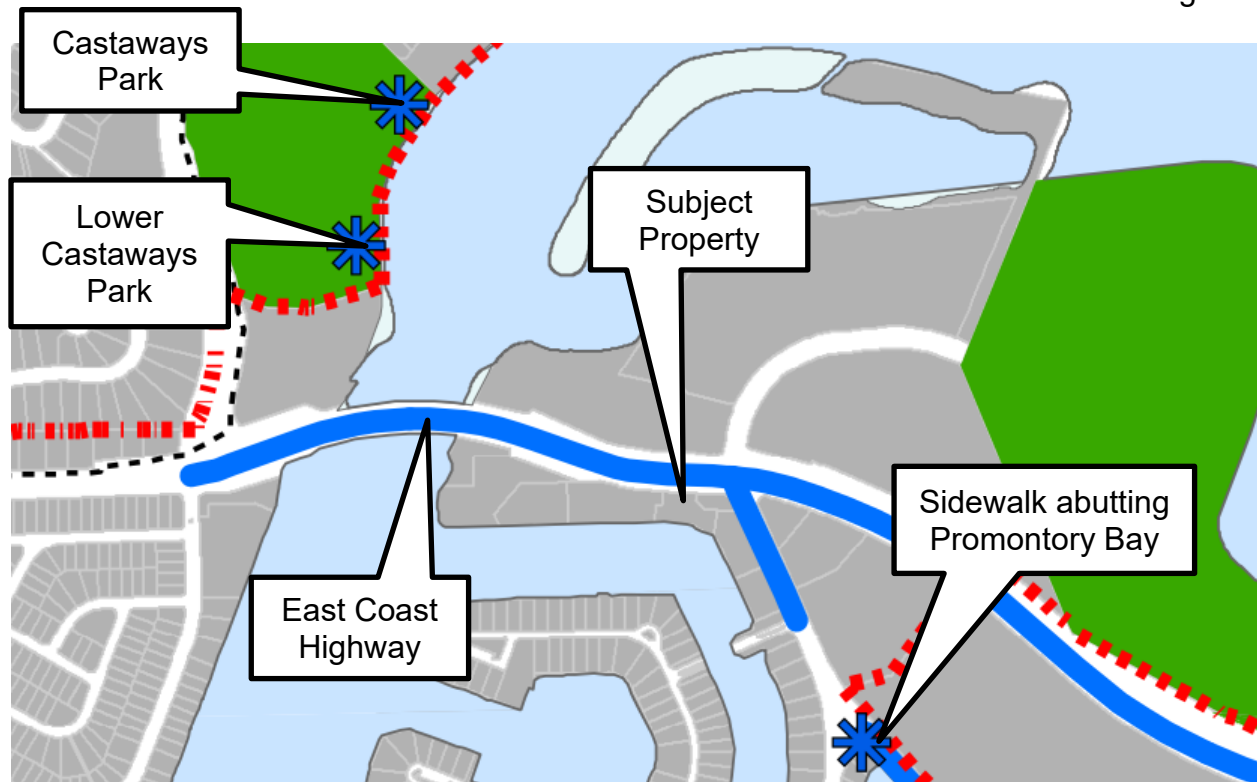
The project complies with applicable development standards such as setbacks, floor area, and parking, as identified in Table 3 below.

Table 3 – Development Standards		
Development Standard	Standard	Proposed
<b>Setbacks (min.)</b>		
<b>Front (East Coast Highway)</b>	0 feet	47 feet
<b>Sides</b>	0 feet	9 feet (East) 10 feet, 6 inches (West)
<b>Rear (Waterfront)</b>	0 feet	0 feet
<b>Allowable Floor Area (max.)</b>	6,404 square feet	5,838 square feet
<b>Parking (min.)</b>	65 spaces	66 spaces 16 on-site 50 off-site
<b>Height (max.)</b>	26-foot flat roof 31-foot sloped roof	21 feet

The property is located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project proposes to retain a temporary outdoor dining area on a permanent basis for an existing restaurant. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

As demonstrated in Figure 3 below, the property is located approximately 440 feet west of a sidewalk area overlooking Promontory Bay along Bayside Drive, which is a designated public viewpoint in the CLUP. The project, including the existing restaurant and proposed patio, is not visible from this public viewpoint due to existing landscaping and commercial buildings adjacent to this viewpoint. Therefore, the project will not impact views from this public viewpoint.

The property is also located approximately 1,100 feet east of Lower Castaways Park, which is another designated public viewpoint in the CLUP and offers views of Back Bay and Newport Harbor. The project is not visible from this public viewpoint as the view is obstructed by the East Coast Highway bridge constructed over the Back Bay. The project will not impact the views from this public viewpoint.



*Figure 3: The location of the subject property in relation to the nearest coastal viewpoints and coastal view road designated in the CLUP.*

The property fronts East Coast Highway, which is a designated coastal view road in the CLUP with views of Newport Harbor and the Back Bay. The project will be entirely within the property and will not create obstructions of Newport Harbor or the Back Bay as viewed from East Coast Highway. The project does not propose any structures over the proposed patio (e.g. canopy, sunshade, or enclosure) that would create obstructions to the harbor from East Coast Highway, although the proposed patio includes poles for string lights and umbrella covers. The string light poles are narrow, and the umbrella covers are retracted when not in use, thereby reducing any minor visual obstructions of the harbor. Additionally, the proposed patio offers views of Newport Harbor for visiting patrons dining at the restaurant. Figure 4 below shows the current condition of the proposed patio and the view towards Newport Harbor.



*Figure 4: Existing patio with views towards Newport Harbor from the parking lot.*

In addition to Title 20, to authorize the proposed off-site parking configuration, Section 21.40.100(B) (Off-Site Parking – Standards for Off-Site Parking Facilities) of the NBMC applies to any nonresidential development where all or a portion of required parking is not located on the same site it is intended to serve. In reviewing this request, the Planning Commission must make the following findings:

- 1. The parking facility shall be located within a five hundred (500) foot distance unless alternative transportation provided to the use it is intended to serve;*
- 2. On-street parking shall not be counted towards meeting any parking requirements;*
- 3. The off-site, off-street parking shall not impact public parking available for coastal access;*
- 4. Use of the parking facility shall not create undue traffic hazards or impacts in the surrounding area;*
- 5. The parking facility shall be permanently available, marked, and maintained for the use it is intended to serve; and*
- 6. Public parking facilities may only be used as an off-site parking facility as part of an overall Parking Management Plan.*

The off-site parking spaces located on Balboa Marina for the benefit of the restaurant are located within 500 feet of the property. The off-site parking spaces are located entirely on private property and will not use any public parking facilities to achieve the required number of parking spaces for the project. Therefore, an overall Parking Management Plan

is not required to implement the project. Additional analysis is provided in the previous section, *Off-Site Parking Findings*, on page 10 of this report.

### Summary and Alternatives

Staff believes all findings for approval can be made, as evidenced in Attachment No. PC 1. The proposed project to retain the temporary outdoor dining area on a permanent basis will be compatible with the surrounding pattern of development. The restaurant will not operate with live entertainment or dancing, and the NBPd has provided appropriate conditions of approval to help prevent negative impacts to the surrounding neighborhood. The proposed project is consistent with the City's goals and objectives identified in the General Plan, Zoning Code, and Local Coastal Program Implementation Plan.

The following alternatives are available to the Planning Commission should they feel the facts are not in evidence of support for the project application:

1. The Planning Commission may suggest specific project modifications or operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting to allow redesign of the project; or
2. If the Planning Commission does not believe the facts in support of findings can be made, the Planning Commission may deny the application request.

### Environmental Review

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential to have a significant effect on the environment.

The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing use. The project involves making an outdoor dining patio permanent for an existing restaurant which is negligible expansion of the existing use and therefore, the project qualifies for a categorical exemption under Class 1.

The Class 3 exemption authorizes the construction and location of a limited number of new, small facilities or structures and authorizes minor alterations to existing structures involving negligible or no expansion of use. This exception includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The project proposes to retain an outdoor dining patio for an existing restaurant and therefore, the Project also qualifies for a categorical exemption under Class 3.

The exceptions to the Class 3 exemption under Section 15300.2 are not applicable. The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners and residential occupants of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant, and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:



Jenny Tran  
Associate Planner

LAW/jt

Submitted by:



Jaime Murillo, AICP  
Acting Community Development Director

### ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Police Department Memorandum
- PC 3 Project Plans