**CALIFORNIA COASTAL COMMISSION**
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| Staff: | L. Roman-LB |
| Staff Report: | 10/25/12 |
| Hearing Date: | 11/15/12 |

## STAFF REPORT: REGULAR CALENDAR

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| **Application No.:** | **5-12-214** |
| **Applicant:** | **Advanced Group 99-D (AERIE)** |
| **Agent:** | URS Corporation |
| **Project Location:** | Private waters and State tidelands seaward of 201-205 Carnation Ave, 207 Carnation Ave and a portion of 101 Bayside Place, City of Newport Beach (Orange County) |
| **Project Description:** | Demolish an existing wood pier, 22' long gangway, 10 – 14" diameter steel guide piles and a 490 sq. ft. double-U shaped floating dock with capacity for up to four 40' boats and construction of a new 3,194 sq. ft. 8 slip floating dock (including one guest slip) supported by 16 new concrete guide piles (9 – 16" diameter, 7- 24" inch diameter); new 44' long gangway; new 10'x14' pier/gangway platform supported by 4- 14" diameter concrete piles, a new wood pier, and repair of existing concrete piles reused to support the new wood pier; the proposed 8 new dock slips range in size from 40'-55' and one 120' long finger slip would in 2,654 sq. ft. of direct and indirect impacts to eelgrass. |
| **Staff Recommendation:** | Approval with Conditions |

# SUMMARY OF STAFF RECOMMENDATION

The applicant proposes demolition of an existing 4-slip floating dock system including the gangway, pier approach and six ABOVE IT SAYS 10 existing 14-inch diameter steel guide piles and construction of a 7-slip dock system and 1-guest side tie. The proposed slips would accommodate two 40' length vessels, two 45' length vessels, two 55' length vessels, one 120' long tie dock that may accommodate one large 100'+ vessel or two to three smaller vessels (depending on length) and one 50' long temporary visitor guest dock. Six existing 14-inch diameter steel guide piles will be removed and 16 (9 – 16" diameter, 7?- 24" diameter) new pre-stressed concrete guide piles will be installed. PLS CHECK THE NUMBERS RE PILES AND DIFFERENCE BETWEEN BOAT SIZE ACCOMMODATED AND SLIP SIZE

The major issues associated with the proposed development are impacts to biological resources, specifically, eelgrass and soft bottom habitat and construction and post construction impacts upon water quality. As proposed, the 3,194 sq. ft. dock would directly and indirectly impact approximately 2,654 sq. ft. of existing eelgrass. The applicant has proposed a mitigation plan, but that plan involves deferral of the mitigation for at least 2 years, which is something the Commission has not typically accepted. Furthermore, the eelgrass impact is avoidable with a revised design. To ensure the proposed project is consistent with the marine resource protection policies of the Coastal Act, staff is recommending the Commission impose a special condition requiring revised plans to ensure no impact to eelgrass by requiring minimization of the footprint of the proposed replacement dock. An alternative dock layout, including but not limited to replacement of the existing dock in its current configuration would result in no loss of eelgrass. Additionally, staff is recommending the Commission impose special conditions which require compliance with construction best management practices and long term boating best management practices to avoid adverse impacts upon water quality. These special conditions are necessary to assure that the proposed project is consistent with the marine resource protection policies of the Coastal Act.

Staff recommends that the Commission **APPROVE** the proposed project subject to **FIVE (5) SPECIAL CONDITIONS**. The **SPECIAL CONDITIONS** require: 1) revised plans to avoid eelgrass impacts; 2) construction responsibilities and debris removal measures; 3) that approval of the permit does not constitute a waiver of any public rights that may exist at the site; 4) pre- and post-construction eelgrass surveys (to verify eelgrass avoidance); and 5) pre-construction caluerpa taxifolia surveys.

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.

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# I. MOTION AND RESOLUTION

**Motion:**

*I move that the Commission **approve** Coastal Development Permit No. 5-12-214 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, located on public trust tidelands and submerged lands, 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

1. **Submittal of Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval two (2) full size sets of Revised Project Plans to modify the proposed dock design to avoid direct and indirect impacts to eelgrass, including shading impacts, and to minimize fill of open coastal waters associated with the placement of concrete piles. The revised plans shall show the following changes to the project: 1) the proposed floating dock shall be placed as close as possible to the onsite natural rock outcropping; 2) in order to accommodate the proposed floating dock as close as possible inland, it may be necessary to remove all or portions of proposed 10'x14' pier platform; 3) the dock layout shall not directly or indirectly impact eelgrass via pile driving or direct shading per the May 2012 Eelgrass Survey conducted by Coastal Resources Management and any subsequent eelgrass survey required pursuant to Special Condition 4 (pre/post construction eelgrass survey); 4) the size and quantity of piles shall be the minimum necessary for engineering purposes, but in no case should exceed 12 piles; and 5) the final pier, gangway and dock floats shall be limited to fit within the area defined by Exhibit 3.

   The applicants 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. **Construction Responsibilities and Debris Removal/Best Management Practices.** The applicants shall comply with the following construction related requirements:
   (1) 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.
   (2) 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.
   (3) 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.
   (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
   (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.

(6) 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.
(7) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
(8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
(9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
(10) 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.
(11) 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.
(12) 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.
(13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
(14) 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.
(15) 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
(16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

(1) Boat Cleaning and Maintenance Measures:

a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.

b. 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.

c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

a. 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 will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

a. 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 will 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.
b. 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.
c. Bilge cleaners containing detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

3. **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 property. The applicants shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. **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, or eelgrass adjacent to the project area that has the potential to be impacted by the development as well as potential eelgrass habitat areas, 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 to ensure that there will be no adverse impacts to the eelgrass from the proposed project.

**Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in this special condition, or eelgrass adjacent to the project area that has the potential to be impacted by the development as well as potential eelgrass habitat areas, 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.

5. **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) to the Executive Director for the review and approval; 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.

# IV. FINDINGS AND DECLARATIONS:

## A. PROJECT LOCATION AND DESCRIPTION

The project site is private waters and State tidelands located seaward of an approximately 1.4-acre residential property comprised of 201-205, 207 Carnation Avenue and a portion of 101 Bayside Place in the City of Newport Beach, Orange County (Exhibit 1). Redevelopment of the residential site was recently approved including demolition of the existing 14 unit apartment building and construction of a 7 unit condominium structure (detailed more fully below). The land portion of the site is surrounded by residential uses, bounded to the north by existing single-family residences and Bayside Place; to the east and southeast by Carnation Avenue and existing single-family residences, to the south is the large Channel Reef condominium complex with approximately 50 units which has a commercial pier permit from the City with 9-slip marina dock and 160' U-shaped slip which accommodates approximately a dozen Duffy-type boats. West of the site is the main entrance to Newport Bay from the Pacific Ocean and the eastern end of Balboa Peninsula.

The privately-owned portion of the property consists of a steep coastal bluff lot on the west-side of the site which is subject to tidal action with a rocky intertidal area at the base of the bluff forming a small cove beach with natural rock outcroppings. The private property line in this area extends out into the bay to a court adjudicated line. The portion of the site subject to tidal action does not currently have any shoreline protection (i.e., bulkhead, seawall, etc). The bluff top and portions of bluff face are developed with single and multi-family residential structures both on the subject site and adjacent to the site. The site is visible from the water along Newport Harbor and from public beach areas on Balboa Peninsula across harbor. The CLUP designates the intersection of Ocean Blvd and Carnation Ave (looking from the bluff out towards the bay) as a Public View Point.

The applicant is proposing to demolish an existing 4-slip dock structure supported by 10 -14" diameter steel piles and accommodating 25' long vessels located in the water area west of the

residential property (the access pier and gangway are within private waters and the dock float is dock float is within State tidelands) and construct a new dock system with 8-slips (1 per residential unit plus one guest slip). Demolition will include the complete removal of all dock floats, gangways, and piles. Six (6) steel dock guide piles supporting the existing 490 sq. ft. foot 4-slip dock structure will be replaced with sixteen (16) new concrete piles (9 - 16" diameter piles and 7 - 24" diameter piles) supporting the new 3,194 sq. ft. dock float; an existing 20' long gangway is proposed to be replaced by a new 44' long gangway; the existing wood pier and 4 – 14" diameter steel piles leading to the gangway will be demolished and replaced with a new 10' x 14' wood pier platform supported by 4 – 14" diameter concrete piles. The new expanded docks would double the number of piles compared with the existing condition (from 10 to 20).

The pile supported wood pier walkway between the gangway pier platform and an existing concrete pad will be demolished and re-constructed in-kind (timber framing, timber deck and timber railings). Four existing concrete piles supporting the wood pier walkway within the cove beach are proposed to be maintained and repaired in place. An existing concrete deck connected to the inland extent of the wood pier and connects to the bluff stairs leading to the residential development at the bluff top is proposed to be maintained; no work is proposed to the existing concrete deck or concrete steps. Furthermore, no work is proposed to the existing bluff stairs and safety rails providing access between the residential development at the bluff top and residential docks at the toe of the bluff. Proposed dock plans are included as Exhibit 2.

The proposed slips would accommodate two 40' length vessels, two 45' length vessels, two 55' length vessels, one 120' long tie dock that may accommodate one large 100'+ vessel or two to three smaller vessels (depending on length) and one 50' long temporary visitor guest dock. Depending on the boat size, the proposed dock may accommodate as few as 8 vessels or as many as 12 vessels. The proposed docks are within the federal Pierhead Line. The Pierhead Line is 70-80 feet from the property line and the main channel is over 500 feet wide in this area (Exhibit 2). City policy allows boats to extend beyond the Pierhead Line no farther than the beam (maximum width) of the boat. Boats docked along the outboard slip would be restricted by the City to a maximum beam of 24 feet to ensure that no encroachment into the harbor channel lanes would occur by large vessels docked along the outer slip. The City has determined that the proposed docks will not cause an impediment to navigation in the main channel.

The proposed dock facility accommodating a minimum of 8 vessels (7 permanently berthed and 1 guest slip) will be larger and involve more water coverage at approximately 3,194 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 4-dock facility. The proposed new dock would cover approximately 2,704 sq. ft. more open water than the existing dock and would result in 10 more piles than are currently in place for a total of 20 piles.

**Previous Commission Actions**

- CDP 5-09-162(Advanced Group-99) - Demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining an on-grade stairway on the bluff face, demolition of a 2,810 sq. ft. single-family residence and construction of a new 61,709 sq. ft., 8-unit, 32-feet tall, 6-level condominium structure including four levels above grade and two subterranean levels, 25 parking spaces and common amenities including a fitness facility, lounge, patio, locker room, massage rooms, pool and space; hardscape and landscaping

improvements; grading consisting of 25,240 cu. yds. of cut; demolition of an existing 4-slip floating dock structure and replacement with a new 8-slip floating dock and guest side-tie; lot line adjustment to merge two lots and a portion of a third lot into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to combine a 584 sq. ft. portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue and to subdivide the air space for eight residential condominium units.

At the April 2010 Commission hearing, staff recommended approval in part and denial in part, approving the proposed land-side condominium development and denying the water-side dock development. However, prior to the Commission hearing, the applicant removed the dock demolition and new dock construction portion from the application. The Commission denied the proposed land-side condominium development. No previous Commission action regarding water-side development on the site has occurred.

- CDP 5-10-298(Advanced Group 99) - Demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining existing on-grade stairway on the bluff face and existing two-slip dock system, demolition of a 2,810 sq. ft. single-family residence, and construction of a new 51,124 sq. ft., 7-unit, 33-feet tall, 5-level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping improvements; grading consisting of 9,810 cu. yds. of cut; lot line adjustment to merge a 584 sq. ft. portion of 101 Bayside Place with the parcel identified as 201-205 Carnation Avenue and with the parcel identified as 207 Carnation Ave into one single 61,284 sq. ft. lot for residential purposes; and tentative tract map to subdivide the air space for seven residential condominium units.

In June 2011, the Commission approved a modified land-side development on the subject site. The applicant modified the project after taking into consideration the Commission's concerns and comments from previous hearings regarding the amount of proposed grading, landform alteration, bulk of proposed structure, use of parking elevators and revised plans to bring all development, specifically cantilevered decks, cantilevered patios, and cantilevered pool areas behind a plane extended vertically from the 50.7' elevation defined by the City of Newport Beach as the Predominant Line of Existing Development (PLOED).

**B. MARINE ENVIRONMENT, MARINE RESOURCES AND BIOLOGICAL PRODUCTIVITY**

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.*

**Biological Productivity**

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored and provides special protection to areas and species of special biological or economic significance. Coastal Act Section 30231 further requires that the biological productivity and the quality of coastal waters to be maintained and, where feasible, restored in order to maintain optimum populations of marine organisms and for the protection of human health.

The applicant provided a Marine Biological Impact Assessment for a Dock Renovation Project at 201-207 Carnation Avenue prepared by Coastal Resources Management, Inc., (CRM) dated June 18, 2012 and revised August 7, 2012. The assessment provides a clear depiction of the physical habitat of Carnation Cove – a rocky intertidal shoreline surrounding a small beach cove with intertidal sand flat habitat; a rocky intertidal/subtidal reef seaward of the cove; and subtidal sand-to-sandy silt bay bottom. Eelgrass was mapped for a total of 19,127.6 sq. ft. of the study area, further discussed in the section below. Marine life observed on the rock substrate within the study area included juvenile and adult giant kelp, red algae, scaly worm snail, wavy turban snail, barnacles, mussels, Kellet's whelk, ochre sea star, warty sea cucumber and lobster. Fish species observed included topsmelt, California garibaldi, shiner surfperch, black perch, kelp

bass, round sting ray, and Pacific electric ray. Other fish species observed during past surveys included mullet, senorita, barred sand bass, and unidentified turbot.

1. Eelgrass and Caulerpa taxifolia

Eelgrass and *Caulerpa taxilfolia* surveys are typically required when a project proposes disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Eelgrass (Zostera marina) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). Eelgrass canopy attracts marine invertebrates and fishes and the added vegetation and vertical relief it provides enhances the abundance and diversity of marine life compared to areas where the sediments are barren. Eelgrass is a major food source in nearshore marine systems, contributing to the system at multiple trophic levels. Eelgrass provides the greatest amount of primary production of any nearshore marine ecosystem, forming the base of detrital (decaying organic) based food webs and as well as providing a food source for organisms that feed directly on eelgrass leaves, such as migrating waterfowl. Eelgrass is also a source of secondary production, supporting epiphytic plants, animals, and microbial organisms that in turn are grazed upon by other invertebrates, larval and juvenile fish, and birds. For instance, bottom-dwelling invertebrates (i.e., clams, crabs, and worms) live within the soft sediments that cover the eelgrass roots and rhizomes. Eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. In addition to habitat and resource attributes, eelgrass serves beneficial physical roles in bays and estuaries. Eelgrass beds dampen wave and current action, trap suspended particulates, and reduce erosion by stabilizing the sediment. They also improve water clarity, cycle nutrients, and generate oxygen during daylight hours. The Commission considers eelgrass an important coastal resource and finds that any development proposed within the Newport Bay must be undertaken in such a manner to avoid impacts that would significantly degrade the biological productivity and quality of these coastal waters.

The Marine Biological Impact Assessment conducted by CRM states that a total of 19,127.6 sq. ft. (0.439 acre) of eelgrass was mapped during a May 2012 eelgrass survey. Of this total approximately 13% was mapped north of the existing dock and 87% was mapped south of the dock.

CRM conducted other eelgrass surveys in the project vicinity in Carnation Cove as follows:

- In 2005, 10,155.4 square feet (0.233 acre) of eelgrass was mapped
- In 2007, 10,062 sq. ft. (0.231 acre) of eelgrass was mapped (the decline in cover was associated with bay wide eelgrass habitat area reductions observed between 2005-2007)
- In the 2009-2010 City bay wide eelgrass survey, 14,107 sq.ft. of eelgrass was mapped
- In 2012 (the latest survey) 19,127.6 sq. ft. (0.439 acre) of eelgrass was mapped

Eelgrass habitat maps are included as Exhibit 4. The project has both direct and indirect long-term eelgrass habitat losses. Direct loss of eelgrass is due to direct displacement caused by new piles to support the proposed dock structures. Indirect long-term eelgrass loss is caused gradually due to changes in habitat conditions caused mostly by direct shading from dock structures and berthed vessels and turbidity caused by vessels. Eelgrass requires certain depths and amounts of light to grow and thrive. The total surface area of the dock structures will be 3,194 sq. ft. and will impact 2,654 sq. ft. (13%) out of the total 19,127,6 sq. ft. of eelgrass in the project vicinity.

The Marine Biological Impact Assessment states,

> *"The direct loss of 5.6 sq. ft. of eelgrass is anticipated as a result of the placement of dock support piles. The loss of the 5.6 sq.ft. of eelgrass vegetation as a consequence of pile driving will be mitigated at a 1.2 to 1 mitigation-to-impact ratio such that 6.7 sq. ft. of eelgrass will be transplanted on site."*

Regarding indirect eelgrass impacts, the Marine Biological Impact Assessment states,

> *"A total of 2,654 sq. ft. of eelgrass may be affected in the long term by dock and vessel shading effects beneath the dock and vessel structures. The actual amount of shading impact will be determined during two annual post-construction surveys as required by the Southern California Eelgrass Mitigation Policy (NMFS, 1991 as amended). For project planning purposes however, a total of 3,150.5 sq. ft. of soft bottom habitat will be set aside to mitigate for long term shading impacts at a ratio of 1.2 to 1. Eelgrass impacted by the project will be mitigated within the proposed on-site mitigation located in the cove shoreward of the dock facilities."*

An actual Eelgrass Mitigation Plan was not submitted in this Coastal Development Permit (CDP) application. Instead, as stated above, the Marine Biological Impact Assessment identifies the amount of direct and indirect eelgrass impacts and proposes mitigation the extent of which will be determined based on eelgrass surveys two years after construction of the docks. The final amount of mitigation to be required after dock construction is proposed to then meet the NMFS Southern California Eelgrass Mitigation Policy required 1.2 to 1 mitigation ratio. The Marine Biological Impact Assessment proposes to "set aside" an over 3,000 sq. ft. possible future on-site mitigation site within the Carnation Cove beach inland of the proposed docks and would require dredging out "excess" beach sands within the cove in order to create conditions suitable for eelgrass growth. However, no other specifics are given, such as the amount of dredging that would be required and its extent, habitat impacts associated with such dredging ,or to where the dredge spoils would be disposed. In addition the documents provided lack the usual components of a mitigation plan (i.e., a plan outlining mitigation techniques, timing, monitoring success, success criteria, etc.).

Most significantly, there is little justification provided for converting this natural cove area into an eelgrass bed. In fact, the applicant's own biological report (and past reports by others)

suggest that the existing cove is sensitive and somewhat rare in Newport Bay, which argues against its conversion. Regarding the sand flat habitat in Carnation Cove, the report states: *"The sand flats within Carnation Cove should be avoided by construction personnel and equipment. Disturbances to the sandy cove intertidal and shallow subtidal habitat and eelgrass habitat within the cove would be considered a significant adverse impact to on-site marine resources."*

The Marine Biological Impact Assessment further makes the finding that:

> *"Carnation Cove supports an extremely diverse assemblage of plant and animal life due to its location near the Harbor Entrance Channel, and the combination of rocky outcrops and fine sands-to-silts substrates. This region of Newport Harbor shares many characteristics common to nearshore subtidal reef and sand bottom marine habitats and communities located off Corona del Mar. Carnation Cove is an important marine habitat that no longer exists in other areas of Newport Bay."*

Section 30230 of the Coastal Act requires special protection be given to areas and species of special biological significance and requires that uses of the marine environment be carried out in a manner that will sustain biological productivity. Section 30233 of the Coastal Act permits fill associated with expanded or new boating facilities, like the proposed boating facility, in accordance with other applicable provisions and where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

As proposed, the dock layout would have a significant adverse impact upon eelgrass. Half of the proposed 50' x 6' guest dock float would shade the large eelgrass patch on the north end of the dock and the pile driven to support the guest float would directly impact eelgrass. The southern portion of the dock (40', 45, and 55' boat slips) also both indirectly and directly impact eelgrass.

According to the applicant, the length of the longest floating dock finger was shortened resulting in a loss of one dock berth in response to a reduced number of approved condominium units (from 8 units to 7 units) on the land-side portion (approved by CDP 5-10-298). The dock alternatives reviewed in the project EIR (referenced in Appendix A) considered larger dock conceptual plans which were later rejected by the applicant due to engineering design considerations or visual impacts. No changes to the dock layout have been considered by the applicant in order to minimize or avoid impacts to eelgrass after receiving the results of the latest 2012 eelgrass survey. The available water area in which residential docks could be accommodated and result in no impacts to eelgrass encompasses approximately a 7,400 sq. ft. zone identified by staff in Exhibit 3. The area surrounding the existing docks is the only area in the project vicinity without eelgrass; most likely due to boat related impacts (propeller wash, turbidity, shading) associated with use of the existing docks. It is entirely feasible to accommodate a different dock layout within the approximately 7,400 sq. ft. which appears to already be disturbed and impacted by the long time use at the existing docks. Exhibit 5 is a City of Newport Beach eelgrass survey map of the vicinity; it is apparent that eelgrass thrives in this area of Newport Bay; a dock system which avoids eelgrass impacts in such a biologically productive area would be the preferred feasible less environmentally damaging alternative. Therefore, the Commission imposes **Special Condition 1** requiring submittal of revised plans that avoid impacts to eelgrass.

The applicant provided an exhibit comparing the proposed dock to other docks in the immediate vicinity and north of project site, mostly single family residences along Bayside Drive (Exhibit 6). The applicant concludes that proportionate to the size of the surrounding 19 lots, the proposed project covers less dock square footage area and has less number of piles (an average of 25 piles per dock compared to the 20 proposed piles). Though the project may appear to propose less piles than the surrounding docks; this is mostly due to a function of geography. The Bayside Drive bay front homes all require long piers with 10+ piles to reach deeper waters; as the subject dock site is located far seaward of Bayside Drive at a rocky promontory, a long pier through public tidelands is not necessary to access deeper waters for a dock float. The 20 piles associated with the proposed project are all to support the large 3,194 sq. ft. dock and are not associated with a dock access pier. Regardless, the applicant's comparison does not relate to the adverse eelgrass impacts the Commission is addressing with the imposed condition of approval requiring a smaller dock footprint.

Eelgrass is also a major constraint to new or replacement dock projects along Bayside Drive. Most recently, at the May 2011 hearing, Commission staff was recommending denial of a new dock project at 2223 Bayside Drive (CDP application 5-10-012[Manzo]) due to significant adverse eelgrass impacts that could be entirely avoided through feasible alternatives such as a shared dock with an adjacent property, dry storage, commercial marina, reduced size pier and dock system not within public tidelands. The project was withdrawn by the applicant after the public hearing and prior to Commission action,

It should be remembered that there are other residential properties in Newport Harbor that do not have their own private residential boat docks and/or have fewer slips than residences. For example, there are six (6) lots along Bayside Drive without a dock; and at the nearby 50-unit Channel Reef condominium complex, there are ten slips. There are many other properties elsewhere in Newport Harbor that also don't have a pier and dock. If each were permitted to have a dock that resulted in adverse impacts to eelgrass, plus the cumulative impacts due to the amount of fill, the overall effect bay wide would be a significant loss of coastal waters, soft bottom habitat and highly productive eelgrass habitat. There is no inherent right to development of a private dock facility over public tidelands and submerged lands.

As proposed, the project does not conform to Coastal Act Sections 30230 and 30233 as no measures have been proposed to minimize adverse impacts upon eelgrass, a species of special biological significance. Furthermore, the mitigation suggested by the applicant has not been fully formulated, and the area proposed to be 'reserved' for mitigation is inappropriate. Therefore, the Commission imposes **Special Condition 1** requiring submittal of revised plans that avoid impacts to eelgrass. Exhibit 3 depicts an approximately 7,400 sq. ft. area between the natural rock outcropping and the City of Newport Beach Pier Head Line in which a revised dock layout may be accommodated without any impact to eelgrass. Only as conditioned, with revised plans to avoid impacts to eelgrass would the project conform with Coastal Act Sections 30230, 30231 and 30233.

2. Soft Bottom Habitat

The placement of piles in open coastal waters for the construction of a new boating facility is an allowable use under Section 30233(a)(3) of the Coastal Act "*where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects."* However, at this time, the applicant has not proposed in-kind mitigation for the fill of the bay's soft sandy bottom that would result from the placement of 16 dock support piles into the bay floor (cumulative surface area of approximately 34.58 sq. ft.). The applicant instead proposes out-of kind mitigation for direct, construction-related soft bottom habitat losses, by increasing the amount of proposed eelgrass mitigation to an additional 28.2 sq. ft. at 1.2 to 1 ratio resulting in 33.8 sq. ft. of additional eelgrass mitigation.

The existing dilapidated dock provided private berthing for up to four vessels for a previously existing 14-unit apartment building. A new 7-unit condominium structure is currently underway on the landward portion of the site. The applicant proposes a new larger dock structure that would provide one dock slip for each of the 7 condominium units (soon to commence construction) plus an additional 50' long guest dock. As such, the Commission must consider the overall cumulative fill of coastal water impacts that dock projects would have if every multi-family bayfront structure were to expand dock structures to provide a slip per unit.

As proposed, the dock expansion component of the proposed development will have an adverse impact resulting in the unmitigated fill of coastal waters. The project results in the total placement of 20 dock support piles into the bay floor. Sixteen (16) will be new piles to support the new larger dock float and will have the cumulative surface area of approximately 34.58 sq. ft. (the other four (4) piles are 14" diameter replacement piles supporting the existing pier). These new additional dock float guide piles constitute fill of open coastal waters. Under Section 30233, the proposed project must be the least environmentally damaging alternative. The Commission has found that, even with like-for-like replacements, current engineering standards usually require larger diameters and around one to two additional piles. In this case, the applicant is requesting double the quantity of larger diameter piles than exist today for the 4-slip structure. Using the above as a guide, the current proposal includes an unusually high number of larger diameter piles. Alternatives to the proposed project include no project, replacement of the dock in precisely the same configuration, or a change to the existing configuration.

**Project Alternatives**

- No Project Alternative. Under the no project alternative, the applicant could pursue simple maintenance activity of the existing 4-slip dock structure. However, simple maintenance could not feasibly repair the docks, nor bring them up to present engineering and safety standards. Simple maintenance would only prolong the condition of the existing docks. While the rate of deterioration would be reduced, further deterioration of the docks would not be fully abated. Safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system.

- Demolition and Replacement in Same Configuration. Replacement of the dock system in the same size and configuration and same number of piles would still result in additional fill of coastal waters, as the replacement piles would have to be larger diameter piles to

meet current engineering standards; however, a new replacement dock in the same configuration would result in no direct or indirect eelgrass impacts. Thus, this represents one environmentally superior alternative than the proposed project.

- Demolition and Replacement in a Different Configuration with No Impact to Eelgrass. Based on the May 2012 Eelgrass Survey, the applicant has an approximately 7,200 square foot area between the rock outcropping and the City of Newport Beach Pier Head Line where no eelgrass currently thrives (see Exhibit #3). This area may accommodate any number of dock system layouts accommodating 1-4 slips depending on slip size. This too is an environmentally superior alternative than the proposed project.

As previously noted, the applicant has not considered a modified dock layout to minimize impacts related to fill or provided feasible in-kind mitigation. As there are feasible less environmentally damaging alternatives, the Commission imposes **Special Condition 1** requiring revised final plans avoiding impacts to eelgrass and reducing the quantity of piles to the minimum necessary to address current engineering standards, but no more than 12, as rationalized above. Only as conditioned, with revised plans avoiding impacts to eelgrass and minimizing the number of piles would the project conform with Coastal Act Section 30233.

3. Water Quality

Coastal Act Section 30231 requires that 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. The proposed development will occur within and adjacent to coastal waters. In addition to supporting "*an extremely diverse assemblage of plant and animal life due to its location near the Harbor Entrance Channel*" as stated in the Marine Biological Impact Assessment for the site; the waters of Newport Bay/Harbor are used extensively for boating, and to a lesser degree fishing. Thus, it is important that the proposed project protect the health of recreational users of these waters consistent with Section 30231.

In addition to the numerous construction best management practices proposed by the applicant (i.e., silt curtains to control turbidity, etc.), **Special Condition 2** requires the applicant comply with detailed pre and post construction best management practices. Only as conditioned, with would the project conform with Coastal Act Section 30231.

## 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.*

Section 30212 of the Coastal Act states, in relevant part:

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is consistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby,…*

The site is located in coastal waters at the entrance to Newport Beach harbor along the east jetty side. The subject site consists of a coastal bluff lot with a cove beach and rocky intertidal area and is developed with a private residential dock structure. Direct public access from the street to the bay is not currently available on site, however, the beach at Carnation Cove (within the adjudicated private property line) is accessible to the public from the harbor (water) side.

The nearest access to a public beach is available approximately 700 feet south of the site at China Cove Beach and also at Corona del Mar State Beach approximately 1,500 feet south of the site. The nearest public access to the bay for boaters is at a public launch site approximately 1,500 feet northwest of the site at the Orange County Harbor Patrol facility. The site is highly visible from the water and from the west jetty on the Balboa Peninsula, specifically looking inland from the West Jetty View Park.

The proposed development involves the demolition of an existing private residential 490 sq. ft. dock structure which once served a 14-unit apartment building and construction of a new 3,194 sq. ft. dock structure to serve a new 7-unit condominium building currently under construction.

**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. The area identified by Commission staff in Exhibit #3 suitable for a proposed dock expansion is approximately 50' away from the Army Corps of Engineers designated 500' wide navigation channel and would not create an impediment to navigation. **Special Condition 3** affirms that approval of a 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 conforms with the public access and recreation policies 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.

The City of Newport Beach Planning Department is the lead agency for California Environmental Quality Act (CEQA) purposes. On July 14, 2009 the City Council certified the Final Environmental Impact Report and a Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15126(b).

The 2009 certified EIR certified by City reviewed landside development on the site consisting of the demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining an on-grade stairway on the bluff face, demolition of a 2,810 sq. ft. single-family residence and construction of a new 61,709 sq. ft., 8-unit, 32-feet tall, 6-level condominium structure including four levels above grade and two subterranean levels, 31 parking spaces and common amenities including a fitness facility, lounge, patio, locker room, massage rooms, pool and space; hardscape and landscaping improvements; grading consisting of 25,240 cu. yds. of cut; lot line adjustment to merge two lots and a portion of a third lot into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to combine a 584 sq. ft. portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue and to subdivide the air space for eight residential condominium units. The EIR also reviewed waterside development on the site consisting of demolition of an existing 4-slip floating dock structure and replacement with a new 3,448 sq. ft. 8-slip floating dock and guest side-tie.

The 2009 EIR concluded that no direct eelgrass impacts would occur and included mitigation measures to minimize water quality impacts and vessel-related impacts on eelgrass habitat during dock construction (i.e., vessel anchors, anchor chain, grounding, propeller scarring). However, since 2009, eelgrass habitat has expanded and the proposed dock would now have direct and indirect adverse impact on eelgrass habitat. Therefore, the impacts arising from the proposed project would be significant.

In addition, 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 plans; 2) compliance with construction responsibilities and debris removal measures; 3) that approval of the permit does not constitute a waiver of any public rights that may exist at the site; 4) pre- and post-construction eelgrass surveys; and 5) pre-construction caluerpa taxifolia surveys. 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

## SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach, Final Environmental Impact Report (EIR, Sch. No. 2007021054) accepted July 15, 2009

Approval-in-Concept/Pier Permit from the City Newport Beach Harbor Resources Department dated July 31, 2009 and updated dock plan dated February 25, 2011

Marine Biological Impact Assessment for a Dock Renovation Project, 201-207 Carnation Avenue, Corona del Mar, CA 92625, prepared for URS Corporation; prepared by Coastal Resources Management, PMB 327, 3334 E. Coast Hwy, Corona del Mar, CA 92625 dated June 18, 2012 and Revised August 7, 2012.

Eelgrass Survey, May 4, 2012, 201-207 Carnation Avenue, Newport Beach, California; prepared for URS Corporation; prepared by Coastal Resources Management, PMB 327, 3334 E. Coast Hwy, Corona del Mar, CA 92625

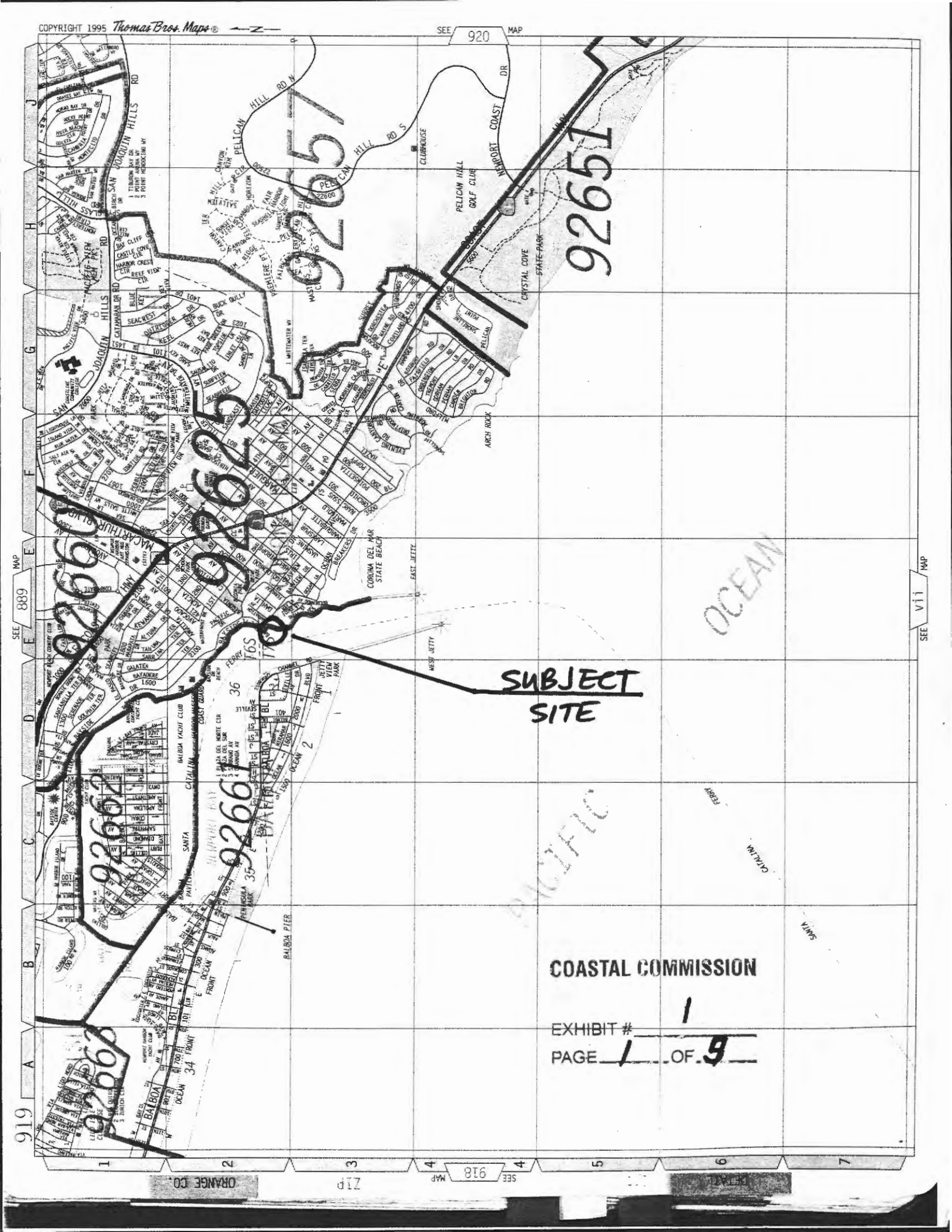
*Calurpa taxifolia* Survey, May 4, 2012, 201-207 Carnation Avenue, Newport Beach, California; prepared for URS Corporation; prepared by Coastal Resources Management, PMB 327, 3334 E. Coast Hwy, Corona del Mar, CA 92625

CDP 5-09-162(Advanced Group 99-D); CDP 5-10-298(Advanced Group 99-D)

US Army Corps of Engineers, Los Angeles District, Regional General Permit – pending

California Department of Fish & Game (CDFG) and National Marine Fisheries Service (NMFS) consultation - pending

Regional Water Quality Control Board (RWQCB) Section 401 Permit – pending




COASTAL COMMISSION

EXHIBIT # 1

PAGE 1 OF 9

201-207 Carnation Ave


2009-2011 Photos provided by Eagle Aerial Imaging www.eagleaerial.com

Selected Features
City Boundary
Station
Pierhead
Bulkhead

Private Property includes some water area

201-207 Carnation Ave


2009-2011 Photos provided by Eagle Aerial Imaging www.eagleaerial.com

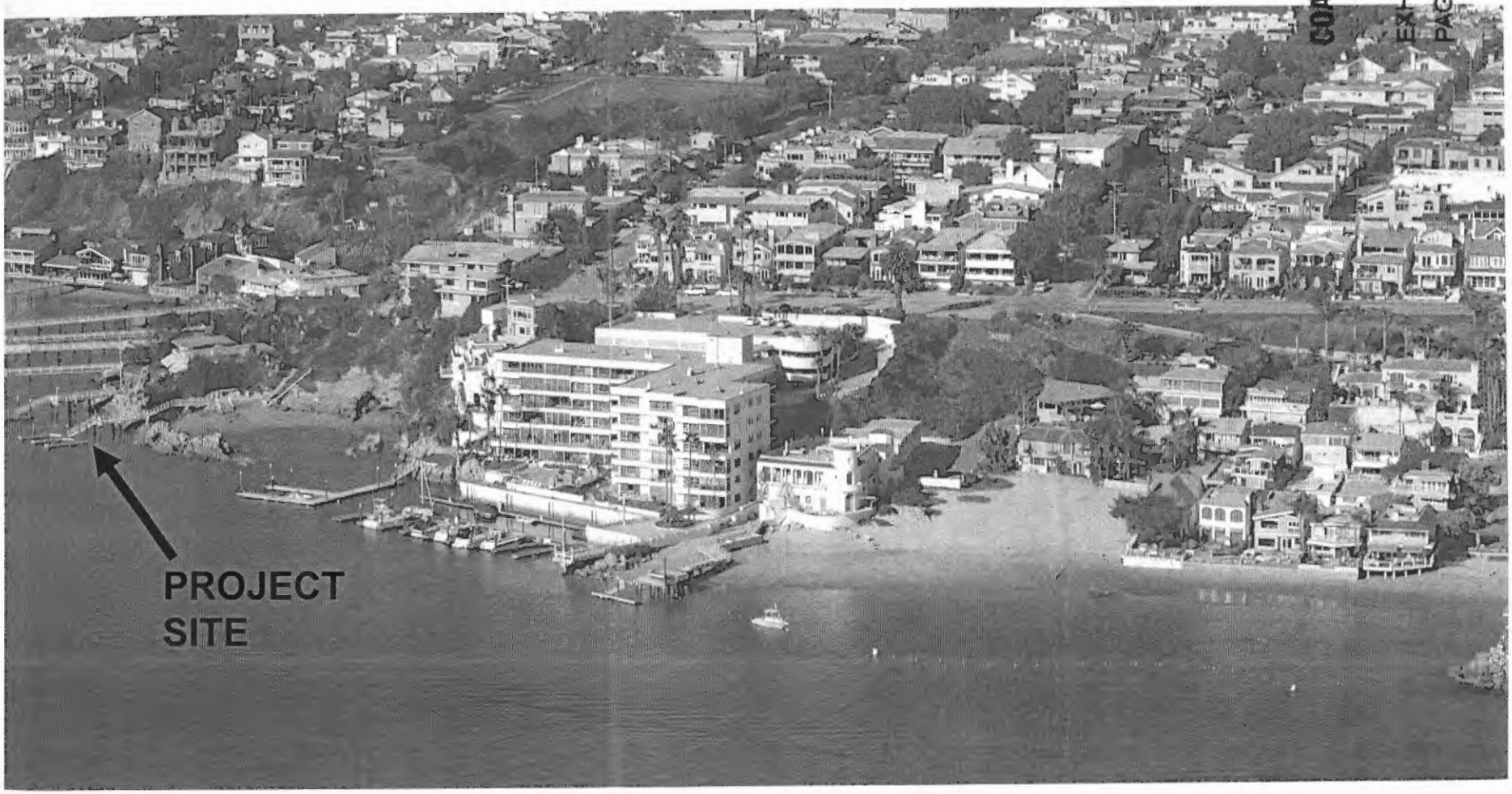
Selected Features
City Boundary
Station
Pierhead
Bulkhead

COASTAL COMMISSION

EXHIBIT # 1

PAGE 2 OF 5

## Aerial view of the project site from the mouth of Newport Bay



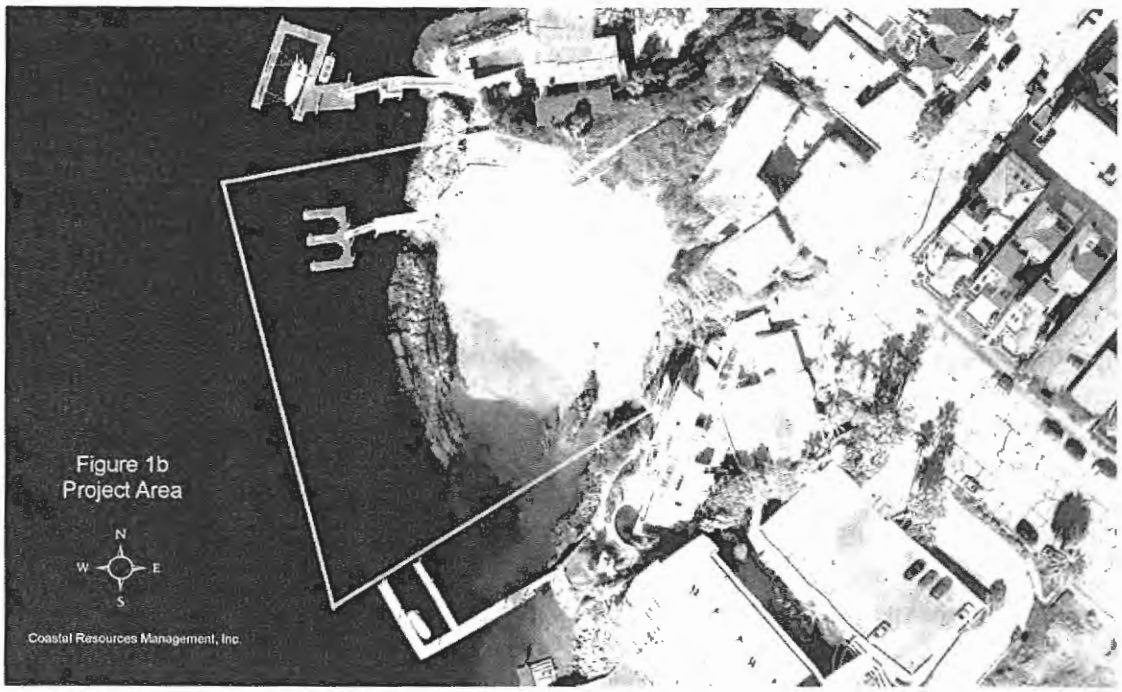
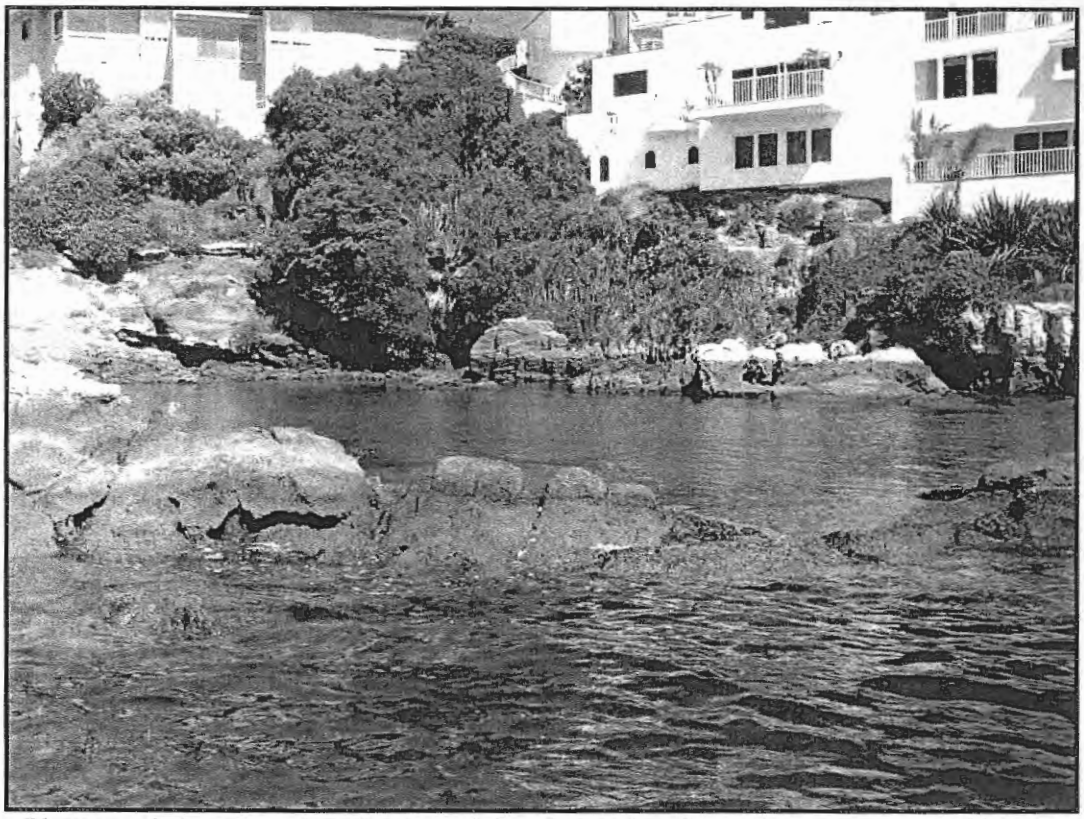
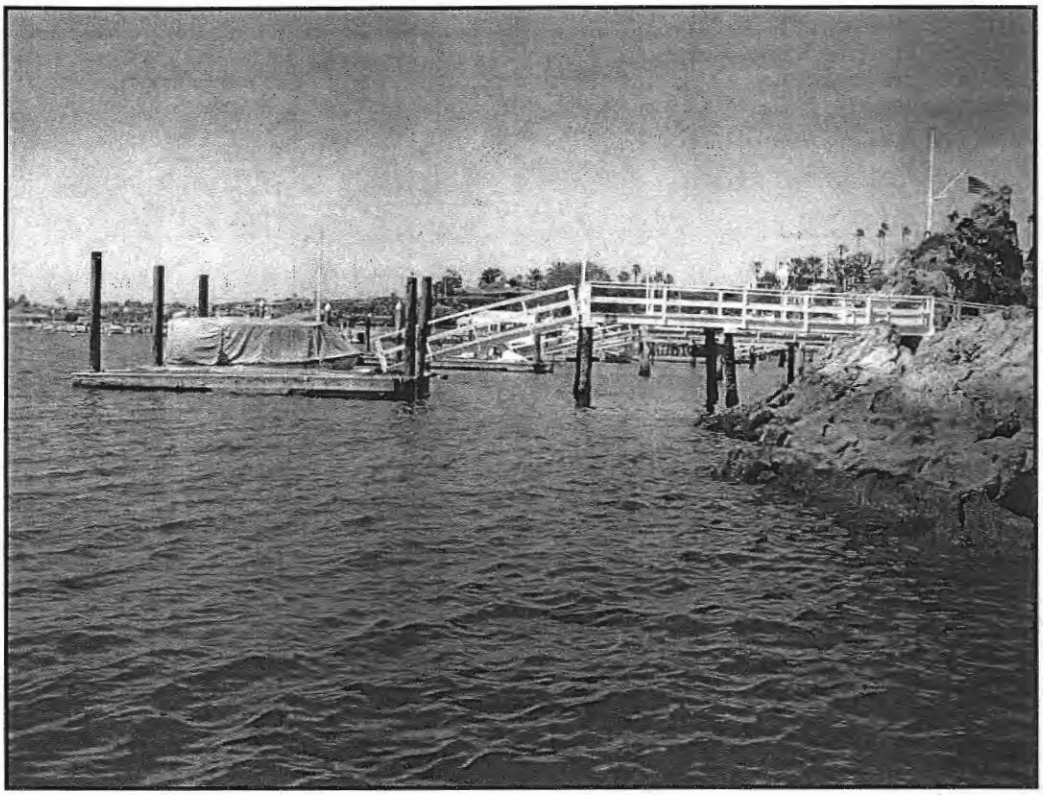



Figure 1b. Local Project Area



Photograph 1. Carnation Cove sand flats located in front of project area residences



Photograph 2. Rocky habitat, and existing dock and pier located seaward of cove.


| | |
|---|---|
| EXISTING PILES | = 6 ● 14"ø |
| EXISTING PILE SF | = 6.42 SF |
| NEW PILES | = 7 ● 24"ø |
| | = 9 ● 16"ø |
| NEW PILE SF | = 34.58 SF |

MIX DESIGN:
3 – 40'
1 – 45'
2 – 55'
1 – 100'
7 Boats

EXISTING DOCK AREA = 490 SF
PROPOSED DOCK AREA = 3,194 SF

EELGRASS AREA IMPACTED BY SHADING:

| | |
|---|---|
| 1. DOCKS: | |
| 1. NORTH: | 120± SF |
| 2. SOUTH: | 901± SF |
| 2. SLIPS: | |
| 1. NORTH: | 0 SF |
| 2. SOUTH: | 1,605± SF |
| SUBTOTAL: | 2,626± SF |

DIRECT BOTTOM IMPACTS FROM PILES:

| | |
|---|---|
| 1. EELGRASS HABITAT: | 5.6 SF |
| 2. SOFT BOTTOM: | 22.6 SF |
| SUBTOTAL: | 28.2 SF |

TOTAL DIRECT & INDIRECT IMPACTS: 2,654± SF

LEGEND:
- EELGRASS AREA
- IMPACTED EELGRASS AREA BY DOCKS
- IMPACTED EELGRASS AREA BY SLIPS
- EELGRASS MITIGATION AREA

GRAPHIC SCALE: 0, 10', 20', 40'

Date: 7/31/12

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| 5 | 5-30-12 | EELGRASS UPDATED W/ APRIL 2012 SURVEY | RHM |
| 4 | 2-14-10 | ISSUED FOR CONCEPT & APPROVAL | RHM |
| 3 | 7-28-09 | ISSUED FOR CONCEPT & APPROVAL | RHM |

REVISIONS

URS
310 Golden Shore, Suite 100
Long Beach, CA 90802
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Fax: (562) 256-7905

| | |
|---|---|
| ENGINEER | RHM |
| DESIGNER | RLR |
| CAD OPERATOR | RLR |
| CHECKER | FJM |
| PROJECT MANAGER | RHM |

AERIE DOCKS
201-207 Carnation Ave.
Corona del Mar, CA 92625

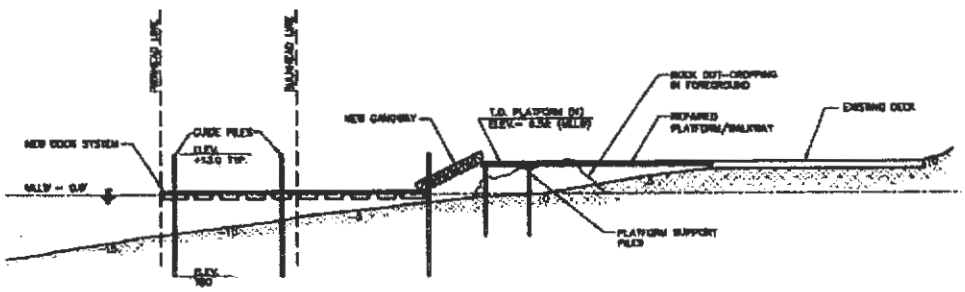
RESIDENTIAL DOCK LAYOUT

SCALE 1" = 20' (C)
PROJECT NUMBER 6255.00
DRAWING NUMBER SP1

COASTAL COMMISSION
EXHIBIT # 2
PAGE 1 OF 2

URS

310 Golden Shore, Suite 100
Long Beach, CA 90802
Phone: 562.308.2350




SECTION A–A

0 20' 40' 80'
GRAPHIC SCALE: 1"=40'

| | | |
|---|---|---|
| PURPOSE: Replace dilapidated dock, gangway, platform and walkway with new dock system to serve 7–unit residential development<br>Datum: MLLW = 0<br>Adj. Property Owners:<br>1. See list provided herein | SECTION<br>(Along Path–of–Travel to Docks)<br>Owner: Advance Group 99–D, CA LP<br>(a.k.a. AERIE Docks)<br>23792 Rockfield Blvd., Ste. 100<br>Lake Forest, CA 92630 | Dock Removal & Replacement<br>201–205 & 207 Carnation Ave.<br>Newport Beach, CA 92625<br>IN: Newport Harbor<br>AT: Newport Beach<br>County of Orange State: CA<br>Application By:<br>Sheet 2 of 2 Date: 4/ /12 |

Project Cross-Sectional View

COASTAL COMMISSION

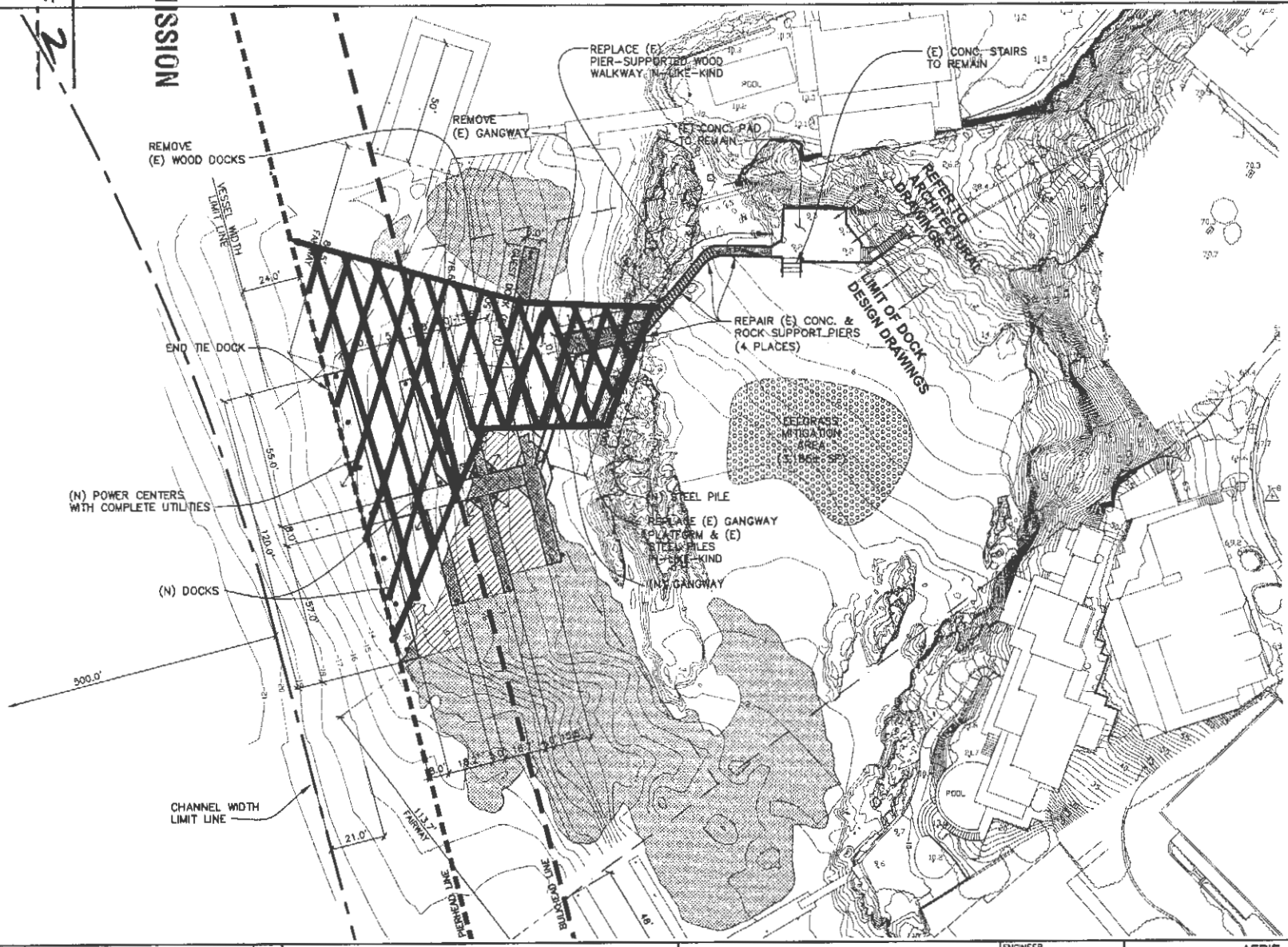
EXHIBIT # 2

PAGE 2 OF 2

COASTAL COMMISSION

EXHIBIT # 3

PAGE 1 OF 2




| | |
|---|---|
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| EXISTING PILE SF | = 6.42 SF |
| NEW PILES | = 7 ⊙ 24"ø<br>= 9 ⊙ 16"ø |
| NEW PILE SF | = 34.58 SF |

MIX DESIGN:
3 – 40'
1 – 45'
2 – 55'
1 – 100'
7 Boats

EXISTING DOCK AREA = 490 SF
PROPOSED DOCK AREA = 3,194 SF

EELGRASS AREA IMPACTED BY SHADING:

| | |
|---|---|
| 1. DOCKS: | |
| 1. NORTH: | 120± SF |
| 2. SOUTH: | 901± SF |
| 2. SLIPS: | |
| 1. NORTH: | 0 SF |
| 2. SOUTH: | 1,605± SF |
| SUBTOTAL: | 2,626± SF |

DIRECT BOTTOM IMPACTS FROM PILES:

| | |
|---|---|
| 1. EELGRASS HABITAT: | 5.6 SF |
| 2. SOFT BOTTOM: | 22.6 SF |
| SUBTOTAL: | 28.2 SF |

TOTAL DIRECT & INDIRECT IMPACTS: 2,654± SF

LEGEND:
- EELGRASS AREA
- IMPACTED EELGRASS AREA BY DOCKS
- IMPACTED EELGRASS AREA BY SLIPS
- EELGRASS MITIGATION AREA

GRAPHIC SCALE 0 10' 20' 40'

Date: 7/31/12

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| 3 | 5-30-12 | EELGRASS UPDATED W/ APRIL 2012 SURVEY | RHM |
| 2 | 12-14-10 | ISSUED FOR CONCEPT & APPROVAL | RHM |
| 1 | 7-29-08 | ISSUED FOR CONCEPT & APPROVAL | RHM |

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|---|---|
| ENGINEER | RHM |
| DESIGNER | RLR |
| CAD OPERATOR | RLR |
| CHECKER | FJM |
| PROJECT MANAGER | RHM |

AERIE DOCKS
201–207 Carnation Ave.
Corona del Mar, CA 92625

RESIDENTIAL DOCK LAYOUT

SCALE 1" = 20'

PROJECT NUMBER 6255.00

DRAWING NUMBER SP1

COASTAL COMMISSION

EXHIBIT # 3

PAGE 2 OF 2


| | |
|---|---|
| EXISTING PILES | = 6 ⊙ 14"ø |
| EXISTING PILE SF | = 6.42 SF |
| NEW PILES | = 7 ⊙ 24"ø |
| | = 9 ⊙ 16"ø |
| NEW PILE SF | = 34.58 SF |

MIX DESIGN:
3 – 40'
1 – 45'
2 – 55'
1 – 100'
7 Boats

EXISTING DOCK AREA = 490 SF
PROPOSED DOCK AREA = 3,194 SF

EELGRASS AREA IMPACTED BY SHADING:

| | |
|---|---|
| 1. DOCKS: | |
| 1. NORTH: | 120± SF |
| 2. SOUTH: | 901± SF |
| 2. SLIPS: | |
| 1. NORTH: | 0 SF |
| 2. SOUTH: | 1,605± SF |
| SUBTOTAL: | 2,626± SF |

DIRECT BOTTOM IMPACTS FROM PILES:

| | |
|---|---|
| 1. EELGRASS HABITAT: | 5.6 SF |
| 2. SOFT BOTTOM: | 22.6 SF |
| SUBTOTAL: | 28.2 SF |

TOTAL DIRECT & INDIRECT IMPACTS: 2,654± SF

LEGEND:
- EELGRASS AREA
- IMPACTED EELGRASS AREA BY DOCKS
- IMPACTED EELGRASS AREA BY SLIPS
- EELGRASS MITIGATION AREA

GRAPHIC SCALE 0 10' 20' 40'

Date: 7/31/12

* Approximate Sq.ft. of area with no eelgrass:
1,800
4,400
1,200
7,400 sq.ft.

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| 5 | 5-30-12 | EELGRASS UPDATED W/ APRIL 2012 SURVEY | RHM |
| 4 | 12-14-10 | ISSUED FOR CONCEPT & APPROVAL | RHM |
| 3 | 7-29-09 | ISSUED FOR CONCEPT & APPROVAL | RHM |

REVISIONS

URS
310 Golden Shore, Suite 100
Long Beach, CA 90802
Tel: (562) 366-2300
Fax: (562) 256-7905

| | |
|---|---|
| ENGINEER | RHM |
| DESIGNER | RLR |
| CAD OPERATOR | RLR |
| CHECKER | FJM |
| PROJECT MANAGER | RHM |

AERIE DOCKS
201–207 Carnation Ave.
Corona del Mar, CA 92625

RESIDENTIAL DOCK LAYOUT

SCALE 1" = 20'
PROJECT NUMBER 6255.00
DRAWING NUMBER SP1

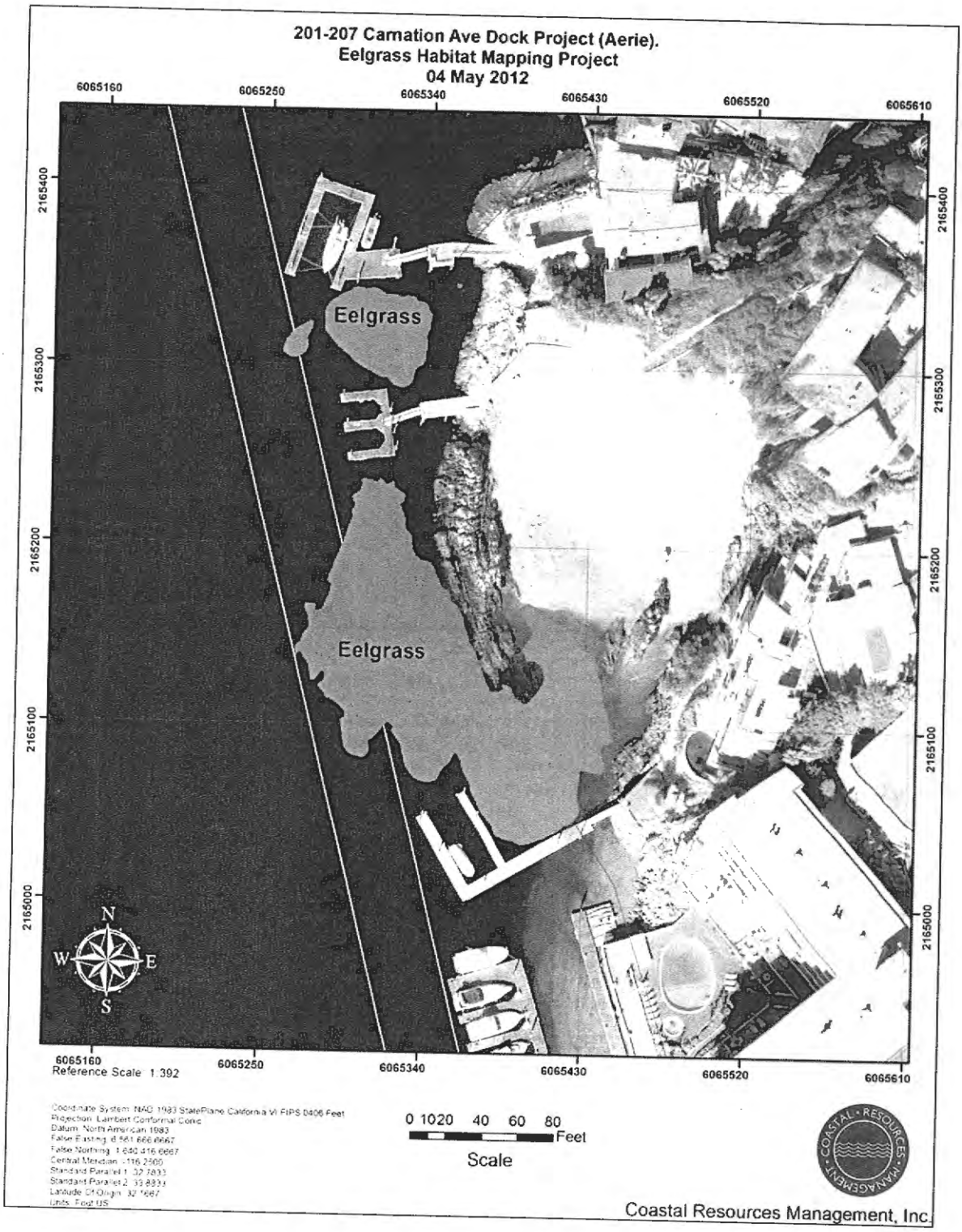
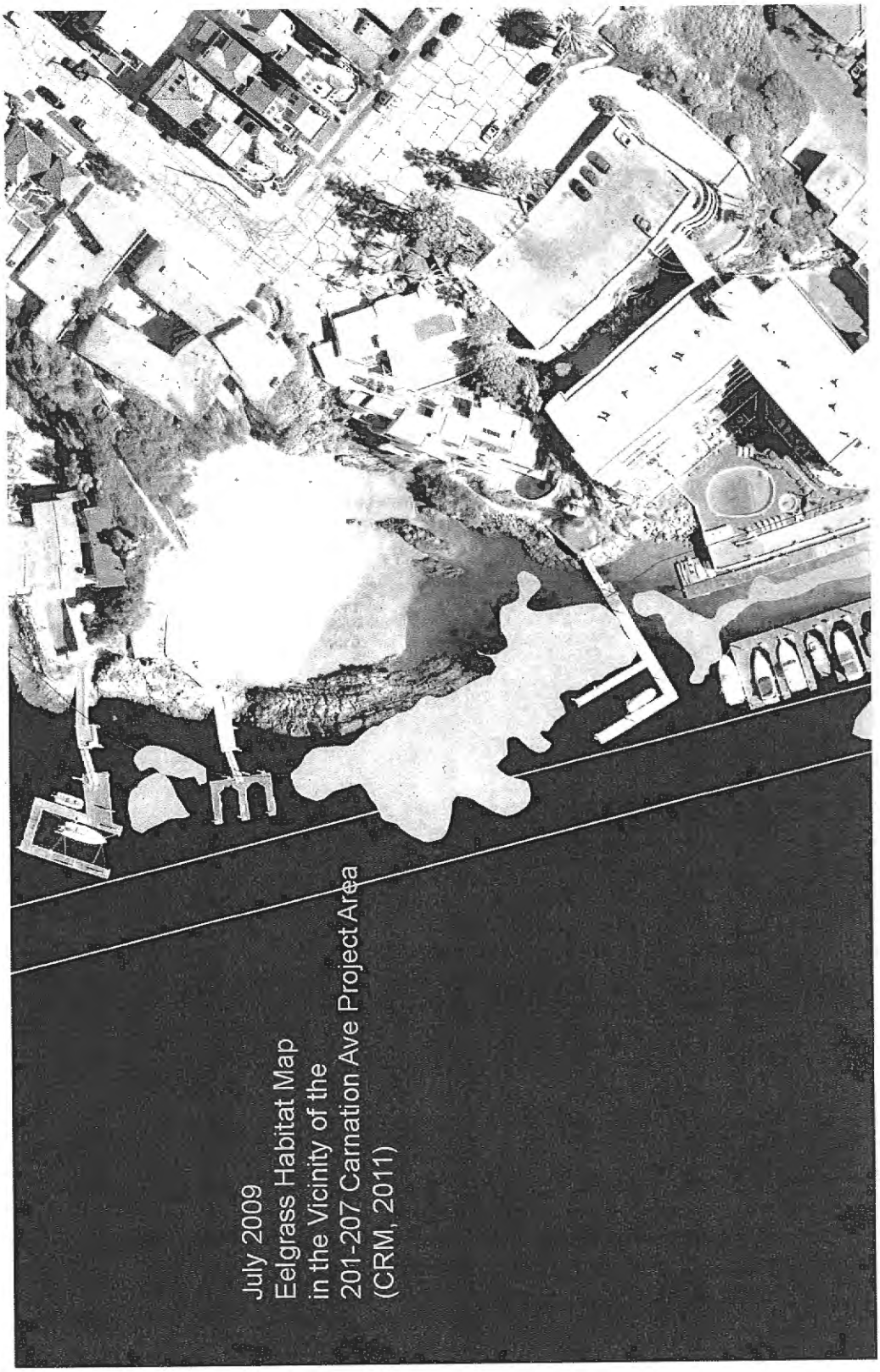



Figure 3. May 2012 Eelgrass Habitat Map at the 201-207 Carnation Ave Project Site

**COASTAL COMMISSION**

EXHIBIT # 4
PAGE 1 OF 4

Coastal Resources Management
PMB 327, 3334 E. Coast Highway, Corona del Mar, Ca 92625
(949) 412 9446 (office/cell); (940) 675-2970 (fax); 1



July 2009
Eelgrass Habitat Map
in the Vicinity of the
201-207 Carnation Ave Project Area
(CRM, 2011)

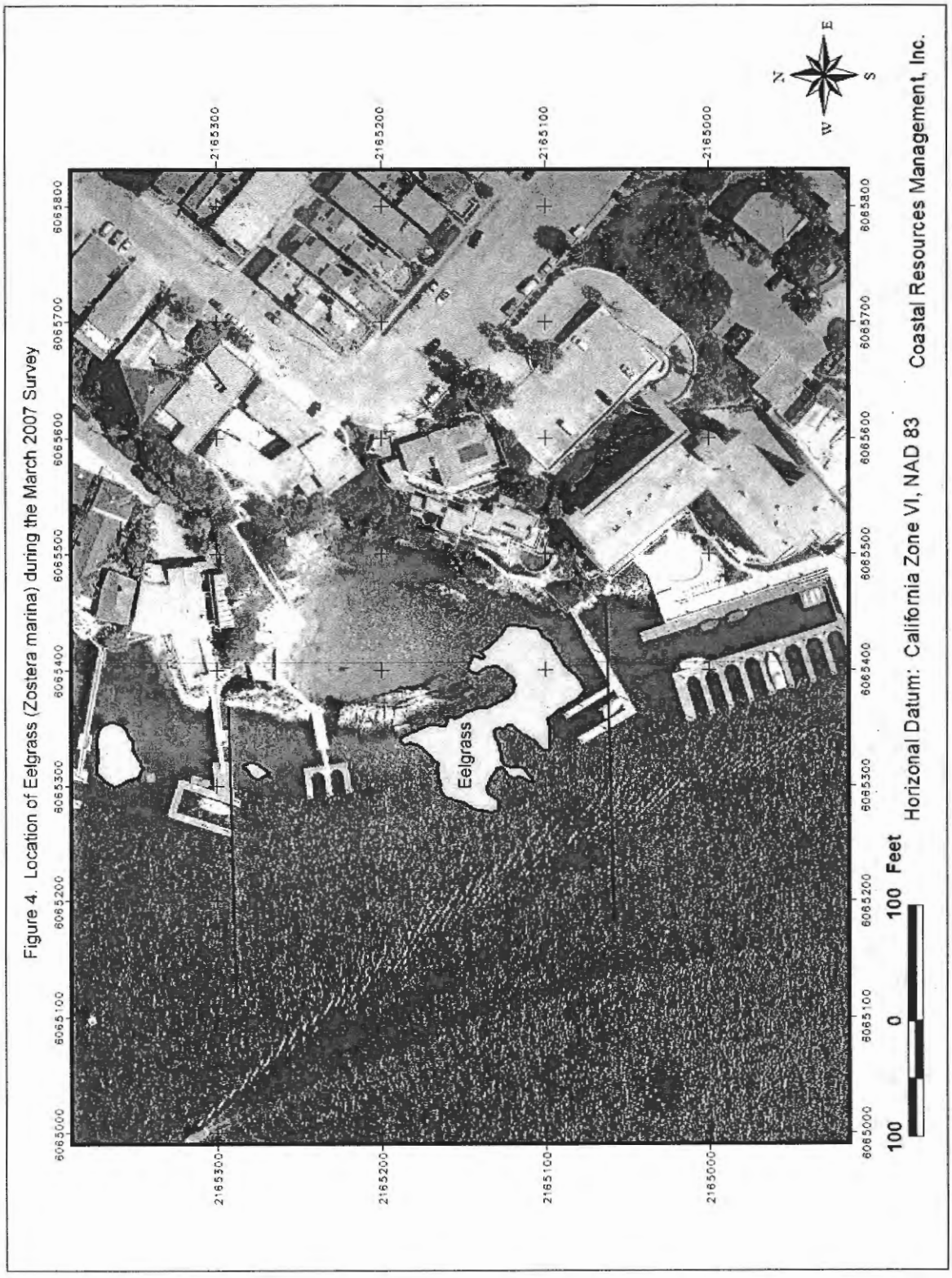



Figure 4. Location of Eelgrass (Zostera marina) during the March 2007 Survey

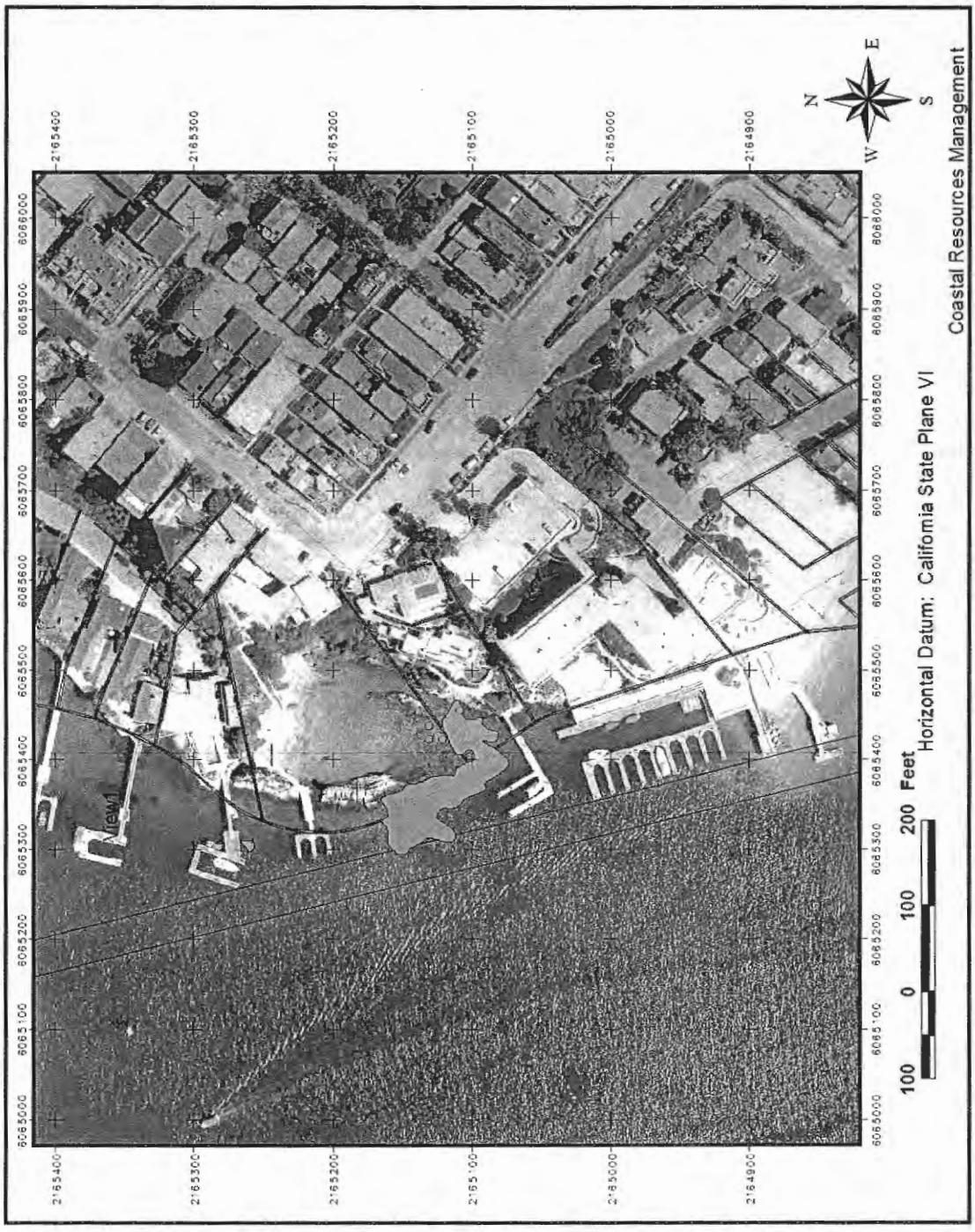
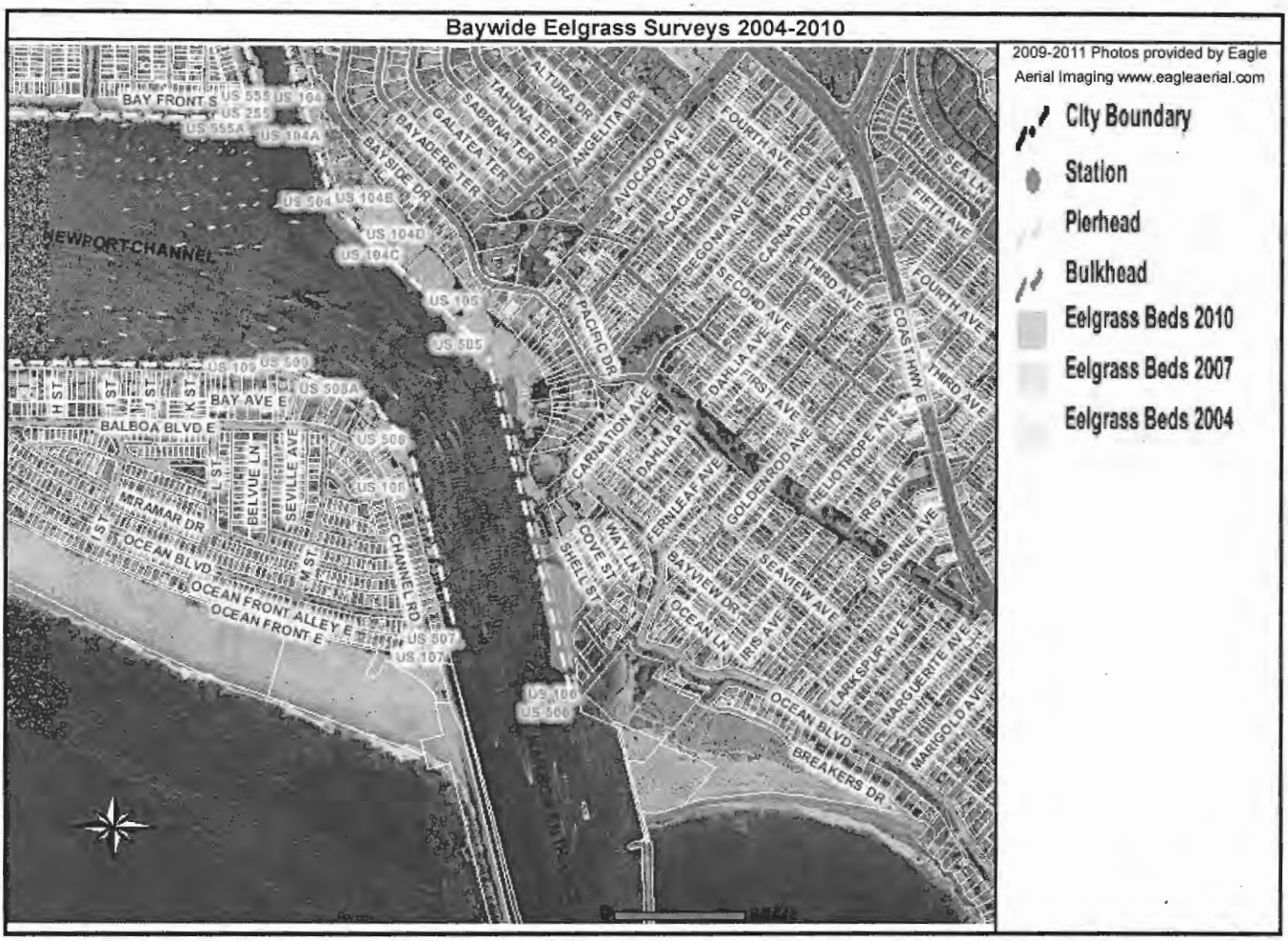



Figure 3. Location of Eelgrass in the Project Area, March, 2005




COASTAL COMMISSION

EXHIBIT # 5

PAGE 1 OF 1

## AERIE Dock Project

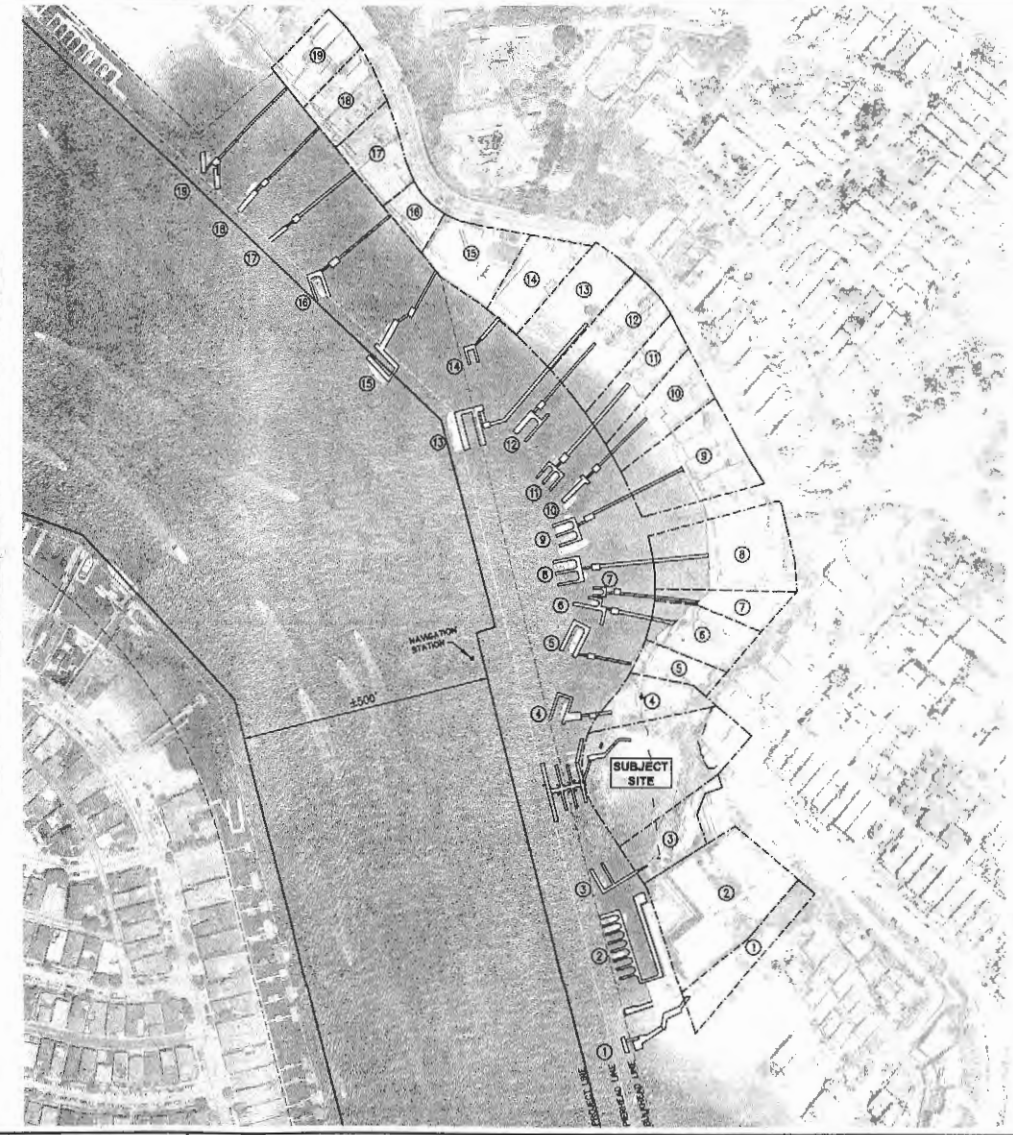
Surrounding Properties & Docks

| # | Property | Apprx. Site Size (sf) | Apprx. Dock Area (sf) | # Pylons | # Boats |
|---|---|---|---|---|---|
| 1 | 101 Dahlia | 17,984 | 2,064 | 47 | 6 |
| 2 | 2525 Ocean Ave (Channel Reef) | 52,563 | 4,470 | 25 | 22 |
| 3 | 2495 Ocean Ave | 16,832 | 1,162 | 7 | 6 |
| 4 | 101 Bayside Place | 15,335 | 1,542 | 14 | 5 |
| 5 | 103 Bayside Place | 9,892 | 1,804 | 15 | 4 |
| 6 | 105 & 107 Bayside Place | 18,855 | 1,726 | 21 | 3 |
| 7 | 109 Bayside Place | 12,142 | 1,200 | 21 | 3 |
| 8 | 111, 113 & 115 Bayside Place | 40,007 | 2,717 | 35 | 6 |
| 9 | 2307, 2315, 2319 & 2323 Bayside Dr | 35,132 | 2,251 | 33 | 5 |
| 10 | 2233 & 2301 Bayside Dr | 20,854 | 1,424 | 22 | 4 |
| 11 | 2227 & 2231 Bayside Dr | 17,926 | 2,301 | 34 | 5 |
| 12 | 2215 & 2223 Bayside Dr | 27,836 | 2,036 | 29 | 4 |
| 13 | 2209 Bayside Dr | 24,737 | 4,248 | 44 | 5 |
| 14 | 2137 Bayside Dr | 19,279 | 919 | 10 | 4 |
| 15 | 2121 Bayside Dr | 22,617 | 2,623 | 26 | 6 |
| 16 | 2115 Bayside Dr | 8,523 | 1,742 | 22 | 4 |
| 17 | 2039 & 2103 Bayside Dr | 16,455 | 1,331 | 22 | 3 |
| 18 | 2027 & 2033 Bayside Dr | 16,629 | 1,437 | 20 | 4 |
| 19 | 2015 & 2021 Bayside Dr | 16,765 | 2,133 | 35 | 7 |
| | Average | 21,598 | 2,059 | 25 | 6 |

| | Apprx. Site Size (sf) | Apprx. Dock Area (sf) | # Pylons | # Boats |
|---|---|---|---|---|
| Averages | 21,598 | 2,059 | 25 | 6 |
| AERIE Proposed Plan | 61,284 | 4,079 | 17 | 7 |

| Square Footage of Site per : | Ratio: Dock SF/Site SF | # Pylons | # Boats |
|---|---|---|---|
| Averages | 10% | 0.12% | 0.03% |
| AERIE Proposed Plan | 7% | 0.03% | 0.01% |

* AERIE proposed has 184% more site area than the average site properties in the surrounding area, but proportionately less dock square footage and pylons.




** All data is estimated. ARES and its affiliates take no responsibility as to its accuracy

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| 1 | 11-21-11 | ISSUED FOR CCC STAFF REVIEW | RHM |

REVISIONS

COASTAL COMMISSION

EXHIBIT # 6

PAGE 1 OF 1

URS
5772 Bolsa Ave, Suite 100
Huntington Beach, CA 92649-1134
Tel: (714) 895-2072
Fax: (714) 895-1291

| | |
|---|---|
| ENGINEER | RHM |
| DESIGNER | RLR |
| CAD OPERATOR | RLR |
| CHECKER | FJM |
| PROJECT MANAGER | RHM |

AERIE DOCKS
201-207 Carnation Ave.
Corona del Mar, CA 92625

SUMMARIES
SURROUNDING PROPERTIES & DOCKS

SCALE NTS

PROJECT NUMBER 6255.00

DRAWING NUMBER -