

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.:	5-14-0580
Applicant:	Patrick Werner Family Trust
Agent:	Shellmaker Inc.
Project Location:	1226 West Bay Ave., Newport Beach (Orange County)
Project Description:	Demolition of an existing 250 sq. ft. "U" shaped wood float boat dock, three 12-in. square concrete dock piles, and 3 ft. x 20 ft. gangway and installation of a new 672 sq. ft. "U" shaped wood float dock, four 14-in. square concrete dock piles and new 3 ft. x 24 ft. gangway. No changes proposed to the existing pier approach and pier platform. Total water coverage would increase by 422 sq. ft.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes demolition of an existing 250 sq. ft. U-shaped boat dock float, three 12-in. sq. concrete support piles and gangway and installation of a new 672 sq. ft. U-shaped dock float with four new 14-in. sq. concrete support piles and a new gangway. No changes are proposed to the existing pier approach, pier platform or bulkhead. The proposed new larger dock float would result in a 422 sq. ft. increase of water coverage, a significant 250% increase in overall water coverage.

The major issues associated with the proposed development are concerns regarding biological resources, specifically, cumulative impacts to biological productivity of coastal waters resulting from increased water coverage, reduced light/shading, habitat displacement, decreases in foraging habitat

for sight foraging marine birds and typical construction and post construction impacts upon water quality. The Commission recommends modification of the project because the proposed configuration is inconsistent with Coastal Act Sections 30230 and 30231 regarding maintenance and enhancement of biological productivity of coastal waters and water quality. As proposed, the project is inconsistent with Coastal Act Section 30250 which requires that new development be located where it will not have cumulative adverse effects on coastal resources.

Therefore, in order to minimize adverse impacts to biological productivity of coastal waters per Sections 30230, 30231, and 30250 of the Coastal Act, and equivalent policies in the Certified Land Use Plan (CLUP) **Special Condition 1** requires the applicant submit a revised project plan to minimize overall water coverage to the greatest extent feasible by reducing the proposed finger float widths to the minimum required by the City of Newport Beach harbor Design Standards.

Additionally, the proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions are: 1) Final Revised Plans (to minimize the overall water coverage of the proposed dock float; 2) pre- and post-construction eelgrass surveys; and 3) pre- and post-construction caluerpa taxifolia surveys; 4) compliance with construction responsibilities and debris removal measures; 5) construction best management practices; and 6) that approval of the permit does not constitute a waiver of any public rights that may exist at the site.

Commission staff recommends **approval** of coastal development permit application 5-14-0580 as conditioned.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission on tidelands, submerged lands and public trust lands such as the subject site. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act with the certified City of Newport Beach LCP Land Use Plan used as guidance.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION	Page 3
II.	STANDARD CONDITIONS	Page 3
III.	SPECIAL CONDITIONS	Page 4
IV.	FINDINGS AND DECLARATIONS	Page 8
	A. PROJECT LOCATION AND DESCRIPTION	Page 9
	B. MARINE ENVIRONMENT & MARINE RESOURCES	Page 10
	C. PUBLIC ACCESS	Page 13
	D. LOCAL COASTAL PROGRAM (LCP)	Page 15
	E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	Page 15

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Existing/Proposed Dock Configuration

Exhibit 3 – Project Plans

Exhibit 4 – City of Newport Beach Harbor Design Criteria, Guidelines and Standards (excerpt)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-14-0580 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be

perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The intent behind the required re-design is to minimize water coverage of the proposed new dock. The dock float finger widths shall be reduced to the minimum 4' finger width requirement per the City of Newport Beach Harbor Design Criteria for residential boat docks with berths under 55 ft. in length. The revised project plans shall be in substantial conformance with the plans submitted on March 21, 2014. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

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

2. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. If any portion of the project commences in a previously undisturbed area after the last valid eelgrass survey expires, a new survey is required prior to commencement of work in that area. The survey shall be prepared in full compliance with the "*Southern California Eelgrass Mitigation Policy*" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval by the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new Coastal Development Permit.

Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required by this special condition, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "*Southern California Eelgrass Mitigation Policy*" Revision 8 (SCEMP) (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in

consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval by the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the SCEMP. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new Coastal Development Permit unless the Executive Director determines that no amendment or new permit is legally required.

3. **Pre-Construction *Caulerpa taxifolia* Survey.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this Coastal Development Permit (the “*project*”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate. If any portion of the project commences in a previously undisturbed area after the last valid *Caulerpa taxifolia* survey expires, a new survey is required prior to commencement of work in that area.

The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

- (1) for the review and approval by the Executive Director; and
- (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Calurpa taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Calurpa. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

4. **Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- K.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- L.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- O.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

A. Boat Cleaning and Maintenance Measures:

1. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
2. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
3. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

B. Solid and Liquid Waste Management Measures:

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge

pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and

3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.
6. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project involves an existing private residential dock over public tidelands in front of a single-family residence located at 1226 West Bay Ave. in the City of Newport Beach on the Newport Bay side of the Balboa Peninsula (**Exhibit 1**). The proposed development is demolition of an of an existing 250 sq. ft. "U" shaped wood float dock, three 12 inch square concrete dock piles, and 3 ft. x 20 ft. gangway and installation of a new 672 sq. ft. "U" shaped wood float dock, four 14 inch square concrete dock piles and new 3 ft. x 24 ft. gangway with no proposed changes to the existing pier approach and pier platform. **Exhibit 2** depicts the proposed new dock system layout and size compared to the existing layout and size. Proposed project plans are included as **Exhibit 3**. The proposed dock also would extend to the U.S. Pierhead Line. This is similar to other boat dock systems in the adjacent area as can be seen on the aerial photograph of the site included in **Exhibit 1**. No work is proposed to the existing bulkhead located along the seaward property line. The existing dock system (including pier approach, pier platform, gangway and dock float) covers 542 sq. ft. of water/tideland area. The new proposed dock system would result in 976 sq. ft. of water/tideland coverage (434 sq. ft. increase), a substantial change of overall water coverage; the proposed new dock float would also require one additional concrete support pile resulting in additional fill of coastal waters. There are no previous Coastal Development Permit approvals for the dock associated with this property, which is the subject of this application.

Local Government and Other Approvals

The proposed dock conforms to the U.S. Pierhead Line and is consistent with the City's Harbor Permit Policy. The project has received an approval-in-concept from the City of Newport Beach Harbor Resources Division on March 12, 2014 (Harbor Permit No. #116-1226 and Plan Check Number 2995-2013). The Regional Water Quality Control Board (RWQCB) has issued a "General Certification for replacement of Sheet and Dock Piles" determining that the proposed project will not adversely impact water quality if standard construction methods and materials are used and if no waste is discharged from the proposed project. The applicant has applied for a U.S. Army Corps of Engineers' Letter of Permission (LOP) to determine whether the proposed

project would have any adverse effect on essential fish habitats. In addition, the National Marine Fisheries Service (NMFS) has reviewed the project and had no comments.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

B. MARINE ENVIRONMENT AND MARINE RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launch areas.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(6) Restoration purposes.

Section 30250 of the Coastal Act states in part:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The proposed work involves replacement of an existing small floating dock with a much larger floating dock and no change to the existing pier approach and 10'x 12' pier platform. No work is proposed to the existing bulkhead located along the seaward property line.

Sections 30230 and 30231 of the Coastal Act require that marine resources, including biological productivity, be protected. The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by lower order green algae, phytoplankton, and diatoms that form the basis of the marine food chain. In addition to reduced sunlight and decreases in biological productivity of coastal waters, increased coverage of coastal waters is a significant concern since it also impedes avian foraging activities. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the State and federally listed California brown pelican found throughout Newport Harbor. Although the coverage of bay surface area habitat associated with this project may not seem to create significant adverse impacts, the cumulative effect of allowing significant increases in water coverage by dock projects will add up over time, especially as docks are considered a boating related use and is an allowable use of fill under Section 30233. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the amount of fill and water coverage beyond that which is consistent with the Section 30233, the overall effect would be a significant loss of coastal waters and soft bottom habitat.

A Preliminary Eelgrass Survey Report and Caulerpa taxifolia Survey was conducted at the project site and vicinity by Mark Sites on October 28, 2013. No eelgrass was mapped to exist in the vicinity of the proposed development. No other marine biological impact assessment, survey, or study was submitted describing other marine life in the project area. Although abundant in other areas of Newport Bay, historically, eelgrass has not been found in the vicinity of the subject site (i.e., harbor waters between the Balboa Peninsula and Lido Island) by the bay wide eelgrass surveys conducted by the City in 2004, 2007, and 2010. Those surveys only mapped small eelgrass patches on the north and eastern end of Lido Isle and none along this section of Balboa Peninsula. Water depth and sediment grain sizes at the subject site are within those that will support eelgrass, however, lack of eelgrass growth in the project vicinity may have to do with inadequate tidal flow and water quality necessary to support eelgrass. However, conditions in the bay do change over time and in theory, this is an area where eelgrass could potentially grow and thrive in the future.

Coastal Act Section 30233 clearly limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only including “*new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*” However, fill for boating facilities is only allowable *where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.* The proposed project would result in a

minor increase in fill (compared to existing conditions) due to one additional proposed support pile required to support the larger dock float. However, the amount of water coverage resulting from the replacement of a 250 sq. ft. float with a 672 sq. ft. float would result in a significant increase compared to existing conditions. The existing pier approach, pier platform, gangway and floating dock in their current configuration provide less water coverage and fewer piles (i.e., less fill). Compared to the proposed project, the existing floating dock/no project alternative is the least damaging environmental alternative and the proposed one is not because the proposed dock's significant increase in water coverage that results in adverse impacts on the biological productivity of marine resources that depend on light for their existence like the green algae, phytoplankton, and diatoms.

As outlined above, the proposed project raises concerns related to the substantial increase in water coverage. In response to staff request for further information regarding the nature of the request to modify the existing dock layout/the perceived need for a larger dock float, the applicants' agent Shellmaker Inc. responded:

*"The homeowner at 1226 West Bay Avenue needs the u-shaped dock configuration he has applied for to accommodate his vessels. He has the following:
 Elliot Sport Fisher: 52' long x 17.5' wide
 Bertram: 31' long x 11' wide
 Duffy: 21' long x 10' wide
 Harbor 20 Sailboat: 20' long x 8' wide
 There is no way these could be accommodated on a single finger or I-shaped float out to the project line."*

The City of Newport Beach Harbor Resources Division has established Harbor Design Criteria Guidelines and Standards for residential dock projects, these are provided as **Exhibit 4**. These Standards are minimum requirements. The minimum required finger widths for residential docks depends on the length of the berth, in this case, the applicant is proposing a 44' long x 20' wide berth, therefore, the minimum finger float width is 4', the applicant is proposing 6'. The minimum width of the float dock headwalk is no less than 6' for dock lengths up to 80'. The proposed dock float is a U-Shaped dock float with 6' wide finger floats and a 6' wide headwalk. According to the City's Standards, a 6' wide headwalk, as proposed by the applicant is the minimum required, but the proposed 6' wide finger floats could be minimized to 4' wide.

Revised Dock Float Fingers (Minimum Requirements)
Head Walk: 6' wide x 20' long = 120 sq. ft.
Finger: 4' wide x 44' long = 176 sq. ft.
Finger: 4' wide x 44' long = 176 sq. ft.
Total: 472 sq. ft.

Therefore, just a minor adjustment to the width of the finger floats could result in a project that meets the City's Residential Dock Standards and minimizes the increase in water coverage. In order to minimize adverse impacts to biological resources and to ensure that there will not be negative cumulative impacts to the Newport Harbor ecosystem, the proposed increased water coverage of the proposed larger replacement dock must be reduced as much as is feasible. The

Commission imposes **Special Condition #1** requiring the applicant submit revised project plans to minimize the finger float width from 6' to 4' while maintaining the minimum headwalk width of 6'. This would result in an approximately 200 sq. ft. decrease in water coverage for a new larger dock float at the site, from the proposed 672 sq. ft. dock float to an approximately 472 sq. ft. dock float. No change in the proposed U-shaped dock float configuration would be required to achieve this minimization of water coverage.

Additionally, other existing dock system components of the proposed boat dock, such as pier and pier platform are not built to the maximum allowable under City's Harbor Resources Design Standards. For example dock Standards allow for pier platforms not to exceed 170 sq. ft. which is a change from previous guidelines that set the maximum at 140 ft. or typically 10'x14'. The existing pier platform is 10'x12' or 120 sq. ft., supported by three pier T-Piles and is setback from the bulkhead by a 4' x 20' wooden pier approach. No work (i.e., repairs, replacement, enlargement, new fill) is proposed to these dock system elements. The existing 120 sq. ft. pier platform is an adequate size to meet boating related uses.

Furthermore, the City of Newport Beach Harbor Resources Division harbor permit contains the following special condition: *"Only marine oriented uses are allowed on the pier, pier platform, gangway and float. Patio furniture, plants etc...are not permitted."* This is consistent with the Commission's goal that dock projects be used for boating-related purposes. When proposing fill in coastal waters to build a new or expanded boating facility, the proposed project must be tailored to exclusively accommodate boating related uses. The pier structure must be strictly limited to boating-related uses, to provide a means for travelling from shore to the boat dock, and nothing more.

C. PUBLIC ACCESS

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.

The City of Newport Beach Coastal Land Use Plan contains the following policies:

- 3.1.4-3 *Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.*

- 3.1.4-4 *In residential areas, limit structures bayward of the bulkhead line to piers and floats. Limit appurtenances and storage areas to those related to vessel launching and berthing.*
- 3.1.4-5 *Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.*
- 3.1.4-7 *Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.*
- 3.1.4-8 *Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.*
- 4.2.3-17 *Continue to limit residential and commercial structures permitted to encroach beyond the bulkhead line to piers and docks used exclusively for berthing of vessels. However, this policy shall not be construed to allow development that requires the filling of open coastal waters, wetlands or estuaries that would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.*

The subject site is located on the Newport Bay Harbor facing side of Balboa Peninsula in the City of Newport Beach. Both the ocean and harbor sides of the peninsula are mostly developed with single family residences, the majority of which also have private boat docks which extend into public land and waters managed by the City. On-street parking is available along West Bay Avenue for public access to bay waters or bay beaches.

There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. The nearest public pedestrian access to public tidelands is available approximately 100 feet upcoast of the subject site at the 13th Street street-end. From this access point, members of the public may access tidelands and, for example, launch a kayak, or during low tide, it is possible to walk under the residential piers for strolls down the beach. The existing pier approach and platform are currently raised to the height of the bulkhead, providing sufficient clearance for public access to the tidelands below. The aerial photographs provided in **Exhibit #1** clearly show sandy beach areas covered by residential dock structures. The public can also access the public beach area seaward of the subject site by watercraft or by swimming to the site.

Public Rights

The Commission is not authorizing any new development in open coastal waters that would obstruct public use of or access to those waters. Furthermore, the proposed expanded dock does not encroach into the navigation channel and does not create an impediment to navigation.

Special Condition #6 affirms that approval of a replacement dock does not constitute a waiver of any public rights that exist or may exist at the site. As conditioned, the proposed development will not have any new adverse impacts on public access to the coast or to nearby recreational facilities and conforms to Section 30210 and 30211 of the Coastal Act. As adequate public access to the bay exists nearby, the Commission finds that no public access dedication is

necessary with the proposed new development and that the proposed project is consistent with section 30212 of the Coastal Act. Thus, as conditioned, the proposed development would not interfere with the public's right of access to the sea and interfere with recreational opportunities on public tidelands and is, consistent with City of Newport Beach Coastal Land Use policies and Sections 30210 and 30211 of the Coastal Act.

D. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005 and in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt under CEQA on March 12, 2014. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. The proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The conditions are: 1) revised project plans; 2) pre- and post-construction eelgrass surveys; and 3) pre- and post-construction caluierpa taxifolia surveys; 4) compliance with construction responsibilities and debris removal measures; 5) construction best management practices; and 6) that approval of the permit does not constitute a waiver of any public rights that may exist at the site. There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

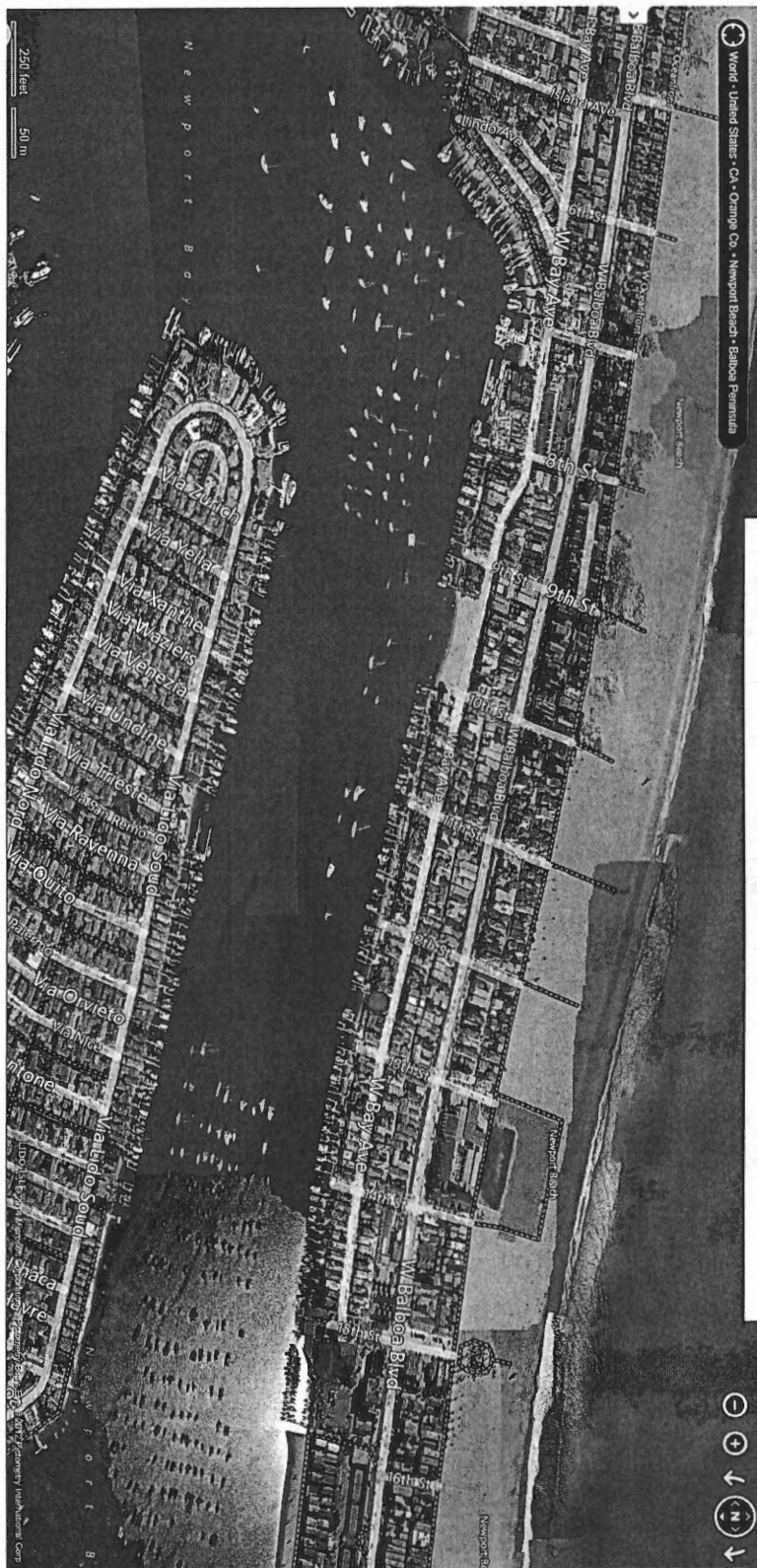
SUNSTANTIVE FILE DOCUMENTS

The City of Newport Beach harbor Resources Division issued a Harbor Permit #116-1226/Plan Check #2995-2013 on March 12, 2014

Preliminary Eelgrass (*Zostera marina*) Survey Report and *Caulerpa taxifolia* Survey, 1226 W. Bay Ave., Newport Beach, prepared by Mark Sites, dated November 11, 2013.

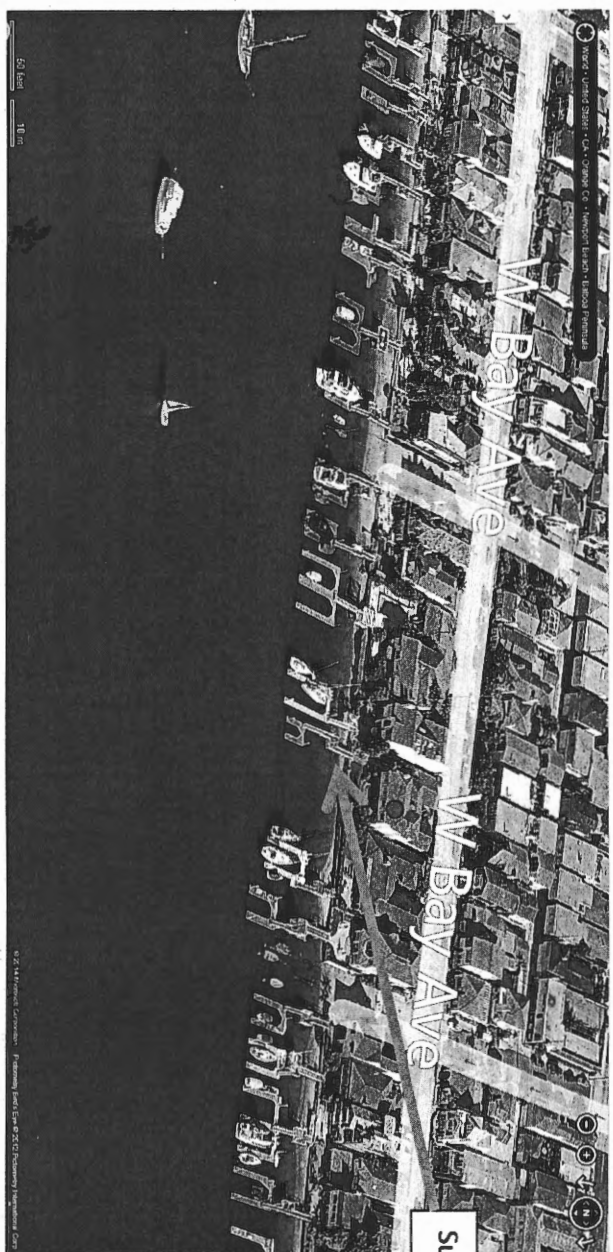
Correspondence dated August 19, 2014 from Shellmaker Inc., Lisa E. Miller, President re: 1226 West Bay Avenue, Newport Beach, CA 92661, Application #5-14-0580.

Vicinity Map - 1226 W. Bay Ave., Newport Beach, Orange County

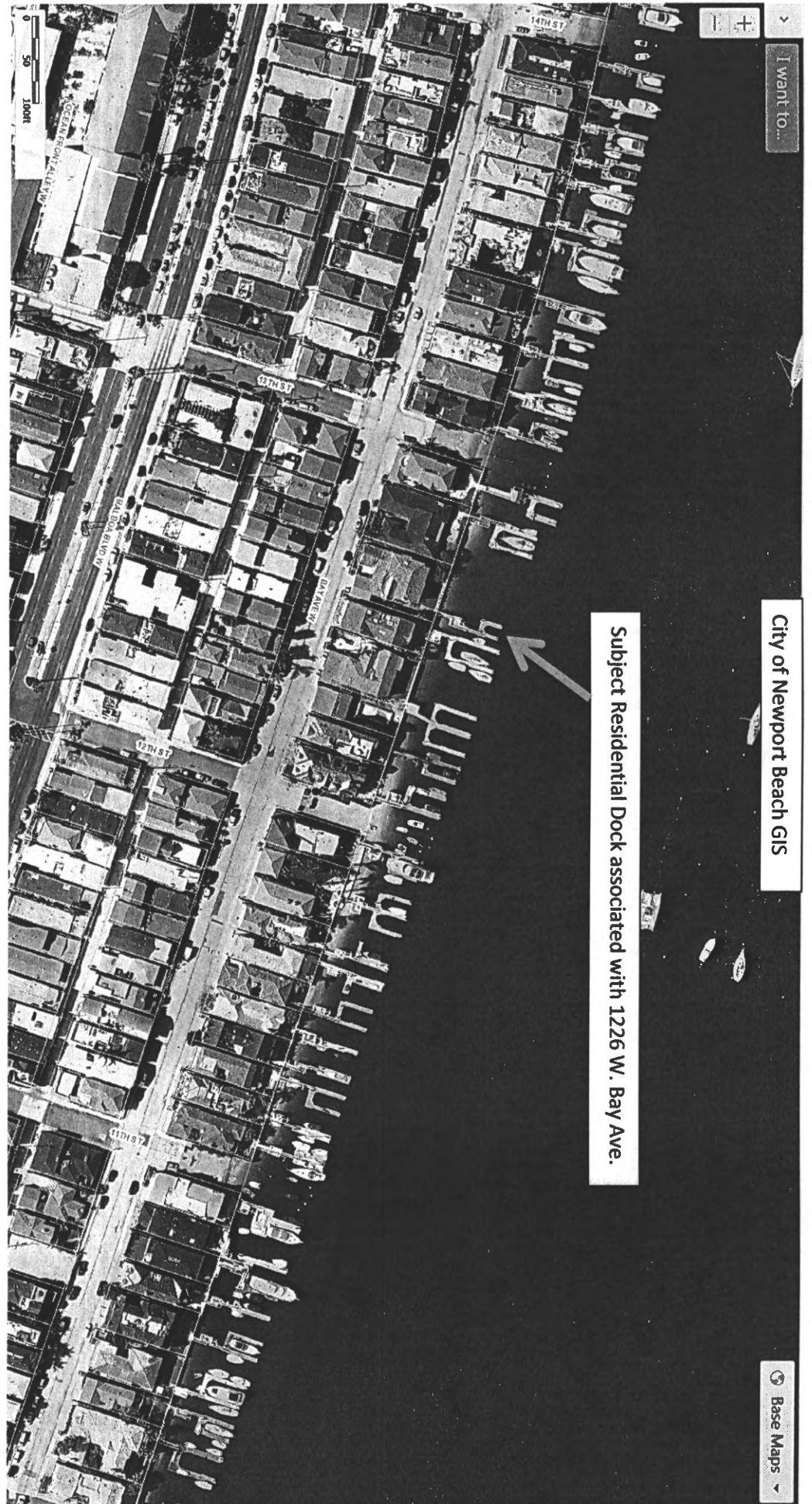


COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2



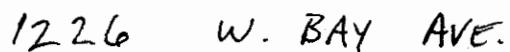
Subject Residential Dock associated with 1226 W. Bay Ave.



COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

(E) = existing to remain
(DEMO) = existing to be removed/demolished



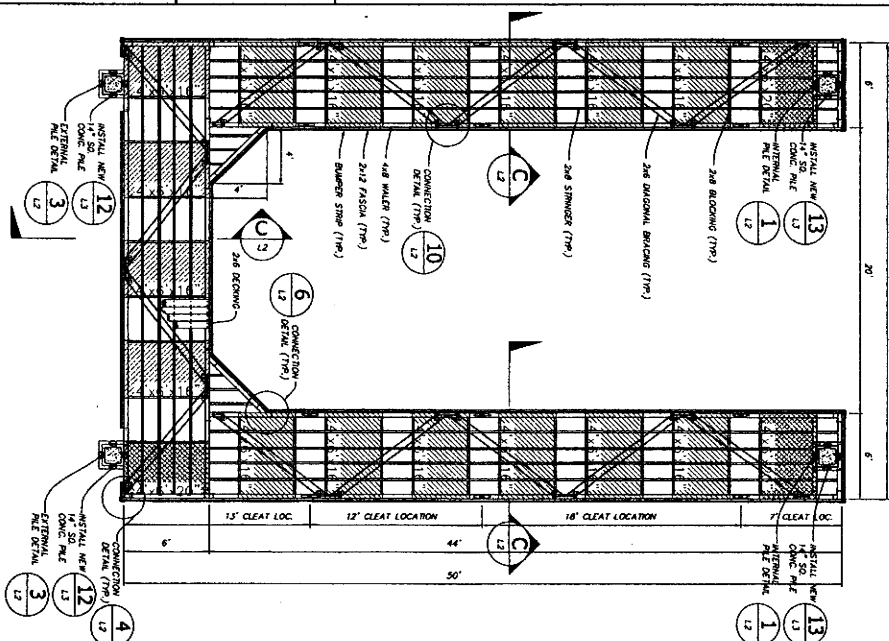
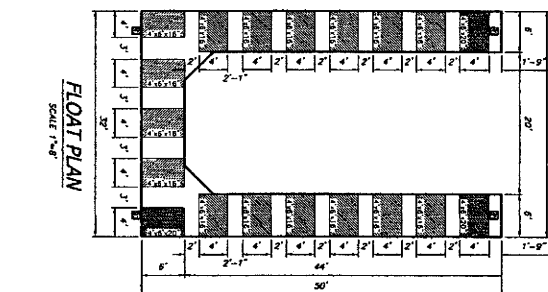


EXHIBIT # 2
PAGE 2 OF 4

PROPOSED SITE PLAN

SCALE 1"=10'

1. REMOVE AND REPLACE EXISTING FLOATING DOOR

2. REMOVE (3) EXISTING PILES.
3. INSTALL (4) NEW 14" SQ CONC. PILES
4. EXISTING 3"X20" GANGWAY TO BE RELOCATED.
5. EXISTING PIER AND (3) "T" PILES TO REMAIN IN PLACE.

FLOAT PLAN

Scale 1-6

**SHELLMAKER INC.
837 W. 17TH ST.
COSTA MESA, CA**

[illegible]

BLEWATER
INCORPORATED
Planning and Engineering Services
for Municipal and Industrial Districts

3500 Via Cabrillo Marina, Suite 200
San Pedro, CA 90731
Tel: 310 840 3132
Fax: 310 940 1824

**EXISTING VS.
PROPOSED SITE PLAN,
FLOAT PLAN &
FRAMING PLAN**

AS NOTED	02-27-14
2285 - C	
L-1	
1 of 3	

AS NOTED	02-27-14
2285 - C	
4-2	
2 of 3	

PROJECT
PAT WERNER
1226 W. BAY AVE
NEWPORT BEACH, CA

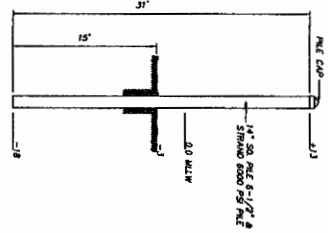
CONTRACTOR
SHELLMAKER INC.
837 W. 17TH ST.
COSTA MESA, CA

2500 1/8 Calhoun Highway, Suite 200
San Diego, CA 92121
Tel: 619 444 1111
Fax: 619 444 1111
Email: info@shellmaker.com

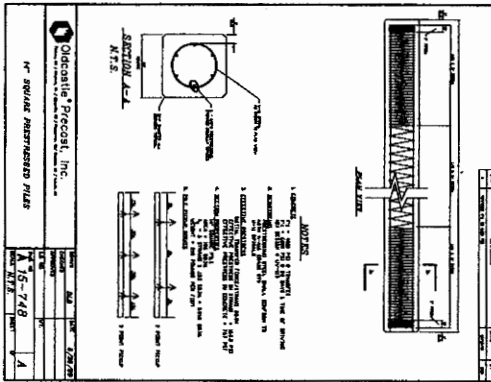
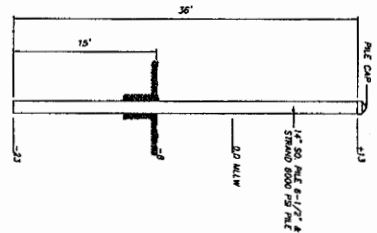
PILE INFORMATION

NO.	DATE	DESCRIPTION	BY	CHKD
1	02-27-14	AS NOTED	2285-C	
2		L-3		
3		3 of 3		

PILE DETAIL 12
SCALE 1"=4'



PILE DETAIL 13
SCALE 1"=4'



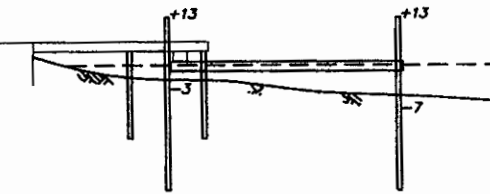
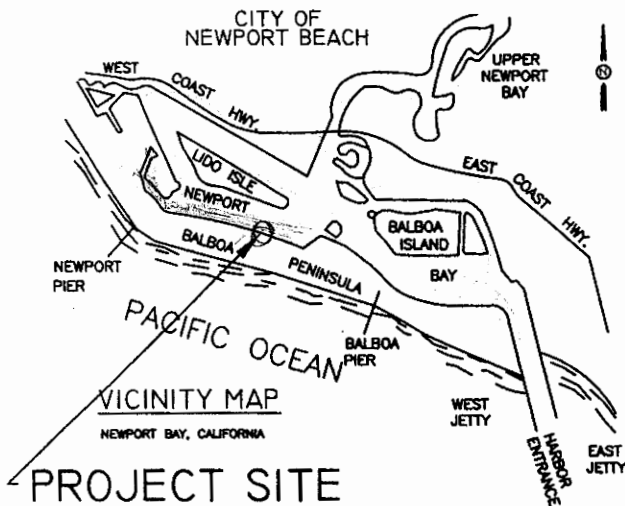
COASTAL COMMISSION

EXHIBIT # 2
PAGE 4 OF 4

COASTAL COMMISSION

CITY OF NEWPORT BEACH

EXHIBIT # 3
PAGE 1 OF 1



SCALE 1"=40'

ELEVATION

SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE DEPTHS BELOW MEAN LOWER LOW WATER. MAXIMUM RANGE OF TIDE APPROXIMATELY 10 FEET. HARBOR LINES ARE ESTABLISHED IN THIS SECTION OF NEWPORT BAY.

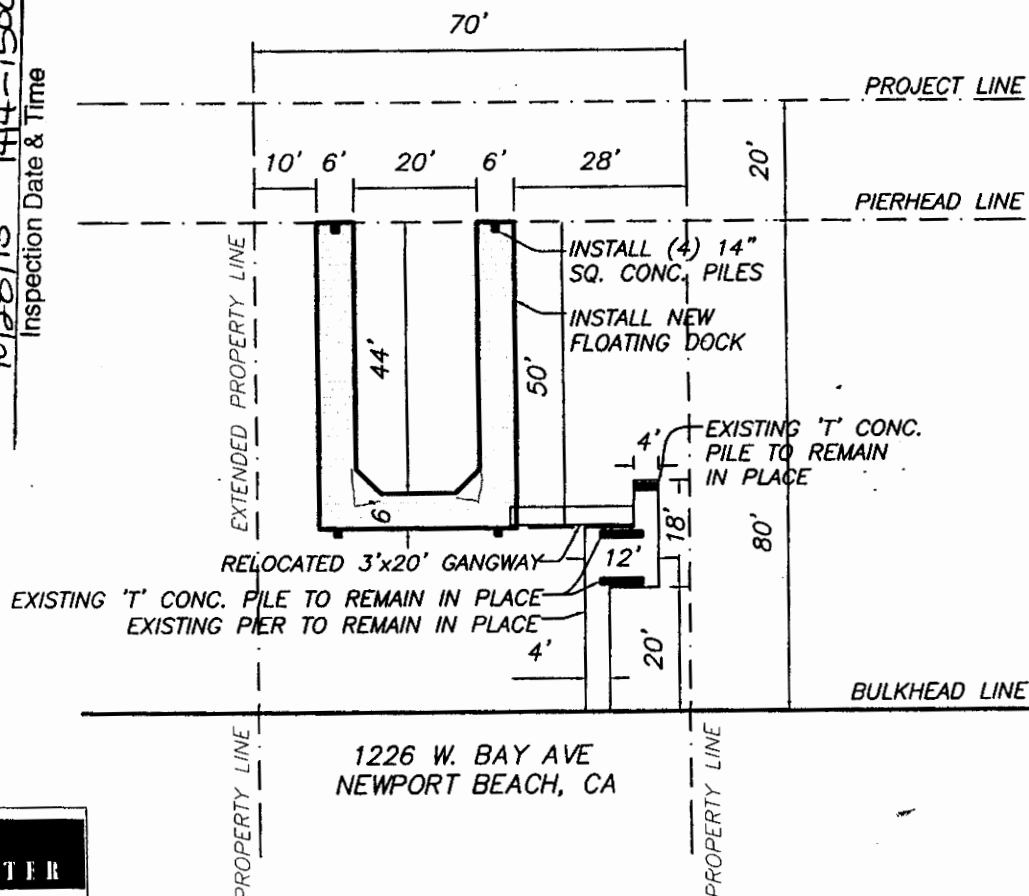
EEL GRASS INSPECTION

- ☐ Eelgrass within 15' of project
- ☐ Eelgrass within 15 - 30' of project
- ☒ No Eelgrass in project area

Signature

10/28/13 1414-1500

Inspection Date & Time



HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

Handwritten signature and date: 3/12/14



Planning and Engineering Services
For Marinas and Waterfront Resorts

SITE PLAN
SCALE 1"=30'

APPLICANT'S NAME: PAT WERNER

JOB ADDRESS: 1226 W. BAY AVE.

DATE: 07 MAR. 14

utilized as shown, or in combination with one another, in an overall marina dock scheme.

2. **LAYOUT AND DESIGN (Commercial & Residential)**

a. General

- (1) Layout and design of harbor facilities shall be based upon the use of the facility defined as follows:
 - (a) Single or joint residential
 - (b) Multi-residential
 - (c) Commercial
 - 1) Passenger
 - 2) Recreational boat marina
- (2) Harbor structures shall conform to "Layout & Design Guidelines for Marina Berthing Facilities", latest edition, published by the State of California Department of Boating and Waterways, 2000 Evergreen Street, Suite 100, Sacramento, California 95814; Telephone (888) 326-2822, except as modified by the City's harbor standard drawings within the Design Criteria.
- (3) See the attached **Harbor Standard Drawings** for plans, sections and details of typical conditions for vessel moorings and docks, gangways, platforms, seawalls, and beach profiles. These Standards are to be considered minimum requirements for the cases represented and, at the City of Newport Beach Building Department discretion, may not apply to the specific project submitted. The Building Department reserves the right to mandate deviation from the Standards, if particular project conditions require special consideration.

b. Slip and Boat Overhang into Adjacent Fairways:

- (1) Berths shall not be occupied by vessels more than 3 feet longer than the berth or slip, or in the case of fairways with a 1.75 x Lb width, not more than 10% of the length of the finger.
- (2) For berths either parallel or perpendicular to a main channel, vessels can extend beyond the limits of the slip by as much as the *beam of the boat*.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 3

c. Finger and Walkway Widths:

- (1) Minimum finger widths for recreational commercial and residential docks shall be per **Table No. 1**.
- (2) Fillets at the connection of walkways to fingers shall not have less than a 4-foot side.
- (3) Outer end (end tie) and side-tie fingers shall be a minimum of one foot wider than the minimal widths for all other adjacent finger docks.
- (4) Residential Headwalks and Mainwalks:
 - (a) Minimum residential headwalk widths shall be no less than 6 feet for dock lengths up to 80 feet in total length, and 8 feet wide for dock lengths of more than 80 feet.
- (5) Commercial Headwalks and Mainwalks:
 - (a) Minimum widths shall be no less than 8 feet wide. If use of a walkway is for staging the public while waiting to board a vessel, the minimum dock width shall be 12 feet.
 - (b) At gangways, a minimum of 6 feet of walking surface shall be maintained in front of the furthestmost gangway projection (including toe plate) at high tide, and have a minimum of 4 feet of clear space to walk along the side of any gangway for access to berthed vessels.



Table No. 1
Minimum Finger Widths

Fingerfloat Width (Feet)	Length of Berth (Feet)
F = 5.0'	All ADA Accessible Fingerfloats
F = 3.0'	Up to 35'
F = 4.0'	36' to 55'
F = 5.0'	56' to 70'
F = 6.0' ⁽¹⁾	71' to 84'
F = 8.0' ⁽¹⁾	85' and over

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 3

⁽¹⁾ Widths of more than that shown in this Figure may be necessary for specific site conditions and/or uses of fingers over 70 feet.

⁽²⁾ Minimum 5'-0" widths are required for the entire path of travel for ADA access, including paths along main- and headwalks.

