



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION ACTION REPORT**

**TO:** CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

**FROM:** Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director

**SUBJECT:** Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending October 21, 2016.

---

**COMMUNITY DEVELOPMENT DIRECTOR  
OR PLANNING DIVISION STAFF ACTIONS  
(Non-Hearing Items)**

- Item 1: 208 Evening Canyon Road Grade Determination – Staff Approval No. SA2016-011 (PA2016-134)  
Site Address: 208 Evening Canyon Road
- Action: Approved Council District 6
- Item 2: Newport Dunes Christmas Trees – Limited Term Permit No. XP2016-003 (PA2016-171)  
Site Address: 1131 Back Bay Drive
- Action: Approved Council District 5

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

949-644-3200 Fax: 949-644-3229

[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER**

**Application No.**            **Staff Approval No. SA2016-011 (PA2016-134)**

**Applicant**                **Eric Trabert & Associates**

**Site Address**            **208 Evening Canyon Road**  
**208 Evening Canyon Road Grade Determination**

**Legal Description**    **Lot 49, Tract 1116**

On **October 21, 2016**, the Community Development Director approved Staff Approval No. SA2016-011 to establish a grade plane for the purpose of measuring building height for a new single family home. The grade plane is based on the existing elevation contours of the subject property and the adjacent property to the north. It consists of four elevation points located at the corners of the proposed building footprint. The elevation points create the base from which height shall be measured, consistent with Newport Beach Municipal Code Section 20.30.50(B)(2) (Grade Establishment – Establishment of Grade – Five Percent or Less Slope). This approval is based on the following findings and subject to the following conditions.

### **ZONING DISTRICT/GENERAL PLAN**

- **Zone:** R-1-6000 (Single Unit Residential)
- **General Plan:** RS-D (Single Unit Residential Detached)

### **DISCUSSION**

The subject property is currently developed with a single family home including a partially subterranean garage on the northwest corner of the property. At the time of development of the home in 1951, the grade was significantly altered to construct the partially subterranean garage. The existing topographic elevations have been surveyed using the North American Vertical Datum of 1988 and certified by a professionally licensed land surveyor (Attachment No. CD 2). As a result of the previous construction, the northwest side of the lot is significantly lower than the rest of the lot, and the existing grade elevation no longer represents the previously existing natural topography of the property. Therefore, the existing elevation point is not appropriate for determining the established grade from which building height shall be measured.

The applicant has prepared an exhibit to determine an appropriate grade plane for redevelopment of the lot. The exhibit connects existing contour lines on the subject property and the adjoining property to the north (212 Evening Canyon Road) to approximate the natural grade of the northwest corner of the lot prior to construction of the partially subterranean garage. The purpose of this grade determination is to ensure the height of development is based on conditions that are more representative of the site's natural topography and is in character with the surrounding area.

## **FINDINGS**

In accordance with Zoning Code Section 20.30.050(C) (Grade Establishment – Establishment by Director) if the Community Development Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Community Development Director may establish a grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots.

### Finding:

- A. *The existing grade on the subject lot has been previously altered or other conditions are present to the degree that the existing grade is not representative of the prevailing grades and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot.*

### Facts in Support of Finding:

1. The existing grade on the subject property was altered when the home and partially subterranean garage were constructed in 1951. Specifically, the northwest side of the property was altered such that this corner is significantly lower than the rest of the lot. The existing grade is therefore not appropriate for the purpose of establishing grade and measuring height, and would result in a grade that is inconsistent with the surrounding area.
2. Connecting existing contour lines between the subject property and the adjoining property to the north is appropriate in this case because it closely approximates the natural grade of the lot prior to the development of the partially subterranean garage and is in character with the adjoining lot and other homes on the street

### Finding:

- B. *The grade is reasonable and comparable with the grades of adjoining lots and will not be detrimental or injurious to property and improvements on adjoining lots.*

Facts in Support of Finding:

1. The proposed grade plane is based on the existing grade at the subject property and the grade of the adjoining property to the north and is slightly lower than the grade of the adjoining lot; therefore, it is compatible with the adjoining lots.
2. The proposed grade establishes elevations consistent with the previously existing natural topography of the site and requires building heights to be measured from an established grade, a methodology consistent with the neighboring lots.
3. The property will be required to comply with all applicable development standards of the Zoning Code which are in place to prevent detriment or injury to the existing property and neighboring properties and improvements on adjoining lots.

**CONDITIONS**

1. A copy of this action letter including the findings and conditions shall be copied onto the building plans.
2. The height of the principal structures shall be based on the grade plan exhibit provided, stamped with the date of this approval and identified as Attachment No. CD 3.
3. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 208 Evening Canyon Road Grade Determination including, but not limited to, SA2016-011 (PA2016-134). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD**

An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

On behalf of Kimberly Brandt, AICP, Community Development Director

By:

  
\_\_\_\_\_  
Chelsea Crager, Assistant Planner

GBR/cc

Attachments: CD 1 Vicinity Map  
CD 2 2016 Topographic Survey (NAVD88)  
CD 3 Grade Plane Exhibit

# **Attachment No. CD 1**

Vicinity Map



# **Attachment No. CD 2**

Topographic Survey





# **Attachment No. CD 3**

Grade Plane Exhibit





## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

(949) 644-3200 Fax: (949) 644-3229

[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

**Application No.** Limited Term Permit No. XP2016-003 (PA2016-171)  
**Applicant** Newport Dunes  
**Site Address** 1131 Back Bay Drive  
Newport Dunes Christmas Trees  
**Legal Description** Portions of Multiple Parcels

On **October 20, 2016**, the Zoning Administrator approved a Limited Term Permit application for Christmas tree sales (seasonal sales) in the Newport Dunes Resort and Marina parking lot located in the PC 48 (Newport Dunes) Zoning District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions:

### **ZONING DISTRICT/GENERAL PLAN**

- **Zone:** PC 48 (Newport Dunes)
- **General Plan:** PR (Parks and Recreation)

### **REQUIRED FINDINGS**

In accordance with Section 20.52.040 (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act Guidelines under Class 4 (Minor Alterations to Land).*

#### Facts in Support of Finding:

1. Class 4 exempts minor temporary uses of land having negligible or no permanent effects on the environment including the sale of Christmas trees.

#### Finding:

- B. *The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and*

*orderly growth of the City, nor 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 requested limited duration use.*

Facts in Support of Finding:

1. The operation of temporary Christmas tree sales has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
2. The subject property has been used for temporary Christmas tree sales in the past and has not proven detrimental or hazardous to public convenience, health, or safety of persons residing or working in the neighborhood.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot.*

Facts in Support of Finding:

1. The proposed limited duration use will take place in a 4,800 square-foot (0.11 acres) temporary tent located on a portion of an existing parking lot that is approximately four (4) acres in size. Within the tent will be a tree display area and a sales booth.
2. All temporary structures and improvements will be erected on private property.
3. Adjacent properties to the northeast, east, and southeast are buffered from the limited duration use by Back Bay Drive and a private access drive into the parking lot.
4. As conditioned, the applicant is required to maintain public access and parking in accordance with the Newport Dunes Settlement Agreement, including, but not limited to boat launch and trailer parking, wash down, beach and day use facilities, bike trail, human-powered launch, and camping.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate.*

Facts in Support of Finding:

1. The subject lot maintains adequate access from Back Bay Drive via a four (4) lane access drive.

2.

Finding:

- E. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator.*

Facts in Support of Finding:

1. The Christmas tree sales lot is not anticipated to generate an excess of vehicular traffic or impact the parking for patrons and guests of the Newport Dunes Resort and Marina because high turnover is expected.
2. Adequate temporary parking will be provided by way of the existing Newport Dunes Resort and Marina parking lot.
3. The project is conditioned requiring adequate traffic flow on Back Bay Drive and circulation within the parking lot be maintained.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. Christmas tree sales will be held no earlier than November 25, 2016 and end no later than December 22, 2016.
2. The Christmas tree sales lot is conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
3. The subject lot is not located within a specific plan.

**CONDITIONS OF APPROVAL**

1. The limited duration sales use shall not commence operation prior to November 25, 2016 and shall conclude by end of day December 22, 2016.
2. During the temporary event, the operator shall maintain public access and parking in accordance with the terms of the Newport Dunes Settlement Agreement, including but not limited to, boat launch and trailer parking, wash down, beach and

- day use facilities, bike trail, human-powered launch, and camping.
3. All temporary structures shall be anchored and a building permit shall be secured for those structures as required by the Building Division.
  4. All temporary structures are required to be inspected by a Building Division Inspector. The applicant shall comply with all lawful orders and requirements of the Building Inspector. Inspection approval is required before the temporary tent can be entered by the public.
  5. The limited duration use shall only operate between the hours of 10:00 a.m. and 10:00 p.m., daily.
  6. The operator of the limited duration use shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. If noise generation does not comply with the aforementioned provisions, the Community Development Director may require remediation measures which may include relocation of equipment.
  7. No outdoor sound system, loudspeakers, or paging system shall be permitted in conjunction with the facility.
  8. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted. If in the opinion of the Community Development Director the existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas, the dimming of light sources or other remediation may be ordered. An electrical permit shall be secured for lighting as required by the Building Division.
  9. All electrical shall be in good working order and shall be protected from pedestrian traffic. An electrical permit shall be obtained and the site inspected by the Building Division.
  10. Accommodations for accessibility shall be provided as close as possible to the tree lot.
  11. The site driveway access shall have adequate sight distance pursuant to City Standard STD-110-L.
  12. The applicant shall ensure patron vehicles do not impact traffic flow on Back Bay Drive.

13. Operation of the Christmas tree lot/sales shall not impact the vehicular circulation within the remaining parking areas.
14. The site shall be cleaned of debris, litter, or any other evidence of the limited duration use upon completion or removal of the use, and shall continue to be used in compliance with the Zoning Code. The site shall be adequately cleaned by midnight on December 31, 2016. An inspection by Code Enforcement is required. Failure to adequately clean the site will result in a forfeiture of a portion or the entirety of the \$500 deposit.
15. A valid Business License Tax Certificate shall be secured from the Revenue Division prior to commencement of the limited duration use.
16. All signs shall be in compliance with Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code and the site is limited to two (2) temporary banner signs not to exceed 75 square feet each. Placement of temporary signage shall be subject to Planning Division approval.
17. Signage shall be placed in a manner that does not impact the view of drivers while entering and exiting the site.
18. All proposed temporary structures and any site contents shall be located within the private property lines.
19. Tents shall comply with Newport Beach Fire Department Guideline A.03. Tents and temporary membrane structures require a plot plan and permit issued through the fire department.
20. 2A 10BC fire extinguishers will be required. All extinguishers shall be mounted in a visible unobstructed location at a height of 3 to 5 feet. Extinguishers shall have a current State Fire Marshal servicing tag attached to the fire extinguisher. California Fire Code Section 906.1
21. An electrical permit shall be obtained and the site inspected by the building department.
22. Fuel powered equipment (generators) shall be a minimum of 20 feet from any combustible materials (including Christmas trees). C.F.C. Section 5704.4.6 & 3103.8.2.
23. Motor vehicles shall be a minimum of 20 feet from all trees stored on the lot and any tents on the property.
24. Fuel powered equipment (generators) shall be isolated from contact with the public by physical guards, fencing or enclosure.



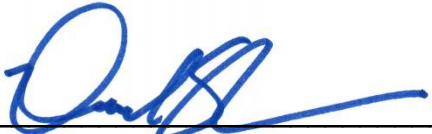
25. Open flame devices, such as torches, candles, warming devices and other devices using a flame, capable of igniting combustible materials, shall not be used in or adjacent to tents or canopies, or near or on combustible decorations or materials such as, but not limited to, weeds, straw or hay.
26. All weeds, combustible vegetation, trash and combustible storage shall be removed from areas adjacent to and within 30 feet of tents and canopies.
27. Combustible ground covering greater than two inches in depth shall not be permitted unless approved by the Fire Department. Straw and other combustible ground covering shall be maintained in a damp or moist condition and/ or be treated with an approved fire retardant chemical.
28. All flocking material shall be flame retardant.
29. Smoking shall not be permitted in tents or canopies or in adjacent areas where hay, straw, sawdust, Christmas trees, or other combustible materials are being used, displayed, or stored. "NO-SMOKING" signs shall be conspicuously posted throughout the lot and in the tent or canopy, as well as all points of entry that are visible to all patrons who enter the premises.
30. The approval of the requested limited term permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful granting of all required permits from any other department or governing agency.
31. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Newport Dunes Christmas Trees including, but not limited to, XP2016-003 (PA2016-171). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD**

An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

On behalf of Patrick Alford, Zoning Administrator

By:



---

David S. Lee, Planning Technician

JM/dl

Attachments:   ZA 1 Vicinity Map  
                  ZA 2 Site Plan

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



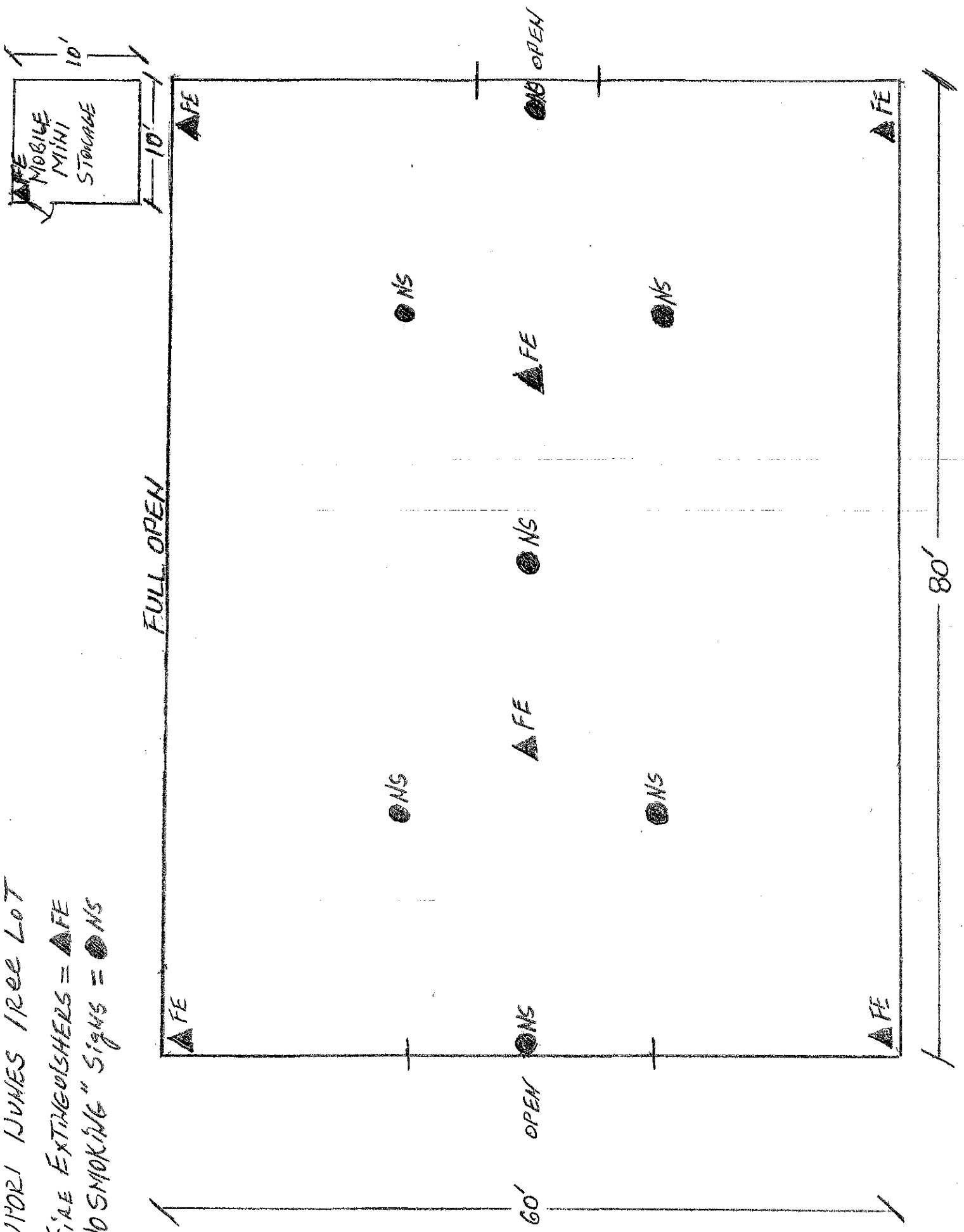
Limited Term Permit – Seasonal No. XP2016-003  
PA2016-171

**1131 Back Bay Drive**

# **Attachment No. ZA 2**

Site Plan

W/20'1 INCHES TREE LOT  
FIRE EXTINGUISHERS = ▲ FE  
NO SMOKING " SIGNS = ● NS



# 50 NEWPORT DUNES

WATERFRONT RESORT & MARINA  
CELEBRATING OVER 50 YEARS OF HOSPITALITY

## Newport Dunes Resort Map



**NEWPORT DUNES**  
WATERFRONT RESORT & MARINA  
949-729-3800

© 2014 Newport Dunes Waterfront Resort & Marina

 = Christmas Tree Lot (Tent 60x80)