

CALIFORNIA COASTAL COMMISSION

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



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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-13-0962-A1

Applicant: Jeri Kochis

Agent: Swift Slip Dock and Pier Builders

Location: 1509 East Bay Avenue, Newport Beach, Orange County

Project Description: Remove existing "W" shaped approximately 1,339 square foot floating dock, approach, pier, and gangway, as well as nine 12 inch square concrete piles and six 14 inch square concrete "T" piles. Replace with two new "I" shaped approximately 1,316 square foot combined boat dock systems (one for each of the subdivided properties), with a total of four 14 inch square concrete piles and ten 14 inch square concrete "T" piles.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to remove and replace the existing "W" shaped approximately 1,339 square foot floating dock, approach, pier, and gangway, as well as nine 12 inch square concrete piles and six 14 inch square concrete "T" piles with two new "I" shaped approximately 1,316 square foot combined boat dock systems (one for each of the subdivided properties), with a total of four 14 inch square concrete piles and ten 14 inch square concrete "T" piles.

The subject site is a bayfront property located at 1509 East Bay Ave. in the City of Newport Beach, Orange County. The subject property is located on the north side of the Balboa Peninsula between the first public road and Newport Bay. The subject site at 1509 East Bay

Ave. and the property directly to the west at 1501 East Bay Ave. provide one of the last remaining open stretches of sandy beach on the north side of that area of the Balboa Peninsula.

On April 11, 2014, the Commission approved Coastal Development Permit (CDP) No. 5-13-0962, which allowed for: 1) the demolition of an existing 5,224 square foot single-family home and attached garage located on a 10,980 square foot bayfront property; 2) approval of a tentative parcel map to subdivide the property into two separate parcels (Parcel 1 would be 6,498 square feet and Parcel 2 would be 4,482 square feet); 3) construction of a new two-story, 28-foot-tall single family residence on Parcel 1 with 3,182 square feet of living area, an attached three-car, 668 square foot garage, and a 95 square foot covered entry. To date, no new single family residence has been designed for Parcel 2.

The applicant is now seeking an amendment to CDP No. 5-13-0962 to remove and replace the existing boat dock system that served the single lot prior to the Commission-approved subdivision with two new boating facilities, which would allow for each property to have their own private boat dock system.

The primary issue areas identified with the proposed development include potential adverse impacts to public access and recreation, visual resources, and prejudicing the City's ability to prepare a Local Coastal Program (LCP).

To ensure that any potential adverse impacts are addressed, Commission staff is recommending **Special Conditions 1 through 8**, which would incorporate into this permit requirements to: 1) submit revised project plans; 2) seek an amendment to this permit for any future development; 3) perform and submit a pre and post-construction eelgrass survey; 4) perform and submit a pre-construction caulerpa taxifolia survey; 5) incorporate construction responsibilities and debris removal; 6) incorporate best management practices; 7) maintain public rights; and 8) ensure the boat dock systems are used for boating/marine purposes only. As conditioned, the proposed development conforms with the resource protection and coastal access policies of the Coastal Act.

Commission staff recommends **approval** of coastal development permit amendment 5-13-0962-A1, as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1—Project Vicinity Map
Exhibit 2—Aerial Photograph
Exhibit 3—Project Plans
Exhibit 4—Simulations
Exhibit 5—Project Site Photos

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Amendment No. 5-13-0962-A1 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit 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 would 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 of 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:

Note: Unless specifically altered by this amendment, all conditions imposed on the previously approved permit shall remain in effect.

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, revised project plans for either of the following boat dock system options:

1) replacement of the existing “W” shaped dock system with an in-kind, or redesigned, single dock system; or

2) remove existing dock system and redesign/construct one new dock system along the prolongation of the common lot line that divides the two lots, for shared use of one dock system between the two separate property owners.

For either option, the proposed single dock system shall be designed to: a) maximize the difference in elevation between the sand level along the beach and bottom of the pier, and shall have a minimum clearance of 6 feet, as generally depicted in Exhibit No. 3; b) the pier platform and point at which the gangway descends to the dock float shall be placed as far seaward as possible; c) any pier that connects the bulkhead and pier platform shall not exceed 4 feet in width; d) the number of piles shall be minimized and their placement and orientation shall maximize lateral beach access; e) any “T” piles shall be oriented parallel to the bulkhead; f) the new dock system shall neither exceed the amount of fill that was used for the existing dock system nor exceed the amount of coverage of the existing dock system; and g) any proposed changes to the revised project plans shall not result in extending the boating facility bayward past the City of Newport Beach pierhead line.

The applicant shall submit two sets of revised project plans. 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.

2. **Future Development.** This permit is only for the development described in Coastal Development Permit Amendment No. 5-13-0962-A1. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit amendment No. 5-13-0962-A1. Accordingly, any future improvements to the development authorized by this permit amendment, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-13-0962-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
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 & Wildlife (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.

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 amendment 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.
7. **Public Rights.** The Coastal Commission's approval of this permit amendment shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit amendment. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
8. **Permitted Uses on Dock Structures.** By acceptance of this permit amendment, the applicant agrees that the approved dock structures shall be used for marine/boating related purposes only (e.g., sails, boating equipment storage lockers, personal watercraft storage, etc.). Patio furniture, barbeques, plants, etc. are not permitted.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT DESCRIPTION AND LOCATION

The subject site is a bayfront property located at 1509 East Bay Ave. in the City of Newport Beach, Orange County (**Exhibit 1**). The subject property is located on the north side of the Balboa Peninsula between the first public road and Newport Bay (**Exhibit 2**).

The proposed project involves an existing private residential boat dock system over public tidelands in front of a single-family residence. The site is on the Bay side of Balboa Peninsula and the existing dock system extends from an existing private bulkhead (wooden retaining wall), and across public tidelands in Lower Newport Harbor.

The subject site at 1509 East Bay Ave. and the property directly to the west at 1501 East Bay Ave. provide one of the last remaining open stretches of sandy beach (approximately 150 feet long and 50 feet wide) on the north side of that area of the Balboa Peninsula. There is a portion of a wooden retaining wall that runs along the western end of the property at 1509 East Bay Avenue. This wood wall initially runs parallel to Newport Bay from the eastern property line beneath the existing pier at 1509 East Bay Ave. and then continues on a diagonal. Access to the existing dock system is located at the downcoast edge of the property (which has now been subdivided). The existing dock system contains a “W” shaped dock that extends out into the Bay. The existing dock system also contains a gazebo-type structure on the platform beyond the mean high tide line

A topographical survey prepared by RdM Surveying, Inc. on August 28, 2008 shows that the approximate mean high tide line lies in close proximity to the intersection of the diagonal and parallel sections of wood wall. The northerly boundary of the subject property lies a short distance bayward of the approximate mean high tide line. At low tide, the public can use the sandy beach below the mean high tide line. Portions of the existing beach between the piers and boat docks at 1501 and 1509 East Bay Ave. provide an unobstructed view of Newport Bay and the hills and mountains beyond (**Exhibit 5**).

On April 11, 2014, the Commission approved Coastal Development Permit No. 5-13-0962, which allowed for: 1) the demolition of an existing 5,224 square foot single-family home and attached garage located on a 10,980 square foot bayfront property; 2) approval of a tentative parcel map to subdivide the property into two separate parcels (Parcel 1 would be 6,498 square feet and Parcel 2 would be 4,482 square feet); 3) construction of a new two-story, 28-foot-tall single family residence on Parcel 1 with 3,182 square feet of living area, an attached three-car, 668 square foot garage, and a 95 square foot covered entry. To date, no new single-family residence has been designed or approved for Parcel 2, which according to records submitted by the applicant has been designated as 1503 East Bay Avenue.

On February 24, 2014, the applicant submitted a separate application to remove and replace the existing approximately 1,339 square foot “W” shaped floating dock, approach, pier, and gangway, as well as nine 12 inch square concrete piles and six 14 inch square concrete “T” piles, with two new approximately 1,316 square foot (combined) “T” shaped floating docks (one for each of the subdivided properties), with a total of four 14 inch square concrete piles and ten 14 inch square concrete “T” piles (**Exhibit 3**).

Staff initially requested that the new application for the dock systems be combined with the subject upland development, which the applicant complied with. Staff later indicated that while staff could recommend approval of the proposed upland development (single-family residence), subject to the special conditions that are typically imposed on similar-type development, staff could not recommend that an additional boat dock system (where only one currently exists) would be consistent with the coastal resource protection and public access policies of the Coastal Act and the certified CLUP. Therefore, to expedite the approval of the upland development, the applicant agreed that the original Coastal Development Permit (No. 5-13-0962) would not authorize any development, including, but not limited to, any repair or maintenance, or demolition, involving the existing dock system at 1509 East Bay Ave. And the applicant agreed that any development involving the existing dock or a future dock shall require an amendment to Coastal Development Permit No. 5-13-0962 or an additional Coastal Development Permit from the California Coastal Commission.

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

B. PUBLIC ACCESS AND RECREATION

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 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:

(2) adequate access exists nearby...

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30240 of the Coastal Act states, in part:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act states, in part:

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

The City's CLUP contains a number of policies that are also applicable to proposed developments involving docks and piers including, but not limited to, the following:

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

3.1.4-5 *Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the numbers of piers along the shoreline.*

The proposed dock system will be on public tidelands. There is no direct vertical public pedestrian access to public tidelands through the private residential lot associated with this dock system project. Public pedestrian access to public tidelands is available approximately 75-100 feet upcoast and downcoast of the 1509 E Bay Ave via a vertical public access points at the end of “G” and “H” Streets (**Exhibit 2**). From every street end along the Balboa Peninsula, in fact, members of the public may access tidelands and, for example, launch a kayak, or during low tide, walk under the residential piers for a stroll along Newport Bay on the exposed sand. The public can also access the public beach area seaward of the subject site by watercraft or by swimming to the site.

As stated in the original Coastal Development Permit staff report for the subdivision, Commission staff’s position is, and has generally been, that subdividing a lot into two or more lots does not automatically create a right to a dock system or boating facility for each of the newly subdivided properties. Staff has generally opposed proposals for new private residential dock systems for each newly subdivided parcel in order to prevent the proliferation of such piers and docks, and bulkheads, piers, pier platforms, gangways, docks, and groin walls in general, because such structures individually and cumulatively create impediments to public access along the shoreline of Newport Bay. The City’s CLUP, in the above mentioned policies, also reflects concern over adverse impacts to public lateral access created by dock systems and boating associated facilities.

Notably, here the subject site at 1509 East Bay Ave. and the property directly to the west at 1501 East Bay Ave. provide approximately 150 linear feet of one of the last remaining open stretches of sandy beach on the north side of that area on the Balboa Peninsula. The addition of a second dock system would create another impediment to public access of public tidelands – resulting in further privatization of public tidelands, because the physical structure and docking of private boats will reduce the amount of space available for recreational activities on the beach and over the water. In fact, adjacent to the “G” street end, there is an unpermitted groin. This groin blocks lateral access across the public beach at this street end. Staff is investigating this unpermitted structure, however, as stated above, the public can also access this beach from the water. Further, once the unpermitted groin wall adjacent to the proposed project is removed, which acts as a physical barrier to lateral access along the sandy beach, staff anticipates that the general public will be able to better maximize and protect its legal right to use of the public beach area between the unpermitted wall and the subject site, consistent with Sections 30210 and 30211 of the Coastal Act.

In addition, while the applicant has designed two identical dock systems in a manner that attempts to minimize the appearance of any additional structures on the beach, and that provide 6 feet 5 inches of clearance for the public to walk under in order to access the beach, the fact remains that additional piers, docks and other structures not only reduce the amount of beach

available to the public, but gives the appearance – regardless of whether the public attempts to access the area by land or by sea – that the area is private and not available to the public.

To address and reduce the proliferation of private dock systems, as stated above, Policy 3.1.4-5 of the City’s CLUP encourages joint ownership of piers along the prolongation of the common lot line. Commission staff supports the City’s CLUP policy (3.1.4-5) of encouraging joint ownership of dock systems, because it is a reasonable alternative in situations where applicants desire such new facilities. In this case, since the two lots are currently owned by a single individual, relocating the dock system along the prolongation of the common lot line for shared use is a viable option for the applicant.

Another option available to the applicant is to allow the future second lot owner to use the existing dock, which is large enough to accommodate multiple boats, or share a replacement dock, if the applicant decides to replace the existing dock system and construct a new dock system in its current location. However, construction of a single dock system in a new location, whether shared or unshared, or constructing a new dock system in the same location could adversely impact public access by creating a physical vertical barrier across the beach, thereby obstructing lateral public access along the public beach. Accordingly, if not designed properly the public may not be able to cross under the pier using the sandy portion of the public beach.

In similar residential boat dock system projects the Commission has ensured that dock systems are designed to allow public access under the pier so that there is unimpeded access along the public beaches. Therefore, to ensure that the public has adequate lateral access across the beach, **Special Condition 1**, also requires that for either option that involves construction of a new dock, pier, pier platform, and gangway, the proposed development shall be designed to: a) maximize the difference in elevation between the sand level along the beach and bottom of the pier, and shall have a minimum clearance of 6 feet, as generally depicted in Exhibit No. 3; b) the pier platform and point at which the gangway descends to the dock float shall be placed as far seaward as possible; c) any pier which connects the bulkhead and pier platform shall not exceed 4 feet in width; d) the number of piles shall be minimized and their placement and orientation shall maximize lateral beach access; e) any “T” piles shall be oriented parallel to the bulkhead; f) the new dock system shall not exceed the amount of fill that was used for the existing dock system; and g) any proposed changes to the revised project plans shall not result in extending the boating facility bayward past the City of Newport Beach pierhead line.

Additionally, the Commission imposes **Special Condition 7**, which states that the Coastal Commission’s approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit Amendment. The permittee shall not use this permit amendment as evidence of a waiver of any public rights that may exist on the property.

Therefore, the Commission finds that the proposed development, as conditioned, does not pose significant adverse impacts on public access and recreation and is consistent with Sections 30210, 30211, 30212, 30213, 30221, and 30240 of the Coastal Act.

C. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting

As stated in the City's CLUP, "Newport Beach is located in a unique physical setting that provides a variety of spectacular coastal views, including those of the open waters of the ocean and bay, sandy beaches, rocky shores, wetlands, canyons, and coastal bluffs." And, "The City has historically been sensitive to the need to protect and provide access to these scenic and visual resources . . ."

Accordingly, the CLUP contains a number of policies addressing adverse impacts to coastal views caused by new development including, but not limited to, the following:

- 4.4.1-1 *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*
- 4.4.1-2 *Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*
- 4.4.1-3 *Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.*

- 4.4.1-4 *Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.*
- 4.4.1-5 *Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.*

The proposed development will have an adverse impact on public coastal visual resources, for the addition of a second private residential dock system (where only one currently exists) would contribute to further private development along the coast. The existing shoreline in the surrounding area is developed with private residential boat dock systems, however, as previously mentioned in this staff report, the subject site at 1509 East Bay Ave. and the property directly to the west at 1501 East Bay Ave. provide one of the last remaining open stretches of sandy beach on the north side of that area of the Balboa Peninsula (**Exhibits 2 and 5**). Allowing new private residential dock systems for both of the newly subdivided parcels would segment the open beach area and reduce the size of the sandy beach, thereby constraining views to and along the harbor in this area. Considering that the existing dock system is located on the downcoast side of the subdivided properties, should the existing dock system remain, upcoast views would largely be retained, whereas upcoast views would likely be degraded with the addition of a second dock system.

Commission staff acknowledges that a new single shared dock system along the prolongation of the common lot line would also partly constrain upcoast coastal views, and could slightly degrade coastal visual resources, however, the applicant currently has an existing dock system, and any adverse impacts to coastal visual resources resulting from such a dock system will be significantly less than the adverse impacts resulting from two individual dock systems (**Exhibit 5**).

Furthermore, as discussed in the Public Access and Recreation section of this staff report, the addition of a second dock system would give the appearance that the area is private and not available to the public, because access to the existing boating facility is currently located close to the downcoast property line of the newly subdivided properties, which allows for a visually open and inviting beach. Such a location is the preferred alternative should the applicant seek to keep or even replace the existing dock system, because it provides and maintains the greatest views, and access, whereas relocating the dock system would divide the beach into two sections. Accordingly, to minimize adverse impacts to visual resources, **Special Condition 1** allows the applicant the choice of retaining the existing dock system or constructing a new shared use dock system either at the existing location or along the prolongation of the common lot lines. Furthermore, to minimize placement or construction of structures, such as shade structures or patio equipment that could adversely impact public coastal views, **Special Condition 8** limits the construction of a new dock system to the dock and structures that are necessary for boating related activities, such as storage structures for boating equipment. Therefore, only as conditioned does the Commission find that the proposed project is consistent with Section 30251 of the Coastal Act.

D. BIOLOGICAL RESOURCES AND WATER QUALITY

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 waterflow, 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:

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

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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 . . .

Pursuant to Sections 30230, 30231, 30233, 30240, and 30250 of the Coastal Act, a Coastal Development Permit may be issued if the project can ensure that the uses of the marine environment 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 eelgrass and “lower order” green algae, phytoplankton, and diatoms that form the basis of the marine food chain. The proposed project neither sustains nor enhances productivity of coastal waters, and would have individual, as well as cumulative adverse impacts on coastal waters.

The two proposed private residential dock systems are “I” shaped, would cover approximately 520 square feet and 498.67 square feet respectively, and include a total of four 14 inch square concrete piles and ten 14 inch square concrete “T” piles. As proposed, the project results in the total placement of 14 piles with a cumulative displacement of soft bottom marine habitat of approximately 16.3 square feet, whereas the existing piles cumulatively displaced 16 square feet (**Exhibit 3**).

In addition, the existing dock system covered approximately 1,139.25 square feet of public land, whereas the proposed dock systems cover approximately 1,018.67 square feet of public land. The proposed dock systems would, therefore, cover approximately 120.6 square feet less of public land than the existing dock system (**Exhibit 3**).

The site was surveyed for eelgrass and *Caulerpa taxifolia* on October 25, 2013. Neither eelgrass nor *Caulerpa taxifolia* was found in the project area or vicinity. These eelgrass and *Caulerpa taxifolia* surveys are valid for a limited period of time (until the next growing season for eelgrass and 90 days for *Caulerpa taxifolia*). If construction does not occur within the respective time periods, a subsequent survey will be required. **Special Conditions 3 and 4** identify the procedures necessary to be completed prior to beginning any construction. And, **Special Condition 6** requires the applicant comply with construction best management practices to ensure no adverse impacts to water quality occur within the marine environment during project demolition and construction.

Under Section 30233(a)(3) of the Coastal Act, the placement of piles in open coastal waters for the construction of a new boating facility is an allowable use. Staff has previously documented pier platforms with patio lounges, tables, barbeques, planters, etc. When proposing fill in coastal waters to build a new or expanded boating facility, the proposed project must be tailored to exclusively accommodate boating related uses to be consistent with section 30233. The proposed private pier platform from a residential property to a private boat dock and subsequent associated fill, is simply for the purposes of accessing the boating facility. The pier structure must be strictly limited to boating-related uses, to provide a means for travelling by foot, or other means if disabled, from shore to the boat dock, and nothing more. Therefore, the Commission imposes Special Condition 8, requiring the applicant agree that the approved dock structures shall be used for marine/boating related purposes only (e.g., sails, boating equipment storage lockers, personal watercraft storage, etc.) and that patio furniture, barbeques, plants, etc. are not allowable uses.

Also, under Section 30233(a)(3) of the Coastal Act, the placement of piles in open coastal waters for the construction of a new boating facility is an allowable use, “where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.” The applicant, however, has not provided an alternative, and has indicated an unwillingness to consider sharing dock systems due primarily to concerns over potential liability. Although the difference in the amount of fill between the existing dock system and those being proposed by the applicant is minimal, and the proposed dock system would cover approximately 120.6 square feet less of public land than the existing dock system, alternatives do exist that could potentially further reduce significant impacts to coastal resources and public access.

Among the potential alternative developments are the no project alternative and the shared pier/dock along the prolongation of the common lot line alternative. The no project alternative would leave the existing dock system in place, which could be shared by the owners of the newly subdivided properties. As such, the no project alternative would result in the least amount of impacts on coastal resources and public access. The shared pier/dock along the prolongation of the common lot line alternative does entail removal of the existing dock system and construction of a new dock system along the common lot line, however, as previously established in this staff report, one dock system would have less of an impact on coastal resources and public access than would two dock systems. Should the applicant decide to pursue the shared pier/dock along the prolongation of the common lot line alternative, the difference in the amount of fill required and the coverage over public land would be determined at a later date. Pursuant to the terms of **Special Condition 1**, however, any new dock system will neither increase fill nor cover more public land than the applicant’s existing dock system.

Furthermore, **Special Condition 5** requires the applicant comply with construction best management practices to ensure no adverse impacts to water quality occur within the marine environment during project demolition and construction.

Staff has also previously documented pier platforms with patio lounges, tables, barbeques, planters, etc. in Newport Beach, which are accessory structures and not necessary for the operation of the dock system. When proposing fill in coastal waters to build a new or expanded dock system, the proposed project must be tailored to exclusively accommodate boating related uses. The proposed private pier platform from a residential property to a private boat dock and subsequent associated fill, is simply for the purposes of accessing the dock system. The pier structure must be strictly limited to boating-related uses, to provide a means for travelling by foot, or other means if disabled, from shore to the boat dock, and nothing more. Therefore, the Commission imposes **Special Condition 8**, requiring the applicant agree that the approved dock system shall be used for marine/boating related purposes only (e.g., sails, boating equipment storage lockers, personal watercraft storage, etc.) and that patio furniture, barbeques, plants, etc. are not allowable uses. And to ensure that the applicant is aware that any future development shall require an amendment to this permit or a new Coastal Development Permit, the Commission also imposes **Special Condition 2**.

Finally, as outlined in the staff report for Coastal Development Permit No. 5-10-012 (installation of a new dock system where one did not currently exist) – which was withdrawn by the applicant – although the coverage of bay surface area habitat for this proposed project may seem small when compared with the total amount of open water in Newport Harbor, permitting dock systems for newly subdivided properties, or for existing properties currently without such dock systems, is a significant concern due to the anticipated cumulative impacts of the new facilities. It should be noted that many other properties elsewhere in Newport Harbor currently do not have a dock system, and if each were permitted to have such facilities, there would no doubt be a significant increase in fill, loss of coastal waters, and soft bottom habitat.

Therefore, as conditioned, the Commission finds the proposed project is consistent with Sections 30230, 30231, 30233, 30240, and 30250 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604(a) 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 permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Coastal Land Use Plan (CLUP) was effectively certified on May 19, 1982. The City's certified CLUP was updated on October 13, 2005, and again in October 2009. The City currently has no certified Implementation Plan, therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3

policies of the Coastal Act. The CLUP policies, including 3.1.4-3, 3.1.4-5, and 4.4.1-1 through 4.4.1-5, may be used for guidance in evaluating a development's consistency with Chapter 3.

The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act, as well as with the policies in the City's certified CLUP, because the proposed development would have adverse impacts on coastal resources and public access. As conditioned, however, the proposed development is consistent with Chapter 3 policies of the Coastal Act and with the City's certified CLUP. Therefore, approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program that is consistent with the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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 proposed development would have adverse impacts to coastal resources and public access. Feasible alternatives include shared use of the existing dock or shared use of a new dock along the prolongation of the common lot lines, which the applicant may choose to pursue under this permit. Therefore, as conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Accordingly, the proposed project is found to be consistent with CEQA and the policies of the Coastal Act.

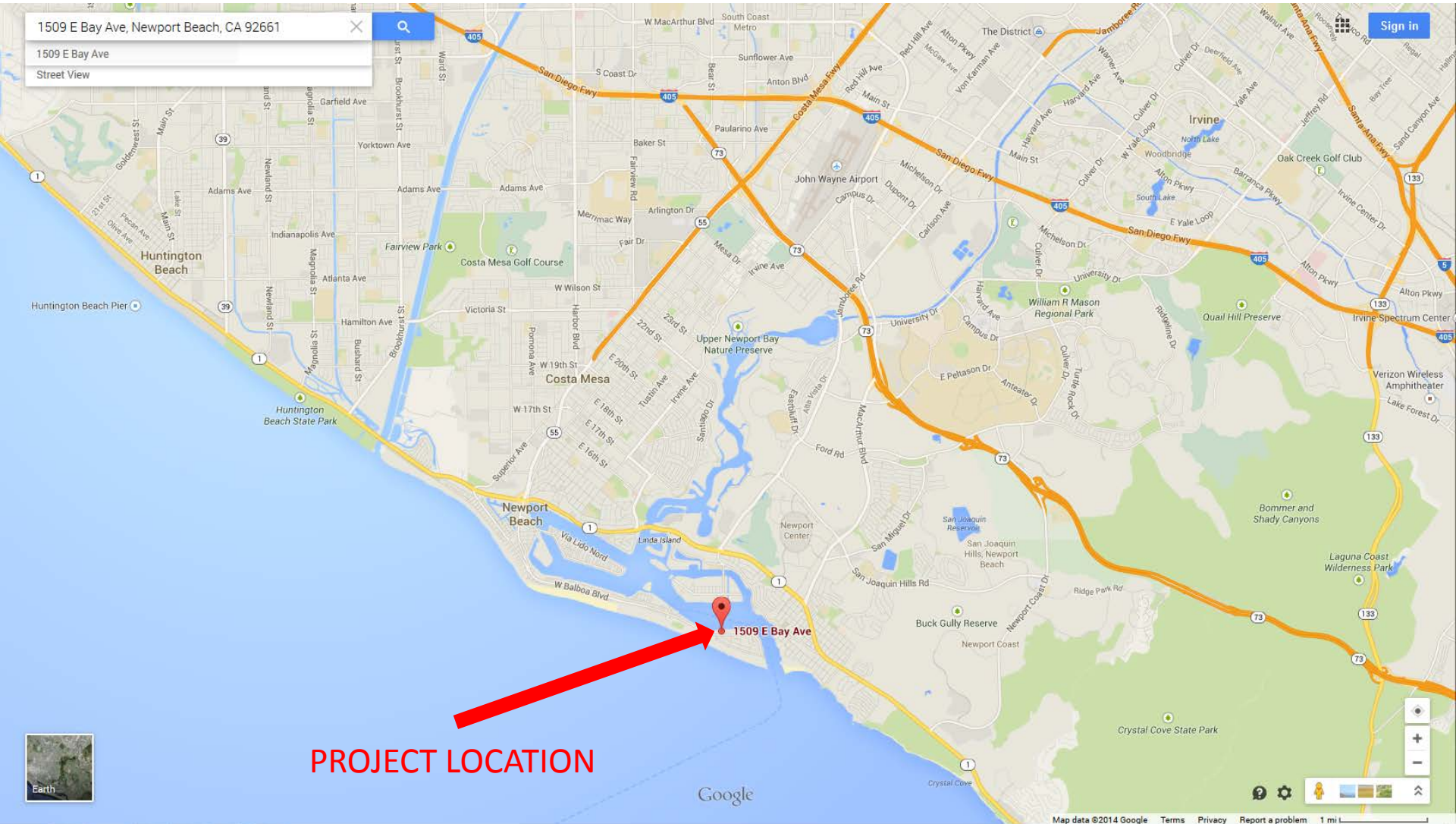
APPENDIX A

Substantive File Documents: Coastal Development Permit Amendment Application File No. 5-14-0962-A1; City of Newport Beach Certified Land Use Plan; City of Newport Beach Resolution of the Zoning Administrator (No. ZA2013-079) Approving Tentative Parcel Map No. NP2013-028 For A Subdivision Located At 1509 East Bay Avenue (PA2013-208); Harbor Permit/Approval-in-Concept dated February 19, 2014; Preliminary Eelgrass Survey Report and Caulerpa Taxifolia Survey for 1509 E Bay Ave, Newport Beach, CA dated October 25, 2013; Coastal Development Permit Application File No. 5-13-0962.

EXHIBIT# 1

Vicinity Map
1 of 1

Application Number:
5-13-0962-A1



1509 E Bay Ave, Newport Beach, CA 92661

1509 E Bay Ave

Street View



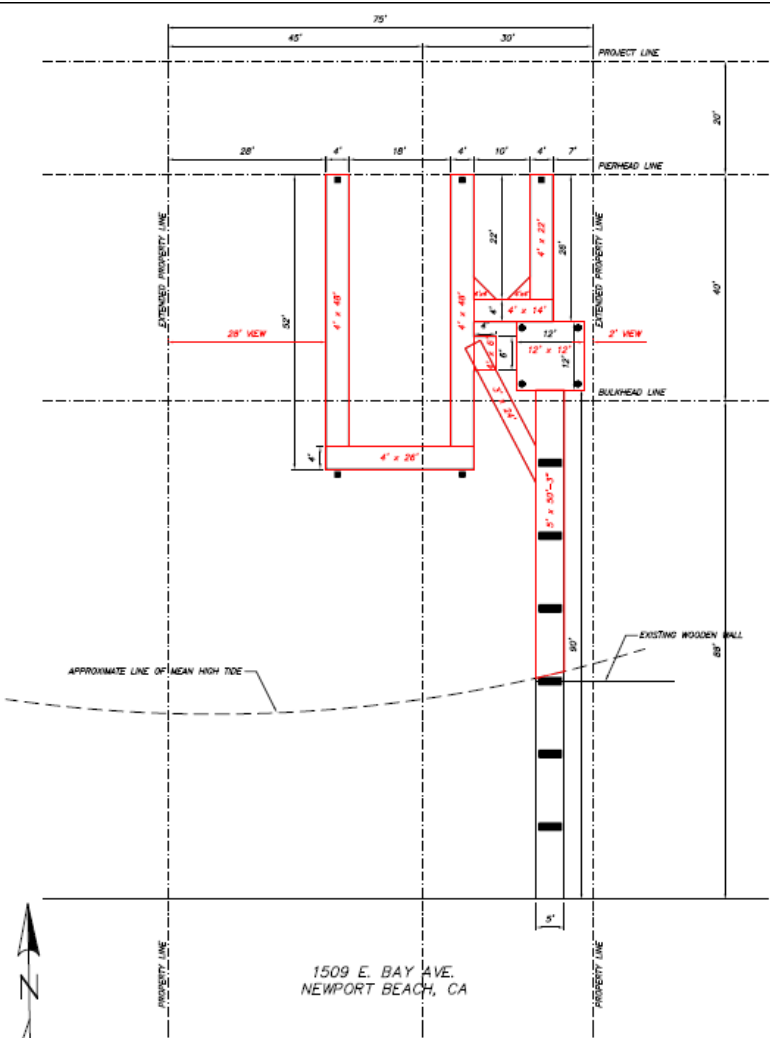
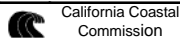
PROJECT LOCATION

EXHIBIT# 3

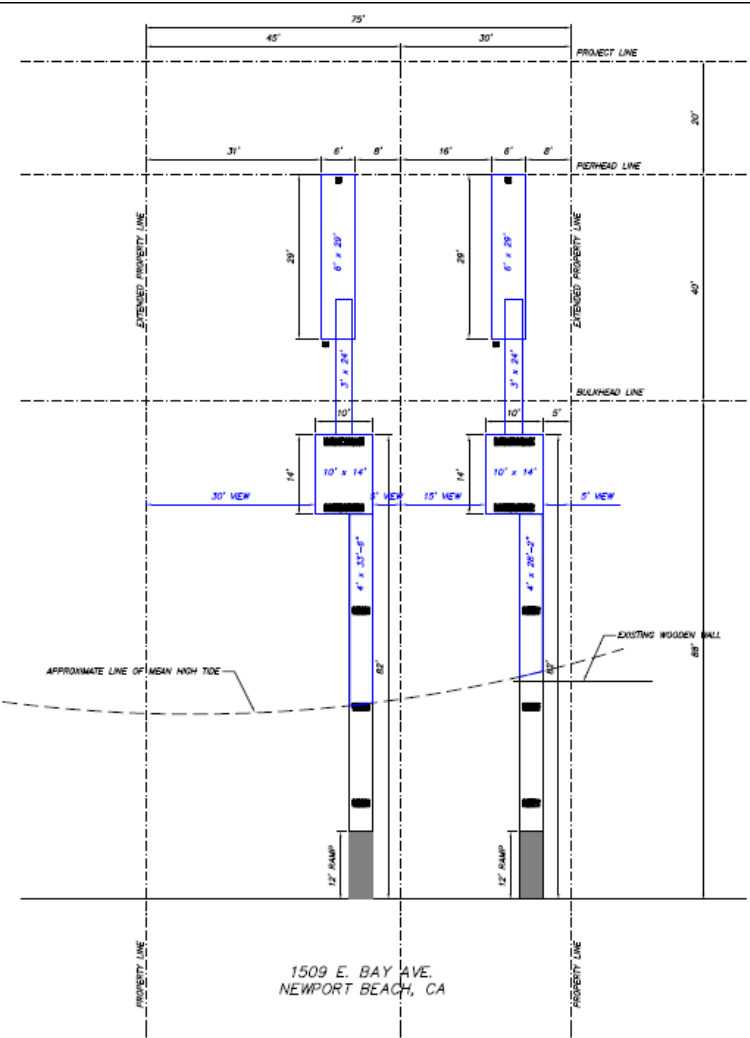
Site Plans

1 of 4

Application Number:
5-13-0962-A1



EXISTING SITE PLAN
SCALE 1"=10'

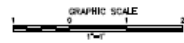


PROPOSED SITE PLAN
SCALE 1"=10'

FOOTNOTES	
NEW-	EXISTING 28' + 2' = 30'
	PROPOSED 30' + 15' + 5' + 5' = 55'
	SS' - 30' = INCREASE OF 25 LINEAR FT. OF VIEWING
OVER PUBLIC LAND-	
	EXISTING 4' x 48' = 192 SQ. FT.
	EXISTING 4' x 48' = 192 SQ. FT.
	EXISTING 4' x 26' = 104 SQ. FT.
	EXISTING 4' x 22' = 88 SQ. FT.
	EXISTING 4' x 14' = 56 SQ. FT.
	EXISTING 4' x 6' = 24 SQ. FT.
	EXISTING 4' x 4' / 2 = 8 SQ. FT.
	EXISTING 4' x 4' / 2 = 8 SQ. FT.
	EXISTING 12' x 12' = 144 SQ. FT.
	EXISTING 5' x 50'-3" = 251.25 SQ. FT.
	EXISTING 3' x 24' = 72 SQ. FT.
	EXISTING OVER PUBLIC LAND TOTAL = 1,139.25 SQ. FT.
	PROPOSED 6' x 20' = 120 SQ. FT.
	PROPOSED 6' x 20' = 120 SQ. FT.
	PROPOSED 3' x 24' = 72 SQ. FT.
	PROPOSED 3' x 24' = 72 SQ. FT.
	PROPOSED 10' x 14' = 140 SQ. FT.
	PROPOSED 10' x 14' = 140 SQ. FT.
	PROPOSED 4' x 33'-6" = 134 SQ. FT.
	PROPOSED 4' x 26'-2" = 112 SQ. FT.
	PROPOSED OVER PUBLIC LAND TOTAL = 1,018 SQ. FT.
	1,139.25.0 - 1,018.0 = DECREASE OF 121.25 SQ. FT. OVER PUBLIC LAND



NOTE:
ALL FIELD MEASUREMENTS AND SITE
PLAN ARE AS PROVIDED BY THE
CONTRACTOR/OWNER/OWNER
REPRESENTATIVE.



EXHIBIT# 3

Site Plans

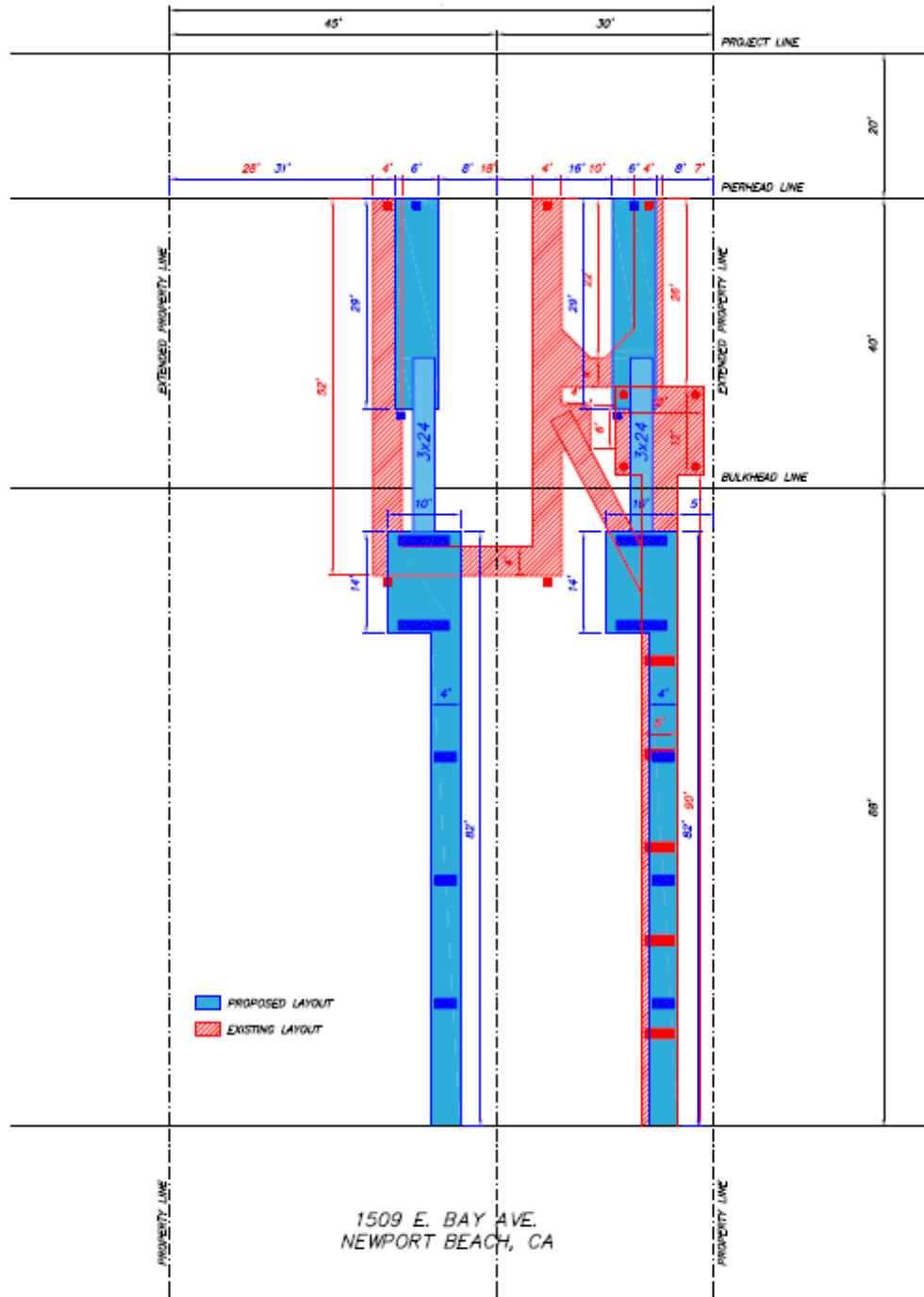
2 of 4

Application Number:

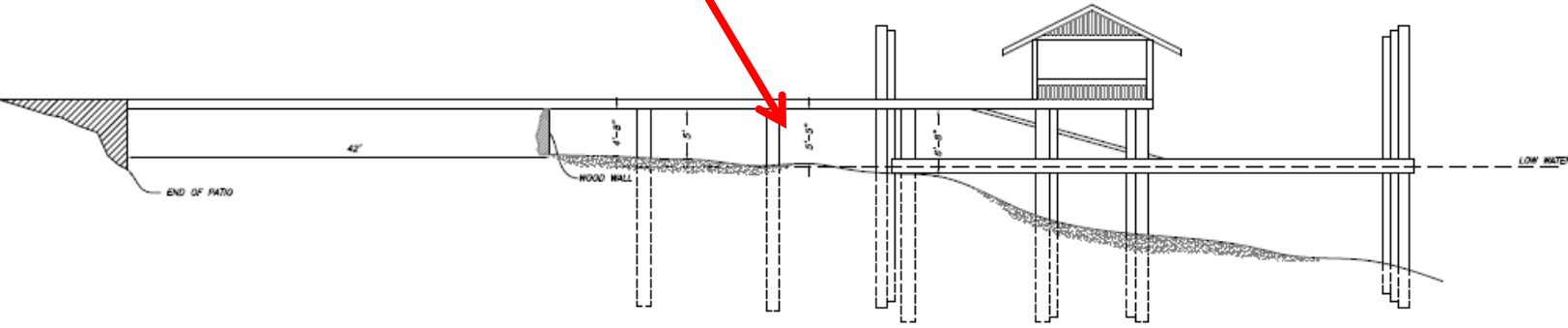
5-13-0962-A1



California Coastal
Commission

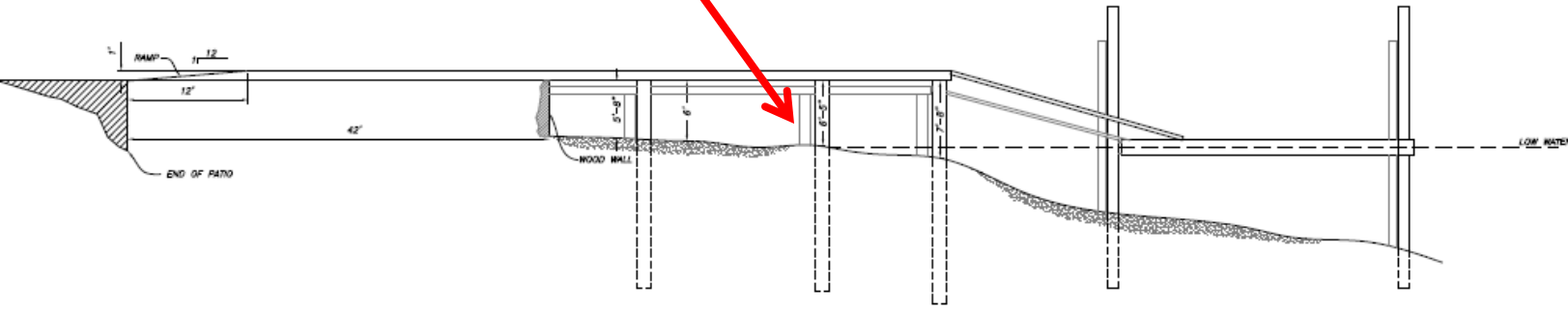


5'5" Clearance



EXISTING EAST ELEVATION
 SCALE 1"=6'

6'5" Clearance



PROPOSED EAST ELEVATION
 SCALE 1"=6'

EXHIBIT# 3

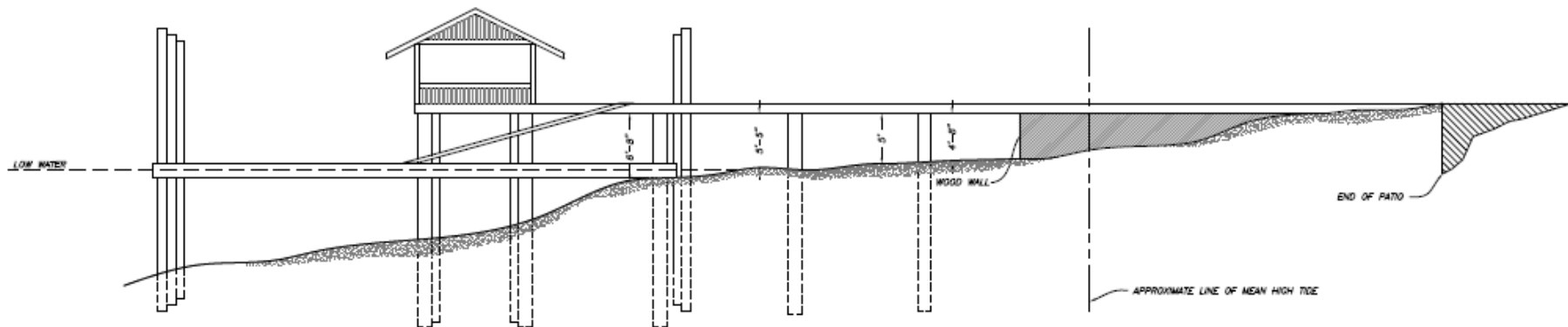
Site Plans

4 of 4

Application Number:

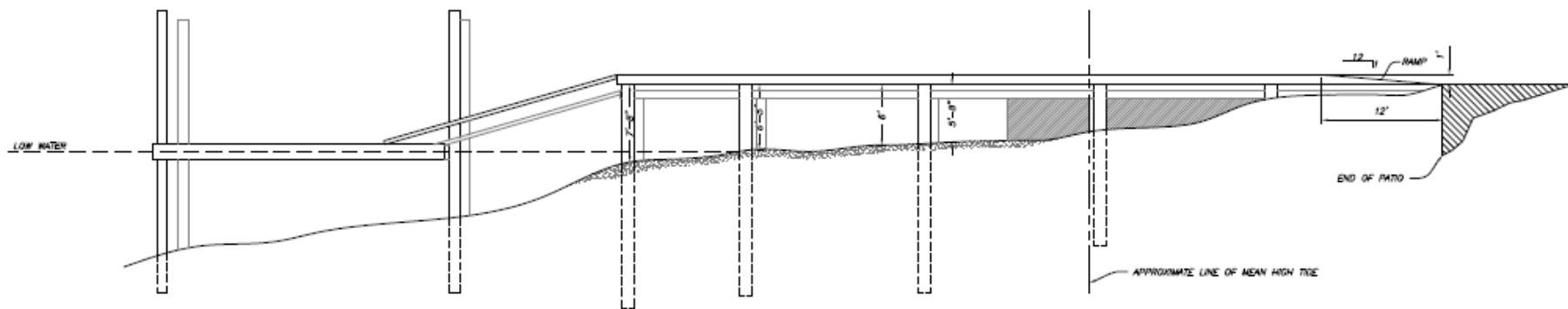
5-13-0962-A1

California Coastal
Commission



EXISTING WEST ELEVATION

SCALE 1"=6'



PROPOSED WEST ELEVATION

SCALE 1"=6'

PROPOSED BOATING FACILITY

UNPERMITTED GROIN WALL

PUBLIC
 BEACH



EXISTING BOATING FACILITY

UNPERMITTED GROIN WALL
PUBLIC BEACH



EXHIBIT# 5

Site Photograph

1 of 2

Application Number:

5-13-0962-A1

California Coastal
Commission

SUBJECT SITE – LOOKING EAST



EXISTING BOATING FACILITY



PUBLIC BEACH

EXHIBIT# 5

Site Photograph
2 of 2

Application Number:
5-13-0962-A1



California Coastal
Commission

SUBJECT SITE – LOOKING NORTHEAST

