

Click here to go to  
original staff report

**LAWVERDICT®**  
**Law Offices of Michael C. Hewitt**  
**Attorney at Law**  
**2082 Michelson Drive, Suite 300**  
**Irvine, California 92612**  
**Phone: 949 825-5260 Fax 949 852-5261**

November 10, 2014

**RECEIVED**  
South Coast Region

NOV 10 2014

CALIFORNIA  
COASTAL COMMISSION

F16a

Ferni Si  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802

Re: Application 5-14-0522, 2782 Bayshore, Newport Beach, CA  
(Moriarty).

Dear Mr. Si,

Enclosed is correspondence from Ron Presta to the  
California Coastal Commissioners. I request that you  
forward the enclosed correspondence directly to the Coastal  
Commissioners prior to the hearing on Application Number 5-  
14-0522 calendared for November 14, 2014.

If for any reason you cannot provide the enclosed  
correspondence to the Coastal Commissioners, please contact  
me immediately.

Very truly yours,

  
Michael C. Hewitt

N:\Company\Shared Documents\Client Files\PRESTA\2872 Bayshore\Ferni Si  
November 10, 2014.doc

Application Number 5-14-0522 (Moriarty)  
Submitted by Ron Presta.

Ron E. Presta  
P.O. Box 7099  
Newport Beach, CA 92658

November 10, 2014

Coastal Commissioners  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

RE: Application of No. 5-14-0522, 2782 Bayshore, Newport Beach,  
CA (APN049-191-27)

Dear California Coastal Commissioners,

I am a partner in the Newport Marina (hereinafter "Newport Marina") which is located immediately to the north of the proposed project at 2782 Bayshore Marina, Newport Beach, CA (APN 049-191-27) (hereinafter "2782 LLC").

I, along with at least ten other members of the boating public, submitted written objections to Application Number 5-14-0522. I write this correspondence to document some of my objections to the proposed project and to request that the Coastal Commission deny the application of 2782 LLC, or alternatively, require that 2782 LLC provide a navigation easement of at least 12 feet from the purported north property line of 2782 LLC, or alternatively, move the proposed dock to 2782 LLC's southern property line. Exhibit A hereto provides an overview of the Newport Marina and 2782 LLC properties.

Newport Anchorage is a public marina that provides side ties and docks for small boats.

Page 1 of 4

2782 LLC is located in a private, guard gated, 218 unit residential development called Bayshores that monopolizes a large section of coast line accessible only to the residents of Bayshore. Bayshore has a private beach and private docks. Bayshore does not permit public access to the private beach, nor does Bayshore provide any public docks. (Exhibit A hereto.)

2782 LLC now seeks to further enhance private use and reduce or preclude public use and access of Newport Harbor by impeding public navigation into and out of Newport Marina.

Due to the only gangway located at the north end of the Newport Marina dock, boats on the east side of Newport Marina must exit to the south and pass between the south end of Newport Marina dock and the north purported property line of 2782 LLC. Presently, boats are able to navigate and maneuver between the end of the Newport Marina dock and the north end of 2782 LLC because the dock at 2782 LLC is not configured to accommodate a large boat. The proposed new dock is substantially larger and as shown in the previous application will accommodate at least a 70 foot boat. (Exhibit C hereto.)

As of today, two boating members of the public have terminated their leases at Newport Marina due to navigability concerns created by the potential of an expensive mega yacht docked at 2782 LLC.

2782 LLC admits that the proposed larger dock is designed to accommodate a larger boat:

"The majority of the increase in dock area will occur in the area where the dock is being moved closer to the house in order to accommodate a boat that is larger than can be accommodated." (Exhibit D hereto, page 4 and Staff Report page 12.)

Navigation and maneuverability will become close to impossible because a 70 foot boat butting against the south property line of Newport Marina impedes navigation for all vessels moored on the east side of the Newport Marina dock. As noted in the Coastal Commission correspondence, dated March 27, 2014, the Overall Layout and Access plan contains the note:

"Dock owner has not been notified to confirm the vessels shown." (Exhibit E hereto.) This is true, I have not been notified of the scope and purpose of the project, nor have I been asked to confirm the vessels shown on Exhibit E hereto.

2782 LLC has not submitted a maneuverability plan. A navigation easement of 12 feet, as shown on Exhibit F hereto, will provide adequate navigation and maneuvering room to ingress and egress Newport Marina. Alternatively, the proposed dock could be moved to the south end of 2782 LLC.

2782 LLC is taking advantage of having the existing dock "grandfathered in" on public County of Orange Tidelands and any Coastal Commission application by 2782 LLC should be denied. 2782 LLC paid only \$300 to the County of Orange (Parks and Recreation-Tidelands) in 2011 for a permit to use the existing private dock in front of 2782 LLC. (Exhibit H hereto.)

By comparison, Newport Marina pays over \$70,000.00, per year to the County of Orange.

For this reason alone, I respectfully request that the Coastal Commission take equitable action to allow full public access to Newport Harbor: Deny 2782 LLC's application, dismantle the single user private dock in front of 2782 LLC and extend the Newport Marina dock in front of 2782 LLC. This is the highest and best use of the water in front of 2782 LLC, providing more public access to Newport Harbor. If 2782 LLC desires to keep a boat on the water, 2782 Bayshore, LLC can rent a slip and pay reasonable slip fees just like the boating public. Alternatively, the proposed dock could be moved to the southern property line of 2782 LLC to provide navigable space for the boats at Newport Marina.

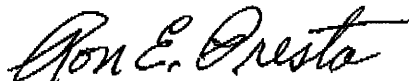
Further, there is no good reason to increase the water coverage from an existing 764 square feet to the proposed water coverage of 978 square feet, an increase of 214 square feet or 28% for private use. What section of Coastal Act or the Commissions regulations permit such a drastic increase to the detriment of the public?

Critically, I have not received the required 100' ownership listing and application number 5-14-0522 should be denied on that basis alone. Attached as Exhibit G is 2782 LLC's mailing, which does not reference the owner of the parcel upon which the Newport Marina docks are located.

**Applicant has failed to submit final plans.** 2782 LLC has not submitted final plans to the Commissioners. (Staff Report page 5.) How can the Commissioners grant an application without presentation and review of the final plans? How can the public comment without review of the final plans? The application should be denied based on the failure of the applicant to present the final plans for the dock.

Based on the fact that 2782 LLC's proposed project will substantially decrease public coastal access in an area that is already exclusively privatized with no public access, I respectfully request that the Commission outright deny Application No 5-14-0522, or alternatively, grant the application on condition that 2782 LLC provide a navigation easement of 12 feet on the north side of 2782 LLC, or alternatively to require 2782 LLC to move the proposed dock to the south end of 2782 LLC's property.

Thank you for your consideration,

  
Ron E. Presta

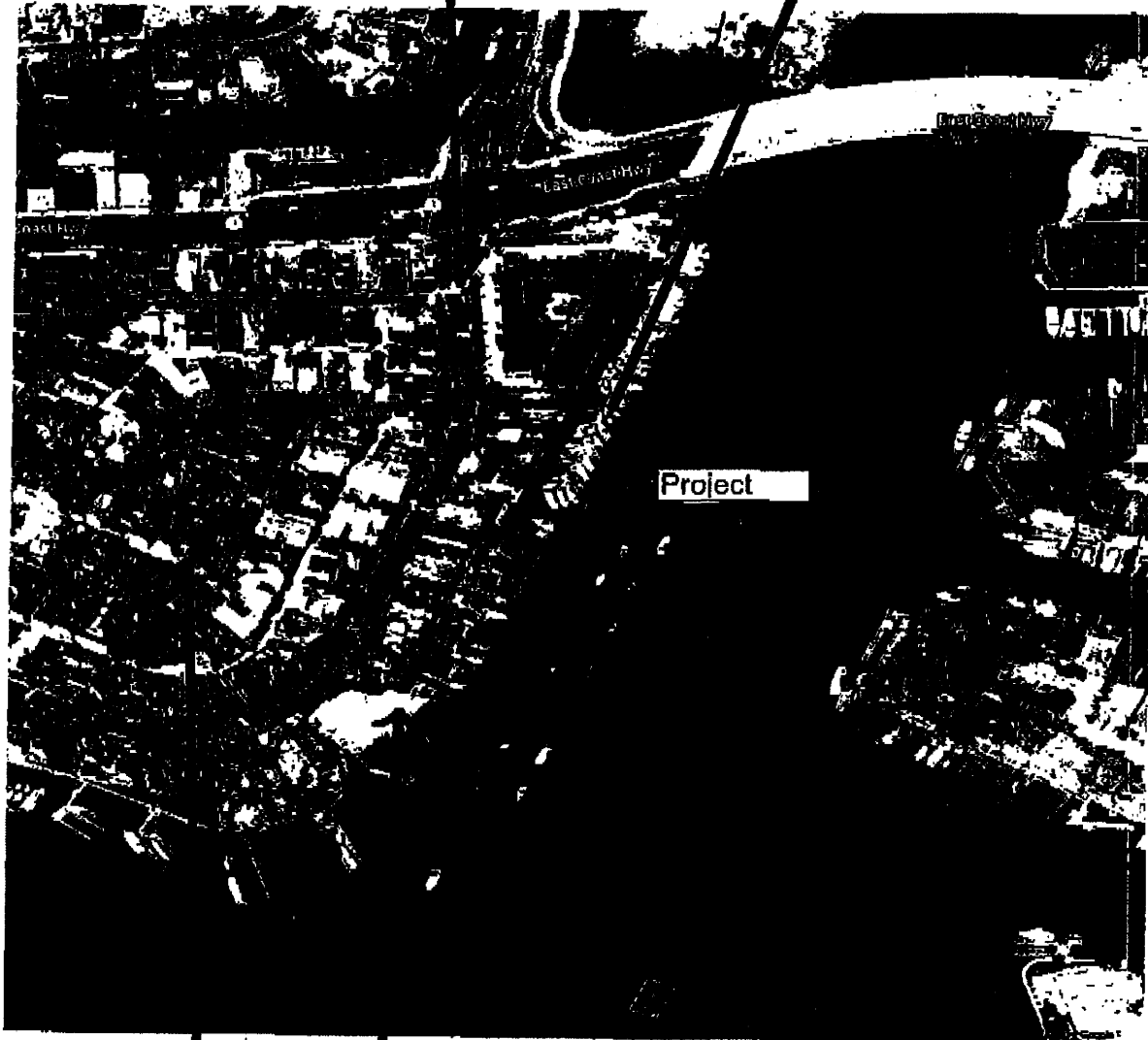
# EXHIBIT A

Guard gate.

Public market.

Digitized by Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



Private beach - no public access.

Private development-guard gated. No public access.

### Vicinity

**CoastCom 094**

*Site Address:*  
2782 Bayshore Drive  
Newport Beach, CA 92663

**Fuchsia outline reflects dive survey perimeter**



Newport  
Beach  
GIS



0 40 80  
Feet

**Disclaimer:** Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

**Imagery:** 2009-2013 photos provided by Eagle Imaging [www.eagleimaging.com](http://www.eagleimaging.com)

4/15/2014

4



# EXHIBIT B

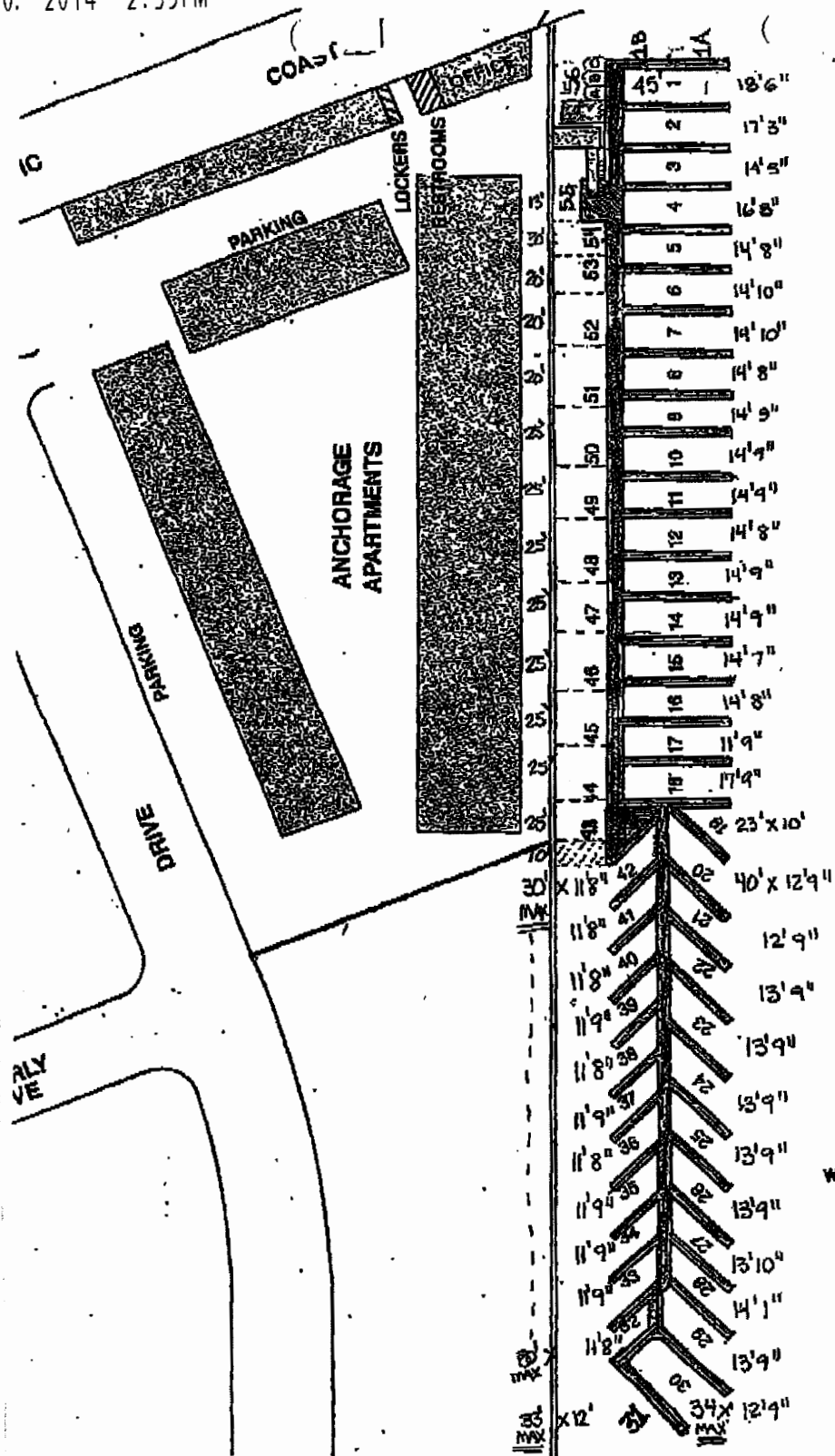
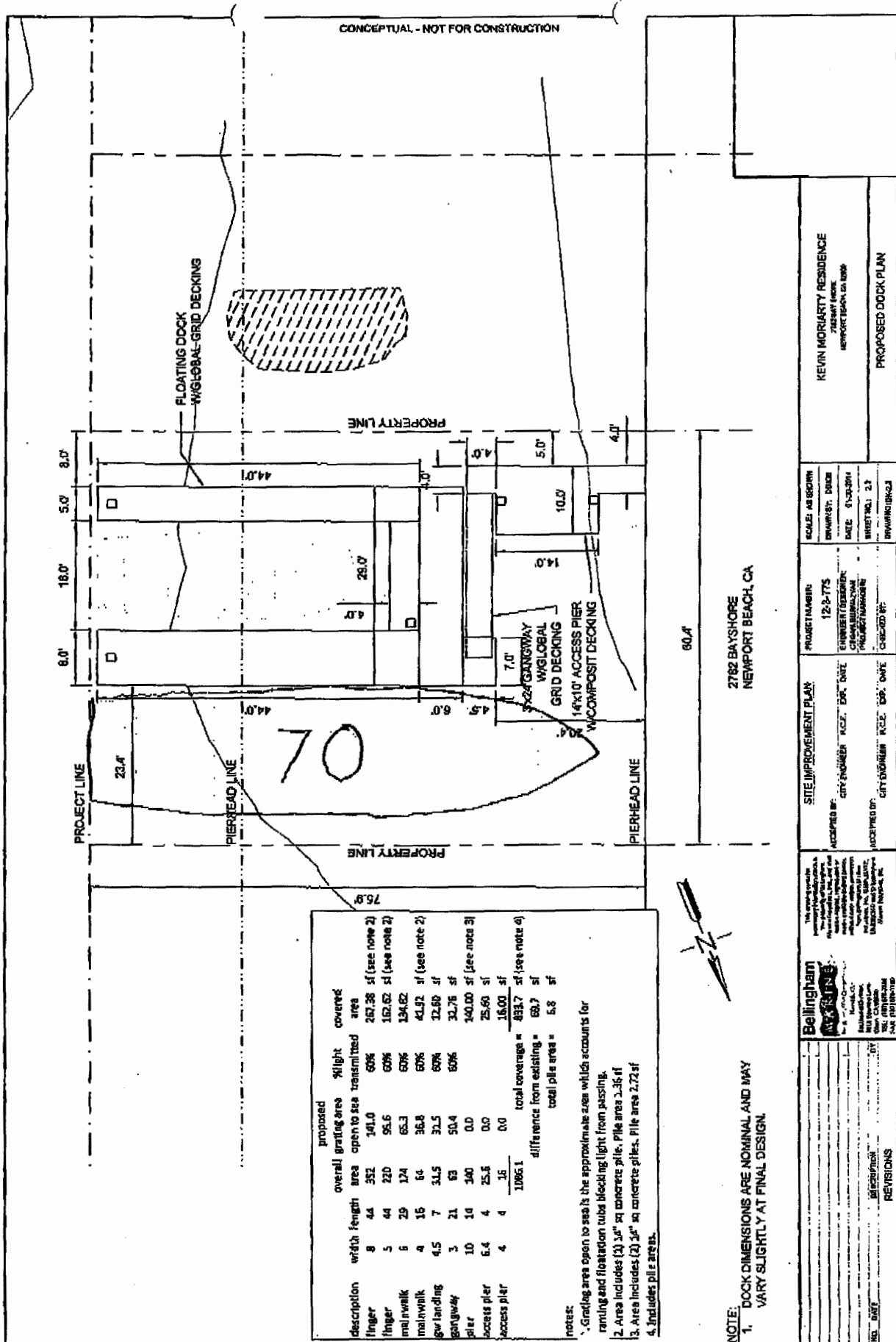


EXHIBIT C



NOTE:  
1. DOCK DIMENSIONS ARE NOMINAL AND MAY VARY SLIGHTLY AT FINAL DESIGN.

<b>REVISIONS</b> NO. DATE DESCRIPTION 01 01/10/2014		<b>PROJECT NAME</b> 2782 BAYSHORE NEWPORT BEACH, CA		<b>SCALE AS SHOWN</b> DRAWN BY: DMR DATE: 01-10-2014 SHEET NO. 23 DRAWING NO. 073	
<b>SITE IMPROVEMENT PLAN</b> ACCEPTED BY: CITY ENGINEER K.C.F. DATE: 01-10-2014 PROJECT NUMBER: 12-2-775 ENGINEER/DESIGNER: GRIFFIN ENGINEERING PROJECT NAME: KEVIN MORIARTY RESIDENCE		<b>PROPOSED DOCK PLAN</b> KEVIN MORIARTY RESIDENCE 2782 BAYSHORE NEWPORT BEACH, CA 92659			

# EXHIBIT D

Mr. Jeffrey Rabin  
May 30, 2014  
Page 4 of 5

[ The proposed dock is within the Federal Project line, with a proposed 1' protrusion as compared to the existing dock, and is set back 23.4' from the northerly property line, as indicated above. The majority of the increase in dock area will occur in the area where the dock is being moved closer to the house in order to accommodate a boat that is larger than can currently be accommodated. The proposed dock design limits the total size of the dock to just the increase that is necessary to accommodate a modern, larger boat. The original dock construction in 1953 and the subsequent replacement in kind in 1984 do not accommodate the size of modern boats, and therefore another replacement in kind is infeasible.

Larger  
boat.

With respect to the 8' finger, the finger becomes less stable when the dock length is increased. The finger width has been increased for better stability. The width of the south finger is not being increased. In addition, the dock has been designed in consideration of the safety of the property owner and his family. The dock is located in one of the main channels of Newport Harbor where there is a tidal influence as well as significant boat traffic. Every effort was made to minimize the dock size while considering safety. It should be noted that the number of piles required to support the larger dock has not increased.

- **Eelgrass Survey report was not submitted.** An Eelgrass survey was completed in October 2012 and the eelgrass letter report and mapping from that survey was included in the original CDP Application submittal. That survey indicated that there was no eelgrass on the subject property, and also noted a patch of eelgrass approximately 16' to the south. Because the CDP application was submitted in February - which is outside of the window for Eelgrass surveying - no updated report was submitted with the application. At your advice, a new eelgrass survey, as well as a *Caulerpa taxifolia* survey were completed on May 19 and 20, 2014. The surveys confirmed that no eelgrass or *Caulerpa* were detected in the project area. The study area extended 30' beyond the property line on all accessible sides, including under boats and dock floats. The updated eelgrass and the *Caulerpa* surveys are included herein. We acknowledge that pre- and post-construction eelgrass surveys will be required.
- **Maneuverability study.** The City of Newport Beach required that dimensions to the property line be provided for the Approval in Concept. The City did not require a "maneuverability study." Plan Sheet 4 depicts property lines and the adjacent marina which will remain unchanged. Following receipt of your letter, Mr. Moriarty contacted the adjacent property owner, Mr. Ron Presta, who has confirmed that he has no concerns with Mr. Moriarty's dock plan. The proposed location for the new dock is 2.3' to the north of the existing dock, and is 23.4' from the property line. The property line will remain unchanged and access to adjacent small ships will remain unimpeded.

The City of Newport Beach has several policies in place to insure safe and navigable channels, but they also serve to protect public views and access. Local Coastal Program

CoastCom'036



# CAA PLANNING

**RECEIVED**  
South Coast Region

JUN - 3 2014

May 30, 2014

CALIFORNIA  
COASTAL COMMISSION

Mr. Jeffrey Rabin  
Coastal Program Analyst  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Subject: Response to Notice of Incomplete Application, Application No. 5-14-0522  
2782 Bayshore Drive, Newport Beach (APN: 049-191-27)

Dear Mr. Rabin:

On behalf of Kevin Moriarty, CAA Planning, Inc. (CAA) provides the following responses to your March 27, 2014 Notice of Incomplete Application and our telephone call of April 10<sup>th</sup> related to the residential dock replacement at the above-noted address.

- *The project description lacks the required detail.* As detailed in the February 25, 2014 CDP Application submittal letter, the existing U-shaped dock is approximately 1' shorter than the proposed dock and is set back approximately 10.3' from the southern property line and 25.4' from the northern property line. The proposed dock is 8' from the southern property line and 23.4' from the northern property line. The existing dock is depicted on Existing Plan, Sheet No. 1 in the Plans included in the CDP Application package.

Page 2, Item 2 of the CDP Application provides for attaching additional sheets to the application if more detail is provided than Page 2 space 2 allows. The project, as illustrated on the submitted Site Plan, contains a high level of detail that cannot be properly described in the space provided on Page 2 Item 2. For that reason, the submittal letter which accompanied the CDP Application described the basic dock components and included attachments detailing existing and proposed dock information. The table below is a summary of existing and proposed dock specifications as they relate to water area coverage:

Description	Existing		Proposed	
	Width	Length	Width	Length
Finger 1	7'	29'	8'	44'
Finger 2	5'	29'	5'	44'
Mainwalk 1	5'	25'	6'	29'
Mainwalk 2	--	--	4'	16'
GW Landing	--	--	4.5'	7'
Gangway	4'	16'	3'	21'
Pier	11'	16'	10'	14'
Access Pier 1	5'	10'	6.4'	4'
Access Pier 2	--	--	4'	4'

65 Enterprise, Suite 130 • Aliso Viejo, California 92656 • (949) 581-2888 • Fax (949) 581-3599

CoastCom 033

Received Nov-10-14 03:54pm

From-9498337946

To-California Coastal

Page 015

Mr. Jeffrey Rabin  
May 30, 2014  
Page 2 of 5

For clarity, Site Plan 2.1 and 2.2 has been revised, where the prior iteration mislabeled the pier. The word "Access Pier" was replaced with the word "Pier." All dimensions and detail remain accurate and unchanged. Please also note that Site Plan 2.1 and 2.2 detail the gangway length at 24', while the water coverage table details the gangway length at 21'. This is due to a 3' overlap the gangway will have with the connecting gangway landing. The 3' overlap is not calculated twice in terms of water coverage.

- *Previous permit history.* At the time of submittal, CAA was unaware that a prior application had been submitted to the Coastal Commission in April 2013; however, we were aware that a prior design for the project included a very large square-shaped dock which likely would be considered not-approvable by the Coastal Commission based on inconsistency with adjacent dock designs. As we discussed following CAA's February application submittal, the April 2013 application was submitted and subsequently withdrawn due to dock design incompatibility. Subsequent to the withdrawal of that application, Bellingham Marine designed a dock that is similar to the existing dock and incorporates a commonly used U-Shape design and state of the art Global Grid Decking. Without taking the 60% light penetration factor into account, overall dock area is proposed to be 1,086.1 square feet. This represents a 322.1 square foot increase over the existing dock size. However, when a light penetration factor of 60% is applied to the the dock the water coverage decreases to 833.7 square feet, which represents an approximately 70 square foot, or an 8% increase in water surface and bottom coverage as compared to the existing dock system.
- *Ownership of the property.* As indicated on page 4 of our submittal letter, Mr. Kevin Moriarty is named as the sole Manager of the 2782 Bayshore, LLC. The Operating Agreement specifies that the business, property and affairs of the LLC be managed exclusively by the Manager. The CDP application is hereby revised to include identification of the applicant as 2782 Bayshore, LLC with Kevin Moriarty as sole Manager.
- *What is the basis for subtracting the square footage occupied by the proposed grating area from the total amount of water coverage?* The United States Army Corps of Engineers (USACE) in conjunction with the National Oceanic and Atmospheric Administration's National Marine Fisheries service (NMFS) makes a recommendation of specific measures to be taken to avoid, minimize, mitigate, or otherwise offset adverse effects to Essential Fish Habitat (EFH). The EFH Programmatic Consultation for Overwater Structures recommendation 11 for pile supported over-water structures recommends that in order to minimize impacts to EFH the project should "incorporate materials into the overwater structure design to maximize light transmittance." The incorporation of the Global Grid Decking material over the entire dock and gangway is a proactive measure to offset incremental increases in shading, which the Coastal Commission staff have characterized as a cumulative impact on marine resources even in

CoastCom 034



Mr. Jeffrey Rabin  
May 30, 2014  
Page 3 of 5

the absence of eelgrass. In terms of marine resource protection, the decking material reduces the coverage impact by allowing 60% light penetration thereby reducing the effective water coverage from 1,081.1 square feet. to 833.7 square feet. While both the total dock coverage and the effective water coverage are indicated on the plan and in the original submittal, the amount of coverage including the 60% light penetration factor is described because that is the amount of shading that will result with the grating material.

Nothing in the Coastal Act precludes the use of innovative materials on docks to enhance and improve shading effects from such structures, in fact, such material has been required and approved within Newport Harbor where eelgrass is present. While there is no eelgrass within the property or the immediate vicinity, the most current revision (Revision 11) of the Southern California Eelgrass Mitigation Policy does encourage the use of materials which allow for light penetration, such as grating, where impacts to eelgrass cannot be avoided (Source: SCEMP, July 31, 1991, 2. Boat Docks and Related Structures). Reliance on The SCEMP Revision 11 is not necessary because there is no eelgrass on the property, however, it is instructive nonetheless. However, we recognize the Coastal Commission references the SCEMP Revision 6, which does not contain any guidance on dock materials. Nevertheless, the Coastal Commission has approved docks within Newport Harbor which incorporate grating to allow for light penetration. In these instances, it appears that grating has only been required where eelgrass is present, and a direct impact on eelgrass would otherwise occur. While no eelgrass is present on the subject property, the incorporation of the light penetrating grating material could allow for future growth of eelgrass. In addition, and as stated in our original CDP application submittal, the global grid decking material is proposed so as to reduce the perceived "cumulative impact" of water surface shading.

As noted above and in our original submittal letter, the proposed Global Grid Decking has a 60% factor for light penetration, which will result in total water surface and bottom coverage of 833.7 square feet, including the required piles. This represents an approximately 70 square foot, or an 8% increase in effective water surface and bottom coverage as compared to the existing dock system.

- *Size of the proposed dock?* While the Coastal Act does not prohibit the construction of "larger" docks, it is understood that movement towards larger docks should be limited to minimize the potential increase of water surface coverage. As detailed above, prior to CAA's involvement in the project, a dock with significantly greater water surface coverage was proposed for this property and subsequently withdrawn from consideration. This proposed dock is responsive to the Commission Staff's concern related to an increase in water shading. As stated above, the global grid decking material was incorporated on every feasible dock surface in order to reduce the effective water shading increase. This was done as a purposeful, pro-active measure in order to limit the increase in water shading.

CoastCom 035

Mr. Jeffrey Rabin  
May 30, 2014  
Page 5 of 5

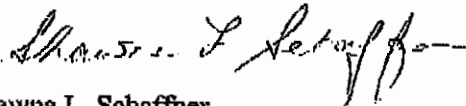
(LCP) policy 3.1.4-5 encourages joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline. Mr. Moriarty's property is bordered by a marina on one side and a private residence on the other. It would be infeasible for Mr. Moriarty to utilize a joint ownership opportunity with the Marina, and while joint ownership would be more feasible with the adjoining residence, there currently is a functioning dock on that property and Mr. Moriarty seeks to replace his existing dock.

- *Declaration of Posting.* The Notice of Pending Permit was posted on the dock because that is the place where the greatest number of the general public will see the Notice. However, as shown on the attached photos, the Notice has been posted in front of the house so that residents and visitors of the private, gated community of Bayshores will see the Notice.

We believe this information responds to all of your concerns and that the additional documents included herein further clarify the proposed project. Please do not hesitate to call me if you have any further questions, or require additional information.

Sincerely,

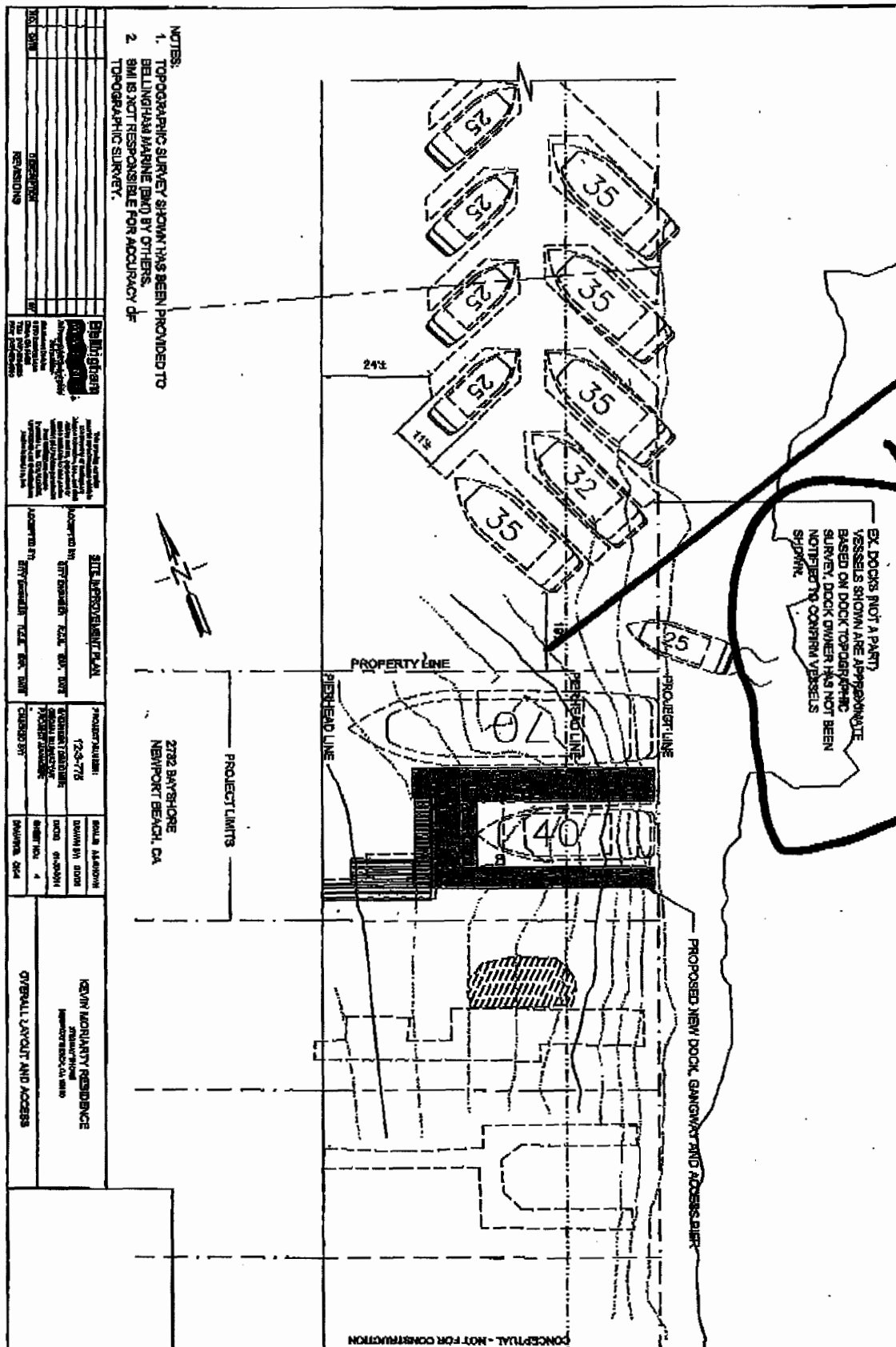
CAA PLANNING, INC.

  
Shawna L. Schaffner  
Chief Executive Officer

c: Mr. Kevin Moriarty

Attachments: Updated Dock Plans  
CDP Application updated applicant information, page 1  
Eelgrass Survey  
Calupera taxifolia Survey  
Updated Posting Photos and Declaration of Posting

# EXHIBIT E



CostCom 112



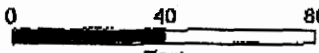
# EXHIBIT F

*Site Address:*  
2782 Bayshore Drive  
Newport Beach, CA 92663

Fuchsia outline reflects dive survey perimeter



Proposed  
12 foot  
navigation  
easement  
shown in  
white.

<p>Newport Beach GIS</p> 	  <p>0 40 80 Feet</p>	<p><b>Disclaimer:</b> Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility (front or relating to any results obtained in its use.</p> <p><b>Imagery:</b> 2009-2013 photos provided by Eagle Imaging <a href="http://www.eagleairtel.com">www.eagleairtel.com</a></p>
--	--	--

# EXHIBIT G

#5972  
2/18/2014**Advanced Listing Services Inc**

Ownership Listings &amp; Radius Maps

P.O. Box 2593 • Dana Point, CA • 92624

Office: (949) 361-3921 • Fax: (949) 361-3923

[www.AdvancedListing.com](http://www.AdvancedListing.com) [Denise@AdvancedListing.com](mailto:Denise@AdvancedListing.com)**100' OWNERSHIP LISTING  
100' OCCUPANT LISTING  
PREPARED FOR:****049-191-27  
2782 BAYSHORE LLC  
2782 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-190-01  
BAYSHORES COMMUNITY ASSN  
PO BOX 4708  
IRVINE CA 92616****049-191-05  
FRITZ HOELSCHER  
2752 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-191-23  
THERESA MORRISON  
PO BOX 15878  
NEWPORT BEACH CA 92659****049-191-24  
ZACHARY & ASHLEY FISCHER  
2812 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-191-27  
2782 BAYSHORE LLC  
2782 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-191-28  
PIERCE KAREN A V RESIDENCE  
2772 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-191-29  
ROGER A DE YOUNG  
2762 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-01  
HENRY A & MARGARET PELLEGRINI  
2603 E 22ND PL  
TULSA OK 74114****049-192-02  
JOHN TBAL  
2811 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-03  
R CLARK  
2801 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-04  
ANDY M LEE  
22 BOULDER VW  
IRVINE CA 92603****049-192-05  
ELIZABETH OH  
17981 SKY PARK CIR P  
IRVINE CA 92614****049-192-06  
JAMES SARGEANT  
2771 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-07  
GARY F & TONI THOMSON  
2761 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-08  
WILLIAM E MC CULLOUGH  
2751 BAYSHORE DR  
NEWPORT BEACH CA 92663****050-451-11 050-461-18  
CITY OF NEWPORT BEACH  
3300 NEWPORT BLVD  
NEWPORT BEACH CA 92663****050-451-46  
AMERICAN COASTAL PROPS LLC  
18881 VON KARMAN AVE 8  
IRVINE CA 92612****050-451-47  
MING HSIEH  
1738 CAMINO LINDO  
SOUTH PASADENA CA 91030****050-461-17  
MICHAEL F HARRAH  
1103 N BROADWAY  
SANTA ANA CA 92701****050-461-19  
ORANGE COUNTY INVESTMENTS  
LLC  
550 W PLUMB LN B  
RENO NV 89509****049-191-23  
OCCUPANT  
2800 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-01  
OCCUPANT  
2821 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-04  
OCCUPANT  
2791 BAYSHORE DR  
NEWPORT BEACH CA 92663****049-192-05  
OCCUPANT  
2781 BAYSHORE DR  
NEWPORT BEACH CA 92663****CoastCom 241**



050-451-46  
OCCUPANT  
86 LINDA ISLE  
NEWPORT BEACH CA 92660

050-451-47  
OCCUPANT  
87 LINDA ISLE  
NEWPORT BEACH CA 92660

050-461-17  
OCCUPANT  
44 LINDA ISLE  
NEWPORT BEACH CA 92660

050-461-19  
OCCUPANT  
43 LINDA ISLE  
NEWPORT BEACH CA 92660

CAA Planning, Inc.  
65 Enterprise, Suite 130  
Aliso Viejo, California 92656

1

**Advanced Listing Services Inc**

Ownership Listings & Radius Maps  
P.O. Box 2593 • Dana Point, CA • 92624  
Office: (949) 361-3921 • Fax (949) 361-3923  
[www.AdvancedListing.com](http://www.AdvancedListing.com)

I, Denise Kaspar, hereby certify that the attached list contains the names, addresses and assessor's parcel numbers of all persons to whom all property is assessed as they appear on the latest available assessment roll of the County of Orange within the area described by the required 100 foot radius (excluding roads and waterways) measured from the exterior boundaries of the property legally described as:

**Subject: APN: 049-191-27**

**Subject Address: 2782 BAYSHORE DR  
NEWPORT BEACH CA 92663**

February 18, 2014

  
Denise Kaspar  
Advanced Listing Services Inc

I hereby certify that to the best of my knowledge the attached occupants list correctly indicates addresses of the required occupants that fall within the radius.

February 18, 2014

  
Denise Kaspar  
Advanced Listing Services Inc

# Exhibit H

**OC PARKS PERMIT**

8/7/2014

**P2010-01294**

Vessey, Kellor 9:33:20 AM HP

**OC Parks Contact Number****949-923-2252****COUNTY OF ORANGE**

**OC Parks Permits**  
**13042 Old Myford Road**  
**Building #4**  
**Irvine, CA 92602**  
**(866) 627-2757**  
**Fax: (714) 973-3336**

**Permit No: P2010-01294****Effective Date: 1/1/2011**

12:00 AM

**Expiration Date: 1/1/2011**

12:00 AM

**Permanently Issued****PERMITTEE**

**Kevin K. Moriarty**  
**22431 antonio Pky #B160-602**  
**Rancho Santa Margarita, CA 92688**

**OC Parks Facility**

<b><u>Name</u></b>	<b><u>Number</u></b>
<b>Newport Harbor Tidelands</b>	<b>HA0002</b>

**Permittee Ref No.: Replaces Permit #2009-10730**

**Contact Person : Bruce**  
**Telephone No. 626-440-9714**

**PERMITTED USE:**

User of County property is hereby authorized as follows, subject to provisions attached hereto:

To use and occupy a portion of County Newport Harbor Tidelands, per Special Provisions attached and for the sole purpose of operating and maintaining one (1) private recreational pier located within the extension of permittees side property lines.

**THIS PERMIT IS TO REMAIN IN EFFECT UNTIL OWNER SELLS PROPERTY OR MAKES SUBSTANTIAL CHANGES TO THE EXISTING PIER OR THE INSURANCE EXPIRES.**

**CEQA Code 1****SWPPP: No****LOCATION OF WORK:****2782 Bayshore Dr., Newport Beach, Assessor's Parcel Number: 049-191-27****Dimension/Type:****Thomas Brother; 889; B7****Area: Newport Beach****CONSIDERATION:**

<b><u>Types</u></b>	<b><u>PWO#</u></b>	<b><u>Permit Fees</u></b>	<b><u>Surety</u></b>	<b><u>Penalty</u></b>	<b><u>Total</u></b>	<b>Total Fees: 291.00</b>
HP	EH68120	291.00 (2085)	0.00 (2092)	0.00	291.00	

<b><u>Payment</u></b>	<b><u>Trust</u></b>	<b><u>Check</u></b>	<b><u>Receipt</u></b>	<b><u>Date</u></b>	<b><u>Amount</u></b>	<b><u>Total Payment:</u></b>	<b><u>291.00</u></b>
Check		4458	724718	12/21/2010	291.00		

**PERMITTEE'S ACCEPTANCE:****DRAFT****COUNTY APPROVAL:****DRAFT****Richard Adler**

**Note: Deposits will not be refunded until Final Inspection is performed and signed-off permit is submitted to OC Parks Permits.**

Nov. 10. 2014 2:37PM

# OCP PARKS PERMIT

No. 0907 P. 29  
P2010-01294

Page 2 of 2

Surety Paid By:

TUF Invoice Paid By:

Contractor:

Engineer:

Inspection: OCP Coastal Facilities - North Beaches

CC: OCP Coastal Facilities Supervisor

## PERMIT INSPECTORS REPORT:

DATE WORK COMPLETED: \_\_\_\_\_

The permitted work was completed in satisfactory manner per instructions and/or the as-built plans and inspectors report submitted herewith for county files

Remarks:

P201001294

Inspector:

Date

Refund Recommended By:

Date

Refund Approved By:

Date:

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**F 16a**

Filed: 6/2/14  
180th Day: 11/29/14  
Staff: F. Sy-LB  
Staff Report: 10/30/14  
Hearing Date: 11/14/14/4

**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-14-0522

**Applicant:** Kevin Moriarty

**Agent:** CAA Planning, Inc., Attn: Shawna Schaffner

**Project Location:** 2782 Bayshore Drive, Newport Beach (Orange County)

**Project Description:** Demolition of an existing 764 sq. ft. "U" shaped boat dock system, three 12-in. sq. concrete dock piles, and two 12-in. sq. "T" piles, and installation of a new 994 sq. ft. "U" shaped boat dock system, three 16-in. square concrete piles and two 16-in. sq. "T" piles. Total water coverage would increase by 230 sq. ft.

**Staff Recommendation:** Approval with conditions

---

**SUMMARY OF STAFF RECOMMENDATION**

The applicant proposes demolition of an existing 764 sq. ft. U-shaped boat dock float, three 12-in. sq. concrete dock piles and two 12 in. sq. "T" piles and installation of new 994 sq. ft. "U" shaped boat dock system, three 16-in. square concrete piles and two 16-in. sq. "T" piles. The proposed new larger dock float would result in a 230 sq. ft. increase of water coverage, a 30% 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.

Larger dock structures that result in additional coverage of water/tideland area reduce the availability of open water area necessary for biological productivity and foraging opportunities. Therefore, the amount of coverage must be minimized in order to protect marine resources. The originally proposed project would have resulted in a 1,086 sq. ft. boat dock system and an additional 322 sq. ft. of additional coverage of water/tideland area. The applicant and Commission staff have worked together to reduce the amount of coverage to 994 sq. ft. that would result in 230 sq. ft. of additional coverage area. The design is based on engineering requirements for the unique location of the project site in Newport Harbor that is subject to more than anticipated wind driven wave loads, higher current, higher wind loading considering direction of wind, and higher impact loading as compared to most other areas in the harbor. Thus, the proposed boat dock system has been reduced to the least amount possible and thus results in preservation of open water area and protection of marine resources. However, while the applicant has provided a narrative and tentative plans indicating the most recent reduction in water/tideland coverage reducing the amount of coverage to now 214 sq. ft. no final revised plans have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

The dock system is located in a unique location in Newport Harbor being subjected 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. The proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act and these special conditions are: **1)** submittal of final revised project plans; **2)** submittal of a Newport Tidelands Encroachment Permit from the County of Orange; **3)** pre- and post-construction eelgrass surveys; **4)** pre- and post-construction *Calera Taxi folia* surveys; **5)** compliance with construction responsibilities and debris removal measures; and **6)** compliance with construction best management practices.

Commission staff recommends **Approval** of Coastal Development Permit No. 5-14-0522 as conditioned.

## **TABLE OF CONTENTS**

<b>I.</b>	<b>MOTION AND RESOLUTION</b>	Page 4
<b>II.</b>	<b>STANDARD CONDITIONS</b>	Page 4
<b>III.</b>	<b>SPECIAL CONDITIONS</b>	Page 5
<b>IV.</b>	<b>FINDINGS AND DECLARATIONS</b>	Page 9
A.	PROJECT LOCATION AND DESCRIPTION, LOCAL GOVERNMENT AND OTHER APPROVALS AND PRIOR COMMISSION ACTIONS AT SUBJECT SITE	Page 9
B.	MARINE ENVIRONMENT & MARINE RESOURCES	Page 11
C.	FILL OF OPEN COASTAL WATERS	Page 14
D.	PUBLIC ACCESS	Page 16
E.	LOCAL COASTAL PROGRAM (LCP)	Page 17
F.	CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	Page 17

## **APPENDICES**

Appendix A – Substantive File Documents

## **EXHIBITS**

Exhibit 1 – Location Maps

Exhibit 2 – Existing Dock Configuration

Exhibit 3 – Proposed Dock Configuration



## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-14-0522 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 final revised project plans. The intent behind the required revised project plans is to minimize water coverage of the proposed new dock. The existing 3' x 16' headwalk section will be eliminated and replaced with two 4' x 4' knee structures. The revised project plans shall be in substantial conformance with the plans submitted on September 12, 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. **Newport Tidelands Encroachment Permit from the County of Orange.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a copy of the Newport Tidelands Encroachment Permit from the County of Orange regarding the proposed project, or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the County of Orange. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit amendment, unless the Executive Director determines that no amendment is legally required.

3. **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.

- 4. 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 *Caulerpa 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 *Caulerpa 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.

**5. 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.

**6. 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.

#### **IV. FINDINGS AND DECLARATIONS:**

##### **A. Project Location and Description, Local Government and Other Approvals, and Prior Commission Actions at Subject Site**

###### **Project Location and Description**

The proposed project involves an existing private residential dock over public tidelands in front of an existing single-family residence located at 2782 Bayshore Drive located in the locked gate community of Bay Shores in the City of Newport Beach (**Exhibit No. 1**). The proposed development consists of the following: demolition of an existing 764 sq. ft. “U” shaped boat dock system consisting of a 7 ft. x 29 ft. finger, a 5 ft. x 29 ft. finger and 5 ft. x 25 ft. headwalk, 5 ft. x 10 ft. access pier, 11 ft. x 16 ft. pier, and 4 ft. x 16 ft. gangway, three 12-in. sq. concrete dock piles, and two 12-in. sq. “T” piles (**Exhibit No. 2**); and installation of a new 994 sq. ft. “U” shaped boat dock system consisting of a 7.5 ft. x 43 ft. finger, a 4 ft. x 43 ft. finger, a 3 ft. x 16.5 ft. headwalk, a 6 ft. x 29 ft. headwalk, a 6.4 ft. x 4 ft. access pier, a 10 ft. x 14 ft. pier, a 4 ft. x 4 ft. access pier, a 3 ft. x 24 ft. gangway, a 4.5 ft. x 7 ft. gangway landing, three 16-in. sq. concrete piles and two 16-in. sq. “T” piles (**Exhibit No. 3**). Additional changes have recently been proposed resulting in a reduction of the dock system area to 978 sq. ft., which will be discussed more thoroughly below. The proposed dock extends 20’ channelward past the U.S. Pierhead Line as allowed by the City’s Harbor Permit Policy and is consistent with the policy. No work is proposed to the existing bulkhead located along the seaward property line.

The existing dock system covers 764 sq. ft. of water/tideland area. Since submittal of the proposed project, the amount of coverage water/tideland area has changed since the applicant and Commissions staff have worked together to reduce the proposed new dock system to the least amount necessary. Initially, the proposed new dock consisted of 1,086 sq. ft. and would have resulted in 322 sq. ft. of additional coverage of water/tideland area and then it was reduced to 994 sq. ft. that would have resulted in 230 sq. ft. of additional coverage area. The project has been additionally reduced to 978 sq. ft. resulting in approximately 214 sq. ft. of coverage of water/tideland area. According to the applicant’s engineer the proposed “U” shaped dock is the minimum size necessary given its unique location in Newport Harbor where the project site is

subjected to more than anticipated wind driven wave loads, higher current, higher wind loading considering direction of wind, and higher impact loading as compared to most other areas in the harbor. While the applicant has provided a narrative and tentative plans indicating the most recent reduction in water/tideland coverage reducing the amount of coverage to now 214 sq. ft. by eliminating the 3' x 16' headwalk section and replacing with two 4' x 4' knee structures, no final revised plans have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

### **Local Government and Other Approvals**

The proposed dock extends 20' channelward past the U.S. Pierhead Line as allowed by the City's Harbor Permit Policy and is consistent with the policy. The project has received an approval-in-concept from the City of Newport Beach Harbor Resources Division on February 19, 2014 (Harbor Permit No. #130-2782 and Plan Check Number 0287-2014). The Santa Ana Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. 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 and on July 14, 2014, the applicant received "Provisional Letter of Permission".

The proposed project extends out into public tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a "Tidelands Survey for Newport Harbor for the City of Newport Beach". Thus, the County of Orange would be the permit issuing authority for development (i.e. dock system) within the public tidelands area and the permits they issue for such development are entitled "Newport Tidelands Encroachment Permits". The applicant has applied for a "Newport Tidelands Encroachment Permit" for the proposed project from the county, but no permit has been issued yet. Thus, the Commission imposes **Special Condition No. 2**, which requires applicant to submit a copy of the "Newport Tidelands Encroachment Permit" issued by the County of Orange regarding the proposed project.

### **Prior Commission Actions at Subject Site**

On May 10, 1984, the Commission approved Administrative Permit No. 5-84-206-(Chapman) for the modification of an existing private pier, ramp and dock, which the current proposed project would be removing and replacing with a new boat dock system. No special conditions were imposed.

On February 8, 2012, the Commission approved De-Minimus Waiver No. 5-12-009-(2782 Bayshore, LLC) for the demolition of an existing single-family residence and construction of a new, 29 ft. high, 7,812 sq. ft. single-family residence. Replacement of tiebacks and concrete deadmen for the existing bulkhead was also proposed.

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 Coastal Land Use Plan (CLUP) 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 Coastal 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....*



### **Marine Resources/Biological Productivity**

Increased coverage of coastal waters is a significant concern since it reduces light and decreases the biological productivity of coastal waters and impedes wildlife foraging activities. The existing boat dock system consists of 764 sq. ft. and the most recent version of the proposed dock system consists of 978 sq. ft. As proposed, the proposed boat dock system results in approximately 214 sq. ft. of increased water coverage.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. A coastal development permit may be issued if the project can ensure that the uses of the marine environment will be carried out in a manner that will sustain the biological productivity of coastal waters. 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. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by covering an unnecessarily large area.

Larger dock structures take up more of the bay’s water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement) than the smaller piers and docks that the Commission found to be consistent with the Coastal Act. Larger dock structures decrease foraging habitat for sight foraging marine birds, such as the state and federally listed California brown pelican, which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may be small compared to the overall water acreage of the harbor, it is a concern because of the cumulative impacts from these kinds of docks. Consistent with those concerns, the Commission has limited the size of shoreline structures to preserve open water area and protect marine resources from adverse impacts. It has found that docks associated with single-family structures should be limited in size to preserve open water areas in bays, thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight.

The applicant states that the replacement of the existing 764 sq. ft. boat dock system is necessary since the original dock construction in 1953 and the subsequent replacement in kind in 1984 do not accommodate the size of modern boats. The originally proposed project would have resulted in a 1,086 sq. ft. boat dock system and an additional 322 sq. ft. of additional coverage area water/tideland area. Since then, the applicant has been working with Commission staff to reduce the amount of additional water/tideland coverage to preserve open water area and protect marine resources for adverse impacts. As a result of collaborating with the applicant and Commission staff, the proposed boat dock system was subsequently reduced to 978 sq. ft. resulting in approximately 214 sq. ft. of coverage of water/tideland area. Therefore, after a few redesigns to reduce the amount of water coverage the proposed boat dock system has been reduced to the least amount possible and thus results in preservation of open water area and protection of marine resources. However, while the applicant has provided a narrative and tentative plans indicating the most recent reduction in water/tideland coverage reducing the amount of coverage to now 214 sq. ft. no final revised plans have been submitted. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit final revised project plans.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Increased water coverage resulting from larger boat dock systems would add to cumulative adverse effects on biological resources of multiple large docks in Newport Harbor. Although a single larger boat dock system may not seem to create significant adverse impacts, the cumulative adverse effect of allowing such increased water coverage will add up over time. It should be noted that there are hundreds of private residential boat dock systems in Newport Harbor and each one has the potential to be replaced by a newer boat dock system. As conditioned, the proposed revised boat dock system minimizes impacts to marine resources and preserves open water area and therefore would not have cumulative adverse impacts upon coastal resources and would be consistent with Sections 30230 and 30231 of the Coastal Act.

### **Eelgrass**

An eelgrass survey took place on May 19 & 20, 2014 as required by the City of Newport Beach Harbor Resources Division. No eelgrass was found in the project area. As a result, the proposed boat dock would not encroach on or result in shading of the existing eelgrass. Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October is valid until the resumption of active growth (i.e., March 1). The project is agendaized for the November 2014 Coastal Commission Hearing so the existing eelgrass survey is no longer valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **Special Condition No. 3**, which requires a new eelgrass survey and identifies the procedures necessary to be completed prior to beginning construction, in case the new survey also expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

### ***Caulerpa Taxifolia***

In 1999, a non-native and invasive aquatic plant species, *Caulerpa Taxifolia*, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). *Caulerpa Taxifolia* is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that *Caulerpa Taxifolia* can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive *Caulerpa Taxifolia*. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. *Caulerpa Taxifolia* is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the general project vicinity, *Caulerpa Taxifolia*, if present, could displace eelgrass in the channels.

A pre-construction *Caulerpa Taxifolia* survey was completed on May 19 & 20, 2014 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized for the November 2014 Coastal

Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **Special Condition No. 4**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is legally required.

### **Construction and Post-Construction Impacts**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help assure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement.

To assure that all impacts to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 5**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality, the Commission imposes **Special Condition No. 6**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

### **Conclusion**

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231, 30233 and 30250 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality and avoiding cumulative impacts.

### **C. Fill of Open Coastal Waters**

Section 30233 of the Coastal Act states, in pertinent 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:*

...

- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities ...*

The proposed project includes removal of an existing boat dock system and installation of a new boat dock system. The existing “U” shaped dock currently contains three 12-in. sq. concrete dock piles, and two 12-in. sq. “T” piles and the proposed new “U” shaped boat dock is to be supported by three 16-in. sq. concrete piles and two 16-in. sq. “T” piles located in coastal waters. Placement of the piles will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet a three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

### **Allowable Uses**

The proposed project includes three 16-in. sq. concrete piles and two 16-in. sq. “T” piles that are larger than the existing piles, to support the new “U” shaped boat dock.

The piles for the boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the total five 16-in. sq. piles will support the boat dock system, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use.

### **Alternatives**

The proposed placement of the five 16-in. sq. piles will result in fill of coastal waters. The design of the boat dock system is based on engineering requirements due to the unique location of the project site in Newport Harbor that is subject to more than anticipated wind driven wave loads, higher current, higher wind loading considering direction of wind, and higher impact loading as compared to most other areas in the harbor. The placement of the five piles is the minimum amount of construction necessary to safely anchor the boat dock system based on its unique location in the harbor. Fewer and/or smaller piles would not adequately secure the boat dock system. By using the least number of piles necessary to accomplish the goal of securing the boat dock system, the five piles associated with the boat dock system represent the least environmentally damaging feasible alternative that still achieves the project goal of allowing boat berthing. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233(a)(3) that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

### **Mitigation**

The proposed recreational boat dock system and its associated five 16-in. sq. piles are an allowable and encouraged marine related use. The five existing 12-in. piles displace 5 sq. ft. of soft bottom habitat. The project design for the boat dock system includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the boat dock system. The potential impacts associated with the five 16-in., displacement of 9 sq. ft. of soft bottom habitat, piles include potential impacts on eelgrass habitat and potential dispersal of *Caulerpa Taxifolia* (as described in detail in the findings above) and the displacement of a net increase of 4 sq. ft. of soft bottom bay habitat with a hard substrate (9 sq. ft. - 5 sq. ft. = 4 sq. ft.). The potential effects on eelgrass and adverse effects related to *Caulerpa Taxifolia* dispersal will be mitigated by the requirements of **Special Condition No. 3** and **No. 4**. With regard to soft bottom habitat, there is no area on site or in the project vicinity that could be feasibly restored in the context of this project. Although the hard substrate of the piles is not equivalent to the

displaced soft bottom habitat, the piles do provide an important type of habitat for marine organisms that is not otherwise widely present in the bay. The hard substrate presents an opportunity for biological resources to prosper in the area. Given the size and scale of the proposed project, the small scale of the soft bottom impact, and the absence of any potential for on-site or nearby restoration of soft bottom habitat, the proposed hard scape habitat is the only feasible mitigation measure available to offset the soft bottom impact in this case. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa Taxifolia*. Therefore, as conditioned, there is adequate mitigation to offset the impacts created by the project.

### **Conclusion**

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30233(a)(3) of the Coastal Act because it is an allowable use, there are no feasible less environmentally damaging alternatives available, and adequate mitigation is provided.

### **D. 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 subject site is located in the locked gate community of Bay Shores in the City of Newport Beach. No public access currently exists through the site. Public access to the harbor exists approximately 1/3 of a mile up coast outside and adjacent to the Bay Shore Community at the Balboa Bay Club and Resort. Thus, the project will have no impacts on existing coastal access.

Letters from the public have been received stating that the proposed project will impact access to the existing adjacent private marina north of the project site and requesting that a navigation easement be imposed on the project site for access to the private marina. Access to the private marina is currently available without the need of a navigation easement and there is no such current agreement for access to the private marina through the applicant's private property. The private marina and project site are two separate properties and the proposed project will not impact access to the adjacent private marina. The proposed dock is located entirely within the applicant's water area and setback consistent with local requirements from the property lines.

## **Conclusion**

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210 and 30212 of the Coastal Act with regard to the public's right of access to the sea.

### **E. LOCAL COASTAL PROGRAM (LCP)**

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 Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP 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 CLUP 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.

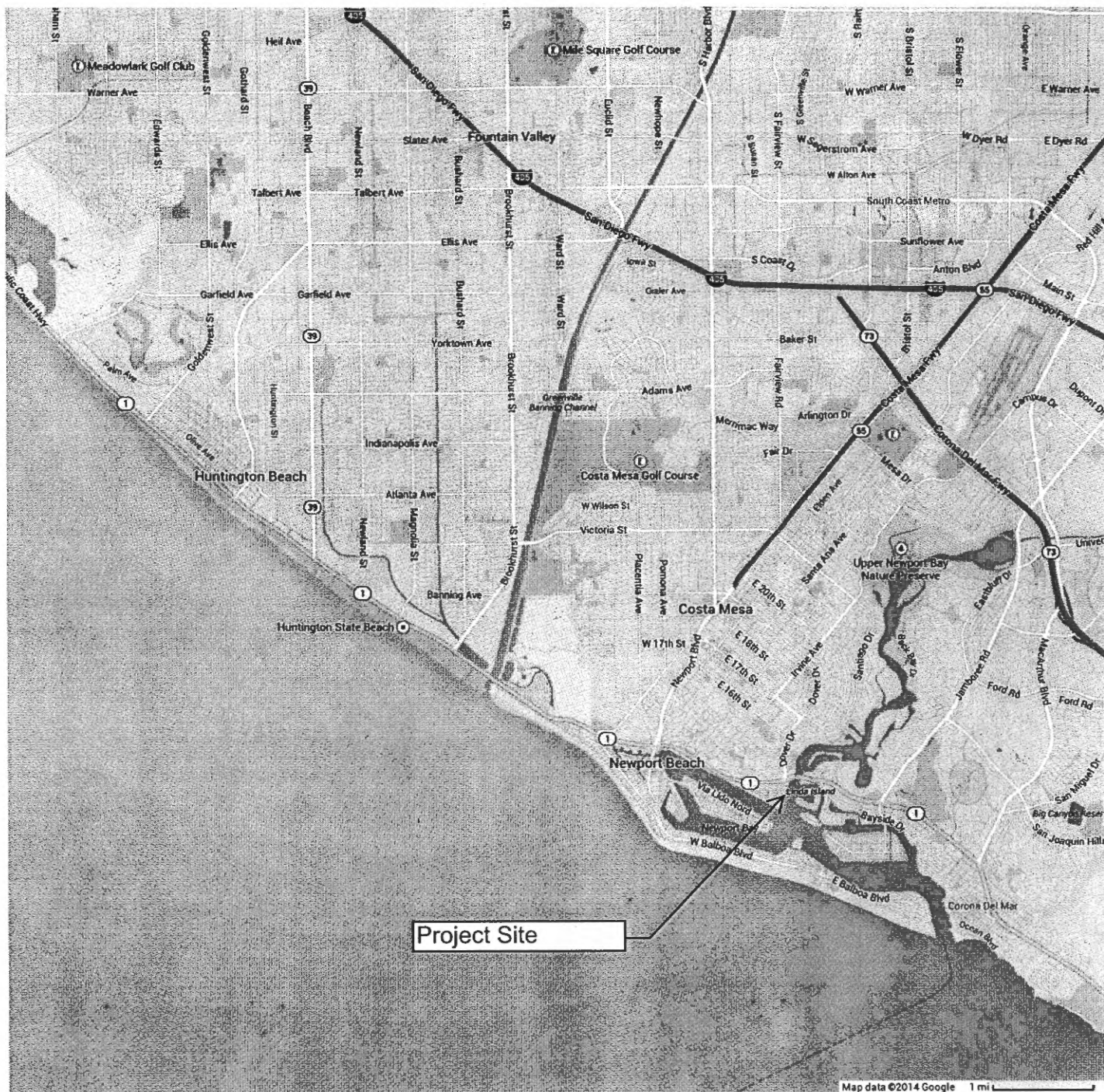
### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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 February 19, 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) submittal of final revised project plans; 2) submittal of a Newport Tidelands Encroachment Permit from the County of Orange; 3) pre- and post-construction eelgrass surveys; 4) pre- and post-construction *Calera Taxi folia* surveys; 5) compliance with construction responsibilities and debris removal measures; and 6) compliance with construction best management practices. 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 Certified Coastal Land Use Plan (CLUP); City of Newport Beach Harbor Permit Policies; City of Newport Beach Waterfront Project Guidelines and Standards; City of Newport Beach Harbor Resources Division Permit/Approval-in-Concept Harbor Permit No. 130-2782 and Plan Check No. 0287-2014 dated February 19, 2014; Letter from CAA Planning, Inc. to Commission staff dated March 11, 2014; Eelgrass and *Caulerpa Taxifolia* surveys by Professional Ecological Sampling Consultants International on October 13, 2012; Eelgrass and *Caulerpa Taxifolia* surveys by Debbie Karimoto on May 19 & 20, 2014; Letter from CAA Planning, Inc. to Commission staff dated February 25, 2014; Letter from Commission staff to CAA Planning, Inc. dated March 27, 2014; Letter from CAA Planning, Inc. to Commission staff dated May 30, 2014; and letter from Bellingham Marine Industries, Inc. to Commission staff dated October 9, 2014.



**RECEIVED**  
South Coast Region

FEB 26 2014

CALIFORNIA  
COASTAL COMMISSION

COASTAL COMMISSION 5 - 140522

EXHIBIT # 1  
PAGE 1 OF 2

Regional Vicinity Map



**PROJECT SITE**

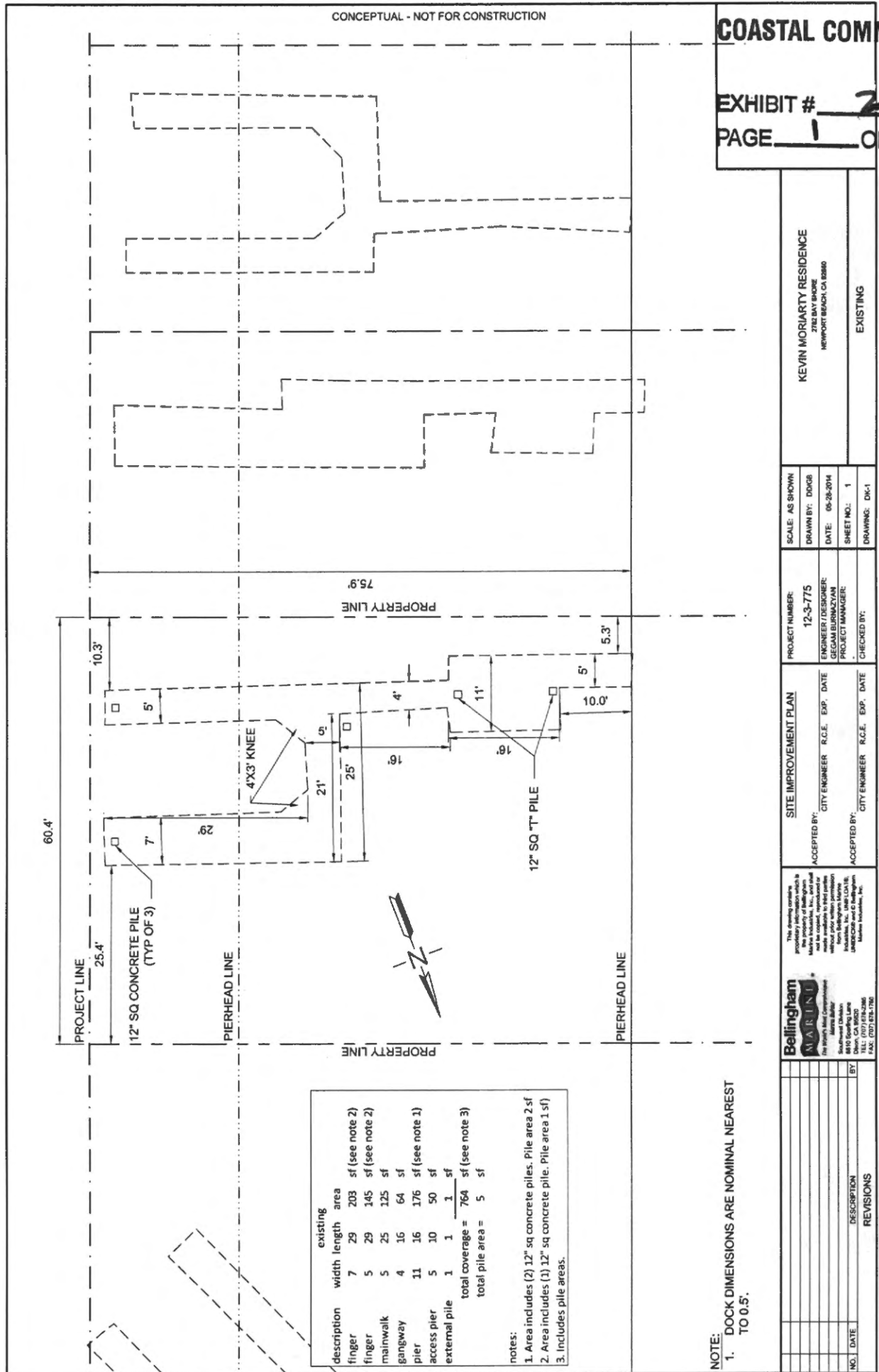


**COASTAL COMMISSION**

EXHIBIT # 1

PAGE 2 OF 2

EXISTING: 764 SQ. FT. OF WATER COVERAGE



NOTE:  
1. DOCK DIMENSIONS ARE NOMINAL NEAREST TO 0.5'.

## COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 1

[illegible]